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## STATEMENT OF THE CASE AND FACTS

Appellee Jason Romage—a licensed barber—moved to the Pickerington area in 2010 to assume ownership of a local barbershop. (Tr. Ct. Rec, 13.) As a business owner in the area, Romage decided to live in the community in which he worked and moved into an apartment in Pickerington. (*Id.*)

Romage is from rural West Virginia. (*Id.*) He is a licensed soccer referee, has no criminal record, and has a small town friendly demeanor, which was somewhat out of place in the more urban area into which he moved. (*Id.*)

On October 13, 2010, Romage was in the process of moving out of his Pickerington apartment and into a new community in the Clintonville area. (*Id.* at 14.) He had been moving boxes and other large items back and forth between his old apartment and his new apartment in Clintonville. (*Id.*)

As he was gathering some boxes from his car, he saw a few kids playing in the street in his apartment complex. (*Id.*) Accustomed to more a rural and neighborly community, Romage offered the kids a couple of quarters to help him move the boxes and some groceries from his car to his apartment. (*Id.* at 1, 14.) Nothing in the record suggests any illicit intent or motive by Romage. (*See id.*, generally.) The kids said no and Romage went along with his day, moving the boxes and groceries himself. (*See id.*)

The mother of one of the children contacted Columbus Police, and officers arrived at Romage's home shortly afterward to discuss the alleged incident. (*Id.* at 14.) Romage was subsequently charged with two counts of criminal child enticement under R.C. 2905.05(A), which is a first degree misdemeanor carrying a penalty of up to six months in jail. *State v.*

*Romage*, 10th Dist. No. 11AP-822, 2012-Ohio-3381, at ¶2. Romage entered a not guilty plea to the charge. *Id.*

Before trial, the Defendant filed a motion to dismiss the complaint challenging the constitutionality of R.C. 2905.05(A)—the statute under which Romage was charged. *Id.* at ¶3. The trial court agreed with Defendant-Appellee Romage that R.C. 2905.05(A) is unconstitutionally overbroad and, accordingly, dismissed the complaint filed against him. *Id.*

On appeal to the Tenth District, the court of appeals also agreed—finding that R.C. 2905.05(A) “sweeps within its prohibitions a significant amount of constitutionally protected activity.” *Id.*

The State applied for reconsideration and filed a motion to certify a conflict. The Tenth District Court of Appeals denied the State’s application for reconsideration. *State v. Romage*, 10th Dist. No. 11AP-822 (Oct. 23, 2012). However, the Tenth District Court granted the State’s motion to certify a conflict and certified the question: Is R.C. 2905.05(A) unconstitutionally overbroad? *Id.* This question is now before this Court.

### **ARGUMENT**

**Certified Conflict Question:** Is R.C. 2905.05(A) unconstitutionally overbroad?

**Appellee’s Proposed Proposition of Law:** R.C. 2905.05(A) is unconstitutionally overbroad in its entirety because it sweeps within its prohibitions a significant amount of innocent and constitutionally protected activity.

Defendant-Appellee Romage was charged with violating R.C. 2905.05(A), which provides:

No person, by any means and without privilege to do so, shall knowingly **solicit, coax, entice, or lure** any child under fourteen years of age to accompany the person **in any manner**, including entering into any vehicle or onto any vessel, whether or not the offender knows the age of the child, if both of the following apply:

(1) The actor does not have the express or implied permission of the parent, guardian, or other legal custodian of the child in undertaking the activity.

(2) The actor is not a law enforcement officer, medic, firefighter, or other person who regularly provides emergency services, and is not an employee or agent of, or a volunteer acting under the direction of, any board of education, or the actor is any of such persons, but, at the time the actor undertakes the activity, the actor is not acting within the scope of the actor's lawful duties in that capacity.

R.C. 2905.05(A) (emphasis added).

Ohio's Second, Eighth, Ninth and Tenth Appellate District Courts have struck R.C. 2905.05(A) as substantially overbroad and unconstitutional on its face. *See State v. Chapple*, 175 Ohio App.3d 658, 2008-Ohio-1157, 888 N.E.2d 1121 (2d Dist.); *State v. Goode*, 9th Dist. No. 26320, 2013-Ohio-556; *State v. Romage*, 10th Dist. No. 11AP-822, 012-Ohio-3381; *Cleveland v. Cieslak*, 8th Dist. No. 92017, 2009-Ohio-4035, ¶12-16 (concluding in reliance on *Chapple* that a municipal ordinance that closely mirrored R.C. 2905.05(A) was unconstitutional).

Appellee asks this Court to affirm the reasoning adopted by these four Ohio appellate courts and recognize what these courts already have: that R.C. 2905.05(A) is written so broadly that it encompasses a substantial amount of constitutionally protected conduct—chilling ordinary, innocent and protected speech.

**I. R.C. 2905.05(A) is Unconstitutionally Overbroad as it Criminalizes a Substantial Amount of Innocent and Constitutionally Protected Conduct.**

A statute is overbroad if it reaches more broadly than is reasonably necessary to protect legitimate state interests at the expense of First Amendment freedoms. *See Grayned v. City of Rockford*, 408 U.S. 104, 114, 92 S. Ct. 2294, 2302, 33 L. Ed. 2d 222 (1972). In other words, a statute is void for overbreadth where its object is achieved by means that sweep unnecessarily broadly and invade the area of protected freedoms. *See Zwickler v. Koota*, 389 U.S. 241, 88 S.

Ct. 391, 19 L. Ed. 2d 444 (1967). *Akron v. Rowland*, 67 Ohio St.3d 374, 387, 1993-Ohio-222, 618 N.E.2d 138 (“A clear and precise enactment may \* \* \* be ‘overbroad’ if in its reach it prohibits constitutionally protected conduct.”).

Protecting children from predators and abduction is inarguably a legitimate, substantial and critically important state interest. But even when the government has a legitimate and compelling purpose supporting legislation, that purpose cannot be accomplished by means that “broadly stifle fundamental personal liberties.” *Shelton v. Tucker*, 364 U.S. 479, 488, 81 S. Ct. 247, 5 L. Ed. 2d 231 (1960). See *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 663, 670-671, 124 S. Ct. 2783, 159 L. Ed. 2d 690 (2004) (holding unconstitutional a statute criminalizing indecent Internet speech, which was designed for protection of children, because its reach encompassed constitutionally protected speech); *Rowland* at 387 (“criminal statutes ‘that make unlawful a substantial amount of constitutionally protected conduct may be held facially invalid even if they also have legitimate application.’”) (quoting *Houston v. Hill*, 482 U.S. 451, 459, 107 S. Ct. 2502, 96 L. Ed. 2d 398 (1987)).

What’s more, “[i]t has long been recognized that the First Amendment needs breathing space and that statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn \* \* \* .” *Broadrick v. Oklahoma*, 413 U.S. 601, 611-612, 93 S. Ct. 2908, 37 L. Ed. 2d 830 (1973). In analyzing whether a statute is narrowly drawn or narrowly tailored, “the crucial question” is whether the regulated expression is “basically incompatible with the normal activity of a particular place at a particular time.” *Grayned v. City of Rockford*, 408 U.S. 104, 114, 92 S. Ct. 2294, 2302, 33 L. Ed. 2d 222 (1972). In other words, a statute is substantially overbroad if it is “susceptible of regular application to protected expression.” *City of Akron v. Rowland*, 67 Ohio St. 3d 374, 387 (1993) (quoting *Houston v. Hill*, 482 U.S. at 467).

**A. R.C. 2905.05(A) is Void for Overbreadth Because it Prohibits Constitutionally Protected Conduct and is Not Narrowly Tailored.**

Here, R.C. 2905.05(A) has an extremely wide sweep prohibiting everyday, innocent speech and conduct. Its reach is much broader than reasonably necessary to protect children and is fundamentally incompatible with normal everyday speech and ordinary, innocent societal interactions.

The State's interest in preventing kidnapping and other harm to children can and must be accomplished without restricting the right of Ohioans to have innocent conversations with their neighbors free of fear that their words could lead to criminal charges or arrest. *See City of Akron v. Rowland*, 67 Ohio St. 3d 374, 387-388 (1993) (finding the ordinance at issue to be overbroad as it "may force people to curb their freedom of expression and association or risk arrest") (quoting *Coleman v. Richmond* (1988), 5 Va.App. 459, 465, 364 S.E.2d 239, 243).

The way R.C. 2905.05(A) is drafted, the notion that innocent conversations could lead to arrest is real. Because the statute prohibits asking children "to accompany" the speaker "in any manner"—without any requirement that the speaker have any ill-intent—R.C. 2905.05(A) "prohibits a wide variety of speech and association far beyond the statute's purpose of safeguarding children." *Goode*, 2013-Ohio-556, ¶ 8.

R.C. 2905.05(A) states that no one—regardless of their age—may "**solicit, coax, entice, or lure** any child under fourteen years of age to accompany the person **in any manner**"—regardless of the person's intentions. R.C. 2905.05(A) (emphasis added). In its brief, the State focuses on the four verbs used in the statute, attempting to narrowly define the verbs to save the statute. Its attempts must fail, as explained below, because each of these four prohibitions reaches substantially into the sphere of innocent, ordinary and protected conduct.

But even more problematic are the prohibitions against asking a child "to accompany"

the person “in any manner,” the lack of any age requirement of the speaker, and the lack of any mens rea element. The State ignores this “in any manner” language, ignores the fact that the statute puts no age restriction on the speaker, and ignores the fact that the statute is completely devoid of any element of criminal intent. Thus, regardless of how the various verbs are construed, the statute is nonetheless overbroad.

**1. Criminalizing the Act of “Soliciting” a Child to Accompany the Person “in Any Manner” for Any Purpose is Not Narrowly Drawn and Criminalizes a Substantial Amount of Protected Conduct.**

First, R.C. 2905.05(A) states that no one—regardless of the person’s age—may “solicit” a child to accompany that person “in any manner” for any reason without parental permission. R.C. 2905.05(A). As the court in *Chapple* noted, “[t]he common, ordinary meaning of the word ‘solicit’ encompasses ‘merely asking.’” *Chapple*, at ¶ 16. Even Appellant acknowledges in its brief that “solicit” can be defined as “to seek, request or petition.” Appellant’s Brief, at 6. Indeed, as *Chapple* notes, “R.C. 2905.05(A) fails to require that the prohibited solicitation occur with the intent to commit any unlawful act.” *Id.* at ¶ 17.

Examples of innocent and constitutionally protected speech and acts prohibited under by the statute’s “solicit” language abound. For example:

- Parents picking up their child from school would violate the “solicit” prohibition merely by asking their child’s friend if he or she needed a ride home. *See Goode*, at ¶9.
- Asking a child to return a Frisbee that has inadvertently blown over the fence.
- A 13-year-old boy asks a 13-year-old friend to come over to help stuff envelopes at his house for a school levy that his parents are helping to organize. The boy has violated R.C. 2905.05(A) by the act of simply asking the other boy to come over without first calling the other boy’s parents.

In fact, Appellant acknowledges that the generally understood definition of the term “solicit”—meaning “to ask”—is overly broad and asks the Court to either narrowly construe the

term “solicit” to mean “entice” or to strike the word entirely from the statute. Appellant’s Brief, at 5-6.

**2. Criminalizing the Act of Enticing, Luring or Coaxing a Child to Accompany a Person “in Any Manner” for Any Purpose is Not Narrowly Drawn and Criminalizes a Substantial Amount of Protected Conduct.**

The remaining verbs in the statute—“entice,” “coax” and “lure”—also reach a significant amount of protected activity. For example, Appellant suggests that the court should define “entice” as “to tempt with hope of reward or pleasure.” Appellant’s Brief, at 5-6. Likewise, Appellant suggests that “lure” means to tempt “with a promise of gain or pleasure.” Appellant’s Brief, at 7 (citing *Commonwealth v. Hart*, 611 Pa. 531, 549 (Pa. 2011) (“The most commonly accepted definition of ‘lure’ when used as a verb is ‘to tempt with a promise of pleasure or gain.’”) (quoting Webster’s Third New International Dictionary, 1347 (3d. ed. 1986)).

As is true with use of the term “solicit,” examples of innocent and protected speech falling under the “entice” and “lure” prohibitions are also numerous. For example:

- Parents inviting a child’s friend on the playground to join them and their child for pizza on a picnic table in the park. The promise of pizza could be construed as “tempting” the child “to accompany” the parents from the swing set to the picnic table.
- An elderly woman offering her 13 year old neighbor’s child \$10 to rake her leaves. The woman could face up to 6 months in jail just by simply saying the words: “Would you like to earn a little money by helping me rake leaves?”
- A 13 year old sets up a lemonade stand in front of her house. If she gestures to her 13 year old neighbor to come over and have a glass, she has “enticed” her friend “to accompany” her from one lawn to another with the promise of lemonade in violation of the statute.
- A 13 year old asks her friend if she wants to come over to her house for a fundraiser for her mom’s judicial campaign. She promises that the fundraiser will have great desserts. She has violated R.C. 2905.05(A) by “enticing” her friend “to accompany” her to the fundraiser with the promise of delicious catering.

Finally, Appellant suggests that “coax” as used in the statute should be defined as “to

persuade with flattery.” But again, examples of innocent and protected scenarios falling within the purview of the statute abound. For example:

- A 13-year-old boy tells a girl in his class that he has a crush on her and invites her to a dance. He has attempted to persuade her with flattery to accompany him to the dance without first obtaining her parent’s permission in violation of R.C. 2905.05(A).

All of the circumstances described—and countless others—demonstrate that each prohibited act in R.C. 2905.05(A) implicates and criminalizes everyday, innocent and protected speech and conduct. These examples—and countless others—are not outlandish hypothetical scenarios. Rather, “[t]hese are very basic societal interactions going to the very idea of speech and association. By prohibiting these, the statute necessarily infringes on protected speech and conduct.” *Goode*, at ¶9. These interactions happen nearly every day in every neighborhood in Ohio, making R.C. 2905.05(A) a classic case of real and substantial overbreadth.

### **3. The Existence of the Defense of “Implied Permission” Cannot Save the Statute from Unconstitutionality.**

Amicus curiae the Ohio Prosecuting Attorney’s Office argues that the statute is not overbroad because the statutory defense of “implied permission” would be sufficient to avoid liability. Amicus Brief, at 12. But this only creates even more problems. In essence, the amicus curiae are suggesting that police officers should be given discretion to determine for themselves who likely has “implied permission” from the child’s parent and who does not.

Not only does this reliance on creates the strong possibility of discriminatory enforcement—creating a void for vagueness issue—but it entrusts lawmaking “to the moment-to-moment judgment of the policeman on his beat.” *City of Chi. v. Morales*, 527 U.S. 41, 56 (1999) (“Vagueness may invalidate a criminal law” where the statute “may authorize and even encourage arbitrary and discriminatory enforcement.”).

What’s more, representations by the government as to how they will choose to enforce

the statute are insufficient. See *Vittitow v. City of Upper Arlington*, 43 F.3d 1100 (6th Cir. 1995) (Sixth Circuit declined to save an unconstitutional ordinance by accepting the representations of the City’s counsel that the ordinance would be enforced in a particular way); *Dambrot v. Central Mich. Univ.*, 55 F.3d 1177, 1183 (6th Cir. Mich. 1995) (declining to save an unconstitutional university anti-harassment policy by accepting promise by university that policy would not interfere rights to free speech).

Thus, the existence of a statutory “implied permission” defense does not save the statute from substantial overbreadth.

#### **4. Four of Ohio’s Appellate District Agree that R.C. 2905.05(A) is Overbroad.**

Four of Ohio’s Appellate Districts have agreed that R.C. 2905.05(A) prohibits a broad range of speech and conduct far beyond its intent to protect children from abductors. See *State v. Chapple*, 175 Ohio App.3d 658, 2008-Ohio-1157, 16, 888 N.E.2d 1121 (2d Dist.) (“R.C. 2905.05(A) criminalizes a substantial amount of activity protected by the First Amendment.”); *State v. Goode*, 9<sup>th</sup> Dist. No. 26320, 2013-Ohio-556, ¶ 12 (“R.C. 2905.05(A) prohibits a broad range of speech and conduct far beyond its intention to protect children from abductors.”); *State v. Romage*, 10<sup>th</sup> Dist. No. 11AP-822, 2012-Ohio-3381, ¶ 14, 974 N.E.2d 120; (“Because R.C. 2905.05(A) sweeps within its prohibitions a significant amount of constitutionally-protected activity, we conclude that the statute is unconstitutionally overbroad.”); *Cleveland v. Cieslak*, 8<sup>th</sup> Dist. No. 92017, 2009-Ohio-4035, ¶ 12-16 (concluding in reliance on *Chapple* that a municipal ordinance that closely mirrored R.C. 2905.05(A) was unconstitutional).

The conclusion running through each of these cases is that 2905.05(A) criminalizes constitutionally protected speech and conduct and “appears to infer criminal intent from countless innocent acts.” *Chapple* at ¶17.

Finally, although the instant case comes to the Court as a certified conflict, the conflicting case cited in the Tenth District’s decision certifying a conflict—*State v. Clark*, 1<sup>st</sup> Dist. No. C-040329, 2005-Ohio-1324—is unpersuasive. In support of its conclusion that R.C. 2905.05(A) is not overbroad, *Clark* summarily cites two First District cases from the 1980s that involved an older version of the statute—*State v. Long* (1989), 49 Ohio App.3d 1, 2, 550 N.E.2d 522; *State v. Kroner* (1988), 49 Ohio App.3d 133, 134-135, 551 N.E.2d 212. *Clark*, at ¶8. *Clark* fails to recognize the fact that R.C. 2905.05(A) was substantially broadened in 2001 to encompass a great deal of innocent conduct. *See Chapple* (explaining that the *Clark* case does not address or analyze the effect of subsequent statutory amendments prohibiting soliciting a child “in any manner”).

Thus, because R.C. 2905.05(A) prohibits an enormous range of everyday, innocent conduct, it is not narrowly drawn and should be found void for overbreadth.

**B. Other State Supreme Courts Have Similarly Found that an Element of Illicit Intent is Necessary to Prevent a Child Enticement Statute from Being Void for Overbreadth.**

Several other state supreme courts have examined their own child enticement statutes on challenges of constitutional overbreadth. An examination of Massachusetts and Florida’s statutes are particularly instructive. In each instance, the state supreme court has determined that a mens rea element is necessary in a child enticement statute to avoid unconstitutionally sweeping in innocent and protected activity.

Massachusetts General Laws c. 265, § 26C punishes “[a]ny one who entices a child under the age of 16, \* \* \* to enter, exit or remain within any vehicle, dwelling, building, or other outdoor space *with the intent that he or another person will violate [certain enumerated criminal statutes]* \* \* \*.” The Massachusetts Supreme Court upheld the statute against an overbreadth

challenge, holding:

What the statute does require in addition to enticing words or gestures, and **indeed what we conclude is needed to ensure that constitutionally protected communications are not criminalized by the statute**, is that the person who entices does so with the intent to violate one or more of the enumerated criminal statutes; in other words, that the person who entices does so with a criminal mens rea.

*Commonwealth v. Disler*, 451 Mass. 216, 222 (Mass. 2008).

Likewise, Florida’s child enticement statute prohibits a person from luring a child “into a structure, dwelling, or conveyance *for other than a lawful purpose \* \* \**.” Fla.Stat. Ann. 787.025(2) (emphasis added). As in Massachusetts, the Florida Supreme Court concluded that the statute was not overbroad or vague because it requires the State prove “that the defendant lured or enticed the child \* \* \* for an ‘illegal’ purpose, i.e., with intent to violate Florida law by committing a crime.” *State v. Brake*, 796 So.2d 522, 529 (Fla. 2001).

In other words, the Massachusetts and Florida statutes narrow their scope to include only criminal behavior—and exclude the innocent scenarios that currently fall within R.C. 2905.05(A). Unlike the Massachusetts and Florida statutes, R.C. 2905.05(A) lacks any scienter requirement, and thus cannot withstand a constitutional challenge on the ground of substantial overbreadth.

## **II. The State’s Proposals to Narrowly Construe or Sever the Term “Solicit” Should be Rejected.**

If it is reasonably possible, “validly enacted legislation must be construed in a manner ‘which will avoid rather than \* \* \* raise serious questions as to its constitutionality.’” *City of Akron v. Rowland*, 67 Ohio St. 3d 374, 380 (1993) (quoting *Co-operative Legislative Comm. of the Transp. Bhd. & Bhd. of Maintenance of Way Emp. v. Pub. Util. Comm.*, 177 Ohio St. 101, 29 O.O.2d 266, 202 N.E.2d 699 (1964), paragraph two of the syllabus).

That being said, “[i]t is not the province of the court, under the guise of construction, to ignore the plain terms of a statute or to insert a provision not incorporated therein by the Legislature.” *Rowland*, at 380. (Emphasis added.) (citing *State ex rel. Defiance Spark Plug Corp. v. Brown*, 121 Ohio St. 329, 331-332, 168 N.E. 842, 843 (1929)).

Appellant suggests that the meaning of “solicit” should be interpreted to mean “tempting or luring” citing the canon of *noscitur a sociis*—which counsels that a word is given a more precise meaning by the neighboring words with which it is associated.” Appellant, at 6. But looking to the counter-canon is instructive on this point:

A basic rule of statutory construction requires that “words in statutes should not be construed to be redundant, nor should any words be ignored.” *E. Ohio Gas Co. v. Pub. Util. Comm.* (1988), 39 Ohio St.3d 295, 299, 530 N.E.2d 875. Statutory language “must be construed as a whole and given such interpretation as will give effect to every word and clause in it. No part should be treated as superfluous unless that is manifestly required, and the court should avoid that construction which renders a provision meaningless or inoperative.

*D.A.B.E., Inc. v. Toledo-Lucas County Bd. of Health*, 96 Ohio St. 3d 250, 256 (2002).

Here, if the Court interprets the term “solicit” to mean nothing more than “tempting or luring,” then “solicit” becomes a redundant and meaningless verb in the statute—a result that this Court should reject. Rather, the Court should give meaning to every word in the statute—including the commonly understood definition of the word “solicit,”—meaning “to ask.”

The court in *Chapple* considered a similar narrowing proposal by the State and likewise concluded:

In finding R.C. 2905.05(A) to be substantially overbroad, we have considered the possibility of giving the statute a narrower construction to avoid invalidation. \* \* \* \* In the present case, however, **we find a limiting construction to be unavailable.** The child-enticement statute prohibits a person from knowingly soliciting a child to accompany the person “in any manner” without regard to motive. **Short of rewriting the statute, which we cannot do, its overbroad language is not susceptible of a narrowing construction.**

*State v. Chapple*, 175 Ohio App. 3d 658, 662-665 (2d Dist. 2008) (emphasis added).

Next, the State asks the Court, in the alternative, not just to narrowly construe the word “solicit,” but to completely sever it in an attempt to save the statute from its problematic overbreadth. But this argument is waived. As the Tenth District notes, the State made this severance argument for the first time in its Motion for Reconsideration. *State v. Romage*, 10th Dist. No. 11AP-822 (Oct. 23, 2012). As such, the Tenth District properly found that the argument had been waived and refused to consider it. *Id.* at ¶5.

Even if this Court could consider this new argument, severance does not save the statute from overbreadth. Even if the word “solicit” was severed, the remaining language—that no person may “entice, coax, or lure any child \* \* \* in any manner”—still encompasses a wide range of innocent and protected conduct. Even if the word “solicit” is removed, the statute will still capture a substantial amount of protected conduct given that it lacks any mens rea element, lacks any age requirement for the speaker, and is still not narrowly tailored to achieve the purpose of protecting children.

### **III. Rewriting the Statute to Require Illegal or Unlawful Intent is the Only Way to Avoid Prohibiting a Substantial Amount of Protected Activity.**

The only way to achieve the General Assembly’s purpose here would be to rewrite the statute to require that the defendant have an illegal intent or an unlawful purpose in soliciting, enticing, coaxing or luring a child. However, this Court cannot on its own accord rewrite the statute to include an intent element. *Rowland*, 67 Ohio St. 3d at 379-380 (finding that the court of appeals erred in adding a specific intent element to the ordinance in an attempt to pass constitutional muster).

Rather, lawmaking should be left up to the General Assembly. Indeed, the Ohio General Assembly has already recognized the constitutional challenges to the existing statute and has

begun this process of amendment.

On April 10, 2013, Representative Kunze introduced H.B. 122, which would amend R.C. 2905.05(A) to add as an element of the crime that the person allegedly soliciting, enticing, coaxing or luring a child do so with an unlawful purpose. 2013 Am.H.B. 122. Likewise, on March 7, 2013, a group of Ohio Senators introduced S.B. 64, which contains language identical to H.B. 122. 2013 Am.Sub.S.B. 64. This amendment would cure the overbreadth issues associated with the currently constitutionally infirm statute. The innocent and constitutionally protected scenarios described in this brief would fall outside the purview of this amended statute.

#### **IV. Conclusion**

For all of the reasons described herein, Appellee respectfully requests that this Court affirm the Tenth District Court of Appeal's decision and hold that R.C. 2905.05(A) sweeps within its prohibitions a significant amount of constitutionally-protected activity, and is thus unconstitutionally overbroad.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

A copy of the foregoing MERIT BRIEF OF APPELLEE JASON ROMAGE was forwarded by regular U.S. Mail, postage prepaid, to the attorneys listed below on this 23<sup>rd</sup> day of May, 2013.

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