

# The Ohio Coalition for

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# Equity & Adequacy

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## Of School Funding

William L. Phillis, Executive Director, 100 S. Third St., Columbus, Ohio 43215 (614) 228-6540, (614) 228-6542 fax, e-mail [ohioeanda@sbcglobal.net](mailto:ohioeanda@sbcglobal.net)

### **Brief Commentary on the Chronology of the Education Provisions in the Ohio Constitution and the rationale for a New Education Amendment**

State legislatures typically are reactive rather than proactive entities. Law-making bodies generally linger rather than lead in the public policy arena. Hence, constitutional amendments are required from time-to-time to spur state government toward the public good, particularly in the realm of public education.

State legislatures often fail to meet their constitutional responsibilities, especially in the provision for public education. School funding suits challenging the constitutionality of the system have been litigated in at least 45 states in the past two decades. More than half of the cases have been decided in favor of the plaintiffs.

Education amendments to the Ohio Constitution have been adopted on a 40-60 year cycle. The first Ohio Constitution (1802) included a provision borrowed from the Northwest Ordinance of 1787 that required the legislature to "encourage schools and means of instruction." Dissatisfied with the state's progress, delegates to the Constitutional Convention of 1850 and 1851 crafted a provision that mandated the legislature to secure a "thorough and efficient system of common schools throughout the state". (Article VI, section 2)

Some progress toward a statewide system had been made by the early 1900s but not enough to satisfy the delegates to the 1912 Constitutional Convention. These delegates, like those 62 years earlier, were dissatisfied with the state's progress in providing education. The state had not fulfilled the "thorough and efficient" mandate; hence, the delegates proposed an amendment to accomplish the "organization, administration and control of the public school system of the state supported by public funds". This amendment was adopted via statewide ballot on September 3, 1912. (Article VI, section 3)

Forty-one years later, in 1953, the citizens of Ohio, discerning the need for more aggressive state leadership in public education than state government had been providing, adopted a constitutional amendment that established the positions of State Board of Education and Superintendent of Public Instruction. The amendment (Article VI, section 4) passed in spite of opposition from then-Governor Frank Lausche. Enabling legislation provided for an elected State Board of Education and thus the State Education Agency became in many respects a fourth branch of government.

The elected State Board of Education had its initial organizational meeting in January 1956. The original and on-going mission of the board is "to exercise leadership in the improvement of public education in Ohio". The board and its mission seem to have been a threat to the various governors and legislatures from the beginning.

Soon after the board was organized, legislation was introduced to dissolve it. This became a routine practice during the early years of the State Boards existence. Most of the governors since 1956 have expressed their desire to either eliminate the State Board or appoint the membership so as to be able to control it.

State Superintendent Franklin B. Walter resisted a suggestion by Governor James Rhodes that an appointed board replace the elected board. Governor Richard Celeste met with the State Board during the first month of his first term to tell the members they were "short termers"; thus he did not hide his intention of pushing for an appointed board. Governor George Voinovich in December 1990, even before being inaugurated, appealed to certain members of the board to withdraw the legislative policy and

recommendations that were in the process of being forwarded to the 119<sup>th</sup> General Assembly; however, the recommendations went forward. Voinovich then worked doggedly for legislation to replace the elected members with appointed members.

Voinovich was partially successful in the battle to secure an appointed State Board. The legislature reduced the elected membership of the State Board from 19 (one from each congressional district) to 11 (one from each of 11 new districts each comprised of three Senate districts). There was insufficient support for an appointed board so a smaller size board was established as a compromise. The politicians involved in this move felt that a smaller board would be easier to control.

After the State Board of Education voted not to appeal the July 1, 1994 DeRolph decision by Perry County Common Pleas Judge Linton Lewis, Voinovich renewed his efforts to secure an appointed board. Again the legislation advanced resulted in a compromise—11 elected members and eight appointed members.

Voinovich inserted himself in the process of appointing the Superintendent of Public Instruction in 1991. That move by Voinovich in 1991 and on subsequent occasions, and the legislation for the appointment of eight members, changed the dynamic of the State Board. The Governor and legislature now wield considerable influence over the State Board of Education and the Superintendent of Public Instruction. The independence enjoyed by the elected State Board in earlier years has been diminished or lost.

Some legislators have recently been pushing the concept of making the state agency a cabinet position and eliminating the State Board altogether. They seem to view the Board as an obstacle in the way of the free reign of education funding and policy they desire. They seem to cherish having the sole power over education, with no checks and balances.

It is obvious that much progress has been made in educational opportunities over the years. It is equally obvious that the social, civic, technical and economic demands on citizens require that even greater educational opportunities be afforded the youth of Ohio. However, the legislature, being the reactive body that it has always been, is not keeping pace with the educational demands of the times. Four Ohio Supreme Court decisions in DeRolph, largely being ignored by the Governor and legislature, verify the quiescent nature of the legislature regarding state responsibility for a thorough and efficient system of public education.

Now, just over 50 years from the adoption of the last constitutional amendment regarding public education, a further mandate from the sovereign people of Ohio is essential. An amendment is sorely needed that will force state government to implement the provisions of Article VI, sections 2 and 3 of the Ohio Constitution. The amendment must establish education as a fundamental right and force the state to identify, cost out and fund the components of a high quality, thorough and efficient system of public education while reducing the emphasis on property tax. The time is now!

**At this point in Ohio's history, a comprehensive constitutional amendment that nails down state responsibility for providing each school child high quality educational opportunities as an entitlement is essential. A constitutional amendment that merely increases the property tax burden, such as was recommended by the Governor's Blue Ribbon Task Force on Financing Student Success, without addressing the state's responsibility, is inappropriate and counterproductive. A comprehensive amendment is necessary.**

It is quite obvious that the Governor and legislature will continue to ignore the current constitutional provisions and the Court orders to give the school funding system a complete systematic overhaul. The Court will not enforce its own orders. Additionally, the Governor and legislature will continue to erode the State Board's leadership role. The only viable alternative is for the people of Ohio to adopt a constitutional amendment that forces the state to define, cost out and fund high quality educational opportunities regardless of the composition of the legislature or the party in power.