

IN THE SUPREME COURT OF OHIO

DALE R. DEROLPH, et al.,

Appellees,

v.

STATE OF OHIO, et al.

Appellants.

:
:
: Case No. 99-0570
:
:
: Appeal from the Common Pleas
: Court of Perry County, Ohio,
: Case No. 22043 as Remanded By
: The Ohio Supreme Court,
: Case No. 95-2066
:

PLAINTIFFS'-APPELLEES' MEMORANDUM IN OPPOSITION TO STATE'S
EMERGENCY MOTION FOR CLARIFICATION AND TO QUASH
DEPOSITION SUBPOENAS AND FOR PROTECTIVE ORDER

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I. INTRODUCTION

This matter is before the Court which has retained its jurisdiction of the case pursuant to Article IV of the Ohio Constitution. Jurisdiction is retained for the purpose of evaluating compliance by the State with the Court's orders in *DeRolph I* and *DeRolph II*. On January 25, 2001, the Court directed the parties to "...[f]ile any evidence they intend to present as early as practicable but no later than June 15, 2001." To date, the State has filed nothing.

Notwithstanding the May 11, 2000 order of the Court in *DeRolph II*, it is only within the past week that legislative measures addressing school funding have begun to move through the legislative process. That is, for over ten months, the State did nothing. As such, there was nothing to discover. As will be discussed more fully below, now there is much to discover.

The State does not want to respond to discovery. The last time it was forced to produce documents and testimony, the flaws in its' position were laid bare for the Court. The State does not want that to happen again and apparently for good reason.

Indeed, the State virtually engages in histrionics when it suggests that the Plaintiffs seek "to depose the entire State" and that "the entire workings of the State will be severely frustrated."¹ This is nonsense. After *DeRolph I*, the State was easily able to produce both records and testimony from several departments, including the Department of Education, Legislative Budget Office, and Department of Taxation. The agencies to which the document requests are directed have shown themselves to be able to produce records quickly and with little interruption. There is little question that had counsel for the State distributed the document requests two weeks ago when they were served, document production could have already begun. Plaintiffs have sought to depose only four individuals, yet these individuals must be the nerve

¹ State's Motion to Quash, p. 9.

center of the entire government of the State of Ohio, for to depose them would, according to the State, disrupt “the entire workings of the State.”

The subject matter of the documents requested are focused on very specific subject matters which have been at issue since this litigation commenced eight years ago. The State knows where the documents are and can produce them easily if it wants to.

As will be discuss more fully below, (1) this Court is exercising original jurisdiction during which discovery is permitted, (2) none of the Court’s orders bar discovery, (3) discovery will not come at “great cost” to the legislative process, (4) there is no privilege by virtue of the Speech and Debate Clause or R.C. §101.30 and, if there was, it has been waived, and (5) the information sought is the exact same type of information which was sought after *DeRolph I* and is just as relevant.

II. ARGUMENT

A. By Affirming The Trial Court, Directing The State To Correct Constitutional Deficiencies, And Retaining Jurisdiction, The Court Has Invoked Its Original Jurisdiction.

Indicating a rather stunning misunderstanding of appellate procedure, the State maintains that “the parties are still at the appellate stage.” Yet, the State does not identify what issues remain on appeal, or what assignments of error have yet to be ruled on. In *DeRolph II*, this Court affirmed the decision of the trial court to the extent the trial court’s decision was consistent with this Court’s decision. DeRolph II, 89 Ohio St.3d at 38.

The State argues that “the Supreme Court Rules of Practice permit discovery only in original actions.”² It argues that this case is not an original action and therefore Supreme Court

² State’s Motion to Quash, p. 5.

Rule X does not apply. The State confuses “original action” with “original jurisdiction.” The State apparently has not read Section 1 of Rule X. It states:

(A) This rule applies only to actions, . . . , within the *original jurisdiction* of the Supreme Court under Article IV, Section 2 of the Ohio Constitution. (Emphasis added.)

Article IV, Section 2 of the Ohio Constitution expressly provides that this Court has original jurisdiction in “any cause on review as may be necessary to its complete determination.”

As argued in Plaintiffs’ motion to compel filed on the same day as the State’s motion to quash, the State has asserted an untenable position that because this matter is “on appeal,” no discovery can occur. Actually, the issues on appeal were decided long ago in *DeRolph II*. As such, any appeal of any decision from a lower court has been concluded.

What remains is the State’s obligation to comply with *DeRolph I* and *DeRolph II*. There is no question that by this Court retaining jurisdiction, it has invoked its original jurisdiction pursuant to Article IV, Section 2 of the Ohio Constitution. As this Court has already noted:

“Section 2(B)(1)(f), Article IV of the Constitution of Ohio grants original jurisdiction to this court ‘[i]n any cause on review as may be necessary to its complete determination.’ We have interpreted this provision to authorize judgments in this court that are necessary to achieve closure and complete relief in actions pending before the court. (Several citations omitted.) We conclude from these cases that Section 2(B)(1)(f), Article IV of the Ohio Constitution authorizes this court to enter such judgment in causes it hears on review as are necessary to provide a complete and final determination thereof.” *State v. Steffen* (1994), 70 Ohio St.3d 399, 407-8.

Following *Steffen*, the Court addressed this issue again in the case of *State v. Berry* (1997), 80 Ohio St.3d 371. There, the Court had already decided the defendant’s appeal and the public defender argued that the Court no longer had jurisdiction to consider the defendant’s competency. In response to this argument, the court held:

State v. Steffen (1994), 70 Ohio St.3d 39, 639 N.E.2d 67, demonstrates that the term ‘cause on review’ is not limited to cases currently pending on direct appeal. Berry, 80 Ohio St.3d at 373.

Indeed, by this language, the court established that it can exercise original jurisdiction on a matter that is either before it on a direct appeal or on a matter wherein the appeal has been decided and the court continues to retain jurisdiction. The latter is the current posture of this case.

Supreme Court Rule X clearly applies to these proceedings. As such, the Ohio Rules of Civil Procedure are applicable by virtue of Section 2 of Rule X. It then follows that the parties have an obligation to follow those rules as they relate to discovery.

Indeed, the State’s argument on this point unwittingly supports the Plaintiffs’ position. The State notes that, “... Plaintiffs and the State will likely have differing views on the future effect of the State’s legislation.”³ This “future effect” which the State acknowledges in its own motion, is a relevant issue for this Court’s consideration. In fact, the State bluntly admits that it plans to submit “charts” and “graphs... to describe that effect.”⁴ So the State has statistical data which projects the future effect of legislation, but wants to hide the data from the Plaintiffs. Or is there something else?

Are there simulations that show, for example, under the current contemplated level of funding certain districts will benefit in the first year, but will suffer deeply in later years? Are there simulations which show the impact of new phantom revenue created under the most current versions of legislation being enacted? Are there simulations or printouts which show that districts receiving the greatest increases in funding are drawing those increases from the big city school districts? Are there printouts which show that the “additional revenue” touted by the

³ State’s Motion to Quash, p. 5.

⁴ Id.

State is actually replacement revenue for revenue lost as a result of other legislation? None of this type of information appears on the face of any legislation.

The State cavalierly suggests that the State can file its evidence and the Plaintiffs can file their evidence and all is equal. The problem here is that the State with its vast resources in the Department of Education, Department of Taxation, Office of Budget and Management, and Legislative Budget Office *has all the data*. The Plaintiffs simply do not. So what is the State's argument as to why Plaintiffs should not have access to this data? It is a stunning *non sequitur*:

“It is certainly within Plaintiffs’ prerogative to do so [present charts, graphs, and affidavits] as well. However, what is not appropriate – and which *must be prevented in this case* – is to disrupt the legislative process as the State works to enact a remedy.” (Emphasis added.)⁵

Again, we approach histrionics. Producing data and records from different departments and producing a handful of individuals would hardly “disrupt the legislative process.” If it did, then there is something wrong with the legislative process.

B. The Question Is Not Whether The Court’s Orders Contemplate Further Discovery, But Whether They Bar Discovery. They Do Not.

As noted above, the Court has chosen to exercise its original jurisdiction. By doing so, Supreme Court Rule X applies and discovery is permitted. Indeed, in its order of January 25, 2001, the Court expressly stated that the parties are to file “any evidence” on or before June 15, 2001. Section 7 of Rule X states how parties are to submit “evidence”:

To facilitate the consideration and disposition of original actions, counsel, when possible, should submit an agreed statement of facts to the Supreme Court. All other evidence shall be submitted by affidavits, stipulations, *depositions, and exhibits*. (Emphasis added.)

⁵ Id.

Evidence in the form of a deposition cannot be submitted unless a deposition is taken. Exhibits cannot be marked unless documents are produced. For the State to bluntly assert that this Court did not contemplate any further discovery is to blatantly flout this Court's unambiguous invocation of its original jurisdiction.

It is not material that after *DeRolph I* this Court chose to remand this matter back to the trial court for further hearing and fact-finding. After *DeRolph II*, the case's posture is substantively the same except that the Court has retained the role of finder of fact and it has limited the form of evidence it will consider by excluding live testimony at a hearing. These are differences of form and not substance. Discovery is no less appropriate now than it was then.

C. Discovery Will Not Come At Great Cost To The Legislative Process.

As to this argument, the State complains that it only "has less than 45 days within which to comply with the Court's order *and* establish the biennial budget which will provide for the operation of state government over the next two years...."⁶ The State does not indicate why it has "less than forty-five days" within which to comply with the Court's order. The fact is, for over ten months the State did nothing. For over ten months, there was nothing to discover. Then, when the State finally started to take action and finally started to generate activity so that there was finally something to discover, it complains that because of its own self-inflicted time emergency it simply cannot be bothered with having to disclose its back-office machinations.

The State also complains that it has been served with eighty-four document requests. Actually, the requests are specific and focused on specific subjects. For example, six of those requests simply ask for the fiscal notes and local impact statements of certain pieces of legislation which, by law, the State is required to prepare and publish. Hardly burdensome.

⁶ State's Motion to Quash, p. 8. (Emphasis in original.)

One of the reasons the requests may appear to be voluminous is that the Plaintiffs simply do not know what the State has done. For example, Plaintiffs seek to know what simulations or surveys the State has done to determine the actual cost of educating a child with special education needs.⁷ Plaintiffs and the Court have the right to know whether the State even bothered to try determine whether the formula which determines the level of special education funding even remotely approximates the actual cost. It may very well be that the State has never bothered to try to determine the actual cost. If so, then there are no documents to produce.

In another example, Plaintiffs seek:

“Any and all studies, analyses, surveys, or simulations performed by or for the State as part of any effort to determine the nature, extent, and cost of resources needed by Ohio public school pupils to receive a thorough and efficient education.”⁸

Again, by all accounts, the State still has not bothered to actually try to calculate the cost of giving a child a thorough and efficient education. More likely, it is still playing around with the voodoo of inferential methodologies which have no basis in fact. In any event, Plaintiffs are entitled to know.

Plaintiffs have requested the State to produce any documents which show “any effort to determine the nature, extent, and cost of resources needed by Ohio public school pupils in conditions of poverty....”⁹ As the Court knows, a material feature of Ohio’s school funding program relates to funding the education needs of children in conditions of poverty (the DPIA funds). Plaintiffs and this Court have a right to know if the State has even bothered to *try* to determine the cost of the needs of these children in poverty to determine whether the cost is even

⁷ See Request No. 28(a) to Plaintiffs’ Post-*DeRolph II* Request for Production of Documents, attached as Exhibit C to Plaintiffs’ Motion to Compel.

⁸ *Id.*, Request No. 25(a).

⁹ *Id.*, Request No. 26(a).

remotely within the range of state funding levels. This should not be a burdensome request to the State as Plaintiffs have reason to believe that such documents simply do not exist.

And that is why the State does not want to have to respond to many of these requests. It does not want to have to admit in writing that it has not bothered to perform any studies, analyses, or surveys on some of the most fundamental questions which have been before this Court. The process, by all accounts, has continued to be budget-driven first and needs-driven last.

The State argues:

“Permitting Plaintiffs to engage in such unbridled and unreasonably over-broad discovery would have long-reaching and devastating consequences well beyond the life of this litigation.”¹⁰

More histrionics. The unfortunate problem here is that the State from the outset has taken only one position in response to discovery – a total stiff-arm. It simply refuses to even discuss producing anything. As the Court knows, in most litigation matters, the parties attempt to work out among themselves what is a reasonable scope of discovery. Plaintiffs are more than willing to sit down with the State to discuss what the State can produce, when it can be produced, and when depositions can be taken. However, the State has flatly rejected any discovery of any kind under any condition, thus portraying this matter as a choice of two extremes: (1) no discovery at all, or (2) epic discovery of such biblical proportions that it will destroy the very fabric of state government. This is nonsense.

¹⁰ Id., p. 9.

D. There Is No Privilege And If There Was, It Has Been Waived.

1. The Law Of The Case Precludes The State From Asserting A Legislative Claim Of Privilege

This issue was raised by the State once before *in this action* and the trial court decided the issue against the State. The State never appealed the trial court's ruling on this issue so it is now the law of the case.

Specifically, after *DeRolph I*, Plaintiffs sought to depose Liz Connolly and Tim Keen who, unlike Mr. Brunson and Ms. Zahn, were actually employees of the Majority Caucus Staff of the Ohio Senate and the Ohio House of Representatives, respectively. On July 24, 1998, the State filed a motion for a protective order seeking to bar Plaintiffs from taking the depositions of these individuals, claiming that such testimony "is protected by the Speech and Debate Clause of the Ohio Constitution."¹¹ Indeed, the State made the exact same arguments before the trial court that it is now making before this Court. Plaintiffs responded¹² and on August 4, 1998, the trial court overruled the State's motion for a protective order and allowed the depositions to proceed.¹³

This issue has already been fully briefed and decided against the State. The State did not appeal this issue and is precluded from raising it again.

If the Speech and Debate Clause did not create a privilege to prevent Plaintiffs from deposing actual staff employees of the majority caucuses of the General Assembly, it certainly does not apply to individuals who are not employees of the General Assembly, but who are only employees of a separate entity which, while providing a supporting role to the General Assembly, is not part of the staff of the General Assembly.

¹¹ For the Court's convenience, a copy of the State's motion for protective order is attached hereto as Exhibit A.

¹² See attached Exhibit B.

¹³ A copy of the court's entry is attached hereto as Exhibit C.

2. The Speech And Debate Clause Does Not Apply

The Speech and Debate Clause has no relevance to this case. The clause provides that “for any speech, or debate, in either house, [senators and representatives] shall not be questioned elsewhere.” While Ohio courts have never addressed the claim advanced by the State, it is absolutely clear from the federal case law construing the federal counterpart that the privilege created by the Speech and Debate Clause was designed to protect legislators from criminal prosecution or civil liability in connection with legislative acts. United States v. Brewster (1972) 408 U.S. 501, 514 (“I would define the article as securing to every member exemption from prosecution, for every thing said or done by him, as a representative, in the exercise of the functions of that office”). In a case such as this, involving judicial review of legislation, the clause does not elevate legislators or the legislative process beyond the full and effective scrutiny of the judiciary.

Our speech or debate privilege was designed to preserve legislative independence, not supremacy. Our task, therefore, is to apply the Clause in such a way as to insure the independence of the legislature without altering the historic balance of the three co-equal branches of Government.

Id. at 508 (footnote omitted).

In the instant case, the parties are litigating the State Defendants’ compliance with the direction of the Supreme Court that the General Assembly construct an entirely new school funding system. Liability on the part of the legislature and the State of Ohio has already been established. The information sought here presents no risk of criminal liability or personal civil liability on the part of Ms. Zahn, Mr. Brunson, or any legislator. Instead, at issue is Plaintiffs’ ability to discover, and the Court’s ability to consider, whether the legislature has satisfied the mandates of the Supreme Court. The Court’s inquiry into such a matter is not constrained by the

Speech and Debate Clause. Analyzing the scope of that clause, the Supreme Court of the United States noted in Powell v. McCormack (1969), 395 U.S. 486, 506 as follows:

As was said in Kilbourn v. Thompson (1881) 103 U.S. 168, 199], in language which time has not dimmed:

‘Especially is it competent and proper for this court to consider whether its (the legislature’s) proceedings are in conformity with the Constitution and laws, because, living under a written constitution, no branch or department of the government is supreme; and it is the province and duty of the judicial department to determine in cases regularly brought before them, whether the powers of any branch of the government, and even those of the legislature in the enactment of laws, have been exercised in conformity to the Constitution; and if they have not, to treat their acts as null and void.’

The protective order sought by the State would have no purpose other than the impairment of the Court’s ability to engage in effective judicial review. There is no legal or other justification for utilizing the Speech and Debate Clause to further such improper purposes.

Immunity for non-legislators under the Speech and Debate clause has never been recognized by any Ohio Court. The State thus premises its claim upon federal cases construing the federal counterpart to Ohio’s clause. Doe v. McMillan (1973) 412 U.S. 306, Gravel v. United States (1972), 408 U.S. 606. The cases upon which the State relies are, however, distinguishable from the instant matter. In both cases, legislators had engaged in legislative actions which would have subjected them to personal liability – in one case criminal liability and, in the other, civil liability for damages – but for the existence of the legislative immunity conferred by the Speech and Debate Clause. And, in each case, the legislator(s) had of necessity worked in concert with non-legislators to accomplish the very legislative actions which would have given rise to such liability.

In Gravel, the individual whose testimony was at issue was an aide hired by a single senator to assist with a single project. The project involved preparations for a hearing before a

subcommittee at which the senator placed in the record highly classified reports prepared by the Pentagon and known as the “Pentagon Papers.” An investigation was subsequently instituted regarding potential wrongdoing by the senator related to his disclosure of the papers. Because the aide was intimately involved with the senator in the preparations for the hearing, the Court considered the aide to be the “alter ego” of the senator, concluding that in these circumstances, the scope of the privilege had to include the aide in order to protect the senator from liability. Id. at 616.

In McMillan, non-legislators assisted in the production of a report authorized by a resolution of the House of Representatives concerning the schools in the District of Columbia. The subsequently-prepared report included “derogatory information” about individual students who were identified by name. McMillan 412 U.S. at 308-309, fn. 1. In the ensuing lawsuit, the petitioners alleged that the report invaded protected privacy rights, injured the mental and physical health of the children, and damaged their reputations. In this context, the Court held that both the legislators and those the legislators employed to assist in the preparation of the report were immune from liability “for introducing material at Committee hearings that identified particular individuals, for referring the Report that included the material to the Speaker of the House, and for voting for publication of the report.” Id. at 312. The issue before the Supreme Court in McMillan was the scope of legislative immunity from liability for damages. Like Gravel, McMillan had nothing to do with the purported discovery privilege claimed in the instant case, where no personal liability is at stake.¹⁴

¹⁴ Indeed, the Court in McMillan expressly noted that it had no occasion to consider whether a testimonial privilege protecting publication to the general public could be derived from the Speech and Debate Clause even when the liability of a legislator or a legislator’s agent was at stake. Id. at fn 11 (“We have no occasion in this case to decide whether or under what circumstances, the Speech or Debate Clause would afford immunity to distributors of allegedly actionable materials from grand jury questioning, criminal charges, or a suit by the executive to restrain distribution, where Congress has authorized the particular public distribution.”)

In stark contrast to Gravel and McMillan, the sole issue in this case is the constitutionality of remedial legislation enacted by the General Assembly following a prior declaration of unconstitutionality. In these circumstances, the privilege created for the purpose of averting the threat of civil or criminal liability to individual legislators simply does not apply. See United States v. Helstoski (1979) 442 U.S. 477, 493 (“the privilege secured ... is not so much the privilege of the house as an organized body, as of each individual member composing it.” (Ellipsis in the original)).

3. Any Claim Of Privilege Has Been Waived

Even if the State could assert a legislative privilege under the Speech and Debate Clause, it waived that privilege long ago *in this case*. In 1998, the State permitted Plaintiffs to depose David Brunson. In fact, Mr. Brunson’s testimony became a key part of the evidence upon which the trial court and then this Court relied in *DeRolph II*. See, e.g., DeRolph, 98 Ohio St.3d at 33. As the Court knows, it is the Legislative Budget Office which, by law, prepares the fiscal notes and local impact statements for any new piece of legislation. Mr. Brunson testified that he is in charge of having those prepared. It was Mr. Brunson who was the primary author of the impact statements concerning the unfunded mandates which drew significant attention in *DeRolph II*. Id. Presumably, the new legislation will be accompanied by local impact statements which will be generated from the Legislative Budget Office.

Privileges, such as the attorney-client privilege or the attorney work-product privilege, can be waived. Indeed, the State has already acknowledged in this case that the Speech and Debate Clause “may be waived.”¹⁵ By allowing Mr. Brunson to testify as to prior pieces of

¹⁵ See, State’s Motion for Protective Order to Prevent Depositions of Liz Connolly and Tim Keen, filed July 24, 1998, p. 6.

legislation enacted in response to this Court’s rulings, the State has waived any right to assert a privilege based upon the Speech and Debate Clause.

4. R.C. §101.30 Does Not Create A Privilege

Even if such a privilege were recognized by this Court, the State is only able to argue that the Speech and Debate Clause “shields legislative aides,” that “acts of legislative aides are all an integral part of the deliberative process,” and that “members of the General Assembly and legislative aides are entitled to absolute legislative immunity...”¹⁶ Well, neither Mr. Brunson nor Ms. Zahn are legislative aides. Neither of them are employees of the General Assembly nor are they employed as staff members of any member of the General Assembly.

The State attempts to get around this by suggesting that they are employees of the Legislative Service Commission and that the Commission itself was “created in the legislative branch of government.” Asserting that they are “legislative staff,” the State completes its argument by citing R.C. §101.30 which creates a “confidential relationship with each member of the General Assembly, and with each member of the General Assembly staff, with respect to communications” between them. However, a review of the *entirety* of R.C. §101.30 reveals that it is limited to excluding certain records from *public records* requests. It makes confidential certain communications and documents. Pointedly, the statute only uses the term “confidential.” R.C. §101.30 does not establish any type of privilege or immunity from litigation discovery. Indeed, in commercial litigation courts are regularly faced with parties which seek confidential information in discovery. Such confidential records are regularly ordered to be produced, perhaps only under the cloak of a protective order which maintains their confidentiality. Nevertheless, the documents are produced even though they are confidential. Here, the State

¹⁶ State’s Motion to Quash, p. 11.

does not seek to maintain any degree of confidentiality pursuant to a protective order. Rather, it seeks a complete bar to the production of the documents. There is simply no support for this.

E. The Discovery Sought Could Produce Evidence Which Is Crucial To This Court's Consideration.

The State claims that “the depositions sought by Plaintiffs would not provide testimony that is relevant to the issue of whether the State’s legislative response is constitutional.”¹⁷ It claims that this Court can simply look at the face of the legislation and make its decision on that alone.¹⁸ Yet, in the same motion, the State argues:

“The difficulty in these proceedings arises from the fact that Plaintiffs and the State will likely have differing views on the future effect of the State legislation. *The State may very well present, for example, charts, graphs, and/or affidavits to describe that effect.*” (Emphasis added.)

Well, if all the Court has to do is to look at the legislation to determine whether or not the State has complied with *DeRolph I* and *DeRolph II*, then why does the State contemplate submitting charts, graphs, and affidavits as to the future effect of the legislation? And what is the data behind those charts and graphs? And why does the State think that is relevant? And who will be qualified to testify in affidavits as to what will be the future effect of the legislation? It is unlikely to be the legislators themselves. Rather, it is more likely to be the professionals like Brunson, Zahn, Payton, and Shams who, in the past, have run simulations and run countless types of data through different software programs to determine this “future effect.”

As such, it is disingenuous and inconsistent with the State’s own earlier arguments to suggest that only “the law speaks for itself.”¹⁹

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

III. CONCLUSION

The State does not seek to restrict discovery. The State does not seek to limit the scope of discovery. Rather, the State seeks to completely block any effort to have it produce one piece of paper or one sentence of testimony. Having manufactured a time crisis of its own, it feigns to be just too busy to have to produce a few witnesses and limited categories of documents.

Having established that discovery is permitted, that it is highly relevant, that it is not unduly burdensome, that it is not subject to a claim of privilege or confidentiality, there remains no basis for the State's position. Indeed, the only basis which remains is that there is highly relevant evidence which shows why the legislation being enacted in response to *DeRolph I* and *DeRolph II* is not what it seems to be. If such evidence exists, Plaintiffs are entitled to see it. If it does not, Plaintiffs are entitled to know that as well. Either way, discovery is appropriate and necessary.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request this Court to issue an order overruling the State's motion for clarification, to quash, and for a protective order and to grant Plaintiffs' motion to compel.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true copy of the foregoing document was served upon the following counsel by hand-delivery this 4th day of May, 2001, addressed as follows:

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