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In the
Supreme Court of Ohio

STATE OF OHIO, Plaintiff-Appellee, v. SUDINIA JOHNSON, Defendant-Appellant.	:	Case No. 2013-1973 On Appeal from the Butler County Court of Appeals, Twelfth Appellate District Court of Appeals Case No. CA2012-11-235

RESPONSE OF *AMICUS CURIAE* OHIO ATTORNEY GENERAL MICHAEL DEWINE TO MOTION TO STRIKE

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RESPONSE OF *AMICUS CURIAE*
OHIO ATTORNEY GENERAL MICHAEL DEWINE
TO MOTION TO STRIKE

Defendant-Appellant Sudinia Johnson moves to strike the amicus brief of Ohio Attorney General Michael DeWine on the ground that the brief addresses matters beyond the scope of the issue on which this Court granted review. More particularly, the Court granted review on the question whether evidence obtained in violation of the Constitution should nevertheless be admitted because the officers acted in good faith, and Johnson reads the Attorney General's brief as addressing the predicate question whether any constitutional violation occurred. For three reasons, the Court should deny the motion.

First, Johnson misreads the Attorney General's Propositions of Law. Both are phrased in terms of the good-faith exception, not in terms of the underlying constitutional issue. The first Proposition states: "The U.S. Supreme Court might hold, and thus there is a *good-faith basis for an officer to believe*" that GPS attachment and monitoring may be "reasonable under the Fourth Amendment." Br. at 11 (emphasis added). The second Proposition states that "law enforcement relied on legal precedent" authorizing the use of electronic tracking of automobiles "*in good faith*." Br. at 19 (emphasis added). Both address the good-faith exception to the exclusionary rule and therefore rest comfortably within the limitations Johnson wants to place on this case.

Second, in any event, Johnson is wrong that granting review on the good-faith issue does not fairly include the underlying constitutional issue. Such a rule would hinder this Court's efforts to provide administrable legal rules for law enforcement, individuals, and lower courts. Under Johnson's view of the world, the Court could declare a police practice as being in bad faith without ever deciding that the practice is unlawful. How could officers conform their conduct to such a rule? And how could lower courts adjudicate future cases raising the same issue? These questions are important because the Court decides cases to give guidance to the

whole State, not just to give resolution to the parties before it. Given that, although the good-faith question could be decided in favor of the *State* without deciding the constitutional question, it could *not* be decided in favor of Johnson without doing so. *See* Br. at 10-11.

Finally, the suggestion that Johnson could prevail on the good-faith question without an initial decision on the constitutional question runs contrary to the purposes of the exclusionary rule. The exclusionary rule is premised on the idea that suppression of unconstitutionally obtained evidence will deter future Fourth Amendment violations on the part of the police. *See Davis v. United States*, 131 S. Ct. 2419, 2426 (2011). Yet officers should not be deterred from engaging in police practices if those practices do not violate the Constitution. The Court should not deprive officers of a useful tool of investigating and solving crime without initially holding that the tool crosses a constitutional line. His suggestion is particularly harmful to law enforcement because application of the exclusionary rule means that the police have engaged in "deliberate, reckless, or grossly negligent conduct." *Herring v. United States*, 555 U.S. 135, 144 (2009). Before issuing such a condemnation, courts should first determine that the police engaged in any misconduct at all.

CONCLUSION

For these reasons, the Court should deny the motion to strike.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Response of *Amicus Curiae* Ohio Attorney General Michael DeWine to Motion to Strike was served by U.S. mail this 18th day of July, 2014, upon the following counsel:

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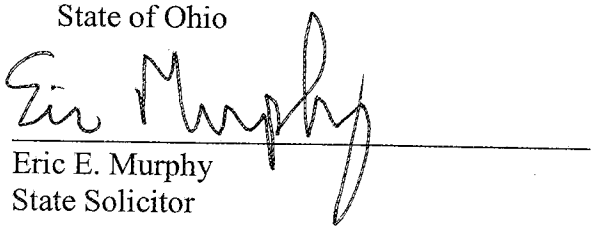

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