IN THE SUPREME COURT OF OHIO

MALIEKA EVANS,	:	Case No. 2019-0453
Plaintiff-Appellee,	:	On Appeal from the Ninth Appellate District, Summit County, Case No. 28340
vs.	:	
AKRON GENERAL MEDICAL CENTER, *et al.*	:	
Defendant-Appellant.	:	

BRIEF OF AMICUS CURIAE OHIO EMPLOYMENT LAWYERS ASSOCIATION IN SUPPORT OF APPELLEE MALIEKA EVANS

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I. STATEMENT OF INTEREST

The Ohio Employment Lawyers Association (OELA) is a state-wide professional membership organization in Ohio comprised of lawyers who represent employees in labor, employment, and civil rights disputes. OELA strives to protect the rights of its members' clients and regularly supports precedent-setting litigation affecting the rights of individuals in the workplace. As an organization focused on protecting the interests of employees, OELA has an abiding interest in ensuring that employees, especially victims of sexual assault or harassment in the workplace, can hold an employer accountable for its own negligence in hiring, retaining, or failing to supervise an employee or independent contractor whose conduct caused injury to another employee. Impeding, or completely foreclosing, the ability of Ohio employees to pursue a claim for negligent hiring, retention, or supervision against their employers will ultimately make it more difficult for victims of sexual assault or harassment in the workplace to vindicate their rights and hold employers accountable for their own negligence. OELA therefore files its amicus brief to urge this Court to adopt the analysis set forth by the Ninth Appellate District and Plaintiff-Appellee Malieka Evans ("Ms. Evans") and affirm the judgment below.

II. SUMMARY OF THE ARGUMENT

Ohio has long recognized the public policy that an employer bears the legal responsibility to provide its employees with a safe workplace. The claim of negligent hiring, retention, or supervision furthers that policy by holding an employer liable for negligently hiring, retaining, or supervising an employee, resulting in injury to another employee. Holding an employer liable for failing to provide a safe workplace is, and should remain, separate and apart from holding liable an individual bad actor whose tortious or criminal actions caused harm to an employee.

In the employment context, victims of sexual assault or harassment in the workplace often bring a claim of negligent hiring, retention, or supervision against their employers when they negligently hire, retain, or supervise a perpetrator who the employer knew or should have known engages in sexual misconduct or harassment. The case at bar presents a factual scenario outside of the employment context in which a claim of negligent hiring, retention, or supervision can also arise.

In this matter, Appellee Malieka Evans, a patient of Appellant Akron General Medical Center ("AGMC"), alleges that she was sexually assaulted by a physician while seeking medical attention in AGMC's emergency room and brought claims of negligent hiring and negligent retention/supervision against AGMC. Relying on this Court's decision in *Strock v. Pressnell*, 38 Ohio St.3d 207, 527 N.E.2d 1235 (1988), AGMC and its Amici Curiae ask this Court to hold that, to sustain a viable cause of action against an employer for negligent hiring, retention, or supervision, a plaintiff must either: (1) obtain a civil or criminal verdict against the individual bad actor as a condition precedent to pursuing an employer for its own negligence; or (2) have an existing, cognizable cause of action against the individual bad actor. AGMC and its Amici Curiae

further seek to have this Court shorten the statute of limitations for a claim of negligent hiring, retention, or supervision from two years to one year.

The propositions urged by AGMC and its Amici Curiae are not only unworkable from a practice standpoint and are prejudicial to the rights of injured plaintiffs, but also have implications far beyond the facts of Ms. Evans' case. Adopting the propositions urged by AGMC and its Amici Curiae would render it nearly impossible for Ohio employees who are victims of sexual assault or harassment to pursue employers for their negligent conduct – conduct that is separate and apart from that of the individual bad actor. In short, AGMC and its Amici Curiae are asking this Court to eviscerate Ohio's long standing public policy regarding safe work environments and shield *all* employers from liability, whether or not in the employment context, for their own negligence by allowing them to hide behind defenses that are available only to the individual bad actors, not the employers. This is not what this Court's decision in *Strock* stands for. Accordingly, the Ohio Employment Lawyers Association respectfully requests that this Honorable Court uphold the Ninth Appellate District's interpretation of *Strock* and the positions urged by Plaintiff-Appellee Malieka Evans.

III. STATEMENT OF FACTS AND THE CASE

OELA adopts the Statement of Facts and the Case set forth in the brief of Plaintiff-Appellee Evans.

IV. LAW AND ARGUMENT

A. A claim of negligent hiring, retention, or supervision is a separate and distinct claim necessary to hold employers liable for their own negligent conduct. Thus, an employer's liability under this claim is separate and apart from, and not dependent upon, the liability of the individual wrongdoer.

The elements for negligent hiring, retention, or supervision are: (1) the existence of an employment relationship; (2) the employee's incompetence; (3) the employer's actual or constructive knowledge of such incompetence; (4) the employee's act or omission causing the plaintiff's injuries; and (5) the employer's negligence in hiring, retaining, or supervising the employee as the proximate cause of the plaintiff's injuries. *Harmon v. GZK, Inc.*, 2nd Dist. Montgomery No. 18672, 2002 WL 191598, *16 (Feb. 2, 2002).

In Ohio, a claim for negligent hiring, retention, or supervision is a separate and distinct tort and "is analyzed separately from respondent superior or vicarious liability causes of action, which require a scope of employment analysis. An employer can therefore be held independently liable for negligently hiring, retaining, or supervising an employee, ***separate and apart from the underlying conduct of its employee***." *Simpkins, et al. v. Grace Brethren Church of Delaware*, 2014-Ohio-3465, 16 N.E.3d 687, ¶¶49-50 (5th Dist.), *citing Stephens v. A–Able Rents Co.*, 101 Ohio App.3d 20, 654 N.E.2d 1315 (8th Dist.1995); *Byrd v. Faber*, 57 Ohio St.3d 56, 565 N.E.2d 584 (1991); and *Lutz v. Chitwood*, 337 B.R. 160 (Bankr.S.D.Ohio 2005). In other words, the employer is not automatically, indirectly liable for its employee's wrongdoing. Rather, a claim for negligent hiring, retention, or supervision is premised on the employer's direct liability for its own act of negligence in failing to properly hire, retain, or supervise the individual who caused harm to the plaintiff.

This Court in *Strock v. Pressnell*, a 1988 decision, held that, "an underlying requirement in actions for negligent supervision and negligent training is that the employee is individually

liable for a tort or guilty of a claimed wrong against a third person." *Strock*, 38 Ohio St.3d at 217. There was no further analysis by this Court of the claim or its elements. Yet, it is this single sentence from a 1988 opinion that forms the entire basis of Appellant's argument that a plaintiff must either obtain a verdict or have a viable cause of action against the individual bad actor before she can pursue her employer for its own misconduct that gave rise to her injury.

In *Strock*, this Court found that *the individual defendant had never committed any legal wrong against the plaintiff*. The individual defendant was a minister who was having sexual relations with the wife of a married couple who had been seeing the minister for marriage counseling services. This Court held that, because Ohio law no longer recognized "amatory torts" such as alienation of affection, which was the thrust of the allegations against the minister, the minister had not violated any legal right of the plaintiff. Given that the plaintiff did not suffer a legal wrong at the hands of the minister, the minister's employer could not be held liable on a negligent hiring or retention claim. *Strock, supra*.

That reasoning does not apply here. Unlike the minister in *Strock*, taking Ms. Evans' allegations as true, the physician very obviously committed a legal wrong and a tort against Ms. Evans when he sexually assaulted her. The fact that Ms. Evans did not pursue an action against the physician individually does not change that. Thus, this Court's statement in *Strock*, cited above, is not at odds with the Ninth Appellate District's rationale that, "there is a difference between never having had a cause of action and not pursuing a cause of action," and its recognition that *Strock* established that, "a plaintiff must allege and prove a wrong recognized as a tort or crime in the state of Ohio" to sustain a claim for negligent hiring, retention, or supervision. *See Evans v. Akron General Medical Center*, 9th Dist. Summit No. CV 2014-11-5041, 2018-Ohio-3031, ¶¶ 33-34.

AGMC and its Amici Curiae insist that this Court expand *Strock* further than necessary. Rather than merely showing that the individual wrongdoer committed a legally cognizable wrong, Appellant asks this Court to require the plaintiff in a negligent hiring, retention, or supervision action to either secure an actual judgment in court or have an existing cause of action that could be pursued against that individual wrongdoer to hold the wrongdoer's employer accountable for *its own* wrongful acts. However, this is not what this Court and other courts subsequent to *Strock* have held. While not deciding the issue, the Second Appellate District in *Harmon* rejected GZK's argument that an actionable claim of sexual harassment is a prerequisite to a claim of negligent retention and supervision based on the same harassing behavior. Interpreting this Court's decision after *Strock* in *Kerans v. Porter Paint Co.*, 61 Ohio St.3d 486, 575 N.E.2d 428 (1991), and also the decision by the Ninth Appellate District in *Myers v. Goodwill Indust. of Akron, Inc.*, 130 Ohio App.3d 722, 721 N.E.2d 130 (9th Dist. 1998), the *Harmon* court held:

> While the trial court addressed the negligent supervision and retention issue separately, GZK argues that an actionable claim of sexual harassment by an employee is a prerequisite to a claim of negligent retention based on sexually harassing behavior, citing *Myers*, *supra*. ***However, a close reading of Myers and its antecedent, Kerans, reveals that those courts did not require an actionable claim for sexual harassment in order to bring negligent supervision and retention claims.*** Rather, they stated that where a sexual harassment claim exists, a claim for negligent supervision and retention may lie as well.

Harmon, 2002 WL 191598, *16 (emphasis added).

Adopting the position urged by AGMC and its Amici Curiae will throw well-established and well-reasoned precedent into question and create an unworkable state of affairs for victims of workplace harassment or assault whose employers failed to maintain a safe workplace by negligently hiring, retaining, or supervising an individual wrongdoer. An employer should not be permitted to escape liability merely because the plaintiff either cannot, or validly chose not to,

pursue the individual wrongdoer – a result that none of the courts that have considered this issue could have intended.

B. Tying the liability of a negligent employer to the liability of the individual wrongdoer avails the employer of defenses and protections to which it would not, and should not, otherwise be entitled.

An individual wrongdoer may not be held civilly or criminally liable for his misconduct or be subject to suit for a myriad of reasons, even though he committed a legally cognizable wrong. For example, in the context of civil claims, the statute of limitations for those claims applicable to the underlying conduct of the individual wrongdoer may have expired. The plaintiff may have been unsuccessful in obtaining service against the individual wrongdoer due to his fleeing the jurisdiction or avoiding or ducking service. Even if sued, the individual wrongdoer may be dismissed from the case for a variety of grounds, including immunity if a municipal employee, or settlement.

In the criminal context, prosecutors hold considerable discretion in determining whether to pursue a prosecution against the individual perpetrator. Even if indicted, the prosecution may be unable to prove beyond a reasonable doubt that the perpetrator engaged in criminal conduct, or the perpetrator may be acquitted based on other legal bases, such as constitutional violations or statute of limitations.

These situations and any defenses that are available to individual defendants should apply *only* to the individual wrongdoer. An employer who negligently hires, retains, or supervises the individual wrongdoer should not be able to escape liability for its separately negligent conduct by "riding the coattails" of the individual tortfeasor/criminal. In other words, an otherwise culpable employer should not be freed of liability for the sole reason that the individual wrongdoer was able

to escape liability. Rather, the culpable employer should be subject to liability for its own tortious conduct.

Holding an employer accountable for its own negligence, even where an individual wrongdoer escapes liability, is similar to what can happen in a typical *Monell* claim brought under *Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). In *Monell*, a plaintiff must show, to hold the municipality liable, that she suffered a tort in violation of federal law that was committed by a municipal actor and that the commission of the tort resulted from a custom or policy of the municipality. *Monell*, 436 U.S. at 690-91. The plaintiff, however, is not required to sue the individual tortfeasor, let alone obtain any sort of judgment against him:

> It does not follow, however, that the plaintiff must obtain a *judgment* against the individual tortfeasors in order to establish the liability of the municipality. It suffices to plead and prove against the municipality that municipal actors committed the tort against the plaintiff and that the tort resulted from a policy or custom of the municipality. ***In fact, the plaintiff need not sue the individual tortfeasors at all, but may proceed solely against the municipality.***

Askins v. Doe No. 1, et al., 727 F. 3d 248, 253 (2nd Cir. 2013) (emphasis added).

This is no different than what the Ninth Appellate District held with regard to a negligent hiring, retention, or supervision claim, *i.e.*, to satisfy the "incompetency" element, a plaintiff must only allege and prove a wrong recognized as a tort or crime in the state of Ohio. A plaintiff is not required to sue the individual tortfeasor or even have a viable claim against the individual tortfeasor, like in a *Monell* claim in which the individual tortfeasor may be immune from liability.

C. Requiring a civil or criminal judgment against an individual bad actor as a condition precedent to pursuing an employer for its own negligence prejudices plaintiffs with unnecessary delay and increased costs.

There exist additional strong policy objectives against imposing upon victims of sexual assault or harassment the obstacle of obtaining a civil or criminal judgment against an individual bad actor prior to pursuing a culpable employer who has negligently hired, retained, or supervised the bad actor.

Ohio Rule of Civil Procedure 20(A), Permissive Joinder, allows for multiple plaintiffs to bring all claims against a single defendant in a single action arising out of the same set of facts. *See* Civ.R. 20(A). The policy behind Rule 20 is to "promote trial convenience and expedite the final determination of disputes, thereby preventing multiple lawsuits." *Miller v. Hygrade Food Products Corp.*, 202 F.R.D. 142, 144 (E.D. Pa.2001) ("Under the rules, the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged.").[1] If able to meet the requirements under this Rule, multiple plaintiffs may have a negligent hiring, retention, or supervision claim against a single employer based on the actions of a single bad actor. In addition to contravening the clear policy objectives of Civ.R. 20(A), it would prove impractical, if not impossible, for these plaintiffs to litigate their claim against the employer in a single action if each were required to first pursue the individual employee civilly or criminally, given the possible variation in timing of the bad actor's tortious or criminal actions.

A victim of criminal conduct will typically wait months for the criminal investigation to be completed and for the prosecutor to decide whether to seek an indictment. If the perpetrator is successfully indicted, then it may be months before the criminal proceeding is concluded. Under

[1] Federal Rule of Civil Procedure 20, Permissive Joinder of Parties, is virtually identical to Ohio Civ.R. 20.

the formula proposed by AGMC and its Amici Curiae, only then could the victim initiate a civil action against the employer for any negligence on its part that gave rise to the criminal conduct occurring in the workplace. By this point, the statute of limitations for a negligence claim against the employer may have run.

In addition, forcing an individual plaintiff to litigate and finance two separate lawsuits, one against a possibly uncollectible individual defendant, and then – only if successful – against the employer, will cost her additional litigation costs and expenses. This incentivizes the filing of wasteful lawsuits against uncollectible individual wrongdoers. Further, it also discourages settlement. A plaintiff will be disincentivized from settling with the individual defendant, knowing that it would preclude her from pursuing a negligent hiring, retention, or supervision claim against a culpable employer. The potentially liable employer will also be disincentivized from settling with the plaintiff early while waiting for the case against the individual defendant to resolve.

D. There exists no example in Ohio jurisprudence of a "gatekeeping" claim, which requires a plaintiff to either obtain a civil or criminal verdict or have a cognizable claim against one defendant as a condition precedent to sue another defendant.

Requiring an employee who is a victim of sexual assault or harassment in the workplace to have a cognizable claim or first obtain a verdict, either civil or criminal, against her perpetrator creates an artificial and unnecessary "gatekeeping" mechanism to surmount before pursuing a claim of negligent hiring, retention, or supervision against a culpable employer. There exists no other example of such a "gatekeeping" mechanism in which there are two separate torts alleged against two separate defendants. Rather, where there are two separate defendants being held liable for their own tortious conduct, Ohio law does not impose an artificial prerequisite of obtaining a judgment against one tortfeasor before suing the other.

For example, under Ohio law, a claim of negligent entrustment holds an owner of a motor vehicle liable for injury to a third person resulting from the owner's negligently entrusting his or her car to a driver who directly causes the injury. To recover under negligent entrustment, a plaintiff must demonstrate, in part, that the driver entrusted with the motor vehicle was "incompetent or unqualified". *Romstadt v. Garcia, et al.,* 2017-Ohio-7277, 96 N.E.3d 952, ¶8 (6th Dist.); *see also* R.C. §4511.203 (Wrongful Entrustment of Motor Vehicle). Notably, nothing in the Ohio Revised Code or the common law requires the injured party to sue the driver and obtain a judgment before suing the person who negligently entrusted the vehicle to the driver. More importantly, nothing in the Ohio Revised Code or at common law prohibits a plaintiff from recovering against the vehicle owner only. In *Motorists Insurance Co., et al. v. Sokol, et al.*, 8th Dist. Cuyahoga No. 45380, 1983 WL 5911, *4 (April 7, 1983), the Eighth Appellate District held that, with regard to a negligent entrustment claim:

> [T]he possessor or owner is jointly and severally liable for damage which results from his negligent entrustment of the chattel. Negligence by the entrusted person demonstrates that the entrustor's negligence proximately caused the damage. ***Therefore, a judgment against the entrustee is not necessary to impose liability on the entrustor***.
>
> The trial court's exoneration of the codefendant driver does not afford this defendant any ground for complaint. Liability for negligent entrustment is direct rather than imputed. *Williamson v. Eclipse Motor Lines, Inc*. (1945), 145 Ohio St. 467. ***The unfortunate defendant who is held liable cannot complain about the favorable verdict rendered in favor of a fortunate codefendant***. *Price v. McCoy Sales & Service, Inc*. (1965), 2 Ohio St. 2d 131; *Reugler v. Lilly* (1875), 26 Ohio St. 48.

Id. (emphasis added). Because nothing in Ohio law imposes a "gatekeeping" mechanism in the context of a similar negligence claim, this Court should not adopt one in this case.

Unlike negligent entrustment and negligent hiring, retention, or supervision, a claim for loss of consortium is a truly derivative claim that seeks to hold a single defendant liable for injury to two separate plaintiffs. *See Bowen, et al. v. Kil-Kare, Inc., et al.*, 63 Ohio St.3d 84, 92-93, 585

N.E.2d 384 (1992). As this Court recognized in *Bowen*, a claim for loss of consortium is "derivative in that the claim is ***dependent upon*** the defendant's having committed a legally cognizable tort upon the spouse who suffers bodily injury." *Id.*; *see also Urban, et al. v. Goodyear Tire & Rubber Co*., 8th Dist. Cuyahoga Nos. 77162, 77776, 76703, 2000 WL 1800679, *5-6 (Dec. 7, 2000). Further, "[t]he liability elements of a loss of consortium claim are proven when the underlying tort is proven; therefore Ohio law does in fact presume liability for loss of consortium when a spouse is tortiously injured . . . ." *Id*. at *6.

Thus, once an underlying tort is proven against a single defendant, there exists a claim for loss of consortium against *that same defendant*. If AGMC and its Amici Curiae want this Court to adopt a loss-of-consortium analysis for a claim of negligent hiring, retention, or supervision, then they must also concede that the employer's liability would be presumed once a plaintiff successfully pursues a civil action against the individual tortfeasor. Rather, they want it both ways – to require the plaintiff to prove her case against the individual, but without the benefit of a finding of direct liability against the individual actor, that being presumed liability against the negligent employer. The illogicality of this position exposes the flaw in the comparison between loss of consortium and negligent hiring, retention, and supervision.

E. The claim of negligent hiring, retention, or supervision carries with it a rigorous evidentiary bar, as each element, including the underlying conduct of the individual wrongdoer, must be proved by a preponderance of the evidence.

The Ninth Appellate District held that, under *Strock*, to prove the "incompetency" element, a plaintiff must allege and prove "a wrong recognized as a tort or crime in the state of Ohio". Each element, including the incompetency element, must be proved by a preponderance of the evidence, the same standard of proof that a plaintiff would need to meet if she had brought a civil claim

against the individual employee. *White v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2004–04981, 2005-Ohio-5063, ¶49.

Indeed, as the law currently stands, the evidentiary bar to prove a negligent hiring, retention, or supervision claim is stringent, as the plaintiff must prove the underlying conduct of the bad actor by a preponderance of the evidence, along with the other elements of the claim. *Harmon, supra*. Contrary to AGMC and its Amici Curiae, the Ninth Appellate District did not lower the evidentiary bar. In any case, there is no need to impose a further, heightened burden on plaintiffs by requiring them to obtain a judgment or have a viable cause of action against the individual wrongdoer.

F. Tying the statute of limitations for a negligent hiring, retention, or supervision claim against an employer to the limitations period applicable to the underlying conduct of the individual bad actor – a separate defendant – will lead to confusion and inconsistency.

The statute of limitations for a claim of negligent hiring, retention, or supervision is two years, as provided in Ohio Revised Code §2305.10. *Keisler v. First Energy Corp.,* 6th Dist. Ottawa No. OT-04-055, 2006-Ohio-476, ¶27. AGMC and its Amici Curiae argue that, in the case at bar, the statute of limitations for Ms. Evans' negligent hiring, retention, or supervision claim should be tied to the statute of limitations applicable to the physician's underlying conduct, civil assault and battery, which they argue is one year. However, marrying the statute of limitations for a negligent hiring, retention, or supervision claim to the limitations period for the individual wrongdoer's underlying conduct will undermine judicial efficiency and will lead to confusion and inconsistency.

In deciding which statute of limitations applies to a particular claim, courts must look to the true nature or subject matter of the acts giving rise to that claim. *Brown v. Holiday Inn Express & Suites*, 10th Dist. Franklin No. 17AP-477, 2018-Ohio-3281 (holding that the statute limitations

applicable to a negligent supervision claim is two years, not the one-year statute of limitation for battery). As the *Brown* court recognized, the nature of the claim against the employer is negligence; the employer's liability does not stem from an inappropriate or offensive touching. *Id.* at ¶16. Thus, as the *Brown* court correctly decided, the statute of limitations for a negligence claim is the two-year statute of limitations. *Id.*

Even if the "true nature" of the negligence claim against the employer stemmed from sexual assault or harassment in the employment setting, the claims of sexual assault or harassment have varying statute of limitations, depending on the basis on which the claim is brought: (1) civil assault or battery (one-year statute of limitations), *Brown,* 2018-Ohio-3281, ¶10, *citing* R.C. 2305.111(B); (2) common law sexual harassment (four-year statute of limitations), *Kerans,* 61 Ohio St.3d at 492-97 (recognizing common law claim for sexual harassment), and R.C. §2305.09(D); and (3) statutory sexual harassment (six-year statute of limitations), *Cosgrove v. Williamsburg of Cincinnati Management Co., Inc*., 70 Ohio St.3d 281, 638 N.E.2d 991 (1994), syllabus. Thus, in the case of workplace assault or harassment, tying the statute of limitations for negligent retention, hiring, or supervision to the limitations period applicable to the individual tortfeasor's conduct would result in uncertainty and confusion for parties and for the courts.

Further, it is not at all clear when the one-year statute of limitations as argued by AGMC for a negligent hiring, retention, or supervision claim against the employer would begin to run – at the time of the conduct by the bad employee, or when a judgment is entered against the individual bad employee? The purpose of a statute of limitation is to provide certainty. To hold that the statute of limitations for a negligent hiring, retention, or supervision claim against one defendant, the employer, is dependent upon the underlying conduct of another defendant, the individual bad actor, only provides uncertainty.

In addition, a two-year statute of limitations provides a plaintiff an adequate opportunity to fully investigate her claim of negligent hiring, retention, or supervision prior to filing against the employer. Given the elements of the claim, a plaintiff must investigate the parameters of the relationship between the employer and the individual wrongdoer, which may not be immediately apparent, and explore what information the employer knew, or should have known, about the individual bad actor prior to hiring or during the employer's relationship with the wrongdoer. If the statute of limitations for this claim is shortened to one year and if the plaintiff is required to obtain a judgment against the individual wrongdoer before pursuing the employer, the statute of limitations will most likely expire prior to the resolution of any civil or criminal case against the individual bad defendant. Thus, a plaintiff would be forced to file a second action prior to the resolution of the first action and then ask the Court to stay the case against the employer to await the outcome of any proceedings involving the individual defendant. These scenarios fly in the face of judicial efficiency.

V. CONCLUSION

For the reasons stated above, *Amicus Curiae* the Ohio Employment Lawyers Association urges this Court to adopt the analysis set forth by the Ninth Appellate District and hold that: (1) a plaintiff does not need an existing, cognizable cause of action or to obtain a civil or criminal verdict against an individual bad employee or independent contractor to pursue a separate claim of negligent hiring, retention, or supervision against an employer; and (2) the statute of limitations for a claim of negligent hiring, retention, or supervision is two years under R.C. §2305.10.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of October, 2019, a copy of the *Brief of Amicus Curiae OELA in Support of Appellee Malieka Evans* was served by electronic mail upon the following:

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