

The Washington Education Budget After *McCleary*: A Longitudinal Study of Court-Ordered  
Education Finance Reform

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August 19, 2019

## Introduction

The purpose of this study is to analyze the policy response of the Washington State Legislature to the order handed down by the State Supreme Court in *McCleary v. State of Washington* to reform the education finance system. It compares national historical trends nationwide of court-ordered education finance reform as a benchmark for Washington's case. As a backdrop, according to a collection of studies arranged by the National Education Association (NEA), there is a causal link between an increase in K-12 spending and quality of education which leads to higher earnings post-graduation, an increased likelihood of going to college, an increase in educational attainment, and a decrease in dropout rates.<sup>1</sup> It was found that a ten percent increase in education spending per student results in a two percent increase in post-high school graduate earnings and a 0.6% increase in educational attainment.<sup>2</sup> It was also found that a five-student decrease on average in the student-teacher ratio of a classroom resulted in a 0.4% increase of return on state-based institutional education and that a ten percent increase in teacher salaries resulted in a 0.1% in institutional education; overall, they found that a 10% increase in school investment results in a 1-2% increase in post-high school earnings.<sup>3</sup> Another study found that a ten percent decrease in teacher to student ratio would result in a 1-2% high school graduation rate.<sup>4</sup> Another study found that an increase in teacher salaries per student

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<sup>1</sup> Hungerford, T. L., & Wassmer, R. W. (2004). K-12 Education in the US Economy: Its Impact on Economic Development, Earnings, and Housing Values. NEA Research Working Paper. *National Education Association Research Department* (40).

<sup>2</sup> Johnson, George E., and Frank P. Stafford. 1973. "Social Returns to Quantity and Quality of Schooling." *Journal of Human Resources* 8(2): 139–55.

<sup>3</sup> Card, David, and Alan B. Krueger. 1992. "Does School Quality Matter? Returns to Education and the Characteristics of Public Schools in the United States." *Journal of Political Economy* 100(1): 1–40.

<sup>4</sup> Sander, William. 1993. "Expenditures and Student Achievement in Illinois: New Evidence." *Journal of Public Economics* 52: 403–16.

expenditures results in an increase in post-high school graduate income.<sup>5</sup> Another study found that whether or not teachers had graduate degrees had a positive correlative relationship with high school graduates going to college; they also found that being in smaller classes in K-12 resulted in a higher chance of going to a four-year college as opposed to a two-year college.<sup>6</sup> The NEA also found that a funding cut to K-12 had a more significant negative effect on quality of education than an equivalent increase. A study found that if there was a ten percent decrease in the student-teacher ratio it would result in a 20% decrease in dropouts per birth cohort and a proportional increase in high school graduates becoming college graduates.<sup>7</sup>

## **Background**

On September 28<sup>th</sup>, 1978 the Washington State Supreme Court issued their opinion for *Seattle School District No.1 v. State of Washington*. The Court was deciding on whether or not special excess levies could be used to fulfill the State’s duty to provide ample provision for basic education to all children within its borders. They ruled that while levies could be used to fund “enrichment programs” that fall outside of the constitutional mandate, “there can be compliance with the State's mandatory duty only if there are sufficient funds derived through dependable and regular tax sources to permit school districts to carry out a basic program of education.” The Court also tasked the Legislature with defining and giving substantive meaning to “education”

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<sup>5</sup> Altonji, Joseph G., and Thomas A. Dunn. 1996. “Using Siblings to Estimate the Effect of School Quality on Wages.” *Review of Economics and Statistics* 78(4): 665–71.

<sup>6</sup> Strayer, Wayne. 2002. “The Returns to School Quality: College Choice and Earnings.” *Journal of Labor Economics* 20(3): 475–503.

<sup>7</sup> Heckman, James, Anne Layne-Farrar, and Petra Todd. 1996a. “Does Measured School Quality Really Matter? An Examination of the Earnings-Quality Relationship.” In Gary Burtless ed., *Does Money Matter?* (pp. 192–289). Washington, DC: Brookings Institution Press.

and the “public education system” and deciding what would constitute ample provision.<sup>8</sup> During the early court proceedings but before the case had reached the Supreme Court, the Legislature passed the Basic Education Act and the Levy Lid Act of 1977; the Court decided not to evaluate the constitutionality of the Basic Education Act due to the timing of its passage, stating that it would “amount to an advisory opinion.” The Basic Education Act outlined the basic education system with the goal of, “to provide students with the opportunity to achieve those skills, which are generally recognized as requisite to learning, including the ability: (1) To distinguish, interpret and make use of words, numbers and other symbols, including sound, colors, shapes and textures; (2) To organize words and other symbols into acceptable verbal and nonverbal forms of expression, and numbers into their appropriate functions; (3) To perform intellectual functions such as problem solving, decision making, goal setting, selecting, planning, predicting, experimenting, ordering and evaluating; and (4) To use various muscles necessary for coordinating physical and mental functions.” The Levy Lid Act limited the levy funding to ten percent of a school district’s annual funding; the legislature raised this cap multiple times over the years resulting in the cap being as high as thirty-eight percent for some grandfathered districts by 2010 and at a minimum twenty-eight percent.<sup>9</sup>

After the opinion was issued, the Legislature decided not to define or give substantive meaning to “education” or the “public education system” as the Court told them to as they felt that the Basic Education Act did that already. In 1983 Judge Doran, the Superior Court Judge who originally heard *Seattle District No. 1 v. State*, evaluated the constitutionality of the Basic

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<sup>8</sup> *Seattle Sch. Dist. v. State*, 90 Wn.2d 476, 585 P.2d 71, 1978 Wash. LEXIS 1111 (Supreme Court of Washington September 28, 1978 ).

<sup>9</sup> *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012)

Education Act. He concluded that while it did cover some areas of the basic needs of children, there were still several programs that were missing such as food services and extracurricular activities.<sup>10</sup> In 1991, the State Governor signed an executive order creating the Governor's Council on Education Reform and Funding (GCERF) in order to make the transition from a seat-based education system to a performance-based education system and give a substantive definition for “education”. This led to the GCERF’s final recommendations being included in ESHB 1209 in 1993; this changed the goal of the Basic Education Act to be, “to provide students with the opportunity to become responsible citizens, to contribute to their own economic well-being and to that of their families and communities, and to enjoy productive and satisfying lives.” The four goals were also changed to be, “to provide opportunities for all students to develop the knowledge and skills necessary to: (1) Read with comprehension, write with skill, and communicate effectively and responsibly in a variety of ways and settings; (2) Know and apply the core concepts and principles of mathematics; social, physical, and life sciences; civics and history; geography; arts; and health and fitness; (3) Think analytically, logically, and creatively, and to integrate experience and knowledge to form reasoned judgments and solve problems; and (4) Understand the importance of work and how performance, effort, and decisions directly affect future career and educational opportunities.” This bill also contributed to the creation of the Washington Assessment of Student Learning, a new standardized testing system to evaluate student mastery over the essential academic learning requirements (EALRs) established by the State. The report also revealed that the Legislature had not reevaluated the definition of basic education system since Judge Doran had acknowledged that the Basic Education Act was not comprehensive enough over ten years prior. It was recommended that the

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<sup>10</sup> *Id.*

Legislature investigate whether or not they were still fulfilling their paramount duty as well as to look into if school districts were using levies to fund basic education needs, however, no major funding reforms were made, setting the stage for another lawsuit.<sup>11</sup>

The issue of the State's paramount duty was brought back to the State Supreme Court in *McCleary v. State* in 2007. The Supreme Court was asked to answer four questions: (1) "What is the correct interpretation of the words 'paramount,' 'ample,' and 'all' in Article IX, § 1 of the Washington State Constitution?" (2) "What is the correct interpretation of the word 'education' in Article IX, § 1 of the Washington State Constitution?" (3) "Is the Respondent State currently complying with its legal duty under [the] court's interpretation of the language in Article IX, § 1?" (4) "If the Respondent State is not currently complying with its legal duty under [the] court's interpretation of Article IX, § 1, what (if any) Order should [the] court enter to uphold and enforce the State's legal duty?"<sup>12</sup> The Court decided to affirm the lower courts definitions of "all" and "paramount" since they were being built off of precedence set in *Seattle School District No. 1 v. State*. They also decided to define education as a combination of ESHB 1209, EALRs, and the Court's broad definition from *Seattle School District No. 1 v. State*, with the clarification that, "these broad guidelines are not "fully definitive of the State's paramount duty" but rather they constitute "the minimum" education that is constitutionally required."<sup>13</sup> As for the definition of ample, the Supreme Court affirmed the lower court's definition of "considerably more than just adequate or merely sufficient," and that it must come from "regular and dependable tax sources," referencing levies specifically saying,

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<sup>11</sup> *ESHB 1209. (1993)*

<sup>12</sup> *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012)

<sup>13</sup> *Id.*

Contrary to the State's view, we rejected special excess levies as "dependable and regular" not only because they are subject to the whim of the electorate, but also because they are too variable insofar as levies depend on the assessed valuation of taxable real property at the local level. This latter justification implicates both the equity and the adequacy of the K-12 funding system. Districts with high property values are able to raise more levy dollars than districts with low property values, thus affecting the equity of a statewide system. Conversely, property-poor districts, even if they maximize their local levy capacity, will often fall short of funding a constitutionally adequate education. All local-level funding, whether by levy or otherwise, suffers from this same infirmity. In short, the State's reliance on local dollars to support the basic education program fails to provide the "ample" funding article IX, section 1 requires.<sup>14</sup>

The Court then affirmed the lower court's ruling that the State had failed in amply funding the public education system and as a result districts had to rely on local levies to fill the gaps bringing the State back to the initial issue that the Court sought to solve in *Seattle School District No. 1 v. State* thirty years prior. The Court attributed this to the transition from a seat-based system to a performance-based system without updating the funding formulas from the Basic Education Act which were based on the conditions in the mid-70's.

In answering the final question raised by the plaintiffs of coming up with a remedy for the State, the Court recognized that since this case was first heard by the lower courts, the Legislature assigned the Basic Education Task Force to do a comprehensive review of the K-12 system and make recommendations which were then supposed to be implemented through the

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<sup>14</sup> *Id.*

passage of ESHB 2261. When the Superintendent at the time, Randy Dorn, was asked if ESHB 2261 was going to be sufficient to fulfill the State's constitutional duty, he said, "If the legislature fulfills its obligation in that law and also finds the funding source. Okay, I think that's key. I don't think you can do it out of existing systems. So, they would have to find a funding source. Then I believe you could get to adequate or ample funding of education, but they also have to find a funding source for revenue to go to education."<sup>15</sup> The Court pointed out that despite this, ESHB 2261 did not get fully funded and so while they recognize that the State was making an effort, it still was not good enough. They pointed out that the Legislature was unable to solve this problem when the Court originally ordered them to over thirty years ago so they decided to opt for a solution that was originally proposed by Judge Doran but struck down by the Supreme Court; to retain jurisdiction in order to track the progress of the implementation of ESHB 2261,

A better way forward is for the judiciary to retain jurisdiction over this case to monitor implementation of the reforms under ESHB 2261, and more generally, the State's compliance with its paramount duty. This option strikes the appropriate balance between deferring to the legislature to determine the precise means for discharging its article IX, section 1 duty, while also recognizing this court's constitutional obligation.<sup>16</sup>

Shortly after the opinion was handed down, they came up with a schedule for the Legislature to adhere to in order to ensure compliance. They ordered that the legislature create an education program that will meet their constitutional obligation by 2014 for the 2018-2019 school year with a final deadline of September 1, 2018. The legislature failed to meet the first deadline, and so they were held in contempt. On November 15, 2017, the court then declared that the

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

Legislature had achieved full compliance in every way except that they delayed complete implementation until the 2019-2020 school year, and so they remained in contempt. In response to this, the Legislature passed E2SSB 6362 to move full implementation up to the 2018-2019 school year on March 8<sup>th</sup>, 2018.<sup>17</sup> On June 7, 2018, the court finally declared that the state had fully complied and had purged its contempt. They then terminated their retention of jurisdiction.<sup>18</sup>

## Review of Literature

Prior work in this field has focused on the history of court-ordered education finance reform, the effect it has on per pupil spending, what that effect has through a racial lens, and State-specific evaluations of court ordered reform. One paper argued that historically, state courts do not act independently when making their decisions; state courts tend to emulate other state courts.<sup>19</sup> Another paper that culminated the history of education finance reform went over the three historical waves of litigation. The first wave started in the early 1970's and focused on the United States constitutional equal protection clause but ended in 1973 with the Supreme Court ruling of *San Antonio Independent School District v. Rogdriguez* that local finance was not unconstitutional. This ushered in the second wave of litigation, a combination of focusing on equal protection and education clauses in State constitutions. The third and final wave began in

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<sup>17</sup> E2SSB 6362. (2018)

<sup>18</sup> Washington Supreme Court. *McCleary v. State of Washington*. 7 June 2018.

<sup>19</sup> Howard, R. M., Roch, C. H., & Schorpp, S. (2017). Leaders and Followers: Examining State Court-Ordered Education Finance Reform. *Law & Policy*, 39(2), 142–169. <https://doi-org.offcampus.lib.washington.edu/10.1111/lapo.12073>

1989 when efforts shifted to focus mainly on the education clause.<sup>20</sup> Another paper found that as education funding shifted from the local level to the state level through court-ordered reform, the degree and nature of spending changes are defined by the characteristics of the state's population and schools.<sup>21</sup> One study out of California focused on two specific districts through their conceptions of equity and how it influenced their implementation of education finance reform. They found that both districts adhere to the view that equity means to a certain extent that the more needs a student has the more resources should be dedicated to them but one district implemented this across the board while the other district also demonstrated a belief that equity is an equal distribution of resources among all students, demonstrating individual-level understanding of both views.<sup>22</sup>

There is also research that has come out in recent years arguing that court-ordered reform has done little to close the student performance gap and that even when it is implemented it results in tax and expenditure limitations that have a negative effect on local own-source education expenditures. Some even go so far as to argue that court-ordered reform has reached the limit of what it is able to achieve fiscally.<sup>23</sup> A study out of Maryland found that while education finance reform did improve spending equity, it did not do much to close the student

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<sup>20</sup> "3 The Impact of Court-Mandated School Finance Reform." National Research Council. 1999. *Equity and Adequacy in Education Finance: Issues and Perspectives*. Washington, DC: The National Academies Press. doi: 10.17226/6166.

<sup>21</sup> Downes, T. A., & Shah, M. P. (2006). The effect of school finance reforms on the level and growth of per-pupil expenditures. *PJE. Peabody Journal of Education*, 81(3), 1-38. doi:http://dx.doi.org/10.1207/s15327930pje8103\_1

<sup>22</sup> Allbright, T. N., Marsh, J. A., Hall, M., Tobben, L., Picus, L. O., & Lavadenz, M. (2019). Conceptualizing Equity in the Implementation of California Education Finance Reform. *American Journal of Education*, 125(2), 173–200. <https://doi-org.offcampus.lib.washington.edu/10.1086/701247>

<sup>23</sup> Hill, S. A., & Roderick Kiewiet, D. (2011). The Pursuit of Equality Through Education Finance Reform. *Conference Papers -- American Political Science Association*, 1–33. Retrieved from <http://search.ebscohost.com.offcampus.lib.washington.edu/login.aspx?direct=true&db=a9h&AN=94859278&site=e-host-live>

performance gap.<sup>24</sup> Another piece of research found that when states impose tax and expenditure limitations (TELS) on local governments following a court-mandated decrease in education funding inequality, it has a negative effect on local own-source education expenditures.<sup>25</sup>

Some less covered areas of the field have found that when education finance reform is achieved through the courts, whether or not the state judges are elected to office has an effect on the chances of success, as well as when the judicial ideology on the court supports it as long as there is not precedent already set by the state supreme court.<sup>26</sup> An article found that when comparing the likelihood of education finance reform passing through the court or the legislature, whether or not the State judges are elected or appointed was a strong determining factor; their need to be loyal to an electorate has an effect on whether or not they are willing to force reform, however if they need not be loyal to the electorate then the legislature is more likely to pass reform so as to avoid the court possibly limiting their future ability to enact policy.<sup>27</sup> The difference between what has already been done in the field of court-mandated education finance reform and what this paper seeks to add is that there is currently no analysis of the effect of Washington State's court-mandated education finance reform.

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<sup>24</sup> Chung, I. H. (2015). Education Finance Reform, Education Spending, and Student Performance: Evidence From Maryland's Bridge to Excellence in Public Schools Act. *Education & Urban Society*, 47(4), 412–432. <https://doi-org.offcampus.lib.washington.edu/10.1177/0013124513498413>

<sup>25</sup> Blankenau, W. F., & Skidmore, M. L. (2004). SCHOOL FINANCE LITIGATION, TAX AND EXPENDITURE LIMITATIONS, AND EDUCATION SPENDING. *Contemporary Economic Policy*, 22(1), 127. doi:<http://dx.doi.org/10.1093/cep/byh010>

<sup>26</sup> Cann, D., & Wilhelm, T. (2011). Policy Venues and Policy Change: The Case of Education Finance Reform. *Social Science Quarterly (Wiley-Blackwell)*, 92(4), 1074–1095. <https://doi-org.offcampus.lib.washington.edu/10.1111/j.1540-6237.2011.00805.x>

<sup>27</sup> Roch, C. H., & Howard, R. M. (2008). State Policy Innovation in Perspective: Courts, Legislatures, and Education Finance Reform. *Political Research Quarterly*, 61(2), 333–344. <https://doi-org.offcampus.lib.washington.edu/10.1177/1065912907308097>

## Methodology

The methodology used for this study was drawing from analyzed data provided by the Washington Association of School Administrators (WASA) to describe the differences in Washington State school district budgets before and after the State complied with the order handed down by the State Supreme Court. Historical archival data provided by the Center for Educational Equity of the Teachers College of Columbia University was also analyzed to compare Washington to the national trend of court ordered education finance reform.

## Results

After the Court terminated its jurisdiction, school boards from around the State such as the Bellingham,<sup>28</sup> Edmonds,<sup>29</sup> and Tacoma<sup>30,31</sup> school districts began to express their frustration and worry with their new budget under what was then being called, the “McCleary Solution.” WASA and the Washington Education Association (WEA) both spoke out about the negative effects that the McCleary Solution would have especially on the more rural school districts. Data collected by WASA revealed that of the 295 school districts in the state, 132 districts were negatively impacted with 93 of those districts being funded at lower levels than they were before *McCleary v. State* (See Table 1).

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<sup>28</sup> Bellingham Public Schools. (2018, October 17). OFFICIAL MINUTES OF THE REGULAR BOARD MEETING BELLINGHAM SCHOOL DISTRICT BOARD OF DIRECTORS

<sup>29</sup> Edmonds School District. (2019, April 23).

<sup>30</sup> Tacoma Public Schools. (2018, September 20). Board of Directors Business Meeting.

<sup>31</sup> Tacoma Public Schools. (2018, October 18). Study Session



**(Table 1)**

Although WASA only pointed to the most negatively affected districts, even districts that actually got money from the McCleary Solution, such as the Edmonds and Bellingham

school districts, still recognized that there was a chance that they were going to have to make cuts in order to make ends meet.<sup>3233</sup> The solution that WASA offered to the State was called the “Hold Harmless” amendment. They argued that the main reason why so many districts were negatively affected was because the Legislature seriously reduced the levy cap across the state because of the Hold Harmless provision in E2SSB 6362, the final bill that the Legislature passed in order for the Court to terminate its jurisdiction. Since the amount of money the Legislature allocated to K-12 did not offset the amount lost from the levy cap, districts suffered.

The Hold Harmless provision was supposed to protect the districts that would be negatively affected by ensuring that they would at least break even with their pre-McCleary solution budget; due to the wording of the provision, that did not happen, “The Legislature set out to ensure districts did not lose funding with a hold harmless provision. But our research confirms that the hold harmless did not achieve its intended purpose.”<sup>34</sup> Therefore, the solution that they proposed was to amend said provision and increase basic education funding by \$123 million. They also proposed increasing the basic education operating revenue based on the annual Implicit Price Deflator (IPD) for districts that were only marginally above offsetting levels. They also proposed increasing state funding for teacher salaries because under the new funding system the teacher salary cap was at \$65,216 regardless of years of experience. The state responded to the outcry of the districts and stakeholders by increasing the K-12 budget for the

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<sup>32</sup> Edmonds School District. (2019, April 23).

<sup>33</sup> Bellingham Public Schools. (2018, October 17). OFFICIAL MINUTES OF THE REGULAR BOARD MEETING BELLINGHAM SCHOOL DISTRICT BOARD OF DIRECTORS

<sup>34</sup> Aune, J. (2019, February 13). *School Districts Offer Remedy to Counter Losses due to Legislative Changes* [Press Release]. Retrieved from [www.wasa-oly.org](http://www.wasa-oly.org)

2019-2021 biennium by \$4.5 billion and raising the levy cap from \$1.50 per \$1,000 of assessed property value to \$2.50.<sup>35</sup>

As this is being written, it is still unclear how school districts will react to the increase in levies and whether or not it will be enough. Looking at how other state legislatures have dealt with court-ordered education finance reform, possible outcomes can be predicted for Washington.

## **Nationwide Policy Responses**

### Oregon

In the 1970's Oregon's education finance system relied on local property taxes ranging from \$9 per \$1,000 to \$20 per \$1,000 of assessed value for 78% of its funds. The State was sued on the basis of inequity between districts in 1976 and 1991 but the Court denied relief to the plaintiffs both times leading them to pursue alternative options, specifically the referendum and initiative process. In November of 1991 voters passed Measure 5, a State Constitutional amendment that limited how much the State could rely on levies and that the difference had to come from the State's general fund; this resulted in the State funding going up to 75%. The constitutionality of this funding system was challenged twice between 1994 and 2000, but both failed.

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<sup>35</sup> Epperly, Emma. "Legislature Adjourns on Time with New Budget, More Money for Education." *Bellevue Reporter*, Bellevue Reporter, 29 Apr. 2019, [www.bellevuereporter.com/northwest/legislature-adjourns-on-time-with-new-budget-more-money-for-education/](http://www.bellevuereporter.com/northwest/legislature-adjourns-on-time-with-new-budget-more-money-for-education/).

In 2006 the State was accused of not meeting the funding model they set for themselves with the passage of the constitutional amendment in *Pendleton School District v. State*; the case went all the way to the State Supreme Court. The Court agreed that the State was failing to meet their own model, but refused to order them to do anything because the wording of Article VIII, Section 8 which had been added by referendum in 2000 stated the following:

The Legislative Assembly shall appropriate in each biennium a sum of money sufficient to ensure that the state's system of public education meets the quality goals established by law, and publish a report that either demonstrates the appropriation is sufficient, or identifies the reasons for the insufficiency, its extent, and its impact on the ability of the state's system of public education to meet those goals.<sup>36</sup>

Since the amendment says that all the Legislature has to do when they do not meet the requirements of their model is explain the way they did not meet it, why they did not meet it, and what kind of effect it will have on K-12 education.

## New Mexico

In the early 1970's, the New Mexico State government faced a lawsuit over their reliance on levies, but before it went to trial the Legislature passed the 1974 Public School Finance Act which raised the State share of education funding to 80%. In 1998, the Legislature was sued again in *Zuni School District v. State* because the Public School Finance Act did not constitutionally cover capital projects. The trial court agreed and ordered the State to remedy the situation by creating and implementing a system for funding capital projects. In late 2001, the

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<sup>36</sup> Oregon State Constitution Art. VIII, Sec. 8 (2000)

Legislature created a \$400 million capital project fund. In 2006, they added an extra \$90 million because the system was failing to maintain an adequate and uniform level of funding.

In 2014, two separate groups of parents of educationally disadvantaged Latino and Native American students filed education adequacy and equity lawsuits against the State that were consolidated into *Martinez v. State of New Mexico*. They accused the State of denying children a “uniform and sufficient education” guaranteed by Article XII §1 of the New Mexico State Constitution and of violating their equal protection clause as well. In July of 2018, the District Court ruled that the State’s education finance system violated the education, equal protection, and due process clauses. The Court gave the Legislature until April 15, 2019 to take “immediate steps to ensure that New Mexico schools have the resources necessary to give at-risk students the opportunity to obtain a uniform and sufficient education that prepares them for college and career.”<sup>37</sup> The Court retained jurisdiction and warned that if the legislature did not comply there would also be injunctive relief. The Governor and Legislature came to an agreement on a package of reforms that would increase teacher salaries, extend instructional time at public schools and boost spending on low-income students in April of 2019 before the aforementioned deadline; however, the plaintiffs argue that this reform package will not be enough to solve all of the problems that the Court recognized in their decision.

## California

In 1971, the California State Supreme Court ruled in *Serrano v. Priest* that education was a fundamental right and remanded it for trial. They later affirmed the trial court’s ruling that the

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<sup>37</sup> *Martinez v. State of New Mexico* 20 July 2018.

state education finance system violated the equal protection clause in their State Constitution. In 2012, the California State Legislature was sued by advocacy groups in *Campaign for Quality Education, et al. v. State of California*. They alleged that the funding formula used for the education finance system was severely outdated and did not line up with the financial and educational realities of the present, but it eventually died after being dismissed at the trial and appellate levels. While the State Supreme Court declined to review the lower court decision in a 4-3 decision in August of 2016, Justice Liu dissented saying, “It is possible that the complexion of the issue and, in turn, this court’s posture may change if our education system further stagnates or worsens.”<sup>38</sup>

In 2015 the Legislature was sued again in *California School Boards Association v. Cohen*. The plaintiffs alleged that the Legislature was manipulating the minimum funding guarantee of the funding formula laid out in Proposition 98, a constitutional amendment passed in 1988 guaranteeing all public schools stable funding aligned with economic growth. In 2016, the State Superior Court agreed with the plaintiffs and found the State manipulation of the funding formula unconstitutional. In July of 2019, the State and the plaintiffs agreed to a settlement where the legislature would pay public schools back for underpayments dating back to 2016 totaling in \$686 million.

## Texas

While *Rodriguez v. San Antonio Independent School District* failed for the plaintiffs, cases at the State level in Texas were more successful in 1989 with *Edgewood Independent School*

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<sup>38</sup> California Supreme Court *Campaign for Quality Education v. State of California* 22 August 2016.

*District v. Kirby*. The State Supreme Court found the State in violation of the education clause of the State Constitution. The state made multiple revisions to their educational finance system in order to remedy the situation and in 1995 the Court finally agreed that the State was in compliance. The new system included reliance on local revenue from wealthier areas in order to compensate poorer areas. In 2001, the wealthy districts challenged the constitutionality of the levies placed on their districts which was remanded by the State Supreme Court in 2003. The plaintiffs expanded their argument as the trial proceeded resulting in more districts joining in to challenge the constitutionality of the funding formula as a whole in *West Orange-Cove Consolidated ISD v. Neeley*. In 2005, the Supreme Court agreed that the education finance system was unconstitutional citing the State's constitutional prohibition on a statewide property tax, but that the education finance system did not violate the State's education obligation. The Court ruled that the State's constitutional obligation was to ensure that school districts be, "reasonably able to provide all of their students with a meaningful opportunity to acquire the essential knowledge and skills reflected in... curriculum requirements..."<sup>39</sup> Evidenced by the improved standardized test scores of Texas students, the Court found that this obligation had been met by the State.

After a \$5.4 billion cut in 2011, over 500 school districts and a group representing charter schools sued the State in five lawsuits that were consolidated into *Texas Taxpayer and Student Fairness Coalition v. Williams*. The District Court sided with the plaintiffs on the grounds of both adequacy and equity because the State did not give meaningful discretion in setting the tax rates of low-income school districts because they were taxed at or near the maximum rate due to

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<sup>39</sup> *West Orange-Cove Consolidated ISD v. Neeley* 22 November 2005.

lack of state funds. Even after the Legislature put \$3.4 billion back into education in 2013, the District Court continued to find them in violation of the State Constitution. The State Supreme Court unanimously reversed the district court decision. The Court found that schools passed the “results” test because the vast majority of school districts met state accountability and accreditation standards.

## Arizona

In 1994, the Arizona State Supreme Court found the capital portion of the education finance system to be unconstitutional in *Roosevelt Elementary School District No. 66 v. Bishop*. Up until that point they had been relying on local levies to fund capital projects. After the Court made their decision, the State phased out the local levies they were using to fund capital projects. In 2002, plaintiffs returned to court alleging that the State was underfunding the Building Renewal Fund, but the Court ultimately told them that they need to prove that the reduction in \$90 million resulted in facilities that were substandard. In 2006, a class of low income minority students and English Language Learners filed a suit against the State challenging the constitutionality of the State’s standardized test, the Arizona Instrument to Measure Standards (AIMS), on the grounds of equal protection by citing the inequities in the education finance system that block the plaintiffs from being able to receive the kind of education that would allow them to pass the standardized test. The Court ended up dismissing the case due to lack of evidence of a causal link between pass/fail on the AIMS and the underfunded districts.

In May of 2017, four school districts filed *Glendale Elementary School District v. State of Arizona* alleging that the State had failed to meet their obligation pursuant to Article XI, Section

1 of the State Constitution which requires them to provide sufficient funds for school maintenance. The plaintiffs argued that this fund was used for building and bus maintenance as well as textbooks and technology; the State's failure to provide sufficient funds has forced schools to divert funds from other areas in order to compensate and as a result, the education of the students was being negatively affected. The State submitted a motion to dismiss in August of 2017 which is still pending.

## Louisiana

In 1992, the Louisiana State Legislature was sued for not meeting their constitutional obligation to, "provide a minimum foundation of education to all children in the public schools of the state."<sup>40</sup> In 1998, the Louisiana State First Circuit Court of Appeals ruled in favor of the State, emphasizing the word "minimum" in the constitution making it so that the State was meeting its obligation. In its defense, the State submitted a study done by a nationally known education finance consultant that was being kept on retainer by the State who recommended a new funding formula which became law in 1992. The appellate court decided that this new formula would be sufficient for the State to meet its constitutional obligation. In 2005, the State was sued again because they did not include the cost of facilities in their formula and so therefore, they were in violation of their constitutional obligation. Both the trial and appeals court agreed.

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<sup>40</sup> *Charlet v. Legislature of the State of Louisiana* 13 November 1998.

## Alabama

In 1992, the State education finance system was sued on the grounds of constitutional equity and adequacy. A remedy was negotiated between the two parties and ordered by the Court in *ACE v. Folsom* to be funded in six years. The State Supreme Court upheld the ruling in 1993 but eventually vacated the order in 1997. In 2001, the Alabama Association of School Boards as well as multiple individual districts went to court in response to sweeping cuts to K-12 in *Siegelman v. AASB*. The Court ruled that they were not exempt from these cuts as K-12 was one of many areas that was cut. In 2011, a US District Judge dismissed *Lynch v. State*, a case that claimed that the constitutional property tax system enacted in the 1800's to keep tax rates low in predominantly black counties to ensure that there was limited education funding available for black students was still affecting black and low-income children in the "black belt" counties of Alabama. The judge ruled that while the plaintiffs did show a clear disparity between districts, they did not prove a disparity along racial lines.

## Florida

In 1995, the State was sued in *Coalition for Adequacy and Fairness in School Funding v. Chiles*, an adequacy case alleging that the education finance system was unconstitutional. In 1996, the State Supreme Court affirmed the lower court decision to dismiss the case on the basis of the separation of powers doctrine, concerned with the risk of judicial intrusion. After losing the case, education advocates in Florida turned to alternative options. Through the initiative and referendum process, an amendment to the education clause was passed in 1998 to state, "The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children

residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high-quality system of free public schools that allows students to obtain a high-quality system of free public schools that allows students to obtain a high-quality education...”<sup>41</sup>

In 2009, the State was sued again in *Citizens for Strong Schools Inc. v. Florida State Board of Education* because they had not met any part of the amended constitutional education clause. After multiple procedural issues, the lower court finally ruled in favor of the defendants in 2016 because the plaintiffs failed to prove beyond a reasonable doubt that Florida’s education finance system is not “rationally related” to a system that allows students to obtain a high-quality education. This was reaffirmed by the State Supreme Court in January of 2019.<sup>42</sup>

## Georgia

In 1981, the constitutionality of the State education finance system was challenged in *McDaniel v. Thomas*. While the trial court did find it unconstitutional, the State Supreme Court did not find it unconstitutional under the equal protection clause. In 2004, 51 of Georgia’s 180 school districts known collectively as the Consortium for Adequate School Funding in Georgia (CASFG) filed a lawsuit on the grounds of adequacy. They alleged that the education finance system violates the education clause of the State Constitution but in 2008 the plaintiffs withdrew their suit saying that they would pursue other actions including filing a new lawsuit in different court in Georgia.

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<sup>41</sup> Florida State Constitution Art. IX Sec. 1 (1998)

<sup>42</sup> *Citizens for Strong Schools Inc. v. Florida State Board of Education* 4 January 2019.

New York

In 1978, *Levittown v. Nyquist* was filed by a group of low-income school districts as well as the five major urban districts alleging that the education finance system was unconstitutional. The Court of Appeals acknowledged the inequities in funding between districts, but ultimately ruled that the State Constitution does not require equal funding, only the opportunity for a “sound basic education.”<sup>43</sup> This decision led to a new lawsuit in 1993, *CFE v. State*, alleging that the State was failing to provide an opportunity for a sound basic education for hundreds of thousands of children. In 2003, the Court of Appeals ruled in favor of the plaintiffs and gave the State until July 30, 2004 to “determine the cost of providing a sound basic education, fund those costs in each school, and establish an ‘accountability’ system to ensure that the reforms actually provide the opportunity for a sound basic education.”<sup>44</sup> The State did not comply by the deadline, but eventually did begin taking steps recommended by a panel appointed by the Court to increase funding to more adequate levels by 2007.

In 2014, the New York State United Teachers filed a lawsuit challenging the constitutionality of a tax cap that was put in place by Governor Cuomo as applied to school districts in *New York State United Teachers v. State of New York*. The Court ruled that the plaintiff’s argument was just a repackaging of rejected arguments made in *Levittown*, so they ruled in favor of the State. The State Supreme Court reaffirmed the decision in 2016. *New Yorkers for Students’ Educational Rights v. State* was also filed in 2014. In this suit, the plaintiffs alleged that the State was not sufficiently funding every school so some students were not being given the opportunity to have a meaningful education due to budget restrictions making it

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<sup>43</sup> *Levittown USFD v. Nyquist* 23 June 1982.

<sup>44</sup> *Campaign for Fiscal Equity v. State of New York* 26 June 2003.

impossible to offer every student the full range of resources constitutionally guaranteed to them and was therefore not fulfilling its constitutional obligation. At the time of their filing, State funding for education had gone down to almost \$4 billion below the amount established in 2007 to be necessary in response to *CFE v. State*. The case is still ongoing.

## Kansas

In 1972, a trial court found the public education finance system unconstitutional in *Caldwell v. State*. In reaction to this, the Legislature passed the School District Equalization Act which established a foundation level of school funding per pupil and committed the State to fund the difference between local revenues and this target amount. The SDEA's constitutionality was then challenged in 1990. In reaction to this, the governor created a taskforce to come up with a new system resulting in the creation of the School District Finance and Quality Performance Act. The Supreme Court affirmed the new system. In 2001, the SDFQPA's constitutionality along with the state "capital outlay" and special education "excess costs" were challenged in *Montoy v. State*. The trial court ruled in favor of the plaintiffs in December of 2003 and gave the State a deadline of July 1<sup>st</sup> of 2004 to enact a remedy. The State Supreme Court affirmed the decision in late 2004 giving the State until April to come up with a remedy. The State complied with the deadline but provided substantially less funding than was deemed necessary by a 2002 study commissioned by the State. The Court agreed with plaintiffs that the remedy was not satisfactory in April of 2005 and ordered the State to fund to the amount recommended by the study by June 30<sup>th</sup>. While the Legislature failed to meet the deadline, they were able to fully fund the amount in special session during the Fourth of July weekend.

In 2010, the plaintiffs along with 74 school districts moved to re-open the lawsuit because the State had continued a pattern of tax decreases in budget cuts including five cuts in 2009 that had effectively undermined any gains from the litigation. The State Supreme Court denied the motion, implying that they should just file a new lawsuit instead. On November 2, 2010, 63 school districts filed a new lawsuit alleging that the State was no longer in compliance with the order that the Supreme Court gave the Legislature in *Montoy v. State*. In March of 2014, the Court agreed with the plaintiffs and adopted the funding standards set by the Kentucky State Supreme Court in *Rose v. Council for Better Education* and sent the case back to the District Court. In December of 2014, the District Court ruled that the education finance system was once again in violation of the State Constitution. In February of 2016, the Supreme Court partially affirmed the lower court decision, making a ruling on the equity aspect but not on the adequacy aspect. They ruled that, “if the Kansas Legislature does not cure its current constitutional violations and provide equitable levels of funding to the plaintiff school districts by June 30, 2016, then the entire public education system will be shut down for the next school year.”<sup>45</sup> On June 28<sup>th</sup> after the Legislature held a special session to comply with the Court order, the Court issued a ruling stating that the State had satisfied the outstanding equity issues in the case.

In March of 2017, the Supreme Court ruled that the education finance system was, “not reasonably calculated to have all Kansas public education students meet or exceed the minimum constitutional standards of adequacy.”<sup>46</sup> They ordered the State to enact a new system by June 30<sup>th</sup>, 2017. The State complied and switched back to a per-pupil formula. In October of 2017, the Court ruled that the bill the Legislature passed in June still did not meet the *Rose* standard for

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<sup>45</sup> *Gannon v. State of Kansas* 11 February 2016.

<sup>46</sup> Kansas Supreme Court *Gannon v. State of Kansas* March 2017.

both equity and adequacy. The Court also ruled that the State's reliance on Local Option Budget (LOB) funding because they are dependent on property wealth factors which are inherently inequitable. Recognizing that the State had failed to operate a constitutional funding system for 12 of the previous 15 years, the Court decided that it would be best to retain jurisdiction and ordered the State to create a new funding system and an implementation plan before April 30, 2018 so that the Court would have enough time to consider the new plan before the end of the school year. The State approved a \$500 million increase over five years before the deadline. In July of the same year, the Court ruled that this increase would satisfy the constitutional obligation of the State, but they decided that they would retain jurisdiction to ensure that implementation would be complete before June 20, 2019. When June finally came, the Court acknowledged that the State had completed implementation, but decided that they would continue to retain jurisdiction to ensure continued compliance.

## **Discussion**

After looking at other states in comparison to where Washington is now, it appears that the pattern Washington is following most closely resembles New Mexico and Kansas. If the pattern holds true in Washington, *McCleary* and its legal ramifications are far from over. The nature of this pattern will lead Washington back to relying heavily on local levies, inequitable funding distribution among districts, or inadequate funding for most if not all districts. In the event that any of these three scenarios happen, it is also highly probable that the State Supreme Court will take back jurisdiction over the Legislature and continue to retain jurisdiction after the State complied to ensure continued compliance similar to the way that the Kansas State Supreme Court did. A similarity that all 12 states including Washington share is that after their supreme

court found the legislature in violation of their State Constitution, they would continue to fail to comply despite making their best efforts.

The main issue that seems to cause the continued failure to comply is the lack of necessary revenue to cover the cost of education without relying on local taxes; the equity issues stemming from uneven funding levels due to the reliance on local revenue creating inconsistent funding of certain districts and the adequacy issues stemming from a general inadequate level of funding. Increasing revenue at the state level seems to make it easier to respond to the needs of districts overall than local levies do but harder to accommodate districts with more needs than average. A limitation of this study was how recent the analyzed events in Washington occurred, most school district boards acknowledged that they would not be able to finalize their budgets until late August. As a result, whether or not faculty or staff will have to be laid off due to budget shortfalls and the final effects of the new budgets passed by the State legislature in April cannot be determined at this time. Future research on this subject should involve further evaluation of Washington's reformed education finance system after it is given more time to develop.