

TABLE OF CONTENTS

	<u>Page</u>
Memorandum <i>Amicus Curiae</i> In Support Of Appellants' and Reversal Of The Decision By The First Appellate District	1
A. <u>Interests of <i>Amicus Curiae</i></u>	1
B. <u>Argument</u>	2
1. The Legislature Enacted R.C. 2151.421 In Part To Provide The Means By Which Ohio Is Able To Protect Its Children From Abuse	2
2. The Decision By The Court Of Appeals Is In Direct Conflict With The Purpose Of R.C. 2151.421, And The Decision By The Court Of Appeals Will Significantly Diminish The Effectiveness Of The Statute And The Ability Of Ohio Prosecuting Attorneys To Identify And Stop Child Abusers	2
C. <u>Conclusion</u>	4
Certificate Of Service	5

MEMORANDUM

A. Interests Of Amicus Curiae

This Court correctly recognized in *Yates v. Mansfield Bd. Of Educ.*, 102 Ohio St.3d 205, 207 (2004) that child abuse, sexual and physical, is a “pervasive and devastating force in our society” and may already be “a problem of epidemic proportions.” The Ohio legislature also recognized the seriousness and scope of this problem when it enacted R.C. 2151.421. As elected officials, with the duty to prosecute certain of the persons who violate R.C. 2151.421 within our respective jurisdictions, we are in agreement with this Court’s assessment of the problem.

As Prosecuting Attorneys we are also very concerned that many individuals and entities who are mandated reporters under R.C. 2151.421 are not fulfilling their duties to report. We are even more concerned that certain mandated reporters may be intentionally breaching those duties and, in essence, helping child abusers to cover up and continue the abuse they are perpetrating. As such, to protect children from abuse by “eliminat[ing] the source of the abuse,” we have a strong interest in defending one of the better means the Ohio legislature has made available to everyone, including Ohio prosecuting attorneys, to identify those persons and entities who do not fulfill their duties under R.C. 2151.421. *Id.*, at 218, citing *Brodie v. Summit Cty. Children Serv. Bd.* (1990), 51 Ohio St.3d 112, 554, N.E.2d 1301.

B. Argument

1. The Legislature Enacted R.C. 2151.421 In Part To Provide The Means By Which Ohio Is Able To Protect Its Children From Abuse.

Under R.C. 2151.421 mandated reporters are required to make reports to proper authorities when they suspect or know that a child is a victim of sexual and/or physical abuse. Failure to report abuse or suspected abuse to authorities can be a criminal offense. To encourage persons who are mandatory reporters under the statute to make reports when they suspect or know that child abuse has occurred, the legislature included a provision in the statute (i.e. subsection (H)(1)) that provides protection to persons who *make* reports. To effectuate the primary purpose of the statute - *i.e.*, to protect children from abuse by identifying and stopping child abusers - it is essential that (1) mandated reporters responsibilities be clear, and (2) all Ohioans, including the Prosecuting Attorneys, have the right and means to verify whether mandated reporters are meeting their duties under R.C. 2151.421.

2. The Decision By The Court Of Appeals Is In Direct Conflict With The Purposes Of R.C. 2151.421, And The Decision Of The Court Of Appeals Will Significantly Diminish The Effectiveness Of The Statute And The Ability Of Ohio Prosecuting Attorneys To Identify And Stop Child Abusers.

The undersigned respectfully submit that, by its Decision in *Roe v. Planned Parenthood Southwest Ohio Region*, Case No. C-060557, the First Appellate District, in part, ruled in a manner that is in direct conflict with what the Ohio legislature intended when

R.C. 2151.421 was enacted. The Court of Appeals' ruling that "reports made under R.C. 2151.421 . . . are inadmissible in any civil proceeding" is in direct conflict with one of the purposes of the statute – to discourage the failure to report. *Campbell v. Burton* (2001), 92 Ohio St.3d 336, 750 N.E.2d 539. In fact, R.C. 2151.421(H)(1) provides "whistleblower" protection to persons who *make* reports; it does not provide protection to those persons who intentionally breach their duty to report. Moreover, the Court of Appeals' ruling prevents Appellants from collecting strong, if not the best, evidence that will show whether Planned Parenthood systematically and as part of a practice ignores its reporting duties and did so in this case.

The First Appellate District's interpretation of R.C. 2151.421 will encourage persons who have a duty under the statute *not* to make reports, and it has left the statute without the teeth necessary to enforce it. Indeed, the Decision will in many cases render R.C. 2151.421 virtually useless, resulting in children being more vulnerable to abusers and the protection of abusers, not children.

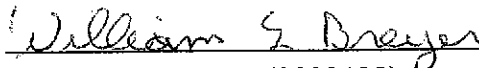
C. Conclusion

For the reasons stated above, the undersigned request that the First Appellate District's Decision be reversed.

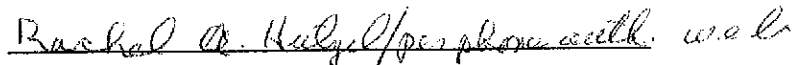
Respectfully submitted,



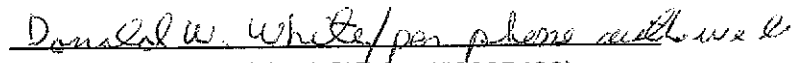
Honorable Joseph T. Deters (#0012084)
Hamilton County Prosecutor's Office



William E. Breyer (0002138)
Chief Assistant Prosecuting Attorney
Hamilton County Prosecutor's Office
230 E. Ninth Street, Suite 4000
Cincinnati, OH 45202
Phone: (513) 946-3244 Fax: (513) 946-3100
Bill.Breyer@hcpros.org



Honorable Rachel A. Hutzell (#0055757)
Warren County Prosecutor's Office
500 Justice Drive
Lebanon, OH 45036
Phone: (513) 695-1325; Fax: (513) 695-2962



Honorable Donald W. White (#0005630)
Clermont County Prosecutor's Office
123 N. Third Street
Batavia, OH 45103
Phone: (513) 732-7313; Fax: (513) 732-7592

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by regular mail this 14th day of May, 2008 to the following attorneys of record:

CRABBE BROWN & JAMES, LLP
Brian E. Hurley (0007827)
Robert J. Gehring (0019329)
30 Garfield Place, Suite 740
Cincinnati, Ohio 45202
(513) 784-1525
(513) 784-1250 facsimile

VORYS, SATER, SEYMOUR & PEASE LLP
Daniel J. Buckley (0003772)
Barbara Bison Jacobson (0014190)
Suite 2000, Atrium Two
221 East Fourth Street
Cincinnati, Ohio 34201
(513) 723-4002; (513) 852-7819 facsimile

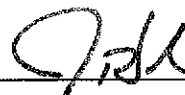
KEATING MUETHING &
KLEKAMP, PPL
Richard L. Creighton, Jr. (0021806)
William A. Posey (0021821)
1 E. Fourth Street, Suite 1400
Cincinnati, Ohio 45202

*Counsel for Defendants-Appellees,
Planned Parenthood Southwest Ohio
Region and Roslyn Kate, M.D.*

WHITE GETGEY & MEYER CO. LPA
Nicholas E. Bunch (0015008)
Fourth & Vine Tower
1 W. Fourth Street, Suite 1700
Cincinnati, Ohio 45202

*Counsel for Plaintiffs-Appellants,
John and June Roe, Individually, And
As Parents And Next Of Friends
Of Jane Roe, A Minor*

Respectfully submitted,



Honorable Joseph T. Deters (#0012084)
Hamilton County Prosecutor's Office