

**IN THE SUPREME COURT OF OHIO
CASE NO. 2012-0790**

**SUPPORTIVE SOLUTIONS TRAINING ACADEMY, LLC
Plaintiff-Appellee,**

v

**ELECTRONIC CLASSROOM OF TOMORROW
Defendant-Appellant.**

**ON APPEAL FROM THE EIGHTH APPELLAT DISTRICT
CUYAHOGA COUNTY, OHIO, CASE NOS. 95022 AND 95287**

**PLAINTIFF-APPELLEE'S BRIEF IN OPPOSITION TO DEFENDANT-APPELLANT'S
MOTION FOR PARTIAL RECONSIDERATION**

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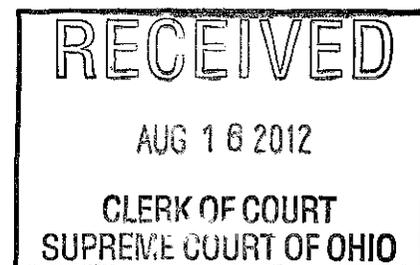
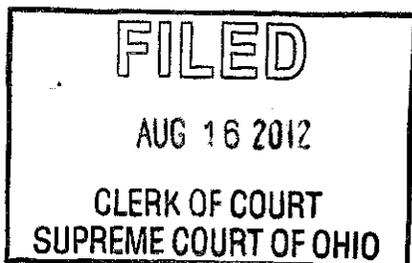
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Plaintiff-Appellee Supportive Solutions Training Academy, LLC (herein after Supportive Solutions), respectfully requests that this Honorable Court deny Defendant-Appellant Electronic Classroom of Tomorrow's (herein after ECOT) motion to reconsider the denial of jurisdiction over Proposition of Law No. II in the Entry dated July 25, 2012. A copy of which was attached to ECOT's Motion to Reconsider and was labeled Exhibit A.

PROPOSITION OF LAW II:

A NOTICE OF APPEAL DOES NOT NEED
TO SPECIFY EVERY ORDER THAT IS
BEING CHALLENGED AND SHOULD BE
CONSTRUED IN A MANNER THAT
PERMITS APPELLATE REVIEW.

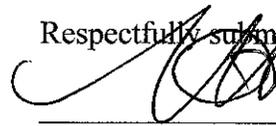
Contrary to ECOT's position that Proposition of Law I and Law II are closely intertwined, they are in fact very separate and distinct arguments. While both rely on whether or not ECOT is a political subdivision and whether or not they are entitled to immunity and ultimately an immediate right of appeal, Proposition of Law II relies on a Summary Judgment argument that was not decided on ECOT'S political subdivision status or its immunity argument.

Supportive Solutions denies that ECOT is a political subdivision ORC 2744.01E defines a political subdivision a "... school district responsible for governmental activities in a geographic area *smaller than that of the state.*" (Emphasis added.) Being an *electronic online* charter school, ECOT admission is open to students in the *entire state*, not a geographic area smaller than that of the state. Had ECOT pled that they were a political subdivision, this could have been briefed or argued rather than just commented on *in dicta*.

In *Hubbell v Xenia*, 115 Ohio St.3d 88, 2007-Ohio-4839, 873 N.E.2d 878, this Court held that “when a trial court denies a motion in which a political subdivision or its employee seeks immunity under RC Chapter 2744, that order denies the benefit of an alleged immunity and is therefore a final, appealable order pursuant to RC 2744.02(C).” However the Court of Appeals made it clear that the denial of ECOT’s summary judgment had nothing to do with its political subdivision status or its alleged immunity and therefore the immediate right of appeal that ECOT sought under RC 2744.02 is irrelevant. The immunity ECOT seeks stems from their affirmative defense of being a political subdivision. Because ECOT did not plead such a defense, it was improperly before the court in its summary judgment motion. If the trial court had denied ECOT Summary Judgment finding that they did not have immunity, ECOT could then argue that they had an immediate right of appeal. Because it did not, the denial was not a final, appealable order. To attempt to add the denial of summary judgment to the appeal is without merit because based on this court’s prior decision, the court of appeals had no jurisdiction to consider an interlocutory order. ORC 2505.02 *Dawson v. Cleveland*, 8th Dist. No. 94510, 2010-Ohio-5142. The court of appeals stated that an amended appeal ought to have been filed so as to argue that the Motion for Summary Judgment would also be before the court. Had the Eighth District Appellate Court agreed with ECOT and made a decision on the merits of the Summary Judgment, it would have expanded the *Hubbell* decision to far greater implications.

The Eighth District was proper in their decision as was this Honorable Court’s decision to not review Proposition of Law No. II.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **Brief** has been sent by e-mail and regular

U.S. Mail, on this 16th day of August, 2012 to:

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