No. 33081 - *The Board of Education of the County of Kanawha, a public corporation v. West Virginia Board of Education, a public corporation, and Dr. David Stewart, as Superintendent of Schools of the State of West Virginia*

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Starcher, J., dissenting:

Unfortunately, the majority opinion will gut public library funding not only in Kanawha County, but also in Berkeley, Hardy, Harrison, Ohio, Raleigh, Tyler, Upshur, and Wood Counties, all of which benefit from similar laws. It will also likely gut library funding in those counties that voluntarily (without a specific legislative statute) provide funding for their community libraries.

The majority opinion overturns settled law that has supported libraries in multiple counties since as early as 1933. The majority opinion overturns a wise decision by Judge Charles King, an experienced circuit judge. And the majority opinion overturns clear statutes that reflect the will of the legislature, without a shred of support in the record. Accordingly, I dissent.

This Court courageously stepped into the swamp of educational funding in *Pauley v. Kelly*, 162 W. Va. 672, 255 S.E.2d 859 (1979). Why?

Because some West Virginia children, simply because of where they happened to live, were going to school in firetraps, had no school supplies, etc. This Court insisted that these children could not be denied their basic constitutional right to a decent educational

experience.

Since the *Pauley* decision, this Court has further recognized that while we can assure that a "floor" of educational quality is reached for all of our children, we cannot manage West Virginia's entire school system. That is the task of the legislature, the executive branch, and local school bodies – not the courts'.

Does the Legislature's requiring some counties to spend some of their levy funds to support libraries adversely and substantially impact the thoroughness and efficiency of educational services afforded to the children in those counties? I think not.

However, the majority opinion's answer to this question is: "Well, it's possible that it could." (What the majority actually says is: "[spending levy money on libraries could] *potentially impinge* on a school board's ability to provide a thorough and efficient education to its students." Thus, under the majority's approach, an entirely *speculative* injury to educational services in certain counties justifies overruling settled statutes and clear legislative choices. Moreover, since public libraries are an integral part of any sound educational system providing educational monies for their support is educationally sound.

This Court has never taken such an absurd position as the majority opinion does. The broad-sweeping approach taken by the majority would justify a constitutional challenge to every educationally-related political decision such as where to locate a school, what courses to fund, or how to spend monies on libraries. Whatever the motive, the

constitutional analysis in the majority's foray into micro-managing the State's school system is a mess, and the result is just plain wrong.

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