

*McCleary v. State of Washington:*  
Where do we stand?



*McCleary v. State of Washington:*  
Where do we stand?

**Firmly on the Constitution**



# Article IX, section 1

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*

# Article IX, section 1

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*Washington State Constitution, Article IX, section 1*

# Article IX, section 1

IT IS THE  
PARAMOUNT DUTY OF  
THE STATE TO MAKE

*Not just the **legislative** branch*  
*Not just the **executive** branch*  
*All three branches -*  
*which includes the **judicial** branch*

*McCleary v. State, 173 Wn.2d at 515.*

WITHIN ITS BORDERS....

*Washington State Constitution, Article IX, section 1*

# Article IX, section 1

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*Washington State Constitution, Article IX, section 1*

# Article IX, section 1

IT IS THE  
PARAMOUNT DUTY OF

*Not just the **easier** or **cheaper** to teach children*

*Not “most” children*

*All children*

*“each and every child”*

*“No child is excluded.”*

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

ALL CHILDREN RESIDING  
WITHIN ITS BORDERS....

*Washington State Constitution, Article IX, section 1*

# Article IX, section 1

IT IS THE  
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*Washington State Constitution, Article IX, section 1*



# Article IX, section 1

IT IS THE  
PARAMOUNT DUTY OF  
THE STATE TO MAKE  
AMPLE PROVISION FOR THE  
EDUCATION OF

*Basic Education is **not** the basic education funding formulas.*

*It's "the basic knowledge and skills needed to  
compete in today's economy and  
meaningfully participate in this state's democracy"*

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

***The legislature defined “basic education” in  
ESHB 1209 (now 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.*

## EDUCATION OF

***Basic Education is not the basic education funding formulas.***

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

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

***The legislature further defined “basic education” in the State’s Essential Academic Learning Requirements (EALRs) “which specify what ‘all students should know and be able to do at each grade level’”***

- reading
- math
- science
- writing
- communication
- social studies
- the arts
- health and fitness
- educational technology

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

## EDUCATION OF

***Basic Education is not the basic education funding formulas.***

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

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

***Then the legislature defined the components of the State's  
"basic education program" to deliver this education in ESHB 2261 and SHB 2776:***

- Pupil Transportation
- Materials, Supplies, & Operating Costs (MSOCs)
- All Day Kindergarten & K-3 Class Size Reduction
- Highly Capable, Special Education, Core 24, LAP (remediation), ELL, etc.
- Compensation that attracts & retains competent personnel

*McCleary v. State, 173 Wn.2d at 505-510.*

## EDUCATION OF

***Basic Education is not the basic education funding formulas.***

*It's "the basic knowledge and skills needed to  
compete in today's economy and  
meaningfully participate in this state's democracy"*

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

# Article IX, section 1

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*Washington State Constitution, Article IX, section 1*

# Article IX, section 1

IT IS THE  
PARAMOUNT DUTY OF  
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EDUCATION OF

*Not just “adequate”*

*Instead: “considerably more than just adequate.”*

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

*Washington State Constitution, Article IX, section 1*

# Article IX, section 1

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*Washington State Constitution, Article IX, section 1*



# Article IX, section 1

IT IS THE  
PARAMOUNT DUTY OF

*Not just a “consideration”*

It's a legal duty:

“the State must amply provide for the education of all Washington children

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

WITHIN ITS BORDERS....

*Washington State Constitution, Article IX, section 1*

# Article IX, section 1

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*Washington State Constitution, Article IX, section 1*

# Article IX, section 1

IT IS THE  
PARAMOUNT DUTY OF

*Not just “important”*

Instead:

“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 v. State, 173 Wn.2d at 520 (underlines added).*

WITHIN ITS BORDERS....

*Washington State Constitution, Article IX, section 1*

## *McCleary Mandate*

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

# ***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*

## *McCleary Mandate*

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

**N O T**


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

# THE SUPREME COURT OF WASHINGTON

Filed   
Washington State Supreme

MATHEW & STEPHANIE McCLEARY, )  
et al., )  
Respondents/Cross-Appellants, )  
v. )  
STATE OF WASHINGTON, )  
Appellant/Cross-Respondent. )

ORDER

AUG 13 2015 

Supreme Court No. 84362-7  
Ronald R. Carpenter  
Clerk

King County No.  
07-2-02323-2 SEA

“The State contends that the matter of salaries must be tied to reform of the local levy system”

“Local levy reform is not part of the court’s [enforcement] order”

McCleary August 13, 2015 Sanctions Order, p.7 n.1 (underline added).



## *McCleary Mandate*

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

# McCleary Mandate

**NOT A SURPRISE  
TO ELECTED  
OFFICIALS**

Decades of *talk* after Seattle School District rulings

**NOT A SURPRISE  
TO ELECTED  
OFFICIALS**

# Decades of **talk** after Seattle School District rulings



**“Now it is important to provide long term, consistent and dependable financing for basic education.”**

1977 State of the State Address  
(Trial Exhibit 577, p.30, 6<sup>th</sup> para.)



**“We have already delayed too long.... full funding of K-12 is mandated by the courts. We should do it now.”**

1979 State of the State Address  
(Trial Exhibit 578, p.141, 2<sup>nd</sup> & 3<sup>rd</sup> paras.)



**“Education is the number one business of this state government.... We must finish the work of meeting our mandate to provide fully for basic education....”**

1984 State of the State Address  
(Trial Exhibit 579, p.43, 7<sup>th</sup> para.)



**it’s not enough to tell parents that our schools will do better next year.... Our students need help now**

1998 State of the State Address  
(Trial Exhibit 580, p.50, 2<sup>nd</sup> para.)



**“It is time for bold, purposeful action.... It is time to get to work.”**

2006 Washington Learns Cover Letter  
(Trial Exhibit 16, p.3, last 3 paras.)



**“Education is the paramount duty of our state government... No excuses, no exceptions and excellence for all.”**

2013 Press Release  
(<http://www.governor.wa.gov/issues/education/default.aspx>) (pdf printed 1/16/2013)

# Decades of **studies** after Seattle School District rulings



*“Now it is important to provide long term, consistent and dependable financing for basic education.”*

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2013 Press Release (<http://www.governor.wa.gov/issues/education/default.aspx>) (pdf printed 1/16/2013)

Over 100 school  
finance studies

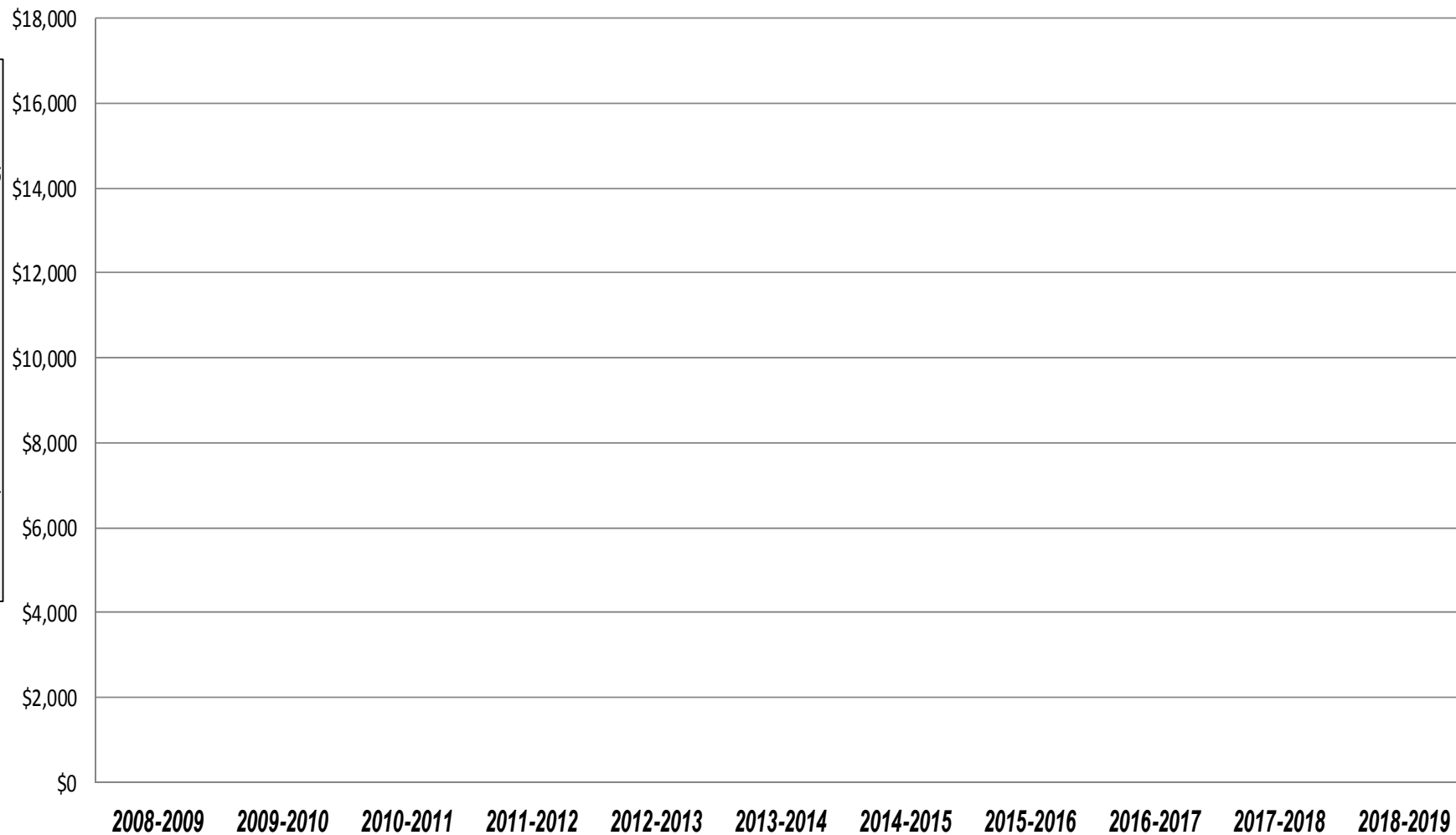
after Seattle School District rulings



Trial Exhibits in green

# "AMPLE" ASSURED BY THE STATE

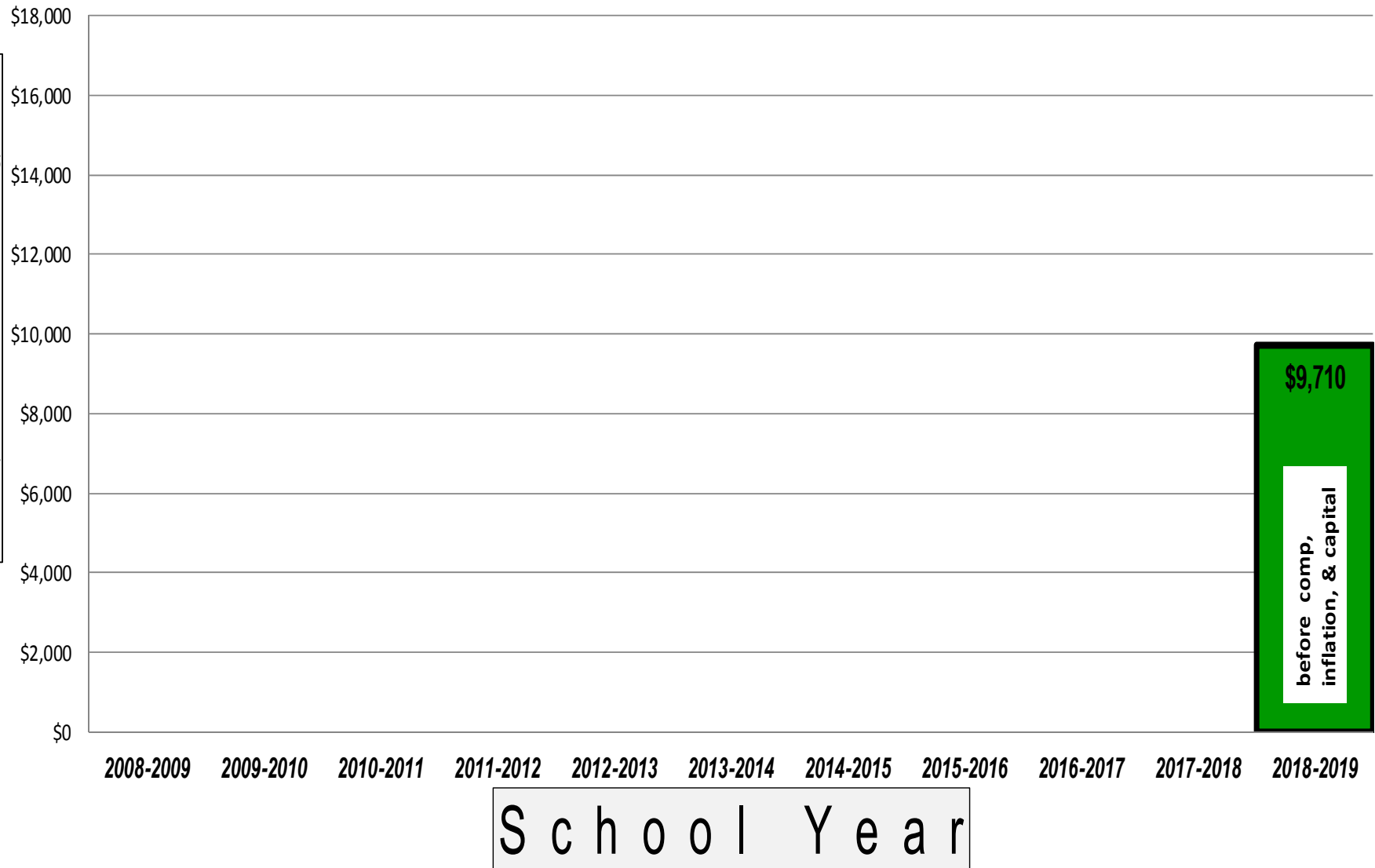
State Funding Per Pupil  
(above local & federal funding)



S c h o o l Y e a r

# "AMPLE" ASSURED BY THE STATE

State Funding Per Pupil  
(above local & federal funding)



\$9,710

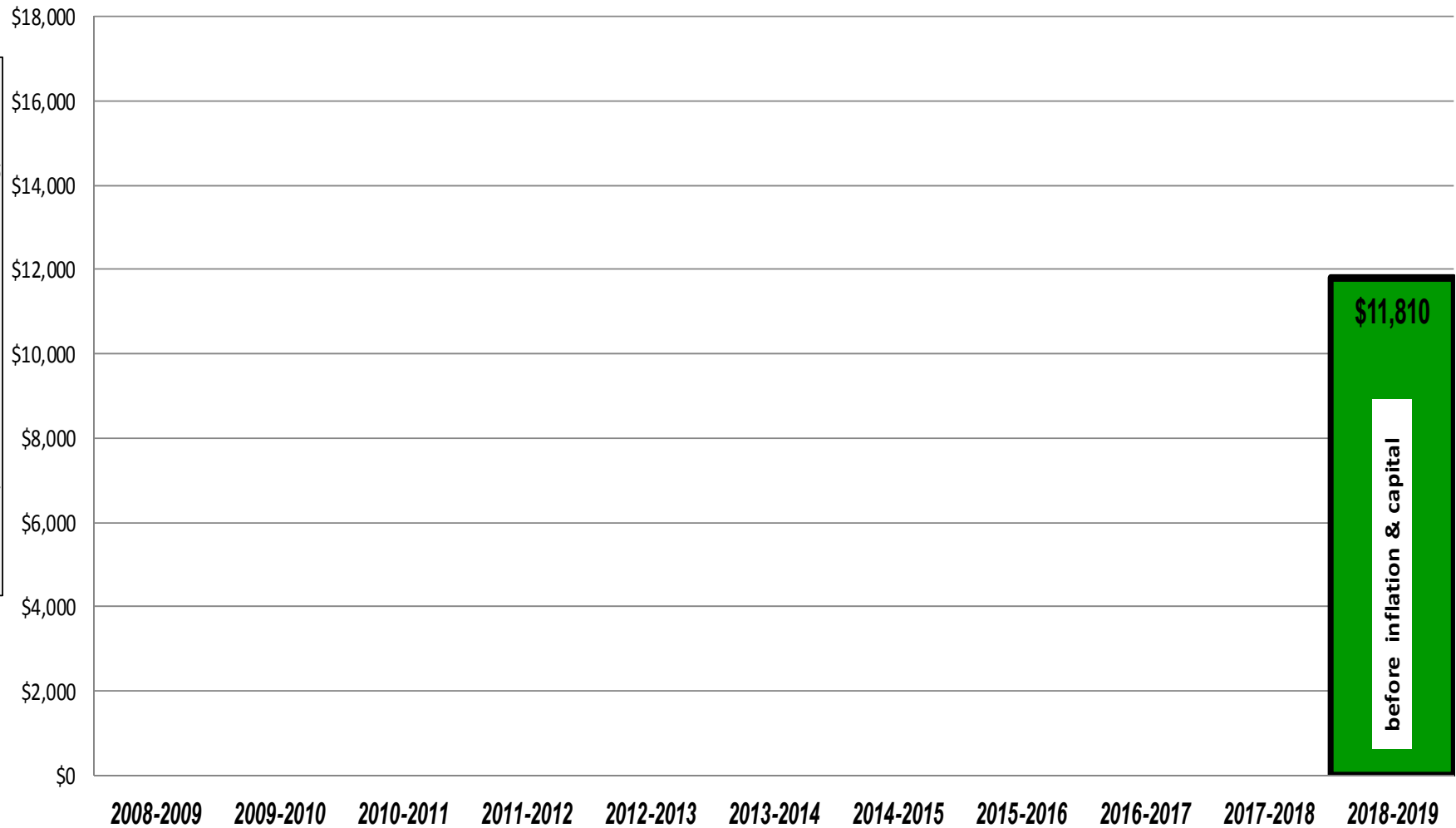
before comp,  
inflation, & capital

Dollar sources detailed in last two pages of the FAQs at <http://waschoolexcellence.org/news-and-resources/faqs/>



# "AMPLE" ASSURED BY THE STATE

State Funding Per Pupil  
(above local & federal funding)

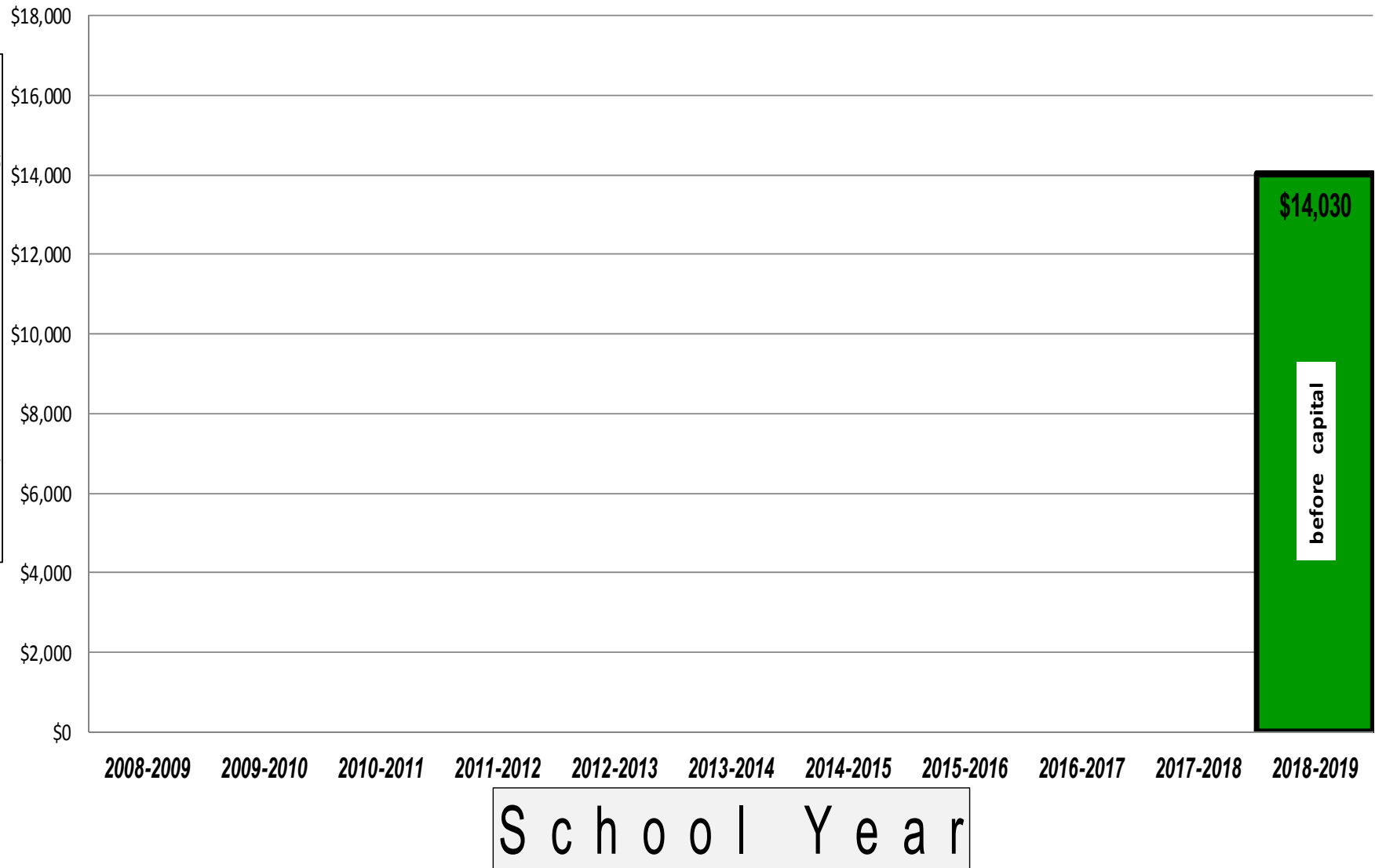


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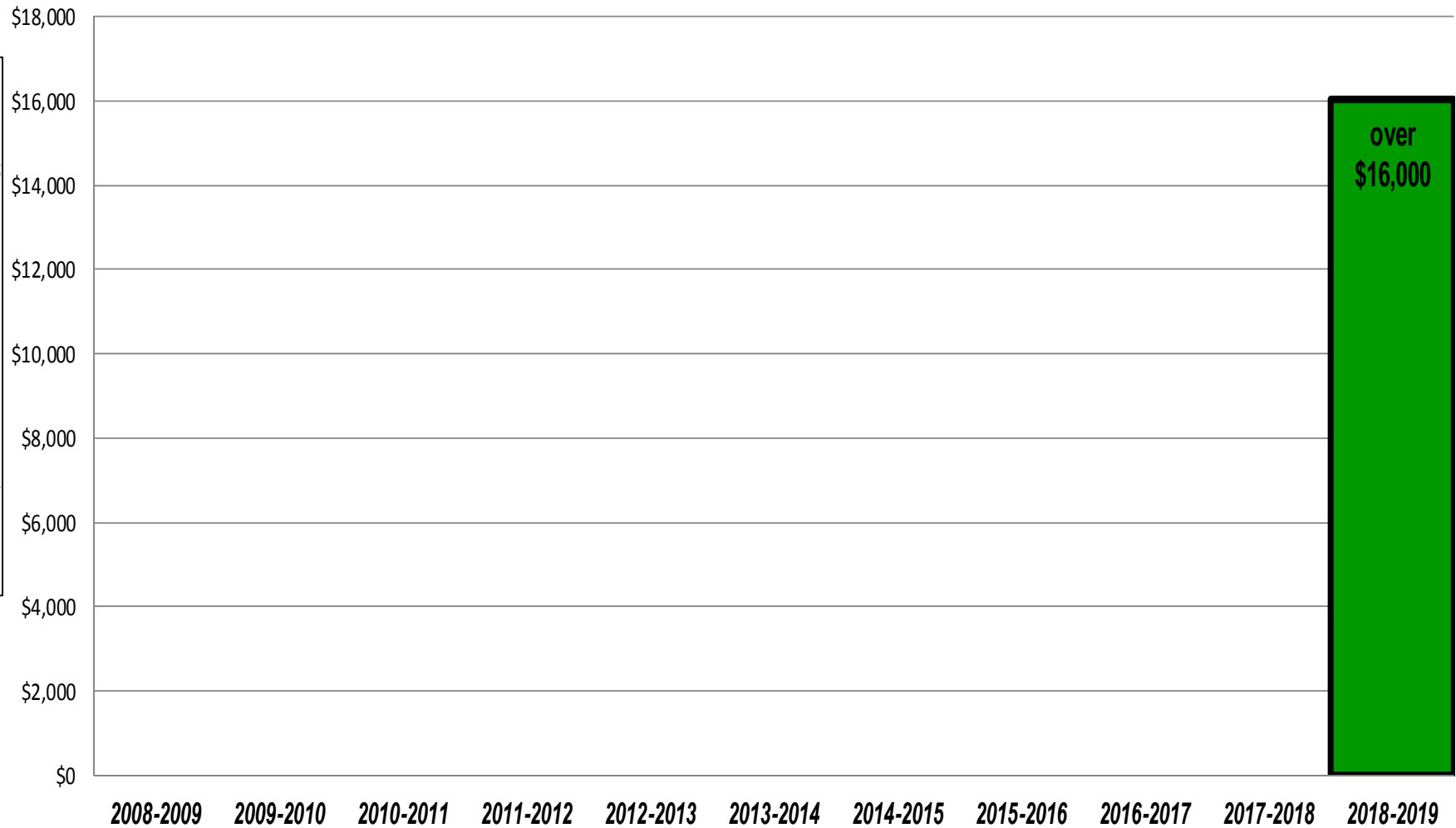
State Funding Per Pupil  
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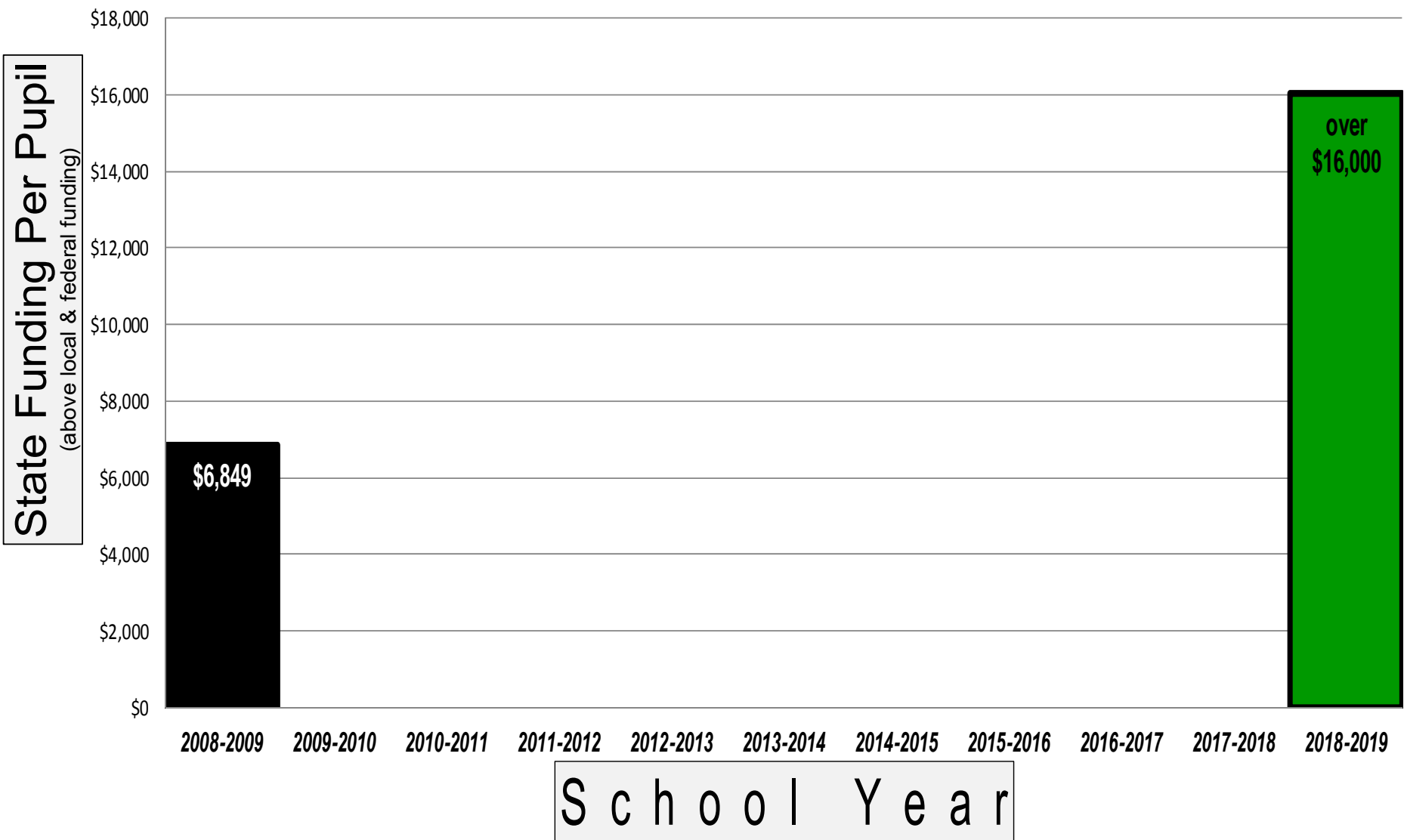
State Funding Per Pupil  
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S c h o o l Y e a r

Dollar sources detailed in last two pages of the FAQs at <http://waschoolexcellence.org/news-and-resources/faqs/>

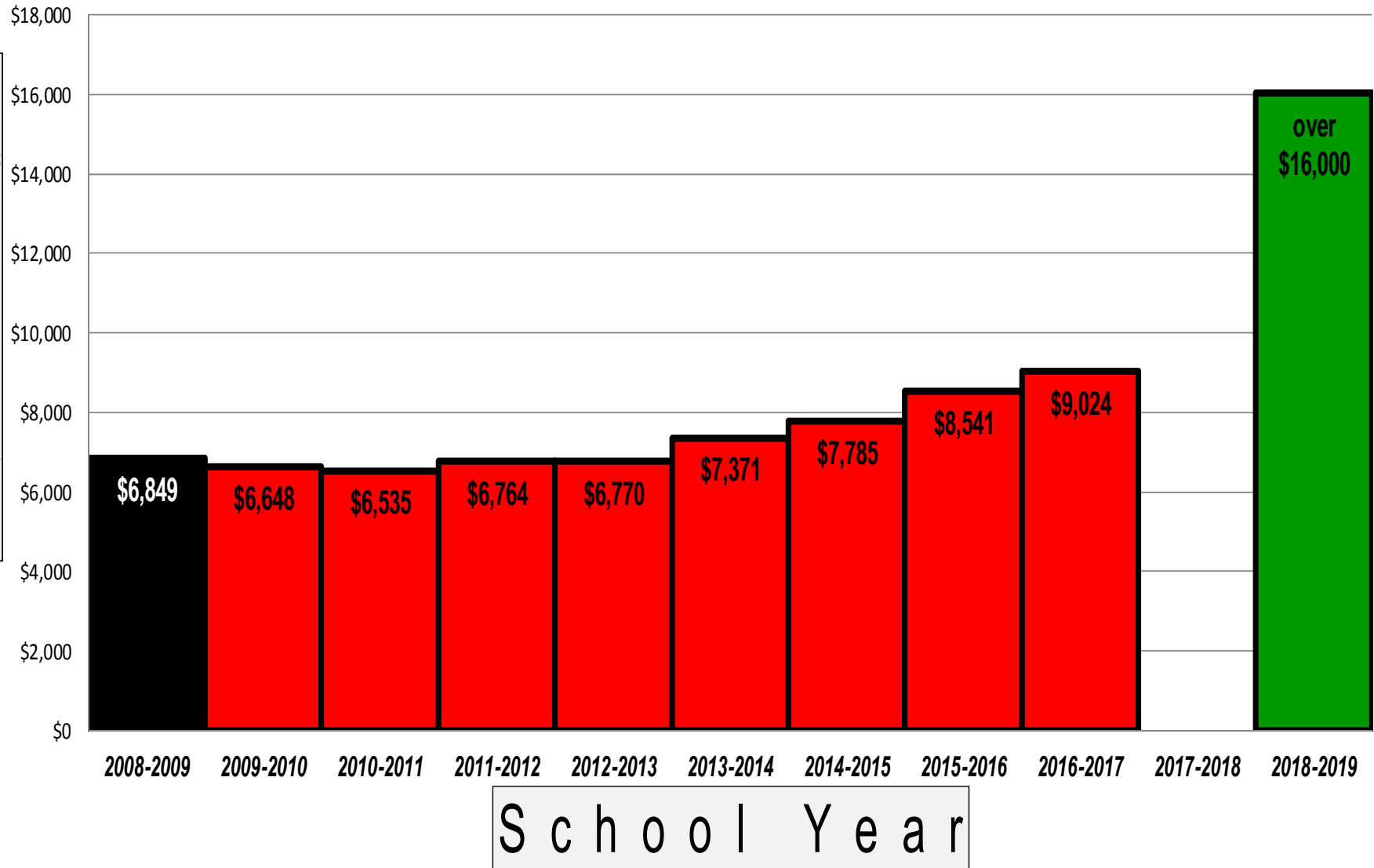
# STATE'S COMPLIANCE GAP



Dollar sources detailed in last two pages of the FAQs at <http://waschoolexcellence.org/news-and-resources/faqs/>

# STATE'S COMPLIANCE THUS FAR

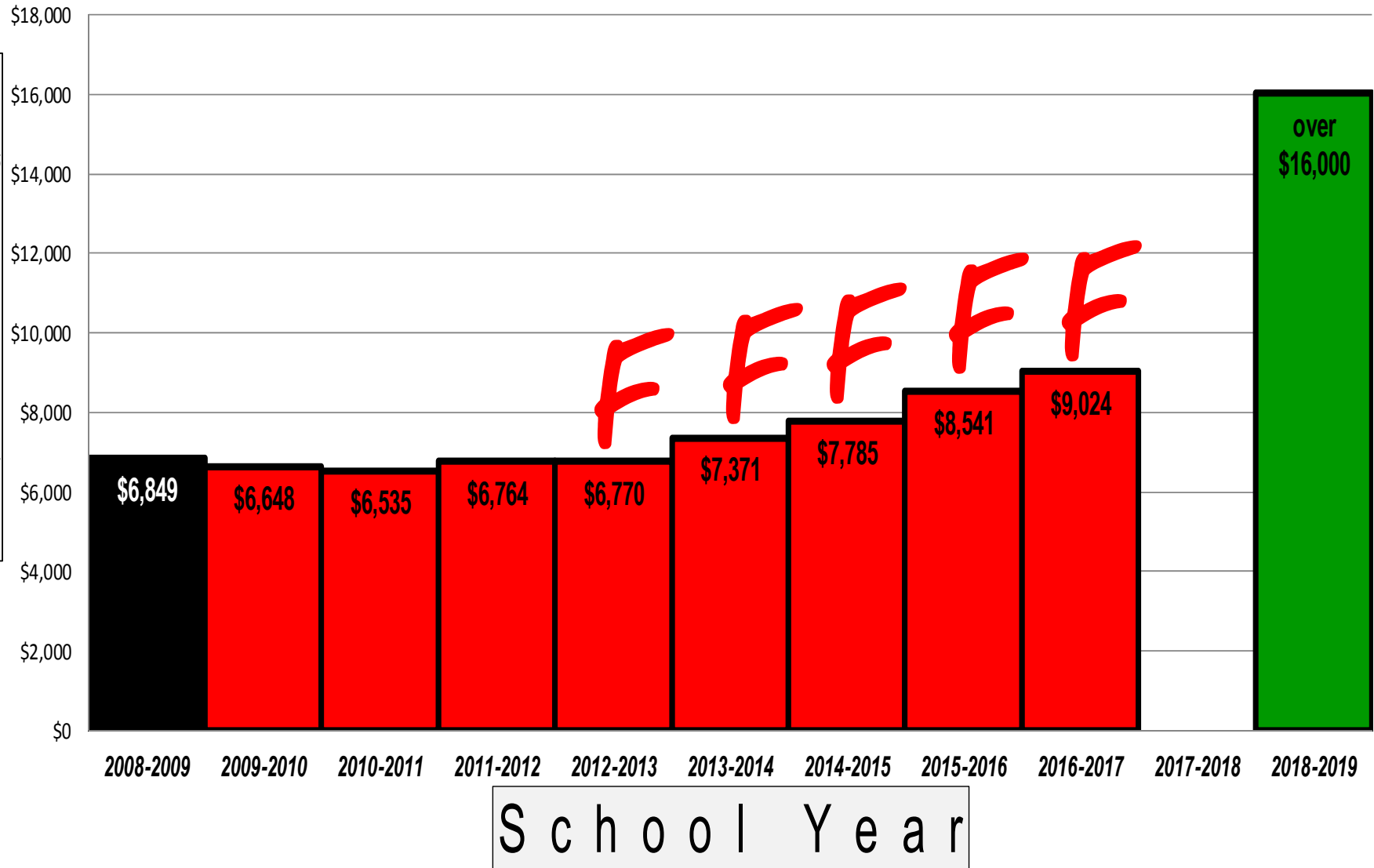
State Funding Per Pupil  
(above local & federal funding)



Dollar sources detailed in "Ample State Funding Progress" chart on last page of FAQs at <http://waschoolexcellence.org/news-and-resources/faqs/>

# STATE'S COMPLIANCE THUS FAR

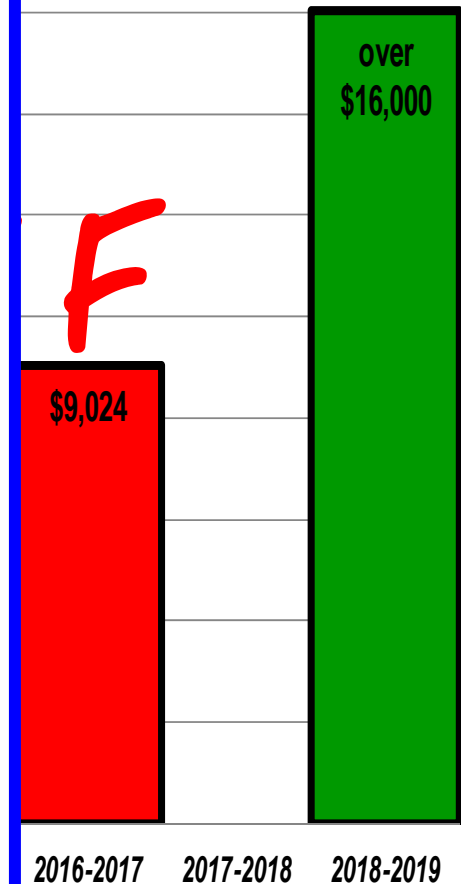
State Funding Per Pupil  
(above local & federal funding)



Supreme Court rejected the State's ample-funding-progress claims in its Dec. 2012, Jan. 2014, Sept. 2014, Aug. 2015, & Oct. 2016 Orders

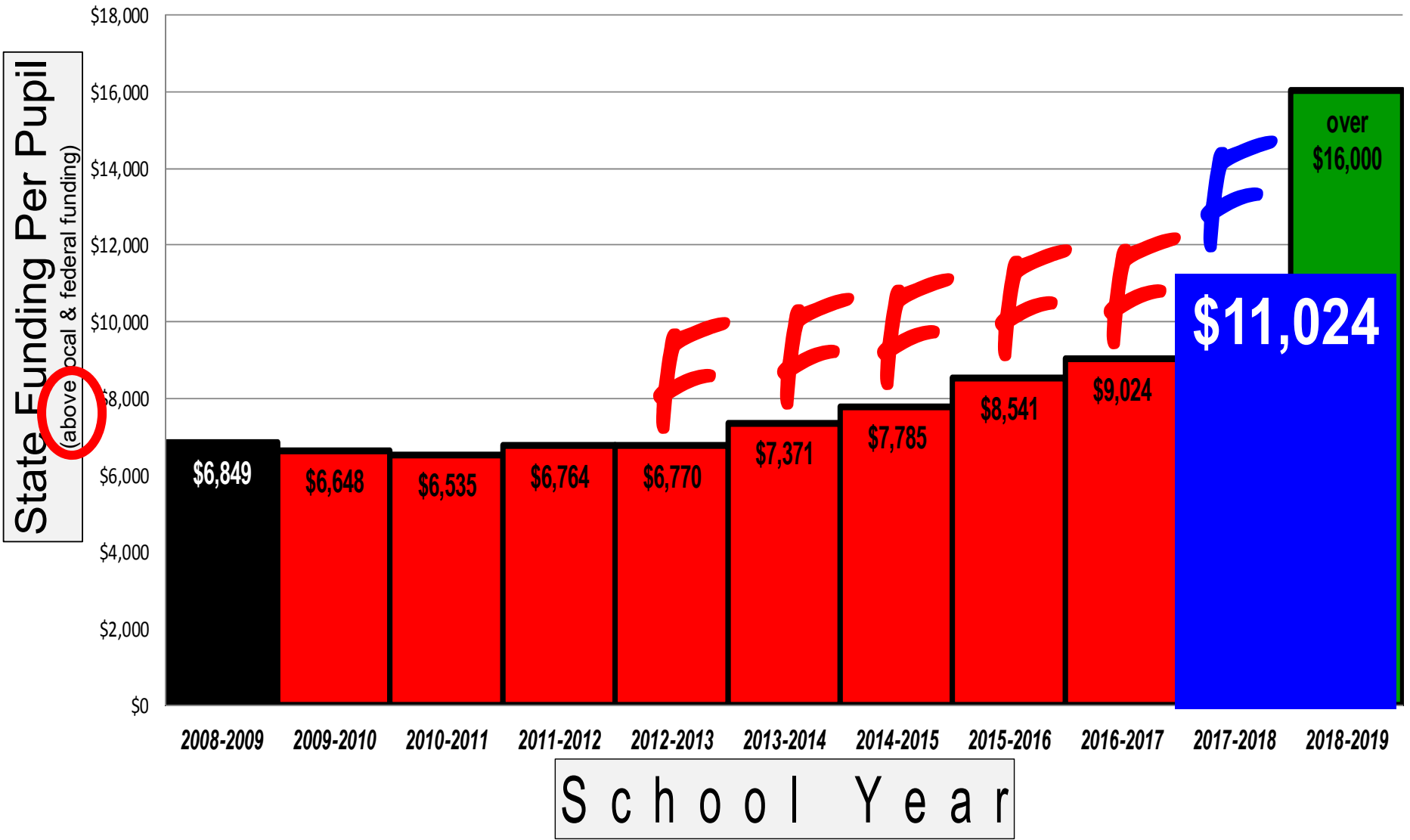
## STATE'S COMPLIANCE THUS FAR

“What remains to be done to achieve compliance is undeniably huge”



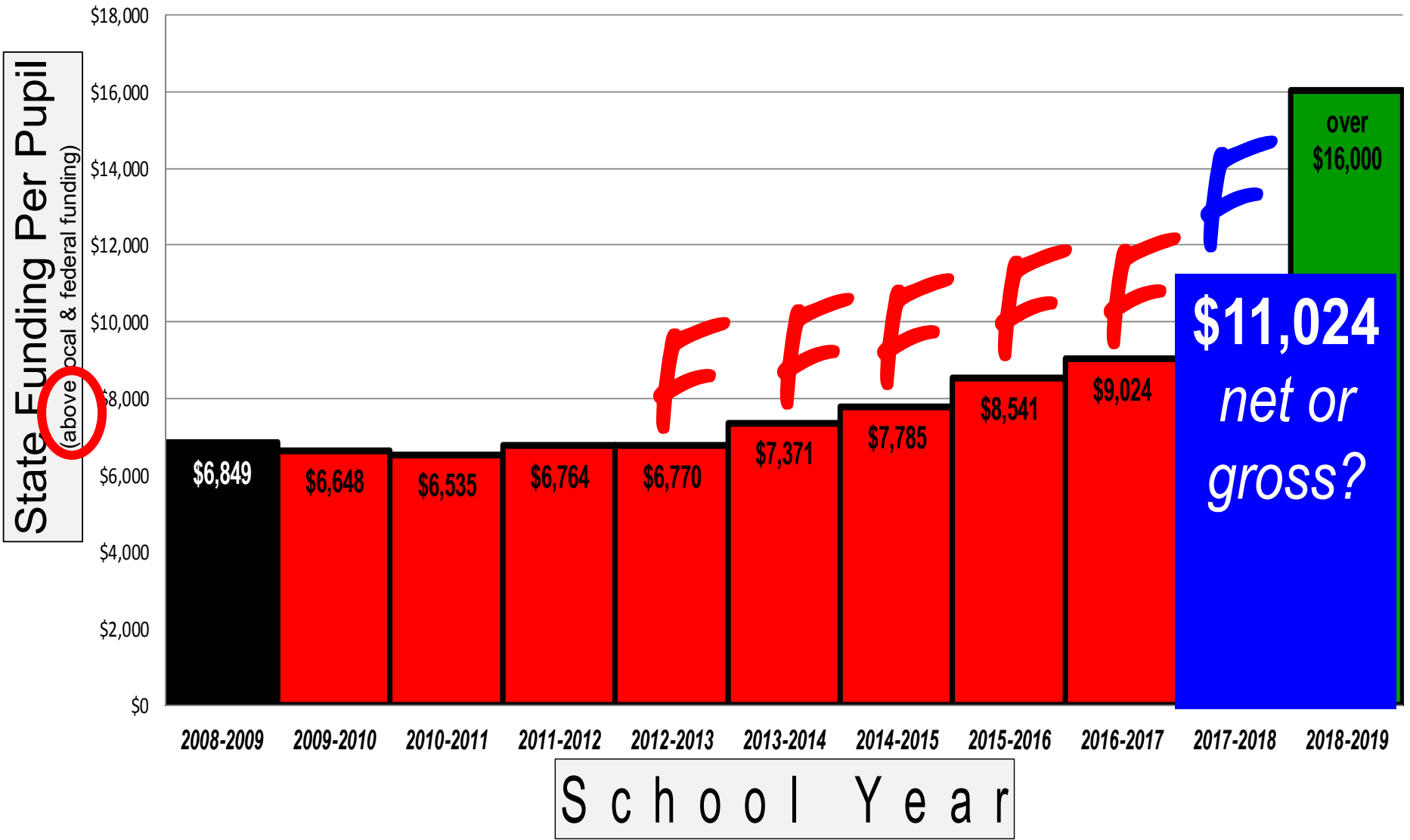
*McCleary v. State, July 2016 Order at p.2*

# STATE'S COMPLIANCE THUS FAR

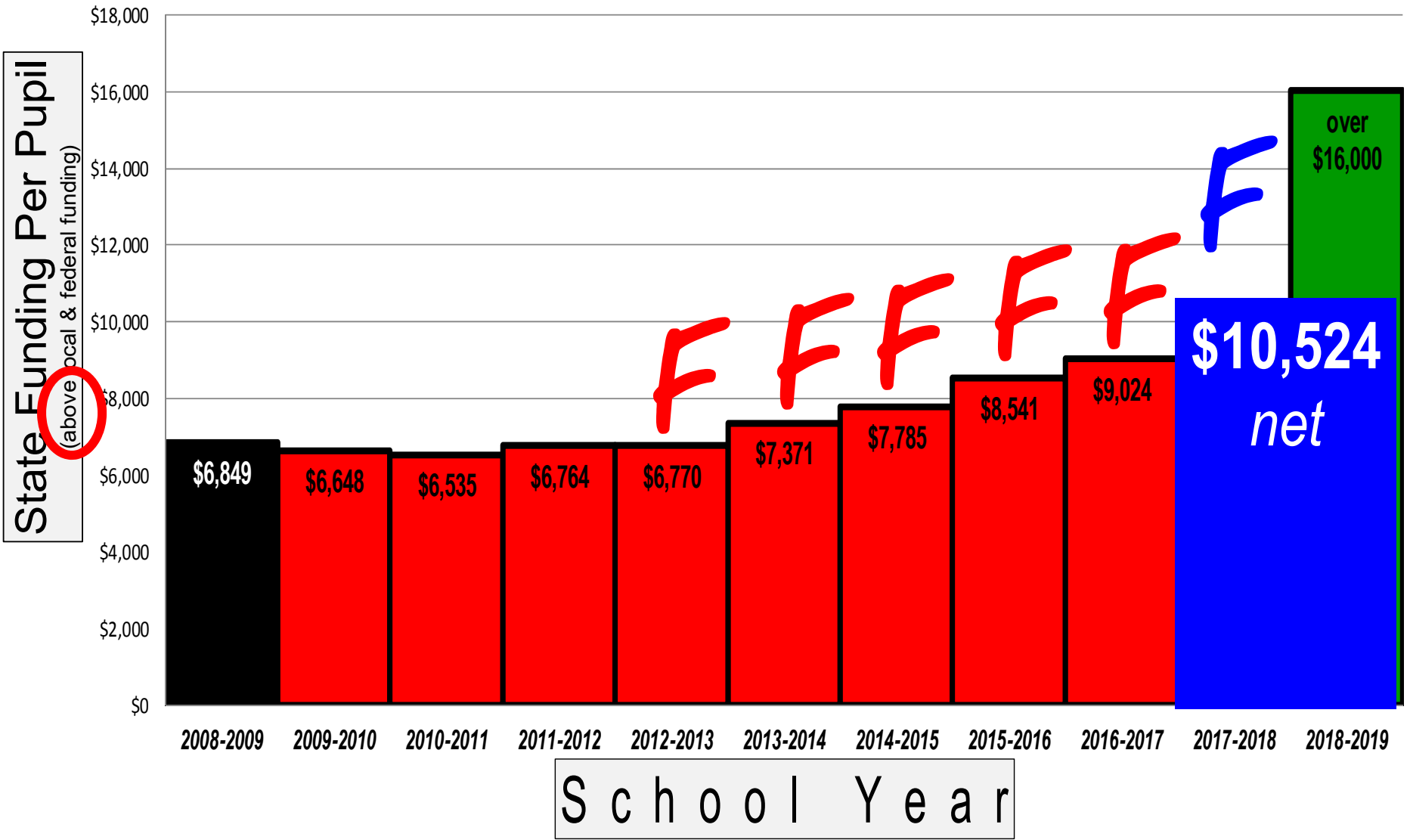




# STATE'S COMPLIANCE THUS FAR



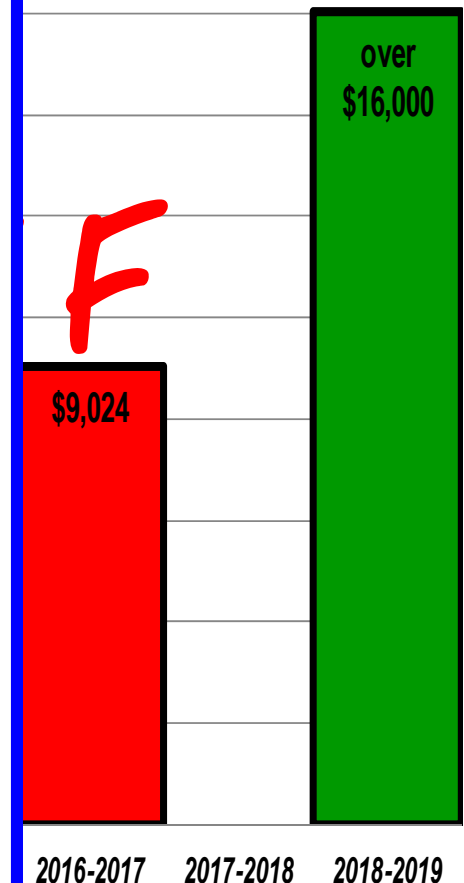
# STATE'S COMPLIANCE THUS FAR



## STATE'S COMPLIANCE THUS FAR

“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.”

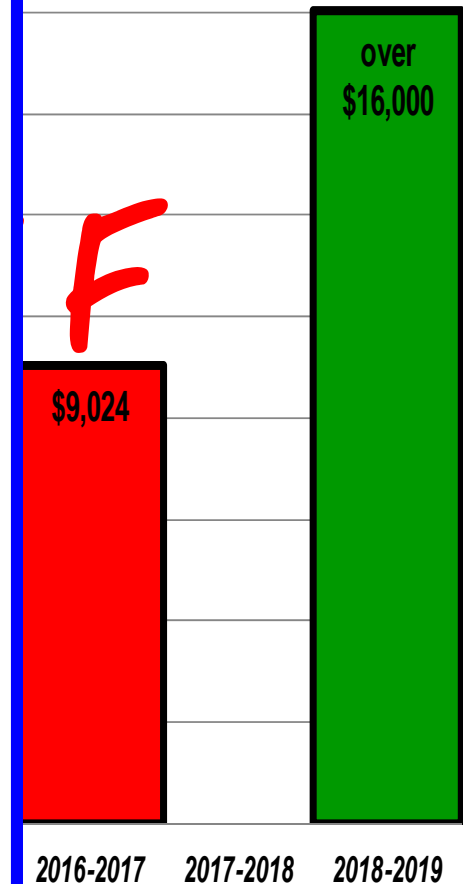
*McCleary v. State, 173 Wn.2d at 532 (2012)*



# STATE'S COMPLIANCE THUS FAR

Will the 2017 legislature fully fund the actual cost of implementing all components of the State's basic education program?

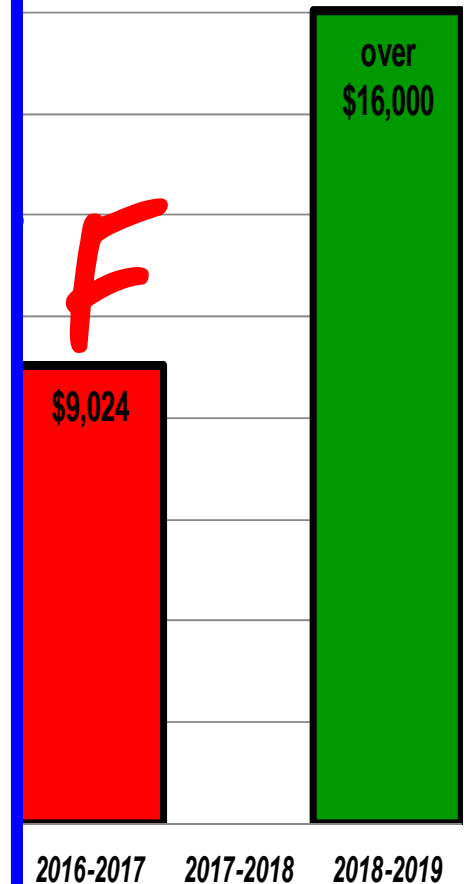
- Pupil Transportation
- MSOCs
- All Day Kindergarten & K-3 Class Size Reduction
- Highly Capable, Special Education, Core 24, LAP, ELL, etc.
- Compensation that attracts & retains competent personnel



# STATE'S COMPLIANCE THUS FAR

Will the 2017 legislature fully fund the actual cost of implementing all components of the State's basic education program?

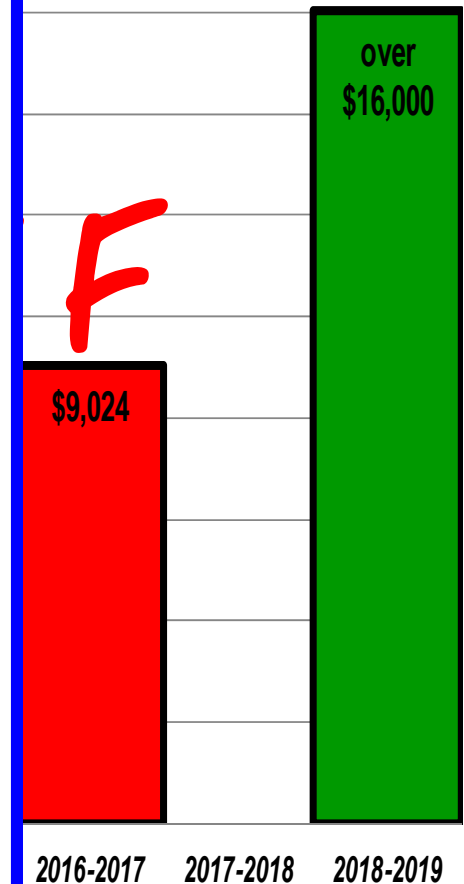
- Pupil Transportation **CURRENTLY NOT AMPLE**  
*(lower of last year's actual or last year's State-wide average)*
- MSOCs
- All Day Kindergarten & K-3 Class Size Reduction
- Highly Capable, Special Education, Core 24, LAP, ELL, etc.
- Compensation that attracts & retains competent personnel



# STATE'S COMPLIANCE THUS FAR

Will the 2017 legislature fully fund the actual cost of implementing all components of the State's basic education program?

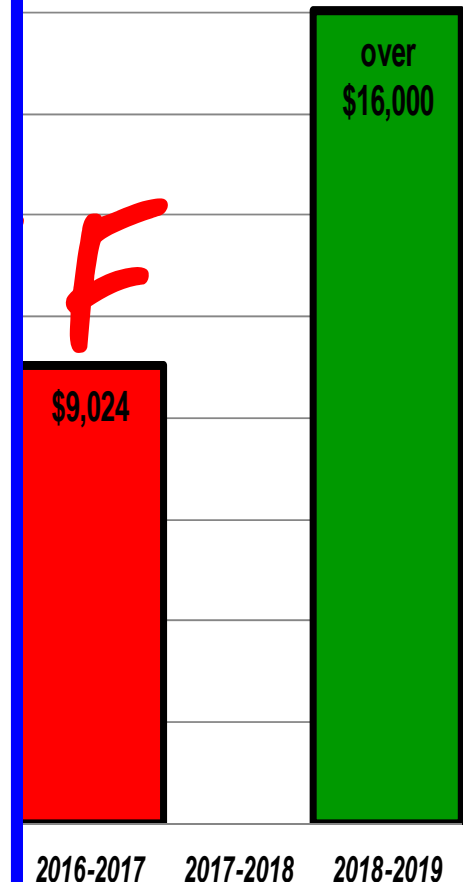
- Pupil Transportation **CURRENTLY NOT AMPLE**  
*(lower of last year's actual or last year's State-wide average)*
- MSOCs **CURRENTLY NOT AMPLE**  
*(statewide averages,  
and based on outdated 2007-2008 school year snapshot)*
- All Day Kindergarten & K-3 Class Size Reduction
- Highly Capable, Special Education, Core 24, LAP, ELL, etc.
- Compensation that attracts & retains competent personnel



# STATE'S COMPLIANCE THUS FAR

Will the 2017 legislature fully fund the actual cost of implementing all components of the State's basic education program?

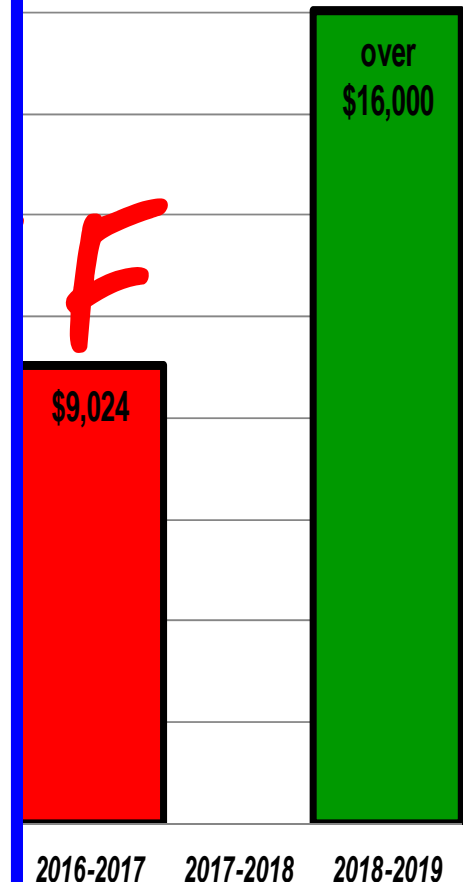
- Pupil Transportation **CURRENTLY NOT AMPLE**  
*(lower of last year's actual or last year's State-wide average)*
- MSOCs **CURRENTLY NOT AMPLE**  
*(statewide averages, and based on outdated 2007-2008 school year snapshot)*
- All Day Kindergarten & K-3 Class Size Reduction **CURRENTLY**  
*(partial funding of actual personnel & capital costs) **NOT AMPLE***
- Highly Capable, Special Education, Core 24, LAP, ELL, etc.
- Compensation that attracts & retains competent personnel



# STATE'S COMPLIANCE THUS FAR

Will the 2017 legislature fully fund the actual cost of implementing all components of the State's basic education program?

- Pupil Transportation **CURRENTLY NOT AMPLE**  
*(lower of last year's actual or last year's State-wide average)*
- MSOCs **CURRENTLY NOT AMPLE**  
*(statewide averages, and based on outdated 2007-2008 school year snapshot)*
- All Day Kindergarten & K-3 Class Size Reduction **CURRENTLY NOT AMPLE**  
*(partial funding of actual personnel & capital costs)*
- Highly Capable, Special Education, Core 24, LAP, ELL, etc. **CURRENTLY NOT AMPLE**  
*(less than actual student caseload, and partial funding of actual personnel costs)*
- Compensation that attracts & retains competent personnel

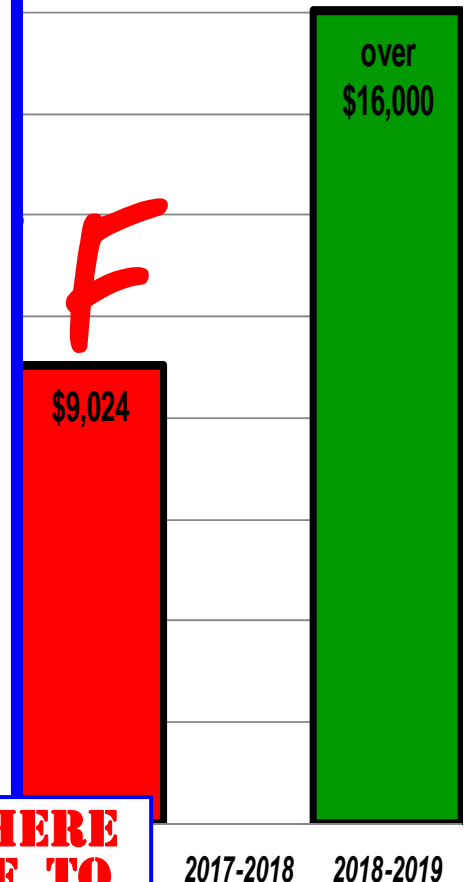




# STATE'S COMPLIANCE THUS FAR

Will the 2017 legislature fully fund the actual cost of implementing all components of the State's basic education program?

- Pupil Transportation **CURRENTLY NOT AMPLE**  
*(lower of last year's actual or last year's State-wide average)*
- MSOCs **CURRENTLY NOT AMPLE**  
*(statewide averages, and based on outdated 2007-2008 school year snapshot)*
- All Day Kindergarten & K-3 Class Size Reduction **CURRENTLY NOT AMPLE**  
*(partial funding of actual personnel & capital costs)*
- Highly Capable, Special Education, Core 24, LAP, ELL, etc. **CURRENTLY NOT AMPLE**  
*(less than actual student caseload, and partial funding of actual personnel costs)*
- Compensation that attracts & retains competent personnel **CURRENTLY NOT AMPLE**  
*(partial funding of actual costs; significant teacher shortages even when local levy & federal funding supplements State funding)*

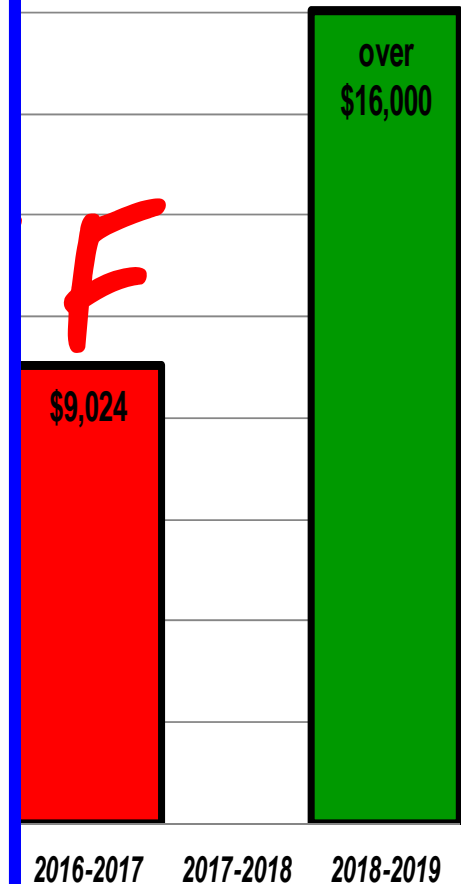


**NOWHERE  
CLOSE TO  
AMPLE**

# STATE'S COMPLIANCE THUS FAR

Will the 2017 legislature fully fund the actual cost of implementing all components of the State's basic education program?

What if the  
2017 legislature  
refuses to  
comply?

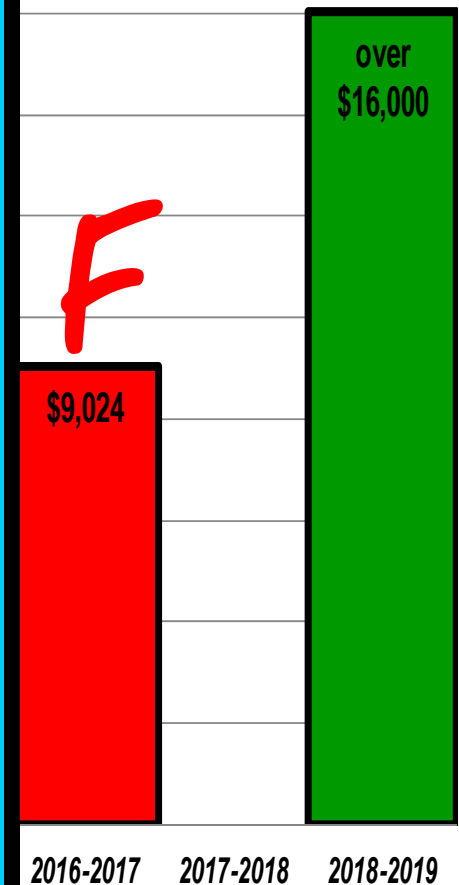


## STATE'S COMPLIANCE THUS FAR

# CONTEMPT

*The Purpose of a Contempt Sanction:*

**Force decision-makers to  
choose to comply with a court  
order by making  
compliance a better choice  
than continued non-compliance.**



# ONE POTENTIAL CONTEMPT SANCTION

**Give the legislature two choices:**

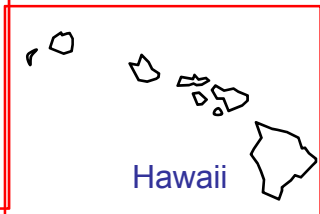
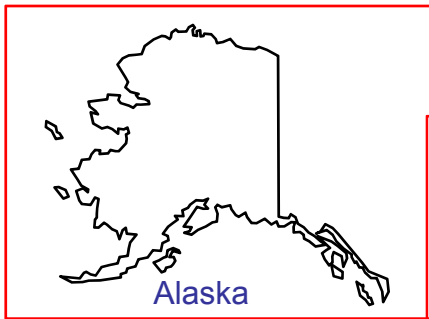
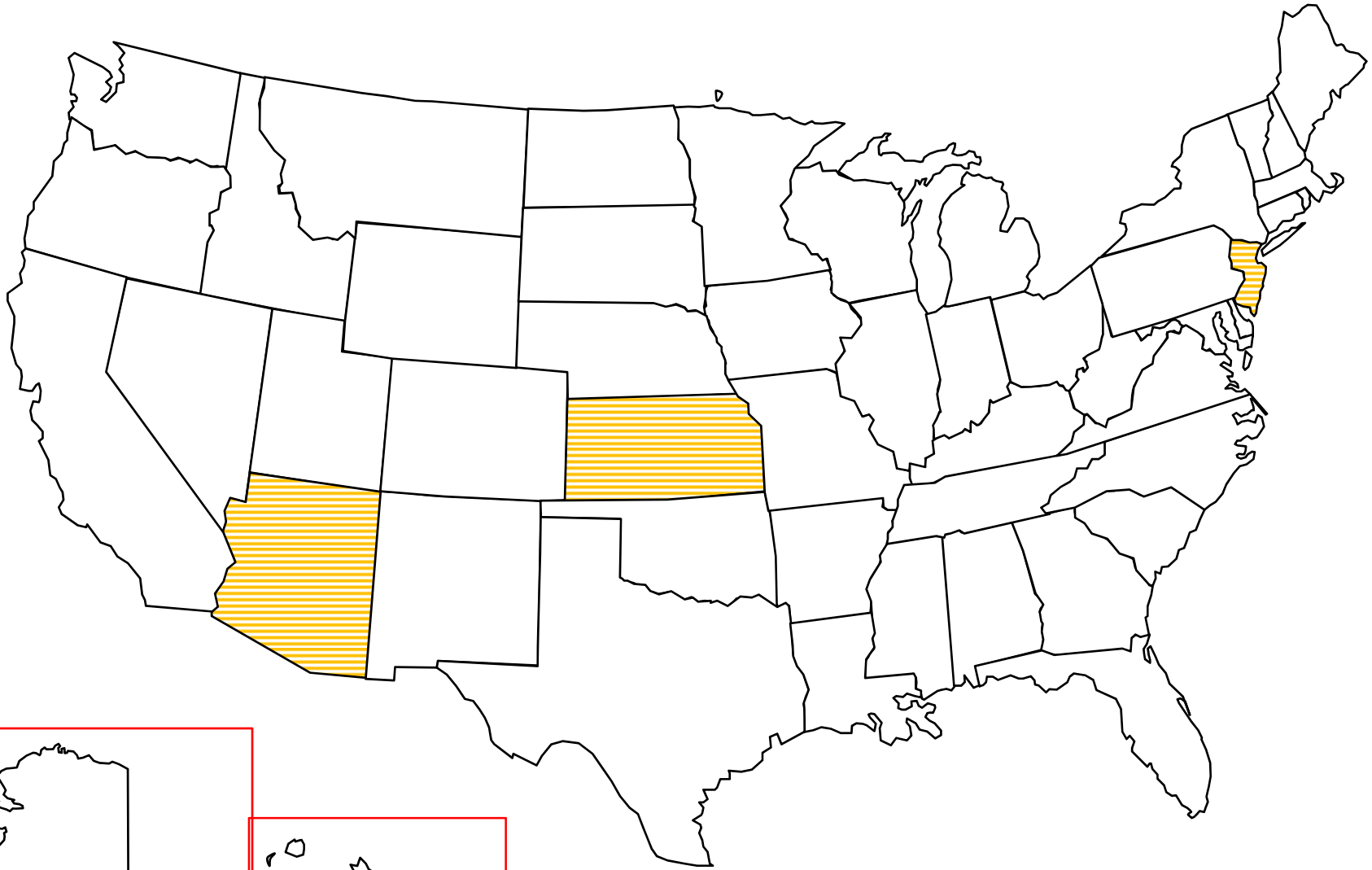
(1) choose to comply with the Constitution  
*(update the State funding formulas to amply fund school districts' actual cost of implementing the State's basic education program),*

**or**

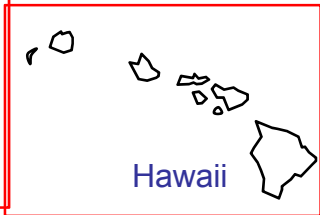
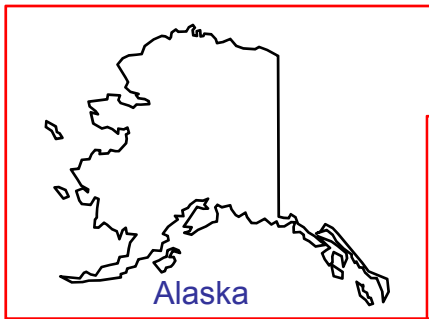
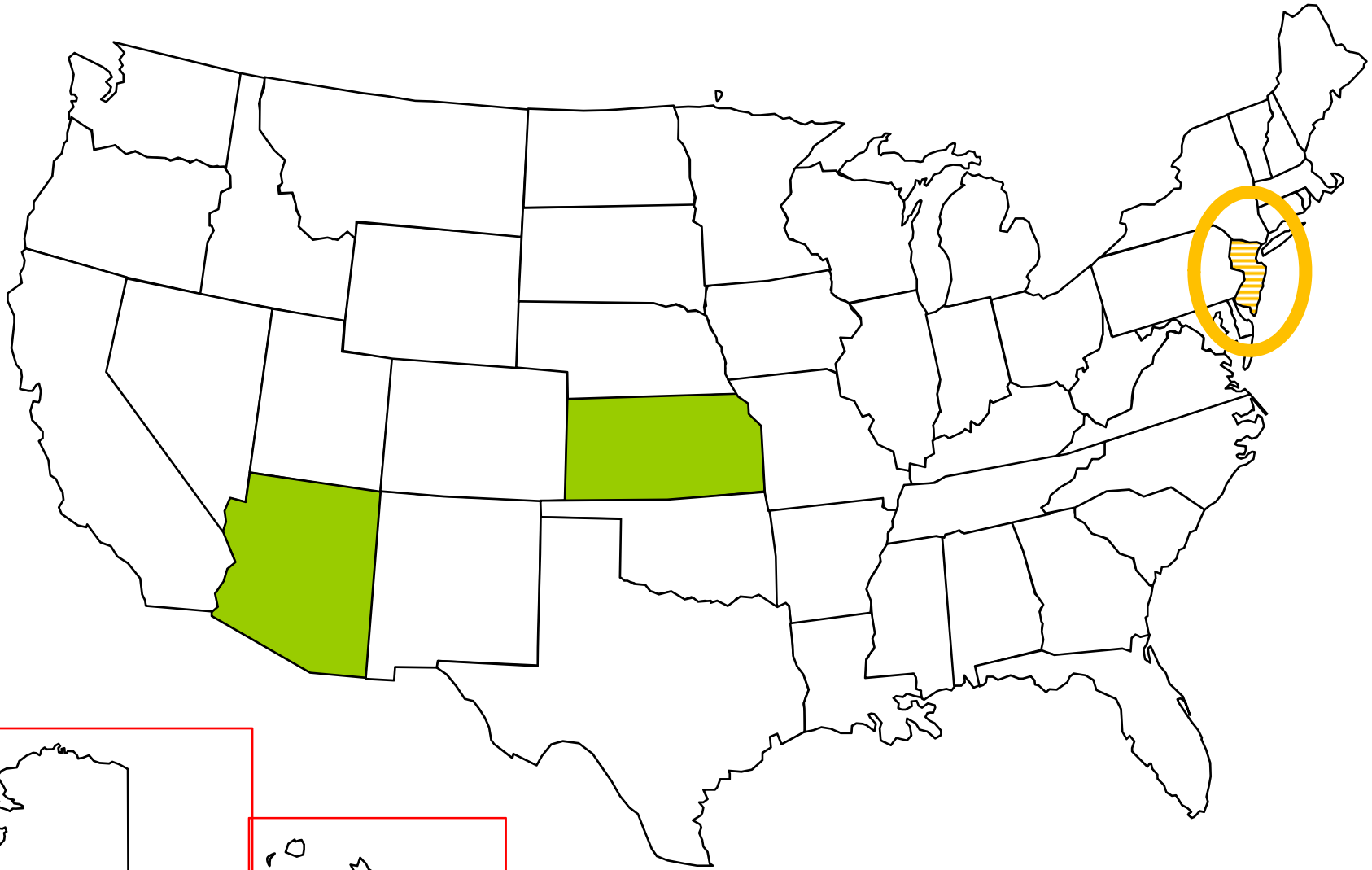
(2) choose to have the State's unconstitutionally funded school statutes suspended or struck down on the first day of the ensuing school year.

***It's entirely the legislature's choice.***

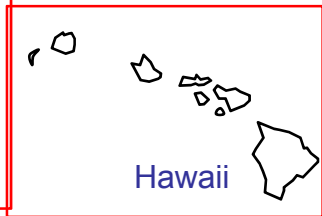
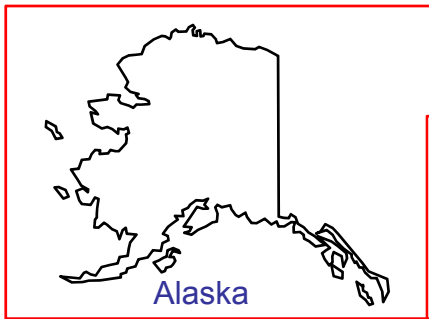
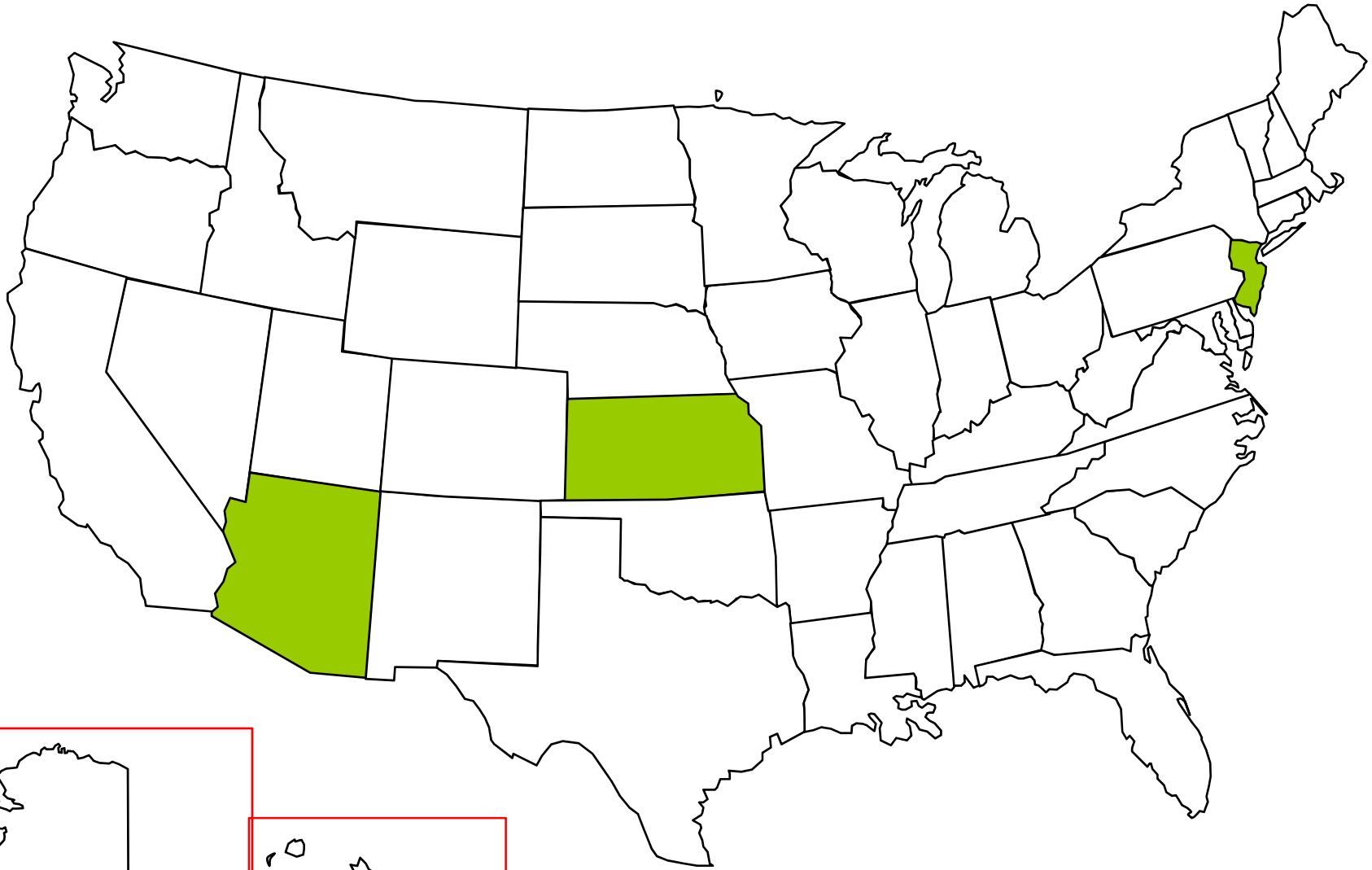
# That's what other State Supreme Courts have done



# That's what other State Supreme Courts have done



# That's what other State Supreme Courts have done



# ANOTHER POTENTIAL CONTEMPT SANCTION

**Give the legislature two choices:**

(1) choose to comply with the Constitution  
*(update the State funding formulas to amply fund school districts' actual cost of implementing the State's basic education program),*

**or**

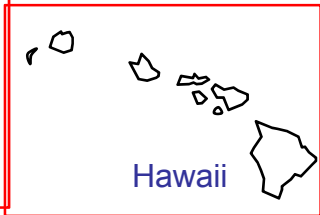
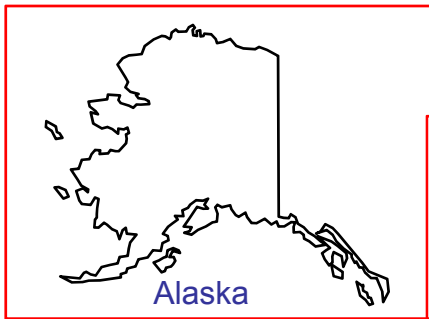
(2) choose to have all tax exemption statutes passed by the legislature suspended or struck down on the first day of the ensuing school year.

***It's entirely the legislature's choice.***

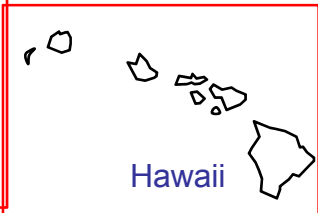
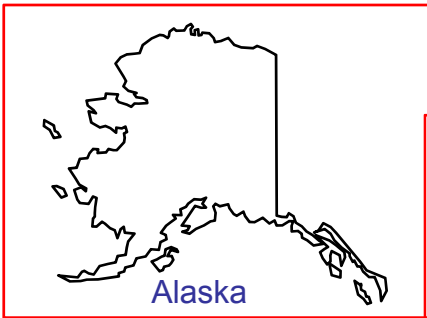
*(Does not affect sales tax exemption on food because it was passed by I-345 voters instead of legislature)*



# Washington State Gives Out Lots of Tax Breaks

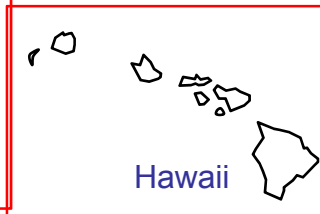
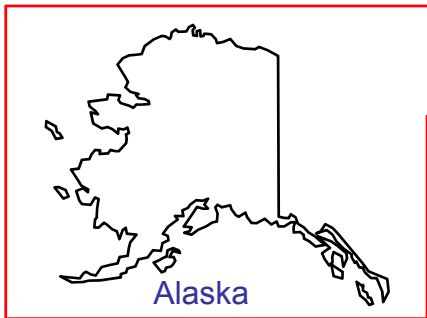


# Washington State Gives Out Lots of Tax Breaks



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/SwEL04E3E7KYe6HaUvUiZP/story.html> ].

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# *Final steps on the McCleary road*

*(October 2016 Order)*

## **1. Regular 2017 Legislative Session:**

State must enact appropriations to achieve full constitutional compliance by September 1, 2018.

## **2. 30 days after Governor signs the biennial budget:**

State must file report & legal briefing on the State's constitutional compliance.

## **3. 30 days after State's filing:**

Plaintiffs file a response to State's filings.

## **4. After reviewing the parties' filings:**

Supreme Court decides what it will do.

*Final steps on the McCleary road*

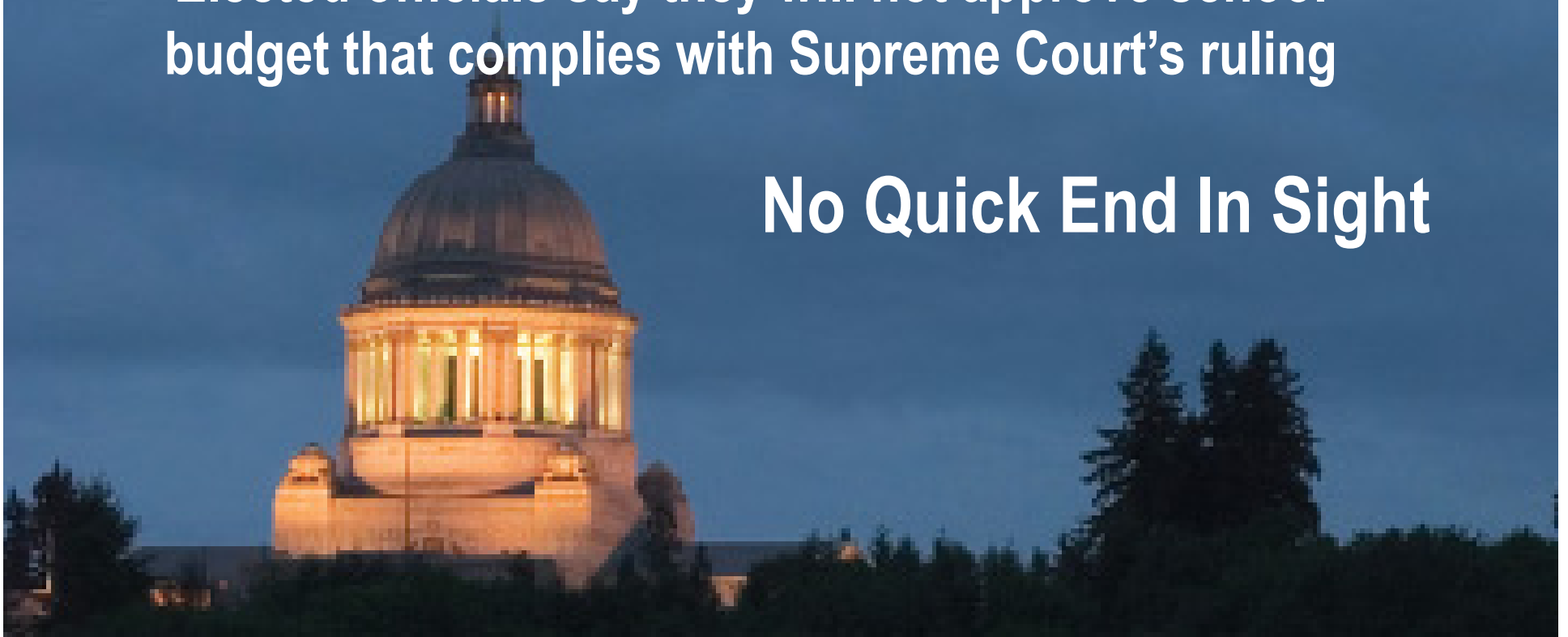


**State official argues the Court has usurped the powers of the State Legislature with its decree**

**State officials say “We cannot levy taxes to pay for what the Supreme Court’s ruling would require”**

**Elected officials say they will not approve school budget that complies with Supreme Court’s ruling**

**No Quick End In Sight**



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*Brown v. Bd. of Education* response in Augusta (Georgia) Chronicle [June 1, 1955]

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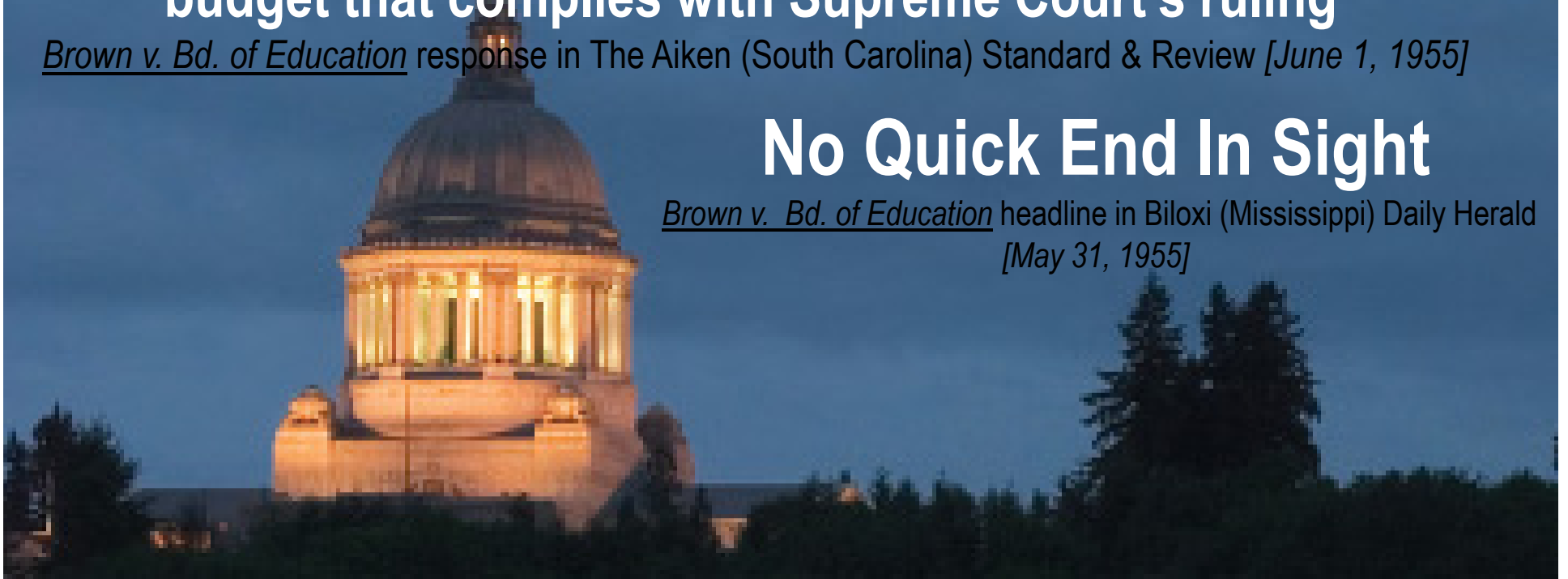
*Brown v. Bd. of Education* response in Atlanta (Georgia) Constitution [June 1, 1955]

**Elected officials say they will not approve school  
budget that complies with Supreme Court’s ruling**

*Brown v. Bd. of Education* response in The Aiken (South Carolina) Standard & Review [June 1, 1955]

**No Quick End In Sight**

*Brown v. Bd. of Education* headline in Biloxi (Mississippi) Daily Herald  
[May 31, 1955]



# 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](http://www.courts.wa.gov/appellate_trial_courts/SupremeCourt/?fa=supremecourt.McCleary_Education)

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

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