

IT IS THE
PARAMOUNT DUTY OF THE STATE TO MAKE
AMPLE PROVISION FOR THE
EDUCATION OF
ALL CHILDREN RESIDING WITHIN ITS BORDERS...
Washington State Constitution, Article IX, section 1

What The Supreme Court Told Every Legislator Before The 2012 Session Started [pp. 1-6]

- *Paramount duty* means that “the State must amply provide for the education of all Washington children as the State’s first and highest priority before any other State programs or operations.”
- *Ample provision* means “considerably more than just adequate”.
- *All children* means “each and every child” in Washington – “No child is excluded.”
- The basic *education* the State must provide is “the basic knowledge and skills needed to compete in today’s economy and meaningfully participate in this state’s democracy” – which are specified in the EALRs and the four numbered provisions from ESHB 1209. (The basic ed. “program” must then effectively deliver that “education”.)
- Article IX, §1 “imposes a *judicially enforceable* affirmative duty” on the State.
- Article IX, §1 grants each Washington child a “positive Constitutional *right to an amply funded education.*”
- This right is each Washington child’s *paramount Constitutional right.*
- The State “has *consistently failed*” to provide the ample funding required by Article IX, §1.

What The Supreme Court Ordered The State To File After Each Budget Is Signed [pp. 6-13]

The State had argued it already did the studies it needed, and was increasing funding under ESHB 2261 “by billions of dollars” to fully fund all the State’s K-12 schools by no later than 2018. The Supreme Court therefore told the State to submit a court filing after each budget is signed, and ordered that each post-budget filing must:

- (1) “demonstrate steady progress” under ESHB 2261, and
- (2) “show real and measurable progress” towards full Article IX, §1 compliance by 2018.

“Steady Progress” under ESHB 2261? [pp. 13-20]

- “Progress” does not mean standing still.
- “Steady” does not mean moving in fits and spurts.
- During the 2009 trial, the State told the court that ESHB 2261 would increase funding by over \$9.6 billion/year.
- “Steady progress” during the nine school years between that bill’s enactment (Spring 2009) and its promised completion (2018) therefore required an average K-12 funding increase of over \$1 billion/year, starting in the 2009/2010 school year. “Steady progress” therefore required a \$4 billion increase for the 2012/2013 school year.
- The State’s 2012 post-budget filing demonstrated the legislature continued to talk about funding ESHB 2261, but also continued to not provide that funding. Continuing well known underfunding is not “steady progress”.

"Real & Measurable Progress" towards full Article IX, §1 Compliance by 2018? [pp. 20-29]

- "Progress" does not mean standing still.
- "Real" means genuine and not illusory.
- The State knows its 2012 budget did not make real progress amply funding its K-12 schools. For example:
- **Starting Line:** The Supreme Court affirmed the February 2010 declaratory judgment holding the State's K-12 funding level was unconstitutionally low. That unconstitutionally low February 2010 funding level is therefore the starting line for "progress". The 2012 budget did not move past that starting line. Instead, that budget continued in the 2012/2013 school year most of the cuts legislators had made after the February 2010 court ruling.
- **NERC/MSOC:** State testimony admitted the State shortchanges the actual cost of materials, supplies, & operating costs by over \$500 million every year. The 2012 budget failed to fund even this admitted minimum for MSOC underfunding in the 2012/2013 school year.
- **Transportation:** State testimony admitted the State shortchanges the actual cost of transporting students to & from school by over \$122 million every year – with a specific dollar amount for each school district. The 2012 budget failed to fund even this admitted minimum for transportation underfunding in the 2012/2013 school year.
- **Salaries:** The State's compensation workgroup report acknowledged that funding market salaries requires at least \$2.8 billion/year more. The 2012 budget failed to fund any of this admitted amount in the 2012/2013 school year. Instead, it continued the salary funding cuts legislators had made after the February 2010 court ruling.
- The State's 2012 post-budget filing demonstrated the 2012 legislature continued to talk about amply funding the State's K-12 schools some other year – but failed to fund the State's admitted funding shortfalls for the Washington kids in school this year. Continuing admitted underfunding is not "real & measurable progress".

Should Legislators' Continued Disregard Of Constitutional Rights Be Condoned? [pp. 29-36]

- The State's repeated practice of funding another study, task force, or workgroup is **financially** understandable – for it's much cheaper for the State to fund another study, task force, or workgroup that it is to fund the significant shortfalls identified by the State's last study, task force, or workgroup.
- That's also **politically** understandable for the obvious reason that kids don't vote. It's always more politically convenient to give kids an "IOU", and then kick the can down the road for someone else or some other time.
- But that's also **Constitutionally** unacceptable.
- The *Brown v. Board of Education* case told State officials that segregated schools are unconstitutional – even if they're fine with the majority of voters. The *Seattle School District* and *McCleary* cases told this State's elected officials that underfunded schools are unconstitutional – even if they're fine with the majority of voters.
- As a **Constitutional** matter, it is completely unacceptable that the 2012 legislators chose to not make significant progress reducing the State's unconstitutional (and long-known) underfunding for this 2012/2013 school year.

What Can The Court Do? [pp. 36-44]

- The Supreme Court has recognized that the Constitution created a separate judicial branch to serve as “a check on the activities of another branch” – even when the judicial branch’s decision “is contrary to the view of the Constitution taken by another branch.” Separation of powers therefore does not give legislators a “free pass” to violate court rulings or Constitutional rights.
- The Supreme Court emphasized that Article IX, §1 grants every child a “positive Constitutional right to an amply funded education” – and that “positive rights do not restrain government action; they require it.” The Supreme Court warned legislators that this requires the Court “to take a more active stance in ensuring that the State complies with its affirmative Constitutional duty.”
- Courts have many tools they can use to compel compliance with the Constitution that each and every elected official takes an oath to uphold. For example:
 - impose contempt sanctions and fines against recalcitrant officials.
 - prohibit State payments for other specific expenses or line items until the court’s Constitutional ruling is obeyed.
 - order the legislature to fund specific education amounts.
 - prohibit funding for less than 100% of students in a given program or grade level (e.g., full-day K).
 - order the sale of State property to fund compliance.
 - issue a writ of mandamus to the legislature to compel performance.

What Should The Washington Supreme Court Do? [pp. 44-49]

- Many parents talk about “teachable moments” for their kids. The Court’s response in this case will be a teachable moment for every student currently in our State’s public schools – for it will teach them whether Constitutional rights really matter.
 - Does our Constitution grant citizens legally enforceable rights, or just make hollow suggestions that courts let government officials disregard when politically convenient?
 - Is a Constitutional mandate an order that the government must obey, or just a suggestion that it may obey if it wants to?
- The history of *Brown v. Board of Education* illustrates that forcing recalcitrant State officials to stop violating school children’s Constitutional rights can be a hard path for the judicial branch to take. But that same history confirms that this hard path is also the right path.
- Plaintiffs’ post-budget filing respectfully requested that the Washington Supreme Court take that harder path of Constitutional enforcement. For example, an Order that (hopefully) puts legislators’ perennial excuses and foot-dragging to an end by making it unmistakably clear that:
 - The State did not demonstrate “steady progress” funding reforms promised under ESHB 2261, and did not show “real and measurable progress” achieving full Article IX, §1 compliance by 2018.
 - The 2012 budget’s failure to make that required progress is Constitutionally unacceptable.
 - The Court will therefore take firm action (which legislators might not like) if the 2013 budget fails to make significant progress (1) fully funding reforms under ESHB 2261, and (2) achieving full Article IX, §1 compliance by 2018.