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SUPREME COURT OF THE STATE OF WASHINGTON

Federal Way School District No. 210, a municipal corp.; ED BARNEY;
CYNTHIA BLACK; EVELYN CASTELLAR; GINGER CORNWELL;
CHARLES HOFF; DAVID LARSON; individually and as guardian for
ANDREW LARSON; THOMAS MADDEN, individually and as guardian
for BRYCE MADDEN; SHANNON RASMUSSEN; SANDRA
RENGSTORFF, individually and as guardian for TAYLOR
RENGSTORFF and KALI RENSTORFF,

Respondents,

v.

The State of Washington; CHRISTINE O. GREGOIRE, in her capacity as
Governor of the State of Washington; TERRY BERGESON, in her
capacity as Superintendent of Public Instruction; BRAD OWEN, in his
capacity as President of the Senate and principal legislative authority of
the State of Washington; FRANK CHOPP, in his capacity as Speaker of
the House of Representatives and principal legislative authority of the
State of Washington,

Appellants.

ANSWER TO BRIEF OF AMICUS CURIAE

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I. INTRODUCTION

Article IX, section 1 of the Washington Constitution requires the State to provide ample funding for the basic education of all children residing within its borders. *Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d 476, 519, 585 P.2d 71 (1978). The League of Education Voters Foundation (Foundation) does not argue that the basic education salary allocations at issue in this case fail to satisfy article IX, section 1. As the trial court correctly ruled, on the record in this case, such a claim fails.

Rather, the Foundation focuses on article IX, section 2, and apparently contends that regardless of whether the State's salary allocation formulas make ample provision for basic education, the formulas are prohibited by article IX, section 2 unless they provide uniform funding for all school districts. Amicus Br. at 5. As discussed more fully below, however—and contrary to the Foundation's argument—the text of article IX, section 2 does not support its position. Nor do the decisions of this Court. The Foundation's article I, section 12 argument also fails as it is predicated on the erroneous premise that the State's basic education funding allocations are prohibited by article IX, section 2.

II. ARGUMENT

A. The Text of Article IX, Section 2 Does Not Require Uniform Funding of School Districts as the Foundation Claims

The Foundation argues that the plain language of the first sentence of section 2 requires uniform funding for the public schools. This argument not only overlooks the more natural meaning of the word “provide” in this constitutional direction to the Legislature, but it also requires one to overlook how the words in this section relate to each other and to other provisions in the same article, and it reads language into the provision that it does not contain.

The first sentence of article IX, section 2 states that “[t]he legislature shall provide for a general and uniform system of public schools.” The Foundation contends that the plain meaning of the word “provide” in the first sentence of article IX, section 2, means “fund.” Amicus Br. at 4. The Foundation is incorrect. This direction to the Legislature to “provide” for a general and uniform system of public schools more naturally and simply requires the Legislature to enact laws. The same dictionary cited by the Foundation supports this meaning, defining “provide” as “3. To make a stipulation or condition: *The Constitution provides for a bicameral legislature.*” *American Heritage Dictionary of the English Language* (4th ed. 2000).

This commonplace meaning of the word “provide” is amply illustrated elsewhere in the Constitution. In every instance the word is used to mean “stipulate by law”, not “fund”. *See, e.g.*, Const. art. I, § 21 (“The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto”); Const. art. II, § 1(d) (“All such [referendum] petitions shall be filed with the secretary of state, who shall be guided by the general laws in submitting the same to the people until additional legislation shall especially provide therefor”); Const. art II, § 1(e) (“The legislature shall provide methods of publicity of all laws or parts of laws, and amendments to the Constitution referred to the people with arguments for and against the laws and amendments so referred”). *See also* Const. art. II, § 3 (repealed 1983) (“The legislature shall provide by law for an enumeration of the inhabitants of the state in the year one thousand eight hundred and ninety-five and every ten years thereafter.”)

Indeed, the meaning of “provide” in article IX, section 2, is no different from other constitutional provisions that require the Legislature to provide for—to stipulate by law for—a general or uniform system. *See, e.g.*, Const. art. XI, § 4 (“The legislature shall establish a system of

county government, which shall be uniform throughout the state except as hereinafter provided, and by general laws shall provide for township organization, under which any county may organize whenever a majority of the qualified electors of such county voting at a general election shall so determine”); Const. art. XI, § 5 (“The legislature, by general and uniform laws, shall provide for the election in the several counties of boards of county commissioners, sheriffs, county clerks, treasurers, prosecuting attorneys and other county, township or precinct and district officers . . .”); Const. art. XII, § 19 (“The right of eminent domain is hereby extended to all telegraph and telephone companies. The legislature shall, by general law of uniform operation, provide reasonable regulations to give effect to this section.”). *See also* Const. art. VII, § 2 (repealed 1930) (“The legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the state, according to its value in money, and shall prescribe such regulations by general law as shall secure a just valuation for taxation of all property, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property”).

Moreover, the Foundation’s argument requires one to ignore the relationship of the words in the first sentence of article IX, section 2 to each other. The word “uniform” in article IX, section 2 modifies “system

of public schools.” It does not modify the word “provide”, so as to require the Legislature to “make uniform provision for” in the manner that article IX, section 1 requires the state to make “ample provision for” the education of all of the State’s children. Article IX, section 2 thus requires the Legislature to enact laws to establish a general and uniform public school system—not to uniformly fund each school district in that system. The *manner* in which the State must provide funding is of course governed by article IX, section 1, which constitutionally compels ample funding for basic education and not necessarily uniform funding.¹

As part of its “textual” argument, the Foundation also reads “equal opportunities for basic education” into article IX, section 2, and then claims that the school system cannot be uniform if the funding is not

¹ While article IX, section 2 focuses on a uniform school system for providing education, it does not exist in a vacuum. The State has a concomitant duty under article IX, section 1 to “amply provide for the education guaranteed through the medium of ‘a general and uniform system of public schools.’” *Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d at 522; *See also Tunstall v Bergeson*, 141 Wn.2d 201, 222, 5 P.2d 691 (2000) (citing *Seattle School District*). Further, article IX, section 1 contains an equal opportunity component, guaranteeing that education will be amply provided to all children in the State and without distinction or preference on account or race, color, caste, or sex.

Justice Utter’s concurrence in the *Seattle School District* case, cited by the Foundation, nicely summarizes the interplay between these provisions.

sufficient to provide students “equal opportunities for basic education.” Amicus Br. at 4–5. Aside from the textual deviation, there are two deep flaws with this argument. First, the argument simply assumes a lack of “equal opportunities for basic education” based on the State’s allocations to the Federal Way School District. There is no support in the record for such an assumption with respect to educational opportunities afforded to students in the District. Indeed, the only facts in this case that compare students in the Federal Way School District to students in other districts show that students in the District have performed very well on the state assessment compared to the state average and to students in surrounding districts. CP 394–405. Accordingly, even by the Foundation’s standard of “educational opportunity”, the facts support the State.

Second, the trial court correctly rejected Federal Way School District’s claim that the State allocations did not provide the District ample funding for basic education, again undercutting the Foundation’s assumption of denied “equal opportunities for basic education.”

These provisions together contemplate an educational system in which, to the extent practical through statewide planning and financial support, each child is afforded an equal opportunity to learn, regardless of differences in his or her family and community resources.

Seattle School District at 547. Nothing, however, in Justice Utter’s statement or in the majority opinion injects an expenditure requirement into article IX, section 2. The section 1 requirement that the State maintain “ample” funding to support the system renders it unnecessary for the Court to read into section 2 a uniform funding requirement.

The final textual argument made by the Foundation is that because article IX, sections 3, 4, and 5 relate to funding, and because section 1's "ample provision" requirement has been held to have an adequate funding component, "[t]here is no reason to believe that the first sentence of section 2 does not also relate to funding." Amicus Br. at 5–6. This assertion lacks logic. If anything, the fact that other language in article IX addresses how the public schools are to be funded, and requires, among other things, that the State provide ample funding for basic education, further supports the conclusion that the first sentence of article IX, section 2—which makes no reference to funding—does not address the subject. Rather, the level of funding to any school district is constitutionally judged against the ample funding standard of article IX, section 1.

B. The State Has Provided a General and Uniform System of Public Schools in Compliance With Article IX, Section 2

The history and text of article IX, section 2 show that it simply requires the State to create a general and uniform system of public schools to ensure reasonably standardized instructional content and educational opportunities. The goals of the Basic Education Act articulate those opportunities. RCW 28A.150.210. The conclusion that the State has discharged its duty is supported by previous decisions of this Court.

Tunstall v. Bergeson, 141 Wn.2d at 221; *Seattle Sch. Dist.*, 90 Wn.2d at 519; *Northshore Sch. Dist. No. 417 v. Kinnear*, 84 Wn.2d 685, 729, 530 P.2d 178 (1974) (overruled on other grounds by *Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d 476, 585 P.2d 71 (1978)). (A general and uniform system is one in which every child in the state has free access to certain minimum and reasonably standardized educational and instructional facilities and opportunities to at least the 12th grade. *Sch. Dist. No. 20 v. Bryan*, 51 Wash. 498, 99 P. 28 (1909).) (The system must be uniform in that every child shall have the same advantages and be subject to the same discipline as every other child.)

As the Court recognized in the *Seattle School District* case, “the Legislature has heretofore enacted laws to ‘provide for a general and uniform system of public schools.’” *Seattle Sch. Dist.* at 519. At that time, however, the Legislature had not yet fully implemented sections 1 and 2 by defining the content of a basic education. It subsequently did so by enacting the Basic Education Act. If section 2 had not been fully implemented to that point, certainly the enactment of the BEA completed the task.

The Foundation misreads *Seattle School District* regarding the scope of article IX, section 2, and attributes to it overly broad conclusions that it does not contain. The Court in *Seattle School District* did not hold

that the district's dependence on local levies evidenced lack of a general and uniform school system. The opinion does not compare the Seattle School District's funding relative to any other single school district in the state. Rather, the Court was concerned that variation in the ability of districts to raise funds through local levies evidenced the "levy system's instability" and demonstrated the State's failure to provide a dependable and regular revenue source to amply fund basic education. *Seattle Sch. Dist.* at 525–26.

Similarly, the Court in *McGowan v. State*, 148 Wn.2d 278, 60 P.3d 67 (2002), applied the principles from *Seattle School District* to hold that, insofar as the cost of living increases required by I-732 were considered a part of basic education, the initiative would impermissibly tie basic education funding to local levies with their deficiencies as a regular and dependable funding source. *McGowan*, 148 Wn.2d at 294.²

Contrary to the Foundation's argument, this Court's opinion in *Island Cy. Comm. on Assessment Ratios v. Dep't of Rev.*, 81 Wn.2d 193, 500 P.2d 756 (1972), does not support the contention that uniform

² The Foundation focuses on a brief observation in *McGowan* that if future levies were to fail in some districts, a difference in expenditures over time could lead to a lack of uniformity. *McGowan* at 294. This passing reference was not necessary to the holding of the case, which identified the constitutional deficiency in the initiative as tying basic education funding to the irregular and undependable funding source of local levies. Moreover, the Court was not presented with a question of the scope of article IX, section 2 in *McGowan*.

spending is compelled by article IX, section 2. Notably, *Island County* predates the *Northshore School District* and *Seattle School District* cases, both of which inform the scope of article IX, section 2, and its relationship to article IX, section 1. Nor was the issue in *Island County* the scope of article IX, section 2.

Island County concerned a formula for equalizing local tax levies under which the State contributed funding to achieve the same per pupil guarantee, after deducting the local property tax levy, at a statutorily assumed level. The plaintiffs in *Island County* argued that the levy equalization formula lacked rationality, and thus violated equal protection, because the equalization payment assumed a uniform level of assessed valuation when assessed property values, in fact, were not uniform within counties or from county to county.³ *Island Cy.* at 200–01. The Foundation correctly points out that the Court upheld the equalization scheme in part because its purpose was to advance increased uniformity in distribution of state aid, particularly to assist school districts with a low level of local taxing capacity.⁴ *Island Cy.* at 201–02. However, the Foundation incorrectly overstates the Court’s holding. The

³ At that time, property taxes (other than special excess levies) were levied by the counties on behalf of school districts. *Carkonen v. Williams*, 76 Wn.2d 617, 628-29, 458 P.2d 280 (1969).

⁴ The State maintains a successor local levy equalization program called “local effort assistance” for similar purposes. RCW 28A.500.

Island County Court held that the assumption of uniform valuation in the equalization statute was rational in light of the constitutional requirement of uniformity in property taxation, and was related to the idea of equalizing educational opportunity by giving preference to those districts having a low level of local taxing capacity. The *Island County* Court did not hold that uniform funding was mandated by article IX, section 2, and the question was not before it.

Each of the cases relied on by the Foundation, and the cases discussed at the beginning of this section, are consistent with the State's interpretation of article IX, section 2. None supports the conclusion that article IX, section 2 requires uniform funding of basic education to each district, and none suggests that the Court should adopt the ill-defined, unworkable uniformity standard proposed by the Foundation. Indeed, precisely how the Foundation—or a court—would define this claimed funding “uniformity” requirement is difficult to discern from the Foundation's brief. The Foundation variably refers to the requirement as one that the State provide reasonably uniform educational opportunity through its funding (Amicus Br. at 12, 13) or that the State provide a reasonably uniform funding method (Amicus Br. at 2, 3, 4). Moreover, according to the Foundation, although article IX, section 2 requires uniform funding, it nonetheless would allow departure from that standard

“to account for such factors as the different needs of the student bodies (e.g., ESL classes, special education classes) and the experience levels of the staff, among other factors.” Amicus Br. at 5, n.3. What “other factors” would warrant departure from uniform funding, or how the legislature is to identify such factors, the Foundation does not explain, except to note the trial court’s reference to “differences in educational costs.” *Id.* What is apparent, however, is that the Foundation’s position necessarily would inject the judiciary into the policy realm of determining how best to structure and manage the State’s public schools. In this particular respect, as with its argument on the whole, the Foundation disregards the admonition that “it is not this court’s role to micromanage education in Washington.” *Tunstall*, 141 Wn.2d at 223. “While the Legislature must act pursuant to the constitutional mandate to discharge its duty, the general authority to select the means of discharging that duty should be left to the Legislature.” *Seattle School District*, 90 Wn.2d at 520.

A constitutional uniform spending rule could unnecessarily hamper future efforts by the Legislature to enhance educational opportunity for all students, as that body continues to grapple with how best to fund the school system. The Court should not unduly restrict the Legislature’s discretion to drive additional state resources for basic

education to efforts that do not necessarily equalize funding in all school districts, where the Legislature rationally determines that approach best serves educational opportunities for all students. The Legislature requires, and the State constitution leaves to the Legislature, the discretion to determine how best to fund the State's school system, within its constitutional duty to provide ample funding for basic education, under the command of article IX, section 1.

C. The Challenged Salary Allocations Reflect Rational Policy Choices

As the State demonstrated in its opening brief, the current salary allocation differentials among school districts reflect conceivably rational policy choices, including choices that reflect market conditions, historical realities, resulting legitimate economic reliance interests, the fact of local autonomy and other education-related policy objectives. Brief of Appellant at 41–50.

The Foundation's response to the State's argument essentially is that because the salary allocations are not reasonably uniform under article IX, section 2 (as the Foundation envisions that requirement), they are not rational. In this respect, the Foundation makes no distinct article I, section 12 claim; it merely reiterates the same claim that it makes under article IX, section 2. For the reasons discussed above, that

claim fails. Article IX, section 2 does not compel the State to provide equal salary allocations to school districts. Thus, the Foundation's reliance on *Seattle School District* for the proposition that a financial burden cannot justify otherwise unconstitutional behavior, rests on a faulty premise and is misplaced. Amicus Br. at 17.

Achieving greater district-to-district uniformity in salary allocations is, and has been, an important policy objective of the Legislature—and one with respect to which the Legislature has made significant progress. However, narrowing salary allocation differences is not the State's only legitimate education-related funding objective. As long as the State meets its obligation to provide ample funding for basic education under article IX, section 1, the Legislature rationally may allocate finite education resources to other important and competing education-related policy objectives.

III. CONCLUSION

The judgment of the trial court, declaring that State salary allocations to Federal Way School District violate article IX, section 2 and article I, section 12, should be reversed.

RESPECTFULLY SUBMITTED this 26th day of May, 2009.

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