

**IN THE SUPREME COURT OF OHIO**

JOHN AND JUNE ROE, individually	:	Case No. 2007-1832
and as parents and next friend of	:	
JANE ROE, a minor,	:	
	:	
Plaintiffs-Appellants,	:	On appeal from the Hamilton County
	:	Court of Appeals, First Appellate
	:	District, Case No. C060557
v.	:	
	:	
PLANNED PARENTHOOD	:	
SOUTHWEST OHIO REGION, <i>et al.</i>	:	
	:	
Defendants-Appellees.	:	

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**BRIEF AMICI CURIAE OF DR. AND MRS. JACK WILLKE,  
CENTER FOR BIOETHICAL REFORM, CENTER FOR BIOETHICS AT  
CEDARVILLE UNIVERSITY, CITIZENS FOR COMMUNITY VALUES,  
CITIZENS MEDIA GROUP, CLEVELAND LAWYERS FOR LIFE,  
CLEVELAND RIGHT TO LIFE, COLUMBUS RIGHT TO LIFE, DAYTON  
RIGHT TO LIFE, FAMILY FIRST, HEALTHY BEGINNINGS, INSTITUTE FOR  
PRINCIPLED POLICY, LIFE ISSUES INSTITUTE, MISSION: AMERICA,  
NE OHIO VALUES VOTERS, OHIO CHRISTIAN ALLIANCE,  
OHIO GOVERNMENTAL PRAYER ALLIANCE, OHIO RIGHT TO LIFE,  
PREGNANCY CENTER EAST, PREGNANCY CENTER WEST, RIGHT TO LIFE  
OF BUTLER COUNTY, RIGHT TO LIFE OF GREATER CINCINNATI,  
SANCTITY OF LIFE FOUNDATION, THE REACH OUT PREGNANCY CENTER,  
TOUCH THE WORLD MINISTRIES, WARREN CO. RIGHT TO LIFE,  
THE WAY OF LOVE, AND WOMEN INFLUENCING THE NATION,  
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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## INTEREST OF *AMICI CURIAE*

Amici Curiae are a coalition of pro-family, pro-woman, pro-child, and pro-life organizations who have an interest in ensuring that women and children are protected from sexual predators, child molesters and other abusers, by enforcement of Ohio's laws requiring medical providers to report known or suspected abuse or neglect.<sup>1</sup> Amici through their participation in this case seek to highlight the important role the reporting statutes play in protecting minors from abuse, particularly teenage victims of statutory rape. Amici have an interest in ensuring that corporate medical providers like Planned Parenthood are fully complying with the child abuse reporting requirements. To protect that interest, Amici submit this Brief in support of the Roes and in opposition to Planned Parenthood's efforts to shield from scrutiny its "don't ask, don't tell" policy of not reporting suspected abuse.

## INTRODUCTION

"Child abuse is a pervasive and devastating force in our society." *Yates v. Mansfield Bd. of Educ.*, 102 Ohio St. 3d 205, 2004-Ohio-2491, 808 N.E.2d 861, at ¶12. To minimize this force and provide mechanisms for early detection of abuse or neglect, Ohio law imposes strict reporting requirements on certain professionals in positions of trust who have reason to know or suspect abuse.

Medical providers are in an optimal position to ascertain signs of child abuse. Recognizing this, the legislature wisely included physicians and other medical providers among those required to report physical and sexual abuse discovered during examinations

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<sup>1</sup> The respective missions and interests of Amici are set forth in the Appendix.

and medical procedures. Often these medical providers are the only safeguard between the child-victim and the perpetrator's ongoing abuse.

Planned Parenthood of Southwest Ohio is a leading provider of abortion and other reproductive health services to women, including young girls, in the region. Indeed, according to its website, in 2006 Planned Parenthood served 50,629 patients.<sup>2</sup> Planned Parenthood is thus uniquely positioned to be able to detect abuse, and particularly *sexual* abuse, of minors. The case of Jane Roe is a perfect example.

Sadly, Planned Parenthood did not report the fact that Jane Roe, a young girl, was being sexually abused by a grown man. And now that she has called upon Planned Parenthood to account for its failure—and in the process has sought records that will reveal Planned Parenthood's "don't ask, don't tell" method of counseling young, frightened statutory-rape victims seeking abortion services—Planned Parenthood is hiding behind the physician-patient privilege to protect itself from further incrimination.

But the Trial Court wouldn't allow Planned Parenthood to hide its records, finding that the Roes (and the public's) interest in obtaining the records is "tremendous." Based on that finding and in consideration of potential patient-privacy issues, the Trial Court ordered Planned Parenthood to produce redacted medical records, thereby granting the Roes the discovery they need (and to which they are entitled) to prove their claims, while at the same time insuring that the physician-patient privilege would not be violated.

Unfortunately, that decision didn't survive on appeal. Exercising jurisdiction where none existed (see Section I, *supra*), and wrongfully employing a de novo standard of review

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<sup>2</sup> See Planned Parenthood Southwest Ohio Region, *Planned Parenthood – About Planned Parenthood* (available at <http://www.plannedparenthood.org/swoh/about-planned-parenthood.htm>) (last checked on May 16, 2008).

(see Section II, *supra*), the Court of Appeals reversed the Trial Court’s well-reasoned decision ordering Planned Parenthood to produce redacted records. In the process, the court obliterated any potential for common law or statutory punitive damages against Planned Parenthood or any other medical provider accused of failing to report known or suspected child abuse, thereby rendering Ohio’s abuse and neglect reporting laws null and void for medical providers. The end result: medical providers like Planned Parenthood will be accountable to no and sexual predators and child abusers like John Haller will continue to rape young teenage girls in Ohio. It is for this critical reason that we urge this Court to reverse the decision of the Court of Appeals.

## ARGUMENT

### I. THE COURT LACKS SUBJECT MATTER JURISDICTION TO REVIEW DISCOVERY ORDERS THAT DO NOT INVOLVE PRIVILEGED MATTERS.

Initially, the Court must determine whether it has jurisdiction to hear this appeal. See *State ex rel. White v. Cuyahoga Metro. Hous. Auth.* (1997), 79 Ohio St.3d 543, 544, 684 N.E.2d 72.<sup>3</sup> For the Court to have jurisdiction (and for the Court of Appeals to have had jurisdiction), Section 3(B)(2), Article IV of the Ohio Constitution requires that the Trial Court’s decision be a judgment or final order.

R.C. 2505.02 lists six appealable orders, only one of which—an order granting or denying a provisional remedy—is applicable here. The term “provisional remedy” is defined in R.C. 2505.02(A)(3) as “a proceeding ancillary to an action, including, but not limited to \*\*\* discovery of a privileged matter.” “If the order in question affects the discovery of a

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<sup>3</sup> Although not raised by the parties, “[s]ubject-matter jurisdiction may not be waived or bestowed upon a court by the parties to the case. It may be raised *sua sponte* by an appellate court.” *Id.*

privileged matter it is by definition a provisional remedy. *Sinnott v. Aqua-Chem, Inc.*, 116 Ohio St.3d 158, 2007-Ohio-5584, 876 N.E.2d 1217, ¶17. No other discovery order is a provisional remedy. See *Myers v. City of Toledo*, 110 Ohio St.3d 218, 222, 2006-Ohio-4353, 852 N.E.2d 1176, ¶24 (application of *expressio unius est exclusio alterius* canon of statutory construction eliminates all other discovery orders from definition of provisional remedy in R.C. 2505.02).

At issue in this appeal are two different categories of documents that were requested by the Roes in discovery. The first category is documents containing statistical data concerning the number of abortions Planned Parenthood performed and the number of abuse reports it made during a specified period of time. Because it is not possible to identify any patients (or information about patients) from these statistics, the Trial Court held that the information was not privileged and ordered Planned Parenthood to produce it.<sup>4</sup>

Although Planned Parenthood argued (to the Trial Court) that the documents *are* privileged, it did not challenge the Trial Court's decision on that narrow issue. Consequently, the Court of Appeals did not have jurisdiction to hear (let alone reverse) the Trial Court's ruling on that issue, and this Court should vacate that portion of the Court of Appeals decision. See *Hitchings v. Weese* (1997), 77 Ohio St.3d 390, 392, 674 N.E.2d 688 (Resnick, J., concurring) ("The court of appeals, on its own initiative, should have dismissed the appeal as to that issue only, in the same way that this court today dismisses the appeal. Because the court of appeals had no jurisdiction to review this issue, its decision pertaining to this issue must be vacated.")

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<sup>4</sup> Trial Court Decision, at 4 ("It appears to this court that many of the documents requested by Roe are not subject to protections under the physician-patient privilege. Any document, therefore, that is relevant and afforded the privilege protection is appropriate for discovery.").

The second category of documents requested by the Roes encompasses certain medical records of Planned Parenthood patients. In light of the safeguards in the Trial Court's decision (ordering that all identifying information be redacted and indicating its intent to issue a protective order if necessary to further guarantee patient privacy), it is certainly questionable whether the Trial Court's decision constitutes a final order within the meaning of R.C.2505.02(B)(4). See *The Dispatch Printing Co. v. Recovery Limited Partnership*, 166 Ohio App.3d 118, 2006-Ohio-1347, 849 N.E.2d 297 (discovery order regarding privilege matter not final order where "trial court fully contemplated that discovery would continue only with adequate safeguards in place"). Amici argued this point in their Memorandum in Support of Appellants' Motion for Reconsideration filed with this Court (at pp. 24-26), and will not repeat it again here.

But there is an additional jurisdictional argument that Amici did not include in their first brief. This argument concerns a *subset* of the second category of requested documents: medical records of *minor* patients of Planned Parenthood. The Roes have requested the records as part of their effort to demonstrate, *inter alia*, that Planned Parenthood has systematically and intentionally disregarded its obligations to report child abuse or neglect in violation of its duty under R.C. 2151.421. Planned Parenthood, of course, maintains that the documents are protected by the physician-patient privilege, and so the Roes may not obtain them.

But pursuant to R.C. 2317.02(B)(1) and R.C. 2151.421(A)(3), the physician-patient privilege is deemed to be *waived* by any patient of Planned Parenthood if:

- (i) the patient (at the time of the communication) is under eighteen years of age;

- (ii) Planned Parenthood knew or had “reasonable cause to suspect based on facts that would cause a reasonable person in [a] similar position to suspect, as a result of the communication or any observations made during that communication” that the patient had suffered or faced a threat of suffering abuse or neglect; and
- (ii) the abuse or neglect did not arise out of the patient’s attempt to have an abortion without the notification of her parents. R.C. 2151.421(A)(3)(c).<sup>5</sup>

In other words, if Planned Parenthood knew or had reason to suspect that a minor patient had suffered or faced a threat of suffering from (non-abortion related) abuse or neglect, the communications “on the same subject” (R.C. 2317.02(B)(1)) between that minor patient and Planned Parenthood *are not privileged*.

The Roes have requested documents that fit squarely into this category. To prove their claim for punitive damages against Planned Parenthood for systematically and intentionally failing to report suspected abuse or neglect, the Roes have requested medical records of minor patients of Planned Parenthood. To the extent those patients had been abused or neglected (or faced a threat of abuse or neglect), and Planned Parenthood knew or *had reasonable cause to suspect it*, the physician-patient privilege doesn’t apply. See R.C. 2317.02(B)(1).

Because this issue was not addressed by the Trial Court in its decision (*i.e.*, the Court simply assumed that all of the patient medical records were privileged, rather than individually evaluating each), the Trial Court’s order is not a final appealable order and the Court of Appeals should not have heard it. This Court should therefore vacate the portion of

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<sup>5</sup> To be clear, for the abortion exception to apply, *the abuse or neglect* (and not the communication concerning the abuse or neglect), must arise out of the patient’s attempt to have an abortion without the notification of her parents. In other words, the abortion exception would not apply in a situation where the doctor learned about the abuse or neglect in the context of performing an abortion on a minor without notifying her parents.

the Court of Appeals decision concerning the Roes' request for discovery of medical records of Planned Parenthood's minor patients.

II. DISCOVERY ORDERS INVOLVING PRIVILEGE MATTERS SHOULD NOT BE DISTURBED UNLESS THE TRIAL COURT ABUSED ITS DISCRETION.

The general rule in Ohio is that, absent an abuse of discretion, an appellate court must affirm a trial court's disposition of discovery issues. See, e.g., *State ex rel. The V Cos. v. Marshall* (1998), 81 Ohio St.3d 467, 469, 1998-Ohio-329, 692 N.E.2d 198. An abuse of discretion implies that the court's attitude was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St. 3d 217, 450 N.E.2d 1140.

When applying the abuse of discretion standard, the reviewing court may not substitute its judgment for that of the trial court, *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621, 1993 Ohio 122, 614 N.E.2d 748, but must be guided by a presumption that the findings of the trial court are correct. *Focke v. Focke* (1992), 83 Ohio App.3d 552, 615 N.E.2d 327. "The term discretion itself involves the idea of choice, of an exercise of the will, of a determination made between competing considerations." *Smalley v. Friedman, Damiano & Smith Co., L.P.A.* (8<sup>th</sup> Dist.), 172 Ohio App.3d 108, 114, 2007-Ohio-2646, 873 N.E.2d 331, quoting *State v. Jenkins* (1984), 15 Ohio St.3d 164, 222, 473 N.E.2d 264. "In order for there to be an abuse of discretion, the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." *Id.* at 222.

The existence of a "privilege" in the Rule 26 discovery context is a discretionary determination to be made by the trial court. *State ex rel. Greater Cleveland Transit Authority*

*v. Guzzo* (1983), 6 Ohio St. 3d 270, 271, 452 N.E.2d 1314. It naturally follows, then, that discovery orders involving matters of privilege should not be disturbed unless the trial court abuses its discretion.

Notwithstanding these basic principles of judicial review, the appellate districts are not in complete agreement on the proper standard of review of discovery orders involving assertions of privilege. See *National Union Fire Ins. Company of Pittsburg, PA v. Ohio State University Board of Trustees*, Franklin App. No. 04AP-1340, 2005-Ohio-3992 (the “standard for review applied in discovery disputes involving privilege [has] varied among courts.”). Unsurprisingly, the vast majority of the appellate courts—including the Third, Fourth, Fifth, Seventh, Ninth, Tenth, Eleventh, and Twelfth Districts—apply the abuse of discretion standard. See, e.g., *Mark A. Banks Judges v. Ohio Physical Med. & Rehab.* (5<sup>th</sup> Dist., Apr. 28, 2008), Fairfield App. No. 07CA68, 2008-Ohio-2165, ¶ 17 (“[A] discovery ruling lies in the trial court’s sound discretion. Regulation of pre-trial discovery matters concerning privilege is also governed by an abuse of discretion standard.”).<sup>6</sup>

The First, Sixth, and Eighth Districts, however, apply the *de novo* standard of review, although the First and the Eighth Districts have applied that standard only recently, and in violation of their own precedent. See *Roe v. Planned Parenthood Southwest Ohio Region*, 173 Ohio App.3d 414, 2007-Ohio-4318, 878 N.E.2d 1061 at ¶18 (“questions of privilege,

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<sup>6</sup> See, e.g., *State v. Moore* (3<sup>rd</sup> Dist.), Allen App. Nos.1-06-89; 1-06-96, 2007-Ohio-3600 (abuse of discretion); *Wagner v. Marietta Area Health Care, Inc.* (4<sup>th</sup> Dist.) Washington App. No. 00CA17, 2001-Ohio-2424 (same); *Folmar v. Griffin* (7<sup>th</sup> Dist.), 166 Ohio App.3d 154, 2006-Ohio-1849, 849 N.E.2d 324 (same); *DePaul v. St. Elizabeth Health Ctr.* (7<sup>th</sup> Dist.) Mahoning App. No. 03 MA 137, 2004-Ohio-4992 (same); *Grove v. Northeast Ohio Nephrology Assocs.* (9<sup>th</sup> Dist.), 164 Ohio App.3d 829, 834-835, 844 N.E.2d 400 (same); *Covington v. Saffold* (10<sup>th</sup> Dist.), 150 Ohio App.3d 126, 2002-Ohio-6280, 779 N.E.2d 838 (same); *Manley v. Heather Hill* (11<sup>th</sup> Dist.), Geauga App. No. 2007-G-2765, 2007-Ohio-6944 (same); *Grantz v. Discovery For Youth* (12<sup>th</sup> Dist), Butler App. Nos. CA2004-09-216, CA2004-09-217, 2005-Ohio-680 (same).

including disclosure [in the discovery process], are questions of law and are reviewed *de novo*"); *Cook v. Toledo Hosp.* (6<sup>th</sup> Dist.), 169 Ohio App.3d 180, 2006-Ohio-5278, 862 N.E.2d 181 (same); *Medical Mutual of Ohio v. Schlotterer* (8<sup>th</sup> Dist., Jan. 10, 2008), Cuyahoga App. No. 89388, 2008-Ohio-49 (same).

Indeed, the First District's application of the *de novo* standard in *Roe*, although consistent with its most recent precedent on the issue, was contrary to its decision in *Richards v. Kerlakian*, 162 Ohio App.3d 823, 2005-Ohio-4414, 835 N.E.2d 768, ¶18. In that case, which involved discovery of privileged matter and was very similar to *Roe*, the court applied the abuse of discretion standard. See *id.*; but, see, *Flynn v. University Hospital, Inc.*, 172 Ohio App.3d 775, 2007-Ohio-4468, 876 N.E.2d 1300 (applying *de novo* standard); *Alcorn v. Franciscan Hospital*, Hamilton App. No. C-060061, 2006-Ohio-5896 (same).

Similarly, the Eighth District has also recently switched the standard of review it applies to discovery orders involving privilege matters. See *Medical Mutual, supra*; but, see, *O'Donnell Const. Co. v. Stewart*, Cuyahoga App. No. 86576, 2006-Ohio-1838 ("the regulation of pretrial discovery matters concerning privilege are governed by an abuse of discretion standard"); *Muehrcke v. Housel*, Cuyahoga App. Nos. 85643, 85644, 2005-Ohio-5440 (same). Indeed, without even mentioning its prior decisions in *Muehrcke* or *O'Donnell*, the court held that a "trial court's decisions on the management of discovery are reviewed under an abuse of discretion standard, \*\*\* [but] [q]uestions of privilege \*\*\* 'including the propriety of disclosure are questions of law and are reviewed *de novo*.'" *Medical Mutual*, at ¶21, quoting *Roe*, at ¶18.<sup>7</sup> So much for *stare decisis*.

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<sup>7</sup> A memorandum in support of jurisdiction in *Medical Mutual* is pending before this Court in Case No. 2008-0598.

If this Court should find that it has jurisdiction in this matter, it should resolve the conflict between the appellate districts by affirming the abuse of discretion standard as the proper standard of review of discovery orders involving privilege matters.<sup>8</sup> In *Patterson v. Zdanski*, Belmont App. No. 03 BE 1, 2003-Ohio-5464, the Seventh District noted the conflict and offered its rationale in favor of the abuse of discretion standard.

We realize the Tenth District concluded that an appellate court should be able to review this particular issue *de novo*. But we disagree with its reasoning. It believes that since this issue “turns on the proper interpretation of what are ‘causally or historically’ related medical records” under the statute, that the issue should “be reviewed as a matter involving an issue of law.” *Ward v. Johnson’s Industrial Caterers, Inc.* (June 25, 1998), 10th Dist. No. 97APE11-1531, at 5, 1998 Ohio App. LEXIS 2841 at \*12. But most discovery issues involve the proper interpretation of a statute or rule and are reviewed using an abuse of discretion standard. See *State ex rel. The V Cos. v. Marshall* (1998), 81 Ohio St.3d 467, 1998 Ohio 329, 692 N.E.2d 198 (Applies abuse of discretion standard even though case turned in part on whether a party was given notice of a deposition without designating with reasonable particularity the matters on which his examination was requested as required by Civ.R. 30(B)(5)); *State ex rel. Vindicator Printing Co. v. Watkins* (1993), 66 Ohio St.3d 129, 609 N.E.2d 551 (Applies abuse of discretion standard even though case involved interpretation of what are “confidential law enforcement investigatory records” and “trial preparation records” under R.C. 149.43). See, also, *Wilson v. Barnesville Hosp.*, 151 Ohio App. 3d 55, 2002 Ohio 5186 at P30, 783 N.E.2d 554. We see no reason to treat this case any differently. Accordingly, we will continue to apply an abuse of discretion standard when reviewing discovery matters similar to those involved in this case.

*Patterson*, at ¶11.

Decisions concerning privilege matters at the discovery stage are best left to the sound discretion of the trial court, and should not be disrupted on appeal unless it is shown

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<sup>8</sup> Although the standard of review is not a proposition of law the Court agreed to review, the Court may nonetheless decide it. See *C. E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 280 n1, 376 N.E.2d 578 (failure to raise as proposition of law whether court of appeals applied proper standard “does not bar this court from deciding that issue because a ‘cause properly appealed to this court is here for the proper determination of all questions presented by the record \*\*\*’ (quoting *Winslow v. Ohio Bus Line Co.* (1947), 148 Ohio St. 101), and the standard applied by the Court of Appeals is clearly presented by the record in the instant cause.”)

that the court abused that discretion. To eliminate the apparent conflict among the appellate districts, the Court should take this opportunity to affirm the abuse of discretion standard as the appropriate standard of review of discovery orders involving privilege matters.

III. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN HOLDING THAT THE DISCOVERY AT ISSUE IS RELEVANT TO THE ROES' CLAIM FOR PUNITIVE DAMAGES BASED ON PLANNED PARENTHOOD'S SYSTEMATIC AND INTENTIONAL FAILURE TO REPORT SUSPECTED ABUSE OF MINORS IN VIOLATION OF R.C. 2151.421.

Among the Roes' several claims against Planned Parenthood is a claim for punitive damages based on Planned Parenthood's systematic and intentional failure to report suspected abuse of minors in violation of R.C. 2151.421 (the "Reporting Statute" or "Statute"). But because the Reporting Statute does not specifically provide for an award of punitive damages, the Roes must look to common law principles governing awards of punitive damages.

Under the common law, the Roes must prove that Planned Parenthood acted with "actual malice" when it failed to report known or suspected child abuse. See *Preston v. Murphy* (1987), 32 Ohio St.3d 334, 512 N.E.2d 1174. To demonstrate actual malice, the Roes must show that Planned Parenthood engaged in behavior "characterized by hatred, ill will, or a spirit of revenge" or "extremely reckless behavior revealing a conscious disregard for a great and obvious harm." *Id.* at 335.

To prove that Planned Parenthood behaved in this manner, the Roes must produce evidence. And to obtain the evidence they need to prove their claim, the Roes have requested that Planned Parenthood produce medical records. The records will either prove or negate the Roes' allegations that Planned Parenthood has systematically and intentionally failed to

report known or suspected abuse of minors (and, as such, has repeatedly violated the Statute with actual malice).

The Roes seek this evidence of actual malice in the form of redacted records of Planned Parenthood’s minor patients that would show (or tend to show) that the patient (whose identity will remain unknown) either had been abused or faced an imminent threat of abuse (or, as in Jane Roe’s case, both), and that such abuse was not reported by Planned Parenthood as required by the Reporting Statute.

The records requested by the Roes may very well show that Planned Parenthood repeatedly failed to report known or suspected sexual abuse (*i.e.*, statutory rape) of minor girls by adult males. This evidence would be used by the Roes to support their claim for punitive damages, to prove both that they are entitled to punitive damages, and also to prove or support the amount of punitive damages to which they are entitled to recover.

The records requested by the Roes might also show that Planned Parenthood has a *policy* (either an overt policy, such as “don’t ask/don’t tell,” or an implied policy, based on a pattern and practice of not reporting suspected abuse) that enabled Jane Roe’s adult abuser to take her to Planned Parenthood to have an abortion, pay for that abortion with his credit card, and then continue to sexually abuse her—*all without fear that Planned Parenthood would report the abuse.*

And that is exactly what happened. After the abortion, Planned Parenthood loaded Jane up with condoms and sent her on her way, *and John Haller continued to sexually abuse her.* See *Roe*, at ¶ 15. All the while the caring folks at Planned Parenthood were probably already giving a shot of Depo-Provera and a box of condoms to their next 14-year old victim, and didn’t give Jane Roe a second thought.

The Roes have an economic interest in obtaining the medical records of Planned Parenthood's minor patients to prove their claims for punitive damages. But the purpose of punitive damages is to punish the wrongdoer for malicious conduct, rather than to compensate the aggrieved party. In that respect, the Roes' interest extends beyond themselves to the public at large.

Indeed, the public's interest in discovering whether Planned Parenthood has systematically and intentionally failed to report suspected abuse of minors far exceeds the Roes' interests. Granted, it is the Roes who would be entitled to receive punitive damages if they are successful in proving their claims, but one cannot put a price tag on the benefit to the public if Planned Parenthood's "don't ask, don't tell" policy concerning the suspected abuse of minors is exposed as a result of this lawsuit.

Ultimately, if Planned Parenthood has maliciously failed to report known or suspected abuse, as the Roes have alleged, they should be punished. Indeed, it is that exact kind of behavior that punitive damages are designed to punish. But without access to the information they have requested, the Roes are helpless to discover the evidence they need to not only prove their claim for punitive damages, but to hopefully put an end to Planned Parenthood's malicious and repeated failure to report child abuse in violation of Ohio law.

## CONCLUSION

The Roes seek limited information to determine if Planned Parenthood has systematically and intentionally ignored child abuse. As the Ohio legislature has recognized in creating an exception to the physician-patient privilege where the patient is an abused or neglected minor, the public interest in protecting child abuse victims far outweighs any

putative confidentiality interest of anonymous past patients. If Planned Parenthood is failing to report suspected abuse as the Roes allege, they should not be allowed to hide behind privilege and confidentiality to avoid liability.

The Court of Appeals stated that it would not matter if Planned Parenthood has failed to report abuse “1,000 times.” *Roe* at ¶40. Amici do not share that court’s cavalier attitude about child abuse. We do not view Planned Parenthood’s conduct as mere technical violations of Ohio law. Rather, each time Planned Parenthood fails to report suspected abuse, it is likely that another Jane Roe will continue to be victimized. Not only for the sake of Jane Roe, but for countless other children, this Court should vacate the decision of the Court of Appeals and reinstate the decision of the Trial Court.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Brief Amici Curiae was served by regular mail  
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# APPENDIX

## MISSION AND INTEREST STATEMENTS OF AMICI CURIAE

*Center for Bio-Ethical Reform Midwest (CBR)* is working to establish prenatal justice and the right to life for the unborn, the disabled, the infirm, the aged and all vulnerable peoples through education and the development of cutting edge educational resources.

*Center for Bioethics at Cedarville University* articulates, integrates and defends a biblical view of ethics, educates others about this view, and engages and influences the broader American culture. It seeks to glorify God through scholarship, dialogue and service.

*Citizens for Community Values* is a grassroots organization of citizens who are concerned for the well-being of the community, the strength of its families, and the future of its children. It strives to be a leader in the restoration of those Judeo-Christian moral values upon which this country was founded in hopes of leaving a lasting legacy of citizens endeavoring to foster and maintain healthy, wholesome, safe, and happy communities.

*Citizens Media Group* is an Ohio corporation involved in publishing newspapers and web sites. Citizens Media Group believes the outcome of this case will have consequences throughout the state of Ohio.

*Cleveland Lawyers for Life* is group of people who believe in the sanctity and dignity of human life from conception until natural death. Its mission is to educate the public about the dignity of human life, support right-to-life organizations and advocate for life in four areas of law: Abortion, Adoption, Embryonic Stem Cell research and Advance Directives.

*Cleveland Right to Life* has a mission to promote and defend the rights of all innocent human beings from the time of fertilization until natural death by eliminating practices such as abortion, infanticide and euthanasia.

*Columbus Right to Life* is made up of two parts: The Columbus Right to Life Society and The Columbus Right to Life Educational Foundation. The Columbus Right to Life Society, Inc. is a nonprofit corporation organized in 1975 to promote a deeper understanding and respect for human life and encourage its protection in an increasingly violent world. The main objective of the Society is to present detailed and factual information about fetal development, abortion, infanticide, and euthanasia. The Columbus Right to Life Education Foundation is a nonprofit corporation founded in 1976. The Foundation was established with the purpose of fostering respect for human life from conception to natural death.

*Dayton Right to Life* is a grassroots organization, which exists to ensure that pro-life principles of protection and dignity for all innocent human life are upheld and kept before the public. Its mission is to promote life through education and action.

*Family First* is a conservative political action committee serving Ohio and Northern Kentucky. It operates with donations and the volunteer help of citizens who are concerned about our country. Family First is especially concerned with pro-life, pro-marriage, school choice, and fiscal responsibility issues.

*Healthy Beginnings* is a prenatal care medical ministry providing care to under-insured women in the Greater Cincinnati Area. Its mission is: To provide quality medical care to expectant women, encouraging them to carry their baby to delivery in an environment of life-changing love and hope.

*The Institute for Principled Policy* is a body of like-minded individuals committed to a foundation of Biblical truths. Its goal is to influence the creation and implementation of social, moral and political public policy from the vantage point of a Biblical world-view. The Institute for Principled Policy publishes a semi-annual journal, *In the Gates*, with articles addressing the topics and debates of our day from a number of distinguished writers and thinkers. Articles are chosen for publication based on the author's approach to the topic from a Biblical perspective. The Institute's primary interest is on policies for the state of Ohio.

*Life Issues Institute* is an Ohio organization whose mission is to assure, through education, equal protection under the law for all living humans from the beginning of their biological life at fertilization until natural death. Life Issues Institute dedicates itself to promoting and providing effective educational tools for the pro-life movement.

*Mission: America* began in 1995 as a publication and website. It covers the latest cultural and social trends in the United States and what they might mean for Christians. *Mission: America* researches social trends inside and outside Christianity, and publishes articles and newsletters on its website.

*NE Ohio Values Voters* is a new 501(c)(4) organization (since 2007) created to provide education and awareness to voters about issues and candidates' positions on life, family, faith, and school-choice. Its mission is to be the most influential values voters network in Northeast Ohio. It is independent of any political party, denomination or religion. NE Ohio Values Voters promotes and defends the rights of all innocent human beings from the time of conception until natural death by seeking to eliminate practices such as abortion, infanticide and euthanasia. NE Ohio Values Voters also: supports the protection of the First Amendment of the U.S. Constitution which protects the free exercise of religion; favors public policy that protects and strengthens marriages and families; and supports a parent's right to choose the best school for their children, religious or secular, without financial penalty.

*Ohio Christian Alliance's* mission is to inform Christians about timely issues and pending legislation; to speak for truth and morality in the public arena; to educate voters through voter guides, score cards, and candidate forums; to train Christian leaders for effective social and political action; and to defend the legal rights of Christians against an ever-growing anti-Christian bias.

*Ohio Governmental Prayer Alliance* is a division of the National Governmental Prayer Alliance, and as such, seeks to facilitate on a state level the mission of the National Governmental Prayer Alliance, which is to educate and activate the Body of Christ in governmental intercession. The Ohio Governmental Prayer Alliance is a ministry dedicated to enlisting, encouraging, educating, and mobilizing effective governmental intercessors across the state of Ohio for the purpose of seeing the will and rule of God released within Ohio and the nation.

*Ohio Right to Life* is a group that exists to promote and defend the right to life of all innocent human beings from the time of fertilization until natural death by eliminating practices such as abortion, infanticide, and euthanasia. Ohio Right to Life's directive is to serve those whose right to life is vulnerable and to work with those who share a common desire to preserve the sanctity of life.

*Pregnancy Center East* is pro-life, pro family pregnancy help center. It offers free and confidential services including crisis counseling, free pregnancy tests, abortion consultations, ultrasounds, consultations concerning pregnancy, parenting education, adoption education and referrals, post-abortion counseling, medical referrals, and referrals for Legal Aid and other social services.

*Pregnancy Center West* is located in Cincinnati, Ohio and is a Christian pro-life ministry. It provides education regarding positive alternatives to abortion and offers assistance with pregnancy-related services. Chaste lifestyles are encouraged. Spiritual and emotional healing is fostered in those experiencing crisis or suffering from Post-Abortion Syndrome. Pregnancy Center West seeks to affirm and maintain dignity of all human life as created by God.

*Right to Life of Butler County* is a subsidiary of Right to Life of Cincinnati. It shares and distributes pro-life ideas and information to the local community through various outreach opportunities such as parades, fairs, festivals and pro-life gatherings.

*Right to Life of Greater Cincinnati* is a grassroots organization which exists to ensure that pro-life principles of protection and dignity for all innocent human life are upheld and kept before the public. It educates society on the malice and extent of attacks on innocent human life that may occur through such actions as abortion, infanticide, embryonic manipulation, and euthanasia. Right to Life of Greater Cincinnati also promotes effective legislation to achieve these ends and secures enforcement of relevant statutes.

*Sanctity of Life Foundation* exists to protect the dignity of life.

*Warren Co. Right to Life's* mission is to inform people of the pro-life message that life begins at fertilization and ends at natural death.

*The Reach Out Pregnancy Center* is dedicated to reaching out with hand and heart to those who are experiencing an unplanned pregnancy. Its mission is to provide loving non-judgmental support during this time. The center does this through full disclosure education for its clientele regarding parenting, adoption and abortion. The Reach Out Pregnancy Center is deeply concerned about the issue of the abortion “choice” and its long-term effect on young women and their partners.

*The Way of Love* sponsors an annual pilgrimage of prayer on the Sundays of Lent involving participants walking around the block encompassing an abortion facility where over 3000 children in a single year have been reported (Ohio Dept. of Health) to have lost their lives through legalized abortion. The Way of Love witnesses to the truth that each man, woman and child born and waiting-to-be-born has the God-given dignity of life.

*Touch the World Ministries’* mission is to facilitate and coordinate existing ministries so that the community may look upward toward God and outward toward His people to solve spiritual and social problems.

*Women Influencing the Nation (WIN)* is an organization that believes in the right to life from natural conception to natural death, and that God has supreme rights over everyone. Its challenge is to uncover the lies, reverse the damage, and reclaim the respect for women that has been lost in America today.