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A Comment on *DeRolph's* Impacts on Ohio's School-Financing System, Twenty-Five Years Later

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A COMMENT ON *DEROLPH*'S
IMPACTS ON OHIO'S SCHOOL-
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*“Even though the legislature has done quite a bit . . . there are still problems about how Ohio funds its schools. We’ll probably say the same thing in 10 years. This is not an issue that you can solve once and for all.”*¹

- Paul Marshall

INTRODUCTION

Twenty-five years ago, Mark Hawk commented in the *Case Western Reserve Law Review*² on an interesting Ohio case recently concluded in the Perry County Court of Common Pleas: *DeRolph v.*

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1. Jim Siegel, *Failure’s Lessons*, COLUMBUS DISPATCH (Dec. 14, 2008, 12:01 AM), https://www.dispatch.com/content/stories/insight/2008/12/14/Marshall_Funding.ART_ART_12-14-08_G1_8UC6SPU.html [<https://perma.cc/ZW2D-CM9U>].
 2. Morris L. Hawk, Comment, “*As Perfect as Can Be Devised*”: *DeRolph v. State of Ohio and the Right to Education in Ohio*, 45 CASE W. RES. L. REV. 679, 679 (1995).

State.³ There, the trial court struck down Ohio's education-financing system as unconstitutional because it did not provide a "thorough and efficient system of common schools" as required by Article VI, Section II of the Ohio Constitution.⁴ Hawk opined that Ohio appellate courts should uphold that ruling and officially recognize a fundamental right to education in Ohio.⁵ He noted that the trial court's decision was "the first act in a three-act drama that will not conclude until the Ohio Supreme Court rules."⁶ Looking back, we now know that *DeRolph*'s drama unfolded in five cases over thirteen years, concluding with a murky holding that left litigants—and virtually everyone else—unsure of the future for Ohio's education funding.

Twelve years after Hawk's comment, Shadya Yazback, another *Case Western Reserve Law Review* contributor, provided an overview of the *DeRolph* litigation saga.⁷ Yazback attempted to clearly define what the multiple decisions meant for Ohio's ability to provide a "thorough and efficient" system of education; she also analyzed whether current legislative proposals had lived up to this standard.⁸ Yazback described an education-financing system that was strikingly similar to both the one held unconstitutional in the first *DeRolph* trial and to the one that exists today.⁹

This Comment continues Hawk's and Yazback's project, and attempts to describe *DeRolph*'s impacts on Ohio's education financing more than twenty-five years after the Perry Common Pleas Court provided its initial holding in the matter. This Comment focuses primarily on the long-term legislative and funding outcomes of the *DeRolph* litigation. Part I addresses the legal framework around the right to education in Ohio, and provides an overview of the history of education-financing litigation in Ohio. Part II reviews legislative attempts to address education funding since *DeRolph*, noting the similarities of each system. And Part III outlines both the temporary

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3. Findings of Fact, Conclusions of Law, Order and Memorandum, No. 22043 (Ohio C.P. Ct. July 1, 1994), <https://www.bricker.com/documents/resources/schoolfund/070194cp.pdf>.
 4. *DeRolph*, No. 22043 at 914.
 5. Hawk, *supra* note 2, at 702–03.
 6. *Id.* at 681 (quoting Tim Miller, *Court Voids System; Ohio School Funding Unconstitutional*, DAYTON DAILY NEWS, July 2, 1994, at 1A).
 7. See generally Shadya Yazback, Note, *School Financing in Ohio Yesterday, Today, Tomorrow: Searching for a "Thorough and Efficient" System of Public Schools*, 57 CASE W. RES. L. REV. 671 (2007).
 8. See generally *id.*
 9. *Id.* at 714; LEGISLATIVE BUDGET OFFICE, OHIO LEGISLATIVE SERV. COMM'N., SCHOOL FUNDING COMPLETE RESOURCE 3 (2019), available at https://www.lsc.ohio.gov/documents/reference/current/schoolfunding/sfcr_feb2019.pdf [<https://perma.cc/B28E-7EJU>].

and lasting impacts *DeRolph* has had on Ohio's education-financing system.

I. HISTORY OF OHIO EDUCATION FINANCE LITIGATION

To fully understand the *DeRolph* cases, they must be put into context of the constitutional framework that protects education in Ohio, the history of Ohio school financing, and the Ohio Supreme Court's earlier school-funding decision in *Board of Education v. Walter*.¹⁰

A. *The Right to Education in Ohio*

Unlike the United States Constitution, most state constitutions include provisions guaranteeing the right to at least some level of education.¹¹ Ohio is no exception: Article VI, Section II of the Ohio Constitution provides that “[t]he 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.”¹² Ohio's Constitution also grants equal protection of the laws to its people.¹³ These provisions

10. 390 N.E.2d 813 (Ohio 1979).

11. See EMILY PARKER, EDUC. COMM'N OF THE STATES, 50-STATE REVIEW: CONSTITUTIONAL OBLIGATIONS FOR PUBLIC EDUCATION 1 (2016); *School Funding Court Decisions*, SCHOOLFUNDING.INFO, <http://schoolfunding.info/school-funding-court-decisions/> [<https://perma.cc/RJZ4-H52L>] (last visited June 28, 2020). Beginning in the 1960s, individuals opposed to the use of property taxes as a primary means of funding education challenged school funding systems as a violation of the Equal Protection Clause and the Due Process Clause of the United States Constitution. The Supreme Court addressed these challenges in *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973). There, the Court held that education is not a fundamental right under the U.S. Constitution. *Id.* at 37. The Court applied a rational-basis test, finding that the Texas school-funding system bore a rational relationship to a legitimate state interest: local control of education. *Id.* at 39–47. This loss in the Supreme Court pushed opponents of school-funding systems to continue their fight in state courts. See, e.g., *School Funding Court Decisions*, *supra*. In the 1960s, most challenges to school-funding systems were under the Equal Protection Clause of states' constitutions. Roughly 66% of Equal Protection challenges were successful. See *id.* In the 1990s, opponents of property tax-based education funding began to challenge the school-funding systems under the Education Clauses of state constitutions, with plaintiffs prevailing in about 60% percent of those cases since 1989. See *id.*

12. OHIO CONST. art. VI § 2 (emphasis added).

13. *Id.* art. I § 2 (“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 . . .”).

served as the basis for challenges to the education financing system in *DeRolph*, as litigants alleged that, by underfunding schools, the state breached its duty to provide a thorough and efficient system of common schools.¹⁴

B. History of Ohio Education Financing Before Board of Education v. Walter

Historically, the primary means of financing local public schools came through local property taxes.¹⁵ “In 1825, the General Assembly enacted legislation allowing county commissioners to levy a” tax on real property through units known as “mills.”¹⁶ A “mill” equates to one-thousandth of one dollar (\$0.001) and is used to determine the amount of money raised through property taxes.¹⁷ In 1935, the Ohio General Assembly enacted the first School Foundation Program to provide state aid to local school districts to supplement the amount raised by property taxes.¹⁸ The amount of aid provided by the state increased over time.¹⁹ In the 2018 fiscal year, 45.8% of all education funding statewide came from local sources, and 48.8% came from state sources.²⁰ The question of determining the correct composition of state versus local aid necessary to provide a “thorough and efficient system of public schools” was key in Ohio school-financing litigation.

C. Board of Education v. Walter (1979)

In 1979, the Ohio Supreme Court upheld as constitutional a school-financing system in *Board of Education v. Walter*.²¹ Thus, understanding the differences between the education-financing system in *Walter* and the system addressed in *DeRolph* offers some insight into what constitutes a “thorough and efficient system of common schools.”

Only a few years before *Walter*, the state legislature reconfigured Ohio's school-funding system into two key parts: an Education Review

14. *DeRolph v. State (DeRolph I)*, 677 N.E.2d 733, 740 (Ohio 1997).

15. *Id.* at 750 (Douglas, J., concurring).

16. *Id.*

17. Larry J. Obhof, *DeRolph v. State and Ohio's Long Road to an Adequate Education*, 2005 BYU EDUC. & L.J. 83, 92 n.63 (2005).

18. *DeRolph I*, 677 N.E.2d at 750 (Douglas, J., concurring).

19. *Id.*

20. LEGISLATIVE BUDGET OFFICE, *supra* note 9.

21. 390 N.E.2d 813 (Ohio 1979); Suzanne Ernst Drummond, Comment, *Deja Vu: The Status of School Funding in Ohio After DeRolph II*, 68 U. CIN. L. REV. 435, 440 (2000).

Committee and an Equal Yield Formula.²² The Education Review Committee recommended a “minimum amount of funding necessary” for each student to receive a “general education of high quality.”²³ The Equal Yield Formula guaranteed that a specific amount of funding per student per mill of the first twenty mills assessed by the local school district went to schools.²⁴ The state would make up any deficiency between the amount generated by local taxes and the amount designated by the Educational Review Committee.²⁵ Thus, under the Equal Yield Formula, no school district would receive less than the amount that the Educational Review Committee determined was necessary for each student to receive a “general education of high quality.”²⁶ If school districts wanted to raise additional funds above the state-determined “minimum amount necessary,” then local school districts could levy additional millage on top of the first twenty mills taxed at the local level.²⁷

In *Walter*, the Cincinnati School District, along with parents and students, challenged Ohio’s school-funding system, claiming that it violated both the Equal Protection and Education Clauses of Ohio’s Constitution.²⁸ Applying a rational-basis test, the Ohio Supreme Court held that the funding system complied with both constitutional clauses²⁹ because the system served the state’s legitimate interest in local control of schools.³⁰ In addition, the court based its decision on the existence of the Education Review Committee and its determination of the amount of funding necessary for each student to receive a “general education of high quality.”³¹ Because every district received at least the minimum

22. See *Walter*, 390 N.E.2d at 816–17; *DeRolph I*, 677 N.E.2d at 750 (Douglas, J., concurring).

23. *Walter*, 390 N.E.2d at 817; Drummond, *supra* note 21, at 440.

24. Drummond, *supra* note 21, at 441.

25. *Walter*, 390 N.E.2d at 816; Drummond, *supra* note 21, at 441.

26. Drummond, *supra* note 21, at 440–41.

27. *Walter*, 390 N.E.2d at 816; Drummond, *supra* note 21, at 441.

28. *Walter*, 390 N.E.2d at 815, 817.

29. The court was unclear about whether education constituted a fundamental right under the Ohio Constitution. Regardless, the court applied rational-basis review to the school-funding system and held that the current system allowed for more local control over education; and local control provided a rational basis for any of the spending disparities that arose out of that system. *Walter*, 390 N.E.2d at 822; Obhof, *supra* note 17, at 93.

30. *Walter*, 390 N.E.2d at 822.

31. *Id.* at 817; Obhof, *supra* note 17, at 93; Drummond, *supra* note 21, at 441.

amount determined by the Educational Review Committee, the state fulfilled its Constitutional duty.³²

D. The School Foundation Program

Just three years after the *Walter* decision, the General Assembly abolished both the Education Review Committee and the Equal Yield Formula.³³ The Ohio legislature implemented a new school-funding program called the School Foundation Program.³⁴ The base amount provided by the School Foundation Program comprised three key components: the foundation amount, the cost-of-doing-business factor, and the average daily attendance.³⁵ The foundation amount was the base per-student dollar amount set by the General Assembly.³⁶ The cost-of-doing-business factor varied from district to district based on assumptions about the cost of running schools in various localities.³⁷ Finally, the state would also subtract an amount known as a “charge off” equal to 2% of the district’s taxable real and tangible property.³⁸

E. DeRolph I (1991–1997)

In an effort to combat low funding levels and inadequate facilities, a group of superintendents in southeast Ohio established a coalition³⁹

32. *Walter*, 390 N.E.2d at 825; Drummond, *supra* note 21, at 441.

33. Obhof, *supra* note 17, at 94.

34. *DeRolph v. State (DeRolph I)*, 677 N.E.2d 733, 750–51 (Ohio 1997) (Douglas, J., concurring); Drummond, *supra* note 21, at 443.

35. *DeRolph I* at 750–51. The School Foundation Program’s mathematical formula is as follows:

$$[\textit{school district equalization factor} \times (\textit{Cost of Doing Business Factor}) \times \textit{average daily membership (ADM)}] - (.02 \times \textit{total taxable property value}).$$

Id. at 738 n.3 (majority opinion).

36. Drummond, *supra* note 21, at 443–44.

37. *Id.* The cost-of-doing-business factor disadvantaged rural districts, as it assumed that the cost of doing business would always be lower in rural districts than in urban districts. *See id.*

38. *See* Obhof, *supra* note 17, at 103; Drummond, *supra* note 21, at 444 n.76. The “charge off” was a proxy for the amount of money a school district could raise through local taxation with 2% equating to 20 mills. *See DeRolph I* at 751–52, 739; Obhof, *supra* note 17, at 103.

39. Obhof, *supra* note 17, at 95–96. Originally the group was called Promoting Appalachian and Rural Initiatives for Teaching Youth (PARITY). After several reorganizations, the group broadened their membership and renamed themselves as the Ohio Coalition for Equity & Adequacy of School Funding. *Id.*

to lobby members of the Ohio General Assembly.⁴⁰ Seeing little success in their lobbying efforts, the coalition refocused and decided to litigate the constitutionality of Ohio's educational-funding system.⁴¹ In 1991, the coalition, through several of its member school districts, students, and other interested individuals, brought suit in the Perry County Court of Common Pleas, alleging that Ohio's current system of school funding violated the Equal Protection and Education Clauses of the Ohio Constitution.⁴² This litigation, kicking off what is known as the *DeRolph* cases, turned into a thirteen-year-long legal battle to determine the adequacy of Ohio's school-funding system.⁴³

In the first *DeRolph* challenge (*DeRolph I*), after a long and complex trial, the trial court issued a 478-page opinion containing extensive findings of fact and law.⁴⁴ The factual findings regarding the state of Ohio's schools painted an abysmal portrait of the educational environment. For instance, in the Southern Local School District, students would not use the bathroom because they were infested with cockroaches, and the schools had no heat "from the beginning of the fall of 1992 until the end of November or beginning of December."⁴⁵ Teachers and administrators had to reuse old textbooks and ration school supplies, including toilet paper.⁴⁶ In the Dawson-Bryant school system, students breathed coal dust emitted from their coal heating system.⁴⁷ The school also offered no foreign language courses, computer courses, or art and music courses (other than band).⁴⁸ In addition, many of Ohio's school facilities were not in compliance with state building codes.⁴⁹ According to the 1990 Ohio Public School Facility Survey, one-half of Ohio's school buildings were at least fifty years old.⁵⁰ Only 17%

40. *Id.*

41. *Id.* at 96.

42. *Id.* at 98, 100.

43. *See generally id.* The Coalition filed the first challenge in 1991; the litigation's final ruling was handed down on May 16, 2003. *See State ex rel. State v. Lewis (DeRolph V)*, 789 N.E.2d 195 (Ohio 2003); *see also* Obhof, *supra* note 17, at 146.

44. *See Findings of Fact, Conclusions of Law, Order and Memorandum, DeRolph v. State*, No. 22043 (Ohio C.P. Ct. July 1, 1994), <https://www.bricker.com/documents/resources/schoolfund/070194cp.pdf>; Obhof, *supra* note 17, at 100.

45. *DeRolph v. State (DeRolph I)*, 677 N.E.2d 733, 743–44 (Ohio 1997).

46. *Id.* at 744.

47. *Id.* at 743.

48. *Id.* at 744.

49. *Id.* at 742.

50. *Id.*

of schools' heating systems and 31% of schools' roofs were satisfactory; and only 20% of the buildings had satisfactory access for people with disabilities.⁵¹

The trial court found that Ohio's education-funding system violated both the Equal Protection and the Education Clauses of the Ohio Constitution.⁵² But, relying on *Walter*, the Fifth District Court of Appeals reversed.⁵³ Two years later, the Ohio Supreme Court—by a 4–3 split—reversed the Fifth District's decision.⁵⁴ The majority held that the school-financing system was unconstitutional under the Education Clause because it did not provide a “thorough and efficient system of common schools.”⁵⁵ Distinguishing the School Foundation Program from the system in *Walter*, the court found that the foundation amount was effectively a budgetary residual and did not relate to “what it actually costs to educate a pupil.”⁵⁶ Similarly, the court determined that the state failed to tie the cost-of-doing-business factor to the actual cost of running and maintaining a school.⁵⁷

The court also took issue with the “charge-off” portion of the formula because, although property values may rise in a particular district, “tax reduction factors” limited the ability of localities to recoup taxes from those property-value increases.⁵⁸ The tax reduction factors were largely tied to property tax limitations under House Bill 920, passed in 1976.⁵⁹ Under H.B. 920, voted levies could not raise more revenue from existing properties than they generated in the initial year

51. *Id.*

52. See Findings of Fact, Conclusions of Law, Order and Memorandum, *DeRolph v. State*, No. 22043 (Ohio C.P. Ct. July 1, 1994), <https://www.bricker.com/documents/resources/schoolfund/070194cp.pdf>; Drummond, *supra* note 21, at 442.

53. *DeRolph v. State*, CA-477, 1995 WL 557316, at *2–3, *9 (Ohio Ct. App. Aug. 30, 1995); Obhof, *supra* note 17, at 100; Drummond, *supra* note 21, at 442.

54. See *DeRolph I*, 677 N.E.2d at 733; Obhof, *supra* note 17, at 101.

55. *DeRolph I*, 677 N.E.2d at 737; Drummond, *supra* note 21, at 442.

56. *DeRolph I*, 677 N.E.2d at 738, 745–46.

57. *Id.* at 738; Drummond, *supra* note 21, at 444.

58. *DeRolph I*, 677 N.E.2d at 739; Obhof, *supra* note 17, at 103.

59. See 1975–1976 Ohio Laws 3182 (codified at Ohio Rev. Code Ann. § 319.301 (West 2020)); OHIO SCH. FUNDING ADVISORY COUNCIL, EDUCATION FINANCE OVERVIEW 3 (2010), available at <https://www.westerville.k12.oh.us/docs/Education%20Finance%20Overview%20-%20Meeting%20Briefing%20010710.pdf> [<https://perma.cc/Z5VN-56G9>]. Due to rapid inflation in the 1970s, housing values and property taxes ballooned. H.B. 920 attempted to protect tax payers (especially pensioners) from the effects of rampant inflation on their property taxes. *Id.*

the levy was passed.⁶⁰ Thus, if property values rose in subsequent years, tax rates were adjusted downward to match the revenue level of the levy's initial year.⁶¹ The Ohio Supreme Court called this problem "phantom revenue" because school districts with increases in property values could not receive additional property tax income but could *lose* education funding due to the increased "charge-off."⁶²

The court identified four factors that "must be eliminated" to make the school funding system constitutional:

- (1) the operation of the School Foundation Program, (2) the emphasis of Ohio's school funding system on local property tax, (3) the requirement of school district borrowing through the spending reserve and emergency school assistance loan programs, and (4) the lack of sufficient funding in the General Assembly's biennium budget for the construction and maintenance of public buildings.⁶³

Although the court outlined the four unconstitutional components of the then-existing school-funding system, it gave no specific guidance for how the legislature could change the system to fulfill its constitutional duty.⁶⁴ Instead, the court remanded the case, giving the legislature one year to address the system's flaws.⁶⁵

In March 1997, Governor George Voinovich created and convened the Ohio School Funding Task Force to address the issues raised in *DeRolph I*.⁶⁶ The Task Force hired education-funding consultant John Augenblick to develop a funding system to address the flaws set out in *DeRolph I*.⁶⁷ Augenblick proposed the "Successful Schools" model, which analyzed academically successful districts' spending to establish the base cost of an adequate education.⁶⁸

The legislature attempted to address Augenblick's suggestions by increasing the amount of base funding per pupil in the next biennial budget. The legislature increased the amount of base funding per pupil

60. OHIO SCH. FUNDING ADVISORY COUNCIL, *supra* note 59.

61. *Id.*

62. *DeRolph I*, 677 N.E.2d at 739; Obhof, *supra* note 17, at 103.

63. *DeRolph I*, 677 N.E.2d at 747; *see* Drummond, *supra* note 21, at 442–48.

64. *DeRolph I*, 677 N.E.2d at 747; Drummond, *supra* note 21, at 447 & n.95.

65. Drummond, *supra* note 21, at 447.

66. OHIO SCH. FUNDING ADVISORY COUNCIL, *supra* note 59, at 5.

67. *Id.*

68. *Id.* at 5–6.

from \$3,663 in the 1998 fiscal year⁶⁹ to \$4,063 in 1999.⁷⁰ Although the legislature increased the base amount, they largely left the School Foundation Program's formula unchanged.⁷¹ The Ohio legislature also created four committees to address academic accountability, fiscal issues, the funding formula, and other issues.⁷² Throughout 1997, the legislature appropriated \$300 million for capital improvements to schools.⁷³ The state also replaced the previous borrowing regime with the Solvency Assistance Fund, which provided interest-free loans funded by the state.⁷⁴

F. DeRolph II (2000)

Dissatisfied with the legislature's actions to improve the school-funding system, *DeRolph I's* plaintiffs renewed their objections in a second round of litigation (*DeRolph II*).⁷⁵ The Supreme Court of Ohio again held that, although the legislature had made some improvements over the last year, it had still failed to provide a "thorough and efficient" system of schools.⁷⁶ The system was still unconstitutional because the state had failed to change the basic funding formula, still relied too much on local tax revenue, still required borrowing from future expenses, and still required schools to comply with unfunded legislative mandates.⁷⁷ Again, the court did not provide the legislature with any specific recommendations,⁷⁸ but this time it clearly defined "thorough" and "efficient" within the context of the Education Clause:

69. *122nd Final Bill Analysis*, OHIO LEGIS. SERV. COMM'N (Feb. 13, 1998), <http://lsc.state.oh.us/coderev/fnla122.nsf/All%20Bills%20and%20Resolution%20s/998577E661C3B00B8525668A004B5595> [<https://perma.cc/5VQD-HAMP>].

70. *Id.* The state, however, failed to appropriate the funds for the base-amount increase, instead appropriating only \$3,851 per student in fiscal year 1999. *See* Drummond, *supra* note 21, at 449. The legislature also attempted to increase education funding through Issue 2—a referendum for a one-cent sales tax increase to finance education. *See* Obhof, *supra* note 17, at 115–16. Unfortunately, voters were suspicious of Issue 2 and referendum failed by a margin of four to one. *See id.* at 117–18.

71. Obhof, *supra* note 17, at 115.

72. *Id.* at 114.

73. *Id.*

74. Drummond, *supra* note 21, at 450. In the previous borrowing regime, school districts were forced to borrow from commercial lenders and pay commercial interest rates. Obhof, *supra* note 17, at 103.

75. *DeRolph v. State (DeRolph II)*, 728 N.E.2d 993 (Ohio 2000).

76. *Id.* at 1020–21.

77. *See id.* at 1021.

78. *See id.* at 1001; Obhof, *supra* note 17, at 123.

A thorough system means that each and every school district has enough funds to operate. An efficient system is one in which each and every school district in the state has an ample number of teachers, sound buildings that are in compliance with state fire and building codes, and equipment sufficient for all students to be afforded an educational opportunity.⁷⁹

While the *DeRolph II* litigation was ongoing, the Ohio legislature continued to appropriate funds for schools. Between *DeRolph I* and *DeRolph II*, the General Assembly passed legislation to allocate nearly \$2 billion toward school facilities.⁸⁰ In addition, the state allocated \$2.5 billion over twelve years from the Tobacco Master Settlement Agreement for school construction.⁸¹ After *DeRolph II*, the legislature also accelerated funding to urban districts, provided permanent funds to districts below the fiftieth percentile of funding, and provided assistance to districts suffering from natural disasters.⁸² The legislature increased the base amount of per pupil spending to \$4,814 in the 2002 fiscal year and it changed the basic funding formula so that per-pupil spending would increase by 2.8% per year.⁸³

G. DeRolph III & IV (2001–2002)

Despite those changes, the *DeRolph* plaintiffs argued that they did not fundamentally change Ohio's school-funding system. Thus, they renewed their challenge against the State in 2001 (*DeRolph III*).⁸⁴ In *DeRolph III*, a majority of the Ohio Supreme Court held once more that the funding system was unconstitutional; but the court's willingness to continue this controversial litigation seemed to be waning.⁸⁵ And so this time, the court specified three changes necessary to make Ohio's school funding-system constitutional: (1) a new base-cost formula, (2) gap aid for "phantom revenue," and (3) parity aid for poor districts.⁸⁶

79. *DeRolph II*, 728 N.E.2d at 1001.

80. Obhof, *supra* note 17, at 120.

81. *Id.*

82. *Id.* at 131.

83. *Id.*

84. *DeRolph v. State (DeRolph III)*, 754 N.E.2d 1184 (Ohio 2001); Obhof, *supra* note 17, at 131–36.

85. *See DeRolph III*, 754 N.E.2d at 1200–01; Obhof, *supra* note 17, at 135; *see DeRolph v. State (DeRolph IV)*, 780 N.E.2d 529, 530 (Ohio 2002) ("The consensus arrived at in *DeRolph III* was in many ways the result of impatience.").

86. *DeRolph III*, 754 N.E.2d at 1192, 1200–01. The decision to provide specific guidance was seen by fellow Justices and commentators as the judiciary

After the legislature had spent the past five years working to improve the school-funding system, it responded to *DeRolph III* “with a big yawn.”⁸⁷ The State immediately filed a motion requesting the Ohio Supreme Court to reconsider its decision.⁸⁸ The court agreed to reconsider the case in November 2001⁸⁹ and over a year later, it reversed:

We do not regret [*DeRolph III*] However, upon being asked to reconsider that decision, we have changed our collective mind. Despite the many good aspects of *DeRolph III*, we now vacate it. Accordingly, *DeRolph I* and *II* are the law of the case, and the current school-funding system is unconstitutional.⁹⁰

Confused by the short and contradictory opinion, the plaintiffs again tried to litigate the case in the trial court.⁹¹ But the Ohio Supreme Court quickly ordered the lower court to stop any further proceedings, noting that “[t]he duty now lies with the General Assembly to remedy [the] educational system.”⁹² Thus, the thirteen-year legal battle over the adequacy of Ohio’s school-financing system ended, and the litigants were left with arguably less clarity than when it all began.

II. OHIO’S SCHOOL FUNDING LEGISLATION AFTER *DEROLPH*

After the *DeRolph* cases, subsequent administrations have tried to implement, with various levels of success, several new educational systems, including a “Building Blocks Model” (2003–2009), an “Evidence-Based Model” (2009–2011, and Governor Kasich’s “Bridge Formula” and “Achievement Everywhere Model” (2012–2019).⁹³

violating the separation of powers to legislate from the bench. Obhof, *supra* note 17, at 134. The move sparked several fiery dissents. *See DeRolph III*, 754 N.E.2d at 1241 (Sweeney, J., dissenting) (“I find it incredible that the majority takes it upon itself to make unconstitutional legislation constitutional.”); *id.* at 1245 (Cook, J., dissenting) (“[T]he majority has made an initial policy determination that the judiciary is ill equipped to make and that is characteristic of non-justiciability.”).

87. Obhof, *supra* note 17, at 136 (quoting an anonymous legislator).

88. *Id.*

89. *Id.* at 137.

90. *DeRolph IV*, 780 N.E.2d at 530; *see also* Obhof, *supra* note 17, at 138.

91. Obhof, *supra* note 17, at 146.

92. *State ex rel. State v. Lewis (DeRolph V)*, 789 N.E.2d 195, 202 (Ohio 2003).

93. *See* RICHARD G. SHERIDAN, FOLLOW THE MONEY: STATE BUDGETING AND PUBLIC POLICY IN OHIO 288 (4th ed. 2019) (ebook); *see also* OHIO DEP’T OF EDUC., BRIDGE FUNDING FORMULA CALCULATION FORM 2 (2012), available at <https://education.ohio.gov/getattachment/Topics/>

Recently, there has been bipartisan support for a new legislative proposal called the “Ohio Fair School Funding Plan,” but advocates were unable to gather sufficient support to get the plan into the 2020–2021 biennial budget.⁹⁴ The following section gives a brief overview of each legislative proposal, as well as an in-depth look at the current state of education financing in Ohio.

A. Building Blocks Model (2003–2009)

In 2003, going against the advice of key Republicans, Governor Bob Taft appointed a Blue Ribbon Task Force on Financing Student Success in an attempt to address lingering school-financing issues.⁹⁵ The “[T]ask [F]orce met for 16 months and rolled out an 18-point plan,” primarily attempting to address the limitations on local property tax collection under House Bill 920.⁹⁶ The proposal faced immediate resistance from both Democrats and Republicans in the legislature, and the Governor ultimately ignored the Task Force’s key recommendation to remove the phantom revenue problem by allowing local property tax revenues to increase with property tax values, up to a predetermined cap.⁹⁷ Instead, the Governor and the legislature cherry-picked the remainder of the Task Force’s suggestions to create the Building Blocks model.⁹⁸

Unlike the Successful Schools Model proposed by Augenblick, the Building Blocks Model claimed to focus on the inputs necessary to fulfill

Finance-and-Funding/State-Funding-For-Schools/Traditional-Public-School-Funding/Bridge-Report/Bridge-Funding-Line-by-Line-Calculation-FY2013/Bridge-Funding-Form-Line-by-Line-Explanation-FY2013.pdf.aspx [https://perma.cc/9YTF-354E]; Siegel, *supra* note 1.

94. See Amy Patterson, *Fair Funding Plan for Schools Misses House Budget*, GEAUGA CTY. MAPLE LEAF (May 16, 2019), <https://www.geaugamapleleaf.com/news/fair-funding-plan-for-schools-misses-house-budget/> [https://perma.cc/42E7-BEHN].

95. Siegel, *supra* note 1.

96. *Id.*

97. *Id.*; Yazback, *supra* note 7, at 705; Christina A. Samuels, *Long-Awaited Report on Ohio School Aid Calls for Tax Reform*, EDUCATION WEEK (Feb. 15, 2005), <https://www.edweek.org/ew/articles/2005/02/16/23ohio.h24.html> [https://perma.cc/2P23-E6D5].

98. Yazback, *supra* note 7, at 705, 710. For instance, the Governor’s proposed budget included several proposals consistent with the Task Force’s recommendations including an “acceleration of the phase-out of the inventory component of the property tax” and “the two-year phase-out of the machinery and equipment component of the property tax.” *Id.* at 706.

the basic needs of an educational program.⁹⁹ In practice, however, the Building Blocks Model functioned much like the School Foundation Program and the Successful Schools Model. The Building Blocks Model started with a formula amount—the amount established by the state as necessary for an adequate education.¹⁰⁰ That number was then multiplied by the cost-of-doing-business factor and the average daily membership of schools.¹⁰¹ Finally, a charge-off amount, representing the local share of education costs raised through property taxes, was subtracted from the formula amount.¹⁰² Thus, the Building Blocks Model was primarily tied to a formula amount unmoored from the cost of operating schools. The system also relied heavily on local property taxes.

B. Evidence Based Model (2009–2011)

The next major attempt to reform the school financing system came in a 2009 proposal by Governor Ted Strickland. In his 2009 State of the State address, Governor Strickland noted he had “embraced an evidence-based education approach that harnesse[d] research results and applie[d] those findings to Ohio’s specific circumstances.”¹⁰³ “After a contentious legislative session,” the Evidence-Based Model was passed as part of the 2010–2011 biennium budget.¹⁰⁴ The model was designed to be phased in over nine years.¹⁰⁵

Strickland’s Evidence Based Model built on the fundamentals of the Building Blocks Model, “but swept in many elements that had previously been addressed by separate programs.”¹⁰⁶ It also attempted to address both phantom revenue and the system’s over-reliance on local property taxes.¹⁰⁷ The model created a new option for school districts called a “conversion levy,” by which school districts could use

99. See Paul F. Milcetic, *A Case Study of Post-DeRolph Public School Funding in Ohio* 103, 208 (Dec. 2011) (unpublished Ph.D. dissertation, Kent State University) (on file with author).

100. Yazback, *supra* note 7, at 698.

101. *Id.* at 698–99.

102. *Id.* at 699.

103. LAWRENCE O. PICUS & ALLAN ODDEN, REVIEW AND ANALYSIS OF OHIO’S EVIDENCE-BASED MODEL 1 (2009), available at <http://picusodden.com/wp-content/uploads/2013/09/Ohio-EB-Report-Final.pdf> [<https://perma.cc/7TGG-3BF3>].

104. OHIO SCH. FUNDING ADVISORY COUNCIL, *supra* note 59, at 7.

105. *Id.*

106. *Id.* at 6.

107. Carla Edlefsen, *Not Funding the Evidence-Based Model in Ohio* 4–6 (Mar. 19, 2010) (unpublished manuscript), available at <https://files.eric.ed.gov/fulltext/ED509027.pdf> [<https://perma.cc/F4BJ-D48K>].

a levy to convert some millage into dollars that were not subject to H.B. 920's tax-reduction factors.¹⁰⁸ It also reduced the local-share expectation from twenty-three mills to twenty mills.¹⁰⁹ Finally, the model also included many new initiatives such as “[i]ncreasing the length of the school year to 200 days,” “[p]roviding full-day Kindergarten to all students,” “[i]mproving educator quality,” and “[e]stablishing an effective accountability system.”¹¹⁰ Unfortunately, Governor Strickland's plans were dashed when he lost re-election to Governor Kasich in 2010. Governor Kasich then wiped out the Evidence Based Model in his first budget.¹¹¹

C. Bridge Formula & Achievement Everywhere Model (2011–2019)

Kasich's Bridge Formula served as “a placeholder formula designed to give school districts about the same proportion of a cut in state funding when looked at relative to the total amount of money they have for education including local dollars.”¹¹² The Bridge Formula adjusted the average-daily-membership calculation for each school district by subtracting preschool students and adding a percentage of vocational students.¹¹³ The Bridge Formula also included an additional charge-off valuation “to further equalize the fund distributions” across districts and to “keep the distributions within the limits of appropriations.”¹¹⁴

The Bridge Formula was replaced in 2013 by the Achievement Everywhere model.¹¹⁵ Although Kasich adjusted the model slightly over subsequent budget cycles, the plan remained largely unchanged throughout his tenure in office.¹¹⁶ Unlike the Evidence Based Model, Kasich's adjustments to the funding formula were not designed to determine the amount necessary to fund adequate schools.¹¹⁷ Instead, Kasich developed a “uniform per-pupil formula amount,” called the

108. *Id.* at 5.

109. *Id.* at 6.

110. PICUS & ODDEN, *supra* note 103, at 1.

111. Aaron Marshall, *Old Plan Scrapped and Tangible Steps in New Direction Have Begun*, POLITIFACT (June 28, 2012, 6:57 PM), <https://www.politifact.com/ohio/promises/kasich-o-meter/promise/778/scrap-govted-stricklands-evidence-based-school-f/> [<https://perma.cc/NCZ3-GCBM>].

112. *Id.*

113. OHIO DEP'T OF EDUC., *supra* note 93, at 4.

114. *Id.*

115. *Kasich Unveils School Funding Overhaul Plan*, WLWT5.COM (Jan. 31, 2013, 7:10 PM), <https://www.wlwt.com/article/kasich-unveils-school-funding-overhaul-plan-1/3528591> [<https://perma.cc/7ZM3-W4T3>].

116. SHERIDAN, *supra* note 93.

117. *Id.*

Opportunity Grant, based on resource availability, not empirical evidence.¹¹⁸ Kasich's education plan focused on achieving his priorities of fiscal responsibility, accountability, and school choice.¹¹⁹

The public's response to the Achievement Everywhere Model split largely along partisan lines. Liberal-leaning organizations lamented the plan for inadequately increasing education funding, relying on local property taxes, pushing school privatization, and making it easier to cut teachers' pay.¹²⁰ Conservative organizations, on the other hand, praised the plan for deregulating education, encouraging competition, and increasing transparency and accountability in schools.¹²¹

D. Current Ohio Education-Funding System

Although current Ohio Governor Mike DeWine has proposed some increased funding for wraparound services, his latest biennial budget has largely left intact Kasich's Achievement Everyone Model.¹²² Thus, the current school-funding model is a result of this hodge-podge of legislation and still maintains many components of the School Foundation Program from the *DeRolph* era. Ohio school districts still receive funding from three primary sources: local governments, state governments, and the federal government.¹²³ In fiscal year 2018, 45.8% of all education funding statewide came from local sources, and 48.8% came from state sources.¹²⁴

118. *Id.* at 288.

119. Chad L. Aldis, *John Kasich's Education Legacy*, THOMAS FORDHAM INST. (Apr. 17, 2018), <https://fordhaminstitute.org/ohio/commentary/john-kasichs-education-legacy> [<https://perma.cc/8K9W-B5PS>].

120. INNOVATION OHIO, A CLOSER LOOK: THE KASICH RECORD ON PUBLIC EDUCATION 5–6, 8–10, 13 (2015), *available at* <http://innovationohio.org/wp-content/uploads/2015/08/IO-Report-Kasich-Edu-Record.pdf> [<https://perma.cc/VY9Z-DDBB>].

121. PAUL T. HILL, STEPS IN THE RIGHT DIRECTION: ASSESSING “OHIO ACHIEVEMENT EVERYWHERE”—THE KASICH PLAN 5 (2013), *available at* <https://fordhaminstitute.org/ohio/research/steps-right-direction> [<https://perma.cc/MR5R-T6EJ>].

122. Jessie Balmert & Jackie Borchardt, *Education, Cigarettes and Taxes: What Does Ohio Gov. DeWine's Budget Mean for You?*, CINCINNATI ENQUIRER (Mar. 15, 2019, 3:42 PM), <https://www.cincinnati.com/story/news/politics/2019/03/14/ohio-gov-mike-dewine-rolls-out-first-budget/3143612002/> [<https://perma.cc/EW8D-GLFA>]; *Investing in Ohio's Schools, Colleges, and Universities*, OFFICE OF BUDGET & MGMT., https://archives.obm.ohio.gov/Files/Budget_and_Planning/Operating_Budget/Fiscal_Years_2020-2021/Enacted/Investing_in_Education.pdf [<https://perma.cc/CPP4-A3MK>] (last visited June 28, 2020).

123. LEGISLATIVE BUDGET OFFICE, *supra* note 9.

124. *Id.*

Ohio funds education primarily through base funding called the “Opportunity Grant,” as well as through categorical add-ons for special education, transportation, students living in poverty, and other variable funding components for “non-typical students.”¹²⁵ The Opportunity Grant comprises two key components: the formula amount and the state-share index.¹²⁶ The formula amount is a per-pupil amount similar to the base amount described in the *DeRolph* cases. As of the 2019 fiscal year, the formula amount was \$6,020.¹²⁷ That amount is multiplied by the state-share index, a formula designed to assess a district’s capacity to raise local revenue for funding education.¹²⁸ The state-share index ranges from 5–90%, depending on a school district’s relative wealth and property values in that district.¹²⁹

125. *Id.* at 7–8.

126. *Id.* at 17.

127. *Id.*

128. *Id.* at 9.

129. *Id.* at 10–13. The state-share index is defined by statute and determined by comparing various state-constructed statistics including: (1) the valuation index; (2) the income index; and (3) the wealth index. *See* OHIO REV. CODE ANN. § 3317.017 (West 2020). The wealth index is key as it compares the valuation index with the income index and is ultimately converted into the state-share index. *See id.* at § 3317.017(C)–(D). To construct the wealth index, first the State creates the valuation and income indexes. *Id.* at § 3317.01(C). The valuation index is the three-year average property valuation per pupil by district weighted against the average state property valuation. *Id.* at § 3317.017(A). It is calculated as follows (*ADM* stands for “average daily membership”):

$$\frac{(\text{district's three-year average valuation} \div \text{district's total ADM}) \div [(\text{the statewide three-year average valuation for school districts with a total ADM} > 0) \div \text{statewide total ADM}]}{}$$

Id. The income index is the weighted median income by district per pupil (from the Ohio Department of Taxation and federal adjusted gross income) compared to the statewide median income by district per pupil. *Id.* at § 3317.017(B). The Income Index is calculated as follows:

$$\frac{[(\text{district's median Ohio adjusted gross income} \div \text{median of the median Ohio adjusted gross income of all districts statewide with a total ADM} > 0) \times 0.5] + \{[(\text{three-year average federal adjusted gross income of the school district's residents} \div \text{district's formula ADM for fiscal year 2017}) \div (\text{three-year average federal adjusted gross income of all districts statewide with a formula ADM for fiscal year 2017} > 0 \div \text{statewide formula ADM for fiscal year 2017})] \times 0.5\}}{}$$

Id. The wealth index is determined by first comparing the income index to the valuation index. *Id.* at § 3317.017(C). When a district’s income index is less than the district’s valuation index and less than 1.5, then the wealth index is calculated as:

Once the Opportunity Grant is calculated, it is supplemented with “targeted assistance” and “capacity aid.”¹³⁰ Targeted assistance is “additional funding to districts with lower capacities to raise local revenues.”¹³¹ Capacity aid is “based on the amount a district can raise with one mill (the district’s capacity amount) and is provided to districts that raise less than the median amount.”¹³² Finally, the Opportunity Grant is adjusted either by temporary transitional aid (often referred to as “guarantees”) or a gain cap, depending on a district’s change in enrollment.¹³³

These adjustments are largely products of all the prior changes to the school-funding formula.¹³⁴ One major concern for each administration was to avoid drastically reducing a district’s budget from year to year due to a formula gain.¹³⁵ As a result, the temporary transitional aid was designed to ensure that districts experiencing major losses in enrollment did not face significant funding cuts.¹³⁶ Temporary transitional aid is provided to districts to guarantee that they receive at least 100% of the previous fiscal year’s state aid, unless the district

$$(\textit{valuation index} \times 0.6) + (\textit{income index} \times 0.4)$$

Id. at § 3317.017(C)(1). If, however, the income index is greater than the valuation index, then the wealth index will be equal to the valuation index. *Id.* at § 3317.017(C)(2). Finally, the wealth index is converted into the state-share index based on a statutory formula by which low-wealth districts receive up to 90% of the formula amount, and high-wealth districts receive only 5%. *Id.* at § 3317.017(D). According to the statute, the district’s state share index is determined as follows:

- (a) If the district’s wealth index is less than or equal to 0.35, then the district’s state share index shall be equal to 0.90.
- (b) If the district’s wealth index is greater than 0.35 but less than or equal to 0.90, then the district’s state share index shall be equal to $\{0.40 \times [(0.90 - \textit{the district's wealth index}) \div 0.55]\} + 0.50$.
- (c) If the district’s wealth index is greater than 0.90 but less than 1.8, then the district’s state share index shall be equal to $\{0.45 \times [(1.8 - \textit{the district's wealth index}) \div 0.9]\} + 0.05$.
- (d) If the district’s wealth index is greater than or equal to 1.8, then the district’s state share index shall be equal to 0.05.

Id.

130. LEGISLATIVE BUDGET OFFICE, *supra* note 9, at 8.

131. *Id.* at 18.

132. *Id.* at 23.

133. *Id.* at 42–44.

134. *Id.* at 3.

135. *Id.* at 46.

136. *Id.* at 42.

lost more than 10% of its enrollment in recent years.¹³⁷ Even if a district's enrollment decreases by 10% or more, the district is guaranteed 95% of the aid it received in the immediately previous year.¹³⁸ In the 2018 fiscal year, the state paid \$221.4 million in temporary transitional aid to 328 districts, which accounted for 53.8% of the school districts in the state.¹³⁹

The gain cap serves as a limit on state funding for rapidly growing districts in an attempt to protect the state from ballooning education costs. The state capped districts' annual funding increases at either 3% or by a percentage proportionate to the district's increase in its average daily membership (up to 6% in fiscal year 2019).¹⁴⁰ As of the 2019 fiscal year, fourteen districts' funding were limited by the gain cap.¹⁴¹ The gain cap is unpopular in high-growth districts, such as the Olentangy Local School District near Columbus.¹⁴² The adjustments to the Opportunity Grant and categorical add-ons create wide discrepancies in the amount of state funding a district receives. In fiscal year 2018, the statewide average foundation funding per pupil was \$4,770, with the poorest quartile receiving \$7,737 per pupil and the wealthiest quartile receiving \$2,264 per pupil.¹⁴³

E. Ohio Fair School Funding Plan

Representatives Bob Cupp (R-Lima) and John Patterson (D-Jefferson) have championed the most recent effort to reform Ohio's school funding system.¹⁴⁴ In 2017 Cupp and Patterson convened Ohio's superintendents and treasurers, and over a period of fifteen months the

137. *Id.* at 42–43.

138. *Id.*

139. *Id.* at 43.

140. *Id.* at 44.

141. *Id.*

142. Thomas Gallick, *The Big Short: Districts Lament Funding Cap*, THISWEEKNEWS (Apr. 18, 2018, 1:58 PM), <https://www.thisweeknews.com/news/20180418/big-short-districts-lament-funding-cap> [<https://perma.cc/8SKY-WES4>]; Jim Siegel, *School Funding Cap Hits Central Ohio Districts Hard, Costs \$890 Million Statewide*, COLUMBUS DISPATCH (Apr. 30, 2017, 8:54 AM), <https://www.dispatch.com/news/20170430/school-funding-cap-hits-central-ohio-districts-hard-costs-890-million-statewide> [<https://perma.cc/26UV-KJDV>].

143. LEGISLATIVE BUDGET OFFICE, *supra* note 9, at 48.

144. Both Representatives serve on the House Primary and Secondary Education Committee. See *Primary and Secondary Education Committee*, OHIO HOUSE OF REPRESENTATIVES, <http://www.ohiohouse.gov/committee/primary-and-secondary-education> [<https://perma.cc/G5VQ-6SUY>] (last visited June 28, 2020).

group discussed education-funding reforms.¹⁴⁵ The group divided into subgroups to research and propose solutions on eight different focus areas: (1) school funding base cost, (2) distribution, (3) poverty and preschool, (4) special education, gifted, and English learners, (5) charter funding, (6) educational service centers, career technical education, and science, technology, engineering, and mathematics (STEM) programs, (7) technology in schools, and (8) transportation.¹⁴⁶ The group's efforts culminated in a twenty-seven-page report that Cupp and Patterson unveiled at a press conference on March 25, 2019.¹⁴⁷

One of the key changes recommended in the Fair School Funding Plan is to overhaul the Opportunity Grant formula as a new base-cost formula.¹⁴⁸ Unlike the current formula amount, which the Plan claims “has no discernible relationship to any objective criteria for determining an appropriate per student funding level,” the base-cost formula was “built around the student and the educational experience.”¹⁴⁹ The base-cost amount was designed to “allocat[e] sufficient resources to provide an average child . . . with the essential high quality opportunities necessary for success.”¹⁵⁰ The proposed base-cost formula is broken down into four weighted components: 60% for direct classroom instruction, 20% for school leadership and operations, 15% instructional and student supports, and 5% for district leadership and accountability measures.¹⁵¹ The Plan claims that the formula “account[s] for what it actually costs to run a school district.”¹⁵²

The Plan also proposes replacing entirely the state-share index with a new method for determining the local share of school funding.¹⁵³ First, the local capacity of each district to levy property taxes would be

145. *Press Conference—School Funding Workgroup Plan Rollout*, OHIO CHANNEL (Mar. 25, 2019), <http://www.ohiochannel.org/video/press-conference-school-funding-workgroup-plan-rollout> [<https://perma.cc/7ST6-R3AN>].

146. OHIO FAIR SCH. FUNDING, FAIR SCHOOL FUNDING PLAN 5 (2019), *available at* <https://sites.google.com/view/ohiofairschoolfunding/report> [<https://perma.cc/2LCN-JZP5>]. The group comprised nine sub-groups, one of which focused on communications related to the report. *Id.*

147. *Press Conference—School Funding Workgroup Plan Rollout*, *supra* note 145. *See generally* OHIO FAIR SCH. FUNDING, *supra* note 146.

148. OHIO FAIR SCH. FUNDING, *supra* note 146, at 7.

149. *Id.* at 7–8.

150. *Id.* at 7.

151. *Id.* at 8.

152. *Id.*

153. *Id.* at 10.

established.¹⁵⁴ “Since the average local funding contribution for all Ohio school districts has ranged from twenty to twenty-three mills,” the Plan recommends setting each district’s local capacity at 2.25% (or the equivalent of 22.5 mills).¹⁵⁵ The local share is then calculated by determining the taxable property valuation per pupil¹⁵⁶ and the average income per pupil in the district.¹⁵⁷ The property valuation per pupil is weighted at 60% and the average income per pupil is weighted at 40%.¹⁵⁸ To calculate the final per-pupil local share, the weighted property valuation and the weighted average income are added together; the entire amount is then multiplied by the district’s local capacity (i.e., 2.25%).¹⁵⁹

Unlike the state-share index, the funding amount for all school districts under Cupp and Johnson’s Plan is now weighted by average income per pupil.¹⁶⁰ Thus, communities with high incomes and relatively low property values will likely benefit less from the Fair School Funding Plan. The Plan also recommended increasing funding for students living in poverty from \$272 per student to \$422 per student, and providing preschool for every four-year-old child living in poverty.¹⁶¹

154. See Microsoft Excel Spreadsheet, *Fair School Funding Plan: State/Local Distribution Calculator*, available at <https://sites.google.com/view/ohio-fairschoolfunding/report> [<https://perma.cc/2LCN-JZP5>] (click “School/Local Distribution Calculator”) (last visited June 28, 2020).

155. See *id.*

156. See *id.* (“The property tax weight is based on the total taxable valuation per pupil. The formula uses the lower of the average of the most recent [three] years of taxable value or the most recent year. It uses the number of pupils from the final count in the previous year (students enrolled in and be educated at the district only).”).

157. See *id.* (“The income component has [two] equally weighted parts that total to the remaining 40% local capacity, the total Federal Adjusted Gross Income and the Median Federal Adjusted Gross Income. The Federal Adjusted Gross Income per pupil uses the lower of the most recent three-year average or the most recent year. The Median Federal Adjusted Gross Income will use the median from the most recent year and multiply by the total number of tax returns. This number is then divided by the total number of pupils. Median income is used because it eliminates distortions in an average gross income that may be present due to unusually large or small incomes present in the district.”).

158. *Id.*

159. *Id.*

160. See OHIO FAIR SCH. FUNDING, *supra* note 146, at 10 (explaining that the new method accounts for a district’s property values and its residents’ income capacities).

161. *Id.* at 12–13.

Although there are many laudable aspects of the Fair School Funding Plan, it has also received some criticism.¹⁶² Much of the criticism arose after the taskforce released simulation spreadsheets that outlined how much funding each district would receive under the new plan.¹⁶³ The spreadsheets revealed that eighty-seven districts, including many poor districts, “would net no new money over two years.”¹⁶⁴ In addition, the “formula sends 15% of new funding to the wealthiest suburban districts, compared to 5% to major urban districts and 9% to the poorest rural districts.”¹⁶⁵ Howard Fleeter, a lead analyst with the Ohio Education Policy Institute, noted that urban districts seem to be negatively impacted by the Plan’s exclusion of charter and private-voucher students.¹⁶⁶ “When calculating local property and income wealth per pupil, removing thousands of students from the equation

162. See Jim Siegel, *Wealthy Districts Would Gain Money in New Ohio Schools Plan*, COLUMBUS DISPATCH (Apr. 8, 2019, 5:48 AM), <https://www.dispatch.com/news/20190408/wealthy-districts-would-gain-money-in-new-ohio-schools-plan> [<https://perma.cc/K8WL-AXCP>] (criticizing the Fair School Funding Plan for providing inadequate funding for low-income districts); Editorial, *Ohio Falls Short of Fair Funding for Schools*, TOLEDO BLADE (Apr. 5, 2019, 12:00 AM), <https://www.toledoblade.com/opinion/editorials/2019/04/05/ohio-general-assembly-fair-funding-for-schools/stories/20190403159> [<https://perma.cc/3AZJ-DFA8>] (same); Tom Troy, *Ohio's School Funding Plan Forgets 'DeRolph' Case*, TOLEDO BLADE (Apr. 12, 2019, 12:00 AM), <https://www.toledoblade.com/opinion/columnists/2019/04/12/remember-rerolph-school-funding-less-property-taxes-toledo-public-schools/stories/20190411113> [<https://perma.cc/55BG-UB9R>] (same); Ohio Public Radio, *Charter Schools Would See Less Money Under Proposed School Funding Formula*, WCBE.ORG (Apr. 23, 2019), <https://www.wcbe.org/post/charter-schools-would-see-less-money-under-proposed-school-funding-formula> [<https://perma.cc/EK5C-ULEC>] (criticizing the Fair School Funding Plan for failing to increase funding for charter schools); Editorial, *Worthy Effort on Ohio School Funding Equity Needs Adjustments and a Full and Honest Debate*, CLEVELAND.COM (Apr. 7, 2019), <https://www.cleveland.com/opinion/2019/04/worthy-effort-on-ohio-school-funding-equity-needs-adjustments-and-a-full-and-honest-debate-editorial.html> [<https://perma.cc/6CJN-6F37>] (criticizing the Fair School Funding Plan for costing far more than an alternative plan while still underfunding low-income districts).

163. See Troy, *supra* note 162; *Report*, OHIO FAIR SCH. FUNDING, <https://sites.google.com/view/ohiofairschoolfunding/report> [<https://perma.cc/2LCN-JZP5>] (cautioning that the simulations are only estimates and may change based on changes in local capacity) (last visited June 28, 2020).

164. Siegel, *supra* note 162.

165. See *id.*

166. Jim Siegel, *Education Experts Weigh Pros and Cons of New Ohio School-Funding Plan*, COLUMBUS DISPATCH (Apr. 9, 2019, 5:53 PM), <https://www.dispatch.com/news/20190409/education-experts-weigh-pros-and-cons-of-new-ohio-school-funding-plan/1> [<https://perma.cc/F9PS-HNX6>].

makes a district look significantly wealthier.”¹⁶⁷ Perhaps because of those criticisms, the Ohio Fair School Funding Plan did not gain the necessary support in the General Assembly to be adopted as part of the 2020–2021 biennial budget.¹⁶⁸

III. IMPACT OF *DEROLPH* TWENTY-FIVE YEARS LATER

Reflecting on the legislative and executive efforts to revamp Ohio's education-financing system since *DeRolph*, it is clear that although each administration has tweaked the school-funding formula, its basic elements have remained the same for nearly fifty years. And while each legislature and administration has attempted to develop its own model, almost every system has followed a similar pattern of the Foundation Program: starting with a base-cost calculation and tacking on some “charge-off” or “state-share” amount to account for local contributions.¹⁶⁹ Educational administrators have commented that the base cost portion of all education-financing systems in Ohio since the 1970s has followed a “residual budgeting” model.¹⁷⁰ One administrator described residual budgeting as “a concept of politically determining an amount of money [and] building a formula to distribute that amount of money as opposed to that formula having any direct relationship with the need of the students.”¹⁷¹ The *DeRolph* court pointed to this “budgetary residual” allocation as one of the failings of the School Foundation Program.¹⁷² And yet, over two decades later, the General Assembly has yet to fix this flaw.

Instead of addressing the budgetary-residual issue, the General Assembly has attempted to address *DeRolph's* concerns by simply increasing appropriations to education. According to data from the National Center for Education Statistics, over the course of *DeRolph's* thirteen-year litigation, Ohio increased its real funding per pupil by

167. *Id.*

168. *School Funding Plan Won't Be In Ohio House Version of the State Budget Proposal*, WCBE.ORG (Apr. 29, 2019), <https://www.wcbe.org/post/school-funding-plan-wont-be-ohio-house-version-state-budget-proposal> [<https://perma.cc/BNG9-ZCD2>].

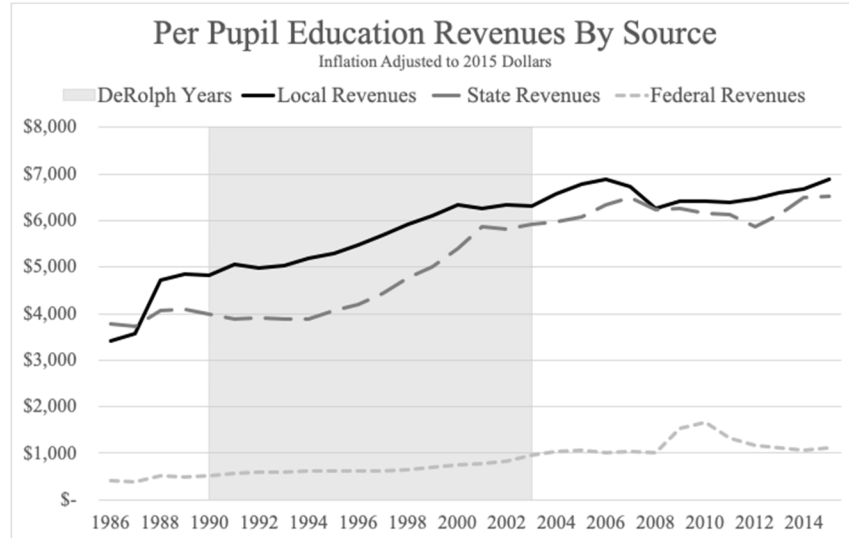
169. Milcetic, *supra* note 99, at 76–78 (defining the base-cost formula, charge off, and state share).

170. *Id.* at 103–09.

171. *Id.* at 107.

172. *DeRolph v. State (DeRolph I)*, 677 N.E.2d 733, 738 (Ohio 1997).

52%, from \$3,877.87 in 1991, to \$5,829.49 in 2002.¹⁷³ In the fifteen years following *DeRolph V*, Ohio's real per-pupil funding has increased only by 12%, from \$5,829.49 in 2002, to \$6,525.77 in 2015.¹⁷⁴



Although correlation does not imply causation, statements from lawmakers at the time of the *DeRolph* tend to imply that *DeRolph* spurred legislative activity on education funding.¹⁷⁵ Unfortunately, the pressure on Ohio lawmakers created by *DeRolph* seems to have been short lived, and real increases in education funding have been muted since *DeRolph* concluded. Further, a recent study by the Ohio Educational Policy Institute found that, from 1999–2019, the percentage increase in funding for the lowest wealth districts in Ohio only marginally outpaced the percentage increase in funding from state

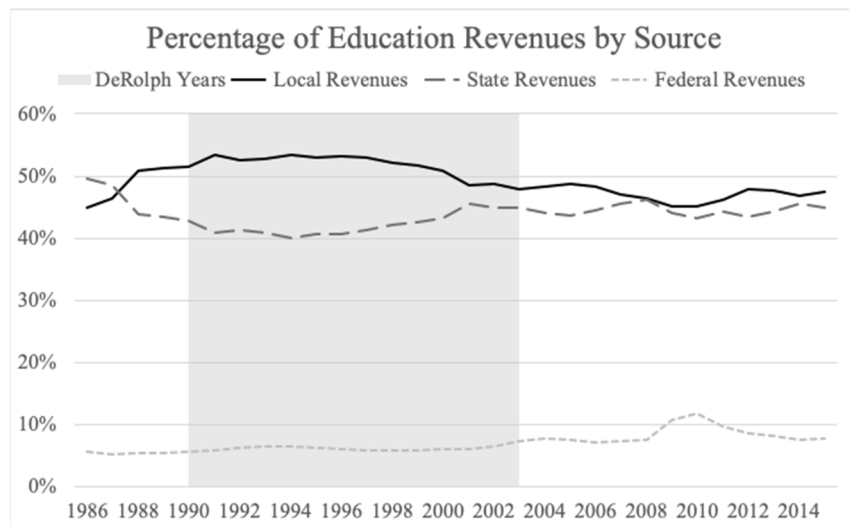
173. See Jessica Ice, Microsoft Excel Spreadsheet, *Ohio School Data Spreadsheets: National Center for Education Statistics, Bureau of Labor Statistics, and Author's Calculations* (on file with author) (gathering data on school district revenues and expenditures from the National Center for Education Statistics Elementary and Secondary Information System, and Consumer Price Index data from the Bureau of Labor Statistics; school district revenues by source have been adjusted by the Consumer Price Index by the author, graphs have been created by the author).

174. *Id.*

175. See Julie Carr Smyth, *Ohio School-Funding Suit Derolph v. State Leaves Mark After 20 Years*, AKRON BEACON J. (Mar. 24, 2017, 11:00 AM), <https://www.beaconjournal.com/akron/news/ohio-school-funding-suit-derolph-v-state-leaves-mark-after-20-years> [<https://perma.cc/B7HK-2R77>].

and local revenues for the highest wealth districts.¹⁷⁶ Ohio's lowest income schools received a funding increase from state and local revenues of 29.4%; the highest wealth districts received an increase of 25.6%.¹⁷⁷ The Ohio Educational Policy Institute argues that this relatively small gap partially explains why school-funding equity has not significantly improved in Ohio after *DeRolph*.¹⁷⁸

In addition, although several administrations have attempted to address the issue of overreliance on local tax revenues, including Strickland's Evidence-Based Model and the most recent Ohio Fair School Funding Plan, the political will to fundamentally adjust the school-funding formula and appropriate sufficient funds has not been strong enough to bring these plans to fruition. True, the gap in state and local funding has narrowed since 1991, but local funding has consistently been the largest source of funding for Ohio's school districts.¹⁷⁹ Analyzing per-pupil funding using National Center for Education Statistics, most of the reduction in the gap between state and local funding has actually come from reduced local funding around the Great Recession years.¹⁸⁰



176. See OHIO EDUC. POLICY INST., 20 YEARS OF SCHOOL FUNDING POST-*DEROLPH* 1 (2008), available at http://www.oepiohio.org/wp-content/uploads/2018/08/Post-Derolph-Press-Conference-Package_8-15-18.pdf [<https://perma.cc/V3P3-VUVZ>].

177. *Id.*

178. *Id.* at 4.

179. *Ice*, *supra* note 173.

180. *Id.*

DeRolph did, however, have some positive side effects that have had a lasting impact on schools. The most obvious is the increased expenditure on educational facilities. As outlined by one administrator:

The other big impact of the *DeRolph* decision in terms of school facilities spending, there really was hardly any state support for school facilities, and if you were a poor district that has trouble raising money to staff your buildings you're going to have the exact same problem in terms of maintaining your buildings, renovating them, building new buildings as you need them. The fact that we've spent over 10 billion dollars on school facilities and we've started from the poorest district and are working our way upward on a list, that's literally a concrete example of, if nothing else had happened, the *DeRolph* decision.¹⁸¹

The Ohio Facilities Construction Commission estimated that, in the twenty years following *DeRolph I*, the state has spent over \$11.5 billion on the construction and improvements of school facilities.¹⁸² Such spending "has led to the opening of over 1,180 new or renovated buildings, reaching an estimated 650,000 students."¹⁸³ Data from the National Center for Education Statistics supports this conclusion, indicating a sharp increase in state facilities' construction expenditures since 1997.¹⁸⁴ Note, however, that facilities' construction expenditures dropped off significantly in 2011.¹⁸⁵ Thus, whether the investments in Ohio's education infrastructure will continue in the long run is yet to be seen.

Lawmakers and political activists are certainly aware of the *DeRolph* decisions, and will pay them lip service when it is politically expedient to do so.¹⁸⁶ However, the final school-funding policies tend to

181. Milcetic, *supra* note 99, at 146–47.

182. David Williamson, *A History of Success: The Ohio School Facilities Commission 20th Anniversary*, SCH. BUS. OFFICIALS Q., June 2017, at 49, 49.

183. *Id.*

184. Ice, *supra* note 173.

185. *Id.*

186. See Jim Siegel, *20 Years After DeRolph, State Not Even Trying to Determine Legal Duty*, COLUMBUS DISPATCH (Mar. 24, 2017, 6:46 PM), <https://www.dispatch.com/news/20170324/20-years-after-derolph-state-not-even-trying-to-determine-legal-duty> [https://perma.cc/PX64-H57V] (highlighting the ongoing debate between legislators about funding in a post-*DeRolph* world). See Kantele Franko, *Lawmakers Unveil Proposal to Overhaul Ohio's School Funding*, WKYC (Mar. 25, 2019), <https://www>

be a result of the current political landscape, not whether those policies create a “thorough and efficient system of common schools.”

CONCLUSION

In the twenty-five years since *DeRolph I* was first decided in the Perry Common Pleas Court, lawmakers, jurists, researchers, and *Case Western Reserve Law Review* contributors have grappled with its implications. Some of the legal questions brought up in the original litigation have been resolved, such as whether Ohio recognizes a fundamental right to education. Yet many other questions remain unanswered, such as what constitutes a “thorough and efficient” system of education and what must the state do to implement such a system. Since the Ohio Supreme Court referred the problem to the General Assembly, ultimately it has been politics—not a legal framework—that has shaped Ohio’s current education-financing system.

Reflecting on the historical evidence and current data, I conclude that *DeRolph* did not have the desired impact of forcing the Ohio General Assembly to overhaul the state’s education-finance system. *DeRolph* did, however, have some positive side effects, including a short-term increase in per-pupil education funding and a large increase in investment in educational infrastructure. Whether Ohio can maintain these improvements or eventually create a system that complies with *DeRolph*’s requirements will be the work for the next generation of lawmakers, researchers, and legal scholars. As one administrator put it, “[t]he bad thing that came out of the *DeRolph* litigation was furthering the notion that someday out there, there is a fix for school funding in Ohio and I don’t think there is one. I don’t think there is (a permanent fix). I think we have to keep revisiting it.”¹⁸⁷

.wky.com/article/news/education/lawmakers-unveil-proposal-to-overhaul-ohios-school-funding/95-3c5b9f54-b34f-4313-a023-b28878dc9782 [https://perma.cc/NN8J-YVU8] (Cupp and Patterson referencing the unconstitutionality of Ohio school financing while attempting to pass new school financing legislation); Jeremy Pelzer, *State Should be Given More Power To Redistribute School Funding, Ohio Speaker Says*, CLEVELAND.COM (Nov. 20, 2019), https://www.cleveland.com/open/2019/11/state-should-be-given-more-power-to-redistribute-school-funding-ohio-house-speaker-says.html [https://perma.cc/5HU4-67VX] (Ohio House Speaker Householder referencing the long history of debate on the constitutionality of Ohio school financing while advocating for a change in the school financing system).

187. Milcetic, *supra* note 99, at 218.

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