

ORIGINAL

ON COMPUTER - JJ

IN THE SUPREME COURT OF OHIO

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

APPELLANTS' POST ARGUMENT BRIEF

CRABBE BROWN & JAMES LLP
 Brian E. Hurley (0007827)
 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
 Tel: (513) 579-6513
 Fax: (513) 579-6457

WHITE, GETGEY & MEYER CO., LPA
 Nicholas E. Bunch (0015008)
 1700 Fourth & Vine Tower
 One West Fourth Street
 Cincinnati, OH 45202
 Tel: (513) 241-3685
 Fax: (513) 241-2399

Counsel for Plaintiffs-Appellants

VORYS, SATER, SEYMOUR AND PEASE LLP
 Daniel J. Buckley (0003772)
 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 Defendants-Appellees

FILED
 APR 10 2009
 CLERK OF COURT
 SUPREME COURT OF OHIO

TABLE OF CONTENTS

	<u>Page(s)</u>
TABLE OF AUTHORITIES	
I. INTRODUCTION	1
II. STATEMENT OF RELEVANT FACTS	2
A. The Passage Of H.B. 280	2
B. The First Provision	2
C. The Second Provision	3
D. The Provisions Are Remedial	4
III. ARGUMENT	4
A. Introduction	4
B. The Remedial Provisions And Clarifications H.B. 280 Made To R.C. 2151.421 Apply To This Case	5
1. The Relevant Law	5
2. Both Provisions Satisfy The First Requirement Of Whether They Are To Be Applied Retroactively.	6
3. The First Revision Is Remedial, And It Confirms That Appellants' Proposition Of Law No. II Is Correct	6
4. The Second Revision Is Remedial, And It Confirms That Appellants' Proposition Of Law No. I Is Correct.	7
5. The Revisions Also Effect This Court's Ruling On Propositions Of Law Nos. III and IV.	8
IV. CONCLUSION	9

TABLE OF AUTHORITIES

<u>CASE(S)</u>	<u>PAGE(S)</u>
<i>Ackison v. Anchor Packing Co.</i> , 120 Ohio St. 228, 2008-Ohio-5423, ¶5, 987 N.E.2d 1118.	6
<i>Bielat v. Bielat</i> (2000), 87 Ohio St.3d 350, 354, 2000-Ohio-451, 721 N.E.2d 28.	5, 7
<i>French v. Dwiggin</i> s (1984), 9 Ohio St.3d 32, 458 N.E.2d 827	7
<i>Jewett v. Owners Inc. Co.</i> , 2002-Ohio-1282, ¶ 17 - 23	7
<i>Kraynak v. Youngstown City Sch. Bd. of Edn.</i> , 118 Ohio St.3d 400, 2008-Ohio-2618.	7, 8
<i>Reproductive Services, Inc. v. Walker</i> (1978), 439 U.S. 1307, 1309	9
<i>Rice v. Certain Teed Corp.</i> (1999), 84 Ohio St.3d 417, 419, 704 N.E.2d 1217	7
<i>State v. Ferguson</i> , 120 Ohio St.3d 7, 2008-Ohio-4824, ¶ 15, 896 N.E.2d 110	5, 6, 7
<i>State v. Walls</i> , 96 Ohio St.3d 437, 2002-Ohio-5059, ¶ 9, 775 N.E.2d 829.	5, 6

I. INTRODUCTION

On April 4, 2009, this Court directed the parties to brief the following issue:

Do the provisions of 127 Am. Sub. H.B. 280 (effective April 7, 2009) apply to the case, and if so, what effect do these provisions have on the issues in this case?

The answer to the first question is “yes.” These provisions clarify, but do not change, certain procedural aspects of R.C. 2151.421 and confirm that compensatory and exemplary (punitive) damages are, and have always been, available under the statute. Moreover, the Ohio General Assembly expressly provided that these provisions “appl[y] to civil actions . . . that are pending on the effective date of this act.”

The answer to the second question is that these provisions require the reversal of the appellate court’s decision for three reasons:

1. First, the provisions clarify and confirm that a plaintiff in a civil action brought pursuant to R.C. 2151.421 may now, and in 2004 could, use the defendant’s redacted reports of other incidents of abuse to prove her claims that the defendant breached its/her duties to the plaintiff under R.C. 2151.421 and the breach was part of a larger pattern of failure to report abuse. (Proposition of Law No. II.)

2. Second, the provisions clarify and confirm that exemplary (punitive) damages are, and in 2004 were, available as a remedy under R.C. 2151.421. (Proposition of Law No. I.)

3. Third, these provisions clarify and confirm that Appellants are entitled to discover information, including redacted abuse reports and medical records of minor patients who presented to Appellees pregnant and/or infected with a sexually transmitted infection (“STI”), to establish their claim that Appellees suspected or knew that Appellant Jane Roe was a victim of sexual abuse,

Appellees' right to an award of punitive damages, and the amount of punitive damages to which they are entitled. (Propositions of Law Nos. III and IV.)

For these reasons, as well as those articulated in Appellants' and their amici's merit and reply briefs and at oral argument, this Court should reverse the decision of the Court of Appeals and reinstate the discovery order of the trial court.

II. STATEMENT OF RELEVANT FACTS

Appellants provided a full statement of the pre-December, 2008 facts in their merit brief, and adopt that statement here. Appellants will limit this statement of facts to the relevant provisions of R.C. 2151.421.

A. The Passage Of H.B. 280

On December 16, 2008, the Ohio Senate unanimously passed 127 Am. Sub. H.B. 280 ("H.B. 280"), and the House, by a vote of 91-2, concurred the next day. H.B. 280 revised and clarified R.C. 2151.421 in two important ways.

B. The First Provision

H.B. 280 added the following sentence to division (H):

Nothing in this division shall preclude the use of reports of other incidents of known or suspected abuse or neglect in a civil action or proceeding brought pursuant to division (M) of this section against a person who is alleged to have violated division (A)(1) of this section, provided that any information in a report that would identify the child who is the subject of the report or the maker of the report, if the maker of the report is not the defendant or an agent or employee of the defendant, has been redacted.

H.B. 280 at pp. 8-9, ¶ 1. By this provision, the Ohio legislature clarified and confirmed that a plaintiff bringing claims under R.C. 2151.421 may now, and could always, discover and use the

defendants' redacted abuse-reporting forms to help prove her claims that the defendants breached their duties to plaintiff under the statute and their right to awards of both compensatory and punitive damages. (" . . . the Bill was amended to *clarify* and *confirm* that the provision of R.C. §2151.421 that precludes the use of redacted reports of other incidents of known or suspected abuse in a civil action against a person who has made a report does *not* preclude the use of those redacted reports in a civil action brought under R.C. §2151.421 against a person who has allegedly breached his or her duty to make a report." Affidavit of Robert P. Mecklenborg (the "Mecklenborg Affidavit"), ¶ 3, attached hereto as Exhibit "A" and to Appellants' Motion For Permission To File Affidavit Of Honorable Robert P. Mecklenborg In Support Of Their Post Argument Brief filed with this Court.)

C. The Second Provision

H.B. 280 also re-labeled the former division (M) as division (N), and added the following language as a new division (M):

Whoever violates division (A) of this section is liable for compensatory and exemplary damages to the child who would have been the subject of the report that was not made. A person who brings a civil action or proceeding pursuant to this division against a person who is alleged to have violated division (A)(1) of this section may use in the action or proceeding reports of other incidents of known or suspected abuse or neglect, provided that any information in a report that would identify the child who is the subject of the report or the maker of the report, if the maker is not the defendant or an agent or employee of the defendant, has been redacted.

H.B. 280 at § 1, pp. 12-13. By this provision, the Ohio Legislature clarified and confirmed that a plaintiff bringing claims under this statute may and *could always* seek *both* compensatory and exemplary (punitive) damages from the defendants in that action. (" . . . the Bill was amended to *clarify* and *confirm* that all remedies available under the common law, including exemplary

(punitive) damages, are available to a plaintiff bringing suit under R.C. §2151.421.” Mecklenborg Affidavit, ¶ 3.)

D. The Provisions Are Remedial.

H.B. 280 expressly provides that both revisions to R.C. 2151.421 are remedial and to applied to currently pending cases.

Section 2151.421 of the Revised Code, as amended by this act, applies to civil actions filed on or after the effective date of this act and to civil actions that are pending on the effective date of this act.

Id. at § 4, p. 100. The “Revision(s) do[] not add any rights or duties, but merely clarif[y] and confirm[] . . .” Mecklenborg Affidavit, ¶’s 3 and 4.

III. ARGUMENT

A. Introduction

As discussed above, H.B. 280 does not change or add duties under R.C. 2151.421. Indeed, H.B. 280 merely clarifies certain procedural aspects of R.C. 2151.421 and confirms what remedies are, and always have been, available under the statute. For that reason, technically, H.B. 280 should have no effect upon the disposition of this case because the clarifications it makes to R.C. 2151.421 are fully consistent with what the holding of this case should be even if the provisions had not been made. Nevertheless, the current version of R.C. 2151.421 should be applied to this case because H.B. 280 is remedial.

B. The Remedial Provisions And Clarifications H.B. 280 Made To R.C. 2151.421 Apply To This Case.

1. The Relevant Law

Under Ohio law, in order to make a statute retroactive, the General Assembly need only include express language of retroactivity. *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, ¶ 15, 896 N.E.2d 110. Moreover, a statute enacted in Ohio is presumed to be constitutional, including those statutes that are expressly retroactive and remedial. *Id.*, ¶'s 12 and 13.

A statute is remedial so long as it does not impair a vested substantive right or impose a new duty to past transactions. *State v. Walls*, 96 Ohio St.3d 437, 2002-Ohio-5059, ¶ 9, 775 N.E.2d 829. A remedial law “affect[s] merely the methods and procedures by which rights are recognized, protected and enforced, not the rights themselves.” *Id.* at ¶ 15 (internal punctuation omitted). Moreover, all non-criminal provisions of R.C. Ch. 2151 “shall be liberally interpreted and construed so as to effectuate the following purposes: (A) to provide for the care, protection and mental and physical development of children subject to Chapter 2151. . . .; (B) to provide judicial procedures through which Chapters 2151 and 2152 . . . are executed and enforced.” R.C. 2151.01. Because the non-criminal provisions of R.C. 2151 are designed to protect the safety and welfare of the children of this state, those provisions, including R.C. 2151.421, are remedial. *Ferguson*, 2008-Ohio-4824, at ¶ 28. Finally, laws “that merely substitute a new or more appropriate remedy for the enforcement of an existing right” are also classified as remedial. *Bielat v. Bielat* (2000), 87 Ohio St.3d 350, 354, 2000-Ohio-451, 721 N.E.2d 28.

2. Both Provisions Satisfy The First Requirement Of Whether They Are To Be Applied Retroactively.

As discussed above, in order to make a statute retroactive, the General Assembly must include express language of retroactivity. *State v. Ferguson, supra* at ¶'s 15 and 16. Here, §4 of H.B. 280 explicitly provides that the subject provisions of R.C. 2151.421 apply "to civil actions filed on or after the effective date of this act and to civil actions that are pending on the effective date of this act." As such, this requirement has been satisfied.

3. The First Provision Is Remedial, And It Confirms That Appellants' Proposition Of Law No. II Is Correct.

By the first provision, the Ohio Legislature merely clarified and confirmed that, with an exception that does not apply to this case, redacted abuse reports are discoverable and may be used in cases in which a plaintiff has alleged that a defendant has breached its/her duties under R.C. 2151.421. This provision is unambiguously procedural, and, thus, remedial. ("Laws that relate to procedures are ordinarily remedial in nature." *Ackison v. Anchor Packing Co.*, 120 Ohio St. 228, 2008-Ohio-5423, ¶5, 987 N.E.2d 1118.) Indeed, in *Walls, supra*, this Court held that revisions to R.C. Chapter 2151 that allowed a juvenile who was alleged to have committed murder to be tried as an adult without a bind over hearing in juvenile court were procedural in nature, and, thus, remedial.

Because the first provision is remedial, it applies to this case. Further, this provision confirms that Appellants' Proposition of Law No. II is correct, and requires this Court to hold that Appellants may obtain and use the Appellees' redacted reports made pursuant to R.C. 2151.421 to help prove their claims against Appellees.

4. **The Second Provision Is Remedial, And It Confirms That Appellants' Proposition Of Law No. 1 Is Correct.**

Prior to the enactment of H.B. 280, R.C. 2151.421 was silent as to precisely what remedies are available to a plaintiff who successfully prosecutes her claims under the statute.¹ For that reason, Appellants argued that, in accordance with long-standing Ohio law, the full panoply of remedies, including exemplary (punitive) damages, is available under the statute. (“ . . . damages, absent a restrictive modifier . . . embrac[e] the full panoply of legally recognized pecuniary relief.” *Rice v. Certain Teed Corp.* (1999), 84 Ohio St.3d 417, 419, 704 N.E.2d 1217.) The inclusion of an express statement in R.C. 2151.421(M) that both compensatory and exemplary damages are available *does not change the law*,² but rather provides undeniable support for the adoption by this Court of Proposition of Law No. 1.

Even if this Court was previously inclined to overturn *Rice* and rule otherwise, the retroactive remedial revisions to R.C. 2151.421 require that the Court hold that punitive damages are available under the statute. Because R.C. 2151.421 previously afforded a remedy, H.B. 280 at most “merely substitute[s] a new or more appropriate remedy for the enforcement of an existing right.”³ *Bielat*, 87 Ohio St.3d, at 354; *French v. Dwiggin* (1984), 9 Ohio St.3d 32, 458 N.E.2d 827 (finding “an expansion of the amount of recoverable damages” to be remedial); *Jewett v. Owners Inc. Co.*, 2002-Ohio-1282, ¶ 17 - 23 (removing rights to obtain attorney fees in pending declaratory judgment

¹ There is no dispute that R.C. 2151.421 affords a civil cause of action. See e.g., *Kraynak v. Youngstown City Sch. Bd. of Edn.*, 118 Ohio St.3d 400, 2008-Ohio-2618.

² Appellants again point out that this issue was never raised by Appellees in the trial court or at the appellate level.

³ Moreover, in *Ferguson, supra*, this Court held that statutes designed to protect citizens of this State from sexual offenders, such as R.C. 2151.421, are remedial.

actions was remedial). In other words, if R.C. 2151.421(M) substituted a new remedy, this “change” merely affected the methods by which the pre-existing rights under R.C. 2151.421 are enforced, and is remedial. *Id.* Accordingly, H.B. 280 is remedial, and R.C. 2151.421(M) is enforceable in currently pending cases. *Id.*

5. The Provisions Also Effect This Court’s Ruling On Propositions Of Law Nos. III and IV.

The primary issue raised in the third and fourth propositions of law involves Appellants’ right to discover information, including redacted abuse reports and non-party medical records. To help put their argument made herein into its proper context, Appellants briefly discuss why they need the records and information they seek.

The records and information that Appellants seek will provide them with the statistical data that will help them establish that Appellees did, in fact, suspect that Appellant Jane Roe was a victim of sexual abuse. It will also provide them with the statistical data to establish that, as a matter of policy, practice and training, Appellees report only cases of “known,” as opposed to “suspected,” abuse. (This only occurs when the minor patient, after being coached not to do so, voluntarily provides information establishing prior abuse (e.g., she states that she was raped), which leaves Appellees with no choice but to make a report.) As such, the records and information will, for example, help Appellants to establish: (1) their claim that Appellants suspected that Jane Roe was a victim of sexual abuse and attack the credibility of their denials that they so suspected;⁴ (2) the

⁴ Since this Court’s decision in *Kraynack, supra*, in which it adopted a subjective standard to assess a defendant’s failure to report, evidence attacking the credibility of the defendant has even greater importance.

reasons why they are entitled to an award of punitive damages; and (3) the amount of punitive damages to which they are entitled.

One of the grounds for the Appellate Court's decision that Appellants are not entitled to Appellees' redacted abuse reports and non-party medical records is that Appellants' are not entitled to seek an award of punitive damages under R.C. 2151.421. Because the second provision makes clear that exemplary (punitive) damages are, in fact, available under R.C. 2151.421, this ground for the Appellate Court's ruling has been eviscerated.

The United States Supreme Court has explicitly recognized that redaction divests medical records of any claim of privilege. *Reproductive Services, Inc. v. Walker* (1978), 439 U.S. 1307, 1309 (permitting discovery of non-party abortion patients' records under a protective order shielding against disclosure of the patients' identities.). By adding language expressly making redacted abuse reports available in discovery and for use at trial, the General Assembly has added its imprimatur to the premise that the redaction of all information from which the identity of a person may be discerned fully protects the person. This imprimatur and logic applies to medical records to the full extent that it applies to abuse reports.

IV. CONCLUSION

For the reasons articulated in Appellants' and their amici's merit briefs, reply briefs, at oral argument, and herein, this Court should reverse the decision of the Court of Appeals and reinstate the discovery order of the trial court.

Respectfully submitted,

CRABBE BROWN & JAMES LLP

Brian E. Hurley

By: Brian E. Hurley (00007827)

Robert J. Gehring (0019329)

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 Creighton

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

Tel: (513) 579-6513

Fax: (513) 579-6457

Nicholas Bunch

Nicholas E. Bunch (0015008)

WHITE, GETGEY & MEYER CO., LPA

1700 Fourth & Vine Tower

One West Fourth Street

Cincinnati, OH 45202

Tel: (513) 241-3685

Fax: (513) 241-2399

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was mailed by electronic and regular U.S. Mail, postage prepaid on this 10th day of April, 2009 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*

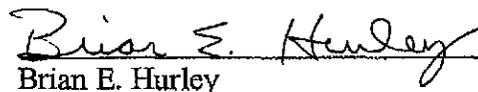
Jeffrey A. Shafer
Alliance Defense Fund
801 G Street, N.W., Suite 509
Washington, D.C. 20001

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

IN THE COURT OF COMMON PLEAS
CIVIL DIVISION
HAMILTON COUNTY, OHIO

FILED
APR - 9 2009
PATRICIA M. CLANCY
CLERK OF COURTS

JOHN AND JUNE ROE, Individually
and as parents and next friends of
Jane Roe, a minor

CASE NO. A0502691

Judge Luebbers

Plaintiffs,

vs.

AFFIDAVIT OF HONORABLE
ROBERT P. MECKLENBORG

PLANNED PARENTHOOD
SOUTHWEST OHIO REGION, et al.

Defendants.

STATE OF OHIO)
) ss
COUNTY OF HAMILTON)

Robert P. Mecklenborg, having been duly sworn and based on his personal knowledge,
states as follows:

1. I am a member of the Ohio House of Representatives, and the State Representative of the 30th House District.
2. Am. Sub. H.B. 280 (effective April 7, 2009) (hereinafter referred to as the "Bill") was amended to include revisions to R.C. §2151.421 (hereinafter referred to as the "Revision") for two reasons.
3. First, the Bill was amended to *clarify* and *confirm* that all remedies available under the common law, including exemplary (punitive) damages, are available to a plaintiff bringing suit under R.C. §2151.421. As such, this Revision does not add any rights or duties, but merely *clarifies* and *confirms* that both compensatory and punitive damages are, and have

EXHIBIT
tabbler
A

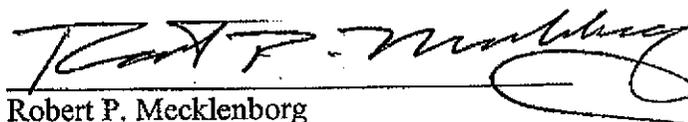
always been, available under R.C. §2151.421.

4. Second, the Bill was amended to *clarify* and *confirm* that the provision of R.C. §2151.421 that precludes the use of redacted reports of other incidents of known or suspected abuse in a civil action against a person who has made a report does *not* preclude the use of those redacted reports in a civil action brought under R.C. §2151.421 against a person who has allegedly breached his or her duty to make a report. As such, this Revision does not add any rights or duties, but merely *clarifies* and *confirms* that plaintiffs in actions brought under R.C. §2151.421 are, and have always been, permitted to use redacted reports in civil actions against a person based on a claim that the person breached his or her duty under R.C. §2151.421 to make a report.

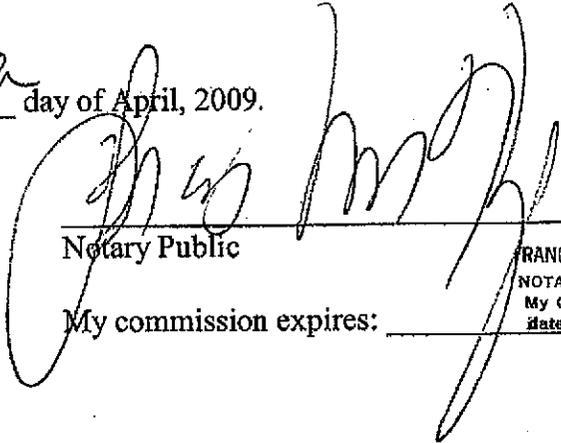
5. The Bill, including the Revisions, was passed by the Ohio Senate by a vote of 33-0 and by the Ohio House of Representatives by a vote of 91-2.

6. The Revisions were enacted to address an interpretation of R.C. §2151.421 by the Court of Appeals, First Appellate Division, in *Roe, et al. v. Planned Parenthood Southwest Ohio Region, et al.*, App. No. 060557. Because the two Revisions are clarifications and confirmations, not changes, they were intended to be applied retroactively, as required by Section 4 of the Bill.

7. Attached hereto is a true and accurate copy of my memorandum of December 7, 2008 to the Republican Members of the Ohio House of Representatives explaining the amendment to Am. Sub. H.B. 280 inserting the Revisions to R.C. §2151.421:


Robert P. Mecklenborg

Sworn to before me on this 7th day of April, 2009.



Notary Public

My commission expires: _____

FRANCIS M. HYLE, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My Commission has no expiration
date. Section 147.03 R.C.

**Ohio House of Representatives
State Representative Robert Mecklenborg, 30th House District**

Confidential Memorandum

To: All Republican House Members

From: Representative Mecklenborg

Date: December 7, 2008

RE: Floor Amendment/R.C. Section 2151.421 Child Abuse Reporting Statute

It is my intent to introduce an amendment to Amended Senate Bill 304. Senate Bill 304 deals with the Safe Haven Statute and extends the time during which a person may deliver a child to a hospital without fear of criminal prosecution from three days after birth to thirty days after birth. This Senate bill recently passed unanimously from the House Health Committee and it is currently scheduled for floor vote on December 9, 2008. I am also perusing a parallel track to amend House Bill 280 that is currently in the Senate Judiciary-Criminal Justice Committee. The Committee chair advises that he hopes to vote House Bill 280 from committee on December 10, 2008. Either way I request your support. I have spoken to a good number of you and the support has been very strong so far.

The amendment I intend to introduce addresses issues that have come to my attention regarding R.C. Section 2151.421. This section of the Revised Code was originally enacted to promote the early identification of child abuse and to encourage reporting of such abuse.

This proposed amendment to R.C. 2151.42 provides (1) that reports of other incidents of known or suspected abuse or neglect of a child may be used in a civil action against a person who is alleged to have failed to report known or suspected child abuse in violation of R.C. 2151.42, (2) that a person who fails to report known or suspected child abuse or neglect is liable for compensatory and exemplary damages to the child who would have been the subject of the report that was not made. This simply confirms that all remedies available under the common law, including exemplary damages, are available in this statute.

This statute was originally enacted to promote the early identification of child abuse and encourage reporting of such abuse. There is currently protection in the statute from civil liability for persons who have made the report and the report cannot be used in a civil action against the reporter who made the report. This bill will NOT change this provision. However, courts have in effect given this same protection to non-reporters who may have breached their duty to report child abuse.

This bill would remedy that judicial interpretation by permitting the use of other reports of abuse in civil proceedings against persons who have breached their duty to report. This change to R.C. 2151.42 will greatly strengthen the statute by helping ensure that such offenses will be reported.

I welcome your support for this amendment. Should you have any questions, please feel free to contact me on my cell (513) 460-1780 or my law office at (513) 481-9800. You may also contact my aide Lizz Eisaman at (614) 466-8258. I wanted to give each of you advance notice of this proposed amendment so that I might be able to address any questions or concerns you might have.