STATEMENT IN SUPPORT OF HB411

My name is Terry Gilbert, an attorney with Friedman and Gilbert in Cleveland. I have been practicing law in Ohio for 45 years specializing in both Criminal and Civil Rights litigation. I have been asked by OACDL to provide testimony in support of the amendments to RC 2743.48 because I have handled many wrongful imprisonment claims going back to 1994 when I represented a man who spent four years in prison for a rape he did not commit, and obtained compensation on his behalf. I also represented Mr. Mansaray in his error in procedure claim under that statute, and argued his case before the Ohio Supreme Court.

The Mansaray decision, in 2014, interpreted the 2003 amendment as permitting such claims only if the procedural error occurred AFTER trial and sentencing. However, as noted by a number of lower court decisions, the vast majority of errors in procedure actually occur in the pretrial and trial setting. This is particularly the case with respect to Brady violations, when prosecutors withhold material evidence to defense counsel who are unaware of exculpatory evidence at trial. The revelation of Brady material often comes years later when records request discover the hidden material, and the defendant has been in prison for years. It is only when a court, usually an appellate court, finds a Brady violation, the case is remanded for trial. In some cases the prosecutor dismisses the case, and in other cases, the trial goes forward and there is an acquittal. It is only then that an individual can bring an action under R.C.2743.48.

The new Bill removes general procedural errors, thereby limiting the scope to only Brady violations, a narrow but egregious form of police and prosecutorial misconduct which has led to many innocent people incarcerated for long periods.

It is my understanding that opposition to the bill is centered on two arguments: 1) that it will open the floodgates to these claims and cost the state huge amounts of money, and 2) that Brady violations are too difficult to determine. As to the first argument, the history of awards in the Court of Claims reveals that relatively few procedural awards have been successful, and that claims other than Brady included 4th Amendment search grounds, speedy trial grounds, and other procedural denials. So, limiting the coverage to Brady claims will control the number of claims brought. As to the second argument, only those Brady violations that have extensively been litigated in appeals and post-conviction petitions will have traction, because the issue of what a

Brady violation is in those particular cases has been finally determined. If the prosecutor chooses not to re-try the case, then there is no reason why that person should not get compensation.

The bottom line is no one should spend years in prison because a court has found that the fundamental due process of a fair trial because a detective or prosecutor made a decision to hide evidence from the defense. That person should be entitled to compensation for the state’s wrongful conduct.

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