

IN THE SUPREME COURT OF OHIO

JOHN and JUNE ROE, Individually :
and as parents and next friend of :
JANE ROE, a minor, : Case No. 2007-1832
:
Plaintiffs-Appellants, :
:
v. :
:
PLANNED PARENTHOOD : On Appeal from the Hamilton
SOUTHWEST OHIO REGION, et al., : County Court of Appeals,
:
Defendants-Appellees. : First Appellate District
(No. 060557)

MOTION OF APPELLEES TO SUPPLEMENT THE RECORD

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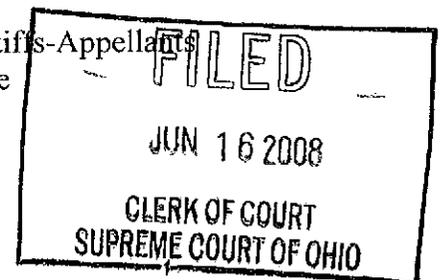
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Jordan, Bob Latta and Jean Schmidt

Pursuant to S.Ct.Prac.R. V, section 6 and S.Ct.Prac.R. XIV, section 4, Appellees respectfully move for leave to supplement the record with the documents included in Exhibit A hereto, which are (1) a letter dated May 6, 2008, from Daniel J. Buckley, counsel for Appellees Planned Parenthood Southwest Ohio Region and Dr. Roslyn Kade, to Brian E. Hurley, counsel for Appellants John, June, and Jane Roe, and (2) the affidavit of Becki Brenner, President and Chief Executive Officer of Planned Parenthood Southwest Ohio Region. These documents memorialize events that transpired after transmission of the Common Pleas Court and Court of Appeals record to this Court -- the production by Planned Parenthood of certain recently-discovered statistical data that the Roes sought in discovery -- and relate to Proposition of Law No. IV, which the Roes have submitted on pages 29-35 of their Merit Brief, and Appellees' response on page 25 of their Merit Brief on the issue of mootness.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion of Appellees to Supplement the Record has been served by electronic and United States mail on this 16th day of June, 2008, to the following:

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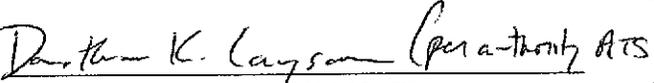
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EXHIBIT A

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May 6, 2008

VIA E-MAIL AND U.S. MAIL

Brian E. Hurley, Esq.
Crabbe Brown & James LLP
30 Garfield Place, Suite 740
Cincinnati, OH 45202

Re: Roe v. Planned Parenthood Southwest Ohio Region, et al.

Dear Brian:

As I stated in our telephone conversation this morning, on the afternoon of Tuesday, April 29, 2008, Planned Parenthood's CEO, Becki Brenner, discovered information as to the number of abortions Planned Parenthood performed on minors during the years 1997-2006. On Wednesday morning, Ms. Brenner found a file containing documents reflecting that same information. Up to now and despite searches, the existence of the file was unknown to both Ms. Brenner and defense counsel.

Enclosed are copies of the documents reflecting the number of abortions performed on minors aged seventeen and under for the years 1997-2006, together with the affidavit of Ms. Brenner. The documents have been redacted of all non-responsive, confidential business information. The affidavit of Ms. Brenner is intended to correct the statements made in the following pleadings:

- (1) Defendants' Status Report, filed with the trial court on March 14, 2007;
- (2) Defendants' Motion for Protective Order, filed with the trial court on April 17, 2006;

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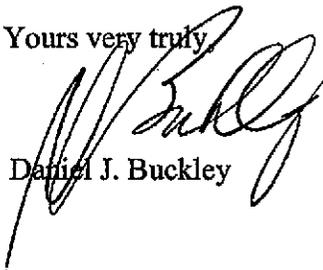
Brian E. Hurley, Esq.
May 6, 2008
Page 2

- (3) Defendants' Combined Memorandum in Further Support of Their Motion for Protective Order and in Opposition to Plaintiffs' Motion to Compel and for Sanctions, filed with the trial court on May 20, 2007;
- (4) Appellants' Memorandum in Opposition to Appellees' Motion for Leave to Supplement Record and File Supplemental Brief, filed with the court of appeals on March 2, 2007;
- (5) Appellants' Memorandum In Opposition to Appellees' Supplemental Memorandum in Support of Motion for Leave to Supplement Record and File Supplemental Brief, filed with the court of appeals on March 21, 2007; and
- (6) Appellants' Memorandum in Opposition to Appellees Application for Reconsideration, filed with the court of appeals on September 14, 2007

Defendants do not object to inclusion of this correspondence and the attached affidavit of Ms. Brenner in any supplement to the briefs that appellants intend to file.

If you have any questions, please inquire.

Yours very truly,


Daniel J. Buckley

Enclosures

cc: Nicholas E. Bunch, Esq.
William A. Posey, Esq.
Richard L. Creighton, Jr., Esq.

**IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

| | | |
|---|---|-----------------------------------|
| JOHN AND JUNE ROE, Individually | : | CASE NO. A0502691 |
| and as parents and next friends of | : | |
| Jane Roe, a minor | : | Judge Nurre |
| | : | |
| Plaintiffs, | : | |
| | : | |
| vs. | : | AFFIDAVIT OF BECKI BRENNER |
| | : | |
| PLANNED PARENTHOOD | : | |
| SOUTHWEST OHIO REGION, et al. | : | |
| | : | |
| Defendants. | : | |

State of Ohio:)
) SS:
County of Hamilton)

Comes now Becki Brenner, and hereby cautioned and sworn, affirms as follows:

1. I am President and Chief Executive Officer of Planned Parenthood Southwest Ohio Region ("PPSWO"), and I have personal knowledge of the facts stated herein.
2. At approximately 3:45 p.m. on Tuesday, April 29, 2008, I was reviewing a 2007 Annual Affiliate Survey Census form ("AASC"), one of the documents that Planned Parenthood Federation of America ("PPFA") requires its affiliates to submit on an annual basis. The document does not require the CEO's signature and I had not previously reviewed this type of AASC report from PPSWO in the past. I was reviewing it to assist my staff with budget discussions and service delivery.
3. While reviewing the document, I noticed a category of information containing the number of abortions performed on minors aged seventeen or less during the 2007 calendar year. When I saw the information contained on the 2007 form, it occurred to me to

question whether this information had been submitted on prior years' AASC forms. I thus immediately contacted the Data Manager at Planned Parenthood Federation of America to ask if this category of information was new, or if it had previously been included on PPFA's AASC document. I was informed that it had been included on the AASC document for several years. I asked the Data Manager whether he could provide me with the number of abortions PPSWO performed on minors aged seventeen or under for the years 1997 – 2006. He confirmed that he could, and provided me with those numbers.

4. Based on my conversation with the Data Manager, I learned that PPSWO's AASC reports contained the number of abortions performed on minors in a given year. None of my previous investigations or inquiries of my staff revealed the existence of this information. I had been aware of a different type of AASC report, known as a ten-year service analysis, that was sent to PPSWO in connection with the accreditation process but which did not contain information on the number of abortions performed on minors (only total number of abortions performed); I did not realize that this separate AASC document contained the minor abortion numbers. At all times prior to the afternoon of April 29th I believed that PPSWO was unable to determine the number of abortions performed on minors in any year prior to 2005 without reviewing individual patient records (PPSWO could determine this information for 2005 and 2006 by virtue of its patient manager software).

5. Shortly after 4 p.m. that same afternoon, and immediately after receiving the information from PPFA's Data Manager, I contacted counsel for PPSWO. At that time, I did not yet know whether PPSWO retained a copy of any of the AASC documents submitted to PPFA in prior years, but intended to search PPSWO's files to make that determination.

6. On the morning of Wednesday, April 30, 2008, with the help of my assistant, I was able to locate a file containing copies of AASC reports submitted to PPFA in previous years. This file contained AASC reports for the year 1997 – 2006, but did not contain a report for the year 1996. Each of the reports in the file contained a category of information reflecting the number of abortions performed on minors aged seventeen or less during the calendar year. The reports do not break down the number of abortions performed on minors of various ages, but instead reflect only one general category: abortions performed on minors “17 or less.” At this point, I again contacted counsel for PPSWO.

FURTHER AFFIANT SAYETH NAUGHT.

Becki Brenner
Becki Brenner

Sworn to before me and subscribed in my presence this 6th day of May, 2008.

GWENDOLYN E. JONES
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 08-15-11
Notary Public – State of Ohio
Gwendolyn E Jones

Demographic Characteristics

Abortion

Total number of Clients
from Services Section:

Age

17 or less

301

REDACTED

SUBJECT TO PROTECTIVE ORDER

This information is protected and shall be kept in confidence in accordance with the terms of a protective order entered in Case No. A 0502691, Court of Common Pleas, Hamilton County, Ohio.

Demographic Characteristics

B. Abortion Clients

Total number of Clients from Services Section:

71

Age

Total

17 or less

198

REDACTED

SUBJECT TO PROTECTIVE ORDER

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Demographic Characteristics

| Total number of Clients from Services Section: | | Abortion Clients |
|--|--|------------------|
| Age | | |
| 17 or less | | 235 |

REDACTED

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Demographic Characteristics

| Total number of Clients from Services Section: | | Abortion Clients | |
|--|------------|------------------|--|
| Age | | | |
| | 17 or less | 189 | |

REDACTED

SUBJECT TO PROTECTIVE ORDER
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B. Client Demographic Characteristics

| Total Number of Clients (from A. Client Services): | Abortion Clients |
|---|---------------------|
| Age | |
| 17 or less | 244 |

REDACTED

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B. Client Demographic Characteristics

| Total Number of Clients (from A. Client Services): | Abortion Clients |
|---|------------------|
| <u>Age</u> 17 or less | 194 |

REDACTED

SUBJECT TO PROTECTIVE ORDER
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B. Client Demographic Characteristics

| Total Number of Clients (from A. Client Services): | Abortion Clients |
|---|------------------|
| Age 17 or less | 195 |

REDACTED

SUBJECT TO PROTECTIVE ORDER
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B. Client Demographic Characteristics

| Total Number of Clients (from A. Client Services): | Abortion Clients |
|---|------------------|
| Age 17 or less | 182 |

REDACTED

SUBJECT TO PROTECTIVE ORDER
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B. Client Demographic Characteristics

| Total Number of Clients (from A. Client Services): | Abortion Clients |
|---|------------------|
| AGE 17 or less | 162 |

REDACTED

SUBJECT TO PROTECTIVE ORDER

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B. Client Demographic Characteristics

| Total Number of Clients (from A. Client Services): | Abortion Clients |
|---|------------------|
| 17 or less | 194 |

REDACTED

SUBJECT TO PROTECTIVE ORDER
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