



McCLEARY UPDATE

¿ WHAT'S REQUIRED IN THIS LEGISLATIVE SESSION ?

¿ WHAT HAPPENS AFTER THIS LEGISLATIVE SESSION ?



Keeping our Promise to All Children.

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¿ WHAT'S REQUIRED THIS LEGISLATIVE SESSION ?

***Provide school districts
\$1 billion to
fully fund the State's
new salary formula for the
2018-19 school year.****

** November 2017 McCleary Order at 43-44.*

¿ WHY THE 2018-19 SCHOOL YEAR DEADLINE ?

Because September 1, 2018 is:

- the completion date the legislature promised the Court back in 2011, and
- the “firm deadline for full constitutional compliance” the Court’s repeatedly ordered since 2012.*

* E.g., December 2012 McCleary Order at 2 ; October 2016 McCleary Order at 12 & 13.

¿ *WHY \$1 BILLION FOR THE SALARY FORMULA ?*

Because the State admitted in Court that:

- it fell \$1 billion short of fully funding its new salary formula by the deadline, and
- it has the money to fund that shortfall.*

* November 2017 McCleary Order at 41 & 43.

¿ WHY DOES THE COURT CARE ?

Because an amply funded education is every Washington child's constitutional right:

- “Article IX, section 1 confers on children in Washington a positive constitutional right to an amply funded education.”*

* January 2012 McCleary decision, 173 Wn.2d at 483.

¿ *WHY DOES THE COURT CARE ?*

And it has a critical civil rights foundation:

- “Education ... plays a critical civil rights role in promoting equality in our democracy.”
- “amply provided, free public education operates as the great equalizer in our democracy, equipping citizens born into underprivileged segments of our society with the tools they need to compete on a level playing field with citizens born into wealth or privilege.”
- “Education...is the number one civil right of the 21st century.”*

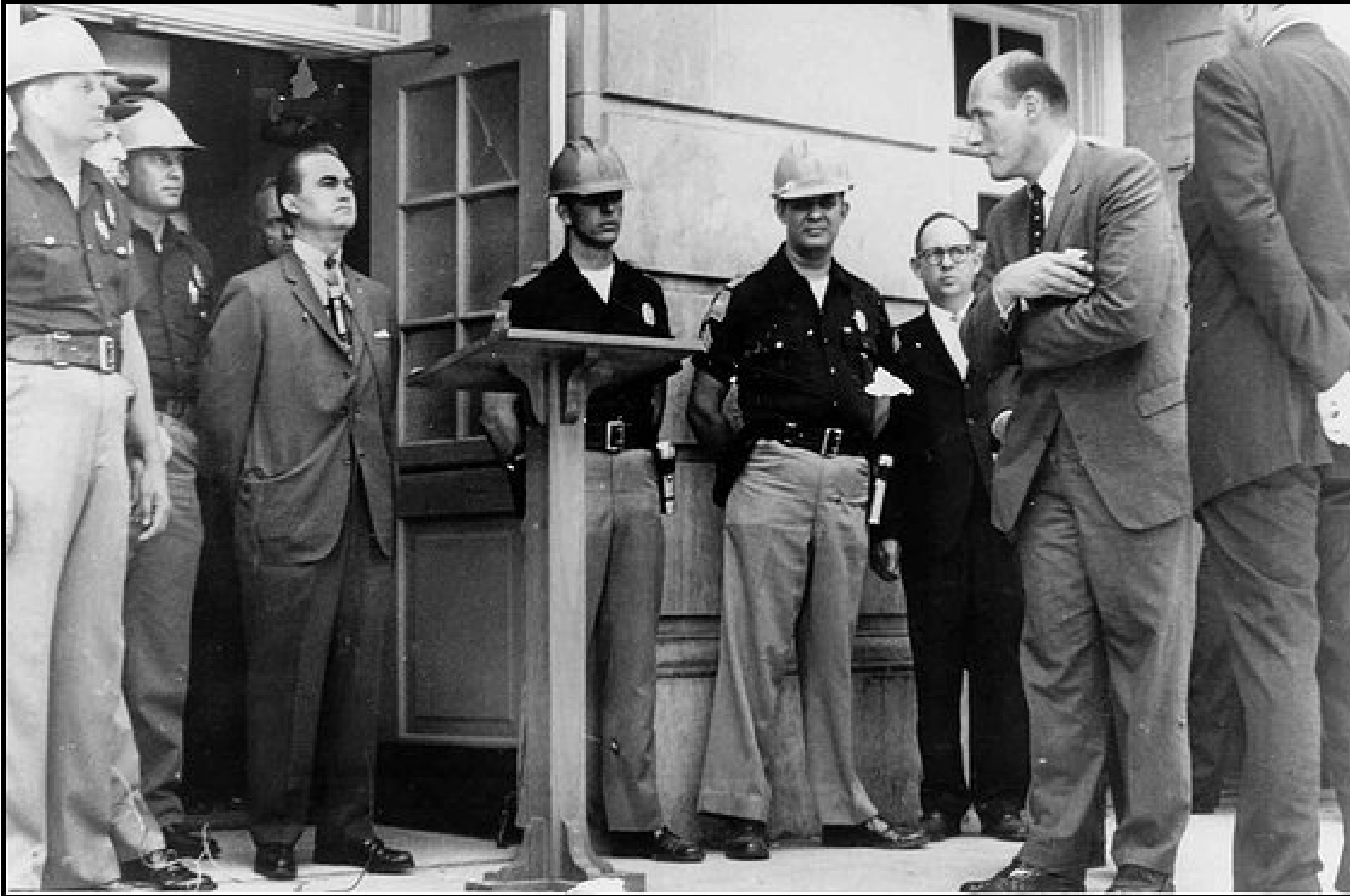
* McCleary Final Judgment at ¶¶132 & 134.

→ *NOVEMBER 2017 COURT ORDER*

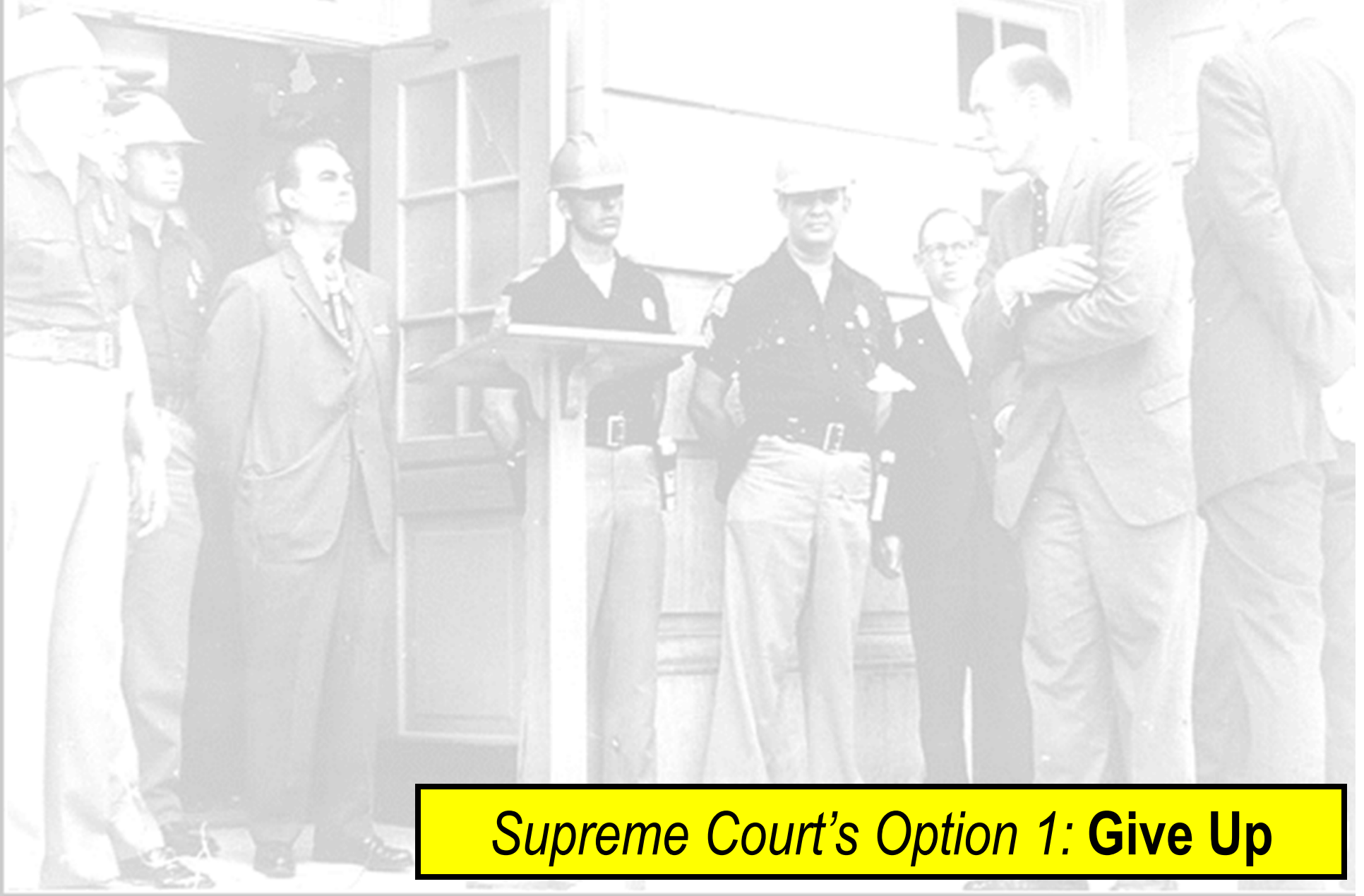
***Provide school districts
the missing \$1 billion to
fully fund the State's
new salary formula for the
2018-19 school year.****

* November 2017 McCleary Order at 43-44.

¿ WHAT IF ELECTED OFFICIALS REFUSE TO COMPLY ?

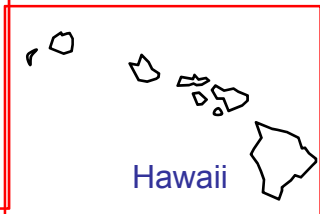
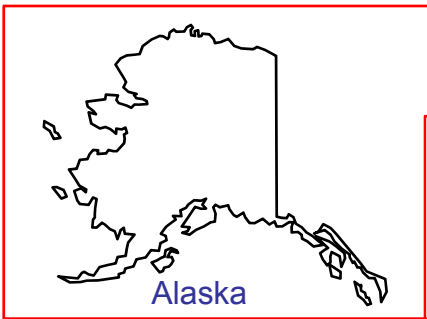


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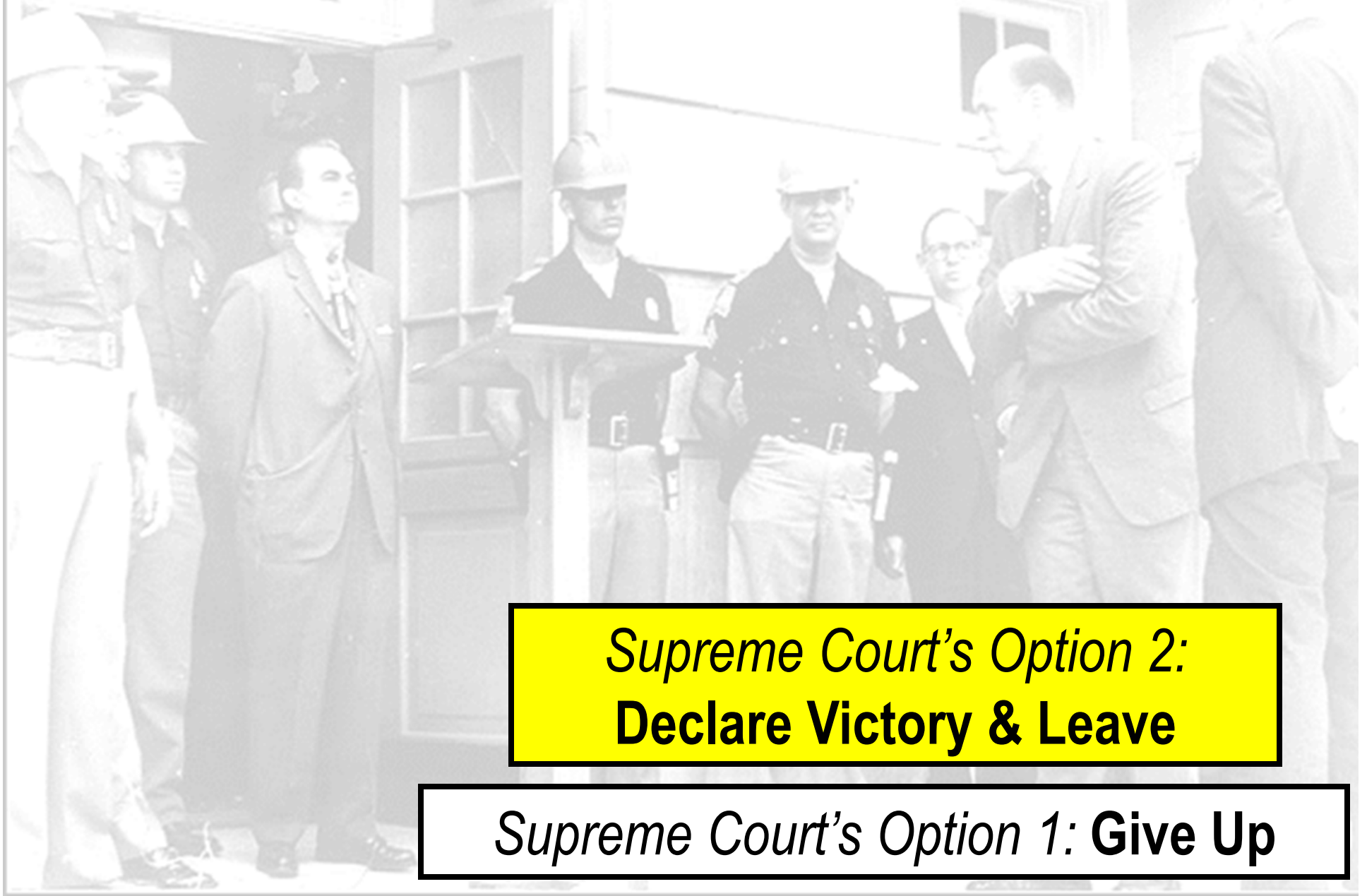


Supreme Court's Option 1: Give Up

That's what the Ohio Supreme Court did



¿ WHAT IF ELECTED OFFICIALS REFUSE TO COMPLY ?



Supreme Court's Option 2:
Declare Victory & Leave

Supreme Court's Option 1: **Give Up**

That's what the New York Court did

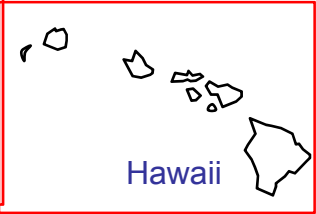
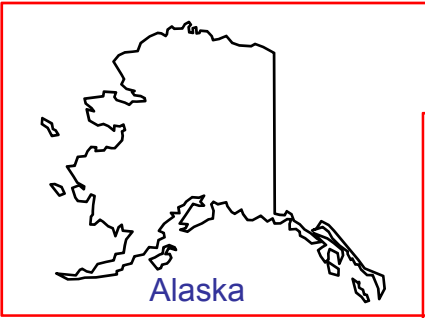


Community Chest

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SECOND PRIZE
IN A
BEAUTY CONTEST
COLLECT \$10**



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¿ WHAT IF ELECTED OFFICIALS REFUSE TO COMPLY ?

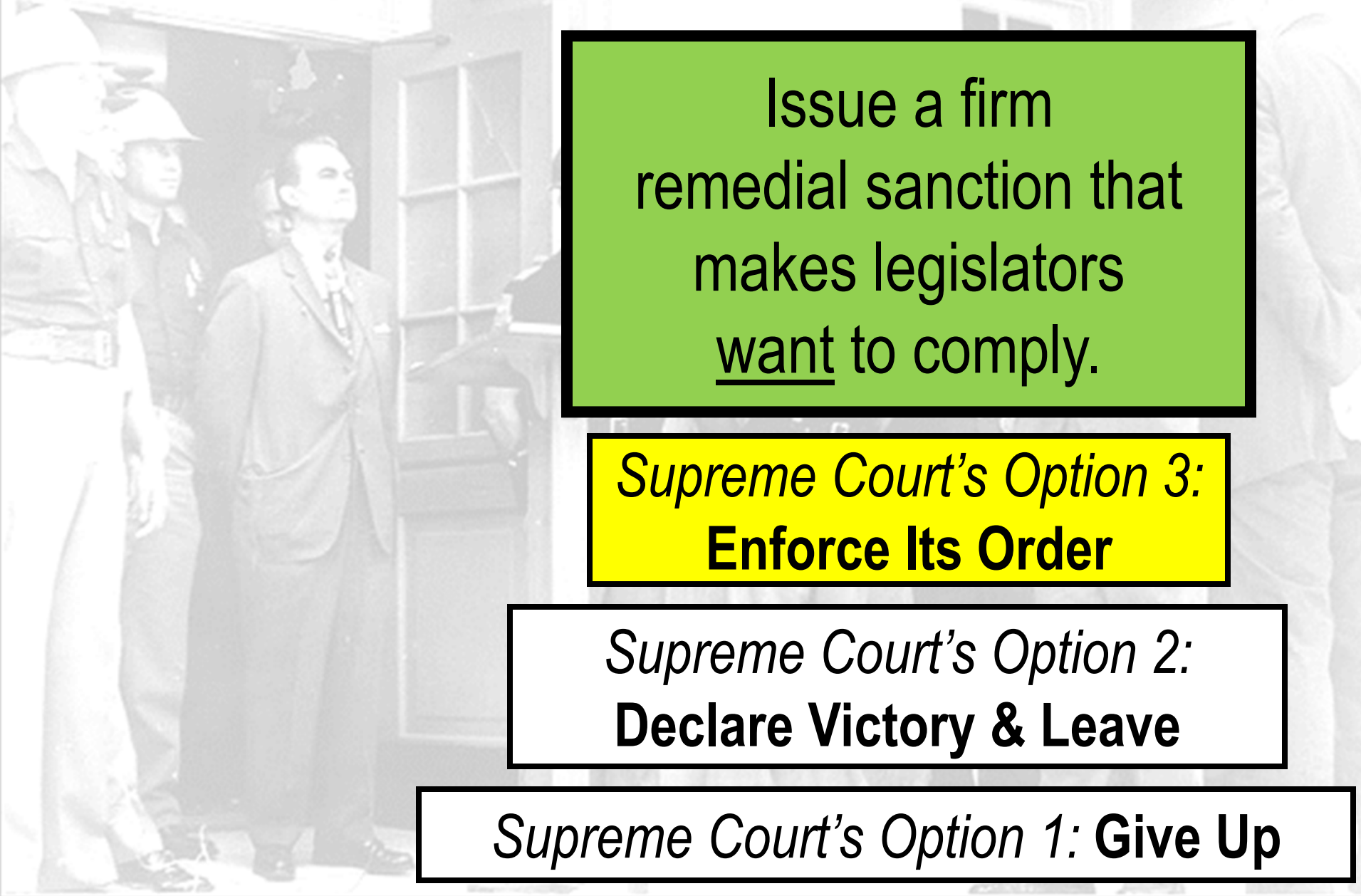


Supreme Court's Option 3:
Enforce Its Order

Supreme Court's Option 2:
Declare Victory & Leave

Supreme Court's Option 1: **Give Up**

¿ WHAT IF ELECTED OFFICIALS REFUSE TO COMPLY ?



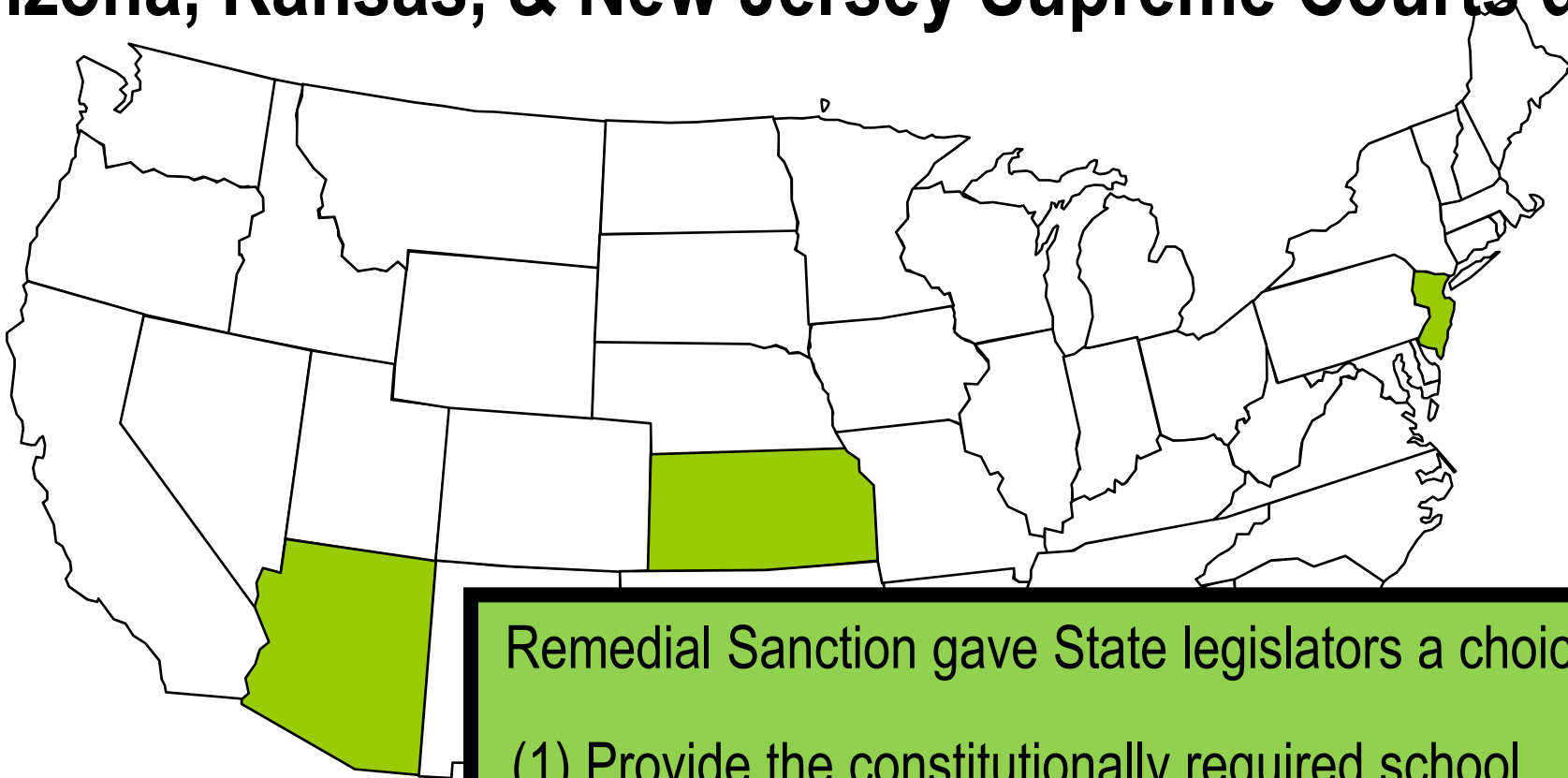
Issue a firm remedial sanction that makes legislators want to comply.

Supreme Court's Option 3:
Enforce Its Order

Supreme Court's Option 2:
Declare Victory & Leave

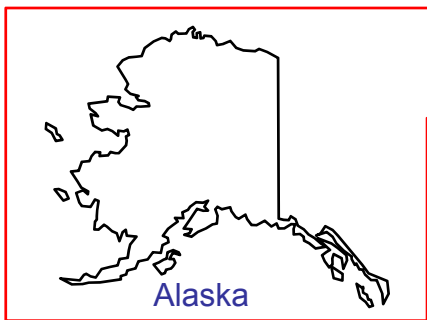
Supreme Court's Option 1: **Give Up**

For example: what the Arizona, Kansas, & New Jersey Supreme Courts did



Remedial Sanction gave State legislators a choice:

- (1) Provide the constitutionally required school funding the Court ordered, or
- (2) Have the Court suspend the State's unconstitutionally funded school statutes *[which effectively closes the school system]*.

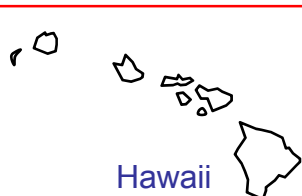
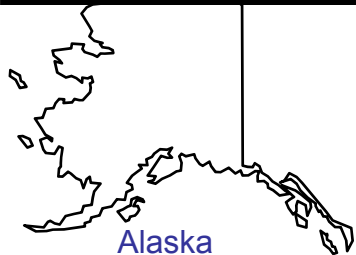


Or: what one Washington Supreme Court Justice suggested at the Sept. 2014 McCleary hearing

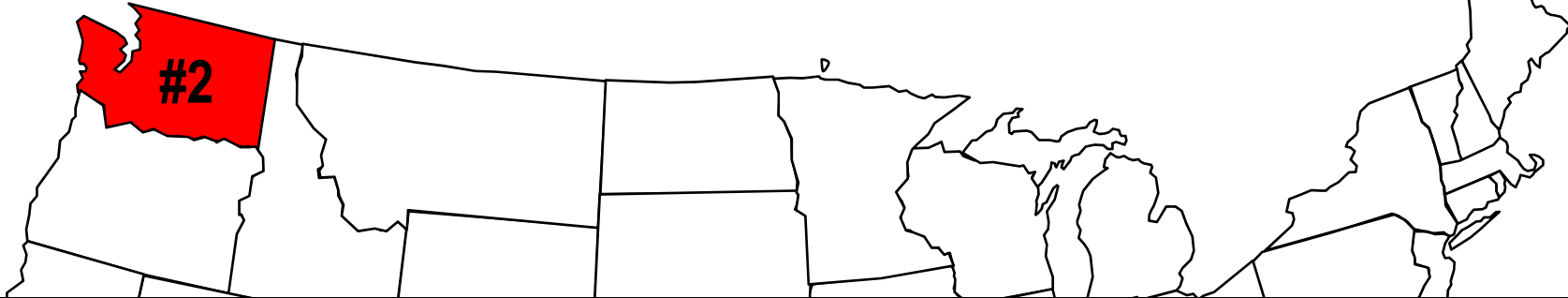


Remedial Sanction that gives State legislators a choice:

- (1) Provide the constitutionally required school funding the Court ordered, or
- (2) Have the Court suspend State tax exemption statutes passed by the legislature *[because tax exemptions take money out of the State budget before the court-ordered funding is put in the State budget].*

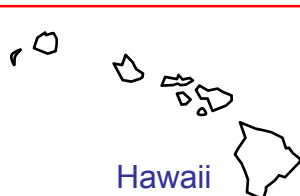
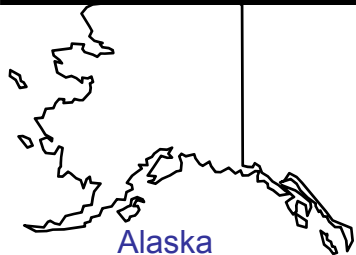


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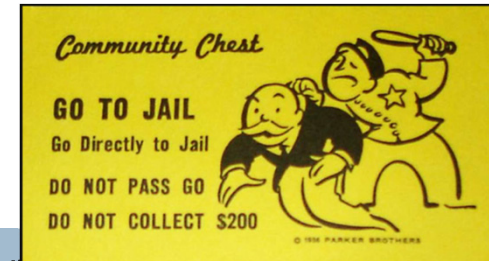


Ranking for "value of corporate subsidies provided to industry" from 11/22/2015 Boston Globe article on McCleary: "Tax cuts or education: Hard lessons from a war in the West", page A18 [<https://www.bostonglobe.com/news/nation/2015/11/21/mother-battle-exposed-inequities-aren-injustices-state-held-contempt-court-flowing-corporations-save-their-tax-breaks-and-promised-education-dollars/SwEL04E3E7KYe6HaUvUjZP/story.html>].

¿ *How Will The Court Address The State's \$1 Billion Compliance This Year ?*

UPCOMING COURT FILINGS:*

- **March 8:** legislature must enact compliance measure
- **April 9:** State files compliance report in court
- **20 days later:** Plaintiffs file response to State report
- **10 days later:** State files reply to Plaintiffs' response
- **also in April:** Amicus briefs filed



**¿ WHAT ABOUT AMPLE STATE FUNDING COMPLIANCE
AFTER THIS YEAR ?**

“At this point, the court is willing to allow the State’s program to operate and let experience be the judge of whether it proves adequate.”*

** November 2017 McCleary Order at 37.*

¿ HUH ?

The ten components of the State's basic education program* are NOT amply funded by the new formulas!!!

- Pupil transportation
- MSOCs
- Full Day Kindergarten
- K-3 class sizes of 17 kids
- Special education
- Remediation for struggling students [*LAP*]
- Transitional Bilingual Education [*TBIP or ELL*]
- Highly capable student instruction
- 24 credit high school graduation requirement [*Core 24*]
- Compensation that attracts & retains competent teachers, administrators, & staff to implement all the above.

* *McCleary*, 173 Wn.2d at 496-499, 505-506, 509-510, 526, 533-535, 545 [detailed in Plaintiffs' 2017 Post-Budget Filing at 7-8 [available at <https://www.courts.wa.gov/content/publicUpload/McCleary/McClearyPlaintiffFiling.pdf>].

¿ WHY DID THE SUPREME COURT PUNT ?

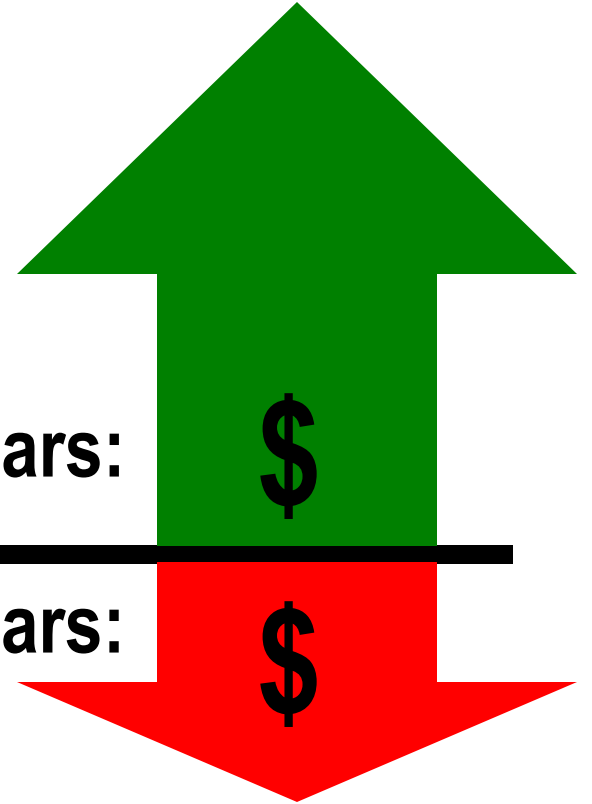
Pragmatic Answer

Our State these past several years:

\$

Most other States these past several years:

\$



Judicial Process Answer

SUPREME COURT LEVEL

TRIAL COURT LEVEL

Judicial Process Answer

TRIAL COURT LEVEL:

- Plaintiff says defendant violated the law
- Defendant says he did not
- Judge tells the jury what the law requires
- Court decides if the evidence proved defendant violated what the law requires

Judicial Process Answer

SUPREME COURT LEVEL:

- Loser says the trial judge was wrong about what the law requires
- Loser says the evidence at trial did not prove what the winner said it did

TRIAL COURT LEVEL:

- Plaintiff says defendant violated the law
- Defendant says he did not
- Judge tells the jury what the law requires
- Court decides if the evidence proved defendant violated what the law requires

Judicial Process Answer

SUPREME COURT LEVEL:

- State said the trial judge was wrong about what Article IX, section 1 requires
- State said the evidence at trial did not prove its funding formulas violated Article IX, section 1

TRIAL COURT LEVEL:

- McCleary plaintiffs said the State funding formulas violated Article IX, section 1
- State said they did not
- Judge said what Article IX, section 1 requires
- Judge decided the evidence proved the funding formulas violated Art. IX, sec. 1

***McCLeary* SUPREME COURT:**

the trial judge was right about what Article IX, section 1 requires

IT IS THE
PARAMOUNT DUTY OF THE STATE
TO MAKE AMPLE PROVISION FOR
THE EDUCATION OF ALL CHILDREN
RESIDING WITHIN ITS BORDERS....

Washington State Constitution, Article IX, section 1

McCLEARY SUPREME COURT:

the trial judge was right about what Article IX, section 1 requires

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Washington State Constitution, Article IX, section 1

“the State **must** amply provide for the education of
all Washington children as the State’s first and highest priority
before any other State programs or operations.”

McCleary, 173 Wn.2d at 520 (underlines added).

McCLeARY SUPREME COURT:

the trial judge was right about what Article IX, section 1 requires

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Washington State Constitution, Article IX, section 1

All three branches of State government:
legislative, executive, and judicial

McCleary, 173 Wn.2d at 515.

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Washington State Constitution, Article IX, section 1

**“considerably more than just adequate
or merely sufficient.”**

McCleary, 173 Wn.2d at 484 (underline added).

McCLeARY SUPREME COURT:

the trial judge was right about what Article IX, section 1 requires

IT IS THE
PARAMOUNT DUTY OF THE STATE
TO MAKE AMPLE PROVISION FOR
BASIC
EDUCATION OF ALL CHILDREN
RESIDING WITHIN ITS BORDERS...

Washington State Constitution, Article IX, section 1

“the basic knowledge and skills needed to compete in today’s economy and meaningfully participate in this state’s democracy”

McCleary, 173 Wn.2d at 483 & 522-526.

Legislature defined “basic education” in ESHB 1209 (RCW 28A.150.210):

- (1) Read with comprehension, write effectively, and communicate successfully in a variety of ways and settings and with a variety of audiences;
- (2) Know and apply the core concepts and principles of mathematics; social, physical, and life sciences; civics and history, including different cultures and participation in representative government; geography; arts; and health and fitness;
- (3) Think analytically, logically, and creatively, and to integrate different experiences and knowledge to form reasoned judgments and solve problems; and
- (4) Understand the importance of work and finance and how performance, effort, and decisions directly affect future career and educational opportunities.

McCleary v. State, 173 Wn.2d at 523 & n.20.

THE **BASIC** EDUCATION OF ALL CHILDREN
RESIDING WITHIN ITS BORDERS...

Washington State Constitution, Article IX, section 1

“the basic knowledge and skills needed to compete in today’s economy and meaningfully participate in this state’s democracy”

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Legislature defined “basic education” in ESHB 1209 (RCW 28A.150.210):

(1) **plus the Essential Academic Learning Requirements (EALRs)**

1-reading

(2) 2-math

3-science

4-writing

(3) 5-communication

6-social studies

(4) 7-the arts

8-health & fitness

9-educational technology

McCleary v. State, 173 Wn.2d at 523 & n.20.

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Legislature defined “basic education” in ESHB 1209 (RCW 28A.150.210):

(1) **plus the Essential Academic Learning Requirements (EALRs)**

(2) **and defined the State’s “basic education program”:**

- | | | |
|----------|-----------------------------------------------------------------------------------------------------|-----------------------------------------------|
| 1-re | (1) To/from transportation | (2) MSOCs |
| 2-m | (3) Full-Day K | (4) K-3 class size = 17 |
| 3-s | (5) Special education | (6) Remediation for struggling students (LAP) |
| 4-w | (7) Transitional Bilingual Education (TBIP or ELL) | (8) Highly capable student instruction |
| (3) 5-c | (9) 24 credit graduation requirement (Core 24) | |
| 6-s | (10) Pay that attracts & retains competent teachers, administrators, & staff to implement the above | |
| (4) 7-th | | |
| 8-h | | |
| 9-e | | |

McCleary, 173 Wn.2d at 496-499, 505-506, 509-510, 526, 533-535, 545 [see Plaintiffs’ 2017 Post Budget Filing at 7-8].

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McCLEARY SUPREME COURT:

the trial judge was right about what Article IX, section 1 requires

IT IS THE
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RESIDING WITHIN ITS BORDERS...

Washington State Constitution, Article IX, section 1

“each and every child”

“No child is excluded.”

McCleary, 173 Wn.2d at 520 (underlines added).

***McCLeary* SUPREME COURT:**

the trial judge was right about what Article IX, section 1 requires

**“Article IX, section 1
confers on children in
Washington a positive
constitutional right to an
amply funded education””**

McCleary v. State, 173 Wn.2d at 483

McCLEARY SUPREME COURT:

the trial evidence proved the funding formulas violated Art. IX, sec. 1

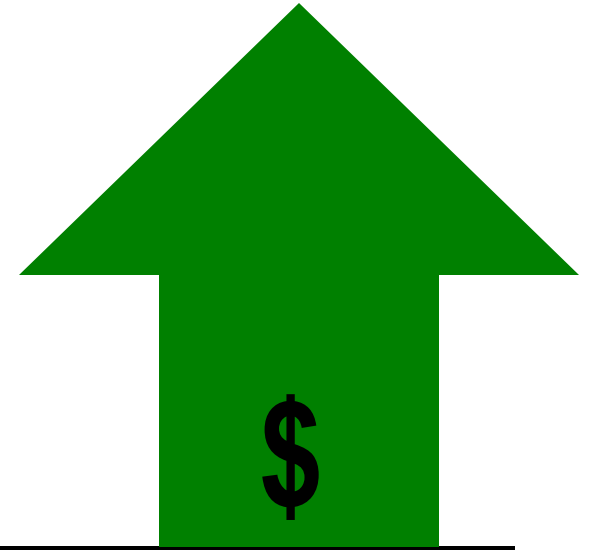
“The State has failed to meet its duty under article IX, section 1 by consistently providing school districts with a level of resources that falls short of the actual costs of the basic education program.” *McCleary, 173 Wn.2d at 547*

“If the State’s funding formulas provide only a portion of what it actually costs a school to pay its teachers, get kids to school, and keep the lights on, then the legislature cannot maintain that it is fully funding basic education through its funding formulas.” *McCleary, 173 Wn.2d at 532*

→ ***NEW FUNDING FORMULAS***

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State budgets **ADD billions of dollars¹**

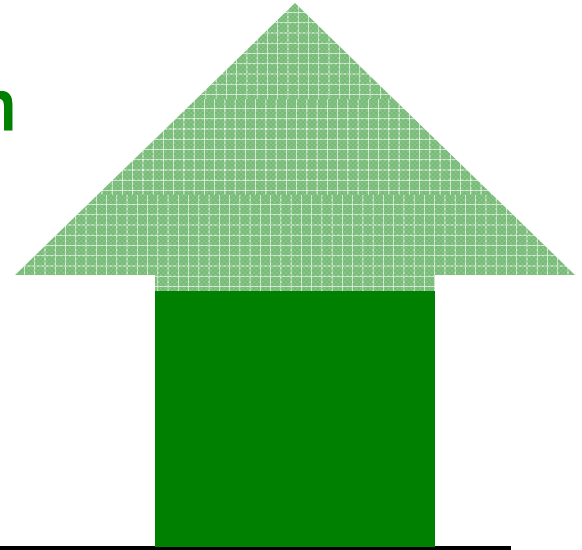


¹ E.g., November 2017 McCleary Order at 23. (“state funding for K-12 education is increased from \$13.4 billion in the 2011-13 biennium to \$22 billion in the current biennium”).

→ ***NEW FUNDING FORMULAS***

State budgets **ADD** billions of dollars¹ to:

- (a) restore cuts made after the 2008 recession**
- (b) address cost inflation**
- (c) adjust for enrollment growth**
- (d) start funding the new funding formulas**



¹. E.g., November 2017 McCleary Order at 23. (“state funding for K-12 education is increased from \$13.4 billion in the 2011-13 biennium to \$22 billion in the current biennium”).

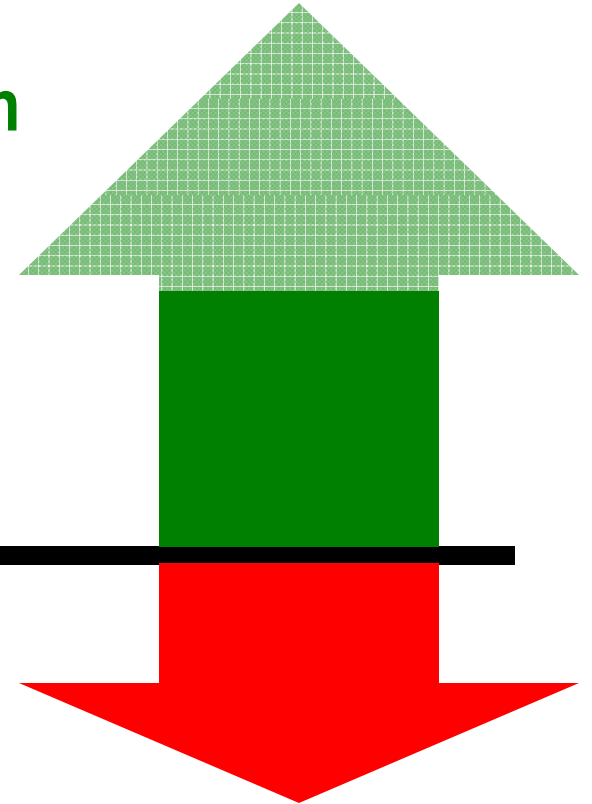
→ **NEW FUNDING FORMULAS**

State budgets **ADD** billions of dollars¹ to:

- (a) restore cuts made after the 2008 recession
- (b) address cost inflation
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State “reforms” **TAKE** billions of dollars:²

- (e) impose new unfunded requirements
- (f) reduce local levy authority

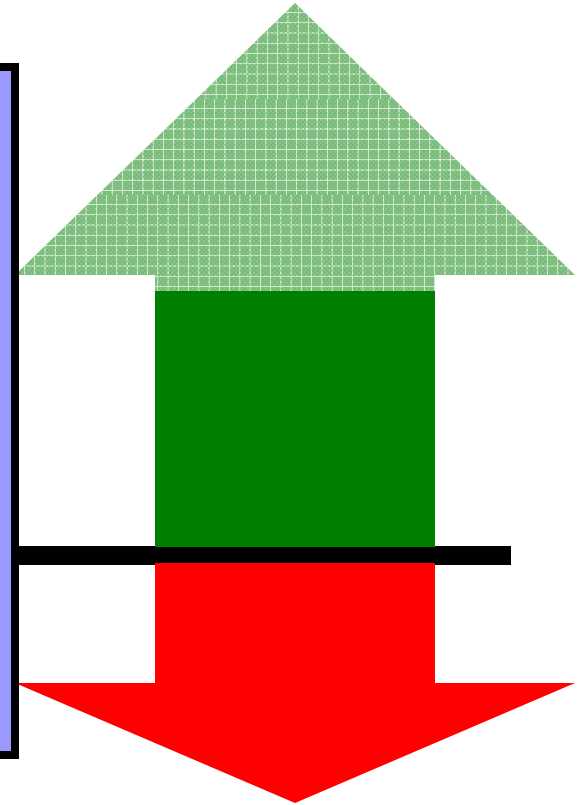


¹ E.g., November 2017 McCleary Order at 23. (“state funding for K-12 education is increased from \$13.4 billion in the 2011-13 biennium to \$22 billion in the current biennium”).

² The State’s own numbers are detailed in *Plaintiffs’ 2017 Post-Budget Filing* at footnote 41 (over \$2.5 billion levy swipe under EHB 2242) & footnote 106 (Core 24’s requiring districts to provide high school students 4 more credit hours of instruction for graduation) [available at <https://www.courts.wa.gov/content/publicUpload/McCleary/McClearyPlaintiffFiling.pdf>].

→ ***NEW FUNDING FORMULAS***

- Plaintiffs said the State's new funding formulas still violate Article IX, section 1.
- State said its new formulas do not.
- But the trial court witnesses & exhibits did not deal with the new formulas.



¿ WHY DID THE SUPREME COURT PUNT ?

SUPREME COURT LEVEL

There's no trial court evidence about the new funding formulas.

If someone claims the new formulas do not provide the ample funding Article IX, section 1 requires, they have to prove it.

TRIAL COURT LEVEL

→ *“At this point, the court is willing to allow the State’s program to operate and let experience be the judge of whether it proves adequate.”*

November 2017 McCleary Order at 37.

→ AFTER THIS LEGISLATIVE SESSION

School district experience will be the test of whether the State's new formulas amply fund the State's basic education program:

- ? Pupil transportation
- ? MSOCs
- ? Full Day Kindergarten
- ? K-3 class sizes of 17 kids
- ? Special education
- ? Remediation for struggling students [*LAP*]
- ? Transitional Bilingual Education [*TBIP or ELL*]
- ? Highly capable student instruction
- ? 24 credit high school graduation requirement [*Core 24*]
- ? Compensation that attracts & retains competent teachers, administrators, & staff to implement all the above.

McCleary v. State background information



Trial Court's February 2010 final judgment against the State:

<http://waschooexcellence.org/the-mccleary-case/the-trial/>

Daily summaries of the trial:

<http://waschooexcellence.org/the-mccleary-case/the-trial/daily-trial-reports/>

Supreme Court Briefs, etc.:

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

Supreme Court's 2012, 2013, 2014, 2015, 2016, & 2017 Rulings:

<http://waschooexcellence.org/the-mccleary-case/the-supreme-court/>