IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF CINCINNATI	**Case No. A1001252**
Plaintiff,	**JUDGE ROBERT P RUEHLMAN**
-VS-	
Dr. ROGER CONNERS, *et al.*	**ANSWER**
Defendants	
	Maurice A. Thompson (0078548) 1851 Center for Constitutional Law 88 E. Broad Street, Suite 1120 Columbus, Ohio 43215 Tel: (614) 224-4422 Fax: (614) 224-4644 MThompson@BuckeyeInstitute.org

Now come Defendants, by and through counsel, and aver as follows:

ANSWER

1. Defendants admit the allegations contained in Paragraph 1 of Plaintiff's Complaint.
2. Defendants admit the allegations contained in Paragraph 2 of Plaintiff's Complaint.
3. Defendants deny the allegations contained in the first sentence of Paragraph 3 of Plaintiff's Complaint, and are without information sufficient to form a belief as to the allegations contained in the second sentence of Paragraph 3 of Plaintiff's Complaint.

4. Defendants admit the allegations contained in Paragraph 4 of Plaintiff's Complaint.
5. Defendants deny the allegations contained in Paragraph 5 of Plaintiff's Complaint.
6. Defendants admit the allegations contained in Paragraph 6 of Plaintiff's Complaint.
7. Defendants admit the allegations contained in Paragraph 7 of Plaintiff's Complaint.
8. Defendants admit the allegations contained in Paragraph 8 of Plaintiff's Complaint.
9. Defendants are without information sufficient to form a belief as to the allegations contained in Paragraph 9 of Plaintiff's Complaint.
10. Defendants admit the allegations contained in Paragraph 10 of Plaintiff's Complaint.
11. Defendants deny the allegations contained in Paragraph 11 of Plaintiff's Complaint.
12. Defendants admit the allegations contained in Paragraph 12 of Plaintiff's Complaint.
13. Defendants admit the allegations contained in Paragraph 13 of Plaintiff's Complaint.
14. Defendants admit the allegations contained in Paragraph 14 of Plaintiff's Complaint.
15. Defendants deny the allegations contained in Paragraph 15 of Plaintiff's Complaint.
16. Defendants admit the allegations contained in Paragraph 16 of Plaintiff's Complaint.
17. Defendants admit the allegations contained in Paragraph 17 of Plaintiff's Complaint.
18. Defendants deny the allegations contained in Paragraph 18 of Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

19. **Plaintiff's Deed Restriction forbidding future school use, which supplies its sole cause of action, is void due to the Ohio public policy in favor of transferring unused, taxpayer-owned public school buildings to charter schools. This policy is evidenced by** R.C. 3318.08(U), which specifically requires a school district to notify "the Ohio Community Schools Association when the board plans to dispose of facilities by sale * * *;" 3313.41(G)(1), which requires that, prior to a school district disposing of property, "it

shall offer that property for sale to the governing authorities of the start-up community schools established under R.C. 3314 * * * at a price that is not higher than the appraised fair market value of the property," and that the school district may only otherwise dispose of the property "if no community school governing authority accepts the offer within sixty days * * *;" and R.C. 3313.41(G)(2), which mandates that when a school district has not used real property suitable for classroom space for one year, and has no plans for using the property, "it *shall* offer that property for sale to the governing authorities of the start-up community schools * * * located within the territory of the school district," and again must do so at "not higher than the appraised fair market value of that property."

20. **Plaintiff's Deed Restriction forbidding future school use, which supplies its sole cause of action, is void due to the Ohio public policy in favor of facilitating the growth of school choice through charter school expansion. This policy is evidenced by** the Ohio Community Schools Act, a comprehensive enactment initiating charter schools, the express legislative of intent of which is "providing parents a choice of academic environments for their children and providing the education community with the opportunity to establish limited experimental educational programs in a deregulated setting," and "provide a chance of educational success for students who may be better served in their educational needs in alternative settings," and which unequivocally states "[a] community school created under this chapter is a public school, *independent of any school district, and is part of the state's program of education*." This policy is further evidenced by R.C. 3318.50 and 3318.52, which establish "the community school classroom facilities loan guarantee fund" for the purpose of "guaranteeing loans to community schools" for "classroom facilities." (The fund is "for the sole purpose of

assisting the governing authority in acquiring, improving, or replacing classroom facilities for the community schools by lease, purchase, remodeling of existing facilities, or any other means including new construction.").

21. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

22. **Plaintiff is estopped from now enforcing this deed restriction** because it has thus far remained silent while Dr. Conners has, in anticipation of opening Roosevelt School, (1) incorporated the school as a non-profit corporation and established a board consisting of educators, professors, accountants, attorneys, and others; (2) entered into agreements with a charter school sponsor, charter school operator, licensed school treasurer, financial services organization, and signed letters of intent to curriculum vendors; (3) invested $60,000 into the rehabilitation of the school building, purchased $10,000 of school furniture, contracted with an architect for $7,500, and secured permits for $3,000 in walkway renovations; (4) in October, 2009, the City of Cincinnati Office of the Zoning Hearing Examiner specifically approved the reopening of Theodore Roosevelt School as a charter school, observing that the school would be "compatible with the surrounding residential neighborhood and will positively contribute to economic growth and revitalization of the neighborhood by eliminating an eyesore."[1] At the hearing on the matter, no opposition was raised to use of the building as a school. Accordingly, Mr. Conners is renovating the building, subject to all necessary building permits and applicable codes and regulations.;[2] (5) 35 employees, 18 teachers.

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[1] October 8, 2009 Report and Decision of Office of Zoning Hearing Examiner, Margaret Wuerstle.

[2] Id.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was served upon the parties specified below this _____ day of _____.

_____
Maurice A. Thompson (0078548)

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