

In the
Supreme Court of Ohio

STATE OF OHIO, :
 :
 : Case No. 2008-0536
 :
 Plaintiffs-Appellee, :
 :
 : On Appeal from the
 :
 v. :
 : Erie County
 :
 : Court of Appeals,
 WILLIAM R. COBURN, et al., :
 :
 : Sixth Appellate District
 :
 :
 Defendants-Appellants. :
 :
 : Court of Appeals Case
 :
 : Nos. E-07-049
 :
 : E-07-050
 :
 : E-07-051

MERIT BRIEF OF *AMICUS CURIAE*
OFFICE OF THE OHIO ATTORNEY GENERAL
IN SUPPORT OF PLAINTIFF-APPELLEE STATE OF OHIO

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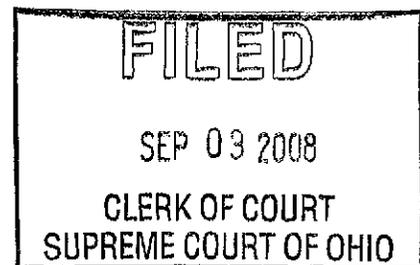


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INTRODUCTION

The State of Ohio has a strong interest in managing and protecting wildlife for the benefit of all Ohioans. Ohio law gives the Division of Wildlife and its employees authority to achieve this purpose by, among other things, regulating the licensing of hunting and fishing. This licensing authority necessarily confers on Division of Wildlife employees the ability to enter private property, consistent with R.C. 1531.14, to investigate and enforce wildlife regulations without good cause to believe that a law is being violated. In this case, the Sixth District Court of Appeals correctly interpreted Ohio's statutory scheme and reversed the trial court. The Court should affirm the Sixth District for three reasons.

First, the Sixth District, unlike the trial court, correctly considered only the indictment in reviewing William Coburn, Marvin Coburn, and Todd Parkison's ("Defendants") motion to dismiss. In the criminal context, a motion to dismiss is designed to test only the sufficiency of the charging document. By engaging in an evidence-suppression analysis and subsequently dismissing all criminal charges against Defendants, the trial court granted relief to which Defendants were not entitled. The appellate court properly considered this case through the motion to dismiss standard of review and reversed the trial court's error.

Second, R.C. 1531.14 provides broad authority for Division of Wildlife employees to enter private property to conduct a variety of wildlife-related activities, including investigating and enforcing fish and game laws. The trial court failed to consider this authority and determined that the wildlife officer in this case needed either probable cause or good cause, under R.C. 1531.13, to enter private property. But R.C. 1531.14's authority to enter private lands is separate from the authority R.C. 1531.13 provides. The R.C. 1531.14 authority enables wildlife officers to go to those open locations where hunting and fishing naturally occur and ensure compliance with the numerous rules and regulations of the Division of Wildlife. Without the authority to

enter private property, once a regulated activity is observed or believed to be taking place, the entire wildlife regulatory scheme will be eviscerated.

Third, the type of entry onto private property that R.C. 1531.14 allows is reasonable—and thus consistent with the Fourth Amendment of the U.S. Constitution and Article I, Section 14 of the Ohio Constitution for two reasons. First, no reasonable expectation of privacy exists in the open fields where hunting occurs. Second, hunting and fishing are highly regulated, and the Division of Wildlife has a predictable presence where hunting and fishing occur. Because those who hunt and fish should expect periodic inspections, the “administrative exception” to the Fourth Amendment applies.

STATEMENT OF AMICUS INTEREST

Ohio Attorney General Nancy Rogers acts as Ohio’s chief law enforcement officer. R.C. 109.02. Accordingly, she has a strong interest in ensuring effective and consistent enforcement of Ohio’s wildlife laws. As the people’s lawyer, Attorney General Rogers is responsible for ensuring that Ohio’s wildlife—as held in trust by the State of Ohio for the benefit of the people—is properly managed and protected. As the State’s lawyer, the Attorney General has a responsibility to enforce the will of the General Assembly as enacted in legislation and signed into law by the Governor.

STATEMENT OF THE CASE AND FACTS

This case began when Wildlife Officer Jared Abele observed three individuals dove hunting on William Coburn’s property. See Certified Record, Jared Abele, Law Enforcement Statement (Oct. 23, 2006) (“Abele Statement”). Officer Abele knew that one of the hunters was William Coburn but was unable to identify the other two. Officer Abele then observed William Coburn walk to his residence. Approximately one hour later, Officer Abele observed Coburn drive his vehicle along a dirt road back to where the other two men remained hunting. Soon after

that, Officer Abele approached the men on Coburn's property to check for required hunting licenses and to ensure that the number of doves killed did not exceed the legal limit. Officer Abele then identified the other two hunters as Marvin Coburn and Todd Parkison. While on the property, Officer Abele noticed "wheat seed in piles and scattered along the ground, dirt lane, and pond dike" where the three men had been hunting. *Id.*

Defendants were charged with one count each of hunting migratory game birds on or over a baited area in violation of R.C. 1531.02 and Ohio Admin. Code 1501:31-7-02(A)(9). Defendants filed a joint motion to dismiss the complaint, alleging that the charges and all supporting evidence are the fruits of an illegal entry, stop, search, and seizure. The trial court dismissed the case without analyzing the sufficiency of the State's charging instrument or conducting an evidentiary hearing on the alleged illegal search. The State appealed the trial court's decision, and the Court of Appeals for the Sixth District reversed the trial court's decision and remanded the matter to the trial court for further proceedings. *State v. Coburn* (6th Dist.), 2008 Ohio App. Lexis 338, 2008-Ohio-371. Defendants filed a Memorandum in Support of Jurisdiction with this Court that was granted.

ARGUMENT

The Court should affirm the Sixth District for three reasons. First, as an initial procedural matter, the trial court erred by dismissing this case based on allegations that the charges were the result of an “illegal entry” onto Coburn’s property. Instead, the trial court should have considered only the sufficiency of the criminal complaint. Second, the authority that R.C. 1531.14 provides—to enter private property to investigate and enforce Ohio’s wildlife laws—is separate from the authority R.C. 1531.13 provides. Third, entry onto private property under R.C. 1531.14 does not violate the Fourth Amendment. Hunting and fishing occur in open fields where no reasonable expectation of privacy exists. Moreover, hunting and fishing are licensed and regulated activities and, as such, those who hunt and fish should reasonably expect periodic inspections to further Ohio’s regulatory scheme.

Amicus Curiae Attorney General’s Proposition of Law No. 1:

A motion to dismiss, in the criminal context, is designed to test only the charging document’s sufficiency. When allegations contained in a criminal complaint state an offense under Ohio law, a motion to dismiss must be denied.

The trial court improperly reached issues of probable cause and search and seizure in considering the motion to dismiss. In so doing, the trial court granted Defendants relief to which they were not entitled. Procedurally, the only question that can be at issue in a criminal motion to dismiss is whether the charging document is sufficient. The appellate court properly reviewed this case under that standard, and its decision should therefore be affirmed.

In criminal cases, appellate courts review de novo rulings on motions to dismiss. *State v. Brown* (5th Dist.), 2008 Ohio App. Lexis 3448, 2008-Ohio-4087, ¶ 21; *State v. Hicks* (3d Dist.), 2008 Ohio App. Lexis 3031, 2008-Ohio-3600, ¶ 17. “A motion to dismiss charges in an indictment tests the sufficiency of the indictment, without regard to the quantity or quality of evidence that may be produced by either the state or the defendant.” *State v. O’Neal* (2d Dist.

1996), 114 Ohio App. 3d 335, 336. This Court therefore must determine whether the alleged facts, as set forth in the criminal complaint, constitute a crime under Ohio law. *Id.*

In each of the criminal complaints filed against Defendants, Officer Abele stated that the defendant “did unlawfully hunt migratory game birds, to-wit: mourning doves on or over a baited area in violation of Section 1531.02 [of the Ohio Revised Code] and/or 1501:31-7-02(A)(9) [of the Ohio Administrative Code].” See Certified Record, Summons and Complaint, Case Nos. 06CRB00444, 06CRB00445, 06CRB00446 (Erie County). Ohio Revised Code 1531.02 states, “[a] person doing anything . . . contrary to any division rule violates this section.” Under Ohio Admin. Code 1501:31-7-02(A)(9), it is “unlawful to hunt or take migratory game birds: By the aid of baiting or on or over any baited area.” The Revised Code defines mourning doves as migratory “game birds.” R.C. 1531.01(S). Thus, for each defendant, the criminal complaint alleged facts that constitute a crime under Ohio law. Accordingly, the motion to dismiss should have been denied.

Rather than consider only the charging document, the trial court engaged in a search-and-seizure suppression analysis when deciding whether to grant Defendants’ motion to dismiss. But it is “improper for the trial court to look beyond the face of the indictment to determine whether a motion to dismiss was proper at the pre-trial stage.” *State v. Tipton* (9th Dist. 1999), 135 Ohio App. 3d 227, 228. Procedurally, Defendants should have filed a motion to suppress, alleging a violation of their Fourth Amendment rights. Regardless of the form of the motion, Defendants are not entitled to dismissal of all criminal charges based on a putative improper entry onto private property. Rather, even if the trial court’s analysis of the search-and-seizure issue was correct, which it was not, the only relief to which Defendants would have been entitled would be suppression of any evidence seized by Officer Abele and his observations once he entered the

property. *State v. Jackson*, 102 Ohio St. 3d 380, 2004-Ohio-3206, ¶ 8 (“Under the exclusionary rule, evidence seized in violation of the Fourth Amendment will result in its suppression.”). Thus, the trial court’s dismissal of the case against Defendants was procedurally improper.

Amicus Curiae Attorney General’s Proposition of Law No. 2:

Under R.C. 1531.14, a Division of Wildlife employee may enter private property to investigate or enforce the State’s wildlife laws without having good cause to believe that a law is being violated.

A. Ohio Revised Code 1531.14 provides authority for Division of Wildlife employees to enter private property to investigate or enforce Ohio’s wildlife laws.

The ability of a wildlife officer to enter private property is an indispensable tool in the management and protection of Ohio’s wildlife. Under R.C. 1531.02, “[t]he ownership of and title to all wild animals in this State, not legally confined or held by private ownership legally acquired, is in the state, which holds such title in trust for the benefit of the people.” To protect and manage wildlife, the General Assembly enacted a statute allowing Division of Wildlife employees to enter private property to investigate and enforce wildlife laws and rules. Under R.C. 1531.14, any Division of Wildlife employee “in the enforcement of laws or division rules relating to game or fish” and “while in the normal, lawful, and peaceful pursuit of such investigation, work, or enforcement may enter upon, cross over, be upon, and remain upon privately owned lands for such purposes.”

R.C. 1531.14 is a critical part of a proper and effective program for the management and regulation of the State’s wildlife, the duties of which are entrusted to the Department of Natural Resources Division of Wildlife. See R.C. 1531.04(C) (stating that the Division of Wildlife *shall* enforce laws and rules for the “protection, preservation, propagation, and management of wild animals”). R.C. 1531.14 provides broad authority to Division of Wildlife employees to enter private lands to investigate and enforce game and fish regulations. Indeed, the statute provides

for such entry for myriad purposes, from wildlife research and restocking of fish to investigation of stream littering. R.C. 1531.14. Ohio's wildlife is the property of the State, but wildlife's habitat is on both privately and publicly owned lands. Thus, the only way to protect wildlife and regulate its taking is to permit reasonable entry onto private lands. Ohio Revised Code 1531.14 achieves that end.

Here, Officer Abele, a wildlife officer and Division of Wildlife employee, observed Defendants dove hunting on the neighboring property of William Coburn. Abele Statement. Officer Abele identified one of the hunters as William Coburn. Because he was hunting on his own property, William Coburn was not required to hold a hunting license. R.C. 1533.10. He was required, however, to comply with all other hunting regulations. And any visitors hunting on his property were required not only to possess a license to hunt the doves, but also to exhibit the license to any wildlife officer and display a tag bearing the license number on their backs. R.C. 1533.14. Because Officer Abele did not know and could not identify the other two men hunting with William Coburn, Officer Abele entered the property to check for the required hunting licenses. Abele Statement. He then learned that the two other men were William Coburn's father, Marvin Coburn, and William Coburn's friend, Todd Parkison. This entry onto Coburn's property to check the visitors' licensing status was entirely proper under R.C. 1531.14. See *Coburn*, 2008-Ohio-371 at ¶15 ("Once [Abele] saw people hunting, R.C. 1531.14 gave him the authority to enter the land in pursuit of his duties, one of which is to ensure that people are hunting lawfully. R.C. 1531.13.").

The Sixth District's decision comports with decisions from other Ohio appellate courts. In *State v. Davis* (5th Dist.), 2004 Ohio App. Lexis 2006, 2004-Ohio-2255, the Court of Appeals for the Fifth District held that R.C. 1531.14 provides authority for a wildlife officer to enter

private property. In that case, on the first day of “primitive weapon deer season,” a wildlife officer observed tire tracks entering a field. The officer followed the tracks to enforce hunting laws and encountered Davis. *Id.* at ¶ 2. The officer observed a loaded weapon in plain view on the front seat of Davis’s truck in violation of R.C. 2923.16(C)(4). The appellate court held that R.C. 1531.14 authorized the officer to enter and remain on the private lands. *Id.* at ¶ 38; see also *Div. of Wildlife v. Freed* (3d Dist. 1995), 101 Ohio App. 3d 709, 711 (stating that “probable cause is not required for a game protector to ask a hunter for his hunting license”).

B. R.C. 1531.14 provides authority to enter private lands that is distinct from the authority in R.C. 1531.13.

The language of R.C. 1531.14 authorizes Division of Wildlife employees to enter private lands; this authority is distinct from the authority under R.C. 1531.13 for wildlife officers to enter property when they have good cause to believe that a law is being violated. Defendants attempt to avoid the plain language of R.C. 1531.14 by arguing that the doctrine of *in pari materia* requires that R.C. 1531.13 and R.C. 1531.14 be read together. But the *in pari materia* rule of construction may be used to interpret a statute only if some doubt or ambiguity exists. *State ex rel. Burrows v. Indus. Comm’n*, 78 Ohio St. 3d 78, 81, 1997-Ohio-310. Here, no doubt or ambiguity within or between these two statutes exists. Moreover, applying *in pari materia* in the way that Defendants advocate actually creates confusion and ambiguity and requires the Court to ignore cardinal rules of statutory construction.

“The first rule of statutory construction is to look at the statute’s language to determine its meaning. If the statute conveys a clear, unequivocal, and definite meaning, interpretation comes to an end, and the statute must be applied according to its terms.” *Columbia Gas Transmission Corp. v. Levin*, 117 Ohio St. 3d 122, 2008-Ohio-511, ¶19 (citing *Lancaster Colony Corp. v. Limbach* (1988), 37 Ohio St. 3d 198, 199). To ascertain the legislative intent in a statute, a court

must “give effect to the words used” but must not “delete words used” or “insert words not used.” *Bernardini v. Bd. of Educ.* (1979), 58 Ohio St. 2d 1, 4-5 (internal citations omitted). Finally, a court should not interpret a statute in a way that will “yield an absurd result.” *State ex rel. Ohio Gen. Assembly v. Brunner*, 114 Ohio St. 3d 386, 2007-Ohio-3780, at ¶ 114 (citing *State ex rel. Dispatch Printing Co. v. Wells* (1985), 18 Ohio St. 3d 382, 384). Given these basic principles of statutory construction, R.C. 1531.13 and R.C. 1531.14 provide two different bases for a wildlife officer to enter private lands to protect and manage Ohio’s wildlife.

R.C. 1531.13 lays out the duties and responsibilities of a wildlife officer in the State of Ohio: Officers “shall enforce all laws pertaining to the taking, possession, protection, preservation, management, and propagation of wildlife animals and all division rules.” R.C. 1531.13. The statute details the officers’ enforcement abilities and authorities. Among other things, any “wildlife officer may enter private lands or water if he has good cause to believe and does believe that a law is being violated.” R.C. 1531.13. This language allows a wildlife officer to enter private land if he believes that a violation of one of the wildlife laws has occurred. Nowhere does the statute state, however, that this is the *only* basis for entry onto private land.

R.C. 1531.14 provides an alternative justification for entry onto private property by granting authority for *all* Division of Wildlife employees to enter private lands in discharging their duties. Unlike R.C. 1531.13, R.C. 1531.14 does not require good cause to believe that a law is being violated as a prerequisite to a Division of Wildlife employee’s entering private property. R.C. 1531.14 is clear and unambiguous in its purpose and language. Adding language to R.C. 1531.14 that requires employees to have good cause before entering private property would render the statute meaningless. Parties involved with restocking of fish, for example, would never possess “good cause to believe . . . that a law is being violated,” R.C. 1531.13,

because that is not the nature of their work. Similarly, a wildlife officer could not go onto private property to check a license, because without asking to see the license, an officer could not have “good cause” to believe that a hunter does not have a valid license. Instead, R.C. 1531.13 and R.C. 1531.14 indicate that the legislature intended to create two separate bases for entry onto private property for a variety of purposes, including the enforcement and investigation of the State’s wildlife laws.

Amicus Curiae Attorney General’s Proposition of Law No. 3:

A Division of Wildlife employee’s ability to enter private property under R.C. 1531.14 is reasonable and does not violate either the Fourth Amendment of the U.S. Constitution or Article I, Section 14 of the Ohio Constitution.

The Fourth Amendment of the Constitution and Article I, Section 14 of the Ohio Constitution protect persons from unreasonable searches and seizures. *State v. Jackson*, 102 Ohio St. 3d 380, 2004-Ohio-3206, ¶ 8. They do not protect places, *Katz v. United States* (1967), 389 U.S. 347, 351; rather, the Fourth Amendment protects a person’s reasonable expectation of privacy in those places. Thus, the touchstone of any Fourth Amendment search-and-seizure argument is whether the party had a reasonable expectation of privacy in the place searched. *State v. Dennis*, 79 Ohio St. 3d 421, 426, 1997-Ohio-372 (“A defendant bears the burden of proving not only that the search was illegal, but also that he had a legitimate expectation of privacy in the area searched.”).

A. Under the open-fields doctrine, a Division of Wildlife employee may constitutionally enter private property to conduct a search.

A person does not have a reasonable expectation of privacy in the open fields of his property, outside and away from the curtilage of the home. *Oliver v. United States* (1984), 466 U.S. 170, 184. The United States Supreme Court has explained that the “term ‘open fields’ may include any unoccupied or undeveloped area outside of the curtilage. An open field need be

neither ‘open’ nor a ‘field’ as those terms are used in common speech.” *Id.* at 180 n.111. And fences or “no trespassing” signs generally do not affect the “reasonable expectation of privacy” analysis, because such open lands remain “accessible to the public and the police in ways that a home, an office, or commercial structure would not be.” *Id.* at 179. Rather, the basic concept is that the Fourth Amendment does not protect open fields because they are not “persons, houses, papers, or effects.” *Id.* at 176.

As the facts of this case show, hunting generally takes place in open or wooded areas away from one’s curtilage, and therefore an owner does not have a reasonable expectation of privacy in those parts of her property. Officer Abele observed William Coburn drive his vehicle, which was parked at his residence, “back a dirt lane to the area where the other two hunters were still hunting.” Abele Statement. Defendants do not allege that they had any expectation of privacy—reasonable or otherwise—in this portion of Coburn’s property. Nor could they, as the facts show that the men were hunting away from the Coburn residence, along a dirt road where Officer Abele could see their activity.

Moreover, the scope of the statute is reasonable. R.C. 1531.14 permits entry onto private property to access only the areas where wildlife, fish, and their habitats are located and where wildlife activities like fishing and hunting are likely to occur. Thus, the statute is not designed to permit a wildlife officer access to the curtilage around the home or inside houses or other buildings. A Division of Wildlife employee’s entry onto the non-curtilage areas of private property is reasonable, because a property owner has no reasonable expectation of privacy in such areas.

Other States’ courts recognize as much. For example, the Supreme Court of Pennsylvania recently considered this same issue in *Commonwealth v. Russo* (Pa. 2007), 934 A.2d 1199, and

applied the open-fields doctrine. Wildlife conservation officers were investigating an allegation that the defendant illegally baited and killed a bear. Despite “no trespassing” signs, the officers entered the defendant’s camp and found evidence of baiting approximately one hundred and fifty yards from the defendant’s cabin. The officers entered the property consistent with 34 Pa.C.S. § 901(a)(2), which “vests in ‘[a]ny officer whose duty it is to enforce this title or any officer investigating violations of this title’ the ‘power and duty’ to, inter alia, enter ‘any land or water outside of buildings, posted or otherwise, in the performance of the officer’s duties.’” *Russo*, 934 A.2d at 122 n.3. The court held that “the search . . . was lawful under the Fourth Amendment, given the open fields doctrine.” *Id.* at 129.

Additionally, in *State v. Hoagland* (Minn. 1978), 270 N.W.2d 778, the Supreme Court of Minnesota upheld the entry of a state conservation officer onto private property to investigate illegal nighttime hunting activity. The officer entered the property pursuant to a Minnesota statute allowing entry onto private lands “to make investigations of any violations of the game and fish laws.” *Id.* at 780. The court recognized that “[b]y their very nature, game law violations frequently occur in woods, open fields, or remote sloughs,” *Id.* at 780. The court upheld the statute as constitutional and added the common sense observation that, “[e]ven if the Fourth Amendment applies, to require game wardens to drive 10 or 20 miles, find the county attorney, look up a judge, and get a search warrant before entering private property to investigate a suspicious gunshot does not seem reasonable.” *Id.*

Similarly, in *State v. Boyer* (Mont. 2002), 42 P.3d 771, the Supreme Court of Montana held that the defendant did not have a reasonable expectation of privacy in his fish catch or the transom of his boat. The warden was operating under a statute that allows “for the inspection of fish and game at reasonable times and at any location other than a residence or dwelling.” *Id.* at

778 (citing Mont. Code Ann. § 87-1-502(6)). The court held that such a statute does not require that the warden first possess probable cause before such inspection:

Since taking or possessing fish is not illegal per se, simply observing someone catching and keeping fish would not give rise to probable cause of a fish and game violation. [Defendant]’s proposition would virtually require wardens or third parties to have personal knowledge of fish and game violations prior to conducting the contemplated inspection. . . . The inevitable result would be the unnecessary depletion of Montana’s wildlife and fish which we are all bound to protect and preserve.

Id. at 776. Thus, the court held that because the defendant did not hold a reasonable expectation of privacy, the wildlife warden’s entry onto the defendant’s boat and request to inspect his catch did not require probable cause and did not constitute an illegal search. *Id.* at 779.

These cases are in line with the holdings of this Court and other Ohio courts with respect to reasonable expectation of privacy and the open fields exception to the Fourth Amendment. See, e.g., *State v. Bobo* (1988), 37 Ohio St. 3d 177 (holding that defendant had no expectation of privacy in an open field). And the cases illustrate the special circumstance of wildlife officers’ statutory obligation to manage and protect wildlife, even on private property. The authority of R.C. 1531.14 balances the effective management of such wildlife with the interests of property owners by allowing entry onto private property in open fields where wildlife is naturally found and where one would not possess a reasonable expectation of privacy.

B. Hunting and fishing are licensed and regulated activities, and those engaged in such activities should anticipate periodic inspections to further Ohio’s regulatory scheme.

A Wildlife Division employee’s entry onto private property is reasonable not only under the open-fields doctrine, but also because it constitutes a valid administrative search. In *Stone v. City of Stow* (1992), 64 Ohio St. 3d 156, this Court expressly added the “‘administrative search’ exception to the list of acceptable warrantless search situations.” *Id.* at 165, n.4 (holding that allowing police and pharmaceutical board access to pharmaceutical records without warrant does

not violate the Fourth Amendment). A warrantless administrative search is reasonable and permissible if a statute “establishes a predictable and guided . . . regulatory presence.” *Donovan v. Dewey* (1981), 452 U.S. 594, 604.

A warrantless administrative search will be deemed “reasonable” and thus consistent with the Fourth Amendment if it meets three criteria. *New York v. Burger* (1987), 482 U.S. 691, 702. “First, there must be a ‘substantial’ government interest that informs the regulatory scheme pursuant to which the inspection is made.” *Id.* “Second, the warrantless inspections must be ‘necessary to further [the] regulatory scheme.’” *Id.* (citing *Donovan*, 452 U.S. at 600). Finally, “the statute’s inspection program, in terms of the certainty and regularity of its application, [must] provid[e] a constitutionally adequate substitute for a warrant.” *Id.* at 703. To meet this last requirement, the statute must be “sufficiently comprehensive and defined that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes.” *Id.* (citing *Donovan*, 452 U.S. at 600).

This case meets the requirements for a reasonable administrative search. First, the State undoubtedly has a “substantial government interest” in managing and protecting wildlife. Hunting and fishing are subject to a multitude of regulations that dictate, among other things, license requirements, seasonal and hourly limitations, bag limits, location and hunting method restrictions, and prohibitions on hunting certain wildlife. See R.C. 1531.01 to R.C. 1533.99; Ohio Admin. Code 1501:31-1 to 1501:31-31-39-01; see also *Boyer*, 42 P.3d at 776 (recognizing that fishing is a privilege and is highly regulated); *Illinois v. Layton* (Ill. App. 1990), 552 N.E.2d 1280, 1287 (noting that hunting is a highly regulated activity that requires consent into some intrusion). As stated previously, the Division of Wildlife is statutorily mandated to protect and manage the State’s wildlife, as held in trust for the people. See R.C. 1531.02; 1531.04.

Second, because wildlife is not stationary but regularly crosses public and private boundaries, reasonable warrantless entry onto private property, as laid out in R.C. 1531.14, is necessary to ensure compliance with the myriad rules and regulations governing the legal taking of wildlife. Cf. *Burger*, 482 U.S. at 702 (noting that an administrative search must be necessary to further a regulatory scheme). Requiring a Division of Wildlife employee to obtain a warrant every time he observes or suspects that a regulated activity is taking place on private property would render the entire regulatory scheme unenforceable. See *Hoagland*, 270 N.W.2d at 780 (noting that it would be impracticable to require wildlife officers to obtain a warrant every time a hunter crosses onto private property).

Finally, under the third *Burger* prong, Ohio's regulatory scheme is sufficiently comprehensive and defined that people who hunt and fish cannot help but be aware of the potential for periodic inspections. R.C. 1533.14 expressly mandates that "[e]very person, while hunting or trapping on the lands of another, shall carry his license with him and exhibit it to any wildlife officer, constable, sheriff, deputy sheriff, or police officer[.]" A similar provision exists for fishing licenses. See R.C. 1533.32. Thus, as required by *Donovan*, a person involved with hunting or fishing will know that he is required to exhibit his license when a wildlife officer approaches, and the officer can also investigate whether the person is following the proper hunting and fishing methods. See *Boyer*, 42 P.3d at 776-77 (requiring anglers to "know[] the laws of their sport"). Given the highly regulated nature of hunting and fishing—and that wildlife is property of the State—participants in these activities necessarily have a diminished expectation of privacy when they avail themselves of the privilege, not the right, to take such property. Thus, it is reasonable for a wildlife officer to enter private property, outside of the

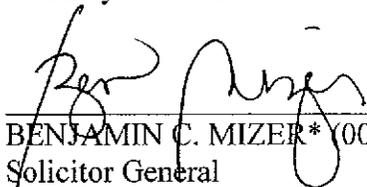
curtilage, to ensure compliance with wildlife regulations and to further the regulatory purpose of protecting and managing wildlife.

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment below.

Respectfully submitted,

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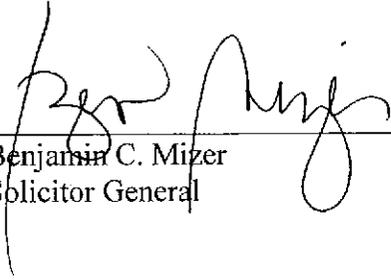
I hereby certify that a copy of the foregoing Merit Brief of *Amicus Curiae* Office of the Ohio Attorney General in Support of Plaintiff-Appellee State of Ohio was served by U.S. mail this 3rd day of September, 2008, on the following counsel:

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