
IN THE SUPREME COURT OF OHIO

ON APPEAL FROM THE COURT OF APPEALS
FIRST APPELLATE DISTRICT
HAMILTON COUNTY, OHIO
CASE NO. C0900708

LEOLA SUMMERVILLE, ADMINISTRATOR
OF THE ESTATE OF ROOSEVELT
SUMMERVILLE, DECEASED, and
LEOLA SUMMERVILLE
Plaintiff-Appellee

FILED
JUL 14 2010
CLERK OF COURT
SUPREME COURT OF OHIO

v.

CITY OF FOREST PARK, ADAM PAPE,
and COREY HALL
Defendants-Appellants

RECEIVED
JUL 14 2010
CLERK OF COURT
SUPREME COURT OF OHIO

**REPLY BRIEF OF DEFENDANTS-APPELLANTS
CITY OF FOREST PARK, ADAM PAPE, and COREY HALL**

LAWRENCE E. BARBIERE (0027106)
Counsel of Record
JAY D. PATTON (0068188)
SCHROEDER, MAUNDRELL, BARBIERE & POWERS
5300 Socialville-Foster Road, Suite 200
Mason, Ohio 45040
Tel. (513) 583-4200
Fax (513) 583-4203
Email: lbarbiere@smbplaw.com

*Counsel for Defendants-Appellants
City of Forest Park, Adam Pape, and Corey Hall*

MARC D. MEZIBOV (0019316)
LAW OFFICES OF MARC MEZIBOV
401 East Court Street, Suite 600
Cincinnati, Ohio 45202
Tel. (513) 621-8800
Fax (513) 621-8833
Email: mmezibov@mezibov.com

*Counsel for Plaintiff-Appellee Leola
Summerville, Administrator of the Estate of
Roosevelt Summerville, Deceased and Leola
Summerville*

STEPHEN L. BYRON (0055657)
REBECCA K. SCHALTENBRAND (0064817)
SCHOTTENSTEIN, ZOX & DUNN Co., LPA
Interstate Square Building I
4230 State Route 306, Suite 240
Willoughby, OH 44094
Tel. (216) 621-5107
Fax (216) 621-5341
Email: sbyron@szd.com

*Counsel for Amicus Curiae, The Ohio
Municipal League*

JOHN GOTHERMAN (0000504)
OHIO MUNICIPAL LEAGUE
175 S. Third Street, Suite 510
Columbus, OH 43215-7100
Tel. (614) 221-4349
Fax (614) 221-4390
Email: jgotherman@columbus.rr.com

*Counsel for Amicus Curiae, The Ohio
Municipal League*

STEPHEN J. SMITH (0001344)
SCHOTTENSTEIN, ZOX & DUNN Co., LPA
250 West Street
Columbus, OH 43215
Tel. (614) 462-2700
Fax (614) 462-5135
Email: ssmith@szd.com

*Counsel for Amicus Curiae, The Ohio
Municipal League*

LYNNETTE DINKLER (0065455)
JAMEY T. PREGON (0075262)
DINKLER PREGON, LLC
2625 Commons Boulevard, Suite A
Dayton, OH 45431
(937) 426-4200
(866) 831-0904 (fax)
Email: lynnette@dinklerpregon.com

*Counsel for Amicus Curiae,
Ohio Association of Civil Trial Attorneys*

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

INTRODUCTION TO REPLY 1

REPLY ARGUMENT 2

 I. The Plain Language of R.C. 2744.02(C) Provides For
 This Appeal 2

 II. In the Alternative, This Court Should Adopt the
 Collateral Order Doctrine to Allow Immediate
 Appeals of Denials of Qualified Immunity in
 Section 1983 Cases 5

 III. Additionally, this Court Should Adopt the Pendent
 Appellate Jurisdiction Doctrine to Allow Immediate
 Appeals of *Monnell* Claims Against Municipal
 Defendants Where They Are Closely Intertwined with
 the Claims to Which Qualified Immunity Applies 8

CONCLUSION 9

PROOF OF SERVICE 11

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Barnhart v. Peabody Coal Co.</i> (2003), 537 U.S. 149, 123 S.Ct. 748, 154 L.Ed.2d 653	3
<i>Bell v. Mt. Sinai Med. Ctr.</i> (1993), 67 Ohio St.3d 60.	7
<i>Brannum v. Overton County School Bd.</i> (6th Cir. 2008), 516 F.3d 489	6
<i>Burger v. Cleveland Hts.</i> (1999), 87 Ohio St.3d 188, 1999-Ohio-319	5
<i>Cincinnati Ins. Co. v. City of Cleveland</i> (8th Dist. 2009), 2009-Ohio-4043, Cuyahoga App. No. 92305	9
<i>Chevron U.S.A. Inc. v. Echazabal</i> , 536 U.S. 73, 122 S.Ct. 2045, 153 L.Ed.2d 82 (2002)	3
<i>DeAscentis v. Margello</i> , 10th Dist. No. 04AP-4, 2005-Ohio-1520	7
<i>Doe v. Exxon Mobile Corp.</i> (D.C. Cir. 2006), 473 F.3d 345	6
<i>General Acc. Ins. Co. v. Insurance Co. of North America</i> (1989) 44 Ohio St.3d 17, 540 N.E.2d 26	7
<i>Goff v. Gates</i> (1912), 87 Ohio St. 142, 100 N.E. 329	3
<i>Hubbell v. City of Xenia</i> (2007), 115 Ohio St.3d 77, 2007-Ohio-4839, 873 N.E.2d 878	1, 5, 7, 8
<i>Hunter v. Bryant</i> , 502 U.S. 224, 112 S.Ct. 534, 116 L.Ed.2d 589 (1991)	6
<i>Karrick v. Board of Education</i> , 174 Ohio St. 73, 186 N.E.2d 855, <i>rev'd on reh'g</i> , 174 Ohio St. 467, 190 N.E.2d 256 (1963).	2
<i>Marcum v. Rice</i> (Nov. 3, 1998), Franklin App. Nos. 98AP-717, 98AP-718, 98AP-179, 98AP-721, 1998 WL 887051	1, 4
<i>Mercer v. 3M Precision Optics, Inc.</i> (Ohio App. 12 Dist., 2009), 181 Ohio App.3d 307, 2009-Ohio-930, 908 N.E.2d 1016	3
<i>Mitchell v. Forsyth</i> (1985), 472 U.S. 511	6

<i>State ex rel. Conroy v. Williams</i> (7th Dist. 2009), 2009-Ohio-6040, Mahoning App. 08MA60	9
<i>State, ex rel. Curtis v. DeCorps</i> (1938), 134 Ohio St. 295, 16 N.E.2d 459	2
<i>Silverbrand v. County of Los Angeles</i> , 46 Cal. 4th 106, 92 Cal. Rptr. 3d 595, 205 P.3d 1047 (2009)	3
<i>United States v. Vonn</i> (2002), 535 U.S. 55, 122 S.Ct. 1043, 152 L.Ed.2d 90	2

Statutes

R.C. 1.51	1, 2, 4
R.C. 1.52	1, 2, 4
R.C. 2501.02	5, 8
R.C. 2505.02	5
R.C. 2505.02(A)(1)	6
R.C. 2505.02(A)(2)	7
R.C. 2505.02(B)	7
R.C. 2505.02(B)(1)	5, 7
R.C. 2505.02(B)(2)	7
R.C. 2744.01(D)	1, 4
R.C. 2744.02(C)	<i>Passim</i>
R.C. 2744.07	3
R.C. 2744.09(E)	1, 2, 3, 4
42 U.S.C. §1983	<i>Passim</i>

Secondary Sources

16 AMERICAN JURISPRUDENCE 2D 252, CONSTITUTIONAL LAW, §73	2
---	---

INTRODUCTION TO REPLY

Despite the plain language of R.C. 2744.02(C), which provides “[a]n order that denies a political subdivision or an employee of a political subdivision the benefit of an alleged immunity from liability as provided in this chapter *or any other provision of the law* is a final order,” Appellee argues Ohio law precludes immediate appeal of adverse qualified immunity determinations in cases brought under 42 U.S.C. §1983 and that Appellants’ argument is “little more than a request for the Court to provide a judicially created exception to Ohio’s laws governing interlocutory appeals.”

Aside from ignoring the plain language of R.C. 2744.02(C), Appellee further ignores the definition of “law” for purposes of Chapter 2744, which includes “any provision of the constitution, statutes, or rules of the United States.” R.C. 2744.01(D). That definition of “law” for purposes of Chapter 2744 has been interpreted to include “all federal and state rules, both judicial and legislated.” *Marcum v. Rice* (Nov. 3, 1998), Franklin App. Nos. 98AP-717, 98AP-718, 98AP-179, 98AP-721, 1998 WL 887051.

Appellee further ignores the statutory rules of construction specified in the Ohio Revised Code, which the Ohio General Assembly itself adopted to aid in the interpretation of its own statutes. Under R.C. 1.51 and 1.52, the more specific and latter enacted provision of R.C. 2744.02(C) would control over the more general and earlier enacted provision of R.C. 2744.09(E) in the case of a conflict.

Appellee does not address the public policy rationale expressed by this Court in *Hubbell v. City of Xenia* (2007), 115 Ohio St.3d 77, 2007-Ohio-4839, 873 N.E.2d 878, which supports immediate appellate review of immunity determinations. As this Court recognized in *Hubbell*, both sides of the lawsuit are benefitted by the early—and correct—determination of questions of

immunity. That reasoning applies with equal force to determinations of qualified immunity in cases arising under 42 U.S.C. §1983. For these reasons, this Court should reverse the decision of the court of appeals and hold that a trial court's decision overruling a motion for summary judgment in which a political subdivision or its employee sought immunity from claims brought pursuant to 42 U.S.C. §1983 is an order denying "the benefit of an alleged immunity" and is, therefore, a final and appealable order under R.C. 2744.02(C).

REPLY ARGUMENT

I. The Plain Language of R.C. 2744.02(C) Provides For This Appeal

Appellee argues R.C. 2744.09(E) precludes the application of R.C. 2744.02(C) to section 1983 claims based on the maxim of *expressio unius est exclusio alterius*, "expressing one item of [an] associated group or series excludes another left unmentioned." *United States v. Vonn* (2002), 535 U.S. 55, 65, 122 S.Ct. 1043, 152 L.Ed.2d 90.

Since the legislative power of the General Assembly is plenary, the judiciary must proceed with much caution in applying the maxim *expressio unius est exclusio alterius* to invalidate legislation. See, *Karrick v. Board of Education*, 174 Ohio St. 73, 186 N.E.2d 855, *rev'd on reh'g*, 174 Ohio St. 467, 190 N.E.2d 256 (1963). As pointed out by the Supreme Court in *State, ex rel. Curtis v. DeCorps* (1938), 134 Ohio St. 295, at 299, 16 N.E.2d 459, " * * * ' * * * [I]ike other canons of statutory construction it is only an aid in the ascertainment of the meaning of the law and must yield whenever a contrary intention on the part of the lawmaker is apparent. * * * ' " The maxim must be put aside when contrary facts and circumstances are known. See, 16 AMERICAN JURISPRUDENCE 2D 252, CONSTITUTIONAL LAW, §73. The canon "*expressio unius est exclusio alterius*" does not apply to every statutory listing or grouping; it has force only when the items expressed are members of an associated group or series, justifying the

inference that items not mentioned were excluded by deliberate choice, not inadvertence.

Barnhart v. Peabody Coal Co. (2003), 537 U.S. 149, 168, 123 S.Ct. 748, 760, 154 L.Ed.2d 653; *Mercer v. 3M Precision Optics, Inc.* (Ohio App. 12 Dist., 2009), 181 Ohio App.3d 307, 310, 2009-Ohio-930, ¶13, 908 N.E.2d 1016, 1018; *see also, Chevron U.S.A. Inc. v. Echazabal*, 536 U.S. 73, 81, 122 S.Ct. 2045, 153 L.Ed.2d 82 (2002). In statutory interpretation, the principle “*expressio unius est exclusio alterius*” always is subordinate to legislative intent. *See, Silverbrand v. County of Los Angeles* (2009), 46 Cal. 4th 106, 92 Cal. Rptr. 3d 595, 205 P.3d 1047.

Expressio unius est exclusio alterius is inapplicable here. Revised Code section 2744.02(C) was enacted over 17 years after the enactment of R.C. 2744.09(E). It is therefore not surprising that in enacting R.C. 2744.09(E), the legislature did not specifically exclude R.C. 2744.02(C), because the latter provision did not yet exist.¹ Consequently, there is no justifiable inference that the item not mentioned (R.C. 2744.02(C)) was excluded by deliberate choice.

In 2003, when R.C. 2744.02(C) became effective, the General Assembly knew R.C. 1.51 and 1.52 would govern the application of the two provisions at issue and that the later enacted and more specific statute would control in the case of a conflict. This Court has recognized that “[i]f * * * a statute is in clear conflict with existing legislation upon the same subject-matter, effect must be given to the later act, even if the result is to repeal by implication the older statute.” *Goff v. Gates* (1912), 87 Ohio St. 142, 149, 100 N.E. 329.

¹ By contrast, R.C. 2744.07, which is specifically excluded in R.C. 2744.09(E), was enacted at the same time as R.C. 2744.09(E). Both provisions were effective November 20, 1985.

Appellee further argues that the two statutory provisions at issue here could be harmonized by using Appellee's interpretation. Plaintiff argues R.C. 2744.02(C) could be construed to apply only to immunities provided elsewhere in the Revised Code. That argument ignores the plain language employed by the General Assembly in R.C. 2744.02(C) that an order denying a political subdivision or an employee the benefit of an alleged immunity "as provided in this chapter *or any other provision of the law*" is a final order. Had the legislature intended what Appellee envisions, it would have used the phrase "any other provision of the Revised Code" instead of "any other provision of the law."

Further, Appellee ignores the definition of "law" for purposes of Chapter 2744 set forth in R.C. 2744.01(D). That statute defines "law" as "any provision of the constitution, statutes, or rules of the United States or of this state[.] In fact, Ohio courts interpreting the term "law" in R.C. 2744.02(C), in conjunction with its definition in R.C. 2744.01(D), have concluded that it encompasses "all federal and state rules, both judicial and legislated." *See, Marcum v. Rice* (Nov. 3, 1998), Franklin App. Nos. 98AP-717, 98AP-718, 98AP-179, 98AP-721, 1998 WL 887051. Given the legislatively mandated definition of "law" for purposes of Chapter 2744, Appellee's interpretation of R.C. 2744.02(C)'s "any other provision of the law" provision as meaning only "any other provision of the Revised Code," is unavailing.

Based upon the plain language of the two provisions at issue, it is clear that either (1) no conflict exists and R.C. 2744.02(C) provides for an immediate appeal from an order denying qualified immunity in an action brought pursuant to 42 U.S.C. §1983, or (2) a conflict exists between the two provisions and, pursuant to the rules of construction mandated by the legislature in R.C. 1.51 and 1.52, the final order provision of R.C. 2744.02(C) controls over R.C. 2744.09(E).

Appellee also ignores the policy rationale set forth by this Court in *Hubbell v. City of Xenia* (2007), 115 Ohio St.3d 77, 2007-Ohio-4839, 873 N.E.2d 878, which applies with equal force here:

As the General Assembly envisioned, the determination of immunity could be made prior to investing the time, effort and expense of the courts, attorneys, parties, and witnesses pursuant to amendments made to R.C. 2744.02(C) and 2501.02.

Id. at ¶26 (citing, *Burger v. Cleveland Hts.* (1999), 87 Ohio St.3d 188, 199-200, 1999-Ohio-319 (Lundberg Stratton, J., dissenting)). The Court also determined “[j]udicial economy is actually better served by a plain reading of R.C. 2744.02(C).” *Id.* at ¶24.

The plain language of R.C. 2744.02(C) provides for immediate appeals of pre-trial denials of qualified immunity in cases brought under 42 U.S.C. §1983. The policy rationale recognized in *Hubbell* support that result. Accordingly, this Court should construe R.C. 2744.02(C) consistently with its plain language and hold that orders denying public officials the benefit of alleged qualified immunity in section 1983 cases are final appealable orders.

II. In the Alternative, This Court Should Adopt the Collateral Order Doctrine to Allow Immediate Appeals of Denials of Qualified Immunity in Section 1983 Cases

Appellee argues this Court should not adopt the collateral order doctrine because that doctrine is consistent with the broader federal definition of “final order,” but inconsistent with R.C. 2505.02, the Ohio statute defining “final order.”

However, allowing an immediate appeal from an adverse pre-trial qualified immunity determination in a section 1983 case is actually quite consistent with R.C. 2505.02. First, an order is final under R.C. 2505.02(B)(1) if it affects a “substantial right” in an action that in effect determines the action and prevents judgment.

R.C. 2505.02(A)(1) defines a “substantial right” as “a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.” It is beyond controversy that qualified immunity is a “substantial right” enjoyed by public officials sued under 42 U.S.C. §1983. It is also clear that a wrongful pre-trial denial of qualified immunity “in effect” deprives public officials of the benefits of that immunity even though, strictly speaking, the issue remains available for determination at trial. This is so because qualified immunity “is an immunity from suit rather than a mere defense to liability . . . it is effectively lost if a case is erroneously permitted to go to trial.” *Mitchell v. Forsyth* (1985), 472 U.S. 511, 526. Qualified immunity provides immunity from the “consequences” of suit, such as the risks of trial, distraction of officials from their governmental duties, inhibition of discretionary action, and deterrence of able people from public service. *Id.* at 526; see also, *Doe v. Exxon Mobile Corp.* (D.C. Cir. 2006), 473 F.3d 345, 350.

Pretrial denials of qualified immunity cannot, therefore, be effectively reviewed after trial because “the court’s denial * * * finally and conclusively determines the defendant’s claim of right not to stand trial on the plaintiff’s allegations, and because ‘[t]here are simply no further steps that can be taken in the [trial] court to avoid the trial the defendant maintains is barred[.]’” *Id.* (internal citations omitted); see, also, *Brannum v. Overton County School Bd.* (6th Cir. 2008), 516 F.3d 489, 493 (holding that should “a public official [be] unable to appeal the denial of qualified immunity immediately, he would be forced to endure the cost, expense, and inconvenience of defending an action to which he may be immune.”).

For those reasons, assertions of immunity are rightfully “decided by the court long before trial.” *Hunter v. Bryant*, 502 U.S. 224, 228, 112 S.Ct. 534, 537, 116 L.Ed.2d 589 (1991).

Prompt consideration also avoids the consumption of governmental resources in defense of a suit

for which there can be no damages or liability assessed. Trial courts must attempt to “resolv[e] immunity questions at the earliest possible stage in litigation.” *Id.* at 227, 112 S.Ct. at 536.

For purposes of R.C. 2505.02(B), an order which affects a substantial right is perceived to be one which, if not immediately appealable, would foreclose appropriate relief in the future. *See, DeAscentis v. Margello*, 10th Dist. No. 04AP-4, 2005-Ohio-1520, ¶19 (citing, *Bell v. Mt. Sinai Med. Ctr.* (1993), 67 Ohio St.3d 60, 63). For example, in *General Acc. Ins. Co. v. Insurance Co. of North America* (1989), 44 Ohio St.3d 17, 540 N.E.2d 266, paragraph one of the syllabus, this Court found an insurer's duty to defend involved a substantial right. Consequently, a pre-trial order denying qualified immunity affects a substantial right and “in effect” prevents a meaningful judgment on the issue for purposes of R.C. 2505.02(B)(1).

Further, under R.C. 2505.02(B)(2), an order is final if it affects a substantial right in a “special proceeding.” Revised Code section 2505.02(A)(2) defines a “special proceeding” as “an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.” R.C. 2505.02(A)(2). Section 1983 was enacted on April 20, 1871 as part of the Civil Rights Act of 1871. Thus, a lawsuit for violation of constitutional rights under section 1983 qualifies as a “special proceeding” pursuant to R.C. 2505.02(A)(2).

Accordingly, adoption of the collateral order doctrine to allow immediate appeals of denials of qualified immunity in section 1983 cases is wholly consistent with the Ohio statute governing “final orders.” In the event this Court holds pre-trial denials of qualified immunity are not immediately appealable under R.C. 2744.02(C), the collateral order doctrine should be adopted to bolster the policy considerations of judicial economy recognized in *Hubbell*.

III. Additionally, this Court Should Adopt the Pendent Appellate Jurisdiction Doctrine to Allow Immediate Appeals of *Monnell* Claims Against Municipal Defendants Where They Are Closely Intertwined with the Claims to Which Qualified Immunity Applies.

Appellee's only argument against the adoption of pendant appellate jurisdiction to allow the review of *Monnell* claims where they are "inextricably intertwined" with the resolution of the public employee's right to qualified immunity is Appellants' alleged "failure to cite to or otherwise explain how the pendant appellate doctrine is consistent with the rules, statutes, or law of this state."

This Court has consistently cited judicial economy as an important factor to consider when addressing questions of appellate jurisdiction. *Hubbell v. City of Xenia* (2007), 115 Ohio St.3d 77, 82, 2007-Ohio-4839, 873 N.E.2d 878, 883.

The *Hubbell* Court observed that

[D]etermination of whether a political subdivision is immune from liability is usually pivotal to the ultimate outcome of a lawsuit. Early resolution of the issue of whether a political subdivision is immune from liability pursuant to R.C. Chapter 2744 is beneficial to both of the parties. If the appellate court holds that the political subdivision is immune, the litigation can come to an early end, with the same outcome that otherwise would have been reached only after trial, resulting in a savings to all parties of costs and attorney fees. Alternatively, if the appellate court holds that immunity does not apply, that early finding will encourage the political subdivision to settle promptly with the victim rather than pursue a lengthy trial and appeals. Under either scenario, both the plaintiff and the political subdivision may save the time, effort, and expense of a trial and appeal, which could take years.

As the General Assembly envisioned, the determination of immunity could be made prior to investing the time, effort, and expense of the courts, attorneys, parties, and witnesses pursuant to amendments made to R.C. 2744.02(C) and 2501.02.

Id. (citations omitted).

Should this Court hold that political subdivision employees sued in state court under 42 U.S.C. §1983 have a right to an immediate appeal of a denial of qualified immunity, either under R.C. 2744.02(C) or the collateral order doctrine, then it would further promote judicial economy to allow the question of the political subdivision's *Monnell* liability to be reviewed at the same time, where resolution of those issues is closely intertwined.

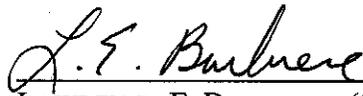
Further, appellate review of issues that are closely intertwined with the issues giving rise to appellate jurisdiction is hardly a novel concept in Ohio. In *State ex rel. Conroy v. Williams* (7th Dist. 2009), 2009-Ohio-6040, Mahoning App. 08MA60 the court discussed all issues in the case, even though only the denial of immunity was immediately appealable. In *Cincinnati Ins. Co. v. City of Cleveland* (8th Dist. 2009), 2009-Ohio-4043, Cuyahoga App. No. 92305, the majority considered a contract claim against a political subdivision in an appeal pursuant to R.C. 2744.02(C)).

Accordingly, pendant appellate review of closely intertwined *Monnell* claims is consistent with the law of Ohio. In cases where immediate appeals are available to government officials under R.C. 2744.02(C) or the collateral order doctrine, the denial of summary judgment on any Section 1983 claims asserted against their political subdivision employers should also be immediately appealable by the political subdivision under the doctrine of pendant appellate jurisdiction.

CONCLUSION

For the reasons set forth above, the court of appeals' entry granting Plaintiff's motion to dismiss the appeal should be reversed.

Respectfully submitted,



LAWRENCE E. BARBIERE (0027106)

Counsel of Record

JAY D. PATTON (0068188)

SCHROEDER, MAUNDRELL, BARBIERE & POWERS

5300 Socialville-Foster Road, Suite 200

Mason, Ohio 45040

Tel. (513) 583-4200

Fax. (513) 583-4203

Email: lbarbieri@smbplaw.com

jpatton@smbplaw.com

Counsel for Defendants-Appellants

City of Forest Park, Adam Pape, and Corey Hall

PROOF OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by regular U.S.

Mail, postage prepaid, this 13th day of July 2010 on:

MARC D. MEZIBOV (0019316)
LAW OFFICES OF MARC MEZIBOV
401 East Court Street, Suite 600
Cincinnati, Ohio 45202
Tel. (513) 621-8800
Fax (513) 621-8833
Email: mmezibov@mezibov.com

*Counsel for Plaintiff-Appellee Leola
Summerville, Administrator of the Estate of
Roosevelt Summerville, Deceased and Leola
Summerville*

STEPHEN L. BYRON (0055657)
REBECCA K. SCHALTENBRAND (0064817)
SCHOTTENSTEIN, ZOX & DUNN CO., LPA
Interstate Square Building I
4230 State Route 306, Suite 240
Willoughby, OH 44094
Tel. (216) 621-5107
Fax (216) 621-5341
Email: sbyron@szd.com

*Counsel for Amicus Curiae, The Ohio
Municipal League*

JOHN GOTHERMAN (0000504)
OHIO MUNICIPAL LEAGUE
175 S. Third Street, Suite 510
Columbus, OH 43215-7100
Tel. (614) 221-4349
Fax (614) 221-4390
Email: jgotherman@columbus.rr.com

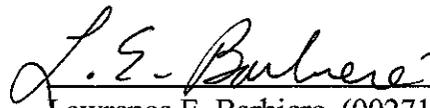
*Counsel for Amicus Curiae, The Ohio
Municipal League*

STEPHEN J. SMITH (0001344)
SCHOTTENSTEIN, ZOX & DUNN CO., LPA
250 West Street
Columbus, OH 43215
Tel. (614) 462-2700
Fax (614) 462-5135
Email: ssmith@szd.com

*Counsel for Amicus Curiae, The Ohio
Municipal League*

LYNNETTE DINKLER (0065455)
JAMEY T. PREGON (0075262)
DINKLER PREGON, LLC
2625 Commons Boulevard, Suite A
Dayton, OH 45431
(937) 426-4200
(866) 831-0904 (fax)
Email: lynnette@dinklerpregon.com

*Counsel for Amicus Curiae,
Ohio Association of Civil Trial Attorneys*


Lawrence E. Barbieri (0027106)