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STATE OF WASHINGTON

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NO. 80943-7

BY RONALD R. CARPENTER

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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The State of Washington; et al.,

Appellants,

v.

Federal Way School District No. 210, a municipal corporation; et al.,

Respondents.

BRIEF OF RESPONDENTS

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I. SUMMARY OF ARGUMENT

This case concerns the irrational and inequitable method by which the Legislature allocates basic education funds to the State's school districts. For the 2008-09 school year, the State's funding formula sets 229 different funding levels for the State's 295 school districts. These funding differences are based not on any educationally relevant variable, but on historical inequities left over from a funding system this Court declared 30 years ago to be unconstitutional. These disparities are not a political issue—they are a constitutional issue. The trial court correctly found that funding different students at different levels with no rational basis for the distinction fails to satisfy the State's constitutional obligations.

The disparate funding allocations violate article IX, sections 1 and 2 of the Washington State Constitution, which require the State to amply provide for the education of its students via a general and uniform system of public schools. The funding inequities violate the ample funding requirement of section 1 because the Legislature has failed to define and provide the level of funding necessary for a basic education. Rather, it has defined 229 different levels of funding to students and school districts across the state. These different levels are not based on the cost of delivering basic education in any school district, but rather on the variable

average salaries paid in different school districts at a time when the State's school system was not general, uniform, or amply funded. This further fails to satisfy the State's obligation to provide the general and uniform school system required by article IX, section 2, because this Court's decisions have consistently interpreted the uniformity clause to apply to the system by which the State funds its public schools.

Furthermore, by privileging students in other school districts with additional funds for their education, the State infringes on Federal Way students' fundamental right to receive an amply funded education in a general and uniform system of public schools. This infringement violates article I, section 12, the privileges and immunities clause of the state constitution.

When applying an equal protection analysis, as the trial court did, the result is the same. Because the salary allocations of LEAP Document 2 thwart the State's interest in fully funding basic education in a general and uniform system of public schools, they cannot survive even a rational basis analysis, let alone the strict scrutiny test appropriately applied to state action that impacts students' educational rights under the Washington State Constitution. Because the State has no rational basis for providing funds differently for students, teachers, and taxpayers in different school districts,

the funding system is arbitrary and capricious in violation of the substantive due process clause, article I, section 3 of the Washington State Constitution.

Although the State has known since the beginning that its system was constitutionally suspect, it has failed for 30 years to provide fair funding for the education of students in Federal Way and other underprivileged districts. This Court should uphold the trial court's decision finding the LEAP Document 2 salary allocations to be unconstitutional.

II. ISSUES FOR DETERMINATION

1. Does the State's school funding system violate article IX, section 1 of the Washington State Constitution, the "ample funding clause," by failing to determine a level of ample funding for basic education, instead allocating funding to school districts based on the historical inequities of the State's former funding system?
2. Does the State's school funding system violate article IX, section 2 of the Washington State Constitution, the "uniformity clause," by allocating more money for the education of students in districts that were more successful at passing levies prior to the 1977-78 school year?
3. Does the State's school funding system violate the privileges and immunities clause of article I, section 12 of the Washington State Constitution by allocating more basic education funding for students in some school districts, without any educationally relevant rationale for the privilege?
4. Does the State's school funding system violate the equal protection rights of Federal Way teachers under article I, section 12 of the Washington State Constitution by capping their salaries at a lower average level than the salaries of teachers in other districts?

5. Does the State's school funding system violate the equal protection rights of Federal Way taxpayers under article I, section 12 of the Washington State Constitution by preventing them from levying as many local dollars for education as taxpayers in other districts are permitted to levy?
6. Does the State's school funding system violate the rights of students, teachers, and taxpayers to substantive due process under article I, section 3 of the Washington State Constitution by arbitrarily and capriciously funding basic education in their school district at a lower level than in other districts?

III. STATEMENT OF THE CASE

The State's current funding system for basic education has its roots in the 1976-77 school year. The State continues to base its funding allocations to individual school districts on derivations of the actual salaries each school district paid its employees that year—a year when the State's schools were not general, uniform, or amply funded, as this Court found in *Seattle School District v. State*, 90 Wn.2d 476, 585 P.2d 71 (1978). Although the Legislature originally made efforts to equalize these funding allocations, it abandoned those efforts in 1987 and only resumed them twenty years later, after this lawsuit was filed, and at a very minimal level. Thus, disparate funding levels have been in place for 30 years, with little effort to cure the inequities and no promise or guarantee of future action to do so.

A. The State has known for 30 years that its unfair funding scheme is constitutionally suspect.

Although glossing over significant inequities, the State's brief is generally accurate when describing the system by which it purports to fund basic education.¹ Brief of Appellants at 13-15. In short, the State calculates each district's basic education allocation based on the number of students in the district, and on a salary allocation rate the Legislature assigns to each district. The Superintendent of Public Instruction multiplies the number of full-time equivalent students enrolled in each district by statutory ratios of staff to students to determine the number of staff units the State will fund for that district. But, after determining the number of staff units each district is entitled to, the State does not give every district the same amount of dollars per staff unit.

Instead, the Legislature has assigned the State's 295 school districts 229 different sets of salary allocations for their funded units of teaching,

¹ The State attached 2008 legislation as an appendix to its brief, and, in its arguments, referred several times to various statistics and funding levels from the 2008 supplemental appropriations act. This legislation, passed subsequent to the trial court's decision, did not attempt to remedy the constitutional defects at issue in this case to any greater degree than had already been contemplated in the 2007 appropriations act considered by the trial court. For the sake of clarity in responding to the State's arguments, Respondents will also refer to the most recent 2008-09 funding levels where relevant. As explained in greater detail herein, those funding levels are identified on a legislative document entitled "LEAP Document 2," the most recent version of which is attached as Appendix A for ease of reference.

administrative, and classified staff for the 2008-09 school year.² The salary allocations are contained in a table created by a legislative agency known as the Legislative Evaluation and Accountability Program (LEAP). For the 2007-08 and 2008-09 school years, the table is entitled “LEAP Document 2.” Laws of Washington 2008, ch. 329, § 503(2)(b).

The Legislature has funded school districts at different levels since it passed the Basic Education Act and an accompanying appropriations bill in 1977. Laws of Washington 1977, 1st Ex. Sess., ch. 359, § 5, ch. 339, § 96-97; CP 75-87. The system originally recognized two different categories of staff: certificated and classified. The Legislature based each district’s salary allocations for certificated and classified staff on that district’s average salary levels during the 1976-77 school year. *Id.* at ch. 339, § 97(1); CP 78-80. Thus, the Legislature based its new funding formula on the salaries districts had been paying under the former funding formula—salary numbers which were unique to each district and varied widely.

² For the 2008-09 school year, 64 districts are assigned the State’s lowest funding level for teaching, administrative and classified staff; three districts are assigned the highest funding level for administrative staff and the lowest funding level for teaching and classified staff; and two districts are assigned the lowest funding level for teaching and classified staff, and a common level of funding for administrative staff that is somewhere between the State’s highest and lowest funding level. The other 226 school districts have a unique set of funding levels for teaching, administrative and classified staff. In the 2007-2008 school year, the State assigned 258 different sets of funding levels for teaching, administrative and classified staff. CP 140-47; Appendix A.

The State's own evidence shows that legislators in 1977 knew this reliance on disparate salaries was legally suspect. The "Reff Study," CP 286-384, heavily relied upon by the State, includes the following passage:

There appeared to be general legislative agreement that in the interest of equity, and perhaps to comply with the court mandate, the wide range in salaries needed to be narrowed.

CP 331. Acknowledging the problem, the State initially planned to equalize salary allocations by 1989. CP 346.

~~The State's contention that the actual salaries paid in 1976-77 reflected different costs of hiring staff in different districts is demonstrably incorrect. Brief of Appellants at 7. Salaries under the old formula varied between districts because districts were forced to rely on uncertain local levy funding, a state of affairs this Court found to be unconstitutional. See *Seattle Sch. Dist. v. State*, 90 Wn.2d 476, 525-26, 585 P.2d 71 (1978). The State's own evidence acknowledges a correlation between successful local levies and higher staff salaries. CP 331. By basing the new funding formula on old salaries, the State took these existing funding disparities and cemented them into law.~~

B. The State has perpetuated the unconstitutional funding disparities over the past 30 years.

The State's description of the current LEAP Document 2 salary allocations as "the culmination of all the salary increases and gap reduction

measures” is artful indeed, implying that the State has diligently worked to reduce the gaps in question. In fact, the State simply ignored the problem for twenty years, from 1987 to 2007, resuming efforts to reduce the salary disparities only after this lawsuit was filed. During those years of inaction, the funding disparities actually increased due to the State’s practice of applying a single percentage increase to all salary allocations. CP 190-92, 205-09. Applying the same percentage increase to a larger number and a smaller number means that the gap between the two numbers will also increase.

After originally acknowledging that the gap in salary allocations needed to be narrowed, CP 331, the State took some small steps to accomplish this narrowing from 1977 to 1987. The Legislature also limited the local control that school districts had over the salaries they paid their employees. In 1981, the Legislature enacted salary compliance laws that prevented school districts from paying salary increases greater than those authorized by the Legislature via its funding formula. CP 201.

However, the Legislature abandoned the effort to equalize funding levels in 1987. In making the last significant changes to the funding allocation system, it divided certificated staff into two groups: certificated instructional staff and certificated administrative staff, with separate

funding allocations for each group. Laws of Washington 1987, 1st Ex. Sess., ch. 2, § 201 (codified as amended at RCW 28A.150.260); CP 89-95, 204. In the accompanying appropriations act, the Legislature standardized the base teacher salary allocation for 262 districts—all but 34 districts that remained grandfathered at higher salary allocation levels until the end of the 2006-07 school year. Laws of Washington 1987, 1st Ex. Sess., ch. 7, § 504(2)-(3); CP 94, 204-05.

Although the Legislature made progress toward equalizing the teacher funding levels that year, it also created an administrative salary allocation scheme that contained significant disparities. The Legislature based its new salary allocations for certificated administrative staff on the average salary each district paid its administrators during the 1986-87 school year. Laws of Washington 1987, 1st Ex. Sess, ch. 7, § 504(2)(a)(i); CP 94, 200-04. Because of the Legislature's salary compliance requirement, these salaries had been capped and tied to funding levels based on 1976-77 average salaries.

When it created the new administrative salary allocations, the Legislature also eliminated salary compliance laws for certificated administrators and classified staff. *Id.* Districts remained subject to salary compliance for certificated instructional staff, but administrators and

classified staff became free to bargain for market wages. *Id.*; RCW 28A.400.200. Because teacher salaries are still subject to salary compliance, LEAP Document 2's salary allocations for teachers directly affect the salary that teachers are paid by the school district employing them. When the State assigns a teacher salary allocation level to a district, the State caps the average salary that the district is allowed to pay its teachers at this same level. RCW 28A 400.200(3)(a). Thus, for teachers, a lower salary allocation level also acts as a lower salary cap. LEAP Document 2's salary allocations for administrative and classified staff, however, have no connection to the actual salaries paid to these staff members. RCW 28A.150.260(2)(c); Laws of Washington 2007, ch. 522, § 503. The salary allocations in these categories are simply used to allocate operating funds. When a district receives a lower salary allocation in one of these two categories, the district has fewer dollars to spend on books, supplies, maintenance, staff, technology, and anything else it needs to educate students. Thus, although the Legislature gives districts local control over how to spend these funds, it also gives certain privileged districts more funds to control.

C. **The State's renewed efforts since the filing of this lawsuit have not eliminated the unconstitutional funding disparities.**

After 20 years of inaction, the Legislature only returned its attention to the funding disparities of LEAP Document 2 after this lawsuit was filed

in November 2006. Laws of Washington 2007, ch. 522, § 504(1)(b)-(d); CP 104-05. The 2007 and 2008 editions of LEAP Document 2 included a cost of living increase applied to all salary allocations, plus larger increases to the certificated, administrative, and classified allocations of districts that had been most disadvantaged by the State's inequitable funding levels.

The current incarnation of LEAP Document 2 creates more uniformity in only one sense: it enlarges the group of school districts that receive the lowest salary allocation for all three categories of staff. Some 64 school districts, including Federal Way, now share the bottom rung on the funding ladder. The State's recent efforts at equalization have not otherwise lessened the unfairness of the salary allocations on LEAP Document 2. Better-funded school districts continue to receive salary allocations that are unexpectedly high in one category and inconsistently low in others. For example, the Columbia (Stevens), St. John, and Harrington school districts receive the top salary allocation for certificated administrative staff and the lowest salary allocation for teachers and classified staff. The Seattle School District receives the top salary allocation for classified staff, but only the 150th-highest salary allocation for certificated administrative staff. No district is at the top in all three categories. CP 148-48; Appendix A. Rather, the districts are all harmed, at varying levels, by a

scattershot funding scheme that fails to fund all districts at the level the Legislature has determined to be full funding for the highest-funded districts. RCW 28A.150.250 (“Basic education shall be considered to be fully funded by those amounts of dollars appropriated by the legislature . . .”).

1. Administrative salary allocations

For the 2008-09 school year, LEAP Document 2 retains a 45 percent disparity between the highest and the lowest salary allocation for certificated administrative staff. CP140-47; Appendix A. Four districts will receive the top funding level: \$84,362. Another 88 districts, including Federal Way, will receive the lowest funding level: \$57,986. In many cases, districts that receive the highest and lowest salary allocations are located immediately adjacent to one another. The top-funded Skykomish School District, located in rural King County, borders the lowest-funded Index and Snoqualmie Valley districts. The top-funded Columbia School District in Stevens County borders the lowest-funded Evergreen and Summit Valley districts. The top-funded St. John School District in Whitman County borders the lowest-funded Steptoe School District. Most districts across the

state fall somewhere between these two extremes, with few allocations alike.³

The salary allocations of LEAP Document 2 bear no relationship to the actual cost of hiring a school administrator. In the 2006-07 school year, when this suit was filed, the Federal Way School District's actual average base salary cost for a certificated administrative staff member in basic education programs was \$94,486. CP 124. This actual cost is 63% greater than the \$57,986 the State will fund for 2008-09. Appendix A. The actual average base salary cost of a certificated administrator in Skykomish for the 2006-07 school year was \$63,928—24% less than the \$84,362 the State will fund for 2008-09. CP 124; Appendix A.

2. Classified salary allocations

In highlighting the fact that 224 districts will have the same classified salary allocation for the 2008-09 school year⁴, the State attempts to gloss over the 15 percent funding disparity that remains between those 224 districts and the top-funded district in the classified funding formula. The

³ Aside from the four districts who share the top funding level and the 88 districts at the bottom of the funding formula, only two other school districts have identical salary allocations for certificated administrative staff: Clover Park and Kittitas, at \$59,385.

⁴ The State claims that 225 school districts will have the same classified funding level for 2008-09. However, one of those school districts, Vader, dissolved effective August 30, 2007. AGO 2007 No. 7 (Nov. 19, 2007). Thus, there are actually 224 districts that will share the lowest funding level for classified staff for the 2008-09 school year.

224 districts, including Federal Way, will all share the lowest classified salary allocation on LEAP Document 2: \$31,865. Appendix A. The top-funded Seattle School District will receive a salary allocation of \$36,777. The remaining school districts in the state will receive a salary allocation somewhere between the high of Seattle and the low of Federal Way. These 70 school districts include districts in every shape and size, scattered from one end of the state to the other. They include Chimacum and Chewelah; Tacoma and Thorp; Pe Ell and Palouse; and Bellevue and Benge.

3. Teacher salary allocations

For the 2008-09 school year, the State will allocate LEAP Document 2's lowest salary level to teachers in 283 of the State's 295 school districts. Those lowest-funded districts, including Federal Way, will receive a salary allocation of \$34,426. Twelve districts will receive larger allocations, with the largest going to the Everett School District at \$36,135. The twelve privileged districts do not share common sizes, locations, or demographics. They include the Seattle School District in urban King County, and the Orondo School District in rural Douglas County. They include large suburban districts, such as Puyallup and Northshore, and small rural districts, such as Lopez Island and Shaw Island. They include districts from the east side of the state (Lake Chelan) and the west (Southside). As

explained above, teachers in these twelve districts have a tangible advantage in compensation over teachers in the state's other 283 school districts. The twelve privileged districts are allowed to pay their teachers a higher average salary than the majority of districts are allowed to pay. RCW 28A.400.200(3)(a).

D. The State has shown that it has no intention of allocating basic education funding equitably.

The State has shown it will not fix this problem without judicial action. Even after the trial court's decision finding this system unconstitutional, the State responded not by fixing the problem, but by directing a committee to "specifically consider" it. Brief of Appellants at 12. The incremental progress highlighted by the State in its brief ends this school year, and the State has made no commitment ever to reach full equalization. CP 117. Even if the Legislature continued to equalize salary allocations at the pace it displayed in the most recent biennium, it would take another 10 biennia, or 20 years, before the salary allocations on LEAP Document 2 are fully equal. *Id.*

Meanwhile, as the trial court correctly recognized, this inequitable funding system means that the State allocates less money for the education of Federal Way students than it does for students in other school districts, including neighboring districts like Highline and Tacoma. CP 421. The

State's reliance on the staff funding formula for other areas of education funding causes a "ripple effect" that further widens the disparity between school districts. CP 422. In the 2006-07 school year, Federal Way would have received an additional \$7.1 million in its basic education allocation if it had been funded at the salary allocation levels considered ample for the highest funded districts. CP 112. Due to the ripple effect recognized by the trial court, Federal Way was disadvantaged by an additional \$2.0 million in special education and employee benefit funding and approximately \$2.2 million in levy capacity. CP 111-15.

IV. ARGUMENT

A. Standard of review

A grant of summary judgment is reviewed *de novo*, with the reviewing court engaging in the same inquiry as the trial court. *Brown v. State*, 155 Wn.2d 254, 261, 119 P.3d 341 (2005). The construction of the Washington State Constitution is a question of law. *State v. Chenoweth*, 160 Wn.2d 454, 462, 158 P.3d 595 (2007). Plaintiffs challenging a legislative action must convince the court that there is no reasonable doubt that the legislature's action violates the constitution. *Island County v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998). Here, there can be no reasonable

doubt that the funding scheme, which the State itself acknowledges is inequitable, is unconstitutional.

B. By failing to fund all districts at the highest salary allocation, the State fails to amply fund school districts.

The LEAP Document 2 salary allocations violate article IX, section 1 of the Washington State Constitution by failing to fund all school districts at the level the State has determined to be ample for the best-funded districts.⁵ Article IX, section 1 of the Washington State Constitution provides as follows:

It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

According to this Court, the ample funding clause not only imposes upon the State “the paramount duty” to amply fund its schools, it also gives the state’s children a corresponding right to an amply funded education. *Seattle School Dist.*, 90 Wn.2d at 513.

⁵ The State incorrectly asserts that the trial court determined the Legislature has satisfied its obligation to provide ample funding for basic education. Brief of Appellants at 1, 3, 20. The trial court merely held that Respondents failed to prove beyond a reasonable doubt that the Federal Way School District is not amply funded. CP 423. The court then found that the LEAP Document 2 salary allocations are unconstitutional on other grounds. It entered a declaratory judgment to this effect, granting the affirmative relief sought by Respondents. A party who prevails at the trial court level and seeks no further affirmative relief may argue any grounds supported by the record to sustain the trial court’s order. *State v. Bobic*, 140 Wn.2d 250, 257-58, 996 P.2d 610 (2000). The ample funding clause of the Washington State Constitution provides an additional ground for sustaining the trial court’s decision.

By assigning salary allocations in an arbitrary and irrational manner, the current State funding system does not amply provide for the education of children in all districts. The basic education funding scheme sets one level of “ample funding” for one district, and another level of “ample funding” for another district. For example, the State has determined, without relying on any educationally relevant variable, that \$57,986 per year is ample provision for each of unit of certificated administrative staff in Federal Way in the 2008-09 school year, but for the Skykomish School District, \$84,362 per year is ample. As explained above, neither assigned level reflects current actual costs.

These irrational funding levels for basic education in the current State funding scheme fail to meet the constitutional imperative that this Court set forth in the *Seattle School District* case thirty years ago. In that case, the Court concluded that “the Legislature has not expressly determined *a level of funding* (or deployment of resources) which would be fully sufficient to provide the ‘basic education’ or a basic program of education mandated by Const. art. 9, §§ 1 and 2.” *Seattle School Dist.*, 90 Wn.2d at 537 (emphasis added). The State’s current funding scheme also fails to determine “a level of funding” sufficient to provide basic education—instead, it sets 229 different levels of funding and has no educational

rationale for the differences. Although the State argues that the record does not contain evidence of revenue shortfall or “allowable expenditures,” the fact remains that if the salary allocations given to the 231 better-funded school districts are ample, the Federal Way School District does not receive ample funding.

C. **The State’s school funding scheme violates the constitutional mandate to establish a “general and uniform system of public schools.”**

The uniformity clause of the Washington State Constitution requires the Legislature to establish a “general and uniform system of public schools.” Wash. Const. art. IX, § 2. This Court has held that the right to an amply funded education must be fulfilled via this uniform system. *Seattle Sch. Dist.*, 90 Wn.2d at 513; *see also Island County Committee on Assessment Ratios v. Dep’t of Revenue*, 81 Wn.2d 193, 198-99, 500 P.2d 756 (1972) (right of school districts to receive funds derives from and is qualified by art. IX, § 2’s mandate of uniformity). Recent decisions of this Court contradict the State’s claim that it “long ago” discharged its duty to create a general and uniform school system by setting up a school system at the first session of the state Legislature. Brief of Appellants at 21. Rather, these cases demonstrate that the State’s execution of this duty is ongoing, and that the State cannot have a general and uniform school system when it

does not uniformly fund that system. The current school funding system fails to achieve the constitutional mandate of uniformity because it arbitrarily allocates different levels of funding in different school districts.

The *Seattle School District* Court noted repeatedly that the State's inadequate system of school funding violated the constitution's uniformity clause as well as the ample funding clause. See, e.g., 90 Wn.2d at 520 (legislature "has not yet fully implemented Const. art. 9, §§ 1 and 2 by defining or giving substantive content to 'basic education' or a basic program of education"), 522 ("Const. art. 9, §§ 1 and 2 require the State to amply provide for the education guaranteed through the medium of a general and uniform system of public schools."), 537 ("the Legislature has not expressly determined a level of funding (or deployment of resources) which would be fully sufficient to provide the 'basic education' or a basic program of education mandated by Const. art. 9, §§ 1 and 2."). The State distorts these words by turning the statement that it has "not yet fully implemented Const. art. 9, §§ 1 and 2," into the conclusion that the Court was "ratifying the existence of a general and uniform system." *Id.* at 519 (emphasis added); Brief of Appellants at 25. That conclusion, however, is not consistent with how this Court has interpreted its decision in the *Seattle School District* case. See *Brown v. State*, 155 Wn.2d 254, 258, 119 P.3d 341

(2005) (“Almost 30 years ago, courts in this state reluctantly concluded that the legislature had not provided a general and uniform system of public schools as required by the constitution, because school funding largely relied on local levies . . .”).

As the trial court recognized, this Court’s most recent article IX cases have read the uniformity clause to place constitutional limitations on the State’s allocation of funds to school districts. CP 439. In *McGowan v. State*, 148 Wn.2d 278, 60 P.3d 67 (2002), the Court recognized that uniformity is connected not only to curriculum, but to the way dollars are allocated. *McGowan* addressed Initiative 732, which mandated annual cost-of-living salary increases for school employees. The Court held that I-732 required the State to fund cost-of-living increases for all employees, including basic education staff units whose salaries are purportedly funded by the State and non-basic education employees whose salaries are funded by local levies. *McGowan*, 148 Wn.2d at 292. However, the Court held unconstitutional a clause of the initiative which stated that these salary increases were to be considered part of the State’s obligation to fund basic education. *Id.*

In doing so, the *McGowan* Court relied in part on the conclusion that including these salary increases in the definition of basic education

would lead to State expenditures that varied between school districts, in violation of the uniformity clause. *Id.* at 293-94. Over time, school districts that passed levies would receive more and more basic education dollars to increase the salaries of employees originally funded by the levy, while districts that failed levies and had to lay off staff would lose the basic education dollars that formerly paid for cost-of-living increases for those employees. *Id.* The Court found that this state of affairs would “lead to lack of *uniformity* in expenditures for basic education,” and accordingly violated article IX, sections 1 and 2. *Id.* at 294 (emphasis added).

The Court echoed this holding in *Brown v. State*, 155 Wn.2d 254, 269, 119 P.3d 341 (2005), further emphasizing the requirement that a general and uniform system necessitates uniformity of funding. The *Brown* Court was again called upon to construe Initiative 732, and in doing so summarized its *McGowan* holding that a portion of the initiative was unconstitutional. The Court explained, again, that designating the cost-of-living increase for all staff to be part of basic education funding would result in the Legislature allocating more basic education dollars to the districts that had passed levies to pay for additional staff. *Brown*, 155 Wn. 2d at 269. “Thus, some districts would receive more state funding than

others, quickly violating the constitutional command that the State provide a general and uniform education.” *Id.*

The cases the State relies on for its limited interpretation of the uniformity clause all predate *Seattle School District*, some by decades. *Seattle School District* makes it clear that the requirement for a general and uniform school system cannot be separated from the requirement that the State fund this system. *Tunstall v. Bergeson*, 141 Wn.2d 201, 5 P.3d 691 (2000), the only post-*Seattle* case cited by the State, does not stand for a contrary proposition, as the Court did not address school funding in that case.

The plurality opinion in *Northshore School District v. Kinnear*, 84 Wn.2d 685, 530 P.2d 178 (1974), relied on by the State despite its overruling by *Seattle School District*, also linked the requirement for a general and uniform system to the requirement of ample funding, indicating that both aspects of the system must provide equality. The *Northshore* opinion stated:

A general and uniform system, that is, a system which, *within reasonable constitutional limits of equality*, makes ample provision for the education of all children, cannot be based upon exact equality of funding per child because it takes more money in some districts per child to provide about the same level of educational opportunity than it does in others.

84 Wn.2d at 728 (emphasis added). The *Northshore* Court appropriately recognized that different funding levels within a general and uniform system may reflect differences in costs from school district to school district. However, as the trial court recognized, funding levels that serve to perpetuate a system that is not general and uniform cannot satisfy the State's obligation under article IX, section 2. CP 423, 439 ("The plaintiffs have shown beyond a reasonable doubt that school districts are funded at disparate levels; that the different levels are based upon a discredited and unconstitutionally funded system of 30 years ago. There is no rational reason to continue this. This violates the general and uniform requirement of our constitution."); see also *Seattle Sch. Dist.*, 90 Wn.2d at 519.

In summary, this Court has previously construed article IX, section 2 to mean that a school system cannot be general and uniform unless the State's funding of this system is uniform.⁶ The current funding scheme,

⁶ The State argues that this is inconsistent with other states' interpretation of the words "general" and "uniform" in the education provisions of their constitutions. However, unlike the instant case, the cases relied upon by the State concern a lack of uniformity resulting from the size of each district's tax base, and not how those districts were treated differently by the state itself. *Olsen v. State*, 276 Or. 9, 554 P.2d 139 (1976); *Skeen v. State*, 505 N.W.2d 299 (Minn. 1993).

More analogous is *Hull v. Albrecht*, 192 Ariz. 34, 960 P.2d 634 (1998), a case in which the state itself created the inequity by allowing different school districts access to different tools to raise revenue. The *Hull* court noted that the type of variation at issue in *Olsen* and *Skeen* would not violate Arizona's "general and uniform" clause. However, the state could not constitutionally adopt a financing scheme that itself creates disparity:

which allocates different funding levels to different school districts based only on the arbitrary salaries paid under an obsolete and unconstitutional system, guarantees that some districts receive more state funding than others.⁷ As the Court held in *Brown*, this practice cannot satisfy the constitutional requirement of a general and uniform system. The trial court correctly held that the State's funding scheme violates article IX, section 2 of the state constitution.

D. Under any analysis, the disparate funding levels of LEAP Document 2 violate the privileges and immunities clause of the Washington State Constitution.

The Washington State Constitution provides that:

No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges and immunities which upon the same terms shall not equally belong to all citizens, or corporations.

Students FIRST will necessarily cause substantial disparities between school districts. Those disparities will not result from factors such as parental influence, family involvement, voter willingness to incur debt for public schools, a free market economy, or housing patterns. Rather, the disparities will result from the funding mechanism chosen by the state. The Arizona Constitution forbids that result.

Id. at 639.

⁷ The State attempts to distort the trial court's ruling by arguing that "constitutionally uniform funding would cast doubt on a variety of other practices." Brief of Appellants at 23 n.29. However, each and every practice identified by the State is premised on an educationally relevant variable. Because the State can rationally deduce that it may take more money to serve certain types of students, the State can foster uniformity by allocating one district more money for certain types of programming if it serves more bilingual students, or more gifted students, or more special education students. See *Northshore*, 84 Wn.2d at 728. However, there is no such rational variable behind the salary allocations on LEAP Document 2.

Wash. Const. art. I, § 12. Like the equal protection clause of the federal constitution, the privileges and immunities clause of the state constitution guarantees that similarly situated persons receive like treatment under the law. *O'Hartigan v. Dep't of Personnel*, 118 Wn.2d 111, 121, 821 P.2d 44 (1991). Accordingly, Washington courts have often applied an equal protection analysis when interpreting article I, section 12, as the trial court did in this case. *See, e.g., Seeley v. State*, 132 Wn.2d 776, 788, 940 P.2d 604 (1997); CP 440. However, this clause of the state constitution may provide greater protection than the federal constitution when a state action provides a grant of positive favoritism to a minority class. *Andersen v. King County*, 158 Wn.2d 1, 14, 138 P.3d 963 (2006). Under either analysis, the disparate funding levels of LEAP Document 2 violate the rights of students, teachers, and taxpayers under article I, section 12.

1. **Privileged funding for the education of students in certain districts interferes with students' fundamental right to an education.**

While the federal constitution is concerned with majoritarian threats to minority rights, article I, section 12 of the state constitution also prohibits laws that serve special interests to the detriment of all citizens. *Grant County Fire Protection Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 807, 83 P.3d 419 (2004). As the State notes, this Court has recently held

that this clause of the state constitution requires an independent state analysis. *Madison v. State*, 161 Wn.2d 85, 94, 163 P.3d 757 (2007). A law violates the privileges and immunities clause when (1) it authorizes a class of citizens to do or obtain something that is not available to other citizens, and (2) the privilege conferred pertains to a fundamental right of citizenship. *Grant County*, 150 Wn.2d at 812-13. The salary allocations on LEAP Document 2 violate this clause because they bestow a privileged funding level upon students in certain school districts, affecting students' fundamental right to an education.

Article IX, sections 1 and 2 of the Washington State Constitution endow students in Washington State with a fundamental right to an amply funded education provided by a general and uniform system of public schools. *Seattle Sch. Dist.*, 90 Wn.2d at 513 (“[A]ll children residing within the State’s borders have a ‘right’ to be amply provided with an education. That right is constitutionally paramount and must be achieved through a ‘general and uniform system of public schools.’”); *Darrin v. Gould*, 85 Wn.2d 859, 870, 540 P.2d 882 (1975) (“That in Washington, education (physical and cultural), free from discrimination based on sex, is a fundamental constitutional right, is a conclusion properly drawn from Const. art. 9, § 1 adopted in 1889.”). The State mischaracterizes the right

at issue by arguing that there is no fundamental right “in having a local municipality receive any particular funding allocation from the State.” Brief of Appellants at 36-37. Yet the State’s allocation of funds to local school districts cannot be separated from students’ fundamental right to be amply provided with an education through a general and uniform system of public schools. The *Seattle School District* Court recognized that the educational rights of students in Washington State can be satisfied only when funds are allocated appropriately by the State. 90 Wn.2d at 522, 513 n.13 (absolute rights, including education, give rise to correlative duties by State). Accordingly, the allocation of these funds in a manner that privileges students in certain districts infringes upon the fundamental right of students to an education.

Tunstall v. Bergeson, 141 Wn.2d 201, 5 P.3d 691 (2000), relied upon by the State, did not hold differently. That case concerned the State’s provision for the education of students incarcerated in Department of Corrections facilities. *Id.* at 206. The State provides for the education of these students under RCW Chapter 28A.193, separately from the Basic Education Act. *Id.* at 208. The *Tunstall* Court first held that RCW Chapter 28A.193 satisfied the State’s constitutional obligations under article IX by establishing an educational program tailored to juvenile

inmates. *Id.* at 221-23. The Court recognized that children incarcerated in adult prisons have special educational needs, and that a separate educational system might reasonably be necessary to address those needs. *Id.* Accordingly, having held that RCW Chapter 28A.193 did not infringe upon the fundamental rights of the plaintiff students, the court concluded that no fundamental right was at stake for purposes of equal protection analysis under article I, section 12. *Id.* at 225-26.

Tunstall dealt with a system in which the State had made a rational decision to treat the plaintiff students differently because they were situated differently. In contrast, the salary allocations of LEAP Document 2 are not premised upon any difference between Federal Way students and students in any other school district in Washington State. As the State notes, all school districts are required to provide uniform educational content, uniform instructional hours, teachers certificated under a uniform system, and “substantially the same educational opportunities.” Brief of Appellants at 23. Although students in Federal Way are entitled to this uniformity, the State allocates fewer dollars to provide it for them.

The State’s allocation of less money for Federal Way students’ education than for the education of students in other school districts infringes upon Federal Way students’ fundamental right to an education.

The State has no educational justification for the privilege it bestows upon students in the best-funded school districts. Therefore, the State's school funding system violates article I, section 12 of the Washington State Constitution.

2. **The State applies different funding levels to different school districts, violating the equal protection rights of students, teachers, and taxpayers.**

Although this case merits a separate and independent privileges and immunities analysis, the State's school funding system also is unconstitutional under the equal protection analysis frequently applied under article I, section 12. *See, e.g., Seeley*, 132 Wn.2d at 788. Article I, section 12, like the equal protection clause of the federal constitution, guarantees that similarly situated persons receive like treatment under the law. *O'Hartigan*, 118 Wn.2d at 121. The state violates an individual's right to equal protection by applying a statute in a manner that creates subgroups within a class, even if the statute on its face only creates a single class. *Willoughby v. Dep't of Labor & Indus.*, 147 Wn.2d 725, 739-41, 57 P.3d 611 (2002) ("Strictly speaking, a statute creates only one relevant class, whereby differential treatment creates subgroups within the general class.").

The first step in conducting an equal protection analysis is to apply the appropriate standard of review. *Tunstall*, 141 Wn.2d at 225. The level

of scrutiny depends on whether the state's action has drawn a suspect or semisuspect classification or implicated a fundamental right; if either is the case, the state action is subject to strict scrutiny. *Andersen*, 158 Wn.2d at 24. Otherwise, rational basis review is appropriate. *Id.* at 18.

- (a) *The State's funding scheme fails strict scrutiny because it actively thwarts the compelling state interest of amply funding a general and uniform public school system.*

As discussed above, the salary allocations on LEAP Document 2 infringe upon the fundamental rights of Federal Way students to be amply provided with an education via a general and uniform system of public schools. Accordingly, the claims of the Respondent students must be judged under strict scrutiny. *Andersen*, 158 Wn.2d at 24. Under a strict scrutiny analysis, any disparity in funding must be narrowly tailored to serve a compelling state interest. *Madison*, 163 P.3d at 767; *State v. Hernandez-Mercado*, 124 Wn.2d 368, 879 P.2d 283 (1994).

The funding scheme at stake in this case does not serve a compelling state interest, but rather frustrates the State's performance of its paramount duty to amply fund a general and uniform system of public schools. The differences in educational funding levels are not based on any factor that would suggest it costs less to educate students in Federal Way than it does in any other school district. The student Respondents are part of a single

class of Washington State public school students. Within this class, Respondents and other Federal Way students are subject to differential treatment based on the school district in which they are enrolled. Cf. *Willoughby*, 147 Wn.2d at 740. If these students attended school in any of 231 other Washington school districts, including some of the districts that border Federal Way, the State would allocate more money for their education. Not only is this inequality not narrowly tailored to serve a compelling state interest, it actively works against the compelling state interest of fully funding a uniform system of public education.

(b) *The State's funding scheme fails rational basis review because there is no rational justification for maintaining a system that was unconstitutional to begin with.*

Although this case merits a strict scrutiny analysis, the State lacks even a rational basis for its 30-year failure to cure the inequities of a system this Court found to be unconstitutional. The State cannot rely on its limited resources or on an accident of history to perpetuate a system that unconstitutionally ties school funding to a school district's ability to pass a levy three decades ago. The trial court correctly recognized that the State's efforts to equalize the LEAP Document 2 salary allocations stand as "an admission that there is no rational reason to continue this inequity." CP 440.

The State first suggests that the finite nature of public financial resources constitutes a rational basis for the current funding system. Even where finite state resources are concerned, however, a statutory discrimination must have an independent rational basis to support it; saving money in order to spend it on some other competing priority is simply not sufficient. *Willoughby*, 147 Wn.2d at 737-38; see also *Plyler v. Doe*, 457 U.S. 202, 227, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982) (“Of course, a concern for preservation of resources standing alone can hardly justify the classification used in allocating those resources.”).

The State’s analogy to *Dandridge v. Williams*, 397 U.S. 471, 90 S. Ct. 1153, 25 L. Ed. 2d 491 (1970) is particularly inapt. In that case, the U.S. Supreme Court affirmed a cap on welfare grants of \$250 per family per month. This policy preserved limited public resources, but also treated every family alike by subjecting them to the same cap. This is not the case with the State’s school funding system. Here, teachers in different school districts are subject to different salary caps despite the fact that they perform the same work, and the State spends different amounts of money on the education of students in different school districts despite no demonstrable difference in educational costs.

This case is more analogous to *Hunter v. North Mason High School*, 85 Wn.2d 810, 817-18, 539 P.2d 845 (1975), in which this Court noted that financial considerations alone cannot create a rational basis. In *Hunter*, the Court invalidated a notice requirement that applied to plaintiffs with claims against governmental entities, but not to those with claims against private parties. The Court noted that, by waiving sovereign immunity, the State had chosen to put itself and its subdivisions on equal footing with private defendants. Therefore, the Court held that the financial benefits of limiting claims against public agencies could not serve as a rational basis for the notice requirement: “Any policy of placing roadblocks in front of potential claimants having been abandoned, we cannot uphold nonclaim statutes simply because they serve to protect the public treasury.” *Id.*, 85 Wn.2d at 818. The policy of funding students’ basic education based on the ability of their local school district to pass a levy has not just been abandoned, it has been declared unconstitutional by this Court. *Seattle Sch. Dist.*, 90 Wn. 2d at 519. Accordingly, the State cannot claim that limited public finances are a rational basis to preserve an unlawful system.

Nor can the State argue that the funding disparities are constitutional simply because they are artifacts of history, or that “expectancy interests” would be impaired if the historical funding

disparities of LEAP Document 2 were eliminated. Washington law is clear that unequal treatment based solely on historical disparities violates the constitutional guarantee of equal protection. *State ex rel. Bacich v. Huse*, 187 Wash. 75, 81, 59 P.2d 1101 (1936), *overruled on other grounds by Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979). School districts, teachers, students, and taxpayers cannot have an expectancy interest in a system that does not comply with the law. *Cf. Bacich*, 197 Wash. 75, 59 P.2d 1101 (1936). In every case cited by the State, the challenged state action protected a reliance interest that did not itself violate the law. *See Nordlinger v. Hahn*, 505 U.S. 1, 12-13, 112 S. Ct. 2326, 120 L. Ed. 2d 1 (1992) (protecting existing homeowners' expectations in the tax value of their homes); *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450, 464, 108 S. Ct. 2481, 101 L. Ed. 2d 399 (1988) (protecting reasonable expectation of citizens whose school district adopted plans requiring free transportation in compliance with legislature's encouragement to reorganize); *U.S. Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 178, 101 S. Ct. 453, 66 L. Ed. 2d 368 (1980) (ensuring that career railroad employees received greatest retirement benefits); *New Orleans v. Dukes*, 427 U.S. 297, 305, 96 S. Ct. 2513, 49 L. Ed. 2d 511 (1976) (protecting street vendors with greatest reliance interest in continued operation). In each of these cases,

the court found that there was a rational basis for recognizing a subset of individuals with a greater reliance interest. Here, in contrast, this Court has already determined that it is unconstitutional to tie basic education funding to a school district's ability to pass a levy. *Seattle Sch. Dist.*, 90 Wn. 2d at 525-26. The LEAP Document 2 funding levels grandfather higher funding levels to school districts that successfully passed levies in the 1970s. CP 331. These districts cannot rely upon the continuation of funding differences that exist only because they are rooted in an unconstitutional system.

Furthermore, students, teachers, and taxpayers in Federal Way cannot be said to have an expectancy interest in receiving less funding than their counterparts in other districts—a historical disadvantage that individuals in all of these school districts expected would be remedied by 1989. CP 397. Funding all school districts at the level the State has determined to be ample for the best-funded districts would not thwart the expectations of the individuals associated with the privileged districts, as the State could continue to allocate to these districts the funding levels they currently enjoy. To the extent that these districts could be said to have an expectancy interest in others' disadvantage, the State avoided creating such an interest by its announced plan to equalize the salary disparities by 1989.

CP 397. Twenty years after it has failed to meet this equalization goal, there can be no more expectancy interest in inequality.

Although the State attempts to rely on an unsupported presumption “that inequities will be remedied over time through the legislative process,” Brief of Appellants at 49, that presumption has long been rebutted by the State’s 20 years of inaction. After making gradual efforts to equalize salary allocations from 1978 to 1987, the Legislature abandoned these efforts and left the disparate salary allocations in place for 20 years. In fact, by granting the same percentage increase to all districts, the Legislature actually widened the disparities that existed in 1987.

The State’s brief also overstates the efforts it has made to cure this problem and the extent to which it has done so. The Legislature has not decided “to gradually bring up those districts that have had lower allocations.” Brief of Appellants at 43. The Legislature made efforts to bring up the lowest salary allocations in the 2007 and 2008 legislative sessions, but retained 229 different funding levels without any commitment in statute or even political rhetoric to continue progress toward equalization in future years. The *Seattle School District* Court refused to consider legislative efforts to fix the funding system that were made after the trial court in that case found the system to be unconstitutional. 90 Wn.2d at

519 n.14. Here, the State asks the Court to consider not only legislative efforts made after the trial court's decision, but speculative future efforts that the Legislature has not even committed to continuing. And even if legislative effort were to continue at the current rate, it would take another 20 years to end the current funding disparities. While the State's brief generalizes that "only a few districts" currently receive higher allocations, in fact 231 of the State's 295 school districts receive larger salary allocations than Federal Way. Brief of Appellants at 43.

3. Respondent students, teachers and taxpayers have standing.

The trial court did not find it necessary to even address the State's challenge to Respondents' standing. But again on appeal the State argues that "multiple layers of discretionary decision-making" mean that the State's inequitable school funding scheme causes only "indirect and hypothetical" harm to Federal Way's students, teachers, and taxpayers. However, intervening variables that might prevent an individual from obtaining a benefit the State is withholding are irrelevant in an equal protection case.

The U.S. Supreme Court has held:

When the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, a member of the former group seeking to challenge the barrier need not allege that

he would have obtained the benefit but for the barrier in order to establish standing.

Ass'n Gen. Contractors v. City of Jacksonville, 508 U.S. 656, 666, 113 S. Ct. 2297, 124 L. Ed. 2d 586 (1993). For this reason, when a local government institutes racial preferences in its contracting system, contractors who are disadvantaged may challenge the system even if they have not shown they would have received a desired contract but for the city's racial preference. *Id.* Students who allege an equal protection violation in college admission requirements need not have actually applied for admission to have standing. *Gratz v. Bollinger*, 539 U.S. 244, 262, 123 S. Ct. 2411, 156 L. Ed. 2d 257 (2003); *see also DeFunis v. Odegaard*, 82 Wn.2d 11, 507 P.2d 1169 (1973), *vacated on other grounds by* 416 U.S. 312 (1974). When plaintiffs challenge a candidacy requirement, they need not show that they would have been elected had they been allowed to run. *Jacksonville*, 508 U.S. at 666, *citing Turner v. Fouche*, 392 U.S. 346, 362, 90 S. Ct. 532, 24 L. Ed. 2d 567 (1970). Accordingly, Federal Way's students need not negate the existence of all intervening variables to show that they are harmed by the State's inequitable school funding scheme.

The State's claim that the Respondent students and their parents have presented no evidence of differential treatment is simply incorrect.⁸ As the trial court recognized, if any one of the Respondent students was to attend school in any one of 231 other school districts, the State would allocate more money for that student's education. The State itself concedes that these districts receive additional funding "above the minimum." Brief of Appellants at 24.

The State also has unequivocally erected a barrier to Federal Way teachers obtaining a benefit that is available to teachers in 12 other school districts: a higher salary. School districts are prohibited from paying their teachers an average salary that exceeds each district's salary allocation level from the State. RCW 28A.400.200. If the District pays a higher salary to Respondent Shannon Rasmussen to match what she would be allowed to earn in one of the 12 grandfathered districts, it must pay an especially low

⁸ The State mischaracterizes the privileges and immunities claims of the Respondent students, parents, employees, and taxpayers by arguing that they should not be permitted to "do, on behalf of the District, what the constitution does not permit the District to do directly." Brief, at 30. The student, employee, and taxpayer Respondents raise their equal protection claims on their own behalf, as the State denies each of them equal treatment.

The State further argues that Respondents' injuries would not be redressed if the State were to equalize funding by reducing the LEAP Document 2 salary allocations for better-funded school districts. Setting aside the issue of whether reducing school funding would violate the State's obligations under the ample funding clause, the Respondents' injuries would indeed be redressed if the State began to give all school districts the same salary allocations on LEAP Document 2. The injury is unequal treatment. The dollars lost to

salary to some other teacher within the District. Regardless of the individual monetary impact on Ms. Rasmussen, the State's salary compliance law prohibits her and her colleagues together from obtaining the benefit of the collectively higher salaries that 12 better-funded districts are able to pay their teachers. This denial of equal treatment establishes standing for Ms. Rasmussen to challenge the funding system. See *Jacksonville*, 508 U.S. at 666.

The State's funding system also prohibits Federal Way taxpayers from providing the same amount of local levy support as taxpayers in higher-funded school districts, regardless of any intervening variables that may affect local levy support. Just as the candidate plaintiffs in *Turner* did not have to show they would have been elected had they been able to run, Federal Way taxpayers need not show that their fellow voters would have passed a larger levy had the State's school funding system not prevented them from putting one on the ballot. See *Jacksonville*, 508 U.S. at 664, citing *Turner*, 396 U.S. at 361 n.23. Nor do they need to negate the existence of all intervening variables that may have affected the levy amount sought by their school district in the most recent school year. *Id.* The fact remains

the District because of this unequal treatment are a symptom of this injury, but they are not the injury itself.

that the State itself has established a funding scheme that puts Federal Way students, teachers and taxpayers at a real and substantial disadvantage, giving them standing to challenge the system.

E. The State's school funding scheme violates the rights of Federal Way students, teachers, and taxpayers to substantive due process

Although the trial court did not rule on the substantive due process argument advanced by the District below, it remains an additional ground for affirmation of the trial court's decision. Article I, section 3 of the Washington Constitution states simply, "[n]o person shall be deprived of life, liberty, or property without due process of law." Due process protects individuals from arbitrary action on the part of the state. *State v. Seattle Taxicab & Transf. Co.*, 90 Wash. 416, 430, 156 P. 837 (1916); *State v. Cater's Motor Freight Sys.*, 27 Wn.2d 661, 667, 179 P.2d 496 (1947). As in equal protection analysis, legislative action must be either narrowly tailored to serve a compelling state interest when it infringes on a fundamental liberty or property interest, or rationally related to a legitimate government interest if it does not. *City of Sumner v. Walsh*, 148 Wn.2d 490, 521 n.17, 61 P.3d 1111 (2003).

As explained above in reference to the privileges and immunities analysis, *see supra* part IV.D.1, the State's execution of the school funding

provisions of the Basic Education Act merits, and fails, strict scrutiny review. The right to an amply funded basic education is both paramount and fundamental. *Seattle Sch. Dist. v. State*, 90 Wn.2d at 513; *Darrin*, 85 Wn.2d at 870. The State has identified no compelling state interest being served by the differential funding levels, and thus, the system violates the Federal Way students' right to substantive due process.

The basic education funding system also fails the less-demanding rational basis test. A law is unconstitutional if it is so unrelated to the achievement of a legitimate purpose that it is arbitrary or obsolete. *State v. Clinkenbeard*, 130 Wn. App. 552, 567, 123 P.3d 872 (2005). The State concedes that its system is rooted only in history and political compromise. Its own evidence shows that the historical inequity is not based on differing costs of providing education in any given school district, but on each school district's success at passing local levies in the 1970s. It offers a fiscal and political rationale for its failure to fix this inequity, but by conceding that the problem should be fixed, it acknowledges that there is no rational basis for the current inequities. CP 440. The substantive due process clause does not allow for progress toward a rational basis where one does not currently exist. Thus, the state funding system is arbitrary and capricious, and the trial court correctly found it to be unconstitutional.

V. CONCLUSION

There is no set of facts that conceivably justifies the disparate salary allocations on LEAP Document 2. The State's own evidence shows that legislators knew from the start that salary allocations would need to be equalized. The State has failed to do so for 30 years. Its renewed efforts following the filing of this lawsuit, and its argument that it should be allowed an infinite amount of time to fix the disparities in funding allocations, shows that the State is aware that the current salary allocations lack a rational basis. Students, teachers, and taxpayers in Federal Way have waited 30 years for equitable funding. By affirming the trial court's conclusion that this disparity is unconstitutional, this Court should ensure that the Respondents do not have to wait any longer.

RESPECTFULLY SUBMITTED this 26th day of June, 2008.

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I certify under penalty of perjury under the laws of the State of
Washington that I sent via *Federal Express, Overnight Mail*, Brief of
Respondents, to the following:

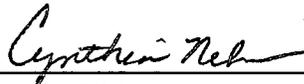
BY RONALD R. CARPENTER

CLERK

Supreme Court of Washington
Temple of Justice
415 12th Avenue SW
Olympia, Washington 98504

Office of Attorney General
David Stolier-Assistant Attorney General
1125 Washington Street Southeast
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Dated this 26th day of June 2008.



By: Cynthia Nelson