

IN THE SUPREME COURT OF OHIO

Toledo City School District Board of Education, et al.,	:	Case No. 14-1769
	:	
Appellees,	:	
Appellees/Cross-Appellants,	:	On appeal from the Franklin County Court of Appeals, Tenth Appellate District
	:	
v.	:	
	:	
State Board of Education of Ohio, et al.,	:	Court of Appeals
	:	Case Nos. 14AP-93
	:	14AP-94
Appellants/Cross-Appellees.	:	14AP-95
	:	

**APPELLEES/CROSS-APPELLANTS' COMBINED MEMORANDUM IN
RESPONSE/OPPOSITION TO APPELLANTS/CROSS-APPELLEES'
JURISDICTIONAL MEMORANDUM AND IN SUPPORT OF JURISDICTION FOR
THE CROSS-APPEAL**

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INTRODUCTION

Cross-Appellants are residents, taxpayers, employees and the parents of students attending the public schools in each of the three Plaintiff School Districts (“Individual Plaintiffs”). The Individual Plaintiffs assert claims on their own behalf as well as on behalf of their minor children who attend the Plaintiff School Districts. The Individual Plaintiffs claim they have been harmed by the unlawful conduct of the Ohio Department of Education (“ODE”) in depriving the School Districts of funds the Districts were entitled by law to receive and that their minor children suffered diminished educational opportunities as a result of the same unlawful conduct. ODE sought dismissal of their claims through a motion for judgment on the pleadings. The trial court granted that motion, dismissing the claims of the Individual Plaintiffs, including the schoolchildren and their parents, on the ground they lacked standing. The court of appeals affirmed that ruling.

The dismissal of the Individual Plaintiffs was the result of significant, consequential errors implicating constitutional interests in public education in Ohio as well as the consistency and integrity of the Ohio Rules of Civil Procedure, all of which are matters of public and great general interest.

EXPLANATION OF WHY THE INDIVIDUAL PLAINTIFFS’ CROSS-APPEAL INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS OF PUBLIC AND GREAT GENERAL INTEREST

At the outset, the Individual Plaintiffs note that this case is not a “school funding” case in the sense of a challenge to the adequacy or sufficiency of funding for Ohio’s public schools. Rather, the case is about the fundamental concept that all Ohioans and all state agencies are obliged to follow the laws enacted by the General Assembly. ODE did not, and thereby deprived three large, urban school districts, together with the student plaintiffs and their parents, of what ODE estimates was over \$40 million in state revenue levied, appropriated and directed by law to

the School Districts for the educational needs of their students, including the student-plaintiffs here.

- A. The sweeping implications of the decision below—that Ohio schoolchildren have no personal, protected interest in the funding mandated for their education by the General Assembly—is of constitutional significance (pursuant to Section 2, Article VII of the Ohio Constitution), impairing on a broad scale educational interests long recognized as preeminent in our society.**

The education of our nation’s children has long been recognized as one of the most significant obligations of government. Sixty years ago, the United States Supreme Court stated as follows in *Brown v. Bd. of Edn.*:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.

347 U.S. 483, 493, 74 S. Ct. 686; 98 L. Ed. 873 (1954). Similarly, this Court has observed that “[o]ver the last two centuries, the education of our citizenry has been deemed vital to our democratic society and to our progress as a state. Education is essential to preparing our youth to be productive members of our society, with the skills and knowledge necessary to compete in the modern world.” *DeRolph v. State*, 78 Ohio St.3d 193, 197, 677 N.E.2d 733 (1997).

In Ohio, as in other states, the significance of education has been deemed so fundamental that a mandate for its provision has been embedded into the Ohio Constitution. *See* Section 2, Article VI of the Ohio Constitution. In furtherance of that mandate, the General Assembly has created a system of public school districts, including the plaintiff School Districts. It also created a state agency—the Ohio Department of Education—charged with administering the system.

The General Assembly appropriates funds for the system and mandates by law the formula by which ODE is to distribute such funds to individual school districts. This year alone, ODE will distribute over \$7 billion to serve Ohio's nearly 1.8 million public school students.

The purpose of the funds is self-evident. Together with other funding sources mandated by law, the funds are intended to finance the school districts' acquisition of resources through which educational opportunities are provided to the district's students. The students are the ultimate intended beneficiaries of the funds. When funds owed by law to a district are withheld by ODE, it is the students of the district who suffer the most consequential harm. The obvious inherent, particularized interest of students and parents in their schools is underscored by laws that impose affirmative obligations on them concerning attendance at school and penalties for noncompliance.

The unique status that state and federal law create for the Individual Plaintiffs as parents and public school students sets them apart from the general public. To say that a student has no particularized interest, beyond that of any member of the general public, in the funds directed by law to the student's school district but withheld from the district by ODE defies reason. Yet this is the basis on which the courts below dismissed the students and their parents from this suit. By the courts' logic, *no* student ever has legal recourse for funds unlawfully denied his or her district by ODE. Conversely, it means that ODE may violate the law with impunity, at least so far as the students are concerned. The implications are staggering, both in constitutional significance as well as societal impact.

The grant of a motion for judgment on the pleadings under Civ.R. 12(C) presupposes that the court found there could be "no set of facts" proven by the dismissed party in support of the claim(s) asserted that would entitle that party to relief. See *O'Brien v. Univ. Community Tenants*

Union, Inc., 42 Ohio St.2d 242, 245, 327 N.E.2d 753 (1975) (a complaint should not be dismissed under Civ. R. 12(B)(6) or 12(C) “unless it appears beyond doubt that the plaintiff can prove no set of facts in support his claim which entitle to him to relief”). Although no such express determination was made by either of the courts below, the dismissal at the pleading stage compels the legal conclusion that neither these nor, for that matter, *any* Ohio public school students or parents could *ever* have standing to assert such a claim.

The significance of such a ruling cannot be overstated. To slam the courthouse door in the face of Ohio’s nearly 1.8 million public school students and their parents with regard to the funding owed their school districts by law is clearly a matter of public and great general interest to all Ohioans. The significance is magnified when one considers that future wrongdoing by ODE might not be challenged by the school districts injured, thus leaving ODE essentially free from any potential judicial oversight of its handling of what this year amounts to over \$7 billion in tax dollars to public schools. Such a result, if it is to occur at all, should only come from this Court.

B. The lower court’s abandonment of notice pleading requirements in favor of what appears to be standardless, ad hoc assessment of the sufficiency of the pleadings creates a future likelihood of erratic and unpredictable outcomes such as that which occurred here.

A second reason this appeal should be accepted for review is the impact of the court of appeals’ disregard of the clear mandates of the Ohio Civil Rules governing both the sufficiency of complaints (Civ.R. 8) and the disposition of motions under Civ.R. 12(C). In addition to the harm caused to the educational interests of these particular students and all others by implication, the court of appeals’ neglect of the pleading standards casts doubt on the manner in which cases in this appellate district will be judged in the future. The implications are far broader than the current litigants and their particular claims.

The complaint alleged that the Individual Plaintiff students: (1) resided in the school districts from which ODE unlawfully withheld substantial funds; (2) attended the schools from which the funds were withheld; and (3) suffered a diminishment of their educational opportunities because of ODE's unlawful conduct. The court of appeals was *required*, by the rules established by this Court, to accept all of this as true.

Had the court of appeals done so, it could not have dismissed the Individual Plaintiffs from this lawsuit. But the court of appeals did not apply the established rules. Instead, that court imposed requirements directly contrary to the rules and drew from concepts that have no basis in law.

Whereas the court was required to take as true the allegations of the complaint, the court instead discounted critical allegations, without explanation (in particular, that the educational resources and opportunities provided the plaintiff students were diminished as a result of ODE's unlawful reduction in funding for the students' districts).

Whereas the court was not permitted to require fact, as opposed to notice, pleading, the court did just that (stating, for example, that “[w]hile the Individual Plaintiffs in this case have alleged that there have been budget cuts and school closings in their respective Districts, as the trial court noted, none of the Individual Plaintiffs have alleged that their children have been denied specific educational opportunities due to ODE's failure to fund their district at the statutory rate or that they lost their jobs as a result of ODE's conduct as alleged in the complaint.”) *Toledo City Sch. Dist. Bd. of Edn. v. State Bd. of Edn.*, 2014-Ohio-3741, ¶ 58.

And whereas no principle of law authorizes dismissal of one party from a suit on the ground that a different party is being permitted to proceed, the court of appeals indicated that this was a consideration in its dismissal of the Individual Plaintiffs:

Even if we were to find that the Individual Plaintiffs have alleged facts which permit an inference of an injury in fact and, even though the allegations of the petition establish a close relationship between the Individual Plaintiffs and the Districts in which they live and work, we have previously determined that the 2009 Budget Bill does not hinder the Districts' right to seek relief. *Consequently*, in order for the Individual Plaintiffs to have standing in this case, they must allege sufficient facts which, if taken as true, establish a personal stake in the outcome of this litigation.

Id. at ¶ 54; emphasis added.

The court below had no discretion or reason to dispense with the rules; it simply did so. *See State ex rel. Harris v. Toledo*, 74 Ohio St.3d 36, 37-38, 656 N.E.2d 334 (1995) (“* * * the court of appeals erred in requiring that Harris plead more specific facts as to the clear legal right and clear legal duty he alleged in his complaint in order to withstand dismissal. * * * ‘It is suggested that the trial court should not create its own exceptions [to the general rule of notice pleading] but that it must follow the Supreme Court rules [*i.e.* Civ.R. 8(A)] unless specifically instructed not to do so by a Supreme Court decision.’”), quoting McCormac, Ohio Civil Rules Practice (2 Ed.1992) 148, Section 6.20).

The court of appeals' error divests the Individual Plaintiffs of consequential rights. The nature of the error also jeopardizes the orderly and predictable administration of justice in this appellate district in the future, which provides an additional and independent reason the Court should hear this appeal.

STATEMENT OF THE CASE AND FACTS

This appeal is requested by Bonnie Jo Herman and Christine Varwig (Toledo Plaintiffs), Keith Cosby and Ann Marie Snyder (Dayton Plaintiffs) and Dessie M. and Christopher Sanders, Edith C. Britt and Angela Barnett (Cleveland Plaintiffs). Each of the named individuals brought this action both on his or her own behalf and as the parent and next friend of his or her minor children who are enrolled in and attending the respective public school districts.

The Individual Plaintiffs allege: (1) they are residents, property owners and taxpayers in their respective public school districts; (2) their children are enrolled in and attend each of the public school districts in which they reside; and/or (3) they are employed by the respective school districts in which they reside. The Individual Plaintiffs also allege that as a result of the unlawful conduct of ODE, their school districts were denied significant amounts of school foundation revenue that the school districts were, by law, entitled to receive. As a consequence of ODE's unlawful conduct, the levels of educational opportunity and resources provided the students were diminished. (Compl. ¶4.)

The circumstances surrounding ODE's unlawful conduct are set forth in greater detail in the School Districts' Memorandum in Response to ODE's Memorandum in Support of Jurisdiction. Those circumstances will not be repeated here, save to say that ODE intentionally departed from the statutory formula for the distribution of school foundation funds to these three urban school districts, costing them what ODE estimates at over \$40 million in revenue intended by the legislature for the education of the Districts' students. The Individual Plaintiffs sued alongside the School Districts, as ODE's unlawful actions, and the significant reduction in the School District's respective state funding, directly impacted the Individual Plaintiffs.

ODE filed a Civ.R. 12(C) motion for judgment on the pleadings seeking dismissal of the complaint as to all plaintiffs. ODE sought dismissal of the Plaintiffs' claims based on the uncodified language included in Am. Sub. H.B. No.1, Section 265.60.70 first enacted in 2009 (the "Budget Provision"), which ODE claimed barred any claim against it for its unlawful conduct in fiscal years 2005, 2006 and 2007. ODE's motion was denied both by the trial court and the court of appeals on the grounds that the Budget Provision violated the Retroactivity Clause of the Ohio Constitution. ODE now seeks review by this Court as to that issue.

ODE also sought dismissal of the Individual Plaintiffs, arguing they lacked standing to pursue their claims. ODE based much of its argument, both in the trial court and in the court of appeals, on the notion that the Individual Plaintiffs had sought standing as representatives of their school districts, a status they never claimed. The trial court granted ODE's motion and dismissed the Individual Plaintiff claims holding, "* * * [t]he individual plaintiffs have not met the requirements to establish that they have standing in this action. Specifically, the individual plaintiffs fail to demonstrate that they have suffered a 'specific injury traceable to the challenged action that is likely to be redressed if the court invalidates the action or inaction.'" (Trial Court Decision at 12.)

The Individual Plaintiffs cross-appealed and the trial court's decision was affirmed: "[i]n our view, the facts alleged in the petition fail to establish damage to the Individual Plaintiffs that is different in character from that sustained by others living in the school district." *Toledo City Sch. Dist. Bd. of Edn.*, 2014-Ohio-3741 at ¶ 55. The Court went on to note, "[w]hile we agree that a taxpayer who has a child attending school in the District may have a greater interest in public school funding issues than the general public, this fact alone does not tip the scales in favor of the Individual Plaintiffs." *Id.* at ¶ 57.

At this point, the court of appeals should have addressed the interests of the student-plaintiffs as well as those of their parents. It did not. Thus, we must assume those interests were never separately considered by the court. The court of appeals then noted, "[w]ithout additional operative facts which would support a reasonable inference that ODE's conduct as alleged in the complaint caused or threatened the Individual Plaintiffs with a specific harm different than that suffered by the public in general, the allegations are nothing more than unsupported legal

conclusions.” *Id.* at ¶ 59. The specific allegation of “educational deprivation” to the students and their parents was never addressed.

ARGUMENT

Cross-Appellants’ Proposition of Law No. 1: Students and their parents, from whose school districts the Ohio Department of Education unlawfully withheld funds, have legal standing to prosecute this suit.

A. Basic Standing Principles.

The core principle of standing is that a litigant must have a personal stake in the matter he or she seeks to litigate. The United States Supreme Court has summarized the principle as follows:

Have the appellants alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions? This is the gist of the question of standing.

Baker v. Carr, 369 U.S. 186, 204, 82 S.Ct. 691; 7 L.Ed. 2d 663 (1962). Standing is determined by the status of the litigant, the nature of the harm alleged, and the remedy sought. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561, 112 S.Ct. 2130; 119 L.Ed. 2d 351 (1992). *See also, Moore v. Middletown*, 133 Ohio St.3d 55, 2012-Ohio-3897, 975 N.E.2d 977 (“[i]t is well settled that standing does not depend on the merits of the plaintiff’s contention that particular conduct is illegal or unconstitutional. Rather, standing turns on the nature and source of the claim asserted by the plaintiffs.”). *Id.* at ¶ 12, quoting *Warth v. Seldin*, 422 U.S. 490, 500, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975).

Here, the court of appeals ruled that the plaintiff students and their parents do not, by virtue of their status, have a stake in the outcome of this suit such as to confer standing on them. Moreover, and as discussed in more detail in connection with the second proposition of law, because the court reached this conclusion on a motion for judgment on the pleadings, the ruling

would be the same regardless of the specific harms caused to these plaintiffs or the specific benefits they would receive if the funding required by law were restored to their districts. This is because if there could exist any set of specific facts that would cure the deficiencies perceived by the court of appeals, the court was obliged to assume such facts and reject the proposed dismissal of these plaintiffs.

B. School students and their parents have a particularized interest, distinct from that of the general public, in ODE's faithful payment of funds to their school districts in the amounts required by statute and appropriated by the General Assembly.

Whereas the court of appeals essentially determined that a student, as a matter of law, can *never* have a personal interest by virtue of that status in the funding owed to his or schools, the law presumes just the opposite. The nexus between funding and educational opportunity has been recognized by this Court and others throughout the nation. *See DeRolph*, 78 Ohio St.3d 193.

Ohio's educational system exists for the purpose of providing an education to Ohio's *students*. It is for this purpose—the education of *students*—that the General Assembly appropriates school funding. The General Assembly also requires ODE to distribute the funds to individual school districts according to a statutory *per student* funding formula. Once received by the districts, the funds are required to be expended in ways that inure to the benefit of the *students*. It should be incontrovertible that the students for whom this entire system exists and is funded have a particularized interest in the same. It should also be incontrovertible that when high-need urban school districts such as those involved in this suit are unlawfully deprived of funds owed them by statute, it is the districts' *students* who suffer the most egregious harm.

Despite the manifest truth of these assertions, the courts below dismissed the Individual Plaintiffs on the ground that they have no special interest in the funds appropriated for their

districts and therefore are barred, for lack of standing, from prosecuting this suit. The dismissal of the students and their parents from this suit divests them of important and historically protected rights.

The United States Supreme Court has recognized that the right to attend public school is protected by the Fourteenth Amendment, and Ohio is compelled to recognize a student's legitimate entitlement to a public education as a property interest protected by the Due Process Clause. *See Goss v. Lopez*, 419 U.S. 565, 574, 95 S.Ct. 729; 42 L.Ed. 2d 725 (1975). Section 2, Article VI of the Ohio Constitution imposes the obligation to provide a thorough and efficient system of common schools upon the general assembly. *DeRolph v. State*, 78 Ohio St.3d at 203. The legislature has created a system of public education as the means to implement that obligation, and public schools exist to provide education to the students they serve.

Further, Ohio makes education compulsory for children between the ages of six and eighteen. R.C. 3321.01. Parents are subject to truancy violations if they fail to cause their children to attend school (*see* R.C. 3321.01; 3321.03; 3321.19), and the children themselves are required to attend school until they graduate or are otherwise excused from attendance. *See* R.C. 3321.03. Failure to observe these requirements can result in criminal penalties for the parents and loss of driving privileges on the part of the students. R.C. 3313.16(B); R.C. 3321.13(B).

These obligations are evidence of the heightened personal interest students and parents have in their schools and the funding that flows to them. The obligations distinguish the Individual Plaintiffs from the public in general and are an additional basis for their legal standing.

The court of appeals' determination that public school students and their parents have no legally protected interest in the funding of their schools is manifestly at odds with Ohio and

federal law. Moreover, as this Court has stated, “standing is not a technical rule intended to keep aggrieved parties out of court.” *Moore v. Middletown*, 2012-Ohio-3897 at ¶ 47. To the contrary, it is “clear that we are generous in considering whether a party has standing.” *Id.* at ¶ 48.

The court below failed to follow these guiding principles when it dismissed the Individual Plaintiffs in a decision that has consequences far beyond the context of this case and these parties. The import of the court of appeals’ reasoning—divesting *all* public school students and their parents from the ability to protect via legal process the funding owed to their schools—merits this Court’s review.

Cross-Appellants’ Proposition of Law No. 2: Because Ohio is a “notice pleading” state, a complaint may not be dismissed upon a Civ.R. 12(C) motion for judgment on the pleadings without the court first construing all material allegations of the complaint as true and drawing all reasonable inferences therefrom in favor of the non-moving party.

The standards by which allegations in a complaint are judged to be sufficient are well-established and, as a general matter, uniformly respected in Ohio. In this case, however, the court below did not merely misapply the standards but appears to have repudiated them, instead imposing requirements that deviate significantly from those historically used in that appellate district and throughout the state.

A. Ohio is a notice-pleading state.

Ohio generally follows notice, rather than fact, pleading. *State ex rel. Cincinnati Enquirer v. Ronan* (2009), 124 Ohio St.3d 17, 18, 2009-Ohio-5947; 918 N.E.2d 515; *see also, Scott v. Columbus Dept. of Pub. Util.*, 192 Ohio App.3d 465, 2011-Ohio-677, ¶ 8 (10th Dist.) (French, J.) (describing Ohio as “a notice-pleading state”). According to Civ.R. 8(A)(1) and this Court, notice pleading requires that “a complaint need only contain a ‘short and plain statement of the claim showing that the party is entitled to relief.’” *Cincinnati v. Beretta U.S.A. Corp.*, 95 Ohio St.3d 416, 424, 2002-Ohio-2480, 768 N.E.2d 1136, ¶ 29.

In *State ex rel. Williams Ford Sales, Inc. v. Connor*, 72 Ohio St.3d 111, 113, 647 N.E.2d 804 (1995), this Court recognized that there are limited exceptions to the general standard of notice pleading in Ohio (“[i]n a few cases, this court has modified the standard by requiring the pleading of specific facts rather than mere unsupported conclusions.”), citing *York v. Ohio State Hwy. Patrol*, 60 Ohio St.3d 143, 145, 573 N.E.2d 1063, 1065 (1991); *State ex rel. Carter v. Wilkinson*, 70 Ohio St.3d 65, 637 N.E.2d 1 (1994) (mandamus action involving inmate claim); S.Ct.Prac.R. X(4)(B) (most original actions filed in this court). This Court has modified the notice pleading standard by requiring that operative facts be plead with particularity in intentional tort and negligent hiring claims, and in fraud or mistake cases brought under Civ.R. 9(B). See *York*, 60 Ohio St. 3d at 145.

This case does not fall within any of these limited exceptions to the general rule requiring notice pleading.

A Civ.R. 12(C) motion for judgment on the pleadings is intended to resolve only questions of law. *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 570, 664 N.E.2d 931 (1996). A determination of a motion for judgment on the pleadings is restricted solely to the allegations in the pleadings. *Id.* at 569. Under Civ.R. 12(C), dismissal is appropriate only where a court: (1) construes the material allegations in the complaint, with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party as true; and (2) finds beyond doubt, that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief. *Id.* at 570. See also, *Peterson v. Teodosio*, 34 Ohio St.2d 161, 165-166, 297 N.E.2d 113 (1973).

To this end, the notice-pleading standard “does not * * * require a plaintiff to plead operative facts with particularity.” *Beretta U.S.A. Corp.*, 95 Ohio St.3d at 423–24. Instead,

notice pleading requires that “a complaint need only contain a ‘short and plain statement of the claim showing that the party is entitled to relief.’” *Id.* at ¶ 29, quoting Civ.R. 8(A)(1).

B. The Tenth District abandoned Ohio’s notice-pleading standard when it granted the motion for judgment on the pleadings as to the Individual Plaintiffs.

The Tenth District affirmed the trial court’s decision to grant a motion for judgment on the pleadings as to the Individual Plaintiffs. It reasoned that the Individual Plaintiffs did not plead their injuries with enough particularity and that they did not establish a causal connection between their injuries and ODE’s failure to fund their district in the proper statutory amount. *Toledo City School Dist. Bd. of Edn.*, 2014-Ohio-3741, ¶¶ 57–59. The court erred in doing so.

The allegations in the complaint were sufficient to meet the notice pleading requirements of Civ.R. 8. The Individual Plaintiffs allege that the wrongful conduct of ODE resulted in the unlawful deprivation of funding, which ODE estimates to be in excess of \$40 million, from their school districts. They further alleged that “[a]s parents and students, they have an interest in the levels of educational resources and opportunity provided to them, which have been diminished by Defendants’ unlawful withholding and recoupment of revenue.” (Compl. ¶4.)

Applying the standards discussed herein, the court of appeals was compelled to conclude: (1) ODE unlawfully withheld a substantial amount of money intended by the legislature to provide for the education of the Individual Plaintiff students; (2) as a direct result of that conduct, the educational opportunities afforded the Individual Plaintiff students was diminished; and (3) the restoration of the funds wrongfully withheld would inure to the educational benefit of those students. These facts alone satisfied the pleading requirements of Civ.R. 8. No additional detail was required.

The Tenth District erred when it did not accept all factual allegations in the complaint as true. The Court reasoned that the Individual Plaintiffs did not allege that ODE’s conduct caused

them harm. *Toledo City School Dist. Bd. of Edn.*, at ¶ 59. But that is exactly what the Individual Plaintiffs alleged. Paragraph four of the complaint lists the Individual Plaintiffs' injuries, each of which is followed by a direct connection to the Defendants' actions—the taxpayers had to pay additional taxes “to make up for the revenue unlawfully held by Defendants”; property value fell because of “Defendants' unlawful withholding and recoupment of revenue”; the employees' “operational resources” “were substantially diminished by Defendants'” actions; and the students (whose parents have an obligation to see that their children get an education, *see* R.C. 3321.03) saw educational opportunities “diminished by Defendants'” actions. In short, the complaint alleged that harm specific to these plaintiffs came from the defendants' actions. The Tenth District erred when it did not accept these allegations as true.

The Tenth District's treatment of the students' injuries is particularly inexplicable. The Court held that “none of the Individual Plaintiffs have alleged that their children have been denied *specific educational opportunities*” due to ODE's actions. *Id.* at ¶ 58. In other words, the court required the Individual Plaintiffs to state with particularity the exact harms they sustained. Again, Ohio law does not require pleading operative facts with particularity. *See Beretta*, 95 Ohio St. 3d at 423–24.

The Individual Plaintiffs pled the students' harm sufficiently when they put forth “simple, concise, and direct” allegations that educational opportunities and resources were diminished because of ODE's actions. Civ.R. 8(E)(1); *see* Compl. ¶ 4; *Buckeye Quality Care Centers, Inc. v. Fletcher*, 48 Ohio App.3d 150, 154, 548 N.E.2d 973 (10th Dist. 1988) (allegation of “great financial hardship” enough to survive a motion to dismiss). Further, the specificity of the lost educational opportunities is an issue of fact, which should be resolved through “liberal discovery” and summary judgment. *Morrisette v. DFS Servs., LLC*, 10th Dist. Franklin No.

10AP-633, 2011-Ohio-2369, ¶ 18; *see Karmasu v. Bendolf*, 4th Dist. Scioto No. 93CA2160, 1994 Ohio App. LEXIS 4545, *18 (Sept. 28, 1994) (“A motion to dismiss * * * is not the proper vehicle by which to test the quantum of evidence supporting those claims or its believability.”).

Considering the above, the Tenth District failed as a general matter to apply Ohio’s “no set of facts” standard. The standard prohibits dismissal unless it “appears beyond doubt” that “no set of facts” would entitle the plaintiffs to relief. *O’Brien*, 42 Ohio St.2d at 245. In applying this standard and drawing all reasonable inferences in the Individual Plaintiffs’ favor, the proper question before the court of appeals was whether any set of facts could have existed in which the Individual Plaintiffs sustained specific and distinct injuries, and whether those injuries could have possibly come from ODE’s actions. The only rational answer is yes.

Given the allegations, the court of appeals was required to assume that the Individual Plaintiffs sustained the injuries they alleged (loss of job, increase in taxes, reduction in property value, diminished job resources, diminished educational opportunities), all of which could have reasonably followed from ODE’s actions (improperly decreasing funding to the districts at issue). Yet, the Tenth District, in what appears to have been an ad hoc, standardless assessment of the pleadings, demanded more. In so doing, the court clearly disregarded the long-standing notice pleading requirements in Ohio.

**THE OHIO DEPARTMENT OF EDUCATION’S APPEAL DOES
NOT RAISE A SUBSTANTIAL CONSTITUTIONAL QUESTION OF
PUBLIC OR GREAT GENERAL INTEREST**

The Individual Plaintiffs incorporate the statements set forth in the School Districts’ Memorandum in Response to ODE’s jurisdictional memorandum, demonstrating why ODE’s appeal does not raise a substantial constitutional question of public or great general interest.

ARGUMENT IN RESPONSE TO THE OHIO DEPARTMENT OF EDUCATION'S PROPOSITION OF LAW

The Individual Plaintiffs incorporate the arguments set forth in the School Districts' Memorandum in Response to ODE's jurisdictional memorandum, in response to ODE's proposition of law.

CONCLUSION

Few of the cases brought to this Court for review involve issues of the magnitude presented here. Questions of standing permeate every claim in every court, and the civil rules, at least in theory, govern the disposition of every one of those cases. When the lower courts stray from the law of standing and depart from the civil rules, there is no recourse save to seek review by this Court.

This case brings each of those issues cloaked in circumstances of enormously significant importance for all Ohioans. ODE is not above the law, and its effort to be so positioned has, thus far, failed in the courts below with respect to the School District Plaintiffs.

But what if there were no School District Plaintiffs? The courts below have held that the students/parent Plaintiffs, the ultimate beneficiaries of Ohio's public schools, have no "skin in the game"—no standing—to pursue relief from ODE's unlawful conduct. Is that really to become the law of Ohio, and if so, who can hold ODE responsible the next time it flagrantly departs from the mandates of the General Assembly? The answers to those questions are of monumental importance, not only to the students/parent Plaintiffs, but also to every Ohioan who believes in the importance of public education and adherence by public officials to the rule of law.

Neither the Plaintiffs here nor any of the other students/parents who may in the future be harmed by similar misconduct by ODE have any forum for recourse, save to bring their claims to

court. Yet here, the doors have been closed to them, leaving them with *no* recourse. If this is the law, it is this Court that should say so, after a thorough consideration of all of the issues. That can only occur by accepting the Individual Plaintiffs' cross-appeal for review.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on the following by regular

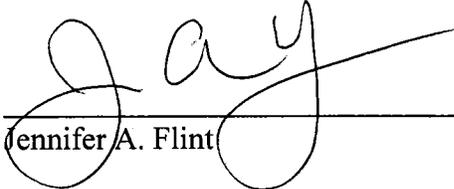
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