No. 17-3857

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JANE DOE, Appellee, v. OHIO ATTORNEY GENERAL, ET AL., Appellants.	:	On Appeal from the United States District Court for the Southern District of Ohio Western Division
	:	District Court Case No. 1:12-cv-00846

REPLY BRIEF OF APPELLANTS MICHAEL DEWINE, OHIO ATTORNEY GENERAL, AND TOM STICKRATH, SUPERINTENDENT OF THE OHIO BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION, IN THEIR OFFICIAL CAPACITIES

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Doe reduces her merits argument to a simple proposition: the Constitution requires that Ohio have some procedure to assess her "current dangerousness." Doe Br. 36. That argument fails under *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003), unless Doe's current dangerousness is of some "consequence" under Ohio's legal regime, *id*. at 7. But Doe has not, and cannot, show that a hearing about her current dangerousness would change her registration status under Ohio law. The law in effect when she was designated a predator required a court to evaluate her crime and character *at sentencing*. *See* Ohio Rev. Code § 2950.09(B)(1), (2) (2006). That initial process gave Doe all the procedure she was (and is) due, and the law had no provision to evaluate Doe ever again. *Id.* § 2950.09(D)(2) (2006) (adjudication "permanent" and "in no case shall" be "terminated").

The law in force today similarly designates offenders for registration *at the time of the offense*. Current law also makes no room to reevaluate that designation, at least for those with the highest designation. Ohio Rev. Code § 2950.07(B)(1). The hearing Doe requests would be no more fruitful than a 14-year-old requesting a hearing to prove that she is entitled to a driver's license because she is the best driver the world has ever seen. *See Public Safety*, 538 U.S. at 8 (Scalia, J., concurring); Frank Easterbrook, *Substance and Due Process*, 1982 S. Ct. Rev. 85, 88 (1982) ("No entitlement, no process."). Any hearing about Doe's current risk

of re-offending is irrelevant to her registration duty. It does not matter what Doe can prove. Ohio law (then and now) still requires that she register as a consequence of her past conviction and past adjudication as a sexual predator. Doe cannot overcome this fundamental flaw in the district court's judgment.

Taking one step back in the order of operations (but following the sequence of Doe's brief), Doe cannot show a protected liberty or property interest. *See, e.g.*, *Swarthout v. Cooke*, 562 U.S. 216, 219 (2011) ("We first ask whether there exists a liberty or property interest of which a person has been deprived, and if so we ask whether the procedures followed by the State were constitutionally sufficient."). Doe disclaims any *constitutional* source of such a right. *See* Doe Br. 23. That leaves Doe with the task of identifying a source in codified law. She cannot find a right in federal law about housing subsidies because, as she admits, that law affirmatively blocks her use of that benefit. Doe Br. 18. Doe is thus left to show that an Ohio statute gives her some liberty or property interest. But Doe *attacks* the Ohio statute precisely because it forswears any liberty or property interest in a new sex-offender designation. Doe's Janus-faced view of Ohio law sums up the problem with her claim, and the district court's holding.

Taking another step back in the order of operations, Doe has not hurdled the non-substantive barriers to the relief that she requests. The named defendants—despite their roles in drafting forms and regulations—do not enforce the sex-

registry laws. Prosecutors do. So the Attorney General and the Superintendent are not proper defendants under *Ex Parte Young*. Redressability is also a barrier. Neither Defendant can force a state-court hearing, and no state judge could terminate Doe's registration obligations. Doe therefore lacks standing. These barriers provide additional reasons to reverse.

A. Doe Cannot Distinguish Binding Supreme Court And Circuit Precedent

As Defendants elaborated in their opening brief, the Supreme Court's *Pubic Safety* decision and this Court's *Fullmer* decision (and persuasive authority from elsewhere) shut the door on Doe's procedural-due-process claim. Def. Br. 33-41; *Fullmer v. Mich. Dep't of State Police*, 360 F.3d 579 (6th Cir. 2004). Doe misreads those cases and misreads Ohio law when she claims that those cases "find[]" that a registrant is "entitled to a hearing" when a registry law is "based on present dangerousness." Doe Br. 4.

Doe misreads the cases because neither one found that a registrant is "entitled to a hearing." *Id*. Both cases instead held that the registrant had no due-process right to a new hearing. *Public Safety*, 538 U.S at 7-8; *Fullmer*, 360 F.3d at 582-83. And what those cases said about registries applies equally to Ohio's old registration system. *Public Safety* observed that the Connecticut *executive* had made "no determination" that any registrant was dangerous. 538 U.S. at 5 (quotation marks omitted). The same was true in Ohio. Instead, a trial judge made

that call at the time of conviction. *See* Ohio Rev. Code 2950.09(B) (2006). *Fullmer* is even more on point. It held that—"[r]egardless" of language in a statute suggesting future dangerousness—a registrant had no due-process right to a hearing about that fact because state law required registration whether the registrant was "'currently dangerous or not.'" 360 F.3d at 582. So too in Ohio. State law requires registration of all those adjudicated dangerous *at the time of conviction*, whether or not they are currently dangerous *years later*. Under these cases, the facts that Doe wants to show at a hearing—that she is a low risk of reoffending in 2018 or beyond—must be "relevant *under the statutory scheme*." *Public Safety*, 538 U.S. at 8 (emphasis added). Doe points to no part of Ohio law that would make the outcome of a 2018 proceeding about her risk of recidivism relevant. That ends her case.

Doe also misreads Ohio law. Ohio's old law, like those upheld in the Supreme Court and this Court, assessed future risk of recidivism by evaluating factors *at the time of conviction*, but never again. The only difference between the statutes upheld and Ohio's old law is that those statutes made the prediction of future risk in a categorical fashion from the fact of a conviction alone, whereas Ohio's old statutes made that prediction case-by-case at a hearing that included cross examination, state-paid experts, and defendant-specific evaluations. *See* Def.

Br. 7, 9. All of the statutes predicted future risk at the time of sentencing; none of the statutes permitted *reevaluation* of that risk many years later.

Doe proposes other supposed distinctions to steer around these binding precedents, but none has traction.

First, Doe wrongly insists that the statutory text shows how "current risk" played a role in Ohio's old registration laws. Doe Br. 8. Doe rightly calls this the "key" to her whole argument, *id.*, but that key unlocks no doors. She quotes Ohio's old statute defining a predator as a person "likely" to reoffend, *id.*, but assigns that phrase the wrong meaning. The language about reoffending represents a prediction *at the time of adjudication*, not years or decades in the future. That is true as a matter of language and logic.

Linguistically, the "is likely" phrase plainly points to a judicial prediction at the time of sentencing, not at any future time. That is why the prediction was made by the "sentencing judge," Ohio Rev. Code § 2950.01(G)(2) (2006), and why the designation was included in the "sentence" and "judgment of conviction," *id.* § 2950.09(B)(4) (2006). That sentencing-time decision was declared "permanent." *Id.* § 2950.09(D)(2) (2006). Given this context, Doe's argument violates the "'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" *Sturgeon v. Frost*, 136 S. Ct. 1061, 1070 (2016) (citation omitted).

Doe's reading also clashes with the factors the adjudicating judge had to consider when designating Doe a predator. The listed factors related mostly to the offender's past conduct or to the sex crime itself. *See, e.g.*, Ohio Rev. Code § 2950.09(B)(3)(b) (2006) (prior offenses); (B)(3)(e) (use of drugs to impair victim); (B)(3)(h) (past sexual contact with victim); (B)(3)(i) (cruelty during sex crime). Because those factors could not change over time, the statute contemplated that judges would evaluate recidivism at the time of sentencing, and never again. All told, Doe's reading of the "is likely" phrase "fits poorly" with the rest of the statute. *Cyan, Inc. v. Beaver Cty. Emples. Ret. Fund*, 138 S. Ct. 1061, 1071 (2018).

Logically, the *absence* of a mechanism to evaluate ongoing recidivism risk years later shows that the old law evaluated future risk once, and did not revisit it. If Ohio's General Assembly meant to have ongoing recidivism hearings, "it knew exactly how to do so." *SAS Inst., Inc. v. Iancu*, No. 16-969, 2018 U.S. LEXIS 2629, at *15 (Apr. 24, 2018). For juveniles, Ohio law *has* such a mechanism. *See* Ohio Rev. Code § 2152.85; *Jennings v. Rodriguez*, 138 S. Ct. 830, 844 (2018) (holding that express inclusion of one thing creates "negative implication" against similar implicit provision). But no such mechanism exists for adults.

Precedent confirms these textual and logical insights. The Connecticut and Michigan laws upheld in *Public Safety* and *Fullmer* both predicted future

dangerousness at the time of conviction. The Connecticut law aimed to "'alert the public by identifying *potential sexual offender recidivists*.'" *State v. Waterman*, 825 A.2d 63, 67 (Conn. 2003) (citation omitted) (emphasis added). And the Michigan law—which labeled registrants as "potential serious menace[s] and danger[s]"—"was enacted . . . with the intent" to protect "against the commission of *future criminal sexual acts* by convicted sex offenders." Mich. Comp. Laws § 28.721a (emphasis added); *see also* 73 F.R. 38030, 38044 (July 2, 2008) (noting that registration may reduce "likelihood of registrants committing more sex offenses" because the fact of registration itself may "discourage . . . further criminal conduct"). Designation as a lifetime registrant in Connecticut or Michigan carried the same message of future danger as Ohio's law. Those holdings control here.

What is more, Doe's request that an Ohio judge reclassify her would *remove* the very language she makes the pivot of her argument. The "is likely" language is no longer part of Ohio law. So an Ohio judge asked to classify Doe under current law would not evaluate her risk *at all*. Under current law, the General Assembly has decided that *every* registrant designated as a sexual predator under the old law should be placed in Tier III today (the highest designation). Ohio Rev. Code § 2950.01(G)(5). If Doe gets the hearing she thinks is somehow required, that hearing would not ask the question whether Doe is "likely" to reoffend.

To be sure, few registrants from the old system are designated under Tier III, so Doe's hypothetical hearing might be unique. That is because the Ohio Supreme Court held that the *executive* department could not reclassify previously designated offenders. *State v. Bodyke*, 933 N.E.2d 753 (Ohio 2010). But Doe wants a *judicial* officer to reclassify her. That officer would be bound by current Ohio law to implement the *legislative* judgment that all offenders previously designated as sexual predators must be classified as Tier III offenders. (One caveat: Although the Ohio Supreme Court has declared some substantive restrictions non-retroactive under the Ohio Constitution, *see State v. Williams*, 952 N.E.2d 1108 (Ohio 2011), the procedure for classifying registrants through judicial action is still valid). In other words, if Doe gets the hearing she wants, she will be classified under a law that, even she admits, is not distinguishable from those laws upheld in *Public Safety* and *Fullmer*. *See* Doe Br. at 12-14.

Doe pushes back on whether a hearing today would use the classification criteria in place today. Doe Br. 27. Yet she offers no reason why an Ohio court could ignore the statute's explicit direction that those previously adjudicated as sexual predators should be classified as Tier III.

Second, Doe cites more general statutory language that, she says, reveals the "relevance of present risk." Doe Br. 8-10. This tour of even older Ohio law (pre-2003) shows no more than a shift in legislative thinking from one era to the next. The language Doe highlights includes some phrases no longer in force when Doe was adjudicated a predator ("high risk" of future offenses was modified to "risk" in 2003, *see* 150 Ohio Laws (IV) 6,558, 6,645 (2003)). Doe thinks that this general language signals a legislative "purpose" to mandate only the release of "correct information" about a registrant's current risk of recidivism. But courts cannot elevate the "'plain purpose' of legislation at the expense of the terms of the statute itself." *Bd. of Governors of Fed. Res. Sys. v. Dimension Fin. Corp.*, 474 U.S. 361, 374 (1986). And the broader point is that Doe's citation to general language makes little sense in a lawsuit where she explicitly challenges the more specific language that she asks the court to *enjoin*. Her request for relief, by definition, means that the statute *itself* does not support her position. If this text argument is right, Doe need not make a *federal constitutional* claim. She should be asserting a *state law* claim in state court.

Third, Doe points to "scientific scholarship" to contest the legislative judgment that those adjudicated sexual predators in the past pose some lifetime risk of re-offense. Doe Br. 11-12. That predictive policy choice is not something a court can override based on its own views of public policy. The Supreme Court

has already rejected the argument that a legislature must cite evidence about the predictive value of criminal adjudications. *Jones v. United States*, 463 U.S. 354, 364 n.13 (1983). More generally, "[a] district court cannot . . . override [a legislative] policy choice, articulated in a statute, as to what behavior should be prohibited." *United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 497 (2001); *see also SCA Hygiene Prods. Aktiebolag v. First Quality Baby Prods., LLC*, 137 S. Ct. 954, 967 (2017) ("we cannot overrule Congress's judgment based on our own policy views"); *cf. State v. Blankenship*, 48 N.E.3d 516, 525 (Ohio 2015) (plurality op.) ("While some may question whether the registration requirements are the best way to further public safety, questions concerning the wisdom of legislation are for the legislature."). Besides, if Doe were right that "scholarship" trumps the statute, the Supreme Court and this Court were wrong to let the Connecticut and Michigan legislatures predict future recidivism from the fact of a past conviction.

Fourth, without explaining how it distinguishes *Public Safety* or *Fullmer*, Doe invokes this Court's ex post facto decision about Michigan's law. She says that the holding in *Does #1-5 v. Snyder*, 834 F.3d 696 (6th Cir. 2016), turned, in part, on the absence of "'individualized assessments'" of risk. Doe Br. 12 (quoting *Snyder*). But Ohio's old law mandated individualized assessments. Ohio judges, after a full hearing with expert testimony and cross-examination, made individual

risk assessments. *See* Ohio Rev. Code § 2950.09(B)(2) (2006). Whatever lesson *Snyder* teaches, it has no bearing on the Ohio law that Doe attacks.

Beyond these failed distinctions, Doe's own framing shows why *Public Safety* and *Fullmer* foreclose her claim. In her words, if a registrant "wants a hearing" about "current dangerousness," then now-current danger "should be material to classification." Doe Br. 13. Doe offers no theory about how Ohio's old law made now-current danger "material" in the sense the Supreme Court used that term. Under *Public Safety*, a fact is material (and therefore might entitle a registrant to some additional process) if it might change the registrant's status *under state law*. Ohio's law, like that in Connecticut and Michigan, made now-current danger immaterial in this sense because no proof of now-current danger (or non-danger) could change a registrant's duty. The classification was permanent. It does not matter that Ohio used a *more protective* process on the front end to decide who should register. After that process, the Ohio law and the laws upheld in *Public Safety* and *Fullmer* are identical.

As a last stab at getting out from under these precedents, Doe cites a case that the Defendants have already distinguished. Doe Br. 16 (citing *State v. Briggs*, 199 P.3d 935 (Utah 2008)). *Briggs* distinguished registry information tied to a prior conviction, *id.* at 948, from registry information tied to an *executive* prediction about a registrant's likely target victims, *id.* A full criminal trial

preceded the first decision, while no process preceded the second. Ohio law contains no analogous executive proclamation about sex offenders. To the extent the Utah Supreme Court suggested any broader due-process right to a new hearing, it is inconsistent with *Public Safety* and *Fullmer*.

In the end, Doe calls the supposed distinction between conviction-based registries and assessment-based registries the "crux" of her case. Doe Br. 12. She has not, however, carried the heavy burden to distinguish binding Supreme Court and circuit precedent.

B. Doe Cannot Show A Protected Liberty Interest That She Retains Despite Her Previous Adjudication

Defendants explained in their opening brief that Doe has no supporting liberty interest in federally subsidized housing or in freedom from registration more generally. Def. Br. 28-33. Doe's scattered responses do not rebut the core problem that her prior conviction and adjudication as a sexual predator "abrogate[d]" whatever pre-adjudication interest she may have had. *Public Safety*, 538 U.S. at 8 (Scalia, J., concurring).

Doe's prior adjudication as a sexual predator renders irrelevant her claim that individuals *without such an adjudication* may have property rights in federal public housing. Doe Br. 17-19. Her adjudication also negates Doe's claimed stigma-plus argument (under *Paul v. Davis*, 424 U.S. 693 (1976)) because the "plus[es]" that she identifies are public housing and freedom from other

restrictions (and so count as "interests" only for those without those adjudications). *See* Doe Br. at 20. Put another way, if housing or freedom from registration duties count as liberty or property interests *regardless of prior adjudications*, no State could make registration permanent because those interests are lost forever in those States that tie registration solely to the criminal conviction. *Public Safety* and *Fullmer* again bar the door because they uphold such laws.

Doe gains nothing by citing (at 20-21) the Seventh Circuit's *Schepers* decision, as that case dealt with the liberty interest in not being *erroneously* designated a sex offender. *See Schepers v. Comm'r*, 691 F.3d 909, 914-15 (7th Cir. 2012). In other words, under Indiana law, it *is* relevant that a person is not really a sex offender. (Ohio law is the same.) But Doe's case depends on making relevant what is irrelevant—her alleged lower risk of recidivism now compared to in 2006. Unlike the plaintiff in *Schepers*, Doe does not claim that she was erroneously adjudicated a sex offender *back in 2006*; she claims that she somehow should be relieved of that classification *today*. *See, e.g.*, Doe Br. 36 ("Doe does not ask Defendants to personally reclassify her, reopen a court's final judgment, or compel a State court to give her a hearing. . . . Rather, she asks for a chance to request a hearing on current dangerousness (not her dangerousness in 2006).").

Also unhelpful for Doe is her discussion (at 22) of *Cutshall v. Sundquist*, 193 F.3d 466 (6th Cir. 1999), which upheld registry obligations against a

procedural-due-process attack, and dissolved a district-court injunction. Doe compares the relative burdens of the Tennessee law involved there and the Ohio law involved here. But all that matters for the liberty-or-property-interest question is whether Doe can identify a protectable interest in substantive law or the substantive component of the Fourteenth Amendment. The burdens of the two laws make no difference.

Doe then tangles with the procedure/substance distinction, but misses the point of Defendants' argument that Doe cannot ground her liberty interest in the Fourteenth Amendment if she has abandoned a substantive-due-process argument. *See* Def. Br. 29-30; Doe Br. 23 (disclaiming liberties protected by substantive due process). The point is that the "plus" in stigma-plus must either be "recognized and protected by" positive law such as state statutes, *Paul*, 424 U.S. at 710, or the substantive component of the Fourteenth Amendment, *id* at 710 n.5. Doe has not shown the first, and she has disclaimed the second. Instead, Doe points over and over to her public-housing restriction (*see, e.g.*, Doe Br. at 2, 17, 20, 26) or the kind of reputation-only interests rejected in *Paul* itself. 424 U.S. at 712; Doe Br. 25. Neither qualifies in light of Doe's conviction and adjudication.

When Doe finally confronts the *Greenholtz* decision and its distinction between a liberty lost and a liberty hoped for, she says only that her interest in housing is more important than the parole release in *Greenholtz v. Inmates of*

Nebraska Penal & Correctional Complex, 442 U.S. 1 (1979) (or the employment opportunities in *Cutshall*). That replaces the objective grounding of the "plus" in positive law with an impermissible "conclusion about the importance of the interest" to the litigant. Erwin Chemerinsky, *Constitutional Law* 590 (4th ed. 2011). And it does not grapple with what the Supreme Court has called "a crucial distinction" between loss of an existing liberty and denial of a liberty sought. *Greenholtz*, 442 U.S. at 9.

Rounding out her points about the liberty or property interest, Doe again offers a mistaken argument. She concedes that a registrant could not "force" a new classification hearing on the heels of an already completed one, at least until the registrant's "risk decreases." Doe Br. 27. That is not the right question under *Paul*. A liberty or property interest does not spring forth when some legally *irrelevant* fact might change. The only question is whether substantive law protects the interest. Doe has not cited any source for her claimed liberty interests. In the sex-offender context, for example, a State can make a fact irrelevant to classification. *See Public Safety*, 538 U.S. at 7-8. That is what Ohio has done here by legislating permanent classifications for certain adjudications made at the time of sentencing.

C. Doe Cannot Overcome The Jurisdictional And Procedural Hurdles To Her Claim

Doe concludes her brief with the logically predicate questions of standing and *Ex Parte Young*. As Defendants detailed in their opening brief, Doe has sued individuals who are not amenable to a federal order because they do not enforce the sex-offender laws. Beyond that, Doe lacks Article III standing because the state-court hearing that she requests is not in the Defendants' power to initiate. Def. Br. 17-27. Doe frames her requested remedy in a way that proves Defendants' point. She demands that two Ohio executive branch officials "stop labeling and restricting" her "*when she proves in court*" that she is not "presently likely to reoffend." Doe Br. 28-29 (emphasis added). Her request is contingent. It seeks nothing of Defendants now. Doe thus confirms that she wants an injunction that guarantees her a hearing in state court. Defendants (executive-branch officers) cannot compel Ohio's judges (judicial-branch officers) to give her a hearing in violation of state law.

Doe begins with the off-base claim that the Defendants "enforce[]" the sex-offender laws. Doe Br. 29. She strings together two-plus pages of the Ohio Revised Code about the Attorney General's duties related to the sex-offender registry, *id*. at 30-32, but cites no *enforcement* power. She begins by discussing a duty the Attorney General does *not* have, because the Ohio Supreme Court has said so. Doe quotes the now-invalid requirement that the Attorney General "determine

. . . [a] new classification" for previously adjudicated offenders. Ohio Rev. Code § 2950.031(A)(1), *abrogated by Bodyke*, 933 N.E.2d at syllabus ¶¶ 2-3. Doe then cites various obligations to draft regulations and set up a database. Drafting regulations and maintaining databases is not enforcement. A legislature is not amenable to an *Ex Parte Young* suit for drafting a law, *see* 209 U.S. 123, 149 (1908) (enjoining Attorney General from enforcing law passed by Minnesota legislature), and an executive is not amenable for simply maintaining a database, *see e.g.*, *Peterson v. Martinez*, 707 F.3d 1197, 1206 (10th Cir. 2013) (rejecting injunction against executive who "'maintain[ed] a database'") (citation omitted); *Hutto v. S. C. Ret. Sys.*, 773 F.3d 536, 550-551 (4th Cir. 2014) (rejecting injunction against officials who had only "'general administration and responsibility"" for state program) (citation omitted). Doe evades these authorities.

Switching to Article III, Doe cites (at 34-35) two dissimilar cases. *Doe v. Virginia Department of State Police* challenged an executive reclassification, 713 F.3d 745, 751-52 (4th Cir. 2013)—something Ohio *cannot do*. *Bodyke*, 933 N.E.2d 753. And *Cutshall* involved the obligation to register and the release of registry information—actions Doe admits are only *derivative* of her request for a new hearing. 193 F.3d at 469; *see* Doe Br. 35. Neither helps her case.

Moving to the problem that neither Defendant can remedy her lack of a hearing, Doe says only that a declaration about Ohio law will afford her "the

opportunity to ask a state court to give her a hearing." Doe Br. 35 (emphasis added). That has nothing to do with either Defendant. No order against the Attorney General or the Superintendent will pave the way for a state-court hearing. Therefore, no order against them can redress her alleged harm.

At bottom, Doe's own words sink her claim. She calls "irrelevant" her "ability to appeal her dangerousness level in 2006" because she is "not challenging her initial classification or initial hearing on dangerousness." Doe Br. 16; *see also id.* at 36 (not seeking review of "her dangerousness in 2006"). But, it is that 2006 judgment adjudicating her a predator—and only that judgment—that causes her alleged harms. (At one point, Doe says that she "*does* want a court . . . to reconsider a 2006 judgement," Doe Br. 38 (emphasis added), but that statement is either inconsistent with the rest of her brief or a minor typo). She further says that she wants Defendants to "stop spreading inaccurate information" about her. *Id.* But that information about her classification remains accurate unless an Ohio *court* changes the 2006 adjudication. Finally, she asks for an order "whereby a court can change her predator status." *Id.* Neither Defendant can do that. Nor can a court under Ohio law. Doe's remedy lies in legislation to move Ohio from a system equivalent to the one upheld in *Public Safety* to one that creates an exit for registrants. There is no room for courts to short-circuit that process reserved for the democratic branches of government.

CONCLUSION

The Court should reverse the district court and direct it to issue a final judgment for the State Defendants.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify, in accordance with Rule 32(g) of the Federal Rules of Appellate Procedure, that this *Brief of Appellants* complies with the type-volume requirements for a principal brief and contains 4,371 words. *See* Fed. R. App. P. 32(a)(7)(B)(i).

/s/ Eric E. Murphy
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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of May, 2018, this *Reply Brief of Appellants Michael DeWine, Ohio Attorney General, and Tom Stickrath, Superintendent of the Ohio Bureau of Criminal Identification and Investigation, in their official capacities*, was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Eric E. Murphy
ERIC E. MURPHY