

1 *DeRolph v. State.*

2 Alice Robie Resnick, J., concurring. I concur in the majority opinion and in  
3 the concurring opinion of Justice Douglas.

4 I write separately primarily to underscore the fact that this case does not  
5 seek equality of education throughout Ohio, but rather seeks a quality education  
6 for every single child in Ohio regardless of where that child resides.

7 The dissent contends that this case involves a nonjusticiable political  
8 question and that as a result this court should decline to address the issues  
9 presented. However, in 1979, when this court decided *Cincinnati School Dist. Bd.*  
10 *of Edn. v. Walter* (1979), 58 Ohio St.2d 368, 383-384, 12 O.O.3d 327, 336, 390  
11 N.E.2d 813, 823-824, this court made clear that in certain instances we would  
12 have jurisdiction to determine the constitutionality of Ohio's system of funding  
13 public schools, and that the issue would be a justiciable question. We recognized  
14 and distinguished the propriety of judicial review from the deference we would  
15 give to the General Assembly's determinations of policy. But that deference is not  
16 without limits. The *Walter* court stated: "A thorough system could not mean one  
17 in which part or any number of the school districts of the state were starved for  
18 funds. An efficient system could not mean one in which part of any number of the  
19 school districts of the state lacked teachers, buildings, or equipment.'

1           “\*\*\*

2           “This court, therefore, intimated in *Miller v. Korn*s [(1923), 107 Ohio St.  
3 287, 140 N.E. 773], that the wide discretion granted to the General Assembly is  
4 not without limits. For example, in a situation in which a school district was  
5 receiving so little local and state revenue that the students were effectively being  
6 deprived of educational opportunity, such a system would clearly not be thorough  
7 and efficient.” (Footnote omitted.) 58 Ohio St.2d at 386-387, 12 O.O.3d at 338,  
8 390 N.E.2d at 825, quoting *Miller*, 107 Ohio St. at 298, 140 N.E. at 776.

9           Today, indeed, we have a number of school districts that are starved for  
10 funds. We have school districts that lack adequate buildings and equipment. In  
11 1997, when it is evident that the citizens of Ohio are unable to declare that the  
12 General Assembly is providing a “thorough and efficient” system of public  
13 schools for all of the students in Ohio, it would be irresponsible for this court to  
14 refuse to decide this question under the guise of calling it a “nonjusticiable  
15 political question.”

16           I join Justice Douglas’s concurring opinion, in which he finds that education  
17 is a fundamental right. I wish to emphasize, however, that education need not be

1 equal or substantially equal in all districts. Rather, there must be a threshold  
2 amount of funding provided by the state which affords each district in Ohio the  
3 ability to meet certain standardized requirements. It should be recognized that  
4 districts may provide for their students above and beyond the state's  
5 responsibility.

6         The dissent notes the great strides the General Assembly has made in  
7 funding education in Ohio since *Walter*. Yet the General Assembly does not know  
8 the actual per-pupil cost of education in Ohio, since it has not calculated the cost  
9 of a quality education since 1973-1974. Moreover, while educational funding has  
10 increased since *Walter* was decided, it is no longer based on an explicit assessment  
11 of the cost of a high-quality education. Education is funded as a residual after  
12 other mandated programs are funded.

13         The dissent states that “evidence demonstrates that the General Assembly  
14 has discharged its constitutional duty for funding a ‘thorough and efficient’  
15 system.” The question to be answered after reviewing all of the evidence is  
16 whether a thorough and efficient system exists in a school district where some  
17 students are taught in a former coal bin, or where there are not enough books for

1 each child, or where the science lab has no gas valves or running water, or where  
2 handicapped children are carried up and down stairs because the buildings are not  
3 accessible to wheelchairs, or where the buildings are structurally unsafe, have  
4 inadequate plumbing, or are without sanitary or indoor restrooms, or where the  
5 school buildings cannot be rewired for computers until an asbestos hazard has  
6 been eliminated. This is not a close question. The answer is obvious. From this  
7 list alone, it is evident that the General Assembly has failed in its constitutional  
8 duty to provide a “thorough and efficient” system of schools throughout Ohio.

9       It is estimated that it will take \$10 billion to reestablish adequate school  
10 facilities throughout the state. But the problem is not only facilities that are  
11 inadequate or in poor condition. In addition, it is all of the other myriad problems,  
12 including the lack of honors programs, language courses, and other electives in  
13 property-poor school districts, that put many of Ohio’s children at a disadvantage  
14 when they try to enter colleges.

15       It cannot be emphasized enough that a thorough and efficient system of  
16 common schools does not require uniformity or equality of all schools. Contrary  
17 to the dissenting opinion, equality is not the purpose of this case. Rather, the

1 General Assembly is required by our state's Constitution to provide a quality and  
2 adequate education for all of Ohio's school students. It must assure every child of  
3 the right to enter a structurally safe building, which is staffed with sufficient  
4 teachers, and contains enough textbooks and equipment so that the child can  
5 develop self-esteem and intellectual abilities. Until this constitutional threshold  
6 has been met in each and every school in Ohio, a thorough and efficient school  
7 system will not exist.

8         The General Assembly must first determine the cost of a basic quality  
9 education in both primary and secondary schools in Ohio, and then ensure  
10 sufficient funds to provide each student with that education, realizing that local  
11 property taxes can no longer be the primary means of providing the finances for a  
12 thorough and efficient system of schools. Continued reliance on property taxes for  
13 the majority of school finances will simply preserve the status quo of inadequacy  
14 and deny the students in property-poor school districts a thorough and efficient  
15 education.

16         DOUGLAS, J., concurs in the foregoing concurring opinion.