

The Ohio Coalition for Equity & Adequacy Of School Funding

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The Pursuit of School Finance Reform in Ohio

In December 1991, the Ohio Coalition for Equity and Adequacy of School Funding challenged the school funding system by filing the *DeRolph* case. The trial court ruled the system unconstitutional on July 1, 1994. Subsequently, the Ohio Supreme Court ruled the system unconstitutional four times. However, due to changes in membership on the Ohio Supreme Court, the Court released jurisdiction of the case in May 2003. Hence, a remedy has not been perfected but is still being sought.

Impact of the *DeRolph* school funding litigation

In the recent *DeRolph* school funding litigation, although the plaintiffs won all four of the Ohio Supreme Court decisions and accrued positive results, state officials were able to wiggle out of the Court order to give the school funding system a complete systematic overhaul. After the first Supreme Court decision in 1997, the President of the Ohio Senate told reporters that the Court would not be able to enforce its order. Subsequent to the September 6, 2001 Court decision, the Senate President publicly stated that the state has no money and **thus the Court has a problem**. History, since 1997, indicates that although substantial gains have been made as a result of the Court decisions, the Court has not enforced the core element of its decision—the complete systematic overhaul. So the prediction of the then-Senate President has essentially come true.

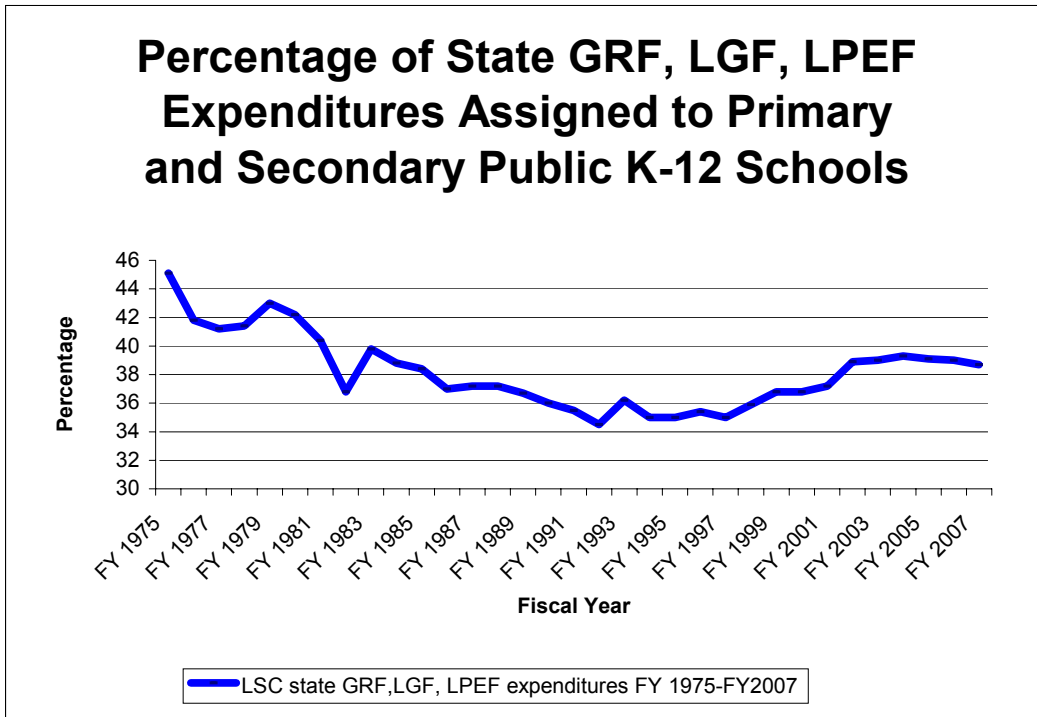
At this juncture it will be instructive to review the state budget priority for public K-12 education since 1975 and consider the impact of the *DeRolph* decisions on the state's budget priority since 1992. Also it will be helpful to consider the impact of *DeRolph* on the provision for school facilities.

The most dramatic impact is in the state's support of the construction and renovation of school facilities. Prior to 1997, the state's support of school facilities was negligible. Since the 1997 *DeRolph* I decision, the state has provided \$4,918,609,203 as shown below.

Fiscal year	State of Ohio Capital Appropriations for School Facilities
FY 1998-1999	\$555,000,000
FY 1999	\$170,000,000
FY 1999-2000	\$505,000,000
FY 2000-2001	\$325,700,000
FY 2000	\$58,903,489
FY 2001-2002	\$886,005,714
FY 2003-2004	\$984,800,000
FY 2004-2005	\$122,800,000
FY 2005-2006	\$1,310,400,000

Source: Ohio School Facilities Commission

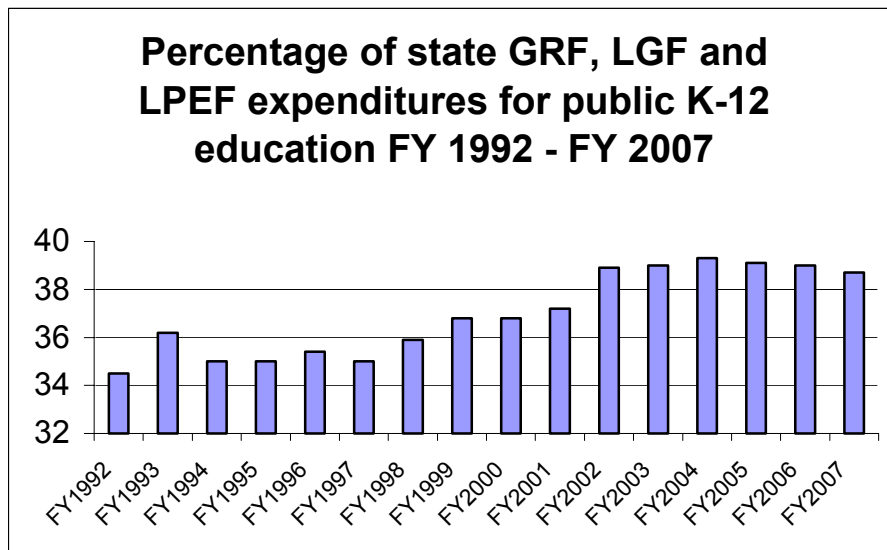
The graph below shows the changes in the state's budget priority for education from FY 1975 to FY 2007. In 1975, 45% of the state budget was allocated to public K-12 education. That percentage diminished to 34.5 in 1992 and then, due to the pressure of *DeRolph*, increased to 39.3 in 2004.



Source: Legislative Service Commission

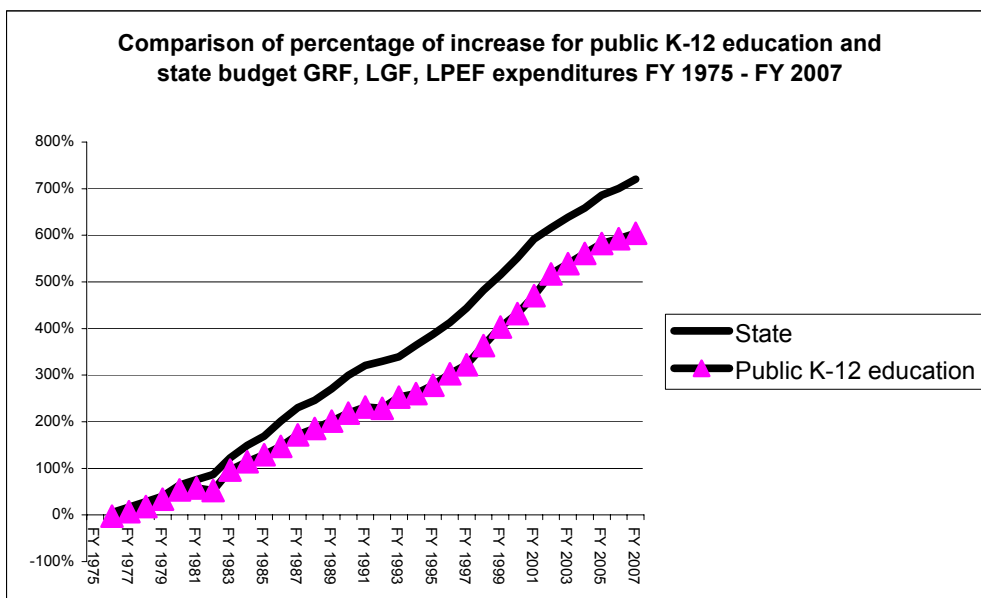
Some suggest that the demand for health care and other human services needs have caused the reduction in the state budget priority for public K-12 education. There have been additional demands on the state budget since 1975, but the demands on public schools have likewise expanded dramatically since 1975. Full service to special education and vocational education students, auxiliary services for non public schools, administrative cost reimbursement for non-public schools, mandatory preschool for handicapped children, Headstart, preschool and proficiency tests are current budget demands that were not required in 1975.

The *DeRolph* litigation has driven up the state budget priority for public K-12 education since FY 1992 when *DeRolph* was filed. The following graph displays a substantial shift in emphasis on education funding. **It is more than of passing interest that the state budget priority for public K-12 education has fallen off since the Court released jurisdiction of *DeRolph*.** The following graphic shows the pattern of state budget for public K-12 education from FY 1992-FY 2007.



Source: Legislative Service Commission

Often state officials cite the higher-than-normal state increases to public K-12 education in recent years. The state budget priority for public K-12 education, as noted earlier, has changed due to the pressure of the *DeRolph* litigation. However, this matter must be put in historical perspective. The graphic below shows that since 1975 the annual increases in the overall state budget have outstripped the state expenditure increases for public K-12 education.



Source: Legislative Service Commission

The State Will Not Fix The System In Accordance With The Court Decisions

It is clear that under current circumstances the state will not fix the school funding system. It is equally clear that the funding system will further deteriorate unless there is significant outside intervention from the citizens of Ohio.

The root cause for the ongoing, broken system of school funding is the common lack of understanding of the 154-year-old constitutional mandate requiring the state to establish and maintain a thorough and efficient system of common schools. Article VI, section 2 of the Ohio Constitution (below) clearly identifies the state’s role in providing educational opportunities.

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; but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state.

The *DeRolph* decisions turned on this “thorough and efficient” clause. The Court opined in *DeRolph I* that Ohio’s elementary and secondary schools are neither thorough nor efficient and ordered a complete systematic overhaul of the school funding system. The Court clarified that Article VI, section 2 of the Constitution of Ohio:

- *Establishes one state system of public common schools*
- *Places full responsibility for securing the one system on the General Assembly and that this obligation cannot be delegated away to school districts*
- *Requires not just a system of education, but a thorough and efficient system i.e. a system of high standard and level of quality*
- *Does not allow any child to be deprived of a high quality education due to lack of property wealth in the district of residence*

The attached document entitled, “Principles Of Law That Have Emerged From The *DeRolph* Decisions”, cites the pertinent statements from the Court decisions.

The Court ordered a “complete systematic overhaul” of the school funding system. The Court identified several flaws in the system that must be remedied in order to perfect the “overhaul”. Among those flaws are:

- The operation of the School Foundation Program
- The emphasis of Ohio’s school funding system on local property tax

- The requirement of school district borrowing through the spending reserve and emergency school assistance loan programs
- The lack of sufficient funding in the General Assembly's biennium budget for the construction and maintenance of public school buildings
- Unfunded mandates
- Phantom revenue
- Lack of strict, statewide academic guidelines that should be developed and rigorously followed throughout all of Ohio's public school districts

Regrettably for Ohio's school children, the state has not corrected the aforementioned flaws and thus the "complete systematic overhaul" as ordered by the state remains totally unresolved. In the *DeRolph IV* decision rendered December 11, 2002, the Court opined that the legislature has merely "nibbled on the edges" of the complete systematic overhaul demanded in *DeRolph I* and *DeRolph II*, and ordered State Defendants to fix the system. Paragraph five of *DeRolph IV* states:

To date, the principal legislative response to DeRolph I and DeRolph II has been to increase funding, which has benefited many schoolchildren. However, the General Assembly has not focused on the core constitutional directive of DeRolph I: "a complete systematic overhaul" of the school-funding system. Id. 78 Ohio St.3d at 212, 677 N.E.2d 733. Today we reiterate that that is what is needed, not further nibbling at the edges. 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. DeRolph VI, paragraph 5

However, the Court membership changed in January 2003. Since that time, the Court has refused to enforce its order and the state has completely abdicated its obligation to obey the order.

The Approach To Breaking The Logjam

Under current circumstances in Ohio, lobbying the Governor and legislature to fix the school funding system is not productive. Further state litigation, considering the makeup of the Ohio Supreme Court, would be fruitless at this time. Given the boundaries of the current legislative districts (most of which are not competitive), the chances of changing the leadership of the legislature within the next few years is not encouraging.

So what intervention strategies are available? Article I, section 2 of the Ohio Constitution states:

§ 1.02 Right to alter, reform, or abolish government, and repeal special privileges (1851)

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly.

Article II, section 1 of the Constitution provides for the right of initiative petition to change the laws or the Constitution. There seems to be general consensus in the education community that additional constitutional direction must be given by the people of Ohio to the legislature and Governor. Simply put, Ohioans must pass a constitutional amendment to resolve the school-funding dilemma in this state. It is of interest that since the beginning of statehood there has been a constitutional amendment regarding public education every 50 or so years. The last educational amendment was adopted 52 years ago.

Why is an additional constitutional mandate necessary? What kind of decree is needed? What essential elements must be included in the mandate? Will a majority of Ohioans readily embrace a proposal that guarantees all school children high quality educational opportunities? Will the education community muster the courage and determination to coalesce around a plan that resolves the problems inherent in the current system? Will state officials meet the obligations imposed upon them by new constitutional language? These are some of the questions that must be pondered, examined and answered as attempts are made to resolve the school funding dilemma via a constitutional amendment.

Why an additional constitutional provision? The reasons are manifold, some of which follow. Presenting a proposed amendment will give Ohioans an opportunity to examine their core beliefs. Do we as Ohioans wish to hold onto a system that sustains unequal treatment of schoolchildren? Are we willing to pay for high quality educational opportunities for all? As a society we must decide whether we like the inadequate and unfair system or embrace a completely new system.

During the 154-year history of the thorough and efficient clause, state officials have failed to meet its requirement. The failure of the state is not related to one political party. Both parties have balanced the state budget on the backs of property taxpayers. For the first 130 years of statehood, nearly all the financial support for public schools in Ohio was derived from property taxes. The first school foundation program, in 1935, appears to have been designed to provide a supplement to the local property tax. It was not predicated on the constitutional provision which holds the state responsible for school funding.

The Power Of Entrenchment Must Be Overcome

The power of entrenchment is awesome. As Ohioans we have lived with an inadequate and inequitable system so long that it is hard to envision one that is fair and just. We have only known a system in which only schoolchildren in high capacity districts are entitled to high quality educational opportunities. **In Ohio, quality of education is a function of the property tax base of various districts—not the needs of students.** The funds available to each district drive the education program. How much does it currently cost to educate students in Ohio? That depends on how much money a district has to spend, which has no relationship to student needs.

The Sense Of "Community"

We as Ohioans typically view the idea of "community" as district wide or sectors within a district. We don't think in terms of a statewide education community even though that is what the Constitution requires regarding the funding of public education.

We lobby state officials to maintain or gain an advantage for the type of district we represent. It is as if there are 613 systems and a myriad of service providers each competing for resources without regard to the one system called for in the Ohio Constitution. Additionally, statewide education organizations with legitimate concerns for self-preservation, weigh-in on school funding issues with varying degrees of commitment and competitiveness.

It is within this backdrop of confusion of constitutional requirements, the Court's decisions and the political considerations of statewide and local public education advocates, that various attempts to formulate additional constitutional language have been made.

One's view of the requirements of the Constitution and of the Court's orders determines what one is willing to proffer as a constitutional remedy. Those that have been closest to the *DeRolph* litigation have a particular view and those that have been on the fringes of *DeRolph* tend to have differing views.

Educate Ohio constitutional amendment approved for circulation on April 7, 2005

Educate Ohio was crafted by those close to the *DeRolph* litigation, including lead attorney Nick Pittner. Educate Ohio was structured to ensure that the terms of the Court would have to be met. Additionally, Educate Ohio goes beyond the Court orders in *DeRolph* to absolutely **guarantee** high quality educational opportunities for all.

Educate Ohio raises public education in Ohio to the status of a fundamental right. Among other things, this status requires that the state give public K-12 education a priority.

Educate Ohio nails down the current constitutional tenet that there is one statewide high quality system of public education that is accessible to all school children. This will end inadequate educational programming anywhere in Ohio. It provides for a completely new system that has no resemblance to the current system.

In contrast to the complex, convoluted current system, Educate Ohio is simple. The district "SF3" for Educate Ohio's funding plan could be placed on a half sheet of paper.

It will eliminate the need for school operating levies. School officials will be able to focus on education improvement issues rather than fundraising.

Educate Ohio will hold state officials accountable for ensuring high quality educational opportunities for all. No longer will the Governor and legislature be able to shift the funding responsibility to the local districts.

Regarding the determination of cost factors and distribution of funds to school districts, Educate Ohio specifies:

- ☆ A process by which a board-based commission, a majority of which shall be educators working for publicly elected boards of education, will identify the educational components of high quality educational opportunities
- ☆ A process whereby the State Board of Education must cost out the components by using actual cost data, not a statistical inferential approach
- ☆ That the legislature must fund the entire cost minus the revenue from 15 local mills in every school district
- ☆ The districts will be held harmless at the current level of state and local revenue

This plan will eliminate phantom revenue and unfunded mandates.

Most of the statewide education organizations do not support Educate Ohio

Supporters of Educate Ohio failed to secure sufficient signatures to get the proposal on the ballot in November 2005. Thus, they set their sights on November 2006. However, since most of the statewide education organizations do not support the proposal, signature gathering tapered off during the fall and winter of 2005.

In January 2006, the Ohio Coalition for Equity and Adequacy of School Funding initiated a plan to bring the statewide education organizations together to craft a constitutional amendment that all organizations could support. Facilitated discussions, under the guidance of a federal mediator, were initiated. The organizations appear to be working together to find common ground and are making progress. Organization leaders are committed to making the process work.

It is hopeful that an agreement will be reached by September 2006. If so, a "new" constitutional amendment will be crafted and slated for the November 2007 ballot.