ORIGINAL

In the

Supreme Court of Ohio

STATE OF OHIO,	:	Case No. 2014-0104
	:	
Plaintiff-Appellant,	:	On Appeal from the
	:	Wood County
v.	:	Court of Appeals,
	:	Sixth Appellate District
TERRANCE BROWN,	:	
	:	Court of Appeals
Defendant-Appellee.	:	Case No. WD-12-070
	:	

BRIEF OF *AMICUS CURIAE* OHIO ATTORNEY GENERAL MICHAEL DEWINE IN SUPPORT OF APPELLANT STATE OF OHIO

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

INTRODUCTION 1

STATEMENT OF AMICUS INTEREST 2

STATEMENT OF THE CASE AND FACTS 3

ARGUMENT 5

***Amicus Curiae*'s Proposition of Law:**

A police officer does not violate the Fourth Amendment to the U.S. Constitution when the officer makes an out-of-jurisdiction traffic stop in violation of state law so long as the officer has probable cause for the stop. Accordingly, because Article I, Section 14 of the Ohio Constitution has the same substantive reach as the Fourth Amendment, that type of out-of-jurisdiction traffic stop also does not violate Article I, Section 14. 5

A. The Sixth District's broad interpretation of Article I, Section 14 conflicts with that provision's language and history, both of which show that the Ohio Constitution's framers intended for it to have the same reach as the Fourth Amendment 6

B. The Sixth District's interpretation conflicts with this Court's cases, which have interpreted Article I, Section 14 to have the same reach as the Fourth Amendment 9

1. The vast majority of this Court's cases have interpreted Article I, Section 14 to have an identical reach as the Fourth Amendment in nearly every possible setting in which search-and-seizure issues arise. 10

2. Out-of-jurisdiction traffic stops fall within the Court's majority rule, not the narrow exception to that rule followed by *Brown*. 14

CONCLUSION 21

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

Cases **Page(s)**

Atwater v. City of Lago Vista,
532 U.S. 318 (2001) 2, 4, 13, 18

Bowling Green v. Godwin,
110 Ohio St. 3d 58, 2006-Ohio-3563 ..... 12, 19

City of Cincinnati v. Alexander,
54 Ohio St. 2d 248 (1978) 14, 20

City of Dayton v. Erickson,
76 Ohio St. 3d 3 (1996) 16

City of Hilliard v. Elfrink,
77 Ohio St. 3d 155 (1996) 17

City of Kettering v. Hollen,
64 Ohio St. 2d 232 (1980) 2, 4, 16, 20

Houck v. State,
106 Ohio St. 195 (1922) 1, 10

Lambert v. United States,
282 F. 413 (9th Cir. 1922) 10

Mapp v. Ohio,
367 U.S. 643 (1961) 9, 14

Ohio Domestic Violence Network v. Pub. Utils. Comm'n of Ohio,
70 Ohio St. 3d 311 (1994) 10

Pfeifer v. Graves,
88 Ohio St. 473 (1913) 6

State ex rel. LetOhioVote.org v. Brunner,
123 Ohio St. 3d 322, 2009-Ohio-4900 6

State ex rel. Mager v. State Teachers Ret. Sys. of Ohio,
123 Ohio St. 3d 195, 2009-Ohio-4908 7

State ex rel. Saxbe v. Brand,
176 Ohio St. 44 (1964) 9

State ex rel. Shkurti v. Withrow,
32 Ohio St. 3d 424 (1987).....6

State ex rel. Wright v. Ohio Adult Parole Auth.,
75 Ohio St. 3d 82 (1996) (overruling *State v. Burkholder*, 12 Ohio St. 3d 205 (1984)).....11

State v. Andrews,
57 Ohio St. 3d 86 (1991).....10, 11

State v. Blackburn,
620 N.E.2d 319 (Ohio Mun. Ct. 1993).....8

State v. Brown,
4 N.E.3d 452, 2013-Ohio-5351.....*passim*

State v. Brown,
99 Ohio St. 3d 323, 2003-Ohio-3931.....*passim*

State v. Buzzard,
112 Ohio St. 3d 451, 2007-Ohio-373.....1, 2, 10, 12

State v. Carswell,
114 Ohio St. 3d 210, 2007-Ohio-3723.....7

State v. Droste,
83 Ohio St. 3d 36 (1998).....2, 17

State v. Emerson,
134 Ohio St. 3d 191, 2012-Ohio-5047.....11, 17

State v. Geraldo,
68 Ohio St. 2d 120 (1981).....10

State v. Hoover,
123 Ohio St. 3d 418, 2009-Ohio-4993.....12, 19

State v. Jones,
121 Ohio St. 3d 103, 2009-Ohio-316.....*passim*

State v. Jones,
88 Ohio St. 3d 430 (2000).....*passim*

State v. Jordan,
104 Ohio St. 3d 21, 2004-Ohio-6085.....1, 12, 19, 20

State v. Kessler,
53 Ohio St. 2d 204 (1978).....10, 12

State v. Kinney,
83 Ohio St. 3d 85 (1998).....1, 11

State v. Lindway,
131 Ohio St. 166 (1936).....8, 13, 14, 20

State v. Mays,
119 Ohio St. 3d 406, 2008-Ohio-4539.....12, 16, 20

State v. Mesa,
87 Ohio St. 3d 105 (1999).....1, 11

State v. Moore,
90 Ohio St. 3d 47 (2000).....11

State v. Murrell,
94 Ohio St. 3d 489 (2002).....13

State v. Myers,
26 Ohio St. 2d 190 (1971).....17

State v. Orr,
91 Ohio St. 3d 389 (2001).....11

State v. Robinette,
80 Ohio St. 3d 234 (1997).....12, 13

State v. Thierbach,
92 Ohio App. 3d 365 (1st Dist. 1993).....14

State v. Thompson,
33 Ohio St. 3d 1 (1987).....17

State v. Unger,
67 Ohio St. 2d 65 (1981).....17

State v. Weideman,
94 Ohio St. 3d 501 (2002)..... *passim*

State v. Wilmoth,
22 Ohio St. 3d 251 (1986).....11

Stone v. City of Stow,
64 Ohio St. 3d 156 (1992) 11

United States v. Beals,
698 F.3d 248 (6th Cir. 2012) 17

Virginia v. Moore,
553 U.S. 164 (2008) 5, 15, 17, 18

Wampler v. Higgins,
93 Ohio St. 3d 111 (2001) 6

Weeks v. United States,
232 U.S. 383 (1914) 14

Statutes, Rules, and Constitutional Provisions

Ohio Const. art. I, § 14 (1851) ..... *passim*

Ohio Const. art. VIII, § 5 (1802) 8

R.C. 109.02 2

R.C. 2929.191 ..... 1, 12

R.C. 4513.39(A) 4

R.C. 5503.02 2

U.S. Const. amend. IV ..... *passim*

INTRODUCTION

For nearly a century and in dozens of different cases, this Court has recognized that Article I, Section 14 of the Ohio Constitution (which prohibits unreasonable searches and seizures) "is identical with the Fourth Amendment to the federal Constitution" and thus has the same substantive reach as its federal counterpart. *Houck v. State*, 106 Ohio St. 195, 199 (1922). This general rule follows from the historical evidence that the 1851 Constitution's framers meant for Article I, Section 14 to have the same reach as the Fourth Amendment—which, at the time, did *not* apply to state actors. The Court has applied the rule in nearly every conceivable search-and-seizure context, from the standards for investigative stops, *see State v. Jordan*, 104 Ohio St. 3d 21, 2004-Ohio-6085 ¶ 55, *superseded on other grounds* by R.C. 2929.191, to the plain-view exception to a "search," *see State v. Buzzard*, 112 Ohio St. 3d 451, 2007-Ohio-373 ¶¶ 13-19 & n.2, to the requirements for warrants, *see State v. Kinney*, 83 Ohio St. 3d 85, 87 (1998), to the rules for inventory searches, *see State v. Mesa*, 87 Ohio St. 3d 105, 112 (1999).

Only once in a context far different from the one at issue in this case—a warrantless arrest for the minor misdemeanor of jaywalking—has the Court found "persuasive reasons" for Article I, Section 14 to impose greater restrictions on law enforcement than the Fourth Amendment. *See State v. Brown*, 99 Ohio St. 3d 323, 2003-Ohio-3931 syl. But because the state and federal provisions were meant to have the same reach, *Brown* should allow this Court to interpret Article I, Section 14 in a manner departing from the U.S. Supreme Court's Fourth Amendment case law *only* when this Court concludes that the relevant U.S. Supreme Court decision substantially misinterpreted that amendment. Indeed, *Brown* largely reached that result—finding that this Court's prior decision in *State v. Jones*, 88 Ohio St. 3d 430 (2000), was

a better reading of the nearly identical state and federal constitutional provisions than the U.S. Supreme Court's later decision in *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001).

Here, however, the Sixth District's decision interpreted *Brown* not as establishing this narrow outlier to the general rule treating the state and federal provisions "as affording the same protection," *Buzzard*, 2007-Ohio-373 ¶ 13 n.2, but as granting state courts a broad license to depart from relevant Fourth Amendment standards whenever they think it a good idea. *See State v. Brown*, 4 N.E.3d 452, 2013-Ohio-5351 ¶¶ 15, 19-20 (hereafter "App. Op."). The Sixth District's sharp departure from this Court's traditional framework was in error. Indeed, this Court has an unblemished record of *rejecting* similar arguments for the exclusion of evidence based on the type of alleged error at issue in this case: a traffic stop by a police officer outside of the statutory limits on the officer's jurisdiction. *See, e.g.*, *State v. Jones*, 121 Ohio St. 3d 103, 2009-Ohio-316 syl.; *State v. Weideman*, 94 Ohio St. 3d 501, 504-06 (2002); *State v. Droste*, 83 Ohio St. 3d 36 syl. (1998); *City of Kettering v. Hollen*, 64 Ohio St. 2d 232, 234-35 (1980). The Court should stay the course with these cases—and with its general rule that Article I, Section 14 and the Fourth Amendment are coextensive—by reversing the Sixth District's decision.

STATEMENT OF AMICUS INTEREST

As Ohio's chief law officer, the Attorney General has a keen interest in decisions that deter police conduct aimed at investigating and prosecuting criminal activity, and, in particular, decisions applying the exclusionary rule in an overly broad manner. *See* R.C. 109.02. In addition, the Attorney General represents numerous state agencies that, like the township police officer in this case, must abide by statutory limits on their jurisdiction. The State Highway Patrol, for example, generally has jurisdiction over the State's roadways. *See* R.C. 5503.02. If this Court were to affirm the Sixth District's decision, the Patrol's inter-agency projects with other law-enforcement entities could be negatively affected. The Patrol, for example, often

works with other law-enforcement agencies, both police departments and sheriffs, to conduct periodic "shield detail" programs that involve jointly entering specific neighborhoods considered "hotbeds" for criminal activity and working together to ferret out crime. Some of the resulting arrests are drug-related, and, depending on the specific jurisdiction in which these "shield details" are conducted, a jurisdictional issue for one of the cooperative agencies could arise. Similarly, the mission of many inter-agency taskforces, such as drug-interdiction or human-trafficking taskforces, could take place across many different jurisdictions. In sum, the decision below has broad ramifications for the law-enforcement community.

STATEMENT OF THE CASE AND FACTS

Appellee Terrance Brown pleaded no contest to possessing at least 30 milligrams of oxycodone, and was sentenced to three years' imprisonment. App. Op. ¶ 1. He reserved the right to appeal the trial court's denial of his motion to suppress the drugs.

At the motion-to-suppress hearing, Kelly Clark, a patrol officer with the Lake Township Police Department, testified that she was watching the traffic on a federal interstate in Wood County. App. Op. ¶ 4. She pulled out onto the interstate and witnessed a car cross over the white line for about one hundred feet. *Id.* She pulled the car over, which was being driven by Brown. *Id.* Eventually, Clark's police dog alerted to the presence of drugs, and Brown was placed under arrest. Brown claimed that he had not crossed over the white line and that he was instead "driving very deliberately" because he had illegal drugs in the car. *Id.* ¶ 6. The trial court nevertheless credited Clark's testimony and found that she had probable cause to pull Brown over based on the lane violation. *Id.* ¶ 7.

The Sixth District reversed Brown's conviction. It noted that while Clark, a township police officer, had no statutory authority to stop drivers on the federal interstate, the statute at issue did not mandate the exclusion of evidence as a punishment for any violations. *Id.* ¶ 12

(citing R.C. 4513.39(A)). For exclusion to take place, therefore, the court recognized that "[t]he unlawful stop would also have to rise to the level of a constitutional violation." *Id.* ¶ 13.

The Sixth District found no Fourth Amendment violation because that constitutional provision allows a police officer to stop a driver if the officer has probable cause that a traffic offense has been committed, even if the stop would otherwise violate state law. *Id.* ¶¶ 14-15 (citing *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001)). But the court stated that "the Ohio Constitution can afford greater protection than the United States Constitution." *Id.* ¶ 15.

Turning to Article I, Section 14 of the Ohio Constitution, the Sixth District recognized that this Court has repeatedly refused to exclude evidence uncovered as a result of an out-of-jurisdiction traffic stop or arrest that violated state law. *Id.* ¶¶ 16-17 (citing *State v. Weideman*, 94 Ohio St. 3d 501 (2002); *City of Kettering v. Hollen*, 64 Ohio St. 2d 232 (1980)). But it interpreted those cases as holding that a court must "balance the government's interests in making the stop against the intrusion upon the individual's privacy" when determining whether an "extraterritorial stop" in violation of state law also violated Article I, Section 14 "despite the existence of probable cause." *Id.* ¶ 17. As support for this balancing test, the court cited *State v. Brown*, 99 Ohio St. 3d 323, 2003-Ohio-3931, a case that had applied greater restrictions under the Ohio Constitution than the Fourth Amendment in the context of a warrantless misdemeanor arrest for jaywalking. *Id.* ¶ 17. Applying that balancing test here, the Sixth District found a violation of Article I, Section 14 because "no extenuating circumstances were presented to justify an extraterritorial stop by township police officers for this type of traffic violation." *Id.* ¶ 20. The court thus held that "the drugs seized as a result of the stop should have been excluded from evidence" under Ohio's Constitution. *Id.*

ARGUMENT

***Amicus Curiae*'s Proposition of Law:**

> *A police officer does not violate the Fourth Amendment to the U.S. Constitution when the officer makes an out-of-jurisdiction traffic stop in violation of state law so long as the officer has probable cause for the stop. Accordingly, because Article I, Section 14 of the Ohio Constitution has the same substantive reach as the Fourth Amendment, that type of out-of-jurisdiction traffic stop also does not violate Article I, Section 14.*

It is now black-letter law that a police officer's traffic stop comports with the Fourth Amendment to the U.S. Constitution even if the stop violates state statutory law so long as the officer had probable cause for the stop. *See Virginia v. Moore*, 553 U.S. 164, 178 (2008) (noting that "it is not the province of the Fourth Amendment to enforce state law"); *State v. Jones*, 121 Ohio St. 3d 103, 2009-Ohio-316 syl. (noting that a stop outside of a police officer's jurisdiction based on probable cause "is not unreasonable under the Fourth Amendment"). In those circumstances, the Fourth Amendment's general reasonableness standard is satisfied without the need for any additional balancing of state and private interests. Instead, "'when an officer has probable cause to believe a person committed *even a minor crime* in his presence, the balancing of private and public interests is not in doubt. [A stop] is constitutionally reasonable'" under the Fourth Amendment. *Jones*, 2009-Ohio-316 ¶ 17 (quoting *Moore*, 553 U.S. at 171).

The Sixth District in this case agreed. It held that the Fourth Amendment does not prohibit a police officer's out-of-jurisdiction traffic stop that violates state law where, as here, the stop is supported by probable cause that the driver committed a traffic offense. *See* App. Op. ¶¶ 15, 19-20. The Sixth District nevertheless concluded that Article I, Section 14 of the Ohio Constitution provides *greater* restrictions than the Fourth Amendment on a police officer's out-of-jurisdiction stop. *See id.* Specifically, the appellate court held that a stop outside of a police officer's jurisdiction in violation of Ohio law will not comport with Article I, Section 14 merely because the officer had probable cause that the suspect has committed a traffic violation.

Instead, the Sixth District reasoned, the government must additionally show, on a case-by-case basis, that its interest in the stop exceeds the intrusion on individual privacy resulting from the stop under a totality-of-circumstances balancing test. *See id.*

This Court should reverse the Sixth District's holding that Article I, Section 14 imposes additional restraints on police investigations of crime that all agree are nowhere to be found in the Fourth Amendment. The Sixth District's view conflicts with the text and common understanding of Article I, Section 14 at the time that it was enacted—both of which show that the state provision was designed to be coextensive with the Fourth Amendment. And the Sixth District's view conflicts with dozens of this Court's cases holding that the Fourth Amendment and Article I, Section 14 have the same substantive reach in a wide array of different search-and-seizure contexts.

A. The Sixth District's broad interpretation of Article I, Section 14 conflicts with that provision's language and history, both of which show that the Ohio Constitution's framers intended for it to have the same reach as the Fourth Amendment.

The Court should reject the Sixth District's interpretation of Article I, Section 14 initially because it conflicts with the text and history of that constitutional provision. Start with the text. This Court interprets sections of the Ohio Constitution in the same manner that it interprets sections of the Ohio Revised Code. The Court's duty "is to construe the meaning of the plain language of the Constitution" as that language is written and as it was commonly understood when it was enacted. *State ex rel. LetOhioVote.org v. Brunner*, 123 Ohio St. 3d 322, 2009-Ohio-4900 ¶ 50; *see Pfeifer v. Graves*, 88 Ohio St. 473, 487 (1913) ("It is our duty to interpret the language of the Constitution according to its fair and reasonable import and the common understanding of the people who framed and adopted it."); *see also, e.g.*, *Wampler v. Higgins*, 93 Ohio St. 3d 111, 121 (2001) (applying plain language of Ohio Constitution as written); *State ex rel. Shkurti v. Withrow*, 32 Ohio St. 3d 424, 426 (1987) (same).

In this respect, the plain language of Article I, Section 14 is revealing. Its language, adopted in 1851, is nearly *identical* to the Fourth Amendment's language adopted some sixty years earlier by the federal constitutional framers. Article I, Section 14 reads: "The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the person and things to be seized." Ohio Const. art. I, § 14. The Fourth Amendment, by comparison, reads: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. Article I, Section 14's text, therefore, illustrates exactly what the state constitutional framers intended—for the state search-and-seizure provision to have the same substantive reach as its federal predecessor. If the framers had intended the Ohio provision to have a different scope than the Fourth Amendment, they would have enacted divergent, not nearly identical, constitutional language.

Two historical points bolster this plain meaning. For one thing, the Court generally presumes that the adopters of constitutional amendments know of the existing body of law touching the same topic when they pass amendments. *See, e.g.*, *State v. Carswell*, 114 Ohio St. 3d 210, 2007-Ohio-3723 ¶ 5 ("'[T]he body enacting the amendment will be presumed to have had in mind existing constitutional or statutory provisions and their judicial construction, touching the subject dealt with.'" (citation omitted)); *cf. State ex rel. Mager v. State Teachers Ret. Sys. of Ohio*, 123 Ohio St. 3d 195, 2009-Ohio-4908 ¶ 23 ("'When an existing statute is repealed and a new statute upon the same subject is enacted to include an amendment, as in this

case, it is presumed that the Legislature intended to change the effect and operation of the law to the extent of the change in the language thereof.'" (citation omitted)). Given this presumption, it is notable that the 1851 framers of Article I, Section 14 substantially departed from that section's state predecessor, which had been adopted in the 1802 Ohio Constitution. The 1802 search-and-seizure provision that Article I, Section 14 superseded had a seemingly *broader* reach than the Fourth Amendment, prohibiting all unwarrantable searches and seizures:

> That the people shall be secure in their persons, houses, papers and possessions, from *unwarrantable* searches and seizures; and that general warrants, whereby an officer may be commanded to search suspected places, without probable evidence of the fact committed, or to seize any person or persons not named, whose offenses are not particularly described, and without oath or affirmation, are dangerous to liberty, and shall not be granted.

Ohio Const. art. VIII, § 5 (1802) (emphasis added); *see State v. Blackburn*, 620 N.E.2d 319, 323 (Ohio Mun. Ct. 1993) (noting that the 1802 provision "prohibited any search or seizure without a warrant"). That the framers of Article I, Section 14 intentionally changed from this different language to nearly the precise language of the Fourth Amendment leaves no doubt that they intended to bring Article I, Section 14 in line with its federal counterpart.

For another thing, the Court should bear in mind the legal landscape when the constitutional framers passed Article I, Section 14. In 1851, the Fourth Amendment had not been incorporated against the States; indeed, the Fourteenth Amendment through which incorporation later took place had not even been adopted. At that time, therefore, the Fourth Amendment provided *no* restraints on state action or state actors. *See State v. Lindway*, 131 Ohio St. 166 syl. ¶ 1 (1936) ("The Fourth and Fifth Amendments to the Constitution of the United States, prohibiting unreasonable searches and seizures and compulsory self-incrimination, are directed exclusively against the activities of the federal government and have no application to the various states and their agencies."). It thus made good sense for the Ohio Constitution's

framers to give Article I, Section 14 the same reach as the Fourth Amendment. The two provisions serve the same interests, interests that, at the time, would have gone unprotected against state actors without Article I, Section 14. In other words, the decision to make Article I, Section 14 identical to the Fourth Amendment did not make it superfluous; Article I, Section 14 was necessary to provide the same restrictions on state actors under the Ohio Constitution that already applied to federal actors under the federal Constitution.

To the extent the Ohio provision is *now* largely superfluous, it is only because of the U.S. Supreme Court's decision—many decades and a Civil War later—to incorporate the Fourth Amendment into the Fourteenth Amendment and thereby to apply its restrictions (including its exclusionary rule) against the States as well. *See Mapp v. Ohio*, 367 U.S. 643, 655 (1961). But these changes in federal law do not and cannot permit this Court to alter the meaning of the Ohio Constitution. Only a constitutional amendment may do so. *See State ex rel. Saxbe v. Brand*, 176 Ohio St. 44, 52 (1964) ("The judicial power conferred upon the Supreme Court by the Constitution of Ohio does not authorize this court to amend or change the intended meaning of the words used by the people of Ohio in their Constitution.").

In short, the Sixth District's decision to expand Article I, Section 14's restrictions on out-of-jurisdiction traffic stops beyond the Fourth Amendment's restrictions has no basis in the text or history of the state constitutional provision. It should come as no surprise, therefore, that the Sixth District simply ignored these critical legal elements when reaching its decision.

B. The Sixth District's interpretation conflicts with this Court's cases, which have interpreted Article I, Section 14 to have the same reach as the Fourth Amendment.

The Sixth District's decision fares no better when assessed against this Court's many cases interpreting and applying Article I, Section 14. The Court's case law confirms that it

should interpret Article I, Section 14 to have the same reach as the Fourth Amendment with respect to the out-of-jurisdiction traffic stop at issue in this case.

1. The vast majority of this Court's cases have interpreted Article I, Section 14 to have an identical reach as the Fourth Amendment in nearly every possible setting in which search-and-seizure issues arise.

The Court has long held that Article I, Section 14 "is identical with the Fourth Amendment" and thus has the same substantive reach. *Houck v. State*, 106 Ohio St. 195, 199 (1922) (relying on *Lambert v. United States*, 282 F. 413 (9th Cir. 1922), to interpret Ohio Constitution). The Court has noted, among other things, that Article I, Section 14 and the Fourth Amendment "are essentially the same," *State v. Kessler*, 53 Ohio St. 2d 204, 207 n.*, 208-10 (1978), that the "reach of Section 14, Article I, of the Ohio Constitution . . . is coextensive with that of the Fourth Amendment," *State v. Geraldo*, 68 Ohio St. 2d 120, 126 (1981), and that it has "refuse[d] to impose greater restrictions under [Article 1, Section 14]," *Ohio Domestic Violence Network v. Pub. Utils. Comm'n of Ohio*, 70 Ohio St. 3d 311, 318 n.3 (1994). In short, "[b]ecause the texts of Section 14, Article I of the Ohio Constitution and the Fourth Amendment to the United States Constitution are virtually identical, [the Court] interpret[s] the two provisions as affording the same protection." *State v. Buzzard*, 112 Ohio St. 3d 451, 2007-Ohio-373 ¶ 13 n.2; *see also, e.g.*, *State v. Andrews*, 57 Ohio St. 3d 86, 87 n.1 (1991) (noting that "[a] review of Ohio case law indicates that we have interpreted Section 14, Article I of the Ohio Constitution to protect the same interests and in a manner consistent with the Fourth Amendment").

In most of its cases, the Court simply treats the Fourth Amendment and Article I, Section 14 as interchangeable (either expressly or implicitly) when determining whether a particular set of facts qualifies as an unconstitutional search or seizure. For example, in a case where the Court upheld administrative searches of pharmacy prescription records under both the state and federal Constitutions, it noted that "[b]ecause the Ohio and federal provisions are very similar,

we use the term 'Fourth Amendment' to collectively refer to *both* the Fourth Amendment *and* Section 14, Article I." *Stone v. City of Stow*, 64 Ohio St. 3d 156, 163 n.4 (1992) (emphases added). Similar examples abound. With respect to nearly every conceivable search-and-seizure issue, the Court has suggested that Article I, Section 14 and the Fourth Amendment have the same reach:

- The Court has held that investigators may constitutionally use a DNA profile that had been lawfully obtained in a prior case, stating that it interprets Article I, Section 14 in the same manner as the Fourth Amendment. *See State v. Emerson*, 134 Ohio St. 3d 191, 2012-Ohio-5047 ¶¶ 14-27.

- The Court has found that the good-faith exception to the exclusionary rule applied to an invalid warrant that had mistakenly been issued based on unsworn statements, citing both Constitutions in the process. *See State v. Wilmoth*, 22 Ohio St. 3d 251, 261-67 (1986).

- The Court has upheld an investigative stop of a suspect who had run from a police cruiser in a high-crime area based on the same "reasonable suspicion" standard used under both Constitutions. *See Andrews*, 57 Ohio St. 3d at 88-89.

- The Court has held that the exclusionary rule should not apply to probation and parole-revocation proceedings under both Constitutions, *overruling* a prior case that had suggested the contrary under the Ohio Constitution. *State ex rel. Wright v. Ohio Adult Parole Auth.*, 75 Ohio St. 3d 82, 91 (1996) (overruling *State v. Burkholder*, 12 Ohio St. 3d 205 (1984)).

- The Court has upheld warrants that name "all persons" at a private residence, noting that "Section 14, Article I of the Ohio Constitution is nearly identical in its language, and its protections are coextensive with its federal counterpart." *State v. Kinney*, 83 Ohio St. 3d 85, 87 (1998).

- The Court has condoned an inventory search of an impounded vehicle conducted pursuant to a city's written procedures under both Constitutions. *See State v. Mesa*, 87 Ohio St. 3d 105, 112 (1999).

- The Court has permitted a vehicle search based on the strong odor of marijuana under both Constitutions. *See State v. Moore*, 90 Ohio St. 3d 47, 48-53 (2000).

- The Court has validated the use of driver's license checkpoints under both Constitutions. *See State v. Orr*, 91 Ohio St. 3d 389, 391-94 & n.1 (2001).

- The Court has held that both Constitutions permit a police officer to stop a suspect for violating posted traffic signs even when it later turns out that the signs lacked the city council's statutorily required authorization. *Bowling Green v. Godwin*, 110 Ohio St. 3d 58, 2006-Ohio-3563 ¶¶ 11-17.

- The Court has noted that both Constitutions include the plain-view exception to what qualifies as a "search" when a police officer discovered evidence while peering through a small opening in a locked garage. *Buzzard*, 2007-Ohio-373 ¶¶ 13-19 & n.2.

- The Court has held that a police officer may reasonably stop a vehicle if the officer witnesses the vehicle drive over the lane markings without additional proof of unsafe driving, citing both Constitutions in the process. *See State v. Mays*, 119 Ohio St. 3d 406, 2008-Ohio-4539 ¶ 7.

- The Court has found that both Constitutions permit a statute that increases the punishment for individuals arrested for drunk driving if they refuse to consent to chemical testing. *See State v. Hoover*, 123 Ohio St. 3d 418, 2009-Ohio-4993 syl.

- The Court has ruled that neither Constitution requires a warrant to search a vehicle stopped on the highway so long as the officer has probable cause. *See Kessler*, 53 Ohio St. 2d at 207 n.*, 208-10.

- The Court has found that both Constitutions incorporate the same rules for investigative stops based on reasonable suspicion. *See State v. Jordan*, 104 Ohio St. 3d 21, 2004-Ohio-6085 ¶ 55, *superseded on other grounds* by R.C. 2929.191.

To be sure, the Court in one relatively recent case added a disclaimer to this great weight of authority. In *State v. Robinette*, 80 Ohio St. 3d 234 (1997), the Court suggested that it "should harmonize [its] interpretation of Section 14, Article I of the Ohio Constitution with the Fourth Amendment, *unless there are persuasive reasons to find otherwise*." *Id.* at 239 (emphasis added). But *Robinette* provided no discussion of what "persuasive reasons" must exist to depart from the Fourth Amendment. *See id.* In that case, moreover, this disclaimer was entirely dicta. The *Robinette* Court ultimately held "that Section 14, Article I of the Ohio Constitution affords protections that are *coextensive* with those provided by the Fourth Amendment and, therefore, the Ohio Constitution [like the Fourth Amendment] does not require a police officer to inform an individual, stopped for a traffic violation, that he or she is free to go before the officer may

attempt to engage in a consensual interrogation." *Id.* at 245 (emphasis added); *cf. State v. Murrell*, 94 Ohio St. 3d 489, 493-96 (2002) (overruling prior decision that departed from U.S. Supreme Court precedent for searches incident to arrest because persuasive reasons did not exist for the prior decision's unreasoned departure from federal law). It is thus safe to say that the Court has departed from the Fourth Amendment quite sparingly.

Indeed, in *only* one outlier case has the Court found "persuasive reasons" for Article I, Section 14 to impose *greater* restrictions on law enforcement than the Fourth Amendment. *See State v. Brown*, 99 Ohio St. 3d 323, 2003-Ohio-3931 syl. In *Brown*, the Court considered whether an arrest for a misdemeanor jaywalking offense violated Article I, Section 14 if undertaken in violation of the state statutory limits on misdemeanor arrests. The Court had previously held that such an arrest would violate *both* Article I, Section 14 *and* the Fourth Amendment under a balancing-of-interests approach. *See State v. Jones*, 88 Ohio St. 3d 430, 440 (2000). But the U.S. Supreme Court subsequently held that the Fourth Amendment permits *all* misdemeanor arrests so long as they are based on probable cause that the relevant misdemeanor has been committed without requiring any sort of additional balancing of interests. *See Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001). In *Brown*, this Court recognized that *Jones* was no longer authoritative with respect to the Fourth Amendment given the subsequent U.S. Supreme Court decision in *Atwater*. *See* 99 Ohio St. 3d at 326. But it nevertheless held that the "balancing test set forth in *Jones*" provided the persuasive reasons for "holding that Section 14, Article I of the Ohio Constitution provides greater protection than the Fourth Amendment to the United States Constitution against warrantless arrests for minor misdemeanors." *Id.* at 327.

Aside from *Brown*, the only non-overruled case in which this Court has departed from the U.S. Supreme Court's interpretation of the Fourth Amendment was its 1936 *Lindway* decision.

In that case, however, the Court interpreted Article I, Section 14 to provide *lesser*—not *greater*—restrictions than the Fourth Amendment. At that time, the U.S. Supreme Court had adopted the exclusionary rule in federal court under the Fourth Amendment, requiring the exclusion of evidence in criminal trials that federal officials obtained in violation of the amendment. *See Lindway*, 131 Ohio St. at 174-76 (discussing, among others, *Weeks v. United States*, 232 U.S. 383 (1914)). This Court departed from the exclusionary rule with respect to Article I, Section 14, because, among other things, "'there [was] nothing in its language changing the rule as to, or in any way affecting, the admissibility of evidence'" in criminal trials. 131 Ohio St. at 180 (citation omitted). While the U.S. Supreme Court's later *Mapp* decision required the exclusion of evidence in state court as a matter of the *Fourth Amendment*, *Mapp* did not (and could not) overrule this Court's interpretation of *Article I, Section 14*. And, for its part, this Court has never overruled *Lindway*. *See City of Cincinnati v. Alexander*, 54 Ohio St. 2d 248, 255 n.6 (1978) (noting that "the non-exclusionary rule adopted in *Lindway* under the Ohio Constitution has never been overruled"); *State v. Thierbach*, 92 Ohio App. 3d 365, 369 (1st Dist. 1993) (same).

In short, dozens of this Court's cases dating back many decades in a wide variety of areas have interpreted Article I, Section 14 to have the same reach as the Fourth Amendment, and only one case has departed from that general rule by interpreting Article I, Section 14 to impose greater restrictions on law enforcement than the Fourth Amendment.

2. Out-of-jurisdiction traffic stops fall within the Court's majority rule, not the narrow exception to that rule followed by *Brown*.

The Sixth District erred by ignoring this Court's general standard treating Article I, Section 14 and the Fourth Amendment as coextensive and instead by relying on the Court's narrow exception to this rule for the jaywalking arrest at issue in *Brown*. *See* App. Op. ¶¶ 19-20. The Sixth District identified *no* reasons—let alone "persuasive" ones—for interpreting Article I,

Section 14 as departing from the Fourth Amendment's rule that out-of-jurisdiction traffic stops in violation of state law are constitutionally reasonable so long as the stops are based on probable cause. *See Jones*, 2009-Ohio-316 syl.

First, the Sixth District did not suggest that the U.S. Supreme Court erred when holding that a violation of state law is irrelevant to the constitutional reasonableness of a seizure (which would provide a reason for the state courts not to make the same mistake when interpreting Article I, Section 14). To the contrary, the *unanimous* U.S. Supreme Court in *Moore* rightly explained that there was "[n]o early case or commentary . . . suggest[ing] the Amendment was intended to incorporate subsequently enacted statutes" for determining its scope. 553 U.S. at 169; *see id.* at 170 (noting that "even though several state constitutions also prohibited unreasonable searches and seizures, citizens who claimed officers had violated state restrictions on arrest did not claim that the violations also ran afoul of the state constitutions"); *State v. Weideman*, 94 Ohio St. 3d 501, 506 (2002) (noting that at common law "there was no clear practice either allowing or forbidding the government action of stopping" a vehicle outside of a police officer's jurisdiction). Accordingly, the Sixth District's decision to depart from the U.S. Supreme Court's Fourth Amendment precedent when applying the Ohio Constitution in this case cannot be justified on any ground that the U.S. Supreme Court wrongly interpreted the Fourth Amendment. And because Article I, Section 14 was meant to be identical to the Fourth Amendment, there is likewise no basis for interpreting the state constitutional provision as incorporating state statutory law to determine its reach.

Second, the Sixth District did not sufficiently take into account the fact that this Court has already held that a police officer who makes an *out-of-jurisdiction arrest* in violation of state law "does not offend either the United States or Ohio Constitution" (at least when the police officer's

pursuit of the arrested individual commenced within the officer's assigned jurisdiction). *City of Kettering v. Hollen*, 64 Ohio St. 2d 232, 235 (1980); *see Weidman*, 94 Ohio St. 3d at 504-05 (interpreting *Hollen* to hold that an out-of-jurisdiction arrest does not violate any constitutional provision when an officer has probable cause). If an out-of-jurisdiction *arrest* in violation of Ohio law comports with Article I, Section 14, it follows that an out-of-jurisdiction *stop* in violation of Ohio law likewise does so. After all, a stop is a much less intrusive invasion of privacy than an arrest, and so it triggers significantly less constitutional concerns. In fact, the Court has noted that such a traffic stop need only be based on reasonable suspicion rather than probable cause. *See Mays*, 2008-Ohio-4539 ¶ 8 ("If an officer's decision to stop a motorist for a criminal violation, including a traffic violation, is prompted by a reasonable and articulable suspicion considering all the circumstances, then the stop is constitutionally valid.").

Third, the Sixth District overlooked that this Court has already adopted the bright-line rule under both Constitutions that "where an officer has an articulable reasonable suspicion or probable cause to stop a motorist for any criminal violation, including a minor traffic violation, the stop is constitutionally valid . . . ." *City of Dayton v. Erickson*, 76 Ohio St. 3d 3, 11-12 (1996); *see id.* at 11 (citing both the "Fourth Amendment to the United States Constitution, and Section 14, Article I of the Ohio Constitution" when reaching this result). The Sixth District's holding creates an unwarranted exception to this easily administrable bright-line rule. By doing so, it risks creating confusion within the law-enforcement community both because it would require law enforcement to learn about an exception to the bright-line constitutional rule in this one particular area and because it would require them to learn the competing standards that would apply under both the Ohio and federal Constitutions. State law enforcement often work with their federal counterparts (especially in the area of illegal narcotics), and Article I, Section

14 would not apply in federal court. *See, e.g.*, *United States v. Beals*, 698 F.3d 248, 263 (6th Cir. 2012) ("While the states are free to impose rules for searches and seizures that are more restrictive than the Fourth Amendment, those rules will not be enforced in a federal criminal proceeding.").

Fourth, the Sixth District gave insufficient weight to this Court's repeated admonition that a police officer's violation of state law does not rise to a constitutional violation requiring the exclusion of evidence obtained as a result. *See State v. Emerson*, 134 Ohio St. 3d 191, 2012-Ohio-5047 ¶¶ 15, 32; *State v. Droste*, 83 Ohio St. 3d 36, 40 (1998); *City of Hilliard v. Elfrink*, 77 Ohio St. 3d 155, 157-58 (1996); *State v. Thompson*, 33 Ohio St. 3d 1, 8 (1987); *State v. Unger*, 67 Ohio St. 2d 65, 69-70 (1981); *State v. Myers*, 26 Ohio St. 2d 190, 196-97 (1971). The violation of state law at issue here (an out-of-jurisdiction traffic stop) is just as technical of a violation as the violations in these other cases. *Droste*, for example, involved a similar out-of-jurisdiction stop by liquor-control investigators in violation of state law, *see* 83 Ohio St. 3d at 40, and *Thompson* involved an out-of jurisdiction incarceration in violation of a state law requiring a suspect to be jailed in the same county in which he was arrested, *see* 33 Ohio St. 3d at 8.

It should also be noted that the Court's traditional rule—refusing to equate state statutory law with state constitutional law—makes sense. A rule that ties constitutional law to statutory law would only incentivize the General Assembly to provide no more protection than the state and federal Constitutions otherwise require. If the General Assembly provides greater statutory *protections* but refuses to adopt the blunt *remedy* that is the exclusionary rule for violations of those protections, the constitutional exclusionary rule would kick in and overturn the General Assembly's remedial choices. As Justice Ginsburg rightly noted in her concurrence in *Moore*, the courts should be reluctant to "put States to an all-or-nothing choice in this regard." 553 U.S.

at 180 (Ginsburg, J., concurring in the judgment) ("A State may accord protection against arrest beyond what the Fourth Amendment requires, yet restrict the remedies available when police deny to persons they apprehend the extra protection state law orders."). Instead, the Court should follow its usual rule that "establishing a remedy for a violation of a statute remains in the province of the General Assembly, not the Ohio Supreme Court" under the guise of constitutional interpretation. *Jones*, 2009-Ohio-316 ¶ 22.

Fifth, the Sixth District misinterpreted the scope of this Court's *Brown* decision—the sole decision on which it relied. Contrary to the Sixth District's claim, App. Op. ¶¶ 19-20, *Brown* did not hold that the balancing test that it applied on top of the probable-cause inquiry governs *every* situation. Rather, *Brown* simply applied that additional balancing test to the "warrantless arrests for minor misdemeanors" at issue in that case. 2003-Ohio-3931 ¶ 22. *Brown* did so only after concluding that its prior 2000 decision in *Jones* provided the better interpretation of the relevant constitutional provisions. That conclusion (effectively) interpreted the U.S. Supreme Court in *Atwater* as committing error when reaching its contrary result—an error that would *not* be binding on this Court when interpreting Ohio's constitutional counterpart to the Fourth Amendment. This reading of *Brown*'s "persuasive reasons for departure" test is the *only* one that reconciles it with the historical evidence illustrating that the state constitutional provision was meant to have the same reach as its federal counterpart. *See* Part A. Here, however, for the reasons already indicated, there is no basis for concluding that the U.S. Supreme Court's unanimous decision in *Moore* and this Court's 2009 decision in *Jones* were *wrong* when concluding that the Fourth Amendment's reach did not depend on state statutory law. *Brown*'s basis for departure from the Fourth Amendment, therefore, is thus entirely inapplicable here.

The Court's later decisions, moreover, bear out *Brown*'s limited nature. After *Brown*, for example, the Court did not apply any additional balancing test when holding that probable cause itself sufficed to require an individual suspected of drunken driving to take a chemical test. *See Hoover*, 2009-Ohio-4993 ¶¶ 22-23. After *Brown*, the Court did not apply any additional balancing test when holding that probable cause itself sufficed to justify a traffic stop for the violation of a traffic sign that had been accidentally posted in violation of state law. *Bowling Green*, 2006-Ohio-3563 ¶¶ 11, 16-18. And after *Brown*, the Court did not apply any additional balancing test when holding that reasonable suspicion was sufficient for an investigatory stop based on an anonymous tip and a flight from police. *Jordan*, 2004-Ohio-6085 ¶¶ 52, 55. Simply stated, *Brown* cannot bear the weight that the Sixth District placed on it. It applied its additional balancing test only *in the one context* of "warrantless arrests for minor misdemeanors." 2003-Ohio-3931 syl. It did not hold that Article I, Section 14 required such a test *in all contexts*.

Regardless, *Brown* is distinguishable even on its own terms. Even assuming (wrongly) that *Brown*'s balance-of-interests test applies here in addition to the normal probable-cause test, the State can satisfy it. In the context of an out-of-jurisdiction traffic stop, the relative weights of the government and privacy interests are entirely flipped—as this Court has already held in *Weideman*. On the criminal suspect's side, this case does not involve the "'*full custodial arrest* for a minor misdemeanor'" that was at issue in *Brown*, which the Court found to be a "'serious intrusion upon a person's liberty and privacy.'" 2003-Ohio-3931 ¶ 19 (quoting *Jones*, 88 Ohio St. 3d at 440) (emphasis added). Instead, it involves merely the validity of the officer's initial *traffic stop*. As noted, the Court has repeatedly suggested that stops such as this one need only be supported by reasonable suspicion rather than probable cause precisely because of their

reduced intrusion into privacy and thus their reduced constitutional concerns. *See, e.g.*, *Jones*, 121 Ohio St. 3d at 107 n.4; *Mays*, 2008-Ohio-4539 ¶ 8; *Jordan*, 2004-Ohio-6085 ¶ 55.

On the government's side, out-of-jurisdiction traffic stops need not involve the minor misdemeanors that were at issue in *Brown* for which the government had a "'minimal'" interest in a full custodial arrest. 99 Ohio St. 3d at 326 (quoting *Jones*, 88 Ohio St. 3d at 440). An out-of-jurisdiction officer may witness a number of dangerous activities on the road. The officer, for example, may witness dangerous driving suggesting a drunken driver. *See Hollen*, 64 Ohio St. 2d at 235. Or the officer may suspect that the out-of-jurisdiction vehicle has just left the scene of an accident. *See Jones*, 2009-Ohio-316 ¶¶ 3-6. In short, a constitutional rule excluding evidence obtained as a result of an out-of-jurisdiction traffic stop could endanger the public while providing only minimal additional privacy protections. *See Weideman*, 94 Ohio St. 3d at 506 ("The government's interest in promoting public safety by stopping and detaining persons driving erratically outweighs the momentary restriction of the driver's freedom.").

Sixth, and finally, to the extent the Court finds that Article I, Section 14 provides greater restrictions on police than does the Fourth Amendment, it should nevertheless refuse to apply the exclusionary rule for this alleged violation of state constitutional law. The Court has never overruled its decades-old precedent in *Lindway* that the exclusionary rule does not apply for violations of Article I, Section 14, *see Alexander*, 54 Ohio St. 2d at 255 n.6, and the Court should not do so in this case either.

CONCLUSION

This Court should reverse the Sixth District's judgment and reinstate Appellee Terrance Brown's conviction and sentence.

Respectfully submitted,

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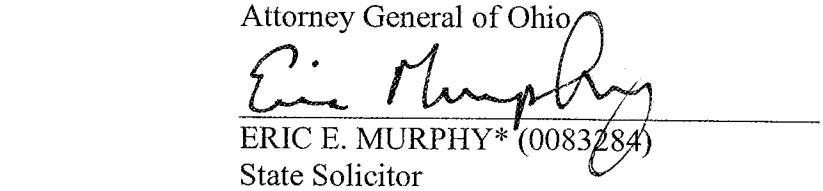

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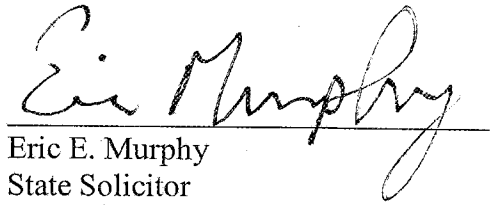

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