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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Albright, Justice, dissenting:

While not directly striking down the Special Act¹ that has mandated the diversion of a portion of regular tax levy receipts collected in Kanawha County for the support of the Kanawha County Public Library for almost fifty years, the majority has inflicted upon the public library system a serious and unnecessary blow. In the guise of protecting the fundamental right of education,² the majority has chosen a course of action that will have long-term detrimental effects³ on the public library systems throughout this

¹Chapter 178, Acts of the Legislature, Regular Session, 1957.

²I say this because the record is *completely* devoid of any evidence that the constitutionally required “thorough and efficient” education is not being provided. *See Pauley v. Kelley*, 162 W.Va. 672, 255 S.E.2d 859 (1979); W.Va. *Const.*, art. XII, §1. Appellant’s witnesses in this case concede that Kanawha County students are receiving a “thorough and efficient” education. And the finding by the trial court that Appellant is able “to carry over surplus every fiscal year ranging from \$6,000,000.00 to \$13,000,000.00” certainly refutes any suggestion that the funds being diverted to the public library are contributing to a funding crisis.

³Because the funds available for education-related purposes must be legislatively appropriated, the effect of the majority’s decision in forcing the Legislature’s collective hand to credit the eight counties that have funding arrangements similar to Kanawha County whereby a portion of their education dollars is diverted to public libraries is that there will be a reduction in funds available to the forty-six counties that do not have such systems in place, absent a corresponding increase in overall education appropriations. Consequently, those forty-six counties will indirectly be paying for the library systems in the nine counties where education funds are diverted by law to public libraries. A further
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state – systems that are undisputedly beneficial to the students and citizens of this state and that are clearly education-related in nature.

With absolutely no evidence in the record of this case to indicate that the Constitutional standard of providing a “thorough and efficient system of free schools”⁴ has been negatively affected by virtue of the long-standing arrangement of distributing a portion of the Kanawha County’s annual regular levies for the benefit of the public library system – an arrangement that has been found not to violate our Constitution on two separate occasions by this Court⁵ – the Court has wrongly inserted itself into a Legislatively-determined funding structure. Had there been evidence presented which demonstrated that this state’s educational system was in peril as a direct result of this lawful diversion of funds, the majority’s actions might begin to be understandable. But, as it currently stands, the majority has simply made a shortsighted policy decision that libraries are not deserving of public education funds.

³(...continued)

downside to the majority’s directive is that those counties who voluntarily contribute funds to their respective public library systems may no longer have the funds available for such contributions due to the reduction of their piece of the funding pie that results from giving credits to the nine counties with such diversionary funding mechanisms in place.

⁴W.Va. *Const.* art. XII, § 1.

⁵See *Kanawha County Public Library v. County Court*, 143 W.Va. 385, 102 S.E.2d 712 (1958); accord *Hedrick v. County Court of Raleigh County*, 153 W.Va. 660, 172 S.E.2d 312 (1970).

Through its action, the majority has effectively adopted the position that libraries are not to be valued and recognized for the critical and correlative nexus they have to the education process. Virtually every school child at some point in their state-mandated school attendance is required as part of his or her educational experience to utilize the varied resources that only a library can provide. Such materials necessarily include encyclopedias; atlases; CD's; DVD's; as well as the voluminous published works of fiction and non-fiction. While some people prefer to downplay the significance of actual books given the presence of the internet, I respond by stating that for many people in the rural areas of this state the libraries are often the only source of computer access for those people. In addition, I observe that the internet simply cannot replace the many benefits that a public library provides to its patrons both in terms of physical access to documents and also in terms of broadening an individual's perception and understanding of his or her place in the world by means of exposure to information and events. There is simply no end to the benefits that a public library offers to the citizens of this state, initially extended at the pre-school level, continuing through the school years, and enduring throughout adulthood. Without question, the public library enhances every community in which it is situated through services that are both cultural and educational in nature.

Lest the origins of the extensive public library system that currently exists throughout this country and the importance of permanently securing funding for such

invaluable institutions be forgotten, we should recall the life of steel magnate and philanthropist Andrew Carnegie. When he arrived in this country in 1848 as a poor immigrant, he was denied access to the so-called public library because he did not have the funds to pay the annual fee required to use the library. Recognizing the injustice of the situation, he wrote a letter to the editor of the Pittsburgh Dispatch in 1853, arguing that poor young people should be given free access to libraries so that they could improve themselves. The director of Andrew Carnegie's local library read the letter, and it persuaded him to change the rule. After becoming one of the richest men in the world, Andrew Carnegie spent the rest of his life giving his fortune away to charity. Among his many charitable acts was the construction of almost 3,000 libraries across the country. For every library he funded, he required that the town set aside a certain amount of tax funds to keep it running in perpetuity. He also required that many libraries inscribe phrases like "Free Library" or "Free to the People" over the entrance, so that the libraries would always remain free.

While perhaps overlooked by the majority, Carl Sagan aptly articulated the value of the public library to society:

The library connects us with the insights and knowledge, painfully extracted from Nature, of the greatest minds that ever were, with the best teachers, drawn from the entire planet and from all of our history, to instruct us without tiring, and to inspire us to make our own contribution to the collective knowledge of the human species. . . . I think the health of our civilization, the depth of our awareness about the underpinnings

of our culture and our concern for the future can all be tested by how well we support our libraries.

Carl Edward Sagan, *Cosmos*, 282 (1980). Because the majority has proceeded down a path that threatens the funding structure for public libraries and clearly devalues such vital institutions, I must respectfully dissent.

I am authorized to state that Justice Starcher joins in this separate opinion.