

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN DOE, et al., :
 :
 Plaintiff : Case No. 2:91-cv-0464
 :
 v. : Judge John D. Holschuh
 :
 STATE OF OHIO, et al., :
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 Defendants. :
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BRIEF OF *AMICUS CURIAE* VARIOUS MEMBERS OF THE OHIO GENERAL ASSEMBLY
MINORITY CAUCUSES IN SUPPORT OF PLAINTIFFS' AND THE PLAINTIFF CLASS'S
MEMORANDUM *CONTRA* DEFENDANTS MOTION TO DISMISS OR FOR SUMMARY
JUDGMENT

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[Local Rule 7.2(a)(3)]

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This Court represents the last best hope for Ohio’s 1.8 million school children. A decade ago the Supreme Court of Ohio offered a new hope for Ohio school children, the hope that every child in the state would have access to a thorough and efficient system of public schools. The executive and legislative branches, much to the frustration of *amici*, ensured that this hope was a hollow one. Even the Supreme Court of Ohio failed to deliver. This Court, by allowing the Plaintiffs and Plaintiff Class to pursue their claims, has the opportunity to finally give meaning to the Supreme Court of Ohio’s command for a complete systematic overhaul of the school finance system. This Court must not allow this opportunity to pass.

I. INTRODUCTION

A. INTEREST OF AMICI CURIAE

The appearance as *amici curiae* is made by thirty-five duly elected and acting members of the current Ohio General Assembly. The *amici curiae* include: State Senators C.J. Prentiss, Minority Leader; Kimberly Zurz, Assistant Minority Leader; Teresa Fedor, Minority Whip; Thomas Roberts, Assistant Minority Whip; Marc Dann; Eric Fingerhut; Robert Hagan; Eric Kearney; Dale Miller; Ray Miller; and Charlie Wilson; and State Representatives Joyce Beatty, Minority Leader; Todd Book, Assistant Minority Leader; Steve Driehaus, Minority Whip; Fred Strahorn, Assistant Minority Whip; Catherine Barrett; Edna Brown; Kenneth Carano; Timothy Cassel; Kathleen Chandler; Timothy DeGeeter; John Domenick; Lorraine Fende; George Distel; William Hartnett; William Healy II; Robert Otterman; Jeanine Perry; Chris Redfern; Michael Skindell; Dan Stewart; Barbara Sykes; Brian Williams; Claudette Woodard; and Kenneth Yuko.

These state Senators and state Representatives represent over four million Ohioans in districts comprised of rural, suburban, and large urban city school systems. They have actively worked over the years to create a constitutional method of funding Ohio's public schools and many have filed *amici curiae* briefs with the Supreme Court of Ohio and the Supreme Court of the United States supporting past plaintiffs in prior challenges to the constitutionality of Ohio's school finance system. *Amici* file in support of the Plaintiffs and the Plaintiff Class (hereinafter "the Plaintiffs") to emphasize that a substantial number of Ohio legislators do not support the Defendants' motions or the

Defendants' continued failure to provide all Ohio schoolchildren—including children with disabilities—a thorough and efficient public education.

Through their unique legislative perspective, *amici* will support the Plaintiffs' allegation that Defendants violate Plaintiffs' due process and equal protection rights as protected by the Fourteenth Amendment to the United States Constitution by continuing to deny Plaintiffs their constitutional right to a "thorough and efficient system of common schools." *Amici* will illustrate how the Ohio General Assembly systematically dismantled the minimal progress made as long as the Supreme Court of Ohio retained jurisdiction over the *DeRolph* litigation.

In ruling Ohio's school finance system unconstitutional in 1997, the Supreme Court of Ohio noted: "As thirty-seven lawmakers concede in their *amicus curiae* brief, despite their recent efforts, the General Assembly has not funded our public schools properly. They assert that unless this court rules in favor of the appellants, the urgency of resolving public school funding will quickly fade." *DeRolph v. State of Ohio*, 78 Ohio St.3d 193, 211-212, 677 N.E.2d 733, 746 (1997)(hereinafter "*DeRolph I*"). *Amici* believe that unless this Court rules in favor of the Plaintiffs, the urgency of resolving Ohio's school funding crisis will completely disappear.

B. SUMMARY OF ARGUMENT

This case is about the State of Ohio's repeated, systematic failure to provide Ohio's school children with a "thorough and efficient system of common schools." The state's highest court repeatedly has declared the school funding scheme unconstitutional. *DeRolph I*, 78 Ohio St.3d at 212, 677 N.E.2d at 747; *DeRolph v. State of Ohio*, 89 Ohio St. 3d 1, 728 N.E.2d 993 (2000)(hereinafter "*DeRolph II*"); *DeRolph v. State of Ohio*, 93

Ohio St. 3d 309, 754 N.E.2d 1184 (2001)(hereinafter “*DeRolph III*”); *DeRolph v. State of Ohio*, 97 Ohio St. 3d 434, 780 N.E.2d 529 (2002)(hereinafter “*DeRolph IV*”). The Supreme Court of Ohio’s “core constitutional directive” ordered the General Assembly to conduct a “complete systematic overhaul of the school-funding system.” *DeRolph IV*, 97 Ohio St. 3d at 435, 754 N.E. 2d at 530. The General Assembly never complied.

Nevertheless, during the period of time in which the Supreme Court of Ohio retained jurisdiction, the General Assembly at least paid attention to school funding and achieved minimal progress in improving the school funding system. This minimal progress never fulfilled the requirements of the Ohio Constitution, leading the Supreme Court to “reiterate that [a complete systematic overhaul] is what is needed, not further nibbling at the edges.” *Id.* Specifically, the court ordered the General Assembly to eliminate overreliance on local property taxes.

The General Assembly’s reaction actually increased overreliance on local property taxes. Unfortunately, the court relinquished jurisdiction over school funding after ruling the system unconstitutional for the fourth time. Freed from judicial oversight, the General Assembly systematically dismantled the minimal progress made during the period in which the court exercised oversight. The General Assembly’s funding formula is essentially the same as when the court first ruled the system unconstitutional. Since *DeRolph IV*, the General Assembly has systematically undermined this funding formula. Today, Ohio school children are provided with a public school system that is less thorough and less efficient—and just as unconstitutional—as the scheme found unconstitutional four years ago.

This unconstitutional system persists because the Supreme Court of Ohio denied a remedy to Ohio's school children. In *DeRolph IV*, the Court inexplicably relinquished jurisdiction and denied Plaintiffs access to a judicial remedy. The result violates the due process and equal protection rights of Ohio's 1.8 million school children.

This Court represents the last best hope for Ohio's 1.8 million school children. Further legislative proceedings are futile. Despite *amici's* best efforts, as the Ohio legislature has already demonstrated, further legislative proceedings will only lead to a further systematic dismantling of Ohio's public education system. This Court possesses broad remedial power to redress the violation of constitutional rights. *Amici* urge this Court to deny the Defendants' motions and, at the appropriate time, exercise its power on behalf of Ohio school children to vindicate their constitutional right to a thorough and efficient education system.

II. LAW AND ARGUMENT

Amici will provide the Court with the unique perspective of Ohio legislators who have collectively worked over the years to resolve Ohio's school funding crisis. Specifically, *amici* will: (A) summarize Ohio's school funding formula, the constitutional mandates governing Ohio school finance, and the minimal progress the state made in improving the school funding system while the Supreme Court of Ohio retained jurisdiction; (B) document how the state systematically dismantled the *DeRolph*-era's minimal progress and the impact of the state's systematic dismantling; and (C) conclude that further legislative proceedings are futile and that this Court represents the last best hope for protecting the right of Ohio schoolchildren to a system of thorough and efficient

public schools. Whether Ohio's 1.8 million school children have the opportunity to receive a meaningful, appropriate education depends upon the outcome of this case.

A. Despite the Defendants' failure to conduct a court ordered "complete systematic overhaul" of the school-funding system that eliminates overreliance on local property taxes, the school funding system improved somewhat while Ohio courts retained jurisdiction over the *DeRolph* litigation.

The State of Ohio's school funding scheme is unconstitutional. The Supreme Court of Ohio ruled it unconstitutional in 1997. *DeRolph I*, 78 Ohio St.3d at 212, 677 N.E.2d at 747. The Supreme Court ruled it unconstitutional in 2000. *DeRolph II*, 89 Ohio St. 3d at 35, 728 N.E.2d at 1020. The Supreme Court ruled it unconstitutional in 2001. *DeRolph III*, 93 Ohio St. 3d at 323, 754 N.E.2d at 1200. The Supreme Court ruled it unconstitutional in 2002. *DeRolph IV*, 97 Ohio St.3d at 435, 780 N.E.2d at 530. The state's school-funding scheme remains unconstitutional today.

The General Assembly feebly tinkered around the edges of the school funding system while subject to judicial oversight. This tinkering resulted in some minimal progress for Ohio schoolchildren. Never, however, did the General Assembly's feeble attempts achieve the "thorough and efficient system of common schools" required by the Ohio Constitution. In this section, *amici* chronicle the four Supreme Court of Ohio decisions holding Ohio's school funding system unconstitutional. In doing so, *amici* describe the state's school funding formula, the court's orders, the minimal progress noted by the court, and the fatal flaws in each feeble attempt. The *DeRolph*-era ends with Ohio's highest court ordering that a "[complete systematic overhaul] is what is needed, not further nibbling at the edges." *Id.*

1. In *DeRolph I*, the court declared Ohio’s school funding scheme unconstitutional and ordered a complete systematic overhaul of the system.

Nearly a decade ago, the Supreme Court of Ohio offered Ohio schoolchildren a new hope by declaring that the State of Ohio’s system for funding public education violated the Ohio Constitution. *DeRolph I*, 78 Ohio St.3d at 212, 677 N.E.2d at 747. The court held that the state’s scheme for funding public schools violates the Ohio Constitution, which protects the right of Ohio schoolchildren to a “thorough and efficient” public education system. Specifically, Section 2, Article VI of the Ohio Constitution provides:

“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.”

The court explained that it had previously defined the meaning of the phrase “thorough and efficient:”

This declaration is made by the people of the state. It calls for the upbuilding of a system of schools throughout the state, and the attainment of efficiency and thoroughness in that system is thus expressly made a purpose, not local, not municipal, but state-wide.

With this very purpose in view, regarding the problem as a state-wide problem, the sovereign people made it mandatory upon the General Assembly to secure not merely a system of common schools, but a system thorough and efficient throughout the state.

A thorough system could not mean one in which part or any number of the school districts of the state were starved for funds. An efficient system could not mean one in which part or any number of the school districts of the state lacked teachers, buildings, or equipment. *DeRolph I*, 78 Ohio St.3d at 203-204, 677 N.E.2d at 741 (quoting Miller v. Korns, 107 Ohio St. 287, 297-298).

The Court applied these standards to a school funding formula that is essentially the same school funding formula the General Assembly uses today:

$$(\text{Student enrollment} \times \text{state base formula amount} \times \text{the cost of doing business}) - (\text{local property value} \times \text{chargeoff millage}) = \text{state aid.}$$

“Student enrollment” is the “average daily membership” calculated during the first week of October. The “state base formula amount” (hereinafter “the formula amount”) is a “figure set by the General Assembly as part of the biennial budget process.” *DeRolph I*, 78 Ohio St.3d at 218, 677 N.E.2d at 751, Douglas, J., concurring. The formula amount is theoretically the state’s estimate of how much it costs to educate a student.¹ The “cost-of-doing-business factor” is an adjustment to account for higher operational costs due to higher labor costs in certain geographic areas of the state. For example, costs of doing business are generally greater in school districts located in urban counties than in rural counties. The formula is supplemented with additional aid based on special factors such as vocational education, special education, and transportation. This formula failed to provide students with a thorough and efficient public education system. The formula the state utilized at the time of *DeRolph I* is essentially identical to the formula utilized today.

In *DeRolph I*, the Court ordered that “Ohio’s public school financing scheme must undergo a complete systematic overhaul.” *DeRolph I*, 78 Ohio St.3d at 212, 677 N.E.2d at 747. As part of this complete systematic overhaul, the Court highlighted four factors:

“which contribute to the unworkability of the system and which must be eliminated . . . (1) the operation of the School Foundation Program, (2) the

¹ The formula amount is only theoretically the amount needed to educate a student because the State of Ohio has never conducted a study to determine the cost of an adequate education in Ohio.

emphasis of Ohio's school funding system on local property tax, (3) the requirement of school district borrowing through the spending reserve and emergency school assistance loan programs, and (4) the lack of sufficient funding in the General Assembly's biennium budget for the construction and maintenance of public school buildings." *Id.*

As a result, the Court held that the Ohio's system of financing public schools violated Section 2, Article VI of the Ohio Constitution. *Id.*

In deference to the doctrine of separation of powers, the court declined to "instruct the General Assembly as to the specifics of the legislation it should enact." *DeRolph I*, 78 Ohio St.3d at 212-213, 677 N.E.2d at 747. Instead, the court ordered the General Assembly to "create an entirely new school finance system." *DeRolph I*, 78 Ohio St.3d at 213, 677 N.E.2d at 747.

2. The *DeRolph II* court acknowledged some progress since *DeRolph I*, but ruled the school funding scheme unconstitutional, largely because the state failed to eliminate overreliance on local property taxes.

Despite some modest legislative improvements after *DeRolph I*, the Supreme Court of Ohio three years later again held that the state's school funding system violated the Ohio Constitution. *DeRolph II*, 89 Ohio St. 3d at 36, 728 N.E.2d at 1021. The court did "acknowledge that the state has made some alterations to the school-funding scheme." *DeRolph II*, 89 Ohio St. 3d at 17, 728 N.E.2d at 1006. The court noted modest progress, albeit inadequate progress, in tinkering with three of the four deficiencies the *DeRolph I* court identified: 1) the inadequate funding of school facilities; 2) forced borrowing; and 3) inadequate overall funding. These alterations marked the beginning of modest improvements in the school-funding system. In the fourth area, overreliance on local property tax, the General Assembly failed to make any progress. Overall, the state failed to give the school funding system a complete and systematic overhaul.

a. The court recognized the significance of the creation of the School Facilities Commission.

The court noted the significant progress made with the creation of the School Facilities Commission and the additional revenue “for school building construction and maintenance.” *DeRolph II*, 89 Ohio St. 3d at 36, 728 N.E.2d at 1020. The court also praised the creation of the SchoolNet program to improve computer literacy. *DeRolph II*, 89 Ohio St. 3d at 36, 728 N.E.2d at 1020-1021.

b. The state failed to persuade the court that the state had eliminated forced borrowing.

The court noted progress in reducing the need for school districts to borrow funds. However, the court remained unconvinced that the newly created School Solvency Assistance Fund would eliminate the need for schools to rely on borrowing. The court noted testimony that the state “did not research or analyze the effect that H.B. 650 and H.B. 770 would have on borrowing.” *DeRolph II*, 89 Ohio St. 3d at 25, 728 N.E.2d at 1013. In addition, the court stated that the state’s school finance expert “did not take borrowing or the repayment of existing loans into account in arriving at the base cost figure.” *DeRolph II*, 89 Ohio St. 3d at 26, 728 N.E.2d at 1013. The court reiterated that reliance on borrowing must be eliminated before Ohio’s public school system would be thorough and efficient. *Id.*

c. The court noted important, but inadequate, progress in reducing reliance on residual budgeting and expressed concern that the funding formula still contained structural problems.

The court found some progress in the General Assembly’s tinkering with the foundation formula. The General Assembly improved the foundation program by addressing the problem of “residual” budgeting. “This method for calculating the cost of

a basic education involved determining how much money the state could afford for education” first and then “working backward to arrive at the per-pupil basic subsidy.” *DeRolph II*, 89 Ohio St. 3d at 19, 728 N.E.2d at 1007. Thus, the amount allocated for funding education was entirely based on how much the legislature wanted to pay for education, not the actual cost of an adequate education. The General Assembly addressed the residual budgeting problem in three ways. First, the state enacted a separate education budget instead of funding education with the residual amount left over from the state budget. The court decided to give the state the benefit of the doubt, although the court acknowledged the possibility that the stand-alone education budget was merely “disguised residual budgeting.” *DeRolph II*, 89 Ohio St. 3d at 19-20, 728 N.E.2d at 1008. Sadly, this stand-alone education budget marked the first and last time the Ohio legislature enacted a separate education budget.

Second, the state codified its decision to calculate the formula amount based on the actual cost of an adequate education. The court explained that “[c]ommencing in July 2001, and every six years thereafter, the President of the Senate and the Speaker of the House of Representatives are required to appoint three members to a committee, which will determine the cost of an adequate education.” *DeRolph II*, 89 Ohio St. 3d at 15, 728 N.E.2d at 1005. The court found that “[t]his is certainly a positive step in view of the fact that the cost of an adequate education in Ohio had not been determined since 1973-1974.” *DeRolph II*, 89 Ohio St. 3d at 16, 728 N.E.2d at 1005 (citing *DeRolph I*, 78 Ohio St.3d at 261, 677 Ne.E.2d at 780 (Resnick, J., concurring)).

Third, the court found that the state started down the right path by hiring an expert in school finance, Dr. John G. Augenblick, to develop a new funding methodology.

DeRolph II, 89 Ohio St. 3d at 17, 728 N.E.2d at 1007. The court explained that the state, for the most part, adopted Dr. Augenblick's methodology to calculate the formula amount. *Id.* Because the cost-of-doing-business factor was such a vital component of the funding formula, the General Assembly supplemented the new formula amount methodology by accelerating the phase-in of an increase in the cost-of-doing-business factor. The General Assembly decided to accelerate the phase-in of this amount until it reached 18 percent in 2004 instead of 2010. Increasing the cost-of-doing-business multiplier carried with it the promise of increasing state aid to local districts burdened by high labor costs. This was the closest the General Assembly ever came to determining the cost of an adequate education, basing the formula amount on that cost and providing meaningful aid to high labor cost districts.²

Despite this minimal progress, the court concluded that "the current formula is almost identical to its predecessor." *DeRolph II*, 89 Ohio St. 3d at 17, 728 N.E.2d at 1006. One glaring deficiency was that the funding formula retained "structural deficiencies and may not in fact reflect the amount required per pupil to provide an adequate education."

DeRolph II, 89 Ohio St. 3d at 37, 728 N.E.2d at 1021. The court further found that the state inexplicably altered Dr. Augenblick's formula. *DeRolph II*, 89 Ohio St. 3d at 18, 728 N.E.2d at 1007. The state's inexplicable alteration actually *lowered* the per pupil base cost amount for fiscal year 1999 from \$4,269 to \$4,063. *Id.* The impact of this reduction was exacerbated by the state's decision to phase it in over three years. The

² The Augenblick methodology is only the closest the General Assembly ever came to basing the formula amount on an adequacy study because Dr. Augenblick's methodology was not actually based on an adequacy study. Instead, the Augenblick methodology was based on a sample of some schools that met a specified number of certain academic standards. Dr. Augenblick did not conduct a study to determine the cost of an adequate education.

promise of a school funding formula based on the actual cost of an adequate education once again was woefully inadequate.

The primary deficiency the court singled out was the state's failure to eliminate overreliance on local property taxes to fund schools. The court lamented that overreliance on local property taxes "persists in the state's current funding plan, *wholly unchanged.*" *DeRolph II*, 89 Ohio St. 3d at 26, 728 N.E.2d at 1013. Moreover, the state not only overrelied on local property taxes, the General Assembly worsened that overreliance through its decision to phase-out a local business property tax. *DeRolph II*, 89 Ohio St. 3d at 27, 728 N.E.2d at 1014. This decision actually *increased* the state's reliance on local property taxes. Overall, the deficiencies in the formula amount and the continued overreliance on local property taxes led the court to once again find the public school system unconstitutional.

3. The *DeRolph III* court again ruled the school funding scheme unconstitutional.

Not surprisingly, in light of the General Assembly's feeble efforts, just one year after *DeRolph II*, the court again ruled that the state failed to provide a thorough and efficient public education system. The court's decision in *DeRolph III* is unique because the court completely vacates its *DeRolph III* decision in *DeRolph IV*. As a result, *DeRolph III* lacks precedential value. The decision is useful, however, in understanding the minimal progress and continuing constitutional deficiencies in Ohio's public school system. The court again acknowledged modest improvements to Ohio's public school system. For example, the General Assembly decided to end the base cost phase-in that the court criticized in *DeRolph II*, instead funding the amount of the per pupil base cost fully and immediately. *DeRolph III*, 93 Ohio St. 3d at 313, 754 N.E.2d at 1191. This immediate

implementation, the court found, would result in \$4,814 per student in FY02. *Id.* By fiscal year 2007, the court found the base cost per student would be \$5,527. *Id.*

The court also praised the General Assembly for supplementing basic state aid with “parity aid.” “Parity aid is intended to give low-wealth districts the opportunity to spend funds on discretionary items in the same manner as wealthier districts.” *DeRolph III*, 93 Ohio St. 3d at 314, 754 N.E.2d at 1193. Parity aid would “provide an additional \$100 million to eighty percent of school districts in fiscal year 2002 and an additional \$500 million per when the program is fully phased in by fiscal year 2006.” *DeRolph III*, 93 Ohio St. 3d at 315, 754 N.E.2d at 1193. Parity aid provided a step in the right direction toward bridging the gap between low-wealth and high-wealth school districts.

Overall, the court’s continued oversight produced some progress for Ohio schoolchildren. As noted by Justice Andrew Douglas:

Certainly Ohio’s schoolchildren are better off today than they were before *DeRolph I* and *DeRolph II*. New facilities have been and are being constructed. Learning materials, including books, have been updated and replaced. Technology has been introduced and improved. We recognize that more must be done, but the impetus is now at work. *DeRolph III*, 93 Ohio St. 3d at 339, 754 N.E.2d at 1212, Douglas, J., concurring.

The post-*DeRolph II* progress, however, again failed to produce a constitutional system of common schools. As Justice Resnick noted, “[t]he state has used a Band-Aid approach instead of the major surgery that was required to fix these problems.” *DeRolph III*, 93 Ohio St. 3d at 362, 754 N.E.2d at 123-1231, Resnick, J., dissenting. For example, with one hand the General Assembly gave immediate implementation of the formula amount, while with the other hand it sharply reduced the cost-of-doing-business factor

phase-in that began after *DeRolph I*. Justice Douglas explained the impact of this sharp reduction:

[The state] reduced the maximum cost-of-doing-business factor from eighteen percent to 7.5 percent, further eroding the enormous gains it purports to fund. In fact, and by example, Hamilton County under HB 650 would have received \$5,084 per pupil, yet with the reduction in the cost of doing business factor under HB 94, Hamilton County will actually receive \$5175. Thus . . . the state yields a meager \$91 gain for Hamilton County over what it would have received under HB 650. Other counties face similar circumstances. *DeRolph III*, 93 Ohio St. 3d at 336, 754 N.E.2d at 1209, fn. 4, Douglas, J., concurring.

As indicated by the impact on Hamilton County, home to Cincinnati Public Schools, the cost-of-doing-business reduction had disproportionate negative impact on low-wealth urban districts.

The court ordered the General Assembly to take specific steps in order to achieve a constitutional system of public schools. The court ordered the General Assembly to increase funding for the base cost formula and to fully implement parity aid by the beginning of fiscal year 2004 instead of fiscal year 2006. *DeRolph III*, 93 Ohio St. 3d at 324-325, 754 N.E.2d at 1200-1201. Rather than comply with the court's order, the state moved for reconsideration. The court granted the state's motion and ordered the parties to attempt mediation.

4. In *DeRolph IV*, the court renewed its order for a “complete systematic overhaul” of the school funding system.

After the parties failed to reach agreement in mediation, in 2002, the Court again declared the school funding scheme unconstitutional. The Governor immediately declared that Ohio's school funding system is constitutional. Following the Governor's “leadership,” the General Assembly disregarded the court's ruling.

In ruling Ohio's school funding system unconstitutional for the fourth time, the court renewed its call for a "complete systematic overhaul" of the funding system:

“. . . the General Assembly has not focused on the core constitutional directive of *DeRolph I*: 'a complete systematic overhaul' of the school-funding system. *Id.* 78 Ohio St.3d at 212, 677 N.E.2d 733. Today we reiterate that that is what is needed, not further nibbling at the edges.” *DeRolph IV*, 97 Ohio St.3d at 435, 780 N.E.2d at 530.

In addition, the court vacated its decision in *DeRolph III*: “[a]ccordingly, *DeRolph I* and *II* are the law of the case, and the current system is unconstitutional.” *Id.*

Ohio Governor Bob Taft laid the foundation for the State of Ohio's systematic dismantling of any progress made during the *DeRolph*-era *on the same day* the court issued its order in *DeRolph IV*. Despite the court's emphatic and unequivocal holding that Ohio's school-funding system remained unconstitutional, Ohio Governor Bob Taft stated: “The *DeRolph* case is over. . . . **I continue to believe that** with the changes we made pursuant to *DeRolph I* and *II*, **Ohio has a constitutional system of funding our schools.**” “*Statement by Governor Bob Taft*,” Dec. 11, 2002, available at <http://www.state.oh.us/gov/releases/Archive2002/121102derolph.htm> (last visited April 1, 2006) (emphasis added). Just months after *DeRolph IV*, Governor Taft added actions to his words by cutting \$99.9 million from the Department of Education, of which \$90.6 million was to go directly to school districts. The Governor's direction to the General Assembly could not have been more clear: disregard the Supreme Court of Ohio's order. The General Assembly received its message loud and clear.

Although the General Assembly never made a significant effort to address the systemic inequalities in Ohio's school funding system, the political branches did, albeit inadequately, at least initially increase overall school funding, which helped to alleviate

some of the effects of the inequalities. Nearly a decade ago, the Supreme Court of Ohio recognized the inadequacy of the school funding system and ordered the General Assembly to conduct a complete and systematic overhaul. The General Assembly responded with minimal piecemeal progress rather than a systematic overhaul. The court correctly characterized these changes as “nibbling” around the edges. The court concluded that the General Assembly’s six years of “nibbling” fell far short of its order for a complete systematic overhaul. Accordingly, the court ordered the General Assembly to go back to the drawing board and produce a systematic overhaul in of the school funding system and to eliminate overreliance on local property taxes.

B. Because Defendants have systematically undermined and dismantled progress made during the *DeRolph* litigation, Ohio’s public education system is less thorough and less efficient than the system declared unconstitutional in 2002.

Ohio’s public school system is less thorough and less efficient than the system the Supreme Court of Ohio declared unconstitutional for the fourth time in *DeRolph IV*. Despite some changes to the school funding system while the court exercised jurisdiction over *DeRolph*, the Ohio legislature has actually worsened the school funding system. The General Assembly and Governor Taft have systematically dismantled the minimal progress achieved during the *DeRolph*-era after the Supreme Court of Ohio denied a remedy to Ohio schoolchildren. The General Assembly 1) systematically undermined the school funding formula; 2) resorted to residual budgeting; and 3) increased overreliance on local property taxes. Overall, Ohio’s school funding system is less thorough and less efficient than the scheme the Supreme Court of Ohio declared unconstitutional four years ago.

1. The General Assembly dismantled the minimal progress achieved during the *DeRolph* litigation by undermining the school funding formula.

Following the Supreme Court of Ohio's refusal to provide a remedy to Ohio schoolchildren, the General Assembly systematically undermined the funding formula. Throughout the *DeRolph* litigation, the funding formula remained basically unchanged. In fact, the funding formula in place today remains basically the same as the one declared unconstitutional in *DeRolph I*:

(student enrollment X formula amount X cost-of-doing-business factor) - (total local property value X chargeoff millage) = state aid.

The General Assembly undermined this formula by: 1) facilitating a sharp decline in student enrollment by fostering the development of publicly funded, privately operated charter schools 2) resorting to residual budgeting in calculating the base cost amount and 3) phasing out the cost-of-doing-business factor.

a. The General Assembly has undermined the school funding formula by facilitating the transfer of public school students to private schools and publicly funded, privately operated "community" schools.

The state undermines the existing funding formula by implementing new mechanisms to encourage student enrollment in traditional public schools to decrease. The state causes this decrease by: 1) facilitating the transfer of public school students to private schools by offering vouchers; and 2) authorizing the proliferation of publicly funded, privately operated "community" schools. The most recent state operating budget expanded the state's school voucher program, previously limited to the Cleveland School District, to students in all school buildings that spent the previous three years in "academic emergency." In doing so, the General Assembly made 30,000 public school

students eligible for 14,000 private school vouchers. Less than a year later, the General Assembly expanded the voucher program again to apply to school buildings that spent the previous three years in “academic watch.” As a result, the General Assembly increased the number of students eligible to leave the public school system to 46,000. This increase virtually guarantees public schools will lose 14,000 students and at least \$60 million.

The state also undermines the student enrollment factor in the funding formula by fostering the proliferation of “community” schools. State and local funding follows students as they leave traditional public schools for “community” schools. As a result, these “community” schools siphon millions of dollars away from local districts. Since *DeRolph IV*, “community” school enrollment has increased from 21,342 to 65,673, an increase of 207 percent. During the same time period, “community” school funding increased from approximately \$140 million to nearly \$500 million, an increase of 240 percent. The General Assembly’s “community” school scheme has thus diverted hundreds of millions of dollars from Ohio’s public school system. Losing hundreds of millions of dollars adversely impacts the ability of public school districts to meet their students’ needs.

b. The General Assembly undermines the funding formula by inadequately funding the formula.

The General Assembly also undermined the formula amount in each state operating budget following *DeRolph IV*. First, the state reduced planned increases in the state foundation formula from 2.8 percent to 2.2 percent. This reduction decreased the formula amount from \$5,088 to \$5,058 in fiscal year 2004 and from \$5230 to \$5169 in fiscal year 2005. The second post-*DeRolph IV* state operating budget similarly

undermined the formula amount. The General Assembly rejected the executive budget requested formula amount increases of 3.1 percent for fiscal year 2006 and 3.0 percent for fiscal year 2007. Instead, the General Assembly continued the reduced 2.2 percent increase devised in the previous operating budget. The General Assembly actually lowered the per-pupil formula amount in the executive proposal from \$5328 to \$5283 for fiscal year 2006 and from \$5489 to \$5403 for fiscal year 2007. Overall, these decreases meant school districts lost approximately \$45 million in fiscal year 2006 and \$86 million in fiscal year 2007, a total loss of approximately \$130 million over the biennium.

The General Assembly exacerbates its undermining of the formula amount in its dealing with parity aid and special education funding. The *DeRolph III* court heralded increases in parity aid as one of the General Assembly's most significant *DeRolph*-era achievements. Nonetheless, the General Assembly actually decreased the parity aid calculation in its most recent budget.

Similarly, the General Assembly continued to fail to deliver on its promise to fully fund special education services. The General Assembly funds special education based on an adequacy study based on the requirements of the pre-1997 version of the federal Individuals with Disabilities in Education Act (IDEA). Assuming *arguendo* that the special education funding formula would have been adequate under the pre-1997 law, the state completely fails to take into consideration the fact that the federal law was reauthorized with substantial changes in 1997 and again 2004. The 1997 reauthorization added a significant number of services that are required for a student with a disability to access a free appropriate public education. What may have been adequate under the pre-1997 IDEA is thus wholly inadequate in 2006.

Moreover, the state has never fully funded the amount that it believes is necessary for an adequate special education. In fiscal year 2002, the state funded special education at a level of 82.5 percent. In fiscal year 2003, it was 87.5 percent. In fiscal year 2004, it was 88 percent. For fiscal years 2005 through 2007, the level of special education funding has been stalled at 90 percent. Does this mean that, contrary to federal mandates, students with disabilities in Ohio now receive only 90 percent of an adequate education? The state may try to argue that 90 percent of an adequate education is adequate. Such an argument would obviously defy common sense. Anything less than adequate, even if it is “only” 10 percent less than adequate, is inadequate. Each of these General Assembly tactics—undercutting the formula amount, lowering the parity aid calculation, and failing to fully fund special education—systematically undermines the entire formula and dismantles the minimal progress achieved during the *DeRolph*-era.

c. The General Assembly undermines the funding formula and starves urban districts of funds by phasing-out the cost-of-doing-business factor.

The General Assembly starves primarily urban districts of funds by phasing out the cost-of-doing business factor. The cost-of-doing business factor provides critical support to schools located in counties with high labor costs. The cost-of-doing business multiplier would have been 18 percent if the state had stayed the course in its initial response to *DeRolph I*. The state subsequently reduced the cost-of-doing business factor to 7.5 percent. This reduction disproportionately impacted low-wealth urban school districts like Cincinnati Public Schools. See, e.g., *DeRolph III*, 93 Ohio St. 3d at 336, 754 N.E.2d at 1209, fn. 4, Douglas, J., concurring. Now, in the current operating budget

the state completely phases out this critical support. Over the course of the current biennium, this phase-out will cost Ohio public schools approximately \$300 million.

2. The General Assembly resorted to residual budgeting by failing to prioritize education funding, failing to determine the cost of an adequate education, and backing a rearranged formula into the same formula amount.

In addition to undermining the school funding formula, the state continues to systematically dismantle the minimal progress achieved in the *DeRolph*-era by resorting to residual budgeting. As described in *DeRolph II*, residual budgeting involves “determining how much money the state could afford for education and working backward to arrive at the per-pupil basic subsidy.” *DeRolph II*, 89 Ohio St. 3d at 19, 728 N.E.2d at 1007. The return to residual budgeting is reflected by: 1) the failure to prioritize education funding; 2) the failure to base funding on the actual cost of an adequate education; and 3) the remarkable similarity between the last two state budgeted formula amounts, despite tinkering with the funding formula.

a. The General Assembly’s failure to prioritize school funding demonstrates the return to residual budgeting.

Political-based decision-making and logrolling the education budget into the general operating budget demonstrate the state’s failure to prioritize school funding. The state repeatedly fails to make improved funding for education a priority.

Residual budgeting persists through the state’s decision to simply logroll the education budget into the general operating budget. In *DeRolph II*, the decision to allocate a separate education budget was heralded by the court as an important step away from residual budgeting. However, the education budget discussed in *DeRolph II* ended up being the state’s only stand alone education budget. The state simply logrolled each

subsequent education budget into the general operating budget. Such logrolling increases the risk that the state will simply allow political considerations to determine how much to spend on education and then back the education portion of the budget into that amount.

The most recent operating budget offers a case study in the failure to prioritize school funding. House Bill 66, the current operating budget, provides school districts overall with \$400 million less than the previous budget. This act, more than any other, marks the death of *DeRolph*-era progress and a return to residual budgeting. The General Assembly increased total per pupil aid 1.9 percent in fiscal year 2006 and 1.6 percent in fiscal year 2007. These miniscule increases fail to even keep up with inflation. Even worse, in 2005 the state unexpectedly found itself with an extra \$1.3 billion. Did the General Assembly use any of that money to address its failure to provide a thorough and efficient public school system to Ohio's school children? No. Consistent with its previous defiance of the court's order to systematically overhaul the school funding system, the legislature failed to provide a single additional dollar to the public education of Ohio school children.

Without the threat of judicial oversight, the State of Ohio simply refuses to prioritize education funding. Put simply, as long as the Supreme Court of Ohio retained jurisdiction over *DeRolph* the Governor and General Assembly at least gave some attention to school funding. Once the court relinquished jurisdiction, school funding completely fell from the list of priorities.

- b. The General Assembly's failure to conduct a study of the actual cost of an adequate education illustrates the return to residual budgeting.**

The General Assembly's continuing failure to base education funding on the actual cost of an adequate education also demonstrates the state's reliance on residual budgeting. This failure is demonstrated by three significant factors. First, the state eliminated the requirement that the General Assembly analyze the cost of an adequate education every six years. Second, the state continues to refuse to conduct a study of what constitutes an adequate education. Third, the state repeatedly fails to acknowledge the actual soaring costs of basic education requirements. Overall, the state's approach to education simply fails to bear any rational relationship to the basic cost of an adequate education.

The state ushered in the return to residual budgeting by eliminating the requirement that the General Assembly analyze every six years the cost of providing an adequate education. The Supreme Court of Ohio emphasized the importance of this six year review to eliminating residual budgeting. *DeRolph II*, 89 Ohio St. 3d at 15-16, 728 N.E.2d at 1005. In the first state operating budget after *DeRolph IV*, however, the General Assembly eliminated the requirement that the cost of an adequate education be assessed every six years.

The state's repeated failure to determine the cost of an adequate education further demonstrates the state's reliance on residual budgeting. The closest the state ever came to conducting an adequacy study was the Augenblick methodology developed following *DeRolph I*. However, as previously discussed, the General Assembly arbitrarily altered the Augenblick methodology and ended up providing less per pupil funding than determined necessary. The state has never again even attempt to determine the cost of an adequate education. Even the Governor's Blue Ribbon Task Force on Financing Student

Success failed to conduct an adequacy study. The state's repeated failure to determine the cost of an adequate education has led education leaders to contemplate a constitutional amendment that *requires* the General Assembly to determine and then actually fund the cost of an adequate education.

In the absence of any attempt to determine the cost of an adequate education, the state's failure to account for the skyrocketing cost of education is not surprising. Ohio's traditional public schools face devastating decreases in funding when the increased costs of school operation are taken into account. The cost of running a school increases at around 6 percent annually due in large part to requirements under the federal No Child Left Behind Act. Compliance with No Child Left Behind alone is estimated by 2010 to cost \$1.447 billion annually. William Driscoll and Dr. Howard Fleeter, Projected Costs of Implementing the Federal "No Child Left Behind Act" in Ohio: A Detailed Financial Analysis Prepared for the Ohio Department of Education, December 12, 2003 (Available at http://www.ode.state.oh.us/legislator/Cost_of_Implementing_NCLB.asp). Overall, in the most recent state operating budget for 68 percent of schools the General Assembly failed to provide sufficient funds to keep up with inflation, allowing an increase of less than 2 percent. Without any rational basis for determining the cost of an adequate education, the state's failure to account for skyrocketing costs and unfunded mandates is hardly surprising.

c. The remarkable similarity between the formula amounts utilized in the last two state operating budgets indicates a return to residual budgeting.

The General Assembly's two post-*DeRolph IV* state operating budgets illustrate the return to residual budgeting. In the state budget immediately following *DeRolph IV*,

the General Assembly reduced annual formula amount increases from 2.8 percent to 2.2 percent. In the subsequent state budget, the General Assembly tinkered with the funding formula in a manner that can only be described as rearranging the deck chairs on the *Titantic*. Rather than basing the formula amount on the cost of an adequate education, the General Assembly instead decided to base funding on certain “building blocks,” including classroom teachers and student-to-teacher ratios. Remarkably, despite this elaborate rearranging, the formula amount increased by 2.2 percent—the exact same percent increase for fiscal years 2004 and 2005 under the previous formula. This remarkable coincidence gives every appearance that the state simply predetermined how much it wanted to spend on education and then backed the rearranged formula amount calculation into that predetermined amount. The Plaintiffs, if given the opportunity, will undoubtedly be able to show that what looks and sounds like residual budgeting is residual budgeting.

3. The General Assembly’s decision to increase overreliance on local property taxes undermines any past minimal progress toward achieving a thorough and efficient system of common schools.

The General Assembly’s repeated failures have actually *increased* reliance on local property taxes. This increased reliance on local property taxes completely contradicts the Supreme Court’s mandate to eliminate overreliance on local property taxes. The Supreme Court of Ohio emphasized that:

The most glaring weakness in the state’s attempts to put in place a thorough and efficient system of education is the failure to specifically address the overreliance on local property taxes. If this problem is not rectified, it will be virtually impossible for the revised school funding system to be characterized as thorough and efficient. *DeRolph II*, 89 Ohio St.3d at 36, 728 N.E.2d at 1020.

The court specifically ordered that “the General Assembly must avoid compounding the school-funding system’s infirmities with new legislation that increases reliance on local property taxes. *DeRolph II*, 89 Ohio St.3d at 28, 728 N.E.2d at 1014-1015.

The General Assembly charted two specific courses of action that increase overreliance on local property taxes. First, the General Assembly decided to phase-out the tangible personal property tax. Second, the General Assembly decided to allow property taxes to rise with property values.³ This increased overreliance on local property taxes forces school districts to repeatedly seek property tax increases. The increasingly high failure rate of schools levies forces school districts to cut services to students and lay-off teachers. The blame belongs to the state’s insistence on increasing, not decreasing, overreliance on local property taxes.

The General Assembly’s most recent operating budget undermined what for many school districts is their largest source of local tax revenue. The state budget completely phases-out the tangible personal property tax. This business tax raised \$1.2 billion for local school districts. Overall, this local property tax constituted at least 20 percent of the total tax base for 139 school districts. The state fails to provide replacement revenue for the phase out.⁴ The phase-out will further shift the local property tax burden from businesses to individuals. Because of the lost business tax revenue, school districts’ property tax base will shrink. The certain result is that school districts will have to seek

³ The General Assembly authorized raising local property taxes in this manner in part to mitigate the phenomena of “phantom revenue.” “Phantom revenue” occurs because the funding formula is tied to property *values* not property *tax* revenue, and Ohio law generally prohibits local property taxes from rising with local property values. The General Assembly chose to address this problem by allowing school districts to seek levies which allow property taxes to rise with property value increases.

⁴ The state operating budget professes to hold districts “harmless” for the first five years of this phase-out. However, the hold “harmless” provision only applies to existing tangible personal property—it does not apply to planned or announced projects that school districts reasonably relied upon when seeking school levies. Another deficiency in the state’s professed pledge to hold districts “harmless” is that the state’s guarantee applies only to revenue generated by existing levies.

larger levies to generate the same amount of revenue. The already over-burdensome property tax burden will inevitably shift from businesses to individuals.

The General Assembly recently highlighted the increased overreliance on local property taxes by enacting House Bill 530, which allows local property taxes to rise with local property values. Until the General Assembly enacted H.B. 530, revenue generated by school levies remained fixed even if property values rose. The state now allows school districts to seek levies that rise with inflation up to 4 percent per year.

Overreliance on local property taxes fosters disparities between low-wealth and high-wealth school districts. Allowing property taxes to increase with property values only grants another tool to high wealth districts, exacerbating the disparities. Most critically, the General Assembly's latest "fix" fails to do anything to decrease overreliance on local property taxes. In fact, for the school districts able to persuade voters to pass such a levy, this latest tactic will only further increase reliance on local property taxes.

The steady rise in the number of districts asking residents for funding and equally steadily declining levy passage rate illustrates the reality of Ohio's increasing overreliance on local property taxes. Over the last five years the number of local school operating levy requests increased from 218 to 427. During the same time period, voter approval of levy requests declined from 70 percent to 43 percent. Almost half of Ohio's school districts had a levy on the November 2004 ballot—the most in any general election since 1983. The trend continued in 2005 when the February special election had the most school levies in the history of February special elections. In contrast to the increase in the number of levies, the passage rate in 2004 was only 44.9 percent, the lowest rate in 14 years. These levies generally did not seek to raise additional revenue.

Instead, they sought merely to make up for revenue lost due to the state backsliding on progress made during the *DeRolph* litigation.

The impact of increased overreliance on local property taxes is devastating. Nowhere is the level of devastation more evident than in Ohio's abrupt transition from desperation to attract teachers to hemorrhaging teachers due to funding cuts. At the time of *DeRolph I*, a decade ago, Ohio schools employed 208,345 teachers. During the *DeRolph* litigation, Ohio schools added over 30,000 teachers. The number of teachers in Ohio peaked in 2004 when schools employed 243,383 teachers. Because of the state's assault on school funding, between fiscal years 2003-2004 and 2004-2005 Ohio lost over 7,000 teachers. The impact on special education services has been particularly devastating. Ohio's largest urban districts, since 2003, have lost approximately 1300 special education teachers. Plaintiffs will be able to overwhelm the Court with facts such as these to demonstrate the impact of overreliance on local property taxes.

Plaintiffs will also be able to prove that funding problems and teacher shortages do not discriminate, impacting rural, urban and suburban districts alike. In Northeastern Ohio, Parma City Schools laid-off 59 teachers. Akron Public School more than doubled this number, laying off 132 teachers.⁵ More recently, Akron announced plans to cut \$23 million from its budget, including 33 teachers.⁶ In Central Ohio, Lancaster City Schools is in the process of cutting nearly \$5 million from its budget, including 27 teachers.⁷ Columbus Public Schools had to cut over 400 teaching positions.⁸ In Southeast Ohio,

⁵ Patrick O'Donnell, School Budgets on Chopping Block Statewide, The Plain Dealer, May 2, 2004, at B1.

⁶ Stephanie Warsmith, Schools double teacher job cuts, The Akron Beacon Journal, March 14, 2006, at A1.

⁷ Mary Beth Lane, Lancaster schools face cuts, The Columbus Dispatch March 8, 2006, at B1.

⁸ Patrick O'Donnell, School Budgets on Chopping Block Statewide, The Plain Dealer, May 2, 2004, at B1.

Zanesville City Schools face a \$1.9 million deficit and may need to cut 14 teaching jobs.⁹

In Southwest Ohio the Lakota Board of Education noted that even if a requested levy passed, the district would still have no choice but to fire teachers, increase student fees for participation in sports, and not offer bus transportation to some high school students.¹⁰

Little Miami Local Schools were forced to cut bus service for high school students in the middle of the school year.¹¹ The Plaintiffs will be able to overwhelm this Court with evidence of the crises that school districts experience due to increased overreliance on local property taxes to fund Ohio public schools.

The state's failure to decrease overreliance on local property taxes causes local school districts to take extraordinary measures. At least two school districts sent invoices to Governor Taft totaling over \$5 million—the amount the state shortchanged those districts. The Tiffin City School Board invoiced Gov. Taft to cover a \$1.2 million budget shortfall that occurred after a proposed levy failed to pass. In order to make-up the difference between the state's per pupil aid and what the district actually spends, Northeastern similarly invoiced Gov. Taft for \$4.4 million. The plight of these two districts is likely representative of the plight of Ohio's other 610 school districts. All school districts, for now, must learn to live with ever increasing reliance on local property taxes.

Ohio's public school system is less thorough and less efficient than the system the Supreme Court of Ohio declared unconstitutional for the fourth time in *DeRolph IV*. The General Assembly and Governor Taft systematically dismantled the minimal progress achieved during the *DeRolph*-era after the Supreme Court of Ohio denied a remedy to

⁹ Tom Sheehan, Zanesville schools face deficit, strike, The Columbus Dispatch, March 3, 2006.

¹⁰ Michael D. Clark, Lakota Cuts Might Remain, The Cincinnati Enquirer, April 26, 2005, at B1.

¹¹ Michael D. Clark, Students Lose Bus Rides, The Cincinnati Enquirer, Feb. 7, 2006, at C1.

Ohio schoolchildren. The state systematically dismantled this minimal progress by undermining the school funding formula, resorting to residual budgeting and increasing overreliance on local property taxes. As a result, the school funding system is less thorough and less efficient than the scheme the Supreme Court of Ohio declared unconstitutional four years ago.

C. Because the State of Ohio has violated the Plaintiffs' procedural and substantive due process rights to a remedy for the state's continued failure to provide a constitutional system of public schools, this court must provide Plaintiffs with a remedy.

The State of Ohio's systematic dismantling of the minimal progress made during *DeRolph* demonstrates the need for continued judicial oversight. The Supreme Court of Ohio in *DeRolph I* recognized the doctrine of separation of powers. However, the court also recognized the critical importance of checks and balances. In the *DeRolph* years, the judicial branch provided an important check on the intransigence of the executive and legislative branches. Without the pressure of judicial oversight, the executive and legislative branches have systematically dismantled the minimal progress made during *DeRolph*. This systematic dismantling has further violated plaintiffs' rights. As the Supreme Court of Ohio itself noted, "[a] remedy that is never enforced is truly not a remedy." *DeRolph II*, 89 Ohio St.3d at 12, 728 N.E.2d at 1002. Because the Supreme Court of Ohio's failure to allow Ohio courts to enforce its decision in *DeRolph IV*, this Court must allow plaintiffs to pursue their claims challenging the continued denial of their right to a thorough and efficient system of public schools.

This Court possesses the authority to make the promise of *DeRolph*, a complete systematic overhaul of Ohio's school finance system that decreases overreliance on

property taxes, a reality. The current situation in Ohio is analogous in many respects to desegregation cases, in which the judiciary has recognized a need for continued supervision. When school districts failed to demonstrate good faith under a comprehensive plan to remedy ongoing violations, the Supreme Court of the United States “without hesitation approved comprehensive and continued district court supervision.” *Freeman v. Pitts*, 503 U.S. 457, 499 (1992); *See also Swann v. Charlotte-Mecklenburg D. of Educ.*, 402 U.S. 1 (1971). In this case, the executive and legislative branches continue to fail to demonstrate good faith efforts to remedy repeated constitutional violations. Far from responding in good faith to the court’s orders, the political branches systematically dismantled the minimal progress achieved during *DeRolph*. The need for this Court to exercise its authority to hear and remedy this matter is undeniable.

IV. CONCLUSION

The State of Ohio’s school finance system is unconstitutional. During the *DeRolph*-era, the state achieved minimal progress in by nibbling around the edges of the funding formula. Despite this minimal progress, the state failed to comply with the Supreme Court of Ohio’s order for a complete systematic overhaul of the school finance system.

Since the court last ruled Ohio’s school finance system unconstitutional, the state systematically dismantled the minimal progress achieved during the *DeRolph*-era. The state systematically undermined the school funding formula. The state has also repeatedly failed to fully fund special education. Most inconceivably, the state ignored the order of the state’s highest court to eliminate overreliance on local property taxes.

Instead of decreasing overreliance, the state actually increased overreliance on local property taxes. The result is a system of public schools that is less thorough and less efficient than the system declared unconstitutional in 2002.

This Court represents the last best hope for Ohio's school children. A decade ago the Supreme Court of Ohio offered a new hope for Ohio school children—the hope that every child in the state would have access to a thorough and efficient system of public schools. The executive and legislative branches, much to the frustration of *amici*, ensured that this hope was a hollow one. Even the Supreme Court of Ohio failed to deliver. This Court, by allowing the Plaintiffs to pursue their claims, has the opportunity to finally give meaning to the Supreme Court of Ohio's command for a complete systematic overhaul of the school finance system. This Court must not allow this opportunity to pass.

Respectfully submitted,

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Certificate of Service

I hereby certify that on April 17, 2006, the brief of *amici curiae* various members of the Ohio General Assembly Minority Caucuses in support of the Plaintiffs' and Plaintiff Class's memorandum *contra* Defendants' motion to dismiss or for summary judgment was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/Marc E. Dann