IN THE COURT OF COMMON PLEAS
ADAMS COUNTY, OHIO

SHAWN D. COOLEY, et al. Plaintiffs, v. JOSEPH EDGAR FOREMAN, A/K/A AFROMAN, et al. Defendants.	Case No. 2023-0069 Judge Jerry McBride

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BRIEF OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION OF OHIO FOUNDATION AND AMERICAN CIVIL LIBERTIES UNION IN SUPPORT OF DEFENDANTS' JOINT MOTION TO DISMISS AND MOTION TO STRIKE PLAINTIFFS' COMPLAINT

STATEMENT OF INTEREST OF AMICI CURIAE

The American Civil Liberties Union ("ACLU") is a nationwide, non-partisan, non-profit organization dedicated to defending the principles of liberty and equality embodied in the Constitution and our nation's civil rights laws. The American Civil Liberties Union of Ohio Foundation ("ACLU of Ohio") is an affiliate of the ACLU. Both organizations have been at the forefront of efforts nationwide to protect the full array of civil rights and liberties, including the right to free speech. The ACLU and ACLU of Ohio have appeared in numerous cases to defend the First Amendment right of people to criticize government actors, including police officers, and to ensure that torts aimed at expression are scrutinized carefully to observe the First Amendment's boundaries. This includes appearing as *amici* in *Wood v. Eubanks*, 25 F.4th 414 (6th Cir. 2022),

Novak v. City of Parma, 33 F.4th 296 (6th Cir. 2022), and *Nieves v. Bartlett*, 139 S. Ct. 1715 (2019).

INTRODUCTION AND BACKGROUND

This case is a classic entry into the SLAPP suit genre: a meritless effort to use a lawsuit to silence criticism. And not just any criticism, but criticism specifically of government actors. Plaintiffs are a group of law enforcement officers who executed what appears to have been a highly destructive and ultimately fruitless search of a popular musician's home. Now they find themselves at the receiving end of his mockery and outrage, expressed through a series of music videos about the search, as well as spinoff merchandise and social media commentary. They ask this Court not only to award them damages, but to order him to stop speaking about them. At the granular level, the Complaint is an attempt to shoehorn the facts into a series of torts meant for purposes other than Plaintiffs', and it fails simply because it does not provide allegations that could fulfill the requisite elements of any claim. Conceptually, their allegations run afoul of a much deeper principle: There is nothing the First Amendment protects more jealously than criticism of public officials on a matter of public concern.

As Plaintiffs allege, in August of 2022, they executed a search warrant at the Adams County home of Joseph Foreman, a rapper known by the stage name "Afroman." Mr. Foreman's wife recorded the search, as did several security video cameras on the premises. Compl. ¶¶ 17–18. Subsequently, Mr. Foreman created a series of music videos about Plaintiffs' search; in their Complaint, Plaintiffs provide links to two of these videos, and acknowledge that they feature footage of the search. That footage shows Mr. Foreman's front door being smashed in, officers combing his home with weapons drawn, and officers searching through his clothing and personal belongings. *See* Compl. ¶ 23(l) (links to videos); *infra* Appendix 1 (transcription of the music videos' lyrics for the Court's convenience).

The videos also contain Mr. Foreman's narration, overlaid over the videos and set to music. His lyrical comments range from wry ("Would you like a slice of lemon pound cake?" asked as an officer is shown doing a double-take at a dessert sitting on a kitchen counter), to mocking ("Any kidnapping victims inside my CDs?") to outraged ("Did you have to traumatize my kids? / Will you pay me for doing me wrong?"). He denounces the officers' seizure of cash ("They ran up my driveway with guns and hate to steal my funds"), and questions the propriety of their actions ("Why you disconnecting my video camera?"). Plaintiffs also allege that Mr. Foreman's commentary has continued on social media, in the form of references to the videos, mixed in with insults aimed at the officers, as well as the judge who Mr. Foreman claims signed the warrant permitting the search. *See* Compl. ¶ 23. They also allege that he is selling merchandise containing references to the video footage of the search of his home. *Id.* (t-shirts of "officer poundcake," a reference to the videos).

Plaintiffs do not identify the substance of any particular statement in the videos—or for that matter, anywhere else—that they claim is false. Instead, the central focus of their complaint is that Mr. Foreman is making money off of his video commentary and related merchandise, and is criticizing Plaintiffs harshly in the process. That is not tortious conduct; it is protected speech.

Moreover, it is nothing short of absurd for Plaintiffs to claim that Mr. Foreman has somehow invaded their privacy. By their own account, Plaintiffs are law enforcement officials who were engaged in official business at the time of the search shown in the videos. They were in Mr. Foreman's home, not their own. Nothing about Mr. Foreman's expression involves matters of Plaintiffs' intimate personal privacy that could be protected by law. To the contrary, his description—and criticism—of their police work is a legitimate matter of public concern.

Plaintiffs' claims should be dismissed.

ARGUMENT

I. Legal Standard

In reviewing a Civil Rule 12(B)(6) motion to dismiss, courts are not required to accept a plaintiff's "unsupported, legal conclusions" as true. *E.g., Alexander Loc. Sch. Dist. Bd. of Educ. v. Vill. of Albany*, 2017-Ohio-8704, ¶ 31, 101 N.E.3d 21 (4th Dist.). Rather, a complaint "must contain either direct allegations on every material point necessary to sustain a recovery ... or contain allegations from which an inference fairly may be drawn that evidence on these material points will be introduced at trial." *York v. Ohio State Highway Patrol*, 60 Ohio St.3d 143, 147, 573 N.E. 2d 1063 (1991). In addition, when tort claims arise from allegedly false statements, plaintiffs typically must include "the substance of the . . . statements," though they need not set them out "verbatim." *Hedrick v. Ctr. for Comprehensive Alcoholism Treatment*, 7 Ohio App.3d 211, 215 (1st Dist. 1982); *Bansal v. Mt. Carmel Health Sys.*, 10th Dist. Franklin No. 10AP-1207, 2011-Ohio-3827, ¶ 40.[1]

As discussed below, Plaintiffs' claims rest largely on a series of bald legal conclusions that are at best untethered from, and at worst inconsistent with, the other factual allegations. Further, they fail to allege any specific statements that they maintain are false.

II. Counts One and Two: The Challenged Statements Do Not Give Rise to a Claim of Invasion of Privacy by Misappropriation

Whether resting on statute or common law, the right of publicity is "fundamentally constrained by the public and constitutional interest in freedom of expression," and must be construed very carefully to avoid running afoul of that interest. *ETW Corp. v. Jireh Pub., Inc.*, 332

[1] Although this requirement has most clearly been set forth for defamation actions, several of Plaintiffs' tort claims rest on similar elements to defamation, and their application to speech presents the same risk of silencing criticism and dissent, such that the same pleading principles should apply. *See generally, e.g., Welling v. Weinfeld*, 113 Ohio St.3d 464, 2007-Ohio-2451, 866 N.E.2d 1051, ¶¶ 37, 46 (noting the substantial overlap between false light and defamation).

F.3d 915, 930 (6th Cir. 2003) (quoting Restatement (Third) of Unfair Competition, § 47 Comment c). As relevant here, a plaintiff's claim under R.C. 2741.02 must establish both that their persona has "commercial value" and that it was appropriated for a "commercial purpose." *See* R.C. 2741.01(A)-(B). The former, at minimum, is also true of the common-law tort. *See James v. Bob Ross Buick, Inc.*, 167 Ohio App. 3d 338, 2006-Ohio-2638, 855 N.E.2d 338, ¶¶ 17–18.

Plaintiffs do not, and cannot, allege those elements here. To the contrary, the core nature of their first two counts is inconsistent with the First Amendment. Mr. Foreman is not deriving profit from unfairly commandeering Plaintiffs' likenesses in a manner that deprives them of their rightful economic benefits. Rather, he is offering unflattering commentary on them—and if anything, that commentary, rather than their likenesses, is what has generated commercial value. Mr. Foreman's speech is protected by the First Amendment, and the fact that he also derives profit from it is a red herring.

A. Plaintiffs' Have Alleged No Commercial Value to Their Personas

Commercial value exists where a plaintiff may boast both distinctiveness and recognizability among a relevant audience. *Harvey v. Systems Effect, LLC*, 154 N.E.3d 293, 2020-Ohio-1642, ¶ 61 (2d Dist.) (quoting *Cheatham v. Paisano Publications, Inc.*, 891 F. Supp. 381, 386 (W.D. Ky. 1995)). To state a valid claim, a plaintiff must allege a "significant" commercial value in their persona, or "a notoriety which is strong enough to have commercial value within an identifiable group." *Id.* ¶¶ 60–61.

This requirement gets to the core of why claims of this nature exist at all: to protect something of monetary value that belongs exclusively to the plaintiff. The right of publicity is a form of intellectual property protection, where the property in question is a marketable likeness. "The theory of the right is that a celebrity's identity can be valuable in the promotion of products, and the celebrity has an interest that may be protected from the unauthorized commercial

exploitation of that identity." *Harvey* ¶ 58 (quoting *Carson v. Here's Johnny Portable Toilets, Inc.*, 698 F.2d 831, 835 (6th Cir. 1983)). The plaintiff need not literally be a "national celebrity" to prevail, *id.* ¶ 60, but there must be some monetary value that they allege is being exploited.

Plaintiffs allege nothing of this nature. Nor does it matter, for purposes of this claim, that Defendants have allegedly made Plaintiffs' likenesses famous and lent them marketability of a sort. *See, e.g.*, Compl. ¶ 23. Any such value is alleged to arise from Mr. Foreman's music videos and other expressions, not to predate them. *Id.* ¶ 30 (alleging that "Plaintiffs have suffered damages, including all profits derived from and attributable to" use of their likenesses). Put another way, Mr. Foreman's challenged statements have not *misappropriated* any commercial value; they have *generated* it, through his creation of monikers like "Officer Poundcake" and his sale of related merchandise. *See* Compl. ¶ 23; *see also ETW Corp.*, 332 F.3d at 930 (rationale for protection diminishes where any commercial value is "largely fortuitous" and "unrelated to any investment made by the individual") (internal citation omitted).

B. Mr. Foreman's Videos and Merchandise Do Not Appropriate Commercial Benefits of Plaintiffs' Personas

Where expressive content is otherwise protected by the First Amendment, it does not lose that protection merely because the speaker makes money from it. *See, e.g.*, *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 756 n.5 (1988) ("Of course, the degree of First Amendment protection is not diminished merely because the newspaper or speech is sold rather than given away."); *Time, Inc. v. Hill*, 385 U.S. 374, 397 (1967) ("That books, newspapers, and magazines are published and sold for profit does not prevent them from being a form of expression whose liberty is safeguarded by the First Amendment.") (internal citation omitted). Otherwise, a newspaper could be held to misappropriate every commercially valuable name that it published. *See Zacchini v. Scripps-Howard Broad. Co.*, 433 U.S. 562, 574 & n.11 (1977) ("there must be

some closer and more direct connection, beyond the mere fact that the newspaper itself is sold") (internal citation omitted); *Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations*, 413 U.S. 376, 384–85 (1973) ("If a newspaper's profit motive were determinative, all aspects of its operations—from the selection of news stories to the choice of editorial position—would be subject to regulation").

Newspapers are not unique in this regard. Arts and entertainment, including music, are also protected expression, regardless of whether the speaker is compensated for them. *Zacchini* at 578 ("There is no doubt that entertainment, as well as news, enjoys First Amendment protection."); *Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557, 569 (2003) (paintings, music, and poetry are "unquestionably shielded" by the First Amendment); *Ward v. Rock Against Racism*, 491 U.S. 781, 790 (1989) ("Music, as a form of expression and communication, is protected under the First Amendment"). Speech is only "commercial" for First Amendment purposes—and thus subject to somewhat lesser protection—where it relates "solely to the economic interests of the speaker and its audience." *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of New York*, 447 U.S. 557, 561 (1980).

Right-of-publicity torts are, and must be, framed carefully to avoid burdening or penalizing the incidental use of a person's likeness or name in commentary relating to that person. *See, e.g.*, *ETW Corp.*, 332 F.3d at 930. Such commentary cannot be actionable even where, unlike here, the plaintiff's likeness does have commercial value. *See Harvey*, 2020-Ohio-1642, at ¶ 58 ("[N]or is the value of [the plaintiff's] likeness appropriated when it is published for purposes other than taking advantage of his reputation, prestige, or other value associated with him, for purposes of publicity.") (internal citation omitted); *ETW Corp.* at 930–31 ("[t]he use of a person's identity

primarily for the purpose of communicating information or expressing ideas is not generally actionable as a violation of the person's right of publicity") (internal citation omitted).

The Supreme Court of the United States illustrated this distinction in *Zacchini*. The plaintiff in that case performed a "human cannonball" act, involving being shot from a cannon across a substantial distance into a net. *See* 433 U.S. at 563. He was paid for these performances. *Id.* at 573 n.10. A freelance reporter recorded the entire act, against the petitioner's instructions; it was then broadcast in full on the defendant's evening news. Finding that the petitioner could state a claim consistent with the First Amendment, the Court noted that the defendant's use of the recording served not merely to comment on the petitioner's performance, but to deprive him of its economic value, akin to "preventing petitioner from charging an admission fee." *Id.* at 575. In such circumstances, the rationale for protecting the right of publicity was similar to unjust enrichment or intellectual property protection: "[n]o social purpose is served by having the defendant get free some aspect of the plaintiff that would have market value and for which he would normally pay." *Id.* (internal citation omitted). Broadcasting the entire performance of a professional entertainer "goes to the heart of petitioner's ability to earn a living," *id.* at 576, but by contrast, no tort claim for the mere "incidental use of a name or picture by the press" could have withstood the First Amendment. *Id.*

This case is the opposite of *Zacchini*—not only because Plaintiffs' personas have no protectable economic value, as noted above, but also because Mr. Foreman's expression would do nothing to deprive Plaintiffs of any such value even if they did. His videos are commentary; they employ recordings of Plaintiffs to underscore and illustrate his substantive criticisms, not to obtain some sort of commercial benefit that is rightfully Plaintiffs'. *See* Compl. ¶ 23(l), *infra* Appendix 1 (transcription of lyrics). For example, over images of the officers searching through his

belongings, he asks whether they hope to find "a thousand pounds of weed in my suit pockets" or "kidnapping victims inside my CDs." As they are shown collecting cash to be seized, he asks "Why are you stealing my money? / You represent the law and its funny / You're stealing my legal-work-hard-everyday-pay-taxes money." He denounces them as "white supremacists on my premises" and "rent-a-cops," opining that "[w]e oughta throw crooked cops in the slammer." *Id.*

By Plaintiffs' own account, these are comments about the Plaintiffs and their actions. The use of their likenesses is incidental to that commentary, and therefore protected by the First Amendment. That is all the more so because Plaintiffs are law enforcement officers, and "[c]riticism of the government is at the very center of the constitutionally protected area of free discussion." *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966). That is true even where the criticism is coarse or harsh. *E.g.*, *Kennedy v. City of Villa Hills, Ky.*, 635 F.3d 210, 215–16 (6th Cir. 2011) ("the First Amendment requires that police tolerate coarse criticism"). As the Supreme Court of Ohio has recognized, "the Constitution protects statements made about public officials when those statements concern 'anything which might touch on an official's fitness for office.'" *Early v. The Toledo Blade*, 130 Ohio App. 3d 302, 321, 720 N.E.2d 107 (6th Dist. 1998) (quoting *Sake v. Plain Dealer*, 69 Ohio St.3d 395, 397, 1994-Ohio-337, 632 N.E.2d 1282 (1994)).

At bottom, Plaintiffs are attempting to misuse a form of intellectual property tort to silence criticism. Counts One and Two should be dismissed.

III. <u>Count Three: Plaintiffs Fail to Allege a Valid False Light Claim</u>

Count Three of Plaintiffs' complaint alleges a claim for "Invasion of Privacy-False Light Publicity," citing Restatement (Torts), Second § 652E. That claim requires that "(a) the false light in which the other was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed." *Welling v. Weinfeld*, 113 Ohio St. 3d 464, 2007-

Ohio-2451, 866 N.E.2d 1051, ¶ 61. Inherent in the tort is that the statements must be factually false; the claim fails if they are even "substantially true." *E.g.*, *Dudee v. Philpot*, 133 N.E. 3d 590, 2019-Ohio-3939, 133 N.E.3d 590, ¶¶ 76–77 (1st Dist. 2019).

Plaintiffs do not properly allege a claim for false light. They offer only barren legal conclusions. Moreover, this claim contradicts the Complaint's core narrative—that Defendants publicized Plaintiffs' private matters for commercial value, which implies that the matter publicized is *true*. *See Mitchell v. Fujitec Am., Inc.*, 518 F.Supp.3d 1073, 1097 (S.D. Ohio 2021). Plaintiffs' claim for false light is both impermissibly conclusory, and incoherent in the context of their factual allegations.

A. Plaintiffs Have Not Alleged the Existence of Any False Statement, or that Mr. Foreman Acted with Malice

Whether or not Plaintiffs agree with the manner in which Mr. Foreman presents his narrative, they have not alleged that any of his purported statements are anything but "substantially true or protected opinion[.]" *See Murray v. Chagrin Valley Publishing Co.*, 2014-Ohio-5442, 25 N.E. 3d 1111, ¶ 39 (8th Dist. 2014). The Complaint lists several alleged "examples of the Defendants' use of the personas of Plaintiffs for commercial purposes," Compl. ¶ 23, but even construing Plaintiffs' allegations liberally and as a whole, the listed statements comprise a series of opinions, insults, and undisputed factual assertions.

For example, Mr. Foreman nicknamed Plaintiff Shawn Cooley "Officer Poundcake" because, as evident in the footage of the incident, Plaintiff Cooley took note of Mr. Foreman's "mamma's lemon pound cake" on the kitchen counter, which appeared to make him "wanna put down his gun and cut him a slice[.]"[2] Mr. Foreman likens Officer Cooley to a "family guy" and

[2] *See* Afroman, "Lemon Pound Cake," (Dec. 30, 2022), available at https://www.youtube.com/watch?v=9xxK5yyecRo (accessed Apr. 19, 2023).

compares him to the character Peter Griffin from Family Guy—a statement of opinion. And Plaintiffs fail to allege that any of Mr. Foreman's references to the sheriff's deputies breaking his front gate and door, "stealing my money," "disconnect[ing] my cameras," and "traumatiz[ing] my kids" are false. To the contrary, they are supported by the footage of the incident that Plaintiffs link to in their Complaint. That footage shows armed Adams County sheriff's deputies dressed in full tactical gear forcibly opening Mr. Foreman's front gate, knocking down his front door, searching through his clothing (including suit pockets) and his collection of CDs, counting his money, and ultimately disconnecting his home video surveillance cameras, which stops the footage. *See* Appendix 1. Plaintiffs do not allege that any of Mr. Foreman's statements about these events are false.

Additionally, Plaintiffs do not allege that any particular statement was made with knowledge or reckless disregard for their its truth—that is, actual malice—as required for a false light claim. *Welling*, 2007-Ohio-2451, at ¶ 61. Actual malice is not satisfied merely upon a showing of "ill will, spite, or ulterior motive." *Jacobs v. Frank*, 60 Ohio St. 3d 111, 115, 573 N.E. 2d 609 (1991); *see also Burns v. Rice*, 157 Ohio App.3d 620, 2004-Ohio-3228, 813 N.E.2d 25, ¶ 46 (10th Dist.). "The focus is on the defendants' attitude toward the truth or falsity of the publication, rather than the defendants' attitude toward the plaintiffs." *Burns* at ¶ 46. Whether or not Plaintiffs' allegations support the reasonable inference that Mr. Foreman's statements are motivated by animosity—in light of Plaintiffs having raided his home, damaged his property, and terrified his children—they have not alleged that Mr. Foreman "was aware of [a] high probability of falsity" of these statements. *Lansky v. Rizzo*, 8th Dist. Cuyahoga No. 88356, 2007-Ohio-2500, ¶ 25.

Rather than point to the substance of any statement they contend to be false, or allege actual malice as to any statement, Plaintiffs merely regurgitate the elements of false light and declare them satisfied. *See* Compl. ¶ 44. As noted above, conclusory allegations of this nature are not enough to state a claim. *See Hedrick*, 7 Ohio App.3d at 215 (holding that a plaintiff must allege "the substance" of the statements at issue); *Alexander*, 2017-Ohio-8704, at ¶ 31 (holding that unsupported legal conclusions need not be taken as true).

B. Mr. Foreman's Statements Criticizing the Police Are Protected Speech Under the First Amendment and Not Highly Offensive

Even assuming arguendo that the statements described in the complaint were alleged to be false, in order to be actionable, "[t]he statement must be such a major misrepresentation of [one's] character, history, activities or beliefs that serious offense may reasonably be expected." *Dudee* at ¶ 76 (citing *Welling* ¶ 55). Statements that are merely critical, unkind, or rude are not actionable in tort. *See Betzko v. Mick*, 2022-Ohio-999, 187 N.E.3d 18, ¶ 28 (12th Dist.) ("The defendants' hyperbole, in this instance, does not rise to the level of false light as a matter of law.").

That is especially true in this case, as "[t]he First Amendment protects a significant amount of verbal criticism and challenge directed at police officers." *City of Houston, Tex. v. Hill*, 482 U.S. 451, 461 (1987); *see also Arnett v. Myers*, 281 F.3d 552, 560 (6th Cir. 2002) ("It is well-settled that the freedom to criticize public officials and expose their wrongdoing is a fundamental First Amendment value...."). Even where words would be offensive to another citizen, police officers are "trained to exercise a higher degree of restraint" with respect to name calling and hostile words. *Lewis v. City of New Orleans*, 408 U.S. 913, 913 (1972) (Powell, J., concurring). This freedom of speech overrides any potential impairments of the working efficiency of government agents. *See id.*, n. 12 (internal citation omitted).

Mr. Foreman's statements may be coarse or harsh, but Plaintiffs have not alleged that they misrepresent the deputies' "character, history, activities or beliefs" to such a serious degree that they could be tortious, especially when directed to a public official. *Dudee* ¶ 76; *see Hill*, 482 U.S. at 461. The alleged statements criticizing the deputies' actions and calling attention to the raid on Mr. Foreman's home are protected by the First Amendment.

IV. Count Four: Plaintiffs Have Failed to Sufficiently Plead Invasion of Privacy Through Publicity.

Plaintiffs' fourth count, an invasion of privacy claim, is a particularly odd fit for the statements at issue here. As an initial matter, in contrast to a false light claim, this claim can only succeed if the challenged statements are true. *Mitchell*, 518 F.Supp.3d at 1097. But "[t]ruth may not be the subject of either civil or criminal sanctions where discussion of public affairs is concerned . . . [f]or speech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison v. Louisiana*, 379 U.S. 64, 74–75 (1964).

In addition, a claim for invasion of privacy through publicity requires both that "[t]he facts disclosed [are] those concerning [his] private life . . . not his public life[,]" and that "[t]he matter publicized [is not] a legitimate concern to the public." *Killilea v. Sears, Roebuck & Co.*, 27 Ohio App. 3d 163, 166–67, 499 N.E.2d 1291 (10th Dist. 1985).[3] Defendants' alleged statements focus on how Plaintiffs conducted themselves while on duty as public law enforcement officials, and while in Mr. Foreman's own home. That is the polar opposite of Plaintiffs living their private lives and by definition a matter of legitimate public concern.

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[3] Plaintiffs must also sufficiently allege three other elements: that 1) "the matter [was communicated] to the public at large, or to so many persons that the material must be regarded as substantially certain to become on of public knowledge"; 2) "[t]he matter publicized [is] one which would be highly offensive and objectionable to a reasonable person of ordinary sensibilities"; and 3) the publication was "made intentionally, not negligently." *Id.* at 166–67.

These requirements are "particularly important" where the plaintiffs are public officials because they "have a much weaker basis for privacy claims than average citizens." *Jackson v. City of Columbus*, 67 F. Supp. 2d 839, 869 (S.D. Ohio 1998), *aff'd in relevant part*, 194 F.3d 737 (6th Cir. 1999) (applying this principle to claim brought by former police chief). Indeed, "public men, are, as it were, public property." *New York Times Co. v. Sullivan*, 376 U.S. 254, 268, 270 (1964) (marks and citation omitted).

And statements about them are far more likely to be included within the scope of legitimate public concern. Under this tort, "authorized publicity includes publications concerning . . . crimes, arrests, [and] police raids[.]" Restatement (Second) of Torts (1977) § 652D, comment (g). On this basis, Ohio courts have denied the privacy-through-publicity claims of individuals who survived abuse at the hands of police officers, *Early*, 130 Ohio App. 3d at 345, were improperly arrested, *Penwell v. Taft Broad. Co.*, 13 Ohio App. 3d 382, 384–85, 469 N.E.2d 1025 (12th Dist. 1984), or were ultimately acquitted of criminal charges, *Haynik v. Zimlich*, 508 N.E.2d 195, 196–97 (Cuyahoga C.P. 1986). If individuals who "are so unfortunate as to be present at the scene of a crime" or to otherwise suffer the consequences of government misconduct, "are regarded as properly subject to the public interest," *Penwell* at 384–85, because information about their experiences is "certainly newsworthy," *Early* at 345, the same must be true for officers engaged in police work or being accused of misconduct.

Indeed, courts have refused to allow police officers to stifle criticism of their professional work via invasion-of-privacy-through-publicity claims for these reasons. Where the facts disclosed relate to the plaintiff's "professional life in the area of law enforcement," courts have held that they do "not concern [the officer's] private life," and are "of legitimate concern to the public[.]" *Villa v. Elmore*, 6th Dist. Lucas No. L-05-1058, 2005-Ohio-6649, ¶¶ 39, 44 (refusing to recognize

a police chief's unreasonable publicity claim on the basis of two articles that mentioned that he had pled no contest to a charge of impersonating an officer and guilty to a concealed weapon charge); *see also Jackson v. City of Columbus*, 67 F. Supp. 2d 839, 869 (S.D. Ohio 1998), *affirmed in relevant part*, 194 F.3d 737 (6th Cir. 1999) (dismissing a police chief's unreasonable publicity claim arising from a report about his alleged corruption and mismanagement because "the information in the report was alleged to be false" and "there are no allegations that the report contained any personal information concerning plaintiff's purely private affairs").

"In a democratic society," the ability to publicly discuss the work of government officials is "a check against government ineptitude and corruption," and so "is vital to the well-being of society as a whole." *Villa*, 2005-Ohio-6649, ¶ 44. Such discussion cannot be silenced through invasion of privacy claims brought by public officials.

V. Count Five: Injunctive Relief Is a Remedy, Not a Claim

The Complaint erroneously includes a separate count for injunctive relief. *See* Compl. ¶¶ 51–57. That count should be dismissed on its face, as "injunctive relief is a remedy, not a cause of action." *Woods v. Sharkin*, 2022-Ohio-1949, 192 N.E.3d 1174, ¶ 70 (8th Dist.); *Bresler v. Rock*, 117 N.E.3d 184, 2018-Ohio-5138, ¶ 45 (10th Dist.); *see also Woods v. Oak Hill Community Med. Ctr., Inc.*, 134 Ohio App. 3d 261, 266 n.1, 730 N.E.2d 1037 (4th Dist. 1999). As Plaintiffs' stated claims for relief are without merit, their prayer for injunctive relief as a remedy fails as well.

CONCLUSION

For the foregoing reasons, Amici respectfully submit that Defendants' Motion to Dismiss should be granted and the Complaint dismissed in its entirety.

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CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2023, the foregoing was filed with this Court via facsimile transmission and overnight mail. I further certify that a copy of the foregoing was served to the counsel below by regular and electronic mail.

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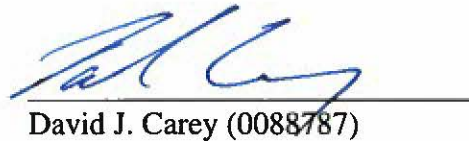

David J. Carey (0088787)

APPENDIX 1[1]

<u>"Will You Help Me Repair My Door"</u>
Will you help me repair my gate?
Will you help me repair my door?
Did you find what you was looking for?
Will you help me repair my gate and door?

Would you like a slice of lemon pound cake?
You can take as much as you want to take
There must be a big mistake
Would you like to have a slice of my lemon pound cake?
The warrant said "Narcotics and kidnapping"
The warrant said "Narcotics and kidnapping"
Are you kidding? I make money rapping
Why does the warrant say "Narcotics?" (Well, I know narcotics)
But why kidnapping?
Let me ask you something, Officer

Any kidnapping victims inside my suit pockets?
Are there, any kidnapping victims inside my suit pockets?
You crooked cops need to stop it
There are no kidnapping victims in my suit pockets
Let me ask you another question
Is there a thousand pounds of weed in my suit pockets?
Is there a thousand pounds of weed in my suit pockets?
You crooked cops need to stop it
There's not a million pounds of weed in my suit pockets
Let me ask you something else

Any kidnapping victims inside my CDs?
Any kidnapping victims inside my CDs?
The Adams County Sheriff's Department, you can get these
There are no kidnapping victims in my, in my CDs
How many pounds of weed are inside my CDs?
How many pounds of weed are inside my CDs?
Adams County Sheriff, you can get these
How many pounds of weed did you find in my CDs?

[1] This transcription encompasses the music videos cited by Plaintiffs. *See* Compl. ¶ 23(l). It was prepared by Amici and is offered for the Court's convenience. It does not represent an official transcription by the artist.

Why are you stealing my money?
Why are you stealing my money?
You represent the law and its funny
You're stealing my legal-work-hard-everyday-pay-taxes money
The sheriff disconnected my cameras
The sheriff disconnected my cameras
The sheriff should be locked up in slammers
The Adams County Sheriff Department disconnected my cameras

Did you have to traumatize my kids?
Did you have to traumatize my kids?
Did you have to traumatize my kids?
Did you have to traumatize my kids?
Will you pay me for doing me wrong?
Will you pay me for doing me wrong?
Will you pay me for doing me wrong?
Or will I have to get paid from this song?

Aye, you think they gon' buy this man?

"Why You Disconnecting My Video Camera"
The British are coming, the British are coming
Hide yo money, yo kids, and yo woman
White supremacists on my premises
What is this? A racist feminist

Why you disconnecting my video camera?
Why you disconnecting my video camera?
Why you disconnecting my video camera?
We oughta throw crooked cops in the slammer
Why you disconnecting my video camera?
Why you disconnecting my video camera?
Why you disconnecting my video camera?
We oughta throw crooked cops in the slammer

August 21st was the day that Adams County Sheriff destroyed my gate
They ran up my driveway with guns and hate to steal my funds
They just couldn't wait
I know you want me dead or in the slammers
But why you unhooking my video cameras?
Rent-rent-a-cops: for rent
Digging in my pockets for lint

Unconfidential informant
False accusations on the warrant
Any pounds of weeds in my custom suits?
Any kidnapping victims in my gator boots?
What do you see in my CDs?
Look at the screen, can you see deez?
What do you see in my CD books?
You can't see me, but I can see you crooks

The British are coming, the British are coming
Hide yo money, yo kids, and yo woman
White supremacists on my premises
What is this? A racist feminist

Why you disconnecting my video camera?
Why you disconnecting my video camera?
Why you disconnecting my video camera?
We oughta throw crooked cops in the slammer
Why you disconnecting my video camera?
Why you disconnecting my video camera?
Why you disconnecting my video camera?
We oughta throw crooked cops in the slammer

Share a snake, quadruple take
TikTok famous: Officer Pound Cake
Speculator, hater
Any kidnapping victims in my refrigerator?
Congratulations, TikTok star, now the world knows how stupid you are
Lucky you're a family guy
Got the munchies because you got high
You never catch white people breaking in my house
But you can traumatize me, my kids, and my spouse
You can steal all this money from me, man
But you can't solve the murder in Seaman
Mad because I'm black
Mad because I'm rich
Mad because I fucked your drug-addict bitch
I came from LA and bought the whole city
Send your wife home drunk with my name on her titties

The British are coming, the British are coming
Hide yo money, yo kids, and yo woman
White supremacists on my premises

What is this? A racist feminist

Why you disconnecting my video camera?
Why you disconnecting my video camera?
Why you disconnecting my video camera?
We oughta throw crooked cops in the slammer
Why you disconnecting my video camera?
Why you disconnecting my video camera?
Why you disconnecting my video camera?
We oughta throw crooked cops in the slammer

I pay taxes, I work daily
I get raided by Beetle Bailey
Randy Walters, Private Pyle
I used to fuck his wife doggy style
Fidel Castro, um, let's see
Duck Dynasty, Uncle Jesse
Officer Receding Hairline
Deputy Dipshit just can't find shit
Lieutenant Mona Licc'em Low Lisa
Ate my ex-wife just like pizza
She jealous of me and my log jam
That's why she disconnected my camera
Pubic Hair, Paw Patrol
Bring back the money that you stole
I defund thee
Refund me
Fuck you and King Kong Bundy

The British are coming, the British are coming
Hide yo money, yo kids, and yo woman
White supremacists on my premises
What is this? A racist feminist

Why you disconnecting my video camera?
Why you disconnecting my video camera?
Why you disconnecting my video camera?
We oughta throw crooked cops in the slammer
Why you disconnecting my video camera?
Why you disconnecting my video camera?
Why you disconnecting my video camera?
We oughta throw crooked cops in the slammer

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Slammer (x4)