

IN THE SUPREME COURT OF OHIO

STATE, EX REL.
STATE OF OHIO
c/o Attorney General Jim Petro
30 East Broad Street, 17th Floor
Columbus, Ohio 43215

Relator,

v.

THE HONORABLE JUDGE LINTON D.
LEWIS, JR.
Perry County Court of Common Pleas
Perry County Courthouse
P.O. Box 7
New Lexington, Ohio 43764

and

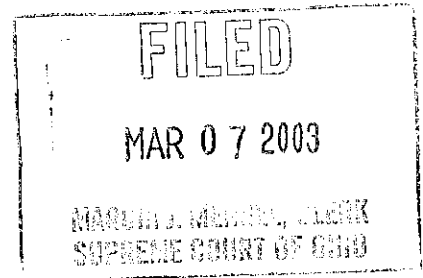
PERRY COUNTY COURT OF COMMON
PLEAS
Perry County Courthouse
P.O. Box 7
New Lexington, Ohio 43764

Respondents.

03-0447

CASE NO.

ORIGINAL ACTION FOR WRIT OF
PROHIBITION



COMPLAINT FOR WRIT OF PROHIBITION AND AFFIDAVIT IN SUPPORT

JIM PETRO
ATTORNEY GENERAL OF OHIO

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Counsel for Relator, The State of Ohio

COMPLAINT FOR WRIT OF PROHIBITION

This action seeks alternative and peremptory writs of prohibition from this Court forbidding the Honorable Linton D. Lewis, Judge of Common Pleas Court, Perry County, Ohio and the Common Pleas Court of Perry County, from exercising jurisdiction in *Dale R. DeRolph, et al. v. State of Ohio*, et al., Original Case No. 22043, by scheduling a compliance conference contrary to the Judgment Entry and Mandate issued by the Ohio Supreme Court in *DeRolph v. State of Ohio*, Case No. 99-570, on December 11, 2002. Immediate relief is required because Judge Lewis and the Common Pleas Court of Perry County patently and unambiguously lack jurisdiction to act. An affidavit in support of this Complaint is attached hereto as Exhibit A.

PARTIES

1. Relator, State of Ohio was the lead defendant in the lawsuit *DeRolph v. State of Ohio*, filed in the Perry County Court of Common Pleas, Original Case No. 22043, Ohio Supreme Court Case Nos. 95-2066 and 99-570.
2. Respondents are the Honorable Linton D. Lewis, Jr., thea Common Pleas Court Judge of Perry County, Ohio, and the Common Pleas Court of Perry County. Respondents are only empowered to decide matters for cases in which they have jurisdiction.

JURISDICTION

3. This Court has original jurisdiction to issue a writ of prohibition to lower courts pursuant to Section 2(B)(1)(d), Article IV of the Ohio Constitution.

BACKGROUND

4. On December 19, 1991, Dale DeRolph and other plaintiffs, including five school districts, filed a lawsuit for declaratory and injunctive relief in the Perry County Court of Common Pleas alleging that Ohio's public elementary and secondary school finance system was

unconstitutional, because it violated the thorough and efficient clause of Section 2, Article VI of the Ohio Constitution.

5. On March 24, 1997, the Ohio Supreme Court, on appeal from the Fifth District Court of Appeals, found that Ohio's then current school funding system violated Section 2, Article VI of the Ohio Constitution. *DeRolph v. State* (1997), 78 Ohio St. 3d 193 (*DeRolph I*). The Court stayed the case for one year to allow the State to create a remedy in response to the *DeRolph I* decision. The Court remanded the case to the Respondents' court to retain jurisdiction in order to review the constitutionality of the State's response. (See Judgment Entry dated March 24, 1997 Exhibit B).

6. On February 26, 1999, the Respondent Court ruled that the State had still not complied with the *DeRolph I* decision. *DeRolph v. State* (1999), 98 Ohio Misc. 2d. 1. The Respondent Court, on the State's Motion, stayed its decision but declined to stay its remedial order. On May 26, 1999, the Ohio Supreme Court issued a stay of the Respondent Court's remedial order. *DeRolph v. State* (1999), 89 Ohio St.3d 1488.

7. On May 11, 2000, the Supreme Court held that the State's restructured school funding system was still unconstitutional. *DeRolph v. State* (2000) 89 Ohio St.3d 1 (*DeRolph II*). The Supreme Court declined to appoint a special master, maintained continuing jurisdiction of the case, and continued the matter until June 15, 2001 to allow the State time to respond. (Entry dated May 11, 2000, Exhibit C)

8. On September 6, 2001, the Supreme Court issued a decision, *DeRolph v. State*, 93 Ohio St. 3d 309 (*DeRolph III*). On November 2, 2001, the Supreme Court granted the State's Motion to reconsider its decision.

9. On December 11, 2002, the Court vacated the September 6, 2001 decision and ruled that

the school funding system is unconstitutional. *DeRolph v. State* (2002), 97 Ohio St. 3d 434 (*DeRolph IV*). On December 11, 2002, the Court issued a Judgment Entry and Mandate which were filed in the Perry County Common Pleas Court on December 12, 2002. (See Exhibits D and E)

10. The *DeRolph IV* decision, Judgment Entry and Mandate ended the *DeRolph* litigation. The Supreme Court did not retain jurisdiction nor did it remand the case to the Court of Common Pleas of Perry County for further proceedings.

11. On March 4, 2003, the *DeRolph* Plaintiffs (“Plaintiffs”) submitted to the Clerk of the Common Pleas Court of Perry County, under the caption *DeRolph v. State of Ohio*, Original Case No. 22043, Supreme Court Case No. 99-570, a Motion for Compliance Conference. (See Exhibit F) The Plaintiffs asked the Respondent Court, pursuant to its 1999 decision, to require the State Defendants forthwith to prepare a report setting forth proposals for complying with the trial Court’s judgment in 1999 and pursuant to the directives and mandates of the Ohio Supreme Court. The Plaintiffs further asked the Respondent Court to schedule and conduct a conference to address the State’s compliance with the orders of the trial court and the Ohio Supreme Court and to monitor the State’s activities in reforming the school funding system.

12. Respondents do not have jurisdiction to consider the Motion submitted by Plaintiffs.

WRIT OF PROHIBITION

13. Relator realleges paragraphs one through 12 as if fully set forth herein.

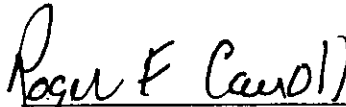
14. In that the *DeRolph* litigation has ended, Respondents patently and unambiguously lack jurisdiction to consider the motion filed by the Plaintiffs.

15. Furthermore, Relator has no adequate remedy at law, if it is forced to comply with the trial court’s 1999 order which has been superceded by the Supreme Court’s decisions in *DeRolph*

II and *DeRolph IV*, attend compliance conferences, and be subjected to the monitoring by the Respondents regarding the State's efforts to reform the school funding system.

WHEREFORE, Relator, the State of Ohio, prays that the Court will grant an alternative and peremptory writ prohibiting the Respondents, the Honorable Judge Linton Lewis and the Common Pleas Court of Perry County, from entertaining jurisdiction in the matter *DeRolph v. State of Ohio*, and from proceeding therein and that the Court grant an immediate stay pending its decision regarding the Relator's request for a Writ of Prohibition.

JIM PETRO
ATTORNEY GENERAL OF OHIO



ROGER F. CARROLL (0023142)

Counsel of Record

JAMES G. TASSIE (0065184)

SHARON A. JENNINGS (0055501)

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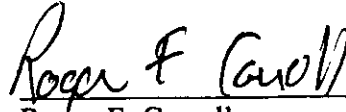
Facsimile: (614) 644-7634

Counsel for Relator, The State of Ohio

4. On March 24, 1997, the Ohio Supreme Court, on appeal from the Fifth District Court of Appeals, found that Ohio's then current school funding system violated Section 2, Article VI, of the Ohio Constitution. *DeRolph v. State* (1997), 78 Ohio St.3d 193 (*DeRolph I*). The Court stayed the case for one year to allow the State to create a remedy in response to the *DeRolph I* decision. The Court remanded the case to the Respondents' court to retain jurisdiction in order to review the constitutionality of the State's response. (See Judgment Entry dated March 24, 1997 Exhibit B to the Complaint).
5. On February 26, 1999, the Respondent Court ruled that the State had still not complied with the *DeRolph I* decision. *DeRolph v. State* (1999), 98 Ohio Misc.2d. 1. The Respondent Court, on the State's Motion, stayed its decision but declined to stay its remedial order. On May 26, 1999, the Ohio Supreme Court issued a stay of the Respondent Court's remedial order. *DeRolph v. State* (1999), 89 Ohio St.3d 1488.
6. On May 11, 2000, the Supreme Court held that the State's restructured school funding system was still unconstitutional. *DeRolph v. State* (2000) 89 Ohio St.3d 1 (*DeRolph II*). The Supreme Court declined to appoint a special master, maintained continuing jurisdiction of the case, and continued the matter until June 15, 2001 to allow the State time to respond. (Entry dated May 11, 2000, Exhibit C to the Complaint).

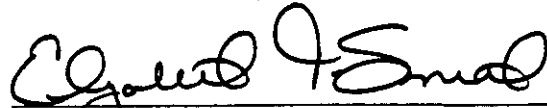
7. On September 6, 2001, the Supreme Court issued a decision, *DeRolph v. State*, 93 Ohio St.3d 309 (*DeRolph III*). On November 2, 2001, the Supreme Court granted the State's Motion to reconsider its decision.
8. On December 11, 2002, the Court vacated the September 6, 2001 decision and ruled that the school funding system is unconstitutional. *DeRolph vs. State* (2002), 97 Ohio St.3d 434 (*DeRolph IV*). On December 11, 2002, the Court issued a Judgment Entry and Mandate which were filed in the Perry County Common Pleas Court on December 12, 2002. (See Exhibits D and E to the Complaint).
9. The *DeRolph IV* decision, Judgment Entry and Mandate ended the *DeRolph* litigation. The Supreme Court did not retain jurisdiction nor did it remand the case to the Court of Common Pleas of Perry County for further proceedings.
10. On March 4, 2003, the *DeRolph* Plaintiffs submitted to the Clerk of the Common Pleas Court of Perry County, under the caption *DeRolph v. State of Ohio*, Original Case No. 22043, Supreme Court Case No. 99-570, a Motion for Compliance Conference. (See Exhibit F to the Complaint). The *DeRolph* Plaintiffs asked Respondents, pursuant to the trial court's 1999 decision, to require the State Defendants forthwith to prepare a report setting forth proposals for complying with the trial Court's judgment in 1999 and pursuant to the directives and mandates of the Ohio Supreme Court. The *DeRolph* Plaintiffs further asked the Respondents to schedule and conduct a conference to address the State's compliance with the orders of the trial court and the Ohio Supreme Court and to monitor the State's activities in reforming the school funding system.

FURTHER AFFIANT SAYETH NAUGHT.



Roger F. Carroll

Sworn to before me and subscribed in my present this 7th day of March, 2003.



Notary Public

ELIZABETH THYM SMITH, Attorney At Law
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date
Section 147.03 R. C.

2-24-97
F

The Supreme Court of Ohio

FILED

MAR 24 1997

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

1997 TERM

| | | |
|-------------------------|---|------------------|
| Dale R. DeRolph et al., | : | |
| Appellants, | : | Case No. 95-2066 |
| | : | |
| v. | : | JUDGMENT ENTRY |
| | : | |
| State of Ohio et al., | : | APPEAL FROM THE |
| Appellees. | : | COURT OF APPEALS |

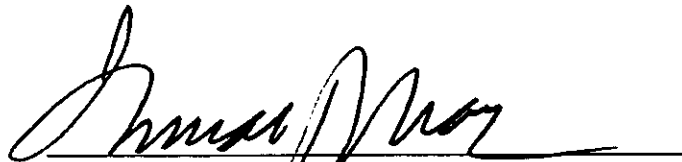
This cause, here on appeal from the Court of Appeals for Perry County, was considered in the manner prescribed by law. On consideration thereof, the judgment of the court of appeals is reversed and the cause is remanded to the trial court with directions to enter judgment consistent with the opinion rendered herein. The trial court is to retain jurisdiction until legislation is enacted and in effect, taking such action as may be necessary to ensure conformity with the opinion rendered herein.

It is further ordered that the appellants recover from the appellees their costs herein expended; and that a mandate be sent to the Court of Common Pleas for Perry County to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Perry County for entry.

COSTS:

Docket Fee, \$40.00, paid by Bricker & Eckler.

(Perry County Court of Appeals; No. CA477)


 THOMAS J. MOYER
 Chief Justice



The Supreme Court of Ohio

FILED

MAY 11 2000

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

Dale R. DeRolph, Parent and : Case No. 99-570
Next Friend of Nathan DeRolph, :
et al., :
Appellees, :
v. :
State of Ohio et al., : ENTRY
Appellants. :

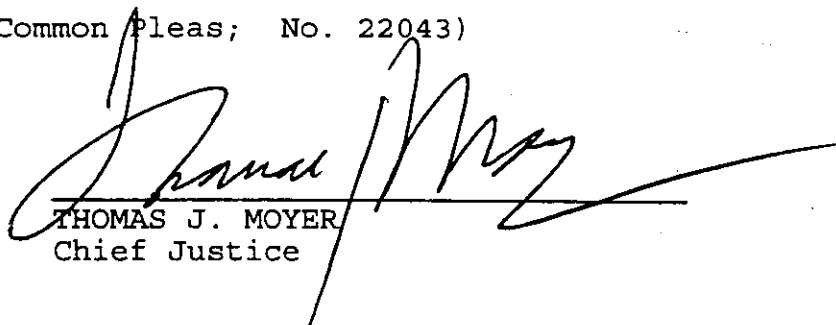
This cause is pending before the Court as an appeal of right from the judgment of the Court of Common Pleas for Perry County entered March 19, 1999. Upon consideration thereof,

IT IS ORDERED by the Court that those portions of the trial court decision that are consistent with the opinion rendered herein are affirmed.

This Court declines to appoint a special master to oversee the state's further efforts to comply with Section 2, Article VI of the Ohio Constitution. This Court will maintain continuing jurisdiction.

IT IS FURTHER ORDERED that this matter is continued to June 15, 2001, at which time this Court will establish a briefing schedule.

(Perry County Court of Common Pleas; No. 22043)


THOMAS J. MOYER
Chief Justice



The Supreme Court of Ohio

FILED
DEC 11 2002

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

Dale R. DeRolph, Parent and
Next Friend of Nathan DeRolph,
et al.,
Appellees,

Case No. 99-570

JUDGMENT ENTRY

v.

State of Ohio et al.,
Appellants.

APPEAL FROM THE
COURT OF COMMON PLEAS

This cause is before the Court upon appellants' motion for reconsideration. Upon further consideration thereof,

IT IS ORDERED by the Court that, consistent with the opinion rendered herein, the decision entered in this case on September 6, 2001 be, and hereby is, vacated and that this Court's decisions in DeRolph v. State (1997) 78 Ohio St.3d 193, 677 N.E.2d 733, and DeRolph v. State (2000) 89 Ohio St.3d 1, 728 N.E.2d 993, are the law of the case and that the current school-funding system is unconstitutional.

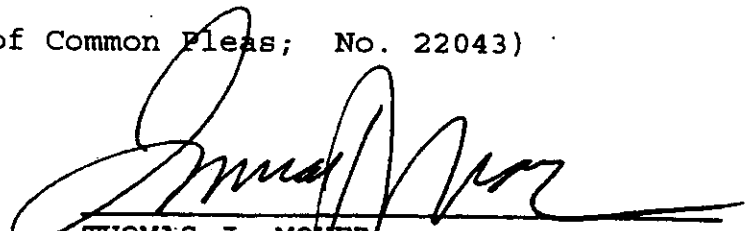
It is further ordered that the appellees recover from the appellants their costs herein expended; and that a mandate be sent to the Court of Common Pleas for Perry County to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Common Pleas for Perry County for entry.

COSTS:

Docket Fee, \$40.00, paid by Attorney General of Ohio.

(Perry County Court of Common Pleas; No. 22043)

I HEREBY CERTIFY that this document is a true and accurate copy of the entry of the Supreme Court of Ohio filed December 11, 2002 in Supreme Court case number 99-570


THOMAS J. MOYER
Chief Justice

In witness whereof I have hereunto subscribed my name and affixed the seal of the Supreme Court of Ohio on this 11th day of December 2002

MARCIA J. MENGEL, Clerk

by  Deputy



The Supreme Court of Ohio

FILED

DEC 11 2002

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

Dale R. DeRolph, Parent and :
Next Friend of Nathan DeRolph, :
et al., :
Appellees, :

Case No. 99-570

v. :

State of Ohio et al., :
Appellants. :

MANDATE

COPY

To the Court of Common Pleas

Within and for the County of Perry, Ohio.

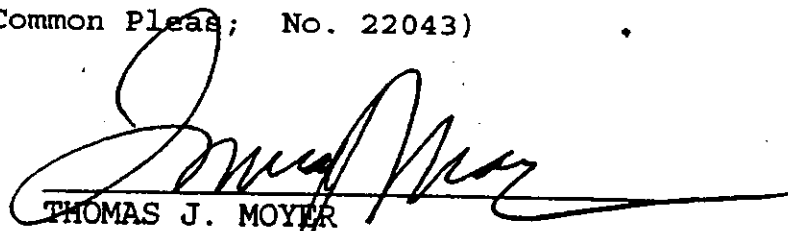
The Supreme Court of Ohio commands you to proceed without delay to carry the following judgment in this cause into execution:

IT IS ORDERED by the Court that, consistent with the opinion rendered herein, the decision entered in this case on September 6, 2001 be, and hereby is, vacated and that this Court's decisions in DeRolph v. State (1997) 78 Ohio St.3d 193, 677 N.E.2d 733, and DeRolph v. State (2000) 89 Ohio St.3d 1, 728 N.E.2d 993, are the law of the case and that the current school-funding system is unconstitutional.

COSTS:

Docket Fee, \$40.00, paid by Attorney General of Ohio.

(Perry County Court of Common Pleas; No. 22043)


THOMAS J. MOYER
Chief Justice



IN THE COMMON PLEAS COURT, PERRY COUNTY, OHIO

DALE R. DeROLPH, *et al.*,

Plaintiffs,

v.

STATE OF OHIO, *et al.*,

Defendants.

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Judge Linton D. Lewis, Jr.

Original Case No. 22043

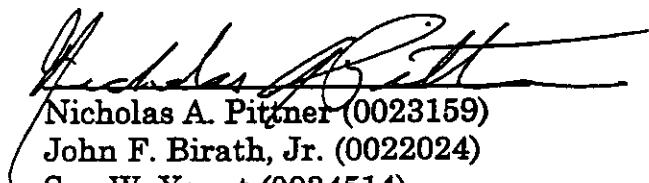
Ohio Supreme Court

Case No. 99-570

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TIMOTHY J. MULLERBERG
CLERK OF COURTS

PLAINTIFFS' MOTION FOR COMPLIANCE CONFERENCE

Pursuant to this Court's 1999 Order requiring Defendants to forthwith prepare a report setting forth proposals for complying with the Court's judgment therein, and pursuant to the directives and mandate of the Ohio Supreme Court, Plaintiffs hereby move this Court to schedule and conduct a conference to address Defendants' compliance with the orders of this Court and the Ohio Supreme Court. The reasons for this Motion are set forth in the attached Memorandum in Support.



Nicholas A. Pitzner (0023159)
John F. Birath, Jr. (0022024)
Sue W. Yount (0034514)
Quintin F. Lindsmith (0018327)
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Attorneys for Plaintiffs

EXHIBIT
F

MEMORANDUM IN SUPPORT

Introduction

"No man is above the law and no man below it: nor do we ask any man's permission when we ask him to obey it."

— Theodore Roosevelt

Before the bench, all parties stand as equals. The State of Ohio is subject to the law no less than the most common of our citizens. Today, Plaintiffs and the 1.8 million Ohio schoolchildren affected by the rulings in this case ask the Court to begin the process of overseeing the development of the school funding system to which they are entitled under the law.

In response to the State's Motion for Reconsideration of *DeRolph v. State* (2001), 93 Ohio St.3d 309, 754 N.E.2d 1184 ("*DeRolph III*"), the Supreme Court issued a decision on December 11, 2002, vacating its prior holding in *DeRolph III* and reinstating as the law of the case its prior decisions in *DeRolph v. State* (1997), 78 Ohio St.3d 193, 677 N.E.2d 733 ("*DeRolph I*") and *DeRolph v. State* (2000), 89 Ohio St.3d 1, 728 N.E.2d 993 ("*DeRolph II*"). *DeRolph v. State* (2002), 97 Ohio St.3d 434, 2002-Ohio-6750 ("*DeRolph IV*"). The Supreme Court's ruling established beyond question that "[D]eRolph I and DeRolph II are the law of the case and the current school funding system is unconstitutional." *Id.* at 435.

In reaching that decision, the Court recognized the intent of the framers to impose binding obligations on the General Assembly.

Otway Curry, a delegate from Union County, expressed his concern that the Thorough and Efficient Clause would "prove totally insufficient and powerless." *Were this court to avoid its*

responsibility to give continued meaning to the Constitution, his fears would become reality.

The Constitution of this state is the bedrock of our society. It expressly directs the General Assembly to secure a thorough and efficient system of common schools, and it does so expressly because the legislature of the mid-nineteenth century would not.

Id. at 436 (Internal citation omitted). (Emphasis added.) The Court specifically directed the result that must now be attained.

[T]he General Assembly has not focused on the core constitutional directive of *DeRolph I*: "a complete systematic overhaul" of the school-funding system. Today we reiterate that that is what is needed, not further nibbling at the edges. Accordingly, we direct the General Assembly to enact a school-funding system that is thorough and efficient, as explained in *DeRolph I*, *DeRolph II*, and the accompanying concurrences.

Id. at 435 (Internal citation omitted).

The Supreme Court did not retain jurisdiction of the case nor did it issue specific orders for further proceedings. The Court did, however, direct this Court, by judgment entry and mandate, both issued on December 11, 2002, to "proceed without delay to carry [the Supreme Court's] judgment in this cause into execution." *DeRolph v. State* (December 11, 2002), Case No. 99-570 (mandate of the Ohio Supreme Court, *DeRolph v. State*, 97 Ohio St.3d 434). (*Exhibits A and B*, attached.) Plaintiffs now move this Court to schedule and conduct a compliance conference to consider the State's plan for compliance with the orders of the Supreme Court, as well as with the remedial orders previously issued by this Court and stayed during the pendency of the appeal to the Supreme Court.

Because Plaintiffs' Amended Complaint in this case set forth valid claims for both a declaratory judgment *and* injunctive relief pursuant to that declaration, this Court has always had jurisdiction to address the latter, except during the pendency of the appeal. *DeRolph v. Ohio*, Case No. 22043 (First Amended Complaint for Declaratory and Injunctive Relief). (*Exhibit C*, attached.) With the declaratory judgment portion of this case conclusively ended by *DeRolph IV*, it is now time for this Court to proceed to secure the implementation of a remedy. The Court has both the right and responsibility to do so.

In this Court's initial *DeRolph* decision, issued July 1, 1994, and in its decision of February 26, 1999, the Court recognized the necessity for remedial orders and issued orders appropriate to the unique nature of this case. *DeRolph v. Ohio* (July 1, 1994), Perry C.P. No. 22043, unreported; *DeRolph v. State* (1999), 98 Ohio Misc. 2d 1, 712 N.E.2d 125. In the latter decision, after ruling that the State had failed to comply with the Supreme Court's *DeRolph I* mandates, the Court issued the following direction to Defendants:

It is this Court's desire to retain jurisdiction for a period of time to assure that this Order is followed and steps are being taken to resolve the matters involved in the case at bar. Therefore, the Superintendent of Public Instruction for the State of Ohio and the State Board of Education are required to forthwith prepare a report setting forth proposals for complying with the Order of this Court and the directives of the Ohio Supreme Court. The same shall be presented to the Legislature upon completion. Thereafter, the State Superintendent and the State Board of Education shall forthwith prepare a report after the legislative session for calendar year 1999 setting forth the steps taken to resolve the issues in the case at bar.

DeRolph v. State, 98 Ohio Misc.2d at 263. The Court's orders (hereafter, the "1999 orders") were clearly designed to require the State to begin the development of a constitutional funding system while not unduly encroaching upon the legislative process necessary to enact that system. The Court expressly retained jurisdiction to assure compliance with its 1999 orders, and it indicated that it would monitor the State's progress, "[u]pon a timely motion by either party or by a motion of this Court." *Id.* at 252.

The Court's 1999 orders were stayed pending the State's appeal to the Supreme Court. (*Exhibit D*, attached.) That stay expired on December 11, 2002, when the Supreme Court issued its *DeRolph IV* decision, a decision which confirmed this Court's declaration that the school funding system is unconstitutional. The Supreme Court has now relinquished its jurisdiction over this case. Consequently, jurisdiction has re-vested in this Court for remedial actions consistent with the decisions of the Supreme Court. The fact that no specific directions were given to this Court by the Supreme Court (other than the mandate to carry the Supreme Court's judgment into effect) is consistent with common law and statutory authority which require no such direction to enable trial courts to carry into execution the judgments of appellate courts.

This Court's 1999 remedial orders represent a reasonable approach to the difficult issue of judicial oversight of the legislative process. While Plaintiffs are not asking the Court to dictate the content of remedial legislation, the Court also cannot permit the continued denial of Plaintiffs' right to a constitutionally compliant

system of public education. Judicial monitoring and oversight are essential if such a system is to be developed in Ohio. Indeed, it is more critical today than it was in 1999 that the Court fulfill this role, since without oversight by this Court, it is apparent that Plaintiffs will continue to be denied their constitutional right to a thorough and efficient system of public education.¹

I. This Court Has Continuing Jurisdiction To Enforce The Supreme Court's *DeRolph IV* Decision.

This Court derives its authority from the Ohio Constitution and laws enacted in furtherance of the constitutional grant of judicial power. In particular, Section 4 of Article IV includes the grant of original jurisdiction to common pleas courts over "[a]ll justiciable matters *** as may be provided by law."

This case was initially brought as an action for both declaratory and injunctive relief pursuant to R.C. Chapter 2721. The law is well established that a common pleas court may not only declare the rights of the parties in a declaratory judgment action brought under R.C. Chapter 2721, but it also may order injunctive relief consistent with the rights so declared. Although R.C. 2721.09 authorizes the filing of additional pleadings seeking further relief following a judicial declaration of rights, additional pleadings are not required where, as in this case, the initial complaint included claims for injunctive relief. *Peltz v. City of South Euclid* (1967),

¹ Public pronouncements of Defendants and Governor Taft since the Supreme Court's *DeRolph IV* decision make it clear that Defendants mistakenly believe that because the Supreme Court did not retain jurisdiction of this case, they are under no obligation to take any action to comply with *DeRolph IV*. But it is fundamental that orders of the Supreme Court directed to the Defendants are binding on them and, as demonstrated herein, are enforceable in this Court. Additional direction from the Supreme Court to this Court was unnecessary.

11 Ohio St.2d 128, 40 O.O.2d 129, 228 N.E.2d 320 (permanently enjoining the enforcement of an ordinance "to the extent of its constitutional infirmity"); *American Life & Acc. Ins. Co. of Ky. v. Jones* (1949), 152 Ohio St. 287, 40 O.O. 326, 89 N.E.2d 301 (interpreting G.C. 12102-8, predecessor to R.C. 2721.09, as providing authority to grant any further necessary or proper relief following an entry of declaratory judgment); *Clermont County ADAMH Boards v. Hogan et al.* (1995), 1995 Ohio App. LEXIS 4795, *aff'd in part, rev'd in part* on other grounds, (1997), 79 Ohio St.3d 358, 1997 Ohio 31, 681 N.E.2d 1322, citing *Central Motors Corp. v. Pepper Pike* (1979), 63 Ohio App.2d 34, 62, 409 N.E.2d 258 ("[a] trial court has continuing authority under R.C.2721.09 and its general equity powers to fashion any remedy necessary to assure the enforcement of its decree"). Accord *McCann v. Kerner et al.* (C.A.7, 1971), 436 F.2d 1342 ("[Section 2202, Title 28, U.S. Code, the federal analog to R.C. 2721.09] contemplates that subsequent to the issuance of a declaratory judgment [holding a state statute unconstitutional], a court may upon notice and hearing grant injunctive relief to protect and enforce its judgment"); *Vermont Structural Slate Co. v. Tatko Bros. Slate Co.* (C.A.2, 1958), 253 F.2d 29 ("[t]here was ample residual power in the court to issue this permanent injunction [under Section 2202, Title 28, U.S. Code], even though the original decree contained no such provision"). Thus, it is within the general equity powers of this Court to fashion any remedial orders necessary to the enforcement of its decree.

This Court's 1999 orders were remedial in nature and issued pursuant to the Court's declaration that Ohio's school funding system was unconstitutional, a

declaration consistent with the Ohio Supreme Court's *DeRolph I* decision and since confirmed by the subsequent decisions of that court.² Had there been no appeal of the 1999 decision and orders, there would be no question that the Court not only had jurisdiction to enforce those orders, but also that the Court expressly retained that jurisdiction for the purpose of enforcement. See *Horn & Hardart Co. v. National RR. Passenger Corp.* (D.C. 1987), 659 F.Supp. 1258, *aff'd*, (C.A.D.C. 1988), 843 F.2d 546 ("it would be incongruous for district courts to have the absolute right to hear petitions for further relief when no appeal is lodged but no right after an appeal unless expressly granted by an appellate court").

The intervening appeal to the Ohio Supreme Court stayed, but did not diminish in any way, this Court's inherent authority to enforce the remedial 1999 orders. To the contrary, the intervening decisions of the Supreme Court in *DeRolph II* and *DeRolph IV* have clearly established, as the law of this case, the unconstitutionality of Ohio's school funding system and the requirement of comprehensive reform. The declaratory judgment portion of this case is now concluded, but this Court remains vested with the authority to enforce the development and implementation of a remedy.

II. The Supreme Court's Mandate In *DeRolph IV* Must Be Enforced By This Court.

Separate and apart from the foregoing grounds for monitoring compliance, this Court is obliged to comply with the Supreme Court's mandate to "proceed

² Of course, the passage of time has made the compliance dates obsolete and an updated compliance schedule is now appropriate.

without delay to carry [the Supreme Court's] judgment in this cause into execution." *DeRolph v. State*, Case No. 99-570 (mandate of the Ohio Supreme Court). (Exhibit A.) The Supreme Court's mandate provides independent authority for the Court's monitoring and oversight of the State's progress in remedying that which has been declared unconstitutional. See *International Union of Operating Engineers, Local 18 v. Dan Wannemacher Masonry Co.* (1990), 67 Ohio App.3d 672, 675, 588 N.E.2d 176, 178, citing 5B Corpus Juris Secundum (1958) 529, Appeal and Error, Section 1958 ("The mandate of the appellate court is the order directing the action to be taken or disposition to be made of the cause by the lower court, returning the proceedings to the lower court, *and reinvesting it with jurisdiction thereof*"). (Emphasis added.)

The Ohio Revised Code broadly empowers the Supreme Court to send its judgments to the court below "for specific or general execution, or to the inferior courts for further proceedings." R.C. 2503.44. Moreover, R.C. 2505.39 provides as follows:

A court that reverses or affirms a final order, judgment, or decree of a lower court upon appeal on questions of law, shall not issue execution, but shall send a special mandate to the lower court for execution or further proceedings. *The court to which such mandate is sent shall proceed as if the final order, judgment, or decree had been rendered in it.*

R.C. 2505.39. (Emphasis added.)

Accordingly, the Court must proceed as if the judgment in *DeRolph IV* had been rendered in this Court. See *Cleveland Elec. Illuminating Co. v. Public Util. Comm. of Ohio* (1976), 46 Ohio St.2d 105, 110, 346 N.E.2d 778, 782, citing *Carey v.*

Kemper (1887), 45 Ohio St. 93, 11 N.E. 130 ("The judgment is given legal effect when it is executed by the lower tribunal, and the judgment as rendered is that of the tribunal to which the cause had been remanded").³ See, also, *Hunt v. Westlake City School Dist. Bd. of Edn.* (1996), 114 Ohio App.3d 563, 568, 683 N.E.2d 803, 807 (holding that a special mandate to the court of common pleas to carry a judgment into execution affords jurisdiction to enforce the judgment of the appellate court). The judgment that has been entered herein is that Ohio's system of school funding is unconstitutional, and the Court thus has the authority to require that appropriate plans are in place to accomplish the "complete systematic overhaul" required by *DeRolph I*, *DeRolph II*, and *DeRolph IV*. *DeRolph v. State*, 97 Ohio St.3d at 435.

The Court not only has the authority – that is, jurisdiction – to enforce a remedy; it also has a *duty* to do so. When a mandate from a superior court to an inferior court is presented, the inferior court has no discretion to obey or refuse, but must proceed in accordance with the mandate. *Nolan v. Nolan* (1984), 11 Ohio St.3d 1, 462 N.E.2d 410. See, also, *State ex rel. Potain v. Mathews* (1979), 59 Ohio St.2d 29, 32, 13 O.O.3d 17, 391 N.E.2d 343, 345 ("A lower court has no discretion,

³ The absence of the term "remand" in *DeRolph IV* has no bearing on this Court's authority to enforce the judgment. In *DeRolph I*, the Supreme Court used the term in connection with its establishment of a unique protocol, involving a stay of the Supreme Court's judgment, a further hearing on the merits in this Court, and a subsequent direct appeal to the Supreme Court. By comparison, at this juncture, no special instructions from the Supreme Court are necessary or appropriate. The unconstitutionality of the school funding system has been conclusively determined by the Supreme Court, no stay was issued, and the judgment is presently effective and enforceable. The Mandate expressly directs this Court to execute that judgment, and the Court now has the duty to use its inherent enforcement authority to do so.

absent extraordinary circumstances, to disregard the mandate of a superior court in a prior appeal in the same case"); Ohio Jurisprudence 3d (1979, Supp.2002), Appellate Review, Section 616. Consequently, this Court has no discretion but to "proceed without delay" to carry the Supreme Court's judgment into execution. *DeRolph v. State*, Case No. 99-570 (mandate of the Ohio Supreme Court). (*Exhibit A.*)

This Court's inherent authority to enforce a remedy thus derives additional vitality from the Supreme Court's mandate, which expressly requires the Court to carry the judgment into execution. As the judgment itself declares the current school funding system unconstitutional, the mandate necessarily embraces the authority of this Court to oversee the State's progress toward remedying the underlying constitutional infirmities. See *International Union of Operating Engineers, Local 18 v. Dan Wannemacher Masonry Co.* (1990), 67 Ohio App.3d 672, 675 ("We agree that the trial court may not alter or disobey the mandate from an appellate court. We do not agree that the trial court may not take additional action in the case not specifically authorized by the mandate").

As the Supreme Court made clear in *DeRolph IV*, "the General Assembly has not focused on the core constitutional directive of *DeRolph I*: 'a complete systematic overhaul' of the school funding system." *DeRolph v. State*, 97 Ohio St.3d at 435, citing *DeRolph v. State*, 78 Ohio St.3d at 212. It is therefore both necessary and appropriate at this time for the Court to exercise its jurisdiction to require the State

to articulate its plan of action for remedying what the Supreme Court has deemed – in no uncertain terms – to be an unconstitutional system of school funding.

III. Without The Oversight Of This Court, Plaintiffs Will Be Denied a Remedy.

Throughout the twelve-year history of this case, the State has steadfastly refused meaningful steps toward compliance with the directives of the courts. Since July 1, 1994, there have been *two* decisions of this Court and *four* decisions of the Ohio Supreme Court, all holding that Ohio does not have a constitutional school funding system. Most recently, the Supreme Court in *DeRolph IV* ruled unequivocally that the current funding system "*is unconstitutional.*" *DeRolph v. State*, 97 Ohio St.3d at 435.

It is a longstanding theorem of jurisprudence that "an unconstitutional act is not a law, but a nullity." *Thomas v. State ex rel. Gilbert* (1907), 76 Ohio St. 341, 361, 81 N.E. 437, 439. Accordingly, the former statutory framework for the distribution of state funds for public education *no longer exists*, having been declared unconstitutional, with finality, in *DeRolph IV*. In these circumstances, Plaintiffs not only continue to suffer under an indisputably unconstitutional system of public education, but they also now are at risk of not having *any* system of public education. Unlike the Supreme Court's previous declarations of unconstitutionality, this one contained *no stay of execution*, and, consistent with the absence of a stay, the mandate to this Court has directed the Court "to proceed without delay to carry the [Supreme Court's] judgment in this cause into execution." *DeRolph v. State*, Case No. 99-570 (mandate of the Ohio Supreme Court). (*Exhibit A.*)

The State's cavalier disregard of the Supreme Court's decisions – together with its seeming lack of concern for the impending collapse of the system of public education in Ohio – underscores the fact that, without judicial oversight, no remedy will be forthcoming in this case. Unbelievably, rather than commencing a good faith effort to comply with the orders of the Supreme Court, the State is now considering *cutting* the already-inadequate funds for education and seeking to balance the State's budget on the backs of its school districts.

This Motion does not ask the Court to intrude into the legislative process. But fundamental principles of jurisprudence establish both the right and the obligation of the judiciary to serve as the guardian of constitutional rights. As the Supreme Court has cautioned, judicial abdication in the face of legislative resistance would result in the judiciary becoming a "[w]illing participant in divesting the courts of judicial power and a coconspirator in the abdication of fundamental individual rights and liberties contained in our Constitution." *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St.3d 451, 501, 715 N.E.2d 1062, 1102. Moreover, as that court confirmed in *DeRolph II*, it is not sufficient for the judiciary merely to declare constitutional rights without also ensuring that remedial action ensues.

[W]hile it is for the General Assembly to legislate a remedy, courts *do* possess the authority to enforce their orders, since the power to declare a particular law or enactment unconstitutional must include the power to require a revision of that enactment, to ensure that it is then constitutional. If did not, then the power to find a particular act unconstitutional would be a nullity. As a result there would be no enforceable remedy. A remedy that is never enforced is truly not a remedy.

DeRolph v. State, 89 Ohio St.3d at 12. (Emphasis in original.)

In the present case, as the Supreme Court warned in *DeRolph II*, the now-final declaration of Plaintiffs' rights will be a nullity without orders reasonably designed to bring about enforcement of those rights. This Court has already issued such orders, recognizing judicial monitoring as essential to assure compliance. Today, all Plaintiffs ask is that the Court begin the monitoring process by convening a conference and requiring the State to advise the Court and Plaintiffs as to when and how it intends to comply with *DeRolph IV* and the 1999 orders of this Court. This is an exceedingly modest request, especially in light of the fulsome scope of the remedy to which Plaintiffs are entitled. And given the *absolute obligation* of the State to comply with the directives of the Supreme Court, it is a request that adds little, if anything, to the obligations already borne by the State. Otherwise stated, this is hardly a burdensome request; to the extent that the State intends in good faith to respond to *DeRolph IV*, there is no reason for the State to oppose it.

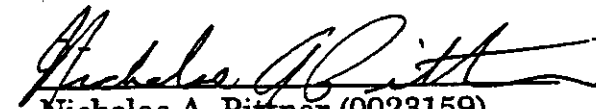
Should the Court decline, however, there is little doubt that the concerns of Delegate Curry – that the constitutional guarantee of a thorough and efficient system of public education could become "totally inefficient and powerless" – will be realized. *DeRolph v. State*, 97 Ohio St.3d at 436. Our Constitution will be rendered a meaningless historical document and our judicial system a mere "paper tiger." The twelve years spent litigating the rights of Ohio's school children will amount to little more than an academic exercise if, at the end, the State is free to disregard the consequent declarations of rights by the highest court of the state.

It now falls to this Court to determine whether the rule of law has meaning – for Plaintiffs and Ohio's 1.8 million public school pupils, as well as for future plaintiffs seeking declaratory judgments against the State. In the process, the Court will also signal whether those charged with making and enforcing the laws of Ohio must live within the constitution or are free to ignore it with impunity.

Conclusion

This matter is now before the Court pursuant to the Court's jurisdiction to enforce both its own prior Orders and those of the Supreme Court. Plaintiffs ask the Court to commence its exercise of its enforcement authority by scheduling a compliance conference at the earliest possible time, in order to ensure that the State initiates, without further delay, the process of formulating a school funding system that satisfies the mandates of the Supreme Court.

Respectfully submitted,



Nicholas A. Pittner (0023159)
John F. Birath, Jr. (0022024)
Sue W. Yount (0034514)

Quintin F. Lindsmith (0018327)
Susan Greenberger (0010154)
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Plaintiffs' Motion For Compliance Conference has been sent by regular U.S. Mail, postage prepaid, on this 4th day of March, 2003, to Roger F. Carroll, Assistant Attorney General, Office of the Attorney General of the State of Ohio, 30 East Broad Street, 16th Floor, Columbus, Ohio 43215-3428.


Nicholas A. Pittner

The Supreme Court of Ohio

FILED

DEC 11 2002

MARCIA J. MENDEL, CLERK
SUPREME COURT OF OHIO

Dale R. DeRolph, Parent and
Next Friend of Nathan DeRolph,
et al.,
Appellees,

Case No. 99-570

v.

State of Ohio et al.,
Appellants.

MANDATE

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PERRY COUNTY

To the Court of Common Pleas

Within and for the County of Perry, Ohio.

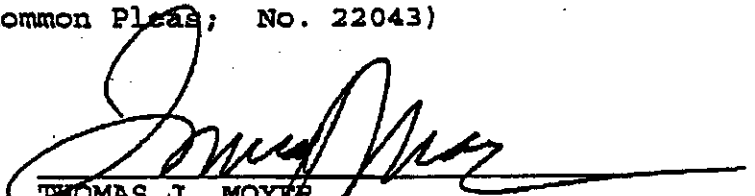
The Supreme Court of Ohio commands you to proceed without delay to carry the following judgment in this cause into execution:

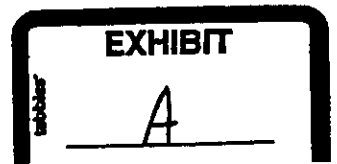
IT IS ORDERED by the Court that, consistent with the opinion rendered herein, the decision entered in this case on September 6, 2001 be, and hereby is, vacated and that this Court's decisions in DeRolph v. State (1997) 78 Ohio St.3d 193, 677 N.E.2d 733, and DeRolph v. State (2000) 89 Ohio St.3d 1, 728 N.E.2d 993, are the law of the case and that the current school-funding system is unconstitutional.

COSTS:

Docket Fee, \$40.00, paid by Attorney General of Ohio.

(Perry County Court of Common Pleas; No. 22043)


THOMAS J. MOYER
Chief Justice



The Supreme Court of Ohio FILED

DEC 11 2002

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

Dale R. DeRolph, Parent and
Next Friend of Nathan DeRolph,
et al.,
Appellees,

Case No. 99-570

JUDGMENT ENTRY

v.

State of Ohio et al.,
Appellants.

APPEAL FROM THE
COURT OF COMMON PLEAS

This cause is before the Court upon appellants' motion for reconsideration. Upon further consideration thereof,

IT IS ORDERED by the Court that, consistent with the opinion rendered herein, the decision entered in this case on September 6, 2001 be, and hereby is, vacated and that this Court's decisions in DeRolph v. State (1997) 78 Ohio St.3d 193, 677 N.E.2d 733, and DeRolph v. State (2000) 89 Ohio St.3d 1, 728 N.E.2d 993, are the law of the case and that the current school-funding system is unconstitutional.

It is further ordered that the appellees recover from the appellants their costs herein expended; and that a mandate be sent to the Court of Common Pleas for Perry County to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Common Pleas for Perry County for entry.

COSTS:

Docket Fee, \$40.00, paid by Attorney General of Ohio.

(Perry County Court of Common Pleas; No. 22043)

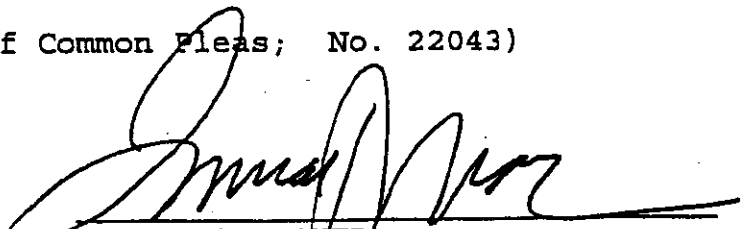

THOMAS J. MOYER
Chief Justice

EXHIBIT
tabbies
B

IN THE COURT OF COMMON PLEAS, PERRY COUNTY, OHIO

DALE R. DeROLPH, Parent
and Next Friend of
NATHAN DeROLPH, a Minor
3643 Hopewell Indian Road NW
Glenford, Ohio 43739

RANDY MISKELL
883 Forest Hills Road
Heath, Ohio 43056

NORTHERN LOCAL SCHOOL DISTRICT
BOARD OF EDUCATION
8700 Sheridan Road
Thornville, Ohio 43076

J. KENNETH MILLER, a Member of
the Northern Local School
District Board of Education
6825 Rushcreek Road NW
Somerset, Ohio 43783

STEVEN JOHNSON, Superintendent
of the Northern Local School
District
8700 Sheridan Road
Thornville, Ohio 43076

KEELY THOMPSON, Parent
and Next Friend of
CHRISTOPHER THOMPSON, a Minor
Box 108, Elm Street
Shawnee, Ohio 43782

JOSEPH WINNENBERG
127 Highland Drive
New Lexington, Ohio 43764

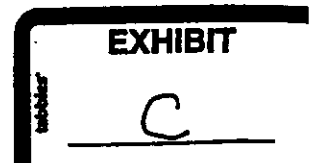
SOUTHERN LOCAL SCHOOL DISTRICT
BOARD OF EDUCATION
10397 State Route 155 S.E.
Hemlock, Ohio 43743

LOUIS ALTIER, a Member of
the Southern Local School District
Board of Education
Box 450, Jackson Street
Corning, Ohio 43730

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PERRY COUNTY
COURT OF COMMON PLEAS

FIRST AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF

Case No. 22043



CAROL SPANGLER, Superintendent of :
the Southern Local School District :
10397 State Route 155 S.E. :
Hemlock, Ohio 43743 :

DONNA BLANKENSHIP, Parent :
and Next Friend of :
JAMI BLANKENSHIP, a Minor :
Route # 1, Box 226-1 :
Ironton, Ohio 45638 :

MARK SEMANCO :
234 Green Oak Drive :
Huntington, West Virginia 25705 :

DAWSON-BRYANT LOCAL SCHOOL :
DISTRICT BOARD OF EDUCATION :
423 Marion Pike :
Coal Grove, Ohio 45638 :

CARL SWARTZWELDER, a Member of :
the Dawson-Bryant Local School :
District Board of Education :
Route # 1, Box 300 :
South Point, Ohio 45680 :

WAYNE WHITE, Superintendent of :
the Dawson-Bryant Local School :
District :
423 Marion Pike :
Coal Grove, Ohio 45638 :

DAVID BOWERS, Parent :
and Next Friend of :
ANDREW BOWERS, a Minor :
CHRISTOPHER BOWERS, a Minor :
1225 State Street :
Lima, Ohio 45805 :

JON CARVER :
1522 Rice Avenue :
Lima, Ohio 45805 :

LIMA CITY SCHOOL DISTRICT :
BOARD OF EDUCATION :
515 South Calumet Avenue :
Lima, Ohio 45804 :

JAMES EATON, a Member of
the Lima City School District
Board of Education
2452 Merit Avenue
Lima, Ohio 45805

CHARLES BUROKER, Superintendent of
the Lima City School District
Board of Education
515 South Calumet Avenue
Lima, Ohio 45804

MARION GARY SOUTHERS, JR., Parent
and Next Friend of
SHERRI SOUTHERS, a Minor
BRIAN SOUTHERS, a Minor
1040 Mercer Street
Youngstown, Ohio 44502

ROBERT RIOS
2676 Poland Village Boulevard
Poland, Ohio 44514

YOUNGSTOWN CITY SCHOOL DISTRICT
BOARD OF EDUCATION
20 West Wood Street
P.O. Box 550
Youngstown, Ohio 44501

SOCRATES KOLITSOS, a Member
of the Youngstown City School
District Board of Education
278 East Lucius Avenue
Youngstown, Ohio 44507

and

EMANUEL CATSOULES, Superintendent
of the Youngstown City School
District Board of Education
20 West Wood Street
P.O. Box 550
Youngstown, Ohio 44501

Plaintiffs,

vs.

STATE OF OHIO
c/o Attorney General of Ohio
State Office Tower, 17th Floor
30 East Broad Street
Columbus, Ohio 43266-0410

STATE BOARD OF EDUCATION OF OHIO
Ohio Departments Building
65 South Front Street
Columbus, Ohio 43266-0308

TED SANDERS,
Superintendent of
Public Instruction
808 Ohio Departments Building
65 South Front Street
Columbus, Ohio 43266-0308

and

OHIO DEPARTMENT OF EDUCATION
Ohio Departments Building
65 South Front Street
Columbus, Ohio 43266-0308

Defendants.

I. INTRODUCTION

1. This action is brought by and on behalf of pupils, parents, school teachers, school district boards of education, board of education members, and school superintendents for the purpose of obtaining a declaratory judgment pursuant to Chapter 2721 of the Ohio Revised Code ("O.R.C."). Plaintiffs seek an order of this Court declaring that the defendants' current system of funding elementary and secondary public education in Ohio, as applied to them and others, fails to comply with mandates of the Ohio Constitution, including the requirement that the state provide a thorough and efficient system of public education, and

unlawfully discriminates against plaintiffs and others in violation of rights secured by the Ohio Constitution. The action also seeks injunctive relief.

II. THE PARTIES

A. Plaintiffs

2. Plaintiff Nathan DeRolph is a minor and a student in the Northern Local School District of Perry County, Ohio; Plaintiff Christopher Thompson is a minor and a student in the Southern Local School District of Perry County, Ohio; Plaintiff Jami Blankenship is a minor and a student in the Dawson-Bryant Local School District; Plaintiffs Andrew Bowers and Christopher Bowers are minors and students in the Lima City School District; and Plaintiffs Sherri Southers and Brian Southers are minors and students in the Youngstown City School District. (The above-named student plaintiffs are hereafter collectively referred to as the "pupil plaintiffs".) Plaintiff Nathan DeRolph brings this action through Dale DeRolph, his parent and next friend. Each of the other pupil plaintiffs, likewise, brings this action through his or her parent as identified in the caption of this First Amended Complaint. The parents of the pupil plaintiffs identified in this complaint also assert claims against the defendants in this action based on harm suffered by the parents as a result of the school funding system described herein.

3. Plaintiff Randy Miskell is a teacher employed by the Northern Local School District Board of Education; Plaintiff

Joseph Winnenberg is a teacher employed by the Southern Local School District Board of Education; Plaintiff Mark Semanco is a teacher employed by the Dawson-Bryant Local School District Board of Education; Plaintiff Jon Carver is a teacher employed by the Lima City School District Board of Education; and Plaintiff Robert Rios is a teacher employed by the Youngstown City School District Board of Education. (The above-named teacher plaintiffs are hereafter collectively referred to as the "teacher plaintiffs".) Each of the teacher plaintiffs is responsible for providing instruction to students attending school in their respective districts.

4. Plaintiff Northern Local School District Board of Education, with its office in Perry County, Ohio, is the governing body of the Northern Local School District; Plaintiff Southern Local School District Board of Education, with its office in Perry County, Ohio, is the governing body of the Southern Local School District; Plaintiff Dawson-Bryant Local School District Board of Education, with its office in Lawrence County, Ohio, is the governing body of the Dawson-Bryant Local School District; Plaintiff Lima City School District Board of Education, with its office in Allen County, Ohio, is the governing body of the Lima City School District; and Plaintiff Youngstown City School District Board of Education, with its office in Mahoning County, Ohio, is the governing body of the Youngstown City School District. (The above-named plaintiff

boards of education are hereafter collectively referred to as the "board of education plaintiffs".) Each of the board of education plaintiffs is required by the Constitution and laws of the State of Ohio and of the United States to provide an educational program for those pupil plaintiffs who are residents of their respective school districts as well as all other public school pupils entitled to attend the schools of their respective school districts. The board of education plaintiffs are authorized to bring this action by O.R.C. Sections 3313.17 and 3313.47.

5. Plaintiff J. Kenneth Miller is a duly elected, qualified, and acting member of the Northern Local School District Board of Education; Plaintiff Louis Altier is a duly elected, qualified, and acting member of the Southern Local School District Board of Education; Plaintiff Carl Swartzwelder is a duly elected, qualified, and acting member of the Dawson-Bryant Local School District Board of Education; Plaintiff James Eaton is a duly elected, qualified, and acting member of the Lima City School District Board of Education; and Plaintiff Socrates Kolitsos is a duly elected, qualified, and acting member of the Youngstown City School District Board of Education. (The above-named plaintiff board of education members are hereafter collectively referred to as the "board of education member plaintiffs".)

6. Plaintiff Steven Johnson is the Superintendent of the Northern Local School District of Perry County; Plaintiff Carol

Spangler is the Superintendent of the Southern Local School District of Perry County; Plaintiff Wayne White is the Superintendent of the Dawson-Bryant Local School District; Plaintiff Charles Buroker is the Superintendent of the Lima City School District; and Plaintiff Emanuel Catsoules is the Superintendent of the Youngstown City School District. (The above-named superintendent plaintiffs are hereafter collectively referred to as the "superintendent plaintiffs".) Each of the superintendent plaintiffs is charged with responsibility for the overall administration of their respective school districts and with the provision of educational programs and services to the pupils of each of their respective school districts. Each of the superintendent and board of education plaintiffs are also charged with the responsibility of providing an appropriate special education program and related services for each handicapped pupil residing in each of their respective school districts.

B. Defendants

7. Defendant State of Ohio, through the Ohio General Assembly, is required to provide for a system of public education in the State of Ohio in accordance with the Constitution and laws of the State of Ohio.

8. Defendant State Board of Education is the governing body charged with general supervision of public education in the state and having those powers enumerated in O.R.C. Section 3301.07.

9. Defendant Ted Sanders is the duly appointed, qualified and acting Superintendent of Public Instruction for the State of Ohio, having those powers and responsibilities described in O.R.C. Sections 3301.08 through and including 3301.12. Defendant Sanders is charged with the overall responsibility for the administration of the laws and regulations governing the operation of public school districts in Ohio, including the implementation and operation of the school funding system as that term is used herein. Defendant Sanders is made a party to this action solely in his official capacity.

10. Defendant Ohio Department of Education is the administrative unit and organization through which the policies, directives, and powers of the Defendant State Board of Education are administered. The Ohio Department of Education consists of the State Board of Education, the Superintendent of Public Instruction, and a staff to perform the duties and exercise the required functions of the department. O.R.C. Section 3301.13.

III. CONSTITUTIONAL AND STATUTORY BASES FOR THE PLAINTIFFS' CLAIMS

A. Ohio Constitution

11. Public elementary and secondary education is a fundamental right guaranteed to the pupil plaintiffs and their parents by the Ohio Constitution and the laws of Ohio.

12. Pupil plaintiffs and their parents have a right under the Ohio Constitution and laws of the State of Ohio to an adequately and equitably funded system of public elementary and

secondary education that provides an adequate and equitable level of educational opportunity regardless of the geographic location in the state in which they and their parents happen to live. That right is guaranteed by, among others, the following provisions of the Ohio Constitution:

A. Section 1 Article I of the Ohio Constitution provides:

All men are, by nature, free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

B. Section 2 Article I of the Ohio Constitution provides, in part:

All political power is inherent in the people. Government is instituted for their equal protection and benefit . . .

C. Section 7 of Article I of the Ohio Constitution provides, in part:

Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the general assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

D. Section 26 of Article II of the Ohio Constitution provides:

All laws, of a general nature, shall have a uniform operation throughout the state; nor, shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the general assembly, except, as otherwise provided in this constitution.

E. Section 2 of Article VI of the Ohio Constitution provides:

The general assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state;

but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state.

F. Section 3 of Article VI of the Ohio Constitution provides:

Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds: provided, that each school district embraced wholly or in part within any city shall have the power by referendum vote to determine for itself the number of members and the organization of the district board of education, and provision shall be made by law for the exercise of this power by such school districts.

G. Section 4 of Article XII of the Ohio Constitution provides:

The General Assembly shall provide for raising revenue, sufficient to defray the expenses of the state, for each year, and also a sufficient sum to pay principal and interest as they become due on the state debt.

B. Provisions of Ohio Law Establishing Public Education as a Fundamental Right of Ohio Citizens

13. In addition to the mandates of the Ohio Constitution, the Ohio General Assembly has enacted legislation that recognizes, both explicitly and implicitly, the existence of a fundamental right to a free appropriate public education for all public elementary and secondary pupils in the state. The following provisions illustrate, by way of example, the existence of that legislated recognition:

14. Every child of compulsory school age, including each of the pupil plaintiffs in this action, must attend a school or participate in a special education program that conforms to the minimum standards prescribed by the Defendant State Board of Education until the child either completes high school and

receives a diploma or certificate of attendance, receives an age and schooling certificate, or is excused under standards adopted by the Defendant State Board of Education. O.R.C. Section 3321.03.

15. A parent, guardian, or other person having care of a child of compulsory school age, including each parent of a pupil plaintiff in this action, who violates the requirements of compulsory school attendance imposed under O.R.C. Chapter 3321 is subject to a fine and may be required to give a bond conditioned upon his causing the child to attend school, and is subject to imprisonment for failure to pay the fine or to give the bond. O.R.C. Sections 3321.38 and 3321.99.

16. School district boards of education in Ohio, including the board of education plaintiffs, are required to offer elementary and secondary education programs meeting the minimum standards prescribed by the Defendant State Board of Education pursuant to O.R.C. Section 3301.07(D).

17. School district boards of education in Ohio, including the board of education plaintiffs, are required by law to offer free educational programs that include instruction for the required number of hours per day and days per year. O.R.C. Section 3313.48.

18. School district boards of education in Ohio, including the board of education plaintiffs, are prohibited from closing or delaying the opening of school for financial reasons. School

district boards of education that lack sufficient revenue to operate their educational programs are required by law to apply for a loan from a commercial lending institution and, if such application is denied, to seek authorization from the State Controlling Board to borrow funds to maintain operations. O.R.C. Sections 3313.483, 3317.63 and 3317.64.

19. Pupils attending the public schools of Ohio, including the pupil plaintiffs in this action, may not be excluded from school for disciplinary reasons (suspended or expelled from school) without due process of law. O.R.C. Section 3313.66.

20. School district boards of education in Ohio, including the board of education plaintiffs, are required by law to provide a free appropriate special education program together with related services to all handicapped pupils three through twenty-one years of age entitled to attend school in their districts. O.R.C. Section 3323.02, et seq.

IV. The School Funding System

21. As used in this complaint, the "school funding system" means the combined operation of the following described groups of statutes that fund public elementary and secondary schools in Ohio. The school funding system consists of two primary parts: one part which provides state revenue, hereafter described, generally, as the school foundation program; and a second part, which provides local revenue from local property and income taxation, referred to hereafter as local revenue. The statutory

framework for the school foundation program includes O.R.C. Chapter 3317 and numerous uncodified provisions of Am. Sub. H.B. No. 298.

A. The School Foundation Program

22. The school foundation program consists of two primary components: basic program support and categorical program support.

1. Basic Aid

23. The amount of basic aid to be received by a school district is determined by three factors: average daily membership (ADM), the taxable property wealth of the district and the statutory equalization factor applicable to the district.

24. Basic aid is determined and distributed to school districts through a formula that compares a legislatively determined amount per ADM increased by a cost of doing business factor. That amount is reduced by an amount equal to twenty mills or two percent times the total assessed valuation of the district.

25. In addition, a basic aid guarantee amount is established for each school district guaranteeing a certain percentage increase in the district's basic aid each year. Thus, if the state basic aid amount calculated by the above formula is less than the guaranteed amount of basic aid, then the district will receive the guaranteed amount rather than the formula amount. School districts entitled to receive guarantee amounts are paid.

without regard to ADM or the amount of assessed valuation per pupil of the school district.

26. For fiscal year 1990-91, over two hundred of the 612 total school districts in Ohio, received foundation payments based on a guaranteed amount rather than a formula amount.

27. For fiscal year 1990-91, Plaintiffs Southern Local School District and Dawson-Bryant School District received foundation payments based on a guaranteed amount rather than a formula amount.

28. For fiscal year 1991-92, over three hundred forty school districts in Ohio are estimated to receive foundation payments based on a guaranteed amount rather than a formula amount.

2. Disadvantaged Pupil Impact Aid

29. The second major component of the school foundation program is Disadvantaged Pupil Impact Aid (DPIA).

30. DPIA funds are distributed on a per pupil basis, with the amount per pupil determined by the percentage of pupils in the district receiving aid to dependent children (ADC).

31. For fiscal year 1991-92, the following represents the amount of DPIA available to school districts in Ohio on a per pupil basis:

| <u>ADC Percentage</u> | <u>Per Pupil Amount of DPIA</u> |
|--------------------------|---------------------------------|
| 5-10% or 50 ADC pupils | \$ 103 |
| 10-16% or 500 ADC pupils | \$ 510 |
| 16-18% | \$ 610 |
| 18-20% | \$ 740 |
| 20+% | \$ 1,092 |

3. Categorical Aid and Other Types of Aid

32. Funding to pay all, or a portion of the cost of particular types of educational programs such as vocational education, special education, and gifted education is provided through a classroom unit mechanism. Funding for approved classroom units, together with other types of state aid such as pupil transportation, school bus purchase allowances, and school lunch support, is provided in the current appropriations measure as set forth in Amended Substitute House Bill No. 298.

B. Local Tax Revenue

33. The second component of the school funding system in Ohio is local tax revenue, representing funds raised by voted and unvoted property taxes and, in some cases, voter-approved school district income taxes.

1. Inside Millage

34. Property taxes consist of two types, unvoted taxes ("inside millage") and voted taxes ("outside millage").

35. Inside millage is that portion of the total available ten mills of unvoted property tax authorized by Section 2 of Article XII of the Ohio Constitution that may be levied by each school district. Though it produces only a small portion of a school district's total revenue, inside millage is not subject to a tax reduction factor and thus, for many school districts, represents the only element of local revenue capable of producing an increase in revenue as property values increase.

2. Voted Property Tax Millage

36. Voted tax levies are "outside" (not subject to) the ten mill limitation and may be authorized to provide for the current operating expenses of a school district or to finance permanent improvements. O.R.C. Section 5705.21. In addition, limited period tax levies designed to produce specific amounts are also available upon the declaration of an "emergency" by a board of education. O.R.C. Sections 5705.194 et seq.

37. Property tax levies for the operation of schools are approved by the voters based on a voted rate of taxation, expressed in mills per dollar of property valuation. The amount of revenue produced by one mill of property taxation will and does vary widely from school district to school district due to wide discrepancies in the types and value of taxable property within each district.

38. Taxable real and tangible personal property is taxed at a percentage of fair market value. For real property, other than agricultural real property, that percentage is thirty-five per cent. Agricultural real property and tangible personal property are taxed at lesser percentages. As used in this complaint the term "assessed valuation per pupil" means the total taxable valuation of all real and tangible personal property subject to property tax within a school district divided by the school district average daily membership.

39. School district property tax levies, other than those for the repayment of indebtedness or to produce a specified amount of money, are subject to a tax reduction factor. Such reduction factors are calculated and certified by the Tax Commissioner through the Department of Taxation and applied by the County Auditor to reduce the amount of revenue to be produced from each property tax levy. The application of the reduction factors results in the determination of an "effective rate" of millage, which insures that the amount of revenue raised by each tax levy will not, when the tax is levied against carryover property, be any greater than the amount of revenue produced in the year the levy was first approved. O.R.C. Section 319.301.

40. Once the application of tax reduction factors has resulted in a reduction in the effective rates of taxation for any class of property to a total of twenty mills, including voted operating levies and unvoted ("inside") millage levied for current operating expenses, the effective rates of taxation are

not reduced further. School districts at the "twenty mill floor" will receive increased revenue if the amount of the real property tax duplicate increases. Other school districts with identical circumstances but with effective rates in excess of twenty mills will receive substantially less additional revenue from an increase in the value of taxable real property.

41. The school funding system permits reduction in the value of taxable property within a school district through such measures as agricultural use valuation, exemption of property from taxation, and abatement of property taxes, thus reducing the amount of revenue that a mill of property tax would raise in that district. The value of taxable property in each of the plaintiff school districts has been reduced through one or more of these measures.

42. The system of public school funding in Ohio limits the receipt of additional school district operating revenue to three basic sources: additional legislative appropriations, the passage of additional tax levies by the voters of the school district, and the addition of new taxable value to the school district tax duplicate.

3. School Facilities

43. The State of Ohio provides no direct state funds to house or equip school district educational programs.

44. Public elementary and secondary school buildings in Ohio are primarily financed through the issue and sale of school

district bonds upon the approval of the voters in the district. The bonds are then repaid with the proceeds of property taxes levied on the taxable property of the school district for that purpose.

45. The rates of tax millage necessary to provide and equip identical school facilities within the state varies widely because of the disparities in the value of taxable real and personal property from school district to school district.

46. Chapter 3318 of the Revised Code provides a means by which a school district may purchase classroom facilities from the state. Such purchase is contingent on the existence of state funds, the approval of school district requests for such funds, and the passage of local tax levies to provide sufficient funds to repay the state.

47. The Ohio Department of Education conducted and published the results of a state-wide school facilities survey in 1990. Based on that survey, the Ohio Department of Education determined that:

A. Over \$10 billion in additional funds was needed to bring existing school buildings up to good working condition.

B. Of the then existing 3,864 public school buildings in Ohio, approximately sixty-eight percent were thirty years of age or older, fifty percent were fifty years old or older, and fifteen percent were seventy years old or older.

C. Of the then existing public school buildings, sixty-eight percent needed roofing work -- thirty percent needed to be repaired and thirty-eight percent needed to be completely replaced. Forty-two percent of the walls and chimneys were in need of repair and five percent needed replacement.

D. Only twenty percent of the existing public school buildings in Ohio had satisfactory handicapped access with the remaining eighty percent in need of repair or replacement.

E. Only approximately thirty-one percent of the existing public school buildings had satisfactory reports regarding asbestos requirements.

F. The Plaintiff Northern Local School District needed additional repairs, additions or replacements of existing facilities, at a total district-wide cost of \$13,812,276. The Plaintiff Southern Local School District needed additional repairs, additions or replacements of existing facilities, at a total district-wide cost of \$7,363,528. The Plaintiff Dawson-Bryant Local School District needed additional repairs, additions or replacements of existing facilities, at a total district-wide cost of \$14,975,241. The Plaintiff Lima City School District needed additional repairs, additions or replacements of existing facilities, at a total district-wide cost of \$42,495,955.

The Plaintiff Youngstown City School District needed additional repairs, additions or replacements of existing facilities, at a total district-wide cost of \$66,924,350.

48. Taxpayers in school districts having lower assessed valuation per pupil must tax themselves at greater rates to produce the same level of revenue to fund school facilities than taxpayers in school districts having higher levels of assessed valuation per pupil.

V. IMPACT OF THE SCHOOL FUNDING SYSTEM

A. Disparities in Valuation, Revenue and Expenditures Per Pupil

49. The method of funding the common schools of Ohio results in wide disparities in school revenues per pupil, thereby harming each of the plaintiffs in this action.

50. For school year 1988-89, the assessed valuation per pupil disparity between the highest and lowest school districts in Ohio ranged from a high of approximately \$680,242 to a low of approximately \$14,557.

51. For school year 1988-89, the fifty Ohio school districts having the greatest amount of assessed valuation per pupil had an average of approximately \$131,294 assessed valuation per pupil, while the fifty Ohio school districts having the least amount of assessed valuation per pupil had an average of approximately \$25,709.

52. The taxpayers in the plaintiff school districts and in other Ohio school districts having lower levels of assessed

valuation per pupil, must tax themselves at a greater rate than those taxpayers in school districts having higher levels of assessed valuation per pupil in order to raise an equal amount of revenue per pupil for their schools. .

53. School districts having high assessed valuation per pupil spend a greater amount of money per pupil for education than school districts having low assessed valuation per pupil.

54. For school year 1988-89, the disparity in expenditures per pupil between the highest and lowest school districts in Ohio ranged from a high of approximately \$11,208 to a low of approximately \$2,807. The Department of Education reported on its report "Fiscal Year 91 Vital Statistics on Ohio School Districts" that for the 1989-90 school year the disparity in expenditures per pupil between the highest and lowest school districts in Ohio ranged from a high of approximately \$42,812 to a low of approximately \$2,637.

55. The disparity in revenue per pupil between the Ohio public school district having the greatest amount of assessed valuation per pupil and the district having the least amount of assessed valuation per pupil is one of the greatest disparities found in any state in the nation.

56. Voters in school districts having low assessed valuation per pupil reject additional tax levies for the local support of public schools at a greater rate than voters in school districts having greater assessed valuation per pupil.

57. Economic growth that produces additional assessed valuation is less likely to occur in school districts having lower assessed valuation per pupil, including the plaintiff school districts, thus further depriving the pupils of those school districts of the opportunity for an adequately funded educational program.

B. Disparities in Levels of Educational Opportunity

58. The variation in fiscal ability between Ohio school districts with high levels of assessed valuation per pupil and those with low levels of assessed valuation per pupil is reflected in wide differences in educational opportunity available to the pupils attending the respective public schools.

59. Ohio school districts with higher assessed valuation per pupil have more course opportunities in, among other areas, English, mathematics, science, foreign languages, and social studies than school districts with lower assessed valuation per pupil, including the plaintiff school districts.

60. High schools in Ohio school districts with higher assessed valuation per pupil generally have more course electives, more advanced placement courses, more foreign language courses, and greater intensity of mathematics and science offerings than school districts with lower assessed valuation per pupil, including the plaintiff school districts.

61. Pupils from Ohio school districts with lower assessed valuation per pupil generally score significantly lower on

standardized tests than pupils from school districts with higher assessed valuation per pupil.

62. Ohio school districts with higher assessed valuation per pupil generally have lower numbers of pupils instructed by a teacher in a classroom than school districts with lower assessed valuation per pupil.

63. Ohio school districts with lower assessed valuation per pupil generally pay teachers at lower rates than the school districts with higher assessed valuation per pupil.

64. Ohio school districts with lower assessed valuation per pupil and lower teachers' salaries are less able to recruit and retain better qualified teachers than school districts with higher assessed valuation per pupil.

65. During the 1989-90 school year, the average salary of teachers in Ohio's fifty school districts with the lowest assessed valuation per pupil was over \$7,000 less than the average salary in the fifty school districts with the highest assessed valuation per pupil.

66. During the 1990-91 school year, plaintiffs Northern Local School District, Southern Local School District, Dawson-Bryant Local School District, Lima City School District and Youngstown City School District paid their classroom teachers at a lower average rate than the state average for public school classroom teachers' salaries for that year.

67. During the 1980s, the relative inequality in the rates of teacher compensation between school districts in Ohio with low and high assessed valuation per pupil has increased.

68. Ohio school districts with low levels of assessed valuation per pupil, including the plaintiff school districts, generally have a lower ratio of library books per pupil than school districts with higher assessed valuation per pupil.

69. In the 1988-89 school year, the fifty Ohio school districts having the highest levels of assessed valuation per pupil had an average of 30.4 books per pupil, while the fifty school districts having the lowest levels of assessed valuation per pupil had less than 18.

70. Ohio school districts having lower levels of assessed valuation per pupil generally have higher dropout rates than do the school districts having higher levels of assessed valuation per pupil.

71. Ohio school districts having lower levels of assessed valuation per pupil generally have lower rates of graduation from high school than do school districts having higher levels of assessed valuation per pupil.

72. Ohio school districts having lower levels of assessed valuation per pupil, including the plaintiff school districts, generally have lower percentages of pupils who are college preparatory graduates than do school districts having higher levels of assessed valuation per pupil.

73. Ohio school districts having lower levels of assessed valuation per pupil generally have lower percentages of graduates who enroll in degree-granting institutions than do school districts having higher levels of assessed valuation per pupil.

74. Ohio school districts having lower levels of assessed valuation per pupil generally have a greater percentage of pupils who require remediation upon enrollment in degree-granting institutions than do school districts having higher levels of assessed valuation per pupil.

75. Ohio school districts having lower levels of assessed valuation per pupil, including the plaintiff school districts, generally provide their pupils with fewer opportunities for social and cultural enrichment than do school districts having higher levels of assessed valuation per pupil.

76. Ohio school districts having lower levels of assessed valuation per pupil, including the plaintiff school districts, generally are unable to offer their pupils the same level of exposure to and training in current scientific and business technology, including such areas as computer training and experience, as are school districts having higher levels of assessed valuation per pupil.

C. Impact on School District Operations

77. The system of funding public elementary and secondary schools in Ohio does not provide sufficient revenue to afford an

adequate education program to pupils in plaintiff school districts and other school districts in Ohio.

78. The system of funding public elementary and secondary schools in Ohio provides substantially less in state funds for the education of pupils than the actual cost of providing that education in any school district.

79. School districts in Ohio have, for the past decade, faced increased operating costs because of unfunded legislative requirements imposed by the Defendants.

80. For many Ohio school districts, including the plaintiff school districts, costs have increased at a faster rate than revenues.

81. School districts in Ohio have been required in increasingly large numbers, to seek approval from the state controlling board to borrow additional funds to maintain operations.

82. Nearly two hundred of the six hundred twelve school districts in Ohio have borrowed funds to maintain operations, have been given approval to borrow funds to maintain operations, or are projected by the Defendant State Department of Education as being in financial difficulty.

83. The current system of funding public elementary and secondary education in Ohio fails to provide an adequate mechanism for increasing school district revenue as expenses of operation increase.

84. Ohio school districts presently having sufficient operating revenue to operate an adequate educational program will in the future become unable to provide an adequate educational program for the pupils of those districts, unless additional revenue is made available.

85. The system of funding public elementary and secondary schools in Ohio harms pupils and the parents of pupils attending the plaintiff school districts and other school districts by impeding their ability to contribute to the general economic and social condition of the state.

86. The system of funding public elementary and secondary schools in Ohio harms pupils and the parents of pupils attending the plaintiff school districts and other school districts by subjecting them to a reduced level of knowledge, effectively diminishing their inalienable rights of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

87. The system of funding public elementary and secondary schools in Ohio effectively denies local control to the citizens and electors of the plaintiff school districts, to the board of education plaintiffs and board of education member plaintiffs and to other school district boards of education and their members in Ohio because those school districts are denied sufficient resources to make policy choices in the best interests of their pupils.

88. The teacher plaintiffs in this action are required to provide, within their areas of certification and assignment, an adequate educational program for those pupils placed in their charge. As a result of the state system of funding elementary and secondary public schools, the teacher plaintiffs and other public school teachers in Ohio are denied a sufficient level of resources to permit them to carry out that responsibility, thus denying them the ability to afford the pupils in their charge the level of educational opportunity to which those pupils are entitled.

89. The differences in expenditures per pupil among public elementary and secondary school districts in Ohio result in lower levels of training and experience of teaching and administrative personnel, fewer support services, restricted scope and content of program offerings, fewer extra-curricular activities, and a reduction in other indicators of quality educational programs in those districts spending fewer dollars per pupil thus harming each of the plaintiffs in this action.

VI. Distinctions Between Classes of Pupils

90. The Defendant State of Ohio has, through the adoption of Chapter 3323 of the Revised Code and actions pursuant to that adoption, determined by statute that some public school pupils in this state have a right to a free appropriate public education and related services designed to meet the unique needs of those pupils.

91. The Defendant State of Ohio has failed to provide sufficient funds to enable the plaintiff school districts and other school districts and their superintendents to provide appropriate educational programs and adequate facilities to serve the needs of handicapped pupils in those districts.

92. Statutory requirements imposed by the Defendant State of Ohio that Ohio school districts provide individualized educational programs and related services for handicapped pupils have reduced the level of resources available for the education of non-handicapped pupils.

93. The defendants have created and maintained an arbitrary distinction between classes of pupils without any rational basis by affording rights and benefits to some public school pupils based on the determination of a handicapping condition and denying the same rights and benefits to the remainder of the pupils in the state, in violation of the Ohio Constitution.

VII. Declaratory Judgment and Injunctive Relief are Appropriate

94. Plaintiffs are entitled to a declaration that the present system of funding public elementary and secondary education in Ohio is unconstitutional as applied to them.

95. Defendants and their agents have acted in Perry County, Ohio in the administration of the system of funding complained of and are subject to the jurisdiction of this Court.

96. Plaintiffs have no adequate remedy at law for such unconstitutional conduct of defendants in that money damages

would be totally inadequate to redress the grievances alleged in this Complaint.

97. Plaintiffs have suffered and will continue to suffer irreparable harm as a result of the actions of defendants.

FIRST CLAIM FOR RELIEF

98. Plaintiffs restate and incorporate by reference each of the allegations of paragraphs 1 through 97 of this Complaint as if fully rewritten herein.

99. The defendants have failed to provide a "thorough and efficient system of common schools throughout the state", in violation of Section 2 of Article VI of the Ohio Constitution, to the damage of plaintiffs and in violation of their rights.

SECOND CLAIM FOR RELIEF

100. Plaintiffs restate and incorporate by reference each of the allegations of paragraphs 1 through 99 of this Complaint as if rewritten herein.

101. The system of funding public education in Ohio, as described in this Complaint, has resulted in an inadequate level of educational opportunity for pupil plaintiffs and the other pupils of the plaintiff school districts, and defendants thereby have deprived the pupil plaintiffs, their parents and others of a fundamental right in violation of the Ohio Constitution.

THIRD CLAIM FOR RELIEF

102. Plaintiffs restate and incorporate by reference each of the allegations of paragraphs 1 through 101 of this Complaint as if rewritten herein.

103. The system of funding public education in Ohio, as described in this Complaint, has created constitutionally impermissible disparities in the level and types of educational opportunity for the pupils attending the plaintiff school districts as compared to those available for pupils elsewhere in Ohio, and said system, and defendants herein, have invidiously and arbitrarily discriminated against plaintiffs and others, to the injury and detriment of plaintiffs. Plaintiffs are thereby deprived of equal protection of law, due process of law, and uniform operation of laws, all as guaranteed by the Ohio Constitution.

FOURTH CLAIM FOR RELIEF

104. Plaintiffs restate and incorporate by reference each of the allegations of paragraphs 1 through 103 of this Complaint as if rewritten herein.

105. The system of funding public education in Ohio, as described in this Complaint, and defendants fail to provide adequate or sufficient revenue to enable the board of education plaintiffs, teacher plaintiffs, and superintendent plaintiffs to provide an adequate educational program and related services for the handicapped pupils of the school district, as required by

law, in direct violation of the obligations of the State of Ohio pursuant to the provisions of O.R.C. Chapter 3323.

FIFTH CLAIM FOR RELIEF

106. Plaintiffs restate and incorporate by reference each of the allegations of paragraphs 1 through 105 of this Complaint as if rewritten herein.

107. The system of funding public education in Ohio, as described in this Complaint, and defendants fail to provide adequate or sufficient revenue to enable the board of education plaintiffs, teacher plaintiffs, and superintendent plaintiffs to provide an adequate educational program and related services for the non-handicapped pupils of the school district, as required by law, thus denying equal protection of law as guaranteed by the Ohio Constitution.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for relief from the Court as follows:

108. That the Court determine and declare that public education is a fundamental right in the State of Ohio, guaranteed by the Constitution of the State of Ohio.

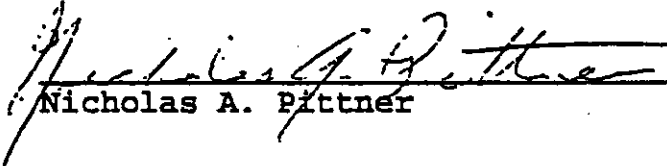
109. That the Court declare, with prospective application and after the allowance of reasonable time as to permit the enactment of a constitutional system, that the current system of funding public elementary and secondary education is unconstitutional as applied to plaintiffs and others.

110. That the Court issue a mandatory injunction requiring the Defendant State of Ohio to provide for and fund a system of funding public elementary and secondary education in compliance with the Ohio Constitution.

111. That the Court award plaintiffs such other relief as it deems equitable and proper.

112. That the Court retain jurisdiction of this matter for the purpose of assuring compliance with its lawful findings and orders.


113. That the Court award plaintiffs costs of this action and reasonable attorneys' fees.



Nicholas A. Pittner



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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served by regular U.S. mail, postage prepaid upon Mark A. Vander Laan and Joel S. Taylor, Dinsmore & Shohl, Suite 330, 175 South Third Street, Columbus, Ohio 43215-5134, this 15th day of January, 1992.



Nicholas A. Pittner

The Supreme Court of Ohio

FILED

MAY 26 1999

1999 TERM

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

Dale R. DeRolph, Parent and :
Next Friend of Nathan DeRolph, :
et al., :
Appellees, :

Case No. 99-570

v. :

State of Ohio et al., :
Appellants. :

E N T R Y

This cause is pending before the Court as an appeal from the Court of Common Pleas for Perry County. Upon consideration of appellants' motion for stay pending appeal of a remedial order issued by the trial court,

IT IS ORDERED by the Court, sua sponte, that the motion for stay be, and hereby is, granted.


THOMAS J. MOYER
Chief Justice


EXHIBIT

D

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served via facsimile and U.S. Mail, postage prepaid, upon the following, this 7th day of March, 2003:

The Honorable Linton D. Lewis, Jr.
Perry County Court of Common Pleas
P.O. Box 7
New Lexington, Ohio 43764



James G. Tassie
Assistant Attorney General
Counsel for Relator, The State of Ohio