



# Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

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## *DeRolph v. State School Funding Case*

*DeRolph v. State*, originally filed in 1991, challenged the constitutionality of Ohio's school funding system. The Ohio Supreme Court issued four decisions in the case between 1997 and 2002, holding that the system that was the subject of the original lawsuit, and the versions of the system enacted by the General Assembly in response to the Court's orders in those decisions, were unconstitutional. In 2003, the Court declared an end to the *DeRolph* litigation.

The General Assembly has changed Ohio's school funding system several times since the conclusion of the *DeRolph* litigation, but the subsequent changes to the system have not been challenged in court.

### Contents

Filing of the case and lower court decisions .....	1
<i>DeRolph I</i> .....	2
Legislative response to <i>DeRolph I</i> .....	2
<i>DeRolph II</i> .....	3
Legislative response to <i>DeRolph II</i> .....	4
<i>DeRolph III</i> .....	4
<i>DeRolph IV</i> .....	5
End of the <i>DeRolph</i> litigation .....	5
Timeline of the case .....	6

### Filing of the case and lower court decisions

A coalition of school districts filed suit against the state in the Perry County Court of Common Pleas in 1991. The plaintiffs in that case, known as *DeRolph v. State*, claimed that the state's school funding system was unfair to low-wealth districts and failed to produce adequate public schools. In 1994, the common pleas court held that the state's system violated several provisions of the Ohio Constitution and ordered the Superintendent of Public Instruction and the State Board of Education to prepare legislative proposals that would eliminate wealth-based disparities among school districts. In 1995, the Fifth District Court of Appeals reversed the trial

court, relying in part on the Ohio Supreme Court's 1979 decision in *Board of Education v. Walter*, in which the Court rejected a challenge to the state's school funding system.<sup>1</sup>

## ***DeRolph I***

Upon appeal in 1997, the Supreme Court of Ohio reversed the appeals court, but only on the grounds that the state's school funding system violated the Thorough and Efficient Clause of the Ohio Constitution.<sup>2</sup> That provision specifies that "the General Assembly shall make such provisions, by taxation, and otherwise, as . . . will secure a thorough and efficient system of common schools throughout the state."<sup>3</sup> The Court gave the General Assembly one year to create a new system.

While the Court did not provide any specific instructions as to what to include in the new system, it did offer some observations as to what the new system should do. For example, the Court devoted much attention to anecdotal evidence of failing school infrastructure, outdated textbooks, dearth of supplies and equipment, and poorly trained teachers in many school districts across the state. In light of these conditions, the Court seemed to find that there must be some amount of funding per pupil that will provide an adequate minimum for each student in any district. The Court did say that it was not interested in a "Robin Hood approach," in which property-wealthy districts share revenue with property-poor districts.<sup>4</sup> However, in the conclusion of the majority opinion, the Court stated that there must be "but one system" of schools in which location would not dictate whether or not students have adequate services.<sup>5</sup>

## **Legislative response to *DeRolph I***

Responding to the Court's order, the 122<sup>nd</sup> General Assembly enacted several bills in 1997 and 1998 dealing with the financing and performance management of public schools. Among these bills were:

Bill Number	Summary of Relevant Provisions Enacted by the Bill
H.B. 215 (the budget act for fiscal years 1998 and 1999)	Increased the per-pupil formula amount and zeroed out funding for fiscal year 1999
S.B. 102	Substantially amended the Classroom Facilities Assistance Program, created the Ohio School Facilities Commission, and authorized a bond issuance of \$300 million to begin a statewide school building initiative
S.B. 55	Added new academic accountability requirements

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<sup>1</sup> 58 Ohio St.2d 368.

<sup>2</sup> 78 Ohio St.3d 193.

<sup>3</sup> Ohio Const., art. VI, sec. 2.

<sup>4</sup> 78 Ohio St.3d, at 212.

<sup>5</sup> 78 Ohio St.3d, at 213.

Bill Number	Summary of Relevant Provisions Enacted by the Bill
H.B. 412	Changed school district fiscal accountability requirements
H.B. 650 and H.B. 770	Together created a new school funding system

The new system enacted by H.B. 650 and H.B. 770 outlined a rational basis for determining the base cost of educating each student and phased in a substantial increase of the per pupil base-cost formula amount. The acts also created a subsidy to equalize some millage of districts with low valuations, created another one for districts where the effective tax rates do not cover the presumed district share, created a special education funding system based on weighted costs of service for various categories of student disabilities, and substantially revised a subsidy for high-poverty districts.

To partially pay the cost of increased state spending in future years and to provide some property tax relief, the General Assembly also enacted H.B. 697, which submitted to the voters an additional one-cent sales and use tax. In May of 1998, the voters rejected that provision and a related bond issue by wide margins.<sup>6</sup>

In 1999, the 123<sup>rd</sup> General Assembly passed H.B. 282, a separate education budget for fiscal years 2000 and 2001 that continued the phase-in of the new funding system and made some refinements to it. It also added new options for school districts to use in financing classroom facilities projects.

## ***DeRolph II***

On May 11, 2000, the Court held the new system unconstitutional on essentially the same grounds as in the 1997 decision.<sup>7</sup> While the Court praised the efforts made by the General Assembly, it also said that more had to be done. The Court again did not give the General Assembly precise instructions as how to fix the school funding system, but it did highlight several areas that needed attention. Those areas were: (1) overreliance on local property taxes, (2) increasing the basic aid formula amount immediately, subject to no phase-in or caps, (3) continued attention to school facilities, (4) improving the school solvency assistance program, (5) funding of all state mandates, (6) eliminating “phantom revenue,”<sup>8</sup> and (7) adopting “strict,

<sup>6</sup> The ballot issue for the sales and use tax was defeated by a [vote](#) of 79.91% to 20.09%. The related bond issue was defeated by a [vote](#) of 60.69% to 39.31%. The official results are also accessible on the Ohio Secretary of State’s website: [ohiosos.gov](http://ohiosos.gov).

<sup>7</sup> 89 Ohio St.3d 1.

<sup>8</sup> The Court described three types of “phantom revenue” in *DeRolph II*. Type I occurs when a school district did not levy the amount presumed by the formula (at that time, 23 mills). Type II refers to “property tax revenue credited to a school district when its tax base increases, but which is never actually received by the district due to . . . tax-reduction factors.” Finally, Type III is the difference between the revenue received when a district levies the amount presumed by the formula and the yield required by the charge-off, in those situations when an income-adjusted tax base is used rather than the actual taxable value. See 89 Ohio St.3d, at 28-31.

statewide academic guidelines.” The General Assembly was given until June 15, 2001, to come up with a new system.<sup>9</sup>

## **Legislative response to *DeRolph II***

Subsequently in 2000, the 123<sup>rd</sup> General Assembly enacted two other bills directed at some of the concerns expressed by the Court in its *DeRolph II* order. First, S.B. 272 made substantial changes in the school facilities assistance programs, including accelerated service for urban districts. Second, S.B. 345 amended the school district solvency assistance program and modified requirements of some school district mandates and fiscal accountability measures.

The 124<sup>th</sup> General Assembly enacted S.B. 1 to substantially change the state’s academic accountability provisions. These provisions included a requirement that the Department of Education develop new academic standards to which new student diagnostic assessments and achievement tests must be aligned.<sup>10</sup> In addition, in H.B. 94 (the budget act for fiscal years 2002 and 2003), the General Assembly made changes to the school funding system, including removing temporary caps on school district state aid increases; revising the methodology for determining the per pupil base cost, which increased the per pupil amounts; and phasing in both a new parity aid subsidy and a new system of six special education funding weights, instead of three weights as under prior law. It also reduced the maximum statutory cost-of-doing-business factor to 7.5%,<sup>11</sup> which had the effect of allocating more state base-cost funding to lower-wealth districts.

## ***DeRolph III***

The state submitted its changes to the Court prior to the June 15, 2001, deadline. The Court found that most components of the new system complied with its earlier orders and held that, if the General Assembly enacted certain additional revisions, the new system would be constitutional.<sup>12</sup> Specifically, the Court instructed the General Assembly to fully fund the new parity aid subsidy by July 1, 2003, and to further adjust the method of calculating the base cost of an adequate education by considering the expenditures of all successful districts and not using certain rounding factors that excluded some districts.

The state moved for reconsideration of the order, offering evidence that the Court’s ordered changes relative to the calculation of the base cost of an adequate education were based

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<sup>9</sup> 89 Ohio St.3d, at 37-38.

<sup>10</sup> Subsequently, the 125<sup>th</sup> General Assembly enacted H.B. 3 to strengthen and refine the accountability requirements (effective August 15, 2003) and S.B. 2 aimed at increasing teacher performance and clarifying teacher standards (effective June 9, 2004). Both H.B. 3 and S.B. 2 contain provisions required by the federal No Child Left Behind Act of 2001.

<sup>11</sup> The cost-of-doing-business factor was a multiple intended to reflect differences in labor costs across Ohio’s 88 counties. Each county was assigned a factor by statute. The base-cost formula amount was multiplied by the cost-of-doing-business factor for the appropriate county to obtain the specific amount for each school district.

<sup>12</sup> 93 Ohio St.3d 309.

on questionable data. The Court granted the motion but also ordered the parties to participate in a mediated settlement conference.<sup>13</sup>

### ***DeRolph IV***

Settlement efforts were not successful, and the Court ruled again on the merits of the case on December 11, 2002.<sup>14</sup> In that order, the Court vacated its *DeRolph III* order and, instead, stated that both of its earlier substantive orders (*DeRolph I and II*) “are the law of the case.” The Court also stated that “the current school funding system is unconstitutional.”

### **End of the *DeRolph* litigation**

Subsequently, the plaintiffs filed a motion in the Perry County Court of Common Pleas seeking an order for a compliance conference relative to the Supreme Court’s order in *DeRolph IV*. In response, the state filed a motion in the Supreme Court seeking a writ of prohibition against Perry County Common Pleas Judge Linton Lewis, arguing that the Judge was without jurisdiction to hear the plaintiffs’ motion. On May 16, 2003, the Supreme Court granted the state’s motion, holding that “it is beyond doubt that Judge Lewis and the common pleas court patently and unambiguously lack jurisdiction over any post-*DeRolph IV* proceedings.” The Court further stated that in granting the writ of prohibition, it was bringing to an “end any further *DeRolph* litigation.” According to the Court, “the duty now lies with the General Assembly to remedy an educational system that has been found by the majority in *DeRolph IV* to still be unconstitutional.”<sup>15</sup> Apparently, any challenge to the school funding system enacted by the General Assembly will be filed as a new case. To date, no new case has been filed.

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<sup>13</sup> 93 Ohio St.3d 628.

<sup>14</sup> 97 Ohio St.3d 434.

<sup>15</sup> *State ex rel. State v. Lewis*, 99 Ohio St.3d 97. Subsequently, the plaintiff’s petition for certiorari to the Supreme Court of the United States was denied (*DeRolph v. Ohio*, 540 U.S. 966 (2003)).

## Timeline of the case

