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STATEMENT OF INTEREST

Amicus curiae the Franklin County District Board of Health (“FCBH”) has a compelling interest in the outcome of this matter, and is able to offer a perspective supportive of, but distinct from, the Ohio Department of Health (“ODH”). The FCBH provides public health services to all of the cities, villages, and townships in Franklin County except for the cities of Columbus and Worthington.¹ The FCBH enforces Ohio’s “Smoke Free Workplace Act” as a “designee” of ODH in every “public place” in its jurisdiction, including restaurants and bars. See R.C. §3794.07; §3794.01(B). While the ODH is the state-wide agency charged with establishing administrative rules and has handled administrative appeals in smoking ban violation cases, it is local boards of health such as the FCBH that investigate alleged violations of the smoking ban. As such, inspectors employed by the FCBH represent the front line in enforcing this statute.

Prior to this case, the decisions issued in administrative appeals of smoking ban violations have, for the most part, provided consistent and harmonious guidance to enforcement officials. However, the FCBH is apprehensive that disturbing the appellate court’s ruling in this matter will compromise the FCBH’s ability to continue to carry out its enforcement duties, and in turn to protect the public health.

STATEMENT OF THE FACTS

On November 7, 2006, the people of the State of Ohio voted to prohibit indoor smoking in most public places statewide. The Smoke Free Workplace Act was codified in Chapter 3794 of the Ohio Revised Code, and became effective on December 7, 2006. R.C. §3794.01. Under

¹ The FCBH serves the cities of Bexley, Dublin, Gahanna, Grandview Heights, Grove City, Hilliard, Pickerington, Reynoldsburg, Upper Arlington, Westerville, and Whitehall; the Villages of Brice, Canal Winchester, Groveport, Harrisburg, Lockbourne, Marble Cliff, Minerva Park, New Albany, Obetz, Riverlea, Urbancrest, and Valleyview; and the Townships of Blendon, Brown, Clinton, Franklin, Hamilton, Jackson, Jefferson, Madison, Mifflin, Norwich, Perry, Plain, Pleasant, Prairie, Sharon, Truro, and Washington.

the law, the ODH was granted authority to promulgate administrative enforcement rules, which were adopted and went into effect on May 3, 2007. R.C. §3794.07.

As a designee, the FCBH receives reports of alleged indoor smoking violations within the FCBH's jurisdiction from the ODH. O.A.C. §3701-52-08(D)(2). Upon receipt, the FCBH opens a file and investigates all reports of smoking ban offenders. Id. To conduct an investigation, the investigator may review the report of violation or any written statement submitted with the report, personally inspect and observe the public place, speak with the proprietor at the location, and conduct a telephone interview. O.A.C. §3701-52-08(D)(2)(a) – (d). The investigator prepares an investigation report, and if the findings are "positive" for a violation of the Smoke Free Workplace Act, the investigator makes a recommendation to the FCBH regarding a civil fine or penalty ranging from a warning letter to fines, based upon how many previous violations the proprietor has and how recently they occurred.

The alleged offender is notified of the proposed findings and consequences, and has the opportunity to submit additional evidence and/or request an administrative hearing before a hearing officer, who must prepare a report and recommendation including findings of fact and conclusions of law. O.A.C. §3701-52-08(F). The alleged offender has the opportunity to file written objections to the report and recommendation. The ODH may then approve, modify or disapprove the report and recommendation of the hearing officer. Finally, an offender may appeal the findings of the ODH to the Franklin County Court of Common Pleas. O.A.C. §3701-52-08(G).

Although the instant case did not fall within the jurisdiction of the FCBH and they did not have any involvement in the underlying investigation, the FCBH believes it would assist this Court with understanding the full context of smoking ban enforcement by providing a similar

factual example of a recent violation from the FCBH's jurisdiction. Parker's Tavern, a bar located within FCBH's jurisdiction, has had multiple findings of Smoke Free Workplace Act violations since its inception. Factually, the proprietors maintain that as a policy, they do not "permit" smoking in their establishment. *Parker's Tavern v. Ohio Dept. of Health*, 2011 WL 2905588 (Ohio App. 10 Dist.), 10th Dist. No. 10APE-968, 2011 -Ohio- 3598, ¶ 6. There are no traditional ashtrays provided by the proprietors, and they have posted no-smoking signs in compliance with the law. *Id.* Despite this, the FCBH has performed inspections on multiple occasions in response to smoking complaints filed with the Ohio Department of Health, and on almost every occasion, investigators have witnessed patrons openly violating the indoor smoking ban at the establishment. *Id.*, ¶ 4. Investigators testified that upon inspection, they witnessed smoking for a period of five minutes wherein no employee of the establishment in any way communicated that smoking was not permitted until *after* the owner noticed the investigators. *Id.*, ¶ 3. The proprietors testified that when they notice patrons smoking indoors, it is their policy to ask them to put out the cigarette or go outside, and patrons usually abide by such requests, but not always. *Id.*, ¶ 6. The proprietors do not take *any* further steps if a patron refuses to comply with such request, and assert that they have taken all reasonable steps necessary to comply with the law by simply asking a patron to stop smoking. *Id.* Specifically, the proprietor testified that she did not think it was reasonable to take any further steps to prevent smoking and that she was not willing to turn away paying customers simply because they were smoking. *Id.* The Court of Appeals for the Tenth District determined that this was sufficient evidence to determine that the establishment affirmatively or implicitly allows smoking because it did not take reasonable measures to prevent the smoking. *Id.*, ¶ 13. The Court further determined that merely complying with the measures delineated in the *Pour House* decision was not sufficient to

demonstrate that smoking was prohibited in Parker's Tavern, particularly where the proprietor had once asked patrons to stop smoking and did not take *any* further action until after she realized FCBH inspectors were on site, which was about an hour after her initial request to the patrons. *Id.*, ¶¶ 14, 16.

In the present case, the trial court opined that “[a]sking a person to put out a cigarette or leave discharges the property owner’s duty under the Smoke Free Act.” Trial Court’s Feb. 22, 2010, *Decision and Entry* (hereinafter, “*Decision and Entry*”), p. 8. Likewise, Appellants argue that as long as the proprietor of an establishment puts up signs, pulls traditional ashtrays, and asks a patron to stop smoking, it is absolve of taking *any* further action. *Merit Brief of Appellants Bartec, Inc and Richard M. Allen* (hereinafter, “*Appellants’ Merit Brief*”), p. 13. The FCBH believes this interpretation of the law is inconsistent with the plain language of the relevant statutory and administrative code provisions, and prior decisions, which have consistently held that proprietors who *implicitly* allow smoking in their establishment violate the law. From a public policy standpoint, establishments that develop a reputation for implicitly allowing indoor smoking not only contribute to the deterioration of public health, but also harm businesses that make a good faith effort to comply with the law. If this Court reverses the appellate court and adopts the trial court’s holding, the FCBH’s ability to enforce the Smoke Free Workplace Act and thereby protect the public health will be compromised.

ARGUMENT

- I. A proprietor who merely asks a smoker to put out their cigarette fails to discharge the proprietor’s duties under the Smoke Free Workplace Act; proprietors are obligated to take further reasonable steps to comply with the law.**

R.C. 3794.02(A) requires that “no proprietor of a public place or place of employment... shall permit smoking in the public place or place of employment. Accordingly, Ohio Administrative Code §3701-52-02 requires that a proprietor take “reasonable steps, including but

not limited to requesting individuals to cease smoking.” O.A.C. §3701-52-02(B). The Code also requires that proprietors post signs and pull ashtrays. O.A.C. §3701-52-02(D) and O.A.C. §3701-52-02(F), respectively. Appellants argue that because these are “the only legislative mandates in the statute to inform what constitutes the permission of smoking” once a proprietor has done these, liability shifts to the patron. *Appellants’ Merit Brief*, p. 17. This argument ignores the plain language of the code that requires reasonable steps including but not limited to these ‘mandates.’

According to R.C. §1.42, “[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage.” The plain language of the Ohio Administrative Code does not support Appellants argument that merely asking a patron to stop smoking, regardless of whether the patron complies or not, discharges a proprietor’s duties under the law. Again, the Ohio Administrative Code states that “a proprietor *shall take reasonable steps including, but not limited to*, requesting individuals to cease smoking. . .” O.A.C. §3701-52-02(B) (emphasis added). Merely asking a patron to stop smoking is not enough.

According to the rules of grammar and common usage, the phrase “shall take reasonable steps including, but not limited to” indicates: 1) taking further steps beyond requesting individuals cease smoking is mandatory, by use of the word “shall;” 2) proprietors must take more than one reasonable step, by use of the plural of “steps;” and 3) the complete subset of reasonable steps proprietors must take in order to achieve compliance with the law includes asking that an individual cease smoking *plus something more*, by use of the phrase “but not limited to.” Construing the plain meaning of this phrase demonstrates that a proprietor’s duty does not cease upon simply requesting that a particular patron stop smoking. Proprietors are

obligated to take some sort of reasonable further steps to ensure that they do not permit smoking in their establishments.

Appellants argue – as the trial court’s found – that because the provisions of R.C. §3794.02(D) make it illegal for a person to refuse to discontinue smoking when asked to do so by a proprietor, the proprietor limits his or her own liability merely by making a request and nothing more – even if the request goes unheeded. The trial court stated, “[t]his section shows that in an establishment whose policy is to not permit smoking; when an individual is asked to stop smoking but refuses, liability is transferred from the property owner to the individual.” *Decision and Entry*, p. 8. Maintaining a smoke-free indoor workplace is more than a mere “policy” that property owners must adopt – it is the law. If this Court adopts Appellants argument and the trial court’s novel interpretation of the statute to contain a transfer of liability, this Court would be simply ignoring the plain meaning of the statute. According to the rules of statutory construction, “the purpose in every instance is to ascertain and give effect to the legislative intent, and it is well settled that none of the language employed therein shall be disregarded, and that all of the terms used should be given their usual and ordinary meaning and signification.” *Carter v. Div. of Water, City of Youngstown* (1946), 146 Ohio St. 203, 65 N.E.2d 63, accord *Weaver v. Edwin Shaw Hosp.* (2004), 104 Ohio St.3d 390, 819 N.E.2d 1079 at ¶12.

Furthermore, as aptly explained by the Supreme Court of Appeals of West Virginia, “[t]he term ‘including’ in a statute is to be dealt with as a word of enlargement and this is especially so where ... such word is followed by ‘but not limited to’ the illustrations given ... by the use of the term ‘including, but not limited to,’ the Legislature implies that measures, other than those specified, may be taken by the Commission in order to effectively carry out the purposes of the Act.” *State Human Rights Commission v. Pauley* (1975), 158 W.Va. 495, 501-

02, 212 S.E.2d 77; disapproved on other grounds in *State Human Rights Commission v. Pearlman Realty Agency* (1977), 161 W.Va. 1, 239 S.E.2d 145. In the case of the legislation at hand, the phrase is preceded by the word “shall,” implying that taking measures other than only the one specified is mandatory in this instance. *Dorrian v. Scioto Conservancy Dist.* (1977), 27 Ohio St.2d 102, syllabus, 271 N.E.2d 834.

The reasonable “something more” that proprietors must do to abide by the statute is undefined. To consider an example outside of the smoking context, suppose that a patron brought their own bottle of alcohol to an establishment holding a liquor license. According to the Revised Code, such action would be unlawful, as only consumption of intoxicating liquor that has been lawfully purchased on the premises of a license holder is permitted. See R.C. §4301.62(C)(1)(a). If the hypothetical patron started serving other patrons drinks from the bottle brought to the establishment, and the proprietor knowingly allowed such behavior to occur, the proprietor’s liquor license might be in jeopardy. If the proprietor asked the patron to stop, and the patron refused, what further steps might a reasonable proprietor take to achieve compliance with the law? The proprietor could: 1) refuse any further food or beverage service to the patron; 2) remove the patron from the premises; 3) call the police and ask the police to remove the patron; or 4) take the patron’s name and report it to the division of liquor control. It is reasonable to expect a proprietor who witnesses patrons illegally smoking in their establishment to take the same or similar steps to ensure compliance with the Smoke Free Workplace Act.

Wouldn’t it be *reasonable* for a proprietor who is in earnest trying to ‘not permit’ smoking and who encounters a dilatory patron to simply report the patron to ODH? This would not only demonstrate that the proprietor is trying in earnest, it would also provide outside verification of those efforts. It would further demonstrate that the proprietor was trying to work

with authorities to comply with the law. In the instant case, however, there is no evidence, that this relatively simple and clearly reasonable step has ever even been attempted by the proprietor. In fact, the proprietor testified to the opposite – that he had never reported a patron who was smoking. Tr. at 108:15-18 (owner Richard Allen testified that he has never reported an individual for smoking in his establishment); see also Tr. at 206:17-22 (manager Mitch Allen testified that he has never reported an individual for smoking). Columbus Public Health investigator Calvin Collins also testified that he never received a complaint against an individual. Tr. at 76:13-18. Instead, Appellants argue that they have done all they can do by merely asking patrons to stop smoking and are absolved of any responsibility to take any other reasonable steps – despite the fact that the Code requires more. Further, Appellants argue that not only should they not be charged with doing anything more, patrons – and only the patrons – should be so charged.

Appellants make much of the alleged fact that no individuals or patrons have been cited with a violation of the statute and argue that this demonstrates a bias and even discriminatory intent on the part of ODH. *Appellants' Merit Brief*, p. 19. First, this not an accurate summation of the actual facts. An individual has been cited under the Smoke Free Workplace Act for failing to extinguish a cigarette when asked to do so by a proprietor. However, the individual, like any proprietor would be, was given a warning because the infraction was a first offense. See Depo. of Lance Himes, 31:19-23. Furthermore, it overlooks the fact that pursuant to the plain language of the statute an individual is not implicated unless or until the proprietor himself actually takes the first step and asks the patron to cease. ~~If proprietors never ask patrons to cease smoking, the provisions of R.C. §3794.02(D) do not come into play and ODH (or its designees) cannot invoke~~

that portion of the statute and take action against the individual, given that it is a complaint-based statute.

The statute itself states that “[t]he provisions of this chapter shall be liberally construed so as to further its purpose of protecting the public health and the health of employees ...” R.C. §3794.04. Furthermore, “[i]t is fundamental in the construction and application of statutes that not only the purpose to be served, but the object to be obtained as well as the evil to be remedied, should be considered.” *State v. Conley* (1947), 147 Ohio St. 351, 353, 71 N.E.2d 275. Appellants’ interpretation of the statute that simply asking a patron to put out their cigarette effectively discharges any further duty on the part of the proprietor should be rejected by this Court. The “transfer of liability” concept fashioned by the trial court and argued by Appellants is not a part of the language of the statute and there is no basis to read the statute in such a manner. In fact, a plain reading of the statute and a consideration of its purpose compels the opposite conclusion, which is that proprietors are obligated to take reasonable steps beyond merely asking a patron to stop smoking to comply with the law as it applies to proprietors.

II. Proprietors who implicitly allow smoking in their establishments violate the Smoke Free Workplace Act.

It has been nearly five years since the Smoke Free Workplace Act went into effect, and most establishments have complied with the explicit requirements of the law to post no-smoking signs and remove traditional ashtrays. However, the evolution of the enforcement arena has moved to establishments that implicitly allow smoking indoors, and have cultivated reputations as places where proprietors tell patrons they can’t smoke with a “wink and a nod.” Merely requesting that a patron cease smoking without other reasonable steps being employed by a proprietor can be construed as an implicit acquiescence to smoking within the establishment. Such implicit acquiescence is not permitted. See e.g. *Deer Park Inn v. Ohio Dep’t of Health*,

10th Dist. No. 09AP974, 2010-Ohio-1392 (violation of R.C. 3794.02(A) affirmed when, in spite of testimony that proprietor had early asked a patron to stop smoking, one-quarter of the patrons were actively smoking in the presence of the bartender and owner). As Appellants have even demonstrated, courts interpreting the smoking ban have determined that ‘proprietors permit smoking when [they] affirmatively allow smoking or implicitly allow smoking.’ *Appellants’ Merit Brief*, p. 18, citing *Pour House, Inc. v. Ohio Dept. of Health*, 2009-Ohio-5475 and *Bexley v. Selcer* (1998, 129 Ohio App. 3d 72, 77).

The trial court’s ruling in this matter made much of the fact that the proprietor posted no-smoking signs and does not provide ashtrays for patrons, and that the inspector did not appear to give much weight to these facts. However, given the history of this case (and the fact that ashtrays were present at the establishment on multiple occasions), the investigators were clearly justified in determining that the proprietors here were at a minimum implicitly permitting smoking with a “wink and a nod.” Incidentally, even if there had been no ashtrays present and signs were posted, this is still not enough to absolve the proprietors. O.A.C. §3701-52-02(D) requires that proprietors post signs; O.A.C. §3701-52-02(F) requires proprietors to remove ashtrays; O.A.C. §3701-52-02(B) requires that proprietors ask patrons to cease smoking *and*, as demonstrated above, *something more*. To not require ‘more’ from proprietors who, in large part, are in the best position to control what goes on in their establishments, would patently allow them to follow rote mandates but still acquiesce to smoking by merely giving lip service to the ban.

~~This Court previously addressed the question of what it means to “permit smoking” in regards to the Columbus Smoking Ban, which was in effect prior to enactment of the state-wide Smoke Free Workplace Act. Revised Code §3794.02(A) mirrors the previous Columbus~~

smoking-ban language, stating “[n]o proprietor of a public place or place of employment ... shall permit smoking ...”. This Court concluded that the phrase “permit smoking” means that “the Ban prohibits a proprietor to allow, consent or expressly assent to smoking within his or her establishment. Likewise, a proprietor is forbidden from being acquiescent to smoking by failing to take appropriate measures to prevent people from using tobacco on the premises ...”. *Traditions Tavern v. City of Columbus*, 2006-Ohio-6655, 171 Ohio App.3d 383, 393, 870 N.E.2d 1197. This Court also previously noted in a similar context that the word “permit” is defined as “to suffer, allow, consent, let; to give leave or license; to acquiesce, by failure to prevent, or to expressly assent or agree to the doing of the act.” *Bexley v. Selcer*, 129 Ohio App.3d 72, 77, 716 N.E.2d 1220. According to these cases, proprietors who implicitly acquiesce to smoking by failing to prevent it, or by neglecting to take reasonable steps to stop it, are permitting smoking in violation of the law.

Any patron who understands that a particular establishment will take no action beyond verbally asking them to put out their cigarette will feel free to continue patronizing the establishment and smoking indoors, to the detriment of every other establishment that makes a good-faith effort to comply with the law. The following passage from another Franklin County Common Pleas case is instructive: “Appellant’s policy of telling smokers that smoking is not allowed but continuing to allow smoking warrants the conclusion by the Department that the violation was intentional.” *Z&Z Resources, LLC v. Ohio Dept. of Health*, Franklin County Common Pleas Case No. 08-CV-5913 (Sept. 24, 2008, Schneider, J.), p. 6. Proprietors can give “lip service” to a no-smoking policy, but a failure to act accordingly belies their true intention which is to acquiesce to smoking in their establishment. For example, if a bartender verbally tells a patron that “smoking is not allowed,” and then hands the patron an empty beer bottle to

ash into, the establishment most certainly implicitly allows smoking. See also *Deer Park Inn II*, wherein the 10th District determined that demonstrating a “willful blindness” to smoking that was occurring in an establishment was not only sufficient for finding violations of the Smoke Free Act, it was sufficient to demonstrate “some measure of contempt for [it].” *Deer Park Inn v. Ohio Dept. of Health*, 10th District No 09AP-974, 2010-Ohio-1392, ¶ 11.

The trial court ruled that interpreting R.C. §3794.02(E) “to make the mere presence of a lighted cigarette on the premises a violation of the Smoke Free Act exceeds the authority given to the Department of Health by R.C. 3794.02” in regards to the strict liability imposed in the statute. *Decision and Entry*, p. 7. However, if every time a department of health inspector is on the premises, one or more patrons are found openly violating the indoor smoking ban, a strong inference can be made that the proprietor or the establishment at a minimum implicitly allows smoking to occur on the premises.

This is what happened in the instant case. Appellants argue that they did all they could do by posting signs, pulling ashtrays and asking patrons to cease smoking. *Appellants’ Merit Brief*, p. 18. However, the facts of this case demonstrate the contrary. The record shows that during the course of the ten (10) investigations conducted at Zeno’s, not only was there smoking present, which belies the assertion that smoking is not permitted, but on nine (9) of those instances ashtrays were also present. See ODH Complaint, filed August 13, 2009. This is a clear indication that Appellants did not do all they could do and in fact failed to do the minimum. In addition, even if they were telling customers that they could not smoke, the presence of ashtrays is an indication, at a minimum, of an implicit acquiescence to smoking if not outright approval. Furthermore, even if there had been no smoke, the failure to remove the ashtrays is

sufficient evidence for the finding of a violation of the Smoking Ban, and the nine violations of R.C. §3794.06(B) was sufficient for ODH's requested statutory injunction.

Ultimately, inspectors must be afforded the discretion to determine whether the presence of a lighted cigarette is an anomaly, because the proprietor can demonstrate that he or she consistently and regularly takes steps in addition to asking patrons to put out cigarettes to disallow smoking; or whether the presence of one or more lighted cigarettes and/or ashtrays every time an inspector appears indicates that the proprietor implicitly permits smoking, even in the presence of no-smoking signs and a purported no-smoking policy. Proprietors who implicitly allow smoking in their establishments violate the Smoke Free Workplace Act.

III. Indoor smoking is a serious threat to the public health.

The General Assembly acknowledged the dangers of second-hand smoke when it enacted the Smoke Free Workplace Act. As it stated in R.C. §3794.04:

Because medical studies have conclusively shown that exposure to secondhand smoke from tobacco causes illness and disease, including lung cancer, heart disease, and respiratory illness, smoking in the workplace is a statewide concern and, therefore, it is in the best interests of public health that smoking of tobacco products be prohibited in public places and places of employment ...

Since the time that indoor smoking bans have been more widely imposed, researchers have been able to study the positive health effects of smoking bans. As an example, one summary report analyzing the health effects of 11 indoor smoking bans found that "[r]emarkably, all of the publications show a decrease in the rate of heart attacks after a smoking ban was implemented. Those decreases ranged from 6 percent to 47 percent, depending on the study and form of analysis." ~~Institute of Medicine, National Academy of Sciences, *Secondhand Smoke Exposure and Cardiovascular Effects: Making Sense of the Evidence* (2010).~~ These studies support a finding that there is an overall decrease in heart attacks across the population at

large in the wake of an indoor smoking ban, including men and women, smokers and non-smokers alike.

Furthermore, other Smoke Free Workplace Act matters have taken note of the public health threat second-hand smoke causes. As one decision noted:

Obviously, those persons who choose not to smoke are also exposed to the "sidestream smoke" given off by a burning cigarette, as well as the smoke exhaled directly by smokers. U.S. Dep't of Health and Human Servs., *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*, 3 (2006). These two causes of "second-hand smoke" cause approximately 50,000 deaths in the United States each year, including deaths from lung cancer, cardiovascular disease, and sudden infant death syndrome (SIDS). Cal. Env'tl. Prot. Agency, *Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant*, Part B: Health Effects 1-1 to -2 (2005).

See *Amvets Post 61 v. Ohio Dept. of Health*, Franklin County Common Pleas Case No. 07-CVF-13168 (Apr. 21, 2009, Lynch, J.) at 5. The State of Ohio has had five years of improvement in the public health because of the state-wide smoking ban. Any interpretation of the statute and administrative rules that weakens the ban will consequently weaken the state of public health.

CONCLUSION

The State of Ohio has made significant improvements in public health over the last five years by banning indoor smoking in public places such as bars and restaurants. This Court should hold that a proprietor who merely asks a smoker to put out their cigarette and takes no further action to prevent indoor smoking violates the express intent of the Smoke Free Workplace Act. Proprietors are obligated to take other reasonable steps to achieve compliance with the law. This Court should hold that proprietors who post no-smoking signs, remove ashtrays, and even purport to have a no-smoking policy, but who willfully turn a blind eye to smoking on their property, implicitly allow smoking in violation of the statute. Holding otherwise, or not upholding the decision of the 10th District Court of Appeals, will impede FCBH's enforcement abilities as well as its abilities to protect public health.

Wherefore, the Franklin County Board of Health respectfully asks that this Court affirm the decision of the Appellate Court, permanently enjoin Appellants from violating the Smoke Free Workplace Act, and impose the fines previously issued in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Brief of Amicus Curiae Franklin County District Board of Health in Support of Plaintiff-Appellee, Ohio Department of Health* has been furnished, via U.S. mail, postage prepaid, this 16th day of August, 2011, to:

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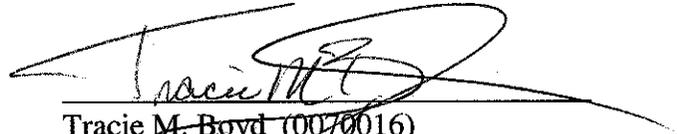
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A handwritten signature in black ink, appearing to read "Tracie M. Boyd", with a long horizontal flourish extending to the right.

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