

Windows Into The Budget

Senator Andy Hill

The Paramount Duty Series:

McCleary, Fulfilling Our Paramount Duty, and the Myth that New Taxes Are Needed

Welcome to The Paramount Duty Series, a three-part examination of what led to the McCleary decision, its key holdings, a look at the dramatic K-12 funding increases in recent budgets, and what still remains to be done.

There have been many half-truths, untruths, and misunderstandings expounded in recent months, and the purpose of this series is to provide readers with a clearer understanding of the issues.

Think of this as a Treatise on McCleary:

What led to it, what has happened since the ruling, and what still remains.

Today's Installment:

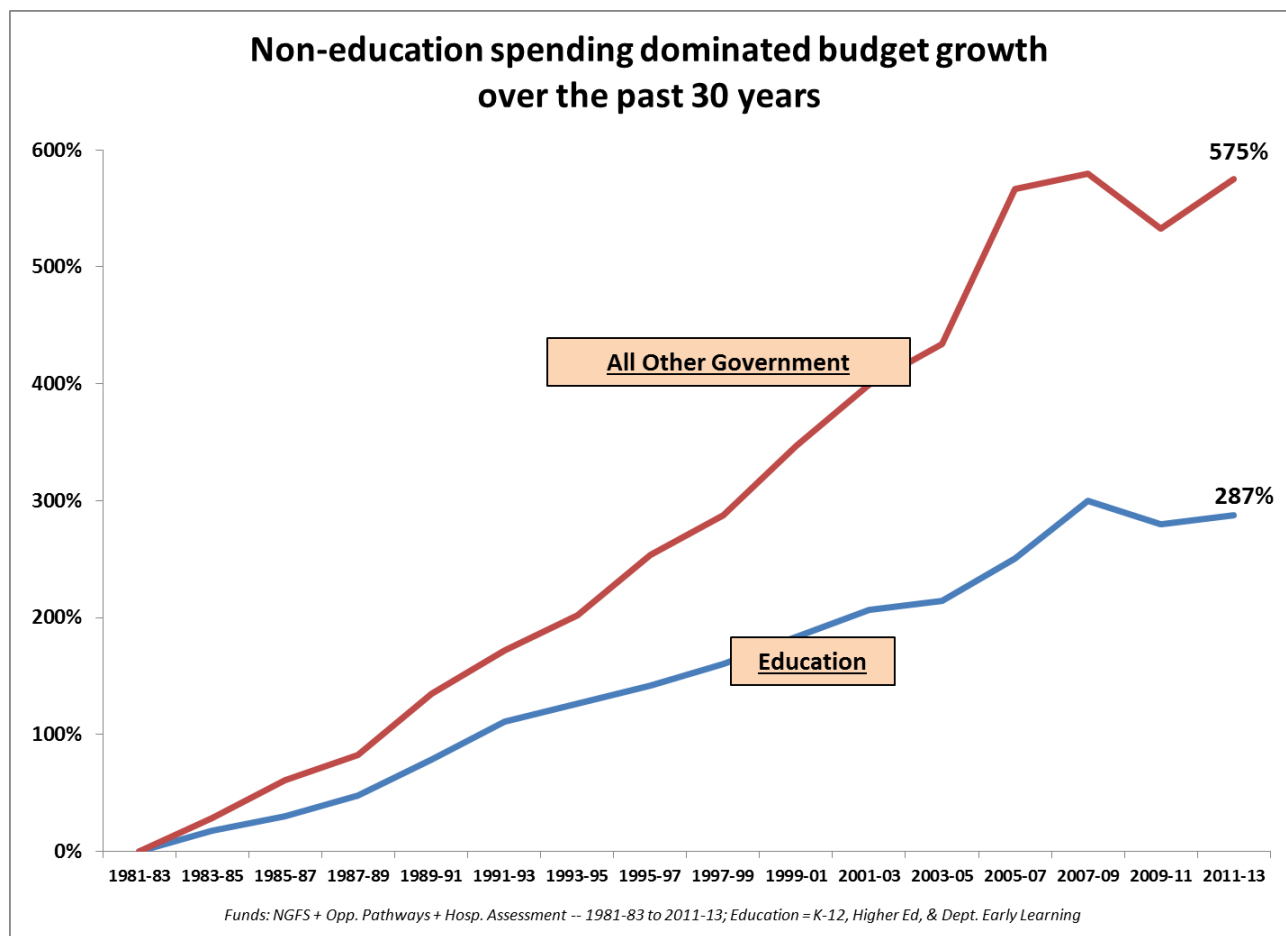
Part I: 30 Years of Shirking the Paramount Duty & Understanding the Holding that Followed

I: The 30 year failing: Education as a declining priority through 2013

"It is the paramount duty of the state to make ample provision for the education of all children residing within its borders[.]"

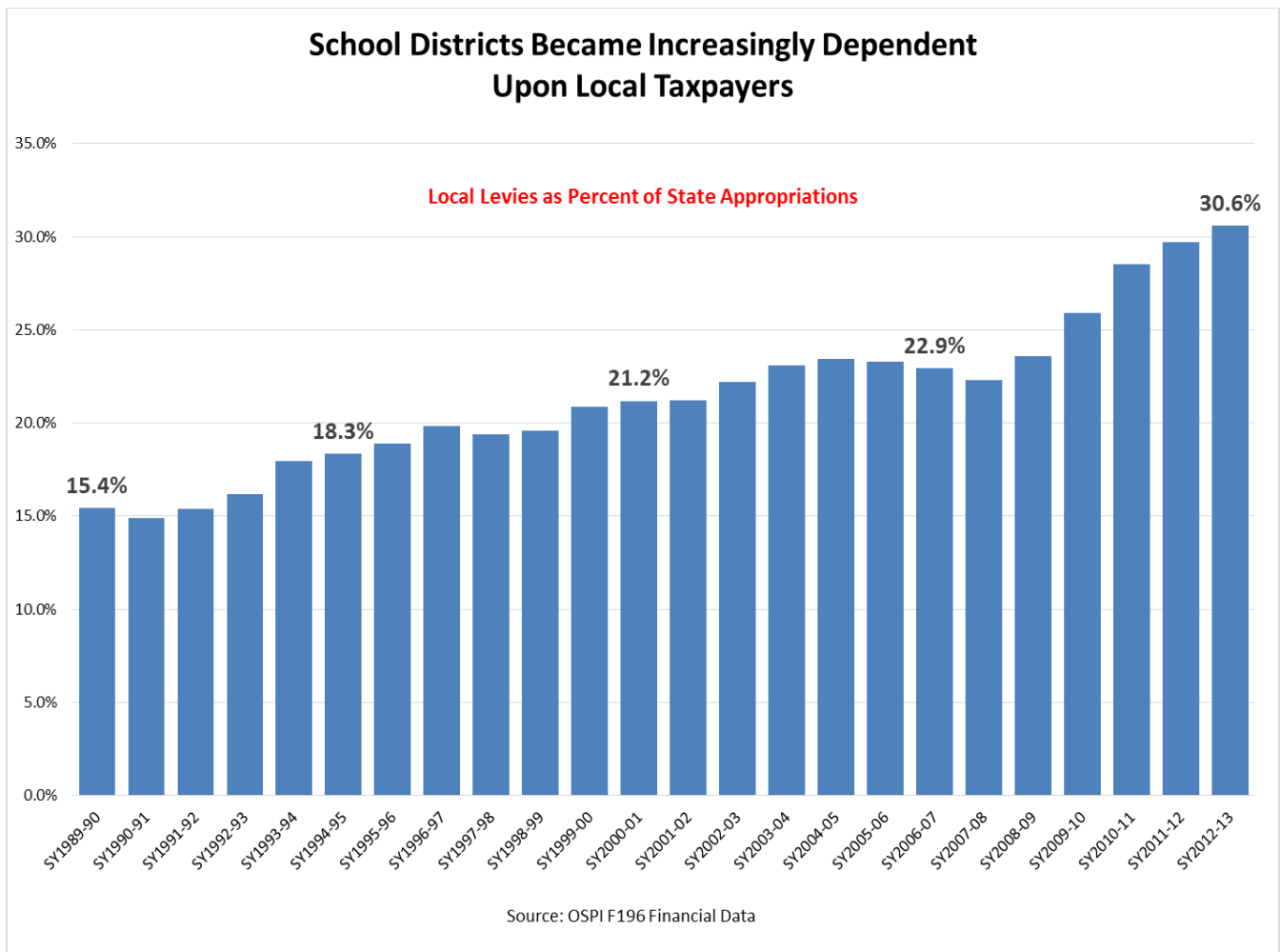
- Art. 9, Sec. 1 of the Washington State Constitution

Despite being ascribed preeminent importance in Washington's Constitution, education was a decidedly declining state budget priority over the last generation as non-education spending dominated budget growth from 1983 to 2013.



This 30-year trend diverted **billions** away from education and into non-"paramount duty" areas of the budget.¹

Meanwhile, as the state de-prioritized education, the burden increasingly fell to local taxpayers to pick up the slack - as shown in the following chart.



To summarize, over the 30 years in question:

- The "paramount duty" became a declining priority in the state budget, and
- The burden for financing schools shifted increasingly to local district taxpayers.

Into this fray comes McCleary vs. State.

II: *The 30-year failing comes home to roost – the McCleary holding:*

- 1. Unconstitutional reliance on local levies to finance K-12, and**
- 2. Skepticism Legislature would fund its "promising reform" of basic education**

In the McCleary suit, the state was alleged to be in violation of Article 9, section 1 of the state constitution. The trial court (King County Superior Court) found against the state, and in January 2012 the Washington Supreme Court affirmed the decision.² The court's ruling hinged on two findings:

- One, substantial evidence at trial that local levies were being used to fund "basic education" obligations that were properly the state's, notably in the areas of pupil transportation, materials & supplies, and certain district salaries, particularly for administrators and support staff.

- Two, the court noted that between the time of the Superior Court trial and the case being reviewed by the Supreme Court the Legislature had enacted a new, more expansive and costly definition of "basic education" designed to make new investments in class size reduction and all-day kindergarten, plus pay for districts' actual transportation and material & supply costs (HB 2261, 2009 & HB 2776, 2010). The court deemed this a "promising reform"³ of basic education but was skeptical - based on the 2011 Legislature's inaction - the program would in fact be funded by the Legislature's self-imposed 2018 deadline.

Key excerpts from the opinion:

On the unconstitutional reliance on local levies for "Basic Education":

- "[W]e rejected local levies as 'dependable and regular' not only because they are subject to the whim of the electorate, but also because they are too variable insofar as levies depend on the assessed valuation of taxable real property at the local level. This latter justification implicates both the equity and the adequacy of the K-12 funding system. Districts with high property values are able to raise more levy dollars than districts with low property values, thus affecting the equity of a statewide system. Conversely, property poor districts, even if they maximize their local levy capacity, will often fall short of funding a constitutionally adequate education. All local level funding, whether levy or otherwise, suffers from this same infirmity."⁴ (emphasis added)
- "The shortfall in state funding forced school districts to increasingly rely on local levies to meet the actual cost of the basic education program."⁵
 - *The opinion notes the evidence at trial highlighted three major areas of underfunding: transportation, materials & supplies, and staff salaries.*⁶
- "Reliance on levy funding to finance basic education was unconstitutional 30 years ago . . . and it is unconstitutional now."⁷

On skepticism the Legislature would fund its "promising reform" of basic education:

- "[F]ull implementation and funding for ESHB 2261 (and HB 2776) will remedy the deficiencies in the prior funding system."⁸
- Court calls reforms comprehensive, but says recent budget cuts "confirm that too much deference may set the stage for another major lawsuit challenging the legislature's failure to adhere to its own implementation schedule."⁹
- "Timely implementation (of 2776) remains uncertain."¹⁰
 - *The court then notes, at length, the inaction of the Legislature in 2011 to make progress toward that legislation's ultimate funding requirements.*¹¹
- "This court cannot idly stand by as the legislature makes unfulfilled promises for reform."¹²

Next in Part II

Turning the Tide – State Spending Radically Re-Prioritized

Footnotes:

1. \$4.29 billion more would have been available for education in 2011-13, if education had maintained its share of the budget that it had in 1981-83.
2. McCleary v. State, 173 Wn.2d 477 (2012) <http://www.courts.wa.gov/opinions/index.cfm?fa=opinions.showOpinion&filename=843627MAJ>
3. *Id.*, p.3 of opinion at link.
4. *Id.*, p. 56
5. *Id.*, p. 67
6. *Id.*, pp. 62-65
7. *Id.*, p. 68
8. *Id.*, p. 73. See also p. 3 ("The legislature recently enacted a promising reform package under ESHB 2261, 61st Leg., Reg. Sess. (Wash. 2009), which if fully funded, will remedy deficiencies in the K-12 funding system.")
9. *Id.*, p. 74
10. *Id.*, p. 75
11. *Id.*, p. 74-76
12. *Id.*, p. 76