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**TRYING TO BRIDGE THE GAPS:
OHIO'S SEARCH FOR AN EDUCATION
FINANCE REMEDY**

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by Molly A. Hunter¹

INTRODUCTION

In 1991, some poor Ohio school districts, and parents and children in those districts, filed a lawsuit charging that the state was unconstitutionally denying adequate and equitable educational opportunities and funding to many of its public school students. In a 1997 decision, the Ohio Supreme Court agreed. The court declared Ohio's education finance system unconstitutional and allowed the state one year to enact a "complete systemic overhaul" of school funding. After almost two years of public controversy, plaintiffs and the state are back in court contesting the sufficiency of the state's response.

As the lawsuit was progressing through the courts, several statewide organizations in Ohio attempted to engage the public in meaningful discussions about school funding and the quality of public education. These organizations formed coalitions, held public forums, and provided numerous other opportunities for public information and dialogue about the issues. Nonetheless, substantial differences still separate commonly held points of view. Struggles to persuade the court and influence public opinion are continuing.

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I. THE STATE OF EDUCATION AND EDUCATION FINANCE

Like The Wizard of Oz

At Dawson-Bryant intermediate school, there are no science labs and no art or music rooms. One shower room serves both boys and girls. When students advance to Dawson-Bryant's high school, their situation is essentially the same: no band or music room and one science lab where the water and gas do not work. At the beginning and end of each school year, it is not unusual for temperatures in Dawson-Bryant's Monitor Elementary School to exceed 100 degrees, but the circuit breakers fail if more than three teachers run fans at the same time. Throughout the district, classroom materials are old, worn out, or missing entirely, and the district offers no honors or advanced placement courses.²

About 100 miles to the north but light years away, Granville High School has five language labs with cordless headsets, a new greenhouse between two biology rooms, three industrial technology rooms with computerized lathes, computer-assisted design programs, equipment for mechanical drawing, woodworking and metalworking, and a separate room for welding. The art facilities include separate rooms for kilns and sculpture and an outdoor art studio for drawing. The locker rooms are carpeted and have individual showers and installed hair dryers. The library has rooms for group study and a mock fireplace reading area. There is a dark room and a radio-television production lab.³ One student from a

² DeRolph, et al. v. State of Ohio, No. 22043, 134-37, 332-34 (C. P. Ohio Perry County July 1, 1994). Page cites for the Common Pleas Court decision are to the copy available at <http://benet-npl.bricker.com>. Since the trial in DeRolph, state funding for construction and remodeling have improved Dawson-Bryant's facilities significantly. Appellees' Brief, Supreme Court of Ohio at 10; Interview with Dr. William Phillis, Executive Director, Ohio Coalition for Equity & Adequacy of School Funding (June 11, 1997 and Jan. 13, 1999).

³ DeRolph, No. 22043 at 157-58. Similar disparities exist in other areas, such as technology, where Withrow High School has 12 computers for 1,800 students and Perry High School has a computer for each of the 600 students enrolled. SOUTH CAROLINA ETV, CHILDREN

middle-wealth district visited a wealthy high school near Columbus and said, “It’s like The Wizard of Oz, going from black and white to color.”⁴

As these examples illustrate, the state of education in Ohio varies dramatically from district to district. Student outcomes vary just as widely. In the fall of 1993, 39% of seniors in plaintiff Youngstown School District and 32% in Dawson-Bryant had not yet passed the basic skills test required for high school graduation, even though the test only covers material taught through 8th grade. At the same time, 99% of Beachwood and 98% of Granville seniors had passed all four parts of the exam. Plaintiff districts did not have the resources necessary to implement the curriculums that teach the material covered by the exam or to provide intervention services. Even prior to the institution of the basic skills proficiency test, over 98% of Beachwood students went on to four-year colleges, while over 40% of Youngstown students did not get a high school diploma.⁵

Beneath these stark disparities there is widespread inadequacy. Dawson-Bryant and Youngstown are just two of many rural and urban school districts throughout Ohio where school buildings are unsafe or unfit, student/teacher ratios are high, and curriculum offerings are limited.⁶ School facilities in Ohio are the worst in the nation.⁷ For years, Boards of Education in many districts have not had the option of deciding what programs to offer but, instead, are limited to deciding which basic programs

IN AMERICA’S SCHOOLS WITH BILL MOYERS, A VIEWER’S GUIDE TO ACTION 3 (n.d. [1996]).

⁴ Interview with David Beavers, Ph.D., Superintendent, Pickaway County Schools (July 21, 1998).

⁵ DeRolph, No. 22043 at 236-45. In 1998, the state raised graduation requirements. See discussion, *infra*, at part III.

⁶ DeRolph, No. 22043 at 119-21, 133-59, 166-71, 180-93, and 331. William Phillis, the former Assistant Superintendent of Public Instruction who is now the executive director of the coalition of schools that filed the lawsuit, has traveled to most schools in the state and reports that in many rural districts, “you could not find an honors course with a search warrant.” Martha Hardcastle, *School Funding Woes Topic of Public Forum*, DAYTON DAILY NEWS, April 5, 1995.

⁷ U.S. GENERAL ACCOUNTING OFFICE, SCHOOL FACILITIES, AMERICA’S SCHOOLS REPORT DIFFERING CONDITIONS (June 1996).

to cut.⁸ Not surprisingly, the lack of educational opportunity in many Ohio districts results in an under-educated workforce which, in turn, is hampering economic development.⁹

In 1991, then Governor Voinovich established The Governor's Education Management (GEM) Council. Council members included CEOs, educators, and legislators. The governor posed the question: Do we have any reasonable assurance that Ohio has a chance to reach the national goals for student achievement, Goals 2000?¹⁰ The Council consulted experts from the National Alliance of Business and The National Business Roundtable who performed a gap analysis to identify problems that would prevent the state from attaining the Goals 2000. The answer to the governor's question was no, not without a robust reform agenda. The Council recommended piloting vouchers and commissioned a study that identified serious flaws in Ohio's public school funding system.¹¹

Recent Education Finance History

⁸ DeRolph, No. 22043 at 161-62, 176, 178, and 360-61.

⁹ “. . . [T]he biggest single issue we're facing in economic development in southwestern Ohio is the lack of a quality work force.” Editorial, *Looking to Do What's BEST for Ohio's Schools and Children*, AKRON BEACON JOURNAL, June 27, 1997, at A13 (quoting Robert L. Wehling, Cincinnati Chamber of Commerce).

¹⁰ The eight goals to be reached by the year 2000 are: all children will start school ready to learn; the high school graduation rate will increase to 90%; all students will demonstrate competency over challenging subject matter at specific grade levels; teachers will have access to continuing professional development; U.S. students will be first in the world in math and science; every school will be safe and offer an environment conducive to learning; and every school will promote parental involvement. CONFERENCE COMM., GOALS 2000: EDUCATE AMERICA ACT, H.R. DOC. NO.103- 446, 103d Cong., 2d Sess., 7-9 (1994).

¹¹ Interview with Robert E. Wehling, Co-Chair of BEST (Building Excellent Schools for Today & the 21st Century) and Senior Vice President, Proctor & Gamble (July 24, 1998 and Jan. 28, 1999) (Mr. Wehling served on the council.); Dennis J. Willard & Doug Oplinger, *Executives Can Use Clout to Push Reform*, AKRON BEACON JOURNAL, Dec. 29, 1996, at A11 [hereafter *Executives Can Use Clout*]. See also Cheryl Curry, *Area Business Leaders to Serve on State Education Council*, AKRON BEACON JOURNAL, March 7, 1991, at C5; *Gaps Impeding Reform of Schools, Council Says*, AKRON BEACON JOURNAL, January 22, 1992, at D3.

A shortage of funds has been a perennial concern for Ohio school districts. As early as 1977, the governor warned that school buildings were falling apart and that poor districts did not have the capacity to raise enough money to maintain their buildings. Also during the 1970s, 55 school districts literally closed their doors in the spring or delayed opening in the fall because they did not have enough money to pay teachers and continue operations. These closings became national news and an embarrassment to the state. In 1979, a committee of 20 corporate executives reported education funding too low to avoid a financial crisis and called for immediate action.¹² The state responded to these problems by increasing taxes and state aid to education and instituting “forced borrowing” to keep schools open.¹³

After the tax increase, per-pupil state aid rose through the 1986-87 school year. However, in November 1987 Ohio voters adopted a constitutional amendment requiring that all lottery profits go to the public schools. The legislature responded by reducing state money for education from other sources, and the result was a net loss in state funds for education. By 1988 voters faced a record number of property tax levies on their local ballots. The levies that passed did not fully replace the lost state revenues.¹⁴ Although the state has increased its total education expenditures, education’s portion of annual state spending has dropped

¹² Editorial, OHIO SCHOOLS 2-3 (OEA January 1998); Hardcastle, *supra*, note 6; Gary Payne & Nelda H. Cambron-McCabe, *Ohio School Finance: Continuing Challenges to Adequacy and Equity of Funding*, 25 EDUCATIONAL CONSIDERATIONS 34 (Fall 1997); DeRolph, No. 22043 at 86; *Chronology*, AKRON BEACON JOURNAL, July 21, 1996, at A10.

¹³ Under forced borrowing, districts unable to meet their budgets must stay open and borrow from the state against the following year’s revenues. If this loan proves insufficient, the district must seek a commercial loan at market rates. The commercial loans are repaid by diverting state aid from the district to the commercial lender. OHIO REV. CODE ANN. §§ 3313.483-488, 3317.4810-4811, 3317.62-64 and 133.301 (Anderson 1998). *But see* discussion, *infra*, at note 67.

¹⁴ Dennis J. Willard & Doug Oplinger, *A State of Denial*, AKRON BEACON JOURNAL, October 27, 199 [hereafter *State of Denial*].

from 35.5% to 31%.¹⁵

Throughout the 1980s, the overall condition of the state's school facilities continued to deteriorate. By 1989, inspectors threatened to close schools due to numerous violations of building codes. The legislature exempted schools from parts of the code and authorized a comprehensive survey of Ohio's 3,643 school buildings. The 1990 survey found that \$10.2 billion would be needed to bring the schools up to legal requirements.¹⁶ However, over the subsequent seven years, the state spent only \$320 million for facilities, while the cost of the problem grew to \$16.5 billion. Sixty-one percent of the state's school districts do not have the financial capacity to meet their identified facilities needs.¹⁷

Real and Phantom Revenues

Ohio, like many states, funds its schools primarily through a combination of local property taxes and state aid. Local revenues comprise 48% of total statewide education funding, state disbursements provide 44%, and federal monies 8%. Differences in local property tax rates and revenues among districts are striking. For example, in Cuyahoga Heights 22 mills of property tax in 1993 allowed the district to spend \$11,891 per pupil. The same year in nearby East Cleveland, over 78 mills enabled the

¹⁵ DeRolph, No. 22043 at 32. *See also* Justice Alice Robie Resnick, Speech at Ohio AAUW Annual Convention (Apr. 19, 1997) (noting funds for corrections have increased from three percent to eight and a half percent of the budget).

¹⁶ *Chronology, supra*, note 12; DeRolph, et al. v. State of Ohio, 677 N.E.2d 733, 742 (Ohio 1997) (referencing the 1990 Ohio Public School Facility Survey).

¹⁷ Doug Oplinger & Dennis Willard, *Officials Lack Proficiency in Math*, AKRON BEACON JOURNAL, Sept. 18, 1998; DeRolph, 677 N.E.2d at 757 (Douglas, J., concurring); Doug Oplinger & Dennis J. Willard, *Public Schools Crumble in Ohio*, AKRON BEACON JOURNAL, Sept. 8, 1998. *See also Chronology, supra* note 12 (reporting that the state used its bonding capacity for four sports arenas while bonding for schools was stuck in legislative committee in 1996); Joanna Cagan & Neil DeMause, *A Tale of Two Cities*, THE NATION 24 (August 10/17, 1998).

district to spend only \$5,564 per pupil.¹⁸

State education funds are distributed through the School Foundation Program (“foundation aid”) for operating expenses. Categorical aid formulas determine state aid for vocational and special education and transportation. Foundation aid is available to any school district that levies at least 20 mills of property tax for current operating expenses. For each district, the foundation aid formula multiplies a legislatively established per-pupil foundation amount, the number of pupils in the district, and a cost-of-doing-business adjustment. From the resulting amount, the formula subtracts the equivalent of a 23 mill tax on the value of the district’s taxable property, the district’s “charge off.”¹⁹

The per-pupil foundation amount grew from \$2,817 for the 1992-93 school year to \$3,663 for 1997-98.²⁰ The state calculates the cost of doing business by county and recognizes higher costs up to 9.6% greater than the state’s lowest cost county. The “charge off” acts as a partial equalization of state aid because it is larger for property-rich districts. However, under hold harmless provisions over one-third of the state’s school districts receive an amount greater than the formula calculates. The majority of these districts are wealthier districts.²¹ School districts that serve children whose families collect Aid to Dependent Children (ADC) receive Disadvantaged Pupil Impact Aid (DPIA), which increases as the percentage

¹⁸ *Funding Ohio’s Future*, (WOSU-TV broadcast, Feb. 1, 1998); Leona Allen, *School Funding Gets ‘F’*, AKRON BEACON JOURNAL, July 2, 1994, at A1.

¹⁹ OHIO REV. CODE ANN. § 3317.01 *et seq.* (Anderson 1998). The number of pupils is “average daily membership.” *Id.* at § 3307.22. *See also* DeRolph, 677 N.E.2d at 737-40 (majority opinion) and 751-52 (Douglas, J., concurring).

²⁰ DeRolph, 677 N.E.2d at 738; LEGISLATIVE SERVICE COMMISSION, BILL ANALYSIS: AM. SUB. H.B. 650 3 (n.d.[1998]).

²¹ JOHN AUGENBLICK, RECOMMENDATIONS FOR A BASE FIGURE AND PUPIL-WEIGHTED ADJUSTMENTS TO THE BASE FIGURE FOR USE IN A NEW SCHOOL FINANCE SYSTEM IN OHIO, Attachment 7 (July 17, 1997); DeRolph, No. 22043 at 42-43; Merit Brief of Appellants, Ohio Supreme Court at 8 n.21 (citing depositions of ODE personnel and a stipulation); LEGISLATIVE SERVICE COMMISSION, BILL ANALYSIS, AM. SUB. H.B. 650 2 (1998).

of ADC students increases. The state does not adjust for district wealth in funding DPIA or in its categorical programs.²²

Despite the DPIA categorical aid and partial equalization in the foundation formula, Ohio's education finance system has been one of the most inequitable in the country.²³ As of 1993, the wealthiest districts spent \$12,000 per pupil while the poorest spent only \$2,800 per pupil. Also, some districts with high property values receive more state aid than districts with lower per pupil property values. Moreover, Ohio is number one in the nation in spending public funds on private schools, at least \$600 per pupil. Although total state aid to private schools in the 1995-1996 school year was only \$136 million, if that money had been allocated to struggling districts, it would have kept all 20 of them that had to resort to forced borrowing that year out of debt.²⁴

State law controls the taxing authority of local school districts and requires Ohio's school districts to submit proposed property taxes in excess of 10 mills to the voters.²⁵ The districts can propose permanent or temporary millage increases, but temporary increases do not ensure stable funding and permanent increases are more difficult to pass. This taxing approach results in numerous local levies and fluctuating revenues when temporary levies are not renewed. Ohio also has a property tax rollback law

²² DeRolph, 677 N.E.2d at 752 (Douglas, J., concurring).

²³ In 1998, *Education Week* ranked Ohio 39th in equity. *Quality Counts*, Jan. 11, 1999, at 167. Ohio ranked 48th in funding equity, according to the trial court's findings in DeRolph. No. 22043 at 359. In 1993, the NEA ranked Ohio 50th in equity of funding. Paula Schleis, *Superintendents Lament Funding*, AKRON BEACON JOURNAL, April 20, 1993, at C2.

²⁴ Doug Oplinger & Dennis J. Willard, *Rival for Dollars*, AKRON BEACON JOURNAL, July 21, 1996, at A1 [hereafter *Rival for Dollars*] (citing study by governor's office); Oplinger & Willard, *Vouchers Cost State \$3,375 per Pupil*, AKRON BEACON JOURNAL, May 14, 1997, at A1 (citing governor's spokesman). Governor Voinovich, now a U.S. Senator, advocated vouchers to pay private schools to educate public school students and initiated a program in Cleveland that now includes 4,000 students. Catherine Candisky, *Board OKs Money for Voucher Program*, THE COLUMBUS DISPATCH, Mar. 3, 1998. See also ODE, Press Release, "Department Announces Reforms to Cleveland Scholarship Program," Jan. 27, 1998.

²⁵ DeRolph, 677 N.E.2d at 739 n.4.

that is more extreme than that of any other state. When property values go up due to reappraisal, state law requires that property tax rates come down so that the levies generate the same amount of money as before.²⁶ In fact, an increase in property values can reduce school revenues because it produces “phantom revenue” in the charge-off portion of the state aid foundation formula. The formula uses the higher property values, as if they represent an increased tax base, to calculate the charge-off amount, which reduces state aid. For these reasons, local school district revenues have not been able to keep pace with inflation or fund the cost of new technology and higher standards.²⁷

Under the current finance system, 122 of the 611 districts in the state have had to use the forced borrowing provisions. For many districts, the debt that results is “staggering, and the cyclical effect of continued borrowing has made it more difficult to maintain even minimal school operations.”²⁸ If a district’s commercial loan is greater than seven percent of general fund expenditures, it becomes a “receivership district” and is subject to state supervision for three years. Local control over expenditures disappears. If a commercial loan is denied, the district must drastically cut its budget, regardless of the educational deficiencies that action typically causes.²⁹ Due to the weaknesses in the education finance system, school districts and others have lobbied and litigated for funding reform.

²⁶ Howard Fleeter, *An Analysis of the Impact of Property Tax Limitation in Ohio on Local Revenue for Public Schools*, J. EDUC. FIN. 343 (Winter 1996); DeRolph, 677 N.E.2d at 739; OHIO REV. CODE ANN. § 319.301. The offset provision is attributable in part to concerns about rapidly rising property values.

²⁷ DeRolph, 677 N.E.2d at 744-45; Merit Brief of Appellants, Supreme Court of Ohio at 6-7 (citing study commissioned by the GEM Council); Laura Haferd, *Medina County Tea Party to Focus on State Plan’s Effect on Local Schools*, AKRON BEACON JOURNAL, March 21, 1995, at C1; Dennis J. Willard & Doug Oplinger, *State Hikes Standards, Not Funding*, AKRON BEACON JOURNAL, Aug. 8, 1998, at A11 [hereafter *State Hikes Standards*].

²⁸ DeRolph, 677 N.E.2d at 739-40.

²⁹ *Id.* There were 25 receivership districts as of 1992, and by 1994 at least 4 of the Big 8 districts were in receivership. *Id.* at 760-61. See also DeRolph, No. 22043 at 327-28 (recounting draconian cuts made by the Youngstown School District).

II. EDUCATION FINANCE FROM COURTROOMS TO PUBLIC FORUMS

The state constitution and two Ohio Supreme Court decisions have framed the recent legal debates about the way public schools are financed in Ohio. The Ohio constitution requires the General Assembly to provide and fund “a thorough and efficient system of common schools throughout the State”³⁰ In 1923, the Ohio Supreme Court interpreted this provision to mean, *inter alia*, that a thorough and efficient system could not be one in which any school districts were “starved for funds” or “lacked teachers, buildings, or equipment.”³¹

In 1976, the Cincinnati Board of Education brought suit against the state, claiming that funding disparities under the state’s finance system violated this “thorough and efficient” clause and the equal protection clause of the state constitution. The Ohio Supreme Court upheld the state’s equal yield funding system then in place, concluding that all districts had the fiscal resources necessary to meet state minimum standards and that the objective of local control provided a rational basis for funding disparities. The court left the door open, however, for possible future adequacy litigation when it stated that a funding system would violate the constitutional standard if “a school district was receiving so little local and state revenue that the students were effectively being deprived of educational opportunity.”³² Shortly after the *Walter* decision, the General Assembly replaced the equal yield system with a foundation system³³ that

³⁰ OHIO CONST., § 2, Art. VI.

³¹ *Miller v. Korns*, 140 N.E. 773, 776 (Ohio 1923).

³² *Board of Educ. of Cincinnati v. Walter*, 390 N.E.2d 813, 822, 825 (Ohio 1979); Geoffrey W. Veith, *Recent Cases: Board of Education v. Walter*, 48 U. CIN. L. REV. 1126 (1979).

³³ *DeRolph*, 677 N.E.2d at 745.

was essentially the same as the current system.

Statewide Organizations Encourage Public Discourse

1. The Ohio Coalition for Equity and Adequacy of School Funding

In 1990, many of the state's poorer school districts joined together to form the Ohio Coalition for Equity and Adequacy of School Funding. The Coalition's express purpose was to bring a lawsuit charging that the state's education finance system was unconstitutional. Filed in 1991 in rural Perry County, *DeRolph, et al. v. State of Ohio* claimed that inadequate and inequitable funding was denying students basic educational opportunities and leaving some districts starved for funds.³⁴

Ohio law allows government entities, such as the individual school districts in the Coalition, to join together for certain purposes in what it defines as a "council of governments." Under this statute, the Coalition is authorized to use school district revenues to finance its operations, and member districts pay \$0.50 per student. Early on, the Coalition's steering committee decided that the organization needed to expand its base to be more effective. The Coalition grew to 550 districts -- most of the districts in the state -- and has maintained membership at that level.³⁵

While the trial in the *DeRolph* case and the judge's decision were pending, the Coalition and its members held a series of meetings around the state each year, including regional superintendents' meetings, informational meetings in a majority of member districts, and usually 15 or more regional

³⁴ Phillis Interview; First Amended Complaint at 24-30, *DeRolph*, No. 22043.

³⁵ The Boards of Education pass resolutions of joinder and payment. Supplemental dues of \$0.25 per pupil to fund public relations are voluntary. For the last six years, the Coalition's revenues have been between \$500,000 and \$600,000 per year. Phillis Interview.

meetings intended to reach other audiences. The Coalition, their attorneys, and invited experts discussed the status of the *DeRolph* suit and the stark resource disparities among Ohio districts. The Coalition also formed a public relations subcommittee, which issued press releases and held student essay contests with topics such as “What is a Common School?” and “The Value of Education.”³⁶

2. The Alliance for Adequate School Funding

After the Coalition filed its suit in 1991, approximately 24 property-rich school districts formed the Alliance for Adequate School Funding to prevent a ‘Robin Hood’ approach to education finance. Since then, its membership has grown to over 60 districts. The Alliance, another council of governments, believed that the state was not meeting its “constitutional mandate of providing sufficient funds” for all of Ohio’s children to receive an adequate education. But it also feared the imposition of caps on higher spending districts or the redistribution of locally generated property taxes as possible outcomes of the funding controversy.³⁷

To accomplish its goals, the Alliance focused primarily on the legislative audience and met with editorial boards. Most people, the organization found, did not want to see the “lighthouse” districts damaged. The Alliance proposed a fully funded equal yield system and was the first organization to call for objective funding criteria applied through a cost-based analysis. A consultant hired by the Alliance performed such an

³⁶ *School Funding Group has 3 Area Forums*, AKRON BEACON JOURNAL, March 29, 1994, at B4; Staff report, *Judge to Speak on Equity in Public School Funding*, AKRON BEACON JOURNAL, September 29, 1993, at D5; Schleis, *supra*, note 23; Phillis Interview; Interview with Julie Underwood, Dean of the School of Education and Allied Programs, Miami University of Ohio (June 11, 1997).

³⁷ Interview with James Betts, Legal Counsel and Legislative Consultant to The Alliance (July 24, 1998); Brief of Amicus Curiae at 1-4, *DeRolph*, 677 N.E.2d 733.

analysis and concluded that an adequate per-pupil foundation amount would have been over \$800, or 32%, more per pupil.³⁸

3. Ohio BEST

Business leaders who had served on the Governor's Education Management Council in 1991 tried to persuade the legislature to adopt a holistic education reform agenda. Although they succeeded with some specific programs, by 1993 they concluded that a very broad base of support would be necessary to achieve comprehensive change. Therefore, together with the State Superintendent of Public Instruction, they formed the Ohio BEST (Building Excellent Schools for Today & the 21st Century) partnership, whose initial membership was composed of a dozen organizations, including the Chamber of Commerce, the Buckeye Association of School Administrators, and the Ohio Education Association (OEA).³⁹

These groups agreed with a holistic approach to education reform and decided to try to "put together the most inclusive group that [they] possibly could across the state." The BEST partnership soon grew to over 100 statewide organizations, including the Farm Bureau, the Ohio PTA, and the NAACP. To ensure that what is agreed to at the state level will be shared with local constituencies, BEST is also working with over 70 communities to develop a common agenda. About 30 of BEST's member organizations form its Board of Directors and are most active in promoting education

³⁸ Betts Interview; JOHN AUGENBLICK, DETERMINING A BASE STUDENT COST FIGURE FOR USE IN OHIO'S SCHOOL FOUNDATION PROGRAM 2, 17 (May 1993) (using 1990-1991 data).

³⁹ Wehling Interview.

reform.⁴⁰

4. Ohio Department of Education

Also in the early 1990s, the Ohio Department of Education (ODE) began to develop educational standards that focused on student outcomes. ODE chose a consensus-building process and formed a Learner Outcomes Panel of 57 people from across the state, including business leaders, parents, and representatives of organizations with interest and expertise in all aspects of K-12 education. The panel reached consensus around five general principles, such as the idea that all children can learn at high levels. However, release of the panel's 24 proposed learner outcomes generated vocal opposition from the Christian Coalition, the Eagle Forum, and others who were concerned that some of the outcomes might infringe on family attitudes and values. Subsequently, the legislature passed a law requiring that educational standards be related to academic learning and vocational education only and be approved by the legislature.⁴¹

Despite significant controversy, ODE persevered in developing standards. It removed all affective goals, brought in outside reviewers, and relied on the State Board of Education to review and approve the standards. These efforts continued until early 1997, when the State Board approved ODE's standards, which retained a performance-based focus and also called for continuous improvement plans in all districts. However, the State

⁴⁰ Wehling Interview; *Looking To Do What's BEST for Ohio's Schools and Children*, AKRON BEACON JOURNAL, June 27, 1997, at A13; *Executives Can Use Clout*, *supra*, note 11. Business members include Proctor & Gamble, General Motors, Honda, and The Limited. Lee Leonard, *Business Views May Not Work for Funding Schools*, THE COLUMBUS DISPATCH, May 26, 1997.

⁴¹ Interview with Cathy Bregar, Educational Consultant, Technical Support Coordination Team, Ohio Department of Education (July 13, 1998 and January 13, 1999); Kim McMahan, *Outcome-Based Ruckus*, AKRON BEACON JOURNAL, May 15, 1994, at A1. Conspiracy accusations from both sides have complicated the debate. *Id.*

Board chose not to take the standards to the legislature for approval.⁴²

The Trial Court Decision and Reactions

The trial in *DeRolph v. State* began in October 1993. Plaintiffs presented evidence of crumbling buildings, sparse curriculums, and low student test scores to show inadequacy. They contrasted this evidence with state-of-the-art buildings, rich, vigorous curriculums, and high-level student performance in better funded districts to prove their equity claim.⁴³ While acknowledging that per-pupil education spending disparities existed, the state claimed its finance system was constitutional because it provided funding “sufficient to assure that each school district has the means to comply with state minimum standards.”⁴⁴ However, some defense witnesses, including the State Superintendent of Public Instruction, admitted that the school finance system was obsolete, denied some students access to educational opportunities, and was “not morally right.”⁴⁵

In July 1994, Circuit Court Judge Linton Lewis issued voluminous Findings of Fact and strongly worded Conclusions of Law that found the state education finance system unconstitutional. The court held that Ohio’s education finance statute resulted in inadequate educational opportunities and violated the “thorough and efficient” and equal protection clauses of the state constitution. It ordered the State Superintendent and the State Board to prepare proposals for eliminating wealth-based disparities and to present

⁴² Bregar Interview. The State Board is comprised of 19 members -- 11 elected and, beginning in 1995, eight appointed by the governor. *Id.*

⁴³ *DeRolph*, 677 N.E.2d at 741-46.

⁴⁴ Appellees’ Brief at 21, *DeRolph* (No. 95-2066) (citing *Cincinnati Board of Educ. v. Walter*).

⁴⁵ *DeRolph*, No. 22043, 24-26 (Ohio C.P., Perry County, July 1, 1994) (quoting State Superintendent Ted Sanders); *DeRolph*, 677 N.E.2d at 735 (few facts in dispute).

the proposals to the legislature.⁴⁶

Reactions among plaintiffs and defendants were mixed. The executive director of the Coalition hailed the decision as “nothing short of revolutionary,” while some superintendents from member districts in the Coalition considered the ruling only the first step in a long process. Among defendants, the president of the State Board wanted the General Assembly to begin revamping the funding system immediately to prevent further harm to students, while the State Superintendent said the decision meant a tax increase and “inviting Robin Hood to the table.” In response to the court’s opinion, the governor criticized school districts for not “doing more with less.” The governor and legislative leaders appealed.⁴⁷

The State Superintendent and State Board complied with the court’s order to develop proposals for the legislature. They hired three school finance and two Ohio tax policy experts who created methodologies for estimating the costs of a basic education and for vocational, gifted, and other programs and services. The experts used the spending of districts whose students performed above the 70th percentile and whose spending met certain input criteria to infer the costs of an adequate education. In 1995, they presented two alternative solutions designed to improve equity and provide adequacy -- one by restructuring taxes and the other by allocating state aid more inversely to school district property wealth. Both options required higher overall education spending and therefore a potential tax increase. After the intermediate appeals court, in August 1995, reversed the trial court’s decision and deferred to the Ohio Supreme Court to determine the constitutionality of the funding system, the legislature did

⁴⁶ DeRolph, No. 22043 at 349-356; Judge Lewis incorporated the well-known, anonymous poem, *The Bridge Builder*, in his opinion and admonished the state to bridge the gap between mediocrity and educational excellence. *Id.* at 455.

⁴⁷ Allen, *supra*, note 18; Leona Allen, *Decision Could Hurt Building at Schools*, AKRON BEACON JOURNAL, July 6, 1994, at A1; Vindu P. Goel, *Voinovich Assails Schools Over Lawsuit*, THE CLEVELAND PLAIN DEALER, July 7, 1994, at 5B (also quoting the Coalition, which invited the governor to visit poor districts). Initially, the State Board voted 6-5 not to be part of the appeal but, ultimately, agreed to join. Interview with Clay Cormany, Consultant, Division of Board Relations and Support Services, Ohio Department of Education (July 15, 1998).

not act on the experts' proposals.⁴⁸

While the appeal went to the Ohio Supreme Court, education advocacy organizations continued to study the issues and kept them in the public spotlight. The Coalition and its members again held and attended local and regional meetings, and at least one statewide meeting each year, to inform people about the education finance system and to comment on proposals made by the governor. They argued that heavy reliance on local property taxes produces unbridgeable funding gaps between wealthy districts and their less prosperous neighbors.⁴⁹ The Coalition also participated in a series of public forums sponsored by the League of Women Voters and another series sponsored by the American Association of University Women. Moreover, the remedy subcommittee of the Coalition's steering committee met monthly to hammer out a remedy proposal.⁵⁰

Among the media, the *Akron Beacon Journal* and public television focused significant attention on K-12 education funding in Ohio. From May 1996 through April 1997, the *Beacon Journal* published a series of in-depth articles about the history and current dilemmas in Ohio public school finance entitled "Short-changing Ohio's Children." Shortly after the *DeRolph* oral argument in the Ohio Supreme Court, public television aired *Children in America's Schools with Bill Moyers*, which used Ohio as a metaphor for schools nationwide. This documentary vividly contrasted beautiful state-of-the-art school campuses with bountiful equipment and dilapidated, sometimes dangerous buildings with no equipment. It also managed to convey the impact on the self-esteem of students attending

⁴⁸ PROPOSALS FOR THE ELIMINATION OF WEALTH BASED DISPARITIES IN PUBLIC EDUCATION, REPORT TO THE OHIO LEGISLATURE (July 1995) (submitted by the State Superintendent and State Board; prepared by Kern Alexander, John Augenblick, William Driscoll, James Guthrie and Richard Levin). One expert witness for each side in the *DeRolph* trial was on this expert panel. *Id.* at 11.

⁴⁹ *Rival for Dollars*, *supra* note 24; *Hardcastle*, *supra* note 6.

⁵⁰ Phillis Interview; Underwood Interview.

these different schools.⁵¹

A Complete Systemic Overhaul

On March 24, 1997, a slim 4-3 majority of the Ohio Supreme Court declared the state education finance system unconstitutional. The court recognized that education is “vital to [a] democratic society” and found that plaintiff school districts were “starved for funds, lacked teachers, buildings, and equipment, and had inferior educational programs,” echoing the language of its 1923 *Miller* decision. The majority characterized the forced borrowing provisions of the state education finance system as “nothing less than a clever disguise for the state’s failure to raise revenue sufficient to discharge its constitutional obligations.”⁵²

Although some criticized the court’s remedy order as “very vague,”⁵³ the decision laid out a number of broad but significant remedial principles. The court stated that the General Assembly must create an entirely new school finance system and that it must be one, statewide system. In calling for a “complete systemic overhaul,” the court concluded that four factors in the finance system must be changed: operation of the Foundation Program,

⁵¹ Dennis J. Willard & Doug Oplinger, AKRON BEACON JOURNAL; *Children in America’s Schools with Bill Moyers* (The Saint / Hayden Co., South Carolina ETV and Nebraska ETV broadcast September 13, 1996); *Funding Ohio’s Future*, *supra*, note 18. Jeffrey Hayden, executive producer of “Children in America’s Schools” says he was inspired to do the special largely by Jonathan Kozol’s *Savage Inequalities*. Dennis Kelly, *In Schools: To Have and Have Not*, USA TODAY, Sept. 10, 1996.

⁵² DeRolph, 677 N.E.2d at 736, 740, 742, 745. The dissent argued that the principle of separation of powers and the doctrine of nonjusticiability should have restrained the court from declaring the state’s education finance system unconstitutional and, alternatively, the remedy should have been narrowly tailored to school facilities. *Id.* at 782-95. *See also* MICHAEL A. REBELL, FISCAL EQUITY LITIGATION AND THE DEMOCRATIC IMPERATIVE (Campaign for Fiscal Equity, Inc., January 1998).

⁵³ *See, e.g.*, Randy Ludlow, *School Ruling Puzzles Attorney General*, THE CINCINNATI POST, Mar. 31, 1997 (quoting Attorney General Betty Montgomery).

the emphasis on local property taxes, forced borrowing, and the lack of sufficient funding from the state for construction and maintenance of public school buildings. Specifically addressing facilities, the court held that “[a] thorough and efficient system of common schools includes facilities in good repair and the supplies, materials, and funds necessary to maintain these facilities” The court allowed the state one year to comply and remanded the case to the trial court.⁵⁴

Immediate reactions from state political leaders and the editorial boards of the state’s three largest newspapers were extremely negative. Some characterized the decision as one of the worst in Ohio’s history and called for a constitutional amendment to overrule the court.⁵⁵ One complaint was judicial overreaching into legislative decision making; another was the perceived need to raise taxes in order to comply. The ruling was “a shock” to political leaders.⁵⁶

Smaller newspapers and the business press were generally more positive. Some referred to the decision as “an important victory,” to the finance system as “medieval,” and to public education as a “priceless commodity.” Some business leaders were willing to see Ohio raise taxes to spend more on schools, but only if the funding were tied to student

⁵⁴ DeRolph, 677 N.E.2d at 747; *Ohio Supreme Court Declares State’s Public School Financing System Unconstitutional*, 111 HARV. L. REV. 855 (Jan. 1998).

⁵⁵ *School Ruling, Court Flunks with Wrong Answer*, THE CINCINNATI ENQUIRER, Mar. 25, 1997, at A10; Michael F. Curtin, *Judicial Lawmaking, High Court Wrecks Havoc on Ohio Schools*, THE COLUMBUS DISPATCH, Mar. 25, 1997, at 14A; *Now What? Supreme Court Wants School Finance System Remade But the Specifics and the Logic Are Lacking*, THE CLEVELAND PLAIN DEALER, Mar. 25, 1997, at 10B; Lee Leonard, *Voinovich: Let Voters Decide School Funding*, THE COLUMBUS DISPATCH, May 21, 1997; Tim Miller, *School Issue Back in Court*, DAYTON DAILY NEWS, Apr. 3, 1997.

⁵⁶ *Id.*; Steve Hoffman, *Ruling Stirs Up Politics in Ohio*, AKRON BEACON JOURNAL, Mar. 25, 1997, at D5 (quoting Sen. Roy L. Ray, Senate Finance Committee chair); Dan Crawford, *Business Fears Bite of School-funding Ruling*, BUSINESS FIRST, March 31, 1997 (quoting Sen. Johnson: “If they’re going to impose a tax on the state of Ohio, they should have a Supreme Court Ways & Means Committee.”); Editorial, THE CINCINNATI POST, Mar. 25, 1997. The court expanded upon its decision in response to defendants’ motion for reconsideration and clarification. *DeRolph, et al. v. State of Ohio*, 678 N.E.2d 886 (Ohio 1997).

results and more accountability. One business editorial admonished state legislators to “view the decision as an opportunity to overhaul Ohio’s entire tax structure.”⁵⁷

III. SEARCHING FOR A REMEDY

After initially denouncing the court and its opinion, the legislature and governor began to wrestle with the court’s order and to consider proposals for revamping the system for funding the public schools.⁵⁸ Starting from the premise that any tax increase for school funding must go to the voters, they worked toward a self-imposed August 6 deadline -- the last date an issue could be placed on the November ballot. The governor established the Ohio School Funding Task Force, composed of the legislative leadership of both parties, the State Superintendent, the state’s Budget Director, and the Governor himself, to hold hearings and solicit proposed remedies from all interested parties.⁵⁹

Both the Coalition and BEST had been working on reform proposals prior to the court’s ruling. Shortly after the March 1997 decision, the Coalition released its proposed remedy: *Preparing Ohio Children for the 21st Century*. This 20-page document emphasizes education finance reforms, including the need to determine the actual cost of an adequate education and state assumption of a larger portion of education funding. The proposal also folds in significant education reforms, such as smaller

⁵⁷ Editorials in the *Athens Messenger*, Mar. 25, 1997, the *Canton Repository*, Mar. 25, 1997, the *Lorain Morning Journal*, Mar. 25, 1997, and the *Tiffin Advertiser-Tribune*, Mar. 25, 1997; Editorial, CRAIN’S CLEVELAND BUSINESS, December 8, 1997, at 10; Crawford, *supra*, note 56 (quoting Dan Navin, Ohio Chamber of Commerce director of taxation: “This offers some opportunities. The state can now justify placing greater accountability on local schools. From a tax standpoint and a funding standpoint, everything’s on the table.”); Melanie Payne, *Bottom Line: Results*, AKRON BEACON JOURNAL, Mar. 25, 1997, at D4.

⁵⁸ Leonard, *supra*, note 55.

⁵⁹ Ludlow, *supra*, note 53; Leonard, *supra*, note 40.

classes in the primary grades, more professional development, and lengthening the school year by 10 days. The Coalition proposed cost-based per-pupil foundation amounts of \$3,900 for fiscal year 1998 (an increase of \$400 over 1997) and \$4,400 for fiscal year 1999.⁶⁰

Ohio BEST spent two years developing a research-based, comprehensive agenda for education improvement similar to the one adopted in Kentucky in 1990. BEST proposed raising academic standards, improving training and increasing professional development for teachers, more substantively connecting parents and communities with their schools, and developing a better infrastructure for current and future needs. BEST's First Things First initiative is designed to ensure that all children attain grade-level competence in core academic areas by the end of third grade through features such as smaller classes in K-3, better professional development for primary teachers, and support services for families.⁶¹

Despite its tax implications, Ohio BEST's agenda of reforms received the approval of the Ohio Chamber of Commerce, the Ohio Business Roundtable, and others. BEST emphasized holistic reform rather than money to improve student performance, but also believed that, especially for school buildings, Ohio needed an aggressive spending program. To finance what BEST described as the "need for greater investment in education," it presented three funding options that included possible tax increases and property tax reductions. These options would have required new or redirected revenues of approximately \$600 million to \$3.5 billion annually. The largest single investment would reduce the teacher/pupil ratio in K-3 classrooms from an average of 1:24 to 1:15. However, Ohio's

⁶⁰ OHIO COALITION FOR EQUITY AND ADEQUACY OF SCHOOL FUNDING, PREPARING OHIO CHILDREN FOR THE 21ST CENTURY 8-18 (April 1997); Underwood Interview.

⁶¹ MOLLY A. HUNTER, ALL EYES FORWARD: PUBLIC ENGAGEMENT AND FISCAL EQUITY IN KENTUCKY (Campaign for Fiscal Equity, Inc., April 1998); Ohio's BEST SCHOOLS for Today and the 21st Century (n.d.[1997]); Wehling Interview; *Executives Can Use Clout*, *supra*, note 11; *Looking To Do What's BEST for Ohio's Schools and Children*, AKRON BEACON JOURNAL, June 27, 1997, at A13.

business leaders are not unanimous in advocating reform in public education. A large contingent of executives favors alternatives, such as vouchers for private and parochial schools.⁶² During 1997 and early 1998, BEST went to the governor's task force and the legislature and "got a good hearing."⁶³

The governor's task force invited school finance experts to testify. The expert who performed the 1993 cost-based analysis for the Alliance and served on the expert panel that developed the court-ordered 1995 study suggested using different criteria to generate new cost-based figures. Under a contract with the state, he calculated a per-pupil foundation amount significantly lower than his earlier work. The 1995 study called for \$4,649 per pupil in fiscal year 1999 dollars, while the new analysis recommended \$4,269 -- a difference of \$684 million per year in state foundation aid.⁶⁴ By the August 6, 1997 deadline, the legislature had enacted higher standards and more assessments for students, district-level accountability, and an increase in total state aid but no change in revenue generation or methods of distribution for financing schools.⁶⁵

In the fall and winter of 1997-98, while the legislature continued to struggle with the school finance question, the League of Women Voters

⁶² Ohio's BEST in Brief: Key Elements of the BEST Schools Agenda (n.d.[1997]); Wehling Interview; Dennis J. Willard & Doug Oplinger, *A New Deal for Schools*, AKRON BEACON JOURNAL, April 18, 199 (quoting the Ohio Chamber of Commerce: "We know [it will cost more]. We accept that. We want to make sure it is spent properly.").

⁶³ Payne, *supra*, note 57; Wehling Interview. Members of the BEST partnership did not vote on the three funding options. *Id.*

⁶⁴ Augenblick, *supra*, note 21; *Funding Ohio's Future*, *supra*, note 18. Ohio has 1.8 million public school students. Dennis J. Willard & Doug Oplinger, *Judge Hears Arguments on Ohio School Funding*, AKRON BEACON JOURNAL, Aug. 25, 1998.

⁶⁵ OHIO REV. CODE ANN. §§ 3301.0710 *et seq.* (Anderson 1998); John Augenblick, Remarks at National Conference of State Legislators, Education Project (Nov. 6, 1997); Thomas Suddes, *Senate Budget Rewrite Gives More to Schools*, THE CLEVELAND PLAIN DEALER, May 19, 1997, at 1-B. The earlier controversy over outcome-based education, *supra*, part II, disappeared when the legislature based the assessment and accountability measures on student performance. Bregar Interview.

held 18 meetings across the state to discuss possible solutions. In February, a few days before the legislature's deadline for getting an issue on the May primary ballot, the League and public television station WOSU-TV sponsored a one-hour special entitled *Funding Ohio's Future*. Citizens met in 200 schools and libraries to watch the program and were asked to express their opinions in writing for submission to legislators. The program also encouraged all other viewers to communicate their opinions on school funding to the legislature.⁶⁶

After working around the clock and through weekends, the legislature and governor revised most factors in the funding system by enacting House Bill 650 ("650"). To reach agreement on these changes, the legislature adjusted the new cost-based per-pupil amount downward from \$4,269 to \$4,063 -- worth another \$370 million per year in state foundation aid -- and codified it in 650. The governor proposed a tax increase to pay for the 650 changes, but wanted the voters to decide on any new tax. Consequently, the legislature placed Issue 2 on the May 1998 primary ballot, choosing not to take the more difficult step of raising taxes themselves.⁶⁷

An Unusual Mix of Allies: Issue 2

Issue 2 asked voters to approve a sales tax increase from five to six

⁶⁶ *Public School Funding Ideas Are Solicited*, THE COLUMBUS DISPATCH, November 20, 1997; *Funding Ohio's Future*, *supra*, note 18; Catherine Candisky, *Show Invites Viewers to Help Fix Schools*, THE COLUMBUS DISPATCH, Jan. 7, 1998. Minority legislators held about 20 public hearings in the fall of 1997. Lee Leonard, *House Democrats Planning Regional Meetings*, THE COLUMBUS DISPATCH, Sept. 11, 1997.

⁶⁷ Robert C. Johnston, *Ohio Lawmakers Agree to Place Tax Question on Upcoming Ballot*, EDUC. WEEK 19 (Feb. 25, 1998); Lee Leonard & Catherine Candisky, *School-Funding Plan Gets Mixed Grades*, THE COLUMBUS DISPATCH, Feb. 15, 1998; Leonard, *supra*, note 66; *Funding Ohio's Future*, *supra*, note 18 (noting that the 1993 and 1995 cost-based studies proposed fiscal year 1999 foundation amounts of \$4,600 and \$4,269, respectively); OHIO REV. CODE ANN. §§ 3313.484, 3317, and 3318. The law phases in the increase, with a fiscal year 1999 foundation amount of \$3,851 and the projected inflation-adjusted cost finally reached in fiscal year 2002. The law also requires the state to re-imburse districts who have paid more than two percent interest on forced loans. *Id.*

percent to generate \$1.1 billion a year. According to its proponents, the Issue 2 revenues would provide a \$550 million residential property tax rebate and a \$550 million increase in school funding. The 650 foundation amount and other funding formula changes were not on the ballot, but advocates viewed the two laws as inseparable components of one remedy.⁶⁸

Issue 2 generated extensive statewide debate. Politicians and interested organizations took positions pro or con, made statements to the press, wrote op-ed pieces, and conducted or participated in public forums. In addition, groups on both sides ran television and radio advertisements. The discourse focused primarily on influencing people to vote for or against Issue 2, not on a more open-ended discussion of what remedy, if any, members of the public thought the state should implement.⁶⁹

The Coalition and the League of Women Voters, as well as the Ohio chapter of the National Taxpayers' Union, Ohio School Boards Association, AFL-CIO, and others, opposed Issue 2. The Taxpayers' Union suggested shifting funds from prison construction and Medicaid to education rather than raising taxes. The 650 revisions to the state aid formulas were an easy target because, aside from increasing revenues to the Big 8 school districts, they produced first-year increases that appeared arbitrary. Opponents also argued that voters had been deceived by state leaders when the lottery profits approved for education in the November 1987 election resulted in a net loss in school funding; the same, they suggested, could happen to Issue 2 revenues.⁷⁰ The Coalition televised a video tape, entitled *The State's Response to DeRolph: Too Little Too Late*, that characterized Issue

⁶⁸ *Failure to Lead*, CRAIN'S CLEVELAND BUSINESS, May 11, 1998, at 10.

⁶⁹ *Issue 2 Campaigners Go All Out on Last Day before Primary Election*, THE CIRCLEVILLE HERALD, May 4, 1998, at 3; Tim Miller & Debra Jasper, *School Funding Proposal - Few Give Plan A Passing Grade*, DAYTON DAILY NEWS, January 30, 1998 (noting that 25 schools and libraries were hosting public meetings about Issue 2 on one Sunday).

⁷⁰ Rita Price, *The Great Debate*, THE COLUMBUS DISPATCH, April 26, 1998, at 1A; Tim Miller, *School Funding - Issue 2 Foes Form Coalition*, DAYTON DAILY NEWS, April 10, 1998, at 3B; Ruth E. Sternberg, *State Funding Figures Baffle School Officials*, THE COLUMBUS DISPATCH, Feb. 27, 1998, at 1A.

2 as political and not responsive to DeRolph. The tape was so effective that it prompted some politicians to ask, “What are we going to do about ‘The Tape’?”⁷¹

Proponents of Issue 2 viewed 650 as a step in the right direction, but also generally agreed that it would need to be improved in the future. The Chamber of Commerce, the Ohio Manufacturers’ Association and the Ohio Business Roundtable endorsed Issue 2, even though they were concerned about the lack of concomitant education reforms.⁷² The Ohio Education Association was the only education interest group to support Issue 2, pointing out that it would support gains in all-day kindergarten and smaller class sizes in the early grades, which it viewed as “substantial steps forward.”⁷³

BEST took no position on Issue 2 because its membership was divided. Some members worked in favor and some in opposition. In public forums, Co-chair Robert Wehling found himself arguing simultaneously against people who wanted much more funding for public education and those who wanted no more funding for public education.⁷⁴ Initially, the Alliance took no position on Issue 2 because it did not want to oppose money going to schools. On a second look, the Alliance came out against the ballot measure because it did not want the education community to be divided and it considered Issue 2 an inadequate remedy.⁷⁵

⁷¹ Phillis Interview.

⁷² Tom Ford, *Ohio Chamber Out to Rally Forces for Education Reform*, CRAIN’S CLEVELAND BUSINESS, May 25, 1998, at 44; Interview with Susan Traiman, Director, Education Initiative, The Business Roundtable (March 16, 1998).

⁷³ Carol Pierce Mix, *Op Ed Page, Issue 2: Yes*, DAYTON DAILY NEWS, April 5, 1998, at 7B; Interview with Carol Pierce Mix, Director of Governmental Services, OEA (May 12, 1998).

⁷⁴ Wehling Interview; Tom Ford, *Issue 2 Has Shaken up Usual Mix of Allies, Foes*, CRAIN’S CLEVELAND BUSINESS, May 4, 1998, at 14 (quoting Bill Howe of OEA).

⁷⁵ Betts Interview.

The voters overwhelmingly rejected Issue 2. Opponents who favor more money for schools saw the vote as a repudiation of an inadequate response to *DeRolph* and are now pushing for a better remedy. However, proponents of Issue 2 wonder if there is any appetite for comprehensive education reform in Ohio at this time.⁷⁶

After Issue 2

The state asserts that its 1998 school funding actions have fulfilled the Ohio Supreme Court's remedy order in *DeRolph*. Plaintiffs and the Coalition have challenged that assertion in court. The parties presented evidence of their views at a two-week hearing before Judge Lewis in late summer 1998. He is expected to rule by March 1999. The losing party is almost certain to appeal to the supreme court.⁷⁷

In any event, implementation of the state's higher standards and accountability is proceeding. School administrators contend that the legislature has simply imposed unfunded mandates on the districts. The schools can meet class size, summer school, testing, and reporting requirements only by reducing or eliminating other programs and services and by requiring personnel to cover more ground. Educators worry that programs such as art and music are being cut when they have a history of preventing dropouts. Some districts are cutting librarian positions, even though librarians are now expected to show students and teachers how to access information through sophisticated technology. More difficult fourth-grade examinations have caused more students to fail, and state

⁷⁶ Mary Beth Lane & Benjamin Marrison, *State Issue 2 Crushed*, THE CLEVELAND PLAIN DEALER, May 6, 1998; Phillis Interview; Wehling Interview. Voters also rejected Issue 1, \$1 billion of state bonding for school facilities. Lane & Marrison, *supra*.

⁷⁷ Plaintiffs' Post-Hearing Brief, *DeRolph*, No. 22043, on remand, No. 95-2066; Willard & Oplinger, *Judge Hears Arguments*, *supra*, note 64; Dennis J. Willard & Doug Oplinger, *School Chief Doesn't Back State Effort*, AKRON BEACON JOURNAL, Aug. 27, 1998; *Ohio's School Funding Case Now in Hands of Judge*, THE CIRCLEVILLE HERALD, Sept. 4, 1998.

requirements placed these students in summer school and/or in fourth grade for this school year. Thus, school districts are reporting additional costs that exceed any increase in state funding. Nonetheless, some people continue to believe that the districts are simply mismanaged.⁷⁸

The Ohio Department of Education views the new assessments and accountability as an opportunity for public engagement around school improvement. It has involved the public in the design of annual school and district-level “report cards” by recruiting members from three groups -- business, educators, and parents -- and letting each “have their say.” ODE piloted the report cards and a “communications tool kit” in over 100 districts last year, and the State Board has made the final decisions about design and distribution for 1999. ODE has scheduled over 20 Public Engagement Regional Meetings in February and March, using the report cards as the “hook” to foster discussions about how participants can go back to their own districts and generate constructive involvement around school improvement. Twelve organizations, including most of Ohio’s statewide education groups and local Business Advisory Councils, are co-sponsoring the meetings.⁷⁹

Some people believe that the legislative and executive branches did the best they could do and will continue to improve the finance system in the future. Others disparage the changes as nothing more than a “coat of paint.” Education finance remains a high priority in the legislature in 1999, and the new governor is emphasizing an initiative to ensure reading competence by the end of fourth grade. However, critics point out that applying the legislature’s 1997 cost-based methodology (used to justify

⁷⁸ Lee Leonard, *New Laws May Cost Schools a Billion*, THE COLUMBUS DISPATCH, August 7, 1998; Beavers Interview; *State Hikes Standards*, *supra*, note 27; DeRolph, No. 22043 at 168; Scott Pullins, Taxpayers Union of Ohio, in *Funding Ohio’s Future*, *supra*, note 18; Dennis J. Willard & Doug Oplinger, *Judge Refuses to Keep Key Testimony Secret*, AKRON BEACON JOURNAL, Sept. 3, 1999.

⁷⁹ See Ohio Department of Education, Local Report Cards, www.ode.ohio.gov (1999); ODE, Continuous Improvement Planning, www.ode.ohio.gov; Bregar Interview. ODE also used focus groups and market studies. To broaden participation, the meetings are scheduled for late afternoons, evenings, and weekends. *Id.*

650's funding levels) to the new assessments and accountability produces a per-pupil foundation amount over \$500 higher -- about \$1 billion per year. The recently retired State Superintendent concluded that the new law does not fundamentally redesign the funding system, fails to provide enough money for per-pupil aid and buildings, and does not allow real estate taxes to go up with inflation.⁸⁰

The level of public rancor between politicians and educators in Ohio is striking. At a public meeting where some educators blamed the legislature for deplorable conditions in the schools, one superintendent said, "I don't know how they sleep at night." State Senator Watts blames school conditions on mismanagement and has said that the superintendents and board of education members "don't have the business sense God gave a goose." Moreover, during the Issue 2 debate, the state singled out the Coalition when it labeled the Coalition's videotape a campaign commercial and required the organization to file a campaign expense report.⁸¹

The Coalition has won in court and believes it will win again but recognizes that it must win in the court of public opinion. The first step in solving the school funding problem, the Coalition argues, is defining the elements of a thorough and efficient system of common schools. Concluding that the state was not taking this approach, the Coalition held town meetings and convened a statewide Education Congress to identify these elements itself. The Coalition is now working to translate these

⁸⁰ Wehling Interview; Jessica L. Sandham, *Out of Time*, EDUC. WEEK, Jan. 11, 1999, at 167; Editorial, CRAIN'S CLEVELAND BUSINESS, June 15, 1998, at 10 (noting that a joint legislative committee will consider reform of the state's property tax system as mandated in House Bill 650); *Gov. Taft Has His Priorities Straight*, AKRON BEACON JOURNAL, Jan. 24, 1999; *State Hikes Standards*, *supra*, note 27; Ann Fisher, *School Funding to Dominate Fall Races*, THE COLUMBUS DISPATCH, June 1, 1998; Catherine Candisky, *State School Superintendent Says He'll Retire Jan. 1*, THE COLUMBUS DISPATCH, February 21, 1998, at 3E (interviewing State Superintendent John Goff).

⁸¹ Leonard, *supra*, note 78; Schleis, *supra*, note 23; Beavers Interview; Phillis Interview. An atmosphere of mistrust may be motivating micro-management of the schools by the state: for instance, last year a Ross County district was forced to upgrade a school building that the district knew would no longer be used. *See also* Catherine Candisky, *Watts Wants to Raise Bar on Student-athlete Grades*, THE COLUMBUS DISPATCH, Sept. 18, 1998.

elements into a “market basket” of specific education resources, with the ultimate goal of determining the cost of a thorough and efficient system.⁸²

After the defeat of Issue 2, Ohio BEST held a retreat to reassess its goals. It has since decided that in the short term it will choose and promote a few high priority reforms in order to move its comprehensive agenda forward incrementally. In February, BEST’s public policy committee will present its recommendations to the entire organization, including an emphasis on early childhood education that BEST believes dovetails with, but goes beyond, the governor’s reading initiative.⁸³

In the November 1998 elections, three supreme court justices, including two of the four who constituted the majority in *DeRolph*, ran for re-election. Although their opponents attacked their role in the school funding decision, all three sitting justices won, including the author of the *DeRolph* opinion who was the only Democrat to win a statewide position. Election results in the General Assembly essentially maintained the status quo in which the education funding issue played no significant role. Interestingly, voters approved local school levies at the highest rate in 25 years.⁸⁴

CONCLUSION

⁸² In October 1998 over 700 people, primarily educators, attended the Education Congress and identified several “essential components,” such as facilities, textbooks/materials, and technology. Phillis Interview; Ohioans Define a Thorough and Efficient System of Common Schools 5, 8-13 (The Coalition, Columbus, Ohio) Dec. 11, 1998.

⁸³ Wehling Interview.

⁸⁴ Pamela Carter, *Sweeney: Decisions Based on Merit, Not Popularity*, and Judge Powell Seeks to Curb Supreme Court ‘Activism’, THE COLUMBUS DISPATCH, Oct. 28, 1998; James Bradshaw, *Three Keep Seats on Supreme Court*, THE COLUMBUS DISPATCH, Nov. 4, 1998; Doug Oplinger & Dennis J. Willard, *Good Year for School Levies, Despite Defeat of Sales Tax*, AKRON BEACON JOURNAL, Dec. 6, 1998, at A1.

The DeRolph litigation and public engagement around education and education finance issues are on-going. Plaintiffs have asked the court to order interim remedies, such as a specific funding level higher than that authorized by the legislature, and to appoint a special master to supervise a process for development and implementation of a new school funding system. The request for a court-supervised remedial process is a strong step, one which has few precedents in fiscal equity litigation. That request is premised on the state's alleged failure to overhaul the education finance system and the knowledge that the remedy phase of school funding cases in some states has persisted for many years.⁸⁵

It seems clear that a substantial increase in state funding would be necessary to refurbish Ohio's school buildings or to institute an ambitious kindergarten or class size reduction program. But so far the state has not generated sufficient political will to fund these needs. In December 1998, the legislature enacted a \$1.7 billion two-year capital budget, designating \$505 million for primary and secondary education facilities.⁸⁶ At that rate, the state would spend \$10 billion on school facilities in about 40 years, which appears to be an insufficient amount to meet the documented needs.

Several organizations in Ohio have built statewide coalitions and encouraged public engagement on these issues. The outlines of a political and economic remedy that would receive broad public acceptance, and therefore more likely pass in the legislature, has not yet emerged. As the political debates continue and court decisions are issued, Ohio will provide a genuine testing ground for public engagement. How much of a role public engagement will play in bridging the gaps among diverse views to

⁸⁵ Plaintiffs' Post-Hearing Brief at 117-32, DeRolph, No. 22043, on remand, No. 95-2066. *See, e.g.*, *Robinson v. Cahill*, 303 A.2d 273 (N.J. 1973) ("*Robinson I*"); *Robinson v. Cahill*, 360 A.2d 400 (N.J. 1976) ("*Robinson VII*"); *Abbott v. Burke*, 693 A.2d 417 (N.J. 1997) ("*Abbott IV*"); *Horton v. Meskill*, 376 A.2d 359 (Conn. 1977) ("*Horton I*"); *Horton v. Meskill*, 486 A.2d 1099 (Conn. 1985) ("*Horton III*"); *Sheff v. O'Neill*, 678 A.2d 1267 (Conn. 1997).

⁸⁶ *State Capital Budget*, NEWS & VIEWS (The Coalition, Columbus, Ohio), December 17, 1998, at 5; *Capital Notions*, AKRON BEACON JOURNAL, Nov. 30, 1998; *State of Denial*, *supra*, note 14.

the benefit of school children in poor districts remains to be seen.