

IN THE SUPREME COURT OF OHIO

JANE DOE, INDIVIDUALLY AND AS	:	Supreme Court Case No. 2007-1304
NEXT FRIEND OF HOLLY ROE, A	:	
MINOR, et al.	:	
	:	
Appellants,	:	
	:	On Appeal from the Judgment
	:	Entered in the Stark County Court
v.	:	of Appeals, Fifth Appellate District
	:	
MARLINGTON SCHOOL DISTRICT,	:	Court of Appeals
et al.	:	Case No. 00102
	:	
Appellees.	:	
	:	

APPELLANTS' MOTION FOR RECONSIDERATION

John F. Hill [0039675]  
Joy Malek Oldfield [0073065]  
Hill Hardman Oldfield, LLC  
National City Center  
One Cascade Plaza, Suite 2000  
Akron, Ohio 44308  
Telephone: (330) 253-4000  
Facsimile: (330) 253-3840  
E-Mail: [jhill@hillhardmanoldfield.com](mailto:jhill@hillhardmanoldfield.com)  
[joldfield@hillhardmanoldfield.com](mailto:joldfield@hillhardmanoldfield.com)

David Kane Smith [0016208]  
Michael E. Stinn [0011495]  
Joseph W. Boatwright, IV [0078304]  
Britton, Smith, Peters & Kalail, Co., L.P.A.  
Summit One, Suite 540  
4700 Rockside Road  
Cleveland, Ohio 44131-2152  
Telephone: 216/642-0323  
Facsimile: 216/642-0747  
E-Mail: [dsmith@ohioedlaw.com](mailto:dsmith@ohioedlaw.com)  
[mstinn@ohioedlaw.com](mailto:mstinn@ohioedlaw.com)  
[jboatwright@ohioedlaw.com](mailto:jboatwright@ohioedlaw.com)

Attorneys for Plaintiffs-Appellants Jane  
Doe, Individually and as Next Friend of  
Holly Roe, A Minor, et al.

and

**FILED**  
NOV 13 2007  
CLERK OF COURT  
SUPREME COURT OF OHIO

  
HILL HARDMAN  
OLDFIELD, LLC  
ATTORNEYS AT LAW  
One Cascade Plaza  
Suite 2000  
Akron, Ohio 44308

Mary Jo Shannon Slick [0022553]  
Stark County Education Service Center  
2100 38<sup>th</sup> Street, N.W.  
Canton, Ohio 44709-2300  
Telephone: 330/492-8136  
Facsimile: 330/492-6381

Attorneys for Defendants-Appellees  
Marlington Local School District Board  
of Education

HILL HARDMAN  
OLDFIELD, LLC  
ATTORNEYS AT LAW

One Cascade Plaza  
Suite 2000  
Akron, Ohio 44308

## MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION

### **I. Introduction**

Pursuant to S. Ct. Prac. R. XI, Section 2, this Court should reconsider its 4-3 decision to deny jurisdiction in this case.

A case with virtually identical facts is now pending in this Court, on a memorandum in support of jurisdiction. That case is *Jane Doe v. Jackson Local School District*, Supreme Court Case No. 2007-1459. The striking similarities between these two cases from different school districts demonstrate the widespread nature of this problem, and that this is an issue of great public and general interest.

Further, this Court recently accepted jurisdiction in yet another case involving sexual abuse of schoolchildren due to school district negligence. That case is *Jane Doe v. Massillon City School District*, Supreme Court Case No. 2007-1311. In that case, this Court will consider the question of whether a political subdivision may be held liable for injuries that occurred off school grounds, if the negligence which led to those injuries occurred on school grounds (i.e., the failure to conduct a background check on faculty or volunteers). The Court's decision to review the scope of school district immunity in that case is appropriate. The Court should review immunity in the (more common) school bus context as well.

### **II. Striking Similarities Between This Case and Case No. 2007-1459**

A special needs elementary school child was repeatedly sexually assaulted on a public school bus by an older student with a checkered past. The abuse occurred in the presence of the school bus driver, who lacked the legally required training and failed to intervene. Those are the facts in this case and in *Jane Doe v. Jackson Local School District*, Supreme Court Case No. 2007-1459.

In both cases, the bus drivers failed to devote the necessary supervision to students with serious histories of misconduct. In both cases, the school districts and the bus drivers violated basic Ohio student transportation requirements regarding student control, pupil management and safety instruction.<sup>1</sup> Both districts failed to provide additional behavior management training as required for special needs bus drivers.

How is it that there is more than one case like this? In her Memorandum in Support in this case, Plaintiff pointed out that sexual abuse on the school bus is a disturbingly common problem in Ohio (and elsewhere); and, is one of the fastest growing forms of school violence.<sup>2</sup> And why not? School districts continue to entrust transportation to individuals they don't know, whose qualifications they don't check. And the districts fail to follow Ohio regulations regarding this transportation.

In February 2007, the Columbus Dispatch reported that the safety of thousands of Ohio schoolchildren has been entrusted to more than 150 bus drivers with histories of drunken driving or drug abuse.<sup>3</sup> More importantly, "the near-universal reaction of school officials when informed that they had hired drivers with checkered pasts: 'We didn't know.'"<sup>4</sup>

School districts are routinely granted immunity for their failure to conduct background checks on their employees. By failing to consider this case, this Court is also granting immunity for the failure by those employees to see the abuse that occurs repeatedly in their presence.

---

<sup>1</sup> See Ohio Administrative Code 3301-51-10, 3301-83-08, and 3301-83-10.

<sup>2</sup> "As School Bus Sexual Assaults Rise, Danger Often Overlooked," 6/14/2005, Elizabeth Williamson and Lori Aratani, [washingtonpost.com](http://www.washingtonpost.com/wp-dyn/content/article/2005/06/13/AR2005061301642_pf.html); [http://www.washingtonpost.com/wp-dyn/content/article/2005/06/13/AR2005061301642\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2005/06/13/AR2005061301642_pf.html)

<sup>3</sup> "Fit to Drive?" 2/11/2007, Randy Ludlow and Jill Riepenhoff, Columbus Dispatch; <http://www.>

<sup>4</sup> *Id.*

### III. Grant of Jurisdiction for Immunity Issues in Case No. 2007-1311

This Court agreed to consider whether a political subdivision may be held liable for injuries that occur off school grounds, if the negligence occurs on school grounds. Certainly, this Court should also consider whether a school district may be held liable for negligence occurring on its motor vehicles – right in the presence of its employee.

### IV. The Legislature Intended a Broader Interpretation of “Operation” of a Motor Vehicle

This case presents an important and increasingly common issue on which appellate courts have disparately interpreted a legislative term. It is the exact kind of case that requires the Supreme Court’s attention.

The exception to immunity at issue in this case (R.C. §2744.02(B)(1)) imposes liability to political subdivisions when their employees negligently “operate” a motor vehicle. “Operation” of a motor vehicle in this context must include pupil supervision, in corroboration with Ohio regulations for school bus drivers. But, after the rulings in this case and the Jackson Local School District case, Ohio appellate courts disagree about what is meant by the term “operate.”

In *Groves v. Dayton Public Schools, et al* (1999), 132 Ohio App.3d 566 and *Doe v. Dayton City School District Board of Education* (1999), 137 Ohio App.3d 166, the Sixth District rejected the narrow definition of “operate” espoused by the Fifth District in this case. A broad interpretation of that word is consistent with the legislative language, which carves out certain types of “operation” which shall remain immune from liability, irrespective of the language in R.C. §2744.01(B)(1) – such as police and emergency medical services on emergency calls or firefighters on duty. The legislature did not carve out a similar exception for school bus drivers. Neither should Ohio courts.

Further, it is clear that the legislature could have defined the term "operate" to exclude pupil supervision, if it had so intended.

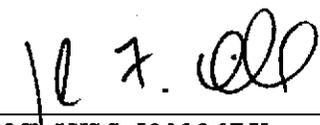
Failing to include supervision within the context of "operating" a school bus permits Ohio school bus drivers to ignore state-mandated duties to supervise schoolchildren on their bus. It permits school districts to ignore state-mandated duties to train their drivers how properly to prevent injuries to children on a bus. The result cannot stand.

V. **Conclusion**

Under the current legislative scheme of political subdivision immunity, our school children are not safe. Families have no redress. School districts have no reason to change their unlawful conduct. That is not the result that the legislature intended. This Court should reconsider its decision and accept jurisdiction in this case.

Respectfully submitted,

By

  
\_\_\_\_\_  
JOHN F. HILL [0039675]  
JOY MALEK OLDFIELD [0073065]  
HILL HARDMAN OLDFIELD  
National City Center  
One Cascade Plaza, Suite 2000  
Akron, Ohio 44308  
Telephone: (330) 253-4000  
Facsimile: (330) 253-3840  
E-Mail: [jhill@hillhardmanoldfield.com](mailto:jhill@hillhardmanoldfield.com)  
[joldfield@hillhardmanoldfield.com](mailto:joldfield@hillhardmanoldfield.com)

Attorneys for Appellant Jane Doe, Individually and as  
Next Friend of Holly Roe, A Minor, et al.

  
HILL HARDMAN  
OLDFIELD, LLC  
ATTORNEYS AT LAW  
One Cascade Plaza  
Suite 2000  
Akron, Ohio 44308

PROOF OF SERVICE

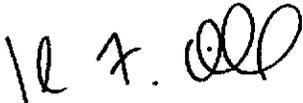
A copy of the foregoing has been served by Federal Express to the following counsel of record this 12<sup>th</sup> day of November, 2007:

David Kane Smith, Esq.  
Michael E. Stinn, Esq.  
Joseph W. Boatwright, IV, Esq.  
Britton, Smith, Peters & Kalail, Co., L.P.A.  
Summit One, Suite 540  
4700 Rockside Road  
Cleveland, Ohio 44131-2152

and

Mary Jo Shannon Slick, Esq.  
Stark County Education Service Center  
2100 38<sup>th</sup> Street, N.W.  
Canton, Ohio 44709-2300

Attorneys for Defendant-Appellants  
Marlington Local School District Board  
of Education

  
\_\_\_\_\_  
JOHN F. HILL [0039675]  
JOY MALEK OLDFIELD [0073065]  
ATTORNEYS FOR APPELLANT

  
HILL HARDMAN  
OLDFIELD, LLC  
ATTORNEYS AT LAW  
One Cascade Plaza  
Suite 2000  
Akron, Ohio 44308