IN THE SUPREME COURT OF THE STATE OF WASHINGTON

SCHOOL DISTRICTS' ALLIANCE FOR ADEQUATE FUNDING OF SPECIAL EDUCATION, consisting of BELLINGHAM SCHOOL DISTRICT NO. 501, a municipal corporation; BETHEL SCHOOL DISTRICT NO. 403; BURLINGTON-EDISON SCHOOL DISTRICT NO. 100, a municipal corporation; EVERETT SCHOOL DISTRICT NO. 2, a municipal corporation; FEDERAL WAY SCHOOL DISTRICT NO. 210, a municipal corporation; ISSAQUAH SCHOOL DISTRICT NO. 411, a municipal corporation; LAKE WASHINGTON SCHOOL DISTRICT NO. 414, a municipal corporation; MERCER ISLAND SCHOOL DISTRICT NO. 400, a municipal corporation; NORTHSHORE SCHOOL DISTRICT NO. 417, a municipal corporation; PUYALLUP SCHOOL DISTRICT NO. 3, a municipal corporation; RIVERSIDE SCHOOL DISTRICT NO. 416, a municipal corporation; and SPOKANE SCHOOL DISTRICT NO. 81, a municipal corporation, Petitioners, v. THE STATE OF WASHINGTON; GARY LOCKE, in his capacity as Governor of the State of Washington; TERRY BERGESON, in her capacity as Superintendent of Public Instruction; BRAD OWEN, in his capacity as President of the Senate and principal legislative authority of the State of Washington; FRANK CHOPP, in his capacity as Speaker of the House of Representatives and principal legislative authority of the State of Washington, Respondents.	)	No. 82961-6 En Banc Filed December 9, 2010

Owens, J. -- This case concerns a challenge to the special education funding mechanism in Washington State. The School Districts' Alliance for Adequate Funding of Special Education (Alliance) argues that the Court of Appeals erred when it held that the State's procedures for funding special education do not violate the Washington Constitution. The Alliance argues that the Court of Appeals (1) used the wrong standard and (2) improperly included the Basic Education Allotment (BEA) in its analysis when it determined whether special education is adequately funded. We affirm the Court of Appeals and hold that when the proper standard is applied, the existing funding mechanism for special education does not violate the Washington Constitution.

FACTS

The Washington Constitution provides that "[i]t 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." Const. art. IX, § 1. We have held that the State's paramount duty is to make ample provision for basic education through "dependable and regular tax source[s]." *Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d 476, 526, 585 P.2d 71 (1978). Special excess levies cannot be used to pay for basic education, though they can be used for "'enrichment program[s].'" *Id*.

Special education is designed to ensure that all children with disabilities receive an appropriate education at public expense. RCW 28A.155.010. Special education in Washington is funded through three mechanisms. The first is the BEA, which the State provides to districts based on the average annual full-time equivalent enrollment of *all* students, both special education students and other students, in the district. RCW 28A.150.250; Laws of 2005, ch. 518, § 502(2). It is undisputed that "special education students are entitled to the full [BEA]." Laws of 2005, ch. 518, § 507(2)(a)(ii). Basic education, as defined by the legislature, is considered fully funded by the BEA. RCW 28A.150.250.

In addition, special education students receive excess funding from the State, "[t]o the extent a school district cannot provide an appropriate education for special education students . . . through the general apportionment allocation." Laws of 2005, ch. 518, § 507(1). This excess special education funding is provided "on an excess cost basis" and is equal to a "district's annual average full-time equivalent basic education enrollment multiplied by the funded enrollment percent . . . multiplied by the district's average basic education allocation per full-time equivalent student multiplied by 0.9309." Laws of 2005, ch. 518, § 507(1), (5)(a)(ii). Essentially, the State provides each school district with additional special education funding that is 0.9309 times the BEA for each special education student.

The third means by which the State funds special education is through the "safety net," which awards additional monies to "districts with demonstrated needs for special education funding beyond the amounts provided" by the BEA and the excess special education funding. Laws of 2005, ch. 518, § 507(8). Presently, state safety net funds are available for students whose excess cost of special education services exceeds approximately $15,000, and federal safety net funds are also available for excess costs above approximately $21,000. When awarding safety net funding, the State considers "unmet needs for districts that can convincingly demonstrate that all legitimate expenditures for special education exceed all available revenues from state funding formulas." Laws of 2005, ch. 518, § 507(8)(a). Safety net awards cannot be based on "program costs attributable to district philosophy, service delivery choice, or accounting practices." *Id*.

The Alliance filed suit alleging that the State was not fully funding special education, forcing school districts to unconstitutionally use special excess levies to attain adequate funding. The Alliance presented evidence of underfunding from F-196 reports (annual financial documents that school districts submit to the State that list education revenues by source and accounting for expenditures by program) and Worksheet A (an application for safety net funding demonstrating financial need for additional safety net funding). In presenting this evidence, the Alliance omitted the

funding that came from the BEA, arguing that school districts expend the entire BEA for special education students in the basic education classrooms. The trial court found that the Alliance had not proved that the State's special education funding formula was unconstitutional beyond a reasonable doubt. Specifically, the trial court ruled that a district must expend all of the BEA and all of the excess special education funding before it can contend that the legislature has underfunded special education. The Alliance appealed to the Court of Appeals, arguing, among other claims, that the trial court erred by (1) including the BEA as part of the total special education funding, (2) requiring the Alliance to prove that the funding mechanism was unconstitutional beyond a reasonable doubt, and (3) finding that the additional 0.9309 multiplier was rational. The Court of Appeals affirmed, holding that the Alliance had not met its burden to prove beyond a reasonable doubt that the special education funding mechanism violated the Washington Constitution. *Sch. Dists.' Alliance for Adequate Funding of Special Educ. v. State*, 149 Wn. App. 241, 266, 202 P.3d 990 (2009). The Alliance petitioned for review, which we granted. *Sch. Dists.' Alliance for Adequate Funding of Special Educ. v. State*, 166 Wn.2d 1024, 217 P.3d 337 (2009).

ISSUES

1. What is the correct standard for determining whether the State's special education mechanism violates the Washington Constitution?

2. Should the BEA be included when we determine if Washington adequately funds special education?

3. Does article VIII, section 4 of the Washington Constitution preclude applying the BEA to special education?

ANALYSIS

I. The Proper Standard Is "Beyond a Reasonable Doubt"

The Alliance argues that the Court of Appeals used the incorrect standard when it determined that the Alliance must prove the special education mechanism unconstitutional "beyond a reasonable doubt." *Sch. Dists.' Alliance*, 149 Wn. App. at 266. The Alliance asserts that since the State's paramount duty is to make ample provision for the education of children, a lower standard should apply to the petitioners. We disagree and affirm the long standing rule that a party challenging a statute's constitutionality must prove it unconstitutional "beyond a reasonable doubt."

In Washington, it is well established that statutes are presumed constitutional and that a statute's challenger has a heavy burden to overcome that presumption; the challenger must prove that the statute is unconstitutional beyond a reasonable doubt. *Wash. Fed'n of State Employees v. State*, 127 Wn.2d 544, 558, 901 P.2d 1028 (1995). This standard, that we will not declare a statute unconstitutional "unless its conflict with the constitution is plain beyond a reasonable doubt," stretches all the way back to

our holding in *Parrott & Co. v. Benson*, 114 Wash. 117, 122, 194 P. 986 (1921). This standard has appeared throughout our jurisprudence. *See State v. Maciolek*, 101 Wn.2d 259, 263, 676 P.2d 996 (1984)*; see also State v. Aver*, 109 Wn.2d 303, 306-07, 745 P.2d 479 (1987). We discussed the reasoning behind the standard in *Island County v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998):

> [T]he "beyond a reasonable doubt" standard used when a statute is challenged as unconstitutional refers to the fact that one challenging a statute must, by argument and research, convince the court that there is no reasonable doubt that the statute violates the constitution. The reason for this high standard is based on our respect for the legislative branch of government as a co-equal branch of government, which, like the court, is sworn to uphold the constitution. . . . Additionally, the Legislature speaks for the people and we are hesitant to strike a duly enacted statute unless fully convinced, after a searching legal analysis, that the statute violates the constitution.

We later reaffirmed our understanding that a demanding standard is justified because "we assume the Legislature considered the constitutionality of its enactments and afford great deference to its judgment." *Tunstall v. Bergeson*, 141 Wn.2d 201, 220, 5 P.3d 691 (2000). We have also used the "beyond a reasonable doubt" standard in the context of challenges to article IX, section 1. In *Tunstall*, we used the "beyond a reasonable doubt" standard in determining that the legislature had not violated article IX, section 1 by enacting a statute that provided for education for children incarcerated in adult prisons. *Id*. at 220-23. In *Brown v. State*, 155 Wn.2d 254, 266, 119 P.3d 341 (2005), we again used the "beyond a reasonable doubt" standard in determining that

the State had not violated article IX, section 1 when it reduced the number of days of education that it was willing to fund.

We note that when we say "beyond a reasonable doubt," we do not refer to an evidentiary standard. "Beyond a reasonable doubt" in this context merely means that based on our respect for the legislature, we will not strike a duly enacted statute unless we are "fully convinced, after a searching legal analysis, that the statute violates the constitution."[1] *Island County*, 135 Wn.2d at 147.

The Alliance argues that the correct standard is "preponderance of the evidence" for as-applied challenges. The Alliance bases this argument on our statement in *Seattle School District* that "[t]hus, contrary to appellants' contention, the normal civil burden of proof, *i.e.*, 'preponderance of the evidence', applies." 90 Wn.2d at 528. A reading of that case shows, however, that we were referring to the appropriate evidentiary standard for factual issues when we made this statement. We

[1] Contrary to the dissent's suggestion, this standard is not "abdication of judicial review." Dissent at 3. Looking to the Founders' intentions, as the dissent instructs, we note that Alexander Hamilton also cautioned appropriate limits of judicial review:

> It can be of no weight to say that the courts, on the pretense of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature.

The Federalist No. 78, bk. 2, at 103 (Alexander Hamilton) (New York, Tudor Publ'g Co. 1937). As Hamilton suggests, looking at the whole text, the separation of powers requires a careful balance by the judiciary that respects the role and authority of the legislature, while assuring its adherence to the constitution. This court's reasoned judgment for nearly the past century has been that the "beyond a reasonable doubt" standard for reviewing the constitutionality of a statute achieves the appropriate balance.

noted that the State was challenging the sufficiency of the evidence "to support the trial court's findings of fact and conclusions of law pertaining to the reasonableness of the District's salary scale, staffing ratios, associated nonsalaried costs and consequently the failure of the State to adequately fund those reasonable costs" before discussing which standard to use. *Id*. at 527. The State was *not* challenging the validity of a statute. When we made that statement, we were not discussing the standard for declaring a statute unconstitutional, but instead whether the existing evidence was sufficient for a trial court to make its findings of fact and conclusions of law. We stated that we would not use the "highest burden of proof" standard from the inapposite case of *In re Salary of Juvenile Director*, 87 Wn.2d 232, 552 P.2d 163 (1976). *Seattle Sch. Dist.*, 90 Wn.2d at 528. Instead, we merely confirmed the general rule that "preponderance of the evidence" is the standard for review of a court's factual findings. *Id*.

There is nothing in the *Seattle School District* case that mandates a change in the general standard for declaring a statute unconstitutional. In fact, the *Seattle School District* case did not involve a challenge to any existing statute, but instead focused on the fact that the legislature had not expressly determined what level of education funding would be sufficient to provide basic education and comply with its constitutional mandate. *Id*. at 519, 537. We even noted that "[w]hile the Legislature

must *act* pursuant to the constitutional mandate to discharge its duty, the general authority to select the *means* of discharging that duty should be left to the Legislature." *Id*. at 520. In short, there is no basis for the Alliance's conclusion that we should apply a "preponderance of the evidence" standard when we review a claim that a statute violates article IX, section 1. We reaffirm the general rule laid down in *Tunstall* and *Brown* that the legislature is entitled to great deference and that a party challenging a statute's constitutionality must therefore prove the statute unconstitutional beyond a reasonable doubt.

The Alliance also argues (1) that the Court of Appeals improperly applied equal protection analysis and (2) that the burden should shift to the State to demonstrate that it met its paramount duty to fund education once the Alliance proved a prima facie case of underfunding. The Court of Appeals in no way applied equal protection analysis. Furthermore, as discussed in sections II and III, the State did not prove a prima facie case of underfunding. Even if the Alliance did present a prima facie case of underfunding, the Alliance presents no authority suggesting that the burden should then shift to the State to prove that the State did not underfund special education. These arguments are without merit.

II. When the BEA Is Included, the Special Education Funding Mechanism Does Not Violate the Washington Constitution

The Alliance argues that the State does not adequately fund special education,

claiming that local districts had to pay an unfunded deficit of $112 million of special education services with local money. The Alliance alleges that the districts in total had $147 million in collective demonstrated need but that only $35 million could be obtained from the safety net funding, leaving a deficit of $112 million. *Sch. Dists.' Alliance*, 149 Wn. App. at 254-55. This supposed deficit, however, does not include the BEA. The trial court determined that it had to consider BEA funding in addition to excess special education funding when deciding whether special education was adequately funded, noting that the Alliance "seeks in essence to decouple special education funding from BEA funding." Clerk's Papers at 306, 324-25. The trial court concluded that a district must expend its entire BEA and all of the excess special education funding allocation before it can make a claim that the legislature has underfunded special education.[2] The Court of Appeals affirmed, ruling that substantial evidence supported the trial court's finding that the Alliance could not properly exclude the BEA from its calculations. *Sch. Dists.' Alliance*, 149 Wn. App. at 259-60. The Court of Appeals held that when the BEA is properly included in the funding calculations, the Alliance had not proved underfunding of special education

[2] The dissent highlights the *potential* for an unlawful funding gap if a district faces a situation where some students' special education costs are above the average allocation and are neither offset by other students' lower costs nor high enough to qualify for safety net funds. Dissent at 10. The burden to show that such a scenario exists is on the Alliance. The trial court's formulation would allow the Alliance to prove such a gap, should it exist, but appropriately requires that BEA funds be included in the calculation as part of the sum of the average allocation for special education students.

beyond a reasonable doubt. *Id*. at 256-60.

For us to conclude that the BEA should not be included in calculations of how much funding goes to special education, we would have to agree with the Alliance's contention that basic education and special education are in entirely separate realms. The Alliance attempts to differentiate between basic education and special education services, but the law does not support this distinction. The bill funding additional special education allocation states in relevant part:

> (1) Funding for special education programs is provided on an excess cost basis . . . . School districts shall ensure that special education students as a class receive their full share of the general apportionment allocation accruing through sections 502 and 504 of this act. To the extent a school district cannot provide an appropriate education for special education students . . . through the general apportionment allocation, it shall provide services through the special education excess cost allocation funded in this section.
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> (2)(a) . . .
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> (i) Special education students are basic education students first;
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> (ii) As a class, special education students are entitled to the full basic education allocation; and
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> (iii) Special education students are basic education students for the entire school day.

Laws of 2005, ch. 518, § 507.

Washington law also provides that "[a]ny school district required to provide [special education] services shall thereupon be granted regular apportionment of state

and county school funds and, *in addition*, allocations from state excess funds made available for such special services for such period of time as such special education program is given." RCW 28A.155.050 (emphasis added). "The superintendent of public instruction, by rule, shall establish for the purpose of *excess cost funding* . . . functional definitions of special education, the various types of disabling conditions, and eligibility criteria for special education programs for children with disabilities." RCW 28A.155.020 (emphasis added). The legislature has consistently made it clear that special education students are *also* basic education students and that the additional special education funding is in addition to, and takes into account, the BEA. We therefore disagree with the Alliance's contention that basic education and special education are entirely separate. We affirm the trial court and Court of Appeals and hold that the BEA must be included in the calculations when deciding if special education is adequately funded.

The Alliance also contends that even if the BEA is included in the calculations, special education is still underfunded. It alleges that basic education is "fully funded" by the BEA but not "more than fully funded," so there is nothing left over in the BEA to pay for special education services as well. There is nothing in the record to support this assertion.[3] The BEA need not be used only for the basic education of special

[3] The Alliance asserts that the 1077 accounting methodology, which allocates the cost of special education teachers whose duties include both basic and special education, proves that the BEA is used up entirely on basic education services. This methodology merely

education students; a district's BEA plus its excess cost special education allocation all go toward educating a special education child, education that includes both basic *and* special education. Even when a student is receiving special education, he or she is also receiving basic education. The two are utterly intertwined. We will not decouple basic and special education and say that the BEA is always used up solely on basic education. Such a result would be absurd. The Alliance's own expert found that a special education student costs 190 percent of a basic education student. The State, when including the BEA and additional special education funding, allocates 193.09 percent of the cost of a basic education student for each special education student. Any deficit in special education disappears when the BEA is included in the calculations. The Alliance therefore does not present a prima facie case that the State is underfunding special education and fails to prove beyond a reasonable doubt that the State violated article IX, section 1.

III. Article VIII, Section 4 of the Washington Constitution Does Not Preclude Applying the BEA to Special Education

The Alliance next argues that article VIII, section 4 precludes the legislature from applying the BEA to fund special education.[4] The Alliance asserts that the legislature is not allowed to appropriate basic education funds to pay for special

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exists to ensure that special education students as a class receive basic education support and supplemental special education revenues. The 1077 accounting methodology in no way proves that the BEA is used up entirely on basic education services.

[4] The Alliance did not brief this issue in the trial court or the Court of Appeals.

education. Specifically, the Alliance argues that section 502 of chapter 518 of the Laws of 2005 provides funding only for basic education and that article VIII, section 4 precludes the State from appropriating any of the money in section 502 for special education. We disagree.

Article VIII, section 4 states that "[n]o moneys shall ever be paid out of the treasury . . . except in pursuance of an appropriation by law . . . and every such law making a new appropriation . . . shall distinctly specify the sum appropriated, and the object to which it is to be applied, and it shall not be sufficient for such law to refer to any other law to fix such sum." We have stated that this constitutional provision "requires every appropriation to specify the sum it appropriates for expenditure and the object to which the appropriation is to be applied." *Wash. Ass'n of Neighborhood Stores v. State*, 149 Wn.2d 359, 366, 70 P.3d 920 (2003).

The laws funding education do not violate article VIII, section 4. First and foremost, the legislature provided at the beginning of chapter 518 that it was adopting a general budget and that the specified amount could be "spent only for the specified purpose" if the legislature stated that it was "'[p]rovided solely.'" Laws of 2005, ch. 518, § 1(2)(e). Part V of chapter 518, including sections 502, 503, 504, and 507, provides funding for education. Section 502 provides funds for the general apportionment to the superintendent of public instruction. It sets out the number of

certified instructional staff that the State will fund in each district based on the district's average enrollment. This section does *not* state that it was provided solely for basic education, nor does it state that its funds cannot be used to pay for part of the special education costs for special education students. It merely provides a state allotment to each district based on its average total enrollment of *all* students. Laws of 2005, ch. 518, § 502. Section 503 determines the salaries and benefits that will be paid to certified instructional and administrative staff from the allocation in section 502. Laws of 2005, ch. 518, § 503. It does not state that it was "provided solely" for basic education. Section 504 provides a cost of living adjustment and incremental fringe benefit allocations for teachers who are funded under sections 502 and 503. Laws of 2005, ch. 518, § 504. It also does not state that it was "provided solely" for basic education. Section 507 states:

> (1) Funding for special education programs is provided on an excess cost basis, pursuant to RCW 28A.150.390. School districts shall ensure that special education students as a class receive their full share of the general apportionment allocation accruing through sections 502 and 504 of this act. To the extent a school district cannot provide an appropriate education for special education students under chapter 28A.155 RCW through the general apportionment allocation, it shall provide services through the special education excess cost allocation funded in this section.

Laws of 2005, ch. 518, § 507.

Section 507, which funds special education, specifically states that special

education students are to receive their full share of general basic education funds under sections 502 and 504. *Id*. It also states that special education funding is on an excess basis, pursuant to RCW 28A.150.390. *Id*. RCW 28A.150.390 states that special education programs must take into account state funds accruing through RCW 28A.150.250 and RCW 28A.150.260, statutes that describe the BEA. In short, section 507 clearly states that special education funding is given to special education students *in addition* to their receipt of the BEA. Furthermore, section 502 in no way states that it is only for basic education and not for special education. Section 502 funds a base level of education for all students while section 507 provides excess funding for special education students. It bears repeating that for special education students, special education and basic education are inextricably linked. When special education students are receiving special education services, they are also receiving basic education. Laws of 2005, ch. 518, § 507(2)(a)(iii). We will not decouple the two types of education and state that the BEA can go toward *only* basic education.

Chapter 518, part V as a whole provides education funding for all Washington State students. Its individual sections specify how that funding will be appropriated and each section "distinctly specif[ies] the sum appropriated, and the object to which it is to be applied." Const. art. VIII, § 4. Section 502 applies the BEA to the education of every student in Washington, sections 503 and 504 state how the BEA will be paid

out to teachers, and then section 507 applies excess cost allocations toward special education students. In the absence of any instruction from the legislature that the BEA must go to basic education (to the exclusion of special education), we hold that article VIII, section 4 is not violated.

CONCLUSION

We affirm the Court of Appeals. We hold that the Court of Appeals applied the proper standard when it ruled that the Alliance must prove that the State underfunded basic education "beyond a reasonable doubt." We also hold that we must consider the BEA when determining whether the State underfunds special education. When the BEA is included, the Alliance has not proved beyond a reasonable doubt that the State underfunds special education.

AUTHOR:
Justice Susan Owens

WE CONCUR:
Chief Justice Barbara A. Madsen

Justice Charles W. Johnson	Justice Mary E. Fairhurst
Justice Gerry L. Alexander	Justice James M. Johnson