"As Perfect as Can Be Devised": *DeRolph v. State of Ohio* and the Right to Education in Ohio

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"As Perfect as Can Be Devised":¹
DeRolph v. State of Ohio and the Right to Education in Ohio

It's time for results. It's time to get something out of our money . . . They have to do what everybody else has to do. They have to restructure.

GOVERNOR GEORGE VOINOVICH²

I would invite the governor and his staff to visit some of these districts and show them how to get more for the buck . . . . He would find kids going to school without bathrooms. He would find kids going to school in coal bins.

WILLIAM L. PHILLIS, EXECUTIVE DIRECTOR OF THE OHIO COALITION FOR EQUITY AND ADEQUACY IN SCHOOL FUNDING³

In DeRolph v. State of Ohio⁴, the Perry County Common Pleas Court held that Ohio's current system of funding public elementary and secondary education through local property taxes violates the Ohio Constitution.⁵ The court based its holding on two major grounds. First, the court found that the inequities visited upon poor school districts by the current funding system deprive students of

¹. II REPORT OF THE DEBATES AND PROCEEDINGS OF THE CONVENTION FOR THE REVISION OF THE CONSTITUTION OF THE STATE OF OHIO, 698 (J.V. Smith ed., 1851) [hereinafter DEBATES OF 1851 CONVENTION] (statement of Delegate Archbold concerning the meaning of a "thorough and efficient system of common schools").

². Vindu P. Goel, Voinovich Assails Schools Over Lawsuit, CLEVELAND PLAIN DEALER, July 7, 1994, at 5B (criticizing school districts for not "doing more with less" after the issuance of the DeRolph opinion).

³. Id.

⁴. DeRolph v. State of Ohio, No. 22043, (Perry County, July 1, 1994) (copy available at cost from the Ohio Coalition for Equity and Adequacy in School Funding, 100 South Third Street, Columbus, OH 43215).

⁵. Id. at 463.
their fundamental right to education, guaranteed by the Ohio Constitution, and so deny them the equal protection of the law.\textsuperscript{6} Second, the court held that the State, by not remediing these inequities, has failed to fulfill its constitutional duty to "secure a thorough and efficient system of common schools" throughout the state of Ohio.\textsuperscript{7}

Brought by the Ohio Coalition for Equity and Adequacy of School Funding on behalf of 500 of the 748 school districts in Ohio,\textsuperscript{8} \textit{DeRolph} represented a concerted state-wide effort to

\textsuperscript{6} Id. at 469. The Court grounds the fundamental right to education in article I, section 1 and section 7 of the Ohio Constitution. Article I, section 1 states that:

\begin{quote}
All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.
\end{quote}

\textsc{Ohio Const.} art. I, § 1.

Article I, section 7 states, in pertinent part, that:

\begin{quote}
... Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the general assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.
\end{quote}

\textsc{Ohio Const.} art. I, § 7.

Article I, section 2, from which the Court the guarantee of equal protection, states that:

\begin{quote}
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.
\end{quote}

\textsc{Ohio Const.} art. I, § 2.

The Court also held that the current funding system violated \textsc{Ohio Rev. Code Ann.} § 3323.02, (Baldwin 1990), by not providing handicapped students with an appropriate education, as required by the statute. As such, the Court held that this violation deprived handicapped students in poor districts of the article II, section 26 requirement of the "uniform operation of the laws." \textsc{Ohio Const.} art. II, § 26. This Comment will focus only on how this holding relates to the broader equal protection claim.

\textsuperscript{7} \textit{DeRolph} v. State of Ohio, No. 22043, (Perry County, July 1, 1994) at 475. Article VI, section 2 of the Ohio Constitution states that:

\begin{quote}
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.
\end{quote}

\textsc{Ohio Const.} art. VI, § 2.

\textsuperscript{8} Tim Miller, \textit{Court Voids System; Ohio School Funding Unconstitutional}, \textit{Dayton Daily News}, July 2, 1994, at 1A.
overturn Ohio's property-based school funding system. The voluminous trial record demonstrated the plaintiffs' well-organized challenge and the defendant's equal resolve in defending against it. Although Judge Linton D. Lewis, Jr.'s opinion represents a complete victory for the plaintiffs, this opinion merely constitutes "the first act in a three-act drama that will not conclude until the Ohio Supreme Court rules." This Comment will address the strength of DeRolph's constitutional holdings. Part I will discuss Board of Education v. Walter, a 1979 case in which the state funding system then in effect, the guaranteed yield formula, withstood a similar constitutional challenge. Part II will briefly describe the current funding system and set forth in detail the DeRolph court's essential findings of fact and conclusions of law. Part III will then examine: 1) Walter's precedential effect on DeRolph; 2) the validity of the equal protection holding, and 3) the validity of the "thorough and efficient" holding.

I. BOARD OF EDUCATION v. WALTER

In Board of Education v. Walter, the named plaintiffs were the Board of Education, Superintendent, Clerk-Treasurer, students, and

9. With 71 witnesses and 500 exhibits, the total trial record came to 10,827 pages. DeRolph at 463.
10. Plaintiffs included three rural and two urban boards of education. The rural districts were Northern Local School District (Perry County), Southern Local School District (Perry County), and Dawson-Bryant Local School District (Lawrence County). The urban districts were Lima City School District and Youngstown City School District. Plaintiffs also included superintendents, board members, teachers, parents, and children of these districts. Id. (cover page).
11. Defendants were the State of Ohio, the State Board of Education, the Ohio Department of Education, and Dr. Ted Sanders, in his individual capacity as the Ohio Superintendent of Public Instruction. Id. After the DeRolph decision, the State Board of Education voted 6-5 not to appeal. The State, however, did appeal and joined the State Board of Education, along with the Ohio Department of Education, as defendants. The plaintiffs planned to challenge the forcible joinder of these parties on appeal. Jonathan Riskind, State to Appeal School Funding Ruling, COLUMBUS DISPATCH, August 13, 1994, at 1C.
12. Miller, supra note 8 (quoting State Senate President Stanley Aronoff).
13. 58 Ohio St. 2d 368 (1979), cert. denied, 444 U.S. 1015 (1980).
15. See infra notes 20-59 and accompanying text.
16. See infra notes 60-106 and accompanying text.
17. See infra notes 107-15 and accompanying text.
18. See infra notes 116-49 and accompanying text.
19. See infra notes 150-71 and accompanying text.
parents of the financially-strapped Cincinnati School District.\textsuperscript{20} They filed a class action on behalf of all other school districts similarly situated seeking a judgment declaring the guaranteed yield school funding formula\textsuperscript{21} unconstitutional under the "equal protection and benefit" clause of article I, section 2 and the "thorough and efficient" clause of article VI, section 2 of the Ohio Constitution.\textsuperscript{22} At the trial level, the plaintiffs succeeded in both claims.\textsuperscript{23} The court of appeals, however, upheld only the equal protection claim.\textsuperscript{24} It reversed the trial court's "thorough and efficient" holding, stating that the trial court "overstepped its power" by infringing upon the General Assembly's broad authority in educational matters.\textsuperscript{25}

Upon appeal of this decision, the Ohio Supreme Court held that the guaranteed yield formula violated neither the "equal protection and benefit" clause nor the "thorough and efficient" clause.\textsuperscript{26} Although this holding seems contrary to the later \textit{DeRolph} opinion, \textit{Walter} is as important for the decisions it avoided as the decisions it made. A close examination of the \textit{Walter} opinion reveals that the court, rather than focusing on the plaintiffs' claim to a right to an adequate education, redefined the issue as one "more directly concerned with the way in which Ohio has decided to collect and spend state and local taxes."\textsuperscript{27} This reformulation of the case,

\begin{itemize}
\item \textsuperscript{20} Board of Educ. v. Walter, 58 Ohio St. 2d 368, 368 (1979), \textit{cert. denied}, 444 U.S. 1015 (1980).
\item \textsuperscript{21} The guaranteed yield formula operated as follows. First, the local districts were required to levy a tax of at least 20 mills per dollar of taxable property valuation. The state would then guarantee each district funds sufficient to achieve a minimum property tax base of $48,000 per pupil, which results in a minimum guarantee of $960 per pupil ($48,000 x 20 mills). The state would also give districts a bonus for extra local millage between 20 and 30 mills. For a more detailed description of this formula see Robert J. Davidek, \textit{Note, The School Funding Challenge in Ohio: Board of Education v. Walter,} 11 \textit{U. Tol. L. Rev.} 1019, 1019 n.2 (1980). For a thorough description of the deficiencies of this system see Annette B. Johnson, \textit{State Court Intervention in School Finance Reform,} 28 \textit{CLEV. ST. L. REV.} 325, 361 (1979).
\item \textsuperscript{22} \textit{Walter}, 58 Ohio St. 2d at 369.
\item \textsuperscript{23} \textit{id.}
\item \textsuperscript{24} \textit{id.}
\item \textsuperscript{25} \textit{id.} at 380.
\item \textsuperscript{26} \textit{id.} at 368.
along with some nifty manipulation of the facts, allowed the court to avoid the issues DeRolph presented.

In deciding the equal protection claim, the Walter court adopted the traditional two-tiered equal protection analysis employed by the United States Supreme Court in its seminal school funding case, San Antonio Independent School District v. Rodriguez. The Walter Court stated that if Ohio’s funding system interfered with the exercise of a fundamental right, here the right to an adequate education, it would be overturned unless “closely tailored” to effectuate a compelling state interest. Conversely, if no fundamental right were involved, the system would survive if merely “rationally related” to a state interest.

However, the Ohio court declined to adopt Rodriguez’s test for determining the fundamentality of a right—namely, that the right be “explicitly or implicitly guaranteed by the Constitution.” First, it correctly pointed out that the Ohio Constitution, unlike the United States Constitution, is one of plenary powers and therefore contains provisions “not considered fundamental to the concept of ordered liberty,” like workers’ compensation. In addition, the court noted that the test might be too broad in any case since, “the right to acquire and hold property” for example, “is guaranteed in the Federal and State Constitutions [but] surely ... is not a likely candidate” for strict scrutiny analysis. Inexplicably though, the court dropped its analysis of the fundamentality of a right to education at this point. Not only did the court fail to determine whether the right to an education is fundamental, it failed to elucidate any test for determining the fundamentality of any right under the Ohio Constitution.

Rather than developing a standard of its own with which to analyze the fundamentality of a right to education, the court simply decided against strict scrutiny because the case “dealt with difficult

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28. See Veith, supra note 27, at 1131; see also Davidek, supra note 21, at 1041.
29. 411 U.S. 1, 36-7 (1973) (holding that the Texas school funding system did not violate the equal protection clause of the Fourteenth Amendment).
30. Walter, 58 Ohio St. 2d at 374 (quoting Zablocki v. Redhail, 434 U.S. 374, 388 (1978)).
31. Id.
32. Rodriguez, 411 U.S. at 33.
33. Walter, 58 Ohio St. 2d at 374.
34. Id. (quoting Robinson v. Cahill, 303 A.2d 273, 282 (N.J. 1973)) (finding the New Jersey school funding system unconstitutional pursuant to its own “thorough and efficient” constitutional provision).
issues of taxation, fiscal planning and education policy. By re-
defining the issue as one of taxation, the challenged guaranteed yield program received the generous protection of a rational basis analysis. Requiring the plaintiffs to prove the unconstitutionality of the program beyond a reasonable doubt, the court held that the guaranteed yield program passed constitutional muster because it was rationally related to each school district’s interest in local control. According to the court, the program comported with the history of state intervention in the funding of public education because it attempted to “ameliorate the disparity in the levels of expenditure without destroying the virtues of local control.”

The Walter court’s resolution of the article VI, section 2 claim involved similar sleight-of-hand. In its legal analysis, the court formulated a relatively clear test for constitutional compliance. However, in its factual conclusions, it simply replaced the trial court’s findings of fact with facts of its own.

After first establishing jurisdiction to hear the issue, the court attempted to set forth its standard for reviewing the actions of the General Assembly under article VI, section 2. The court first echoed the court of appeal’s holding that article VI, section 2 constituted a broad grant of authority to the General Assembly rather than an affirmative obligation and therefore, that the General Assembly was entitled to great deference. However, the court did not close the door on future judicial intervention. To elucidate the limits of its deference, the court quoted a passage from Miller

35. Id. at 375.
36. See Hayman, supra note 27, at 202 (noting that the cases the court cites recognize a legislature’s broad discretion in taxation all “deal[] with classifications created when the state collects taxes,” not the effect of the tax on the groups to whom it is distributed).
37. Walter, 58 Ohio St. 2d at 377. The court defined local control as “not only the freedom to devote more money to the education of one’s children but also control over and participation in the decision-making process as to how those local tax dollars are to be spent.” Id.
38. Id. at 380.
39. Id. at 383-84. The court first declared its power to review legislative action taken pursuant to article VI, section 2, holding that “the doctrine of judicial review is so well established that it is beyond cavil.” Id. at 383. Then, the court held that the issue was not a “political question,” by relying on similar state court review of school funding systems in New Jersey and Washington. Id. at 384 (citing Robinson v. Cahill, 303 A.2d 273 (1973) and Seattle School District No. 1 v. State, 585 P.2d 71 (1978)).
40. Id. at 385 (citing State ex rel. Methodist Children’s Home Ass’n v. Board of Educ., 105 Ohio St. 438 (1922) which states that “[w]ith the wisdom or the policy of such legislation the court has no responsibility and no authority”).
v. Korns, an early school funding case:

[Article VI, section 2] ... calls for the upbuilding of a system of schools throughout the state, and the attainment of efficiency and thoroughness in that system is thus expressly made a purpose, not local, not municipal, but statewide. A thorough system could not mean one in which part or any number of the school districts of the state were starved for funds. An efficient system could not mean one in which part or any number of school districts of the state lacked teachers, buildings, or equipment.

Unfortunately, the court’s application of this standard contravened Miller’s clear language. As an example of a situation in which a system would not be “thorough and efficient,” the court cited Rodriguez’s “absolute deprivation of education” standard.

The court’s factual finding that no child had been deprived of an education because all had received the statutorily-mandated 182 days of instruction reinforces the view that the court would require such deprivation before intervening under article VI, section 2. However, this interpretation plainly ignored Miller, which permitted intervention if a school district “lacked teachers, buildings, or equipment.” In contrast to its own purported standard, the Walter court seemed to require the absolute deprivation of all three.

Most disturbingly, the court ignored long-standing Ohio Supreme Court precedent by substituting its own factual findings for

41. 107 Ohio St. 287 (1923) (holding that the state had the authority to apply the taxes collected from one school district to the funding of another, less wealthy school district).
42. Id. at 297-98.
43. Board of Educ. v. Walter, 58 Ohio St. 2d 368, 387 (1979) (quoting San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 25 (1973), cert. denied 444 U.S. 1015 (1980). In suggesting this standard, the Walter Court fails to recognize the context in which this standard arose in Rodriguez. In Rodriguez, the Court was considering an equal protection claim in which the plaintiffs, on the basis of their poverty, asserted suspect class status. In mentioning this standard, then, the Rodriguez Court was merely stating well-established precedent that, in evaluating equal protection claims on the basis of poverty as a suspect class, absolute deprivation of a right is required. Rodriguez, 411 U.S. at 20. The language of article VI, section 2, by placing a positive obligation on the state to provide a “thorough and efficient system of schools, in no way resembles the language of the equal protection clause of the Fourteenth Amendment. Nor does the claim that the legislature has a positive duty under article VI, section 2 resemble the suspect class claim in Rodriguez.
44. Walter, 58 Ohio St. 2d at 388.
45. Id. at 386 (citing Miller, 107 Ohio St. at 297-98).
46. Id.
those of the trial court. Although the trial court's findings established that the guaranteed yield program did not meet the Miller standard, the supreme court used a 1973 legislative report not cited in the lower court to conclude that the funding program provided sufficient funds for school districts to meet state minimum educational standards. On this basis, the court concluded that the program did not violate the "thorough and efficient" clause of article VI, section 2.

In sum, *Board of Education v. Walter* was a curious opinion. The plaintiffs asserted that the Ohio Constitution guarantees each child a fundamental right to an adequate education and that the General Assembly failed to meet its constitutional duty to secure a "thorough and efficient system of common schools." However, the court decided the case without ever deciding these issues. It failed to determine whether education was a fundamental right and failed, as well, to establish any test of fundamentality for Ohio constitutional provisions. As for the "thorough and efficient" claim, the court set forth a standard that comported with the language of the "thorough and efficient" clause, but decided the issue on its own facts, not the trial court's findings. Even though the court avoided these issues, however, it unequivocally stated that it had the power to decide them.

How then should one read this opinion? Perhaps the best reading of *Walter* recognizes the court's unwillingness to prematurely render a new funding system unconstitutional. At the time, the guaranteed yield program was regarded by many reformers as the most advanced formula for achieving equity in school funding and the plaintiffs challenged it in its first year. Additionally, the

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47. The Ohio Supreme Court does not engage in fact-finding unless there is no evidence in the trial record to support the trial court's factual conclusion. Gates v. Board of Educ. of River Local Sch. Dist., 11 Ohio St. 2d 83, 86 (1967).
48. See Davidek, supra note 21, at 1041 (stating that the "Walter" trial court found that 14% of the schools in Ohio had inadequate pupil-teacher ratios under law, 53% of the schools were found to be deficient in curriculum and instruction, as least 31% of the buildings lacked adequate classrooms, libraries, art music, or physical education facilities, and 54% had inadequate textbooks").
49. 58 Ohio St. 2d at 372 (discussed in Veith, supra note 27, at 1130).
50. See supra notes 20-22 and accompanying text.
51. See supra notes 29-35 and accompanying text.
52. See supra notes 39-49 and accompanying text.
53. Walter, 58 Ohio St. 2d at 384.
54. See Johnson, supra note 21, at 368.
55. Id.
court noted that the General Assembly had shown a willingness in the past to study and reform the funding system. In fact, the guaranteed yield program itself arose from the inefficiencies of the prior foundation program. Finally, the Ohio court most likely wanted to avoid the clashes with the legislature that would inevitably follow the invalidation of the guaranteed yield program. One scholar correctly sums up the Walter decision when she writes that although the court was "extremely unwilling to intervene in [this] legislative decision, . . . one also gets the impression that it would act differently if things got bad enough."

II. DeRolph v. State of Ohio

The plaintiffs in DeRolph asserted that things had gotten bad enough. A short list of one plaintiff school district’s inadequacies offered proof for this claim. At the Dawson-Bryant School District in rural Lawrence County, the building for grades four through eight is heated by a coal furnace, which leaves a fine layer of dust covering everything inside. The band practices in a former coal bin. On hot days during the first week of school, the Monitor elementary school averages 94 degrees. If more than three teachers plug in fans at the same time, the circuit breakers engage because the wiring is so bad. The entire science department has purchased one item, an aquarium, in the last three years. Most tellingly, Dawson-Bryant School District, as of 1993, had yet to meet Ohio’s 1983 minimum educational standards, standards which the Department of Education itself recognizes as inadequate.
The acknowledged culprit behind these deficiencies is the state's current funding system, the school foundation program. The system works as follows. First, the General Assembly determines the basic aid level necessary to guarantee a student a minimum level of education. Then, the state adjusts this level from 0 to .075 times the basic amount to account for each districts' cost of doing business, (i.e., adjusting the amount to include the higher labor costs in urban districts). In order to determine the amount of state funds each district needs to reach the basic aid level, the state next calculates the amount the local districts should purportedly provide. The basis aid level is reduced by this "charge off," equal to 20 mills times the assessed valuation of property in the school district.

This system sounds simple enough, but a myriad of factors converge in its calculation to create insufficient funds in some districts and extravagant riches in others. The problems begin with the 'cost of doing business' factor. By concentrating on labor costs, this calculation assumes that all costs are lower in rural districts. However, the costs of buying textbooks and materials, purchasing insurance, and paying utility bills in rural districts are not lower than they are in urban districts. Transporting construction materials, mechanical parts, and service personnel can be even more expensive. Second, the state mandates that each district provide specific programs, such as special education, but does not fully fund them. Since each district receives a flat distribution per student for these categorical programs, the burden of providing them falls more harshly upon poor districts, which are forced to use all their discretionary funds, or even go into debt, to provide these.

208. In the Youngstown City School District, curriculum is determined solely by state and federal mandates. The district lacks the funds to offer any courses beyond the state minimum requirements. Id. at 241.

65. The State admitted that the foundation program creates inequities. It merely asserted that the program is not unconstitutional. Barry Kawa, Equitable School Funding Is Key Issue, PLAIN DEALER, Oct. 15, 1994, Special Section at 9.

66. The current foundation program, although it bears the same name, is distinct from the foundation program which the guaranteed yield formula replaced.

67. DeRolph v. State of Ohio, No. 22043 (Perry County, July 1, 1994) at 42.

68. Id at 42-43.

69. Id. at 42.

70. Id. at 43.

71. Id. at 69-70.

72. DeRolph v. State of Ohio, No. 22043 (Perry County, July 1, 1994) at 43.

73. Id. at 49-51.
mandated programs.  

However, the major force driving some districts to ration toilet paper and enabling others to set up computer hookups with Russia is the foundation program's continued reliance on the property tax. Wide gaps in property values necessarily create wide disparities in local millage. In addition, Ohio law automatically reduces any increase in property tax due to inflation, subject to a 20 mill floor. Therefore, if a district's property values increase through inflation, the funds available to it from the state decrease because the district's "charge-off" is higher. In reality though, the district receives none of this "phantom revenue" from inflated property values without passing an additional levy. In contrast, districts experiencing rising property values through industrial development or a housing boom do receive this increased revenue.

These factors place property, and income poor districts in an impossible position. In order to keep up with inflation, they must pass levies, but these districts' low property values make the gains from these levies negligible. Given their lack of disposable income, residents of these districts find this burden more difficult to meet and often refuse to meet it, exercising one of their few opportunities to directly reject a tax. Meanwhile, poor districts fall farther behind.

Seeking a judgment declaring this system unconstitutional, the plaintiffs in DeRolph v. State of Ohio brought suit, claiming, as the plaintiffs did in Walter, that the funding system violated the "equal protection and benefit" clause of article I, section 2 and the "thorough and efficient" clause of article VI, section 2. The court's opinion represents a victory for the plaintiffs on both grounds.

In its equal protection analysis, the court found education to be a fundamental right deserving of strict scrutiny. After distin-
guishing DeRolph from Walter by characterizing DeRolph as a “challenge to the way Ohio educates its children” rather than an issue of taxation, the Court culled the right to education from article I, sections 1, 2, and 7 of the Ohio Constitution. The court directly linked the fundamentality of education to the “inalienable rights” of “enjoying and defending life and liberty, acquiring, possessing and protecting property and seeking and obtaining happiness and safety” set forth in article I, section 1. The court emphasized that these rights are “severely restrained if not impossible to meet” without a high quality education. By linking education to these rights, the court asserted that our definition of high quality must grow as our “high-tech” economy advances.

The Court also emphasized the traditional link between public education and republican government. It echoed article I, section 7’s explicit language that “schools and the means of instruction” are essential to instill the “religion, morality, and knowledge” necessary to good government. Although not directly stated, the implicit assumption was that any institution so closely connected to the effective workings of democracy must be fundamental to that democracy.

Upon finding education to be a fundamental right, the court found that the disparities in funding among districts deny plaintiffs the “equal protection and benefit” of the law as guaranteed by article I, section 2. The court linked the disparities in funding to the lack of educational opportunity by citing evidence that “school districts with expenditures in the top thirty percent have, by subject matter, higher levels of students succeeding or passing the proficiency tests and scoring satisfactorily on achievement scores.” Additionally, the court found that the conditions these disparities create, such as “buildings with asbestos dangers, out of date textbooks, overcrowded classrooms, and a lack of standard educational equipment,” effectively deprive plaintiffs of their fundamental right to education.

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83. Id.
84. Id.
85. Id. at 468.
86. Id.
87. Id.
88. Id. at 469.
89. DeRolph v. State of Ohio, No. 22043 (Perry County July 1, 1994) at 469.
90. Id.
The court then subjected the foundation program to strict scrutiny and found that the asserted state interest in "local control" was not compelling.\textsuperscript{91} Adopting the \textit{Walter} test, the court held that plaintiffs cannot "develop programs to meet perceived local needs." Citing the plaintiffs' inability to make curriculum or policy changes not mandated by the state, the court declared that "local control without discretionary funds is a myth" and a "cruel illusion."\textsuperscript{92} The court further found that the plaintiffs do not possess "local control" merely because they have the "ability" to raise funding through additional levies.\textsuperscript{93} Their poverty precludes this option.\textsuperscript{94} In addition, the court noted that the minor plaintiffs are "disenfranchised and have no ability to raise additional funds."\textsuperscript{95}

Next, the court tackled the article VI, section 2 claim by first distinguishing \textit{Walter}. The court correctly pointed out that the \textit{Walter} court found the guaranteed yield program thorough and efficient because all districts met certain "minimum standards." In contrast, the \textit{DeRolph} court stated that the current minimum standards are not even being monitored. The court went on to cite the plaintiff districts' failure to meet the ninth grade proficiency test standards as evidence of the General Assembly's failure to provide "thorough and efficient" schools.\textsuperscript{96} This is the weakest part of the opinion. Given the complex relationship between funding per pupil and student performance, the correlation between the proficiency tests and the plaintiff school districts' lack of funds is attenuated.\textsuperscript{97}

The court moved to stronger ground when it held that the state funding system fails to meet the \textit{Miller} test. As mentioned earlier, \textit{Miller v. Korns} stated that a "thorough system could not mean one

\textsuperscript{91} Id. at 469.
\textsuperscript{92} Id.
\textsuperscript{93} Id. at 470.
\textsuperscript{94} \textit{DeRolph} v. State of Ohio, No. 22043 (Perry County, July 1, 1994) at 470.
\textsuperscript{95} Id. at 470.
\textsuperscript{96} Id. at 473.
\textsuperscript{97} See, e.g., Mary Beth Lane, \textit{Too Rich and Too Poor—Ohio School Dilemma}, \textit{Plain Dealer}, July 3, 1994, at 1A (citing a study by two Ohio University professors which found that the 60 districts with the top proficiency test scores spent as little as $3,000 per pupil and as much as $11,000 while the 60 districts with the worst test scores spent between $3,000 and $9,000 per pupil). This simple comparison of proficiency test scores, however, misconstrues the nature of the \textit{DeRolph} plaintiffs' claims. Because they operate with insufficient funds, the plaintiff school districts cannot provide their students with adequate special education programs or adequate gifted student programs. \textit{DeRolph}, at 232-41. Nor can they provide students with advanced courses necessary for college. Id. In addition, their students are forced to undergo these deprivations, among others, in learning environments that can only be described as Dickensian. Id. at 167-96.
in which a part . . . of the school districts were starved for funds." Nor could an “efficient system” mean one “in which part . . . of the school districts lacked teachers, buildings, or equipment.” The DeRolph court cited to its findings of fact to demonstrate each plaintiff school districts’ deficiencies in teachers, buildings, and equipment. As evidence of their financial need, the court pointed out that some plaintiffs have gone into debt to continue operating and that others “ration paper, [and] paper clips and use out of date textbooks.”

The court also held that the operation of the school funding system violates the plaintiffs’ right to “uniform operation of the laws” because of the vast disparities the system creates in educational opportunity. The court specifically pointed to the arbitrary distributions of the State’s wealth through the workings of O.R.C. 319.301 which reduces inflationary increases in property taxes. Finally, the court made clear that the State, not the local districts, is responsible for the creation of a thorough and efficient system.

The State is obligated by law to produce a thorough and efficient system of education for all students within the state. To ensure that end, the state is likewise obligated to provide sufficient funds to meet that requirement within the constraints of the Ohio Constitution. This State’s current funding system which transfers major obligations for funding from the State to the local school districts does not operate within those constraints.

Pursuant to its decision, the court then ordered the Superintendent of Public Instruction in Ohio to prepare a report containing proposals “for the elimination of wealth-based disparities” in education and to submit it to the Legislature. The court further required the Ohio Department of Education to prepare a report setting forth the legislative resolution of this issue and to submit it to

99. Id. at 298.
100. DeRolph, at 475.
101. Id.
102. Id.
103. Id.; see also supra notes 78-79 and accompanying text.
104. DeRolph, at 476.
105. Id. at 478.
the court after the 1994-1995 session.\footnote{106}

III. ANALYSIS OF DeROLPH V. STATE OF OHIO

A. Distinguishing Board of Education v. Walter

Before an analysis of the DeRolph court's holdings, their validity in light of Walter must be determined. In DeRolph, the defendants argued that Walter was "binding precedent upon the court and res judicata to the issues" before it\footnote{107}. In its opinion, the court rejected both of these arguments on three grounds. First, the court pointed out that Walter determined the validity of the guaranteed yield program, not the current foundation program. Second, the court stated that the individual plaintiffs in DeRolph were not identical to those in Walter. Third, the court stated that several issues before the DeRolph court, like the "revenue limiting impact of [R.C. 319.301] and the funding of state mandated categorical programs," were not at issue in Walter.\footnote{108}

As a matter of black-letter law, the DeRolph court was correct. The syllabus of the Walter Court contained only the validation of the statutes setting forth the guaranteed yield program and law not in the supreme court's syllabus is dicta.\footnote{109} Therefore, Walter is not binding precedent upon DeRolph. In addition, although the DeRolph plaintiffs are arguably in privity with the Walter plaintiffs, the funding systems distribute funds and create funding disparities in different ways.\footnote{110}

Finally, as discussed in Part I, the Walter court did not address whether education is a fundamental right. Instead, it redefined the issue before it as a taxation issue.\footnote{111} Consequently, the DeRolph court escaped Walter when it held that the issue before it is not one "directly concerned" with the collection of taxes, but rather, with the "way in which Ohio educates its children."\footnote{112} Similarly,
the Walter court's reliance on minimum standards, rather than textual interpretation, to decide the article VI, section 2 issue allowed DeRolph to escape its precedential value because the State currently is not enforcing minimum standards. Only if one reads Walter as establishing a standard of absolute deprivation does it have any precedential effect upon DeRolph. However, not only would this reading contradict the Walter court's use of the Miller standard, it also would contradict any reasonable reading of the "thorough and efficient" clause. For these reasons, Board of Education v. Walter was not binding precedent upon DeRolph v. State of Ohio. Nor was the resolution of Walter res judicata to the plaintiffs' claims in DeRolph.

B. Validity of the Equal Protection Claim

In analyzing the DeRolph court's equal protection holding, the major issue for this Comment, as for the court, is whether the right to an education is a fundamental right under the Ohio Constitution. However, before reaching the fundamentality of education, the existence of this right, whether fundamental or not, must be determined. The DeRolph court grounded the right to education in article I, section 1 and article I, section 7 of the Ohio Constitution.

To elucidate the existence and scope of this right, these constitutional provisions shall be examined in turn.

In connecting the right to education to article I, section 1, the court makes an argument essentially from individual economic utility—namely, that the right to education is essential to achieve the rights set forth in section 1. Although this constitutional interpretation makes good policy, both the plain language of section 1 and the history of its enforcement compel a contrary result. First of all, section 1, as written, makes no mention of a governmental obligation to further the rights set forth in it. In fact, "inalienable rights" are, by their very nature, inherent ones that require only the absence of state intrusions, rather than the exercise of state intervention, to exist. The treatment of section 1 in

113. Id. at 466.
114. See supra notes 43-46 and accompanying text.
115. See infra notes 150-71 and accompanying text.
116. See supra notes 82-87 and accompanying text.
117. Id.
118. See JOHN LOCKE, TWO TREATISES OF GOVERNMENT 371 (Phillip Laslett ed.,
Ohio courts supports this conclusion. Although the protection of these rights has been historically enforced, no Ohio court has ever placed a "positive" obligation on the government to further these rights.19

In connecting education to article I, section 7, the court makes a fundamentally different argument. In Section 7, the court finds language asserting the necessity of education in ensuring "good government," an idea that forms the foundation of our republican form of government.20 American thought has long regarded education as "essential to self-government."21 Both the founders of the nation and the framers of the Ohio Constitution recognized that education renders "the people the safe, as they are the ultimate, guardians of their own liberty."22 The early leaders of the public school movement, as well, regarded this "republican" function of

Cambridge Univ. Press, 1967) ("[b]ut though Men when they enter into Society, give up the Equality, Liberty, and Executive Power they had in the State of Nature, into the hands of the Society, to be so far disposed of by the Legislature, as the good of the Society shall require, yet it being only with an intention in every one the better to preserve his Liberty and Property"); JEAN-JACQUES ROUSSEAU, ON THE SOCIAL CONTRACT, 53 (Roger D. Masters ed. & Judith R. Masters trans., St. Martin's Press, 1978) (asserting that people institute government to form "a sum of forces that can prevail" over the obstacles to the exercise of natural rights).

119. OHIO CONSTITUTIONAL REVISION COMMISSION, RECOMMENDATIONS FOR AMENDMENTS TO THE OHIO CONSTITUTION, PART II, 14 (1971) ("No Ohio case was found in which this section alone was cited by a court as setting forth and enforceable right or guarantee.").


121. Hubsch, supra note 120, at 96.

122. THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA, quoted in A.E. Dick Howard, State Courts and Constitutional Rights in the Day of the Burger Court, 62 VA. L. REV. 873, 917 (1976). See also, GEORGE WASHINGTON, THE WRITINGS OF GEORGE WASHINGTON FROM THE ORIGINAL MANUSCRIPT SOURCES, quoted in L. CREMIN, THE AMERICAN COMMON SCHOOLS: AN HISTORIC CONCEPTION 29 (1951) ("Promote then as an object of primary importance, Institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion, it is essential that public opinion be enlightened."); DEBATES OF 1851 CONVENTION, supra note 1, at 14 (comments of Delegate Quigley concerning Ohio's duty to educate its children: "Intelligence is the foundation-stone upon which the mighty Republic rests—its future destiny depends upon the impulse, the action of the present generation . . . ."); id. at 11, 13 (comments of Delegate McCormick: "Educate them and they become useful members of the community that has cared for them . . . . Education will tend to make men moral and useful members of society; therefore, let us provide for the education of every child in the state.").
education as one of its most important. Although the plain language of section 7 does not require but only "encourage[s] schools and the means of instruction" to further the development of "good government," article VI, section 2 does place an affirmative obligation upon the state to educate its citizens. When read together, these two constitutional provisions create a right to education in Ohio to ensure a healthy and functioning government.

Whether the right to an education is fundamental is a closer question. As the Walter court correctly recognized, fundamental rights analysis appropriate for the Federal Constitution is inappropriate for state constitutions. The Federal Constitution is one of limited powers—the federal government can only do those things explicitly or impliedly permitted in the document. In contrast, states have plenary power; a state can do anything not prohibited by its constitution or the Federal Constitution. In addition, state constitutions, unlike the Federal Constitution, are easily and often amended; they change with the changing values of the electorate. State constitutional provisions are also more precise. Further complicating matters, states have often followed Jefferson's advice to write a new constitution for every generation. Ohio, for example, has had constitutional conventions in 1851, 1874, and 1912. Therefore, while federal constitutional interpreters can

123. See HORACE MANN, LECTURES ON EDUCATION 55 (1850) ("Education must be universal . . . With us the qualification of voters is as important as the qualification of governors, and even comes first in the natural order."); Calvin E. Stowe, Report on Elementary Public Instruction in Europe, Made to the Thirty-Sixth General Assembly of the State of Ohio, Dec. 19, 1837, reprinted in CREMIN, supra note 122, at 75 ("Do not patriotism and the necessity of self-preservation call upon us to do more and better for the education of our whole people than any despotic sovereign can do for his.").


125. See infra notes 150-71 and accompanying text.

126. In concert with these two provisions, article I, section 1 can be regarded as contemplating a right to an education to the extent that the political well-being of the state depends on its economic strength, which is in turn dependent on an educated citizenry.

127. See supra notes 32-34 and accompanying text.


129. See Howard, supra note 122, at 939.


look to the "framers;" interpreters of state constitutions must first ask, "which framers?"  

Though the concept of fundamentality in state constitutional interpretation presents problems, state constitutions, beyond question, contain fundamental rights.  

How then does one distinguish provisions embodying fundamental rights from provisions that do not? First of all, given the mutability of state constitutions, a search for the fundamental is arguably the search for the immutable, those provisions present at the creation of the constitution which have not passed into irrelevancy.  

Although some argue that more recent provisions better reveal the "felt needs of each generation," those provisions also tend to be time-bound.  

The second inquiry corresponds to the first. The one constant among the widely variable state constitutions is the inclusion of a bill of rights. Provisions found there should carry a greater presumption of fundamentality than those found in articles more concerned with the delegation of power. Finally, a provision prevalent in other state constitutions and the Federal Constitution should carry a greater presumption of fundamentality than a provision peculiar to one state constitution. This prevalence establishes a close connection between the provision and something fundamental.


133. In fact, the framers of the Federal Constitution developed the Bill of Rights from the original state constitutions, Kenneth R. Bowling, "A Tub to the Whale:" The Adoption of the Bill of Rights, in THE BILL OF RIGHTS AND THE STATES, 49 (Patrick P. Conley & John P. Kaminski eds., 1992) and up through the 19th century, state constitutions were the primary defenders of individual rights. Robert F. Williams, Equality Guarantees in State Constitutional Law, 63 TEX. L. REV. 1195, 1199-211 (1985). Such a central position for state constitutions should not be surprising. In theory, the plenary powers of the states pose a more direct threat to individual liberties than the limited powers of the Federal Constitution. In this sense, state constitutions are the most appropriate place for fundamental rights.

134. See ROBERT DISHMAN, THE SHAPE OF THE DOCUMENT 40 (1968) for a discussion of irrelevancy in state constitutions. See also Frank Grad, The State Constitution: Its Function and Form for Our Time, 54 VA. L. REV. 928, 949-50 (1968) (arguing that fundamental provisions qualifying for inclusion in state constitutions must be "so important and enduring" as to justify placing them in an "area beyond change by normal law-making processes").

135. Howard, supra note 122, at 940.

136. For example, one of the most hotly debated issues at the 1851 Ohio Constitutional Convention, and a major reason for calling it, was the constitutionality of granting of corporate charters to private businesses. It was this issue, not the general right to equal protection, that drew the majority of attention in the drafting of article I, section 2. See Debates of 1851 Convention, supra note 1, at vol. II, 486-512.

137. DISHMAN, supra note 134, at 6.
to our system of government.138

Applying these criteria to DeRolph, the right to education is a fundamental right under the Ohio Constitution. First, the right to education contained in article I, section 7 has been present in some form in every document granting sovereign authority to Ohio. The Ordinance of 1787, which established the system of governance for the Northwest Territory, encoded language essentially identical to article I, section 7 concerning education.139 The Constitution of 1802 repeated this language in its article VIII, section 3 and stated in article VIII, section 25 that "the doors of [ ] schools . . . shall be open for the reception of scholars, students and teachers, of every grade, without any distinction or preference whatever."140 Finally, the Constitution of 1851 fixed article I, section 7 and article VI, section 2 in their present form.141

In addition, the substantive guarantee of the right to an education finds its source in article I, section 7, a provision of the Bill of Rights.142 Although article VI, section 2 grants the state the authority to establish a system of education, article I, section 7 provides the purpose behind the grant. Finally, all fifty state constitutions contain amendments similar to article VI, section 2.143 Therefore, the states have uniformly recognized their obligation, as republican governments, to educate their citizens. These factors, along with the historical connection between education and self-government, render the right to an education a fundamental right under the Ohio Constitution.

The status of education as a fundamental right, then, invokes the strict scrutiny of the foundation program. Under such scrutiny, DeRolph correctly invalidated the program. Although the local control is, and has historically been, an important interest of the state, the evidence before the court demonstrated that the funding

138. See Hubsch, supra note 120, at 95; see also Grad, supra note 134, at 951 ("One value which may weigh heavily . . . is the significance of the provision for effective government.").
140. CONSTITUTION OF 1802, reprinted in DEBATES OF 1851 CONVENTION, supra note 1, at vol. I. 11-12.
141. DEBATES OF 1851 CONVENTION, supra note 1, at 3552.
142. The provisions in article I of the Ohio Constitution constitute Ohio's Bill of Rights.
143. See Hubsch, supra note 120, at 142-48 for a listing of these provisions.
system actually precluded the DeRolph plaintiffs from exercising such control. The poverty of their districts makes the passage of levies difficult and the low value of their property renders those levies ineffectual. Finally, the arbitrary effects of O.R.C. 319.301 in restricting inflationary increases in property values calls into question even the rational basis for the foundation program.

In sum, the DeRolph court correctly held that Ohio's current funding system violates the "equal protection and benefit" clause of article I, section 2. First, article I, sections 1 and 7 clearly establish the existence of a right to education in the Ohio Constitution. Second, the long history of these provisions and their embodiment of the republican tenet that education is an essential attribute of a democracy establish the fundamentality of this right. Because the current funding system does not allow, but actually precludes some school districts from exercising meaningful local control, the system violates the "equal protection and benefit" clause because it infringes upon the fundamental right to an education for no compelling state interest.

C. Validity of the "Thorough and Efficient" Claim.

In its findings of fact, the DeRolph court conclusively demonstrated that the plaintiff school districts lacked sufficient numbers of teachers, buildings, and equipment. Therefore, this analysis will focus on whether DeRolph correctly construed the state's obligation under article VI, section 2. In order determine this, this portion of the Comment will focus on: 1) the plain meaning of the "thorough and efficient" clause; 2) the framers' intent in adopting it, and 3) the history of school funding in Ohio.

When interpreting legislative documents such as constitutional provisions, it is important to look first to the clear language of the document. The language of article VI, section 2 lends strong support to the DeRolph court's interpretation of the provision. Section 2 states that the General Assembly "shall make such provi-

144. See supra notes 91-95 and accompanying text.
145. See supra notes 75-81, 91-95 and accompanying text.
146. See supra notes 75-81 and accompanying text.
147. See supra notes 116-26 and accompanying text.
148. See supra notes 127-43 and accompanying text.
149. See supra notes 144-46 and accompanying text.
150. See supra notes 99-101 and accompanying text.
151. See Williams, supra note 130, at 196; Levinson, supra note 132, at 568.
sions . . . as . . . secure a thorough and efficient system of com-
mon schools throughout the state. 152 This language denotes not
only a duty to fund schools, but also a duty to provide sufficient
funds to secure a high quality of public education throughout the
state. The use of “shall” places an “imperative” 153 duty upon the
state to create a state-wide funding system. The imperative “shall”
also endows the recipients of this obligation, the children of Ohio,
with a right to the enforcement of this imperative. 154 Further,
the words “thorough” and “efficient” extend this duty to the creation
of a funding system that provides schools which are “complete or
perfect in all respects” 155 and which “perform[ ] or function[ ] in
the best possible and least wasteful manner.” 156 Therefore, from
the plain meaning of article VI, section 2, the DeRolph court’s
ruling seems unassailable.

The legislative intent behind the drafting of section 2 also
lends credence to the view that the provision is not simply a grant
of discretionary power. 157 The remarks of the drafters of section 2
at the 1851 Constitutional Convention reveal an intent to see the
schools “grow with the growth, and strengthen with the strength
of the state.” 158 The delegates also repeatedly warned of the harm
to the state if a “permanent and efficient system of education”
were not established. 159 Most importantly, the delegates conceived
of education not just as a benefit to the state, but as the right of
the children. As Delegate Curry stated: “In my opinion, the great

152. OHIO CONST. art. VI, § 2.
154. Id. at 348. (“[I]n jurisprudence, [a duty] is a correlative of right.”).
156. Id. at 421.
157. Interestingly enough, the West Virginia Supreme Court has already come to this
conclusion. In Pauley v. Kelley, 255 S.E.2d 859 (W. Va. 1979), the West Virginia re-
viewed the legislative history of article VI, section 2 in order to determine the meaning
of its own “thorough and efficient” clause, W. VA. CONST. art. XII, § 1, which it had
borrowed from Ohio. The West Virginia Court determined that “the tenor of the discus-
sion [ ] by those advocating the entire education as it was finally adopted, leaves no
doubt that excellence was the goal, rather than mediocrity;” Pauley at 867, and partly on
this finding, declared its school funding system unconstitutional.
158. DEBATES OF 1851 CONVENTION, supra note 1, at vol. II, 711 (remarks of Delegate
Reemlin.)
159. Id. at 15 (remarks of Delegate McCormick); id. at 13 (remarks of Delegate Bates:
“[T]he state would materially suffer if a provision to exclude any class of children from
the benefits of common schools should be engrafted in the new Constitution.”); id. at 11
(remarks of Delegate Taylor: “I think it must be clear to every reflecting mind that the
ture policy of the statesman is to provide the means of education, and consequent moral
improvement, to every child in the state.”).
object to be attained is a system of education, general and complete, which shall extend its advantages to all the children of the State, and afford to each an opportunity to secure all the benefits which it affords."160

Admittedly, the historical reality of school funding in Ohio has often belied both the language and intent of article VI, section 2.161 The Walter court was correct in stating that this history was one of local control162 and often inadequate funding. However, history also reveals that this reliance upon property tax was based on economic assumptions which no longer have relevance in today’s society. The source of Ohio’s reliance upon the property tax is the Land Ordinance of 1785, which ceded the sixteenth section of every township to the support of education upon Ohio’s admission to the Union.163 From its early reliance on the income from these lands, Ohio developed its system of school funding through the taxation of property.164 As long as Ohio remained a largely rural state, land formed the major asset for Ohio’s population and its major source of income.165 Therefore, the funding system made sense. However, Thomas Jefferson authored the Land Ordinance of 1785 on the assumption that Ohio, and the other new states, would remain rural and agricultural in nature.166

160. Id. at 710.
161. See George Knepper, Ohio and its People 185 (1989) ("There was an enormous gap between the dream of an educated citizenry and the reality."); Edward A. Miller, History of Educational Legislation in Ohio: 1803-1850, at 114-18 (Arno Press 1969) ("The traditions of Ohio were from the first against centralization.").
162. See supra note 38 and accompanying text.
164. Id. at 122-25; see also Miller, supra note 161, at 6-10.
165. See Knepper, supra note 161, at 117-36; Interestingly enough, the facts of Miller v. Korns reflect this first demographic shift:

“In the attainment of the purpose of establishing an efficient and thorough system of schools throughout the state it was easily conceivable that the greatest expense might arise in the poorest districts . . . while districts underpopulated with children might represent such taxation value that their school needs would be relatively over supplied . . . . Presumably, the instant law was drawn to meet just such a situation.”

Miller v. Korns, 107 Ohio St. 287, 298 (1923).
Unfortunately, Jefferson's predictions proved wrong. Since the turn of the century, Ohio has become almost completely urbanized. With this urbanization, the rough equality of the frontier farmers disappeared, and income became the function of employment, not land. However, because cities formed around certain economic functions, these early urban areas at least required the presence of citizens from different social strata. It has been the creation of suburban communities that has proved most detrimental to the purposes of article VI, section 2. As communities based on income rather than economic function, the suburbs hopelessly skewed the distribution of school funds through property taxation. Therefore, although history demonstrates the longevity of school funding through property taxation, it also demonstrates its irrelevance.

The DeRolph court correctly held that the present funding system violated the "thorough and efficient" clause of article VI, section 2. The clear language of the provision and the intent of its framers demonstrate that the state has an affirmative obligation to secure a high quality education for every public school student in Ohio. The history of school funding in Ohio further demonstrates the inappropriateness of continued funding of schools through local property taxation.

IV. Conclusion

In DeRolph v. State of Ohio, the court correctly held that Ohio's current funding system violates the "equal protection and benefit" clause of article I, section 2 and the "thorough and efficient" clause of article VI, section 2. Both the founders of our country and the framers of the Ohio Constitution recognized that education is fundamental to our society. Not only does an adequate education prepare citizens to take part in the democratic process, it ensures the state of a population capable of maintaining a strong

167. See Knepper, supra note 161, at 313-47.
168. Id.
169. See Alexander, supra note 120, at 348 (asserting that "[a] sense of solidarity and community based on economic condition is formed around shall, affluent school districts" and that the interests of the parents in these districts are "insular" and "driven toward two primary objectives: maintaining the educational advantage for their children and a near obsessive concern with maintaining or upgrading property values" (citations omitted)).
170. See supra notes 150-60 and accompanying text.
171. See supra notes 161-69 and accompanying text.
middle class, the foundation of every healthy democracy. ¹⁷²

Equally clear is the duty of Ohio to provide this education. The strength of DeRolph lies in its recognition that the drafters of article VI, section 2 intended to establish a system of education, not a system of funding. They expected the educational system to grow to meet the needs of a changing society, not stagnate to conform to an outmoded means of taxation.

Governor Voinovich has stated that “one southern Ohio judge” should not determine the fate of Ohio’s school funding system. ¹⁷³ The Governor has it wrong. Judge Lewis did not determine the fate of school funding; he enforced the Ohio Constitution. This author hopes that the State will do the same.

Morris L. Hawk

¹⁷². See supra note 126.
¹⁷³. Jonathan Riskind, State to Appeal School Funding Ruling, COLUMBUS DISPATCH, August 13, 1994, at 1C.