

**IN THE
SUPREME COURT OF OHIO**

JANE ROE, et al.

CASE NO. 07-1832

Plaintiffs-Appellants,

**On Appeal from the Hamilton
County Court of Appeals, First
Appellate Division**

vs.

**PLANNED PARENTHOOD
SOUTHWEST OHIO REGION, et al.**

(No. 060557)

Defendants-Appellees.

**APPELLANTS' MOTION FOR LEAVE TO FILE POST-ARGUMENT
NOTICE TO CORRECT MISSTATEMENT AT ARGUMENT**

CRABBE BROWN & JAMES LLP

Brian E. Hurley (0007827)

Counsel of Record

Robert J. Gehring (0019329)

30 Garfield Place, Suite 740

Cincinnati, OH 45202

Tel: (513) 784-1525

Fax: (513) 784-1250

**KEATING MUETHING & KLEKAMP
PLL**

Richard J. Creighton, Jr. (0021806)

William A. Posey (0021821)

Charles M. Miller (0073844)

One Each Fourth Street, Suite 1400

Cincinnati, OH 45202

WHITE, GETGEY & MEYER CO., LPA

Nicholas E. Bunch (0015008)

1700 Fourth & Vine Tower

One West Fourth Street

Cincinnati, OH 45202

**VORYS, SATER, SEYMOUR AND PEASE
LLP**

Daniel J. Buckley (0003772)

Counsel of Record

Maureen P. Haney (0070920)

Dorothea K. Langsam (0082973)

Suite 2000, Atrium Two

221 East Fourth Street

P.O. Box 0236

Cincinnati, OH 45201-0236

Tel: (513) 723-4000

Fax: (513) 723-4056

Suzanne K. Richards (0012034)

John J. Kulewicz (0008376)

Alexandria T. Schimmer (0075732)

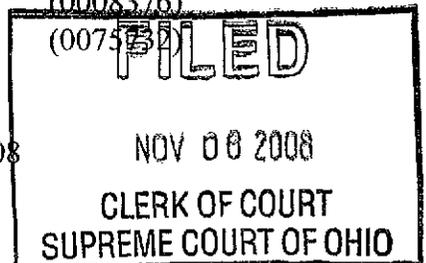
52 East Gay Street

P.O. Box 1008

Columbus, OH 43216-1008

Tel: (614) 464-6400

Fax: (614) 464-6350



Counsel for Plaintiffs-Appellants

Counsel for Defendants-Appellees

**MOTION FOR LEAVE TO FILE POST-ARGUMENT
NOTICE TO CORRECT MISSTATEMENT AT ORAL
ARGUMENT AND MEMORANDUM IN SUPPORT**

Appellants move this Court for leave to file a post-argument notice to correct a misstatement of fact made at oral argument. This Court's Rule IX, Section 9, bars against post-argument filings except for supplemental authorities, and provides that parties may not file such documents "[u]nless ordered by the Supreme Court." For that reason, Appellants ask this Court for leave to submit such a filing.

Appellants seek leave to file the Notice of Misstatement for two compelling reasons. First, Appellees' counsel made a misstatement of fact during oral argument on October 7, 2008 on a matter that Justice Stratton stated was of interest to her when she voted in support of this Court taking jurisdiction of this case. Second, Appellants respectfully submit that the Court should decide cases on accurate information, which serves the interests of integrity and justice.

Procedural Statement

On October 21, 2008, *Amicus Curiae* The Honorable Joseph T. Deters, Prosecuting Attorney Of Hamilton County, Ohio attempted to file a notice of clarification/correction of the record. However, Mr. Deters was not able to file his Notice because, under Rule IX, Section 9 of this Court, only parties to the litigation are permitted to file such Notices. For that reason, Appellants hereby file this Motion for Leave.

**The Part Of The Record That Appellants
Submit Should Be Corrected/Clarified**

During the Oral Argument held on October 7, 2008 in the above-referenced matter, counsel for Appellee Planned Parenthood made a statement that, at the very least, incorrectly implied that

the Hamilton County, Ohio Prosecuting Attorney had investigated whether Planned Parenthood had breached its duty under RC §2151.421 to report the suspected abuse of Appellant Jane Roe and declined to prosecute Planned Parenthood as a result of that investigation. Specifically, Justice Stratton asked Planned Parenthood's counsel the following question:

Justice Stratton: Let me ask you about Joe Deters's position on the criminal aspects. I was interested in that when I accepted this case because of the allegation that failure to report was a criminal violation if there was child abuse and I was interested in that effect on the punitives. But if I understand in reading the brief, there was never a criminal prosecution in this case or Joe Deters's office, the Prosecutor's office, declined to pursue it.

In response to that question, Planned Parenthood's counsel stated the following:

Daniel J. Buckley: There was no prosecution and the Prosecutor's office investigated.

Because the topic of Justice Stratton's question was whether the Prosecutor's Office had declined to pursue a prosecution in connection with this matter for a violation of RC §2151.421 (the abuse reporting statute), Planned Parenthood's counsel's response was not accurate.

**Appellants' Proposed Correction/
Clarification Of The Record**

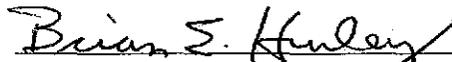
Appellants respectfully submit that the record should be clarified or corrected to reflect the following: "When the Hamilton County, Ohio Prosecutor's Office investigated the sexual relationship between John Haller and Jane Roe, it never considered whether Appellee Planned Parenthood had breached its duties under RC §2151.421, or concluded that Planned Parenthood had not violated that statute, and it did not make a decision not to prosecute Appellee for having violated

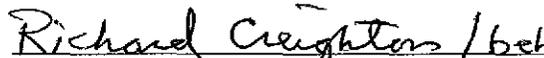
RC §2151.421.”

Conclusion

If the Court grants this motion, Appellants will limit the supplemental filing to a request that the above-discussed misstatement be corrected in the manner described above. Appellants will not add any argument regarding the significance of the misstatement. Accordingly, Appellants move this Court to issue an order granting them leave to file a statement to correct the record.

Respectfully submitted,


By: Brian E. Hurley (00007827)
Robert J. Gehring (00019329)
CRABBE BROWN & JAMES LLP
30 Garfield Place, Suite 740
Cincinnati, OH 45202
Tel: (513) 784-1525
Fax: (513) 784-1250
bhurley@cbjlawyers.com
rgehring@cbjlawyers.com
Counsel for Plaintiffs-Appellants


Richard J. Creighton, Jr. (0021806)
William A. Posey (0021821)
Charles M. Miller (0073844)
KEATING MUETHING & KLEKAMP PLL
One Each Fourth Street, Suite 1400
Cincinnati, OH 45202


Nicholas E. Bunch (0015008)
WHITE, GETGEY & MEYER CO., LPA
1700 Fourth & Vine Tower
One West Fourth Street
Cincinnati, OH 45202

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was mailed by regular U.S. Mail, postage prepaid, on this 5th day of November, 2008, to the following:

Daniel J. Buckley
Vorys, Sater, Seymour and Pease
Suite 2000, Atrium Two
221 East Fourth Street
P.O. Box 0236
Cincinnati, OH 45202
Counsel for Defendants-Appellees

Honorable Joseph T. Deters
Hamilton County Prosecutor's Office
230 E. Ninth Street, Suite 4000
Cincinnati, OH 45202

Honorable Rachel A. Hutzell
Warren County Prosecutor's Office
500 Justice Drive
Lebanon, OH 45036

Honorable Donald W. White
Clermont County Prosecutor's Office
123 N. Third Street
Batavia, OH 45103
Ohio Prosecuting Attorneys, Amici Curiae

Joel J. Kirkpatrick
Kirkpatrick Law Offices
31800 Northwestern Highway, Suite 350
Farmington Hills, MI 48334

Mailee R. Smith
Americans United for Life
310 S. Peoria Street, Suite 500
Chicago, IL 60607
*Counsel for Members of the U.S. Congress,
Amici Curiae*

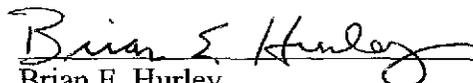
Jeffrey A. Shafer
Alliance Defense Fund
801 G Street, N.W., Suite 509
Washington, D.C. 20001

David R. Langdon
Langdon Law
11175 Reading Road, Suite 104
Cincinnati, OH 45241
*Counsel for Dr. and Mrs. Jack Willke, et al.,
Amici Curiae*

Terri-Lynne B. Smiles
Collis, Smiles & Collis, LLC
1650 Lake Shore Drive, Suite 225
Columbus, OH 43204
*Counsel for Ohio Psychiatric Physicians
Assoc., et al., Amici Curiae*

Anne Marie Sferra
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215
*Counsel for Ohio State Medical Assoc., et
al, Amici Curiae*

Jeffrey M. Gamso
American Civil Liberties Union of Ohio
Foundation, Inc.
Max Wohl Civil Liberties Center
4506 Chester Avenue
Cleveland, OH 44103
*Counsel for Ohio Chapter of the American
Academy of Pediatrics, et al., Amici Curiae*



Brian E. Hurley