

Cracking the “Constitutional  
Concrete”:  
What Article IX Rulings Mean for  
Policymakers

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# Overview

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- Forward-looking discussion :
  - Constitutional context, roles.
  - Themes from court rulings.
- Goal: Understand how courts will look at changes to education law.

# Themes of Article IX discussion

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- Two sources of constitutional tension in Article IX rulings:
  - Courts vs. Legislature.
  - State duty v. Local control.

# Questions that arise from these tensions

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- How does the state demonstrate that it has met its ample funding obligation?
- What is the role of local revenue?
- What does a more substantive definition mean for state obligations and local control?
- How does the state implement its general and uniform obligation?

# The Legislature and the Courts

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The Basic Education Act is not set in constitutional concrete. The legislature . . . has the authority to review and revise, if necessary, the programs necessary to comply with Article IX, section 2, in order to meet the “current needs” of the children of this state.

Judge Doran, *School Funding II* (1983)

# The Legislature and the Courts

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The judiciary cannot, and should not, ‘constitutionalize’ education in Washington so as to place the administration and funding beyond the responsibility of the executive and legislative branches to whom that responsibility was *expressly entrusted by the framers*.

Justice Talmadge, concurring in *Tunstall v. Bergeson* (2000) (emphasis in original).

# How does the court look at legislation?

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- All legislation is entitled to a presumption of constitutionality.
- But, all legislation is not exactly equal.
- These differences affect how courts view education law.

# How does the court look at legislation?

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**Constitutional Rights**

**Constitutional Legislation\***

**Police Power Legislation**



# How does the court look at police power legislation?

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- Legislature receives substantial deference in police power legislation.
- Legislature can reverse judicial interpretation.

# legislation that affects constitutional rights?

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- Court has final say in constitutional interpretation.
- Legislature can't reverse judicial interpretation of constitution.

# What about the laws in between?

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- Education is constitutional  
“paramount duty.”
- But education is also area of policy  
and fiscal legislation.
- And, state has other constitutional  
obligations and directives.

# How does the court view its role?

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- Courts contend that they have final say on interpreting the constitution.
- Because of constitutional context, court will view Article IX legislation differently.
- Article IX legislation must be considered in constitutional context.

# How has the court viewed its role in Article IX cases?

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- Court, not legislature, gets to define constitutional terms.
- *School Funding II*: “Accretion.” Basic education obligation not limited to BEA.
- *Tunstall*: Court, not legislature, gets to define “children” for purposes of constitution.
- *Brown*: Questioning role of legislation.

# Who writes the laws?

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- How could the court actually define a program of basic education?
- Only the legislature can undertake this substantive definition—in legislation.

# So what will the courts really do?

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- Say what the law is.
- Restraint: Unwilling to require remedies that infringe on other branches.

# Why did the court find Article IX violations?

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- Abdication.
- *School Funding I*: Legislature hadn't created system at all.
- *School Funding II*: Legislature had reduced education for transparently budgetary reasons.
- *Federal Way\**: Legislature had failed to update differing allocations and to link differences to educational purposes.

\*appeal pending



# Why didn't the courts find Article IX Violations?

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- Mixed messages.
- *Brown*: No clear indication that LIDs were within basic education program.
- *McGowan*: Confusing attempt to mix basic education obligation with local funding.
- Courts were unwilling to elevate to constitutional obligation without clear law.
  - But, compare *School Funding II* and “accretion.”

# What kind of definition is the court expecting?

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- “Substantive program” of basic education?
- BEA and current definition are based on funding allocation system.
- Why? Washington has school districts.

# Local Control

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- Policy decision: school boards should be close to those whom they represent.
- Delegation to 295 school districts.
- School districts and local control are not constitutionally required.
- More substantive definition of education affects local control.

# Why is there a need for state safeguards?

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- Unless state chooses to run a cost-reimbursement system, the state needs protections built into the allocation method.
- No matter how ample funding is, more could always be spent.
- Legislature is the branch that can link funding and policies.

# State safeguards

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- Currently:
  - Allocation system in statute.
  - Salary controls: RCW 28A.400.200, ch. 41.59.
  - Restrictions on local revenues (levy lid).
- New system?

# What is the role of local revenue?

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- Local revenue: it's in the constitution too.
- What if local districts want to approve local funding?
- Legislature has relied on court's definition of "enrichment."

# How will the court view the role of local revenue?

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- The state may not cause districts to fund basic education with levy revenue.
- The court may have concerns about “structurally incompatible” commingling of state and local education funding.

# Local revenue and state safeguards

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- Issue of TRI “creep.”
  - Protections for state against claim that TRI needed to “hire and retain”?
- Does legislature want to enact a substantive definition of enhancement?



# What is “general and uniform”?

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- In a system that allows for local control and local revenues, what does “general and uniform” require?
- *Federal Way*: Uniform doesn’t require identical state allocations.\*
- But, differences need to be based on educational reasons.\*

\*appeal pending

# Lessons for policy-makers

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- Don't abdicate—assert.
- Consider caselaw.
- Don't be subtle.
- Guide the courts.
- Hope for the best.

# Case Citations and Chronology

- *Northshore Sch. Dist. v. Kinnear*, 84 Wn.2d 685, 727-29 (1974) (Hale, C.J., with three justices concurring).
- *Seattle School District v. State* (“*School Funding I*”), Thurston Co. Sup. Ct. Cause No. 53950 (Superior Court memorandum opinion at 51, 53, 56, 76).
- *Seattle School District v. State* (“*School Funding I*”), 90 Wn.2d 476, 513, 525-26, (1978).
- *Seattle School District v. State* (“*School Funding II*”), Thurston Co. Sup. Ct. No. 81-2-1713-1, Findings and Conclusions at 60, 62; Declaratory Judgment at 2 (1983).
- *North Kitsap School District v. State*, (“*School Funding III*”), Thurston Co. Sup. Ct. Cause No. 85-2-00543-8 (1988).
- *Tunstall v. Bergeson*, 141 Wn.2d 201 (2000).
- *McGowan v. State*, 148 Wn.2d 278 (2002).
- *Brown v. State*, 155 Wn.2d 254 (2005).
- *School Districts Coalition v. State* (Thurston County decision on appeal to Division II).
- *Federal Way School District v. State* (King County decision on appeal to state Supreme Court).
- *McCleary v. State* (trial set for June 2009 in King County Superior Court).

# Appendix 2

## *School Funding II* Holding

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- In addition to general apportionment, basic education includes:
  - Special education
  - Bilingual education
  - Remedial education (Learning Assistance Program)
  - Some pupil transportation
  - Institutional education
- Basic education does not include:
  - Gifted education
  - Food programs
  - “Urban factors”
  - Extra-curricular activities
  - Desegregation costs
  - Deferred maintenance
  - Enrollment decline costs