No. 82961-6

CHAMBERS, J. (concurring in part/dissenting in part) — I concur with the majority in result. The paramount duty of the State is to provide a general and uniform education for all of our children, including those with special needs. Wash. Const. art. IX, § 1. Article IX creates rights and imposes duties that this court will enforce. *Seattle Sch. Dist. No. 1 v. State,* 90 Wn.2d 476, 503, 585 P.2d 71 (1978). Our responsibility to enforce the constitution and protect the rights of individuals is found within the same constitutional tapestry as the legislature's power and duty to make the laws and the hard decisions about spending the State's money. *See generally Hale v. Wellpinit Sch. Dist. No. 49,* 165 Wn.2d 494, 503-07, 198 P.3d 1021 (2009). Our constitutional structure itself demands our due regard for the legislature, and we should not find legislative action unconstitutional unless we are confident that our constitution has been offended. *Id.* at 507; *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 149 Wn.2d 660, 670-71, 72 P.3d 151 (2003). In this case, I cannot say that the legislature has violated the constitution through its funding formulas for allocating state resources to students with special needs. Thus, I join sections II and III of the majority opinion in result.

However, I cannot join the majority's holding that the "party challenging a statute's constitutionality must prove it unconstitutional 'beyond a reasonable

doubt.'" Majority at 6. Simply put, and despite the majority's words to the contrary, "beyond a reasonable doubt," as a burden on a party, is an evidentiary standard. At common law, "beyond a reasonable doubt" was a burden on the *court*; that the court must be persuaded, beyond a reasonable doubt, that a legislative enactment violated the constitution before we would take the heavy step of declaring the work of the people's representatives unconstitutional. In my view, that is where the burden should remain: on us, as a recognition of our respect for our coordinate branch of government, and not on an individual bringing a challenge. As we said more than a century ago,

> it is settled by the highest authority that a legislative enactment is presumed to be constitutional and valid until the contrary clearly appears. In other words, the courts will presume that an act regularly passed by the legislative body of the government is a valid law, and will entertain no presumptions against its validity. And when the constitutionality of an act of the Legislature is drawn in question the court will not declare it void unless its invalidity is so apparent as to leave no reasonable doubt upon the subject.

State v. Ide, 35 Wash. 576, 581-82, 77 P. 961 (1904) (citing Thomas M. Cooley, A Treatise on the Constitutional Limitations 252-54 (7th ed. 1903) (1868)(*overruled in part by Town of Tekoa v. Reilly,* 47 Wash. 202, 91 P. 769 (1907))).[1]

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[1] Cooley in turn cites an 1834 opinion from Massachusetts, which states the problem thus:

> In considering the question, whether the act passed June 5, 1830, providing for the enclosure and appropriation of Cambridge common is a constitutional act, having the force and effect of law, the delicacy and importance of the subject may render it not improper to repeat what has been so often suggested by courts of justice, that *when called upon to pronounce the invalidity of an act of legislation* passed with all the forms and solemnities requisite to give it the force of law, *courts will approach the question with great caution, examine it in every possible aspect, and*

To the extent that Justice Sanders' opinion reflects my foregoing opinions, I concur in his dissent.

> *ponder upon it as long as deliberation and patient attention can throw any new light on the subject, and never declare a statute void, unless the nullity and invalidity of the act are placed, in their judgment, beyond reasonable doubt.* Still however it cannot be doubted, and I believe it is nowhere denied, that in a limited government like ours, acting under a written constitution with numerous and detailed provisions, a constitution which is in itself perpetual and irrepealable except by the people themselves, and which imposes many restraints upon the power of the legislature by express provisions and many others by necessary implication, and where the same constitution has provided for the establishment of a judiciary as a coördinate department of the government, with power in all cases to expound the laws, to declare what has and what has not the force of law, and to apply them to the investigation and adjustment of the rights, duties, and obligations of citizens, *in the actual administration of justice, it is clearly within the power, and sometimes the imperative duty of courts, to declare that a particular enactment is not warranted by the power vested in the legislature, and therefore to the extent, to which it thus exceeds the power of the legislature, it is without efficacy, inoperative, and void.*

In re Wellington, 33 Mass. (16 Pick.) 87, 95-96 (1834) (emphasis added), *cited with approval by* Cooley, *supra,* at 252-53 & n.1.

AUTHOR:
Justice Tom Chambers

WE CONCUR:

Justice James M. Johnson