No. 18-1389

In the Supreme Court of Ohio

APPEAL FROM THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO
CASE NO. 105964

STATE OF OHIO,
Plaintiff-Appellant,

v.

BASIM BARNES,
Defendant-Appellee.

BRIEF OF AMICI CURIAE OHIO STATE BAR ASSOCIATION & ACADEMIC EXPERTS IN SUPPORT OF APPELLEE BASIM BARNES

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

State Cases

Federal Cases

Page

Ohio Rules of Professional Conduct

Other Rules

Statutes

Article

I. INTRODUCTION

[U]nlike Janus, most lawyers cannot look in two different directions at once.

> — *United States v. Roy*, 855 F.3d 1133, 1177 (11th Cir.2017) (en banc), certiorari denied, --- U.S. ---, 138 S.Ct. 1279, --- L.Ed.2d --- (2018).

This observation aptly describes the ethical dilemma at issue in this case. The Public Defender's Office faced the impossible task of representing an indigent defendant against the accusations of a former client ("L.H.")—a representation that demanded that defense counsel simultaneously honor conflicting loyalties to a past and a current client.

As in many jurisdictions, Ohio courts recognize that an attorney's duty of loyalty typically "requires disqualification when a former client seeks to cooperate with the government and testify against the [lawyer's] present client." *State v. Johnson*, 10th Dist. Franklin No. 13AP-997, 2015-Ohio-3248, 40 N.E.3d 628, ¶ 91 (citation and internal quotation marks omitted) (collecting authorities). Presumably for that reason, the State did not oppose counsel's motion to withdraw. The trial court nevertheless denied the motion, leaving counsel to proceed at risk of compromising the duties of loyalty and confidentiality owed to both clients.

The Eighth District wisely deemed the order final and reversed it on appeal. *State v. Barnes*, 8th Dist. Cuyahoga No. 105964, 2018-Ohio-3273, 117 N.E.3d 977, ¶ 37. The Eighth District's decision enables appointed counsel to withdraw upon timely notice of

a manifest conflict of interest. And it did so in keeping with the final-order statute. Accordingly, amici curiae ask this Court to affirm the Eighth District's judgment.

II. STATEMENT OF INTEREST OF AMICI CURIAE

Amici listed below, the Ohio State Bar Association and experts in legal ethics and Ohio procedure, submit this brief to provide an academic perspective on the ethical and constitutional violations occasioned by the trial court's pre-trial order that effectively forced court-appointed counsel to proceed with the representation of an indigent defendant against the criminal charges of a former client. The obvious conflict, which the State did not dispute, simultaneously exposed court-appointed counsel to ethical violations and impinged upon the Defendant's constitutional right to conflict-free counsel.

Amici offer their expertise on these matters in the hope that Ohio courts will consistently provide appropriate mechanisms for conflicted court-appointed counsel to withdraw before they commit ethical violations or undermine their new representation in fealty to their previous client.

The Ohio State Bar Association (OSBA), founded in 1880, is a voluntary, non-profit professional association open to any person who has been admitted to the practice of law. Since its founding, its mission has been "to advance the science of jurisprudence, to promote reform in the law, to facilitate the administration of justice and to uphold integrity, honor and professionalism in the legal profession."

Deborah A. Coleman is the founder of Coleman Law LLC, a mediator and arbitrator, and professional ethics counsel for lawyers facing grievances. Previously, she was the Ethics Partner at Hahn Loeser & Parks LLP. Among other appointments, she served on the Ohio Supreme Court's Task Force on the Rules of Professional Conduct between 2003 and 2006.

Susan Martyn is a Distinguished University Professor and the John W. Stoepler Professor of Law and Values Emeritus at the University of Toledo College of Law. Also a professor of medicine in the College of Medicine, she teaches torts, legal ethics, and bioethics. She also served as a member of the Ohio Supreme Court's Task Force on the Rules of Professional Conduct from 2003–2006.

Andrew S. Pollis is a Professor of Law at the Case Western Reserve University School of Law, where he teaches civil litigation, appellate practice, and evidence. An OSBA-certified appellate-law specialist, he has co-authored the last 10 editions of Painter & Pollis, *Baldwin's Ohio Appellate Practice*. He currently serves as Chair of the Court's Commission on the Rules of Practice and Procedure.

John P. Sahl is the Joseph G. Miller Professor of Law and Director of the Joseph G. Miller and William C. Becker Center for Professional Responsibility at the University of Akron School of Law. Among other appointments, he has served as a member of the Ohio Supreme Court's Commission on the Unauthorized Practice of Law, and he currently serves as the Chair of the Publications Board of Editors for the ABA Center

for Professional Responsibility. He is also the recipient of the 2019 Eugene R. Weir Award for Ethics and Professionalism awarded by OSBA.

III. STATEMENT OF FACTS

Amici adopt and incorporate the Statement of Facts contained in the Merit Brief of Defendant-Appellee Basim Barnes.

IV. ARGUMENT

Counterproposition of Law No. 1

A trial court must permit appointed criminal defense counsel to withdraw when the accuser is a former client of his office.

The Sixth Amendment right to conflict-free counsel is well established. *E.g.*, *State v. Dillon*, 74 Ohio St.3d 166, 657 N.E.2d 273 (1995); *Cuyler v. Sullivan*, 446 U.S. 335, 348, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980). In the context of joint representation, a conflict arises "if, during the course of the representation, the defendants' interests * * * diverge with respect to a material factual or legal issue." (Citation and internal quotation marks omitted.) *Dillon* at 169. Such a conflict exists in the context of *subsequent* representation where the previous client cooperates with the government by offering evidence against the new client, because the attorney's duty of loyalty to the former precludes competent representation of the latter. *E.g.*, *Johnson*, 2015-Ohio-3248, 40 N.E.3d 628, at ¶ 91 (collecting authorities recognizing that the duty of loyalty typically "requires disqualification when a former client seeks to cooperate with the government and testify against the present client" (citation and internal quotation marks omitted)).

In the case of divided loyalties between current and former clients, counsel need not show a " 'substantial relationship' between the subject matter of the prior representation and the issues in the present case before disqualification is warranted." (Citation omitted.) *Id.* Rather, courts recognize that "an attorney who cross-examines former clients inherently encounters divided loyalties" and should be disqualified. (Citation omitted.) *Id.*, quoting *United States v. Moscony*, 927 F.2d 742, 750 (3d Cir.1991); *accord United States v. Williams*, 902 F.3d 1328, 1334 (11th Cir.2018); *Banner v. City of Flint*, 99 Fed.Appx. 29, 36 (6th Cir.2004) (per curiam).

A different attorney in the Public Defender's Office was appointed to represent Mr. Barnes's accuser. But the Public Defender's Office is a "firm," for purposes of conflicts of interest. *See* Prof.Cond.R. 1.0(c). Under Prof.Cond.R. 1.10, if one member of the firm is conflicted, they all are.

The ABA rules for defense attorneys and Ohio Rules of Professional Conduct acknowledge the gravity of such successive-representation conflicts and the attendant conflicting loyalties, by requiring prompt disclosure and informed consent from both clients, while simultaneously prohibiting adverse legal positions and use of the previous client's confidential information to her disadvantage. For instance, ABA Standard for Criminal Justice 4-1.7 provides that "defense counsel should disclose" potential conflicts "relevant to the client's selection of unconflicted counsel," "obtain informed

consent" before proceeding with a conflict, and "not take legal positions that are substantially adverse to a former client." ABA Standards for Crim. J. 4-1.7(c), (f).

Similarly, the Ohio Rules define "conflict of interest" to include representations posing "a substantial risk" that decisions related to the representation "will be materially limited by the lawyer's responsibilities to * * * a former client." Prof.Cond.R. 1.7(a)(2).[1] In such circumstances, the lawyer should not accept or continue the representation unless he can "provide competent and diligent representation to each affected client" and *both* affected clients give written informed consent. Prof.Cond.R. 1.7(b)(1)–(2). Rule 1.9, meanwhile, requires written informed consent from a former client before an attorney may represent "another person in the same or a substantially related matter" where the current and former clients' interests "are materially adverse." Prof.Cond.R. 1.9(a); *see also* Prof.Cond.R. 1.9(b) (also requiring informed consent when the lawyer proceeds against a former client of the lawyer's previous firm). "Substantially related matter" is broadly defined by Prof.Cond.R. 1.0(n) to include any matter in which "there is a substantial risk that confidential factual information that would normally have been obtained in the prior representation of a client would materially advance the position

[1] The ABA Model Rules of Professional Conduct, similarly, provides that "a lawyer shall not represent a client" if "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibility to another client." ABA Model Prof.Cond.R. 1.7(a)(2); *see also Williams*, 902 F.3d at 1334 (citing Model Rule 1.7(a)(2) in discussing the split-loyalty conflict encountered by an attorney who cross-examines a previous client).

of another client in [the] subsequent matter." The Rules also require keeping current and former client information confidential. *E.g.*, Prof.Cond.R. 1.8(b) (providing that "a lawyer shall not use information relating to [the] representation * * * to the disadvantage of a client" without informed consent); Prof.Cond.R. 1.9(c)(1)–(2) (instructing that a lawyer may not (1) "use information relating to the [previous] representation to the disadvantage of the former client," or (2) "reveal information relating to the [previous] representation").

Courts typically defer to an attorney's professional judgment concerning whether or not a conflict precludes representation. When appointed counsel seeks to withdraw, "[t]he lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient." Prof.Cond.R. 1.16, Comment 3; ABA Model Prof.Cond.R. 1.16, Comment 3. In the context of joint representations, the U.S. Supreme Court has recognized that "[a]n 'attorney representing two defendants in a criminal matter is in the best position professionally and ethically to determine when a conflict of interest exists or will probably develop in the course of a trial.' " *Holloway v. Arkansas*, 435 U.S. 475, 485, 98 S.Ct. 1173, 55 L.Ed.2d 426 (1978), quoting *State v. Davis*, 110 Ariz. 29, 31, 514 P.2d 1025 (1973). Ohio courts have made the same observation. *E.g.*, *State v. Brooks*, 3rd Dist. Hancock No. 5-11-11, 2012-Ohio-5235, ¶ 91; *State v. Robinson*, 7th Dist. Jefferson No. 05 JE 8, 2007-Ohio-3501, ¶ 116.

In denying counsel's timely and unopposed motion to withdraw, the trial court not only refused to accept counsel's conclusion that "professional consideration require[d] termination," but it *effectively abrogated* the informed-consent requirements of Rules 1.7(b)(2) for both the Defendant and his accuser (the latter being appointed counsel's former client). And, while the trial court instructed appointed counsel not to use information related to the previous representation of L.H.—honoring the requirements of Rule 1.9(c)—the court failed to account for the "inherently * * * divided loyalties" of requiring counsel to investigate and eventually cross-examine the former client/primary accuser. *See Johnson*, 2015-Ohio-3248, 40 N.E.3d 628, at ¶ 91; *United States v. Williams*, 902 F.3d 1328, 1334 (11th Cir.2018) (citing ABA Model Prof.Cond.R. 1.7(a)(2)).

By instructing appointed counsel to proceed with an undisputed conflict, the trial court not only impinged on the Defendant's Sixth Amendment right to conflict-free counsel, but also exposed counsel to continuing ethical violations. Counsel's dual-loyalty dilemma would undermine *all* aspects of the Office's representation of Mr. Barnes, including:

- the trust relationship between Mr. Barnes and appointed counsel;
- counsel's initial investigation of L.H.'s allegations against Mr. Barnes;
- related plea-bargain strategy;
- subsequent litigation strategy; and

- confrontation of L.H. via cross-examination at trial.

On the front end, counsel could not reasonably investigate the credibility of L.H.'s accusations, because *ethically* he would need to disregard information obtained from or related to the Office's previous representation of her and avoid taking legal positions *materially adverse to her—e.g.*, taking a position implicating her dishonesty, lack of recollection or perception, and even potential criminality. Such information would otherwise be fair game and would potentially exculpate the Defendant.

The Sixth Amendment right to the effective assistance of counsel extends to important pre-trial processes like plea bargaining "[b]ecause ours 'is for the most part a system of pleas, not a system of trials.' " *Missouri v. Frye*, 566 U.S. 134, 143, 132 S.Ct. 1399, 182 L.Ed.2d 379 (2012), quoting *Lafler v. Cooper*, 566 U.S. 156, 170, 132 S.Ct. 1376, 1388, 182 L.Ed.2d 398 (2012). Inasmuch as the vast majority of federal (97%) and state convictions (94%) result from guilty pleas, and guilty pleas often result in shorter sentences, continued representation by conflicted counsel handicaps the defense at the time that "is almost always the critical point for [the] defendant." *Frye* at 144; *accord State v. Clay*, 7th Dist. Mahoning No. 17 MA 0113, 2018-Ohio-985, 108 N.E.3d 642, ¶ 19. *Cf.* Barkow, *Separation of Powers & the Criminal Law*, 58 Stan.L.Rev. 989, 1034 (2006) ("[L]onger sentences exist on the books largely for bargaining purposes [so] * * * individuals who accept a plea bargain receiv[e] shorter sentences than other individuals who are less morally culpable but take a chance and go to trial.").

Related Sixth Amendment interests would suffer on the back end as well. Counsel could not effectively assist[2] with the core Confrontation Clause right of cross-examining L.H. without defying his ethical obligation of abstaining from taking positions adverse to his former client. *See* ABA Standards for Crim. J. 4-1.7. The "main and essential purpose of confrontation is to secure for the opponent the opportunity of cross-examination." (Citation and internal quotation marks omitted.) *Delaware v. Van Arsdall*, 475 U.S. 673, 678, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986). Meaningful cross-examination, for confrontation purposes, encompasses inquiry into the witness's motives, *id.* at 680, as well as previous criminal conduct. *Davis v. Alaska*, 415 U.S. 308, 316, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974); *see also Blackston v. Rapelje*, 780 F.3d 340, 349 (6th Cir.2015). And, while the Confrontation Clause "requires only an adequate opportunity for cross-examination," defense counsel must "be[] 'permitted to expose to the jury the facts from which jurors * * * could appropriately draw inferences relating to the reliability of the witness.' " *United States v. Richardson*, 781 F.3d 237, 243 (5th

[2] Such conflict-based ineffective assistance would be difficult for a defendant to establish, and prejudice would not necessarily be presumed. *See, e.g.*, *McRae v. United States*, 734 Fed.App'x 978, 983 (6th Cir.2018) ("In the sixteen years since *Mickens* was decided, circuit courts have been hesitant to apply *Sullivan*'s presumption [of prejudice] outside the multiple- or serial-representation context," noting the difficulty of determining the corrupting influence of a conflict on a multiple representation case); *Lordi v. Ishee*, 384 F.3d 189, 193 (6th Cir. 2004) (recognizing that the presumption of prejudice does not apply to ineffective-assistance claims asserting conflicts arising from successive representations).

Cir.2015), quoting *United States v. Restivo*, 8 F.3d 274, 278 (5th Cir.1993), quoting *Davis* at 318.

None of these conflict-related perils was necessary in light of counsel's timely—and unopposed—motion to withdraw. The trial court erred by failing to comprehend the full extent of the manifest conflict and the dangers it posed to Defendant's Sixth Amendment rights. By permitting the withdrawal of appointed counsel, the court of appeals both (i) vindicated Defendant's Sixth Amendment right to conflict-free counsel, and (ii) resolved counsel's dual-loyalty conflict. Amici respectfully ask this Court to affirm that court's judgment.

Counterproposition of Law No. 2

> **A trial court's denial of appointed criminal defense counsel's motion to withdraw is a final order when the order requires counsel to proceed against a former client, now the accuser.**

The Eighth District properly concluded that the trial court's order denying the motion to withdraw was final under R.C. 2505.02(B)(4). The State concedes that the order meets the first two requirements of the statute; the trial court's order denying counsel's motion to withdraw is (1) an order denying a provisional remedy and (2) determines the action with respect to the provisional remedy. Appellant Br. at 7; *see also State v. Anderson*, 138 Ohio St.3d 264, 2014-Ohio-542, 6 N.E.3d 23, ¶ 42. Accordingly, amici address the final requirement: whether the appealing party could obtain "a meaningful or effective remedy" from the normal appellate process and subsequent

retrial. R.C. 2505.02(B)(4)(b). The court of appeals correctly concluded that the answer is "No" and granted immediate review.

A. Proceeding with the representation, despite dual loyalties, exposes appointed counsel to ethical violations—which cannot be remedied by appeal and retrial.

Though the State and the dissent below characterize the situation as one of "potential conflicts," neither addresses the informed-consent requirements in Rules 1.7 and 1.9 or the admonition in the ABA Standards for Crim. J. 4-1.7 that defense counsel "should not take legal positions that are substantially adverse to a former client." As detailed above, they elide the dual-loyalty dilemma that would prevent appointed counsel from: (1) adequately investigating the allegations and credibility of the Office's former client (*e.g.*, dishonesty, lack of recollection, impaired perception, etc.); (2) using that information for purposes of plea bargaining; and (3) effectively cross-examining L.H. at trial. At each of these steps, counsel would need to balance the professional judgment that he might be compromising his duties of confidentiality, loyalty, and diligence to both clients (*see* Prof.Cond.R. 1.3, 1.7 & Comments 1, 18) with the trial court's conclusion that his concerns were speculative. Striking the wrong balance could expose counsel to discipline or sanctions for ethical violations.

The trial court's order practically invited ethical violations by insisting that appointed counsel continue to represent Defendant despite the dual-loyalty conflict. Because L.H.'s testimony, if believed, could result in Defendant's conviction and

incarceration, counsel would *need* to investigate not just her allegations, but her overall credibility, including any criminal history. Investigating L.H. would be essential to evaluating whether to seek a plea agreement or go to trial. If the Office's file for L.H. contained information that would contradict her testimony or otherwise implicate her in wrongdoing relevant to her credibility, counsel would be duty-bound to use that information for the defense of Mr. Barnes. Yet, the Office's countervailing ethical obligations to L.H. would prevent counsel from (i) obtaining or using any information related to the previous representation, or (ii) taking legal positions substantially adverse to the former client. ABA Standards for Crim. J. 4-1.7; Prof.Cond.R. 1.8(b), 1.9(c). Abandoning such information would violate counsel's obligation to Mr. Barnes.

Further, well-established case law recognizes that the "inherently * * * divided loyalties" of having an attorney cross-examine his former client generally requires disqualification of the attorney, even without a showing of a "substantial relationship" between the current and former matters. *E.g.*, *Johnson*, 2015-Ohio-3248, 40 N.E.3d 628, at ¶ 91; *Banner*, 99 Fed.Appx. at 36; *Moscony*, 927 F.2d at 750. And courts have enforced that rule by imposing sanctions on attorneys who nevertheless take positions against former clients. *Banner*, 99 Fed.Appx. at 36–38 (affirming $20,000 fine imposed on firm where attorney deposed a former potential client by using confidential information obtained from their initial meeting).

Far from speculative, appointed counsel's concern about divided loyalties in this case easily meets Rule 1.7(a)(2)'s definition of a conflict—"a *substantial* risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's responsibilities to * * * a former client." (Emphasis added.) Indeed, holding the conflict here to be no more than speculative would effectively require counsel to violate his ethical obligations (to one client or the other) *before* being permitted to take steps to avoid the problem. All the while, the Defendant would be denied his Sixth Amendment right to conflict-free counsel. From the perspective of appointed counsel's compromised representation, the bell cannot be unrung, the chessboard cannot be reset.

B. Post-trial review cannot remedy the injury to Defendant's Sixth Amendment right to conflict-free counsel because of the impossibility of determining prejudice—if the matter goes to trial at all.

Both the State and the dissent presume the adequacy of traditional appellate process that would require the Defendant to show an actual conflict and prejudice. But that would impose an impossible burden on Defendant, who could not know the degree to which appointed counsel's dual loyalties impacted every strategic decision (investigation, plea bargain, pre-trial, trial) throughout the course of the representation.[3]

[3] It also undermines the presumption of innocence to require an indigent Defendant to proceed with conflicted counsel during trial, only to require that Defendant to prove prejudicial ineffective assistance on appeal. Such burden-shifting comes at a price, too,

Further, even if the Defendant could obtain a new trial, any subsequent retrial would entail confrontation with stale evidence (for crimes allegedly committed more than 10 years ago) and further tax judicial resources. And there is no way to ensure that any improper information that came to light in the first trial would not be used against Defendant in a retrial (even with different counsel).

These reasons weighed heavily in this Court's decision in *State v. Chambliss*, 128 Ohio St.3d 507, 2011-Ohio-1785, 947 N.E.2d 65. In that case, the Court held that orders disqualifying chosen counsel are final and subject to immediate appellate review. With regard to the undue burden of requiring the defendant to show prejudice, the Court stressed the salient point from *United States v. Gonzalez-Lopez*, 548 U.S. 140, 150, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006)—that it was " 'impossible to know what different choices the rejected counsel would have made, and then to quantify the impact of those different choices on the outcome of the proceedings.' " *Chambliss* at ¶ 20, quoting *Gonzalez-Lopez* at 150. A trial is not required to demonstrate the conflict because not all these choices involve trial strategy; " '[m]any counseled decisions, including those involving plea bargains and cooperation with the government, do not even concern the conduct of the trial at all. Harmless-error analysis in such a context would be a speculative inquiry into what might have occurred in an alternative

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even if the Defendant could prove ineffective assistance and receive a new trial—the stigma of being convicted of a crime.

universe.' " *Id.*, quoting *Gonzalez-Lopez* at 150.[4] That, combined with the fact that "the subject matter of the first trial, including the strategy employed, witnesses cross-examined, etc., would be stale and likely weakened" and the "waste of scarce judicial resources," "render[ed] a postconviction appeal ineffective or meaningless." *Id.* at ¶ 22.

The same rationale applies here, and neither the State nor the dissent below has a response to the important issues the Court identified in *Chambliss*.

As detailed above, the Sixth Amendment right to counsel impacts all stages of a criminal defense and safeguards additional constitutional protections related to the pre-trial and trial processes. *Chambliss* took the appropriate step of granting immediate review to the disqualification of chosen counsel, even though federal courts generally defer appellate review of counsel-disqualification orders. *Id.* at ¶ 19–27 (rejecting

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[4] *Gonzalez-Lopez* concluded that orders erroneously denying criminal defendants their counsel of choice constituted "structural defects" subject to automatic reversal. *Gonzalez-Lopez* at 150. *Chambliss* quotes another key portion of that Court's rationale, elaborating on the critical importance of the choice of counsel:

> Different attorneys will pursue different strategies with regard to investigation and discovery, development of the theory of defense, selection of the jury, presentation of the witnesses, and style of witness examination and jury argument. And the choice of attorney will affect whether and on what terms the defendant cooperates with the prosecution, plea bargains, or decides instead to go to trial. In light of these myriad aspects of representation, the erroneous denial of counsel bears directly on the "framework within which the trial proceeds"—or indeed on whether it proceeds at all.

Chambliss at ¶ 18, quoting *Gonzalez-Lopez* at 150.

Flanagan v. United States, 465 U.S. 259, 104 S.Ct. 1051, 79 L.Ed.2d 288 (1984)). The same rationales—impossibility of proof, diminution of evidence, and judicial resources—support a modest extension of *Chambliss* to the scenario here: immediate review of an order requiring appointed counsel to continue with a defense compromised by *undisputed* conflict when a former client is now an accuser. Indeed, these reasons arguably weigh more strongly in favor of immediate review of appointed counsel's conflicts, where the indigent defendant does not have a pre-existing relationship of trust with counsel.

The Court need not consider whether other forms of counsel-disqualification orders—addressing genuinely disputed conflicts—qualify as final orders. The Sixth Amendment guarantees conflict-free counsel no less than it does counsel of choice, and the denial of these rights causes nearly identical "structural defects." Unlike Janus, the Public Defender's Office "cannot look in two different directions at once." *See Roy*, 855 F.3d at 1177. It cannot zealously defend the new client while honoring its duties to a former client, now the State's chief witness. Because post-conviction appeal would not provide a "meaningful or effective remedy" for Defendant's Sixth Amendment rights and counsel's ethical exposure, R.C. 2505.02(B)(4)(b), the court of appeals properly allowed immediate review of this final appealable order.

V. CONCLUSION

Court-appointed counsel attempted to honor its ethical obligations by disclosing its prior representation of Mr. Barnes's primary accuser, L.H., and timely moving to withdraw. The State had no objection. The court of appeals properly considered, and reversed, the trial court's order requiring counsel to proceed with the representation despite the conflict. Both the Defendant's Sixth Amendment rights and counsel's professional integrity were at stake and could not await post-trial appeals incapable of undoing these harms. The court of appeals correctly extended the rationale of *Chambliss* to appointed counsel's conflict of interest, and this modest extension poses no risk of eroding the final order doctrine. Accordingly, amici urge this Court to AFFIRM the judgment of the court of appeals.

Respectfully submitted,

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A copy of the foregoing was served on April 2, 2019 per S.Ct.Prac.R. 3.11(B) by email to:

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