

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, <i>et al.</i> ,)	
)	
Defendants-Appellees.)	

**APPELLANTS' MOTION FOR PERMISSION TO FILE
THE AFFIDAVIT OF HONORABLE ROBERT P. MECKLENBORG
IN SUPPORT OF THEIR 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 East 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

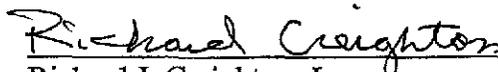
Appellants, by and through counsel and pursuant to S. Ct. Prac. R. IX, 9, hereby move this Court for permission to file the affidavit of Honorable Robert P. Mecklenborg in support of their Post Argument Brief they were ordered to file pursuant to this Court's Entry of April 4, 2009.

Respectfully submitted,

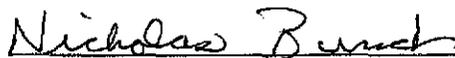
CRABBE BROWN & JAMES LLP



By: Brian E. Hurley (00007827)
Robert J. Gehring (0019329)
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



Richard J. Creighton, Jr. (0021806)
William A. Posey (0021821)
Charles M. Miller (0073844)
KEATING MUETHING & KLEKAMP PLL
One East Fourth Street, Suite 1400
Cincinnati, OH 45202
Tel: (513) 579-6513
Fax: (513) 579-6457



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

Counsel for Plaintiffs-Appellants

MEMORANDUM

Honorable Robert P. Mecklenborg is a member of the Ohio House of Representatives and the Representative of the 30th House District. Representative Mecklenborg was very involved in the process that resulted in the introduction and passage of 127 Am. Sub. H.B. 280 ("H.B. 280").

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

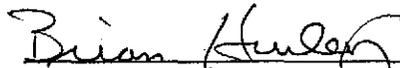
Do the provisions of 127 Am. Sub. H.B. 280 (effective April 7, 2009) apply to the case, and if so, what effect do these provisions have on the issues in this case?

In connection with the research and investigation they conducted to respond to these questions, Appellants contacted Representative Mecklenborg, who provided information relating to H.B. 280. Based on what Representative Mecklenborg told them, Appellants concluded that some of that information will help them provide full and accurate answers to this Court's questions. Appellants obtained an affidavit from the Representative that memorializes that information, and the affidavit has been filed in the trial court. (A true and accurate copy of the affidavit is attached hereto.)

For these reasons, Appellants respectfully move this Court to grant them permission to supplement the record to include the Affidavit of Honorable Robert P. Mecklenborg.

Respectfully submitted,

CRABBE BROWN & JAMES LLP



By: Brian E. Hurley (00007827)
Robert J. Gehring (0019329)
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

Richard Creighton

Richard J. Creighton, Jr. (0021806)

William A. Posey (0021821)

Charles M. Miller (0073844)

KEATING MUETHING & KLEKAMP PLL

One East 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

Counsel for Plaintiffs-Appellants

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*

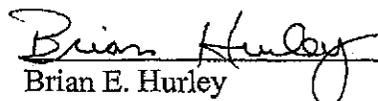
Jeffrey A. Shafer
Alliance Defense Fund
801 G Street, N.W., Suite 509
Washington, D.C. 20001

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



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

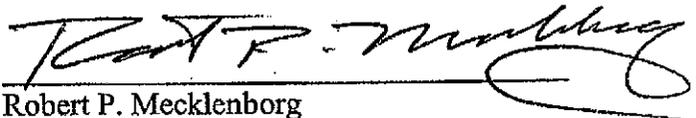
always been, available under R.C. §2151.421.

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.

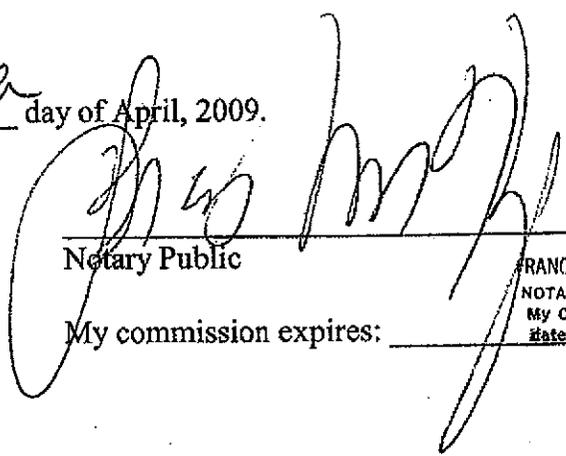
5. The Bill, including the Revisions, was passed by the Ohio Senate by a vote of 33-0 and by the Ohio House of Representatives by a vote of 91-2.

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

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

My commission expires: _____

**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 (514) 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.