

Broken Promises, Shell Games & Poison Pills...

Why the Levy Swipe Scam
will REDUCE School Funding
in Washington State!



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<https://coalitiontoprotectourpublicschools.org/>

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Broken Promises, Shell Games & Poison Pills

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Summary

Parents and teachers have not been told the truth about the recent “Levy Swipe” school funding plan passed by the Washington State legislature. In a July 31, 2017 Report to the Supreme Court, legislators claimed they have “more than doubled” school funding since 2011 and that their new plan will provide “\$8.4 billion” in additional school funding. <http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/2017ReportbytheJointSelectCommittee.pdf>

In this article, we will show that, due to a never ending charade of broken promises, shell games and poison pills, there has been a decline in school funding since 2011 and that the new Levy Swipe Plan will further reduce school funding in the coming years.

This report is divided into six sections. In Section 1, we describe the seven billion dollar Broken Promise our legislature made to the Supreme Court in 2009 so that they could delay funding for our schools until the 2018 school year.

Section 2 uses the State legislature’s own charts they submitted to the Supreme Court to show that the Levy Swipe does not increase school funding. In fact, it is a complex shell game that actually reduces school funding by \$200 million per year!

Section 3 describes how the legislature has used “**Ghost Money**” to transfer the tax burden for funding schools onto the backs of local homeowners over the past 17 years.

Section 4 explains how the illegal One Percent Tax Lid is a **Slow Poison Pill** that will gradually reduce school funding if there is a period of rapid home price increases similar to the rise in home prices during the past 17 years.

Section 5 reviews the **Fast Poison Pill** or the danger of the Levy Swipe “locking” the maximum levy rate. We then calculate how much school funding will drop if there is a sudden decline in home prices like there was in 2008 and during the Great Depression.

Section 6 explains two of the most harmful aspects of the Levy Swipe. The first is double taxation of homeowners in 2018. The second is the inability of local schools districts to make up school funds when the state fails to provide those funds. Many school districts would be hit by a **double whammy** of rising taxes & falling school funding.

Section 7 explains why our Supreme Court should repeal tax breaks for the rich instead of closing our public schools.

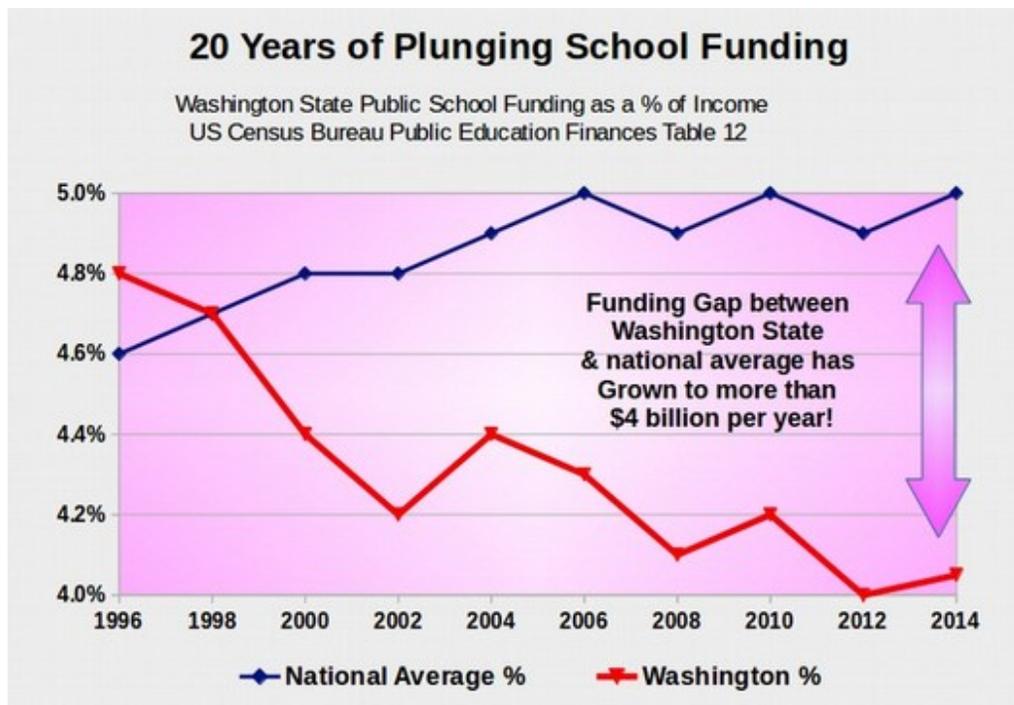
This report provides detailed evidence that, rather than helping our schools and our kids, the Levy Swipe scam is a ticking time bomb that is certain to gut school funding and severely harm our kids. In short, the new school funding plan is even worse than the old (unconstitutionally low) school funding plan. Please share this important article with parents, teachers and other citizens concerned about the future of our public schools.

I. The Seven Billion Dollar Broken Promise

For more than 20 years, our State legislature has promised parents and teachers that during some future session, they would finally and fully fund our public schools. Yet in every session, up to the present day, school funding in Washington state has gotten worse and worse – despite having the strongest State Constitutional guarantee of school funding in the nation.



In the 1980's our State was 11th in the nation in school funding. By 1997, after years of cuts, our school funding had fallen to 25th in the nation. Today, 20 years later, our state is 45th in the nation in school funding as a percent of income. As a consequence, our kids and teachers are forced to endure the highest class sizes in the nation.



In 2007, a collection of school funding advocates called the NEWS coalition (aka the McCleary Plaintiffs) got tired of the legislature's broken promises and sued the State claiming that the State had failed to meet their "Paramount Duty" to amply fund our public schools. In 2009, after a lengthy trial, a King County judge agreed that the State had violated Article 9, Section 1 of our State Constitution. He ordered the State to determine the actual cost of fully funding our public schools and to provide ample funds from stable reliable sources.

In response to the King County Judge's orders, the 2009 legislature passed House Bill 2261 which they "promised" was a plan to fully fund our schools by 2018. In fact, House Bill 2261 only funded the "Prototypical" School model. Put in plain English, the prototypical school was simply an attempt to describe the minimum level of funding needed to fund the average school that already existed in Washington State. It described how many janitors, cooks, secretaries, counselors, nurses, librarians, administrators and teachers the average school would get.

In 2009, I wrote several articles opposing House Bill 2261. I was opposed to this bill for two reasons. First, while the Prototypical School model described in detail by House Bill 2261 might provide the minimum level of funding for the average school, the minimum level of funding is not what is required by our State Constitution. Our State Constitution requires AMPLE funding – which our Supreme Court has said is much more than minimal or even adequate funding. In fact, our Supreme Court is supposed to honor the INTENT of our State Constitution. It is very clear that the drafters of our State Constitution wrote the strongest school funding language in the nation because they wanted our schools to be the most well funded schools in the nation – with the highest paid, most qualified teachers and the lowest class sizes in the nation.

Second, the existing laws at the time, Initiative 728 and the Basic Education Act, called for class sizes to be under 20 students per class. House Bill 2261 allowed class sizes to RISE to as high as 30 students per class. In short, school funding under House Bill 2261 would actually be LESS than it was under the prior formulas and class sizes would be greater than they were under the prior formulas. Despite my objections, the bill passed the legislature and was signed into law in 2009.



One of the few positive aspects of House Bill 2261 was that it called for a commission to determine how much additional revenue the Prototypical Model (minimal or average funding) would cost. Keep in mind that this was not a study on how much it would cost to AMPLY fund our schools, but simply a study to determine how much it would cost to provide the minimum level of staffing described in House Bill 2261.

That study on the actual cost of implementing House Bill 2261 was released on June 30, 2012. The study concluded that **it would take \$6.6 billion per year in additional revenue in order to fund our public schools and pay for all the promises the legislature made in 2009 in House Bill 2261.** This \$6.6 billion amount included \$2 billion per year in local levy funds that must be replaced by state funds. Because our state has about one million school children, this was a **promise to come up with an additional \$6,600 per student per year. With inflation, the current amount of this promise is more than \$7 billion – which is why we refer to it as the \$7 billion broken promise.** The vast majority of this new money would go not to reducing class sizes but mainly to restore teacher pay which had also fallen to near the worst in the nation. See page 49 of the following report.

<http://www.k12.wa.us/Compensation/CompTechWorkGroupReport/CompTechWorkGroup.pdf>

In January 2012, the Washington State Supreme Court agreed with the King County judge and ordered the State to determine the actual cost of fully funding our public schools and to provide ample funds from stable reliable sources.

However, the Supreme Court also noted that the State legislature had passed House Bill 2261 which promised to fully fund our schools by 2018. So the Supreme Court gave the legislature until 2018 (six years) to keep all of the funding promises they had made in House Bill 2261. The Supreme Court said that they would view House Bill 2261 funding to be in compliance with our State Constitution. The state promised the Supreme Court that they would implement ESHB 2261's reforms "over a ten-year period, beginning in 2009 and concluding in 2018," which would "increase state funding of basic education by billions of dollars." The State then urged the Court to assume that would occur. See: State's Reply Brief and Response to Cross-Appeal at 10, McCleary (No. 84362-7) (discussing ESHB 2261, chapter 548, Laws of 2009).

Since the Supreme Court's ruling in January 2012, there has been a series of filings, hearings and Orders. If you are a gluten for punishment, you can read all of these filings and Orders at the following Supreme Court website:

http://www.courts.wa.gov/appellate_trial_courts/SupremeCourt/?fa=supremecourt.McCleary_Education

In a nut shell, the NEWS Coalition (aka McCleary Plaintiffs) repeatedly complained that the State legislature failed to make "steady progress" to come up with the promised \$6 billion per year (or \$6,000 per student) in additional school funding. "Steady progress" would mean increasing school funding by one billion dollars per year each year for six years. The legislature responded with a series of annual reports in which they explained why they were kicking the can down the road - but "promised" to do a better job in future legislative sessions.

In September 2014, the Supreme Court got so fed up with the legislature's lack of progress that they found the legislature in "contempt of court" for the first time in the history of our State. In August 2015, after yet another year of the legislature kicking the can down the road, the Supreme Court started fining the legislature \$100,000 per day – a fine that the legislature still refuses to pay because the legislature does not want the "out of control" Supreme Court bossing them around. The legislature apparently thinks our State Constitution is merely a series of "suggestions" rather than a law which they must actually comply with. The unpaid fine is now \$83 million and counting.



Finally, on June 30, 2017 at the end of a series of Special Sessions and minutes before our State Government was going to shut down, the legislature passed the Levy Swipe School Funding plan – a 120 page plan that was released just hours before the vote and which few in the legislature even read.

While the plan is 120 pages long, it is based on a simple concept. Beginning in 2018, the legislature will rob urban and suburban school districts, mainly in King County, of about one billion dollars in "local levy" funds (paid for with property taxes of King County homeowners), change the name of this billion dollars to "state levy" funds and then spreads this money around to more rural school districts. I use the word "rob" because these were funds local voters had approved under the condition they were used in their own school district – not some other school district.



Sadly, as we will show, this new Levy Swipe Plan does not solve the problem. In fact, it makes the school funding problem much worse than it was before. The Levy Swipe plan also does not implement the Prototypical School model (AKA the average school model) – which would have cost an additional \$7 billion per year. Instead, it pretty much ignores it in favor of a series of complex and arbitrary formulas that are not based on anything other than trying to fool people.

Here is a quote from a Amicus brief filed by Paramount Duty on how well the legislature keep their 2009 \$7 billion promise to fund the Prototypical school model:

“The State has again failed in its constitutional duties under Article 9, § 1. Instead of the oft-promised remedy of fully funding of the reforms of ESSB 2261 (2009), the State effectively scrapped that plan.”

Here is a link to the Paramount Duty Amicus brief:

<https://www.courts.wa.gov/content/publicUpload/McCleary/843627McClearyWAParamountDuty.pdf>

In short, the legislature knows that they have been failing to comply with our State Constitution for more than 20 years. They also know that way back in 2009, they promised to come up with an additional \$6.6 billion in school funding by 2018. Instead, they have done next to nothing.

On Tuesday, October 24, 2017, from 10 to 11 am, the Washington Supreme Court will hold a hearing to decide whether the legislature’s Levy Swipe Plan will satisfy their “Paramount Duty” in our State Constitution. Our purpose in writing this report is to explain why the Levy Swipe Plan is not a stable, reliable or ample source of revenue and thus should be rejected by our Supreme Court. After years of broken promises, it is time for the legislature to end their excuses and actually fund our schools from stable, reliable and ample sources like they promised they would do way back in 2009.

Now that we understand that the legislature made a pinky promise to come up with \$6.6 billion per year in additional school funding in 2009 (more than \$7 billion in today’s dollars) and thus far, has not provided any additional funding, in the next section, we will take a closer look at the shocking differences between the claims being made about the Levy Swipe Scam and what it will actually do.

II. Understanding the Levy Swipe Shell Game

In their latest 2017 Supreme Court filing, the NEWS Coalition compared the Levy Swipe Scam to a Magic Trick. You take a billion dollars from the right hand and put it in the left hand and suddenly you have a billion dollars in “new” state funding.

<https://www.courts.wa.gov/content/publicUpload/McCleary/McClearyPlaintiffFiling.pdf>

But we will call the Levy Swipe a “shell game” instead of a magic trick because the Levy Swipe is not merely intended to fool people, it is also intended to confuse and rob homeowners while also robbing our schools and kids. Magic tricks do not rob people. Only shell games do that. You think that school funding money is under one shell only to find that it has suddenly disappeared – there is no school funding under any of the shells!

The real issue is that the actual cost of fully funding our schools is an additional \$6.6 billion per year. This is what the legislature promised in 2009 and again in 2012. Now they want us to take our eye off of the \$6.6 billion annual increase to fully fund our schools and instead play some “divide and conquer” guessing game about which school districts will be helped and which schools will be harmed by transferring one billion dollars in funding from some school districts and giving this money to other school districts.



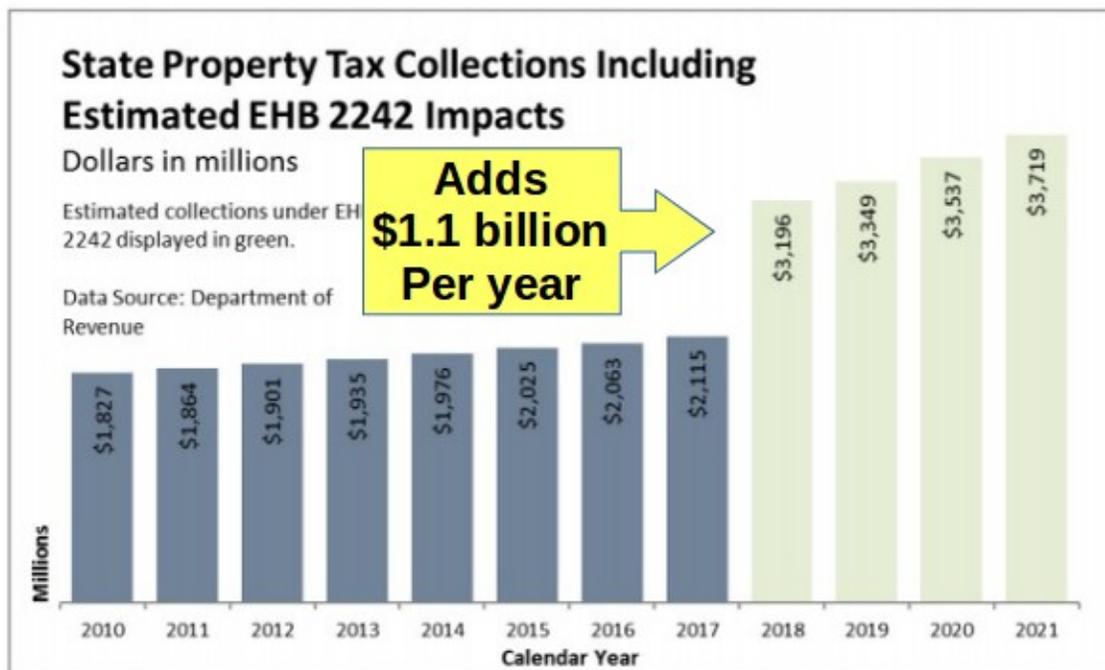
The McCleary Plaintiffs have repeatedly explained that the State needs to pay the actual cost of fully funding our schools (by increasing funding by \$6.6 billion per year). The Washington Supreme Court has also ordered the State to pay the actual cost of fully funding schools. But the legislature does not want to pay the actual cost. So instead, they have come up with this hair brained scam to transfer levy funds from some local school districts to other districts and then call that an increase in State funding.

How Much of an Increase in School Funding Does the Levy Swipe Actually Provide?

There have been all kinds of numbers tossed about. In the following sections of this report, we will show that the **Levy Swipe will not provide any additional funding** – in fact, it will reduce school funding in our State. But for now, let's look at a couple of charts the State gave the Supreme Court in their July 30, 2017 Report. You can read the entire State Report at this link:

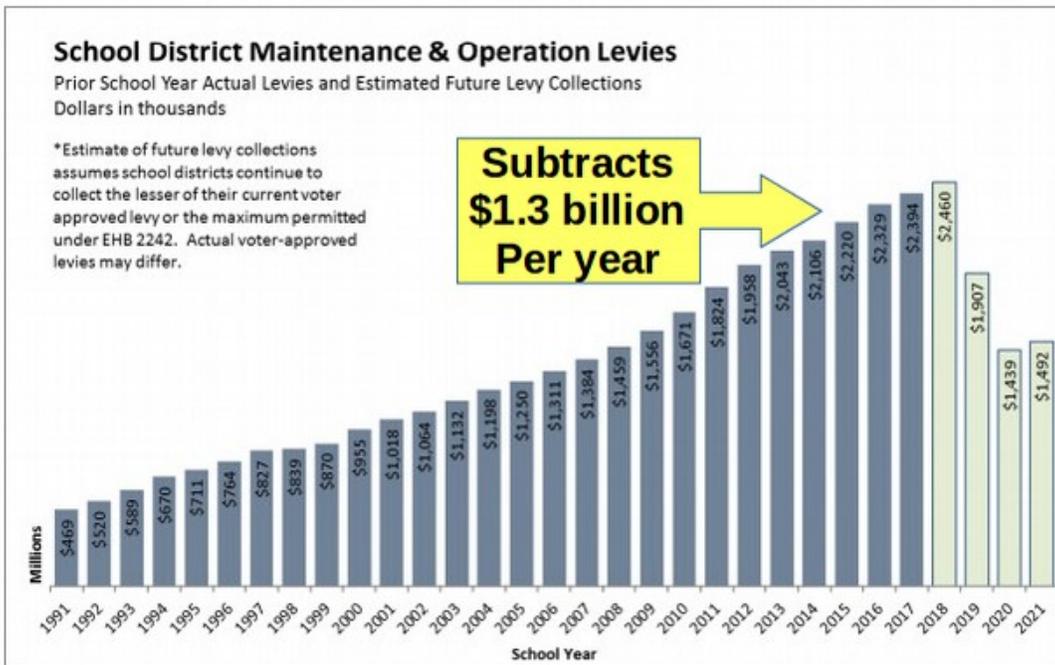
<http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/2017ReportbytheJointSelectCommittee.pdf>

On page 50, the State claimed that the new State Levy will increase property tax collections by \$1.1 billion dollars per year beginning in 2018. The chart below shows actual State Levy Tax Collections for 2010 to 2017 and then estimates that these tax collections will increase by \$1.1 billion in 2018 due to EHB 2242 (aka the Levy Swipe).

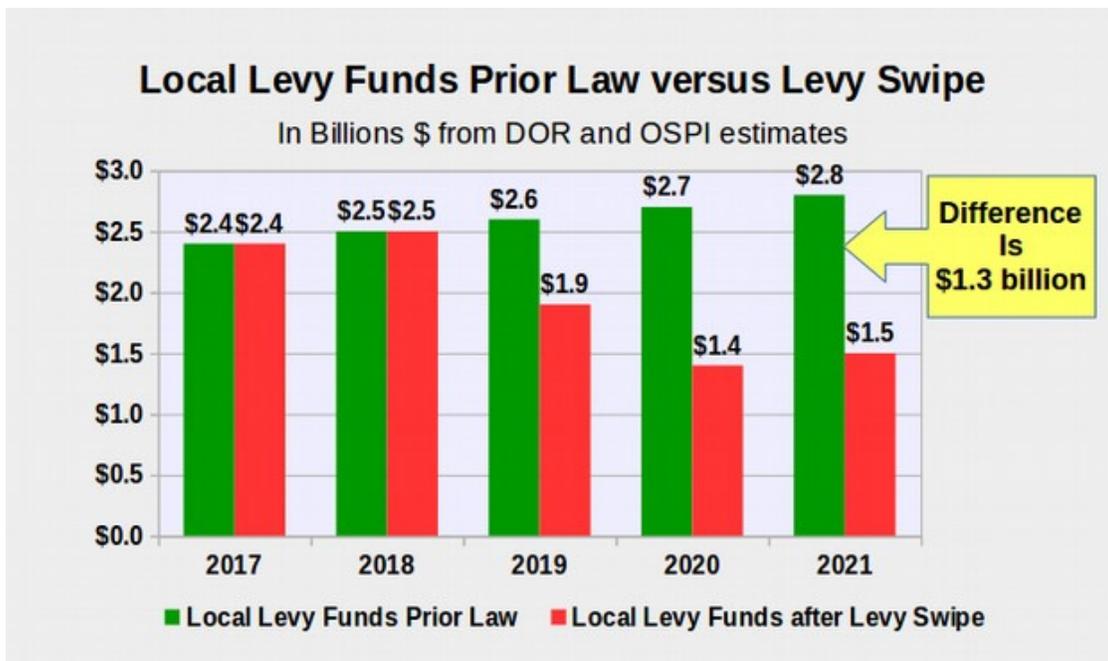


To be clear, \$3.2 billion in 2018 minus \$2.1 billion in 2017 equals \$1.1 billion dollars. So new State funding would be \$1.1 billion (or as we will say throughout this report, about one billion dollars per year).

But then a different State Chart on Page 57 of their Report shows local levies going from \$2.7 billion in 2020 to \$1.4 billion in 2020 – **a loss in local levy funds of \$1.3 billion dollars per year.**



To be clear, the 2017 local levies totaled \$2.4 billion and have been rising at a rate of \$100 million per year. This means that by the year 2020, under the former school funding process, local levies would have been \$2.7 billion. Instead, local levies are estimated to drop by \$1.3 billion (from \$2.7 billion to \$1.4 billion). Here is a chart that more clearly shows this year by year difference in local levy funds:



Thus, even according to the State's own estimates in their report to the Supreme Court, the levy swipe will result in a State gain of \$1.1 billion but also a local loss of \$1.3 billion for a NET LOSS OF \$200 million per year beginning in 2020.

Understanding the Levy Swipe effect on school funding



The State uses “double taxation” in 2018 to increase Property Taxes by \$1.1 billion per year...
But then cuts Local School Funding By \$1.3 billion per year in 2020.
The NET LOSS is \$200 million per year And gets even worse over time!

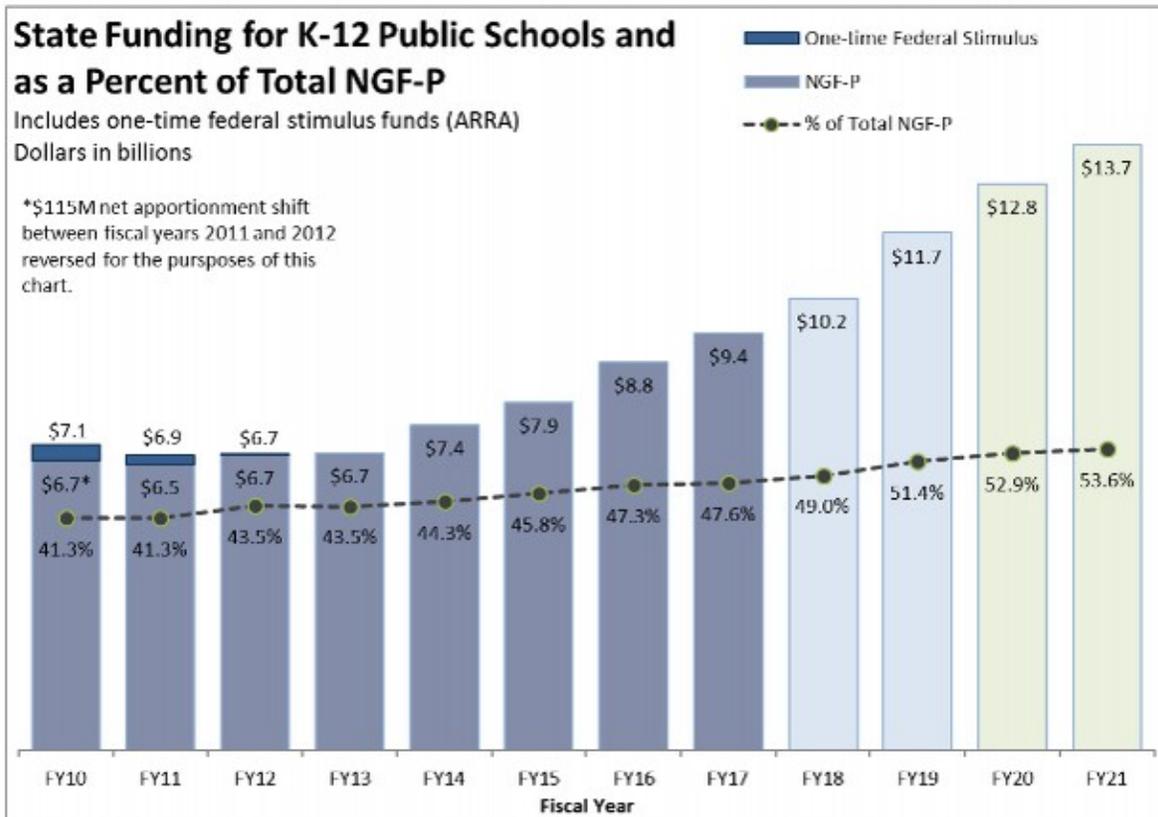
Let's Compare what the Levy Swipe Actual Does to What We Were Told It Would Do

Wait a minute. What about the claim by legislators that their plan will provide “\$8.4 billion” in additional school funding? Well, this is why we call the Levy Swipe a Shell Game. When you start to look at the actual details of the legislature’s plan, you quickly discover that there is no additional school funding at all in the Levy Swipe Scam. Even using the State’s own (inaccurate) estimates, the Levy Swipe will result in an eventual loss of \$200 million per year beginning in 2020.

In fact, using more accurate information presented in the following sections, we will show that the actual loss in school funding will be much greater than \$200 million per year – **the ACTUAL LOSS in school funding could be more than one BILLION DOLLARS PER YEAR! This is even beyond the current unconstitutionally low level of state funding.**

This eventual plunge in Levy Swipe school funding is because while local levy funding will decrease, the State levy will not actually increase. The reason the State levy won’t increase is because of two “poison pills” that were inserted into the Levy Swipe bill – problems we will explain in sections 4 & 5.

To better understand how low future school funding will go, let’s look at another chart in the State’s Report to the Supreme Court. This chart is on page 9.



Here is a quote from page 9 of the State Report: “On an annual basis, state funding for K-12 has increased from \$6.5 billion in fiscal year 2011, the first year in which the prototypical school funding model was in effect, to \$13.7 billion planned for fiscal year 2021. This increase more than doubles state funding for K-12 public schools since the 2012 order.”

To change these numbers to more understandable “Per Pupil” estimates, all we need to do is divide them by one million students. Thus, the State is claiming that Per Pupil spending was \$6,500 in 2011 and will rise to about \$13,700 by 2021. This seems to show that school funding will double, right?

The State claims they have dramatically increased school funding and will eventually more than double school funding. Sadly, there is no truth at all to this claim. Instead, as I have been writing about and warning for years, the legislature has repeatedly just shifted money around from one account to another and then called it an increase in school funding. The Levy Swipe is simply the latest example of moving money around and then calling it an increase.

To see what has actually happened since 2011, and what will happen in the future, we need to use sources other than the State legislature. Below is what has actually happened to school funding since 2011.

What was school funding like in our state back in 2011?

The 2011 school year is important because that was the school year our Supreme Court ordered the legislature to increase school funding. 2011 was also the year the legislature’s used in their recent report to the Supreme Court claiming that they will have more than doubled school funding from 2011 to 2021. In 2011, the school year in which our Supreme Court issued their Order, Washington State was 44th in the nation in school funding as a percent of income. Percent of income is the best way to compare school funding because it accounts for Cost of Living differences between states as well as adjusting for inflation from year to year.

<https://www2.census.gov/govs/school/11f33pub.pdf>

As a consequence of having some of the lowest school funding in the nation, our kids were (and still are) forced to deal with the highest class sizes in the nation. In 2011, the average class size in Washington state was nearly 30 students. Here is a distribution of class sizes showing which states have low, average, above average or extremely high class sizes:

https://nces.ed.gov/programs/digest/d13/tables/dt13_209.30.asp

Class Sizes in Grades 7 to 12										
(US average is 26 to 27 students... no data for FL, HA or MD)										
20 or less	21	22	23	24	25	26	27	28	29	30 or more
AK		CT	LO	NE	AR	DE	AL	AZ	CO	CA
ME		MT	MS	NJ	ID	NC	IN	GE	MI	MN
ND		NH		NM	KS	SC	IO	IL		NV
VT		SD		OK	MA		KT	WI		OR
WY				VI	NY		MO			UT
				WV	PA		OH			WA
							TN			
							TX			

How has school funding changed since the January 2012 Supreme Court Order?

A public source of information that is harder to manipulate is the State Report card at OSPI. This Report Card is a useful baseline to determine if an actual increase in school funding has occurred because the total number of people is from actual school district reports each year. Here is a link to this report.

<http://reportcard.ospi.k12.wa.us/summary.aspx?year=2016-17&yrs=2016-17>

Here is a table I compiled based on these State report cards for 2011 to 2016.

School Year	OSPI reported # classroom teachers	# Students (K) Oct	M	Adj # Classroom Teachers	Decrease # teachers over 2011	% decrease in school funding compared to 2011
2011	61,724	1044	1.00	61,724	0	0.00
2012	61,596	1051	0.99	60,980	-744	- 0.01
2013	59,002	1057	0.99	58,411	-3,313	- 0.05
2014	60,543	1075	0.97	58,727	-2,997	- 0.05
2015	61,761	1084	0.96	59,290	-2,434	- 0.04
2016	63,541	1102	0.95	60,364	-1,360	- 0.02

Note: M = subtracting teachers added solely due to increase in # students = adjustment for increase in # students each year = # students in 2011 (1104 K) / # Students in each subsequent year

Percent increase in teachers 2011 to 2016 = $1817 / 61,724 = \text{Almost } 3\%$

Percent increase in students 2011 to 2016 = $58K/1044K = \text{Almost } 6\%$

In short, since 2011, **the number of teachers increased by about 3% while the number of students increased by about 6%**. In other words, the school funding situation in our State is worse now than when the Supreme Court issued their Order in January 2012. Keep in mind that 2011 was a very low school funding year where Washington State had among the highest class sizes and lowest school funding in the nation. Therefore, **the number of teachers in our State adjusted for the increase in students has declined by about 1,360 teachers since 2011.**

Using 2011 OSPI reported classroom teachers as a baseline, **school funding in Washington state has actually declined about 2% since 2011.** This is why class sizes in Washington state are still among the highest in the nation. This is also why the claims made by legislators that they have “doubled school funding” are absurd, disgusting and disgraceful.

Had school funding really been doubled, we would have twice as many teachers and class sizes would be much lower than they are now. So let this be a lesson. **Do not believe anything the legislature tells you about school funding.** Instead, just walk into the class room in your local middle school to see what is really happening with ACTUAL school funding.

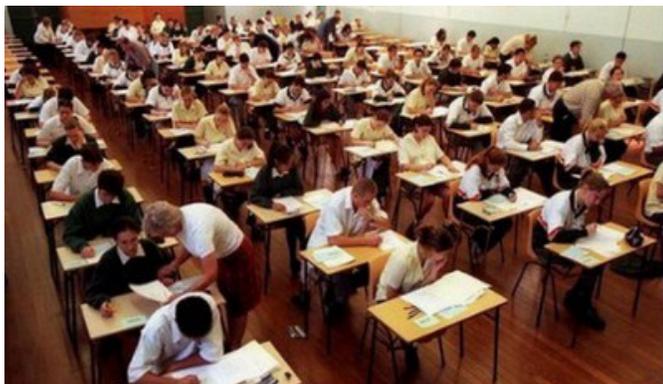
III. Ghost Money for Two Class Size Initiatives

The best predictor of future behavior is past behavior. We will therefore next look at another scam created by the legislature called Ghost Money before reviewing how two poison pills inserted into the Levy Swipe Scam will cause dramatic declines in school funding in the coming years.

There is probably no better example of how the legislature manipulates school funding than the topic of Ghost Money. This is money that does not really exist – but the legislature pretends it exists. They have even written this term into state law. More precisely, Ghost Money is money that would have existed if the legislature had followed the law. But because the legislature wanted to increase tax breaks of the rich, the money was diverted away from schools and into tax breaks for the rich. What was left for schools was called Ghost Money. The billionaires who own wealthy corporations like Microsoft and Boeing got the Real Money.

This ugly story about Ghost Money all started in 2001 with the passage of the first Class Size Initiative 728. A lot of people do not realize this, but when the voters pass an Initiative it becomes an actual law that the legislature is suppose to comply with. Instead, the legislature has a long history of ignoring these Initiatives just like they ignore our State Constitution (which is also an actual law). In 2003, the legislature voted to give Boeing hundreds of millions of dollars in tax breaks by passing House Bill 2294. To come up with this money, the legislature also passed House Bill 1449 which gutted hundreds of millions of dollars in school funding by “suspending” Initiative 728.

But gutting state funding for schools would also mean gutting local funding for schools because local levy funding was capped as a percent of state funding. In order to keep local funding, the legislature came up with the concept of Ghost Money. Local funding would no longer be a percent of state funding. Instead it would be a percent of State Funding PLUS Ghost Money – which is the amount of money the State would have provided had it fully funded Initiative 728. You may think I must be making this up - but I am not. In fact, since 2003, the legislature made even more cuts to school funding such that eventually Ghost Money totaled more than one billion dollars per year in missing state funds – all of which was money that was supposed to go to our schools by law but instead has gone to tax breaks for the rich.



**Many teachers
Now have more than
35 students per class.
With 5 periods per day,
Many teachers
Have more than
175 students per day!**

In 2014, the voters again passed a Class Size Reduction Initiative 1351. Again the legislature ignored the will of the voters. In 2015, the legislature passed a bill to suspend Initiative 1351 for four years – claiming that it would have cost more than one billion dollars per year to actually lower class sizes. Ignored in this debate was the fact that the legislature has passed more than \$30 billion in annual tax breaks for the rich.

The Legislature’s July 30 2017 report to the Supreme Court states: **“The increased school staffing ratios in I-1351 are re-established outside the program of basic education as potential future enrichments... The I-1351 implementation schedule is repealed. (EHB 2242 Section 906).”** Since Initiative 1351 was still state law, moving it to optional means a further loss in school funding of more than one billion per year – over and above the loss in local levy funding of more than one billion dollars per year.



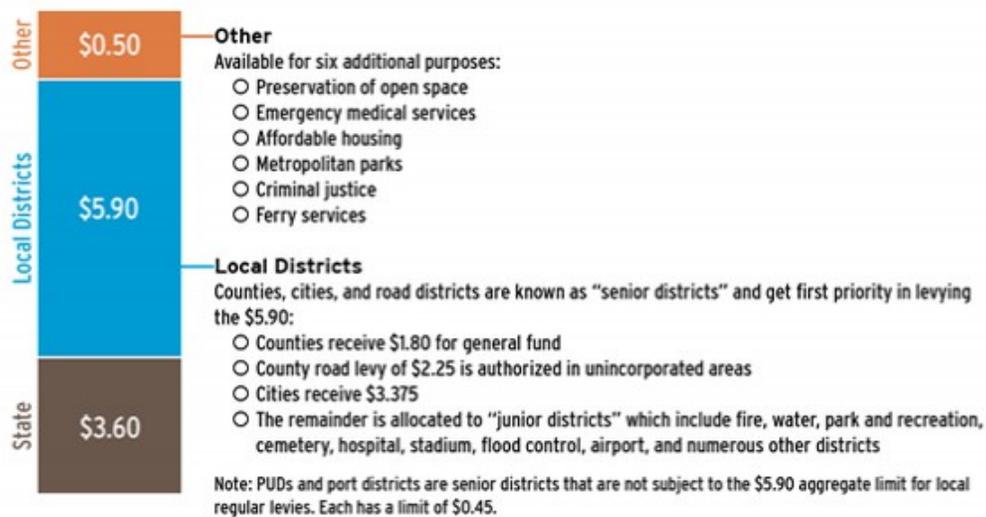
“There are plenty of days when I know someone needs help, and I simply cannot get the time to talk with him or her one-on-one before the bell rings.” 7th Grade Math Teacher

As for Ghost Money, that was retained for the 2018 school year (see page 55 of the State Report). But the Ghost Money is then replaced with per pupil caps and/or local property tax caps. Ironically, both of these new ideas will also result in Ghost Money as a result of the two poison pills we will discuss next.

IV. The Slow Poison Pill: The Illegal Tax Cap

Buried within the Levy Swipe bill is an innocent sounding provision that temporarily removes the 1% property tax cap until 2022. We will refer to this provision as the Slow Poison Pill because it will take about 9 years before it gradually destroys school funding. This means that this poison pill will result in school funding in 2029 being noticeably worse than it is today. The slow poison pill is described in detail in the Washington State Budget and Policy Center Brief to the Supreme Court. Here is a link to this brief. <https://www.courts.wa.gov/content/publicUpload/McCleary/843627McClearyAmicusWASstateBudgetandPolicyCenter.pdf>

First, to understand how a one percent cap will reduce school funding, we need to review how property taxes are structured and calculated here in Washington state. The Washington State Constitution limits the annual rate of property taxes that may be imposed on an individual property to 1% of its value. Since tax rates are stated in terms of dollars per \$1,000 of value, the 1% limit is the same as a \$10 limit per \$1,000 of assessed value. So if a person's home is assessed to be worth \$200,000, then a 1% rate would be \$2,000 property tax or \$10 per thousand times \$200,000. This \$10 per thousand is further broken down between State and local governments in the following manner. Note that the State portion of property taxes is (or was) \$3.60 per thousand – with the remaining \$6.40 going to local governments.

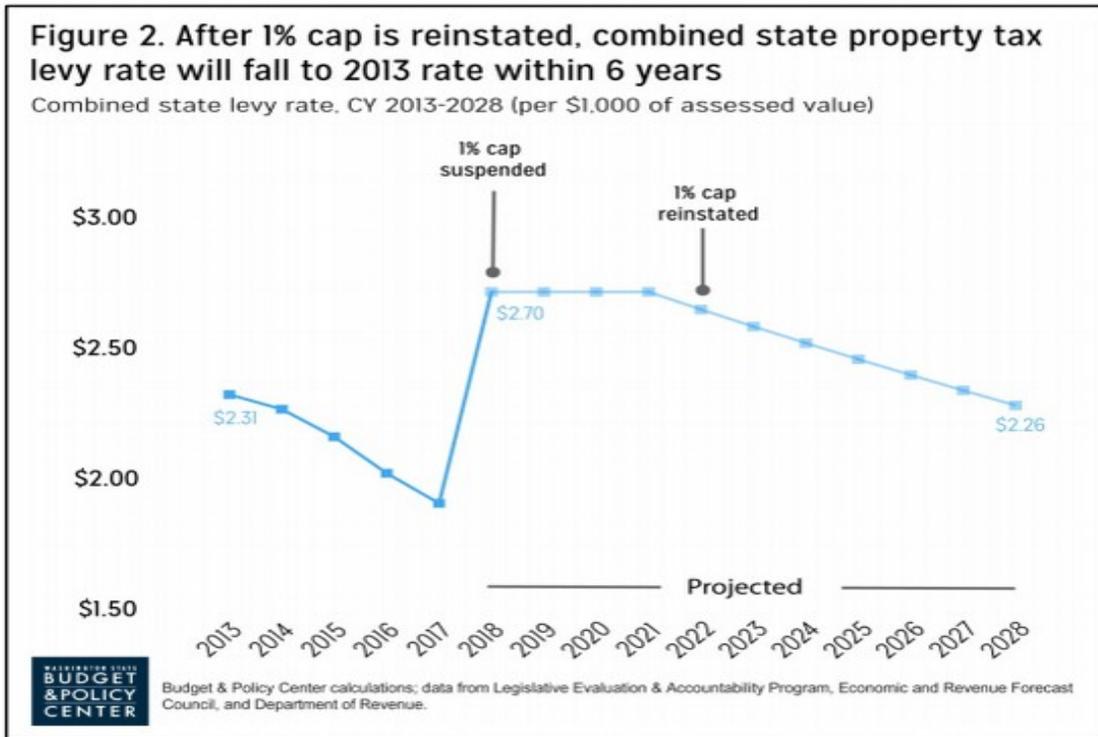


Here is the link for the above graphic: <http://mrsc.org/Home/Explore-Topics/Finance/Revenues/The-Property-Tax-in-Washington-State.aspx>

In 2001, the voters passed an Initiative placing a one percent cap on the growth of property taxes. So even if the total property value in a taxing district grows by 5% per year, the taxes on that property can only grow by 1% per year. **How the total tax is capped when property values rise more than one percent per year is by lowering the rate.** For example, if the State Rate of \$3.60 per thousand results in taxes rising by more than one percent per year, then the State Rate must be lowered to whatever amount would result in only a one percent tax increase. Over time, this process has resulted in the State rate falling from \$3.60 per thousand to only \$1.89 per thousand.

In 2007, the Washington Supreme Court ruled this Initiative was invalid. However, the 2007 legislature passed a law ignoring the Supreme Court and continuing the cap anyway. See *Wash. Citizens Action of Wash. v. State*, 162 Wn.2d 142, 162, 171 P.3d 486 (2007); also see *Laws of 2007, 1st Sp. Sess., ch. 1 (HB 2416)*.

Here is a chart on Page 11 of the Washington State Budget and Policy Center brief showing how State Property Taxes declined from \$2.31 in 2013 to \$1.89 per thousand in 2017 as a result of the one percent cap. The chart also shows that as a result of the Levy Swap Scam, the State Property Tax rate will increase to \$2.70 in 2018 (raising an additional billion dollars). But then, after 2021, the State Rate will slowly decline to \$2.26 by 2028 (losing about one billion dollars):



While the chart correctly shows that the State Levy Rate will not remain stable, there are two problems with the chart. The first problem is that it does not show the full decline in the State Rate prior to 2013. Up until 2001, the State Rate was still \$3.60 per thousand. The State Rate rate then began declining as a result of the one percent cap until by 2017, it was only \$1.89. This was a decline of \$1.71 in 17 years or \$0.10 per year. This brings up the second problem. The actual rate of decline was \$0.10 per year while the chart only projects a rate of decline in future years of \$2.70 minus \$2.26 = \$0.44/7 = \$0.06 per year.

Here is a more complete chart using Department of Revenue data showing how dramatically the State Levy Rate has declined since 2001 and adjusting the rate of future decline after the year 2021 to match the \$0.10 rate of the actual decline during the past 17 years:



Even this chart does not show the full picture of the rate change. This is because the rate change, in terms of the end of the old local levy will occur in 2019. Therefore, we need to compare the new State Rate to what the State Rate would have been in 2019 without the Levy Swipe change. Declining at a rate of ten cents a year, the 2019 rate would have been \$1.69. So the real increase in the State Levy Rate in 2019 will be from \$1.69 to \$2.70 – an increase of almost exactly \$1.00 per thousand of assessed valuation. We will return to this number later in our report when we look at the real impact on homeowners.

It took 17 years for the the original rate to fall from \$3.60 to \$1.89. However, because the new rate will start at a much lower point of only \$2.70, it will only take 9 years to fall to a rate of \$1.90.

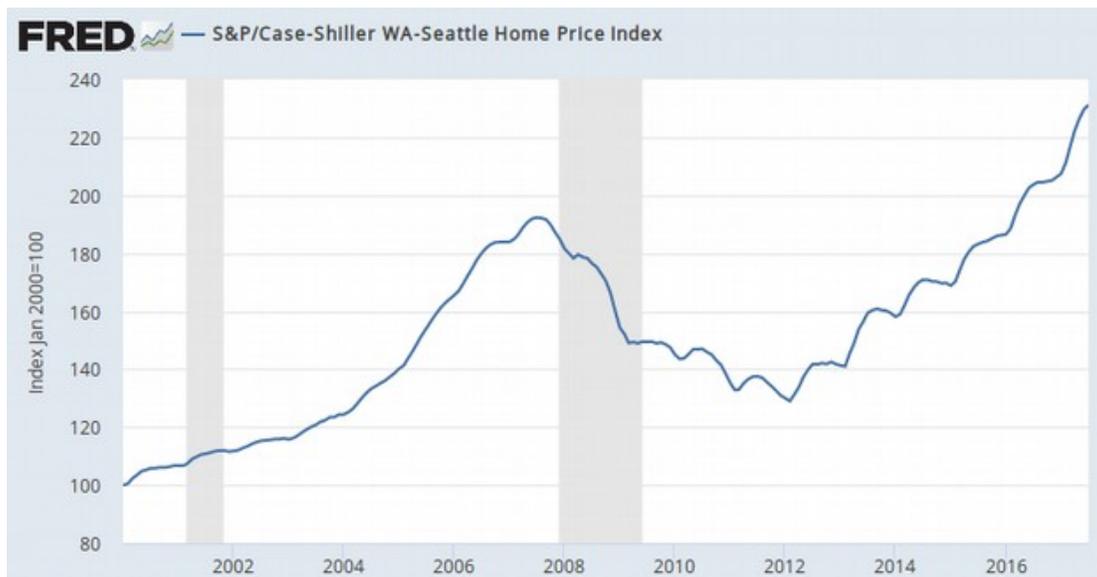
Here is a quote from the Budget and Policy Center brief: *“Although the State shifts the burden of funding from local levies to the state property tax, the State does so in a way that is neither dependable nor regular... Although the maximum state property tax rate is \$3.60 per \$1,000, see RCW 84.52.065, the actual tax rate had dwindled to \$1.89 in 2017 due to artificially imposed reductions under the 1% cap. EHB 2242 raises the state property tax rate to \$2.70 by suspending the 1% cap for 2018 through 2021. EHB 2242, § 301. Beginning in 2022, however, EHB 2242 re-imposes the 1% cap on annual revenue growth. As a result the state levy rate will decline steadily, falling from \$2.70 in 2021 to \$2.26 by 2028—erasing half of the overall rate increase in just six years.”*

Unlike the prior funding process, where the loss of state funds could be made up by asking the voters to increase local property taxes, this huge loss in State Funding can no longer be made up with local funding due to restrictions imposed by the new Levy Swipe law on local levies. As bad as this danger of the Slow Poison Pill is, because it will take 9 years for the loss in school funding to occur, it is not as bad as the “fast” poison pill which we will consider next!

V. The Fast Poison Pill: Unstable Property Values

Now we will look at the most irresponsible and grotesque part of the Levy Swipe Scam. Shockingly, this problem has never been addressed by any other analysis. Here is the biggest problem with the new School Funding plan. It completely changes the way School funding is calculated from one based on the actual amount of funding needed to a process that is tied directly to property values. Let's ignore for a second the problem we covered in the last section with property values rising by more than one percent a year and instead consider what will happen if property values FALL SUDDENLY like they did in 2008.

Below is the Case Shiller chart showing what happened to home prices in the Seattle Market after the 2008 Crash. The chart is set with the year 2000 being 100%. From 2000 to 2007, home prices nearly doubled. But then in just three years, home prices fell sharply from 190 to about 130. **This was a decline of $60/190 = 32\%$** . Here is the link: <https://fred.stlouisfed.org/series/SEXRNSA>



As all Washington Homeowners know, our local school related property taxes did not decline when housing prices declined. Instead, the Local Levy Rate rose in order to compensate for the decline in home values. This was because the local levy was not based on any particular rate. Instead, it was based on an actual amount of money needed to make up for the lack of State funding. In my small school district, the Snoqualmie Valley School District, this local levy amount was set at

Snoqualmie Valley School District local levy amount was about \$20 million. This fixed amount was then divided up among all of the homeowners. If the value of the homes fell in half, the rate would simply be doubled. The point is that the old system always used a fixed amount of money not a fixed rate. But the new system replaces fixed money with a rate locked in stone!

Example of Why School Funding Should not be Linked to Home Prices

The Levy Swipe reduces the maximum State Levy Rate from \$3.60 per thousand down to only \$2.70 per thousand. It then LOCKS this State Levy rate in a manner that allows it to fall if there is inflation (the Slow Poison Pill) – but it does not allow the State Levy Rate to rise if there is rapid deflation. To see how this could harm school funding, we will look at what would happen if home prices declined by 50% from a Case Schiller value of 240 to where they were in 2003 – 120. This is more of a drop than occurred in 2008. However, it is LESS than the drop in home prices that occurred in the Great Depression.

To show how much this drop would harm a local school district, and to keep the math simple, we will assume we have a School District with one school and 100 students and assume that the actual cost is \$10,000 per student per year (we know from 2012 study that actual cost is between 15,000 to 20,000 but we will use 10K to keep the math simple). We will then compare how a rapid housing price drop would affect this school district under the Old School Funding System – where the maximum local levy rate is not fixed - compared to the New Levy Swipe system – where the maximum State levy rate is fixed.

How the Old System Funded Schools - Actual Cost of Sample School District

Actual Cost = Per student cost times the number of students
10K times 100 students = 1000K or One Million.

Funding Method Before the Levy Swipe Law was Based on Actual Cost

Assume the state only pays 80% of actual cost = \$800 K so school board asks local homeowners to pass local levy to make up the difference. If voters say no, then 20% of teachers are fired and class sizes skyrocket. The local levy is for a FIXED amount and this fixed amount is determined by the actual amount needed to run the school. The fixed amount is \$200K

Now assume there are 200 families in 200 homes in this school district (only half of the families have kids in the school). 51% have to vote Yes to pass the “excess levy”. Assume that each home is worth exactly the same and is currently worth \$100K.

The fixed amount of the levy (\$200K per year) is divided between the 200 homeowners. This comes to \$1K per homeowner in extra property taxes per year – all because the State legislature refuses to fund the full actual cost of the school. Since the homeowners home is worth 100K, the cost of the levy in terms of dollars per thousand of assessed valuation is \$1000 property tax for excess levy/100K home = **\$10 per thousand of assessed valuation**. In other words, the extra tax on a \$100K home is \$10 times 100 = \$1,000.

This is a fixed amount based on the actual cost. So if home values double to \$200K per home, then the amount per thousand is cut in half. But the total amount of tax revenue the school district receives remains the same. Assume the value of all homes is \$200K each. Then to get the needed \$200K levy, each homeowner pays **\$5 per thousand of assessed valuation instead of \$10**. The total tax is still \$1,000 (\$200K home times \$5.00 per thousand = \$1,000 tax).

The bottom line is that no matter whether the home values go up or down the local homeowners still have to pay \$1,000 each because there are 200 homeowners and the amount needed is \$200K.

The danger with the current system is that some communities cannot pass their local levies and then the kids in those school districts have much less school funding than in other school districts (Rich Schools versus Poor Schools).

The Problem with the Levy Swipe Law Linking Funding to Home Prices

Legislators falsely claim that all the Levy Swipe does is transfer about one billion dollars in local levy funds to the State and then add another one billion per year onto the backs of “richer” homeowners located mainly in King County. But this is not true. Because instead of being based on the actual cost of school and with this cost being Independent of the rise or fall in home values – as the old system was – the new system sets a **FIXED Levy cost of \$2.70 per thousand of assessed valuation**. If home values rise, then the amount of tax rises with it. **More important, if home values fall, then the amount of tax falls with it.** The Fixed Rate Levy Swipe System no longer funds actual cost!

Let’s go back to our Example School District. The State now “swipes” the local levy in order to “fully fund” the school and pay 100% of the cost of Basic Education. We use the term “swipe” because money that use to be under the direct control of a local school district has been transferred to the General Fund under the control of the State legislature. It is then sent from the General Fund to a completely different school district.

To illustrate how dangerous the new fixed levy rate method is, we will now assume that this school district is located in King County and that the average home is currently worth \$500K. The school still needs \$10K per student times 100 students or one million dollars.

The state now pays the entire one million. But \$200K or 20% comes from “Levy Swipe increase” in the State Levy Rate from \$1.69 (what the State Rate would have been in 2019) to \$2.70. As we noted in a previous section, this is an increase of about \$1.00 per thousand. But to keep the math simple, we will assume the increase was \$2.00 per thousand to exactly match the old Local Levy Rate we used above. With 200 homes each worth \$500K each homeowner still pays about \$1000 to cover this “increase” in the State property tax beginning on January 1, 2018. But we are told not to worry because the local portion of our property tax will eventually be reduced (we will explain why this is false in a moment). So the rate per thousand is \$1,000 in increase state taxes divided by our \$500K home or \$2 per thousand. This rate remains fixed over time regardless of whether homes go up or down in value. **But the amount collected does not remain the same. It goes up or down with the value of the homes.**

School funding remains the same as long as our home is worth \$500K. **But what happens to school funding if there is a Housing Crash and suddenly our 200 homes in King County are only worth \$250K each?** The rate remains the same at \$2 per thousand. **But the total amount collected by the Levy Swipe Formula drops**

from \$200K to \$100K. School funding for the entire district drops from one million dollars (the actual amount needed to run the school) to only \$900K. The result is that the **school is forced to fire 10% of the teachers** and class sizes skyrocket. This 10% plunge in tax collections can happen in just a single year. This is why a housing crash is the Fast Poison Pill.

In short, under the Levy Swipe Scam, the Slow Poison Pill causes school funding to drop if there is home price inflation like there has been over the past 17 years. But the Levy Swipe Scam also causes school funding to drop if there is rapid deflation in home prices! The only situation where school funding remains the same is if home prices remain stable – something home prices have never done!

How the Fast Poison Pill would cause a Rise in Property Taxes

But there is an additional problem with the Fast Poison Pill. No local school district will want to fire 10% of their already low supply of teachers just because housing prices dropped - something that would raise class sizes by 10% when our State already has the highest class sizes in the nation.

Recall that in the Ghost Money section of this report, we quoted the following from the State July 30, 2017 Report to the Supreme Court: **“The increased school staffing ratios in I-1351 are re-established outside the program of basic education as potential future enrichments... The I-1351 implementation schedule is repealed. (EHB 2242 Section 906).”**

In fact, it is Section 501 of EHB 2242 that places small class sizes as an “Enrichment Option” rather than being a Student Right as a part of Basic Education. Section 906 merely repeals Initiative 1351. Here is a link to EHB 2242 in case you would like to read the entire Levy Swipe law:

<http://k12.wa.us/safs/INS/2242/2242.SL.pdf>

But in any case, what the legislature is saying is that low class sizes, or even national average class sizes will no longer be a part of “Basic Education.” Instead, future class sizes will be based on whether home prices remain stable. If home prices do not remain stable and parents still want lower class sizes, then they will have to pay for it themselves by trying to pass a local levy. This in turn means that some school districts who have an easier time passing a local levy will have class sizes that are much lower than school districts that cannot pass a local levy. In any case, nearly every school district that can pass a local levy will try to pass a local levy if for no other reason than to reduce the extremely over-crowded classes.

VI. Two Double Whammies:

How the Combination of a Higher State Levy & a New Local Levy will affect Homeowners and School Districts

Whether passage of new local levies will result in an increase or a decrease in property taxes compared to the current rate depends on the whether the current Local Levy rate is more or less than \$1.50 per thousand of assessed valuation (which is the new limit under the Levy Swipe law). To this, one also needs to add the increase in the State Property Levy Rate from \$1.69 to \$2.70. So the real baseline is whether a school district is currently above or below $\$1.50 + \$1.01 = \$2.51$ per thousand of assessed valuation. School Districts above this amount (typically rural school districts) may see their taxes go down. Meanwhile suburban and urban school districts, especially in King County, will see their taxes go up.

To better see how this works, we will use an OSPI spreadsheet to look at two real school districts. You can use this spreadsheet to also determine how the Levy Swipe will impact homeowners in your school district. To download this spreadsheet, go to the OSPI website k12.wa.us. Then click on the **Financial** tab in the Main Menu. Then click on the **EHB 2242** menu item in the left side menu. Here is the direct link to this page: <http://k12.wa.us/safs/INS/2242/2242.asp>

There are two excel spreadsheets posted on this page. The first is a 10 MB spread sheet called the Updated Multi Year Budget Comparison Tool. The Multi Year Tool has a break down of funding by school district accessed in the Summary Tab by clicking on the drop down arrow to select the school district. However, it does not list the Levy Rate amounts or the impact on homeowners. That is only covered in the EHB 2242 Enrichment Levy spreadsheet.

The second spreadsheet is called the EHB 2242 Enrichment Levy and State School Tax Analysis. Download and/or open this document. At the bottom, you will see three tabs. The first is Tax Rates with no cliff. The second is Tax Rates with Cliff and the third tab is called Read Me. We will use the first tab, Tax Rates with No Cliff as this is the most accurate comparison to the prior school funding process and prior school funding levels.

Scroll down to the Seattle School District and you will see the following columns:

Estimated Local M&O Tax Rates (Before EHB 2242 passed NO LEVY CLIFF)				Estimated New Local Enrichment Levy Rates (After EHB 2242 passed)				Estimated Additional State Levies (After EHB 2242 passed, Rates Adjusted by Indicated Ratio) ¹				Estimated State and Local Tax Rate Change per \$1,000 Assessed Value (After EHB 2242 passed)			
CY 2018	CY 2019	CY 2020	CY 2021	CY 2018	CY 2019	CY 2020	CY 2021	CY 2018	CY 2019	CY 2020	CY 2021	CY 2018	CY 2019	CY 2020	CY 2021
PRE	PRE	PRE	PRE	PRE											
CLIF>	CLIF>	CLIF>	CLIFF	CLIFF											
###	\$1.10	\$1.12	\$1.13	\$1.14	\$0.66	\$0.62	\$0.59	\$0.96	\$1.00	\$1.05	\$1.10	\$0.96	\$0.55	\$0.55	\$0.56

Because Seattle has more property per student than any other school district in the State, Seattle can raise a lot of money through local levies even though the Rate per Thousand is also the lowest in the State. Seattle's current Local Levy rate for its operating budget levy is about \$1.14 per thousand in 2018 (still using the old levy law).

The new levy rate for Seattle will be reduced to about \$0.66 per thousand in 2019. The new State Levy Rate will increase by about \$1.00. The reason the spreadsheet shows the State Rate rising in 2020 and 2021 is not because the State Rate is actually going to rise. Rather it is because the State Rate would have been falling each year under the old law and the increase is in comparison to the old law. To keep the math simple, we will use a State Rate increase of \$1.00 for each year.

The First Double Whammy: Double Taxation in 2018

Now look at the **CY 2018** area of the fourth column (total State and Local Tax Change). The 2018 total tax rate increase is \$0.96 per thousand. But this is in addition to the prior law local levy rate of \$1.14 per thousand for a real total tax rate of \$2.10 per thousand – basically doubling the school related tax in the Seattle School District for the 2018 calendar year. This is the first double whammy. Nearly all homeowners in the State will see their school related property taxes skyrocket as a result of the Levy Swipe law. All homeowners will see their property tax go up by about one dollar per thousand of assessed valuation. So if you live in a home assessed at \$200,000, you will see a \$200 increase and if you live in a home assessed at \$500,000, you will see a \$500 increase.

By 2021, the maximum local rate in Seattle will fall to \$0.59 and the State rate will be \$1.10 above where it would have been had the Levy Rate law not passed. But the new State rate will still only be \$2.70 or about one dollar above where it had previously been.

The total new Local Plus State Rate will be \$2.70 per thousand (State) plus \$0.59 per thousand (Local) = \$3.29 per thousand which is or \$0.56 above where it would have been without the Levy Swipe law (1.13 local + 2.60 state = 2.73). The median additional tax on a median \$600,000 home in Seattle will be about \$350 in 2021.

Seattle is an example of a school district whose local levy cap will be less than \$1.50 per thousand because it is capped by the per pupil limit of \$2,500 per pupil which comes to about \$0.60 per thousand for a maximum local levy. We will next look at the Snoqualmie Valley School District - a school district that has much less property per student and therefore is capped by the \$1.50 per thousand local levy limit. Scroll down the spreadsheet to the Snoqualmie Valley School District and you will see the following:

Estimated Local M&O Tax Rates (Before EHB 2242 passed NO LEVY CLIFF)				Estimated New Local Enrichment Levy Rates (After EHB 2242 passed)				Estimated Additional State Levies (After EHB 2242 passed, Rates Adjusted by Indicated Ratio) ¹				Estimated State and Local Tax Rate Change per \$1,000 Assessed Value (After EHB 2242 passed)			
CY 2018	CY 2019	CY 2020	CY 2021	CY 2018	CY 2019	CY 2020	CY 2021	CY 2018	CY 2019	CY 2020	CY 2021	CY 2018	CY 2019	CY 2020	CY 2021
PRE	PRE	PRE	PRE	PRE											
CLIF>	CLIF>	CLIF>	CLIFF	CLIFF											
###	\$2.17	\$2.17	\$2.17	\$2.17	\$1.50	\$1.50	\$1.50	\$0.96	\$1.00	\$1.05	\$1.10	\$0.96	\$0.33	\$0.38	\$0.43

The local rate in Snoqualmie Valley SD is currently \$2.17 and will reduce to \$1.50 in 2019. The new State Rate will increase by about one dollar per thousand in 2018. Because of Double Whammy Taxation, the tax increase in 2018 will be one dollar per thousand. So for the average \$400,000 home, the tax increase in 2018 will be about \$400. In future years, because of the drop in the maximum local levy rate from \$2.17 to \$1.50, the increase compared to current law will be about 40 cents per thousand or \$160 per year on a \$400,000 home.

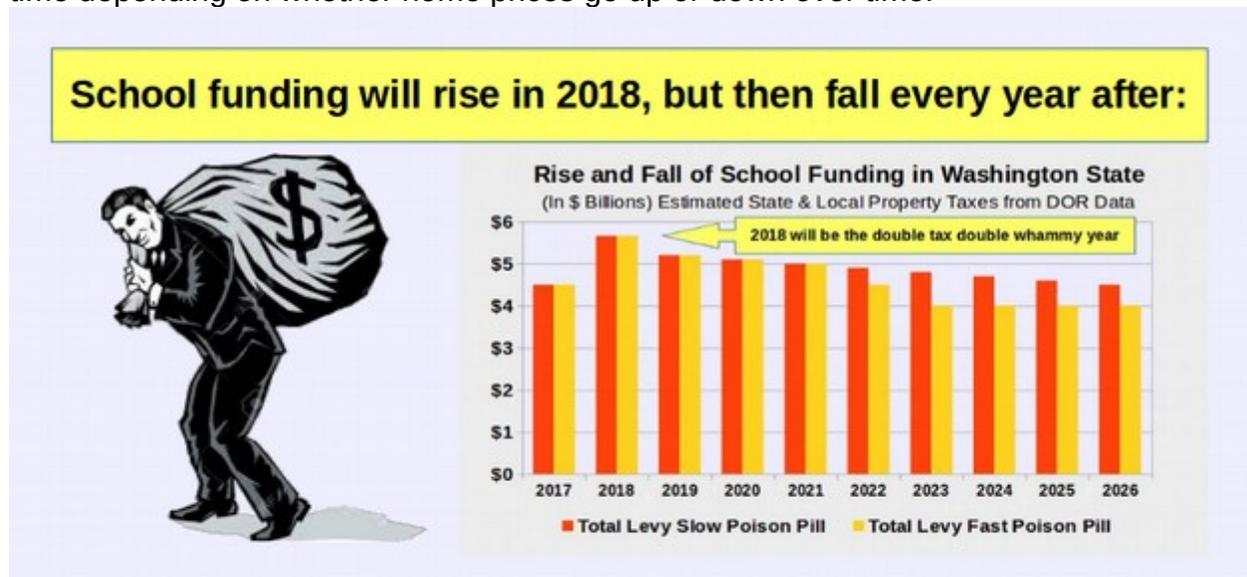
The Second Double Whammy: Most School Districts will no longer be able to cover losses in State Funding

So far, the new law is not too bad. But the OSPI spreadsheet is based on the Department of Revenue Growth Model. This model assumes that home prices will rise 10% to 20% over the next four years. This might be the case. But **what if home values are cut in half at some point during the next few years?**

Seattle will only be affected by the gradual loss in State Funding over the next 9 years (the Slow Poison Pill). If homes in Seattle decline in value by 50%, the Seattle School District could just raise their Local Levy amount of from \$0.60 to \$1.20 and still get the same amount of money (\$2,500 per student). However, most local school districts would already be at the \$1.50 per thousand Local Levy Limit. They would be prohibited from floating or doubling the Local Levy Rate as they have done in the past. So they would be hit by a huge double whammy. First, they would be hit by the loss of State Levy Funds – which would be cut in half. Second, they would be hit by the loss of Local Levy Funds – which would also be cut in half. Local school boards would be forced to fire about 10% of their teachers just to balance the budget. And there would be no way under the new levy swipe law to make up this shortfall. Ouch!

Given that the Levy Swipe Law is not likely to change in the near future, I can see only one way to even partially protect students from this disaster. Local school boards should immediately begin raising their Reserve Fund (also known as a Rainy Day Fund). Every school district in the State will get a massive increase in funding in 2018 – due to the double taxation of the Old Local Levy Rate plus the New State Levy Rate – both at their maximum in the same year. School Boards should not spend any of this money! Instead, they should save the money for the time in the future when State Funding begins to falter – either due to home price increases or home price decreases.

Here is a chart showing how total school funding in Washington State will go down over time depending on whether home prices go up or down over time:



The above chart is based on the Department of Revenue estimates as provided in the two charts in the State July 30, 2017 Report to the Supreme Court – adapted with the changes calculated in the Fast and Slow Poison Pill sections of this report.

Slow Poison Pill Estimate

In 2018, property tax related school funding will rise from the current \$4.5 billion to about \$5.6 billion – an increase of just over one billion dollars. However, it will be all downhill from there. In 2019, the double taxation will end and local levy collections will begin to fall. In just 2019, total property tax collections will fall by about a half billion dollars – with more gradual declines in the following years. If home prices continue to rise more than one percent per year, then after 2020, the One Percent Cap will begin to erode school funding at a rate of about 5% per year. By about 2026, the entire increase in school funding will have completely disappeared and our kids and schools will be right back in the same crisis where they are today – with the highest class sizes and lowest school funding in the nation.

Fast Poison Pill Estimate

This option estimates what will happen to school funding if there is a Housing Bubble Collapse in 2021. The first few years will be the same as with the Fast Poison Pill option. 2018 will see a major billion dollar increase in school funding and everything will look wonderful (except if you are a struggling homeowner trying to figure out how to pay the double taxes). 2019 will see a major decline in funding as the Local Levy Punch Bowl is cut in half. 2020 and 2021 will see more gradual declines. But a collapse in home prices in 2021 will lead to much lower home assessments in 2022 and school districts all across the state will be plunged into crisis mode.

Either way, school districts should do their best to max out their local levies to the greatest extent permitted by the new law – and then put away as much money as they can in their Rainy Day Fund to protect against the school funding declines that are almost certain to come due to the Levy Swipe Law's reliance on unstable home prices for funding our public schools.

There are many other drawbacks of the Levy Swipe which we will cover in future reports. The biggest of these drawbacks is how the Levy Swipe will harm teacher pay in many school districts and thus make our Teacher Shortage even worse than it is now.

But rather than continuing to dwell on the negative, in the next section, we will describe a path for getting our schools and kids out of the bleak dungeon they have been placed in by our State legislature.

VII. Why the Supreme Court Should Repeal Tax Breaks for the Rich (instead of closing schools)

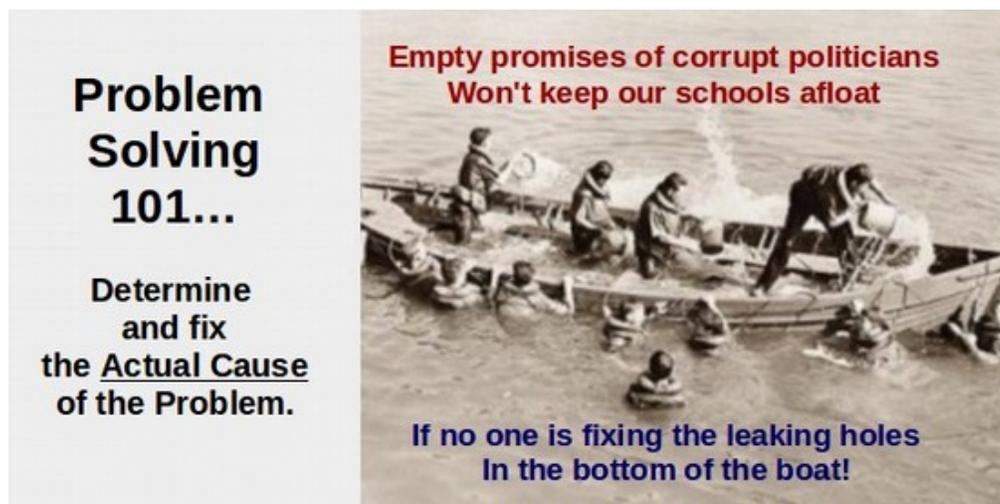
The McCleary plaintiffs have already made the case in their recent briefs to our Supreme Court that the last minute Levy Swipe Plan hatched by the legislature is not a stable or dependable or ample source of school funding. They have also correctly pointed out that this new funding method is not even remotely based on the actual cost of fully funding our schools. You can read the Plaintiffs latest brief at the following link. <https://www.courts.wa.gov/content/publicUpload/McCleary/McClearyPlaintiffFiling.pdf>

In this brief, on pages 45 and 46, plaintiffs ask the court to take one of two “Alternatives.” The first alternative is to either fully fund the schools or have all tax exemption statutes struck down or suspended. The second alternative is to either fully fund the schools or have all school related statutes struck down or suspended. The second alternative would effectively shut down our public schools.

In this section, we will review why the first alternative (repealing tax breaks is required by our State Constitution and why the second alternative (closing schools) is contrary to our State Constitution.

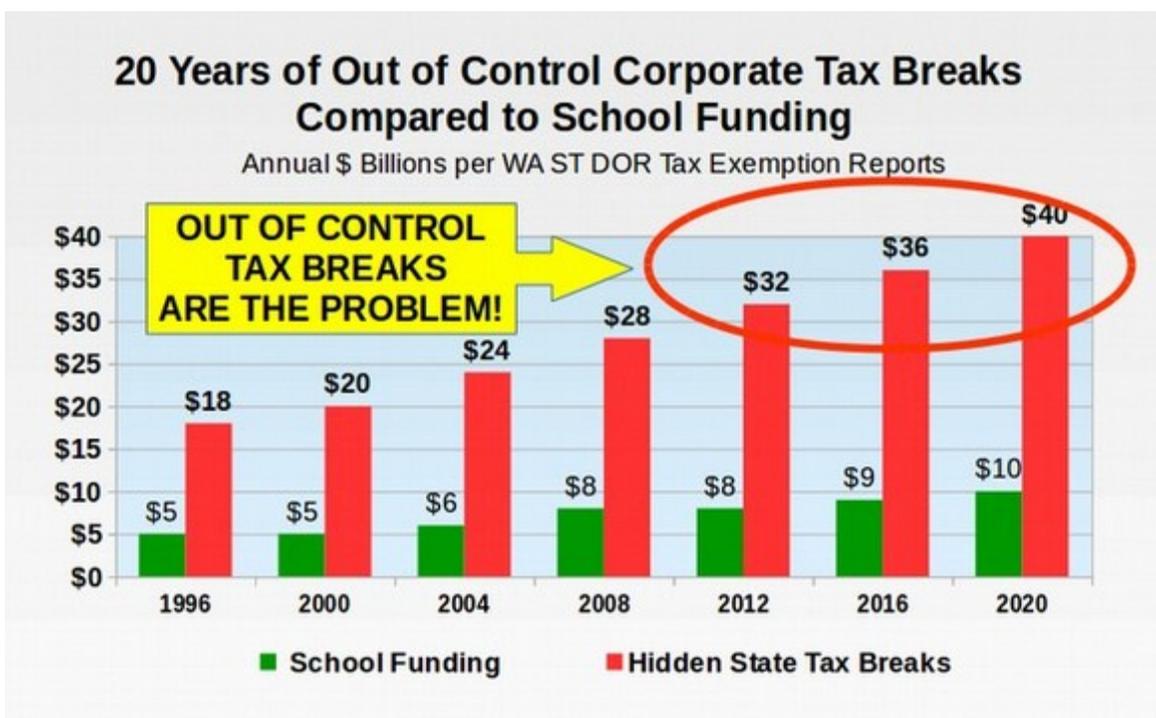
Why Repealing Tax Breaks is Required by our State Constitution

I have spent 20 years teaching courses in Problem Solving at Bellevue College. In order to solve any problem, one has to understand the underlying cause of the problem. In the case of the lack of school funding here in Washington state, the underlying cause is that during the past 20 years our legislature has passed more than 700 tax breaks, called Tax Exemptions – with new tax exemptions being added by the legislature every year. These tax exemptions currently total more than \$30 billion dollars per year – meaning that for every dollar our legislature spends on school funding, they spend three dollars on tax breaks for the rich. This is despite the fact that these tax breaks are specifically prohibited by our State Constitution!



The simple reason the legislature passed a Levy Swipe bill that gutted school funding, instead of passing a bill to increase school funding, was and is to protect all of these tax breaks for the rich. It is basic math. Every time the legislature wants to pass another tax break for the rich, they need to reduce funding somewhere else. For the past 20 years, that some place else has been to cut school funding. This is why we now have gone from having among the highest school funding in the nation to among the lowest school funding and highest class sizes in the nation. We will never be able to fully restore school funding until we get rid of these dishonest and illegal tax breaks.

We cannot allow our legislature to give away more than \$30 billion per year in tax breaks for wealthy corporations and still have enough money left to fully fund our schools and lower class sizes. So in this section, we will explain why our Supreme Court not only can repeal these tax breaks, but MUST repeal these tax breaks.



Note that the source for the above chart is WA ST DOR Tax Exemption Reports. These reports are issued by the Washington State Department of Revenue every 4 years. The latest report was issued in 2016. I have written elsewhere about this report and every tax exemption report going back to 2000. We will not repeat that information here. What I will note is that the 2016 Tax Exemption Report estimates that the 700 or so current tax breaks cost about \$25 billion per year (more than enough to double school funding and cut class sizes in half if they were repealed). However, this report (and the 2012 report) are missing several major tax exemptions that were included in previous tax exemption reports.

The biggest of these are the 1997 Tax Exemption on Commercial Intangible Property which costs our kids and our schools about \$5 billion per year (or \$5,000 per student).

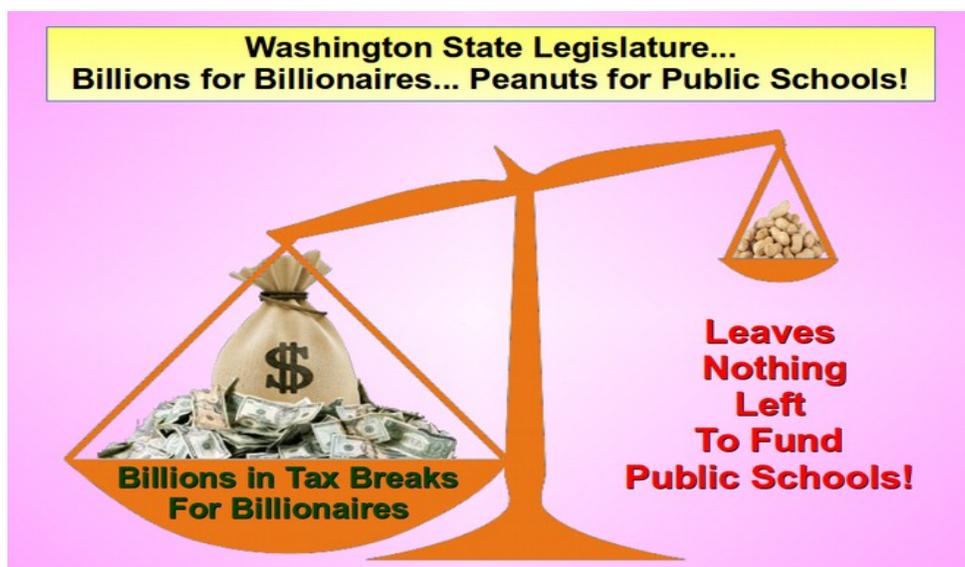
The second biggest is the Microsoft B & O Tax Break wherein we allow Microsoft to pretend that they are located in Reno, Nevada. This costs our kids and our schools about one billion dollars per year (or about \$1,000 per student per year).

There is one tax break that was passed by the people rather than by the legislature. This is the sales tax break on food which costs about one billion dollars per year. This is in the Tax Exemption Report. **Thus, the total tax breaks for the rich passed by the legislature are about \$30 billion per year.**

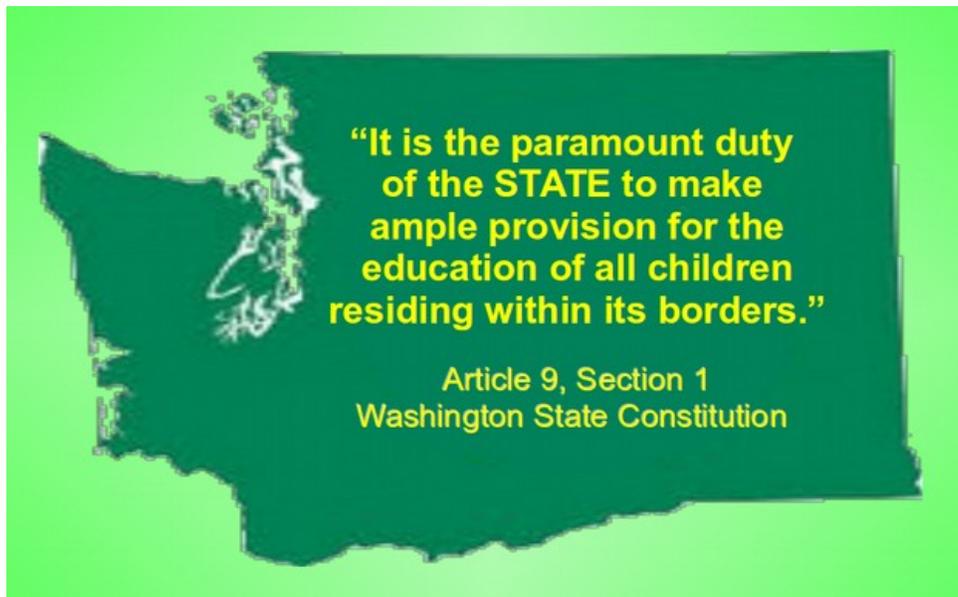
Here is a link to the 2016 tax exemption report in case you would like to read it:
http://dor.wa.gov/docs/reports/2016/Tax_Exemption_Study_2016/2016_Tax_Exemption_Study_Entire_Report.pdf

Why Tax Breaks are Prohibited by our State Constitution

We will now take a brief look at the meaning, purpose and history of our State Constitution. This history makes it clear that not only does our Supreme Court have the power to repeal these illegal tax breaks - but that our State Constitution **REQUIRES** our Supreme Court to repeal all tax breaks in order to fully fund our schools!



In 1889, the 75 delegates who drafted our State Constitution were determined to see to it that the State provided ample funding for our public schools. This was why they put into our State Constitution a clause making it the Paramount Duty of the State to amply fund our schools:



Unlike other states, which made it the duty of the legislature to “adequately” fund our schools, the drafters of our State Constitution created **a shared Paramount Duty** - a duty applied to the entire State Government including the Supreme Court - when they wrote Article 9, Section 1: "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."

While other state constitutions made it the duty of the state legislature to fund schools, the Washington Constitution made it the "paramount duty of the State." Notice that Article 9 Section 1 does not merely refer to the State legislature. It refers to our entire **State** government - which includes the Governor and the Supreme Court. In other words, **it is the Paramount Duty of every branch of State Government to make ample provision for the education of all children.**

Also while other state constitutions use the term "make adequate provision", the Washington State Constitution uses the term "**make ample provision.**" In fact, the Washington State Constitution is the only constitution in the nation to make it the Paramount Duty of the entire State to amply fund our public schools.

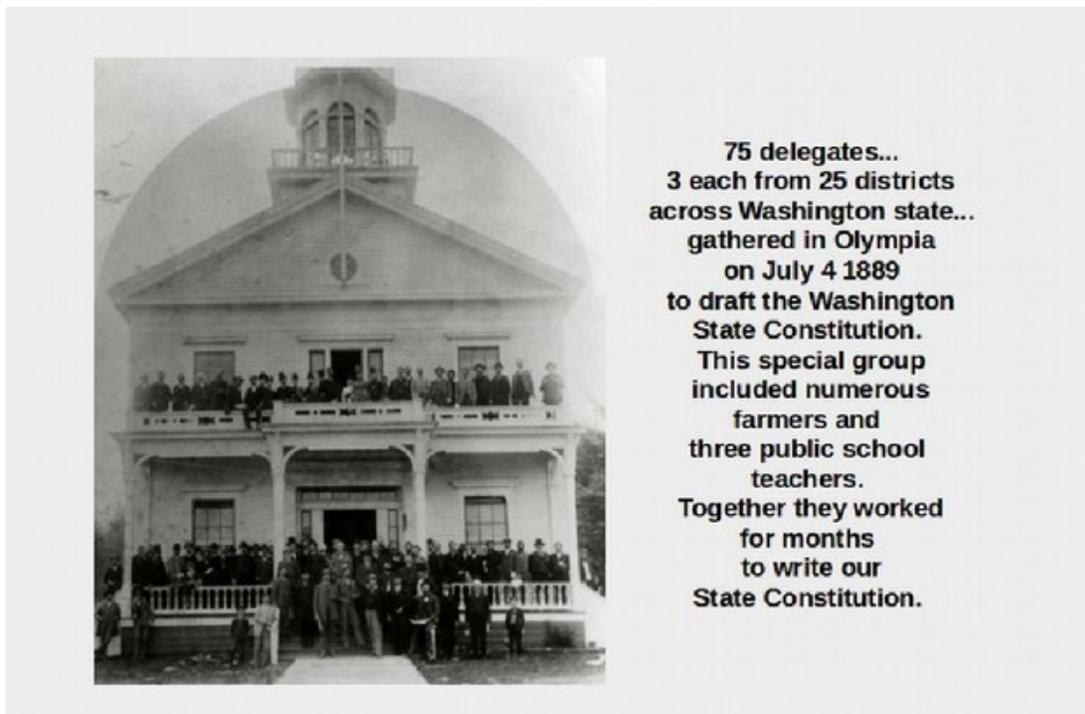
Here is what one of the drafters of our State Constitution (and a later Supreme Court Justice said about Article 9, Section 1: "**No other state has placed the common school on so high a pedestal. One who carefully reads Article 9 might wonder whether after giving to the school fund all that is here required to be given, anything would be left for other purposes. But the convention was familiar with the history of school funding in the older states, and the attempt was made to avoid the possibility of repeating the tale of dissipation and utter loss.**" Theodore L. Styles One of the 75 drafters of the Washington State Constitution and later a Supreme Court Justice in Effects of the State Constitution on Public Interests Page 284 <http://lib.law.washington.edu/waconst/Sources/Stiles.pdf#page=6>

The vote in favor of the Paramount Duty clause at the Constitutional Convention was 73 to 2. This Constitution was later approved by the voters in 1889 by a margin of more than two to one. Thus, the drafters of our state constitution and the citizens in 1889 had one paramount goal, namely the ample funding of a uniform system of public schools. In order to achieve that paramount goal, they did everything they could think of to minimize the chances that powerful corporations might corrupt and take over our state legislature.

Does our Supreme Court have the power to repeal tax breaks?



In order to help parents, teachers, other voters (and even our Supreme Court) determine who is right in this debate, we will take a quick trip down memory lane back to 1889 and the drafting of the Washington state constitution.



Why is the Washington State Constitution Different from Every Other Constitution in the Nation?

What is important to understand is that the Washington State Constitution is radically different from the Constitutions of every other state in the nation. There are many differences between the Washington State Constitution and other state constitutions. Here are two of the most important differences.

#1 No Separation of Powers Clause.

#2 Several clauses prohibiting the legislature from granting tax breaks to private corporations.

Let's examine why each of these conditions were written into the Washington State Constitution.

#1 No Separation of Powers Clause.

While the Washington State Attorney General and numerous legislators now claims that "separation of powers" prevents our Supreme Court from repealing tax breaks (or even from enforcing the Paramount Duty Clause of our State Constitution), it is a fact that, unlike every other State Constitution, **the Washington State Constitution does not have a Separation of Powers Clause.** Go ahead and look for it. You won't find one. The Separation of Powers clause our Attorney General and many legislators are referring to does not actually exist. Kind of like the "progress in school funding" does not actually exist. So why isn't there a Separation of Powers clause in our State Constitution when it is in nearly every other State Constitution in the nation? It was not an accident. The 75 drafters of our State Constitution had literally dozens of State Constitutions from around the nation at their disposal as they were writing the Washington State Constitution in the hot summer of 1889.

Here is the separation of powers clause in the Oregon State Constitution of 1859: Article III, **Section 1. Separation of powers.** The powers of the Government shall be divided into three separate branches, the Legislative, the Executive, including the administrative, and the Judicial; and no person charged with official duties under one of these branches, shall exercise any of the functions of another, except as in this Constitution expressly provided.

Here is a similar Separation of Powers clause in the California State Constitution of 1850: Article III, **Section 3. Separation of powers.** The powers of the government of the state of California shall be divided into three separate departments--the legislative, executive and judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except as in this constitution expressly directed or permitted.

The Oregon and California Separation of Powers clauses strictly forbid the Judicial branch from interfering with the Legislative Branch - with the sole exception being to prevent the legislature from violating the State Constitution. Nevertheless, both State Courts have concluded that they can interfere with the legislature under some circumstances. Here is a quote from the San Fransisco Law Review:

"California courts have developed their own separation of powers jurisprudence based on the unique features of the California Constitution--which has been described as the "core powers" analysis. Under that analysis, a violation of the California separation of powers doctrine occurs only if an act by one branch "materially impairs" the core powers or functions of another branch. Incidental impairments do not constitute a violation, and **reasonable regulation is permissible**... the three branches of (state) government are interdependent and are not wholly independent entities... (California) courts will affirm the Legislature's interpretive efforts unless they are disclosed to be unreasonable or **clearly inconsistent with the express language or clear import of the Constitution.**" <https://www.law.berkeley.edu/files/45-USFLR-655.pdf>

So even when there is a Separation of Powers Clause, this does not allow the legislature a blank check to violate our State Constitution. The purpose of the Separation of Powers doctrine is to avoid the accumulation of too much power in any single branch of government. So why did the drafters of the Washington State Constitution refrain from including this Separation of Powers clause?

The simple answer is that **the branch of government the drafters of our Washington State Constitution feared most was the State legislature.** Here is a quote from a local newspaper in 1889: **"If a stranger dropped into the convention, he would conclude that the members were fighting a great enemy - and that this enemy is the State legislature!"** Tacoma Daily Ledger August 9 1889

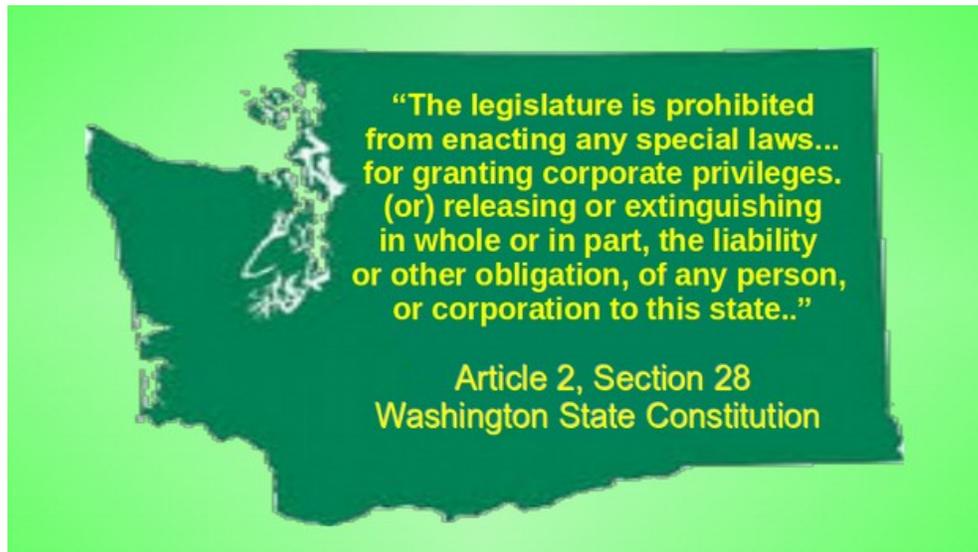
The wise drafters of our State Constitution wanted a independent Supreme Court - elected directly by the people - to act as a check against a corrupt legislature. The drafters of our State Constitution spent days, weeks and months discussing every clause in every one of these other Constitutions (especially every word in the California and Oregon Constitutions). They took hundreds of votes and went line by line over many options for every Article and every clause. Every word was carefully considered both in the 17 committees that were formed and then in the final debates before the votes were taken to adopt the various sections of our State Constitution. The reason there is no Separation of Powers clause in our State Constitution is because the drafters of our Constitution did not want a separation of powers clause. Instead, they wanted the Supreme Court to have the ability to over-rule the State legislature if the legislature became too corrupt.

#2 Several clauses prohibiting the legislature from granting tax breaks to private corporations.

The problem with granting 700 tax breaks to wealthy corporations, besides the fact that these billions in tax breaks make it impossible to fully fund our schools, is that these tax breaks create a non-uniform system of taxes whereby local homeowners pay a much higher percentage of taxes than wealthy multinational corporations. Put another way, even if the legislature had fully complied with their Paramount Duty to amply fund our public schools, tax breaks to wealthy corporations would still be against the Washington State Constitution. Throughout the State Constitution, there are several clauses that indicate that granting tax breaks to private corporations is unconstitutional. Here are just three of those clauses.

Article 2, SECTION 28 SPECIAL LEGISLATION. The legislature is prohibited from enacting any private or special laws... Here are three of several clauses prohibiting tax breaks to corporations:

5. For assessment or collection of taxes, or for extending the time for collection thereof.
6. For granting corporate powers or privileges.
10. Releasing or extinguishing in whole or in part, the indebtedness, liability or other obligation, of any person, or corporation to this state.



Every tax break passed by the Washington legislature is a clear violation of Article 2, Section 28 of our State Constitution

Despite this fact, no other state in the nation grants tax breaks to wealthy corporations to the extent that the Washington legislature has granted tax breaks to wealthy corporations. The total is now more than \$30 billion per year. In granting 700 tax exemptions, some of which apply to only a single corporation, such as Microsoft or Boeing, our state legislature has created laws that clearly violate the uniformity clause of Article 7, Section 1 of our State Constitution. These special tax breaks are not legal even if the Constitution did not have a Paramount Duty clause. But when we also consider the Paramount Duty clause and how hard the drafters of our State Constitution worked to prevent corporate corruption in our state, the existence of these 700 illegal tax breaks adds insult to injury. Even after our Supreme Court ruled in 2012 that our public schools were not being amply funded (something obvious to any parent or teacher), the legislature continued to enact even more tax breaks - including a new \$9 billion tax break for Boeing that was the largest tax break in the history of the planet.

Our State Constitution was written by people who deeply feared that a corrupt legislature would refuse to fund our public schools. So they put several clauses in our State Constitution specifically to take power AWAY from the legislature and put it in the hands of independently elected people with the hope that they would force the legislature to fund our schools.

This is exactly where we are today. Our Supreme Court has shown their independence by being the first Supreme Court in the nation to hold the State legislature in Contempt for failing to comply with the 2012 Court Order.

However, our legislature has continued to place corporate tax breaks above their duty to fund our schools despite sanctions from our Supreme Court. In January 2012, just weeks after our Supreme Court found that the legislature had failed meet their Constitutional duty to fund the public schools the legislature renewed \$2.2 billion in corporate tax breaks – in a single afternoon! I know because I was there and I spoke against renewing these \$2.2 billion in tax breaks. We cannot possibly fund our schools as long as the legislature continues to give away these massive corporate tax breaks.

Here is a quote from one of the McCleary Plaintiff's latest Reply briefs on this subject: "The State's putting tax exemptions for the private sector ahead of ample funding for its public schools is not new. For example, after this Court's January 2012 decision made the meaning of the State's "paramount duty" unequivocally clear, the 2013 legislature focused instead on a special session to give an airplane company a multi-billion dollar tax break. All told, the State's recent tax exemption study reported that 694 of the tax exemptions handed out by the State totaled \$50.4 billion in the 2015-2017 biennium – with 114 of those exemptions enacted after the January 2007 filing of this suit. The State's paramount constitutional duty is ample K-12 funding – not tax exemptions... Citing this Court's ruling that Article IX, section 1 specifically imposes its paramount duty mandate on all three branches of State government, amici emphasize that this Court has a specifically mandated duty under Article IX, section 1 that is broader than the Court's more traditional role under Article IV."

<https://www.courts.wa.gov/content/publicUpload/McCleary/843627McClearyStateofWAConsolidatedAnswer.pdf>

Why Closing Schools would be Contrary to Our State Constitution

The Washington Supreme Court has the power to declare any law invalid. So they could simply declare the school funding laws (the Levy Swipe Law) to be invalid and thereby close our Public Schools until the legislature passed a law that would actually fund our public schools. As much as I hate the Levy Swipe Law (and I am certain that it is in fact unconstitutional), I am opposed to declaring this funding plan to be unconstitutional because I am also certain that closing our public schools would be equally unconstitutional in that it would be depriving our 1.1 million children of their Constitutional Right to an Education. Now many, including the McCleary Plaintiffs and our Supreme Court say that our kids are already being deprived of this right. But even an over crowded school is better than no school at all.

Equally important, our Supreme Court is required to give effect to each and every section of our State Constitution when they give an Order. Let's look again at Article 9, Section 1 of our State Constitution: "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."

The State includes the Supreme Court. So the Supreme Court has a Paramount Duty to make ample provision for the education of all children. Closing our schools would NOT make ample provision. It might frighten the legislature (in addition to making parents mad). But it would be kicking the can back to the legislature and as we now clearly see, there is no guarantee the legislature will make ample provision for our schools.

However, declaring all 700 tax exemptions passed by the legislature to be invalid would in fact “make ample provision” for our schools because it would restore more than \$30 billion per year in revenue that is currently absent from our State Budget.

Declaring these tax exemptions to be invalid would have two other positive effects that would not be achieved by closing our schools. The first is that it would give effect to Article 2, Section 28 of our State Constitution. Second, and equally important, it would make it clear to our State legislature that the days of robbing our kids and our schools in order to pay for illegal tax breaks for the rich were over.

Finally, it is a simple Math Fact that our State legislature will not be able to restore full funding for our public schools until these tax breaks for the rich are repealed. If the legislature does not have the political courage to repeal these disgusting tax breaks, then the Supreme Court should do it for them.

My mom always said “Two wrongs do not make a right.” Our Supreme Court should not punish our kids by closing our schools when our kids did nothing wrong and urgently need to be in school. Rather than closing schools and harming our kids, our Supreme Court should give effect to every section of our State Constitution by repealing the illegal tax breaks for the rich.

VIII. Conclusion: The Future of our Schools is in Your Hands

I am not the only researcher claiming that the Levy Swipe will reduce rather than increase school funding. There have been many school districts that have warned that the Levy Swipe Plan will reduce their school funding. This year, for the first time in history, several major school districts asked to file Amicus briefs to explain their problems directly to the Supreme Court. The Supreme Court turned them all down (likely to avoid being buried by an avalanche of 100 school districts filing Amicus briefs to explain how the Levy Swipe plan will harm their students). So instead, these school districts have gone directly to the public. Here are just a few statements:

Seattle Public Schools, the state's largest district with more than 54,000 kids, has explained the numbers under EHB 2242 as follows: In the upcoming school year, the state will provide \$46.2 million, while the district will use its levy dollars to cover another \$71.4 million, for a total of \$117.6 million. In 2019-20, after the new levy restrictions kick in [under EHB 2242], the state will provide \$68 million for special education, but the district estimates special education costs to total \$121.5 million. The district doesn't know **where it will find the remaining \$53.5 million, given that it can't raise the money locally.** Here is the Link:

<https://www.seattletimes.com/seattle-news/education/despite-what-state-lawmakers-say-seattle-school-officials-say-the-new-budget-falls-short/>

Tacoma Public School District's "analysis . . . shows that, even if Tacoma voters approve the full levy in February, Tacoma will lose \$151 per student beginning in the 2018-2019 school year, \$121 per student in 2019-2020 and \$154 per student in 2020-2021."

Here is the link: <https://www.tacomaschools.org/news/Pages/budget-outlook.aspx>

In Spokane, school budget officials estimate state dollars will still be between \$2 million and \$4 million a year short for covering special education. In Yakima, the district expects to be more than \$5 million short. Here's the link:

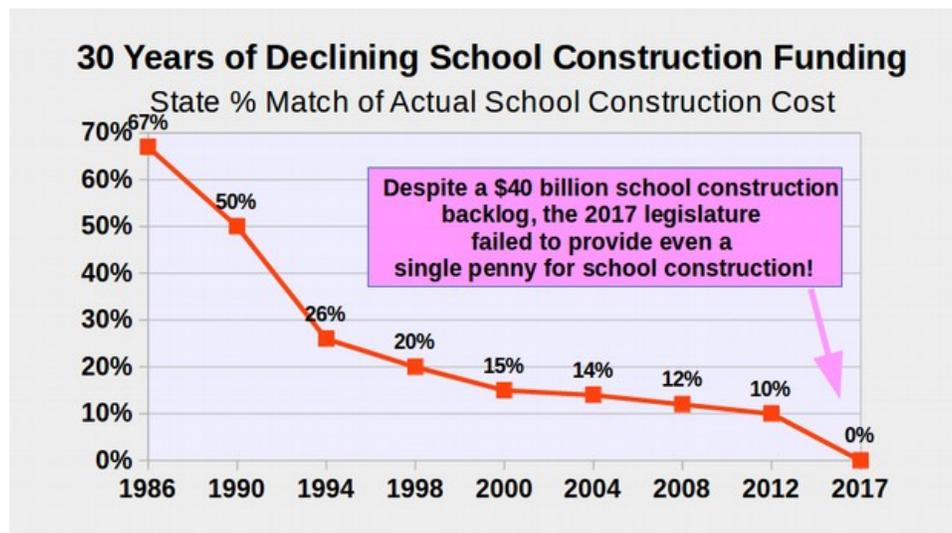
<https://www.seattletimes.com/opinion/editorials/has-legislature-solved-mccleary-not-so-fast/>

School funding also includes providing every student with a safe and healthy classroom. Currently over half of our schools are over 50 years old and do not meet the health codes or earthquake code standards. Many of these schools do not even have safe drinking water. Think Flint Michigan only on a massive scale. Here is a quote on this disgraceful situation.

"In 2009, Washington adopted a rule that would require testing school water for lead. But the rule never went into effect because the Legislature hasn't found the money to pay it. Instead, like other education expenses in this state, whether your child's school is testing its water depends on your ZIP code. . . . House Bill 1925 would require testing of all drinking and cooking water inside schools, while outlining reasonable and affordable mitigation if lead is found."

<http://www.seattletimes.com/opinion/editorials/school-water-safety-should-be-a-higher-priority/>

Even more shocking, despite our schools facing a \$40 billion school construction and repair backlog, the 2017 Washington legislature failed to provide even a single penny for school construction and repair:



With the passage of the Levy Swipe bill that is certain to reduce school funding rather than increase it, our current legislature has made it crystal clear that they have no intention of honoring their Paramount Duty to amply fund our public schools. The only question left is what can we do as citizens, parents and teachers to restore school funding here in Washington state.



Two Options: Hope and Pray versus Taking Direct Action

Up until now, parents and teachers have been hoping and praying that the NEWS Coalition and our Supreme Court would be able to cajole the legislature into fully funding our schools. So far, this plan has not worked. We are now 10 years into this lawsuit and despite all kinds of claims and promises, there has been no actual increase in school funding and no real reduction in class sizes. Every year, the legislature chooses to fund more tax breaks for the rich and ignore the plight of our kids and schools. What can we do with a legislature that so blatantly refuses to honor our State Constitution and is even refuses to honor a direct order from our Supreme Court? The time has come to stop wringing our hands and instead to roll up our sleeves and get to work. We need to inform every parent and every teacher in our State about the drawbacks of the Levy Swipe Scam. We need to warn them that, while school funding will go up for one year in 2018, it will start to fall back down again in 2019 and go lower every year after that.

So the first step would be to share this article with other parents and teachers. Post it on your Facebook page. Email it to other friends and teachers. Print off a flier and pass it around at your local PTA meeting. Hold a discussion on school funding at your local library. Here is a direct link to download this report:

<https://coalitiontoprotectourpublicschools.org/phocadownload/Broken%20Promises%20Shell%20Games%20and%20Poison%20Pills%20.pdf>

Join our Coalition and organize a branch in your school district. Here is the link to join:

<https://coalitiontoprotectourpublicschools.org/join-our-coalition>

Here is a link to a Power Point Presentation of this report:

<https://coalitiontoprotectourpublicschools.org/research>

Here is a link to a one page flier about this article and our coalition:

<https://coalitiontoprotectourpublicschools.org/phocadownload/Broken%20Promises%20Flier.pdf>

Join the Coalition to Protect our Public Schools

Community Leaders:
Organize a coalition branch in your community!

Parents:
Join the Coalition to Protect our Public Schools & your local PTA & your local political party...
Make your voice heard!

Teachers:
Help us oppose endless high stakes testing

Union members:
Urge your union to protect our public schools

Legislators:
Just say no to billionaire bribes!

But we need to do even more than that. Parents and teachers need to start thinking about running against incumbents in the coming elections. We need to let legislators know that if they keep voting against our kids and schools, we will simply replace them. It is time to stop hoping and praying that someone else will solve this problem. The future of our kids and our schools is up to everyone of us to take direct action and to start taking that action now. As always, I look forward to your questions and comments.

Regards, David Spring M. Ed.

Director, Coalition to Protect our Public Schools

Coalition to Protect Our Public Schools
Every child deserves a REAL school and a QUALIFIED teacher!