

# Equity & Adequacy

## Of School Funding

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Chair Readler, Vice-chair Gilbert and members of the Education, Public Institutions and Miscellaneous and Local Government Committee, thank you for the opportunity to speak to you today. My name is William L. Phillis, Executive Director of the Ohio Coalition for Equity & Adequacy of School Funding, and with me is Attorney Nicholas Pittner, with the Bricker & Eckler LLP law firm. Attorney Pittner was the lead attorney for the plaintiffs in the *DeRolph* school funding case.

I will briefly review some relevant public education background to provide the context for our presentation. See document A which is in your folder. Then I will briefly discuss Relevant Methodologies for Determining the Cost of Public Education which is document B in your folder. Attorney Nick Pittner will then present a brief summary of the *DeRolph* decisions. Following his presentation I will reference document C regarding the impact of charter schools on school district funds and other charter school fiscal data. I will conclude by a reference to three amendments in document D for your consideration. We recommend that Article VI, sections 2 and 3 not be changed.

Regarding the historical background of public education (document A), it is clear that public education is in all aspects “public”— in terms of funding, governance, oversight, transparency and accountability. It has never been and should not become a private, de-regulated enterprise.

The concepts of democracy and universal free public education are weaved together to comprise the fabric of a society that values liberty, justice and the common good. Thomas Jefferson, a consummate advocate for universal public education, stated, “I know of no safe depository of the ultimate powers of society but the people themselves. If we think them not enlightened enough to exercise their control with wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education.”

Jefferson's education philosophy was engrained in the Land Ordinance of 1785, wherein a portion of each township was to be set aside for the support of schools and in the Northwest Ordinance of 1787 wherein is stated, "But religion, morality, and knowledge, being essentially necessary to the good government and happiness of mankind, schools and the means of instruction shall forever be encouraged..."

Ohio's first Constitution, written in 1802, provided that schools and the means of instruction would be encouraged by legislative provision. The 1802 Constitution also provided that the poor would have equal participation in government-supported schools.

Ohio's early laws for public education, in 1821 and 1825, provided for the (a) establishment of school districts within each township, (b) for board members elected by the community to be responsible for the operation of the public schools and (c) for property taxes.

The common school system in Ohio was initiated by the 1821 and 1825 enactments. The legislature gave momentum to the common school movement in Ohio by employing Samuel Lewis as the Superintendent of Common Schools in 1837. Although he served only three years, he inspired a greater state commitment to the common school movement.

The delegates to the Constitutional Convention of 1850 and 1851 obligated the state to secure a thorough and efficient system of common schools. The state became responsible for the system, but the delivery of educational opportunities was maintained at the local community level via elected board members. Board members were made responsible for the operation of the public schools within their respective districts.

The common school system developed slowly and incrementally subsequent to the 1851 "thorough and efficient" constitutional mandate, but laws were enacted to increase its capacity to educate all of the children. During the Constitutional Convention of 1912, the delegates developed an amendment which seemed to be designed to quicken the pace of the growth and development of the public school system. Ohioans approved the amendment (Article VI, section 3) which required the state to organize, administer and control "the public school system of the state supported by public funds." Within seventeen months of the passage of this amendment on September 12, 1912, (a) a major school survey commission report was written and issued, (b) a statewide "School Survey Day" was conducted in the

school buildings across the state, (c) a two day citizens' education congress was held in Columbus and (d) four major education bills were enacted and signed by the governor.

The first school foundation program was enacted in 1935 which was funded by a three-cent sales tax. This program raised the state's contribution to public school expenditures from about 4 percent to 50 percent. The state's contribution to school expenditures slipped to 30 percent prior to the advent of the state income tax in the early 1970s. The income tax revenue boosted the state contribution to public school expenditures to the range of 42-45 percent where it has stayed since the 1980s. The percentage of the public school expenditures borne by local revenue has exceeded fifty in all but a couple of years since the beginning of Ohio statehood.

I refer your attention to document B entitled "Relevant methodologies for determining the cost of public education." A discussion of school funding must include numbers and formulas. But first, and most importantly, the discussion must focus on what compendium of educational programs, curricula and services is necessary for appropriate educational opportunities for all youth. Historically, public education programming has been predicated on a legislated amount of funding; hence, the funds appropriated have driven the educational opportunities and programming. This practice has resulted in great inadequacies and inequities in school funding and, thus, in educational opportunities. The rational approach is for the educational programming to define the money. The needs of students and what is expected from them must drive the funding.

Simply put, student needs should drive the funding and the funding should not drive student needs.

### ***DeRolph* Decisions – a Brief Summary by Attorney Nick Pittner**

The Ohio Supreme Court addressed the constitutionality of Ohio's school funding system four separate times in the *DeRolph* decisions.<sup>1</sup> In the first decision in 1997 (*DeRolph I*), the Court recognized that the Constitutional mandate of Section 2, Article VI of the Ohio Constitution imposes a direct obligation upon the State of Ohio to provide a "thorough and efficient system" for the public education for Ohio's children.

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<sup>1</sup> Collectively, *DeRolph v. State* 78 Ohio St.3d 193 (*DeRolph I*), *DeRolph v. State* 89 Ohio St.3d 1 (*DeRolph II*), *DeRolph v. State* 93 Ohio St.3d 309 (*DeRolph III*) and *DeRolph v. State* 97 Ohio St.3d 434 (*DeRolph IV*).

“Section 2, Article VI of the Ohio Constitution requires the State to provide and fund a system of public education and includes an explicit directive to the General Assembly:

‘The general assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the State \*\*\*.’” *DeRolph I*, at page 203

The Court went on to find that the constitutional mandate of Article VI was not being met, and that the laws then in place were unconstitutional. In reaching that conclusion, the Court noted as one of the primary deficiencies of the system, that the “formula amount” (provided by the school foundation program) has no real relation to what it actually costs to educate a pupil. *Id.* at 199. The Court went on to identify four features of the school funding system that required correction.

By our decision today, we send a clear message to lawmakers: The time has come to fix the system. Let there be no misunderstanding. Ohio’s public school financing scheme must undergo a complete systematic overhaul. The factors which contribute to the unworkability of the system and which must be eliminated are: (1) the operation of the School Foundation Program; (2) the emphasis of Ohio’s school [\*\*\*47] funding system on local property tax; (3) the requirement of school districts borrowing through the spending reserve and emergency school assistance loan programs; and (4) the lack of sufficient funding in the General Assembly’s biennium budget for the construction and maintenance of public school buildings. The funding laws reviewed today are inherently incapable of achieving their constitutional purpose. *Id.* at 212.

The Court then deferred the matter to the General Assembly to enact appropriate remedial legislation which was to be reviewed first by the trial court, and then by direct appeal to the Supreme Court. That review resulted in the Court’s *DeRolph II* decision issued May 11, 2000. Justice Resnick, addressing the issue of overreliance on local property taxes, summarized the problem as follows:

“The inherent inequities of funding systems that rely too much on local property taxes not only are extremely difficult to rectify, but also run counter to our Constitution’s explicit requirement for a *statewide* system of public schools. The valuation of local property has no

connection whatsoever to the actual education needs of the locality, with the result that a system overreliant on local property taxes is by its very nature an arbitrary system that can never be totally thorough or efficient.”

*DeRolph II* at 8.

The Court, after a thorough analysis of the legislative changes offered in response to *DeRolph I*, concluded:

“At the present time, it is apparent to us that, despite the past and present efforts of Governor Taft and our General Assembly, the mandate of the Constitution has not yet been fulfilled.

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The process must continue. The **most glaring weakness** in the state’s attempts to put in place a thorough and efficient system of education is the failure to specifically address the overreliance on local property taxes. If this problem is not rectified, it will be virtually impossible for the revised school funding system to be characterized as thorough and efficient. *Id.* at 36.”

Having twice-mandated that the General Assembly reform Ohio’s school funding laws to no avail, the Court offered a compromise solution in *DeRolph III*, one which would have approved a new funding formula with changes specified by the Court. The State moved for reconsideration and that Motion was granted, thus setting the stage for the Court’s fourth and final *DeRolph* decision.

The *DeRolph IV* decision was issued on Dec. 11, 2002. In that decision, the Supreme Court vacated its *DeRolph III* decision and reinstated *DeRolph I* and *DeRolph II* as the law of the case ruling, once again, that “[t]he current school-funding system is unconstitutional.” *DeRolph IV* at 435. “Accordingly, we direct the General Assembly to enact a school-funding scheme that is thorough and efficient, as explained in *DeRolph I*, *DeRolph II* and the accompanying concurrences.” *Id.* Paramount among the items to be changed, was the system’s overreliance on local property taxes as revenue source of school funding. “The overreliance on local property taxes is the fatal flaw that until rectified, will stand in the way of constitutional compliance.” *DeRolph IV* at 438. Resnick, J. concurring.

While some aspects of the *DeRolph* decisions have been addressed, the paramount flaws in Ohio's school-funding system have not. First, there remains no connection between the amount of state funds allocated to Ohio's public schools and the cost of the educational opportunities those schools are charged with providing. Second, the overreliance on local property taxes as a revenue source continues unabated.

## Lessons Learned

The Supreme Court's decisions clearly establish two principles of paramount importance to Ohio's future. First, the obligation to provide a thorough and efficient system of public education is imposed directly on the State by the Ohio Constitution. Ohio's children should not be deprived of their right to public education by the circumstances of the school district in which they happen to live. Second, the current system, essentially the same system reviewed by the Court in the *DeRolph* decisions, lacks two fundamental provisions. There is no connection between the amount of state funds allocated to a school district and the cost of providing educational opportunities for pupils. In addition, the current system remains overreliant on local property taxes as a funding source. That circumstance serves to perpetuate the disparities in educational opportunity between "rich" and "poor" school districts. For example, one mill of local property taxes will produce annual revenue of \$45.80 in the "poorest" school district and \$740.54 in the "wealthiest", a ratio of over 16 to 1.<sup>2</sup>

We should also understand that Ohio had a "constitutional crisis" over enforcement of the *DeRolph* mandates. The Court's directives were clear and unmistakable. The General Assembly's response was grossly inadequate, consisting of nothing more than "nibbling at the edges" of the problem.<sup>3</sup> The Supreme Court blinked, by not retaining jurisdiction for the enforcement of its orders. The "face-off" was resolved, but the core failings of the system remain in effect today. As a result, many of Ohio's children continue to be deprived of the Constitutional promise of a thorough and efficient system of public education.

Section 2, Article VI of the Ohio Constitution is clear and needs no revision. What is needed are specific standards by which compliance with the mandates of Section 2, Article VI can be measured and enforced. In that regard, the proposed Constitutional Amendment language

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<sup>2</sup> As measured by assessed tax valuation per pupil. Campbell City School District is lowest, with an assessed valuation of \$45,805 and Danbury Local is highest with an assessed valuation per pupil of \$740,508.

<sup>3</sup> *DeRolph IV* at 435.

imposes specific, measurable and enforceable obligations on the General Assembly which, when carried out, will finally fulfill Ohio's obligations to educate its pupils.

## **Going Forward**

No less than the building of highways and the provision of police and fire protection, the provision of public education is a responsibility of state government. As the global economy becomes increasingly competitive, the ability of our children to effectively compete is jeopardized when they are deprived of necessary educational opportunities. Likewise our need for informed and educated citizens capable of making informed voting decisions and carrying out the other duties of citizenship likewise increases. The failure to address this paramount obligation of State government will jeopardize our children's future and the welfare of our State and nation.

## **Charter school fiscal data**

Document C in your packet shows the impact of charter school deductions from school districts and other fiscal implications. Statewide, the state deducts about twice as much money per charter school pupil from school districts as the districts receive per pupil from the state. Document C also provides additional fiscal data regarding charter schools.

## **Proposed amendments**

Document D sets forth three constitutional amendments for your consideration.