

ORIGINAL

In the
Supreme Court of Ohio

CITY OF CLEVELAND,

Plaintiff-Appellant,

v.

ERIN MCCARDLE AND
LEATRICE TOLLS,

Defendants-Appellees.

: Case No. 2013-0096
:
:
: On Appeal from the
: Cuyahoga County
: Court of Appeals,
: Eighth Appellate District
:
:
: Court of Appeals
: Case Nos. 12-98230 and 12-98231
:

**MERIT BRIEF OF *AMICUS CURIAE* STATE OF OHIO
IN SUPPORT OF APPELLANT CITY OF CLEVELAND**

BARBARA LANGHENRY (0038838)
Director of Law
VICTOR R. PEREZ (0074127)
Chief Prosecutor
CONNOR P. NATHANSON* (0085191)
Assistant City Prosecutor
**Counsel of Record*
City of Cleveland
1200 Ontario Street, 8th Floor
Cleveland, Ohio 44113
216-664-4850; 216-664-4399 fax
cnathanson@city.cleveland.oh.us

Counsel for Plaintiff-Appellant
City of Cleveland

J. MICHAEL MURRAY* (0019626)
**County of Record*
STEVEN D. SHAFRON (0039042)
Berkman Gordon Murray & DeVan
55 Public Square, Suite 2200
Cleveland, Ohio 44113
216-781-5245; 216-781-8207 fax
jmmurray@bgmdlaw.com

Counsel for Defendants-Appellees
Erin McCardle and Leatrice Tolls

MICHAEL DEWINE (0009181)
Attorney General of Ohio

ALEXANDRA T. SCHIMMER* (0075732)
Solicitor General

**Counsel of Record*

SAMUEL C. PETERSON (0081432)
Deputy Solicitor
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax

alexandra.schimmer@ohioattorneygeneral.gov
samuel.peterson@ohioattorneygeneral.gov

Counsel for *Amicus Curiae*
State of Ohio

FILED
MAY 21 2013
CLERK OF COURT
SUPREME COURT OF OHIO

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

INTRODUCTION 1

STATEMENT OF AMICUS INTEREST 1

STATEMENT OF THE CASE AND FACTS 2

A. Cleveland Codified Ordinance 559.541 imposes a nighttime curfew on a portion of Public Square in downtown Cleveland..... 2

B. Erin McCardle and Leatrice Tolls challenged their convictions for violating C.C.O. 559.541 on First Amendment grounds. The trial court found the ordinance constitutional, but the Eighth District reversed..... 2

ARGUMENT 3

Amicus Curiae State of Ohio’s Proposition of Law:

A law limiting overnight access to a public park is facially constitutional so long as it is content-neutral, narrowly tailored, and leaves open ample alternative channels for communication. 3

A. Cleveland Codified Ordinance 559.541 is content-neutral..... 4

B. The ordinance serves significant governmental interests. 4

C. The ordinance is narrowly tailored. 8

D. The ordinance leaves open ample alternative channels of communication..... 10

CONCLUSION..... 12

CERTIFICATE OF SERVICEunnumbered

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>City of Cleveland v. McCardle</i> , 2013-Ohio-1123	3
<i>City of Lakewood v. Plain Dealer Publ’g Co.</i> , 486 U.S. 750 (1988).....	5
<i>City of Painesville Bldg. Dep’t v. Dworken & Bernstein Co.</i> , 89 Ohio St. 3d 564 (2000).....	3
<i>City of Renton v. Playtime Theatres, Inc.</i> , 475 U.S. 41 (1986).....	5, 10
<i>Clark v. Comm. for Creative Non-Violence</i> , 468 U.S. 288 (1984).....	4, 5
<i>Coalition for the Abolition of Marijuana Prohibition v. City of Atlanta</i> , 219 F.3d 1301 (11th Cir. 2000)	7
<i>Cox v. New Hampshire</i> , 312 U.S. 569 (1941).....	5
<i>Fla. Bar v. Went for It</i> , 515 U.S. 618 (1995).....	7
<i>Heffron v. Int’l Soc. For Krishna Consciousness</i> , 452 U.S. 640 (1981).....	11
<i>Hill v. Colorado</i> , 530 U.S. 703 (2000).....	5
<i>Holder v. Humanitarian Law Project</i> , 130 S. Ct. 2705 (2010).....	4
<i>Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent</i> , 466 U.S. 789 (1984).....	5
<i>Menotti v. City of Seattle</i> , 409 F.3d 1113 (9th Cir. 2005)	10
<i>Multimedia Publ’g Co. v. Greenville-Spartanburg Airport Dist.</i> , 991 F.2d 154 (4th Cir. 1993)	7
<i>Perry Educ. Ass’n v. Perry Local Educators’ Ass’n</i> , 460 U.S. 37 (1983).....	3

Snyder v. Phelps,
131 S. Ct. 1207 (2011).....5, 6

Thomas v. Chicago Park Dist.,
534 U.S. 316 (2002).....5

Ward v. Rock Against Racism,
491 U.S. 781 (1989).....3, 4, 9

STATUTES, RULES AND CONSTITUTIONAL PROVISIONS

Cincinnati Board of Parks Rule 21, available at <http://www.cincinnatiiparks.com/about-us>
(last visited May 6, 2013)7

Cleveland Codified Ordinance 559.541 *passim*

Ohio Adm. Code 128-4-02(F).....7

Ohio Adm. Code 1501:41-7-017

Columbus City Code 919.05.....7

OTHER AUTHORITIES

McConville, *1 Year on, Occupy's Future up in the Air*, Boston Herald (Sept. 17, 2012).....8

Tracy, *Pressure Mounts to Evict Occupy DC*, Wall Street Journal (Jan. 17, 2012).....8

INTRODUCTION

Does the First Amendment require 24/7 access to public property for anyone wishing to engage in speech? In a novel and sweeping constitutional ruling below, the Eighth District essentially said “yes.” In the court’s view, Cleveland’s nighttime curfew on portions of a downtown park is unconstitutional because the curfew contains no exemption for those seeking to use the park for expression. Because the appellate court’s ruling is at odds with core First Amendment jurisprudence, and because it improperly disregards legitimate government interests in managing public property and ensuring public safety, this Court should reverse the decision below.

The curfew and its incidental burden on expression easily withstand intermediate scrutiny and thereby pass muster under the First Amendment. First, the curfew is content neutral because its effect on expressive conduct (indeed, all conduct) is the same regardless of the message or the speaker. Second, by limiting only overnight access, the curfew is narrowly tailored to serve the city’s legitimate public-safety, public-health, and government-resources concerns. And finally, because it applies only to certain portions of Public Square—and at that, only during certain hours—the curfew unquestionably leaves open alternative channels of communication.

Accordingly, the Court should reverse the judgment below.

STATEMENT OF AMICUS INTEREST

The State of Ohio, and its agencies and instrumentalities, manage thousands of acres of public land, as well as countless public buildings. The State therefore has a strong interest in any decision, such as the one below, that threatens to dramatically restrict the ability of the State and local governments to enforce reasonable time, place, and manner restrictions for the sake of public safety and for the protection and maintenance of public property.

STATEMENT OF THE CASE AND FACTS

A. **Cleveland Codified Ordinance 559.541 imposes a nighttime curfew on a portion of Public Square in downtown Cleveland.**

In 2007, Cleveland's city council adopted Cleveland Codified Ordinance ("C.C.O.") 559.541, which imposes a nighttime curfew on portions of Public Square, a large park in downtown Cleveland. *City of Cleveland v. McCardle*, Nos. 98230 and 98231, 2012-Ohio-5749, ¶ 8 (8th Dist.) ("App. Op."). The ordinance closed three of four quadrants of Public Square nightly between 10:00 p.m. and 5:00 a.m., stating that no "unauthorized person" may "remain on or in" the closed areas during that time. C.C.O. 559.541.

But the restriction is not absolute. Any person or group may seek a permit to be exempted from the curfew. *Id.* A permit "shall be issued" so long as the permitting authority finds that the proposed activity or use: (a) "will not unreasonably interfere with or detract from the promotion of public health, welfare and safety;" (b) "is not reasonably anticipated to incite violence, crime or disorderly conduct;" (c) "will not entail unusual, extraordinary or burdensome expense or police operation by the City;" and (d) "the facilities desired have not been reserved for other use at the day and hour required in the application." *Id.*

B. **Erin McCardle and Leatrice Tolls challenged their convictions for violating C.C.O. 559.541 on First Amendment grounds. The trial court found the ordinance constitutional, but the Eighth District reversed.**

In October 2011, Erin McCardle and Leatrice Tolls—members of the Occupy Cleveland movement—were arrested for violating C.C.O. 559.541 after they refused to vacate a portion of Public Square after the curfew. App. Op. ¶¶ 5-6. Each filed motions to dismiss the charges, claiming that the curfew violates the First and Fourteenth Amendments to the United States Constitution. *Id.* ¶ 6. The trial court rejected those arguments, and each pleaded no contest and appealed. *Id.* ¶¶ 6-7.

On appeal, the Eighth District agreed that the ordinance was content-neutral, and therefore subject to intermediate scrutiny, App. Op. ¶¶ 21-22, but it nonetheless ruled that the ordinance was not a valid time, place, or manner restriction. According to the Eighth District, the ordinance was unconstitutional because: (1) Cleveland’s asserted interests in restricting access during nighttime hours—concern for public health and safety, maintaining public spaces, and protecting the public fisc—were insufficient to justify its limit on speech, *id.* ¶¶ 22-23, and (2) the ordinance “fails to [exempt] persons who are seeking to use the park for peaceful protest” and is therefore not narrowly tailored. *Id.* ¶ 30; *see also id.* ¶¶ 25, 28.

The Eighth District declared the ordinance “void on its face.” *Id.* ¶ 30.

Cleveland then appealed to this Court, which accepted review. *City of Cleveland v. McCardle*, 2013-Ohio-1123.

ARGUMENT

Amicus Curiae State of Ohio’s Proposition of Law:

A law limiting overnight access to a public park is facially constitutional so long as it is content-neutral, narrowly tailored, and leaves open ample alternative channels for communication.

The constitutional principles governing content-neutral time, place, or manner regulations, such as the ordinance here, are long-settled and well-known. Such regulations are valid as long as they are “narrowly tailored to serve a significant governmental interest,” and “leave open ample alternative channels for communication.” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989); *see also Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983); *City of Painesville Bldg. Dep’t v. Dworken & Bernstein Co.*, 89 Ohio St. 3d 564, 568 (2000).

Cleveland’s ordinance easily meets these requirements. First, as even the Eighth District acknowledged, the ordinance is content-neutral. The curfew applies to all conduct, expressive or

otherwise, and its impact on speech is the same regardless of the speaker's identity or message. Second, the legitimacy of Cleveland's interests in limiting access to Public Square overnight—safety, protection of property, and conservation of public resources—is clear-cut. Third, the curfew, along with its associated permit process, easily satisfies the tailoring requirement. And finally, the ordinance leaves open ample alternative channels for communication because it applies only to a limited portion of Public Square and only for a limited period of time each day.

In reaching a contrary conclusion, the Eighth District strayed far from both precedent and logic. The decision below should therefore be reversed.

A. Cleveland Codified Ordinance 559.541 is content-neutral.

As the court of appeals agreed, the ordinance is content-neutral. App. Op. ¶ 21. In assessing content neutrality, the “principal inquiry” is “whether the government has adopted a regulation of speech because of disagreement with the message it conveys.” *Ward*, 491 U.S. at 791; *see also Clark v. Comm. for Creative Non-Violence*, 468 U.S. 288, 293 (1984) (speech restriction is content neutral as long as it is “justified without reference to the content” of the speech). The ordinance easily meets that standard. It prohibits *all* unauthorized persons from remaining in certain portions of Public Square overnight, regardless of their purpose or intended speech or conduct. In other words, the ordinance regulates expressive and non-expressive conduct alike. And any incidental burden on speech in no way “depends on what [the speaker] say[s].” *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705, 2723-24 (2010). The ordinance is therefore content and viewpoint neutral on its face.

B. The ordinance serves significant governmental interests.

It is also clear that the curfew ordinance serves significant governmental interests—public safety, preservation of public property, and conservation of public resources—sufficient to justify the incidental burden it imposes on expression.

As for the city's public-safety interests, "the important interest that localities have in insuring the safety of persons using city streets and public forums" has been consistently upheld. *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 781-82 (1988); *see also Hill v. Colorado*, 530 U.S. 703, 715 (2000) ("It is a traditional exercise of the State's police powers to protect the health and safety of their citizens.") (internal quotation marks and citation omitted).

Property-maintenance and aesthetic concerns also justify speech regulations when it comes to urban spaces and public parks. A city's "interest in attempting to preserve the quality of urban life is one that must be accorded high respect." *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 50 (1986) (internal quotation marks and citation omitted); *see also Clark*, 468 U.S. at 296 (governments have a "substantial interest in maintaining" public parks in "an attractive and intact condition"); *Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 805 (1984) ("It is well settled that the state may legitimately exercise its police powers to advance esthetic values."). Indeed, as the United States Supreme Court has explained, "[r]egulations of the use of a public [park] that ensure the safety and convenience of the people are not 'inconsistent with civil liberties but . . . [are] one of the means of safeguarding the good order upon which [civil liberties] ultimately depend.'" *Thomas v. Chicago Park Dist.*, 534 U.S. 316, 323 (2002) (quoting *Cox v. New Hampshire*, 312 U.S. 569, 574 (1941)) (alteration and omission in original).

The Eighth District ignored these precedents and rejected these interests out of hand. App. Op. ¶¶ 22-23. Reflecting on the U.S. Supreme Court's decision in *Snyder v. Phelps*, 131 S. Ct. 1207 (2011), the funeral-protest case, the Eighth District concluded that "if the [welfare] interest in *Snyder* did not suffice, certainly sanitation, convenience, and aesthetics will not suffice [here]." *Id.* ¶ 23. But that wildly misreads the First Amendment issue at play in *Phelps*,

which concerned the intersection of the First Amendment and tort—specifically, whether the First Amendment protects from tort liability those who peacefully protest on a matter of public concern near a military funeral. Quite simply, *Phelps* was not a time/place/manner First Amendment case, and the Supreme Court explicitly said so. See 131 S. Ct. 1207, at 1218 (noting that it was “not beyond the Government’s regulatory reach” to subject funeral-picketing to “reasonable time, place, or manner restrictions,” but that “[t]he facts here are . . . quite different, both with respect to the activity being regulated and the means of restricting those activities.”). *Snyder* is therefore inapposite here and has no bearing whatsoever on the evaluation of a time, place or manner restriction.

The Eighth District also took Cleveland to task for failing to “present any testimony regarding a specific interest” furthered by the ordinance. App. Op. ¶ 24. But that sets the bar too high for a run-of-of-the-mill park-closure regulation. For starters, even without “testimony,” Cleveland’s regulatory aims are plain on the face of the ordinance; specifically, in the permitting regime. The ordinance authorizes a permit to issue unless doing so would (1) unreasonably threaten public health, welfare, or safety; (2) be reasonably likely to incite violence or other unlawful activity; (3) impose excessive financial or operational costs on the city, or (4) interfere with another reservation of the same facilities. C.C.O. 559.541. These stated exceptions to the curfew explain why the curfew was enacted in the first place—to safeguard public health, welfare, and safety, to protect against violence and criminal activity, to manage city resources, and to preserve the property. In short, no “testimony” is needed to demonstrate the purposes of an ordinance when those purposes are already plain on the face of the ordinance.

Moreover, the First Amendment does not require Cleveland to “demonstrate the significance of its interest” by marshaling “detailed evidence” about why it might have an

interest in limiting access to a city park overnight; it is free to rely on “appeals to common sense and logic.” *Coalition for the Abolition of Marijuana Prohibition v. City of Atlanta*, 219 F.3d 1301, 1318 (11th Cir. 2000) (internal quotation marks omitted); *see also Multimedia Publ’g Co. v. Greenville-Spartanburg Airport Dist.*, 991 F.2d 154, 160-61 (4th Cir. 1993) (same). The U.S. Supreme Court, too, has “permitted litigants to justify speech restrictions by reference to studies and anecdotes pertaining to different locales altogether or even, in a case applying strict scrutiny, to justify restrictions based solely on history, consensus, and ‘simple common sense.’” *Fla. Bar v. Went for It*, 515 U.S. 618, 628 (1995) (internal citation omitted).

Simple common sense is surely on Cleveland’s side here. The curfew ordinance is a run-of-the-mill park-closure regulation. No pageant of evidence is needed to explain that the purposes of such a law are public safety and the preservation of public property and public resources.

Finally, it is worth noting that Cleveland is not alone in having a significant interest in managing access to public property. The State and local governments across Ohio shoulder the burden of managing public property for the benefit of all citizens and impose similar access restrictions. For instance, some state parks are closed entirely at night while access to others is limited. Ohio Adm. Code 1501:41-7-01. The State Capitol and its grounds also close at night. *See* Ohio Adm. Code 128-4-02(F). In addition, Columbus and Cincinnati are two other cities that close city parks overnight. *See* Columbus City Code 919.05; Cincinnati Board of Parks Rule 21, available at <http://www.cincinnatiiparks.com/about-us> (last visited May 6, 2013). These State and local closure rules—just a few of many across the State—demonstrate just how commonplace Cleveland’s park-closure ordinance is and underscore the sea-change that would be effected if the Eighth District’s constitutional analysis were extended.

In short, Cleveland’s regulatory interests are plain on the face of the curfew ordinance, and the significance of those interests is well-settled and amply justifies the time, place, and manner restriction here.

C. The ordinance is narrowly tailored.

Turning to the next prong of the time/place/manner test, the curfew ordinance is narrowly tailored to further Cleveland’s significant interests. The nexus between the ordinance and the city’s governmental interests is obvious. Limiting overnight park access reduces the potential for criminal activity or nuisances. The regulation also prevents individuals from effectively setting up residence in the park, which threatens legitimate sanitary and aesthetic interests and can stymie access by other members of the public.

Recent events confirm that these regulatory concerns are real. *See, e.g., Tracy, Pressure Mounts to Evict Occupy DC*, Wall Street Journal (Jan. 17, 2012) A2 (stating that a health inspection conducted at one of the Occupy D.C. encampments revealed a “dangerous rat infestation as well as serious potential for communicable disease, hypothermia, and food-borne illness.”); *McConville, 1 Year on, Occupy’s Future up in the Air*, Boston Herald (Sept. 17, 2012) 7 (observing that protest “[c]amps across the country were plagued by reports of sexual assault, drug use, poor sanitation and other problems”). In short, overnight park access imposes public-safety and maintenance burdens on the city—burdens the city is justified in mitigating by narrowly tailoring an ordinance to restrict access during hours when society generally is not carrying on with public activities.

The Eighth District concluded that the curfew ordinance is not narrowly tailored, but its analysis is deeply flawed. The court started with the curious premise that Cleveland could have achieved its aims without limiting expressive activity, since, in the court’s view, the ordinance “seems to be concerned with those who use the park for *private* reasons.” App. Op. ¶ 25

(emphasis added). But that rationale goes nowhere. First, the ordinance draws no distinction between those wishing to remain in Public Square overnight for “public” or “private” reasons. Nor would such a distinction make sense, since the government interests served by the ordinance would be compromised by overnight use, regardless of whether such use were for public or private purposes. Second, the Eighth District ignored the clear command from the United States Supreme Court: To be narrowly tailored, a time, place, or manner restriction “need not be the *least* restrictive or *least* intrusive means” of serving the governmental interest. *Ward*, 491 U.S. at 798 (emphasis added). “So long as the means chosen are not substantially broader than necessary to achieve the government’s interest . . . , the regulation will not be invalid simply because a court concludes that the government’s interest could be adequately served by some less-speech-restrictive alternative.” *Id.* at 800.

The Eighth District also strayed by essentially issuing the sweeping conclusion that a time, place, and manner restriction is facially invalid if it fails to “make exceptions for those individuals seeking to use the park for a speech-related activity.” App. Op. ¶ 25; *see also id.* ¶ 30. In the appellate court’s view, the absence of a speech exception means that the ordinance is “substantially broader than necessary to achieve the government’s interest.” *Ward*, 491 U.S. at 800. But if that were true, nearly every time, place, or manner restriction would fail the tailoring requirement because, *by definition*, such restrictions—either purposely or incidentally—burden some speech. *Ward*, 491 U.S. at 791 (“[G]overnment[s] may impose reasonable restrictions on the time place or manner *of protected speech.*”) (emphasis added). To reduce the tailoring inquiry to an evaluation of whether the restriction contains an exception for First Amendment activities is, in effect, to have no tailoring requirement at all and to instead condemn *all* such restrictions as invalid.

The Eighth District’s resolution of the tailoring question suffers one final flaw. The Eighth District faulted the ordinance in part because it bans “expressive activity” and, in its view, that ban “absolutely forbids access regardless of purpose.” App. Op. ¶ 26. But that characterization is wrong. The ordinance is *not* a blanket ban. To the contrary, those seeking an exception to the curfew requirement—regardless of whether they wish to engage in speech-related or any other type of activity—are free to do so, by applying for a permit. See C.C.O. 559.541. So long as their proposed use meets the criteria set forth in the statute, a permit “*shall* be issued.” *Id.* (emphasis added). Thus, the ordinance is tailored far more narrowly than the Eighth District described.

D. The ordinance leaves open ample alternative channels of communication.

Finally, although the Eighth District did not reach this issue, App. Op. ¶ 31, the ordinance’s speech restriction leaves open ample alternative channels of communication. To meet this requirement, a challenged restriction need only leave open a “reasonable opportunity” for the speaker to communicate his or her message. *Playtime Theatres*, 475 U.S. at 54; see also *Menotti v. City of Seattle*, 409 F.3d 1113, 1138 (9th Cir. 2005) (“[T]he Supreme Court generally will not strike down a governmental action for failure to leave open ample alternative channels of communication unless the government enactment will foreclose an entire medium of public expression across the landscape of particular community or setting.”) (internal quotation marks omitted).

The alternative-channels prong is easily satisfied here. The curfew applies to only a portion of Public Square (it “excludes the quadrant on which sits the Soldiers and Sailors Monument”) and it applies for only a limited period (“between the hours of 10 p.m. to 5:00 a.m.”) each night. C.C.O. 559.541. And the ordinance explicitly exempts from regulation “dedicated streets, public sidewalks adjacent to dedicated streets and RTA bus shelters within

this area.” *Id.* To be sure, there may be those—such as *McCardle* and *Tolls*—who would prefer to use the restricted portions of Public Square during the restricted period, and who may believe that doing so is important for their message. But “the First Amendment does not guarantee the right to communicate one’s views at all times and places or in any manner that may be desired.” *Heffron v. Int’l Soc. For Krishna Consciousness*, 452 U.S. 640, 647 (1981). Any suggestion that this ordinance leaves no “reasonable opportunity” for speakers to communicate their message strains credulity.

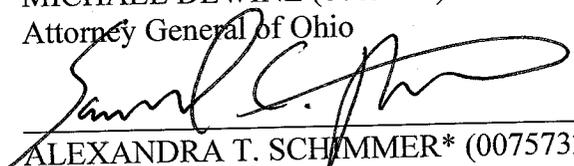
In sum, rather than applying the well-worn constitutional principles that apply in these circumstances, the Eighth District crafted a new doctrinal framework that is both unfaithful to U.S. Supreme Court precedent and incompatible with legitimate State and local government interests. When properly applied, well-worn First Amendment principles confirm that Cleveland’s ordinance is a valid time, place, and manner restriction, and the Court should therefore reverse the decision below.

CONCLUSION

For the foregoing reasons, this Court should reverse the decision of the Eighth District Court of Appeals.

Respectfully submitted,

MICHAEL DEWINE (0009181)
Attorney General of Ohio



ALEXANDRA T. SCHIMMER* (0075732)
Solicitor General

**Counsel of Record*

SAMUEL C. PETERSON (0081432)

Deputy Solicitor

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

614-466-8980

614-466-5087 fax

alexandra.schimmer@ohioattorneygeneral.gov

samuel.peterson@ohioattorneygeneral.gov

Counsel for *Amicus Curiae*
State of Ohio

CERTIFICATE OF SERVICE

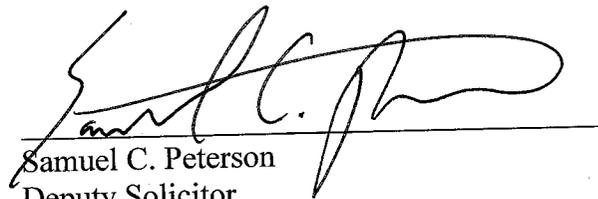
I certify that a copy of the foregoing Merit Brief of *Amicus Curiae* State of Ohio in Support of Appellant City of Cleveland was served by U.S. mail this 21st day of May, 2013 upon the following counsel:

Barbara Langhenry
Director of Law
Victor R. Perez
Chief Prosecutor
Connor P. Nathanson
Assistant City Prosecutor
City of Cleveland
1200 Ontario Street, 8th Floor
Cleveland, Ohio 44113

Counsel for Plaintiff-Appellant
City of Cleveland

J. Michael Murray
Steven D. Shafron
Berkman, Gordon, Murray & DeVan
55 Public Square
Suite 2200
Cleveland, Ohio 44113

Counsel for Defendants-Appellees
Erin McCardle and Leatrice Tolls



Samuel C. Peterson
Deputy Solicitor