IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	
Plaintiff-Appellant	:	**Case No. 2015-1847**
	:	
vs.	:	**On Appeal from the Cuyahoga County**
	:	**Court of Appeals, Eighth Appellate**
DARLELL ORR	:	
	:	
Defendant-Appellee	:	

MERIT BRIEF OF *AMICUS CURIAE* OHIO PROSECUTING ATTORNEYS ASSOCIATION IN SUPPORT OF APPELLANT

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Ohio Prosecuting Attorneys Association "OPAA" represents the interests of the eighty-eight elected prosecuting attorneys in the State of Ohio. OPAA provides opportunities and resources for professional development to assistant prosecuting attorneys across Ohio. Additionally, the association advocates for positions that would improve the administration of justice in Ohio and better protect the constituents each county prosecutor represents.

This case comes before this Honorable Court because Appellant was denied a forum in which it could prosecute the rape and kidnaping of fourteen-year-old S.L. In the case at bar, the Eighth District Court of Appeals found that the trial court properly dismissed the indictment and denied the State's request to transfer the case to the juvenile division of the common pleas court. These decisions precluded Appellant from seeking justice on the behalf of S.L. and any opportunity to hold Appellee accountable for his alleged misconduct.

While no other court of appeals has addressed the precise issue accepted for review, this case was not the first in which the Eighth District Court of Appeals has found a juvenile offender, identified, apprehended, and indicted as an adult, is beyond the reach of the law. Without clear guidance from this Court, it will not be the last. Given the number of juveniles who committed serious violent offenses during the period in question and the steady improvements in the State's ability to identify suspects through previously collected DNA evidence, this *amicus* is concerned that this is an issue unlikely to persist for years to come. Should the Eighth District's decision be permitted to stand, an entire class of victims will be denied justice.

STATEMENT OF FACTS

The a*micus curiae* fully adopts the statement of facts as contained in the brief filed by the Appellant, State of Ohio.

LAW AND ARGUMENT

In this case the Eighth District Court of Appeals, relying primarily upon its prior decision in *State v. Webber,*[1] improperly affirmed the trial court's dismissal of the indictment against Appellee in this case. The lower courts explained that because Appellee was thirteen years old at the time of the alleged offenses he was ineligible to be tried as an adult under then-existing law. In light of that, application of the current versions of the relevant statutes, which would allow Appellee to be tried as an adult, would violate Due Process and the Ex Post Facto clauses of the Ohio and U.S. Constitutions.[2] Having concluded the relevant statutes were unconstitutional as applied to Appellee, the lower courts found dismissal of the indictment was the appropriate form of relief.

I. R.C. 2152.02(C)(3), R.C. 2151.23(I) and R.C. 2152.12(J) are constitutional as applied to Appellee

This Court should begin its analysis with the ell-established rule that statutes enjoy a strong presumption of constitutionality.[3] A statute must be upheld unless the challenger can meet the burden of establishing beyond a reasonable doubt that the statute is unconstitutional. In cases where a challenger argues that the relevant statutes are unconstitutional as applied to his particular situation, he "bears the burden of presenting clear and convincing evidence of a

[1] See *State v. Webber*, 2015-Ohio-1953.
[2] *State v. Orr*, 2015-Ohio-4081 at ¶10.
[3] *State v. Carswell*, 114 Ohio St.3d 210; *State v. Collier* (1991), 62 Ohio St.3d 267, 269; *State v. Thompkins* (1996), 75 Ohio St.3d 558, 560; *Sorrell v. Thevenir* (1994), 69 Ohio St.3d 415, 418–419, 633 N.E.2d 504.

presently existing state of facts that make the statutes unconstitutional and void when applied to those facts."[4]

When the constitutionally of a statute is in question, a reviewing court cannot simply rewrite it in order to make it constitutional.[5] However, the court is required to liberally construe the statute to save it from constitutional infirmities.[6] Moreover, with respect to the statutes at issue in this case, courts are required to liberally construe the statutes to provide judicial procedures through which Chapters 2151 and 2152 can be enforced in executed.[7] In this case, the lower courts deviated from well-established principles and the legislative mandate set forth in R.C. 2151.01(B).

Retroactivity Clause of Ohio Constitution

In recognition of the possibility of the unjustness of retroactive legislation Section 28, Article II of the Ohio Constitution provides that the General Assembly "shall have no power to pass retroactive laws." It is now settled in Ohio that a statute runs afoul of this provision if it "takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past.'[8]

This Court has previously articulated a two-part framework for determining whether a statute is impermissibly retroactive under this provision. First, a court should determine if there is a clearly expressed legislative intent that the statute apply retroactively. Second, if such intent

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[4] *Harrold v. Collier*, 107 Ohio St.3d 44, citing *Belden v. Union Cent. Life Ins. Co*. (1944), 143 Ohio St. 329, syllabus, paragraph six.
[5] *Peebles v. Clement* (1980) 63 Ohio St.3d 314, 321.
[6] *State v. Sintito* (1975), 43 Ohio St.2d 98, 101.
[7] 2151.01(B).
[8] *Van Fossen v. Babcock & Wilcox Co*. (1988), 36 Ohio St.3d 100, 104; *State v. Cook* (1998), 83 Ohio St.3d 404, 411.

exists, determine whether the challenged statute is substantive or remedial.[9] A will be substantive and unconstitutionally retroactive under Section 28, Article II "if it impairs vested rights, affects an accrued substantive right, or imposes new or additional burdens, duties, obligations, or liabilities as to a past transaction."[10] Conversely, a retroactive statute that is remedial will not violate Section 28, Article II.[11]

This Court has previously examined the constitutionality of the 1997 amendments to R.C. Chapter 2151, as applied to defendants who committed their offenses before the effective date of the 1997 amendments, but were not charged until after changes became effective and they were over the age of twenty-one.[12] In both instances, this Court found that while the 1997 amendments to R.C. Chapter 2151 apply retroactively. This Court explained that the amendments were merely remedial and did not impair any "vested rights" within the meaning of this Court's retroactivity jurisprudence.[13]

In *Walls*, the defendant was indicted by the Butler County Grand Jury for aggravated murder. Even though Walls had been fifteen years old at the time of the offense (and would have had a right to a bindover hearing under the law at the time of the offense) he was not identified and apprehended until he was twenty eight years old.[14] By the time Walls was indicted, the 1997 amendments to R.C. Chapter 2151 had taken effect. The law existing at the time he was charged required him to be charged as an adult and be subject to the correspondingly serious penalties that entailed.[15]

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[9] *Cook* at 410; *Van Fossen*, syllabus, paragraph two
[10] See *Van Fossen* at 106-107.
[11] *Id*. at 107 (quoting *Rairden v. Holden* (1864), 15 Ohio St. 207).
[12] *State v. Walls* (2002), 96 Ohio St.3d 437; *State v. Warren* (2008), 118 Ohio St.3d 200, ¶21-53.
[13] *Walls* at 443; *Warren* at 209.
[14] *Walls* at 438.
[15] See 147 Ohio Laws, Part II, 3421–34221; 146 Ohio Laws, Part II, 2054.

When Walls challenged the retroactive application of the 1997 amendments under the Ohio Constitution, this Court employed the two-part *Van Fossen* analysis set forth above. This Court found the General Assembly clearly intended the 1997 amendments to R.C. Chapter 2151 to apply retrospectively and require offenders who committed offenses as juveniles, but were not apprehended until after they attain the age of twenty one, to be treated as adults and subject to adult penalties.[16]

Although Walls argued the 1997 amendments were "substantive" within the meaning of this Court's retroactivity cases for a variety of reasons, this Court found that statutory changes were merely remedial.[17] This Court explained that it has defined "remedial" as "those laws affecting merely the methods and procedure[s] by which rights are recognized, protected and enforced, not * * * the rights themselves."[18] In effect, the amendments eliminated the bindover procedure for any juvenile offender who was not charged until after he reached the age of twenty one and changed the tribunal in which the case the case would be heard.

Despite the alleged differences in available sanctions between the two tribunals this Court did not believe the changes to be "substantive." This Court recognized that the "[a]pplication of a new jurisdictional rule usually takes away no substantive right but simply changes the tribunal that is to hear the case."[19] As in *Walls*, the statutes at issue in this case deprived Appellee of no substantive right; the statutory changes merely changed the forum in which his case could be heard.

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[16] *Walls* at 442.
[17] *Walls* at 443.
[18] *Id*. (quoting *Well v. Taxicabs of Cincinnati*, Inc. (1942), 139 Ohio St.198, 205).
[19] *Wall*s at 444 (quoting *Hallowell v. Commons* (1916), 239 U.S. 506, 508 (internal quotation marks omitted)).

After *Walls*, this Court reexamined the issue and reached the same conclusion.[20] In *Warren*, the defendant was charged for conduct that occurred when he was fifteen. However, the complaint was not filed until after he had exceeded the age of twenty one. Once again, this Court determined that amendments to R.C. 2151 requiring offenders who commit offenses as juveniles, but who are not apprehended until after they are twenty one to be tried as adults, impair no substantive rights within the meaning of the test set forth in *Van Fossen*.[21] Because the jurisdictional changes impaired no substantive right, the statutes in question did not violate the Retroactively Clause of the Ohio Constitution.

Since the *Walls* and *Warren* decisions, appellate courts have interpreted those cases to stand for the proposition that offenders have no substantive or fundamental right to a bindover hearing. More fundamentally, the courts have explained offenders have no substantive right to have their cases heard in juvenile court. [22] However, in both this case and in its prior decision in *Webber*, the Eighth District has strongly implied the defendants had a vested substantive right to have their cases heard in juvenile court.[23]

Appellee never had a substantive right to be tried in the juvenile court. If this court agrees with that principal, as it suggested in both *Walls* and *Warren*, then the application of R.C. 2152.02(C)(3), R.C. 2151.23(I) and R.C. 2152.12(J) is not impermissibly retroactive. There can be no infringement upon a substantive right where no substantive right exists. The decision

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[20] *State v. Warren*, 118 Ohio St.3d 200, 209.
[21] *Id*.
[22] See e.g. *State v. McKinney*, 2015-Ohio-4398 at ¶21 (in which the First District explained there is nothing in the United States or Ohio Constitutions that guarantees a juvenile the right to be tried in a juvenile court or have a bindover proceeding); see also, *State v. Adams*, 2012-Ohio-5088 at ¶18-20 ("changing from the juvenile to the general division of the common pleas court did not involve any substantive right"); *State v. Scharr*, 2004-Ohio-1631 at ¶27; see generally, *State v. Chavis*, 2015-Ohio-5549; *State v. Martin*, 2015-Ohio-1339; *State v. Fortson*, 2012-Ohio-3118; *State v. Washington*, 2005-Ohio-6546.
[23] Orr at ¶8-9; *Webber* at ¶11.

to change the tribunal before which juvenile offenders, apprehended as adults, was a rational decision of the General Assembly. This Court has repeatedly explained that felons have no reasonable right to expect that their conduct will never thereafter be made the subject of legislation.[24]

Whether or not Appellee could have been tried as an adult at the time he committed the offense is immaterial to the Retroactivity Clause analysis. Jurisdictional changes are remedial and do not affect the substantive rights of the parties. Absent the implication of a substantive right, the statutory provisions in question cannot not run afoul the Retroactivity Clause contained in Section 28, Article II of the Ohio Constitution.

Ex Post Facto Clause of the United States Constitution

The Ex Post Facto Clause prohibits four types of legislative enactments: 1) every law that makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action; 2) every law that aggravates a crime, or makes it greater than it was, when committed; 3) every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed; 4) every law that alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offence, in order to convict the offender.[25]

The United States Supreme Court has repeatedly held that these four categories provide "an exclusive definition of ex post facto laws."[26] More recently, the Court has said that it is "a

[24] See e.g., *State v. White* (2012) 132 Ohio St. 3d 344, 354 (quoting *State ex rel. Matz v. Brown* (1988), 37 Ohio St.3d 279, 281).
[25] See *Carmell v. Texas* (2000), 529 U.S. 513. 522, quoting *Calder v. Bull*, 3 U.S. (3Dall.) 386, 390. See also State v. Adams (2015), 144 Ohio St.3d 429, 496.
[26] *Collins v. Youngblood* (1990), 497 U.S. 37, 42.

mistake to stray beyond *Calder*'s four categories."[27] As such, considerations about the differing purposes of the juvenile and adult justice systems, relative culpability of juveniles compared to adults, and jurisdictional changes to the tribunals authorized to decide the matter are irrelevant to the Ex Post Facto Clause analysis.[28] The Court must not look beyond the four categories set forth in *Calder*.

In this case, there should be no question that both rape and kidnapping, regardless of Appellee's age, were crimes punishable under Ohio law at the time he is alleged to have committed them.[29] In fact, the lower courts seemed unconcerned with any of the *Calder* factors aside from the third factor relating to an increase in punishment. While not directly referencing any of the factors, the Eighth District's decision hinges upon whether R.C. 2152.02(C)(3), R.C. 2151.23(I) and R.C. 2152.12(J) inflict greater punishment upon Appellee than the law that existed at the time he allegedly committed the offenses.

Although the statues at issue do not themselves speak to punishment, the Eighth District concluded that application of the current version of the statutes would inflict greater punishment upon Appellee than the law that existed at the time he allegedly committed the offenses.[30] A superficial review of the statute outlining the possible dispositions for a delinquent child in 1993 would appear to confirm the intuitive notation that the available punishment for juvenile was less

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[27] *Carmell v. Texas*, (2000), 529 U.S. 513, 539.

[28] See also, *Landgraf v. USI Film Products* (1994), 511 U.S. 244, 274 (explaining that the Court has regularly applied intervening statutes conferring or ousting jurisdiction, regardless of where jurisdiction was appropriate when the conduct occurred as jurisdictional statutes speak to the power of the court rather than to the rights or obligations of the parties.)

[29] This Court has previously addressed the "civil" label attached to juvenile proceedings does not mean that the conduct in question was not criminal under the first *Calder* factor. See *Walls* 445-446.

[30] While not mentioning *Calder* or the other factors, the lower court referenced its earlier decision in *Webber* that it was "additionally" concerned that application of the amended statutes would "clearly impose a greater penalty than the juvenile law in effect at the time of the alleged conduct." Orr at ¶8-9

than that available to adult offenders.[31] However, case law surrounding the jurisdiction of the juvenile court and what a dispositions a court could order under then-existing R.C. 2151.355(A)(11) complicate the analysis.

Unlike their modern counterparts, the relevant portions of R.C. Chapter 2151 conferring jurisdiction to the juvenile courts over children who were alleged to be delinquent in 1993 included no language terminating the jurisdiction of the juvenile court when a "child" attained the age of twenty one.[32] The plain language of R.C. 2151.011(B) read in conjunction with R.C. 2151.23(A)(1) clearly indicate that the juvenile courts retained jurisdiction over individuals who are alleged to have committed offenses as a juvenile "irrespective of his age at the time the complaint is filed."[33]

Following the plain language of the relevant statutes, as they existed in 1993, Appellee would have been subject to prosecution for the conduct alleged in this case in juvenile court regardless of when the complaint was filed. As such, he would have been on notice that regardless of when his crime was discovered, he could face any of the dispositions set forth in R.C. 2151.355 as it existed in 1993. For the purposes of the second and third *Calder* factors in the Ex Post Facto Clause analysis, this Court should consider the vast discretion available to juvenile court judges under R.C. 2151.355(11).

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[31] See 2151.355 (1993)

[32] See R.C. 2151.23(A)(1) (1993); 2151.011(B)(1) (1993) defining "child" as "a person who is under the age of eighteen years, except that any person who violates a federal or state law or municipal ordinance prior to attaining eighteen years of age shall be deemed a "child" irrespective of his age at the time the complaint is filed or hearing had on the complaint"); See also Juv. R. 2(2) and 2141.02 (A) (1993) (defining "Delinquent Child").

[33] R.C. 2151.011(B)(1); for a sample of the jurisdictional debate see e.g., *In re J.B.* (1995), 71 Ohio Misc.2d 63 (the plain language of R.C. 2151.011(B)(1) and Juv. R. 2(D) as they existed in 1995 conferred jurisdiction to the juvenile court irrespective of his age); *See contra*, In Matter of Jay I. (1995) 1995 WL 604613 (a divided panel of the Sixth District found the juvenile court lacked jurisdiction over a twenty-four-year old man).

To illustrate why this discretion was necessary, the Court should consider how this case, factually unchanged, would have been handled under the law as it existed when Appellee is alleged to have committed the offenses. When technological advancements allowed the identification, he would have been charged and tried in juvenile court.[34] However, as Appellee is over the age of twenty one, he could not be committed to the Department of Youth Services. Instead, the court would have to use one of the other dispositions available to it under R.C. 2151.355. The traditional dispositional options in R.C. 2151.355 would have little impact on Appellee.

As early as 1973, the Seventh District Court of Appeals encountered a similarly vexing situation.[35] In *Cox,* the two juveniles were adjudicated delinquent and ordered to serve a commitment in the Department of Youth Services. However, for an unknown reason they did not appear for their commitment prior to their twenty first birthdays. No longer having the authority to impose a DYS commitment, the trial court used its authority to "make such further disposition as the court finds proper" (under the previous version of R.C. 2151.355) and sentenced the defendants to serve the time in the county jail. The defendants claimed that the juvenile court had no jurisdiction and no authority to incarcerate them after they reached the age of twenty one.

The Seventh District disagreed and affirmed the sentence. The Court explained that R.C. 2151.01 requires the Court liberally interpret the provisions of Chapter 2151 to provide judicial procedures through which Chapters 2151 of the Revised Code are executed and enforced, and in which the parties are assured of a fair hearing, and their constitutional and other legal rights are recognized and enforced. As such, the authority to "make such further disposition

[34] Despite his current age, he would not be eligible for transfer to the general division under R.C. 2151.26 (1993) as he was under 15 when the conduct in question is alleged to have occurred.
[35] *In re.Cox* (1973), 36 Ohio App.3d 65.

as the court finds proper" included the authority to treat a "child" (over the age of twenty one) as an adult and sentence them within parameters the legislature set forth for adult offenders.[36]

This court itself has recognized that R.C. 2151.355(A)(11) provides juvenile court the ability to impose dispositions not explicitly authorized by R.C. Chapter 2151, but are otherwise authorized in the Revised Code.[37] In *Caldwell*, this Court examined a trial court's decision to impose consecutive sentences upon a juvenile which were authorized under the substantive criminal statutes, but were not enumerated as an option under R.C. 2151.355. This Court held that "make any further disposition that the court finds proper" should be given its plain meaning and courts "are instructed by R.C. 2151.01 to liberally interpret and construe R.C. Chapter 2151 to effectuate its purposes."

Revised Code 2151.355(11), as it existed in 1993, permitted a court to "make any further disposition that the court finds proper, except that the child shall not be placed in any state penal or reformatory institution, county, multicounty, or municipal jail or workhouse, or any other place where any adult convicted of crime, under arrest, or charged with crime is held." While the statute offers some prohibitions *where* a "child" can be incarcerated, it places no limit on the *duration* for which a "child" can be incarcerated. More importantly, it explicitly contemplates the incarceration those deemed to be children other than with the Department of Youth Services.

The question must then be answered whether R.C. 2152.02(C)(3), R.C. 2151.23(I) and R.C. 2152.12(J), as applied to Appellee, would result in greater punishment than that which he would have been subject to under the 1993 statutory scheme. While that is a difficult question to answer, Appellee is subject to no greater potential period of incarceration than he was in 1993. The broad language of R.C. 2151.355(11) permitted the incarceration individuals deemed a

[36] *Id*. 69-70.
[37] *In re Caldwell* (1996) 76 Ohio St.3d 156, 158.

"child" without respect to duration. Moreover, the juvenile court (as it existed in 1993) was not divested of jurisdiction when the "child" attained the age of twenty one. As such, the period of potential incarceration was only limited by other statutory constraints and constitutional considerations.

By its very terms R.C. 2151.355(11), as it existed in 1993, prohibits a "child" incarcerated in number of specifically delineated adult facilities. However, that difference is irrelevant under *Calder*. It permits their incarceration. While the Ex Post Facto Clause affords Appellee certain protections, the location and population with whom one is incarcerated is outside the factors set forth in *Calder*.[38] Such a procedural change is undoubtedly unpalatable but does not amount to a constitutional violation.[39]

The *amicus* is not suggesting would have been likely or even plausible that Appellee would have experienced a lengthy period of incarceration, other than at DYS, had he been adjudicated on this case in 1993. However, the legal framework authorizing such incarceration for a period up to the limits imposed by the criminal statutes was in place at the time he is alleged to have committed the offense.[40] Should this Court agree that the *potential* for such punishment was authorized under Ohio Law at the time he committed the offense, Appellee's *ex post facto* challenge must fail.

[38] *Calder*, supra.
[39] See e.g. *Dobbert v. Florida* (1977), 432 U.S. 282, 293-94 (procedural changes may work to the disadvantage of a defendant, but do not implicate the ex post facto clause).
[40] See *Cox*, *supra*, interpreting R.C. 2151.355(11)

If an *ex post facto* violation occurred in this case, transfer of the case, not dismissal is the appropriate remedy.

The jurisdictional gap created by the Eight District's interpretation of the relevant statutory provisions renders a significant population of juvenile offenders entirely unaccountable for their misconduct. Juvenile offenders who committed their offenses prior to the effective date of the 1997 Amendments to R.C. Chapter 2151, and who were less than fifteen years old when the offenses were committed, are beyond the jurisdiction of both the juvenile and general divisions of Ohio courts.

Despite the fact that the relevant statutory changes occurred in 1997 the population in question remains substantial. The Office of Juvenile Justice and Delinquency Prevention have tracked data relating to juvenile offenders for more than fifty years. In examining the juvenile arrest rate for violent crimes 1990 through 1997, the period immediately preceding the relevant statutory changes, saw the highest juvenile violent crime rate since statistics had been kept.[41] For example, the juvenile arrest rate in 1995 was nearly 500 per 100,000 persons in the resident population. By comparison, that is more than twice the rate for the same population examined in 2014.[42]

During the relevant time period, Ohio's Juvenile population remained constant around 2.8 million children.[43] By the end of the 1990s, Ohio's population included approximately 800,000 juveniles between the ages of ten and fourteen years of age.[44] Applying the violent crime arrest rate for juveniles to the juvenile population, one can quickly see that thousands of children

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[41] "Violent Crimes" as recorded by these statistics are limited to murder, non-negligent manslaughter, rape, robbery, and aggravated assault. See OJJDP Statistical Briefing Book. Online. Available: http://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05201. December 13, 2015.

[42] *Id*.

[43] http://www.publicsafety.ohio.gov/links/ocjs_Statistics.pdf, p 72.

[44] U.S. Census Bureau, Census 2000 Summary File 4

between the age of ten and fourteen are arrested for violent crimes each of those years. When biological or other forensic evidence collected from those arrests are examined with new technology in the coming years, Appellee will be the first of many to escape all accountability for past misconduct.

In other contexts, if the application of a statute would violate the Ex Post Facto Clause, a reviewing court would simply apply the version of the statute in effect when the conduct occurred. Only if no statute criminalized the misconduct at the time of the offense is the defendant entitled to a complete dismissal. However, because the lower courts found the juvenile court lacked jurisdiction under the present day statutes, Appellee cannot be held accountable in either forum. Such a result would be absurd and contrary to the intent of the General Assembly. It is a fundamental axiom of judicial interpretation that statutes must be construed to avoid unreasonable or absurd consequences.[45]

While the Court has no duty to fix the mistakes of the General Assembly, the jurisdictional gap in this case is one of *judicial* creation. If the Court applied the relevant statutory framework from R.C. 2151, as it existed in 1993, Appellee's case could be transferred to the juvenile court pursuant to then existing R.C. 2141.25. Even after twenty one, Appellee would be considered a child a subject to the jurisdiction of juvenile court.[46] The jurisdictional gap is only created because of the judicial convention that the jurisdictional statutes in place when a complaint is filed control.

Should this Court find that application of R.C. 2152.02(C)(3), R.C. 2151.23(I) and R.C. 2152.12(J) are unconstitutional as applied to Appellee, this Court should then apply the relevant

[45] State ex rel. Dispatch Printing Co. v. Wells (1985) 18 Ohio St.3d 382, 384; State ex rel. Cooper v. Savord (1950), 153 Ohio St. 367.
[46] R.C. 2141.011(B)(1) (1993)

portions of R.C. Chapter 2151 that were in place at the time Appellee is alleged to have committed the offenses. Such a result is necessary to avoid frustrating the will of the General Assembly and creating a jurisdictional gap Appellee will not be the last to exploit.

Conclusion

The Eighth District failed to grant the relevant statutes the strong presumption of constitutionally that they must be afforded. Instead, they reached the conclusion that multiple constitutional violations occurred in this case with little analysis and scarce reference to applicable precedent. Had the lower courts applied *Van Fossen* and its progeny, they would have determined that the relevant statutes do no violate Section 28, Article II of the Ohio Constitution. Moreover, had the lower courts considered the extraordinary latitude juvenile courts possessed in 1993 in conjunction with the lack of a jurisdictional terminus, the courts would not so readily found Appellee carried his burden.

The issues present in this case are not a mere historical anomaly that Courts can simply cast aside. Across Ohio there are thousands of unsolved crimes for which biological, fingerprint, or other evidence may yet reveal a suspect. Many of those will have been committed by a juvenile who was under the age of fifteen when the offense was committed. Should the Court affirm the decision of the lower courts, an entire class of defendants escape all possibility of prosecution. More importantly, an entire class of victims will never see justice be served when their assailant is finally identified. Such an outcome would be a tragic and ironic perversion of the intent of the General Assembly.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned Attorney hereby certifies that a true and accurate copy of the foregoing MERIT BRIEF OF *AMICUS CURIAE* OHIO PROSECUTING ATTORNEYS ASSOCIATION IN SUPPORT OF APPELLANT was served upon the following counsel via regular mail this 1st say of June, 2016 Erika Cunliffe, 310 Lakeside Ave, Suite 200 Cleveland OH 44113; Daniel T Van, The Justice Center 9th Floor, 1200 Ontario Street, Cleveland OH 44113.

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