

1 DeRolph v. State.

2 PFEIFER, J., concurring. I join the majority of this court in concluding
3 that the current school funding system violates the Thorough and Efficient
4 Clause of the Ohio Constitution. The School Foundation Formula and related
5 statutes do not adequately smooth out the unconscionable funding inequities
6 that exist between school districts in this state. These disparities in funding are
7 direct evidence of a system that is inefficiently designed and administered.

8 Even within a single county, disparities can be remarkable. For example,
9 the actual tax yield per pupil per operating mill in Cuyahoga County ranges
10 from \$581.57 in Cuyahoga Heights to \$21.06 in East Cleveland. In 1994, the
11 year from which these figures were taken, it required over twenty-seven mills
12 in East Cleveland to yield what one mill yielded in Cuyahoga Heights.

13 In Trumbull County, the property valuation per pupil ranges from
14 \$194,649 in Lordstown Local to \$42,297 in McDonald Local. In Clermont
15 County, the property valuation per pupil ranges from \$254,365 in New
16 Richmond to \$33,283 in Felicity-Franklin. New Richmond received more state

1 aid per pupil than over sixty school districts with lower property valuation per
2 pupil.

3 In Cuyahoga Heights and Independence, taxpayers paid an average of
4 twenty-two mills in 1993 and were able to spend an average of \$11,891 per
5 pupil. In East Cleveland, Lakewood City and Olmsted Falls, taxpayers paid an
6 average of over seventy-eight mills in 1993 and were able to spend an average
7 of only \$5,564 per pupil. Thus, on average, residents of Cuyahoga Heights and
8 Independence paid less than one third the millage paid in East Cleveland,
9 Lakewood City and Olmsted Falls but were able to spend over twice as much
10 per pupil.

11 These disparities were not caused by a lack of commitment to education.
12 The residents of East Cleveland, Lakewood City and Olmsted Falls have taxed
13 themselves heavily but are handicapped by their low property base. A system
14 of funding that relies heavily on property taxes while producing such
15 disparities and further exacerbates the disparities by providing state funds to
16 wealthy school districts cannot be considered thorough and efficient.

1 The majority opinion examines a constitutional mandate and determines
2 that the present funding structure fails to meet that mandate. It does neither
3 more nor less than the syllabus law sets forth.

4 In contrast, the minority would require us to forgo addressing the issue
5 before us. They would defer the determination of this vital constitutional
6 standard to the General Assembly. This approach would severely limit the
7 constitutional authority of this court and would, in the long term, harm both the
8 legislative and judicial branches of government.

9 Moving to the merits, the minority would do nothing. They would
10 require us to ignore coal bin classrooms, free-floating asbestos fibers, leaking
11 roofs, and arsenic-laced water and determine that the current system complies
12 with the Thorough and Efficient Clause. A fair reading of the minority opinion
13 leaves one with great difficulty imagining a system that would violate the
14 minority's understanding of the Thorough and Efficient Clause. In short, the
15 minority gives a "dead letter" interpretation to the Thorough and Efficient
16 Clause.

1 The concept of providing free compulsory education for every citizen,
2 while a constitutional mandate, is nevertheless an ongoing experiment. Public
3 education is a constantly evolving process.

4 The delegates to the constitutional convention of 1850-1851 added the
5 Thorough and Efficient Clause to the Constitution due to their distinct
6 disappointment with the General Assembly's treatment of education at that
7 time. They intentionally rejected more specific language in favor of the more
8 fluid term "thorough and efficient." They expected the measure of "thorough
9 and efficient" to expand as time passed and the state matured. The delegates
10 placed on their and each subsequent generation the burden of constantly
11 evaluating whether the constitutional standard was being met. We honor their
12 foresight by giving life and meaning to their language.

13 The General Assembly has long been aware that the current funding
14 structure is constitutionally flawed. It has been impossible to adequately
15 address the problem because wealthy school districts have staunchly defended

1 the status quo. This decision rejects the status quo and requires the General
2 Assembly to act.

3 The solution to the problem before us cannot come exclusively from the
4 legal or political system. The General Assembly cannot write a statute, and we
5 cannot write an opinion, that requires parents to love their children, to provide
6 proper nutrition for their children, to challenge and nurture their children, to
7 read to their children, or to do any number of other things that are vitally
8 important to the growth and educational development of their children. We can
9 require the General Assembly to comply with the Constitution of this state by
10 implementing a funding scheme that secures “a thorough and efficient system
11 of common schools throughout the state.” Neither the plain language of the
12 Ohio Constitution nor our collective consciences allow us to do otherwise. We
13 have accepted our constitutional duty and dispatched it as best we could. We
14 are confident the General Assembly will do likewise.