IN THE SUPREME COURT OF OHIO

Dale R. DeRolph, et al.	:	
	:	
Plaintiffs-Appellees,	:	Case No. 99-0570
	:	
v.	:	Appeal From The Court Of Common Pleas, Perry County, Ohio, As
	:	Remanded By The Ohio Supreme
State of Ohio, et al.	:	Court, Case No. 95-2066
	:	
Defendants-Appellants.	:	
	:	

STATE DEFENDANTS' MOTION FOR RECONSIDERATION

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THE STATE DEFENDANTS' MOTION FOR RECONSIDERATION AND CLARIFICATION

Pursuant to S.Ct.Prac.R. XI, Section 2(A)(4), the State Defendants respectfully ask the Court to reconsider those portions of its September 6, 2001 decision that (1) require the elimination of wealth screens from the calculation of the base cost of an adequate education; and (2) apply retroactive to July 1, 2001 the remaining modifications to the calculations of base cost.

A memorandum in support follows and is incorporated herein.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

Throughout this case, we have all looked forward to the day when we could move from the courtroom to the classroom, when we could shift our focus from experts and affidavits to teachers and textbooks. Following *DeRolph III*, we are almost there. Today, however, the State respectfully asks the Court to reconsider two aspects of its decision. We ask that the Court reconsider its decision with respect to one of the modifications, the elimination of the wealth screens in computing the base cost,[1] and to reconsider the retroactive application of the modifications to the base cost formula.

The State seeks reconsideration in the interests of using good numbers and good math. As we have learned, the Court's changes may have been based in part upon erroneous calculations and data. For example, the Russell Harris affidavit, which Plaintiffs submitted and the Court understandably relied on, has several material flaws. An old adage known to all lawyers is "bad facts make bad law," and surely a case of this magnitude ought not be based on bad data. Further, once good data is used, it must be used in a good methodology—and, as explained below, the use of wealth screens is standard practice throughout school finance and the discipline of statistics generally. Finally, we ask the Court to reconsider its order to change the formula retroactively, as that order contrasts sharply with the Court's prior decisions in this case and the practical considerations they recognize, as well as other precedent under the Ohio Constitution.

We urge the Court to reconsider these points. It should want to look at the correct data using the correct methods. And then, with a new order in place, we can turn together—not just as plaintiffs and defendants, but as parents and principals, students and teachers—to the hard

[1] R.C. 3317.012(B)(2) and (3).

work of putting that system in place and building a better education for all Ohio's schoolchildren.

I. TWO PARTS OF THE COURT'S SEPTEMBER 6, 2001 DECISION MERIT RECONSIDERATION.

The State's request for reconsideration could not be more appropriate. The reconsideration procedures set forth in S.Ct.Prac.R. XI are invoked to correct decisions where necessary. *Buckeye Community Hope Foundation v. City of Cuyahoga Falls* (1988), 82 Ohio St.3d 539, 541, quoting *Huebner v. W. Jefferson Village Council* (1995), 75 Ohio St.3d 381, 383. *See also, Rennie v. Rennie* (Oct. 10, 1997), Lucas App. No. L-97-1054, 1997 Ohio App. LEXIS 4602 (granting relief from judgment where a settlement was based on the misinterpretation of an expert's statements in setting the value of an STRS account) [Attached hereto at Tab 1].

Moreover, "*DeRolph* is not a traditional appeal, in which the court has a previously established record available for review. Rather, *DeRolph* has become a hybrid which will require this court to engage both in fact-finding and application of law to those facts to determine whether the state has complied with prior orders of this court." *DeRolph v. State* (2001), 91 Ohio St.3d 1274, 1275. In this context, this motion for reconsideration is analogous to a motion made under Civ.R.60(B)(1) and/or (5), and the State accordingly provides with it additional evidence in the form of affidavits to verify the assertions herein. *See, e.g., U.A.P. Columbus JV326132 v. Plum* (1986), 27 Ohio App.3d 293; *East Ohio Gas Co. v. Walker* (1978), 59 Ohio App.2d 216 (facts alleged in a 60(B) motion must be of evidentiary quality, i.e., affidavits, depositions, written stipulations, or other sworn testimony, and not merely unsworn allegations of facts).

II. THE COURT SHOULD RECONSIDER ITS ORDER THAT THE WEALTH SCREENS BE ELIMINATED FROM THE BASE COST FORMULA.

In House Bill 94, the General Assembly enacted a base cost methodology that had one goal: to calculate the true base cost for an adequate education. In order to do that, a proper methodology must be followed. The Court's conclusion that the five percent wealth screens must be eliminated from that methodology should be reconsidered because plaintiffs' evidence to the contrary is based upon incorrect data and discounts generally accepted statistical practices; the Court has already previously implicitly acknowledged the use of five percent wealth screens; and the overwhelming consensus in the fields of school finance and statistics is to accept the elimination atypical data. The practical effect of plaintiffs' error is to distort the actual base cost of an adequate education.

A. As A Result Of Reviewing Incorrect Data, The Court Understandably Was Misled In Concluding That The Purpose Of Applying The Five Percent Wealth Screens Was To Reduce The Base Cost.

In their brief to the Court on June 18, 2001, plaintiffs spent little effort (amounting to about two sentences and a footnote in their 50-page brief) and produced little evidence assailing the five percent screens. Unfortunately, the little evidence they did offer has proven to be erroneous.

Plaintiffs submitted the affidavit of Russell Harris (Plaintiffs' Exhibit 528) [Tab 2] as purported evidence of the impact of the five percent screens on the base cost number, and reproduce a chart in his affidavit (Harris Exhibit I) at page 15 of their brief.[2] However, the chart

[2] Russell Harris's affidavit, dated June 11, 2001, and other evidence from both parties was submitted to the Court on Friday, June 15. Even after the Court permitted discovery on May 11, neither the affidavit nor working papers were made available to the State under plaintiffs' assertion of attorney work product. The following Monday, June 18, the parties submitted simultaneous briefs. Reply briefs were not allowed. The following Wednesday, June 20, five

and Harris's underlying data and calculations pertaining to the five percent screens are simply incorrect, understandably leading the Court to the conclusion that the screens are not a valid statistical tool.

While Harris avers that all of his data originally came from the Department of Education, there are two errors in his analysis related to the Court's ruling: First, Harris chose and then compared data runs that apply different ranges of the cost of doing business factor in analyzing the effect of the wealth screen. Specifically, the set of base cost data Harris used to calculate the average base cost expenditures of the 163 districts meeting at least 20 out of 27 standards (Harris Exhibit I, Line 2) consisted of 1999 figures deflated by an 18% variation in the cost of doing business factor (CODBF), not a 7.5% variance as he asserts. Affidavit of Wendy Zhan, ¶ 6 [Tab 3]; Affidavit of Matthew Cohen, ¶ 3 [Tab 4]. The result is that the average base cost data Harris calculated for those districts is lower than it would have been had he used the 7.5% variance. Zhan Affidavit, ¶ 6;[3] Cohen Affidavit, ¶ 5. Indeed, a look at individual school districts within the data set (Harris Exhibit D) demonstrates that their base cost figures are systematically lower than the base cost figures for those same districts in Harris Exhibit E:

School District	Base Cost	
	Harris Exhibit D (18% CODBF)	Harris Exhibit E (7.5 % CODBF)
Bexley City	$6,014.89	$6,452.38
Maumee City	$5,666.28	$6,007.16
Poland Local	$4,186.58	$4,447.01
Fairland Local	$2,967.42	$3,030.42
Westerville City	$4,544.16	$4,874.68

days after submission of evidence and two days after the submission of the parties' briefs and numerous amicus briefs, the Court heard oral argument.

[3] At pages 40 to 44 of the State's Brief was a general discussion of the numerous errors throughout plaintiffs' evidence. A number of examples were cited, including the cost of doing business calculation.

In Exhibit E, where Harris calculated the base cost for those districts meeting at least 20 performance standards and utilizing the wealth screens, Harris chose data that correctly used the 7.5% cost of doing business deflation factor. Zhan Affidavit, ¶ 6.[4] By subtracting the result of his calculation in Exhibit E from the erroneously low result in Exhibit D, Harris concludes that the State reduced the base cost per pupil by $110 per student by utilizing the wealth screens. *See* Harris Exhibit I, lines 2 and 3; Plaintiffs' Brief at 11. However, the difference between line 2 and line 3 is underestimated because the figures underlying line 2 are deflated by a *larger* amount than the figures underlying line 3. Zhan Affidavit at ¶ 8; Affidavit of Matthew Cohen, ¶ 5 ("The impact of combining these two procedures in the same chart is that the difference * * * is much less than it should be had the calculations been done in a consistent manner.")[5]

Harris's second error is more obvious, and even less explainable. He estimates that the impact of a $1 change in basic per pupil funding results in a $1.2 million change in overall state funding. Harris Affidavit, p. 3; Harris Exhibit I, fn. 3. The origin of that estimate is unclear, yet plaintiffs reiterate it in their brief. Plaintiffs' Brief at 14. However, Harris's assumption is outdated and "has not been true since 1998." Zhan Affidavit at ¶ 15. *See also* Cohen Affidavit at ¶ 7 "The more accurate multiplier for every dollar change in the formula amount is more than $1.9 million in recent years." Zhan Affidavit at ¶ 15; *see also* Cohen Affidavit at ¶ 7 ("Experts

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[4] This data is identical to the base cost data filed by the State with its evidence on June 15, 2001. *See* Legislative Service Commission Base Cost Update FY 1999, (127 Model Districts). [State's Evidence Filed June 15, 2001, Box B File 58]. In fact, plaintiffs had the same information much earlier, as they introduced it as an exhibit during the deposition of David Brunson held May 31, 2001. [Brunson Deposition Exhibit 21] [State's Evidence Filed June 15, 2001, Box F, File 152] [Tab 5].

[5] Harris's analysis is particularly misleading because he asserts a pattern of behavior by the State to lower the base cost. In reality, the actual modification made by the General Assembly to the wealth screen (i.e., moving it from 10% to 5%) included additional higher expenditure districts in the base cost calculation which increased the base cost.

in school funding in Ohio have long recognized" the change in the multiplier).

The combined effect of these errors is to mask the need to exclude some district data from the base cost calculation, and can understandably lead to an incorrect conclusion that there was a pattern of behavior by the State to lower the base cost. The inclusion of data from the top and bottom five percent of districts has a dramatic effect and distorts the base cost calculation, *see* Affidavit of David Monk, ¶ 4 [Tab 6], because *these districts are spending either well beyond or well below the constitutional level of adequacy*. Augenblick 1998 Trial Testimony at 734-735 [Tab 7].

Unfortunately, it appears that the Court considered Harris's erroneous evidence in reaching its decision. It concludes that the wealth screens "exclude districts that should be considered" in the base cost formula. *DeRolph III,* Majority Opinion at 39. The weight of the record, however, is in favor of excluding these districts so that they do not distort the base cost calculation. Indeed, in the face of this evidence, the only evidence plaintiffs cite in favor of including them is Harris's erroneous affidavit. Further, it is readily inferred from one of the concurring opinions that Harris's calculations factored—at least indirectly—into the majority decision. "[T]hrough the introduction of the wealth screens, the state was able to reduce the basic aid amount by $110 per pupil." *DeRolph III*, Concurring Opinion of Justice Douglas, p. 15. The $110 dollar figure is cited in plaintiffs' brief, and is derived from Harris's analysis. Plaintiffs' Brief, p. 11. Similarly, the costs of the other adjustments made by the majority, as cited in the concurring opinion, correspond with Harris's Exhibit I.

That the Court understandably was led to an unsupportable conclusion is significant because it is virtually axiomatic, as a matter of both school finance and the discipline of statistics, that the exclusion of atypical data is critical to ensuring that the average is an accurate

measure of the data. Affidavit of William Notz, ¶ 3 ("Outliers (extreme observations that differ significantly from the remainder of the data) can make the [average] a poor measure of the center of data.") [Tab 8]; *see also* Monk Affidavit, ¶ 3. When the actual impact of the inclusion of the atypical districts is known, it becomes clear that they are statistical outliers. Monk Affidavit, ¶ 5. Simply stated, including these atypical districts distorts the calculation of the actual base cost of an education. The evidence submitted by plaintiffs is simply and unfortunately wrong on this critical issue, and the State urges the Court to reconsider its decision in this light.

B. The Court Has Already Reviewed And Implicitly Accepted The Use Of 5% Screens As A Method To Prevent Distortion Of The Base Cost Number.

It is well to remember that the use of statistical screens in the calculation of the base cost amount has been in place since FY 1998. Discussion of their use to prevent distortion of the base cost number was part of the evidence leading to *DeRolph II*.[6] Plaintiffs' challenge to the use of the wealth screens was twofold: first, they challenged the Augenblick methodology; second, they challenged the legislature's modification in H.B. 650 of the screen based upon *income* wealth to eliminate the top and bottom ten percent of districts. (In this regard, it should be noted that the screen based upon *property* wealth has *always* been set at 5%, unchanged from Augenblick's original recommendation.)

By questioning the General Assembly's modification of the income wealth screen from five percent to ten percent, the Court, in *DeRolph II*, acknowledged the use of screens set at five percent:

> [T]he General Assembly enlarged the screen that was intended to remove anomalous districts in terms of personal income, from the fifth and ninety-fifth percentiles recommended by Augenblick to the tenth and ninetieth percentiles. * * * Although we recognize that deciding what methodology to adopt is a policy determination, *we are perplexed by the General*

[6] *DeRolph v. State* (2000), 89 Ohio St.3d 1.

> *Assembly's actions of enlisting an expert in the area of school financing and then, with no adequate explanation, altering his method.* * * * [Warren] Russell testified that he did not believe that the legislature had the expertise to understand the impact of the changes made to the Augenblick methodology and to grasp the statistical concepts involved.

DeRolph II, 89 Ohio St.3d at 17-18 (emphasis added). In developing House Bill 94, the General Assembly reconsidered each of the modifications it made to the original Augenblick method in light of the Court's decision. "After a careful re-examination, the Committee recommends adopting Dr. Augenblick's original recommendation and eliminating from the model only those districts with median income within the top and bottom 5 percent of all districts." Report of the Joint Committee To Re-Examine The Cost Of An Adequate Education (December 31, 2000), p. 20 [State's Evidence Filed June 15, 2001, Box A File 13] [Tab 9].

C. The Record Evidence Supports The Use Of Five Percent Screens To Avoid Distortion Of The Base Cost Number.

Indeed, the record before the legislature and before the Court strongly favors the use of wealth screens to avoid the distortion of the calculated base cost number by atypical data. Experts on both sides have supported the use of screens as the most appropriate means to establish the true base cost throughout this litigation:

William Driscoll. Driscoll, who testified on behalf of plaintiffs in 1998 and who submitted an affidavit on their behalf on June 15, 2001, supported the five percent wealth screens in his analysis of the Augenblick method:

> Selecting a range from the 10th to the 90th percentile would remove 190 districts in contrast to the removal of 107 districts through the use of the 5th through 95th percentile. While either approach could be used, the preferable method favors the 5th through 95th percentile as the more representative range. *Standard statistical analyses typically use 5% to estimate the tails at either end of a distribution. In this case, the tails or extreme observations do fall, in fact, in approximately the lowest and highest 5% of the range.*

Levin & Driscoll, "Response to the Supreme Court Decision in *DeRolph*," December 5, 1997, in

the record as Exhibit 12 to the Deposition of William P. Driscoll taken August 11, 1998; August 11, 1998 Deposition of William P. Driscoll, p. 141-142 [Tab 10].

William Driscoll & Howard Fleeter. In their joint report entitled "Complete Systematic Overhaul? An Analysis of Education Funding Provisions in Am. Sub. H.B. 94, 124th General Assembly," Driscoll and Howard Fleeter commended the return to the five percent screen:

> One of the changes in the bill would bring the computation of the cost of an adequate education more closely in conformity with the original method designed by John Augenblick. This change would exclude the top and bottom 5% of all districts in terms of property wealth per pupil and income wealth from the districts identified as "successful." This represents a change from the current law which excludes the top and bottom 10% of all districts. The practical effect of this change is to include some successful districts with higher wealth.

Plaintiffs' Exhibit 531, Exhibit A, p. 4. [Tab 11]. Notably, nowhere in their report do Driscoll and Fleeter suggest that the five percent screens are inappropriate or preclude the House Bill 94 base cost calculation from being constitutional.

David Monk. As the State pointed out in its brief filed June 18, 2001, David Monk, Dean of the Pennsylvania State University College of Education, having more than 20 years' experience in education finance, notes that "[a] 5% exclusion of this kind is a well established practice within the field of school finance given the common existence of highly atypical school districts in the tails of wealth and income distributions." Affidavit of David Monk, p. 8 [State's Evidence filed June 15, 2001, Box G, File 155] [Tab 12].

Dr. John Augenblick. Before the trial court in 1998, Dr. Augenblick testified extensively regarding his recommendation of the five percent screens. He testified that in his model, he utilized screens to remove 107 school districts which were among the highest or lowest five percent of all districts in terms of either per pupil property wealth or median income per tax return because very wealthy districts tend to provide things that go well beyond what

might be needed for basic or adequate services and the poorest districts spend too little. Augenblick 1998 Trial Testimony, Tr. 734-35 [Tab 7]; State's 1998 Trial Ex. 15, p. 7 [Tab 13].

Further, Dr. Augenblick testified that a graphical display of school districts from the lowest to highest wealth supported the determination that school districts suddenly look very different at the 90th or 95th percentile of the distribution. Augenblick 1998 Trial Testimony, Tr. 736, 739. Dr. Augenblick testified that it was appropriate to eliminate from consideration school districts which on this graphical representation looked unusual based upon the curves of the distribution, which visually show those districts are atypical. Augenblick 1998 Trial Testimony, Tr. 741-742. For the Court's reference, the State has attached to this Motion copies of its 1998 Trial Exhibits 78 and 79 [Tab 14], which illustrate the distribution of school districts using FY 1996 data, i.e., the data used by Dr. Augenblick in making his determination.

D. The Use Of Screens Is A Commonly Recommended Practice In School Finance And The Discipline Of Statistics.

In addition to significant evidence in favor of the five percent wealth screens, many of plaintiffs' experts and the Coalition for Equity and Adequacy of School Funding itself have supported the use of various five percent screens in connection with other proposals. For example, the Panel of Experts—Kern Alexander, William Driscoll, Richard Levin, James Guthrie, and John Augenblick—appointed by the State Superintendent following the trial court's 1994 decision, utilized not one, but two separate types of screens in conjunction with one another. Alexander, *et al.*, *Proposals for the Elimination of Wealth Based Disparities in Public Education* (July, 1995) (Plaintiffs' Ex. 473), page 19 ("In order to keep the focus of the comparison on districts providing a 'basic' education, districts in the top 5% and the bottom 5% of expenditures per pupil were excluded."); *id.* ("[T]he comparison excluded the smallest 5% and

largest 5% of the districts.") [Tab 15]. Similarly, following the Court's *DeRolph I* decision,[7] the Coalition issued a remedy proposal with a base cost formula calculation that incorporated screens. Ohio Coalition for Equity and Adequacy of School Funding, "Public School Reform and School Funding Remedy Proposal," April 1997 (State's 1998 Trial Exhibit 27), p. 17 (Eliminating from "the determination of the cost of an adequate education" districts "at the extremes of instructional spending per pupil (the top and bottom five percent of the districts).")[Tab 16].

Well outside the world of school funding, the use of screens is recognized throughout statistics. "Statisticians deal with outliers in a number of ways. * * * [One] is to delete the outliers and compute the mean of the remaining data. In fact, deleting outliers is standard practice in statistics." Affidavit of Dr. William Notz, ¶ 4, 5 (citations omitted).

In light of the foregoing evidence, and the Court's acknowledgment of the five percent screens in *DeRolph II*, the State respectfully urges the Court to reconsider that portion of its *DeRolph III* order requiring the elimination of wealth screens.

III. THE COURT SHOULD RECONSIDER THAT PORTION OF ITS DECISION REQUIRING THAT NEW BASE COST CALCULATIONS BE APPLIED RETROACTIVELY TO JULY 1, 2001 BECAUSE CURRENT BUDGETS ARE IN PLACE AND TIME FOR ADJUSTMENTS IS NEEDED.

The State also requests that the Court reconsider that portion of its decision requiring any remaining modifications to the base cost formula be applied retroactively, *DeRolph III,* Majority Opinion at 42. First, as this Court has recognized, the retroactive application of laws has engendered "near universal" disfavor in legal jurisprudence. *Van Fossen v. Babcock and Wilcox Company* (1988), 36 Ohio St.3d 100, 104. This disfavor is embodied in Article II, Section 28 of the Ohio Constitution, which limits the power of the legislature to pass retroactive laws, and R.C.

[7] *DeRolph v. State* (1997) 78 Ohio St.3d 193.

1.48, which provides that statutes are presumed to be prospective absent an express indication that the general assembly intended it to be retrospective.

This Court has recognized a distinction between laws affecting substantive rights, duties, and obligations, which may not be retroactive, and procedural or remedial law, which may be applied retrospectively. *Kunkler v. Goodyear Tire & Rubber Co.* (1988) 36 Ohio St.3d 135; *State ex. rel. Beacon Journal Publishing Co. v. Ohio Department of Health* (1990), 51 Ohio St.3d 1, 5. The State respectfully submits that the imposition of changes in the base cost formula is a matter of substantive law, as it "imposes new or additional burdens, duties and obligations" upon the State, *Van Fossen*, 36 Ohio St.3d at 107, while at the same time granting to school districts the right to additional funding. These changes—which will require legislative modifications before they may take effect—are thus substantive in that they create a redistribution of duties, rights and obligations when compared to H.B. 94 as it was originally enacted. Accordingly, the modifications may not be imposed retroactively in a manner consistent with the Ohio Constitution.

Second, throughout its involvement in this case, the Court noted that developing a school funding system is a "Herculean task." *DeRolph I*, 78 Ohio St.3d 193, 211. Thus, following the Court's decision in *DeRolph I* that the school funding system then in place was unconstitutional, the Court stayed the effect of its decision for one year. *DeRolph I*, 78 Ohio St.3d at 213. The State took that time to study, and then modify or replace, almost every aspect of its school funding system.

In *DeRolph II*, while recognizing the State's "good faith" efforts, *DeRolph II*, 89 Ohio St.3d at 36, the Court held that "even more" was required. *Id.* And, as it did following *DeRolph I*, the Court gave the State an additional year to address the problems the Court identified in the

new system. In *DeRolph II*, however, the Court again noted the "exceedingly complex" task in developing education legislation and identified the practical difficulties related to the State's efforts. "The task is difficult enough in prosperous times, when the state's coffers are full." *DeRolph II*, 89 Ohio St.3d at 9.

The economic pressures upon the legislative and budgetary process of the past year are magnified in these trying and uncertain times. In view of the tragic events of the last week, and the unprecedented impact upon federal, state, and local governments and the economy as a whole, the need for flexibility is more acute than ever. While structural changes to the State's school funding formula may appear no longer to be an issue, *DeRolph III*, Majority Opinion at 43, it will nonetheless require time to study the costs involved and develop an implementation plan to effectuate any modifications. In this regard, it should be remembered that the base cost is exactly what its name implies—it serves as a base (or a foundation), upon which the entire school funding formula is built.

As the concurrence points out, "[e]ach school district in this state presumably already has a budget for at least the coming year." *DeRolph III*, Concurring Opinion of Justice Douglas, p. 23. The need for stability and predictability in each district's budget process is another practical consideration in implementing any additional modifications prospectively. Indeed, the State's biennium budget for FY02-FY03 is in place as the Constitution requires.

The Court's decision already accommodates some of the practical difficulties in implementing its changes to the school funding system by delaying to the next fiscal year the requirement that parity aid be fully funded. In the same vein, the State respectfully asks that the Court reconsider its requirement that changes in the base cost calculation be applied retroactively.

IV. CONCLUSION

Throughout this litigation, the parties and the public have not only debated the best way to fund schools and teach students, but we have also debated the respective roles of the Court and the General Assembly in deciding these issues. On one hand, the "Constitution requires the *General Assembly* to 'make such provisions by taxation or otherwise, as * * * will secure a thorough and efficient system of common schools throughout the state.'" *DeRolph I,* 78 Ohio St.3d at 264 (*DeRolph I*) (Moyer, C.J., dissenting) (emphasis added). Yet, as the Court has said, the "courts of this state are entrusted with the authority to determine whether a school-funding scheme complies with the Constitution." *DeRolph II*, 89 Ohio St.3d at 12. Between these principles, we do not all agree on where the line stands between the judicial and legislative roles.

But today, we need not agree on that broad issue to agree upon the points we have raised here. Even those of us who disagree on the broader debate may very well agree that reconsideration is warranted in light of the erroneous evidence that understandably led the Court to require the elimination of the wealth screens. In addition, from either frame of reference, reconsideration of the retroactive application of any formula modification merits reconsideration.

For the foregoing reasons, the State respectfully seeks the Court's reconsideration of those portions of its decision that (1) require the elimination of the five percent wealth screens; and (2) make the Court's adjustments to the base cost formula retroactive to July 1, 2001.

Respectfully submitted,

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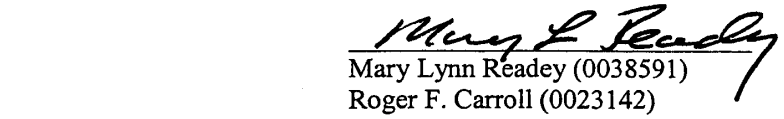

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing *Motion for Reconsideration* was served this 17th day of September 2001 by hand-delivery upon the following:

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