IN THE SUPREME COURT OF OHIO

IN RE L.G., A Minor Child	:	Case No. 2017-0877
	:	On APPEAL from the Montgomery County Court of Appeals Second Appellate District
	:	C.A. Case NO. 27296

BRIEF OF AMICI CURIAE, JUVENILE LAW CENTER, OFFICE OF THE OHIO PUBLIC DEFENDER, CHILDREN'S LAW CENTER, INC., EDUCATION LAW CENTER-PA, JUVENILE JUSTICE COALITION, NATIONAL JUVENILE DEFENDER CENTER, AND SCHUBERT CENTER FOR CHILDREN'S STUDIES, IN SUPPORT OF APPELLANT, L.G.

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Statement of Interest of Amici Curiae

Juvenile Law Center advocates for rights, dignity, equity, and opportunity for youth in the child welfare and justice systems through litigation, appellate advocacy and submission of amicus briefs, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children's unique developmental characteristics, and reflective of international human rights values. Juvenile Law Center has represented hundreds of young people and filed influential amicus briefs in state and federal cases across the country.

The Office of the Ohio Public Defender is a state agency, designed to represent criminal defendants, adults, and juveniles, and to coordinate defense efforts throughout Ohio. The Ohio Public Defender, through its Juvenile Department, provides juveniles who have been committed to the Ohio Department of Youth Services their constitutional right to access to the courts. *See John L. v. Adams*, 969 F.2d 228, 1992 U.S. App. LEXIS 16208 (6th Cir.1992). Like this Court, the Ohio Public Defender is interested in the effect of the law that this case will have on parties who are, or may someday be involved in similar litigation. The Ohio Public Defender has represented and currently represents other juveniles who are subject to custodial interrogation at school. Accordingly, the Ohio Public Defender has an enduring interest in protecting the integrity of the justice system and ensuring equal treatment under the law. To this end, the Ohio Public Defender supports the fair, just, and correct interpretation and application of *J.D.B. v. North Carolina* and its progeny.

The **Children's Law Center, Inc. (CLC)** is a non-profit organization committed to the protection and enhancement of the legal rights of children. CLC strives to accomplish this mission through various means, including providing legal representation for youth and advocating for systemic

and societal change. For nearly 30 years, CLC has worked in many settings, including the fields of special education, custody, and juvenile justice, to ensure that youth are treated humanely, can access services, and are represented by counsel. For the past ten years, CLC has worked on issues facing Ohio youth prosecuted in juvenile and adult court, including ensuring that youth receive constitutionally required protections and due process in educational settings, as well as delinquency and criminal court proceedings. To this end, CLC advocates for protection of the constitutional rights of children in school.

The **Education Law Center-PA (ELC)** is a non-profit, legal advocacy organization dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through individual and impact litigation, and advocacy at the local, state and national level, ELC advances the rights of vulnerable children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English language learners, LGBTQ students, and children experiencing homelessness. Over its 40-plus-year history, ELC has advocated vigorously to dismantle the school-to-prison pipeline in all of its forms through individual representative, class action lawsuits, and systemic policy reforms.

The **Juvenile Justice Coalition** is an Ohio state advocacy organization that works with directly impacted youth to advance research-based reforms for youth involved in the state's juvenile courts and youth who are suspended or expelled from school.

The **National Juvenile Defender Center (NJDC)** was created to ensure excellence in juvenile defense and promote justice for all children. NJDC responds to the critical need to build the capacity of the juvenile defense bar in order to improve access to counsel and quality of representation for children in the justice system. NJDC gives juvenile defense attorneys a more permanent capacity to address important practice and policy issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice. NJDC provides support to

public defenders, appointed counsel, child advocates, law school clinical programs, and non-profit law centers to ensure quality representation and justice for youth in urban, suburban, rural, and tribal areas. NJDC also offers a wide range of integrated services to juvenile defenders and advocates, including training, technical assistance, advocacy, networking, collaboration, capacity building, and coordination. NJDC has participated as Amicus Curiae before the U.S. Supreme Court , as well as federal and state courts across the country.

The **Schubert Center for Child Studies (Schubert Center)** is an academic center in the College of Arts and Sciences at Case Western Reserve University (CWRU) which bridges research, practice, policy and education for the well-being of children and adolescents. The Schubert Center Faculty Associates includes a group of approximately 70 researchers from various disciplines across CWRU with a shared interest in child-related research and connecting research with practice and policy to improve child well-being and to create knowledge and approaches that are generalizable to a larger population of children. The Schubert Center is interested in ensuring that public policies and legal determinations impacting children are informed by reliable research, aligned with principles of child and adolescent development and consistent with professional practice promoting child well-being. Toward this end, the Schubert Center has been engaged in state level policy reforms including efforts to provide guidance to law enforcement on age-appropriate interactions with youth and to clarify roles and expectations, as well as training, for school resource officers. As these issues are directly addressed by this case, the implications of this decision are of particular concern to the Schubert Center.

Statement of the Case and Facts

The Second District Court of Appeals adduced the facts below as follows:

On October 27, 2015, a person called the Dayton Regional Dispatch Center and claimed that there was a bomb in Dayton's Longfellow Alternative School. The police contacted school officials, who immediately evacuated the school. The police also contacted Jamie Bullens, Dayton Public Schools' Executive Director of Safety and Security, who met police officers at the school.

As Executive Director of Safety and Security, Bullens, a retired [***2] detective with the Dayton Police Department, oversees 26 school resource officers, who are trained as peace officers. The school resource officers are qualified as special police officers, and they have the authority to arrest individuals for offenses that occur on school campuses; school resource officers carry handcuffs, but do not carry weapons. Bullens indicated that he works closely with law enforcement when incidents occur that school resource officers cannot handle. And, he is directed to work closely with the police department any time formal charges may be warranted.

Upon arriving at Longfellow, Bullens confirmed that the school had been evacuated, and he initiated a walkthrough. Bullens and Dayton Police Sergeant Keller had bomb-sniffing dogs sweep the building; the dogs found nothing. He and Sergeant Keller authorized the children to be brought into the school's gymnasium.

While the students were in the gymnasium, Bullens told them that he needed to know who had made this bomb threat. Bullens informed the students that there was an agreement with the Miami Valley Crime Stoppers Association, and it was offering a reward from $50 to $1,000 for information leading to the person [***3] responsible for the bomb threat. Bullens then went to the school cafeteria.

Soon after, two individuals came forward to school officials implicating L.G., a thirteen-year-old seventh grader. Kerry Ivy, the school resource officer, and Jack Johnson, the principal, informed Bullens that there were two individuals he needed to speak to right away. The individuals were brought to the cafeteria, where they gave information to Bullens about the bomb threat and implicated L.G.

Bullens contacted Ivy and "had him go into the gymnasium with the information, the description of the individual we were looking for, and to retrieve that individual and bring him to the cafeteria." Ivy got L.G. from the gym, brought him to the cafeteria, and had L.G. sit across a table from Bullens. There, with two uniformed police officers standing nearby (closer to L.G. than to Bullens), Bullens questioned L.G. about his alleged involvement with the bomb threat. Bullens did not provide *Miranda* warnings prior to asking L.G. any questions.

Once confronted with the information provided by the two informants, L.G. confessed to calling in the bomb threat. When Bullens finished questioning L.G., L.G. was handed off to [***4] Officer Jeremy Stewart, one of the police officers who had been standing nearby and

had witnessed the questioning. Officer Stewart placed L.G. under arrest and transported him in a cruiser to a police station for further questioning by Dayton police detectives.

The following day, the Dayton Police Department filed a complaint alleging that L.G. was a delinquent child for committing the offense of inducing panic under R.C. 2917.31(A)(1), a second-degree felony under R.C. 2917.31(C)(5). L.G. filed a motion to suppress the statements that he had made to Bullens, arguing that the questioning was not conducted with his (L.G.'s) consent and that he was not advised of his *Miranda* rights before the questioning. The matter was referred to a magistrate, who held an evidentiary hearing. After the hearing, the magistrate granted L.G.'s suppression motion. The State filed objections to the magistrate's decision with the juvenile court, arguing that L.G. was not in custody for *Miranda* purposes and that *Miranda* did not apply because Bullens was not a law enforcement officer or acting as an agent of law enforcement when he interviewed L.G. The juvenile court overruled the State's objections and sustained the motion to suppress. The [***5] court concluded that L.G. was in custody for *Miranda* purposes and that Bullens was acting as an agent of law enforcement.

The State appeal[ed].

In re L.G., 2017-Ohio-2781, 82 N.E.3d 52, ¶ 2-9 (2d Dist.).

On appeal, the Second District properly applied the "reasonable child" analysis to the determination of whether L.G. was in custody under *Miranda.* The court held that, although *Miranda* warnings are not required whenever a teenager is questioned by school personnel, under the specific facts of this case, "no reasonable thirteen (13) year old child would feel he or she was at liberty to terminate the interrogation and leave." *Id.* at ¶ 13, 18, citing *J.D.B. v. North Carolina*, 564 U.S. 261, 270, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011). The court recognized that, " 'the duty of giving '*Miranda* warnings' is limited to employees of governmental agencies whose function is to enforce law, or to those acting for such law enforcement agencies by direction of the agencies; that it does not include private citizens not directed or controlled by a law enforcement agency, even though their efforts might aid in law enforcement.' " *Id.* at ¶ 20, quoting *State v. Bolan*, 27 Ohio St.2d 15, 18, 271 N.E.2d 839 (1971). Under the facts of this case, however, the court concluded that "when viewing the totality of the circumstances, [Security Director] Bullens was acting in conjunction with law enforcement officers, such that *Miranda* warnings were required." *Id.* at ¶ 22. The decisions of both the juvenile court and court of appeals were sound and should be affirmed.

Argument

Introduction

"[N]o person shall be 'compelled' to be a witness against himself when he is threatened with deprivation of his liberty." *In re Gault*, 387 U.S. 1, 50, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967). Moreover, a suspect must be warned of his constitutional rights to remain silent and to appointed counsel when subjected to custodial interrogation to ensure that any statements made are "truly the product of free choice." *Miranda v. Arizona*, 384 U.S. 436, 457, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). Absent a waiver of those rights, evidence gathered during an interrogation may not be used against the defendant. *Id.* at 476-79. These rights are "critical for all individuals, but particularly for juveniles." *In re M.W.*, 133 Ohio St.3d 309, 2012-Ohio-4538, 978 N.E.2d 164, ¶ 61 (O'Connor, C.J., dissenting), citing *In re Gault*, 387 U.S. 1, 47, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967).

As this Court and the U.S. Supreme Court have recognized, children require "special care" to ensure that any incriminating statements they may make during questioning are not obtained in violation of their due process rights. *State v. Barker*, 149 Ohio St.3d 1, 2016-Ohio-2708, 73 N.E.3d 365, ¶ 41 (2016); *See Gallegos v. Colorado*, 370 U.S. 49, 53, 82 S.Ct. 1209, 8 L.Ed.2d 325 (1962). Indeed, the U.S. Supreme Court has repeatedly recognized that tactics which are not coercive when applied to adults may well be coercive when applied to children. *See Haley v. Ohio*, 332 U.S. 596, 599, 68 S.Ct. 302, 92 L.Ed.224 (1948) ("What transpired would make us pause for careful inquiry if a mature man were involved. And when, as here, a mere child an easy victim of the law – is before us, special care * * * must be used * * * That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens.") *See also J.D.B. v. North Carolina*, 564 U.S. 261, 317, 131 S.Ct. 2394, 108 L.Ed.2d 310 (2011). ("[A] juvenile subject to custodial interrogation cannot be compared to an adult in those same circumstances.") More specifically, in determining whether a suspect is "in custody" and thus must be given *Miranda* warnings prior to interrogation, the Supreme Court has held that the

appropriate test is whether a "reasonable child" would feel free to leave and terminate the interrogation. *Id.* at 271. These conclusions are grounded in research showing that children's developmental characteristics – including their immaturity, impulsivity, and susceptibility to coercion – make them uniquely vulnerable in the interrogation room. *Id.* at 269-273; *see also* International Association of the Chiefs of Police, *Reducing Risks: An Executive's Guide to Effective Juvenile Interview and Interrogation* 18.[1]

The requirement that children receive due process protections during interrogation to assure that any admission made is "not the product of ignorance of rights or of adolescent fantasy, fright or despair" (*Gault*, 387 U.S. at 55, 1, 50, 87 S.Ct. 1428, 18 L.Ed.2d 527) is just as important in school interrogations as it is in any other custodial setting. Moreover, the Court has made clear that the school setting may heighten the coercion, noting that the "effect of the schoolhouse setting cannot be disentangled from the identity of the person questioned." *J.D.B.* at 276. Therefore, "[a] student--whose presence at school is compulsory and whose disobedience at school is cause for disciplinary action--is in a far different position than, say, a parent volunteer on school grounds to chaperone an event, or an adult from the community on school grounds to attend a basketball game," and requires unique protections to ensure that his or her constitutional rights are respected. *Id.*

The Montgomery County Juvenile Court correctly found that "a great deal of entanglement" existed between Director Bullens and the City of Dayton Police and that, under the facts and circumstances of the questioning in this case, a reasonable child would not have felt free to terminate questioning and leave. *L.G.*, 2017-Ohio-2781, 82 N.E.3d 52, at ¶ 22. The court of appeals agreed with the juvenile court's determination that Director Bullens was acting as an agent of the police during the investigation and that L.G. was in custody and therefore entitled to *Miranda* warnings.

[1] available at www.tinyurl.com/zavuoxq (accessed 6.11.2018).

Id. at ¶ 1, 19-24. The courts' holdings below protect the constitutional rights of children, giving them "the full scope of * * * procedural safeguards" without undermining traditional school discipline. *See J.D.B.*, 564 U.S. at 281. For the reasons that follow, and for those outlined in L.G.'s answer brief, *Amici Curiae* urge this Court to affirm the decisions of the Montgomery County Juvenile Court and Second District Court of Appeals.

Amici Curiae's Response to Petitioner's Proposition of Law

I. Children are entitled to special constitutional protections during interrogations.

Article I, Section 10 of the Ohio Constitution and the Fifth and Fourteenth Amendments of the United States Constitution prohibit the acceptance of any statement into evidence that is "not the product of essentially free and unconstrained choice by its maker." *Culombe v. Connecticut*, 367 U.S. 568, 602, 81 S.Ct. 1860, 6 L.Ed.2d 1037 (1961) (plurality opinion); *accord Schneckloth v. Bustamonte*, 412 U.S. 218, 225-26, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973); *State v. Melchior*, 56 Ohio St.3d 15, 381 N.E.2d 195, 201 (1978). This standard must be interpreted in the context of age.

To ensure that children are adequately protected against the pressures of interrogation, the U.S. Supreme Court has required that age be considered in the objective analysis of whether a suspect was "in custody" during questioning. *J.D.B.* 564 U.S. at 271-72, 131 S.Ct. 2394, 108 L.Ed.2d 310. "Even for an adult, the physical and psychological isolation of custodial interrogation can undermine the individual's will to resist and * * * compel him to speak where he would not otherwise do so freely." (internal quotation marks omitted) *Id.* at 269. Because children are more susceptible to pressure than adults, they are more likely to involuntarily and falsely confess during custodial interrogations. *J.D.B.*, 564 U.S. at 272, 131 S.Ct. 2394, 180 L.Ed.2d 310, citing *Corley v. United States*, 556 U.S. 303, 321, 129 S.Ct. 1558, 173 L.Ed.2d 443, (2009) and Drizin & Leo, *The Problems of False Confessions in the Post-DNA World*, 82 N.C.L. Rev. 891, 906-907 (2004). ("Indeed, the pressure of

custodial interrogation is so immense that it can induce a frighteningly high percentage of people to confess to crimes they never committed * * * That risk is all the more troubling -- and * * * all the more acute – when the subject of custodial interrogation is a juvenile."). Children are more at risk of coercive pressure, the Court explained, because they " 'are generally less mature and responsible than adults, * * * often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them * * * [and] are more vulnerable to or susceptible to * * * outside pressures' than their adult counterparts." *J.D.B.* at 275, quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115-116, 102 S.Ct. 869, 71 L.Ed.2d. 1 (1982); *Belloti v. Baird*, 443 U.S. 622, 635, 99 S.Ct. 3035, 61 L.Ed.2d 797 (1979); and *Roper v. Simmons*, 543 U.S. 551, 569, 125 S.Ct. 1182, 161 L.Ed.2d 1 (2005).[2] As a result, a juvenile subject to custodial interrogation "cannot be compared to an adult in those same circumstances." *Id.*

The *J.D.B.* Court further reasoned that while age may not always determine the outcome of a case, "[i]t is, however, a reality that courts cannot simply ignore" when applying a reasonable person analysis. *Id.* at 277. If the court were "precluded from taking J.D.B.'s youth into account, it would be forced to evaluate the circumstances * * * through the eyes of * * * a reasonable adult," when some "objective circumstances [surrounding an interrogation]* * * are specific to children." *Id.* at 275-76. As the Court noted, to apply the adult reasonable person standard to a minor would lead to

[2] *See also* Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie Schuck, Editors, National Research Council, *Reforming Juvenile Justice: A Developmental Approach*, 2:2 (2013). ("Adolescents differ from adults and children in three important ways that lead to differences in behavior. First, adolescents have less capacity for self-regulation in emotionally charged contexts, relative to adults. Second, adolescents have a heightened sensitivity to proximal external influences, such as peer pressure and immediate incentives, relative to children and adults. Third, adolescents show less ability than adults to make judgments and decisions that require future orientation. The combination of these three cognitive patterns accounts for the tendency of adolescents to prefer and engage in risky behaviors that have a high probability of immediate reward but can have harmful consequences.")

"absurdity," since a minor's developmental status, including age, informs his or her perspective. *Id.* at 276.

Due process has long required courts to rigorously consider a child's age when assessing the constitutionality of an interrogation. More than 50 years ago, in *Gallegos v. Colorado*, the U.S. Supreme Court held unconstitutional the confession of a 14-year-old boy, noting that a teenager "cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions." *Gallegos*, 370 U.S. at 54, 82 S.Ct. 1209, 8 L.Ed.2d 325. The *Gallegos* Court adopted the reasoning of *Haley v. Ohio*, where a plurality of the Court held that age was the crucial factor in determining the voluntariness of a confession. *Id.* at 53. Specifically, the *Haley* Court found:

> But a 14-year-old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police. That is to say, we deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protest his own interests or how to get the benefits of his constitutional rights.

Haley, 332 U.S. at 599-601, 68 S.Ct. 302, 92 L.Ed.224. The Court further explained: "[t]hat which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teen years." Thus, persistent questioning of a child without the aid of counsel undermines "that due process of law which the Fourteenth Amendment commands." *Id.* at 599. *See also Gault*, 387 U.S. at 55, 87 S.Ct. 1428, 18 L.Ed.2d 527 (concluding that "When an admission is obtained from a juvenile without counsel, the greatest care must be taken to assure that the admission was voluntary.").

This Court, too, has underscored the importance of "the juvenile's age, experience, education, background, and intelligence" under the Fifth Amendment. *Barker*, 149 Ohio St.3d 1, 2016-Ohio-2708, 73 N.E.3d 365 at ¶ 24, quoting *Fare v. Michael C.*, 442 U.S. 707, 725, 99 S.Ct. 2560, 61 L.Ed.2d 197 (1979). Further, this Court has recognized that "courts should take 'special care' in scrutinizing a purported confession * * * by a child," (*In re C.S.*, 115 Ohio St.3d. 267, 284, 2007-Ohio-4919, 874 N.E.2d 1177, ¶ 96), and that youth require unique protections during interrogations. *Barker*, 149 Ohio

St.3d 1, 2016-Ohio-2708, 73 N.E.3d 365 at ¶ 24 (noting that "[a] juvenile's access to advice from a parent, guardian or custodian also plays a role in assuring that the juvenile's waiver is knowing, intelligent, and voluntary.")

This approach is supported by the significant body of literature emphasizing that youth are more susceptible to coercion than adults. Psychological studies and false confession research confirm the need for robust procedural protections during custodial interrogations of juveniles. *See* Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 944 (2004) (describing research showing that juveniles are grossly overrepresented in proven false confession cases). Many of these studies attribute adolescents' heightened risk of false confessions to their developmental characteristics, particularly their immature judgment, difficulty understanding long-term consequences of conduct, and tendency to comply with authority figures. *See, e.g.,* Lindsay Malloy et al., *Interrogations, Confessions, and Guilty Pleas among Serious Adolescent Offenders*, 38 L. & Hum. Behav. 181 (2014); Saul M. Kassin, *False Confessions*, WIREs Cognitive Sci. 1 (2017); Thomas Grisso, et. al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 L. & Hum. Behav. 333 (2003); Allison D. Redlich & Gail S. Goodman, *Taking Responsibility for an Act not Committed: Influence of Age and Suggestibility*, 27 L. & Hum. Behav. 141, 147, 150-51 (2003); Naomi Goldstein et al., *Juvenile Offenders' Miranda Rights Comprehension and Self-Reported Likelihood of Offering False Confessions*, 10 Assessment 359 (2003). By virtue of age and/or limited life experience, a child may be more likely to respond to a law enforcement officer or their agent's questions rather than terminating an encounter.

Research indicates that "[t]he developmental capabilities and limitations of adolescence are highly relevant to behavior in the interrogation room." Saul M. Kassin et al., *Police-Induced Confessions: Risk, Factors and Recommendations*, 34 L. & Hum. Behav. 3, 19 (2010). "[S]tress and other situational factors can undermine [a youth's] comprehension" and their ability to terminate an interrogation or

encounter with authority figures. Saul M. Kassin et al., *On the General Acceptance of Confessions Research: Opinions of the Scientific Community*, 73 Amer. Psych. Ass'n. 63, 64 (2018). Researchers have found that "certain police interrogation techniques are psychologically potent and [the stress of determining whether one would feel free to leave] is increased by certain factors inherent in vulnerable suspects as well as the conditions of their custody and interrogation." *Id.* at 63; *see also*, Barry C. Feld, *Behind Closed Doors: What Really Happens When Cops Question Kids,* 23 Cornell J. L. & Pub. Pol'y 395 (2013) (noting that "[t]he modern practice of in-custody interrogation is psychologically rather than physically oriented.").

For youth, being isolated from peers or an interested adult while being interrogated can "conspire to promote their acceptance, compliance with, and even approval" of remaining in the custody of authority figures rather than feeling free to leave. Saul M. Kassin et al., 34 L. & Hum. Behav. at 16; *See*, Steven A. Drizin & Richard A. Leo, at 944 (noting that juveniles are "more easily intimidated by police power, persuasion, or coercion," and "less likely to possess the psychological resources to resist the pressures of accusatorial police questioning."); *see also*, Richard A. Leo, *Interrogation and Confessions* in *Reforming Criminal Justice* 233, 248 (2015).

II. When a school official's investigation is entangled with that of law enforcement, the school official is acting as an agent of the police for purposes of *Miranda*.

It is well established that "the duty of giving '*Miranda* warnings' is limited to employees of governmental agencies whose function is to enforce law, or to those acting for such law enforcement agencies by direction of the agencies; that it does not include private citizens not directed or controlled by a law enforcement agency, even though their efforts might aid in law enforcement." *State v. Bolan*, 27 Ohio St.2d 15, 18, 271 N.E.2d 839 (1971). The State relies heavily on *Bolan* for the proposition that Bullens was not a state actor; but the analogy is inapt. In *Bolan*, a shoplifting suspect incriminated himself in response to questioning by a private security guard who detained him while awaiting the

arrival of law enforcement to the department store. *Id.* at 16-17. In that case, the security guard was nothing more than an employee of the department store who had no power of detention other than that granted by other store employees. *Id.* at 17. The guard was therefore not acting under the direction of law enforcement when he questioned Mr. Bolan. Such was not the case here.

Today, public schools have increased the presence of law enforcement on their campuses, which has led to greater cooperation between school officials and police and increased student interactions with law enforcement. Kristi North, *Recess is Over: Granting* Miranda *Rights to Students Interrogated Inside School Walls*, 26 Emory L.J. 441 (2012); *see also* Michael Pinard, *From the Classroom to the Courtroom: Reassessing Fourth Amendment Standards in Public School Searches Involving Law Enforcement Authorities*, 45 Ariz.L.Rev. 1067, 1077-1078 (2003); and Lisa H. Thurau & Johanna Wald, *Controlling Partners: When Law Enforcement Meets Discipline in Public Schools*, 54 N.Y.L.Sch.L.Rev 977, 978 (2009-2010). Indeed, a recent national survey of 400 school resource officers found that SROs believed "enforcing laws" to be their primary role.[3] Research has shown that "as a result of these formalized relationships, as well as the heightened concern about school violence, school officials in many jurisdictions more readily report the activities of their students to local law enforcement agencies[,]" and that incidents that typically would have been handled solely by a school are now being addressed by law enforcement. Pinard at 1079. Thus, the line between law enforcement and school official is blurred, as the two entities are no longer working independently in many instances. In fact, this is precisely the relationship that existed between city police and Director Bullens in this case. Director Bullens's own testimony highlighted that he was "required to work closely with the police department if a situation occur[ed] and formal charges may be warranted" and that the

[3] June 2018 Education Week Research Center. Available at: https://www.edweek.org/info/about/additional-reports.html#SROsurvey (accessed June 8, 2018).

investigation in this case was initiated when Bullens received a call from the Dayton Police Department Regional Dispatch. (10.6.15 Entry p.4).

The employment structure of Director Bullens and other school officials is also significant here. Rather than being a school employee who was at Longfellow Alternative on a regular basis, Director Bullens—a retired police officer with 23 years of experience in law enforcement, is the Executive Director of Safety and Security for all the City of Dayton Public Schools. (12.22.15 T.p. 17). He supervises 40 employees, including the 26 school resource officers who were trained as peace officers for the district and sworn in through the City of Dayton Police Department as "special peace officers" pursuant to the Ohio Revised Code. *L.G.* at ¶ 3; (12.22.15 T.pp. 24-25). Bullens's school resource officers carry handcuffs and have authority to arrest individuals for offenses that happen on school grounds. *L.G.* at ¶ 3.

The day of the incident, Bullens arrived at Longfellow Alternative approximately 15-20 minutes after receiving the call from Regional Dispatch. (12.22.15 T.pp. 29-30). By the time he arrived, the investigation was already underway and the city police had evacuated the school. (12.22.15 T.p. 30). Both the juvenile court and court of appeals found the following facts persuasive:

> [W]hen Director Bullens arrived on scene, he and Sergeant Keller made the joint decision to have dogs check for any devices in the school building. Director Bullens and Sergeant Keller then made a joint decision to let children back in the school's gymnasium. Later, Director Bullens offered a reward to students for information leading to the person responsible for making the bomb threat after he received permission from Detective Querubin at Miami Valley Crime Stoppers Association. Then, Director Bullens directed Mr. Ivy, the school's Resource Officer, to retrieve [L.G.] from the gymnasium after receiving information implicating [L.G.] in the crime. Once made to sit alone and away from his peers in the school's cafeteria, [L.G.] was questioned by Director Bullens about the incident in the close, physical presence of at least two (2) uniformed and armed Dayton Police Officers.

L.G. at ¶ 22. Immediately after Bullens was finished questioning L.G., the youth was "handed off" to a police officer who immediately placed L.G. under arrest and transported him to West Patrol Operations to be questioned further. (10.6.15 Entry p.5).

Both the court of appeals and juvenile court found that the above-referenced factors created a "great deal of entanglement" between Director Bullens and the local police department such that Director Bullens was acting "in conjunction with law enforcement officers, [and] *Miranda* warnings were required." *L.G.*, 2017-Ohio-2781, 82 N.E.3d 52, at ¶ 22.

The Second District expressly stated that it was not holding "or even suggesting that *Miranda* warnings are required whenever a teenager is questioned by school personnel; that is not the law and that is not what happened here[.]" *L.G.* at ¶ 18. Rather, under the facts of this case, that conclusion was warranted. As recognized by the juvenile court below:

> [P]rivate person interrogation is within *Miranda* when the presence of the police and/or other circumstances indicate the questioner is acting on behalf of the police. Agency is established when, in light of all the circumstances, the private person acted as an instrument of the state. A private person must be directed or controlled by a law enforcement agency. A great deal of entanglement between the police and the private searcher must be established before agency can be found.

(Internal citations omitted). (10.6.15 Entry, p. 4), citing *In re Gruesbeck*, 2d Dist. Greene No. 97-CA-59, 1998 Ohio App. LEXIS 1146 *8; *State v. Cook*, 149 Ohio App.3d 422, 2002-Ohio-4812, 777 N.E.2d 882, 885; and *In re G.J.D.*, 11th Dist. Geauga No. 2009-G-2913, 2010-Ohio-2677, ¶ 22. Director Bullens was clearly working in close conjunction with law enforcement, from the inception of the investigation through its culmination in L.G.'s arrest upon the conclusion of Bullens's questioning.

The juvenile court's decision on L.G.'s motion to suppress was sound. *See State v. Retherford*, 93 Ohio App.3d 586, 592, 639 N.E.2d 498 (2d Dist.1994) (finding that in ruling on a motion to suppress, the trial court "assumes the role of the trier of fact, and, as such, is in the best position to resolve questions of fact and evaluate the credibility of the witnesses."); *State v. Knisley*, 2d Dist.

Montgomery No. 22897, 2010-Ohio-116, ¶ 30. The court of appeals also rightly determined that "Bullens's questioning of L.G. was part of the criminal investigation, not simply the school district's investigation, into the bomb threat at Longfellow Alternative School" and that his "interactions with the police following the bomb threat, including his interview of L.G. in the presence of police officers, reasonably rendered him an agent of law enforcement for purposes of *Miranda*." *Id.* at ¶ 23.

III. Children who are subject to custodial interrogation at school are entitled to *Miranda* warnings.

> In order to determine whether a person is in custody for purposes of receiving *Miranda* warnings, courts must first inquire into the circumstances surrounding the questioning and, second, given those circumstances, determine whether a reasonable person would have felt that he or she was not at liberty to terminate the interview and leave.

State v. Hoffner, 102 Ohio St.3d 358, 2004-Ohio-3430, 811 N.E.2d 48, ¶ 27. Under *J.D.B.*, when the suspect is a juvenile, the court must employ the reasonable juvenile standard—meaning, that the perception of freedom of movement must be made through the lens of youth. *See In re J.S.*, 12th Dist. Clermont No. CA2011-09-067, 2012-Ohio-3534, ¶ 12 (finding that a reviewing court must consider the circumstances surrounding the questioning to determine whether a child would have felt he was free to leave). As the U.S. Supreme Court has recognized, for children, the custody determination must also account for the school environment and the impact of authority figures in that setting. *J.D.B.*, 564 U.S. at 274, 131 S.Ct. 2394, 108 L.Ed.2d 310.

A custodial interrogation triggers the *Miranda* protections, which are necessary safeguards to ensure that a child's statements are the product of free choice. *See In re D.B.*, 5th Dist. Licking No. 2009CA00024, 2009-Ohio-6841, ¶ 38, ("Because custodial interrogation is inherently coercive, incriminating statements, which are the product of such questioning, are not admission unless *Miranda* warnings precede the questioning."), *reversed on other grounds*; *Miranda*, 384 U.S. at 444, 476-479, 86 S.Ct. 1602, 16 L.Ed.2d 694 ("the prosecution may not use statements, whether exculpatory or inculpatory, stemming from the custodial interrogation of the defendant unless it demonstrates the use of

procedural safeguards to secure the privilege against self-incrimination."). Thus, in the absence of *Miranda* warnings, statements elicited during custodial interrogations are presumptively coerced and must be suppressed. *United States v. Patone*, 542 U.S. 630, 639, 124 S.Ct. 2620, 159 L.Ed.2d 667 (2004).

In reviewing a motion to suppress, the appellate court is bound to accept the trial court's findings if they are supported by competent and credible evidence. *In re T.W.*, 3d Dist. Marion No. 9-10-63, 2012-Ohio-2361, ¶ 20-22, citing *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. An appellate court uses a de novo standard of review as to the conclusion of law when deciding whether the motion to suppress was erroneously denied. *T.W.* at ¶ 20.

In *J.D.B.*, the U.S. Supreme Court recognized that custodial interrogation "entails inherently compelling pressures that can induce a frighteningly high percentage of people to confess to crimes they never committed * * * [and that r]ecent studies suggest that risk is all the more acute when the subject of custodial interrogation is a juvenile." *J.D.B.*, 564 U.S. at 272, 131 S.Ct. 2394, 180 L.Ed.2d 310, citing *Corley v. United States*, 556 U.S. 303, 321, 129 S.Ct. 1558, 173 L.Ed.2d 443, (2009) and Steven A. Drizin & Richard A. Leo, *The Problems of False Confessions in the Post-DNA World*, 82 N.C.L. Rev. 891, 906-907 (2004). Further, the Court reiterated that "[a] child's age is far 'more than a chronological fact; * * * it is a fact that 'generates commonsense conclusions about behavior and perception.'" *J.D.B.* at 262, quoting *Eddings*, 455 U.S. at 115, 102 S.Ct. 869, 71 L.Ed.2d. 1 and *Yarborough v. Alvarado*, 541 U.S. 652, 674, 124 S.Ct. 2140, 158 L.Ed.2d 938 (2004) (Breyer, J. dissenting). Because children "are generally less mature and responsible than adults, * * * often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them * * * [and] are more vulnerable to or susceptible to * * * outside pressures" than their adult counterparts, a juvenile subject to custodial interrogation cannot be compared to an adult in those same circumstances. *J.D.B.* at 275, quoting *Eddings* at 115-116; *Belloti v. Baird*, 443 U.S. 622, 635, 99 S.Ct. 3035, 61 L.Ed.2d 797 (1979); and *Roper*, 543 U.S. at 569, 125 S.Ct. 1182, 161 L.Ed.2d 1 (2005).

In analyzing the interrogation here, *J.D.B.* is instructive. J.D.B. was 13 years old when he was removed from his classroom and taken to a closed conference room where he was questioned for 30-45 minutes by police about a break-in, in the presence of the assistant principal and an administrative intern. *J.D.B.* at 265-266. The officers did not read J.D.B. his *Miranda* rights. *Id.* J.D.B. initially denied the allegations, but after pressing by police and being told to "do the right thing" and tell the truth by the assistant principal, J.D.B. made incriminating statements to the officers. *Id.* at 266. In analyzing whether the reasonable person standard applied, the Court found that "[i]t is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave." *Id.* at 264. Accordingly, the Court established the reasonable juvenile standard, which requires a court to view the circumstances of a juvenile's interrogation and perceived freedom of movement through the lens of the child's age. *Id.* at 280.

Here, a child was taken to a school cafeteria where he was questioned outside the presence of his parents or counsel, without being given *Miranda* warnings. (12.22.15 T.pp. 7, 43). Both the juvenile court and court of appeals applied the proper test when determining whether a reasonable child in that position would have felt free to leave. The juvenile court weighed the following factors in its review: L.G. testified that no one ever told him that he was free to get up and leave during questioning; he was questioned for approximately 10-20 minutes, in the presence of at least two uniformed city police officers; for the duration of the questioning, officers stood approximately 5-15 feet away from him and he was aware of their presence during the entire interrogation; more officers may have been waiting by the door; Director Bullens testified that, although he did not know L.G.'s exact age, he was aware of the youth's grade level; Bullens acknowledged that L.G.'s mother was not contacted prior to questioning. (10.6.15 Entry p.4).

The court of appeals found the following: it would have been apparent to L.G. that an active police investigation was underway because police officers and bomb-sniffing dogs were present and a

Crime Stoppers award had been offered; all students were gathered in the gymnasium during the search of the school and were not permitted to leave; L.G. was taken to the cafeteria by a school resource officer, who had the "authority of a special police officer" when on school grounds; L.G. was questioned by the school district's Executive Director of Safety and Security, not a staff member of the school, who he would have been familiar with; and the officers who stood by while Bullens questioned L.G. stood closer than Bullens did during questioning. *L.G.*, 2017-Ohio-2781, 82 N.E.3d 52 at ¶ 15.

Like J.D.B., L.G. was "in custody" such that he should have been read his *Miranda* rights before interrogation when he was taken to a room in his school, separated from his peers, and surrounded by police officers. This conclusion comports with decades of precedent and is consistent with the requirement that the "greatest care" is extended when children are subject to interrogation and the mandate that the *Miranda* custody determination be made through the lens of the reasonable child standard. *J.D.B.*.; *Haley*, 332 U.S. at 599-600, 68 S.Ct. 302, 92 L.Ed.224; *Gallegos*, 370 U.S. at 54 82 S.Ct. 1209, 8 L.Ed.2d 325; *Fare*, 442 U.S. at 725, 99 S.Ct. 2560, 61 L.Ed.2d 197; *Barker*, 149 Ohio St.3d 1, 2016-Ohio-2708, 73 N.E.3d 365 at ¶ 24; *J.D.B.*, 564 U.S. at 272, 131 S.Ct. 2394, 180 L.Ed.2d 310.

Conclusion

For the foregoing reasons *Amici Curiae* respectfully request that this Court affirms the decisions of the Second District Court of Appeals and the Montgomery County Juvenile Court, or in the alternative, as Appellee has requested, dismiss this case as improvidently granted.

Respectfully submitted,

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Certificate of Service

I hereby certify that a copy of the foregoing **BRIEF OF AMICI CURIAE, JUVENILE LAW CENTER, OFFICE OF THE OHIO PUBLIC DEFENDER, CHILDREN'S LAW CENTER, INC., EDUCATION LAW CENTER-PA, JUVENILE JUSTICE COALITION, NATIONAL JUVENILE DEFENDER CENTER, AND SCHUBERT CENTER FOR CHILDREN'S STUDIES, IN SUPPORT OF APPELLANT, L.G.** was sent by regular U.S. mail, postage prepaid, to Mathias H. Heck, Jr., Montgomery County Prosecutor, 301 West Third Street, 5th Street, Dayton, Ohio 45422, Christina E. Mahy, Assistant Montgomery Prosecutor, Appellate Division, 301 West Third Street, 5th Street, Dayton, Ohio 45422; and Michael Deffet, Assistant Montgomery County Public Defender, 117 South Main Street, Suite 400, Dayton, Ohio 45402, on this 12th day of June, 2018.

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