

ORIGINAL

IN THE SUPREME COURT OF OHIO

Andrea Riffle, et al.	:	
	:	
Plaintiffs-Appellees,	:	Case No. 2012-0205
	:	
-vs-	:	On Appeal from the
	:	Ninth Appellate District
Physicians and Surgeons Ambulance Service	:	Summit County, Ohio
	:	
and	:	Court of Appeals
	:	Case No. 25829
City of Akron, Ohio	:	
	:	
Defendants-Appellants.	:	

**BRIEF OF *AMICUS CURIAE*, OHIO ASSOCIATION FOR JUSTICE
IN SUPPORT OF PLAINTIFFS-APPELLEES ANDREA RIFFLE, ET AL.**

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INTRODUCTION AND STATEMENT OF INTEREST

The Ohio Association for Justice (“OAJ”) is Ohio’s largest victims’ rights advocacy association. It is comprised of attorneys who are dedicated to maintaining a strong civil justice system in which deserving individuals receive just and fair compensation, and wrongdoers are duly held accountable for their tortious conduct. OAJ generally opposes any law that impinges upon an individual’s right to recover civilly against a tortfeasor, or that relieves a party of responsibility for its tortious acts or omissions.

As amicus curiae in support of the plaintiffs-appellees Andrea Riffle and Dan Riffle (“the Riffles”), OAJ urges this Court to affirm the judgment of the Ninth District Court of Appeals (“Ninth District”), but for a different, much simpler reason than that presented by the Ninth District.

This appeal arises out of a fundamental disagreement over the nature of the interplay between two non-conflicting Revised Code sections: R.C. 4765.49 and R.C. 2744.02. In the Ninth District and in others, courts have gotten bogged down in the minutia of whether these sections should be labeled as “immunity statutes” or as “liability statutes.” Ignoring a third option – that each section both grants immunity *and* imposes liability – the courts summon the rules of statutory interpretation and engage in tortured analysis to vet legislative intent, when all that is required is this: simply apply the plain, unambiguous, and noncontradictory language employed in the statutes.

Resolution of this appeal – and settlement of the immunity/liability question – requires one thing only: that the Court apply as written the plain language of the statutes: R.C. 4765.49 and R.C. 2744.02. Simply applying the language as written will (i) allow both sections to be read and applied, each in its entirety and in harmony with the other; (ii) result in both sections being given full effect;

(iii) promote the public policy expressed by the legislature through the language employed in both sections; and (iv) avoid the result of two statutory sections being rendered wholly meaningless.

A Brief Overview of the Steps Leading to Liability

Division (A) of R.C. 4765.49 expressly imposes civil liability for damages upon an emergency medical technician (“EMT”) when harm results from the EMT’s administration of emergency medical services “in a manner that constitutes willful or wanton misconduct.” This imposition of liability on a political subdivision employee is consistent with R.C. 2744.03(A)(6)(b). Thus, under R.C. 4765.49(A), civil liability for damages is imposed on the City’s EMTs who are alleged to have acted in a willful, wanton, or reckless manner.¹

Division (B) of R.C. 4765.49 expressly imposes direct civil liability for damages upon a political subdivision that provides emergency medical services when harm arises out of an EMT’s provision of services “in a manner that constitutes willful or wanton misconduct.” Accordingly, the allegedly willful, wanton, or reckless administration of emergency medical services by the City’s EMTs results in the imposition of direct civil liability upon the City pursuant to R.C. 4765.49(B).

^{1/} Neither the filing of a suit nor a finding of liability against the EMTs is a prerequisite to maintaining a cause of action against the City. The imposition of liability upon the City’s EMTs occurs by operation of law and without regard to whether the EMTs are sued personally.

Furthermore, the imposition of liability upon the City occurs by operation of law – and without regard to whether its EMTs have been sued personally – when a complaint sufficiently alleges that the City’s EMTs administered emergency medical services in a willful or wanton manner.

“[W]hen civil liability is expressly imposed” as used in R.C. 2744.02(B)(5) does not mean “when liability has been found or determined,” which would imply that fact-finding by the trier of fact has already occurred – an absurd proposition given that the point of determining whether “civil liability is expressly imposed” is to determine whether suit against the City may be maintained in the first place.

Shifting into the third-tier analysis: Division (B) of R.C. 2744.02 imposes direct civil liability for damages upon a political subdivision for harm “allegedly caused by an act or omission of the political subdivision or of any of its employees * * * [(5)] when civil liability is expressly imposed upon the political subdivision by a section of the Revised Code.” Thus, under R.C. 2744.02(B)(5), the City is civilly liable in damages based on R.C. 4765.49(B)’s express imposition of civil liability on the City.

The City’s Proposition

The City proposes that R.C. 4765.49(B) be deemed an immunity statute in its entirety; that the portion of R.C. 4765.49(B) imposing liability for willful or wanton misconduct be excised and discarded; that the remaining immunity portion of R.C. 4765.49(B) be deemed an additional immunity under R.C. 2744.03 – to be considered only when addressing the third tier of the *Cater* analytical framework; and that the immunity analysis terminate before reaching the second tier of the *Cater* framework – thus relegating R.C. 4765.49(B) to a state of utter uselessness..

To accept the City’s proposition, the Court necessarily would have to: (i) resort to rules of interpretation that would otherwise apply only to conflicting or irreconcilable statutes; (ii) disregard public policy expressed by the legislature through R.C. 2744.02(B)(5) and R.C. 4765.49(B); (iii) nullify – or judicially repeal – R.C. 2744.02(B)(5) and R.C. 4765.49(B) to the extent that each imposes civil liability on a political subdivision; and (iv) accept the resultant absurdity of deeming the remainder of R.C. 4765.49(B) a defense under the third tier of the Court’s analytical framework even though it would never be possible for a plaintiff to proceed to the second tier.

STATEMENT OF THE FACTS

The OAJ adopts and incorporates by reference as if fully rewritten herein, in its entirety, the statement of the case and facts presented in the brief of plaintiffs-appellants, Andrea Riffle, *et al.*

STATEMENT OF THE CASE

Before the Court is the appeal of a trial court order denying the City's motion for judgment on the pleadings, and the appellate court's decision affirming that order.

It is important to point out that paramedic Stacy Frabotta and company officer Todd Kelly, both City employees, were sued based on their alleged wanton, willful, or reckless misconduct relative to their administration of emergency medical services. Though not determinative of this appeal, their involvement in the case, as well as their tacit acknowledgment that liability is imposed by virtue of the Riffles' allegations of wanton, willful, or reckless misconduct, punctuates the point that liability is imposed on the City.

ARGUMENT

The League has submitted to the Court the following proposition of law:

Proposition of Law No. 1: R.C. Chapter 2744 provides the analytical framework for determining whether a political subdivision is immune from tort liability.

This proposition has been raised and passed upon in prior appeals; it simply recites existing settled law.^{2/} More importantly, no party to these proceedings has challenged the viability or the applicability of the framework referenced in the proposition.

^{2/} The OAJ previously has argued – and presently maintains – that R.C. Chapter 2744, the Political Subdivision Tort Liability Act (“the Act”), is unconstitutional. Neither the Act's constitutionality nor the framework for its application is an issue in this appeal, however.

The three-tiered analytical framework for determining a political subdivision's immunity and liability, set forth in *Cater vs. Cleveland*, 83 Ohio St.3d 24, 1998-Ohio-421 (1998), is a settled proposition. Moreover, the *Cater* framework has been consistently applied by Ohio's courts – including both lower courts in this case. There is no reason for this Court to consider or pass upon this proposition.

I. THE CITY SETS FORTH AN UNWORKABLE AND UNNECESSARY INTERPRETATION OF R.C. 4765.49

Proposition of Law No. II: R.C. 4765.49(B) does not conflict with R.C. 2744.02 under a[n] R.C. 1.51 analysis, but serves as an additional immunity defense under R.C. 2744.03(A)(7).

The City presents a partially correct statement in its proposition of law: “R.C. 4765.49(B) does not conflict with R.C. 2744.02.” As to the remainder of the City's proposition, OAJ submits that (i) R.C. 1.51 by its terms applies only when two statutory provisions conflict; and (ii) to construe R.C. 4765.49(B) as “an additional immunity defense under R.C. 2744.03(A)(7)” requires the Court to ignore virtually every well-settled rule of statutory construction set forth by this Court, as well as those rules set forth by the General Assembly in R.C. 1.42 [common, technical or particular terms], R.C. 1.47 [presumptions in enactment of statutes], R.C. 1.49 [determining legislative intent], and R.C. 1.51 [special or local provision prevails as exception to general provision].

The trial court issued a thoughtful, well-reasoned opinion that outlined the parties' respective claims before applying the *Cater* framework. That court concluded, correctly, that the imposition of liability to a political subdivision, where EMS employees administered services in a wanton or willful manor, constitutes an exception to political subdivision immunity under 2744.02(B)(5).

The trial court found that the City’s argument – that R.C. 4765.49(B) “creates a separate statutory immunity that would be applicable pursuant to R.C. 2744.03(A)(7)” – is “unsupportable,” and noted that interpreting and applying R.C. 4765.49(B) in the manner suggested would render the relevant portion of R.C. 4765.49(B) a nullity; that “[i]f R.C. 4765.49[B] does not provide an exception to that immunity, it has no meaning whatsoever.”

OAJ concurs. Under the City’s proposed interpretation (and proposition of law), half of R.C. 4765.49(B) is instantly rendered permanently meaningless, and the remaining half is transmogrified into a redundant, superfluous, wholly unnecessary recitation of law which exists already in R.C. 2744.02(A).

Ultimately, the trial court just applied the plain language of R.C. 4765.49 and R.C. 2744.02. This simple act left intact the harmonious coexistence that the two sections have enjoyed since their enactment; it resulted in full effect being given to all of the language in each of the sections; it quietly furthered the public policy underlying each of the sections; and it left no room or reason for unnecessary statutory interpretation.

The Ninth District affirmed the trial court’s judgment on alternative grounds. While the Ninth District also issued a well-reasoned opinion, it relied on the tortured and unnecessary application of rules of statutory construction which followed a determination that R.C. 4765.49(B) is an “immunity statute,” and a second determination – based on the first – that the R.C. 4765.49(B) immunity statute irreconcilably conflicts with the R.C. 2744.02(A) immunity statute.

OAJ proposes a fourth alternative: dispense with efforts to label the statutes as “immunity statutes” or as “liability statutes”; acknowledge that each section both grants immunity *and* imposes liability; and just apply both sections as written. It will readily be seen that the sections can be read

in pari materia; that they can be harmonized; that they do not conflict, therefore obviating the need to employ rules of statutory interpretation; and that they do not contain ambiguities which would require reconciliation.

Resolution of this appeal requires only that this Court apply the law as written by the General Assembly.

II. NO CONFLICT EXISTS BETWEEN CHAPTER 2744 AND R.C. 4765.49

The City and the League present the following proposition of law: “R.C. 4765.49 does not conflict with R.C. 2744.02 under a[n] R.C. 1.51 analysis. . . .” OAJ respectfully asserts that R.C. 4765.49(B) and R.C. 2744.02 do not conflict under *any* analysis, and that the court need only look at the plain language of each section and then simply apply both sections without resorting to interpretative analysis.

R.C. 4765.49(B) provides, in relevant part:

A political subdivision . . . that provides emergency medical services . . . *is not liable* in damages in a civil action for injury, death, or loss . . . arising out of any actions taken by a first responder, EMT-basic, EMT-I, or paramedic . . . *unless* the services are provided in a manner that constitutes willful or wanton misconduct. [*emphasis added*].

R.C. 4765.49(B) provides a grant of immunity based solely on the political subdivision’s special status and without respect to conduct, just as was done in R.C. 2744.02(A). Likewise, R.C. 4765.49(B) contains a dependent clause (beginning with the subordinating conjunction “unless”) which conditionally, but expressly, imposes civil liability upon the political subdivision for certain tortious conduct, much like R.C. 2744.02(A)(1), which also contains a dependent clause (beginning with the subordinating conjunction “except”) and which provides for conduct-based exceptions to immunity.

R.C. 2744.02(A)(1) states, in relevant part:

Except as provided in division (B) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function. [Emphasis added].

R.C. 2744.02(A) provides the general grant of immunity and is based solely on the political subdivision's special status and without respect to conduct. R.C. 2744.02(A), like R.C. 4765.49(B), contains a dependent clause (beginning with the subordinating conjunction "except") which conditionally, but expressly, incorporates the enumerated exceptions which expressly imposes civil liability upon the political subdivision for certain tortious conduct. It must be noted that the use of a dependent clause to incorporate the immunity exceptions does not render those exceptions any less effective (in contrast to a finding made by the Ninth District, discussed below).

R.C. 2744.02(B) provides, in relevant part:

Subject to sections 2744.03 and 2744.05 of the Revised Code, a political subdivision is liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the political subdivision or of any of its employees in connection with a governmental or proprietary function, as follows:

* * *

(5) *In addition to the circumstances described in divisions (B)(1) to (4) of this section, a political subdivision is liable for injury, death, or loss to person or property when civil liability is expressly imposed upon the political subdivision by a section of the Revised Code, including, but not limited to, sections 2743.02 and 5591.37 of the Revised Code. Civil liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon a political subdivision, because that section provides for a criminal penalty, because of a general authorization in that section that a political subdivision may sue and be sued, or because that section uses the term "shall" in a provision pertaining to a political subdivision. [Emphasis added].*

A. Rule of Statutory Construction

The Court’s “paramount concern is the legislative intent in enacting the statute.” *In re Adoption of M.B.*, 131 Ohio St. 3d 186, 190, ¶ 19 (2012); quoting *In State ex rel. Steele v. Morrissey*, 103 Ohio St. 3d 355, 2004-Ohio-4960, ¶ 21. “To determine intent, we look to the language of the statute and the purpose that is to be accomplished by it.” *Id.*; accord, *Rice v. CertainTeed Corp.*, 84 Ohio St.3d 417, 419, 1999-Ohio-361, (1999).

In *Zumwalde v. Madeira & Indian Hill Joint Fire Dist.*, 128 Ohio St.3d 492, 2011-Ohio-1603, this Court described as “concisely stated” and “well-settled” the following rule of statutory interpretation:

“[T]he intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the lawmaking body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.”

Zumwalde at ¶ 22; quoting, *Slingluff v. Weaver* (1902), 66 Ohio St. 621, 64 N.E. 574 (1902), paragraph two of the syllabus.

“When we engage in statutory interpretation, we must first examine the plain language of the statute.” *In re T.R.*, 120 Ohio St. 3d 136, 138 (2008); accord, *State v. Lowe*, 112 Ohio St.3d 507, 2007-Ohio-606, ¶ 9. “When we conclude that a statute’s language is clear and unambiguous, we apply the statute as written, * * * giving effect to its plain meaning.” *In re Adoption of M.B. at ¶ 19*; accord, *In re Estate of Centorbi*, 129 Ohio St. 3d 78, 2011-Ohio-2267, ¶ 14.

“In construing statutory language, we ‘must ascertain and give effect to the intent of the legislature,’ which we determine by “read[ing] words and phrases in context and constru[ing] them

in accordance with rules of grammar and common usage.” ’ ’ *Columbus City Sch. Dist. Bd. of Educ. v. Testa*, 130 Ohio St. 3d 344 (2011), ¶ 14; accord, *HIN, LLC v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, 923 N.E.2d 1144, ¶ 15, quoting *State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 2006-Ohio-5858, ¶ 11; *R.C. 1.42* (“Words and phrases shall be read in context and construed according to the rules of grammar and common usage”).

“Further, this court construes a statute ‘as a whole and give[s] [it] such interpretation as will give effect to every word and clause in it. No part should be treated as superfluous unless that is manifestly required, and the court should avoid that construction which renders a provision meaningless or inoperative.’ “ *Id.*; accord, *State ex rel. Myers v. Spencer Twp. Rural School Dist. Bd. of Edn.*, 95 Ohio St. 367, 373 (1917); see generally *R.C. 1.47(B)* (in enacting a statute, it is presumed that the General Assembly intended the entire statute to be effective).

Statutes Relating to the Same Subject Matter must Be Construed in Pari Materia

Another axiomatic rule of statutory construction is that statutes relating to the same subject matter must be construed in *pari materia* so as to give full effect to the provisions. *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55 (2012), ¶11; accord, *State ex rel Colvin v. Brunner*, 120 Ohio St.3d 110 (2008), ¶46.

It is the court’s duty to harmonize two statutes dealing with the same subject matter and, to the greatest extent, giving “effect to every word and clause in it. No part should be treated as superfluous unless that is manifestly required, and the court should avoid that construction which renders a provision meaningless or inoperative.” *In re adoption of M.B.*, 131 Ohio St.3d 186, 190 (2012).

From the language employed by the legislature, both the grant of immunity *and* the imposition of civil liability are part of R.C. 4765.49(B) and R.C. 2744.02(A) and (B). When possible, a court “should give meaning to every word in every act.” *In re Andrew*, 119 Ohio St.3d 466, 2008-Ohio-4791, ¶ 6; *accord*, *State ex rel. Mitman v. Greene Cty. Bd. of Commrs.*, 94 Ohio St. 296, 308, 113 N.E. 831 (1916); *E. Ohio Gas Co. v. Pub. Util. Comm.*, 39 Ohio St.3d 295, 299, 530 N.E.2d 875 (1988) (“a basic rule of statutory construction [is] that words in statutes should not be construed to be redundant, nor should any words be ignored”). See *Steele, Hopkins & Meredith Co. v. Miller*, 92 Ohio St. 115, 120, 110 N.E. 648 (1915) (“no portion of a written constitution should be regarded as superfluous”).

The City’s Proposed Statutory Misinterpretation Would Result in the Abolishment of All Political Subdivision Liability

In this appeal, the Ninth District set out to determine whether statutes with “unless” or “except” clauses “expressly impose[]” liability on a political subdivision under R.C. 2744.02(B)(5). The court stated: “We agree with the City that Section 4765.49(B) does not “expressly impose[]” civil liability on political subdivisions under Section 2744.02(B)(5). *Riffle v. Physicians & Surgs. Ambulance Serv.*, 2011-Ohio-6595 (2011), ¶ 8.

OAJ respectfully submits that this arbitrary finding violates every settled rule of construction. R.C. 1.47 provides: “In enacting a statute, it is presumed that: (A) Compliance with the constitutions of the state and of the United States is intended; (B) The entire statute is intended to be effective; (C) A just and reasonable result is intended; [and] (D) A result feasible of execution is intended.” Certainly, the finding violates R.C. 1.47(B), (C), and (D).”

The Ninth District's finding, which is in line with the City's proposition of law: disregards the plain language employed by the legislature; removes entire dependent clauses that otherwise provide scope and context to the statute, and which otherwise give effect to the public policy underlying the legislative enactments; discounts entire provisions and renders them inoperative; and renders subordinating conjunctions like "except" and "unless" superfluous; and renders redundant and superfluous the remains of R.C. 4765.49(B) because, under the Ninth District's analysis and the City's proposition of law, there would be two statutes granting immunity and *none* imposing liability.

Were the Court to apply the Ninth District's and the City's logic to R.C. 2744.02, every political subdivision would enjoy absolute immunity because the dependent clause that starts R.C. 2744.02(A)(1), *to-wit*: "Except as provided in division (B) of this section [2744.02]" – would be mere surplusage, to be set aside and held for naught. Such clearly is an absurd result that could be avoided simply by applying the language as written.

The General Assembly just as easily could have switched the format – and still kept the same meaning – by first imposing civil liability for wanton or willful administration of medical services, and then stating that each actor is not liable for negligence (and thus providing for the retention of the immunities granted in R.C. 2744.02(A) and 2744.03(A)(6), respectively.

To punctuate the point, here are at least four ways the general assembly could have written R.C. 4765.49(B) and achieved the same object:

1. A political subdivision is *not civilly liable unless* its EMT employee administered emergency medical services in a manner constituting willful or wanton misconduct;

2. A political subdivision *is civilly liable only if* its EMT employee administered emergency medical services in a manner constituting willful or wanton misconduct;
3. *Unless* its EMT employee administered emergency medical services in a manner constituting willful or wanton misconduct, a political subdivision *is not civilly liable*;
4. *Only if* its EMT employee administered emergency medical services in a manner constituting willful or wanton misconduct, a political subdivision *is civilly liable*.

Had the statutes been written in any of the ways set forth above, no one would seriously question that the legislature intended to grant immunity to the political subdivision for negligent conduct. The imposition of civil liability should be no less compelling than a grant of immunity.

B. R.C. 4765.49(B) Imposes Direct Civil Liability on a Political Subdivision

Division (A) of R.C. 4765.49 retains immunity for an EMT's negligent conduct, and expressly imposes civil liability for damages upon an EMT when harm results from the EMT's administration of emergency medical services "in a manner that constitutes willful or wanton misconduct." This imposition of liability on a political subdivision employee is consistent with R.C. 2744.03(A)(6)(b), which immunizes an employee for negligent conduct.

Division (B) of R.C. 4765.49 retains immunity for a political subdivision whose EMT employee administer emergency medical services in a negligent manner, and expressly imposes direct civil liability for damages upon a political subdivision that provides emergency medical services when harm arises out of an EMT's provision of services "in a manner that constitutes willful or wanton misconduct." Accordingly, the allegedly willful, wanton, or reckless administration of emergency medical services by the City's EMTs results in the imposition of direct civil liability upon the City pursuant to R.C. 4765.49(B).

Division (B) of R.C. 2744.02 imposes direct civil liability for damages upon a political subdivision for harm “allegedly caused by an act or omission of the political subdivision or of any of its employees * * * [(5)] when civil liability is expressly imposed upon the political subdivision by a section of the Revised Code.” Because R.C. 4765.49(B) expressly imposes direct civil liability on a political subdivision for willful or wanton misconduct, the City is civilly liable in damages under R.C. 2744.02(B)(5).

Much debate has developed and centered around whether R.C. 4765.49(B) “grants immunity” to a political subdivision – a result already accomplished by R.C. 2744.02(A)(1) – or whether it “imposes civil liability” on a political subdivision for harm caused by the willful or wanton administration of emergency medical services by an EMT employed by the political subdivision. OAJ respectfully submits that the debate is purely academic, as the difference between the two positions is one without a distinction.

III. Application of the City’s Proposition of Law Would Lead to Unreasonable and Absurd Results

The City asserts that R.C. 4765.49(B) and R.C. 2744.02 do not conflict “under a[n] R.C. 1.51 analysis”; however, if no conflict exists, then R.C. 1.51 provides no analysis. *City’s Brief at p.6.* Given the absence of any conflict, a proper analysis involves a review of the plain language of the statutes and the straightforward application of the statutes as written.

The City asserts further that the two statutes “are easily reconciled and harmonized”; that they “reasonably co-exist within the framework of the three-tiered analysis of Chapter 2744”; and that “R.C. 2744.02(A) exists as the grant of immunity in the first tier of the immunity analysis. . . .” *City’s Brief at p.6.* OAJ agrees with these assertions, with a caveat: in the absence of any ambiguity

– and no ambiguity has been asserted – there is no need to reconcile statutory language. Again, the City’s assertions merely punctuate the need for a straightforward application of the statutory language employed by the General Assembly.

OAJ does assert that, although the immunity portion of R.C. 4765.49(B) co-exists with the grant of immunity in R.C. 2744.02(A), the portion of R.C. 4765.49(B) that expressly imposes civil liability in damages for harm caused by willful or wanton conduct must be applied in the second-tier analysis as an R.C. 2744.02(B)(5) exception to immunity. Any other construction of R.C. 4765.49(B) renders the section meaningless and contravenes the public policy set forth in the plain language of that section: that a political subdivision “*is liable*” in “*damages*” in a “*civil action for injury, death, or loss*” only if “*willful or wanton misconduct.*”

The last assertion made by the City is that R.C. 4765.49(B) “fits neatly as an additional ‘defense or immunity . . . established by the Revised Code’ in the third tier of the immunity analysis, under R.C. 2744.03(A)(7).” *City’s Brief at p.6.* It is this proposition which, if accepted by the Court, will obliterate the liability half of R.C. 4765.49(B); leave a redundant, superfluous, meaningless grant of immunity; result in an absurd scenario where the a political subdivision has a backup immunity in the third tier of analysis, even though no plaintiff could ever get past the first tier. It is baffling that anyone could suggest such an interpretation with a straight face.

CONCLUSION

For the reasons discussed, OAJ, amicus curiae in support of the plaintiffs-appellees Andrea Riffle and Dan Riffle, respectfully requests this Honorable Court apply the time-honored rule of statutory construction and apply the plain language of R.C. 4765.49(B); overrule the City's and the League's propositions of law; and affirm the judgment of the Ninth District Court of Appeals on the grounds proposed herein.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on August 1, 2012 a copy of this *Brief of Amicus Curiae, Ohio Association for Justice in Support of Plaintiffs-Appellees Andrea Riffle, et al.* was sent via email to the following attorneys:

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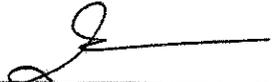
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