

In the
Supreme Court of Ohio

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IN RE: DARIAN J. SMITH,

A Delinquent Child.

Case No. 2008-1624

On Appeal from the
Allen County
Court of Appeals,
Third Appellate District

Court of Appeals Case
No. 1-07-58

**MOTION FOR ALIGNMENT OF BRIEFING SCHEDULE WITH *STATE V. BODYKE*
BY THE STATE OF OHIO AND *AMICUS CURIAE*
OHIO ATTORNEY GENERAL RICHARD CORDRAY**

BROOKE M. BURNS* (0080256)

**Counsel of Record*

Assistant State Public Defender

250 E. Broad St., Suite 1400

Columbus, Ohio 43215

614-466-5394

614-752-5167 fax

brooke.burns@opd.ohio.gov

Counsel for Appellant Smith

JUERGEN A. WALDICK (0030399)

Allen County Prosecutor

CHRISTINA L. STEFFAN* (0075206)

Assistant Prosecutor

**Counsel of Record*

204 N. Main St., Suite 302

Lima, Ohio 45801

419-228-3700

419-222-2462 fax

Counsel for Appellee State of Ohio

RICHARD CORDRAY (0038034)

Attorney General of Ohio

BENJAMIN C. MIZER* (0083089)

Solicitor General

**Counsel of Record*

ALEXANDRA T. SCHIMMER (0075732)

Chief Deputy Solicitor General

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

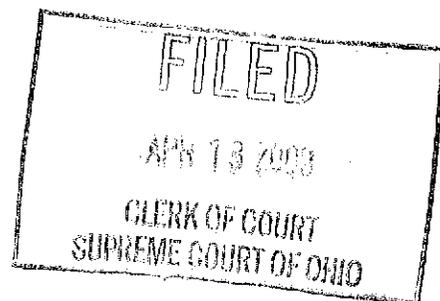
614-466-8980

614-466-5087 fax

benjamin.mizer@ohioattorneygeneral.gov

Counsel for *Amicus Curiae*

Ohio Attorney General Richard Cordray



**MOTION FOR ALIGNMENT OF BRIEFING SCHEDULE WITH
STATE V. BODYKE BY THE STATE OF OHIO AND AMICUS CURIAE OHIO
ATTORNEY GENERAL RICHARD CORDRAY**

In accordance with Supreme Court Practice Rule XIV, Section 4, the State of Ohio and *Amicus Curiae* Ohio Attorney General Richard Cordray move the Court to align the briefing schedule in this case with the briefing schedule in *State v. Bodyke*, 2008-2502. Both this case and *Bodyke* concern the constitutionality of Ohio's newly enacted sex offender registration laws. The Court has already ordered that oral argument for two cases occur on the same day, see 4/08/2009 Case Announcements, 2009-Ohio-1638, and alignment of the briefing schedules will allow all parties to brief these weighty constitutional questions at the same time for the benefit of the Court.

There are two pending cases before the Court testing the constitutionality of Ohio's newly enacted sex offender registration statutes, collectively known as "Senate Bill 10." The first case, *In re Smith*, 2008-1624, was accepted on December 3, 2008. The second, *State v. Bodyke*, 2008-2502, was accepted on April 8, 2009. This Court ordered that *Smith* and *Bodyke* be calendared for oral argument on the same day. Right now, however, the briefing schedules in the two cases are staggered. The State of Ohio's brief in *Smith* is due on April 22, 2009. The record is not filed yet in *Bodyke*, and no briefing schedule has been set.

There is substantial overlap between these cases. Both appellant *Smith* and appellant *Bodyke* were classified under Ohio's old sex offender registration regime. In 2007, the General Assembly passed Senate Bill 10 in an effort to comply with the federal Adam Walsh Act, which requires States to adopt a comprehensive scheme for classification of sexual offenders and child-victim offenders. *Smith* and *Bodyke* were reclassified under Senate Bill 10. The reclassification increased both the frequency and duration of their registration requirements. They each now

claim a violation of the Ex Post Facto Clause of the U.S. Constitution, the Eighth Amendment to the U.S. Constitution, and the Retroactivity Clause of the Ohio Constitution.

To be sure, the cases are not on all fours. *Bodyke* is a broad constitutional attack on Senate Bill 10, including its retroactive effect. By contrast, *Smith* is a much narrower challenge to Senate Bill 10 as it applies to juvenile registrants. This may influence the constitutional analysis because, as this Court has recognized, some constitutional safeguards apply in full force to juveniles, while others do not. See *State v. D.H.*, 120 Ohio St. 3d 540, 2009-Ohio-9, ¶ 41. Furthermore, Senate Bill 10 contains unique procedures that apply only to juvenile offenders. See, e.g., R.C. 2152.82, 2152.83, 2152.831. Nevertheless, the more important point is that the broader constitutional issues in *Bodyke* will unquestionably inform the more specific constitutional disputes in *Smith*.

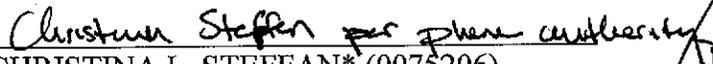
The State of Ohio and the Attorney General want to provide this Court with a careful, coherent interpretation of Senate Bill 10 as it relates both to adult and juvenile registrants. This cannot be accomplished absent a thorough comparison of *Smith* and *Bodyke*. The current briefing schedule, however, does not allow sufficient opportunity for the parties to study *Bodyke*, to consult fully with the Huron County prosecutors who handled that case below, or to identify all the relevant legal and factual similarities and distinctions between the two cases. In fact, the State of Ohio's briefing deadline in *Smith* will probably occur before the record is even filed in *Bodyke*. Put simply, alignment of the briefing schedule will allow a more comprehensive and coherent presentation of the legal issues.¹

¹ If the Court grants this motion, the State of Ohio and the Attorney General would not oppose a request by appellant Smith to supplement his merits brief after the filing of the record in *Bodyke*.

Accordingly, the State of Ohio and the Attorney General respectfully request that the Court align the State's briefing schedule in this matter with the briefing schedule in *State v. Bodyke*, 2008-2502.

Respectfully submitted,

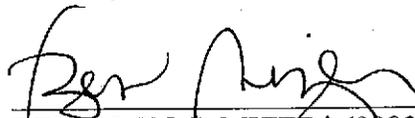
JUERGEN A. WALDICK (0030399)
Allen County Prosecutor


CHRISTINA L. STEFFAN* (0075206)

Assistant Prosecutor
*Counsel of Record
204 N. Main St., Suite 302
Lima, Ohio 45801
419-228-3700
419-222-2462 fax

Counsel for Appellee State of Ohio

RICHARD CORDRAY (0038034)
Attorney General of Ohio


BENJAMIN C. MIZER* (0083089)

Solicitor General
*Counsel of Record
ALEXANDRA T. SCHIMMER (0075732)
Chief Deputy Solicitor General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax
benjamin.mizer@ohioattorneygeneral.gov

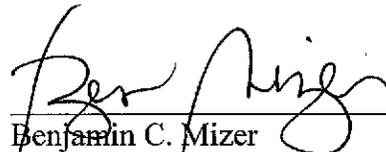
Counsel for *Amicus Curiae*
Ohio Attorney General Richard Cordray

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion for Alignment of Briefing Schedule was served by hand on this 13th day of April 2009, upon the following counsel:

Brooke M. Burns
Assistant State Public Defender
250 E. Broad St., Suite 1400
Columbus, Ohio 43215

Counsel for Appellant Smith



Benjamin C. Mizer
Solicitor General