

IN THE SUPREME COURT OF OHIO

ADAM STEWART

PLAINTIFF-APPELLANT,

v.

BOARD OF EDUCATION OF
LOCKLAND LOCAL SCHOOL
DISTRICT

DEFENDANT-APPELLEE.

CASE No. 14-0164

APPEAL FROM THE FIRST DISTRICT COURT
OF APPEALS,
CASE No. C-130263

HAMILTON COUNTY COURT OF COMMON
PLEAS
CASE No. A1206854

MEMORANDUM OF APPELLEE OPPOSING JURISDICTION

Konrad Kircher (0059249)
Ryan J. McGraw (0089436)
KIRCHER ARNOLD & DAME, LLC
4824 Socialville-Foster Road
Mason, Ohio 45040
Tel: 513-229-7996
Fax: 513-229-7995
kkircher@kircherlawoffice.com
rmcgraw@kircherlawoffice.com
Counsel for Plaintiff-Appellant

**David J. Lampe (0072890) (Counsel of
Record)**
Kate V. Davis (0076331)
BRICKER & ECKLER LLP
9277 Centre Pointe Drive, Suite 100
West Chester, Ohio 45069
Tel: 513-870-6700
Fax: 513-870-6699
dlampe@bricker.com
kdavis@bricker.com
Counsel for Defendant-Appellee

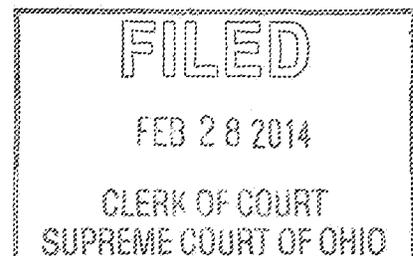


TABLE OF CONTENTS

	<u>Page</u>
THIS CASE DOES NOT PRESENT A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS NOT OF PUBLIC OR GREAT GENERAL INTEREST	1
STATEMENT OF THE CASE AND FACTS	3
PROCEDURAL HISTORY OF THE CASE	6
ARGUMENTS IN RESPONSE TO PROPOSITIONS OF LAW	7
Response to Proposition of Law No. 1: The First District Court of Appeals correctly held that Stewart was provided with a predisciplinary hearing according to <i>Cleveland Bd. of Edn. v. Loudermill</i> , 470 U.S. 532, 105 S. Ct. 1487, 84 L.Ed.2d 494 (1985); <i>Local 451, Communications Workers of America v. Ohio State Univ.</i> , 49 Ohio St.3d 1, 550 N.E.2d 164 (1990), and that such hearing need not be public.....	7
Response to Propositions of Law Nos. 2 and 3: The <i>Loudermill</i> hearing is not a hearing “elsewhere provided by law” as required by this Court in <i>Matheny</i> because (1) it is not a statutory termination hearing and (2) it is not required to be a public hearing.....	8
Response to Proposition of Law No. 4: The Board did not violate the Open Meetings Act, and public policy weighs in favor of the Board’s right to deliberate in executive session.....	11
CONCLUSION.....	13
CERTIFICATE OF SERVICE	14

**THIS CASE DOES NOT PRESENT A SUBSTANTIAL CONSTITUTIONAL QUESTION
AND IS NOT OF PUBLIC OR GREAT GENERAL INTEREST**

This Court should deny Plaintiff-Appellant Adam Stewart's ("Stewart") Memorandum in Support of Jurisdiction because the issue of an employee's right to demand a public body discuss and deliberate upon his/her discipline in open session has been clearly addressed. The First District Court of Appeals correctly applied this Court's precedent in upholding the trial court's decision denying Stewart's motion for summary judgment and granting the Lockland Local School District Board of Education's ("Board") motion for summary judgment regarding the Open Meetings Act ("OMA"). As this Court decided in *Matheny v. Frontier Local Bd. of Edn.*, 62 Ohio St.2d 362, 405 N.E.2d 1041 (1980), Section 121.22(G)(1) of the Ohio Revised Code does not provide an independent basis for a public hearing and, therefore, Stewart had no right to demand that the Board deliberate in public regarding his employment.

Stewart does not challenge the constitutionality of R.C. 121.22, or claim that he was denied a constitutional right. Rather, his challenge in the lower courts focused only on how R.C. 121.22(G)(1) was to be applied to the particular factual circumstances involving the parties. However, the courts in *Matheny* and *Loudermill* have already ruled on the relevant substantive legal issues. There is no reason for this Court to reconsider them. *Matheny*, 62 Ohio St.2d at 362, 367; *Cleveland Board of Edn. v. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487, 84 L.Ed.2d 494 (1985).

Furthermore, this is not a matter of great public or general interest. In upholding the trial court's decision that Stewart was not entitled to have the Board deliberate in public regarding his termination, the First District Court of Appeals relied upon well-settled and well-accepted authority that a public employee with property rights is entitled to a pretermination hearing, but not a *public* hearing unless the employee has a separate statutory right to a public,

pretermination hearing. The First District applied *Matheny*, where this Court struck the appropriate balance between a public body's need for discretion in personnel matters and the public employee's right to have a statutorily required public hearing. According to *Matheny*, only if a **public** hearing is elsewhere provided by law may an employee demand that deliberations take place in public.

Stewart argues courts have narrowly construed *Matheny* to deny public employees the right to public hearings. However, courts have only extended such rights when a specific statute vested a particular class of public employees with the right to demand a public hearing. For example, in *Connor v. Village of Lakemore*, 48 Ohio App.3d 52 (1988), the court followed *Matheny* and held the public body (the village) violated R.C. 121.22(G)(1) because the terminated police chief was **statutorily entitled** to a public hearing. Likewise, in *Schmidt v. Village of Newtown*, 1st Dist. Hamilton County, No. C-110470, 2012-Ohio-890, the court held the employee was entitled to a hearing only if the statute provided such a right. Thus, courts and public bodies have consistently applied *Matheny* correctly, and determined public bodies must hold public termination hearings when statutorily required.

Contrary to Stewart's assertions, the lower courts' reliance on *Matheny* has not resulted in information being improperly withheld from the public. Upon closer review of the facts in this case, the Board did permit Stewart to address it in open session. Further, the Board adopted a resolution that specified the allegations against Stewart in open session. Thus, the public was not "in the dark" as Stewart portrays, and there is no reason for this Court to change or review its precedent in *Matheny*. Because no new constitutional issue or matter of great public interest has been raised, this Court should decline jurisdiction.

STATEMENT OF THE CASE AND FACTS

Stewart had been employed by the Board at all relevant times as Data Coordinator. On July 25, 2012, the Board received written notice from the Ohio Department of Education (“ODE”) that Board personnel had improperly and falsely reported student attendance data in order to improve the District’s State Report Card ranking for the 2010-2011 school year. As a result of this data falsification, ODE exercised its statutory authority to recalculate and reissue corrected 2010-2011 district and school building report cards and lowered the District’s ratings in numerous areas of Ohio’s accountability system.

Following receipt of ODE’s notice, the Board sought to determine who was responsible for the above-referenced falsification of student attendance data. The Board’s investigation focused on Superintendent, Donna Hubbard, and her son, Plaintiff-Appellant, Adam Stewart.

On August 1, 2012, the Board held a special meeting. During this meeting, the Board adjourned into executive session pursuant to R.C. 121.22 to consider the appointment, employment, dismissal, discipline, promotion or compensation of a public employee or official, and to discuss pending or imminent court action. Counsel for Stewart was invited into this executive session. While in executive session, and for approximately two hours, counsel for Stewart engaged the Board in a comprehensive discussion concerning the matters addressed in ODE’s July 25, 2012 letter, and Stewart and Superintendent Hubbard’s involvement in the reporting of student attendance data to ODE. Neither Stewart nor his legal counsel demanded this discussion be held in open session.

On August 21, 2012, interim superintendent, Dan Lawler, sent Stewart written notice that the Board would consider, pursuant to R.C. 3319.081, passing a resolution at its August 23, 2012 meeting to terminate his non-teaching employment contract. Attached to the August 21, 2012

letter was a draft resolution stating the specific grounds for Stewart's discharge in the event the Board took action. The charges against him included:

- Mr. Stewart worked in concert with Superintendent Hubbard to improperly and falsely report to the Ohio Department of Education ("ODE") that 37 Lockland students were withdrawn during the 2010-2011 school year to attend another Ohio school district; and/or to attend a private school; and/or to attend another school outside of Ohio; and/or due to a transfer out of the United States; and/or due to a transfer to home schooling.
- Mr. Stewart worked in concert with Superintendent Hubbard to report to ODE that the aforementioned 37 withdrawn students were subsequently reenrolled into Lockland during the 2010-2011 school year despite the fact that the students did not, in fact, leave Lockland.
- The aforementioned 37 withdrawn students failed all or portions of the 2010-2011 state achievement or graduation tests used by ODE to assign state designations to school buildings and school districts as part of its annual state report card rankings. The effect of withdrawing and subsequently reenrolling these students was to remove the students' test scores from consideration by ODE in assigning Lockland these designations and state report card rankings.
- Mr. Stewart worked in concert with Superintendent Hubbard to falsely report attendance and withdrawal data to ODE in order to improve the percentage of Lockland students in each grade and/or at each school building that passed state achievement tests or the Ohio graduation test. This falsely inflated Lockland's performance in meeting ODE state indicators, Lockland's state performance index, and Lockland's performance in meeting adequate yearly progress for the 2010-2011 state report card.
- Mr. Stewart knew or should have known that reporting false student attendance and withdrawal data to ODE was improper; and/or fraudulent; and/or violated the Ohio Revised Code, Ohio Administrative Code, and/or other state and federal laws.
- On July 25, 2012 ODE, following an investigation it had conducted, notified Lockland of its decision that Lockland personnel had improperly and falsely reported to ODE that 37 students were withdrawn during the 2010-2011 school year and subsequently reenrolled in the District despite never leaving Lockland.
- On July 25, 2012 ODE recalculated and reissued the 2010-2011 district and school building state report cards to lower ratings in numerous areas of Ohio's accountability system due to the aforementioned decisions to report false attendance and withdrawal data.

- The aforementioned conduct has seriously damaged Lockland's reputation and credibility to the residents of Lockland and to the students and families that Lockland serves.

Stewart was notified that both he and his representative would be afforded an opportunity at the August 23, 2012 board meeting to speak against this recommendation and to present evidence in support of his position.

The Board held a special meeting at 6:30 p.m. on August 23, 2012. At approximately 6:32 p.m., the Board, over the objection of Stewart's counsel, passed a motion to adjourn into executive session pursuant to R.C. 121.22 to consider the appointment, employment, dismissal, discipline, promotion or compensation of a public employee or official. The Board met in executive session between 6:33 p.m. and 6:50 p.m. and discussed the appointment of a new board member to fill a recent vacancy, as well as matters relating to the employment, dismissal and discipline of Superintendent Hubbard and Stewart. The Board's legal counsel was present during this executive session.

At approximately 6:50 p.m., the Board reconvened into open session. While in open session, Stewart and his legal counsel addressed the Board and presented evidence relating to ODE's July 25, 2012 report and spoke against the interim superintendent's recommendation that the Board pass a resolution to terminate Stewart's employment contract.

At approximately 7:23 p.m., Stewart's counsel informed the Board that Stewart had nothing further to present to the Board. The Board, over the objection of Stewart's counsel, then passed a motion to adjourn into executive session pursuant to R.C. 121.22 to consider the appointment, employment, dismissal, discipline, promotion or compensation of a public employee or official. During this second executive session, the Board discussed matters

pertaining to the employment, discipline and dismissal of Stewart, as well as two other employees. The Board's legal counsel was present during this executive session.

The Board reconvened into open session at 9:07 p.m., and the Board passed a resolution to terminate Stewart's employment contract. On August 24, 2012, Stewart was sent written notice of the Board's August 23, 2012 actions. This notice also informed Stewart of his right, under R.C. 3319.081, to appeal the termination to the Court of Common Pleas.

PROCEDURAL HISTORY OF THE CASE

Stewart filed a complaint in the Hamilton County Court of Common Pleas against the Board on August 28, 2012, asserting two causes of action: Count 1 for an alleged violation of R.C. 121.22(G)(1), and Count 2 as an appeal of his termination per R.C. 3319.081. Stewart and the Board filed respective motions for summary judgment, memoranda in opposition and replies with respect to Count 1. There were no genuine issues of material fact, and the matter turned on a question of law. The trial court correctly denied Stewart's motion for summary judgment regarding Count 1, and granted summary judgment in favor of the Board, determining the Board did not violate the Open Meetings Act ("OMA").¹

The First District Court of Appeals upheld the trial court's determination that the Board did not violate the Open Meetings Act by deliberating in executive session regarding Stewart's employment. Specifically, the appellate court held in pertinent part:

Stewart cannot rely on his entitlement to a Loudermill pretermination hearing to prevent the Board from entering into executive session. ***Our decision comports with the basic principles guiding the Loudermill court's decision.*** Loudermill sought to provide persons who possessed a property interest in continued employment with the basic due-process protections of notice and an opportunity to be heard prior to termination of employment. Considering its statement that a required hearing need not be formal or elaborate, the Loudermill court certainly

¹ Stewart also separately filed for summary judgment regarding Count 2 (the R.C. 3319.081 appeal), and this was also denied by the Court of Common Pleas.

did not accord such persons the right to require that the entire pretermination hearing be held publically.

Opinion at ¶ 16. (Emphasis added).

ARGUMENTS IN RESPONSE TO PROPOSITIONS OF LAW

Response to Proposition of Law No. 1: The First District Court of Appeals correctly held that Stewart was provided with a predisciplinary hearing according to *Cleveland Bd. of Edn. v. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487, 84 L.Ed.2d 494 (1985); *Local 451, Communications Workers of America v. Ohio State Univ.*, 49 Ohio St.3d 1, 550 N.E.2d 164 (1990), and that such hearing need not be public.

Stewart's first proposition of law underscores the fact that no new legal ground is being covered by this appeal. Stewart, the Board, and the First District Court of Appeals all agree that Stewart was entitled to a predisciplinary hearing prior to his termination based on *Loudermill*.

The essential elements required under *Loudermill* and *Local 4501* are well established: oral or written notice of the charges, an explanation of the evidence, and an opportunity to present the employee's side of the story. *Loudermill* at 547-548. Such pretermination/pre-discipline hearing, known as a "*Loudermill* hearing," need not be elaborate. *Id.* at 545. In fact, the *Loudermill* hearing does not have to definitively resolve the propriety of the termination, and it may serve only as an initial check against mistaken decisions. *Local 4501* at 3, quoting *Loudermill v. Cleveland Bd. of Edn.*, 844 F.2d 304, 310-312 (6th Cir. 1988). Indeed, only the "*barest of a pretermination procedure*, especially when an elaborate post-termination procedure is in place[.]" is necessary. *Id.* (Emphasis added). Stewart was provided with these essential elements of pre-discipline due process.

In the instant matter, the Court of Appeals properly analyzed *Loudermill* and found that the Board of Education provided Stewart with all the due process to which he was entitled. Specifically, the Court of Appeals held:

As a nonteaching employee, Stewart's employment was governed by R.C. 3319.081. This statute provides, in relevant part, that Stewart's employment could be terminated by a majority vote of the Board, but that Stewart could only be terminated for cause. See R.C. 3319.081(C). Because Stewart could only be terminated for cause, he possessed a property right in his employment and was entitled under due-process principles to a pretermination hearing before his employment was terminated. *Cleveland Bd. of Edn. v. Loudermill*, 470 U.S. 532, 542, 105 S. Ct. 1487, 84 L.Ed. 2d 494 (1985). The United States Supreme Court has held that when an employee is also afforded post-termination administrative procedures, which Stewart was, the pretermination hearing need not be formal or elaborate, and ***does not require a full evidentiary hearing***. *Id.* at 545-548. ***Stewart does not dispute that he was accorded the required pretermination hearing.***

Opinion at ¶ 8 (emphasis added). Thus, the First District emphasized that if a public employee has further post-termination procedures available, the pretermination procedures need not be elaborate. Here, the Board met with Stewart and his counsel, provided him with detailed notice of the charges against him, and gave him the opportunity to present his arguments to the Board in open session prior to taking action to terminate his employment. Further, Stewart exercised his right to appeal his termination to court pursuant to R.C. 3319.081. Therefore, the First District correctly held the Board met the requirements of *Loudermill*.

Response to Propositions of Law Nos. 2 and 3: The *Loudermill* hearing is not a hearing “elsewhere provided by law” as required by this Court in *Matheny* because (1) it is not a statutory termination hearing and (2) it is not required to be a public hearing.

As Stewart concedes, in *Matheny*, the Court explained that by enacting R.C. 121.22(G)(1), the legislature did not intend to create an independent right to a public hearing where one did not previously exist. Stewart's entire argument that a *Loudermill* hearing is a hearing “elsewhere provided by law” rests on one sentence cherry-picked from the *Matheny* decision which stated:

Throughout R.C. 121.22, the legislature employed the term “meeting” to designate “any prearranged discussion of the public business of the public body by a majority of its members.” R.C. 121.22(B)(2). Since the General Assembly

specifically defined, and extensively employed, the term “meeting” in drafting this statute, and since the term “hearing” appears only twice in the statute, both times in reference to situations where a formal hearing is statutorily mandated, we must assume that these terms were intended to have altogether different meanings. *As we have stated, the term “public hearing” in subdivision (G)(1) of this statute refers only to the hearings elsewhere provided by law.*

Stewart focuses solely on the last sentence of the above-quoted paragraph to argue that the *Loudermill* hearing is a hearing “elsewhere provided by law” which entitled him to public deliberations under R.C. 121.22(G)(1). However, as explained by the First District Court of Appeals, this argument fails for several reasons. First, as the Court of Appeals recognized, when the state legislature enacted R.C. 121.22(G)(1), it was attempting to bring that statute into conformity with *existing statutes* such as R.C. 3319.16, which does provide a teacher or administrator with the right to a *formal, public* termination hearing. See Opinion at ¶ 15. In reaching its decision, the First District quoted from *Matheny* as follows:

R.C. 121.22(G)(1) was intended to bring the other provisions of that section into conformity with existing statutes, *such as R.C. 3319.16, which prescribe the procedure applicable to public employee termination actions.* We do not believe that the words ‘unless the public employee***requests a public hearing***’ were intended to grant the right to a hearing where none existed previously, as in the instance of contract considerations of non-tenured teachers.

Opinion at ¶ 12, citing *Matheny*, 62 Ohio St.2d at 367 (emphasis added).

Specifically, R.C. 3319.16 provides:

Before terminating any contract, the employing board shall furnish the teacher a written notice signed by its treasurer of its intention to consider the termination of the teacher’s contract with full specification of the grounds for such consideration....Within ten days after receipt of the notice from the treasurer of the board, the teacher may file with the treasurer a written demand for *a hearing before the board or before a referee...The hearing shall be private unless the teacher requests a public hearing.*

(Emphasis added).

Thus, certificated employees such as a teacher, principal or superintendent have the right to demand a public hearing under R.C. 3319.16, which specifically provides such employees with this right. However, R.C. 3319.16 does not apply to non-teaching employees such as Stewart. R.C. 3319.081 only provides that:

The action of the board of education terminating the contract of an employee or suspending or demoting the employee shall be served upon the employee by certified mail. Within ten days following the receipt of such notice by the employees, the employee may file an appeal, in writing, with the court of common pleas of the county in which such school board is situated.

Consequently, the First District correctly held that because R.C. 3319.081 does not provide a right to a formal, public termination hearing as found in R.C. 3319.16, Stewart did not have a right to a public hearing “elsewhere provided by law.”

Second, Stewart cannot point to any statute, or any other law, including the Constitution, that gives him the right to a *public* hearing. Stewart implies that *Matheny* may have come out differently if the Court had the benefit of the *Loudermill* decision. In other words, Stewart argues the *Matheny* court may have expanded its holding to state that if an employee has a right to a “*Loudermill* hearing,” he or she can demand a public *Loudermill* hearing under R.C. 121.22(G)(1). However, as the First District Court of Appeals held, *Loudermill* would not have changed the outcome or analysis because it does not guarantee a right to a *public* hearing. Not even the Constitution guarantees a public employee with the right to a public pretermination hearing. As the First District correctly held:

Stewart cannot rely on his entitlement to a *Loudermill* pretermination hearing to prevent the Board from entering into executive session. ***Our decision comports with the basic principles guiding the Loudermill court’s decision.*** *Loudermill* sought to provide persons who possessed a property interest in continued employment with the basic due-process protections of notice and an opportunity to be heard prior to termination of employment. ***Considering its statement that a***

required hearing need not be formal or elaborate, the Loudermill court certainly did not accord such persons the right to require that the entire pretermination hearing be held publically.

Opinion at ¶ 16. (Emphasis added).

Thus, assuming *arguendo* that Stewart is correct, and *Matheny* is not limited to statutory hearings elsewhere provided by law, Stewart would still have to point to a law that gives him the right to a *public* pretermination hearing in order to demand a public hearing under 121.22(G)(1). He cannot do so. Neither the Constitution, nor case law interpreting it (*Loudermill*) give him a right to a public hearing. Therefore, he cannot rely on *Matheny* to claim that the Board had a duty to deliberate in public. The fact that *Loudermill* was decided after *Matheny* does not change the analysis of the Court in *Matheny*. Therefore, there is no reason for this Court to reconsider *Matheny*.

Response to Proposition of Law No. 4: The Board did not violate the Open Meetings Act, and public policy weighs in favor of the Board's right to deliberate in executive session.

The case law cited by Stewart stands for the general notion that public bodies should conduct their business in public. The Board agrees that, in general, it should conduct its business in open session. This is why the Board allowed Stewart and his counsel to make their presentation in defense of his job in open session at the August 23, 2012 Board meeting. Indeed, the Board went above and beyond because Stewart was not entitled to a hearing before the *Board* at all. Stewart's "Loudermill" hearing could have been conducted solely by an administrator (such as the Interim Superintendent), in private. See *Robinson v. Springfield Local Sch. Dist.*, 144 Ohio App.3d 38, 759 N.E2d 444 (9th Dist. 2001).

The Board voted in open session to terminate Stewart's employment contract. The public was afforded the right to hear the Board's grounds for the termination of Stewart's contract and

Stewart's basis for speaking against the proposed termination. Since the Board allowed Stewart to "tell his side of the story" in *open session*, the public was given the opportunity to weigh the merits of Stewart's position prior to Board action. Therefore, the purpose of the OMA was upheld by the Board at the August 23, 2012 meeting. Further, assuming *arguendo*, that Stewart was entitled to a public hearing, the Board did provide him with a public hearing on August 23, 2012, since he was permitted to present his case in open session. The Board met the requirements of the plain language of the statute at issue.² For all of these reasons, there was no violation of the Open Meetings Act.

Moreover, the General Assembly has determined specific exceptions to the OMA are justified. "If specific procedures are followed, public officials may discuss certain sensitive information privately in conformity with the exceptions set forth in R.C. 121.22(G)." *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 544, 668 N.E.2d 903 (1996). While Stewart makes much of the fact that he did not request any privacy, Stewart fails to recognize there may be other reasons a public body may wish to deliberate in executive session.

None of the cases cited by Stewart address the notion that a public body has a legitimate need to fully and completely deliberate an individual's employment, and that the need for candid debate (which is expressly recognized by the law in R.C. 121.22(G)) can outweigh the general obligation to deliberate in public. Moreover, the Board may have desired to protect other third parties (i.e., other employees) in its debate—parties who were not accused of illegally tampering with student data. In the end, the Board struck the proper balance of meeting in executive session only to deliberate, while providing Stewart an opportunity to present his side of the story

² Specifically, R.C. 121.22(G)(1) allows for the executive session "to consider the appointment, employment dismissal, discipline, promotion, demotion, or compensation of a public employee or official," unless the "public employee, official, licensee, or regulated individual requests a *public hearing*."

in open session, thereby keeping the public informed about his arguments in defense and the business of the Board in general.

CONCLUSION

Nothing in this case merits review by this Court. This Court has already considered the requirements of Constitutional due process in *Local 451, Communications Workers of America v. Ohio State Univ.*, 49 Ohio St.3d 1, 550 N.E.2d 164 (1990), and the public hearing requirements of R.C. 121.22(G)(1) in *Matheny v. Frontier Local Bd. of Edn.*, 62 Ohio St.2d 362, 405 N.E.2d 1041 (1980). The case herein demonstrates an application of well-delineated law by the court below to a specific set of facts, and, thus, a review of the same is unwarranted. Based on the foregoing, Defendant-Appellee respectfully requests that this Court decline Plaintiff-Appellant's request for jurisdiction regarding this matter.

Respectfully submitted,



David J. Lampe (0072890)
Kate V. Davis (0076331)
BRICKER & ECKLER LLP
9277 Centre Point Drive, Suite 100
West Chester, Ohio 45069
Telephone: (513) 870-6700
Fax: (513) 870-6699
dlampe@bricker.com
kdavis@bricker.com

Counsel for Defendant-Appellee

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing MEMORANDUM OF APPELLEE OPPOSING JURISDICTION was served upon the following by regular U.S. mail, postage prepaid, on February 28, 2014:

A handwritten signature in cursive script, appearing to read "Kate V. Davis", written over a horizontal line.

Kate V. Davis