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SUPREME COURT OF THE STATE OF WASHINGTON

LEAGUE OF WOMEN VOTERS OF WASHINGTON, a Washington non-profit corporation; EL CENTRO DE LA RAZA, a Washington non-profit corporation; WASHINGTON ASSOCIATION OF SCHOOL ADMINISTRATORS, a Washington non-profit corporation; WASHINGTON EDUCATION ASSOCIATION, a Washington non-profit corporation; WAYNE AU, PH.D., on his own behalf; PAT BRAMAN, on her own behalf; DONNA BOYER, on her own behalf and on behalf of her minor children; and SARAH LUCAS, on her own behalf and on behalf of her minor children,

Appellants,

v.

STATE OF WASHINGTON,

Respondent,

and

WASHINGTON STATE CHARTER SCHOOLS ASSOCIATION; LEAGUE OF EDUCATION VOTERS; DUCERE GROUP; CESAR CHAVEZ SCHOOL; TANIA DE SA CAMPOS; and MATT ELISARA,

Intervenors.

**BRIEF OF RESPONDENT/CROSS-APPELLANT
THE STATE OF WASHINGTON**

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 ORIGINAL

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I. INTRODUCTION

Washington has never taken a “one-size-fits-all” approach to public education. Instead, Washington has developed a variety of innovative programs to meet the needs of an increasingly diverse student population. Some programs are operated by school districts and some are operated by other entities, from community colleges to nonprofit schools for students with disabilities. One and one-half million Washington voters created an additional option when they voted to approve Initiative 1240, the Charter Schools Act. The Act authorized establishment of up to 40 public charter schools with an emphasis on serving at-risk students. The voters simply continued what the legislature has been doing since statehood: periodically adding to the education system to meet current needs.

In their haste to declare charter schools unconstitutional, Plaintiffs ask this Court to adopt two irreconcilable holdings: (1) that “the Constitution requires the *uniform application* of school laws in a unitary public school system;” and (2) that it also requires local school districts to have “*complete control* of the schools.” Appellants’ Op. Br. at 21, 35 (emphases added). The Washington Constitution does not impose such absolute, contradictory demands. Rather, Washington courts have long interpreted the state constitution to require centralized statewide learning standards that define what every child should know, while permitting instructional innovation and ground-breaking programs, often governed directly by school districts, but sometimes operated by other entities.

Plaintiffs' challenge to the constitutionality of the Charter Schools Act is facial. They must prove beyond a reasonable doubt that there is no set of circumstances under which charter schools could be implemented within constitutional limitations. They cannot meet this heavy burden.

Public charter schools are free and open to all. They must comply with the statutes and rules identified in the Act, as well as those "made applicable to the charter school in [its] charter contract." RCW 28A.710.040(3). Public charter schools must provide a basic education, including instruction in the Essential Academic Learning Requirements for each grade level and subject. RCW 28A.710.040(2)(b).

Adding charter schools as an option within the already diverse mix of innovative public schools and programs does not alter the constitutional uniformity of our public school system. Charter schools are common schools under the state constitution, but even if they were not, they could easily operate without accessing constitutionally restricted revenues or accounts. Charter schools are part of Washington's public education system, so they cannot "divert" money from it or undermine its ample funding. Nor does use of current levy money for charter schools, if it occurs at all, presumptively fall outside the purpose of such levies.

While charter schools, like other public schools and programs, are able to use innovative instructional methods, there is no unconstitutional delegation of legislative authority to charter schools. Charter schools must operate under the same supervisory authority of the Superintendent of Public Instruction as other public schools. Finally, the adoption of the

Act was consistent with article II, section 37 because it is a complete act and did not mislead or deceive voters.

Absent unconstitutionality proven beyond a reasonable doubt, this Court should allow charter schools to develop as voters intended, with the understanding that Plaintiffs can bring an as-applied challenge if a charter school violates the constitution in practice.

II. ASSIGNMENTS OF ERROR

1. Given that the legislature has defined the contours of the common schools since statehood, the trial court erred when it concluded that public charter schools are not common schools.
2. As a result, the trial court also erred when it concluded that public charter schools are not eligible for certain funds, including from the Common School Construction Fund.
3. The trial court erred when it granted summary judgment to Plaintiffs in part and concluded that a portion of the Charter Schools Act is unconstitutional.

III. ISSUES

A. Issues Pertaining to the State's Assignments of Error

1. Are public charter schools common schools as that term is used in article IX, section 2?
2. Even if they are not common schools, can the legislature appropriate funding for charter schools from unrestricted general fund revenues in compliance with article IX, sections 2 and 3?
3. Are the portions of the Charter Schools Act declaring public charter schools to be common schools and permitting them to access common school revenues and funds severable?¹

¹ The cross-appeal addresses whether charter schools are common schools, as well as the intertwined issues of funding and whether certain provisions can be severed.

B. Issues Pertaining to Plaintiffs' Assignments of Error

1. Does the people's addition of charter schools to Washington's system of public schools destroy the general and uniform character of the education system in violation of article IX, section 2?
2. Does funding public charter schools, as a piece of the general and uniform system, violate the ample funding requirement in article IX, section 1?
3. Can Plaintiffs show (a) that the Charter Schools Act requires local levy funding from levies approved before the Act to be spent on public charter schools, and (b) that charter schools are outside the scope of any applicable levy?
4. Does the Charter Schools Act improperly delegate the legislature's constitutional duty to define basic education or otherwise unconstitutionally delegate to non-profit entities?
5. Does the Superintendent of Public Instruction maintain supervision over charter schools, satisfying article III, section 22, where multiple entities have always played various roles in the overall operation of public schools?
6. Does the Charter Schools Act comply with article II, section 37 because it is a complete act and it did not mislead voters?

IV. STATEMENT OF THE CASE

A. Washington's Public School System Has Evolved to Allow for Innovative and Flexible Programs That Serve Diverse Students

In the 125 years since the Washington Constitution was adopted, the public school system has evolved to meet the needs of a changing society. Washington's schools have advanced from one-room school houses that served students for only about three months per year, to graded schools gradually serving students for longer periods, to a system that serves students nine months of the year or more and includes high schools and kindergarten. *See* Laws of 1889-90, Title XIV, § 64, p. 379 (requiring graded schools when population exceeded 300 students); Laws of 1897,

ch. 118, § 70, p. 385 (three-month requirement; longer for graded schools). At statehood in 1889, there were three high schools in Washington, with 320 students enrolled.² In 1892, statewide average daily public school attendance was approximately 50,700, and 45 students graduated from high school.³ In contrast, Washington now serves more than one million students, in about 2,281 public schools statewide.⁴ For good reason, Washington's current public education system is far different from the one that existed at statehood.

The legislature has committed "to provide for a public school system that is able to evolve and adapt in order to better focus on strengthening the educational achievement of *all* students." RCW 28A.150.210 (emphasis added). While most public school students attend the traditional public school closest to their home, the education system has evolved to include several flexible and innovative programs targeted at satisfying modern needs and a diverse student population.⁵

For example, Running Start allows eligible eleventh and twelfth graders to enroll in college-level courses at a community college, technical college, or select public four-year university for both high school and college credit.⁶ The higher education institutions, even including border

² Don Burrows, *The Economics and Politics of Washington's Taxes* 91 (2013).

³ See Frederick E. Bolton & Thomas W. Bibb, *History of Education in Washington* 125 (1934).

⁴ *A Citizen's Guide to Washington State K-12 Finance* 3 (2014), available at <http://www.leg.wa.gov/Senate/Committees/WM/Documents/2014K12CitizensGuide.pdf>.

⁵ See *Learning by Choice, Student Enrollment Options in Washington State* (rev. Aug. 2013), available at <http://www.k12.wa.us/LegisGov/2013documents/LearningByChoice2013.pdf>.

⁶ See *Learning by Choice* at 16-19; RCW 28A.600.310(1), .350.

community colleges located in Oregon and Idaho, receive state basic education funding, calculated based on the number of public school students participating.⁷ In addition, the Superintendent allocates basic education funding directly to at least one technical college to operate a high school program.⁸ School districts do not control the colleges funded through these mechanisms or their professors.

Funding appropriated for basic education similarly supports a wide variety of other programs operated by non-district entities, including: (1) University of Washington programs for selected academically gifted students, (2) Washington Youth Academy, a residential school for at-risk youth run by the National Guard,⁹ (3) work-based learning, (4) online courses and other alternative learning experiences, (5) contracted special education and other services provided by educational service districts¹⁰ or non-sectarian private entities, (6) schools for juvenile offenders housed in adult corrections facilities that can be operated by educational service districts, higher education institutions, or private entities, and (7) tribal schools operated by tribes under compacts.¹¹ School districts also operate

⁷ RCW 28A.600.310(4), .385(1); WAC 392-169-090.

⁸ See RCW 28A.150.275; WAC 392-121-187.

⁹ The residential school provides a quasi-military training and mentoring program, in a highly structured format. See <http://mil.wa.gov/WYA/AboutUs.shtml>.

¹⁰ Educational service districts are regional political subdivisions that provide various services to school districts, the Superintendent, and the State Board of Education, and sometimes provide direct instruction to students. RCW 28A.310.010, .180(4), .340(3).

¹¹ See RCW 28A.185.040; WAC 392-120 (University of Washington); RCW 28A.300.165; RCW 28A.150.310; WAC 392-124 (Washington Youth Academy); WAC 392-410-315; WAC 392-121-124 (work based learning); WAC 392-121-182 (alternative experiences); RCW 28A.150.305(1); WAC 392-121-188; WAC 392-172A-04080 to 04110 (private contracts for special education and other instructional services); RCW

innovative schools, which can select top performing students, have private boards of directors, and whose curricula differ from traditional public schools. *E.g.*, CP at 348-65 (Aviation High School). Public charter schools are simply another innovative option for students and parents, joining this long list of programs, all of which are already part of our comprehensive education system operated with basic education funding.

B. The People Adopted the Charter Schools Act to Provide a Limited Number of Innovative Public Charter Schools with an Emphasis on Serving At-Risk Students

The people adopted the Charter Schools Act in 2012 with Initiative 1240. CP at 39-78. Washington was the forty-second state to adopt a charter school law. CP at 553. The Act allows up to forty public charter schools statewide in the first five years, with a focus on serving at-risk students, and it imposes strict accountability measures to monitor outcomes. RCW 28A.710.140-.210. Charter schools must be operated by non-profit, non-sectarian organizations, selected on a competitive basis. RCW 28A.710.010(1), .140. They must be free and open to all students. RCW 28A.710.020(1). Where student interest exceeds capacity, spaces must be allotted by lottery. RCW 28A.710.050(4). Teachers must be state certificated. RCW 28A.710.040(2)(c).

Like traditional public schools, public charter schools' state funding allocations are tied to student enrollment. RCW 28A.710.220. The Superintendent allocates funding to charter schools using substantially the

28A.193 (juvenile offenders in adult institutions); RCW 28A.715 (tribal compact schools).

same formulas as are applied for traditional public schools. *Id.* The main source of funding is appropriation from the state general fund.¹² Laws of 2013, 2d Spec. Sess., ch. 4, §§ 501-516 (Operating Budget—Education).

Where charter schools open, students and their families will have a choice between their traditional public school and the public charter school. If students and their families do not believe public charter schools are performing as well or better than their traditional counterparts, the charter school will not survive, providing the ultimate in accountability.

Nineteen charter schools applied for up to eight slots for each of the 2014-15 and 2015-16 school years.¹³ The Spokane Public Schools, a school district authorizer, chose one,¹⁴ and the Charter School Commission, the statewide authorizer, chose seven. Joint Stip. ¶¶ 2-3. Successful applicants could choose to open in 2014 or 2015, and only one charter school is targeted to open in the fall of 2014. *Id.* That school will serve severely at-risk students, including homeless students, in Seattle.¹⁵

C. Public Charter Schools Are Subject to Rigorous Accountability

Public charter schools are subject to rigorous accountability requirements. They must meet the same academic standards as traditional

¹² Generally, the legislature “appropriates” general fund money to the Superintendent, who “allocates” the money to various programs according to statutory formulas or direction in the operating budget.

¹³ Charter School Commission, 1/30/14, at 00:03:00, http://www.governor.wa.gov/issues/education/commission/documents/meeting_minutes_20140130.pdf.

¹⁴ School district authorizers must be selected and approved. RCW 28A.710.080-.090. To date, only the Spokane Public Schools has become an authorizer.

¹⁵ First Place Scholars Redacted Application 2, *available at* https://www.dropbox.com/sh/2cjuqeccaegveew/AADzRWLhtO68jqr5vzK5OvYaa/WCS-C%202013%20Applications%20Redacted/First%20Place_Redacted.pdf.

public schools, providing a curriculum of instruction that ensures students will meet the Essential Academic Learning Requirements (EALRs), the statement of what every child should know at each grade level. *See* RCW 28A.710.040(2)(b); RCW 28A.150.210; CP at 371-504.

For example, the science EALRs span more than 92 pages, and they provide generous detail. *See* CP at 371-504. In physical science, one of the 36 things that kindergarten and first grade students are expected to know is that a force is a push or a pull that can move an object, and its speed is related to how strongly it is pushed or pulled. CP at 390-403. Fourth and fifth graders have 58 science learning standards; for example, they should be able to draw and label diagrams showing several ways that energy can be transferred. CP at 419-35. Ninth through twelfth graders have 23 pages of science standards that include physical science, earth and space science, and life science. CP at 459-82. Public charter schools must provide instruction in these and similar EALRs for each subject and at each grade level. RCW 28A.710.040(2)(b).

Within these standards, public charter schools are allowed to innovate as to scheduling, personnel, funding, and educational programs to improve student outcomes. RCW 28A.710.040(3). While the EALRs identify *what* a student should know in great detail, charter schools have flexibility in determining *how* to effectively deliver that information to students. *See* RCW 28A.710.040(3). This flexibility is not limited to charter schools. Some traditional public schools also have flexibility to teach the EALRs using innovative instruction. *See, e.g.*, CP at 348-65, 375.

The Charter Schools Act, along with the Commission's extensive regulations and approval criteria, require each charter school applicant to submit, among other things: (1) its planned curriculum and evidence the curriculum is based on proven methods, (2) a description of teaching methods and instructional strategies, (3) student performance expectations and standards for promoting students to the next grade, (4) an outline of the school calendar and typical school day, (5) the number of instructional days and hours to be provided, (6) a description of the school culture and how it will be developed, (7) an overview of supplemental programming including summer school and other programs for student mental, emotional, and social development, (8) a plan for serving many categories of students, including those who have special needs, who do not meet minimum academic standards, who are at risk of dropping out, who have higher than average disciplinary sanctions, who have limited English proficiency, who are economically disadvantaged, and who are highly capable, (9) a culturally inclusive student recruitment and enrollment plan, (10) a discipline plan that complies with state and federal laws, protects the rights of students, including those with disabilities, and is based in sound research, experience, and best practice, (11) a student assessment plan, (12) information about school governance, management, and staffing, (13) a detailed plan for family engagement, (14) a detailed facility plan, including backup and contingency plans, (15) a financial plan, (16) school-specific performance measures, (17) completed background checks on staff, (18) an overall review of cultural

responsiveness, and (19) a teacher performance evaluation plan. RCW 28A.710.130(2); WAC 108-20-070. Not surprisingly, charter school applications are several hundred pages long.

In evaluating the applications, the Commission and school district authorizers must hold a public forum, and they must evaluate every aspect of the application according to nationally recognized principles, considering also whether the school is designed to serve at-risk students. RCW 28A.710.140. Approved charter schools must meet precontract conditions and enter into a contract with the school district authorizer or the Commission. RCW 28A.710.160; WAC 108-20-090. The contracts must ensure academic performance is monitored and compliance measures are in place for student achievement, comparative performance, student progress, post-secondary readiness, state and federal accountability, mission-specific accountability, financial compliance, and organizational performance. RCW 28A.710.170; WAC 108-30-020. The contracts can impose additional requirements and require compliance with laws not referred to directly in the Charter Schools Act. RCW 28A.710.040(3). The approved charter schools must meet certain conditions before they can open, and approval can be revoked prior to opening. WAC 108-20-090; Joint Stip. ¶ 4. Operators cannot be paid any public funds until the school opens, so they use grants or fundraising to cover their start up costs. *See* Joint Stip. ¶¶ 5, 6.

Public charter schools are subject to the supervision of the Superintendent and must comply with accountability measures to the same

extent as other public schools, unless the Act specifically says otherwise. RCW 28A.710.040(5). Public charter schools are required to participate in statewide student assessment tests and annual school performance reviews. RCW 28A.710.040(2). They are accountable to the State Board of Education for performance improvement, and the charter school authorizers must continually monitor compliance with the law. RCW 28A.710.040(2), (3). Complaints to the Commission about a particular charter school can result in sanctions. WAC 108-30-040.

Charter school authorizers can require a corrective action plan at any time. RCW 28A.710.180(4). Charter schools can be closed for noncompliance with state or federal laws, as well as failure to meet performance expectations. RCW 28A.710.200. They must remain above the bottom quartile of public schools to be eligible to renew their contract, absent extraordinary circumstances; *Id.* In contrast, traditional public schools are required to implement a corrective plan if they fall into the bottom five percent of public schools. RCW 28A.657.

Finally, the Act emphasizes transparency. Charter school authorizers and public charter schools are subject to the Public Records Act and the Open Public Meetings Act. RCW 28A.710.040(2)(h). Furthermore, the State Board of Education must issue an annual report comparing performance of public charter schools versus similarly situated traditional public schools. RCW 28A.710.250.

In sum, public charter school applicants must undergo a rigorous application process and, once selected, must provide a basic education by instructing students in the EALRs, at the risk of being closed if they fail.

D. The Superior Court Upheld the Vast Majority of the Charter Schools Act and Simply Severed the Definition of Charter Schools as Common Schools and the Portions Allowing Use of the Constitutionally Restricted Construction Fund

Plaintiffs sued in King County Superior Court seeking declaratory judgment that the Act is unconstitutional on its face. *See* CP at 31. They alleged that the Act violates article IX, sections 1 (ample provision), 2 (general and uniform system of public schools), and 3 (funds for support of common schools); article III, section 22 (Superintendent supervision); article VII, section 2(a) (limitation on levies); and article II, section 37 (amendment of statutes) of the Washington Constitution. CP at 31. Charter school supporters intervened. CP at 148-49.

The trial court granted summary judgment to the State and intervenors on all issues but one. CP at 1037-46. The Superior Court concluded that it was constrained by *Spokane County v. Bryan*, 51 Wash. 498, 99 P. 28 (1909), to hold that charter schools are not “common schools” under article IX and, therefore, the Common School Construction Fund, restricted to common schools, could not be appropriated to charter schools. CP at 1040-43, 1045. The court held, however, that the provisions permitting such appropriations were severable. CP at 1046. Otherwise, the trial court rejected all of Plaintiffs’ arguments. CP at 1043-45. The parties sought direct review at the Washington Supreme Court.

V. ARGUMENT

A. **Plaintiffs Must Prove Beyond a Reasonable Doubt That There Is No Set of Circumstances Under Which Charter Schools Could Be Implemented Constitutionally**

Washington courts have long recognized that the legislative power is unrestrained unless specifically limited by the constitution. *Moses Lake Sch. Dist. v. Big Bend Cmty. Coll.*, 81 Wn.2d 551, 555, 503 P.2d 86 (1972). “An exercise of the initiative power is an exercise of the reserved power of the people to legislate.” *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 204, 11 P.3d 762 (2000). Thus, the Charter Schools Act, RCW 28A.710, is presumed constitutional, and Plaintiffs must prove the Act unconstitutional beyond a reasonable doubt. *See, e.g., id.* at 205. Given that Plaintiffs’ challenge is facial, it must be rejected unless this Court is convinced that there is no set of facts or circumstances under which the statute can constitutionally be applied. *Tunstall ex. rel. Tunstall v. Bergeson*, 141 Wn.2d 201, 221, 5 P.3d 691 (2000).

B. **The Washington Supreme Court Has Recognized That Washington’s System of Public Education Must Evolve Over Time to Meet Contemporary Needs**

The legislature, and the people acting in their legislative capacity, need flexibility to customize education programs to meet the current needs of Washington’s children. *See id.* at 223 (citing *Tommy P. v. Bd. of County Comm’rs*, 97 Wn.2d 385, 398, 645 P.2d 697 (1982)). So long as an educational program fits within article IX’s broad constitutional guidelines, it is up to the legislature, and the people in their legislative capacity, to determine what educational programs and options should be

available to Washington students. *See Tunstall*, 141 Wn.2d at 223 (citing *Seattle Sch. Dist. v. State*, 90 Wn.2d 476, 520, 585 P.2d 71 (1978)). Even where the Court has discussed the meaning of words in article IX, it has left the legislature the “greatest possible latitude to participate in the full implementation of the constitutional mandate.” *Seattle Sch. Dist.*, 90 Wn.2d at 515; *McCleary v. State*, 173 Wn.2d 477, 516-17, 269 P.3d 227 (2012). The Court has firmly left it to the legislative branch to “address[] the difficult policy questions inherent in forming the details of an education system.” *McCleary*, 173 Wn.2d at 517.

The Court has recognized that the education system must adapt as times change. For example, the *McCleary* Court explained that the legislature must periodically evaluate the elements of the basic education program “as the needs of students and the demands of society evolve” to determine whether different offerings are necessary. *Id.* at 251. The legislative branch “generally enjoys broad discretion in . . . deciding which programs are necessary to deliver the constitutionally required ‘education.’” *Id.* at 251-52.

Finally, the state constitution’s education provisions are not “static.” *See Seattle Sch. Dist.*, 90 Wn.2d at 517. Article IX must be flexible enough to support an education system that prepares all of Washington’s children “for their role as citizens and as potential competitors in today’s market as well as in the market place of ideas.” *Id.* The parameters of the State’s “basic education” for instance, “are not etched in constitutional stone.” *McCleary*, 173 Wn.2d at 526. Indeed,

over time, Washington courts have shifted responsibility for ensuring the adequacy of Washington's public education system from school districts to the State. *Id.*; see also *Seattle Sch. Dist.*, 90 Wn.2d at 515.

C. Like Other Innovative Educational Programs, Public Charter Schools Fit Within Washington's General and Uniform System of Public Schools

Article IX, section 2 requires the legislature to provide for a "general and uniform *system* of public schools." (Emphasis added.). The Court has held that 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.'" *Federal Way Sch. Dist. v. State*, 167 Wn.2d 514, 524, 219 P.3d 941 (2009) (quoting *Northshore Sch. Dist. v. Kinnear*, 84 Wn.2d 685, 729, 530 P.2d 178 (1974)). The system must be sufficiently uniform that a child can "'transfer from one district to another within the same grade without substantial loss of credit or standing.'" *Id.* The *Federal Way* Court held that the Basic Education Act's (1) uniform educational content, (2) statewide teacher certification, (3) instructional hour requirements, and (4) statewide assessment system satisfy the "general and uniform" requirement. *Id.* at 524-25. Of course, the education provided to each student need not be identical. *Tunstall*, 141 Wn.2d at 220, 222.

Public charter schools do not destroy the uniformity of any of these aspects of the existing system. With regard to educational content, charter schools must provide a basic education through instruction in the EALRs,

which establish what every child should know in each subject and at each grade level. RCW 28A.710.040(2)(b). While charter schools enjoy flexibility in instructional methods, they must ensure that their students are learning the same material being taught in other public schools. *See id.* This is also true for traditional school districts, which develop their own curricula and choose textbooks at the local level. RCW 28A.320.230; *see also* CP at 375. The legislature has also authorized waivers of some requirements for traditional public schools to develop innovation schools and zones. RCW 28A.630.083. Thus, the concept of waiving some requirements to nurture innovation was already part of the general and uniform system before public charter schools.

Plaintiffs ignore that imposing the degree of uniformity they advocate would undermine many existing programs for diverse students that the general and uniform education system already contains. *See Tunstall*, 141 Wn.2d at 222 n.16, 235 n.2 (Talmadge, J. concurring). These programs include Running Start, RCW 28A.600.300-.400; learning assistance programs operated by contract under RCW 28A.165.035(g); dropout prevention and reengagement programs operated in partnership with community organizations, educational service districts, or community colleges, RCW 28A.175.035(f)-.110; the program for highly capable students at UW, RCW 28A.185.040; and schools for juvenile offenders run by non-district entities, RCW 28A.193. Charter schools simply add another innovative option to this existing list.

With regard to the other aspects of a general and uniform system listed in *Federal Way*, public charter schools are required to hire only state certificated teachers and charter schools must participate in the statewide student assessment system. RCW 28A.710.040(b), (c). Plaintiffs assert that charter schools are not expressly required to participate in the basic education programs listed in RCW 28A.150.220, yet the Act and its related regulations expressly require charter school applicants to recite how they will comply with all of the elements of this statute. *See* RCW 28A.710.130(m); WAC 180-19-030(4)(f) (school district authorizers); WAC 108-20-070(2)(d), (g) (Commission authorizer). The successful charter school applicants will all meet or exceed the minimum instructional hour requirement. Stip. Facts ¶ 13. The charter school application requirements, the applications, and the statutory funding formulas assume that charter schools will provide (and receive categorical allocations for) highly capable, learning assistance, and transitional bilingual education, as well as special education, which is independently required by federal law. RCW 28A.710.220(2). While Plaintiffs contend that charter schools will not provide the programs required in RCW 28A.150.220, they have not shown, nor can they, that any charter school contract fails to require compliance with that statute.

Similarly, relying on *Bryan*, Plaintiffs assert that a general and uniform system must subject each public school student to the same discipline as any other child. *See Bryan*, 51 Wash. at 502. They speculate that charter schools will deviate so far from the discipline policies in

traditional public schools that they will be non-uniform. But no charter school has yet opened, and no discipline plan has been implemented.

Charter school applicants must detail their discipline plan, they must comply with state and federal laws (including parents' rights laws, civil rights laws, and due process), and charter school contracts can explicitly require compliance with all federal, state, and local school discipline laws. RCW 28A.710.130(2)(p); RCW 28A.710.040(2)(a), (3). Plaintiffs cannot show charter schools will be exempt from any existing discipline regulations or that they will impose discipline that so far departs from that provided in other schools that it destroys uniformity. If some future charter school deviates significantly from state or federal law, the violation will trigger consequences under the charter school accountability system, but affected students could also bring an as-applied challenge.

Additional requirements further ensure that charter schools will not depart from the general and uniform system. Public charter schools must comply with all federal laws, including those governing special education, privacy, health and safety, and nondiscrimination. RCW 28A.710.020(5), .040(2)(a). Charter schools must obey all civil rights laws and comply with any additional laws identified in their contracts, including laws not specified in the Act. RCW 28A.710.040(3).¹⁶

In sum, the authorized charter schools are a part of the general and

¹⁶ See also U.S. Dep't of Educ., Office for Civil Rights, *May 14, 2014 Guidance Letter*, available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405-charter.pdf> (requiring charter school compliance with civil rights laws).

uniform system of public schools. Plaintiffs simply cannot show beyond a reasonable doubt that charter school students will not be able to successfully transfer within the system or that charter schools will somehow destroy the uniformity of Washington's education system.

D. Public Charter Schools Are Common Schools, and They Will Not Divert Any Constitutionally Restricted Funds or Revenues

1. Charter Schools Are Common Schools

This Court should decline to apply an overly restrictive definition of "common school" based on antiquated principles, instead recognizing that the Court has looked to legislative definitions of article IX terms to inform its interpretation.

The Washington Constitution provides that the "public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established." Const. art. IX, § 2. The term "common school" is not defined in the constitution. Yet, since 1969, the legislature has defined "common schools" as "schools maintained at public expense in each school district and carrying on a program from kindergarten through the twelfth grade or any part thereof including vocational educational courses otherwise permitted by law." RCW 28A.150.020. In 2012, the Act amended the statutory definition of "public schools" to state that "charter schools" are both public and common schools. RCW 28A.150.010; RCW 28A.710.005(m). Thus, the Act places charter schools within the statutory definition of "common schools." *Id.*

The term “common school” has evolved over centuries. L.K. Beale, *Charter Schools, Common Schools, and the Washington State Constitution*, 72 Wash. L. Rev. 535, 536 (1997). Early common schools referred to schools that were not taught in Latin and, thus, accessible to all regardless of class status. *Id.* The term has also been used to distinguish between “one-room ‘common’ school house[s]” as compared to “graded” schools in which students are separated by grade level. *Id.* Washington’s territorial common schools were not even necessarily free; some of them charged tuition. Dennis C. Troth, *History and Development of Common School Legislation in Washington* 88 (1927).

A few years after statehood, after a challenge to the legality of funding high schools with common school funds, the legislature adopted language making high schools part of the common school system, even though common schools and high schools were listed as separate types of schools in article IX, section 2. Troth at 159-60; Laws of 1895, ch. CL, § 1, p. 373. Kindergarten was legislatively added to common schools even later. Former RCW 28A.01.060 (1978) (cited in *Seattle Sch. Dist.*, 90 Wn.2d at 534).

In 1909, the Court was asked to determine whether the State’s normal schools, public schools associated with teacher-training institutions, were also “common schools” for purposes of receiving common school funding. *Bryan*, 51 Wash. at 500-01. The *Bryan* Court considered what “common school” meant, declaring that it must “measure up to every requirement of the Constitution *and code of public*

instruction.” *Id.* at 503 (emphasis added). At the time, Washington statutes had long defined “common schools” as those “maintained at public expense in each school district *and under the control of boards of directors,*” “open to the admission of all children . . . residing in that school district.” Laws of 1897, ch. CXVIII, § 64, p. 384 (emphasis added).

Consistent with this statutory definition, the *Bryan* Court held that “a common school, within the meaning of our Constitution, is one that is common to all children of proper age and capacity, free, and subject to, and under the control of, the qualified voters of the school district.” *Bryan*, 51 Wash. at 504. The *Bryan* Court, using language that does not indicate whether it was referring to a statutory or constitutional requirement, also opined: “The complete control of the schools is a most important feature, for it carries with it the right of the voters, through their chosen agents, to select qualified teachers, with the power to discharge them if they are incompetent.” *Id.* The Court emphasized that normal school teachers were not certificated and could not be fired by school district officials, and normal schools were not open to all students. *See id.*

The *Bryan* Court then relied, in part, on the fact that the constitutional framers had expressly distinguished between common schools and normal schools. *Id.* at 502, 504-05. To the extent that the legislature wanted to fund normal schools, it could do so out of the general fund. *Id.* at 505-06 (“[I]t has made provisions . . . out of the wrong fund.”).

Plaintiffs ask this Court to interpret every requirement listed in *Bryan* as based on the constitution, rather than statute. This Court should

decline. Such a reading of *Bryan* would mean that like normal schools, high schools' status as a separate category of schools in the text of article IX, section 2 would also prevent them from being common schools, regardless of how the legislature has characterized them. This result would be absurd in our modern school system. *E.g.*, *State v. Monfort*, 93 Wash. 4, 6, 159 P. 889 (1916) (avoiding absurdity in constitutional interpretation). It would be similarly absurd in modern times for school district voters to have "complete control" over public schools, as *Bryan* implied was required. *Bryan*, 51 Wash. at 504. As even Plaintiffs recognize, some state control is required, both by the constitution and as a practical matter. Const. art. IX, § 2 (general and uniform provision), art. III, § 22 (Superintendent's supervisory authority).

Rather than accepting Plaintiffs' unworkable reading of *Bryan* as a static statement of constitutional imperatives, this Court should recognize that *Bryan* relied on then-existing statutes to give meaning to constitutional requirements. This Court has continued to do the same in interpreting article IX's provisions, providing broad guidelines but otherwise relying on the legislative branch to develop the substantive content of constitutional terms. *E.g.*, *Seattle Sch. Dist.*, 90 Wn.2d. at 518-19 (discussing the term "education"). The legislature has, over time, added high schools and kindergarten to the definition of "common schools," and since *Bryan* was decided, it has removed from the statutory definition the requirement that common schools be "under the control of [school district] boards of directors." *Compare* Laws of 1909, ch. 97, Title III, ch.1, § 1,

p. 261 *with* RCW 28A.150.020. Most recently, the people expressly provided that public charter schools are common schools. RCW 28A.150.010. “[T]he constitution was not intended to be a static document incapable of coping with changing times” (*Seattle Sch. Dist.*, 90 Wn.2d at 517), and this Court should not ignore these changes.

Moreover, since *Bryan*, the Court has recognized the legislature’s prerogative to both expand and contract the scope of the common schools. *Moses Lake*, 81 Wn.2d 551. In the mid-1940s, the legislature expanded the then-existing common school system to include thirteenth and fourteenth grades, and in the 1960s, it authorized school districts to establish and maintain community colleges. *Id.* at 552; Laws of 1945, ch. 115, § 2, p. 308. Then, in 1967, the legislature transferred the community colleges from the common school system to a new, separate community college system. *Moses Lake*, 81 Wn.2d at 552-53. The Court rejected constitutional challenges to this transfer, emphasizing the legislature’s prerogative to define the scope of the school system without running afoul of the article IX common school provisions. *Id.* at 558-61.

Plaintiffs alternatively assert that the constitutional definition of common schools must maintain certain essential characteristics, one of which must be a local school district’s power to hire and fire teachers. But this argument ignores that while the legislature, as a policy matter, has made school districts and local control central aspects of Washington’s school system, school districts are not mentioned *anywhere* in article IX. *See* Const. art. IX, §§ 1-5. Local district or local voter control of common

schools is certainly a historical tradition in Washington (*see* Laws of 1854, ch. II, p. 320-22), but it is not a constitutional requirement under the plain language of article IX. The constitutional framers certainly knew how to articulate local voter control, but they chose not to include it in article IX.

Instead, the Court has held that school districts are “creatures of statute” created by the legislature to administer public schools with only those powers expressly granted by the legislature. *Tunstall*, 141 Wn.2d at 232; *Moses Lake*, 81 Wn.2d at 556. While Washington’s legislature may generally adopt a system of local district control, without a constitutional requirement, it is also the legislative branch’s prerogative to allow exceptions.

In fact, the legislature has created several programs within its “Common School Provisions” that lack direct school district control over hiring and firing of staff, including Running Start and the UW highly capable program. Their higher education professors cannot be hired and fired by school district officials.¹⁷ The Court has recognized that article IX should adapt to evolving societal needs, and charter schools, like these programs, have been developed to serve unique needs of distinct populations of students.

As noted above, charter schools, like these other innovative

¹⁷ RCW 28A.600.310-.400; RCW 28A.185.040; *see also* RCW 28A.300.165; RCW 28A.150.305 (drop-out prevention and other programs run by educational service districts, the National Guard, or under contracts with private entities); RCW 28A.193.020(1)(a) (youth offender schools in adult institutions run by higher education, educational service districts, or private contractors); WAC 392-121-188; WAC 392-172A-04080-04110 (private contracts for special education and other instructional services); RCW 28A.715 (tribal compact schools).

programs, have accountability measures that satisfy the *Bryan* Court’s central concerns. Significantly, charter schools are subject to the ultimate accountability measure—families can vote with their feet, an option not available to many students attending underperforming traditional public schools. Public charter schools also have extensive accountability to public officials, who are in turn accountable to voters. Charter schools can employ only certificated teachers whose licenses are regulated by the Superintendent. RCW 28A.710.040(2). The Commission is appointed by elected officials, and school district authorizers supervise contracts with each charter school. RCW 28A.710.070(2), .080(2).

Public charter schools and their teachers are at least as accountable to the public as staff working in existing programs like Running Start, the UW highly capable program, and other educational service district or contracted programs. Charter schools fit within the current legislative definition of the term “common school” and they violate no principles stated in article IX. This Court should recognize an evolving common school system that is not etched in constitutional stone (*McCleary*, 173 Wn.2d at 526), holding that charter schools are “common schools.”

2. In Any Event, Charter Schools Can Be Funded Without Using Constitutionally Restricted Revenue or Accounts

In their attempt to block *any* funding for charter schools, Plaintiffs wander far afield of the actual funding restrictions imposed by the plain language of article IX. Although certain accounts and revenue sources are constitutionally restricted to common schools, total state appropriations

for public education vastly exceed revenues from these restricted sources. The Permanent Common School Fund, the Common School Construction Fund, and the state tax for common schools are the only funding sources that are constitutionally restricted. Plaintiffs fail to prove beyond a reasonable doubt that charter schools cannot operate without these funds.

a. Charter Schools Can Operate Without Access to the Well-Defined Permanent Common School Fund

The Permanent Common School Fund is a well-defined fund that was originally created with proceeds arising from land grants in territorial days. Troth at 86. When adopting the constitution, the framers maintained the “permanent and irreducible” quality of the pre-existing common school fund. Const. art. IX, § 3. They specifically enumerated the means through which the principal can be supplemented, including, for example, with proceeds from state mineral sales and escheated property, and with other funds specifically appropriated into the permanent fund by the legislature. *Id.*; *see also* Troth at 92. The principal must remain intact, and the legislature has provided for its investment. RCW 28A.515.300(2). Plaintiffs have not alleged, nor can they, that the principal of the permanent and irreducible fund identified in the constitution has been improperly appropriated. *See Moses Lake*, 81 Wn.2d at 560 (recognizing “the common school fund” in article IX, section 3 is precisely defined).

The 1889 Washington Constitution also provided that “interest accruing on [the Permanent Common School Fund,] together with all rentals and other revenues derived therefrom and from lands and other

property devoted to the common school fund shall be exclusively applied to the current use of the common schools.” Const. art. IX, § 3 (1889). In 1966, the people approved an amendment to article IX, section 3, creating the Common School Construction Fund “to be used exclusively for the purpose of financing the construction of facilities for the common schools.” Const. amend. 43. Notably, amendment 43 shifted the interest and revenue accruing on the Permanent Common School Fund after July 1, 1967, from support of the operation of common schools to the Common School Construction Fund. *Id.* Thus, neither the principal of, nor the interest or proceeds from the Permanent Common School Fund are now used for *any* school operating costs, including charter schools.

b. Charter Schools Will Operate Using General Fund Appropriations, Without Need for Any Revenue From the Current State Property Tax for Common Schools

Charter Schools receive general fund appropriations, and they need not obtain any revenue from the current state property tax for common schools. While Plaintiffs attempt to expand the scope of the constitutional restriction, they ignore the basic truism that the legislature has complete discretion to appropriate the vast majority revenues in the general fund.

The constitution requires that “the entire revenue derived from . . . *the* state tax for common schools shall be exclusively applied to the support of the common schools,” not the revenue from *any* tax ever used for the support of common schools, as Plaintiffs imply. Const., art. IX, § 2 (emphasis added); Appellants’ Op. Br. at 23. The use of the definite article

“the” reflects intent to identify a specific item—“the state tax for common schools.” *See, e.g., In re Strand*, 167 Wn.2d 180, 188-89, 217 P.3d 1159 (2009) (distinguishing between “a,” the indefinite article to be used when the thing is unspecified, and “the,” the definite article).

The constitution itself does not levy or designate a specific state tax for common schools. But since 1895, the legislature has dedicated some state property tax to the common schools, Laws of 1895, ch. LXVIII, p. 122, and since 1967, the legislature has imposed the current version, RCW 84.52.065. Subject to certain overall property tax limits, “in each year, the state shall levy . . . for the support of common schools of the state a tax of three dollars and sixty cents per thousand dollars of assessed value upon the assessed valuation of all taxable property within the state” as adjusted according to the statute. RCW 84.52.065. The revenue from the current state property tax levy is deposited into the general fund. RCW 84.52.067; CP at 1029, ¶¶ 6, 7.

The revenue from the state property tax for common schools amounted to \$1.879 billion in fiscal year 2012 and that revenue has been projected to rise to \$1.997 billion for fiscal year 2015. CP at 1029, ¶¶ 6, 7. Of course, nothing in the constitution prevents the legislature from spending more on education than only the revenues derived from the state property tax to support the common schools. On the contrary, ever since *Seattle Sch. Dist.*, 90 Wn.2d 476, additional funding has been necessary to meet the state’s constitutional duty “to make ample provision for the education of all children residing within its borders,” a duty whose plain

language is not limited to the “support of common schools.” Const. art. IX, § 1. For example, in fiscal year 2012, the legislature appropriated \$5.220 billion for public schools through formula-generated general apportionment for schools, as well as an additional \$1.197 billion in categorical education funding for special education, learning assistance, highly capable, institutional, and bilingual programs, and transportation, for a total of \$6.417 billion. CP at 1032. The revenue from “the state tax for common schools” made up only about 29 percent of the legislature’s appropriation to the Superintendent for allocation to Washington’s public schools in 2012. CP at 1029-32.

Plaintiffs estimate that the approved charter schools could eventually require allocation of \$20 million. Appellants’ Op. Br. at 18. This estimate is speculative because the opening of each charter school is contingent on many factors, no public dollars are provided to them until they open, and Plaintiffs’ calculations are based on estimates of the number of students who will attend. Joint Stip. ¶¶ 6, 10, 11. Even so, this amount is a small proportion of the State’s overall expenditures for public schools. It could easily come out of the more than \$4.4 billion in general fund education appropriations that have *not* been provided by the state tax for common schools (\$6.417 billion minus the projected \$1.997 billion state property tax revenue for 2015). CP at 1029-30. Or it could come out of any other unrestricted money in the general fund. Thus, even if charter schools could not be supported with revenue from “the state tax for common schools,” the general fund will contain sufficient money from

unrestricted sources to appropriate the necessary amounts to charter schools without resort to state property tax revenues. CP at 1030, ¶ 8.

Plaintiffs seem to suggest that the State must maintain the state property tax revenue in an account separate from the general fund or that it must mark and trace every dollar of revenue from the state property tax for common schools in order to prove that none will be spent on non-common school purposes. If this Court were to declare that state property tax revenues must be accounted for separately from the general fund, then the State could certainly do that, but this step is unnecessary when the record shows that the limited number of charter schools authorized by the Act can easily be supported from unrestricted general fund revenues. CP at 1029-30. A challenger must prove “by argument and research that the statute does in fact violate the constitution,” “in keeping with the fact that the Legislature possesses a plenary power in matters of taxation except as limited by the Constitution.” *Wash. Off Highway Vehicle Alliance v. State*, 176 Wn.2d 225, 234, 290 P.3d 954 (2012) (internal quotation marks omitted). Plaintiffs cannot show that a single dollar from restricted state property tax revenues has been or will be spent on charter schools.

Plaintiffs also attempt to expand the scope of the constitution’s funding restriction beyond its plain language, which requires revenues from “the state tax for common schools” be spent only for the “support of the common schools.” Const. art. IX, § 2. Plaintiffs attempt to turn this restriction on its head by applying the constitutional restriction to appropriations, rather than certain tax revenues. Relying on *State ex. rel.*

State Board for Vocational Education v. Yelle, 199 Wash. 312, 91 P.2d 573 (1939), they contend that any dollar that has been appropriated for basic education has necessarily come from revenue from *any* “state tax for common schools,” and therefore those dollars must also be constitutionally restricted. Appellants’ Op. Br. at 23. If Plaintiffs are correct, then the legislature’s approach to school funding has been unconstitutional for at least decades, and perhaps since the 1890s when the legislature made high schools “common schools.”

First, since *Vocational Education*, the Court has recognized the State must appropriate funding for public education beyond the constitutionally protected funds for the common schools, noting that article IX, section 5 of the constitution expressly refers to a broader category of “other state educational funds.” *Seattle Sch. Dist.*, 90 Wn.2d at 521 (“The constitutional draftsmen must have contemplated that funds, [o]ther than common school funds, were to be available for [a]nd used to educate our resident children.”). “The general and uniform system contemplated by the constitution is neither limited to common schools nor is it synonymous therewith.” *Id.* at 522; *see also Moses Lake*, 81 Wn.2d at 559. Article IX, section 2 “provides for something considerably more extensive.” *Seattle Sch. Dist.*, 90 Wn.2d at 522. It would contradict these more recent holdings for this Court to restrict all school appropriations to use for “common schools.” It would also render unconstitutional many

programs, like Running Start, where allocations are made to entities that do not meet Plaintiffs' restrictive definition of "common school."¹⁸

Second, the taxing and funding scheme in place when *Vocational Education* was decided was fundamentally different from the current system. In the late 1930s, the recently adopted Revenue Act required the deposit of tax revenues into several different accounts, including "the state current school fund" and "the state general fund." Laws of 1935, ch. 180 (The Revenue Act), § 211, p. 846; Laws of 1937, ch. 227, § 22, p.1165; Laws of 1939, ch. 225, § 31, p. 1016. The "current school fund" was expressly restricted by statute, and once revenues were deposited into it, those moneys had to be used exclusively for common schools. Laws of 1939, ch. 174, § 1, p. 527. For this reason alone, absent a change to the current school fund's statutory restrictions, the 1939 legislature's appropriation of current school fund money to support adult vocational education was improper, but this was a *statutory* restriction. *Vocational Education*, 199 Wash. at 313-17.

At that time, the state taxing and school funding schemes were fundamentally different in another way: the amount of the state tax for common schools was set according to how much funding was needed for the "current school fund," considering both need and other revenue sources. *See* Laws of 1939, ch. 174, § 1, p. 527. The amount of the state

¹⁸ *See, e.g.*, Laws of 2013, 2d Spec. Sess., ch. 4, § 502; RCW 28A.600.310(4) (Running Start); RCW 28A.185.040 (UW); RCW 28A.300.165; RCW 28A.150.310; (drop-out prevention); RCW 28A.150.305 (private contracts for educational services); RCW 28A.193 (juvenile offenders in adult institutions); RCW 28A.715 (tribal schools).

property tax levy for common schools was determined by calculating the amount necessary to provide the schools with “twenty-five cents per day per pupil for each day’s attendance” *Id.* § 4. The legislature deemed this amount “the basis for the state levy for current use to be applied exclusively to the common schools.” *Id.* Certain percentages of collected excise taxes were also placed in the current school fund, but only up to the limits of the calculated need. Laws of 1939, ch. 225, § 31, p. 1016.¹⁹ Thus, it makes sense for the *Vocational Education* Court to have described the dedicated “current school fund” and the “state tax for common schools” as one and the same, because the size of the fund established the tax rate.

Our legislature no longer funds schools through the “current school fund,” making the *Vocational Education* reasoning no longer relevant. In 1967, the legislature adopted RCW 84.52.065 returning the state property tax for common schools to a defined amount, now \$3.60 per thousand dollars of assessed valuation, subject to other limits. The revenues from the tax must be deposited into the general fund (RCW 84.52.067), and the legislature now appropriates most basic education funding from the general fund. *See, e.g.*, Laws of 2013, 2d Spec. Sess, ch. 4, §§ 501-516 (Operating Budget—Education).

Plaintiffs rely on the reference to common schools in RCW 28A.150.380(1), which requires the legislature to appropriate funds “for

¹⁹ In the 1930s there were several property tax initiatives capping the overall rate of property taxes, likely necessitating that some excise tax dollars also provide revenues to “the current school fund.” *See, e.g.*, Laws of 1935, ch. 2, § 1, p. 8; Laws of 1939, ch. 2, p. 5.

the current use of common schools.” Appellants’ Op. Br at 17-18. While common schools are certainly funded from the general fund in compliance with this requirement, nothing prevents the legislature from providing additional education funding to other public school programs, also out of the general fund. *E.g.*, Laws of 2013, 2d Spec. Sess, ch. 4, §§ 501-516, RCW 28A.150.380(2).

The duty to appropriate in RCW 28A.150.380(1) does not create a restricted “fund;” instead, it requires appropriations from whatever revenues are available to fund one aspect of Washington’s education system—the common schools. RCW 28A.150.380 is irrelevant to how other appropriations for educational programs are made from unrestricted general fund revenues.

Third, Plaintiffs suggest that the *Vocational Education* Court held that the constitutional provision *allowing* the legislature to make appropriations to the *permanent and irreducible* common school fund somehow forbids the legislature from using other moneys for other education purposes. Appellants’ Op. Br. at 23-24. That cannot be so, for such a reading would improperly expand the scope of the constitutionally protected Permanent Common School Fund, which by definition could not, and still cannot, be used for school operations. Const. art. IX, § 3. The Court has already expressly distinguished between the “common school fund” protected by article IX, section 2 and more general “public school funds” available for broader programs. *Moses Lake*, 81 Wn.2d at 560.

Ultimately, decisions about how to fund various obligations involve political questions that must be left to the legislature absent a clear constitutional restriction. *See Wash. Fed'n of State Emps. v. State*, 107 Wn. App. 241, 244-47, 26 P.3d 1003 (2001). Each year, the legislature is entitled to adjust basic education appropriations among basic education programs, and it would certainly be entitled to move basic education funding from one educational program to another so that the funding scheme can adapt to changes in enrollment in those programs. *See Seattle Sch. Dist.*, 90 Wn.2d at 522. This is all that the people have required with the Charter Schools Act. As noted, to hold otherwise would eviscerate preexisting programs, like Running Start, where allocations are made according to student enrollment in programs that do not meet Plaintiffs' restrictive definition of "common school." Such a restriction extends far beyond the plain language of Washington's constitution. The constitution in no way prevents the legislature from using other general fund revenues for broader basic education programs.

c. Charter Schools Can Operate Without Access to the Common School Construction Fund

Unlike the Permanent Common School Fund, the principal of the Common School Construction Fund can be appropriated. Since amendment 43, the Common School Construction Fund must be "used exclusively for the purpose of financing the construction of facilities for the common schools." Const. art. IX, § 3. The Common School Construction Fund is used exclusively to support the state portion of the

School Construction Assistance Program (SCAP).²⁰

The Charter Schools Act makes charter schools eligible for school construction assistance (RCW 28A.710.230(1)), but the Common School Construction Fund is not the only funding source the legislature uses to support SCAP. The legislature also uses money from the State Building Construction Account (funded with general obligation bond proceeds) to pay for school construction. *See* Laws of 2013, 2d Spec. Sess., ch. 19, §§ 5001-5020 (Capital Budget) (appropriating funds from both). Thus, even if the legislature could not appropriate from the Common School Construction Fund for construction or repair of charter schools, nothing would prevent it from using the State Building Construction Account, or even unrestricted revenues in the general fund. Moreover, because charter schools can lease or use existing buildings, it is entirely possible construction will not be necessary. RCW 28A.710.230.

In sum, Plaintiffs have failed to show, beyond a reasonable doubt, that there is no circumstance under which charter schools can be operated constitutionally. Charter schools do not require appropriations from the Permanent Common School Fund, the state tax for common schools, or the Common School Construction Fund.

3. Even If Charter Schools Are Not Common Schools, the Portions of the Charter Schools Act Declaring Them So and Allowing Them Restricted Funds Can Be Severed

Even if charter schools are not common schools, the trial court was

²⁰ *See* RCW 28A.525 (authorizing construction assistance); WAC 392-341 to WAC 392-347 (governing construction assistance program).

correct to conclude that the portions of the Charter Schools Act that declare charter schools to be common schools and give them access to the constitutionally restricted Common School Construction Fund are severable. Whether an initiative provision can be severed depends upon “whether the constitutional and unconstitutional provisions are so connected that it could not be believed” that the people would have adopted “one without the other,” and whether “the part eliminated is so intimately connected with the balance of the act as to make it useless to accomplish [the people’s] purposes.” *League of Educ. Voters v. State*, 176 Wn.2d 808, 827, 295 P.3d 743 (2013) (internal quotation marks omitted). This Court may treat the Act’s severability clause as conclusive unless it is “obviously false on its face.” *Id.*

Here, the voters’ intent was to allow up to 40 charter schools to open in Washington in the next five years, as part of the state’s overall public education system. Voters would have understood from Initiative 1240’s plain language that public charter schools would be funded, in part, with existing levels of education funding that would follow students from their current school to their charter school. RCW 28A.710.220. The legislature will appropriate the necessary funding out of the general fund according to the school allocation formula, and doing so will fulfill, not undermine, voters’ purpose. There is no reason to believe that voters would have rejected the Charter Schools Act unless charter schools meet a narrow definition of “common schools,” where there would be no practical impact other than possible changes in the legislature’s

accounting. Moreover, voters would not likely find it critical if charter school construction were funded from the State Building Construction Account, rather than the Common School Construction Fund. In fact, it is far from clear that construction will even be needed. Finally, Washington voters have often enacted unfunded education requirements, so Plaintiffs cannot show that voters would have rejected charter schools absent a secure funding stream. *See Federal Way Sch. Dist.*, 167 Wn.2d at 520 (describing Initiative 732, teacher COLAs without a funding source).

Even if this Court were to conclude that charter school funding must be appropriated in an operating budget section separate from traditional public schools, a technical change in budgeting would not undermine the voters' purpose. Thus, even if public charter schools are not common schools, the related portions of the Act are severable.

E. Appropriating General Fund Revenues to Charter Schools Fulfills, Rather Than Jeopardizes, Ample Funding Under Article IX, Section 1

Article IX, section 1 requires that the state amply provide for “the education of all children” in Washington. Plaintiffs assert that Washington’s public education system somehow does not encompass charter schools and, instead, charter schools will necessarily divert funds from that system. Yet public charter schools surely are a part of Washington’s public school system, even if they do not meet a narrow definition of “common school.” In fact, Plaintiffs’ argument ignores the Washington Supreme Court’s consistent approach to defining the contours of basic education, leaving such policy decisions to the legislative branch.

McCleary, 173 Wn.2d at 517 (“difficult policy questions inherent in forming the details of an education system,” are left to the legislative branch); *Tunstall*, 141 Wn.2d at 223.

At the very least, charter schools are part of the public school system and must provide a basic education as defined in RCW 28A. RCW 28A.710.040(2)(b). To the extent Plaintiffs complain that adding charter schools to the education system will make the state’s overall basic education obligation more expensive, the fact that the funding follows the students within the system, regardless of whether they attend a traditional public school, Running Start, or a public charter school, belies this point. The amount of private grant funding supporting charter schools also makes this an arguable proposition. Joint Stip. ¶ 12. Still, issues regarding the adequacy of state funding of basic education will be resolved in the course of the ongoing *McCleary* litigation, and are not justiciable here.²¹ It would be unheard of for a court to lop off pieces of the education system that it deems, as a policy matter, to be somehow less worthy than others.

F. Plaintiffs’ Levy Claim is Not Justiciable; Plaintiffs Cannot Show Any Improper Spending of Levy Funds

Plaintiffs’ levy claims are not justiciable, and they cannot show the Charter Schools Act’s levy provisions could never operate constitutionally. Plaintiffs assert that article VII, section 2(a) and article VII, section 5 of the Washington Constitution allow local levy funds to be

²¹ *Federal Way*, 167 Wn.2d at 528-30 (holding ample funding challenges brought by various non-school district plaintiffs were not justiciable).

spent only for the purpose approved by the voters when the levy was adopted, and that RCW 28A.710.220(6) and (7) violate these provisions. CP at 26 (Complaint). But no levy funds have yet been appropriated to charter schools. While Plaintiffs focus on an existing levy for the Spokane Public Schools, it is not certain a charter school will receive any of those levy funds, and even so that levy broadly covers operation and maintenance of public schools.

While it is not necessarily clear whether the source of the rule is article VII, the Court has held that local governments cannot expend levy funds raised “for a designated purpose” for a substantially different use. *Thompson v. Pierce County*, 113 Wash. 237, 241, 193 P. 706 (1920); *see also O’Byrne v. City of Spokane*, 67 Wn.2d 132, 136, 406 P.2d 595 (1965) (“radical” deviation would be improper). Whether an expenditure fits within the scope of the voters’ approval, depends upon the specific levy terms. *Thompson*, 113 Wash. at 242 (more general terms could have allowed the expenditure in question).

RCW 28A.710.220(6) discusses conversion charter schools, converted from an existing traditional public school into a public charter school. RCW 28A.710.010(8). Yet no conversion charter school has yet been authorized and it is unclear whether any conversion charter school will ever seek access to local levy funds. Thus, alleged injury from RCW 28A.710.220(6) is speculative, and not enough to establish a justiciable controversy. *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 415-16, 27 P.3d 1149 (2001) (no justiciable controversy where an event has “not yet

occurred or remains a matter of speculation”). And because conversion schools, by definition, must exist in the district before conversion to public charter status, voters would have approved levy funding for that school.

The Act also provides that “[n]ew charter schools are not eligible for local levy moneys approved by the voters before the start-up date of the school unless the local school district is the authorizer.” RCW 28A.710.220(7). Plaintiffs allege this provision will allow money from the Spokane Public Schools operations levy to be spent on a charter school. Appellants’ Op. Br. at 46. The Spokane Public Schools has authorized a public charter school, scheduled to open in fall 2015. While that charter school assumed some levy funding in its application, that is only the first step in the process. Several contingencies still exist, including whether the charter school will continue to meet pre-opening requirements. Joint Stip. ¶¶ 4-6. Moreover, while the Spokane-authorized charter school may be *eligible* for local levy money, it might not obtain any of these funds. RCW 28A.710.220(7).

More importantly, the existing Spokane levy, which will be paid into the District’s General Fund until 2016, has a broad purpose: “for maintenance and operation support” to meet the District’s “educational program[] and operation expenses.” CP at 254. Even if the District allocated levy revenues to the public charter school, that school’s operation fits within the levy’s broad terms: “educational programs” and “operation expenses.” This levy was not approved only for a specific school or project. Contrast with *Sheldon v. Purdy*, 17 Wash. 135, 137, 49

P. 228 (1897) (levy adopted for specific project). In sum, Plaintiffs cannot show that the Act will result in improper levy appropriations, and even if the Act's levy provisions were improper, they could be severed.

G. The Charter Schools Act Does Not Improperly Delegate the State's Paramount Duty with Regard to Education

The Charter Schools Act does not delegate the State's paramount duty to define "basic education," and any lesser delegation that does exist is subject to appropriate safeguards. The Court has held that sufficient standards are in place when the legislative body "define[s] in general terms what is to be done and the instrumentality or administrative body which is to accomplish it;" and where "[p]rocedural safeguards exist to control arbitrary administrative action and any administrative abuse of discretionary power." *Barry & Barry, Inc. v. State Dep't of Motor Vehicles*, 81 Wn.2d 155, 159, 500 P.2d 540 (1972). Yet requiring the legislative branch to "lay down exact and precise standards for the exercise of administrative authority destroys needed flexibility." *Id.* at 160; *see also United Chiropractors of Wash., Inc. v. State*, 90 Wn.2d 1, 6, 578 P.2d 38 (1978) (same test for delegation to a private entity).

As described above, the Act requires charter schools to provide the already-defined basic education through instruction in the detailed EALRs. RCW 28A.710.005(1)(n)(v), 040(2)(b). While Plaintiffs doggedly insist that charter schools will not provide any aspect of the program of basic education in RCW 28A.150.220, they ignore that the Act requires applicants to report how they will comply with .220, the Act assumes

funding for all of the programs listed in .220, the authorized applicants will meet or exceed instructional hour requirements, and the contracts can require compliance with .220.

Plaintiffs contend that delegating to public charter schools the ability to establish how the materials required in the EALRs will be taught is improper because charter schools will be operated by non-profit, non-sectarian entities. However, nothing in the state constitution prohibits the legislature from delegating operation of charter schools to non-profit entities, so long as sufficient safeguards are in place. *See United Chiropractors*, 90 Wn.2d at 6. Indeed, other statutes have long allowed school districts to contract with non-sectarian, private entities to provide instruction to public school students. *E.g.*, RCW 28A.150.305; RCW 28A.300.165 (National Guard); RCW 28A.193 (incarcerated juveniles); WAC 392-172A-04080 to -04110 (special education).

The Act imposes procedural safeguards sufficient to ensure that public charter schools do not abuse their power or otherwise act arbitrarily. *See Barry*, 81 Wn.2d at 159. Charter schools must comply with the terms of their contracts, which can incorporate statutory or regulatory requirements not specifically addressed in the Act, RCW 28A.710.040(3). Public charter school authorizers must approve a charter school's education plan, discipline plan, instructional hours, and all other elements of the charter school's extensive application. RCW 28A.710.130. Authorizers must continuously monitor charter schools and conduct ongoing performance evaluation. RCW 28A.710.180(1). Authorizers may

conduct investigations as long as they do not unduly inhibit the school's autonomy. RCW 28A.710.180(2). If needed, the authorizer can impose sanctions or require a corrective action plan. RCW 28A.710.180(4).

Authorizers can revoke or refuse to renew a charter contract "at any time" for any of several reasons, including: failure to comply with state or federal law or contract requirements, failure to make sufficient progress toward performance expectations, or fiscal mismanagement. RCW 28A.710.200. While operators must be given notice and an opportunity to be heard (RCW 28A.710.200(3)), there is no indication that the process will be unduly lengthy, and compliance with due process should not otherwise undermine a finding that appropriate safeguards are in place under *Barry*. Indeed, charter schools can be subject to sanctions that traditional public schools do not face, including nonrenewal if they fall in the bottom quartile of public schools. RCW 28A.710.200(2).

To the extent Plaintiffs focus on conversion schools, they misunderstand the conversion requirements. While applicants to convert existing schools must show sufficient parent or teacher support, this does not relieve them of any other requirement. RCW 28A.710.130(3). Where a family prefers not to participate in a charter school, the district must place the student in a traditional school. *See* RCW 28A.150.220(5). Staff not hired by the converted charter school would be entitled to continued district employment subject to the limits of their contract.

In sum, the legislature—not charter schools—defines basic education, which charter schools are required to provide. There is no

evidence any authorized charter school will not be required to comply with RCW 28A.150.220, and there are ample safeguards in place to avoid arbitrary action. Thus, Plaintiffs cannot prove beyond a reasonable doubt that unconstitutional delegation will occur.

H. The Superintendent Supervises Public Charter Schools in Compliance with Article III, Section 22

The Superintendent has the same level of supervisory authority over charter schools that he has over traditional public schools. Article III, section 22 provides: “The superintendent of public instruction shall have supervision over all matters pertaining to public schools, and shall perform such specific duties as may be prescribed by law.” The plain language recognizes legislative authority to define what the Superintendent’s specific duties are, so long as the legislative branch does not interfere with the general supervisory authority. 1998 Op. Att’y Gen. No. 6, at 2.

“Charter schools are subject to the supervision of the superintendent of public instruction and the state board of education, including accountability measures, to the same extent as other public schools, except as otherwise provided in [the Charter Schools Act].” RCW 28A.710.040(5). Thus, unless the Act specifically indicates otherwise, the Superintendent’s supervisory authority remains the same. Plaintiffs point to no provision that specifically divests the Superintendent of any particular aspect of his supervisory authority.

The Superintendent has supervisory authority over teacher certification in traditional and charter public schools, with the Professional

Education Standards Board, RCW 28A.410.010. The Superintendent establishes and revises the EALRs, with which charter schools must comply. CP at 373. He also supervises statewide assessments, in which charter schools must participate. RCW 28A.300.041(7). The Superintendent must make reports and recommendations to the legislature regarding the overall public education system, including charter schools. RCW 28A.300.040. Significantly, the Superintendent holds the power of the purse; he allocates funds from the legislature to the public schools, including charter schools, and he can withhold funds. RCW 28A.710.220; RCW 28A.150.290(2) (authority to establish conditions for funding); *see also State v. Preston*, 84 Wash. 79, 86-87, 146 P. 175 (1915).

Plaintiffs argue that the Charter Schools Act transfers some of the Superintendent's authority to the Commission, but it does not. The Charter School Commission is charged with "authoriz[ing] high quality public charter schools throughout the state, particularly schools designed to expand opportunities for at-risk students, and to ensure the highest standards of accountability and oversight for these schools." RCW 28A.710.070(1). The Commission must, "through its management, supervision, and enforcement of the charter *contracts*, administer the portion of the public common school system consisting of the charter schools it authorizes as provided in this chapter, *in the same manner as a school district board of directors.*" *Id.* (Emphases added). Thus, the Commission's role is parallel to that of school district authorizers, and it does not supplant the Superintendent's general supervision over the public

schools. While the Superintendent will not participate in the day-to-day operation of charter schools, it would be wholly impractical to suggest that the Superintendent could personally supervise the day-to-day operations of each public school, or even each of the 295 public school districts. Such a system would contradict the local control that Plaintiffs assert is required.

The Commission is no different than the State Board of Education or the Professional Educator's Standards Board, which are independent boards charged to address certain aspects of the education system, and neither of which defeats the Superintendent's supervisory authority. *See* RCW 28A.305; RCW 28A.410.010. Similarly, local school boards are responsible for developing performance evaluation criteria for staff, developing curricula that meet state standards, and evaluating instructional materials. RCW 28A.150.230. Such local oversight has never been held to encroach on the Superintendent's authority. The legislative branch can assign specific tasks to the Commission, just as it has done for these other entities within the education system. Plaintiffs cannot show a violation of article III, section 22.

I. The Charter Schools Act Complied with Article II, Section 37

The Superior Court was correct that the Charter Schools Act is a complete act that does not violate article II, section 37 of the Washington Constitution. Article II, section 37 provides that no act shall be "revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length." In applying this provision, the Court has analyzed whether the new enactment is a complete act such that

the scope of the rights or duties affected can be determined without referring to any other law, and whether a straightforward determination of the scope of rights or duties under existing statutes would be rendered erroneous. *See State v. Manussier*, 129 Wn.2d 652, 663, 921 P.2d 473 (1996). A complete act is not unconstitutional, “even though it may by implication operate to change or modify prior acts.” *Id.* at 664-65. What matters is whether the legislature or the people were misled. *Id.* at 665. The Charter Schools Act did not mislead voters, and it did not amend existing collective bargaining laws or any definition of basic education.

The Charter Schools Act created, for the first time, collective bargaining statutes that would address charter school employees. RCW 41.56.0251; RCW 41.59.031. Collective bargaining for charter school employees was not addressed prior to the Act because charter schools were never before authorized in Washington. The Act did not alter collective bargaining in any pre-existing statutes for other employees.

Similarly, the Act did not surreptitiously amend any portion of the Basic Education Act. As explained above, the Charter Schools Act does not alter the definition of basic education; it plainly requires that charter school students receive instruction in the EALRs. RCW 28A.710.040(2)(b). Some existing requirements will not apply to charter schools unless they are incorporated into the charter school contract. RCW 28A.710.040(3). Yet where the effect of a new statute is to decline to apply existing law in a new circumstance, that does not make a complete act violate article II, section 37. *See Citizens for Responsible Wildlife*

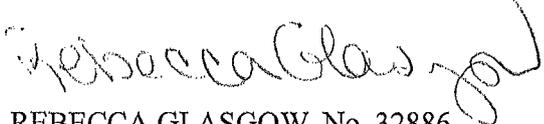
Mgmt. v. State, 149 Wn.2d 622, 640-42, 71 P.3d 644 (2003). “Nearly every legislative act of a general nature changes or modifies some existing statute, either directly or by implication but this, alone, does not inexorably violate the purposes of [article II,] section 37.” *Id.* at 640 (internal quotation marks omitted). The voters were not misled and, therefore, the Act does not violate article II, section 37.

VI. CONCLUSION

This Court should reverse the Superior Court in part, holding that public charter schools are common schools. This Court should otherwise affirm, concluding that Plaintiffs have not shown beyond a reasonable doubt that there is no set of circumstances under which charter schools could operate constitutionally.

RESPECTFULLY SUBMITTED this 30th day of May, 2014.

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HISTORY AND DEVELOPMENT OF COMMON SCHOOL LEGISLATION IN WASHINGTON

by

DENNIS C. TROTH



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II.

COMMON SCHOOL FUND

I. SCHOOL SUPPORT BEFORE 1854

Education was left unmentioned in the Federal Constitution, and the tenth amendment left the matter entirely to the states. This amendment reads:

Article X. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."⁵³

The Organic Act of Congress creating the Territory of Washington was approved March 2, 1853, and in section twenty of this act provision is made that sections sixteen and thirty-six of public lands in every township shall be reserved for common school purposes.⁵⁴

The few scattered and primitive schools prior to the Territorial legislature of 1854, were supported by private subscriptions, missionary support, and in rare cases by mutual local taxation, as was the case of support of the school at Olympia. When the first session of the legislature of the Territory of Washington was convened in Olympia on February 27, 1854, the first governor, Isaac Ingalls Stevens, appeared before the body with the first gubernatorial message. In that document is found the following paragraph:⁵⁵

"The subject of education already occupies the minds and hearts of the citizens of this Territory, and I feel confident that they will aim at nothing less than to provide a system which shall place within the means of all the full development of the capacities with which each has been endowed. Let every youth, however limited his opportunities, find his place in the school, the college, the university, if God has given him the necessary gifts. Congress has made liberal appropriations of land for the support of the schools, and I would recommend that a special commission be instituted to report on the whole system of schools. I will also recommend that Congress be memorialized to appropriate land for a university."⁵⁶

By an act of the first territorial legislature provision was made that the principal of all moneys accruing from the sale of any land given by Congress for school purposes, or which may hereafter be given by Congress for school purposes, shall constitute a permanent and irreducible school fund; the interest accruing from such moneys shall be divided annually among all the school districts in the territory, proportionately to the number of children between the ages of four and twenty-one living in each district. It was specified that this money should be used for the support of common schools and for no other purpose whatsoever. But owing to the fact that no public land commission had been provided by the legislature for the territory no immediate money from this source was received.⁵⁷

The following table shows the states receiving township section school grants for public schools.⁵⁸

⁵³ Constitution of the United States, Article X.

⁵⁴ The Organic Act, 1853, Section 20.

⁵⁵ Dewey (H. E.) *History of Education in Washington*, 1909, p. 7.

⁵⁶ *Ibid.*

⁵⁷ *Liter of Washington*, 1854, pp. 319-21.

⁵⁸ Swain (F. H.), *Federal Aid to Public Schools*, 1922, Bulletin No. 47, p. 11.

COMMON SCHOOL LEGISLATION BY WASHINGTON
FEDERAL LAND GRANTS FOR COMMON SCHOOLS
 (States and sections in each congressional township)

TABLE I

Group 1. States receiving Section No. 16

Acres		Acres	
Alabama	911,627	Louisiana	807,244
Arkansas	931,773	Michigan	1,071,807
Florida	975,307	Mississippi	822,210
Illinois	966,320	Missouri	1,121,517
Indiana	668,573	Ohio	1,221,264
Iowa	983,196	Wisconsin	667,126

Group 2. States receiving Sections Nos. 16 and 36

California	5,534,923	Nevada	2,061,967
Colorado	3,685,616	North Dakota	2,495,286
Idaho	2,088,698	Oklahoma	1,132,000
Kansas	2,007,820	Oregon	1,399,300
Minnesota	2,874,951	South Dakota	2,721,084
Montana	5,198,258	Washington	2,376,891
Nebraska	2,730,951	Wyoming	3,470,000

Group 3. States receiving Sections Nos. 2, 16, 32 and 36

Arizona	8,093,186	Utah	7,841,195
New Mexico	4,355,662		

TOTAL (not including Alaska) 73,158,075 acres, or 114,304.8 square miles
 Alaska reservations* (sections 16 and 36) 21,009,209 acres, or 32,826.8 square miles
 GRAND TOTAL 94,167,284 acres, or 147,131.6 square miles.

Three states, Arizona, New Mexico, and Utah, have received from the Federal Government, for the support of public schools, sections 2, 16, 32, and 36 in each township.

The following table shows the states receiving no Federal land grants for common schools:

EXISTING STATES WHICH RECEIVED NO FEDERAL LAND GRANTS FOR COMMON SCHOOLS

TABLE II

The thirteen original states and four admitted later.

Connecticut	New Jersey	Virginia
Delaware	New York	Vermont (1791)
Georgia	North Carolina	Kentucky (1792)
Maryland	Pennsylvania	Maine (1820)
Massachusetts	Rhode Island	Texas (1845)
New Hampshire	South Carolina	West Virginia (1863)

2. COUNTY AND DISTRICT SUPPORT

In the absence of any available funds from school lands at this time, for the purpose of establishing and maintaining common schools, the county commissioners of each county were authorized by an act of the legislature to accept an

* Reserved but not granted; area estimated.
 † Smith (P. H.), *Federal Aid to Public Schools*, 1922, Bulletin No. 17, p. 9.

annual tax of two mills on a dollar, on all taxable property in the county. All money collected from this source was appropriated for the benefit of school teachers. In addition to the two mill levy by the county commissioners, the first territorial legislature gave authority to district meetings, legally called, to levy a tax upon the property of the district for any purpose whatever connected with, and for the benefit of public schools, and the promotion of education in the district.⁶⁴

Special taxes were made possible to meet the deficiencies in the annual school funds of the different counties and districts of the territory by an amendment to the school law of 1854, approved January 30, 1858, in which provision was made whereby any legally called school meeting, by a majority vote of the legal voters subject to school tax, could vote to levy a special tax not to exceed twenty-five cents on the one hundred dollars valuation on the taxable property of the district, for school purposes.⁶⁵ The county tax was changed a number of times to meet emergencies. Three mills on the dollar was authorized in 1860.⁶⁶

Another scheme for raising local school funds which apparently was carried over from pre-territorial times by the legislature of 1860 and enacted into law, was that of authorizing the directors to assess parents or guardians of children attending school for their portion of the necessary expense of sustaining the school, in the way of tuition, fuel, and the like, in proportion to the number of children sent by each.⁶⁷

For further support of common schools, the county treasurer was authorized to set aside all money received by his office arising from fines for breach of any penal laws committed in the territory. The money received from this source was added to the yearly school fund raised by tax, and appropriated in the same manner.⁶⁸

During the Civil War when the territory became burdened with financial obligations, school finances suffered and as a measure of relief the legislature of 1861 enacted a law authorizing the county commissioners of any county, when they were convinced that the welfare of the common schools demanded it, to sell the lands within their respective limits, which had been donated by Congress for school purposes.⁶⁹ This land was to be sold in subdivisions not more than one hundred and sixty acres, to the highest bidder, at the minimum price of one dollar and twenty-five cents per acre.⁷⁰ The moneys received from these lands were to be loaned out at the legal rate of interest. The law particularly states that the principal should not be reduced but should be a permanent fund for school purposes only.⁷¹ If there was no school district within the limits of the township in which the land was sold, the voters, by a two-thirds vote could appropriate the money received from the sale of the land to the

⁶⁴ *Laws of Washington, 1854*, p. 326, Section 6.

⁶⁵ *Ibid.*, 1858, p. 22, Section 21.

⁶⁶ *Session Laws, 1860*, p. 34.

⁶⁷ *Ibid.*, 1854, p. 320.

⁶⁸ *Laws of Washington, 1860*, p. 316, Section 19.

⁶⁹ *Ibid.*, 1861, p. 31, Section 1.

⁷⁰ *Ibid.*, 1861, p. 32, Section 3.

⁷¹ *Ibid.*, 1861, p. 32, Section 4.

support of schools in the districts convenient to them. The law provided for one school in Yakima, Kitchikan, Okanogan, Pierce, Chelan, Grant, and Walla Walla Counties until later.¹²

Two years later, January 23, 1869, provision was made whereby the state commissioners under certain conditions could sell certain sections of land. If they were not for not less than one dollar and fifty cents per acre, such lands were granted to persons who were rightfully in possession of any part or parts of sections sixteen and thirty-two previous to the public survey.¹³ This provision in the purchase was provided for in the Donation of Pre-emption Act.¹⁴

In January, 1870 the need for funds became so general throughout the territory that an act was approved allowing the directors of any school district to levy a special tax not exceeding two mills for maintaining a school in that district, upon a petition signed by a majority of all the parents and guardians of the scholars and resident property holders paying taxes in such districts.¹⁵

On November 29, 1871, another law was approved to take effect January 1, 1872, which raised the annual tax for schools to four mills on the dollars. The law also gave district power to levy taxes for school purposes additional to the former mill tax.¹⁶

A law approved November 14, 1873, repealed all preceding acts in relation to common schools, and enacted a new law with the following changes in regard to school lands: (1) Provision was made for levying a tax of not more than four mills; (2) the new law restricted the power of district meetings to levy a district tax "for any purpose whatsoever connected with and for the benefit of the study and promotion of education in the district," to "a tax not exceeding ten mills on a dollar for the purpose of building and repairing school houses;" (3) it requires voters in districts to be taxpayers as well as residents; (4) it repealed the compulsory feature of the former law.¹⁷

An act approved November 9, 1877, relative to the public school system of the Territory of Washington gave boards of directors of any school the privilege, when they deemed it advisable, to submit to the qualified school directors of such district the question of whether a special tax, which should not exceed ten mills, should be raised "to furnish additional school facilities for the district, to maintain any school or schools in the district, or for building one or more school houses, or for removing or building additions to one already built, or for the purchase of globes, maps, charts, books of reference and other appliances or apparatus for teaching, or for any or all of these purposes."¹⁸

¹² Laws, 1867, pp. 32-33, Section 8.

¹³ Laws, 1869, pp. 46-7.

¹⁴ Laws, 1869, Section 9.

¹⁵ Laws of Washington, 1870, p. 12, Section 1.

¹⁶ Laws, 1871, pp. 13-14.

¹⁷ Laws of Washington, 1873, p. 43, Section 4.

¹⁸ Laws, p. 43, Section 21.

¹⁹ Laws, p. 46, Section 31.

²⁰ Laws of Washington, 1877, Title XV, Section 31, pp. 280-1.

Again in 1881 the directors of school districts, composed of incorporated towns or cities were authorized to levy a special tax not exceeding ten mills in any one year, when in their opinion it was necessary for building school houses.⁴¹ The same legislature made provision for levying a special tax not to exceed five mills, in any one year, for tuition purposes.⁴² In 1883 a law was enacted making it the duty of the county commissioners to levy a tax of not less than three mills nor more than six, for the support of common schools.⁴³ When more money was needed for additional school facilities school directors could submit the question of an additional levy to the qualified voters.⁴⁴

The last territorial legislation affecting school funds was enacted by the legislature of 1886 whereby the county commissioners were required to levy a tax of not less than three mills nor more than six, for establishing and maintaining public schools.⁴⁵ In case further funds were needed for building purposes or equipment the directors were authorized to place the question before the qualified voters for a decision in the matter.⁴⁶ School laws regarding school funds, have been passed at nearly every session of the territorial legislature from 1854 to 1889, but the object aimed at has been but slightly changed.

The legislature of 1889-90 made it the duty of the county commissioners to levy a tax of not less than four nor more than ten mills for school purposes. The district directors were authorized to levy a tax of five mills. A higher levy than five mills required a majority vote of the district. This could not exceed ten mills.⁴⁷

In 1891 the minimum county levy remained at four mills but the maximum levy was reduced to six mills.⁴⁸

The county school tax was again changed in 1897 by authorizing the county commissioner to levy a tax not to exceed eight mills for school purposes. The district levy remained, the minimum at five mills, and the maximum at ten mills.⁴⁹

In 1901 school directors were authorized to levy a special tax not to exceed ten mills for the purpose of furnishing additional school facilities within their district. No tax exceeding five mills could be levied until such a levy was ordered by a majority vote of the electors of the district at a special election. The boards of directors of union districts could levy a special tax not to exceed three mills, and the levying of such tax by union school district boards would not prevent the electors of any district within such union district from levying a tax of ten mills.⁵⁰

In 1903 a law was enacted which prohibited the annual expenditure of

⁴¹ *Ibid.* 1881, p. 26, Section 4.

⁴² *Ibid.* 1881, p. 26, Section 5.

⁴³ *Ibid.* 1883, p. 17, Section 35.

⁴⁴ *Laws of Washington, 1885*, p. 21, Section 89.

⁴⁵ *Ibid.* 1886, p. 20, Section 53.

⁴⁶ *Ibid.* 1886, p. 20, Section 80.

⁴⁷ *Ibid.* 1889-90, p. 461, Section 32.

⁴⁸ *Ibid.* 1891, p. 309, Section 24.

⁴⁹ *Ibid.* 1897, p. 167, Section 63.

⁵⁰ *Ibid.* 1901, p. 331, Section 17.

from exceeding the annual revenue. The county commissioners were authorized to levy not to exceed three mills, the proceeds of which constituted a special fund for the payment of the district indebtedness. The same law authorized the county commissioners to levy a tax not to exceed eight mills in rural districts. In districts of ten thousand or more population a ten mill levy was authorized. Two more mills could be levied by a vote of the district. The county commissioners were also authorized to levy a tax of one-tenth of one mill for library purposes.⁹¹

For the purpose of school sites, buildings, furnishings of, and so forth, and the creating of a sinking fund for the payment of indebtedness, the directors were authorized, in 1907, to expend, in cities having a population of more than ten thousand and less than fifty thousand, a sum not exceeding fifty thousand dollars, in cities having a population of not less than fifty thousand, nor more than one hundred thousand, a sum not exceeding one hundred thousand dollars, and in cities having a population exceeding one hundred thousand, a sum not exceeding two hundred thousand dollars. When a greater expenditure was required in any one current school year, the question was submitted to a vote of the district. The board of directors had power to proceed to condemn and appropriate sufficient land for a school house site not to exceed five acres in extent.⁹²

In cities of ten thousand or more inhabitants, the aggregate tax should not exceed one per cent in one year, provided the board of directors, by unanimous vote on all the members, could determine upon a greater tax, not exceeding two per cent.⁹³

In 1909 the legislature enacted a law which was a long step in equalizing taxation and educational opportunities within the various counties of the state by requiring the county commissioners to levy a county tax sufficient to produce ten dollars for each child of school age, providing the tax shall not exceed five mills. Two-thirds of this revenue is apportioned on the basis of actual days attendance, and the remainder on the basis of the number of teachers employed.⁹⁴

In 1909 a large increase in both county and district levy was authorized. The school boards of districts of the first class were authorized to levy a school tax not to exceed one per cent of the assessed valuation of the district. When a greater expenditure was necessary the matter was submitted to a vote of the district. The maximum of a special levy was two per cent of the assessed valuation of the district. The same law applied to districts of the second class and to the third class.⁹⁵

In 1917 the county commissioners were authorized to levy a tax not to exceed two mills, against all non-union high school districts for the purpose of educating non-resident high school pupils.⁹⁶

⁹¹*Code of Washington*, 1903, p. 332, Section 1.

⁹²*Ibid.*, 1907, p. 41, Section 4.

⁹³*Ibid.*, 1907, p. 42, Section 5.

⁹⁴*Ibid.*, 1909, p. 332, Section 5.

⁹⁵*Ibid.*, 1909, Chapter 97, p. 303.

⁹⁶*Ibid.*, 1917, Chapter 2, p. 68.

No later legislation has been enacted relative to county and district support.

3. PERMANENT SCHOOL FUND

The makers of the State Constitution wisely provided for a permanent and irreducible endowment, or school fund for the common schools; the income from which provides for a current expense school fund.

The permanent school fund is derived from the following sources:

1. The principal of all funds arising from the sale of lands and other property granted to the state for the support of common schools.
2. Appropriations and donations made by the state to this fund.
3. Donations and bequests by individuals to the state or common schools.
4. The proceeds of land and other property which revert to the state by escheat and forfeiture.
5. The proceeds of all property granted to the state, when the purpose of the grant is not specified or is uncertain.
6. Funds accumulating in the treasury of the state for the disbursement of which provision has not been made by law.
7. The proceeds of the sale of timber, stone, minerals or other property from school and state lands other than those granted for specific purposes.
8. All moneys other than rentals recovered from persons trespassing on said lands.
9. Five per centum of the proceeds of the sale of public lands lying within the state, which shall be sold by the United States subsequent to the admission of the state into the Union as approved by section fifteen (15) of the act of Congress enabling the admission of the state into the Union.
10. The principal of all funds arising from the sale of lands and other property which have been and hereafter may be granted to the state for the support of common schools.
11. Such other funds as may be provided by the legislative enactment.

The amount of the Permanent School Fund on March 31, 1922, was \$16,430,133.37.¹⁰ The State Constitution specifies that all losses to the permanent school fund, which may be the result of mismanagement or fraud of agents or officers managing the funds, a permanently funded debt against the state in favor of the particular fund sustaining the loss, upon which not less than six per cent interest will be paid.¹¹

4. CURRENT SCHOOL FUND

The makers of the constitution did not stop after providing for a permanent school fund. They wisely enacted legislation which guarantees an annual source of funds with which to defray the expense of maintenance and operation of the common schools from year to year. The state constitution provides that income from the following sources shall apply annually to the current

¹⁰ *Statistical Tables*, 1930-31, Table 10, Section 50, p. 250.
¹¹ Preston (Josephine Condit), Superintendent of Public Instruction, *School Reports*, 1922, p. 1.
¹² *State Constitution*, Article IX, Section 5.

of the common schools. The interest accruing on the permanent school fund, together with rentals and other revenues derived therefrom, from lands and other property devoted to the common school fund shall be applied to the current use of the common schools.¹⁴⁰

Perhaps no other single phase of school legislation is more significant and interestingly carried out than that phase which states that all schools supported wholly or in part by public funds must be forever free from sectarian control or influence.¹⁴¹

The legislation began very early to supplement the source of the current school fund by enacting laws from time to time which provided that all sums of money derived from fines imposed for violation of orders of injunction, attachment, and the like, for contempt of court, and the net proceeds of all fines collected for breach of penal laws, and from the sale of lost goods and chattels and from penalties and forfeitures should be deposited with the state treasurer to be placed to the credit of the state current school fund.

TABLE III

Stats of Common School Grant to and including September 30, 1924

(Being Sections 19 and 36 and Approved Licu. Selections.)
(Report Commissioner of Public Lands, 1924, p. 27.)

Location of Approved Area, Counties	Total Area, Acres	Area Sold, Acres	Balance Remaining in Grant, Acres
Adams	84,375.37	27,217.39	57,157.98
Asotin	24,649.97	4,367.22	20,282.75
Benton	75,443.08	11,954.47	63,488.61
Chelan	43,506.78	4,027.21	39,479.57
Chittenden	34,449.87	4,470.85	30,000.00
Clark	24,048.74	11,826.67	12,222.07
Columbia	23,200.00	9,441.61	13,758.39
Coville	40,706.16	10,739.01	29,967.15
Douglas	69,460.68	23,262.40	46,198.28
Franklin	23,123.87	915.24	22,208.63
Garfield	47,371.24	7,527.00	39,844.24
Grant	19,180.75	8,929.53	10,251.22
Grant	122,440.83	34,864.71	87,576.12
Grant	48,017.95	13,139.78	34,878.17
Island	10,340.66	5,872.74	4,467.92
Lincoln	47,070.02	2,740.61	44,329.41
Linn	51,280.04	22,998.13	28,281.91
King	13,412.35	6,056.32	7,356.03
Knap	167,315.91	10,146.27	157,169.64
Knap	81,796.87	12,687.56	69,109.31
Klickitat	68,415.62	12,664.25	55,751.37
Lewis	81,141.97	32,419.26	48,722.71
Mason	23,383.42	5,157.87	18,225.55
Okanogan	33,841.09	9,789.01	24,052.08
Pacific	38,196.82	6,877.57	31,319.25
Pacific	31,721.82	3,843.02	27,878.80
Panama	34,549.02	17,753.31	16,795.71
Pierce	35,745	2,834.26	32,910.74
Spokane	29,698.11	9,107.83	20,590.28
Spokane	19,970.34	2,577.52	17,392.82
Stromboli	35,380.81	17,528.46	17,852.35
Snohomish	61,839.18	33,978.60	27,860.58

Appendix 000009

HIGH SCHOOLS

The modern high schools of Washington had their beginning in the graded schools that were established in the seventies. When communities were populous enough to have their schools graded, many added such subjects as algebra and bookkeeping to the common branches. Although high schools were flourishing in other states, the report of the Commissioner of Education in 1877 contained nothing concerning high schools in Washington Territory. For years, however, the University had maintained a high school department to prepare students for college.

The legislature of 1877 provided for union, or graded, schools in which instruction should be given in the higher branches. Also the Board of Education, created by the same act, was given authority to prescribe rules for the general government of the public schools,³⁰⁰ and among other things it classified these union schools as primary, intermediate, grammar and high schools. The curriculum of the junior class of the high school included algebra, English, and analysis throughout the year, physiology, and zoology the first half, philosophy and bookkeeping the second half. The senior curriculum included geometry and history throughout the whole year, with botany and the United States Constitution the first half and astronomy and chemistry the second half. Rhetorical exercises were given throughout the whole high school course.³⁰¹

In 1881, the legislature enacted a law to the effect that no language other than English and no mathematics higher than arithmetic should be taught in these schools.³⁰² This clause met with bitter opposition everywhere and the next legislature made provision permitting these subjects to be taught in graded schools maintained by incorporated cities.³⁰³ Again in 1885, Latin was eliminated by an act of the legislature.³⁰⁴

There is no information to be found in state and national reports covering the high schools in the territory between the years 1881 and 1889, however, how many such schools were in existence. A Seattle school record shows that a high school was started in that city in the year 1885 and that the first class was graduated in 1886. The school for the first year had a registration of thirty-six, which is evidence that there was a public demand for a high school. This, it is believed, can be learned, was the first regularly organized public high school in the State of Washington. Only a three-grade high school was at that time maintained, and no foreign languages were taught.

It might be interesting to note in this connection that high schools had no legal status in Washington during its territorial days, nor during its statehood.

³⁰⁰ *Laws of Washington, 1877*, pp. 277-8.

³⁰¹ *Ibid.*, 1877, p. 262, Section 11.

³⁰² Report of Superintendent of Public Instruction (1879), p. 15-22.

³⁰³ *Laws of Washington, 1881*, p. 27.

³⁰⁴ *Ibid.*, 1883, p. 18, Section 63.

³⁰⁵ *Ibid.*, 1885-6, p. 22, Section 63.

until the year 1895.¹⁸⁴ All public money spent in the maintenance of schools during this period was illegally spent, but illegally spent as it was in schools in the territory and state notwithstanding grew in number, their work was made more comprehensive, and their efficiency increased, until the spring of 1893, when a few overburdened taxpayers in the city of Seattle (times having grown hard) threatened the city school board with injunction should it continue the illegal expenditure of the city's money in support of high school. Because of threatening legal entanglements, the school was abolished by action of the school board.

As soon as the action of the board became known to the public, friends of the school instituted a campaign to have the board rescind its action if possible. The best legal talent of the city was summoned to help devise some scheme or plan whereby the school could be legally reopened and continued.

Two weeks later, at the termination of the vacation, the school was brought back into official existence under the name of "The Senior Grammar School of Seattle," under which name it operated until 1895, when the legislature of that year passed an act giving high schools their first legal status in Washington.

At the time of its abolishment, the Seattle high school had a registration of 264 pupils in a city of 45,000 population, or six high school pupils to every one thousand inhabitants.¹⁸⁵ At present, 1925, Seattle has an enrollment of 13,168¹⁸⁶ high school pupils out of a population of 411,578¹⁸⁷ inhabitants, or thirty one high school pupils to every one thousand population.

In the course of time parts of the state were becoming densely populated and the management of school was becoming a complex problem. In 1890 a law was passed making all incorporated cities of 10,000 or more inhabitants individual districts, each having its own board of education, consisting of its members having the power to adopt and enforce such rules and regulations (including night schools) that would best promote the interests of education in the district.

The larger high schools were now made to put what they chose into their curricula. A glance at the curricula of the high schools in 1891 shows that such academic subjects as algebra, geometry, trigonometry, and physics were offered. Most schools maintained only three year courses. Others, however, gave a thorough Latin preparatory course in addition.

The next biennium shows the curricula divided into classical courses and typical ones being Classical, Scientific, English, Commercial and Industrial.

¹⁸⁴ Laws of Washington, 1895, Chapter 130, p. 375.

¹⁸⁵ Twenty-sixth Biennial Report of the Superintendent of Public Instruction, pp. 293.

¹⁸⁶ Information obtained from the office of the Superintendent of Public Instruction, Schools, July 2, 1925.

¹⁸⁷ Seattle Daily Times Information Bureau, July 2, 1925.

¹⁸⁸ Laws of Washington, 1889, ch. 45, Title XIV, Section 4.

¹⁸⁹ First Biennial Report of the Superintendent of Public Instruction, 1890.

THE ECONOMICS AND POLITICS OF WASHINGTON'S TAXES

From Statehood to 2013

What Caused the Tax Increases?



What does the Future Hold?

Don Burrows, Former Revenue Director

Deficit Spending

State revenue shortfalls are not new. In fact, the state had deficits during most of the early years.¹⁰¹ These were mostly due to the time delay between when the expenditures were made and when state's property taxes came into the state treasury. During these revenue shortfall periods, the state would issue warrants to its employees, suppliers, etc. The banks would accept the warrants at face value and collect interest until the state redeemed them. When there was an extended delay in paying off the warrants, banks became concerned and often threaten not to accept them.

Taxes during the Early Years

(1889-1912)

Property Taxes

The state's tax history begins and ends with the property tax as the predominant source of state and local tax revenue during this period: It accounted for approximately 90 percent of the combined tax revenues of state and local governments during the first 23 years of statehood.

Property Tax Rates

There was no limit on property tax rates in the original state Constitution. The legislature set the limits. The maximum combined allowable property tax rate for the state, counties, and schools was set at 24 mills (i.e., \$2.40 per \$100 of assessed value). The cities' authority for levying taxes was in separate legislation and not subject to the \$2.40 limit. Classified cities were authorized to levy property taxes not to exceed 10 mills (i.e., \$1 per \$100 of assessed value). There were a few junior tax districts, including drainage, irrigation, diking and metropolitan parks, which were authorized to make property tax levies. Most of those districts had to have voter approval before making their levies. Thus, the total authorized property tax rates (i.e., taxes as a percent of full market value) for "regular levies" ranged from 3.4 percent of true and fair (i.e., market) value inside first class cities to 2.4 percent outside city limits

Effective vs. Nominal Rates

The actual effective tax rates on property were much lower than the maximum nominal rates in the law. This was because the counties' assessment levels were far below the 100 percent of full value required by law. Most property was assessed at 25 percent or lower. A nominal levy of \$2.40 per \$100 of actual assessed value was equal to a 0.6 percent effective rate on property assessed at 25 percent of its full value.

The statewide average effective rate of property tax increased from 0.7 percent in 1890 to 1.6 in 1912. The increase was due primarily to the increases in the tax rates. Assessment changed very little during the period. The effective tax rate varied considerably from property to property and county to county because of differences in assessment levels and tax rates. Property tax rates in the heavier populated areas, where more government services were provided, were higher than in the rural areas of the state.

Causes of Property Tax Increases

Increases in road expenditures and increases in school enrollments were major causes of property tax increases. The growing numbers and use of automobiles required more roads and state highways.

¹⁰¹ In a letter to Governor Ellsha Ferry on March 18, 1890, J. M. Reed, president of the First National Bank of Olympia, agreed to loan the state \$300,000. The loan was redeemed through annual legislative appropriations.

The first state property tax levy for public highways was made in 1906 at 0.25 mills. By 1913, the state's property tax levy for highways totaled 2.75 mills, a ten-fold increase in the rate in the seven years.

A combination of a rapid increase in K-12 public school enrollments and the passage of a law requiring increased state government support of local schools resulted in increases in the state government's property tax rates for education. The first earmarked state property tax levy for schools was made in 1895 and accounted for about 50 percent of total state property tax levies.

In 1889, there were three high schools in the state with 320 students enrolled. By 1912, there were 307 high schools with 17,640 students enrolled.¹⁰² During the first years of statehood, school districts relied on county and local school district property tax revenues and some contributions from the state's Permanent School Fund for their financial support but that was changing.

The state government's role in the funding of local schools was greatly changed in 1895. The legislature passed the "*Barefoot Schoolboy Law*" that year (Ch. 68). The new law guaranteed every child in the state a common school education. It required the State Board of Equalization to make annual property tax levies that would, when combined with the earnings from the permanent school fund, raise \$6 for every child of school age in the state. This was the beginning of the state government's major involvement in the financial support of the public schools. State government financial support of K-12 has been a major factor in the growth of state expenditures and state taxes throughout the state's tax history.

At first, the state government simply provided each school district with a flat dollar amount per student. In later years, the legislature made equalization payments in addition to the flat dollar amounts. Under the equalization system, school districts with low per capita property valuations are provided proportionately more state funds.¹⁰³

Earmarking of Property Taxes

The state government's property tax levy was increasingly being earmarked for specific programs during this period. Separate levies were made for supporting general government and military (i.e., the National Guard) expenditures during the first year of statehood. By 1913, the state was making 10 separate dedicated property tax levies, including levies for the general fund, military, public schools, two highway levies and five separate levies for each of the state's institutions of higher learning.

Property Tax Revenues: 1890 -1912

As shown in Table 6-1, total property taxes of the state and local governments increased from \$3.7 million in 1890 to \$28.1 million by 1912, a 660 percent increase in 22 years. During the same period, the state government's property tax levy went from \$0.8 to \$5.4 million. Total local government property taxes (i.e., cities, counties and schools) in 1890 were \$2.9 million. By 1912, they had increased to \$22.7 million.

¹⁰² At statehood, a grade school education was adequate training for the vast majority of available jobs and children often started to work at a very young age.

¹⁰³ For many years, the assessors' property values were used to determine the amount of school equalization grants given to the school districts. According to State Board of Tax Commissioners, some counties were deliberately using low assessment levels to gain more state equalization revenues for their local schools. As a result, the legislature made changes in school funding formula to eliminate the problem of counties gaining additional state school funds because of low assessment practices.

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HISTORY OF EDUCATION IN WASHINGTON

By

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and

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TABLE 13.—*Census, enrollment, attendance, graduates, 1890-1933*

Year	Number of census children	Number of pupils enrolled in—				Number of pupils in average day's attendance	Number of graduates from—		Percent high-school enrollment is of total enrollment
		Kindergarten	Elementary school	High school	Total		Elementary school	High school	
1	2	3	4	5	6	7	8	9	10
1890	87,813		55,644	320	55,964	36,946			0.57
1891	100,396		68,917	693	69,610	44,411		48	1.99
1892	106,130		77,754	1,065	78,819	50,716		45	1.55
1893	112,300		82,992	987	83,979	54,680		80	1.18
1894	115,160		85,180	1,540	86,720	58,399	622	179	1.78
1895	119,357		88,387	1,830	90,217	61,676	473	209	2.03
1896	120,563		87,773	2,340	90,113	63,212	726	388	2.60
1897	118,252		90,457	2,561	93,018	63,641	847	340	2.75
1898	118,491		95,286	2,630	97,916	64,192	968	367	2.69
1899	127,069		102,791	3,064	105,855	67,275	1,089	265	2.89
1900	139,097		110,918	4,186	115,104	74,717	1,725	382	3.64
1901	152,541		118,561	4,830	123,391	81,400	2,125	404	3.91
1902	168,582		130,991	5,633	136,624	91,333	1,729	521	4.12
1903	183,292		143,561	6,192	149,753	101,088	2,602	576	4.13
1904	196,347		154,449	7,202	161,651	110,774	3,177	652	4.46
1905	207,099		161,326	9,060	170,386	118,852	3,702	765	5.32
1906	219,911		169,073	10,919	179,994	127,505	4,631	817	6.07
1907	235,061		175,902	13,087	188,989	130,750	4,662	1,020	6.92
1908	247,997		183,499	14,715	198,214	142,275	5,761	1,317	7.42
1909	256,307		187,926	17,640	205,566	151,927	6,135	1,519	8.38
1910	268,972		195,760	19,928	215,688	156,064	7,018	1,799	9.24
1911	276,244		198,419	22,042	220,461	163,022	7,852	2,077	10.00
1912	283,141		199,876	24,534	224,410	170,041	8,553	2,512	10.93
1913	286,849		202,499	27,494	229,993	171,628	9,867	2,675	12.82
1914	296,695		207,342	31,321	238,663	180,255	11,149	3,167	13.12

NO. 89714-0

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SUPREME COURT OF THE STATE OF WASHINGTON

LEAGUE OF WOMEN VOTERS OF WASHINGTON, a Washington non-profit corporation; EL CENTRO DE LA RAZA, a Washington non-profit corporation; WASHINGTON ASSOCIATION OF SCHOOL ADMINISTRATORS, a Washington non-profit corporation; WASHINGTON EDUCATION ASSOCIATION, a Washington non-profit corporation; WAYNE AU, PH.D., on his own behalf; PAT BRAMAN, on her own behalf; DONNA BOYER, on her own behalf and on behalf of her minor children; and SARAH LUCAS, on her own behalf and on behalf of her minor children,

Appellants/Cross-Respondents,

v.

STATE OF WASHINGTON,

Respondent/Cross-Appellant,

and

WASHINGTON STATE CHARTER SCHOOLS ASSOCIATION; LEAGUE OF EDUCATION VOTERS; DUCERE GROUP; CESAR CHAVEZ SCHOOL; TANIA DE SA CAMPOS; and MATT ELISARA,

Intervenors.

CERTIFICATE OF SERVICE

I certify under penalty of perjury in accordance with the laws of the State of Washington that a copy of the Brief of Respondent/Cross-Appellant the State of Washington was served on all counsel at the following addresses by email and US Mail Postage Prepaid via Consolidated Mail Service:

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DATED this 30th day of May, 2014 at Olympia, Washington.


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Dear Clerk and Counsel:

Attached for filing in the above-entitled matter, please find the Brief of Respondent/Cross-Appellant The State of Washington with Certificate of Service.

Thank you,
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