

IN THE SUPREME COURT OF OHIO

STATE, EX REL. :
STATE OF OHIO :
 :
Relator, :
 :
v. : CASE NO. 03-0447
 :
THE HONORABLE JUDGE : ORIGINAL ACTION FOR WRIT OF
LINTON D. LEWIS, JR., *et al.* : PROHIBITION
 :
Respondents. :

ANSWER OF RESPONDENTS-INTERVENORS, THE *DeROLPH*
PLAINTIFFS AND THE
OHIO COALITION FOR EQUITY & ADEQUACY OF SCHOOL FUNDING

For their Answer to the Complaint, Respondents-Intervenors, the Plaintiffs in *DeRolph v. Ohio* (July 1, 1994), Perry C.P. No. 22043, unreported (hereinafter "*DeRolph* Plaintiffs")¹ and the Ohio Coalition for Equity & Adequacy of School Funding ("Coalition"), admit, deny and aver as follows:

FIRST DEFENSE

1. In response to paragraph #1 of the Complaint, the *DeRolph* Plaintiffs and the Coalition state that Relator, State of Ohio, was a defendant in the lawsuit *DeRolph v. State*, filed in the Perry County Court of Common Pleas, Original Case No. 22043, Ohio Supreme Court Case Nos. 95-2066 and 99-570. The *DeRolph*

¹ The *DeRolph* Plaintiffs are identified with particularity in Plaintiffs' First Amended Complaint, attached as Exhibit C to Plaintiffs' Motion for Compliance Conference, Exhibit F to Relator's Complaint.

Plaintiffs and the Coalition deny the remaining allegations of paragraph #1 of the Complaint.

2. In response to paragraph #2 of the Complaint, the *DeRolph* Plaintiffs and the Coalition admit that Respondents include the Honorable Linton D. Lewis, Jr., the Common Pleas Court Judge of Perry County, Ohio, and the Common Pleas Court of Perry County. The *DeRolph* Plaintiffs and the Coalition state that the law regarding jurisdiction of a common pleas court speaks for itself. The *DeRolph* Plaintiffs and the Coalition deny each and every other allegation of paragraph #2 of the Complaint.

3. The *DeRolph* Plaintiffs and the Coalition admit the allegations of paragraph #3 of the Complaint.

4. In response to paragraph #4 of the Complaint, the *DeRolph* Plaintiffs and the Coalition state that on or about December 19, 1991, Dale DeRolph and other plaintiffs 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 funding system was unconstitutional on several grounds, including that the system violated the thorough and efficient clause of Section 2, Article VI of the Ohio Constitution. The *DeRolph* Plaintiffs and the Coalition deny any remaining allegations of paragraph #4 of the Complaint.

5. The *DeRolph* Plaintiffs and the Coalition admit the allegations of paragraph #5 of the Complaint.

6. The *DeRolph* Plaintiffs and the Coalition admit the allegations of paragraph #6 of the Complaint.

7. The *DeRolph* Plaintiffs and the Coalition admit that on May 11, 2000, the Ohio Supreme Court held that the State's system of school funding was still unconstitutional in *DeRolph v. State* (2000), 89 Ohio St. 3d 1 (*DeRolph II*), but deny that there had been restructuring of the system. The *DeRolph* Plaintiffs and the Coalition admit the remaining allegations of paragraph #7 of the Complaint.

8. The *DeRolph* Plaintiffs and the Coalition admit the allegations of paragraph #8 of the Complaint.

9. The *DeRolph* Plaintiffs and the Coalition admit the allegations of paragraph #9 of the Complaint.

10. In response to paragraph #10 of the Complaint, the *DeRolph* Plaintiffs and the Coalition admit that the Supreme Court did not retain jurisdiction. The *DeRolph* Plaintiffs and the Coalition deny the remaining allegations of paragraph #10 of the Complaint.

11. The *DeRolph* Plaintiffs and the Coalition admit the allegations of paragraph #11 of the Complaint.

12. The *DeRolph* Plaintiffs and the Coalition deny the allegations of paragraph #12 of the Complaint.

SECOND DEFENSE

13. The admissions, denials, and averments of paragraphs #1 through #12 of this Answer are incorporated by reference as if fully set forth herein.

14. The *DeRolph* Plaintiffs and the Coalition deny the allegations of paragraph #14 of the Complaint.

15. The *DeRolph* Plaintiffs and the Coalition deny the allegations of paragraph #15 of the Complaint.

THIRD DEFENSE

16. The *DeRolph* Plaintiffs and the Coalition incorporate by reference all of the preceding admissions, denials and averments in this Answer as if fully set forth herein.

17. The Complaint fails to state a claim upon which relief may be granted.

FOURTH DEFENSE

18. The *DeRolph* Plaintiffs and the Coalition incorporate by reference all of the preceding admissions, denials and averments in this Answer as if fully set forth herein.

19. The Complaint seeks an order of this Court which would, if granted, represent an unwarranted infringement on the constitutional and statutory rights and responsibilities of Respondents Perry County Common Pleas Court and Judge of that Court because the Respondents are a court of general jurisdiction with subject matter jurisdiction over *DeRolph v. State* for the purpose of issuing remedial orders consistent with the orders of this Court.

FIFTH DEFENSE

20. The *DeRolph* Plaintiffs and the Coalition incorporate by reference all of the preceding admissions, denials and averments in this Answer as if fully set forth herein.

21. Respondent, as an Ohio Common Pleas Court, does not "patently and unambiguously" lack jurisdiction to consider the Motion For Compliance Conference submitted by the *DeRolph* Plaintiffs. Respondent has the right to determine, in the first instance, whether it has that jurisdiction and whether that jurisdiction should be exercised as requested in the Motion. Relator has an adequate remedy at law by way of appeal from any appealable orders that might be issued by Respondent.

SIXTH DEFENSE

22. The *DeRolph* Plaintiffs and the Coalition incorporate by reference all of the preceding admissions, denials and averments in this Answer as if fully set forth herein.

23. Relator has failed to plead sufficient facts to demonstrate, and in fact cannot establish, that the Motion For Compliance Conference, if granted, would result in harm to Relator sufficient to warrant relief from this Court.

SEVENTH DEFENSE

24. The *DeRolph* Plaintiffs and the Coalition incorporate by reference all of the preceding admissions, denials and averments in this Answer as if fully set forth herein.

25. Divesting the Trial Court of the authority to provide a remedy for the constitutional wrongs declared in *DeRolph v. State* (2002), 97 Ohio St.3d 434 (*DeRolph IV*) would violate the substantive due process rights of the *DeRolph* Plaintiffs and Ohio's public school children in contravention of the United States and Ohio Constitutions.

SEVENTH DEFENSE

26. The *DeRolph* Plaintiffs and the Coalition incorporate by reference all of the preceding admissions, denials and averments in this Answer as if fully set forth herein.

27. Relator, the Ohio Attorney General, is estopped from asserting the claims in the Complaint by the oath or affirmation he was required to take before entering upon his duties, which oath or affirmation was to support the Constitution of the United States and this state. See, Section 7, Article XV of the Ohio Constitution. The relief sought in the Complaint would perpetuate the continuing violation of constitutional rights of *DeRolph* Plaintiffs and Ohio's public school children.

WHEREFORE, the *DeRolph* Plaintiffs and the Coalition having answered the Relator's Complaint in this matter, respectfully request this Court to dismiss this action at Relator's costs.

Respectfully submitted,

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Attorneys for Intervenors

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Answer of Respondents-Intervenors, the *DeRolph* Plaintiffs and the Ohio Coalition for Equity & Adequacy of School Funding, has been served upon Roger F. Carroll, Counsel of Record, Assistant Attorney General, 30 East Board Street, 16th Floor, Columbus, Ohio 43215-3428, via regular U.S. Mail postage prepaid, this _____ day of March, 2003.

Sue W. Yount