IN THE SUPREME COURT OF OHIO

B.J. ALAN COMPANY, d/b/a Phantom Fireworks, et al.,	} Supreme Court Case No. 08-0306
Appellees,	} On Appeal from the Wayne County Court of Appeals, Ninth Appellate District
v.	
CONGRESS TOWNSHIP BOARD OF ZONING APPEALS, et al,	} Court of Appeals Case No. 07CA0051
Appellants.	

BRIEF OF *AMICUS CURIAE* OHIO PROSECUTING ATTORNEYS ASSOCIATION IN SUPPOPT OF APPELLANT CONGRESS TOWNSHIP BOARD OF ZONING APPEALS

FILED
JUN 30 2008
CLERK OF COURT
SUPREME COURT OF OHIO

Martin Frantz (#0002625)
Wayne County Prosecuting Attorney
Katherine Gallagher (#0073310)
Latecia Miles (#0077353)
Assistant Prosecuting Attorneys
115 West Liberty Street
Wooster, Ohio 44691
(330) 262-3030
Fax: (330) 287-5412

Timothy M. Burke (#0009189)
Emily T. Supinger (#0074006)
Daniel J. McCarthy (#0078388)
Manley Burke, LPA
225 West Court Street
Cincinnati, Ohio 45202
(513) 721-5525
Fax: (513) 721-4268

COUNSEL FOR APPELLANT, CONGRESS TOWNSHIP BOARD OF ZONING APPEALS

Daniel F. Brosius (#0007925), **Counsel of Record**
Peter N. Griggs (#0073819)
Loveland & Brosius, LLC
50 West Broad Street, Suite 3300
Columbus, Ohio 43215
(614) 464-3563
Fax: (614) 224-6221

COUNSEL FOR *AMICUS CURIAE* OHIO TOWNSHIP ASSOCIATION

Stephen W. Funk (#0058506)
Paul W. Lombardi (#0078179)
Roetzel & Andress, LPA
222 South Main Street, Suite 400
Akron, Ohio 44308
(330) 376-2700
Fax: (330) 376-4577

COUNSEL FOR APPELLEES, B.J. ALAN COMPANY, PHANTOM FIREWORKS OF WEST SALEM, INC. & ZOLDAN FAMILY OHIO LIMITED PARTNERSHIP

Joseph T. Deters (#0012084)
Hamilton County Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3052
Fax: (513) 946-3021

Nick A. Selvaggio (#0055607)
Champaign County Prosecuting Attorney
Scott D. Schockling (#0062949)
Assistant Champaign County Prosecuting Attorney
200 North Main Street
Urbana, Ohio 43078
(937) 484-1900
Fax: (937) 484-1901

COUNSEL FOR *AMICUS CURIAE* OHIO PROSECUTING ATTORNEYS' ASSOCIATION

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES.....iii

STATEMENT OF INTEREST OF *AMICUS CURIAE* OHIO PROSECUTING ATTORNEYS ASSOCATION.....1

STATEMENT OF CASE AND FACTS.....2

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW.....2

Proposition of Law No. I: The requirement set forth in R.C. 519.02 that a township zoning resolution be created "in accordance with a comprehensive plan" is met where the township's zoning resolution relies on a county plan that sets forth the land use and planning goals for the county, which includes the township in the plan.....2

A. Chapter 519 of the Revised Code encourages cooperation between townships and planning commissions during the adoption of a zoning resolution, and utilization of a comprehensive plan authored by the planning commission furthers that goal.....2

B. No statutory provision requires the utilization of township-specific comprehensive plans during the adoption of a zoning resolution.....6

Proposition of Law No. II: The requirement set forth in R.C. 519.02 that a township zoning resolution be created "in accordance with a comprehensive plan" is a flexible concept that must be evaluated by looking at the nature of the land to be zoned.....8

CONCLUSION.....12

CERTIFICATE OF SERVICE.....13

TABLE OF AUTHORITIES

CASES

BGC Properties, v. Township of Bath (Mar. 21, 1990),
Summit App. No. 14252, 1990 Ohio App. LEXIS1026.....8

B.J. Alan Co. v. Congress Twp. Bd. of Zoning Appeals,
Wayne App. No. 07CA0051, 2007-Ohio-7023.....1, 5, 9

Cleveland Elec. Illum. Co. v. Cleveland (1988), 37 Ohio St.3d 50.....7

Cline v. Ohio Bur. Of Motor Vehicles (1991), 61 Ohio St.3d 93.....7

Columbia Oldsmobile, Inc. v. Montgomery (1990), 56 Ohio St.3d 60.....7

East Fairfield Coal Co. v. Miller Zoning Inspector (1955),
71 Ohio L. Abs. 490.....10

Englehardt v. Philipps (1939), 136 Ohio St. 73.....11

Florida v. Jimeno (1991), 500 U.S. 248.....10, 11

Garcia v. *Siffrin Residential Assn.* (1980), 63 Ohio St.2d 259.....7

Ketchel v. Bainbridge (1992), 79 Ohio App.3d 174.....6

Ohio v. Robinette (1996), 519 U.S. 33.....11

Reese v. Copley Twp. Bd. of Trustees (1998), 129 Ohio App.3d 9.....8

Rumpke Waste, Inc. v. Henderson (S.D. Ohio 1984), 591 F. Supp. 521.....8, 9

Ryan v. Board of Twp. Trustees of Plain Township (Dec. 11, 1990),
Franklin App. No. 89AP-1441, 1990 Ohio App. LEXIS 5519.....7

Village of Euclid v. Ambler Realty Co. (1926), 272 U.S. 365.....9, 10

STATUTES

R.C. 519.02.....2, 3, 6, 7, 8

R.C. 519.04.....3

R.C. 519.05.....2, 3

R.C. 519.07.....3

R.C. 713.23.....4, 5

OTHER AUTHORITIES

Evans-Cowley, Jennifer, "Land Use Planning and Zoning in Ohio Townships," *Journal of Extension*, August 2006, Volume 44, No. 4.....6

Merriam-Webster Dictionary.....11

Stuart Meck and Kenneth Pearlman, Ohio Planning & Zoning Law (2007).....9

Wayne County Comprehensive Plan.....6

Statement of Interest of *amicus curiae* Ohio Prosecuting Attorneys' Association

The Ohio Prosecuting Attorneys Association ("OPAA") is a private non-profit membership organization which was founded in 1937. The OPAA was established and exists for the benefit of the 88 elected county prosecutors in Ohio. The goal of the OPAA, since its inception, has been: to increase the efficiency of its members in the pursuit of their profession; to broaden their interest in government; to provide cooperation and concerted actions on policies which affect the office of prosecuting attorney; and to aid in the furtherance of justice.

The OPAA and its member prosecuting attorneys have a compelling interest in the outcome of this case. By statute, prosecuting attorneys are charged with the duty of representing townships. Since 1947, townships have been vested with the authority to adopt zoning resolutions in accordance with a comprehensive plan. Many of these townships are small with limited resources. Yet the need for effective land management and planning is no less than in Ohio's large municipalities and fast-growing suburbs. By requiring townships that want to implement zoning to develop their own comprehensive plan, as opposed to utilizing one developed by a county or regional planning commission, the Wayne County Court of Appeals severely limits their ability to do so, given the cost of developing such a plan. See *B.J. Alan Co. v. Congress Twp. Bd. of Zoning Appeals*, Wayne App. No. 07CA0051, 2007-Ohio-7023.

More compelling though, the Court of Appeals has made every township zoning resolution a ticking time bomb that might be found unenforceable at any time for want of a comprehensive plan tailored to that specific jurisdiction. Many of these resolutions have been in effect for decades, yet the Court of Appeals has called into question their

validity. Prosecuting attorneys, in their role as counselors to townships, are charged with the duty of enforcing township zoning resolutions, including their criminal provisions. Yet their unique role as representatives of the sovereign prohibits them from prosecuting criminal cases not supported by probable cause. By calling into question the validity of zoning resolutions, the Court of Appeals has left prosecuting attorneys with the unenviable task of enforcing zoning resolutions that might prove to be invalid, in possible contravention of their ethical duties as prosecutors.

Statement of the Case and Facts

The OPAA adopts the statement of the case and facts as presented by Appellants, Congress Township and the Congress Township Board of Zoning Appeals.

Argument

Proposition of Law No. I: The requirement set forth in R.C. 519.02 that a township zoning resolution be created "in accordance with a comprehensive plan" is met where the township's zoning resolution relies on a county plan that sets forth the land use and planning goals for the county, which includes the township in the plan.

In its decision, the Court of Appeals found that the Zoning Resolution was invalid because it was not drafted in accordance with a comprehensive plan unique to Congress Township. By requiring each individual township to have its own comprehensive plan, the Court of Appeals has effectively precluded them from utilizing a plan prepared by a county or regional planning commission that looks at a county or region, in contravention of the intent of Chapter 519.

A. Chapter 519 of the Revised Code encourages cooperation between townships and planning commissions during the adoption of a zoning resolution, and utilization of a comprehensive plan authored by the planning commission furthers that goal.

Chapter 519 clearly contemplates townships relying upon assistance from a county or regional planning commission. For example, the last paragraph of R.C. 519.05 states:

> In any county where there is a county or regional planning commission, the zoning commission may request such planning commission to prepare or make available to the zoning commission a zoning plan, including text and maps, for the unincorporated area of the township or any portion of the same.

Also of note is R.C. 519.04 which provides:

> Where there is a county or regional planning commission the board [of township trustees] may appoint qualified members of such commission to serve on the township zoning commission.

Furthermore, according to R.C. 519.07,

> the township zoning commission shall submit the proposed zoning resolution, including texts and maps, to the county or regional planning commission of the county or district in which the township is located, if there is such a commission, for approval, disapproval, or suggestions.

These provisions of Chapter 519 indicate the General Assembly's desire to have townships rely upon the expertise of county and regional planning commissions during the enactment of zoning resolutions. Planning commissions may draft the zoning resolution and individual members may be appointed to the township zoning commission. Utilizing a comprehensive plan prepared by a planning commission furthers this collaborative effort.

Furthermore, there is no reason why that comprehensive plan cannot address the county or region as a whole. R.C. 519.02 only requires that a zoning resolution be enacted in accordance with a comprehensive plan. It does not have to be a plan limited to the township considering the adoption of a zoning resolution.

Indeed, utilization of a county or regional comprehensive plan is more logical than one limited to a township. No political subdivision exists in a vacuum and many of the problems zoning seeks to address (sprawl, conservation, etc.) can only be addressed on a county or regional basis. One does not fall off the face of the earth when he or she leaves Congress Township; rather, he or she simply enters another political subdivision that faces many of the same land use issues as Congress Township.

Reflective of this reality, county and regional planning commissions are statutorily charged with the following duties:

> (1) Preparing the plans, including studies, maps, recommendations, and reports on:
>
> (a) Regional goals, objectives, opportunities, and needs, and standards, priorities, and policies to realize such goals and objectives;
> (b) Economic and social conditions;
> (c) The general pattern and intensity of land use and open space;
> (d) The general land, water, and air transportation systems, and utility and communication systems;
> (e) General locations and extent of public and private works, facilities, and services;
> (f) General locations and extent of areas for conservation and development of natural resources and the control of the environment;
> (g) Long-range programming and financing of capital projects and facilities.
>
> (2) Promoting understanding of and recommending administrative and regulatory measures to implement the plans of the region;
>
> (3) Collecting, processing, and analyzing social and economic data, undertaking continuing studies of natural and human resources, coordinating such research with other government agencies, educational institutions, and private organizations;
>
> (4) Contracting with and providing planning assistance to other units of local government, councils of governments, planning commissions, and joint planning councils; coordinating the planning with neighboring planning areas; cooperating with the state and federal governments in coordinating planning activities and programs in the region;

> (5) Reviewing, evaluating, and making comments and recommendations on proposed and amended comprehensive land use, open space, transportation, and public facilities plans, projects, and implementing measures of local units of government; and making recommendations to achieve compatibility in the region;
>
> (6) Reviewing, evaluating, and making comments and recommendations on the planning, programming, location, financing, and scheduling of public facility projects within the region and affecting the development of the area[.]

R..C. 713.23.

By relying upon a county or regional plan, a township benefits from a "big picture" approach that takes into account its interdependence with other political subdivisions, many of which face the same issues. Furthermore, a county or regional planning commission might be the only entity in a locale with the expertise needed to draft a comprehensive plan. Requiring a specific plan for each political subdivision would greatly task the commission's resources and result in less thorough plans. In effect, the citizens of Congress Township, who received a better analysis of their land use needs, might actually receive less as a result of the Court of Appeals' decision. This nonsensical result is further reason to reverse the appellate court's decision requiring townships to develop comprehensive plans unique to them.

In the present case, Congress Township Trustee William Cletzer testified that he was involved in the drafting of the current zoning resolution while a member of the township zoning commission. *B.J. Alan Co. v. Congress Twp. Bd. of Zoning Appeals*, Wayne App. No. 07CA0051, 2007-Ohio-7023, at ¶14. He also testified that the drafters looked to the Wayne County Comprehensive Plan and molded or formed the township resolution based upon that plan. *Id.*

Moreover, the comprehensive plan is wholly suited for use by townships. In that regard, the plan provides the following:

- Under the title "Proposed Land Use and Development Goals for Wayne County Area," goals and recommendations for the preservation of agricultural lands, urban development, energy, environment, and natural resources.[1]

- A model zoning text for use by Wayne County townships, including recommended districts, lot dimensions, and administration procedures.[2]

- A chapter entitled "Regional Development Factors and Goals," which states that the plan serves "the entire area of Wayne County and all its communities."[3]

- Proposed regional land use and development goals for Wayne County, including the preservation of farmland, the conservation of energy, and the retention and improvement of environmental and natural resources.[4]

In short, the Wayne County Comprehensive Plan offers a thorough discussion of ways local communities can use zoning to implement its goals and recommendations. As such, it provides a blueprint for townships implementing zoning resolutions.

Moreover, townships commonly utilize a county- or region-wide comprehensive plan when enacting zoning resolutions. A 2006 survey of Ohio townships showed that approximately one-third of them had relied upon a county comprehensive plan when enacting their zoning resolution.[5] The Court of Appeals' decision casts doubt on the validity of those plans. It also inhibits townships without zoning from adopting resolutions since they alone must bear the burden of developing a comprehensive plan

---

[1] Wayne County Comprehensive Plan (Part I) at 27-28.
[2] *Id.* at 34, 41.
[3] Wayne County Comprehensive Plan (Part III) at 1.
[4] *Id.* at 10-26.
[5] Evans-Cowley, Jennifer, "Land Use Planning and Zoning in Ohio Townships," *Journal of Extension*, August 2006, Volume 44, No. 4.

unique to them. These negative impacts are further reason to reverse the Court of Appeals' decision requiring township-specific comprehensive plans.

B. No statutory provision requires the utilization of township-specific comprehensive plans during the adoption of a zoning resolution.

No provision of Chapter 519 requires the utilization of township-specific comprehensive plans. R.C. 519.02 does not require that a comprehensive plan be independently adopted in order to have a valid zoning resolution. E.g., *Ketchel v. Bainbridge* (1992), 79 Ohio App.3d 174, 183. Rather, a board of township trustees "may in accordance with a **comprehensive plan** regulate . . . the uses of land for trade, industry, residence, recreation, or other purposes. . . ." R.C. 519.02 (emphasis added).

It should be noted that no adjective or qualifier precedes "comprehensive plan." Rather, R.C. 519.02 simply mentions a comprehensive plan. When construing a statute, a court is to give effect to the words used in a statute, not to insert words not used. E.g., *Cleveland Elec. Illum. Co. v. Cleveland* (1988), 37 Ohio St.3d 50, paragraph three of the syllabus. In other words, courts may not delete words used or insert words not used. *Cline v. Ohio Bur. Of Motor Vehicles* (1991), 61 Ohio St.3d 93, 97.

OPAA believes that it is only by submitting a qualifier such as "township-specific" into R.C. 519.02 that the Court of Appeals was able to reach the conclusion that it did in the present case. OPAA further believes that this result is contrary to the cardinal rules governing statutory construction. The Court of Appeals' failure to follow these rules is further reason to reverse its decision.

Furthermore, although a comprehensive plan is ordinarily separate and distinct from the zoning resolution, it is possible for the resolution itself to be a comprehensive

plan. A political subdivision need only show that the zoning ordinance implements a coherent land use policy derived from a rational consideration of the needs of the community as a whole. *Columbia Oldsmobile, Inc. v. Montgomery* (1990), 56 Ohio St.3d 60, 67 (H. Brown, J., concurring). Ohio courts have consistently held that a well-drafted zoning ordinance can, by itself, constitute the "comprehensive plan." E.g., *Garcia* v. *Siffrin Residential Assn.* (1980), 63 Ohio St.2d 259, 273-274; *Ryan v. Board of Twp. Trustees of Plain Township* (Dec. 11, 1990), Franklin App. No. 89AP-1441, 1990 Ohio App. LEXIS 5519.

Thus, a township's failure to have a comprehensive zoning plan that is separate and distinct from a zoning ordinance does not render unconstitutional a zoning ordinance. *Reese v. Copley Twp. Bd. of Trustees* (1998), 129 Ohio App.3d 9, 15; *BGC Properties, v. Township of Bath* (Mar. 21, 1990), Summit App. No. 14252, 1990 Ohio App. LEXIS 1026. It logically follows that the lack of a township-specific comprehensive plan will not invalidate a zoning resolution, especially in cases, like the present one, where the record clearly shows that the drafters of the resolution relied upon a county- or region-wide comprehensive plan. Therefore, the Court of Appeals erred when it struck the Congress Township Zoning Resolution for want of a township-specific comprehensive plan.

Proposition of Law No. II: The requirement set forth in R.C. 519.02 that a township zoning resolution be created "in accordance with a comprehensive plan" is a flexible concept that must be evaluated by looking at the nature of the land to be zoned.

In its decision, the Wayne County Court of Appeals found that Congress Township did not have a comprehensive plan when it enacted its zoning resolution in

1994. Even though Wayne County had created its own comprehensive plan, and Congress Township used that plan to develop its zoning resolution, the Court of Appeals concluded that the township did not have a comprehensive plan.

The Revised Code does not define the term "comprehensive plan." Moreover, R.C. 519.02 is applicable to all townships that wish to enact zoning, regardless of their size or the nature of their communities. This applicability necessarily means that the term "comprehensive plan" must be given flexibility.

Thus, whether a particular resolution is comprehensive or not can be determined only by looking at the particular circumstances of the case, in particular and perhaps most important, the nature of the area which is to be zoned. E.g., *Rumpke Waste, Inc. v. Henderson* (S.D. Ohio 1984), 591 F. Supp. 521, 534. Under this standard, a comprehensive plan for an urban area is necessarily more detailed than one for a rural area. Indeed, a zoning ordinance that would be clearly valid in an urban setting might be clearly invalid as applied to rural communities. *Village of Euclid v. Ambler Realty Co.* (1926), 272 U.S. 365, 387. Rather, a zoning plan for a rural area that reflects current uses and allows for change as additional needs develop, and that bears a substantial relationship to the public health, safety or welfare, is a comprehensive plan. *Rumpke Waste*. 591 F. Supp. at 534.

In the present case, the Court of Appeals adopted the following definition of comprehensive plan:

> [T]hey are the local government's textual statement of goals, objectives, and policies accompanied by maps to guide public and private development within its planning jurisdiction. The comprehensive plan is the chief policy instrument for: (1) the administration of zoning and subdivision regulations; (2) the location and classification of streets and thoroughfares; (3) the location and construction of public and semi-public

> buildings and related community facilities and infrastructure (water, storm and sanitary sewers, gas, etc.); (4) the acquisition and development of public and semi-public properties such as parks and open spaces; and (5) the initiation of new programs, such as those in the areas of housing rehabilitation and economic development, to address pressing community needs.
>
> * * *
>
> The essential characteristics of a plan are that it is comprehensive, general and long range. "Comprehensive" means that the plan encompasses all geographical parts of the community and integrates all functional elements. "General" means that the plan summarizes policies and proposals and does not, in contrast with a zoning ordinance, provide detailed regulations for building and development. "Long range" means the plan looks beyond the foreground of pressing current issues to the perspective of problems and possibilities ten to twenty years into the future.

Phantom Fireworks, 2007-Ohio-7023, at ¶13, quoting Stuart Meck and Kenneth Pearlman, Ohio Planning & Zoning Law Section 4:31 (2007).

The unsuitability of this description of a comprehensive plan for rural townships with small populations, like Congress Township, should be obvious. As noted by the court in *East Fairfield Coal Co. v. Miller Zoning Inspector* (1955), 71 Ohio L. Abs. 490, "what might be comprehensive in an agricultural community in Mahoning County would very likely not be comprehensive in the metropolitan area of Cleveland or Cuyahoga County." Id. at 502. Similarly, the United States Supreme Court, in the seminal case of *Ambler Realty*, noted that what might be clearly valid in an urban setting might be clearly invalid as applied to rural communities. 272 U.S. at 387.

Ambler Realty and *East Fairfield Coal* simply recognize the need for flexibility in zoning. By adopting an academic definition of "comprehensive plan," the Court of Appeals has ignored this pragmatic observation and needlessly burdened townships with the cost of preparing detailed comprehensive plans that may not be appropriate for their situation. The cost of developing such plans might cause many townships that currently

do not have zoning from implementing it, a nonsensical result that lessens rather than enhances the quality of life available in those areas.

The Court of Appeals, by adopting a rigid academic definition of "comprehensive plan," has unnecessarily deprived Ohio townships of flexibility in their zoning. Yet the very nature of Ohio townships, which range in population from a few hundred people to more than 60,000, counsel in favor of a flexible approach that takes into account the particular circumstances of the case, especially the nature of the area to be zoned.

This concept of "flexibility" is similar to the concept of "reasonableness," a fundamental concept in American jurisprudence. For example, "[t]he touchstone of the Fourth Amendment is reasonableness." E.g., *Florida v. Jimeno* (1991), 500 U.S. 248. Similarly, legal liability for negligence is based upon conduct involving an unreasonable risk of harm to another, which must be established by affirmative evidence tending to show that such conduct falls below the standard represented by the conduct of reasonable persons under the same or similar circumstances. E.g., *Englehardt v. Philipps* (1939), 136 Ohio St. 73, at paragraph two of the syllabus. Reasonableness, in turn, is measured in objective terms by examining the totality of the circumstances. *Ohio v. Robinette* (1996), 519 U.S. 33, 39. Or in the context of zoning, reasonableness is determined by looking at the nature of the land to be zoned.

The word "comprehensive" is commonly defined as "covering completely or broadly." See, *Merriam-Webster Dictionary*. It logically follows that the amount of information needed to "cover completely or broadly," thereby satisfying the dictionary definition of "comprehensive," is inherently flexible and largely dependent upon the circumstances. Likewise, it follows that the amount of information needed for a

"comprehensive plan" is dependent upon the totality of the circumstances, including the nature of the land to be zoned.

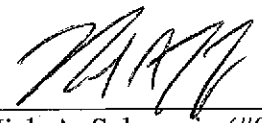
Accordingly, the sufficiency of comprehensive plans should be governed by a flexible standard that takes into account the totality of the circumstances, including the nature of the land to be zoned, as opposed to the rigid academic approach favored by the Court of Appeals. A flexible approach is wholly consistent with the legal concept of "reasonableness," which also looks at the totality of the circumstances. It is also consistent with the dictionary definition of "comprehensive," the satisfaction of which is largely dependent upon the amount of information available.

Moreover, a flexible standard as to the sufficiency of comprehensive plans is needed to take into account the varied needs and resources of Ohio townships. A "lockstep" approach, like the one adopted by the Court of Appeals, that does not take into account these differences will result in the needless consumption of resources, time, and money, all of which are in short supply. Therefore, with regard to the question of whether a township zoning resolution has been created "in accordance with a comprehensive plan," OPAA urges this Court to adopt a flexible standard that takes into account the totality of the circumstances, including the nature of the land to be zoned.

CONCLUSION

For the reasons stated above, this Court should reverse the appellate court's decision and remand the matter for consideration of Appellees' remaining assignments of error.

Respectfully submitted,



Nick A. Selvaggio (#0055607)
Champaign County Prosecuting Attorney
Scott D. Schockling (#0062949)
Assistant Champaign County Prosecuting Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 30, 2008, a copy of the foregoing was served via regular first class mail, on:

Counsel for Appellants:

Martin Frantz
Wayne County Prosecuting Attorney
Katherine Gallagher
Latecia Miles
Assistant Prosecuting Attorneys
115 West Liberty Street
Wooster, Ohio 44691

Counsel for *Amicus Curiae*
Ohio Township Association:

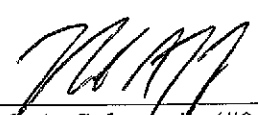
David F. Brosius
Peter N. Griggs
Loveland & Brosius, LLC
50 West Broad Street
Suite 3300
Columbus, Ohio 43215

Special Counsel to Defendant-Appellants:

Timothy M. Burke
Emily T. Supinger
Daniel J. McCarthy
Manley Burke, LPA
225 West Court Street
Cincinnati, Ohio 45202

Counsel for Appellees:

Stephen W. Funk
Paul W. Lombardi
Roetzel & Andress, LPA
222 South Main Street
Suite 400
Akron, Ohio 44308



Nick A. Selvaggio (#0055607)
Champaign County Prosecuting Attorney
Scott D. Schockling (#0062949)
Assistant Champaign County Prosecuting Attorney