IN THE SUPREME COURT OF OHIO

IN RE: COREY SPEARS, A MINOR CHILD.	:	Case No. 2006-1074
	:	On Appeal from the Licking County Court of Appeals, Fifth Appellate District No. 2005-CA-93

BRIEF OF AMICI CURIAE JUSTICE FOR CHILDREN PROJECT AND OHIO ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF APPELLANT COREY SPEARS

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STATEMENT OF THE INTEREST OF AMICI CURIAE

The Justice for Children Project, is an educational and interdisciplinary research project housed within The Ohio State University Michael E. Moritz College of Law. Begun in January 1998, the Project's mission is to explore ways in which the law and legal reform may be used to redress systemic problems affecting children. The Justice for Children Project has two primary components: original research and writing in areas affecting children and their families, and direct legal representation of children and their interests in the courts. Through its scholarship, the Project builds bridges between theory and practice by providing philosophical support for the work of children's rights advocates. By its representation of individual clients through the Justice for Children Practicum and through its amicus work, the Justice for Children Project strives to advance the cause of children's rights. The Project has participated as amicus to this Court in numerous cases, including *In Re Adoption of Asente* (2000), 90 Ohio St.3d 91, *In Re Williams*, 101 Ohio St.3d 398, 2004-Ohio-1500 and *In Re A.B.*, 110 Ohio St.3d 230, 2006-Ohio-4359, as well as other cases, several of them currently pending decision.

The Ohio Association of Criminal Defense Lawyers (OACDL) is a statewide association of over seven hundred (700) public defenders and private attorneys who practice primarily in the field of criminal defense law. OACDL was formed for charitable, educational, legislative and scientific purposes, with the goal of advancing the interests of society and protecting the rights of citizens and other persons accused of crimes under the laws of the State of Ohio and the United States. OACDL seeks to provide the judiciary and the legislature with insights from its members concerning the day-to-day

operation of the criminal justice system and how it affects the citizens of this State. Over the past two decades, OACDL has participated as a friend of the court in dozens of cases, including *Ohio v. Robinette* (1996), 519 U.S. 33; *State v. Kinney* (1998), 83 Ohio St.3d 85; and *State v. Thompson*, 95 Ohio St.3d 264, 2002-Ohio-2124. The association has an enduring interest in the protecting the integrity of the justice system, ensuring equal treatment under the law, and protecting all facets of the right to counsel for accused criminal defendants and delinquents.

Because of the important questions raised in this case regarding the contours of the right to counsel of juveniles and the procedural protections required to waive that right, amici hereby offer this brief in support of the appellant. Amici have no relationship to any of the individuals involved in this litigation. This brief is submitted pursuant to S. Ct. R. VI, Sec. 6.

STATEMENT OF THE CASE AND FACTS

Amici Curiae hereby adopt the Statement of Case and Facts set forth in the Briefs of the Appellee.

ARGUMENT

Appellant's First Proposition of Law:

> Ohio Revised Code 2151.352 impinges upon a juvenile's constitutional right to counsel because the provision, "Counsel must be provided for a child not represented by the child's parent, guardian, or custodian" has led to inconsistent interpretations of the right to counsel in violation of Article I, Section 10 of the Ohio Constitution and the Sixth and Fourteenth Amendments to the United States Constitution

In *In Re Gault* (1967), 387 U.S. 1, the United States Supreme Court held that the basic protections of due process required by the Fourteenth Amendment apply to juvenile court proceedings. See *id.* at 34-42 (holding that due process and 'procedural justice' require the right to counsel for juveniles facing delinquency proceedings). In *Gault*, the U.S. Supreme Court rejected the claim that juvenile courts could proceed with unfettered discretion under the guise that they were acting in loco parentis, *id.* at 16 (describing history of parens patriae doctrine) and forcefully held instead that the Constitution required juvenile courts to abide by "the procedural regularity and the exercise of care implied in the phrase 'due process.'" *Id.* at. 27-8. Most crucially to this case, the *Gault* court held that with respect to the right to counsel, "[t]here is no material difference between adult proceedings and juvenile proceedings of the sort here involved." *Gault*, 387 U.S. at 36, cited in *In Re Doyle* (1997), 122 Ohio App.3d 767, 771. Amici respectfully assert that because the plain meaning, intent, and effect of the fifth sentence of R.C. 2151.352 creates such a "material difference" by permitting parents unconstitutional control over the exercise of a juvenile's right to counsel, it constitutes a violation of due process.

Prior to *In Re Gault*, Ohio's statutes did not recognize an absolute right to counsel in juvenile cases. See Former R.C. 2151.35 (eff. 10-14-1963). Although courts

were required to allow lawyers to appear on behalf of juveniles if they had been retained to do so, courts were not required to inform the juvenile or his parents of this limited right, nor were courts required to appoint counsel for juveniles under any circumstances.[1] See generally Max Kravitz (1973), *Due Process in Ohio for the Delinquent and Unruly Child*, 2 Cap. U. L. Rev. 53, 67-8. This laissez-faire approach was in stark contrast to the emphasis placed on the right to counsel by *Gault*.

> A proceeding where the issue is whether the child will be found to be "delinquent" and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution. The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child "requires the guiding hand of counsel at every step in the proceedings against him."
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> * * * *
>
> We conclude that the Due Process Clause of the Fourteenth Amendment requires . . . the child and his parents must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child.

Gault, 387 U.S. at 36-41. *Gault* had a dramatic and immediate impact on Ohio's juvenile courts, which reluctantly began to recognize the juvenile's right to be represented by counsel. See Walter W. Reckless and Reckless, Walter C. (Winter 1968), *The Initial Impact of the Gault Decision in Ohio*, 18 Juv. Ct. Judges J. 121, 122 (noting that "courts apparently are recognizing the child's right to counsel" and observing that most juvenile

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[1] Ohio's pre-*Gault* juvenile statutes state only that "[t]he juvenile court shall permit a child to be represented by an attorney at law during any hearing before such court . . . . [s]uch attorney at law . . . shall be entitled to visit such child at any reasonable time and to be present at any hearing involving the child and shall be given reasonable notice of such hearing." Former R.C. 2151.35 (eff. 10-14-1963).

courts now use a written waiver of the right to counsel, although the "forms and their use vary with each court").

The following year, the Ohio Supreme Court explicitly recognized that Ohio's juvenile counsel law did not measure up to the standards of *Gault*. In *In Re Agler* (1969), 19 Ohio St.2d 70, the Court noted in passing that its prior precedent, which "states that appointment of counsel in delinquency cases (for indigents, where such right is not clearly waived) is not constitutionally requisite," had been implicitly overruled by *Gault*, *id.* at 76, and further suggested that appointed counsel at state expense was required in every case, since "the parents or guardian do not always represent the child's best interests and are sometimes averse thereto." *Id.* at 78, citing *Griffin v. Illinois* (1956), 351 U.S. 12.

In the aftermath of *Gault* and *Agler*, Ohio enacted a major reform of its juvenile laws. See generally Robert J. Willey (1970), *Ohio's Post-Gault Juvenile Court Law*, 3 Akron L. Rev. 152 (describing major provisions of 1969 Am. Sub. H.B. 320, the Ohio Juvenile Court Act). As part of its reform, the Ohio legislature enacted a new statute, R.C. 2151.352, which created a statutory right to counsel modeled after language included in the Uniform Law Commissioners' Model Juvenile Court Act of 1968.[2] The relevant language, as originally adopted, stated that:

> The court shall appoint counsel for any parties found to be indigent unless representation is competently and intelligently waived. Counsel must be provided for a child not represented by his parent, guardian or custodian. If the interests of two or more parties conflict, separate counsel shall be provided for each of them.

[2] The Model Juvenile Court Act was fully adopted in only two jurisdictions, North Dakota and Georgia. See Uniform Law Commissioners' Model Juvenile Court Act of 1968, Refs. and Annos, Uniform Laws Ann. Vol. 9A (1998).

133 Ohio Laws 2040, 1969 Am. Sub. H.B. 320 (enacting R.C. 2151.352). At the time, one commentator observed that "[t]he most troublesome problems concerning the right to counsel involve whether the right has been waived. In Ohio, [R.C. 2151.352] states that any waiver of the right must be competent and intelligent. However, it is impossible to determine [from the statute] what standards will be used to determine a valid waiver." Kravitz, supra at 71-2.

Six years later, the Ohio legislature may have compounded the problem when it eliminated the sentence requiring "appoint[ed] counsel . . . unless representation is competently and intelligently waived" as as part of the bill that created the Office of the Ohio Public Defender. See 136 Ohio Laws 1869, 1975 Am. Sub. H.B. 164 (amending R.C. 2151.352). It seems likely that the legislature determined this sentence to be superfluous after the adoption of the Ohio Rules of Juvenile Procedure in 1972. See, *e.g.,* Juv. R. 3 ("Waiver of Rights") and Juv.R. 4 ("Assistance of Counsel; Guardian Ad Litem"). However, the removal of the sentence has, even recently, created additional confusion about whether counsel must be appointed for children. See, for example, *In Re Williams*, 101 Ohio St.3d 398, 2004-Ohio-1500 at ¶23 (discussing appellate court's misinterpretation of R.C. 2151.352 relating to appointed counsel for child in dependency case). Moreover, this legislative action was in stark contrast to this Court's decision in *Agler*, which concluded that due process required that counsel be appointed for every child.

> [J]uvenile proceedings present a special problem because the child whose interests are drawn into question is not sui juris, and is, both legally and as a practical matter, unable to take responsibility [for obtaining his or her own counsel]. Moreover, the parents or guardian do not always represent the child's best interests and are sometimes adverse thereto. This special problem requires a special solution to assure the constitutional fairness of

adjudication, reached by provision of counsel at state expense. *Agler*, 19 Ohio St.2d at 78. In any event, the current version of the statute states only that "[c]ounsel must be provided for a child not represented by the child's parent, guardian or custodian." R.C. 2151.352. Waiver of the right to counsel is no longer specifically mentioned in the statute, nor is the role, if any, of the parent, guardian or custodian in such waiver. Cf. *In Re R.B.*, 166 Ohio App.3d 626, 2006-Ohio-264 at ¶25.[3]

However, despite the nearly forty-year history of this statutory language, Ohio's courts have not reached a consensus as to its meaning. Any suggestion that the parent is capable of waiving the child's exercise of the right to counsel is foreclosed by due process as described in *Gault* and *Agler*. See *Gault*, 387 U.S. at 41-2, and *Agler*, 19 Ohio St.2d at 78. See also *In Re Doyle*, 122 Ohio App.3d at 772 (holding that "no case in Ohio 'has held that a parent can waive the constitutional right of a minor in a Juvenile Court'"). But that constitutional principle alone has not settled the confusion among the appellate courts, which have been consistently unable to follow the statute's clear language. Compare *In Re Smith* (2001), 142 Ohio App.3d 16, 21-22 (stating that "[t]he custodian's advice that the juvenile admit to the charges if true, or deny them if false, is a solid bit of parenting" and holding that "[i]t would serve no meaningful rehabilitative purpose for a court to appoint legal counsel to a clearly delinquent child . . . [when] all agree that a certain disposition would be in a child's best interests") with *In Re Doyle*

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[3] See also *Williams* at ¶¶28-90, which strongly endorsed the subject minor's right to counsel in neglect and dependency cases. The Court held that R.C. 2151.352, as clarified by Juv.R. 4(A) and Juv. R. 2(Y), provides an unambiguous statutory right to counsel for juveniles, noting that "[o]nce we accept the premise that the subject child is a party whose due process rights are entitled to protection, peripheral practical considerations fade in importance."

(1997), 122 Ohio App.3d 767, 771-72 ("[w]e also note that although Doyle's mother signed the waiver of counsel form, 'this does not constitute a waiver of [Doyle's] right to counsel, as no case in Ohio held that a parent can waive the constitutional right of a minor in a Juvenile Court'"). At least one court has held that R.C. 2151.352 creates a general presumption of nonwaivability, and that "[o]nly if the child has some adult to advise him may the child knowingly and voluntarily waive his right to counsel." See *In Re R.B.* at ¶25. Another has concluded that reliance on the presence of a parent is misplaced. *In Re Royal* (1999), 132 Ohio App.3d 496, 506 (holding that "the presence of appellant's mother at the hearing does not provide dispositive proof that appellant waived his right to counsel voluntarily, knowingly, and intelligently"). Still other courts have sidestepped the question altogether, instead relying heavily on the issue of whether the parent's interest was aligned with the child's. See *In Re Kindred*, Licking App. No. 04 CA 7, 2004-Ohio-3647 at ¶29 (Edwards, J., concurring, arguing that "[i]f non-indigent parents of a child refuse to provide counsel for that child and the child wants to be represented by counsel, that child is indigent and the court must appoint counsel"); *In Re William B.*, 163 Ohio App.3d 201, 2005-Ohio-4428 at ¶¶16-18 (refusing to permit mother to "represent" son for purposes of waiver where her interests appeared to be adverse to her son's best interests); *In Re Johnson* (1995), 106 Ohio App.3d 38, 41-2 (finding that juvenile's waiver of rights was invalid without directly addressing involvement in waiver of juvenile's grandmother who was juvenile's guardian ad litem); and *In Re Poland*, Licking App. No. 04 CA 18, 2004-Ohio-5693 at ¶¶19-20 (suggesting that father's apparently adverse position to son and trial court's failure to discuss right to counsel with father were factors that could render son's waiver of counsel invalid). In

short, despite *Agler* 's clear indication that the right to counsel is personal to the juvenile and that due process requires the appointment of counsel, Ohio's appellate courts have varied widely in their understanding of the requirement in R.C. 2151.352 that counsel "must be provided for a child not represented by the child's parent, guardian, or custodian."

Interestingly, the two states that adopted the Model Juvenile Courts Act have not had such difficulty discerning the meaning of the sentence. Both jurisdictions have concluded that the language imposes an absolute duty on the state to appoint counsel for a child at all stages of the proceedings (including pretrial questioning), and that counsel cannot be waived by the juvenile unless the juvenile is "represented" at the time of waiver by an unbiased parent, guardian, or custodian. See *K.E.S. v. Georgia* (Ga.App. 1975), 216 S.E.2d 670, 672-3, and *In the Interest of D.S.* (N.D. 1978), 263 N.W.2d 114, 119-21. As noted above, at least one Ohio appellate court seems to have accepted this reading of the statute. See also *In Re R.B.* at ¶25. Cf. Kravitz, *supra* at 72 ("[t]he Model Juvenile Court Act provides for a nonwaiverable [sic] right to counsel both in delinquency and 'in need of supervision cases'").

This "parental veto" appears to be the clear meaning of the language and the intent of the legislature—however, the result is plainly unconstitutional. As the United States Supreme Court has observed, "the right to the assistance of counsel implicitly embodies a 'correlative right to dispense with a lawyer's help.'" *Faretta v. California* (1975), 422 U.S. 806, 814, quoting *Adams v. United States ex rel. McCann* (1942), 317 U.S. 269, 279. In *Faretta*, the Supreme Court recognized that both the Sixth Amendment and the Fourteenth Amendment preclude the state from "compel[ling] a

defendant to accept a lawyer he does not want." *Id.* at 818 and 835. There can be no question that one of the aspects of the right to counsel is the right to *waive* counsel—this is as true in juvenile cases just as it is in criminal cases. See, *e.g.*, *In Re Shawnn F.* (Cal.App. 5 Dist. 1995), 40 Cal.Rptr.2d 263, 267-68 ("the law in California is that a minor can waive his right to counsel at trial"); *In Re Dominick F.* (1980), 428 N.Y.S.2d 113, 114-15 ("an adult, if he is not then represented, may waive counsel on his own at any time before judicial proceedings have begun . . . . [a]s a matter of constitutional law, the same rule applies to minors"). See also *Gault*, 387 U.S. at 42 (describing waiver of right to counsel as the "'intentional relinquishment or abandonment' of a fully known right" and citing *Johnson v. Zerbst* (1938), 304 U.S. 458, 464). The constitutional problems that arise by allowing a parent to veto a child's waiver of counsel are manifest—particularly in those situations where the child has made a rational, informed choice to proceed without counsel and concluded that proceeding without counsel is in some way to the child's benefit. Courts may not force counsel upon children accused of delinquency any more than they may force such counsel on adults. See, *e.g., Dominick F.*, 428 N.Y.S.2d at 115 (citing *Faretta*); *Shawnn F.*, 40 Cal.Rptr.2d at 268 (discussing application of *Faretta* to juvenile cases); and *J.W. v. State* (Ind. App. 2002), 763 N.E.2d 464, 467 (applying *Faretta* to juvenile case). See also *Gault*, 387 U.S. at 36 (holding that with respect to the right to counsel "[t]here is no material difference between adult proceedings and juvenile proceedings of the sort here involved").

To be certain, amici absolutely agree with *Gault*'s suggestion that "[t]he juvenile needs the assistance of counsel to cope with the problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain

whether he has a defense and to prepare and submit it." *Id.* See also Stephen Wizner, "The Defense Counsel: 'Neither Father, Judge, Probation Officer, or Social Worker,'" *Trial* v. 7 (September 1971), p. 30 (describing importance and role of defense counsel in post-*Gault* delinquency cases). Moreover, amici are sadly aware that Ohio's juvenile courts are far too often careless and allow children to waive counsel where it is far from clear that those children understand the ramifications of such waiver. See Kim Brooks et al., eds. (2003), *Justice Cut Short: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings in Ohio* at 25 (observing that over 15% of children in custody of DYS were unrepresented by counsel, and nearly 25% of children in local custody were unrepresented), available online at http://www.juvenilecoalition.org.

However, it is the *right* to counsel, rather than the assistance of counsel itself, that is at issue. By authorizing parents to "veto" a child's knowing, voluntary and intelligent decision to waive the right to assistance of counsel, the fifth sentence of R.C. 2151.352 actually *diminishes* the juvenile's right to counsel, by eliminating altogether the juvenile's right to proceed without counsel. See *Faretta*, 422 U.S. at 836 (holding that forcing defendant to accept counsel deprived him of his constitutional right to conduct his own defense). This is clearly at odds with both *Gault* and with this Court's decisions interpreting R.C. 2151.352 in other contexts. See *State ex rel. Asberry v. Payne* (1998), 82 Ohio St.3d 44, 46 (noting that R.C. 2151.352 "provides a statutory right to counsel that goes beyond constitutional requirements"). Moreover, as *Gault* correctly cautions, such limitations on the child's exercise of rights, however well-intentioned, often have the paradoxical effect of undermining the purposes of the

juvenile court system. Cf. *e.g., Gault*, 387 U.S. at 26 (" the appearance as well as the actuality of fairness, impartiality and orderliness—in short, the essentials of due process—may be a far more impressive and therapeutic attitude so far as the juvenile is concerned.")

This Court recognized in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, that when a provision of a state statute is unconstitutional, "severance may be appropriate." *Id.* at ¶94, citing R.C. 1.50. In *Foster*, the Court applied the three-pronged severance analysis of *Geiger v. Geiger* (1927), 117 Ohio St. 451, 466.

> (1) Are the constitutional and the unconstitutional parts capable of separation so that each may be read and may stand by itself? (2) Is the unconstitutional part so connected with the general scope of the whole as to make it impossible to give effect to the apparent intention of the Legislature if the clause or part is stricken out? (3) Is the insertion of words or terms necessary in order to separate the constitutional part from the unconstitutional part, and to give effect to the former only?

Foster at ¶95. After applying the *Geiger* test, this Court concluded that severance of several statutory sections and clauses from other sections was required to address the unconstitutionality of Ohio's sentencing scheme. *Id.* at ¶¶97-99.

Amici respectfully assert that under this same analysis, severance of the fifth sentence of R.C. 2151.352 is fully warranted.[4] Elimination of the sentence solves the constitutional problem, the statute remains both sensible and logical without the

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[4] After application of severance, the relevant portion of R.C. 2151.352 would read:

> If a party appears without counsel, the court shall ascertain whether the party knows of the party's right to counsel and of the party's right to be provided with counsel if the party is an indigent person. The court may continue the case to enable a party to obtain counsel, to be represented by the county public defender or the joint county public defender, or to be appointed counsel upon request pursuant to Chapter 120. of the Revised Code. * * * * If the interests of two or more such parties conflict, separate counsel shall be provided for each of them.

offending sentence, and no additional terms need be added to achieve this result. Most importantly, this result comports with due process as described in *Gault* and *Agler* and also gives full effect to the legislature's original purpose to provide counsel to parties appearing in juvenile court. See generally 133 Ohio Laws 2040, 1969 Am. Sub. H.B. 320 and 136 Ohio Laws 1869, 1975 Am. Sub. H.B. 164. Applying the *Foster* severance remedy would allay the confusion of Ohio's appellate courts over the meaning of the fifth sentence of R.C. 2151.352. Cf. *supra* text at 6-7. Moreover, severance would harmonize the statute with existing constitutional precedent. See generally *Gault*, 387 U.S. at 36; *Zerbst*, 304 U.S. at 464; *Von Moltke v. Gillies* (1948), 332 U.S. 708, 723-24; and *Agler*, 19 Ohio St.2d at 78. See also *Doyle*, 122 Ohio App.3d at 771-72; and *Royal*, 132 Ohio App.3d at 503.

While it is clear that a juvenile has an undiminished right to counsel in a delinquency proceeding, the juvenile nevertheless may choose to waive the exercise of that right. *Faretta*, 422 U.S. at 836. However, there is generally a strong presumption against waiver of the right to counsel. *Von Moltke*, 332 U.S. at 723. The judge before whom the minor appears has a "solemn duty . . . to make a thorough inquiry and to take all steps necessary to insure the fullest protection of this constitutional right." *Id.* at 722. Moreover, this duty extends beyond a "routine" inquiry, involving the use of "standard questions" and the signing of a "standard" written waiver form. *Id.* at 724. This duty "'imposes the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused,'" *id.* at 723, citing *Zerbst*, 304 U.S. at 465, and it is worth noting that in many circumstances, given the

presumption against waiver and the seriousness of the inquiry involved, the court may simply be unable to conclude that a waiver is "intelligent and competent."

> [A] judge must investigate as long and as thoroughly as the circumstances of the case before him demand. The fact that an accused may tell him that he is informed of his right to counsel and desires to waive this right does not automatically end the judge's responsibility. To be valid, such waiver must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter.

Von Moltke, 332 U.S. at 723-24, quoted in *Royal*, 132 Ohio App.3d at 503. See also George L. Blum (2002), *Validity and Efficacy of Minor's Waiver of Right to Counsel—Cases Decided Since Application of Gault,* 101 A.L.R.5th 351.

This Court, following *Faretta*, has held that, to establish effective waiver of assistance of counsel, "the trial court must make sufficient inquiry to determine whether the defendant fully understands and relinquishes that right." *State v. Gibson* (1976), 45 Ohio St. 2d 366, paragraph two of the syllabus. Additionally, while Ohio's juvenile rules recognize the importance of the juvenile's right to counsel, see, e.g., Juv.R. 3, they nevertheless acknowledge that in vast majority of situations juveniles have the ability to waive the right with permission of the court. See *id.* (allowing waiver of right to counsel at all proceedings except Juv.R. 30 hearings) and Juv.R. 4(A) (stating that every party has right to be represented by counsel and indicating that every child has right to appointed counsel). Cf. *Agler*, 19 Ohio St.2d at 78. Finally, Juv.R. 29(B) recognizes that waiver of the right to counsel requires a different and separate inquiry from waiver of other rights, and the juvenile court must strictly comply with that rule prior to determining whether the right to assistance of counsel has been knowingly, voluntarily, and

intelligently waived. See *Royal*, 132 Ohio App.3d at 502-03 (noting compliance with Juv.R. 29(B) is "mandatory").

In sum, the fifth sentence of R.C. 2151.352 has a clear meaning that has thus far been avoided by most Ohio appellate courts, which have perhaps recognized the constitutional difficulties inherent in that meaning, and therefore to the extent it permits a parent to waive or exercise a veto over a child's waiver of the right to counsel that sentence is unconstitutional and must be severed. Moreover, to ensure that a juvenile has knowingly, voluntarily, and intelligently waived his right to counsel, the juvenile must "be made aware of the dangers and disadvantages of self-representation so that the record will establish that 'he knows what he is doing and his choice is made with eyes wide open.'" *Faretta*, 422 U.S. at 835, quoting *Adams v. United States ex rel. McCann*, 317 U.S. at 279. The juvenile court must ensure that any waiver of counsel is "made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charge1s and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter." *Von Moltke*, 332 U.S. at 723-24, quoted in *Royal*, 132 Ohio App.3d at 503. See also Juv.R. 29(B), Juv.R. 3, and Juv.R. 4. Due process requires no less, whether it be a criminal or a delinquency proceeding.

CONCLUSION

For all these reasons, *amici curiae* respectfully request this Court to adopt the appellant's first proposition of law and to reverse the judgment of the Licking County Court of Appeals.

Respectfully submitted,

(per telephone authority, 12/26/2006)
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CERTIFICATE OF SERVICE

I certify a copy of the foregoing document has been served upon the following persons, by regular U.S. mail on this 26th day of December, 2006:

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