

IN THE SUPREME COURT OF OHIO

STATE OF OHIO
CITY OF AKRON

Case Nos. 2012-0808
2012-1216

Appellees,

v.

On Appeal From the Summit
County Court of Appeals
Ninth Appellate District

MONTOYA BOYKIN

Appellant.

MERIT BRIEF OF AMICI CURIAE

Advocates for Basic Legal Equality, Coalition on Homelessness and Housing in Ohio,
Community Legal Aid Services, Disability Rights Ohio, Legal Aid Society of Southwest Ohio,
Legal Aid of Western Ohio, Inc., Legal Aid Society of Cleveland, Legal Aid Society of
Columbus, Office of the Ohio Public Defender, Ohio Justice and Policy Center, Ohio Poverty
Law Center, and Southeast Ohio Legal Services

IN SUPPORT OF APPELLANT

JANE P. PERRY (0029698)
Attorney at Law
Counsel of Record
46 Northmoor Place
Columbus, Ohio 43214
T: 614-261-1711
perdav@columbus.rr.com

JOANN SAHL (0037265)
Counsel of Record
University of Akron School of Law
Legal Clinic
Akron, OH 44325-2901
T: 330-972-7189 Fax 330-972-6326
jsahl@uakron.edu
COUNSEL FOR APPELLANT

Counsel for Amici Curiae
Advocates for Basic Legal Equality
Coalition on Homelessness and Housing in Ohio
Community Legal Aid Services
Disability Rights Ohio, Legal Aid Society of Southwest Ohio
Legal Aid of Western Ohio, Inc.
Legal Aid Society of Cleveland
Legal Aid Society of Columbus
Office of the Ohio Public Defender

FILED
NOV 06 2012
CLERK OF COURT
SUPREME COURT OF OHIO

*Ohio Justice and Policy Center
Ohio Poverty Law Center
Southeast Ohio Legal Services*

HEAVEN DIMARTINO (0073423)
Assistant Summit County Prosecutor
53 University Avenue, 6th Floor
Akron, OH 44308
(330)643-2800
COUNSEL FOR APPELLEE
State of Ohio

MICHAEL DEFIBAUGH (0072683)
Assistant Director of Law
161 S. High Street, Suite 202
Akron, OH 44308
(330) 375-2030
Facsimile: (330) 375-2041
COUNSEL FOR APPELLEE
City of Akron

TABLE OF CONTENTS

	Page	
Table of Contents	iii	
Table of Authorities	iv	
Interest of the Amici Curiae	1	
Statement of the Facts	5	
Argument	5	
 Proposition of Law:		
Persons who receive a full and unconditional pardon are relieved of all disabilities arising from their pardoned convictions including the civil disabilities, or collateral consequences, attendant to those convictions. The sentencing court must therefore seal the pardoned convictions in order to relieve the person of all civil disabilities arising from them.....		5
I. Introduction.....	5	
II. A full pardon must afford the offender relief from all punishments and disabilities, including the collateral consequences, that arise from the pardoned conviction.....	6	
III. Collateral consequences: The secret sentence.....	9	
IV. Collateral consequences affect critical components of reentry into society and continue long after an offender serves his or her sentence.....	12	
V. Collateral consequences will continue to pursue a person who has received a full and unconditional pardon unless the record of the pardoned conviction is sealed.....	25	
Conclusion	26	
Certificate of Service	27	

TABLE OF AUTHORITIES

Cases	Page
<i>Knapp v. Thomas</i> , 39 Ohio St. 377, 381, 48 Am.Rep. 462 (1883).....	7
<i>State ex rel. Attorney General v. Peters</i> , 43 Ohio St. 629, 650, 4 N.E. 81 (1885)	7, 8
<i>State ex rel. Gordon v. Zangerle</i> , 136 Ohio St. 371, 375, 26 N.E.2d 190 (1940)	8
<i>State ex rel. Maurer et al., v. Sheward</i> , 71 Ohio St.3d 513, 644 N.E.2d 369 (1994)	6, 7, 8
 Constitutional Provisions	
Ohio Constitution, Article II, Section 11	5
 Statutes	
R.C. 109.72.....	18
R.C. 124.01.....	13
R.C. 124.25.....	13
R.C. 737.221.....	15
R.C. 1315.23.....	17
R.C. 1503.29.....	14
R.C. 1517.10.....	14
R.C. 1531.13.....	14
R.C. 2313.17.....	23
R.C. 2913.01.....	17
R.C. 2945.25.....	23
R.C. 2953.25.....	19
R.C. 2953.31.....	11
R.C. 2961.01.....	23

R.C. 2961.02.....	23
R.C. 2967.04.....	7, 8, 25
R.C. 3333.38.....	24
R.C. 3501.27.....	23
R.C. 3905.14.....	17
R.C. 3951.04.....	17
R.C. 4639.301.....	14
R.C. 4719.03.....	17
R.C. 4723.28.....	16
R.C. 4725.48.....	19
R.C. 4725.52.....	19
R.C. 4725.53.....	19
R.C. 4735.09.....	17
R.C. 4735.18.....	17
R.C. 4736.05.....	17
R.C. 4738.04.....	19
R.C. 4738.07.....	19
R.C. 4740.06.....	17, 19
R.C. 4741.22.....	16
R.C. 4747.05.....	18, 19
R.C. 4747.12.....	18, 19
R.C. 4749.03.....	19
R.C. 4749.04.....	19

R.C. 4749.06.....	19
R.C. 4753.10.....	18
R.C. 4755.11.....	16
R.C. 4757.36.....	15
R.C. 4759.07.....	16
R.C. 4776.10.....	17, 18, 19
R.C. 5104.09.....	18
R.C. 5123.081.....	15
10 U.S.C. 504.....	24
20 U.S.C. 1091.....	24

Administrative Rules and Regulations

Ohio Adm.Code 173-9-01.....	14
Ohio Adm.Code 3701-13-01.....	14
Ohio Adm.Code 3701-13-05.....	14
Ohio Adm.Code 3701-13-06.....	14
Ohio Adm.Code 4501:1-6-01.....	14
Ohio Adm.Code 4723-26-11.....	16
Ohio Adm.Code 4723-27-09.....	16
Ohio Adm.Code 5101:2-48-09.....	24
Ohio Adm.Code 5101:2-48-10.....	24
Ohio Adm.Code 5101:2-7-02.....	24
Ohio Adm.Code 5101:3-1-17.6.....	15
Ohio Adm.Code 5123:2-1-05.....	15

24 C.F.R. 5.850.....	21
24 C.F.R. 5.851.....	22
24 C.F.R. 5.852.....	22
24 C.F.R. 5.854.....	21
24 C.F.R. 8.854.....	22
24 C.F.R. 960.200.....	21
24 C.F.R. 960.203.....	22
24 C.F.R. 960.204.....	21, 22
24 C.F.R. 982.1.....	21
24 C.F.R. 982.551.....	22
24 C.F.R. 982.552.....	21, 22
24 C.F.R. 982.553.....	21, 22
Crim.R. 24(C)(1).....	23
Sup.R. 81 (B)(3).....	18
Sup.R. 82 (B)(3), (C) (3).....	18

Other Authorities

<i>ABA Standards for Criminal Justice, Collateral Sanctions and Discretionary Disqualification of Convicted Persons</i> , Commentary, at 11 (3d Ed. 2004).....	9, 10, 25
Acoca & Raeder, <i>Severing Family Ties: The Plight of Nonviolent Female Offenders and Their Children</i> , 11 Stan. L. & Pol'y Rev. 133 (1999).....	20
<i>From Classroom to the Community, Exploring the Role of Education During Incarceration and Reentry</i> , Roundtable Monograph, The Urban Institute, 2 (2009).....	24
Jeremy Travis, <i>Invisible Punishment: The Collateral Consequences of Mass Imprisonment</i> (2002), 15, available at http://www.urban.org/uploadedPDF/1000557_invisible_punishment.pdf	8, 11, 23

Love, *Starting Over With a Clean Slate: In Praise of a Forgotten Section of the Model Penal Code*, 30 Fordham Urban L.J. 1705 (2003)..... 6, 18, 25

McCarty, *Criminal Records Keeping Millions of Ohioans Jobless*, Dayton Daily News (June 25, 2011) A1..... 13

Ofobike, *The Ex-Con's Problem – the Elusive Job Offer* (February 17, 2009), Akron Beacon Journal, available at <http://www.ohio.com/editorial/commentary/the-ex-con-s-problem-the-elusive-job-offer-1.143461> (accessed October 22, 2012)..... 19

INTEREST OF THE *AMICI CURIAE*

The *Amici Curiae* parties include the following: Advocates for Basic Legal Equality, Coalition on Homelessness and Housing in Ohio, Community Legal Aid Services, Disability Rights Ohio, Legal Aid Society of Southwest Ohio, Legal Aid of Western Ohio, Inc., Legal Aid Society of Cleveland, Legal Aid Society of Columbus, Office of the Ohio Public Defender, Ohio Justice and Policy Center, Ohio Poverty Law Center, and Southeast Ohio Legal Services.

Amici Curiae, the Ohio Poverty Law Center and the regional legal aid programs (Legal Aid Society of Cleveland, Legal Aid Society of Columbus, Legal Aid Society of Southwest Ohio, Southeast Ohio Legal Services, Legal Aid of Western Ohio, Inc., Community Legal Aid Services, and Advocates for Basic Legal Equality), are nonprofit law offices that provide free civil legal services to low-income persons and seniors in a broad range of substantive legal issues. Their mission is to secure justice for eligible low-income persons and groups to achieve self-reliance, equal justice and economic opportunity. More than two million Ohioans are income eligible for legal aid. Many clients of the legal aid programs are minorities, families with children including many headed by a single parent, and persons with disabilities. These clients struggle to secure employment, public benefits and affordable housing, and the civil collateral consequences of a misdemeanor or felony conviction further limit their ability to obtain a job, keep a job, obtain decent, affordable housing and pursue the education and training they need to become productive citizens. Legal aid programs are thus well positioned to observe the collateral consequences that flow from criminal convictions and to provide the Court with information regarding how the issues in this case adversely impact our vulnerable client population.

Amicus Curiae, the Office of the Ohio Public Defender (OPD) is a state agency charged with the duty to represent criminal defendants and to coordinate criminal defense efforts throughout Ohio. The OPD has an enduring interest in protecting the integrity of the justice system, and a special role in ensuring that the development and application of the criminal law is in accordance with the rights of Ohio's citizens. The OPD also plays a key role in the promulgation of Ohio statutory law and procedural rules. The primary focus of the OPD is on the post-trial phase of criminal cases, including direct appeals and collateral attacks on convictions. The primary mission of the OPD is to protect the individual rights guaranteed by the state and federal constitutions through exemplary legal representation. In addition, the OPD seeks to promote the proper administration of criminal justice by enhancing the quality of criminal defense representation, educating legal practitioners and the public on important defense issues, and supporting study and research in the criminal justice system.

In fulfillment of its many responsibilities to Ohio's citizens and to the state bar, the OPD in collaboration with the Ohio Justice and Policy Center, maintains an online database containing information about the civil consequences of criminal convictions, appropriately titled the Civil Impact of Criminal Convictions database (CIVICC). The CIVICC database offers a basic overview of the legal impediments and deprivations that current Ohio law imposes on individuals with criminal records. CIVICC is a public online database, and as such is easily accessible and available to all of Ohio's citizens as well as all others with an interest in its subject matter.

This case presents important questions regarding the impact of collateral consequences and the power of the executive branch to free certain criminal defendants of those dire consequences through a full pardon. As such, the OPD and the clients it serves will be directly

impacted by this Court's resolution of this appeal, and therefore, the OPD joins in this *amicus curiae* brief in support of Montoya Boykin.

Amicus Curiae, Ohio Justice & Policy Center ("OJPC") is a Cincinnati-based non-profit law office that represents people marginalized by the criminal justice system and that works for local, state, and national smart-on-crime reform. In 2004, OJPC launched its Second Chance Project to expand the freedom of people with criminal records to be fully contributing members of their communities. OJPC's Second Chance strategies include local outreach legal clinics and community legal education classes, as well as research, education, and public and policy advocacy about the collateral consequences of conviction. Through its community-based outreach legal clinics, OJPC has served over 4000 adults and young people with advice, information, referrals and court representation on issues that include criminal-record sealing and correction, pardons, child support, probation and parole conditions, and access to education and employment. OJPC is keenly and deeply aware of the numerous ways in which a person can be forever dogged by the fact of a conviction — even if, like Ms. Boykin, she has gone on to earn a pardon from the governor. Lessons learned from these clients led OJPC to build the Ohio Civil Impacts of Criminal Convictions Database, a public online resource that is now hosted by the Ohio Public Defender at www.opd.ohio.gov/CIVICC. This database now catalogs over 750 state statutes and regulations — rarely, if ever, discussed in a court's sentence — that block the rights and privileges of people with criminal records. Because of the CIVICC Database, OJPC is nationally recognized as a leader in understanding this complex area of law. OJPC is educating lawyers, judges, and lay people across Ohio on the full societal impact of convictions. OJPC's experience provides an informed perspective on the value of executive pardons and the importance of sealing criminal records. In this age of Google and i-phones, the long-term effects

of a conviction will persist and create insurmountable barriers despite rehabilitation and pardon, so long as the State devotes its resources to maintaining, preserving and disseminating the conviction record and supplies that information in response to the increasingly frequent and ubiquitous criminal record checks required by state laws and regulations. When the State has found a person to have been rehabilitated and deserving of pardon, its pardon can have substantive effect only if the State expunges or seals its own records of the pardoned offenses.

Amicus Curiae, Disability Rights Ohio is a not for profit organization and has been designated by the Governor of Ohio as the protection and advocacy system (“P&A”) under federal law for people with disabilities in Ohio.¹ See 42 U.S.C. 10541 *et seq.* The mission of Disability Rights Ohio is to advocate for the human, civil, and legal rights of people with disabilities in Ohio. As the P&A for Ohio, Disability Rights Ohio has extensive experience representing individuals with many different types of disabilities in a wide variety of legal matters, including issues within the criminal justice system. Individuals with disabilities, particularly those with a mental illness, disproportionately enter the criminal justice system, often because of lack of access to appropriate services in their communities. National data shows, for example, that while individuals with a serious mental illness make up only 2.8% of the adult population, they make up 7.2% of jail populations and between 6% and 8% of prison populations. Disability Rights Ohio is concerned about the lifelong impact that collateral consequences have on individuals with disabilities who disproportionately enter the criminal justice system, consequences that will affect their ability to access needed health care and

¹ Disability Rights Ohio became the designated P&A on October 1, 2012, completing a transition of staff and funding from its predecessor Ohio Legal Rights Service, an independent state agency, to the not for profit organization.

housing services. Disability Rights Ohio therefore joins in this brief with other Ohio-based civil justice groups.

Amicus Curiae, the Coalition on Homelessness and Housing in Ohio (COHHIO) is a non-profit corporation organized to advocate for the end of homelessness and for the availability of decent, safe, fair, affordable housing particularly for low-income Ohioans. COHHIO has more than 600 organizational members throughout the State of Ohio, including numerous housing and service providers, which work with and on behalf of vulnerable populations. COHHIO and its members are particularly concerned with the ability of Ohioans to access employment, public benefits, and safe and affordable housing, which can be restricted as a result of civil collateral consequences of a misdemeanor or felony conviction.

STATEMENT OF FACTS

In the interest of judicial economy, *amici curiae* adopt by reference the Statement of Facts submitted by the Appellant Montoya Boykin.

ARGUMENT

Proposition of Law: Persons who receive a full and unconditional pardon are relieved of all disabilities arising from their pardoned convictions including the civil disabilities, or collateral consequences, attendant to those convictions. The sentencing court must therefore seal the pardoned convictions in order to relieve the person of all civil disabilities arising from them.

I. Introduction

Amici curiae respectfully ask this Court to reverse the decision of the court of appeals. As Appellant Boykin establishes in her merit brief, Article II, Section 11 of the Ohio Constitution places the power to pardon in the hands of the Governor. Courts are not permitted to interfere once the pardon application procedures have been followed, as they were in this case, and the Governor has exercised his discretion to grant a pardon.

Pardons are a rare occurrence, given only to those who have truly redeemed themselves. This court has always defined the legal effect of a full pardon in broad terms, stating that it releases the pardoned offender from any further punishment, and from all disabilities attendant to the pardoned conviction. Amici's brief will demonstrate that the disabilities attendant to a conviction must be read to encompass the collateral consequences of a conviction.

As Ms. Boykin discovered, "[t]he collateral consequences of a criminal conviction linger long after the sentence imposed by the court has been served, depriving ex-offenders of the tools necessary to reestablish themselves as law-abiding and productive members of the free community." Love, *Starting Over With a Clean Slate: In Praise of a Forgotten Section of the Model Penal Code*, 30 Fordham Urban L.J. 1705 (2003). When a person is pardoned those collateral consequences should cease. The trial court must seal the record of a pardoned conviction in order to fulfill the legal effect of a gubernatorial pardon.

II. A full pardon must afford the offender relief from all punishments and disabilities, including the collateral consequences, that arise from the pardoned conviction.

The procedure for seeking a pardon is regulated by statute and contains safeguards to ensure that the merits of an application, rather than political considerations, inform the Governor's decision to grant or deny a pardon. *State ex rel. Maurer et al., v. Sheward*, 71 Ohio St.3d 513, 519, 644 N.E.2d 369 (1994).

Recent history shows that many people request pardons from the Governor, but few are found deserving enough to receive them. Governor John Kasich has thus far granted only about 5% of pardon requests. His predecessor, Governor Ted Strickland, granted about 20% of the clemency applications he received, while Governor Robert Taft granted less than 10% of the

clemency requests received.² Alan Johnson, *Pardon from Kasich is Rare* (May 19, 2012), available at The Columbus Dispatch, <http://www.dispatch.com/content/stories/local/2012/05/19/pardon-from-kasich-is-rare.html> (accessed October 16, 2012). Governor George Voinovich considered more than 4600 clemency applications and granted only sixty-nine pardons and fifty commutations, that is, less than 3% of the total applications. Margaret Colgate Love, *Relief from the Collateral Consequences of a Criminal Conviction* (March 7, 2007), available at <http://www.sentencingproject.org/tmp/File/Collateral%20Consequences/Ohio.pdf> (accessed October 10, 2012). These sobering statistics demonstrate that pardons are sparingly granted regardless of who is governor or which party sits in the governor's mansion, and reserved for those who, like Ms. Boykin, have a documented record of rehabilitation so convincing that they earned the trust and forgiveness of the Ohio Parole Board and the Governor.

For those exceptional people who have been found worthy of a full and unconditional pardon, that pardon “relieves the person to whom it is granted of all disabilities arising out of the conviction or convictions from which it is granted.” R.C. 2967.04(B). Historically, this Court has broadly defined the reach of a full pardon, indicating that such a pardon releases the offender not only from the punishment incident to the conviction, but also from the far-reaching effects the conviction has on the pardoned individual's life. See *Knapp v. Thomas*, 39 Ohio St. 377, 381, 48 Am.Rep. 462 (1883) (finding that a full pardon operates as “a complete estoppel of record against further punishment pursuant to such conviction”); *State ex rel. Attorney-General v. Peters*, 43 Ohio St. 629, 650, 4 N.E. 81 (1885) (clarifying that a full pardon “releases the offender from the entire punishment prescribed for his offense, and for all disabilities consequent

² A pardon is one part of the Governor's executive clemency power. Ohio Constitution, Article III, Section 11; *State ex rel. Maurer et al., v. Sheward*, 71 Ohio St.3d 513, 517-18, 521-22, 644 N.E.2d 369 (1994).

on his conviction”); and *State ex rel. Gordon v. Zangerle*, 136 Ohio St. 371, 375, 26 N.E.2d 190 (1940) (holding that a full pardon “purges away all guilt and leaves the recipient from a legal standpoint, in the same condition as if the crime had never been committed”). And in *State ex rel. Maurer et al., v. Sheward*, 71 Ohio St.3d at 521, the Court reaffirmed *Peters* by stating that the Governor’s constitutional power to issue a full and unconditional pardon is an act that “releases the offender... from all the disabilities consequent on his conviction.” (Citation omitted.)

Despite the plain language of R.C. 2967.04(B) and the prior decisions of this Court that broadly define the effect of a full pardon, the court of appeals in this case reasoned that it was not required to seal the record of Ms. Boykin’s pardoned convictions because a pardon did not erase the fact of the underlying convictions.

The appellate court’s reasoning cannot be squared with this Court’s jurisprudence or with the relevant statutory provisions. It is simply not possible to release the recipient of a pardon from further punishment, or to relieve her from all disabilities attendant to the pardoned conviction, without sealing the record of that conviction. As long as the record of her conviction remains on the books, the conviction will continue to pursue the recipient of a pardon “like Nemesis.” Jeremy Travis, *Invisible Punishment: The Collateral Consequences of Mass Imprisonment* (2002), 19, available at http://www.urban.org/uploadedPDF/1000557_invisible_punishment.pdf. This is because of the vast network of collateral consequences, both state and federal, which accompany felony and misdemeanor convictions.

III. Collateral consequences: The secret sentence.

Constitutional principles require that a criminal defendant be fully informed of the consequences of a criminal conviction, including the maximum sentence allowed for the offense in question and the tangential deprivations and responsibilities that accompany most convictions. However, offenders are not fully informed of the long-lasting and far-reaching effects resulting from that criminal conviction, such as civil consequences affecting employment, education, social standing and housing. These consequences typically are not part of the criminal sentence imposed by the judge upon conviction of a crime. Thus, more often than not, offenders are unaware of the collateral consequences, the “secret sentence,” that will affect them for years to come because of their convictions. Chinn, *Effective Assistance of Counsel and the Consequences of Guilty Pleas*, Cornell L.Rev. 697, 700 (2002).

These collateral consequences can be mandatorily or discretionarily imposed. The American Bar Association’s Standards for Criminal Justice call for courts to begin focusing attention on the mandatory “collateral sanctions” and the “discretionary disqualifications” that result from a criminal conviction. According to the ABA, “collateral sanctions” are “a legal penalty, disability or disadvantage, however denominated, *that is imposed on a person automatically* upon that person’s conviction for a felony, misdemeanor or other offense, even if it is not included in the sentence, ” while “discretionary disqualification” is defined as “a penalty, disability or disadvantage, however denominated, that a civil court, administrative agency, or official is *authorized but not required to impose* on a person convicted of an offense...” (Emphasis added.) *ABA Standards for Criminal Justice, Collateral Sanctions and Discretionary*

Disqualification of Convicted Persons, Standard 19-1.1(a)-(b) (3d Ed. 2004).³ In sum, collateral consequences encompass any kind of civil penalty, disability, or disadvantage, whether mandatory or discretionary, that is required or permitted by operation of law because of a conviction but is not part of the sentence.

Most offenders are not prepared for the many ways in which collateral consequences will affect their lives, “some of which may be far more onerous than the sentence imposed by the judge in open court.” *ABA Standards for Criminal Justice, Collateral Sanctions and Discretionary Disqualification of Convicted Persons*, Commentary, at 7 (3d Ed. 2004). Take a very common case, where the person pleads guilty and receives a sentence of time served and probation:

[E]ven though she may walk out of court that very day, a wide range of public benefits and opportunities may no longer be available to her: Military service, government employment, welfare benefits, higher education, public housing, many kinds of licensure, even driving a car, may be out of the question. Inevitably, individuals with convictions, most not legally trained, are surprised when they discover legal barriers they were never told about.

Uniform Collateral Consequences of Conviction Act, Prefatory Note, at 4 (2009). This is exactly what happened to Ms. Boykin. Nearly fifteen years after her convictions, Ms. Boykin suddenly learned that her job as a home care services worker was in jeopardy because of her felony and misdemeanor convictions. And she was halfway toward graduating from college with a social work degree when she was caught unaware by information that her convictions could well prevent her from ever obtaining her license as a social worker. (Record, Case No.: CA-25845,

³ The Ohio Legislature adapted the ABA definition of “collateral sanction” when it enacted S.B. 337 in 2012. R.C. 2953.25(A)(1) now defines “collateral sanctions,” albeit solely in terms of employment, as a penalty, disability, or disadvantage that is related to employment or occupational licensing, however denominated, as a result of the individual’s conviction of or plea of guilty to an offense and that applies by operation of law in this state whether or not the penalty, disability, or disadvantage is included in the sentence or judgment imposed.” R.C. 2953.25(A)(1).

16. Joint Stipulation of Filing [May 20, 2011]). Even now after receiving a pardon, she continues to face these collateral consequences so long as information about her convictions remains available to the public.

The only way for an offender to keep her criminal record out of the public domain in the age of public information and the Internet is to have her record sealed. But under Ohio's statutory scheme, the class of offenders eligible to have their convictions be sealed is small. Under R.C. 2953.31(A), an eligible offender has either (1) not more than one felony conviction; (2) not more than two misdemeanor convictions if the convictions are not of the same offense; or (3) no more than one felony conviction and one misdemeanor conviction. All other offenders who, like Ms. Boykin, do not meet these statutory criteria cannot apply to have their records sealed under R.C. 2953.31.

As information about a person's criminal record has become widely available, the number of collateral sanctions passed in both state and federal laws has proliferated. These two forces work together to increase the odds against an offender's successful reintegration into the community:

[T]here has been an expansion of the prohibitions against hiring teachers, child care workers, and related professionals with prior criminal convictions. This expansion of legal barriers has been accompanied by an increase in the ease of checking criminal records due to new technologies, expanded access to criminal records, and an increase in the number of employers checking criminal records of prospective employees. One's criminal past became both more public and more exclusionary, limiting the universe of available work.

Jeremy Travis, *Invisible Punishment: The Collateral Consequences of Mass Imprisonment* (2002), 22, available at http://www.urban.org/uploadedPDF/1000557_invisible_punishment.pdf.

IV. Collateral consequences affect critical components of reentry into society and continue long after an offender serves his or her sentence.

The proliferation of collateral consequences is reflected in Ohio. There are literally hundreds of them in the Ohio Revised Code and the Ohio Administrative Code. One detailed survey of Ohio law found approximately **800** collateral consequences arising from criminal convictions. Frank, Travis, Reitler, Goulette & Flesher, *Collateral Consequences of Criminal Conviction in Ohio: A Research Report to the Ohio Office of Criminal Justice Services*, available at <http://www.uc.edu/content/dam/uc/ccjr/docs/reports/Collateral%20Consequences%20Final%20Report.pdf>. This survey grouped the collateral consequences in five categories including public employment; regulated professions, occupations, trades, industries, and business; civil rights; care, custody, and control of children and family; and other privileges such as voting and jury service. *Id.* at 5. *See also* Mossoney & Roecker, *Ohio Collateral Consequences Project*, 36 U.Tol.L.Rev. 611 (2005). Moreover, the legislature constantly expands the number and scope of these consequences. *Compare, e.g.*, Ohio Legislative Service Commission Bill Analysis, Am.Sub.H.B. 487, 45-47 (listing 67 additional offenses that will preclude employment with a long-term care agency, pursuant to the 2012 mid-term budget bill.)

Taken together with collateral consequences imposed at the federal level, these statutes and regulations produce a substantial adverse impact on an offender's eligibility for employment and licensure, ability to obtain affordable housing, and other important aspects of community life.

A. Collateral consequences: Employment and Licensure

Ohio's collateral consequences that are explicitly stated in statutes and regulations are concentrated in the areas of employment and licensure. The Office of the Ohio Public Defender (OPD) maintains Ohio's online data base about the Civil Impact of Criminal Convictions. This

CIVICC website is an ongoing effort to track, collect and present in one accessible website the many legal barriers that Ohio laws impose on convicted persons. The information on Ohio collateral sanctions in this brief is taken largely from the CIVICC website,⁴ the Ohio Revised Code and the Ohio Administrative Code.

Many of Ohio's collateral consequences apply to any felony and/or misdemeanor conviction, regardless of the type of crime committed, or to a conviction for a crime "involving moral turpitude," which is often undefined. There are also no "statutes of repose," or time limits, for many consequences. This means that person who committed a felony or "crime of moral turpitude" can still be subject to a collateral consequence even if the crime occurred decades ago and even if the person has led a law-abiding life ever since.

Almost 16 percent of Ohioans, an estimated 1.9 million people, have a felony or misdemeanor conviction. McCarty, *Criminal Records Keeping Millions of Ohioans Jobless*, Dayton Daily News (June 25, 2011) A1. These offenders are going to experience many roadblocks to obtaining and keeping employment that offers enough in wages and/or benefits to sustain themselves, much less a family. Ohio's laws and regulations contain scores of limitations on employment opportunities that are either required or permitted to be imposed on those with criminal records. What follows is only a partial catalog of the collateral consequences related to employment and licensure in this State.

- Any person with a felony conviction may be refused employment in a state classified civil service position. R.C. 124.25. Civil service includes all employment with the state, counties, cities, city health districts, general health districts, and city school districts of the state. R.C. 124.01.

⁴ <http://opd.ohio.gov/CIVICC> (last visited October 18, 2012).

- No person with any of the fifty-five different felony convictions enumerated in Ohio Adm.Code 3701-13-05 can work for an agency that provides adult day care, or home health care to an older adult or child, or hospice care to an older adult under Ohio Adm.Code 3701-13-01(G), unless the agency's director determines, at his discretion, that the applicant meets all of the "personal character and rehabilitation standards" set out in Ohio Adm.Code 3701-13-06.
- A personal care provider, assisted living provider or community long-term care provider operating under an agreement with the Ohio Department of Aging must not hire any person for a direct care position who has a conviction for any of the offenses listed in Ohio Adm.Code 173-9-01(E)(I), and may refuse to hire any person who has a conviction for the numerous "disqualifying offenses" listed in Ohio Adm.Code 173-9-01(D) unless the applicant demonstrates that he or she meets the "personal character standards" in Ohio Adm.Code 173-9-01(E)(2).
- The registrar of motor vehicle may prohibit deputy registrars from employing people convicted of felonies or misdemeanors involving dishonesty or false statement in the past ten years. Ohio Adm.Code 4501:1-6-01.
- A person cannot be hired as an EMT or paramedic if he or she has any state or federal felony conviction unless the appointing authority determines that certain "rehabilitation standards" have been met. R.C. 4639.301(C), (E).
- A person cannot work as a forest officer; a preserve officer; or a game protector if he or she has been convicted of a felony. R.C. 1503.29(D)(1), (2)(a)(i); R.C. 1517.10(C)(1); R.C. 1531.132(B)(1).

- A person cannot be appointed as a village or volunteer fire-fighter if he or she has a felony conviction, unless the appointing authority determines that certain “rehabilitation standards” have been met. R.C. 737.221 (C)(1)(a), (E).
- Many Medicaid providers will not hire anyone with a conviction because the Ohio Department of Job & Family Services can deny or terminate a Medicaid provider agreement if any employee has been convicted of any state or federal criminal offense. Ohio Adm.Code 5101:3-1-17.6 (D)(2).
- A county board of developmental disabilities cannot hire anyone convicted of any of the numerous disqualifying offenses set out in Ohio Adm.Code 5123:2-1-05(F) unless the person “provides proof” that he or she meets the “rehabilitation standards” set out in Ohio Adm.Code 5123:2-1-05(J). R.C. 5123.081(A)(4), (J)(2).

Most licensing and certification boards in Ohio also exclude persons convicted of crimes from many professions, occupations, trades, businesses, and industries:

- The state board of education must deny a teaching or other school personnel license to any person convicted of any of the felonies enumerated in R.C. 3319(C), and may deny a license to anyone with any other felony not listed in division (C). R.C. 3319(B)(2)(a).
- The state board of counselors, social workers and marriage and family therapists may refuse to issue a license or may revoke the license of anyone who is convicted of a felony in this state or any other. R.C. 4757.36(B)(1), (2), (C)(5).
- The state board of psychology may refuse to issue a license or may revoke a license to practice psychology or school psychology to anyone who is convicted

of any felony in any state or federal court, or an “offense involving moral turpitude,” which is not defined.

- The state board of nursing may refuse to issue a license to practice as an RN, LPN or dialysis technician or may revoke the license of anyone who has been convicted of any felony “or of any crime involving gross immorality or moral turpitude,” which is not defined. R.C. 4723.28 (B)(4).
- The state board of nursing may refuse to grant or renew a community health worker or medication aide certificate for any person who has been convicted of any felony “or any crime involving gross immorality or moral turpitude,” which is not defined. Ohio Adm.Code 4723-26-11(B)(4); Ohio Adm.Code 4723-27-09(B)(4).
- The state board of dietetics may refuse to issue or revoke a dietitian license for anyone who has been convicted of any felony. R.C. 4759.07(A)(3).
- The state board of occupational therapists, physical therapists and athletic trainers may refuse to issue or revoke a license to practice as a physical therapist, occupational therapist, occupational therapy assistant or athletic trainer for anyone who has been convicted of a felony or an “offense involving moral turpitude,” which is not defined. R.C. 4755.11(A)(1).
- The state veterinary medical licensing board can refuse to issue or revoke a license to practice as a veterinarian or veterinary technician for anyone who has been convicted or any felony or crime involving illegal or prescription drugs. R.C. 4741.22(I).

- The state attorney general can deny or revoke a certification as a telephone solicitor because of a record of any felony or any theft offense as defined in R.C. 2913.01. R.C. 4719.03(B)(4).
- The superintendent of real estate can refuse to issue a license to practice as a real estate salesperson, broker, or appraiser to any applicant with a conviction of a felony or “crime involving moral turpitude” (not defined), unless the person demonstrates to the superintendent that he or she has a record of truthfulness and honesty since the conviction sufficient to show there is no reason to believe the person will again violate the law. R.C. 4735.09(A), (F)(1); R.C. 4736.05(H)(2); R.C. 4735.18(A).
- A person can be denied a license to engage in the check cashing business if he or she has been convicted of a felony. R.C. 1315.23.
- The superintendent of insurance can refuse to issue or revoke a license as an insurance agent for a felony conviction or conviction of a misdemeanor involving misuse or theft of money or property, fraud, forgery, dishonest acts, or moral turpitude, unless the person shows that he or she has been rehabilitated since the conviction. R.C. 3905.14.
- The superintendent of insurance cannot issue a certificate of authority to work as a public insurance adjuster to anyone who has been convicted of a felony or any - 11 crime involving fraudulent or dishonest practice. R.C. 3951.04.
- The Ohio construction industry licensing board will deny a license to anyone who has been convicted of “disqualifying offense” or crime of “moral turpitude,” as defined in R.C. 4776.10. R.C. 4740.06 (B)(5)(a).

- The hearing aid dealers and fitters board may refuse to issue or revoke a license or permit for anyone who has a conviction for a “disqualifying offense” or misdemeanor involving “moral turpitude,” as defined in R.C. 4776.10. R.C. 4747.05(C)(2); R.C. 4747.12(A).
- The board of speech-language pathology and audiology may refuse to issue or revoke a license for anyone who has been convicted of a felony or crime involving “moral turpitude,” which is not defined. R.C. 4753.10(N).
- A county department of Job & Family Services cannot authorize a person to operate or work in a family day care home if the person has been convicted of any of the numerous felonies enumerated in R.C. 109.72 and R.C. 5104.09(A)(1), unless the person demonstrates that he or she meets all “rehabilitation standards.”
- The Supreme Court of Ohio’s interpreter services program will not certify foreign language or sign language interpreters if they have been convicted of any crime involving “moral turpitude,” which is not defined. Sup.R. 81 (B)(3); Sup.R. 82 (B)(3), (C) (3).

Lack of employment is one of the best predictors of future criminality. “The easy availability of criminal background checks in a risk-averse environment has multiplied the likelihood that someone with a criminal conviction, often in the distant past, will lose a job or business opportunity solely for that reason. An inability to get or keep a job has been identified as a major factor in recidivism.” Love, *Starting Over With a Clean Slate: In Praise of a Forgotten Section of the Model Penal Code*, 30 Fordham Urban L.J. 1705, 1719 (2003). “More than anything, the citizen with a prison record needs a job and an income – just like everybody else – to be able to feed, house and clothe himself or herself and to meet all the

obligations of a responsible adult in society.” Ofobike, *The Ex-Con’s Problem – the Elusive Job Offer* (February 17, 2009), Akron Beacon Journal, available at <http://www.ohio.com/editorial/commentary/the-ex-con-s-problem-the-elusive-job-offer-1.143461> (accessed October 22, 2012). And while many job related collateral consequences obviously remain on the books, Ohio’s lawmakers have recently begun to provide some limited relief from the collateral damage that collateral consequences work on an ex-offender’s hope of gainful employment in this state.

On June 26, 2012, Governor Kasich signed S.B. 337. This legislation converts some mandatory employment disqualification provisions to discretionary disqualification provisions for ex-offenders who seek work as salvage dealers, opticians, hearing aid fitters and dealers, private investigators, security guards and construction industry workers. R.C. 4738.04, R.C. 4738.07 (salvage dealers); R.C. 4725.48, R.C. 4725.52, R.C. 4725.53 (opticians); R.C. 4747.05, R.C. 4747.12 (hearing aid dealers and fitters); R.C. 4749.03, R.C. 4749.04, R.C. 4749.06 (private investigator or security guard); R.C. 4740.06 (construction industry). The bill does not, however, require any employer or licensing board to hire or approve anyone who has a record of a “disqualifying offense” or “crime of moral turpitude” as defined in R.C. 4776.10, nor does it remove any of the numerous mandatory collateral consequences that prohibit employment for ex-offenders in the fields of law enforcement, licensing in health care fields, restrictions on driver’s licenses and restrictions on public employment. R.C. 2953.25(C)(5).

Although the scope of S.B. 337 is limited, it reflects the recognition by both the executive and legislative branches of government that when offenders are legally disqualified from a high number of jobs in the professions, trades, business and industry, the risk of recidivism increases. Consistent with these recent efforts to help ex-offenders overcome the long-lived effects of

employment related collateral consequences, trial courts should also be required to seal the records of those relatively few offenders whose convictions have been pardoned.

B. Collateral consequences: Affordable Housing

Ms. Boykin's convictions are typical of the offenses committed by female offenders, most of whom commit non-violent "property crimes or relatively low-level drug offenses." Acocha & Raeder, *Severing Family Ties: The Plight of Nonviolent Female Offenders and Their Children*, 11 Stan. L. & Pol'y Rev. 133, 135 (1999). As women offenders struggle to find employment that will support themselves and their children, they also face collateral consequences that can prevent them from obtaining affordable housing, a resource critical to maintaining a family.

The most important source of affordable housing for low income persons is federally subsidized housing. This generally takes one of two forms: public housing, in which a government owned agency constructs, maintains, and manages a complex, and the Housing Choice Voucher Program ("HCVP") (commonly referred to as the voucher program or "Section 8"), in which the government contracts with private landlords on an individual basis to provide a rent subsidy. Both programs are funded through the Department of Housing and Urban Development ("HUD").

A third type of subsidized housing, commonly referred to as "Project Based Section 8" housing or HUD Multifamily housing, involves an entire complex owned and managed by a private landlord receiving a rent subsidy directly from the federal government. There are multiple types of such housing; however, the admission criteria are similar to public housing and the voucher program. Both public housing and voucher programs are typically administered through a state or local government entity called a public housing agency ("PHA"). 24 C.F.R.

982.1(a). In Ohio, the General Assembly has created “Metropolitan Housing Authorities,” which are political subdivisions of the state and function as the local PHAs. *See* R.C. Chapter 3735.

The collateral consequences related to subsidized housing are contained in federal statutes and regulations because HUD provides the funding and establishes the general admission criteria for subsidized housing. *See, e.g.*, 24 C.F.R. 960.200 *et seq.*; *see also* 24 C.F.R. 982.552 and 24 C.F.R. 5, Subpart I. Part of the admission criteria includes both mandatory and permissive denials based on the criminal records of the applicant and the prospective household members. *See, e.g.*, 24 C.F.R. 982.553 *et seq.*, 24 C.F.R. 960.204 and 24 C.F.R. 5.850 *et seq.*

Under these regulations, a PHA is *required* to prohibit admission to both the voucher program and public housing if the applicant or any member of the household has *ever* been convicted of the manufacture or production of methamphetamine on the premises of federally subsidized housing or subject to a lifetime registration requirement under a state sex offender registration program. 24 C.F.R. 982.553(a) (HCVP); 24 C.F.R. 960.204(a)(3) (public housing). Public housing, the HCVP and HUD multifamily housing also all are required to deny admission for three years from the date of eviction to any family with a household member who was evicted from federally assisted housing for drug related criminal activity. 24 C.F.R. 960.204(a)(1), 24 C.F.R. 982.553(a)(1) and 24 C.F.R. 5.854(a).

Additionally, a PHA *may* prohibit admission to the Section 8 program if the applicant or any member of his or her household has engaged in a broad range of criminal activity, including drug-related criminal activity, violent criminal activity, and other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or neighbors, or the health or safety of the owner, property management, or staff. 24 C.F.R. 982.553(a)(2)(ii).

PHAs have wide discretion when screening tenants for public housing. HUD regulations state that a “PHA is responsible for screening family behavior and suitability for tenancy” which can include “a record of disturbance of neighbors, destruction of property,” and “a history of criminal activity involving crimes of physical violence to persons or property.” 24 C.F.R. 960.203(c). The PHA has similarly broad discretion to deny admission in the HCVP. 24 C.F.R. 982.551, 982.552 and 982.553. Owners of HUD multifamily housing likewise are granted much discretion in determining their screening criteria for admission. 24 C.F.R. 5.851 and 5.852. With respect to drug use, a PHA must prohibit admission to public housing if it “determines that any household member is currently engaging in illegal use of a drug” which HUD defines as “the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current.” 24 C.F.R. 960.204(a)(2)(i). This same prohibition applies to the voucher program, 24 C.F.R. 982.553(a)(ii)(A), as well as HUD multifamily housing, 24 C.F.R. 8.854(b)(1).

HUD does not give a specific time frame on how far back a PHA can look at a criminal record; rather it uses terms like “a reasonable time before the admission,” or “recently enough.” *See, e.g.* 24 C.F.R. 982.553(a)(2)(ii); *see also* 24 C.F.R. 960.204(a)(2)(i). Additionally, as the regulations apply throughout the country, HUD lists only general categories of criminal activities and not specific offenses. Thus, when denying an applicant for subsidized housing, PHA’s have very broad discretion as to what offenses to consider and how far back they can look. A major drug dealer could be denied subsidized housing, but so could someone with a conviction for a minor drug offense that is several years old.

As with the collateral consequences related to employment, the impact of collateral consequences in subsidized housing has a ripple effect beyond the offender. As Ms. Boykin

stated to the Ohio Parole Board, “I feel that I have paid a lifetime for these mistakes that I have made. Not only have I suffered behind these choices but my children have suffered as well as my family members.” (Brief of Appellant, Appx. 41.) An ex-offender’s inability to obtain affordable housing makes it very difficult to meet a basic need for her family. When the person being denied affordable housing is the head of the household, the children and other family members suffer the consequences of crimes they did not commit.

C. Collateral consequences: Political and Social Privileges

Criminal offenders also face social separation through collateral consequences that exclude them from being able to serve in public office, participate in the election process, serve on a jury, adopt or foster a child, pursue financial aid for educational opportunities, and serve in the military. These are consequences that result in “the diminution of the rights and privileges of citizenship.” Jeremy Travis, *Invisible Punishment: The Collateral Consequences of Mass Imprisonment* (2002), 15, available at http://www.urban.org/uploadedPDF/1000557_invisible_punishment.pdf.

Under Ohio law, a person convicted of a felony is incompetent to hold an office of honor, trust, or profit. R.C. 2961.01(A)(1). Additionally, a person who has been convicted of any state or federal felony theft offense is incompetent to hold a public office in Ohio or to serve as a volunteer in a public office. R.C. 2961.02(A)(1), (B). A person with a felony conviction also cannot serve as a precinct election officer. R.C. 3501.27(A).

Ohio law also allows the parties in civil and criminal proceedings to challenge for cause potential jurors who have been convicted of disqualifying crimes, thus further ostracizing criminal offenders from one of the rights and responsibilities all American citizens hold. R.C. 2313.17(B)(1); R.C. 2945.25(I); Crim.R. 24(C)(1).

A misdemeanor or felony conviction also makes it difficult, if not impossible, to be a foster or adoptive parent. According to Ohio Adm.Code 5101:2-7-02(H), (I)(1),(2), no person who applies to be a foster care giver can be certified if the person, or any adult member of his or her household, has a misdemeanor conviction less than three years old or a felony conviction that is less than ten years old for any of the numerous offenses set out in Ohio Adm.Code 5101:2-7-02(J). A public children's service agency or a private child placement agency also "shall not" recommend a person to be an adoptive parent if that person, or any member of his or her household, has a misdemeanor conviction less than three years old or a felony conviction that is less than ten years old for any of the of the more than fifty offenses set out in the applicable rule. Ohio Adm.Code 5101:2-48-09(F)(3); Ohio Adm.Code 5101:2-48-10(C)(1), (D)(1), (2).

An offender's access to educational opportunities can also be restricted by state and federal laws. Anyone who has been convicted of or adjudicated delinquent for one of the disorderly conduct offenses set out in R.C. 3333.38(B) is not eligible for any state financial assistance at any state institution of higher education. Federal student aid will also be suspended for anyone who, while receiving a federal student loan or grant, is convicted of the possession or sale of an illegal drug. 20 U.S.C. 1091(r). Some colleges also conduct background checks and deny admission to those with a criminal history. Brazzell, Crayton, Mukamal, Solomon & Lindahl, *From Classroom to the Community, Exploring the Role of Education During Incarceration and Reentry*, Roundtable Monograph, The Urban Institute, 2 (2009). And finally, military service, a traditional avenue for self-improvement, is not an option for many offenders. Under federal law, no one with a felony conviction can enlist in any armed force. 10 U.S.C. 504(a).

V. Collateral consequences will continue to pursue a person who has received a full and unconditional pardon unless the record of the pardoned conviction is sealed.

The cumulative effect of prolific state and federal collateral consequences is to marginalize offenders, making them social outcasts who face barriers to earning a living wage, finding affordable housing, improving themselves through education, or participating in basic aspects of civic and community life. As one commentator described it, a “criminal conviction works such a degradation of status that one’s debt to society is never fully paid.” Love, *Starting Over With a Clean Slate: In Praise of a Forgotten Section of the Model Penal Code*, 30 *Fordham Urban L.J.* 1705, 1733 (2003).

If, as R.C. 2967.04(B) and this Court state, a pardon relieves the recipient of all disabilities attendant to the pardoned conviction, then the record of a pardoned conviction must be sealed. It is untenable to characterize collateral consequences as anything other than what they are: punishments and disabilities that “can be the most permanent results of a criminal conviction.” *ABA Standards for Criminal Justice, Collateral Sanctions and Discretionary Disqualification of Convicted Persons*, Commentary, at 11 (3d Ed. 2004).

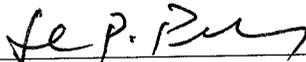
Montoya Boykin is one of the few, a person who so convincingly redeemed herself that she earned a full and unconditional pardon. Yet so long as the state’s official database contains the record of her convictions, they can be disclosed in all of the many settings in which criminal record checks are allowed or even required under Ohio law. It serves no purpose to continue to visit collateral consequences on Ms. Boykin. The Ohio Parole Board found that she was successfully rehabilitated, had demonstrated “exemplary” conduct and character since her convictions, had shown the ability to “lead a responsible and productive life,” and that she “demonstrated a credible, verifiable employment-related need for a pardon.” The Board unanimously recommended a full pardon because “[t]he ongoing debilitating effects of Ms.

Boykin's collateral punishment...are no longer deserving and should be remitted." (Brief of Appellant, Appx. 42.) The irony, and fallacy, of the court of appeals' decision is that "the ongoing debilitating effects of Ms. Boykin's collateral punishment" would continue to haunt her despite that fact that she received a full and unconditional pardon.

CONCLUSION

For all the foregoing reasons, *Amici Curiae* respectfully request that this Court reverse the judgment of the court of appeals and remand this case with instructions that the trial court be ordered to seal the record of Ms. Boykin's pardoned convictions.

Respectfully submitted,



Jane P. Perry (0029698)

Attorney at Law

Counsel of Record

46 Northmoor Place

Columbus, Ohio 43214

T: 614-261-1711

perdav@columbus.rr.com

Counsel for Amici Curiae

Advocates for Basic Legal Equality, The Coalition on Housing and Homelessness in Ohio, Community Legal Aid Services, Inc., Ohio Disability Rights Law and Policy Center, Inc., Legal Aid Society of Cleveland, Legal Aid Society of Columbus, Legal Aid Society of Southwest Ohio, Legal Aid of Western Ohio, Inc., Ohio Justice and Policy Center, Ohio Poverty Law Center, Office of the Ohio Public Defender, and Southeastern Ohio Legal Services

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent by ordinary U.S. Mail to the following

Counsel on the 6^M day of November, 2012:

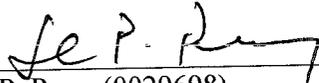
Joann Sahl (0037265)
Legal Clinic
The University of Akron School of Law
Akron, Ohio 44325

Counsel for Appellant

Sherri Bevan Walsh (0030038)
Summit County Prosecutor
53 University Avenue
Akron, Ohio 44308

HEAVEN DIMARTINO (0073423)
Assistant Summit County Prosecutor
53 University Avenue, 6th Floor
Akron, OH 44308
(330)643-2800
COUNSEL FOR APPELLEE
State of Ohio

MICHAEL DEFIBAUGH (0072683)
Assistant Director of Law
161 S. High Street, Suite 202
Akron, OH 44308
(330) 375-2030
Facsimile: (330) 375-2041
COUNSEL FOR APPELLEE
City of Akron



Jane P. Perry (0029698)
Counsel of Record for Amici Curiae