



# McCleary at Twelve: Examining Policy Designs Following Court-Mandated School Finance Reform in Washington State

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All fifty U.S. state constitutions include language that guarantees residents' access to a free public education. Plaintiffs in all but two states have brought litigation challenging state school finance systems, and in over half the cases, judges ruled the systems unconstitutional and mandated state legislators to provide more equitable and adequate funding. In 2012, state supreme court judges ruled in favor of plaintiff school districts in *McCleary v. Washington State*. This study analyzes the policy proposals during the subsequent twelve years, from 2012 to 2024. We document actions of a series of statewide task forces that were formed as part of various state legislative reforms, and we highlight the limited extent to which task force recommendations influenced policy. Using John Kingdon's multiple streams framework, we argue that for school finance policy recommendations to impact policy, three elements must be in place, including political will, a clearly articulated problem, and viable proposals. Major reforms were passed in Washington state once these streams aligned, but in the process the initial definition of the educational problem – one of educational finance equity – was redefined over time in ways that shifted the ultimate policy outcomes. We recommend that policymakers and advocates maintain clearly articulated messages about the theory of the educational problem and the maintain alignment about the recommendations for improving policies.

VERSION: May 2025

Suggested citation: Fujioka, Kendall, and David S. Knight. (2025). *McCleary at Twelve: Examining Policy Designs Following Court-Mandated School Finance Reform in Washington State*. (EdWorkingPaper: 25 -1191). Retrieved from Annenberg Institute at Brown University: <https://doi.org/10.26300/1cbz-yr74>

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### **Abstract:**

All fifty U.S. states have constitutions with language that guarantees residents' access to a free public education. Plaintiffs in all but two states have brought litigation challenging state school finance systems, and in over half the cases, judges have ruled the systems unconstitutional and mandated state legislators to provide more equitable and adequate funding. In 2012, state supreme court judges ruled in favor of plaintiff school districts in *McCleary v. Washington State*. This study analyzes the policy proposals during the subsequent twelve years, from 2012 to 2024. We document actions of a series of statewide task forces that were formed as part of various state legislative reforms, and we highlight the limited extent to which task force recommendations influenced policy. Using John Kingdon's multiple streams framework, we argue that for school finance policy recommendations to impact policy, three elements must be in place, including political will, a clearly articulated problem, and viable proposals. Major reforms were passed in Washington state once these streams aligned, but in the process the initial definition of the educational problem – one of educational finance equity – was redefined over time in ways that shifted the ultimate policy outcomes. We recommend that policymakers and advocates maintain clearly articulated messages about the theory of the educational problem and the maintain aligning about the recommendations for improving policies.

### **Citation to published version:**

Fujioka, K. L., & Knight, D. S. (2024). *McCleary at twelve: Examining policy designs following court-mandated school finance reform in Washington State*. *West Education Law Reporter*.

This material is based upon work supported by the National Science Foundation under Grant No. 2055062 and by the William T. Grant Foundation. Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of funders.

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DAVID S. KNIGHT**

I. Introduction .....	1
A. The Three Waves of School Finance Litigation .....	6
B. Kingdon’s Multiple Streams Framework: Problems, Proposals and Politics .....	10
II. Procedural History of <i>McCLeary</i> .....	12
III. Understanding Washington K-12 Finance Reforms with Kingdon’s Framework .....	14
A. The Political Stream of Education in Washington .....	15
B. The Problem of Inadequate Education Funding in Washington .....	19
C. The Proposal Stream .....	25
IV. Converging Streams and an Open Policy Window: HB 2242 and SB 6362 .....	29
V. Education Funding Changes in Washington Over Time .....	30
A. Changes in State and Local Per-Pupil Revenue .....	31
VI. Discussion and Conclusion .....	36

## I. Introduction

Fifty years of school finance litigation demonstrate that judicial intervention may offer an effective mechanism to precipitate policies that increase funding for K-12 districts and advance educational justice for students.<sup>1</sup> In 2012, Washington’s highest court decided *McCleary v. State*<sup>2</sup> and found the Legislature in violation of its “paramount duty ... to make ample provision for the education of all children ... without distinction or preference on account of race, color, caste, or sex”<sup>3</sup> because state revenues did not cover districts’ necessary expenditures.<sup>4</sup> After two years without measurable progress, the Court held the Legislature in contempt<sup>5</sup> and later imposed sanctions of one hundred thousand dollars (\$100,000) per day.<sup>7</sup> It was not until June 2018, after more than a hundred million dollars in fines, that the Court terminated jurisdiction, ultimately

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<sup>1</sup> Critics contend that school finance litigation unnecessarily involves the judicial branch in issues that fall strictly under the legislative spending power, e.g., Larry J. Obhof, *School Finance Litigation and the Separation of Powers*, 45 MITCHELL HAMLINE L. REV. 539, 566 (2019) (calling for limits to judicial action such that courts cannot impose orders or remedies that equate to policymaking), and question whether lawsuits are an appropriate mechanism to impact school spending, e.g., Eric A. Hanushek & Matthew Joyce-Wirtz, *Incidence and Outcomes of School Finance Litigation: 1968-2021*, 51 PUB. FIN. REV. 748, 749, 772 (2023) (constructing a dataset of more than two hundred cases across forty-eight jurisdictions and concluding that plaintiff victories yield an immediate increase in funding but do not contribute to the long-term growth in school spending).

<sup>2</sup> 269 P.3d 227, 276 Educ. L. Rep. 1011 (Wash. 2012).

<sup>3</sup> WASH. CONST. art. IX, § 1. The plaintiffs’ complaint sought declaratory relief regarding the terms “paramount,” “ample,” and “all” but the text of Washington’s Education Clause which mirrors equal protection language was ultimately not at issue in this case. *Id.* at 244-5.

<sup>4</sup> *McCleary v. Washington*, 269 P.3d 231, 258, 261 (finding the State’s existing formulas did not adequately fund basic education because districts relied on external sources such as local levies for essential expenditures such as staff salaries and operating costs).

<sup>5</sup> Order at 4, *McCleary*, 269 P.3d 227 (Wash. 2012) (No. 84362-7, Sep. 11, 2014). The Legislature violated an order to provide “a complete plan for fully implementing its program of basic education for each school year between now and the 2017-18 school year” Order at 8, *McCleary*, 269 P.3d (No. 8362-7, Jan. 9, 2014).

<sup>6</sup> See Case Comment, *Education Law—Washington Supreme Court Holds Legislature in Contempt for Failing to Make Adequate Progress Toward Remediating Unconstitutional Education Funding Scheme.*—*McCleary v. State*, No. 84362-7 (Wash. Sept. 11, 2014) (order of contempt), 128 HARV. L. REV. 2048, 2054 (2015).

<sup>7</sup> Order at 9, *McCleary*, 269 P.3d (No. 84362-7, Aug. 13, 2015) (imposing sanctions until the Legislature adopted a plan to comply with its Constitutional duty by the 2018 school year).

satisfied with the Legislature’s proposed plan to implement a statutory program that fulfilled its constitutional duty.<sup>8</sup>

Since the “*McCleary fix*”<sup>9</sup> was implemented, public schools in Washington have seen a measurable increase in state funding for basic education, however, research suggests the policies have exacerbated systemic inequalities for some populations.<sup>10</sup> A focal point of the “*McCleary fix*” was to increase staff compensation and benefits, with the introduction of “regionalization factors” to account for cost-of-living differences across the state.<sup>11</sup> The “fix” also authorized additional funding for categorical programs such as the Learning Assistance Program (serving students performing below grade level in reading, writing, or mathematics), Transitional Bilingual Instructional Program (TBIP, serving students whose primary language is one other than English), and Special Education (serving students with disabilities). Our research is consistent with emerging literature that the policies as designed and implemented yield lower levels of funding for students who are American Indian/Indigenous and Latina/o/Hispanic, and

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<sup>8</sup> Order at 4, *McCleary*, 269 P.3d (No. 84362-7, 4, June 7, 2018) (terminating jurisdiction and concluding that the State had complied with orders to fully fund its statutory program of basic education by September 1, 2018).

<sup>9</sup> Neal Morton, *In Sprawling McCleary Fix, Lawmakers May Resurrect Inequities in Washington Schools*, SEATTLE TIMES (July 8, 2017), <https://www.seattletimes.com/seattle-news/education/in-sprawling-mccleary-fix-lawmakers-may-resurrect-inequities-in-washington-schools/> (acknowledging changes to policy to increase pay for teachers, provide support for high-poverty schools, and modify the state’s levy system, but cautioning that the modifications may exacerbate inequalities for students in low-income areas).

<sup>10</sup> See David S. Knight, Pooya Almasi & JoLynn Berge, *Washington School Finance: Exploring the History and Present-Day Challenges for Fiscal Equity* (In Westbrook, Phillip, Eric A. Houck, R. Craig Wood, & David C. Thompson, (Eds.). *Funding Public Schools in the United States, Indian Country, and US Territories*, 2nd Ed., Emerald.) at 1, 3, 8 and 14 (concluding that Washington’s school finance system, which combines a resource-based funding model and local tax revenues, but lacks student weights or progressive funding distributions, yields higher resources for districts with lower rates of poverty and with greater shares of White students, which perpetuates systemic disparities for Latina/o and Pacific Islander students).

<sup>11</sup> E.H.B. 2242, 65th Leg., 3rd Spec. Sess. (Wash. 2017), 2017 Wash. Sess. L. 1665 (establishing statewide minimum salary allocations for classified, certified instructional, and certified administrative staff, with regionalization factors developed by the Legislative Evaluation and Accountability Program Committee going into effect in 2018-19).

disproportionately benefit districts with low percentages of students living in poverty. We seek to understand why the Legislative response was delayed over many years despite being held in contempt and eventually sanctioned, how the policies of “*McCleary* fix” were designed, and why their implementation yields inequalities for some groups of students across the state.

Existing scholarship on school finance litigation examines the relationships between judicial orders, funding levels, and student outcomes,<sup>12</sup> but there is little research on the legislative processes that shape policy designs. Previous studies have found that decisions favoring plaintiffs lead to increases in funding, but the amount and distribution of new funding to districts varies substantially across different court decisions, and current research does not examine the laws—or their formulation—that produce such variation. This commentary aims to address this gap in the literature by applying Kingdon’s Multiple-Streams Framework to examine the legislative reforms prompted by *McCleary*, posing the following questions:

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<sup>12</sup> See generally Christine Kiracofe, Spencer C. Weiler & Jason Kopanke, *Exploring Fiscal Health, School Finance Litigation, and Per-Pupil Funding: A Longitudinal Examination of Data for Six States From 1950 to 2015*, 360 EDUC. L. REP. 604, 616 (2019) (finding that “school finance litigation ... culminating with a plaintiff victory was correlated with an increase in state per-pupil funding”); Michah W. Rothbart, *Does School Finance Reform Reduce the Race Gap in School Funding?*, 15 EDUC. FIN. & POL’Y 675, 698 (2019) (concluding that school finance reform prompted by litigation increases state aid to school districts, with larger impacts where there are higher representations of Black, Hispanic, and American Indian students); David Card & A. Abigail Payne, *School Finance Reform, the Distribution of School Spending, and the Distribution of Student Test Scores*, 83 J. PUB. ECON. 49, 80 (2002) (finding that court decisions invalidating a state’s financing structure generally lead to the state increasing the relative funding available to lower-income districts, and examining SAT scores to suggest a modest equalizing effect on test scores for students from different family backgrounds); Courtney Lockridge & Jeffrey Maiden, *The Tangible Impact of School Finance Litigation*, 39 J. EDUC. FIN. 344 (2014) (examining the relationship between adequacy litigation and student outcomes in fourth- and eighth-grade as measured by National Assessment of Educational Progress (NAEP) scores in reading and math); Christopher C. Candelaria & Kenneth A. Shores, *Court-Ordered Finance Reforms in the Adequacy Era: Heterogenous Causal Effects and Sensitivity*, 14 EDUC. FIN. & POL’Y 31, 57 (2019) (comparing school finance reforms prompted by adequacy litigation to reforms in similarly situated districts without judicial intervention, and suggesting that adequacy litigation yields positive effects of increased revenues and graduation rates in high-poverty districts).

- i. Why was the Washington Legislature's school finance reform policy delayed for five sessions after *McCleary*, even in the face of orders of contempt and sanctions from the Washington Supreme Court?
- ii. How did Washington's education funding change in the ten years following the decision, and how did the funding changes differ for different groups of students and school districts?

Kingdon's Multiple Streams Framework (MSF)<sup>13</sup> contends that three "streams"—problems, politics, and proposed policies—must converge to create open policy windows. Kingdon, a political scientist, developed the theory to understand legislative processes and policy formation in the federal government.<sup>1415</sup> As such, it offers a useful framework to aid in understanding the apparent inaction of Washington's Legislature in the face of Supreme Court sanctions and examining the processes that shaped policy designs that have exacerbated inequalities for some groups of Washington's students. Kingdon's framework illuminates that the policy window for school finance reform remained closed for multiple Legislative sessions because of the misalignment of the problem, proposal, and political streams. In the early years, the problem stream was characterized by inadequate funding across multiple specific categories, but the policy window was closed due to a dearth of suitable proposals with bicameral and

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<sup>13</sup> John W. Kingdon, *How do Issues Get on Public Policy Agendas?*, in *SOCIO. AND THE PUB. AGENDA*, 40-50 (William Julius Wilson, ed., 1993).

<sup>14</sup> *Id.* at 40.

<sup>15</sup> Scholars have questioned the durability of Kingdon's framework, *e.g.* Pragati Rawat & John Charles Morris, *Kingdon's "Streams" Model at Thirty: Still Relevant in the 21st Century?*, 44 *POL. & POL'Y* 608 (2016) (examining trends in the use of Kingdon's framework in research and concluding that the theory's durability is due, in part, to its flexible conceptual elements which render it useful across disciplines, *id.* at 627). We felt the generalizability of Kingdon's problem, policy, and proposal streams offered a simple framework to map the complex interactions over time between Washington's legislative, executive, and judicial branches as *McCleary* and its policy progeny progressed.

bipartisan support. Over time, the pressure of the political stream increased when the Legislature was held in contempt of Court and eventually sanctioned and the problem stream was redefined towards compliance with judicial orders.

In our commentary, we begin by briefly situating *McCleary* among three waves of school finance litigation across the nation, and we follow with further explanation of Kingdon's multi-streams framework and its applicability to our work. The second section provides the facts and procedural history of *McCleary*. Next, we apply Kingdon's framework to examine Washington's school finance reforms, focusing on the actions and processes of the subcommittees and representatives tasked with solving the problem. We supplement our policy analysis with empirical data to demonstrate how the policies designed and enacted following *McCleary* have yielded varying impacts for different groups of students based on their race, ethnicity, socio-economic status, and categorical program eligibility (i.e., LAP, TBIP, Special Education). We draw on data from the Washington Office of the Superintendent of Public Instruction (OSPI), Office of Program Research, and Washington Department of Revenue,<sup>1617</sup> and the F-196 dataset from 1994-95 to 2021-22.<sup>1819</sup> Finally, the commentary concludes by suggesting that future school finance reforms, regardless of whether policy changes are prompted by judicial

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<sup>16</sup> Wash. Off. of the Superintendent of Pub. Instruction & Dep't of Revenue, *E.H.B. 2242 Enrichment Levy and State School's Tax Analysis*, OSPI (Oct. 2017), [https://ospi.k12.wa.us/sites/default/files/2022-12/ehb2242\\_tax\\_impacts.xlsx](https://ospi.k12.wa.us/sites/default/files/2022-12/ehb2242_tax_impacts.xlsx).

<sup>17</sup> Jessica Harrell & Richelle Geiger, *Estimated Impact for the Policies in the 2017-19 Biennial Budget and EHB 2242*, Wash. State Fiscal Info. (July 2017), [https://fiscal.wa.gov/statebudgets/2017proposals/Documents/hoK12TaxPolicyAnalysis\\_0629.pdf](https://fiscal.wa.gov/statebudgets/2017proposals/Documents/hoK12TaxPolicyAnalysis_0629.pdf)

<sup>18</sup> Wash. Off. of the Superintendent of Pub. Instruction, *Final Extract-School Year 2022-2023* (2024), <https://ospi.k12.wa.us/safs-data-files> (expand "Excel Files" and select "Final Extract – School Year 2022-2023").

<sup>19</sup> The F-196 is an Annual Financial Statement for School Districts which reports final enrollment, revenue, and expenditure data for the prior school year. WASH. ADMIN. CODE § 392-117-020.

intervention, can advance educational justice for all students by beginning with a clear problem definition that identifies specific disparities or areas of inadequacy; in turn, the policy proposal stream can generate ideas to resolve the distinct underlying inequities, allowing legislators to choose from possible solutions that result in adequacy and equity, rather than solutions that simply resolve a court mandate.

### **A. The Three Waves of School Finance Litigation**

State courts in forty-eight jurisdictions across the nation have issued more than three hundred decisions in school finance litigation<sup>20</sup> which address the central question of whether a respective state's system to fund K-12 education is valid under the jurisdiction's constitution. Scholars have conceptualized three waves of school finance litigation;<sup>21</sup> while many have theorized the emergence of a fourth wave, there is not yet consensus on a centrally defining characteristic for the newest generation of cases.<sup>22</sup> Despite significant research examining more

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<sup>20</sup> Ethan Hutt, Daniel Klasik & Aaron Tang, *How do Judges Decide School Finance Cases?*, 97 WASH. U. L. REV. 1047, 1070 (2020) (identifying an original data set of 318 state-level school funding cases, including both trial and appeal courts, and concluding that the relative strength of a state's constitutional text regarding education has no bearing on the outcomes of school finance litigation. *Id.* at 1050. The selection criteria included cases: premised on a state constitutional violation (rather than a federal or state statute); where plaintiffs sought remedy in the form of an to invalidate the state's system of funding K-12 education (rather than compensatory damages); and applicable statewide (rather than limited to plaintiff subgroups, such as English learners or special education students). *Id.* at 1073-5. *See also* Michael A. Rebell, *State Courts and Education Finance: Past, Present, and Future*, 2021 BYU EDUC. & L. J. 113, 113, 153 n.113 (observing that forty-eight of fifty states had decisions from trial, appellate, or highest courts regarding constitutional challenges to the adequacy and equity of state education finance systems, with the exclusion of Hawaii and Utah).

<sup>21</sup> William E. Thro, *The Third Wave: The Impact of the Montana, Kentucky, and Texas Decisions on the Future of Public School Finance Reform Litigation*, 19 J. L. & EDUC. 219, 250 (1990) (describing the history of school finance litigation in the "first" and "second" waves, and suggesting a new direction for cases relying on state education clauses).

<sup>22</sup> Compare David G. Hinojosa, "Race-Conscious" School Finance Litigation: Is a Fourth Wave Emerging?, 50 U. RICH. L. REV. 869, 875, 891 (2016) (suggesting that two cases from New Mexico and North Carolina may prompt a fourth wave if future school finance complaints incorporate issues of race), and Christine R. Kiracofe & Spencer Weiler, *Surfing the Waves: An Examination of School Funding Litigation from Serrano v. Priest to Cook v. Raimondo and the Possible Transition of the Fourth Wave*, 2022 BYU EDUC. & L. J. 189, 229 (2022) (suggesting the arrival of a fourth wave based on shifts towards plaintiffs filing lawsuits in federal court, focusing on specific aspects of education that are being denied to them, and grounding claims in the federal constitution), with Lauren

than fifty years of cases,<sup>23</sup> it is difficult to compare or predict the outcomes of school finance litigation due to a lack of consistency in applicable constitutional standards and judicial approaches to issues of justiciability and appropriate remedies.<sup>24</sup>

The first wave of school finance litigation, approximately 1970-73, is characterized by claims brought under the Fourteenth Amendment of the U.S. Constitution, theorizing that the Equal Protection Clause<sup>2526</sup> guarantees substantially equal per-pupil funding for students within a

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Nicole Gillespie, *The Fourth Wave of Educational Finance Litigation: Pursuing a Federal Right to an Adequate Education*, 95 CORNELL L. REV. 989 (2010) (arguing that the fourth wave should be characterized by adequacy litigation in federal courts), and Kevin R. McMillian, *The Turning Tide: The Emerging Fourth Wave of School Finance Reform Litigation and the Courts' Lingered Institutional Concerns*, 58 OHIO ST. L. J. 1867, 1890, 1896 (1998) (suggesting that the fourth wave should contextualize school finance litigation in light of other institutional reform cases, with consideration for judicial legitimacy and competency).

<sup>23</sup> See, e.g., John Dayton, *An Anatomy of School Funding Litigation*, 77 EDUC. L. REP. 627, 647 (1992) (analyzing state supreme court opinions from 1971 to 1991 based on jurisdictional, factual, legal, and judicial policy issues, and concluding that the “crucial issue” is the strength of the state’s constitutional duty to support education); William E. Thro & R. Craig Wood, *The Constitutional Text Matters: Reflections on Recent School Finance Cases*, 251 EDUC. L. REP. 510, 513 (2010) (studying six cases from 2007 to 2009 and finding a common theme of emphasis on the constitutional text); Jason Kopanke, *Show Me the Money: Does the Third Wave of School Finance Litigation Affect Funding and Student Achievement?*, 401 EDUC. L. REP. 689, 702 (2022) (concluding that the third wave was associated with “small, nonsignificant improvements in funding” and “meager improvements in educational outcomes”).

<sup>24</sup> Carlee Poston Escue, William E. Thro, & R. Craig Wood, *Some Perspectives on Recent School Finance Litigation*, 268 EDUC. L. REP. 601, 617 (2011) (concluding that there is a lack of consistency in constitutional standards and judicial approaches).

<sup>25</sup> U.S. CONST. amend. XIV, § 1, provides “No State shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

<sup>26</sup> Courts deciding whether a state action violates the equal protection clause apply one of three standards of review—rational basis, intermediate, or strict scrutiny. Rational basis review, which applies to non-fundamental rights and non-suspect classifications, presumes that the law is valid so long as it is rationally related to a legitimate government interest; the challenger bears the burden to show there is no plausible reason for the classification. *E.g.*, *U.S. v. Carolene Products Co.*, 304 U.S. 144 (1938) (establishing that rational basis is the appropriate standard of review for legislation regarding commercial activity), *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307 (1976) (upholding a policy requiring state police officers to retire at fifty years old because age is not a suspect classification and the state had a legitimate interest in assuring the physical fitness of its uniformed officers). Intermediate scrutiny, which applies to quasi-suspect classifications such as gender, presumes a law is valid if the government can show that the classification is substantially related to an important government interest. *E.g.*, *U.S. v. Virginia*, 518 U.S. 515 (1996) (concluding that a publicly funded male-only military school violated Equal Protection by excluding women because there was not an important government objective). Strict scrutiny, which applies to fundamental rights or suspect classifications such as race or national origin, presumes a law is invalid unless the government shows it is necessary and narrowly tailored to achieve a compelling state interest. *E.g.*, *Brown*

given state.<sup>27</sup> The wave concluded in 1973 with *San Antonio Independent School District v. Rodriguez*<sup>28</sup> where the U.S. Supreme Court held that, for the purposes of Equal Protection analysis, education is not a fundamental right and wealth is not a suspect classification, and therefore a state's school finance formula will be upheld so long as the law is rationally related to a legitimate government interest.

The second wave, "equity" litigation, took place from 1973-1989<sup>29</sup> and is characterized by cases that sought equal protection of the laws and enforcement of the education clauses various state constitutions.<sup>3031</sup> The Washington Supreme Court decided one such case in

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*v. Bd. of Educ.*, 347 U.S. 483 (1954) (concluding that separate educational facilities based on classifications of race are inherently unequal and violate the Equal Protection Clause).

<sup>27</sup> William E. Thro, *The Third Wave*, 19 J. L. & EDUC. at 222-3.

<sup>28</sup> 411 U.S. 1, 93 S. Ct. 1278, 36 L.Ed.2d 16 (1973), *reh'g denied*, 411 U.S. 959 (1973). The Supreme Court heard an Equal Protection and Due Process challenge to the Texas finance scheme, which required districts to fund at least twenty percent of per-pupil funding via local property taxes. The Court applied rational basis review, holding that education is not a fundamental right expressed in the text of the Constitution and "wealth" is not a suspect classification. The Court upheld the statute, finding that Texas had a legitimate government interest (providing a state fund for minimum education for all students and allowing local control for each district to choose whether to go beyond the minimum), and the classification was rationally related to furthering the State's interest. (Brennan, J., dissenting) (arguing that the Texas finance scheme should be invalidated because it discriminates against students and parents living in districts where the per-pupil tax base is lower than comparable revenues for other, more affluent districts) (White, J., Douglas, J., & Brennan, J., dissenting) (arguing that the Texas finance scheme lacks a rational basis and that the right to an education is fundamental to effectuate other rights, such as free speech and association and voting) (Marshall, J., and Douglas, J., dissenting) (arguing that the majority decision effectively allows states to vary the quality of education based for children based on the taxable local wealth of the districts wherein they reside).

<sup>29</sup> See William S. Koski, *Beyond Dollars? The Promises and Pitfalls of the Next Generation of Educational Rights Litigation*, 117 COLUM. L. REV. 1897, 1903 (2017) (characterizing the second wave of "equity" litigation as taking place from 1973-1989).

<sup>30</sup> Thro, *The Third Wave*, 19 J. L. & EDUC. at 228, 230.

<sup>31</sup> All fifty state constitutions contain provisions for public education or schools. ALA. CONST. art. XIV, § 256; ALASKA CONST. art. VII, § 1; ARIZ. CONST. art. XI, § 1; ARK. CONST. art. XIV, sec 1; CAL. CONST. art. IX, § 1; COLO. CONST. art. IX, § 2; CONN. CONST. art. VIII, § 1; DEL. CONST. art. X, § 1; FLA. CONST. art. IX, § 1; GA. CONST. art. VIII, § 1; HAWAII CONST. art. X, § 1; IDAHO CONST. art. IX, § 1; ILL. CONST. art. X, § 1; IND. CONST. art. VIII, § 1; IOWA CONST. art. IX § 12; KAN. CONST. art. VI, § 1; KY. CONST. § 183; LA. CONST. art. VIII, § 1; ME. CONST. art. VIII, § 1; MD. CONST. art VIII, § 1; MASS. CONST. ch. V, § 2; MICH. CONST. art. VIII, §§ 1-2; MINN. CONST. art XIII, § 1; MISS. CONST. art. VIII, § 201; MO. CONST. art. IX, § 1(a); MONT. CONST. art X, § 1; NEB. CONST. art. VII, § 1; NEV. CONST. art. XI, § 2; N.H. CONST. pt. 2, art. 83; N.J. CONST. art. VIII, § 4; N.M. CONST.

*Northshore School District v. Kinnear*<sup>32</sup> where the plaintiffs unsuccessfully argued that the state’s funding structures violated both the Equal Protection clauses of the U.S. and State Constitution as well as Washington’s education clause. The decision observed that there were inequalities based on differing property values and local levy support, but ultimately concluded that the State had not violated its duty to amply provide for public education.<sup>33</sup> In another major case from the second wave, *Robinson v. Cahill*,<sup>34</sup> the plaintiffs asserted Equal Protection under both the United States and New Jersey constitutions<sup>35</sup> and sought enforcement of the New Jersey education provision<sup>36</sup> to challenge the finance scheme, which relied heavily on local taxes.<sup>37</sup> The New Jersey Supreme Court relied on the text of the state’s education clause, which guarantees a “thorough and efficient system of free public schools”<sup>38</sup> and concluded that the state’s system was unconstitutional because the authorization of local taxes did not satisfy the state’s responsibility.<sup>39</sup> *Robinson* was significant as it demonstrated that state constitutions offered a

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art. XII, § 1; N.Y. CONST. art. XI, § 1; N.C. CONST. art. IX, § 2; N.D. CONST. art. VII, § 1; OHIO CONST. art. VI, § 2; OKLA. CONST. art. XIII, § 1; OR. CONST. art. VIII, § 3; PA. CONST. art. III, § 14; R.I. CONST. XII, § 1; S.C. CONST. art. XI, § 3; S.D. CONST. art. VIII, § 1; TENN. CONST. art. XI, § 12; TEX. CONST. art. VII, § 1; UTAH CONST. art. X, § 1; VT. CONST. ch. II, § 68; VA. CONST. art. VIII, § 1; WASH. CONST. art. IX, §§ 1-2; W.VA. CONST. art. VII, § 1; WIS. CONST. art. X, § 3; WYO. CONST. art. VII, § 1.

<sup>32</sup> 530 P.2d 178 (Wash. 1974)

<sup>33</sup> *Id.* at 696, 725.

<sup>34</sup> 62 N.J. 473, 303 A.2d 273 (1973) (*Robinson I*).

<sup>35</sup> N.J. CONST. art. I, § 5 provides that “[n]o person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil... right, nor be segregated ... in the public schools, because of religious principles, race, color, ancestry, or national origin.”

<sup>36</sup> N.J. CONST. art. VIII, § 4 provides that “[t]he Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in the State between the ages of five and eighteen years.”

<sup>37</sup> *Robinson*, 62 N.J. 473, 482.

<sup>38</sup> N.J. CONST. art. VIII, § 4.

<sup>39</sup> *Robinson*, 62 N.J. 473, 520.

viable source of law to prompt school finance reform in either the state equal protection clause or the education provision.<sup>40</sup>

In the third wave, “adequacy” litigation, from 1990-present, plaintiffs generally seek enforcement of the education provisions of their respective state constitutions as a means to guarantee a minimal level of educational quality, but forego equal protection arguments that were asserted in the first and second waves.<sup>4142</sup> In the central case of *Rose v. Council for Better Education, Inc.*<sup>43</sup> the Kentucky Supreme Court found the “*entire system* of common schools ... unconstitutional”<sup>44</sup> (emphasis in original) because of its inefficiencies, and ultimately did not reach claims brought under equal protection.

The chronology and legal strategy of *McCleary* situate the case among the third wave of school finance litigation. The complaint was filed in 2007, the state’s highest court issued its decision in 2012, and the court terminated jurisdiction in 2018. Further, the legal strategy employed by the plaintiffs in *McCleary* aligns with that of third-wave plaintiffs relying on the state’s education provision to guarantee a minimum level of funding for all schools.

## **B. Kingdon’s Multiple Streams Framework: Problems, Proposals and Politics**

In this section, we briefly introduce Kingdon’s Multiple Streams Framework and explain its relevance to *McCleary*. The framework predicts that issues rise to the government’s agenda when three independent “streams”—problems, politics, and policy proposals—converge to open

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<sup>40</sup> Thro, *The Third Wave*, 19 J. L. & EDUC. at 228-32.

<sup>41</sup> Koski, *Beyond Dollars?*, 117 COLUM. L. REV. at 1904 (characterizing the third wave of “adequacy” litigation as taking place from 1989-present).

<sup>42</sup> *Id.* at 1904.

<sup>43</sup> 790 S.W.2d 186 (Ky. Sup. Ct., 1989)

<sup>44</sup> *Id.* at 215.

a window of opportunity to effectuate change.<sup>45</sup> The recognition of a problem requires both objective observable conditions and interpretation of those circumstances. Kingdon explains that “[g]etting people to see a condition as a problem is a central political accomplishment.”<sup>46</sup> The policy proposal stream contains all ideas generated by academics, analysts, government officials, and researchers, which, over time, come together and consolidate to fully developed proposed solutions that are technically feasible, of reasonable budgetary cost, and acceptable to the public.<sup>47</sup> The political stream, which reflects government ideologies and broader national moods, is constantly shifting due to factors such as changes in administration, election results, and interest group campaigns.<sup>48</sup> Kingdon theorizes that policy changes may occur if the three independent streams converge with (1) a relevant and significant problem, (2) accompanied by appropriate and feasible proposed solutions, and (3) the right political climate to enact change.<sup>49</sup>

Here, Kingdon’s theory linking policy problems, politics, and proposals offers a simple framework to examine the complexities of inadequate and inequitable education funding in Washington state, and the processes that shaped the policies that were enacted to address the problem. In the two decades preceding *McCleary*, Washington authorized multiple taskforces and workgroups to examine the problems of insufficient school funding.<sup>50</sup> The political stream

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<sup>45</sup> See Kingdon, *supra* note 13, at 41.

<sup>46</sup> *Id.* at 42.

<sup>47</sup> *Id.* at 42-43.

<sup>48</sup> *Id.* at 41, 43.

<sup>49</sup> *Id.* at 44.

<sup>50</sup> E.g., Wash. Gov. Exec. Ord. 91-04, Establishing the Governor’s Council on Education Reform and Funding (May 16, 1991) (convening the Governor, the State Superintendent, the State House and Senate leaders, educator representatives, and six public members to develop a long-term action plan to improve the education system), and E.S.S.B. 6108, 55th Leg., Reg. Sess. (Wash. 1998), 1998 Wash. Sess. L. 1959 (allocating \$340,000 for the Joint Legislative Audit and Review Committee (JLARC) to study K-12 finances),

expanded as *McCleary* was filed, decided, and eventually affirmed by the State’s highest court. The lawsuit prompted political pressure for compliance with judicial orders, which, as we argue in this commentary, narrowed the legislature’s concerns towards strictly addressing the court mandates to remove the finding of contempt and, as such, the problem formulation and policy proposals paid less attention to the additional educational needs of some student groups.

## **II. Procedural History of *McCleary***

The *McCleary* complaint was filed in January 2007 in King County Superior Court, alleging that the State violated its duty under Article IX. The named plaintiffs were two families, the McClearys and the Venemas,<sup>51</sup> and the Network for Excellence in Washington Schools (NEWS), a statewide coalition of community groups, school districts, and education organizations. The complaint sought declaratory relief to clarify the legal definition of “paramount”, “ample”, “education”, and “all” as used in the state constitution; determine whether the State complied with its duty under the state constitution; and determine what judicial remedy was appropriate to enforce Washington’s legal duty.<sup>52</sup>

The bench trial commenced on August 31, 2009 and closing arguments concluded on November 25 of the same year.<sup>53</sup> The McCleary and Venema families testified about their personal experiences with their children not meeting state standards based on test scores, the disrepair of buildings and facilities, the use of instructional time for students to make crafts to be

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and E.2.S.H.B. 2955, 58th Leg., Reg. Sess. (Wash. 2004) (authorizing a task force to examine Washington’s school finance system).

<sup>51</sup> Both were two-parent households that resided, voted, and paid taxes in Washington and each family had two school-aged children enrolled in the state’s public K-12 system; they were represented by Thomas Ahearne of Foster Garvey in Seattle, WA.

<sup>52</sup> *McCleary*, 269 P.3d 227, 244-5, (Wash. 2012).

<sup>53</sup> *Id.* at 245.

sold at fundraisers, and schools' dependence on parent organizations to fundraise for materials such as books, document cameras, globes, math manipulatives.<sup>54</sup> The trial court also heard testimony and depositions from the Office of the State Superintendent designees, district superintendents across the state, and national experts in school finance.<sup>55</sup>

In the final judgment issued on February 24, 2010, the trial court concluded that the State had not complied with its duty under Article IX<sup>56</sup> because the funding formulas did not produce enough state revenue to cover the actual cost of providing a basic education, which caused districts to increasingly rely on external (i.e., federal or local) sources for necessary expenses.<sup>57</sup> The court adopted precedent from *Seattle School District v. Washington*<sup>58</sup> and defined “paramount” as “having the highest rank that is superior ... preeminent, supreme, and more important to all others”<sup>59</sup> and reaffirmed that education must be the first and highest priority before any other State programs or operations. The judge defined “ample” as “considerably more than just adequate or merely sufficient”<sup>60</sup> and construed this to mean that the State cannot rely on non-state funds, such as parent-teacher organization fundraisers and local levies, to provide basic

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<sup>54</sup> *McCleary*, No. 07-2-02323-2, 18-20 (Wash. Super. Ct. for King Cnty. Feb. 24, 2010).

<sup>55</sup> *McCleary*, 269 P.3d at 245.

<sup>56</sup> *Id.* at 253, 258

<sup>57</sup> *Id.* at 253 (finding that the legislature relied on funding formulas established in the mid-1970s, which did not reflect the State's transition to a performance-based and seat-based education system in the early-1990s).

<sup>58</sup> 585 P.2d 71, 76-8 (1978) Seattle School District initiated the lawsuit alleging the State was not meeting its Article IX duty when the district was faced with budget reductions, deteriorating facilities, and two failed attempts to pass levies with local voter-taxpayers; Seattle School District sought declaratory relief that special excess levies for basic expenditures were not permissible under the state's constitution.

<sup>59</sup> *McCleary*, 269 P.3d at 248-9.

<sup>60</sup> *Id.* at 252.

education to all children.<sup>61</sup> The trial court ordered the Legislature to make “real and measurable progress” to (1) establish the actual cost to “amply provide” for the education of all children and (2) establish how the State would fund that cost with stable and dependable sources.<sup>62</sup>

The State appealed and arguments before the highest court began on June 28, 2011. The Court’s decision, issued on January 5, 2012, largely affirmed the trial court’s findings that the State failed to fund the costs of “amply providing” a basic education program.<sup>63</sup> Justice Stephens acknowledged that the Legislature had “recently enacted sweeping reforms to remedy deficiencies”<sup>64</sup> but retained jurisdiction to “remain vigilant”<sup>65</sup> and ensure the State’s progress toward full implementation of its new education funding formulas by 2018.<sup>66</sup>

### **III. Understanding Washington K-12 Finance Reforms with Kingdon’s Framework**

This section applies Kingdon’s multiple-stream framework to examine the political, problem, and proposal streams of school finance reform in Washington before, during, and after *McCleary*. The subsection on the political stream focuses on the text of the state’s education clause, judicial interpretation of the state’s constitutional mandates, and the state’s statutory program of basic education. The subsection examining the problem stream summarizes the findings and reports of more than fifteen government committees, workgroups, and task forces that focused on issues of the state’s school funding formulas, local levy equalization, staff

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 245, 259.

<sup>63</sup> *Id.* at 254, 258, 261. The decision was affirmed in part, but the Court disagreed with the trial court’s remedy; citing the delicate balancing of powers, the justices deferred to the Legislature to select the means of discharging its duty. *Id.* at 259.

<sup>64</sup> *Id.* at 261. (referring to E.S.H.B. 2261).

<sup>65</sup> *Id.* at 262

<sup>66</sup> *Id.* at 261.

compensation, and education reform between the years of 1991 to 2018. Finally, the subsection about the proposal stream examines the ideas generated by stakeholders and considered by policymakers, with attention to the proposals that were considered by the Joint Task Force on Education Funding (JTFEF), which ultimately led to the legislative reforms that satisfied judicial orders.<sup>67</sup>

### **A. The Political Stream of Education in Washington**

According to Kingdon, the dynamic political stream is influenced by changes in administration, elections and nominations, partisan politics, and pressure from interest groups.<sup>68</sup> In the United States, education is largely a function of state law<sup>69</sup> subject to some federal regulation.<sup>70</sup> Below, we examine the political stream of Washington's school funding with attention to the text of the state's education clause, the statutory program of basic education, and the highest courts' interpretation of the State's responsibilities.

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<sup>67</sup> E.2.S.S.B. 6195, 64th Leg., Reg. Sess. (Wash. 2016), 2016 Wash. Sess. L. 14 (2016) (establishing the Education Funding Task Force to make recommendations to the legislature on implementing the program of basic education, with intent to eliminate school districts dependency on local levies and to provide state funding sufficient to recruit and retain competent classified and certificated staff).

<sup>68</sup> See Kingdon, *supra* note 13 at 43.

<sup>69</sup> U.S. CONST. amend. X (establishing that States have the power to exercise rights that are not delegated to, nor prohibited by, the federal executive, legislative, and judicial branches, and the U.S. Constitution).

<sup>70</sup> U.S. CONST. art. VI (establishing that federal laws are "the supreme law of the land", preempting state laws. Schools and districts are subject to federal legislation such as the Every Student Succeeds Act (ESSA), the Family Educational Rights and Privacy Act (FERPA), and civil rights statutes which prohibit discrimination based on dis/ability, sex, race, and national origin).

### *a. Washington's Education Clause*

While the United States Constitution does not guarantee a fundamental right to education,<sup>71</sup> Washington is one of five jurisdictions with “high duty provisions”<sup>72,73</sup> in the state constitution that places education above other governmental functions.

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.<sup>74</sup>

Washington's “First” Constitution, which was adopted by the territory in 1878<sup>75</sup> (eleven years before the federal government acknowledged its Statehood),<sup>76</sup> did not make education the state's “paramount” duty; it established a “thorough and uniform”<sup>77</sup> system of free public schools

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<sup>71</sup> See *supra* note 28 (summarizing *San Antonio Indep. Sch. Dist. v. Rodriguez*).

<sup>72</sup> William E. Thro, *Originalism and School Finance Litigation*, 335 EDUC. L. REP. 538, 553, n.105 (2016) (identifying five states, Florida, Georgia, Illinois, Maine, and Washington, that prioritize education above other government services such as roads or welfare, and distinguishing between states that (1) mandate the establishment of public schools; (2) require specific quality of education; or (3) provide strong mandates to achieve established levels/quality of schools).

<sup>73</sup> Compare FLA. CONST. art IX, § 1 (declaring it “a paramount duty of the state” to make adequate provision for schools because “education of children is a fundamental value” of the State); GA. CONST. art. VIII, § 1 (providing that the provision of adequate public education is “a primary obligation” of the State); ILL. CONST. art. X § 1 (providing that “educational development of all persons” is “[a] fundamental goal” of the State); ME. CONST. ART. VIII, § 1 (requiring the Legislature to ensure suitable provision for the “important object” of education, which is “essential to the preservation of the rights and liberties of the people”).

<sup>74</sup> WASH. CONST. art. IX, § 1.

<sup>75</sup> Edmond S. Meany & John T. Condon eds., *Washington's First Constitution, 1878*, 9 THE WASH. HIST. Q. 129-152, 208-229, 296-307 (1918).

<sup>76</sup> The Enabling Act of 1889, 25 Stat. 676 c. 180 (1889) granted statehood to Washington, Montana, and North and South Dakota.

<sup>77</sup> Alex S. Abernathy, Lyman B. Andrews, Charles M. Bradshaw, Benj. F. Dennison, Edward Eldridge, Francis Henry, S.M. Gilmore, Wyatt A. George, H.B. Emery, D.B. Hanna, C.H. Larrabee, Oliver P. Lacey, Alonzo Leland, James V. O'Dell, George H. Steward, Sylvester M. Wait & W. Byron Daniels, *Washington's First Constitution, 1878*, in 10 THE WASH. HIST. Q. 110, 120 (Edmond S. Meany & John T. Condon eds., 1919).

to “gratuitously”<sup>78</sup> educate residents. In the intervening years, the national and state political contexts of post-Reconstruction America prompted Washington to strengthen its commitment to public education. In particular, scholars have noted the advocacy of African American groups and community activists in Washington and other states, that successfully petitioned for stronger constitutional language towards anti-discrimination and broader fiscal support beyond localities.<sup>79</sup>

### ***b. Judicial Interpretation of the State’s Shared Responsibility***

In 1974, just on the cusp of the first and second waves of school finance litigation, Washington’s highest court heard *Northshore School District v. Kinnear*<sup>80</sup> and upheld the State’s system for funding education. The decision observed that there was substantial variation across districts funding levels based on differences in assessed property values, but ultimately concluded that the State satisfied its’ paramount duty to amply fund basic education.<sup>81</sup>

*Kinnear* was overruled just four years later. In *Seattle School District v. Washington*<sup>82</sup> the Court concluded that the State failed to make ample provision for the education of all children evidenced by the fact that local levies were being used for basic expenses, rather than being restricted to “enrichment programs”.<sup>83</sup> The *Seattle School District* court held that the three co-

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<sup>78</sup> *Id.*

<sup>79</sup> See Knight et al., *supra* note 10, at 1, 3.

<sup>80</sup> 530 P.2d 178, 84 Wn.2d 685 (Wash. 1974). The plaintiffs, twenty-five school districts across the state, argued that the State’s system violated the equal protection clauses of both the United States and Washington Constitutions as well as the State’s education clause because there were significant differences in funding based on the assessed property values across districts.

<sup>81</sup> *Id.* at 696, 725

<sup>82</sup> 585 P.2d 71, 83, 93 (Wash. 1978). Washington’s largest school district commenced the lawsuit in the face of significant budget cuts after two proposed levies failed to get support from local voters. *Id.* at 78.

<sup>83</sup> *Id.* at 99.

equal branches of government share responsibility for the state’s education system:<sup>84</sup> the judicial branch must interpret and enforce the constitution;<sup>85</sup> the legislature must “organiz[e], administ[er], and operat[e]”;<sup>86</sup> and the executive, via the Office of the Superintendent of Public Instruction (OSPI), must supervise “all matters pertaining to public schools”.<sup>87</sup> The *Seattle School District* decision directed the Legislature to define and give substantive content to a basic program of education<sup>88</sup> and to provide sufficient funds derived from dependable tax sources<sup>89</sup> at an “*irreducible minimum*”<sup>90</sup> (emphasis in original). Further, the decision held that statutory authorization of special excess levies did not satisfy the duty to fund basic education because it was not “dependable” or “regular” and therefore could only be used to fund enrichment programs.<sup>91</sup>

***c. The Statutory Program of Basic Education***

The Washington Basic Education Act of 1977<sup>92</sup> established goals for the state’s public education system and created a formula to fund necessary expenditures. The accompanying Levy

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<sup>84</sup> The Court took an originalist approach to support this conclusion and found that Article IX, § 1 “is addressed to the ‘State’ *not merely the legislature*” (emphasis in original) *Seattle Sch. Dist.*, 585 P.2d 71, 88.

<sup>85</sup> *Id.* at 83, 88.

<sup>86</sup> *Id.* at 95.

<sup>87</sup> WASH. CONST. art. III, §§ 1, 22.

<sup>88</sup> *Seattle Sch. Dist. v. Wash.* at 95.

<sup>89</sup> *Id.* at 97-8.

<sup>90</sup> *Id.* at 97.

<sup>91</sup> *Id.* at 97-8.

<sup>92</sup> 1977 Wash. Sess. L. 1606.

Lid Act of 1977<sup>93</sup> capped levy contributions at ten percent of a school district's annual budget; the levy base was calculated based on the sum of state and federal revenues from the prior year. In subsequent years, the Legislature expanded the definition of basic education to include categorical programs for special education (for students with disabilities), transitional bilingual programs, remediation assistance, and pupil transportation.<sup>94</sup> In 1987 the Legislature added Local Effort Assistance (LEA), or levy equalization aid, to guarantee funding for districts that levy above-average local taxes to compensate for low property tax wealth.<sup>95</sup>

## **B. The Problem of Inadequate Education Funding in Washington**

Concerns of inadequate state funding for public education existed for at least fifteen years before *McCleary* commenced. In 1991, the Governor established the Council on Education Reform and Funding as the state followed national trends and adopted standards-based reform (characterized by implementing standards to promote academically challenging instruction and measuring academic outcomes with standardized large-scale assessments);<sup>96,97</sup> the Council was tasked with developing a long-term plan to reform Washington's primary and secondary schools,

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<sup>93</sup> 1977 Wash. Sess. L. 1246. The Legislature amended the levy lid multiple times. When the State's highest court rendered its *McCleary* decision in 2012 levies were capped at twenty-eight percent, but almost a third of districts across the state were grandfathered in at rates up to thirty-eight percent.

<sup>94</sup> Margaret L. Plecki, *Washington's School Finance Reform: Moderate Success and the Need for Improvement*, 25 J. EDUC. FIN. 565, 570 (2000).

<sup>95</sup> *Id.* at 570-1.

<sup>96</sup> *McCleary*, 269 P.3d at 234.

<sup>97</sup> See LAURA S. HAMILTON, BRIAN M. STECHER & KUN YUAN, STANDARDS-BASED REFORM IN THE UNITED STATES: HISTORY, RESEARCH, AND FUTURE DIRECTIONS 11 (RAND Corp. Ctr. on Educ. Pol'y, ed., 2008) (examining the history of standards-based reforms (SBR) in education in the United States, which originated in the 1980s and 1990s and expanded after federal legislation No Child Left Behind (NCLB). Key features of SBR include the measurement of academic outcomes from large-scale assessments to drive education policy; the use of information produced by the system to guide instructional decision-making; and emphasis on using standards to promote academically challenging instruction).

significantly improve student performance, and efficiently use new and existing funds.<sup>98</sup> The group's final report, published in 1992, recommended that the Legislature work with OSPI and the Office of Financial Management (OFM) to develop a new funding formula to be implemented in 1997-1998.<sup>99</sup>

More than ten years later, the House (lacking support from the Senate) established an internal K-12 Finance Workgroup to assess whether the state's funding formulas were consistent with the state's education policies and goals for education reform.<sup>100101</sup> The committee's final report identified multiple issues of insufficient and inequitable education funding including low staff compensation,<sup>102</sup> special education allocations,<sup>103</sup> student transportation,<sup>104</sup> the Learning

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<sup>98</sup> Wash. Gov. Exec. Ord. 91-04, Establishing the Governor's Council on Education Reform and Funding (May 16, 1991). The Council included the Governor, the State Superintendent, the Speaker of the House, the House Minority Leader, the Senate Majority and Minority leaders, a number of educators (including a school district director, school administrator, two certified instructional staff, and a classified school employee), and six public members appointed by the Governor.

<sup>99</sup> Gov.'s Council on Educ. Reform and Funding, PUTTING CHILDREN FIRST: IMPROVING STUDENT PERFORMANCE IN WASHINGTON STATE 32-3 (1992).

<sup>100</sup> E.2.S.H.B. 2955, 58th Leg., Reg. Sess. (Wash. 2004) (establishing a task force to study the state's education funding system and develop alternative models and a final report to the Legislature).

<sup>101</sup> Denise Graham, Kristen Fraser, & Susan Morrissey, FINAL REPORT OF THE HOUSE OF REPRESENTATIVES K-12 FINANCE WORKGROUP: A JOINT APPROPRIATIONS AND EDUCATION COMMITTEE INTERIM WORKGROUP, E.2.S.H.B. 2955, 58th Leg., Reg. Sess. (Wash. 2004) at 3 (stating that the Senate did not adopt measures to study K-12 finance). The group of sixteen bipartisan House representatives (eight each from democrats and republicans) met four times and heard reports from the Governor, State Superintendent, four district superintendents across Washington, and national experts on education finance. *Id.* at 3. The workgroup characterized the State's approach as "structurally sound" (because it was based on student enrollment and recognized additional costs for special education students, English learners, and students needing remedial help) but recommended further in-depth examination to study levy lids, special education funding, student transportation, and teacher compensation. *Id.* at 18, 19, 21, 23.

<sup>102</sup> *Id.* at 5-6 (observing no incentives for teaching in hard-to-serve schools or difficult-to-fill positions, and the lack of cost-of-living variations among regions in the state).

<sup>103</sup> *Id.* at 7, 17-18 (observing that multiple issues warranted further consideration, and recommending the Legislature conduct an in-depth examination of the entire special education funding structure).

<sup>104</sup> *Id.* at 7, 19 (observing that districts reported both over- and under-compensation for transportation, and the allocation formula had not been modified since it was adopted in the 1980s).

Assistance Program (LAP),<sup>105</sup> and the existence of districts grandfathered in with levy contributions that exceeded the amount set in statute.<sup>106</sup> For example, LAP, the state's only program to target categorical funding to districts based on the student poverty rate, represented less than 3% of total state support, and at the time allocated at that time only 10% of remedial funding based on poverty with the remaining 90% based on the percentage of students testing in the lowest quartile of national tests.<sup>107</sup> Here, the House task force elucidated the problem stream and observed specific inequities in funding for some students (such as the relatively low LAP allocation for students living in poverty and the inadequate finance for special education), but the policy window remained closed because the political stream lacked the support of the Senate, and the report offered areas for further study but no proposed policy solutions.

The following year, the Legislature authorized the Comprehensive Education Steering Committee ("Washington Learns") to develop recommendations to provide stable funding for public schools.<sup>108</sup><sup>109</sup> Washington Learns contracted with school finance experts<sup>110</sup> to conduct an

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<sup>105</sup> *Id.* at 7 (observing that 90% of the state's remedial funding was based on norm-referenced test scores, with the remaining 10% based on poverty).

<sup>106</sup> *Id.* at 8 (observing that most districts had a maximum levy lid at 24% of state and federal revenues, but ninety-one districts across the state were grandfathered in at rates up to 34%).

<sup>107</sup> *Id.* at 8, 19-20 (recommending that a new LAP formula should use poverty as the sole driver of funding).

<sup>108</sup> E.2.S.S.B. 5441, 59th Leg., Reg. Sess., 2005 Wash. Sess. L. 2277 (establishing a committee to conduct a comprehensive K-12 education finance study develop recommendations about how the state can best provide stable funding in accordance with constitutional and legal requirements, with three subcommittees for early learning, K-12, and higher education).

<sup>109</sup> The committee was chaired by newly elected Governor Christine Gregoire, who was a strong proponent for education reform. Gregoire's introductory letter to the final report says "[i]t is time to make big changes to Washington's education system. It's time to make the hopes and dreams of our children a reality. **It is time to get to work.**" (emphasis in original). WASH. LEARNS, WORLD-CLASS, LEARNER-FOCUSED, SEAMLESS EDUCATION, 59th Leg., Reg. Sess., at 3 (2006). <https://ofm.wa.gov/sites/default/files/legacy/reports/WALearnsFinalReport.pdf>

<sup>110</sup> ALLAN ODDEN, LAWRENCE O. PICUS, MICHAEL GOETZ, MICHELLE TURNER MANGAN & MARK FERMANICH, AN EVIDENCE-BASED APPROACH TO SCHOOL FINANCE ADEQUACY IN WASHINGTON: PREPARED FOR THE K-12 ADVISORY COMMITTEE OF WASHINGTON LEARNS AT 2-3, 22, 47, 93-6 (2006) (conducting a school finance adequacy

evidence-based study of the State’s finance system. The expert’s recommendations constitute a “proposal” within Kingdon’s framework, however, the recommendations were not perceived as feasible given the large cost of several billion dollars.<sup>111</sup> The final report of Washington Learns contains sixty pages of aspirations for the state’s education system, but the chapter dedicated to school funding is limited to six pages; it concludes with recommendations that the Legislature make a “significant downpayment” for education but fails to specify an amount—or source—of funding.<sup>112</sup> Here, the Washington Learns report, published shortly before the *McCleary* lawsuit commenced, bolstered the problem stream but left the proposal stream effectively empty.

In 2007, the same year that *McCleary* was filed, the Legislature declared an emergency related to basic education finance and authorized the Joint Task Force on Basic Education Finance.<sup>113</sup> The new group, with the support of the Washington State Institute for Public Policy (WSIPP), was tasked with developing “at least two but no more than four”<sup>114</sup> models to provide stable and adequate funding for the evolving K-12 system. In 2009-10, Legislature passed

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study with cost analyses of identified school-level components required to deliver a high-quality instructional program and recommending, *inter alia*, adoption of a prototypical funding formula for adequate resources and staff for elementary, middle, and high schools based on school and district characteristics; enhanced learning opportunities for struggling students; and expansion of full-day kindergarten).

<sup>111</sup> *McCleary*, 269 P.3d at 240.

<sup>112</sup> A scathing minority report by Representative Glenn Anderson, a member of the Steering Committee, criticizes the Washington Learns final product as a waste of taxpayer resources that “*failed to meet the mandate given it by the authorizing legislation, and largely dodged the difficult issues in K-12 finance*” (emphasis in original). Wash. Learns, *supra* note 109 at 51-3.

<sup>113</sup> 2007 Wash. Sess. L. 1823 (declaring an emergency, establishing a joint task force on basic education finance, and intending to support “significant steps” to implement a comprehensive K-12 finance formula in the 2007-09 biennium and beyond).

<sup>114</sup> *Id.*

E.S.H.B. 2261<sup>115</sup> which increased instructional hours to expand full all-day kindergarten<sup>116</sup> and set the foundation for an allocation formula based on per-pupil costs for a prototypical school<sup>117,118</sup> based on minimum staffing requirements<sup>119</sup> and maintenance, supplies, and operating costs (MSOCs).<sup>120</sup> The legislation also authorized four workgroups to examine issues of school finance and quality: the Quality Education Council (QEC),<sup>121</sup> the Funding Formula Technical Working Group (FFTWG),<sup>122</sup> the Local Finance Working Group,<sup>123</sup> and the

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<sup>115</sup> 2009 Wash. Sess. L. 3331 (amending more than twenty-five sections of the state’s education statutes and adding eight new sections).

<sup>116</sup> 2009 Wash. Sess. L. 3335-6 (requiring that school districts annually provide an average of at least one thousand instructional hours to elementary students and at least one thousand and eighty instructional hours to secondary students).

<sup>117</sup> 2009 Wash. Sess. L. 3338-41 (providing a prototypical allocation funding formula, intended to be adjusted based on the actual number of full-time students in each grade level at each school in the district, and enhancing allocations to provide supplemental instruction and services for underachieving students, English-learners, highly capable students, and students with disabilities).

<sup>118</sup> The prototypical school allocation formula was proposed in 2006 in “An Evidence-Based Approach to School Finance Adequacy in Washington” by Odden & Picus as consultants for the Washington Learns Committee, *supra* note 110.

<sup>119</sup> 2009 Wash. Sess. L. 3339 (requiring the allocations formula to account for both classified and certified staff for schools and central district offices including, but not limited to, administrators, classroom teachers, clerical support, custodians, guidance counselors, instructional assistants, librarians, maintenance, nurses, professional development coaches, and social workers).

<sup>120</sup> 2009 Wash. Sess. L. 3339-40 (requiring the minimum allocation to include the average annual cost per FTE student for technology, utilities, curriculum, textbooks, library materials, and instructional supplies; building-level costs including maintenance and security; and central office administration).

<sup>121</sup> The QEC served as the implementation and oversight board; it was tasked with developing strategic recommendations to inform educational policy and funding decisions, identifying measurable goals and priorities for a ten-year time period, and enabling continuing implementation of the evolving basic education program.

<sup>122</sup> E.S.H.B. 2261, 61st Leg., Reg. Sess., 2009 Wash. Sess. L. 3347 (establishing a technical working group, directed by the office of financial management and the office of the superintendent). The Funding Formula Technical Working Group (FFTWG) was responsible for developing a funding formula consistent with the new guidelines for basic education, recommending a phasing-in schedule for any increased requirements in programs or instruction, and examining possible revenue sources to increase funding. *Id.*

<sup>123</sup> E.S.H.B. 2261, 61st Leg., Reg. Sess., 2009 Wash. Sess. L. 3356 (establishing a technical working group, directed by the office of financial management and the office of the superintendent of public instruction, to be made up of representatives from the department of revenue and the same stakeholders from the funding formula

Compensation Working Group.<sup>124</sup><sup>125</sup> Synthesizing the findings across groups, the QEC found that, even after E.S.H.B. 2261 reforms, there was insufficient state funding for Maintenance, Supplies, and Operating Costs (MSOC),<sup>126</sup> educator salaries, special education, and transportation.<sup>127</sup> The QEC recommended major funding increases for districts to reduce class sizes,<sup>128</sup> expand early learning for ages 3-4,<sup>129</sup> and implement full-day kindergarten;<sup>130</sup> the cost to fully implement the QEC's proposals was projected to be \$355.5 million.<sup>131</sup> The State's budget for the 2011-13 biennium addressed some, but not all, of the QEC's recommendations. It increased funding to support all-day voluntary kindergarten and reduce class sizes, but it made cuts to administrator and staff salaries, underfunded transportation,<sup>132</sup> and maintained a deficit in MSOC allocations of five hundred million dollars.<sup>133</sup> Here, the problem stream was clearly defined and there was an accompanying policy stream with bipartisan political support to change

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workgroup). The group was responsible for developing options for a new system of school funding through local levies and local effort assistance. *Id.*

<sup>124</sup>*Id.* at 3348 (establishing a Quality Education Council to “recommend and inform the ongoing implementation ... of an evolving program of basic education and the financing necessary to support such program”).

<sup>125</sup> *Id.* at 3349 (establishing the Compensation Working Group, tasked with evaluating the state's salary allocation structure for all certificated and classified employees and developing recommendations to equalize compensation (including base salaries, total salaries, basic benefits, and retirement benefits) for district staff).

<sup>126</sup> QUALITY EDUC. COUNCIL, INITIAL REPORT TO THE GOVERNOR & LEGISLATURE AS DIRECTED BY ESHB 2261, 65th Leg. Reg. Sess., 5 (Wash. 2010).

<sup>127</sup> *Id.* at i-ii.

<sup>128</sup> *Id.* at 8.

<sup>129</sup> *Id.* at 7.

<sup>130</sup> *Id.* at 8.

<sup>131</sup> *McCleary*, 269 P.3d at 227-8, 253, 258.

<sup>132</sup> *Id.* at 244.

<sup>133</sup> *Id.* at 260.

school funding formulas, but the policy window remained closed because the proposed solution, to dramatically expand funding for education, was cost-prohibitive. The state was not operating at a budget deficit, however, state tax revenues at the time did not support substantial increases in spending.

In summary, in the years before *McCleary*, Washington's Governor, Legislature, and Superintendent had studied problems of K-12 school finance and concluded that the state failed to adequately fund basic educational expenditures such as staff compensation, pupil transportation, and maintenance and operations. The political stream had bicameral and bipartisan legislative support and executive leadership that supported increased education funding. However, as we describe next, the policy window remained closed because the "trickling" proposal stream contained solutions that were either cost-prohibitive, intangible, or unfeasible, so no new legislative reforms advanced.

### **C. The Proposal Stream**

Kingdon describes the policy proposal stream as containing all ideas generated by academics, analysts, bureaucrats, and researchers; over time, these ideas evolve, coningle, and coalesce until the policy community has a short list of proposals that are (1) technically feasible, (2) of acceptable budgetary cost, and (3) acceptable to the mass public.<sup>134</sup> In the years before, during, and after *McCleary* there were countless ideas generated by academics, education associations, legislators, and the public about how to fund Washington's schools. For many years these proposed policies were unsuccessful because they either lacked a forceful political stream to move forward, or the proposals were unacceptable to the public at large.

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<sup>134</sup> Kingdon, *supra* note 13 at 43-4.

The most significant proposals that ultimately led to the termination of the Supreme Court’s jurisdiction of *McCleary* were those reviewed by the 2016 Joint Education Funding Task Force (JEFTF). The authorizing legislation set clear requirements for the JEFTF to provide comprehensive recommendations for staff compensation, “including whether and how future salary adjustments and a local labor market adjustment should be incorporated” (a nod to “regionalization factors” that were later adopted), maintenance and operation levies and local effort assistance, clarifying the distinction between basic education and local enrichment services, and sources of state revenue to support the state’s statutory program of basic education.<sup>135</sup>

The JEFTF requested public proposals and received plans from multiple stakeholders.<sup>136</sup> State Treasurer James McIntire, concerned about the state’s shrinking tax base, proposed an amendment to the state constitution to generate a five percent flat rate income tax for education while eliminating state property taxes, limiting local school levies, and reducing the state sales tax to five and a half percent.<sup>137</sup> State Superintendent Randy Dorn echoed the call for new sources of revenue; his plan prioritized compensation, recruitment, and retention of K-12 employees, and suggested a differential pay factor to account for regional differences in cost-of-living across the state.<sup>138</sup> The Washington Association of School Administrators (WASA) supported proposals to use labor market adjustment to reflect cost-of-living differences. These

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<sup>135</sup> E.2.S.S.B. 6195, 64th Leg., Reg. Sess., 2016 Wash. Sess. L. 14 (establishing a task force to make recommendations regarding implementation of the program of basic education).

<sup>136</sup> EDUCATION FUNDING TASK FORCE (JEFTF), REQUEST FOR PROPOSED SOLUTIONS FROM THE PUBLIC (Jul. 31, 2016), <https://leg.wa.gov/JointCommittees/Archive/EFTF/Pages/default.aspx> (scroll to “Request for Public Point of View: A Successful K-12 Public School System”).

<sup>137</sup> *Id.* at 21-22.

<sup>138</sup> *Id.* at 40-44.

recommendations were significant because while many states have a geographic cost-of-labor adjustment (which helps districts in high-cost-of-labor regions cover the higher cost of labor, the largest budget item for school districts), very few have cost-of-living adjustments.<sup>139</sup>

The JEFTF generated two sets of proposals for the legislature—one each from the democratic and republican caucuses. Both parties agreed that there was a significant need to increase staff compensation to recruit and retain qualified educators and that the legislature should consider regional adjustments for costs of living.<sup>140</sup><sup>141</sup> The democratic caucus further recommended expanding the program of basic education to include the Learning Assistance Program, Transitional Bilingual Instruction Program, and Special Education with increased allocations and suggested the Legislature consider additional revenues via changes to business taxes, state property taxes, or a capital gains excise tax. The republican caucus recommended further clarification to ensure that the use of local levy funds for staff compensation was limited

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<sup>139</sup> New York, Massachusetts, Missouri, Texas, and other states use a cost of labor index. See Deborah A. Verstegen, *A Quick Glance at School Finance* (2018), <https://schoolfinancesdav.files.wordpress.com/2018/09/survey18-vol-i1.pdf>. Wyoming used a cost-of-living index from 2001 to 2012 but transitioned to a set of labor cost indices in 2012. E.g., Michael Wolkoff, WYOMING EDUCATION FINANCE: REGIONAL PRICE ADJUSTMENT, at 5 (2002), [https://wyoleg.gov/docs/SchoolFinance/2002-01-31%20MAP\\_RegionalPriceAdjustment.pdf](https://wyoleg.gov/docs/SchoolFinance/2002-01-31%20MAP_RegionalPriceAdjustment.pdf) (concluding that there is “no other option” to using the Wyoming Cost of Living Index (WCLI) to make cost-based adjustments for school districts) and Lori Taylor, *External Cost Adjustments for the Wyoming School Funding Model: 2023*, at 2, 6 (2023), [https://wyoleg.gov/InterimCommittee/2023/04-2023092702-05\\_Externalcostadjustments2023FINAL.pdf](https://wyoleg.gov/InterimCommittee/2023/04-2023092702-05_Externalcostadjustments2023FINAL.pdf) (recommending that the Wyoming Legislature continue to use four indices (professional staff resources, non-professional staff resources, utilities, and educational materials) that were adopted in 2012 to guide appropriate external cost adjustments (ECAs)).

<sup>140</sup> WASH. EDUC. FUNDING TASK FORCE DEMOCRATIC CAUCUS, DEMOCRATIC CAUCUS EDUCATION FUNDING TASK FORCE RECOMMENDATIONS, 65th Leg., Reg. Sess. (Jan. 9, 2017) <https://app.leg.wa.gov/committeeschedules/Home/Documents/18439?Joint/0/01-01-2017/12-31-2017/Schedule///Bill/> (select “Agenda”, then “Discussion of Education Funding Task Force recommendations”, then “Non Staff”).

<sup>141</sup> WASH. EDUC. FUND. TASK FORCE REPUBLICAN CAUCUS, EDUCATION FUNDING TASK FORCE RECOMMENDATIONS: REPUBLICAN GUIDING PRINCIPLES, 65th Leg. Reg. Sess. (Jan. 4, 2017) <https://app.leg.wa.gov/committeeschedules/Home/Documents/18439?Joint/0/01-01-2017/12-31-2017/Schedule///Bill/> (select “Agenda”, then “Discussion of Education Funding Task Force recommendations”, then “Non Staff”).

to enrichment beyond basic education; the proposal suggested that it was not necessary to find new revenue sources, but rather encouraged the state to more efficiently use existing resources.<sup>142</sup>

The proposals generated by academics and political actors ultimately flowed from the problem stream, which was defined by significant underfunding across all of Washington's schools. This period was also characterized by rapidly increasing housing prices in the greater Seattle area, where nearly a quarter of the state's students are enrolled, with major newspapers reporting on the challenges teachers and working professionals faced with increased costs of living posed.<sup>143</sup> The proposal to adjust educator salaries to account for the regional differences in cost of living was supported by multiple stakeholders with varying levels of power (including legislative subcommittees, state educators associations, and the state superintendent), which garnered bipartisan support and was eventually enacted by the Legislature. By contrast, proposals that were supported by fewer or singular sources—tax reforms eliminating property taxes and/or establishing a new statewide income tax, or program enhancements for LAP, bilingual, and special education—did not have the necessary political force to move forward through the policy window. In other words, favored proposals at the time did not necessarily address all of the problems initially identified with areas of insufficient funding in specific

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<sup>142</sup> *Id.*

<sup>143</sup> *E.g.*, Neal Morton, *How long must Seattle teachers save for house down payment? New study says 15-19 years*, SEATTLE TIMES, Oct. 18, 2017, <https://www.seattletimes.com/education-lab/how-long-must-seattle-teachers-save-for-house-down-payment-new-study-says-15-19-years> (finding that a first-year Seattle Public School teacher living alone would pay more than thirty percent of monthly income for the median one-bedroom rent, and would need to save ten percent of their salary for nineteen years to make a twenty percent down payment on a median-priced home), and Gene Balk, *'Seattle-ization'? American cities fear what's happened here*, SEATTLE TIMES, Jan. 2, 2019, <https://www.seattletimes.com/seattle-news/data/seattle-ization-american-cities-fear-whats-happened-here/> (observing that the cost of living had risen faster in Seattle than in any other city in America).

categories, but did address the problem of compliance with judicial orders to amply fund education.

#### **IV. Converging Streams and an Open Policy Window: H.B. 2242 and S.B. 6362**

With the proposals generated by the Joint Task Force on Education Funding (JEFTF), the 2017 Legislative Session provided an open policy window for significant reform. The political stream flowed forcefully as the state’s highest court applied significant pressure (sanctions of \$100,000 per day) and the legislature had bipartisan support to reform education finance. The problem stream was characterized by evidence that the State’s formula to finance K-12 districts did not adequately fund the actual cost to provide basic education to all students, with pronounced deficits in areas of staff compensation and MSOCs.

The “*McCleary Fix*” ultimately contained two major policies, E.H.B. 2242 and E.2.S.S.B. 6362. The first, E.H.B. 2242, authorized significant improvements to state allocations for K-12 basic education with plans to phase in compensation increases; it also limited the use of local levies and local effort assistance to “enrichment” beginning in 2019.<sup>144</sup><sup>145</sup> The policy introduced regionalization factors to reflect differences in the costs for districts to recruit and retain educators; a district’s regionalization factor is based on the differences of residential value of each school district and its nearby districts with adjustments of 6, 12, 18, or 24 percent.<sup>146</sup> The latter, E.2.S.S.B. 6362, increased allocations for K-12 salaries, established a new state property

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<sup>144</sup> Enrichment activities must supplement the state’s minimum instruction; examples include additional course offerings, early learning programs, extended learning time, or extra-curricular activities. E.H.B. 2242, 65th Leg., 3d Spec. Sess. (Wash. 2017).

<sup>145</sup> *Id.*

<sup>146</sup> Wash. Legis. Evaluation & Accountability Program Comm., *LEAP Document 3: Regionalization Factors for K-12 Compensation*, Wash. Fiscal Info. (June 2, 2017, 1:14 PM), <https://fiscal.wa.gov/leapdocs/2017L3.pdf>.

tax, revised local effort assistance, and modified levies by capping amounts and limiting them to enrichment activities beyond basic education.<sup>147</sup>

While prior legislative efforts were deemed insufficient, the passage of both E.H.B. 2242 and E.2.S.S.B. 6362 satisfied the court's order and culminated in the termination of jurisdiction of the *McCleary* case.<sup>148</sup> School districts saw increases in state funds (allocated partly according to regionalization factors) and reductions in local levy revenues,<sup>149</sup> but the changes varied across districts. As we show below, the regionalization factors have driven additional resources to districts with higher costs of living, which has disproportionately benefited school districts that serve wealthier student populations and where there are lower enrollments of students of color or low-income students.

## **V. Education Funding Changes in Washington Over Time**

An empirical analysis supplements our examination of the legislative process by demonstrating how the policies that were designed and enacted have yielded varying results for different groups of students. The empirical analysis draws on two data sources. The first is a dataset produced in 2017 by the Washington Office of Public Research that calculated (a) the change in median property tax payments;<sup>150</sup> and (b) the change in per-pupil state and local

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<sup>147</sup> E.2.S.S.B. 6362 Final Bill Rep. (Wash. 2017).

<sup>148</sup> Order at 4, *McCleary*, 269 P.3d 227 (Wash. 2012) (No. 84362-7, June 7, 2018) (terminating jurisdiction because the State had complied with orders to fully implement its statutory program of basic education).

<sup>149</sup> See *supra* note 93. The “levy lid” limits the amount of revenue that a school district may generate from its tax base.

<sup>150</sup> Jessica Harrell & Richelle Geiger, *Estimated Impact for the Policies in the 2017-19 Biennial Budget and EHB 2242*, Wash. State Fiscal Info. (July 2017), [https://fiscal.wa.gov/statebudgets/2017proposals/Documents/hoK12TaxPolicyAnalysis\\_0629.pdf](https://fiscal.wa.gov/statebudgets/2017proposals/Documents/hoK12TaxPolicyAnalysis_0629.pdf)

revenues resulting specifically from the enactment of E.H.B 2242.<sup>151</sup> The dataset includes these two values for all 295 school districts in Washington, over four school years, from 2017-18 to 2020-21. The second data source is the F-196 dataset produced by the Office of Superintendent of Public Instruction, which includes per-student state and local revenues extending back to 1994-95. The two datasets are complementary: the first allows us to assess the impact of E.H.B. 2242 as initially projected in 2017 based on calculations of how the law would change state and local revenues for each district over four years, while the second shows how funding patterns ultimately did change without necessarily parsing out the specific causal impact of E.H.B. 2242 from changes in funding that result from other factors such as local levy elections, enrollment and staffing shifts, or other more minor state school finance policy reforms. We merge these data with student demographic data from OSPI to assess how funding changes differ across different school districts.

### **A. Changes in State and Local Per-Pupil Revenue**

Table 1 shows changes in per-pupil state and local revenues as well as median property tax payments caused by E.H.B. 2242. The data in Table 1 are based on four-year projections generated in July 2017 by the Washington Office of Program Research, estimating the financial effects of EHB 2242 based on analysis of the specific changes to funding formulas, as well as the tax rates and projected assessed property values available at the time of publication in 2017.<sup>152</sup> In 2017-18, the first year of implementation of E.H.B. 2242, there were small fiscal impacts, an

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<sup>151</sup> Washington Office of Superintendent of Public Instruction & Department of Revenue, *EHB 2242 Enrichment Levy and State School's Tax Analysis*, OSPI (Oct. 2017), [https://ospi.k12.wa.us/sites/default/files/2022-12/ehb2242\\_tax\\_impacts.xlsx](https://ospi.k12.wa.us/sites/default/files/2022-12/ehb2242_tax_impacts.xlsx).

<sup>152</sup> These estimates align closely with similar projections estimated jointly by the Office of the Superintendent of Public Instruction and the Department of Revenue in an October 2017 report.

average of three hundred dollars (\$300) per student statewide; the following year this more than tripled to one thousand and ninety-nine dollars (\$1,099).<sup>153</sup> Following full implementation, E.H.B. 2242 ultimately increased per-pupil state and local revenues by an estimated two thousand one-hundred and two dollars (\$2,102).

To assess how different student groups were affected, we calculated the same averages for only the roughly sixty school districts (twenty percent (20%) of school districts across the state) that enroll the greatest percentage of each student demographic group each year. We use regression analysis to account for cost differences across school districts, including district size, urbanicity, and geographic differences in the cost of labor.<sup>154</sup> The column on the far right shows the difference between the state average funding increase and the funding increase for each student group, where significance tests are based on the standard error of the mean. That column shows that the policy changes in E.H.B. 2242 were designed such that high-poverty school districts were projected to receive an increase of one hundred and twenty-nine dollars (\$129) less state and local revenues per pupil in 2020-21, compared to the statewide mean, while lower-poverty districts were projected to receive two hundred and thirty-seven dollars (\$237) more than the state mean. Districts serving the greatest share of students receiving special education services received lower increases, while districts enrolling the highest shares of multi-language learners received slightly greater increases in funding. Relative to the statewide mean, districts serving the highest share of students who identify as American Indian/Indigenous, Latina/o/Hispanic, and White received smaller increases in state and local revenues.

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<sup>153</sup> *Infra* at Table 1.

<sup>154</sup> See David S. Knight, *Are School Districts Allocating Resources Equitably? The Every Student Succeeds Act, Teacher Experience Gaps, and Equitable Resource Allocation*, 33 EDUC. POL'Y 615, 625-7 (2019).

Panel B of Table 1 shows similar information for the impact of property tax payments for single-family residences, expressed as a percent of the median value of property in that district.<sup>155</sup> As noted in our earlier section, changes to property taxes were not perfectly aligned with changes to revenue dispersion. In calendar year 2018, state property tax increased, but levy lids were not yet implemented, leading to a large overall tax increase. In 2019, state property taxes remained at their increased level, but new levy lid policies reduced tax impacts. By 2020-21, the property tax rate for the average student's school district was similar to what it would have been without E.H.B. 2242. As with increases in per-pupil revenues, districts did not experience changes in tax rates equally. Districts serving the greater share of low-income students, and the highest percentages of students who identify as Latina/o/ Hispanic, American Indian/ Indigenous, and White, experienced greater declines in property tax payments, while districts serving wealthier student populations and those serving a greater share of students who identify as Asian/Asian American experienced greater increases in state and local property tax rates.<sup>156</sup>

We next turn to analysis of actual funding data. Figure 1, *infra*, shows the total state and local revenues per pupil from 1994-95 to 2021-22, adjusted for inflation. From the mid-1990s to when the *McCleary* case was initially filed in December 2007, real state and local per-pupil revenues increased only marginally, from about eleven thousand dollars (\$11,000) to twelve thousand dollars (\$12,000). While the *McCleary* case was active, state revenues increased

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<sup>155</sup> Because E.H.B. 2242 only changed policies pertaining to state property taxes and local enrichment levies, our analysis of property tax payments focuses only on these taxes, and excludes other local taxation mechanisms district can access, including bonds, capital project levies, technologies levies, and transportation levies.

<sup>156</sup> The E.H.B. 2242 projections are all based on the rate cap of \$1.50 per \$1,000 of assessed value that was active in 2019, and do not reflect changes in 2020 that increased the rate cap to \$2.50 per \$1,000 of assessed value.

marginally with the 2009 passage of E.S.H.B 2261,<sup>157</sup> which redefined basic education and expanded instructional hours for full-day kindergarten. Real per-pupil revenues declined slightly during the Great Recession era when states around the country made cuts to K-12 education. In 2010 the Legislature passed S.H.B. 2776, which reduced class sizes for K-3 students and increased funding for MSOCs. The 2014 passage of Initiative 1351, a voter-supported initiative directing the Legislature to allocate funding to further reduce K-12 class sizes and to increase staffing for student support. When the *McCleary* decision was rendered in the 2012-13 school year, districts received an average of about twelve thousand and five-hundred dollars (\$12,500) per pupil in state and local revenues. Over the next ten years, per-pupil state and local revenues increased by about five thousand dollars (\$5,000) or about forty percent.

Figure 2 shows similar information, this time placing the state's two hundred and ninety-five (295) districts into groups of about sixty (60) (i.e., quintiles, or five groups each consisting of twenty percent of districts) based on student demographics. Panel A shows average per-pupil state and local revenues across student racial/ethnic categories, and Panel B shows the difference in average funding rates between Students of Color and White students. During most of the mid-2000s, the average student who identifies as a person of Color attended school districts that received less funding than the typical White student. Between 2012 and 2019, when the state experienced a large funding increase, the racial funding gap narrowed for students who identify as Black and Asian/Asian American but expanded for students who identify as Latina/o/Hispanic. As discussed in emerging research of the Washington school finance

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<sup>157</sup> *Supra* note 115.

reforms<sup>158</sup> this resulted in part from a greater share of funds added to districts in urban areas as opposed to rural areas, which tend to enroll greater shares of Black and Asian/Asian American as compared to Latina/o/Hispanic, a greater share of whom attend rural districts in Washington. Funding rates for students who identify in other racial/ethnic categories, including American Indian/ Indigenous students, Pacific Islander/Hawaiian Native students, and those who identify as more than one race, follow similar patterns, but smaller sample sizes influence the interpretation of results.

Panels C and D of Figure 2 show the total state and local revenues per student across all funds for the twenty percent of school districts that serve the highest and lowest percent of students classified as low-income. The graph shows the two groups received roughly the same amount of funding for the majority of the pre-*McCleary* period, with slightly greater funds going to lower-poverty school districts. Beginning in 2012, all districts experienced funding increases, but the amount was not as large for school districts with higher levels of poverty. The gap expanded by the largest amount between 2017-18 and 2018-19, the year the state adopted new levy lids, implemented regionalization factors, and changed the experience mix factors. In the subsequent three school years, 2019-20, 2020-21, and 2021-22, the income-based funding gap narrowed. This may be related to the increase of the rate cap to two dollars and fifty cents (\$2.50) per one thousand dollars (\$1,000) of assessed value for calendar year 2020 forward, and the tapering down of regionalization factors, particularly for districts initially assigned the highest adjustments (e.g., regionalization factors of 1.18 and 1.24).

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<sup>158</sup> David S. Knight & Margaret L. Plecki, *Establishing Priorities for Education Finance Under Fiscal Uncertainty: Recommendations for Washington State Policymakers*, in *A Roadmap to Reducing Barriers to Educational Justice in Washington State* (U. Wash. Coll. of Educ. et al. eds., Feb. 2022), [https://www.education.uw.edu/ejr/files/2022/04/Knight-Plecki\\_WEA\\_School-Finance-Equity-in-Washington\\_Feb2022-1\\_R.pdf](https://www.education.uw.edu/ejr/files/2022/04/Knight-Plecki_WEA_School-Finance-Equity-in-Washington_Feb2022-1_R.pdf).

## VI. Discussion and Conclusion

Prior research on school finance reforms has failed to adequately assess the process through which court mandates are formulated into law. As a result, policymakers have limited information about how to engage in the process of responding to a court mandate—not just writing the laws, but clarifying the problem, identifying viable solutions, and building political support to make change. We therefore applied Kingdon’s framework to understand how the alignment of these three “streams” opened a school finance policy window in Washington. Our analysis revealed a process characterized by an initial problem definition with limited proposal and political force, followed by a revised problem definition that was aligned with viable proposals and political compromise. Our empirical analysis showed the result of this process was as the Office of Program Research predicted—new funding entered the system and districts received additional funds, but the problems initially identified through this process were not ultimately addressed.

While *McCleary* was “successful” in that it increased revenue for Washington’s K-12 schools, data demonstrate continued disparities where there are higher concentrations of students from low-income households. Inadequate and inequitable school funding was an issue for Washington leaders as early as the 1990s, and Kingdon’s framework illuminates how the problem stream grew for twenty years while the political and proposal streams remained quiet. In 2007 the commencement of *McCleary* in district court expanded the political stream to include the judicial branch. After the Supreme Court issued its decision in 2012, the force of the political stream diluted the problem stream towards compliance with the state’s constitutional mandate to amply fund education. In subsequent years, political pressure grew as the Legislature was held in contempt and later sanctioned, which continued to dilute the problem stream toward compliance with judicial orders.

When the Joint Education Funding Task Force (JEFTF) began its work in 2016, the authorizing legislation narrowly defined the problem, which limited the scope of the group’s assignment.<sup>159</sup><sup>160</sup> The proposals generated by the JTFEF were divided along party lines, but there was bicameral and bipartisan support to increase compensation and benefits for educators with adjustments for costs of living. When the policy window opened, there was a clearly defined problem of insufficient staff salaries, and there was a strong political stream supporting the proposal to fund staff salaries with regionalization factors.

Our findings suggest that future instances of school finance reform, whether prompted by judicial intervention or legislative initiative, policymakers can maximize efficiency and effectiveness by beginning with agreement upon a clearly defined problem. The significance of the problem definition cannot be understated, because the conceptualization and framing of the issues directly shape the policy designs that generate the proposal stream. For example, it mattered for policymaking whether the perceived problem of the state’s school finance system was a lack of adequate funding in the highest-need districts or, conversely, limited ability among districts to address the rising costs of living coupled with a court mandate and order of sanctions. As the problem definition transitioned from the former to the latter, policy proposals focused on increasing overall funding and ensuring that funds were allocated to areas with higher costs of living.

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<sup>159</sup> E.2.S.S.B. 6195, *supra* note 67 (requiring the EFTF to make recommendations regarding: compensation sufficient to recruit and retain staff; maintenance and operation levies and Local Effort Assistance; clarifying the distinction between basic education and local enrichment; provision of school employee health benefits; and sources of state revenue to support the state’s statutory program of basic education).

<sup>160</sup> In contrast, the 2005 legislation authorizing Washington Learns gave the task force wide discretion to “direct and coordinate” comprehensive studies on early learning, K-12 finance, and higher education, and to make recommendations based on those studies. As a result, the scope of the Washington Learns final report was broad and sweeping, but it yielded no actionable proposals for the legislature.

To drive school finance reform that enhances equity, policymakers should begin by centering the problem definition around specific identified disparities. With distinct issues of equity at the core of the problem definition, the ideas that populate the policy proposal stream will be solutions to reduce and eliminate specific inequities. Thus, policymakers will be able to select and implement proposals that are tailored to advance equity by increasing funding for the students and schools that need it the most.

TABLE 1

*Summary statistics of projected impacts of EHB 2242*

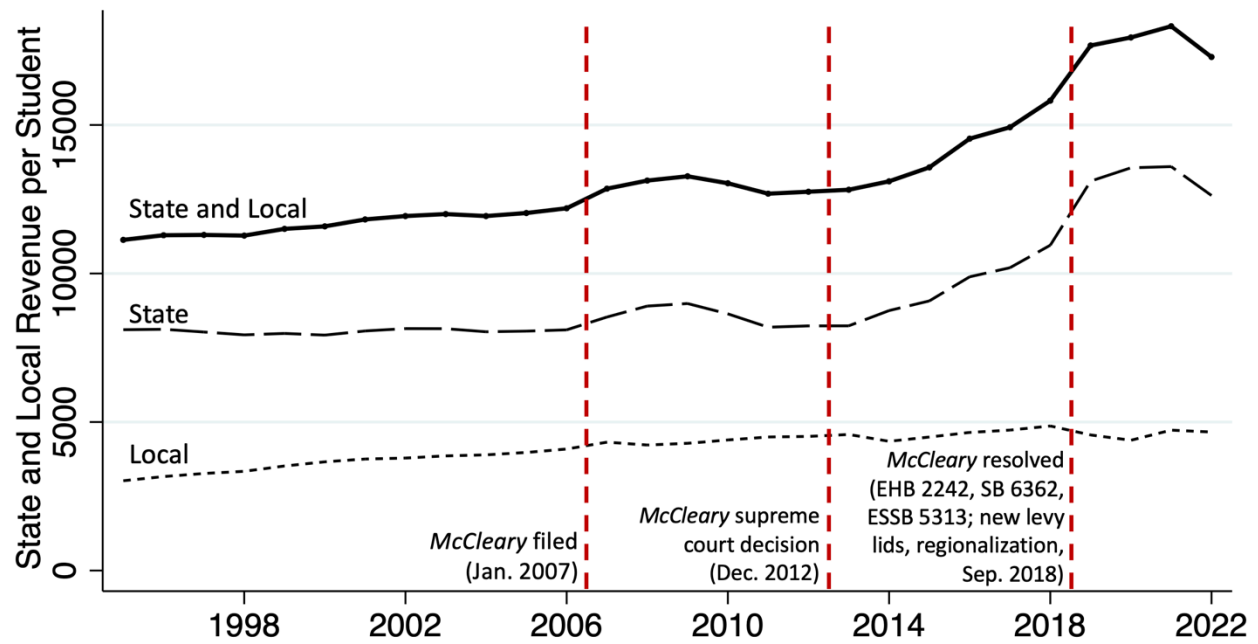
	2017-18	2018-19	2019-20	2020-21	Diff. from state mean in 2020-21
<b>A. Change in nominal per-pupil state and local revenues caused by EHB 2242</b>					
<i>All students</i>	\$301	\$1,099	\$1,880	\$2,102	--
<i>Enrollment classifications</i>					
Classified as low-income	\$314	\$912	\$1,742	\$1,973	-\$129+
Classified as non-low-inc.	\$290	\$1,279	\$2,133	\$2,339	\$237***
Student in special educ.	\$325	\$732	\$1,445	\$1,848	-\$254***
Multi-language learner	\$305	\$1,205	\$2,034	\$2,276	\$174*
<i>Student race/ethnicity</i>					
Am. Ind./ Indigenous	\$316	\$887	\$1,693	\$1,869	-\$233***
Asian	\$292	\$1,267	\$2,069	\$2,309	\$207***
Black	\$295	\$1,238	\$2,021	\$2,268	\$166*
Latina/o/ Hisp.	\$315	\$978	\$1,743	\$1,942	-\$160*
Pac. Is./ Native HI	\$295	\$1,129	\$1,904	\$2,138	\$36
More than one race	\$291	\$1,200	\$1,997	\$2,248	\$146*
White	\$314	\$599	\$1,305	\$1,486	-\$616***
<b>B. Property tax impact of EHB 2242 for single family residences as a percent of median home value</b>					
<i>All students</i>	0.09%	-0.01%	0.01%	0.02%	--
<i>Enrollment classifications</i>					
Classified as low-income	0.09%	-0.02%	0.00%	0.01%	-0.01%
Classified as non-low-inc.	0.09%	0.01%	0.03%	0.03%	0.01%*
Student in special educ.	0.09%	-0.03%	-0.01%	0.01%	-0.01%
Multi-language learner	0.09%	-0.01%	0.01%	0.02%	0.00%
<i>Student race/ethnicity</i>					
Am. Ind./ Indigenous	0.09%	-0.01%	0.00%	0.01%	-0.01%+
Asian	0.09%	0.00%	0.02%	0.03%	0.01%+
Black	0.09%	0.00%	0.01%	0.03%	0.01%
Latina/o/ Hisp.	0.09%	-0.02%	0.00%	0.01%	-0.01%**
Pac. Is./ Native HI	0.09%	-0.01%	0.00%	0.02%	0.00%
More than one race	0.09%	0.00%	0.02%	0.03%	0.01%
White	0.09%	-0.03%	-0.01%	0.00%	-0.02%***

*Source:* Authors' calculations based on projections generated in October 2017 jointly by the Office of Superintendent for Public instruction and the Washington Department of Revenue. Median tax impact is based on the additional annual tax payment due as a result of EHB 2242. Dollar values are nominal unadjusted figures. Sample includes 295 school districts, with means weighted by student enrollment.

\*\*\* p<0.001, \*\* p<0.05, \* p<0.05, + p<0.1.

FIGURE 1

*State and local per-pupil revenues among Washington State school districts, 1994-95 to 2021-22*

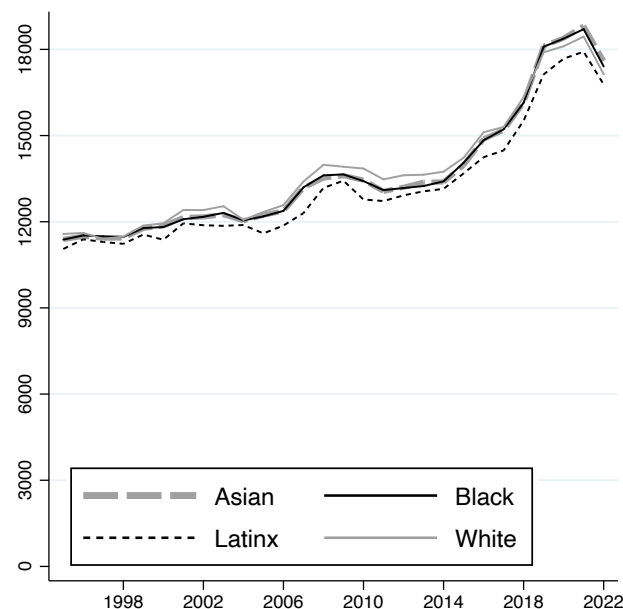


*Note.* Dollars are adjusted for inflation to 2021-22 academic year dollars.

FIGURE 2

*State and local funding per student for low- and high-poverty school districts in Washington, 1994-95 to 2021-22*

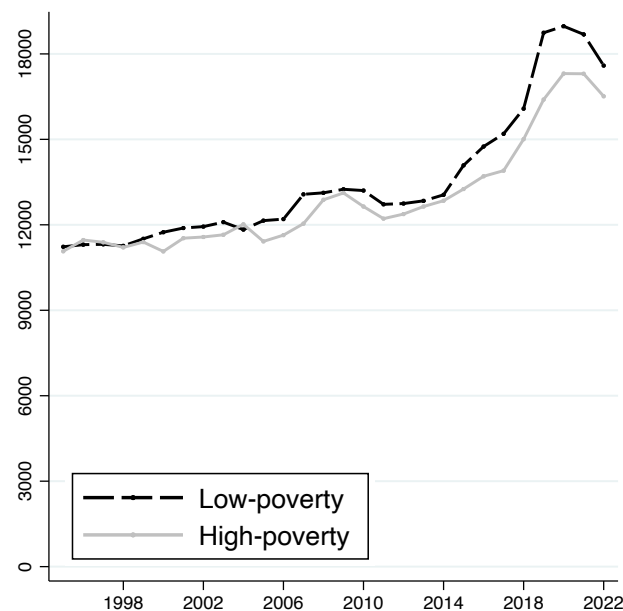
Panel A. State and local revenues, by stu. race/eth.



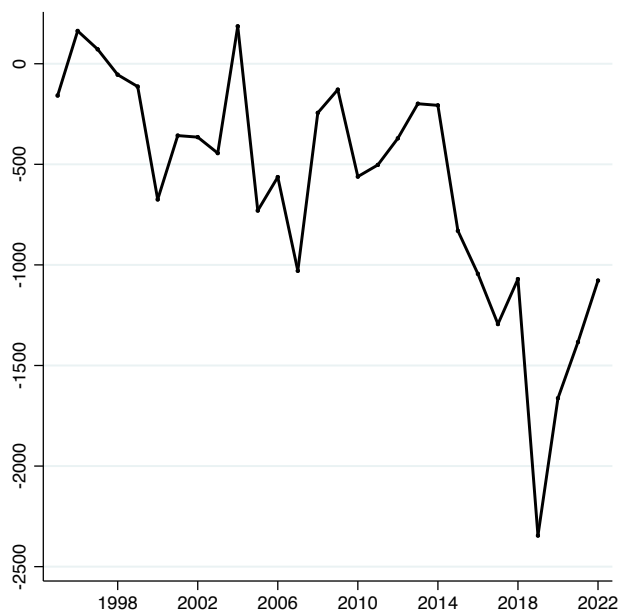
Panel B. Diff., Stu. of Color & White stu.



Panel C. State and local rev., by district pov. rate



Panel D. Diff., low- and high-pov. districts



*Note.* Graphs shows predicted values from a regression of funding on poverty rate, interacted with year indicators, and the following five covariates: urbanicity, district size, education cost of wage index, the percent of student receiving special education services and the percent of students classified as multilanguage. All regressions are weighted by student enrollment and dollars are adjusted for inflation to 2020-21 dollars.