

IN THE SUPREME COURT OF OHIO

CASE NO. 2024-1276

**STATE OF OHIO,
Plaintiff-Appellant,**

-vs-

**D.T.,
Defendant-Appellee.**

**ON APPEAL FROM THE EIGHTH DISTRICT COURT OF APPEALS
CASE NO. CA-23-112955**

**BRIEF OF AMICUS CURIAE, GREATER CLEVELAND CONGREGATIONS,
IN SUPPORT OF D.T.**

Louis E. Grube, Esq. (#0091337)
[Counsel of Record]

FLOWERS & GRUBE

Terminal Tower, 40th Floor
50 Public Square
Cleveland, Ohio 44113
(216) 344-9393
leg@pwfco.com

*Attorney for Amicus Curiae,
Greater Cleveland Congregations*

Dave Yost, Esq. (#0056290)

ATTORNEY GENERAL OF OHIO

T. Elliot Gaiser, Esq. (#0095284)
Solicitor General

Samuel C. Peterson, Esq. (#0081432)
Deputy Solicitor General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
(614) 466-8980
thomas.gaiser@ohioago.gov

*Attorney for Amicus Curiae,
Ohio Attorney General Dave Yost*

Michael C. O'Malley, Esq. (#0059592)

CUYAHOGA COUNTY PROSECUTOR

Anthony Miranda, Esq. (#0090759)
Assistant Prosecuting Attorney
1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113
(216) 443-7964
amiranda@prosecutor.cuyahogacounty.us

*Attorneys for Plaintiff-Appellant,
the State of Ohio*

Lauren Hammersmith, Esq. (#0096671)

Assistant Public Defender

OHIO PUBLIC DEFENDER'S OFFICE

250 East Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394
lauren.hammersmith@opd.ohio.gov

*Attorney for Defendant-Appellee,
D.T.*

Hyeji Kim, Esq. (PHV#29450-2025)

THE GAULT CENTER

1800 M St. NW

FT1 Box #33604

Washington, DC 20033

(202) 452-0010

hkim@defendyouthrights.org

*Attorney for Amicus Curiae,
The Gault Center*

TABLE OF CONTENTS

TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
STATEMENT OF INTEREST OF <i>AMICUS CURIAE</i>	1
STATEMENT OF THE CASE AND FACTS	2
ARGUMENT	2
PROPOSITION OF LAW: A VOLUNTARY GUILTY PLEA IN AN ADULT COURT WAIVES THE ISSUES OF COMPETENCY OR AMENABILITY IN JUVENILE COURT.....	2
I. THE OHIO ATTORNEY GENERAL IS WRONG ABOUT THE PLEA SYSTEM AS IT EXISTS IN CUYAHOGA COUNTY.....	2
II. THE REALITY ON THE GROUND IN CLEVELAND IS THAT CHILDREN ARE POORLY SERVED BY THE LOCAL JUSTICE SYSTEM AND RARELY UNDERSTAND WHAT IS HAPPENING IN ADULT COURT.	7
CONCLUSION	9
CERTIFICATE OF SERVICE.....	10

TABLE OF AUTHORITIES

Federal Cases

<i>Class v. United States</i> , 583 U.S. 174 (2018)	6
--	---

State Cases

<i>01/28/2025 Case Announcements</i> , 2025-Ohio-231.....	3
--	---

<i>Carper v. State</i> , 27 Ohio St. 572 (1875)	6
--	---

<i>Havel v. Villa St. Joseph</i> , 2012-Ohio-552.....	6
--	---

<i>In re D.S.</i> , 2021-Ohio-2516 (8th Dist.)	5
---	---

<i>State v. Cottrell</i> , 2024-Ohio-4900 (8th Dist.).....	5
---	---

<i>State v. Curry</i> , 2023-Ohio-1571 (8th Dist.)	5
---	---

<i>State v. Hill</i> , 2018-Ohio-279 (8th Dist.).....	5
--	---

<i>State v. J.R.</i> , 2022-Ohio-1664, ¶ (8th Dist.).....	7
--	---

<i>State v. Jones</i> , 2022-Ohio-1169 (8th Dist.).....	5
--	---

<i>State v. McGill</i> , 2020-Ohio-5177 (8th Dist.).....	5
---	---

State Statutes

<i>R.C. 2152.02</i>	4
---------------------------	---

State Rules

Crim.R. 11.....	3, 4, 6
-----------------	---------

Crim.R. 12	3
------------------	---

Secondary Authorities

Cleveland Metropolitan Bar Association, <i>Plea Review Week with Cuyahoga County Prosecutors</i> (accessed June 9, 2025)	4
The Holy Bible, Common English Bible.....	8
The Holy Bible, New Revised Standard Version.....	2, 8
Lila Kazemian, Ph.D., <i>Pathways to Desistance From Crime Among Juveniles and Adults: Applications to Criminal Justice Policy and Practice</i> (accessed June 9, 2025)	7
Schubert Center for Child Studies, <i>The Impact of Adolescent Developmental & Brain Research on Juvenile Justice Reform</i> (accessed June 9, 2025).	5

STATEMENT OF INTEREST OF AMICUS CURIAE

Greater Cleveland Congregations (“GCC”) is a non-partisan, non-profit membership organization founded in 2011. It is comprised of nearly 40 distinct congregations and non-profits, representing well over 20,000 constituents across Cuyahoga County. GCC is committed to organizing people of faith and our neighbors to work together to identify the most urgent needs in our community and to work with elected officials and other community leaders to find solutions for justice, equity, and democracy. GCC engages in community advocacy around health equity, voter engagement, economic democracy, gun safety, and criminal justice reform.

Within the criminal justice system, GCC advocates for better pretrial services, ending cash bail, and limiting discretionary bind-overs of children to the adult courts. This latter work is motivated by significant risks youth face in adult court and prisons, including an incredibly disproportionate racial makeup of the children who are transferred, a suicide rate in prison far higher than in juvenile facilities, and a far higher incidence of sexual abuse and rape against those children convicted as adults and incarcerated. In December 2021, GCC publicly launched a campaign to reduce discretionary bind overs in Cuyahoga County, firm in our belief—based on evidence and anecdote—that our county’s disproportionate prosecution of children as adults was moving us further away from peace and justice in our community.

Through its court-monitoring efforts, GCC has observed numerous juvenile bind-over hearings in the Cuyahoga County Juvenile Court. To GCC’s court-watchers, these hearings have the feeling of a mere formality along the way to an inevitable transfer to adult court rather than a meaningful opportunity to determine the amenability of the children subjected to them. The children rarely appear to understand what is going on

and why they are answering ‘yes’ to questions about their knowledge, willingness, and volition around waiver of procedural rights. After arriving in the General Division for prosecution as an adult, GCC has only seen one child choose to go to trial rather than quickly pleading guilty. This appears to be a function of the negotiation process, in which a young person is over-charged in the Juvenile Division with numerous individual offenses arising from the same factual transaction. The deals often require a child to stipulate to their lack of amenability in return for dismissal of some of the charges and a guilty plea to whatever remains after the case has been transferred. By all appearances, the Cuyahoga County Prosecutor’s Office drives hard bargains with children who do not know what is happening or the full extent of the rights they have given away. Based on GCC’s collective experience, we strongly believe that our children deserve better opportunities to be reformed and rehabilitated.

In the words of the prophet Isaiah, GCC is called to be a “repairer of the breach” and a “restorer of streets to live in.” *Isaiah* 58:12 (New Revised Standard Version). We ask and expect our community “to loose the bonds of injustice, to undo the thongs of the yoke, to let the oppressed go free, and to break every yoke.” *Isaiah* 58:6 (New Revised Standard Version). We envision a community where the “wolf shall live with the lamb. . . . They will not hurt or destroy.” *Isaiah* 11:6;9 (New Revised Standard Version). The existing situation is not consistent with GCC’s vision for our city. GCC therefore submits this brief out of concern that the Court might adopt the proposition of law offered by Plaintiff-Appellant, the State of Ohio (the “State”), without reckoning with the reality on the ground in Cleveland, Ohio. Particularly, *Amicus Curiae* the Ohio Attorney General offered a view of the issues that is starkly out of touch with the procedures followed in Cuyahoga County and the bargaining position of children there.

STATEMENT OF THE CASE AND FACTS

GCC defers to the statement of the case and facts offered in the Merit Brief filed by Defendant-Appellee, D.T.

ARGUMENT

On January 28, 2025, this Court accepted one proposition of law for review:

PROPOSITION OF LAW: A VOLUNTARY GUILTY PLEA IN AN ADULT COURT WAIVES THE ISSUES OF COMPETENCY OR AMENABILITY IN JUVENILE COURT.

Memorandum in Support of Jurisdiction of Plaintiff-Appellant, the State of Ohio, filed October 28, 2024, p. 8; 01/28/2025 Case Announcements, 2025-Ohio-231, p. 4. For the following reasons, this Court should reject the proposition of law.

I. THE OHIO ATTORNEY GENERAL IS WRONG ABOUT THE PLEA SYSTEM AS IT EXISTS IN CUYAHOGA COUNTY.

At the heart of the brief filed by the Attorney General as Amicus lies the weak supposition that *a child's right* to properly managed competency and amenability hearings may be “implicitly waived by a guilty plea.” *Brief of Amicus Curiae Ohio Attorney General Dave Yost filed April 18, 2025 (“A.G.’s Brief”), p. 14.* Along those lines, the lower court was criticized for the way it analyzed the impact of D.T.’s guilty plea:

The majority wrote that D.T. should be allowed to appeal because it did not “believe a defendant must choose to go to trial, rather than enter a guilty plea, in order to preserve his or her right to challenge errors in the juvenile court’s handling of competency issues or its amenability determination.” App.Op. at ¶79. In doing so, the majority overlooked a significant third option: a no contest plea. Unlike a guilty plea, a no contest plea “is not an admission of defendant’s guilt, but is an admission of the truth of the facts alleged in the indictment, information, or complaint.” Crim.R. 11(B)(2). In recognition of that fact, this Court has held that a “plea of no contest does not preclude a defendant from asserting upon appeal that the trial court prejudicially erred in ruling on a pretrial motion.” *Beasley*, 2018-Ohio-16 at ¶15 (citing Crim.R. 12(I)).

Id., p. 23-24. It is wildly out of touch to suggest that a child in Cuyahoga County will have the power to simply assert control and give a plea that preserves then-existing issues for appeal: “Had D.T. pleaded no contest, and had the common pleas court accepted his plea, he could have done exactly what the Eighth District majority envisioned: appeal without entering a guilty plea or going to trial.” *Id.*, p. 24.

It is not just that a child will be unlikely to understand the difference between a guilty and no contest plea, which would be essential to making any kind of informed decision about the type of plea to enter to preserve appellate rights. *Nobody* in Cuyahoga has the power to demand a no-contest plea. A Common Pleas Court certainly has the power to give or withhold “consent” to a no-contest plea. *Crim.R. 11(A)*. And it is reasonable to expect that judges will be far less likely to give assent when the kind of serious felony allegations that can be bound over for trial in adult court have been made. *See R.C. 2152.02(AA) and (BB)* (defining categories of offenses for which a child may be prosecuted as an adult). But even if a trial judge were willing, the Attorney General has not shown and cannot establish that the Cuyahoga County Prosecutor will *ever* offer a no-contest plea in a juvenile bind over case following a ruling in this case. And that is why this whole line of argument falls apart.

In Cuyahoga County, the Prosecutor’s Office has long exerted imperious control over plea negotiations. It utilizes the “mark” system. Cleveland Metropolitan Bar Association, *Plea Review Week with Cuyahoga County Prosecutors*, <https://www.clemetrobar.org/?pg=CMBABlog&blAction=showEntry&blogEntry=65291> (accessed June 9, 2025). In this system, the assistant prosecuting attorney in charge of any given case, who is usually the one present at court for hearings when a defendant is present, cannot bargain for plea deals with anyone. Rather, a supervising attorney, who is likely not to be present, decides on

a “mark” reflecting “the best plea possible.” *Id.*; *State v. Curry*, 2023-Ohio-1571, ¶ 4 (8th Dist.) (assistant prosecutors require “permission” from a “supervisor” to make or change a “mark”); *State v. Cottrell*, 2024-Ohio-4900, ¶ 2 (8th Dist.) (same); *State v. McGill*, 2020-Ohio-5177, ¶ 16 (8th Dist.) (same); *see also In re D.S.*, 2021-Ohio-2516, ¶ 5 (8th Dist.) (reflecting use of the mark system in juvenile matters in Cuyahoga County). As one of Cuyahoga County’s trial judges once explained on the record to a defendant:

Attorneys are required to take plea deals to you, but they can’t control what the plea deal is. He can’t get a mark that the state isn’t willing to give him. He can only ask. Your lawyers can only ask. They can’t control it. The state has a right to not reduce any charges if they wish. That’s their option. If they choose to reduce it, again, that’s their option. (Emphasis added.)

State v. Hill, 2018-Ohio-279, ¶ 13 (8th Dist.). These are take-it-or-leave-it offers.

It is anyone’s guess why prosecutors would make a no-contest plea available ever again in a juvenile bind over case if, as the Attorney General argues, that would be necessary to preserve all juvenile court issues for an appeal. If this Court holds that guilty pleas waive all prior non-jurisdictional defects in a juvenile proceeding, it is not hard to see that guilty pleas will be the only kind of pleas made available by the State in these sorts of cases. As it stands, there is only one reported decision from the Eighth District Court of Appeals reflecting that a no-contest plea was offered and accepted by a child bound over for prosecution as an adult. *E.g.*, *State v. Jones*, 2022-Ohio-1169, ¶ 8-12 (8th Dist.). This stands against the backdrop of more than one hundred bind over cases in Cuyahoga County every year. Indeed, the significant plurality of juvenile bind overs throughout Ohio come from Cleveland. Schubert Center for Child Studies, *The Impact of Adolescent Developmental & Brain Research on Juvenile Justice Reform*, p. 1 <https://case.edu/schubertcenter/sites/default/files/2024-03/The%20Impact%20of%20>

Adolescent%20Developmental%20Final%20for%20print%203.13.24.pdf (accessed June 9, 2025). So, quite contrary to the Attorney General’s view, one may not simply enter a no-contest plea to avoid waiver of juvenile-court issues by implication through a guilty plea. And a ruling relying on that false premise will only make it less true.

All of this matters because this Court is not bound to apply the concept of waiver strictly. This Court did not invent waiver as the result of a guilty plea in *Carper v. State*, 27 Ohio St. 572 (1875), as the Attorney General softly implies. That decision quoted a procedural statute, “sec. 111,” at a time when statutes were the source of procedural law. *Carper* at 574-575. Following enactment of the Modern Courts Amendment to the Ohio Constitution, this Court makes procedural law through its rule-making process. *Havel v. Villa St. Joseph*, 2012-Ohio-552, ¶ 12. Presuming there were still a statute that mandates a broad waiver of earlier disputed issues after a guilty plea—neither the State nor the Attorney General identified one—then this Court’s procedural rules would nonetheless prevail. *Id.* And Crim.R. 11 does not expressly say that a guilty plea waives all or any particular statutory procedures, like the bindover or competency protections a juvenile court must apply. As for the federal authorities relied upon by the Attorney General, they very clearly rely on judicially invented doctrine with its roots in the common law of Massachusetts. *Class v. United States*, 583 U.S. 174, 180 (2018).

Consequently, this Court has enormous discretion to make a practical rule for Ohio about the effect of a guilty plea on juvenile-court errors. Th Court should apply a waiver rule grounded in reason and the true context of juvenile proceedings. This Court should reject the State’s proposition of law because it is based upon anachronisms in the law, the foundations of which washed away long ago. Instead, waiver principles should be applied, if at all, in the interests of justice—not to bar procedural relief for children who need it.

II. THE REALITY ON THE GROUND IN CLEVELAND IS THAT CHILDREN ARE POORLY SERVED BY THE LOCAL JUSTICE SYSTEM AND RARELY UNDERSTAND WHAT IS HAPPENING IN ADULT COURT.

As a practical matter, the Attorney General puts undue faith in the ability of children like D.T. to know and understand their rights while navigating their way through Cuyahoga County's adult justice system. The GCC joins and adopts the argument offered today by *Amicus Curiae* The Gault Center, which describe the developmental factors bearing on a court's obligations to ensure children understand what is going on in their criminal proceedings, any options they may have, and the likely permanence of the decisions they will be asked to make. It is also worth considering against that backdrop that the current line drawn between children and adults—the age of eighteen—may not even reflect the reality that the youthfulness of adolescence follows us into our early twenties. Lila Kazemian, Ph.D., *Pathways to Desistance From Crime Among Juveniles and Adults: Applications to Criminal Justice Policy and Practice*, p. 1, <https://www.ojp.gov/pdffiles1/nij/301503.pdf> (accessed June 9, 2025). In stark contrast to the current prosecutorial strategy in Cuyahoga County, more people should be treated as adolescents, not fewer.

But not even children are getting everything that they deserve out of the juvenile system in Cuyahoga County. This is a system where even those with a suspended law license have been permitted to practice—in the most serious juvenile bindover matters. *E.g.*, *State v. J.R.*, 2022-Ohio-1664, ¶ 45 (8th Dist.) (“The state asserts that there was no denial of J.R.’s right to counsel because (1) the probable cause and amenability hearings at which Brooks represented J.R. were ‘preliminary’ and ‘non-adjudicatory,’ (2) Brooks’ suspension was simply due to ‘failure to pay his fees’ and (3) ‘Brooks did not fail to ever meet the substantive requirements [for practicing law in Ohio] because he was at one time

a properly licensed attorney authorized to practice law.”). Not even that kind of problem will lead the State to concede error. *Id.*

Children deserve more. In the Gospel of Matthew, Jesus says: “Whoever welcomes one such child in my name welcomes me.” *Matthew* 18:5 (New Revised Standard Version). But instead of welcoming our children into juvenile courts as developing minors, too often the justice system treats them as little adults. We ask them to make life-altering decisions that they are incapable of truly understanding and then condemn them to harsh punishment in the adult justice system. This is *injustice*, and it typically leads to recidivism and future crime, after children who need custody and services receive punishment and mistreatment in adult prison.

In the Gospel of Matthew, Jesus goes on to say: “As for whoever causes these little ones who believe in me to trip and fall into sin, it would be better for them to have a huge stone hung around their necks and be drowned in the bottom of the lake.” *Matthew* 18:6 (Common English Bible). While these words may sound harsh to our modern ears, Jesus’ hyperbole is intended to make an important point. We must do *everything* in our power to support our children in turning from evil and towards good. Our future depends on it. In this moment, when the Court will decide whether to enforce its judicial rule of waiver to guilty pleas that children rarely understand, supporting children means allowing appellate courts to reach issues that arise before the plea is entered.

CONCLUSION

For all the foregoing reasons, this Court should reject the State's proposition of law.

Respectfully Submitted,

/s/ Louis E. Grube

Louis E. Grube, Esq. (0091337)

FLOWERS & GRUBE

*Attorney for Amicus Curiae,
Greater Cleveland Congregations*

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **Amicus Brief** has been served by e-mail on

June 10, 2024, upon:

Dave Yost, Esq.
ATTORNEY GENERAL OF OHIO
T. Elliot Gaiser, Esq.
Solicitor General
Samuel C. Peterson, Esq.
Deputy Solicitor General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614.466.8980
thomas.gaiser@ohioago.gov
*Attorney for Amicus Curiae,
Ohio Attorney General Dave Yost*

Hyeji Kim, Esq.
THE GAULT CENTER
1800 M St. NW
FT1 Box #33604
Washington, DC 20033
(202) 452-0010
hkim@defendyouthrights.org
*Attorney for Amicus Curiae,
The Gault Center*

Michael C. O'Malley, Esq.
CUYAHOGA COUNTY PROSECUTOR
Anthony Miranda, Esq.
Assistant Prosecuting Attorney
1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113
(216) 443-7964
amiranda@prosecutor.cuyahogacounty.us
*Attorneys for Plaintiff-Appellant,
the State of Ohio*

Lauren Hammersmith, Esq.
Assistant Public Defender
OHIO PUBLIC DEFENDER'S OFFICE
250 East Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394
lauren.hammersmith@opd.ohio.gov
*Attorney for Defendant-Appellee,
D.T.*

/s/ Louis E. Grube
Louis E. Grube, Esq. (#0091337)
FLOWERS & GRUBE

*Attorney for Amicus Curiae,
Greater Cleveland Congregations*