

# The Ohio Coalition for

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# Equity & Adequacy

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# Of School Funding

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## Mr. DeRolph Goes To Washington

The *DeRolph* School Funding case was filed in December 1991 by the newly formed organization of school districts named the Ohio Coalition for Equity and Adequacy of School Funding. The complaint brought against the State Defendants was that the State is not fulfilling its constitutional obligation to secure "a thorough and efficient system of common schools." State Defendants greatly resented the Plaintiffs as well as the complaint and used all the awesome power of state government to fend off the unmasking of Ohio's egregious school funding system and to crush the litigation effort.

State Defendants, during the 1993 Perry County Common Pleas Court trial, conceded that the Ohio system of public education was inadequate, inequitable and morally wrong, but proceeded to vigorously defend the constitutionality of the system. The court did not agree that an inadequate, inequitable and morally wrong system matches the constitutional standard of a thorough and efficient system. The trial court ruled twice and the Ohio Supreme Court ruled four times that the system is unconstitutional. The Ohio Supreme Court ruled in March 1997 and May 2000 that the school funding system must undergo a complete systematic overhaul. In September 2001, the Ohio Supreme Court ruled that if specific changes in the school funding formula were made, the Court would deem the system constitutional even without a "complete systematic overhaul" of the school funding system. However, in December 2002, the Court returned to the original position and ruled that the system must undergo a complete systematic overhaul in accordance with the first two decisions.

State Defendants have made cosmetic changes to the unconstitutional, failed system but have refused to give the system the overhaul ordered by the Court. Over-reliance on property tax and a per pupil base support level that is unrelated to pupil needs are two major culprits that have continued unabated since the beginning of the litigation.

Although the Ohio Supreme Court had ruled and firmly held that the system is unconstitutional, the Court, on May 16, 2003, ruled that Perry County Common Pleas Court Judge Linton Lewis is without authority to consider the Plaintiffs' motion requesting a compliance conference. The Court, in effect, closed the courthouse doors to the *DeRolph* Plaintiffs. This decision struck a blow not only to adequate school funding in Ohio but also to the rule of law.

The Ohio Supreme Court has firmly established that the State has failed to meet its constitutional responsibility to provide a thorough and efficient system of common schools. The Court has unquestionably determined that all students in Ohio have the right to a thorough and efficient system of public education. However, the Court has

washed its hands of the enforcement of that right. The Court has denied the Plaintiffs access to the courts with regard to remedy. A right that is not enforced is a hollow pledge. A declaratory judgment that is not enforceable renders the judgment meaningless. Therefore, the Coalition has petitioned the U.S. Supreme Court for relief.

The U.S. Supreme Court received the Coalition's *Petition for a Writ of Certiorari* at 10:19am, August 14, 2003. The Petition is a request for permission to file an appeal with the Court. Most of the petitions filed with the U.S. Supreme Court are rejected. In fact, the Court grants only one to two percent of those filed. So why did the Coalition file a Petition in view of these statistical odds? Because the issue is so very critical.

But what is the issue? Not school funding. The Ohio Supreme Court has ruled four times that the system is unconstitutional. The issue now is whether the rule of law has meaning in Ohio. The question the Coalition presented to the U.S. Supreme Court is:

*"Have the Petitioners (Coalition) been deprived of their rights, under the United States Constitution, to due process and equal protection of law by the decision of the Supreme Court of Ohio barring them from access to Ohio's courts for the enforcement of a final judgment, including remedial orders, entitling Petitioners to affirmative relief?"*

The above question rises in importance to the very top of the concept of ordered liberty. It addresses whether the courthouse doors can be closed to the *DeRolph* Plaintiffs or anyone else. The U.S. Supreme Court's response to the question has implications of monumental magnitude. Hence, the potential of the U.S. Supreme Court granting the Coalition's Petition seems much greater than the statistical one or two percent.

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