

Equity & Adequacy

Of School Funding

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What the Ohio Constitution requires regarding the public common school system

A. History of the system

1. Land Ordinance of 1785
2. Northwest Ordinance of 1787
3. 1802 Ohio Constitution provisions
4. 1837 Superintendent of Common Schools (Samuel Lewis 1837-1840)
5. Akron Law of 1847
6. Thorough and efficient system of common schools provision in 1851
 - i. 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.
7. State Commissioner of Common Schools Law
8. 1912 constitutional provisions for the organization, administration and control of the public school system of the state supported by public funds, and superintendent of public instruction
9. Major school legislation of 1914
10. School Foundation Program of 1935—three-cent sales tax
11. 1953 constitutional amendment to establish a state board of education and superintendent of public instruction
12. Lottery and income tax passed in early 1970s
13. Equal yield school funding formula passed in 1976
14. *Cincinnati v. Walter* Ohio Supreme Court decision in 1979

15. Return to foundation formula in 1980
16. More than a dozen major school finance studies conducted, 1975-1992
17. January 22, 1991-bipartisan legislative school finance study report— school foundation program must accurately reflect the actual cost of a basic quality education program
18. *DeRolph* school funding litigation
 - i. Case filed in 1992
 - ii. Trial court ruled system unconstitutional 1994 and 1999
 - iii. Ohio Supreme Court ruled system unconstitutional 1997, 2000, 2001 and 2002
19. The E & A Coalition Basket of Essential Learning resources was issued in 1999
20. Numerous studies of the school finance system 1990-2010
21. The Strickland administration's Evidence-based Model legislation is the most recent prior to the Cupp-Patterson study

B. Lessons from history

1. Public officials have generally had good intentions regarding the public common school system but have had difficulty in gaining consensus on funding the system at a constitutionally-adequate level
2. Two major lawsuits challenging the constitutionality of the system have not yet resulted in a thorough and efficient system; one that is equitable and adequate
3. Scores of studies commissioned by governors, legislatures, the state education agency and private groups have provided useful guidance to state officials but have been largely ignored
4. Various governors, legislators, state education officials and private individuals have made valiant efforts to match the public school system with constitutional requirements
5. The unwillingness of state officials to appropriate sufficient funds for public schools has been the problem

C. The chronology of the *DeRolph* litigation (attached are a chronology of *DeRolph* from December 19, 1991 to 2008 and Thirteen Years of School

Funding Litigation: Some recollections and Comments by Attorney Nick Pittner, lead attorney for the Plaintiffs in the *DeRolph* case

1. The attached chronology begins in 1991; however, the seeds of the litigation were planted at a meeting of the Perry County superintendents in 1986. An Ohio Department of Education official told those school officials they needed to get organized because the state would not help poor school districts without being pressured to do so.
2. These superintendents lead the effort to establish the Ohio of Rural and Appalachian Schools (CORAS). CORAS engaged in school activities/actions/events that focused on improving educational opportunities in the Appalachian region, but lack of appropriate funding nagged at those involved in the effort.

CORAS leaders commissioned Dr. Samuel Kern Alexander to conduct a school finance study. As anticipated, the study demonstrated that the Ohio school funding system was neither adequate nor equitable. The results of the study were shared with more than 400 school leaders from across the state at a statewide meeting in 1991. The statewide interest encouraged CORAS leaders to continue efforts to establish an entity to challenge the system in court. The Ohio Coalition for Equity and Adequacy of School Funding was established in 1991 as a council of governments pursuant to Chapter 167 of the Ohio Revised Code. (CORAS continues to assist school districts in the region to improve educational opportunities.)

D. Judicial decisions in *DeRolph*

1. Perry County Court of Common Pleas ruled the system unconstitutional and declared education a fundamental right in July 1994
2. The Ohio Supreme Court declared the system unconstitutional in March 1997:

Ohio's elementary and secondary schools are neither thorough nor efficient, hence unconstitutional. (Court did not address the fundamental right issue.)

The Court did not recommend a remedy but did identify the shortcomings of the system.

The Court identified four factors that contribute to the unworkability of the system and must be eliminated. The two main factors are: the operation of the foundation program and the emphasis of property tax in the funding formula.

The Court ordered a “complete systematic overhaul of the funding system.” Five years later (December 2002), after the legislature performed several tweaks to the system, the Court indicated that the legislature merely “nibbled at the edges” and again ordered a complete systematic overhaul in accordance with *DeRolph I and II*.

E. What constitutes a school funding solution?

1. Funds must be available to finance the educational needs of each category of students (regular, disadvantaged, disability, ESL) regardless of the place of residence in Ohio.
2. Process
 - i. The programs and services required for each category of students must be identified
 - ii. A defensible price tag must be applied to each category of students
 - iii. Some costs, such as transportation, must be funded outside the school foundation formula
 - iv. The distribution formula must take into consideration the characteristics of districts such as enrollment, square miles, topography, etc.
 - v. Charters and vouchers should be funded separate and apart from school districts and must not diminish funding required for a constitutional system

The ultimate goal of the funding mechanism is to ensure a student receives a high quality education regardless of the district of residence.

The quality of programs and services should be similar regardless of geography. Students should be able to move from district to district without experiencing dramatic differences.

F. The Time Is Now

1. Ohio can afford high quality educational opportunities for all
2. The Cupp/Patterson study process was thorough
 - i. It was a bipartisan effort with the right persons heading it up
 - ii. It was a bottom up effort with school superintendents and treasurers exhaustingly engaged
 - iii. It has been subjected to numerous public hearings
 - iv. HB 305 is still being tweaked
3. The Speaker of the House has unfinished business in the school funding arena. He attempted to fix school funding the first time he served as Speaker of the House.

DeRolph v. State of Ohio, et al.

Thirteen Years of School Funding Litigation: Some Recollections and Comments

"School funding litigation is like a classic Russian novel; long, boring and in the end, everyone dies."

The Beginning:

The *DeRolph* case began in Appalachia, Southeastern Ohio where poor country school districts, tired of asking for support from unresponsive legislators hired Dr. Kern Alexander to conduct a study of school funding in Ohio. Dr. Alexander had conducted similar studies in other states and had played a key role in some major school funding litigation. His study concluded that the inequities in Ohio at the time were worse than those in states that had successfully challenged school funding laws.

Emboldened by Dr. Alexander's study, the Coalition of Rural and Appalachian Schools, the group that had commissioned the study, expanded its scope to become a statewide effort called the Ohio Coalition for Equity and Adequacy of School Funding (the Coalition). Soon thereafter the Coalition hired Bill Phillis, who had served as Assistant Superintendent of Public Instruction for a number of years and whose passion for school funding reform provided the spark for the Coalition's efforts. Bill's passion and tireless efforts made the litigation possible. His zeal for adequate funding for public education continues today. After hiring Bill, the group expanded to include over 500 Ohio public school districts as members, with a goal to support litigation to bring about school funding reform.

The Coalition then interviewed a number of law firms to serve as counsel for its litigation project. The sheer scope of the project demanded a firm with sufficient resources to staff a major litigation project. Bricker & Eckler LLP could offer school law and school finance background as well as trial litigation and appellate support. Our core team ultimately included Sue Yount, a school law expert, John Birath, a seasoned litigator, Susan Greenberger, an appellate expert and myself. Others joined the effort for specific tasks as needed.

The Litigation:

Our first complaint was styled *Thompson v. State of Ohio* and was filed in the Perry County Common Pleas Court. The complaint included numerous school districts and individual plaintiffs, including parents, pupils, teachers, school administrators and board members. The claims included violation of IDEA as well as violation of both federal and state constitutional rights by the school funding system. The State defendants, noting the federal claims in the case, removed it to federal court. We were unable to convince the federal court to remand the case back to state court for trial. In order to try to get to trial as quickly as possible we dismissed the federal claims, and most of the plaintiffs, handing the remainder of the case over to an advocacy group seeking a venue to assert IDEA claims in federal court. We then re-filed, on December 19, 1991, a state-claims only case in the same court. It is interesting to note that today, over 27 years later, the remnants of the original *Thompson* case are still pending in the federal court.

The second case was styled *DeRolph, et al. v State of Ohio, et al.* The *DeRolph* was a teenager, Nathan *DeRolph* whose father, Dale *DeRolph* was rightly upset about the fact that there was no chair for his son

in class, and not enough textbooks for all of the students. Little did he know that his name would become part of history. Today, Nathan is grown and has children in school in Columbus.

The fact that both cases were filed in the Perry County Court of Common Pleas raised allegations that the plaintiffs were “forum shopping” by filing the case in a poor, rural Appalachian county with a single judge. In fact, we did extensive research to find a jurisdiction that could process cases quickly, in an appellate district that also handled cases quickly. The goal was to get the case to the Ohio Supreme Court as quickly as possible, and Perry County was a good fit. The schools there also had made remarkable local tax effort to support their school, an additional factor in their favor. So we were, in fact, forum shopping, but not in the traditional sense. As it turned out, we couldn’t have had a much better forum than the one we chose, though we didn’t know it at the time.

In lieu of a class action, we opted to join a variety of school districts and related individuals as plaintiffs. Youngstown City Schools and Lima City Schools were good examples of the “rust belt” decay of urban education while Northern and Southern Local Schools in Perry County local schools were prime examples of the operation of Ohio’s funding system on rural school districts.

Pre-Trial:

One of the more successful strategies that we followed was to get the trial judge, Judge Linton Lewis, to undertake a “view of the scene” prior to trial. On the record, we toured lavish new school facilities in Worthington and Pickerington, as well as some of the plaintiff school buildings as well. The contrast was stark and the judge quickly got the picture. On one of those tours we were walking down the hall in a middle school building and observed a large wading pool in the middle of the floor. Looking up, one could see fallen plaster and daylight through the deteriorated ceiling. Similarly, looking at encyclopedias published 30 or more years ago, chemistry labs with no chemicals and non-working lab equipment and world maps years out-of-date brought home the disparities to all of us, including the judge. I believed we had won the case before the trial ever started.

We also deposed a large number of Ohio Department of Education employees, many of whom were people we had worked closely with over the years in unrelated matters. Though they were all “good soldiers” in trying to follow the advice of their counsel, we knew that their sympathies lay with our side of the case and, given the opportunity, many of them gave us very favorable testimony.

Trial:

The trial lasted 7 weeks and included over 70 witnesses and 500 exhibits. It sorely tested us all. The Judge was insistent that he would wait for no witness, and that counsel should be prepared to move on immediately after the conclusion of the previous witness. In order to accommodate that demand we “platooned” witness presentation, with one of us preparing the next witness while another presented to current witness. To the credit of all counsel, he never had to wait. During the nearly 3 years prior to trial a massive amount of discovery had been undertaken, and a great number of witnesses were presented by deposition. But for that, the trial would have been at least twice as long.

Three days before the trial was set to begin we received a telefax order from a common pleas court judge in Cleveland directing counsel on both sides, as well as the Perry County trial judge to not proceed to trial. The Cleveland court, having a case pending that was styled as a class action, believed that its jurisdiction was exclusive and sought to bar us from proceeding. The next morning we filed a complaint

for a Writ of Prohibition in the Ohio Supreme Court to bar the Cleveland judge from enforcing his order. The Writ was granted 3 days later and the trial proceeded.

The Perry County courthouse is located in New Lexington Ohio. There are no hotels in Lexington Ohio, so we were forced to find lodging elsewhere and travel to court each morning. It being the fall in Appalachia, we saw deer/car incidents most mornings. Every day at lunch time we would walk past pickup trucks laden with deer carcasses outside the Sheriff's Office waiting to be registered. New Lexington was not for the faint of heart.

The Perry County Educational Service Center, a "county school district" offered to serve as our home base during the trial. With telephone, copier and office space, as well as much-needed coffee and sometimes even food, it was a welcome base of operations. Our eternal thanks to Dick Fischer, the superintendent, for his generosity.

We opened the trial with strong witnesses who could explain in clear, understandable terms, the operation and deficiencies of Ohio's school funding system. High among our priorities was the facilities problem, documented by a massive study that Bill Phillis had commissioned during his time at the Department of Education, and which concluded that Ohio had a \$10 billion school facilities need. But anecdotal testimony helped to sharply define that need. For example, one witness testified about the asbestos that flaked from the gymnasium ceiling when the kids played basketball in the gym. Others told of arsenic in the school water, the raw sewage fouling the playgrounds and the school building sliding down a hill. One board member testified that his farm animals were better housed than the school children attending the schools in his district. Makeshift classrooms, lack of restroom facilities, and dangerous, deteriorated school buildings made a strong case that, if the state had responsibility for these conditions, it had badly shirked that responsibility. The trial concluded on, Dec. 8, 1993

The Trial Court Decision:

The Trial Court announced its decision on July 12 1994.¹ The decision was remarkable both in length and breadth. In the all the decision consisted of 958 pages setting forth the Court's findings of fact and conclusions of law. We were delighted that the Court had ruled in favor of the Plaintiffs on every key issue in the case, including ruling that the right to a "thorough and efficient" public education, as defined in the Ohio Constitution, was a fundamental right, thus shifting the burden to justify future disparities to the state. The big-city media took exception to the "country judge" ruling on statewide issues and holding the state accountable. Cartoons and editorials, many of which were virtually identical, were widely published around the state. The Attorney General sought to remedy this obvious miscarriage of justice in the court of appeals. But, he had a problem: the State Board of Education, one the defendants in the case voted *not to appeal* the decision and the General Assembly, had taken no formal action authorizing an appeal within the filing time limit. Faced with no client formally requesting him to appeal the decision the Attorney General did what many politicians do, he rose above it and filed a notice of appeal anyway.

The Ohio Supreme Court:

¹ DeRolph v. State of Ohio, Case No. 22043 (Perry Co. CP, July 1, 1994); See, <http://www.bricker.com/documents/resources/schoolfund/070194cp.pdf>.

In all, the case came before the Ohio Supreme Court on five separate occasions. The first was, for me the most difficult. Though I had argued cases before the Supreme Court on numerous other occasions, this one, by far, was the most significant. We conducted numerous “moot court” exercises to prepare and had a wonderful team including a number of litigators, appellate experts and one former Ohio Supreme Court Justice. One of the points that came from those exercises was “The State of Ohio couldn’t house convicted felons in the buildings it condemns its public school children to occupy on a daily basis.” Another was, in response to anticipated separation of powers questions, “We’re not asking you to do the Legislature’s job, we’re asking you to do your job.” We were able to weave both into the oral argument and one of the Justices echoed that line in his decision, so I guess we hit the mark.

The significance of the case was marked at the outset of the oral argument by the Court essentially waiving the 15 minute per side time limits and permitting counsel to argue until the Court had heard enough – a period lasting nearly 2 hours. Oral argument took place on Sept. 10, 1996 and the Court’s decision was released on March 24, 1997.

The Court announced that its decision would be released on March 24 a day or two in advance and the State’s chief counsel, Joel Taylor called me at home the night before to reminisce a little and wish us well. He was prophetic in observing that, however it came out, “things wouldn’t be the same” after the decision.

The next morning the entire trial team, along with hundreds of other interested folks lined up in front of the Supreme Court’s media counter. There were 5 huge piles of paper lined up on the counter which, we soon learned, respectively represented the Court’s majority decision, the dissent, and 3 concurring opinions. Each was quite lengthy. The decision was 4 to 3 and I’ve always believed that the 4 in the majority agreed among themselves that each would write a separate opinion to prevent any last-minute defections to the other side. That view has never been confirmed or denied. In the end, we won, and it was a momentous day for Ohio’s public school children.² Little did we know that it was just the beginning of another round in the fight.

The Supreme Court directed the legislature to develop a school funding system compliant with the Ohio Constitution and gave them a year in which to do it. The remedial legislation was to be ruled on by the trial court, and then was subject to direct review (bypassing the court of appeals) by the Supreme Court. That review began on August 24, 1998 and in effect represented an additional 10 day trial back in Perry County, at the end of which the trial court ruled that the remedial legislation failed to meet the Supreme Court’s directives as set forth in the March 24, 1997 decision.

The trial court’s second decision was then appealed to the Ohio Supreme Court which held, on May 11, 2000, that school funding system remained unconstitutional.³ The legislature was given additional time for the crafting of remedial legislation. This time evidence was to be filed directly with the Supreme Court -- a really bad idea as, without the agility to cross-examine, distortion and misrepresentation often rules the day – as became manifest as the third round of appeals went forward.

² DeRolph v. State (1997) 78 Ohio St.3d 193.

³ DeRolph v. State (2000) 89 Ohio St.3d 1.

The third Ohio Supreme Court's decision was announced on September 6, 2001.⁴ This time, the Court's frustration was obvious. Abandoning any separation of powers pretense, the Court ruled that the legislative formula advanced by the legislature remained deficient, but "would be" acceptable if a few of the criteria were changed. In effect, the Court sought to re-write the legislative "fix" advanced by the General Assembly. The opponents quickly filed a Motion to Reconsider, arguing that the "fix" would cost the State millions more than the legislation had anticipated and claiming that a data error had been made in one of our expert's reports and mistakenly relied on by the Court. In fact, there was no data error. But, in an effort to avoid the appearance of having made a mistake, the Court granted the Motion and directed the parties to Mediation in an effort to resolve the impasse.

Mediation was a complete waste of time, and the Mediator, Howard Bellman, ultimately reported to the Court on March 21, 2002 that there was no hope of a mediated settlement. The Supreme Court returned the case to the active docket for final resolution.

On December 11, 2002 the Supreme Court issued its 4th DeRolph decision, vacating the third, (compromise) decision, reinstating the 1st and 2nd decisions and directing the General Assembly to "enact a school funding scheme that is thorough and efficient, as explained in *DeRolph I*, *DeRolph II*, and the accompanying concurrences."⁵ The Court's decision was as good as one could possibly have hoped for. It was also timely, as the membership, and balance, of the Court would soon change, with 2 new justices taking the bench after the first of the year.

Now, having a clear mandate for the enactment of a new school funding system, we waited for some sign that the Supreme Court's directive to the legislature would soon be followed; and waited, and waited... Finally, we sought to motivate the State to begin the process by filing a Motion in the trial court asking for a status conference for the State to advise the court, and the Plaintiffs as to its timetable for compliance. The State responded by filing a Motion for Writ of Prohibition in the Ohio Supreme Court asking for an order prohibiting the trial court from taking any further action in the case. The State argued that, since the Supreme Court's decision had neither been retained by the Supreme Court nor remanded to the trial court, the trial court lacked jurisdiction to take any further action in the case. The "new" Supreme Court quickly granted the Motion, thus leaving the Plaintiffs with little choice but to attempt to start the entire process over again by filing a new case.⁶ There was little will to do that, especially since it was clear that the "new" Supreme Court was unwilling to enforce the mandate of its predecessor.

Our last hope was to seek review from the United States Supreme Court, which we did in August of 2003. Like most certiorari petitions, ours was denied. Thus ending, in October of 2003, the litigation begun in 1990. We had a mandate from the Ohio Supreme Court and no way to enforce it. Thus, today Ohio's remains without a school funding formula that satisfies the Ohio Constitution and continues to deprive many of its children of the "thorough and efficient" system of public education to which they are entitled.

What was gained:

⁴ DeRolph v. State (2001) 93 Ohio St.3d 309

⁵ DeRolph v. State, 97 Ohio St.3d 434, 2002-Ohio-6750

⁶ State ex rel. State v. Lewis 99 Ohio St.3d 97, 2003-Ohio-2476

As a result of the *DeRolph* litigation the legislature created a funding structure that channeled \$11.5 billion in state funding to the construction or renovation of 1180 school buildings in Ohio. These were desperately needed improvements and, though the litigation was never formally credited by the politicians as the reason for the funding, we all understood why it came to pass.

The second thing that was gained was a judicial declaration from the State's highest court that the ultimate responsibility for public education in Ohio lies with the legislature.

What was not gained:

Ohio still lacks a school funding formula that meets the requirements set forth in the *DeRolph* decisions and it is unlikely that we will achieve that goal anytime in the near future. There are two fundamental reasons: first, because we had a constitutional crisis in Ohio and the court blinked, thus ceding the issue to the legislature. Early on, some of the Supreme Court justices had telegraphed the fact that they would not exercise judicial authority to enforce their decisions in the case. One justice noted in a concurring opinion to the effect that "the court lacks an army with which to enforce its decisions..." Others were more subtle, but the message was clear that aggressive enforcement would not be forthcoming. Having no consequences to fear, the legislature was free to ignore the Court's *DeRolph* orders, and it did.

The second reason that we have been unable to bring about meaningful reform is the "T" word. School funding reform in the traditional sense cannot be done within the confines of existing revenue, and additional revenue would be required. The prevailing political agenda in Ohio, as in many other states, has been to do everything possible to cut taxes, or at least shift the tax burden from the state to local government, so that school funding reform in the political climate that has, and still prevails in Ohio is unlikely.

As a final observation, I would note that the public has been fed a regular diet of negative publicity, not all of it undeserved, about public education for years. As an institution of government, many public schools, especially those in large urban, high poverty areas have been characterized as "money pits" that consume large amounts of cash and return few positive results. While most parents have high praise for the school their children attend, they are doubtful about the efficacy of public education in general. Against this background, mandates such as those issued by the Ohio Supreme Court are met with general skepticism on the part of the public, and without a groundswell of sentiment for the enforcement of those mandates, the response has not been unexpected. As one observer noted, "no politician has been voted out of office because of school funding." Until that circumstance changes, we may well expect a continuation of the status quo.

We had some heroes:

In addition to the tireless efforts of Bill Phillis, the Coalition also had the steady hand of Larry Miller, a Muskingum County superintendent as Chair of its governing board for much of the time the litigation was pending. Larry stood as a lighthouse for the Ohio education community and he attracted hard work from a great many of his colleagues, too numerous to mention here. Also, the trial team, Sue Yount, John Birath and Susan Greenberger represented the finest collection of brilliant, dedicated and hardworking lawyers ever, in my experience, assembled in one effort.

CHRONOLOGY OF THE *DEROLPH* LITIGATION
Dale R. DeRolph et al... vs. The State of Ohio et al...
Court of Common Pleas, Perry County, Ohio

- **December 19, 1991** - A second complaint was filed by the E & A Coalition in Perry County on behalf of the Northern Local School District et al...
- **June 1992** - An April 19, 1993 trial date was set by Judge Linton Lewis, Jr. (Trial delayed until October, 1993.)
- **October 25, 1993** - The trial began and lasted 30 days. The trial included over 70 witnesses and over 500 exhibits.
- **December 8, 1993** - The trial adjourned.
- **July 1, 1994** - Judge Linton Lewis, Jr. issued a ruling stating that education is a fundamental right and that Ohio's system of school funding is unconstitutional.
- **July 12, 1994** - The State Board of Education adopted a resolution to *not* appeal the *DeRolph* case.
- **August 12, 1994** - The Governor announced that the State Defendants filed a Notice of Appeal. The State Board of Education was included among the Appellants in the Notice of Appeal.
- **August 30, 1995** - In a split decision, (2-1) the Appeals Court essentially overturned the trial court decision in *DeRolph*.
- **October 10, 1995** - E & A Coalition filed an appeal asking the Ohio Supreme Court to accept jurisdiction of the case.
- **January 17, 1996** - Ohio Supreme Court accepted jurisdiction of the case.
- **March 11, 1996** - Twelve Amicus Curiae Briefs written on behalf of 16 organizations, including one presenting views of 37 Ohio legislators, were filed in support of the Plaintiffs/Appellants.
- **September 10, 1996** - Lead plaintiff attorney presented an oral argument before the Supreme Court.
- **March 24, 1997** - The Supreme Court ruled the current funding system unconstitutional and ordered a "complete, systematic overhaul" of the system with enactment required within 12 months (by March 24, 1998).
- **April 3, 1997** - The State defendants filed a motion for reconsideration and clarification of the *DeRolph v. Ohio* decision. The defendants asked the Supreme Court to 1) clarify whether local property taxes may be used in the new funding formula; 2) clarify the continued validity of debt obligations, pursuant to state law, incurred before March 24, 1998; and 3) retain jurisdiction of the *DeRolph* case.
- **April 25, 1997** - The Supreme Court ruled on the State's "Motion for Reconsideration and Clarification," and found 1) local property taxes may be used as part of the funding solution, but they may no longer be used as the primary source of funding for a thorough and efficient system of schools; 2) school district borrowing may continue through March 23, 1998; and 3) the Supreme Court would not retain jurisdiction of the *DeRolph* case because the trial court is in the best position to be a trier of fact and gatherer of evidence and make decisions about the progress and constitutionality of the enacted legislation. The Supreme Court stated that "it would be the trial judge's responsibility to rule on the constitutionality of the enacted legislation and to render an opinion. Any party could then appeal that decision directly to this court for final determination."

- **August 8, 1997** - Plaintiffs filed their first application for determination of fees.
- **August 29, 1997** - Status Conference
- **September 17, 1997** - State filed memorandum in opposition to Plaintiffs' fee application.
- **September 27, 1997** - Plaintiffs filed reply memorandum.
- **October 30, 1997** - Judge Linton Lewis, Jr. ruled, in part, on the Plaintiffs' fee application, stating that the Plaintiffs fees and expenses are appropriate to be paid by the Defendants with the exception of the federal court proceedings in Thompson v. State of Ohio. Judge Lewis also held that an award of interest on the Plaintiffs' fees would be appropriate. Judge Lewis did not award reimbursement for expert witness' fees. The court set February 23 and 24, 1998 as dates for an evidentiary hearing on the reasonableness of the hours expended by Plaintiffs' counsel on the case (trial and appeals) and the reasonableness of the attorneys' fees.
- **February 18, 1998** - State filed for an extension of the March 24 deadline to July 1, 1998 in the Perry County Court of Common Pleas, requesting (1) "to extend the March 24th deadline until July 1, 1998, which is both after the May election and which would provide ample time to review the State's remedy, and (2) to request the Ohio Supreme Court to enter an order asserting jurisdiction over any *DeRolph*-related cases, including any challenges to the May 5th ballot."
- **February 23 -24, 1998** - Hearing on the fees application.
- **March 4, 1998** - Plaintiffs file a motion in opposition to the State's motion for an extension of the March 24 deadline in the Perry County Common Pleas Court. Plaintiffs argued that the Perry County Court's "remand authority is limited to the authority to enforce the Supreme Court's decision, not to change it." And that extending the March 24 deadline will "serve no purpose other than to delay judicial review of the 'remedy' that the State asserts is now complete."
- **March 9, 1998** - The State filed a Reply in Support of Its Motion for Extension of the March 24 Deadline in the Perry County Common Pleas Court, citing two main reasons for the extension. 1) "an extension is necessary to keep the schools open for the remainder of this school year." 2) "an extension will allow this Court to defer a hearing plaintiffs' challenge until after May 5th, which will allow the debate over the sales tax increase to occur in the proper forum."
- **March 10, 1998** - Judge Linton Lewis, Jr. ruled that the Perry County Court "is without authority to extend the deadline." The State's motion for an extension of the March 24 deadline in the Perry County Common Pleas Court was denied.
- **March 11, 1998** - State filed a motion for extension of the March 24 deadline to July 18 in the Supreme Court of Ohio. Dismissing the claim that an extension was needed to keep schools open for the remainder of this school year, the State said an extension was necessary to "clarify that the State defendants may continue operating and funding schools in a smooth and efficient manner." The extension will also "place the State on a reasonable schedule for implementing these changes."
- **March 20, 1998** - The plaintiffs filed a motion in opposition to the State's request for an extension of the March 24 deadline to July 18 in the Supreme Court of Ohio. Plaintiffs argue that the "State has failed to provide this Court with any valid reason to extend the March 24 deadline...the sole purpose and effect of the requested extension is to delay judicial review of that legislation." The plaintiffs also state that "the question of whether such legislation satisfies the mandates of the Court is totally independent of a May 5 election, and the passage or failure of the proposed tax levy will have no effect on the operation of the State's school funding laws."
- **March 23, 1998** - Plaintiffs filed a motion for order reinstating remand, directing the trial court to establish a scheduling order, and allocating to the state the burdens of production and proof. The plaintiffs argued that

the trial court should issue a scheduling order to immediately begin review of the State's remedy to *DeRolph*. The plaintiffs also argued that "it is now the State's responsibility, in the remedy phase of this litigation, to purge itself of the finding of unconstitutionality by affirmatively demonstrating that it has established an 'entirely new school financing system' that is consistent with the constitution and this Court's decision of one year ago." Plaintiffs urged the Court that if the State has appropriately answered the *DeRolph* decision then the State defendants have nothing to fear from immediate judicial review. Plaintiffs further stated that if the State has not appropriately answered the *DeRolph* decision then delay is intolerable.

- **June 1998** - The Ohio Supreme Court has yet to rule on the State's Motion for an Extension of the March 24, 1998 deadline and the Plaintiffs' Motion for Order Reinstating Remand, Directing Trial Court to Establish Scheduling Order, and Allocating to the State the Burdens of Production and Proof.
- **August 24 - September 4** - Hearing in Perry County Common Pleas Court to review the State's response to *DeRolph*.
- **September 1, 1998** - Supreme Court ruled that the State has the "burden of production and proof and must show by a preponderance of the evidence that the constitutional mandates have been fulfilled."
- **November 3, 1998** - Both the Plaintiffs and Defendants filed Post-Hearing Briefs and Proposed Findings of Fact and Conclusions of Law with Judge Lewis.
- **November 3, 1998** - Senator Ben Espy, along with Representatives Bender, Brady, Hartley, Healy, Krupinski, Mallory, D. Miller, Prentiss, Pringle, Sutton, Sykes; and Senators Furney, Hagan, Herington, Latell, McLin and Shoemaker, filed a Brief of Amici Curiae with Judge Lewis on behalf of the Plaintiffs in *DeRolph*.
- **November 3, 1998** - The Ohio Association for Gifted Children submitted an Amicus Curiae Brief to Judge Lewis on behalf of the Plaintiffs in *DeRolph*.
- **November 16, 1998** - State Defendants filed a Motion to Strike portions of Amicus Curiae Briefs submitted by Senator Espy and other legislators, and the Ohio Association for Gifted Children - stating that both briefs contain "information extraneous to the record and are beyond the scope of an Amicus Brief."
- **December 2, 1998** - Judge Lewis denied the State's Motion to Strike portions of the two Amicus Briefs "with the exception of the Radio Talk Show comments allegedly made by Senator Watts. Senator Watts' comment to the effect that the districts that sued the State would 'rue the day' that the Court's decision came down was previously excluded on objections by the State at trial. Wherefore, the remainder of the Amicus Curiae Briefs will be accepted into the record of this case."
- **December 3, 1998** - Both the Plaintiffs and Defendants filed Reply Briefs and Objections to Findings of Fact and Conclusions of Law with Judge Lewis.
- **February 26, 1999** - Judge Lewis ruled State's response to the Supreme Court order in *DeRolph* unconstitutional.
- **June 23, 1999** - The record from the Perry County Common Pleas Court was filed with the Supreme Court.
- **August 2, 1999** - State Defendants filed their brief with the Supreme Court. Governor Robert Taft filed an amicus brief and Senate President Richard Finan, jointly with House Speaker Jo Ann Davidson, filed a second amicus brief on behalf of the Defendants.
- **September 1, 1999** - Coalition Plaintiffs filed their brief with the Supreme Court. 15 amicus briefs were filed in support of the Plaintiffs.

- **September 1, 1999** - Supreme Court set oral argument for November 16, 1999.
- **September 21, 1999** - State Defendants' reply brief was due.
- **November 16, 1999** - Supreme Court heard oral arguments from both parties in the *DeRolph* case.
- **May 11, 2000** – Supreme Court ruled Ohio's school funding system remains unconstitutional and gave the State until June 15, 2001 to bring the system into compliance.
- **December 8, 2000** – Coalition Plaintiffs filed a motion for order requiring Defendants to (1) pay the costs of the unfunded mandates, and (2) file a master plan for achieving compliance with the Supreme Court's orders and to file subsequent progress reports.
- **January 25, 2001** – Supreme Court ordered that Plaintiffs and Defendants file any evidence no later than June 15, 2001 and that the parties and amicus curiae file their merit briefs no later than June 18, 2001. Responsive briefs and stipulated extensions of time will not be permitted. The Supreme Court also set oral argument for June 20, 2001.
- **March 12, 2001** – House of Representatives announced Equity in Education Act, House Bill 2, which has the support of the Coalition Plaintiffs.
- **June 15, 2001** – Evidence was filed with the Supreme Court in preparation for oral argument.
- **June 18, 2001** – Both Plaintiffs and Defendants filed merit briefs. 16 groups and Congressman Ted Strickland filed amicus briefs in support of the Plaintiffs. 5 briefs were filed in support of the State Defendants.
- **June 20, 2001** – Oral argument before the Supreme Court.
- **September 6, 2001** – Supreme Court ruled Ohio's school funding system unconstitutional, but ordered State defendants to alter the methodology for determining the per pupil base support and to accelerate the phase-in of parity aid, at which point the system will become constitutional.
- **September 17, 2001** – State Defendants filed a motion for reconsideration with the Supreme Court.
- **November 2, 2001** – Supreme Court granted Governor Taft's motion for reconsideration, but did not issue an opinion to define the parameters of reconsideration. The Supreme Court issued a statement that merely said, "On motion for reconsideration. Motion granted, Decision and opinion to follow."
- **November 16, 2001** – Supreme Court granted the reconsideration motion, but orders a settlement conference between the Defendants and Plaintiffs and orders a master commissioner to preside over the conference. The Supreme Court provided a list of nine potential candidates for master commissioner and requested both parties to file, within ten days, memorandums to comment on the candidates or provide additional candidates.
- **November 26, 2001** – State Defendants and Coalition Plaintiffs both filed memorandums commenting on the nine potential candidates of master commissioner. The Coalition Plaintiffs found no fault with any of the candidates, but did identify four of the candidates that appeared to "possess the qualifications and experience that would be of greatest assistance to the Master Commissioner." Those four are: Eric Green; Michael Lewis, Francis McGovern and Linda Singer. The State Defendants' memorandum requested clarification on the parties to the litigation and also requested a status conference in addition to comments on the candidates. Specifically, the State Defendants wished to clarify that amici of the Court are not parties to the litigation, state entities are represented solely by the Attorney General's office and individual legislators are not parties to the litigation. The State Defendants felt they did not have ample time to review the list of nine candidates nor to explore the possibility of additional candidates and therefore based on the "limited background information available, the State finds no apparent basis upon which to

challenge any candidate for cause.”

- **December 13, 2001** – Ohio Supreme Court issued order selecting Howard S. Bellman from Madison, WI as the master commissioner. The Supreme Court also denied the State Defendants’ request for clarification and their request for a status conference.
- **February 14, 2002**– Bellman asked for a 30-day extension to file his final report.
- **February 19, 2002** – Supreme Court granted the extension to March 21, 2002.
- **March 21, 2002** – Bellman filed final report stating that mediation did not produce a resolution. Chief Justice Moyer issues a statement that *DeRolph* returns to the Supreme Court’s active docket for resolution.
- **December 11, 2002** – Supreme Court ruled Ohio’s school funding system is unconstitutional and directed the General Assembly to “enact a school-funding scheme that is thorough and efficient, as explained in *DeRolph I*, *DeRolph II*, and the accompanying concurrences.
- **March 2003** – E & A Coalition filed a motion in Perry County Common Pleas Court for a compliance conference
- **May 2003** – Ohio Supreme Court granted writ of prohibition which denied the Trial Courts’ right to decide on the motion for compliance, thus ending the *DeRolph* litigation
- **August 2003** – E & A Coalition filed a petition for writ of certiorari with the U. S. Supreme Court
- **October 2003** – U. S. Supreme Court denied the petition for writ of certiorari
- **November 2003** – E & A Coalition joined former state representative Bryan Flannery in an initiative petition to proffer legislation to fix school funding. Insufficient signatures were gathered.
- **January 2004** – E & A Coalition joined Mr. Flannery in writing and promoting a constitutional amendment to fix school funding. Insufficient signatures were gathered.
- **January 2006** – E & A Coalition joined with statewide education organizations in writing and promoting a constitutional amendment.
- **November 2006**—Education consortium and Ohio Mayors’ Education Roundtable agreed on the content of the amendment.
- **January 2007** – The **Getting It Right!** amendment was announced.
- **March 2007**—Petition effort for the amendment started.
- **July 2007**—Some of the consortium organizations backed away from the amendment but others continued to collect signatures through the remainder of 2007.
- **2008**—Petition effort dropped