

# Washington Law Review

---

Volume 92 | Number 1

---

3-1-2017

## The Washington State Constitution and Charter Schools: A General and Uniform Prohibition?

Asti Gallina

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wlr>



Part of the [Constitutional Law Commons](#), and the [Education Law Commons](#)

---

### Recommended Citation

Asti Gallina, Comment, *The Washington State Constitution and Charter Schools: A General and Uniform Prohibition?*, 92 Wash. L. Rev. 371 (2017).

Available at: <https://digitalcommons.law.uw.edu/wlr/vol92/iss1/9>

This Comment is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review by an authorized editor of UW Law Digital Commons. For more information, please contact [lawref@uw.edu](mailto:lawref@uw.edu).

# THE WASHINGTON STATE CONSTITUTION AND CHARTER SCHOOLS: A GENERAL AND UNIFORM PROHIBITION?

Asti Gallina\*

*Abstract:* In its 2015 opinion in *Washington League of Women Voters v. State*, the Washington State Supreme Court invalidated Initiative 1240—which authorized the creation of charter schools. The Court considered two issues on appeal: (1) that the charter schools unconstitutionally diverted common school funds to non-common schools; and (2) that the charter schools violated article IX, section 2 requiring the legislature to establish a “general and uniform system of common schools.” The Court resolved the case on the common school fund issue and did not reach the “general and uniform” challenge. In its slip opinion, the Court had included a footnote explaining that the charter schools under Initiative 1240 also violated the uniformity of the common school system. After denying the State’s petition for reconsideration, the Court issued an amended opinion omitting the footnote. Thus, the import of the article IX uniformity mandate on charter schools remains unsettled.

In response to the Court’s opinion in *League of Women Voters* invalidating Initiative 1240, the Washington State Legislature passed the Charter Public School Act (the CPSA). The CPSA establishes a system of charter schools outside the common school system. Because the Washington State Supreme Court has not yet considered a challenge to charter schools under the article IX “general and uniform mandate,” it is unclear whether charter schools—which are relatively free from regulation and focused on providing alternative and varied learning experiences—can fit within a general and uniform system of public schools.

This Comment argues that the uniformity requirement in article IX, section 2 of the Washington State Constitution requires the legislature to establish a uniform system of laws by which the public schools are administered. Although cases interpreting the article IX uniformity mandate emphasize the substantive uniformity of the schools themselves, the text of the Constitution, the structure of the public school system, and interpretations advanced in other contexts support a procedure-based interpretation. Because a procedurally uniform system does not necessarily require identical schools, this Comment argues that the charter school system established under the CPSA fits within the general and uniform system of public schools.

## INTRODUCTION

Article IX of the Washington State Constitution requires the legislature to fund “a general and uniform system of public schools.”<sup>1</sup>

---

\* J.D. Candidate 2017, University of Washington School of Law. Special thanks to Hugh Spitzer for his insightful critiques and guidance and to the members of *Washington Law Review* for their support throughout. The author is a Teach for America alumnus and taught at a charter school from 2012–2014.

1. WASH. CONST. art. IX, § 2.

That system must include “common schools, and such high schools, normal schools, and technical schools as may hereafter be established.”<sup>2</sup> In 2012, Washington State voters passed Initiative Measure 1240 (I-1240), authorizing the creation of up to forty charter schools.<sup>3</sup> The Initiative defined charter schools as common schools and provided that charter schools would be funded to the same extent, and with the same sources of funding, as other common schools.<sup>4</sup> In September 2015, the Washington State Supreme Court declared I-1240 unconstitutional in *League of Women Voters of Washington v. State (League of Women Voters)*.<sup>5</sup> The Court held that charter schools under I-1240 were not common schools because they were not subject to local voter control.<sup>6</sup> As a result, the Court concluded charter schools could not receive certain funds restricted for the exclusive use of common schools.<sup>7</sup> Because the decision effectively deprived charter schools of funding, the Court held the provision was not severable and invalidated the entire Initiative.<sup>8</sup>

Opponents of Initiative 1240 challenged the law based on two distinct arguments. They argued that charter schools were not common schools and that the charter schools broke with the uniformity of the common school system.<sup>9</sup> Ruling on cross-motions for summary judgment, the King County Superior Court held that these schools satisfied the constitutional uniformity requirement, but did not qualify as common schools because of the lack of voter control.<sup>10</sup> The Court held that the funding provision was severable, however, and did not invalidate the Initiative in its entirety.<sup>11</sup>

The Washington State Supreme Court heard the case on direct review.<sup>12</sup> Because it concluded that the funding provisions were not

---

2. *Id.*

3. Wash. Initiative Measure No. 1240 (approved Nov. 6, 2012), [https://wei.sos.wa.gov/agency/osos/en/press\\_and\\_research/PreviousElections/2012/General-Election/Documents/I-1240\\_complete\\_text.pdf](https://wei.sos.wa.gov/agency/osos/en/press_and_research/PreviousElections/2012/General-Election/Documents/I-1240_complete_text.pdf) [http://perma.cc/NJ4N-FYYH] (codified in various sections of WASH. REV. CODE § 28A (2014)); *see also* WASH. REV. CODE § 28A.710.

4. Initiative Measure No. 1240, §§ 202(1), 215(1), 220, 223(1) (codified at WASH. REV. CODE §§ 28A.710.020(1), 28A.710.150(1), 28A.710.220, 28A.710.230(1)).

5. 184 Wash. 2d 393, 355 P.3d 1131 (2015) (originally published Sept. 4, 2015).

6. *Id.* at 404, 355 P.3d at 1137.

7. *Id.*

8. *Id.* at 410, 355 P.3d at 1140.

9. Trial Order, *League of Women Voters of Wash. v. State*, No. 13-2-24977-4 SEA (Wash. Super. Ct. Dec. 12, 2013), 2013 WL 11109512.

10. *Id.*

11. *Id.*

12. *League of Women Voters*, 184 Wash. 2d at 397, 355 P.3d at 1133.

severable, it did not go on to address the uniformity arguments advanced by the plaintiffs.<sup>13</sup> However, in its original opinion, the majority included a footnote suggesting that the charter legislation would also violate the constitutional requirement of a general and uniform system.<sup>14</sup> The majority later issued an amended opinion in which it omitted the footnote, deferring the question to a later date.<sup>15</sup> By doing so, the Court left to another day the question whether charter schools can satisfy the constitutional requirement for a general and uniform system.<sup>16</sup>

The Court issued its opinion the day before hundreds of students were set to begin the new school year, causing widespread confusion and uncertainty.<sup>17</sup> In following months, students, teachers and lawyers scrambled to make sense of the ruling.<sup>18</sup> Some politicians and judicial candidates denounced the Court's decision.<sup>19</sup> During the 2016 legislative session, the Washington State Legislature passed new charter legislation, known as the Charter Public School Act (CPSA), in an effort to keep the

---

13. *Id.*

14. *League of Women Voters of Wash. v. State*, No. 89714-0, slip op. at 11 n.10 (Wash. Sept. 4, 2015) (“[T]he absence of local control by voters would also violate the article IX uniformity requirement.”)

15. *Order Changing Opinion and Denying Further Reconsideration, League of Women Voters of Wash.*, 184 Wash.2d 393, 355 P.3d 1131 (No. 89714-0).

16. *See Complaint, El Centro de la Raza v. State*, No. 16-2-18527-4 (Wash. Super. Ct. Aug. 16, 2016) (“Plaintiffs seek to protect the interests relating to the education of children across the state and, in particular, their judicially enforceable right to have the State amply provide them with an education and establish a general and uniform system of public schools.”).

17. *See, e.g., Emma Brown, What Makes a Public School Public? Washington State Court Finds Charter Schools Unconstitutional*, WASH. POST (Sept. 9, 2015), [https://www.washingtonpost.com/local/education/what-makes-a-public-school-public-washington-state-court-finds-charter-schools-unconstitutional/2015/09/08/706975c8-5632-11e5-8bb1-b488d231bba2\\_story.html](https://www.washingtonpost.com/local/education/what-makes-a-public-school-public-washington-state-court-finds-charter-schools-unconstitutional/2015/09/08/706975c8-5632-11e5-8bb1-b488d231bba2_story.html) [<https://perma.cc/GCM6-CBSE>] (“[T]he future is uncertain for the state’s nine charter schools and the 1,200 students who attend them.”); Gene Johnson, *State’s Charter Schools to Stay Open Despite High Court Ruling*, KOMO NEWS (Sept. 8, 2015), <http://komonews.com/news/local/states-charter-schools-to-stay-open-despite-high-court-ruling> [<https://perma.cc/APP4-UFUT>] (describing Charter School Association’s commitment to keep charter schools open for the remainder of the school year despite unclear funding sources).

18. *Updated: WA Charters Statement on Yesterday’s State Supreme Court Ruling*, WA CHARTERS (Sept. 5, 2015), <http://wacharters.org/updated-wa-charters-statement-on-yesterdays-state-supreme-court-ruling/> [<https://perma.cc/G2UB-QYSA>] (“Along with legal experts, we are carefully reviewing the decision to determine how this ruling will be applied. Until we know more, every public charter school plans to be open on Tuesday, September 8, and we will do everything in our power to ensure that there is no disruption for the students currently enrolled in Washington’s public charter schools.”).

19. *Former Gov. Gregoire on the State Supreme Court Ruling*, WA CHARTERS (Sept. 18, 2015), <http://wacharters.org/former-gov-gregoire-on-the-state-supreme-court-ruling/> [<https://perma.cc/B5TM-UVRE>].

doors to Washington's charter schools open.<sup>20</sup> The CPSA defines charter schools as public schools operating outside of the common school system.<sup>21</sup> Because they operate outside the common school system, charter schools are not subject to the same stringent standards articulated by the Court to qualify as common schools.<sup>22</sup> However, the schools must still fit within the constitutional requirement for a "general and uniform" system of public schools.<sup>23</sup>

The language requiring a "general and uniform" system of public schools was present in the original constitution ratified by the citizens of Washington in 1889.<sup>24</sup> Since then, the Court has had few opportunities to define its scope.<sup>25</sup> The bounds of the constitutional mandate, therefore, remain unclear. How much variation between individual schools does the Constitution permit while still maintaining a general and uniform system?<sup>26</sup> Must all schools within the public school system be uniform, or is uniformity required only within each class of schools?<sup>27</sup> In light of this constitutional ambiguity, how should the Court interpret the general and uniform requirement?<sup>28</sup> Is there a place for charter schools within a general and uniform system?<sup>29</sup> This Comment explores each of these questions and attempts to advance an interpretation of the "general and uniform" requirement that both (1) reflects the framer's original intent and (2) allows for public schools that can adapt and accommodate students with diverse needs.

---

20. Act effective April 3, 2016, ch. 241, 2016 Wash. Sess. Laws 1207.

21. *League of Women Voters of Washington v. State*, 184 Wash. 2d 393, 404, 355 P.3d 1131, 1137 (2015).

22. *See infra* section IV.A.

23. WASH. CONST. art. IX § 2.

24. *Id.*

25. *See infra* section III.A.

26. *Cf.* L.K. Beale, *Charter Schools, Common Schools, and the Washington State Constitution*, 72 WASH. L. REV. 535, 551–53 (1997) (discussing the ambiguity of the language in art. IX, § 2); *Education—Charter Schools—Washington Supreme Court Holds Charter School Act Violates State Constitution—League of Women Voters of Washington v. State*, 355 P.3d 1131 (Wash. 2015), 129 HARV. L. REV. 1811 (2016) [hereinafter *Washington Supreme Court Holds Charter School Act Violates State Constitution*] (noting the Court left issues of uniformity unresolved in its opinion in *League of Women Voters*).

27. *Cf.* Beale, *supra* note 26; *Washington Supreme Court Holds Charter School Act Violates State Constitution*, *supra* note 26.

28. *Cf.* Beale, *supra* note 26; *Washington Supreme Court Holds Charter School Act Violates State Constitution*, *supra* note 26.

29. *Cf.* Beale, *supra* note 26; *Washington Supreme Court Holds Charter School Act Violates State Constitution*, *supra* note 26.

Part I will discuss the history and ideology of both the common school and charter school movements. Part II will survey the major cases and legislation influencing charter schools in Washington State. Part III will examine the scope of article IX, section 4 of the Washington State Constitution, including its plain meaning, contemporaneous interpretations, case law, and modern practice and usage to inform the scope of the “general and uniform” mandate. This Comment will then argue that the mandate requires a “general” system of schools that is free and open to all. In addition, the legislature must maintain procedural uniformity in the operation of the law by prescribing a consistent set of procedures governing educational outcomes, administrative oversight, and funding. Finally, Part IV will examine whether the legislature’s new charter legislation satisfies the general and uniform mandate using the procedure-based interpretation advanced in Part III. This Comment concludes by arguing that the CPSA provides sufficient procedural uniformity in the establishment, administration and oversight of charter schools to survive a constitutional challenge on general and uniform grounds.

## I. THE IDEOLOGIES OF THE COMMON SCHOOL AND CHARTER SCHOOL MOVEMENTS INFORM THE MODERN LEGAL DEBATE

The challenges levied against charter schools in Washington State reflect the inherent tension between the charter school and common school models.<sup>30</sup> The common school movement emerged in the 1830s as a response to the widely varying access to education for students throughout the country.<sup>31</sup> Focused on providing all students with a quality education, the movement emphasized equality and uniformity as a means to provide students with equal access to education regardless of income or location.<sup>32</sup> Over time, however, education activists began to question the common school movement’s one-size-fits-all approach to education.<sup>33</sup> The charter school movement emerged as one solution to the perceived need for alternative educational paradigms.<sup>34</sup> Like the

---

30. *See generally* League of Women Voters of Wash. v. State, 184 Wash. 2d 393, 355 P.3d 1131 (2015); Sch. Dist. No. 20, Spokane Cty. v. Bryan, 51 Wash. 498, 99 P. 28 (1909).

31. CARL KAESTLE, PILLARS OF THE REPUBLIC: COMMON SCHOOLS AND AMERICAN SOCIETY, 1780–1860, at 5–7 (1983).

32. *See id.*

33. *See, e.g.*, DANNY WEIL, CHARTER SCHOOLS: A REFERENCE HANDBOOK 12–14 (2000) (discussing various public school reform movements).

34. *See id.*

common school movement, the charter school movement focuses on increasing student access to quality education.<sup>35</sup> However, the charter school movement emphasizes individual choice and market forces as means to improve education.<sup>36</sup> Charter school proponents believe that freeing schools to pursue diverse educational opportunities will allow parents and students to identify successful schools and permit the state to discontinue unsuccessful models.<sup>37</sup> The Washington State Supreme Court's decision in *League of Women Voters* drew heavily on concepts from the common school movement entrenched in the Washington Constitution to invalidate Initiative 1240.<sup>38</sup> An overview of the two movements thus provides context for the larger debate over charter schools and informs the legal arguments on either side.

A. *The Common School Movement's Emphasis on Uniformity Influenced Many State Constitutions and Education Laws*

Common schools are public schools that provide a basic K–12 education. Three primary features characterize common schools: (1) the schools are open to all students of eligible age and are free to attend; (2) teachers maintain state-issued certifications; and (3) the schools are subject to the control of locally-elected board members.<sup>39</sup> Because the common school movement influenced modern education, the movement's origins inform the current legal landscape for schools in Washington<sup>40</sup> and nationwide.<sup>41</sup>

The common school movement emerged as a reform effort in response to the meager (and widely varying) access to education for students of different social classes and localities.<sup>42</sup> Early American education was neither compulsory nor available to all students.<sup>43</sup> Deriving from the traditions of Colonial America, parents, churches, and

---

35. See JOSEPH MURPHY & CATHERINE DUNN SHIFFMAN, UNDERSTANDING AND ASSESSING THE CHARTER SCHOOL MOVEMENT 22 (2002).

36. See WEIL, *supra* note 33, at 119–20.

37. See *id.*

38. *League of Women Voters of Wash. v. State*, 184 Wash. 2d 393, 405, 355 P.3d 1131, 1137 (2015).

39. Cf. *Sch. Dist. No. 20, Spokane County v. Bryan*, 51 Wash. 498, 99 P. 28 (1909).

40. See *League of Women Voters*, 184 Wash. 2d at 404, 355 P.3d at 1137 (discussing the features of a common school).

41. See JOEL SPRING, THE AMERICAN SCHOOL: FROM THE PURITANS TO NO CHILD LEFT BEHIND 102 (7th ed. 2008).

42. See *id.* at 78–79.

43. LAWRENCE A. CREMIN, TRADITIONS OF AMERICAN EDUCATION 12 (1977).

municipalities organized early schools.<sup>44</sup> Funding, teacher education, and curricula varied widely by location.<sup>45</sup> For example, the Massachusetts General School Law of 1647 required towns of more than fifty households to provide a teacher to instruct the children to read and write; the law required larger towns to establish a school.<sup>46</sup> By contrast, the schools in other states typically comprised an un-unified system of private-pay schools and charity schools.<sup>47</sup> While most charity schools originated as church-run institutions for the education of indigent students, many charity schools eventually secured funding from city and state governments.<sup>48</sup>

Following the American Revolution, the concept of formal education gained popularity.<sup>49</sup> In 1779, Thomas Jefferson published *A Bill for the More General Diffusion of Knowledge*.<sup>50</sup> Jefferson advocated for schoolhouses in every county that would provide at least three years of instruction in reading, writing, common math, and with an emphasis on classical history.<sup>51</sup> Unlike many of his peers, Jefferson did not believe schools should provide religious or political instruction.<sup>52</sup> Noah Webster, on the other hand, viewed public schooling as a means to instill common moral and social values in young students.<sup>53</sup> Although the neutral ideology advanced by Jefferson prevailed, Webster made a lasting contribution in American education through the series of schoolbooks he developed, which gained widespread popularity throughout early common schools.<sup>54</sup>

The common school movement took shape in the 1830s and 1840s when school reformers put into place the educational ideas advanced by

---

44. KAESTLE, *supra* note 31, at 3.

45. *Id.* at 4.

46. *Old Deluder Act (1647)*, MASS. GOV., <http://www.mass.gov/courts/docs/lawlib/docs/deludersatan.pdf> [<https://perma.cc/7PMT-YDY7>].

47. KAESTLE, *supra* note 31, at 3–4.

48. *Id.* at 6.

49. LAWRENCE A. CREMIN, *AMERICAN EDUCATION: THE NATIONAL EXPERIENCE 1783–1876*, at 5 (1980). See also Benjamin Rush, *Of the Mode of Education Proper in a Republic*, in *ESSAYS ON EDUCATION IN THE EARLY REPUBLIC* 9–23 (Frederick Rudolph ed., 1965).

50. Thomas Jefferson, *A Bill for the More General Diffusion of Knowledge (1779)*, reprinted in *THE SCHOOL IN THE UNITED STATES: A DOCUMENTARY HISTORY* 20 (James W. Fraser ed., 2d ed. 2001).

51. *Id.* at 21.

52. *Id.* at 23–24.

53. KAESTLE, *supra* note 31, at 5–6.

54. *Id.*



earlier generations.<sup>55</sup> Like Noah Webster, common school reformers advocated education as a way to reduce tensions between social classes, instill shared moral and civic values, and ensure an informed and capable citizenry fit to carry on the republican form of government.<sup>56</sup> Common schools differed from previous schools in several respects. First, the movement advocated educating students in a common schoolhouse.<sup>57</sup> Reformers believed that by educating different groups of children together, hostilities and tensions between different groups would abate.<sup>58</sup> Second, the schools sought to teach government policy-making and nationalism.<sup>59</sup> This was a particularly important goal prior to the civil war because views on American citizenship differed sharply.<sup>60</sup> A third feature of the movement was its role in influencing state legislatures to create agencies to oversee education.<sup>61</sup> Although many states enacted laws requiring counties to provide for local education, the lack of centralized oversight continued the phenomenon of widely varying access to education.<sup>62</sup> These three features formed the basis for many of the modern goals of education.<sup>63</sup> The belief that human nature is malleable and that morality and civic duty can be taught remains central to education theory today.<sup>64</sup>

Two of the most influential figures in advancing the early common school movement were Horace Mann and Henry Barnard.<sup>65</sup> Between the 1820s and 1850s, Mann and Barnard edited periodicals devoted to education and authored influential works regarding the necessity and

---

55. SPRING, *supra* note 41, at 78.

56. See Horace Mann, *Tenth Annual Report*, in *THE REPUBLIC AND THE SCHOOL: HORACE MANN ON THE EDUCATION OF FREE MEN* 62–63 (Lawrence Cremin ed., 1957).

57. SPRING, *supra* note 41, at 79.

58. *Id.*

59. *Id.*

60. *Id.* See also *Common School Movement—Colonial and Republican Schooling, Changes in the Antebellum Era, the Rise of the Common School*, EDUC. ENCYCLOPEDIA, STATEUNIVERSITY.COM, <http://education.stateuniversity.com/pages/1871/Common-School-Movement.html> [<https://perma.cc/RR2B-NU6C>].

61. *Id.*

62. *Id.*

63. See *id.*

64. See, e.g., Stefanie Sanford, *Making Americans: Civic Education and the Common Core*, THOMAS B. FORDHAM INST. (Nov. 19, 2013), <https://edexcellence.net/commentary/education-gadfly-daily/common-core-watch/making-americans-civic-education-and-the-common> [<https://perma.cc/U4GK-BTXS>] (advocating education as a primary tool in the creation of civic-minded citizens).

65. SPRING, *supra* note 41, at 80–81.

purposes of common schools.<sup>66</sup> During this same time, two important shifts were taking place in American society: the abolition of property requirements for suffrage and the widening disparity between social classes as a result of industrialization.<sup>67</sup> Seizing on the uncertain political atmosphere, Mann argued that schools must educate children on the importance of using the vote rather than violence to effect political change.<sup>68</sup>

As the common school movement gained traction, it gained popularity with political groups that advocated common schools as a means of furthering policy goals. Many advocates for common schools were members of the newly-formed Whig party who believed that the government should intervene to provide services such as a free public education to society.<sup>69</sup> The Jacksonian Democrats—the other major political party at the time—opposed the common school movement, arguing that social order would naturally emerge, and instead supported a system of locally-controlled schools.<sup>70</sup> Industrialization gave rise to additional education-based concerns, and the Workingmen’s party emerged with educational demands.<sup>71</sup> The Workingmen’s party, which gained influence in the Eastern states in the late 1820s, advocated education as a means to protect individual rights.<sup>72</sup>

As the common school movement took hold, many states began to codify a right to education either in their state constitutions or legislation creating an affirmative right to education.<sup>73</sup> Legislation from this time

---

66. *Id.* at 81.

67. See WAYNE J. URBAN & JENNINGS L. WAGONER, JR., *AMERICAN EDUCATION: A HISTORY* 90 (5th ed. 2014). Notably, in the southern states, most slaves had no access to formal education and opportunities for free blacks were limited. See, e.g. Slave Code of South Carolina, DUHAIME, <http://www.duhaime.org/LawMuseum/LawArticle-1503/1740-Slave-Code-of-South-Carolina-Articles-44-49.aspx> [https://perma.cc/ZAB9-9VLD] (imposing a fine on individuals who educate slaves).

68. See Horace Mann, *Twelfth Annual Report*, in *THE REPUBLIC AND THE SCHOOL: HORACE MANN ON THE EDUCATION OF FREE MEN* 93 (Lawrence Cremin ed., 1957) (“Had the obligations of the future citizen been sedulously inculcated upon all the children of this Republic, would the patriot have had to mourn over so many instances, where the voter, not being able to accomplish his purpose by voting, has proceeded to accomplish it by violence . . .”).

69. Mark Groen, *The Whig Party and the Rise of Common Schools, 1837–1854: Party and Policy Reexamined*, 35 *AM. EDUC. HIST. J.* 251, 252 (2008).

70. SPRING, *supra* note 41, at 92.

71. *Id.* at 89–90.

72. See *id.* at 90 (quoting an editorial in *The Workingmen’s Advocate* from 1830 arguing, “The right of self government implies a right to a knowledge necessary to the exercise of the right of self government. If all have an equal right to the first, all must consequently have an equal right to the second; therefore, all are entitled to equal compensation.”) (citation omitted).

73. See SPRING, *supra* note 41, at 92.

strongly reflects common school influences.<sup>74</sup> For example, the Enabling Act admitting North Dakota, South Dakota, Montana and Washington to the Union specifically designated federal land grants “for the use and benefit of the common schools” of the states.<sup>75</sup> Likewise, the constitutions of many western states chartered in the mid-1800s include language referring specifically to common schools.<sup>76</sup> This is significant because it reveals the extent to which the values of the common school movement shaped the landscape of education law.

As demonstrated by the conflict between the Whigs and the Jacksonian-Democrats, the success of the common school movement could be viewed, at least in part, as a triumph of one political ideology over another. Common schools enforce uniformity through centralized governmental control to achieve educational equality.<sup>77</sup>

*B. The Charter School Movement Advocated Education Reforms that Allowed for Variation and Individualization*

A public charter school is a publicly funded school typically governed by a group or organization under a contract, known as a charter.<sup>78</sup> Schools can be independent single-site schools or operate as part of a network run by a central managing organization.<sup>79</sup> Either nonprofit organization or for-profit management organizations may operate charter schools, depending on the state legislation.<sup>80</sup> The charter exempts the school from certain state or local regulations. This exemption provides the school with greater autonomy to educate its students.<sup>81</sup> In exchange

74. See, e.g., Enabling Act of Feb. 22, 1889, ch. 180, 25 Stat. 676 (1889) (providing funds specifically for the benefit of common schools). The tradition of dedicating public lands for education dates all the way back to the Northwest Ordinance of 1787. See *Northwest Ordinance*, OUR DOCUMENTS, <https://www.ourdocuments.gov/doc.php?flash=true&doc=8> [https://perma.cc/VW8M-3KNP].

75. *Id.* at 682.

76. E.g., IDAHO CONST. art. IX, § 1 (1889); IOWA CONST. art. IX, § 12 (1857); NEV. CONST. art. 11, § 2 (1864); N.D. CONST. art X, § 24 (1889); WYO. CONST. art. 7, § 1 (1889).

77. See SPRING, *supra* note 41, at 93.

78. *Fast Facts: Charter Schools*, U.S. DEP'T OF EDUC.: NAT'L CTR. FOR EDUC. STAT., <https://nces.ed.gov/fastfacts/display.asp?id=30> [https://perma.cc/BME3-ZB5G].

79. NAT'L ALL. FOR PUB. CHARTER SCHS., A CLOSER LOOK AT THE CHARTER SCHOOL MOVEMENT 2 (2016), <http://www.publiccharters.org/wp-content/uploads/2016/02/New-Closed-2016.pdf> [http://perma.cc/A4BU-2ZCP].

80. See *id.* A survey of charter schools operating throughout the nation during the 2015–16 school year found that 15% of charter schools were operated by education management organizations, 26% were operated by charter management organizations, and 59% were independently operated.

81. See WEIL, *supra* note 33, at 6–7.

for this flexibility, the charter school must perform in accordance with the accountability measures prescribed by its charter.<sup>82</sup>

At the end of the contract term, the charter authorizing entity can either renew or terminate the school's charter.<sup>83</sup> Authorizers should base this decision on how well the school adhered to its charter contract and the outcomes it achieved for schools.<sup>84</sup> In this way, charter schools engage in a tradeoff: greater autonomy in exchange for strict accountability.<sup>85</sup> Rather than complying with the numerous state-promulgated rules and regulations that govern district schools, charter schools are relatively free to experiment.<sup>86</sup> Proponents of charter schools argue that this pressure to perform will motivate the schools to use their autonomy to improve educational outcomes for students.<sup>87</sup>

Charter schools are not the first attempt to decentralize schools and work around the regulations and bureaucracy perceived to stifle innovation in public schools.<sup>88</sup> Innovative schools, magnet schools, and alternative schools appeared before the charter school model for school reform.<sup>89</sup> Innovative schools were district-based schools utilizing experimental curricula and instructional techniques.<sup>90</sup> These schools were different because they directly incorporated input from teachers, parents, and community members.<sup>91</sup> Magnet schools emerged in the 1970s as a way to attract diverse parents and students through additional funding and specialized curriculum and instruction.<sup>92</sup> Charter school proponents identified their model as a means to serve students who were

---

82. *See id.* at 6.

83. *See id.* at 7.

84. Marc Dean Millot, *Autonomy, Accountability, and the Values of Public Education*, CTR. ON REINVENTING PUB. EDUC. 8 (1996), [http://www.crpe.org/sites/default/files/pub\\_crpe\\_aavpe\\_dec96\\_0.pdf](http://www.crpe.org/sites/default/files/pub_crpe_aavpe_dec96_0.pdf) [<https://perma.cc/99VM-WJRP>].

85. *See* MURPHY & DUNN SHIFFMAN, *supra* note 35, at 52–53.

86. *See id.*

87. *See id.* Importantly, this theory is valid only if authorizers actually enforce performance requirements under the charter contract.

88. *See* WEIL, *supra* note 33, at 7–9, 33.

89. *See* JOE NATHAN, CHARTER SCHOOLS: CREATING HOPE AND OPPORTUNITY FOR AMERICAN EDUCATION 5–10 (1996).

90. *Id.*

91. *Id.*

92. WEIL, *supra* note 33, at 7–9. *See also* *What are Magnet Schools?*, MAGNET SCHS. OF AM., <http://www.magnet.edu/about/what-are-magnet-schools> [<https://perma.cc/J6QH-28SM>]. Magnet schools were also used as desegregation incentives. *Id.*

not succeeding in traditional school settings, such as students with a pattern of behavioral problems or students at risk of dropping out.<sup>93</sup>

Ray Budde and Albert Shanker are generally credited with developing the charter school concept throughout the 1980s.<sup>94</sup> Ray Budde, a New England educator, first coined the term “charter school” in his 1974 paper presented to the Society for General Systems Research titled *Education by Charter: Restructuring School Districts*.<sup>95</sup> Budde’s model envisioned chartering academic departments or programs rather than entire schools.<sup>96</sup> He believed that successful charter departments could then serve as models for larger school or district-wide reform.<sup>97</sup> Budde’s vision gained substantial momentum after another education reformer, Al Shanker, presented the charter model during a National Press Club speech.<sup>98</sup> Shanker and the American Federation of Teachers saw charter schools as a vehicle to address the eighty percent of students who were, they said, not adequately served by traditional district schools.<sup>99</sup> In contrast with Budde, Shanker advocated chartering entire schools rather than departments or programs.<sup>100</sup> Under Shanker’s framework, teachers unions would work together with school boards to review charter school proposals.<sup>101</sup> Teachers would be given the same resources as teachers in traditional district schools.<sup>102</sup> Shanker and Budde both advocated allowing charter schools to demonstrate results over defined periods of time.<sup>103</sup>

In 1991, Minnesota passed the nation’s first charter school statute.<sup>104</sup> The legislation provided for the establishment of up to eight charter

---

93. WEIL, *supra* note 33, at 33–34. *See generally* RICHARD NEUMANN, *SIXTIES LEGACY: A HISTORY OF THE PUBLIC ALTERNATIVE SCHOOLS MOVEMENT, 1967–2001* (2003).

94. NATHAN, *supra* note 89, at 62–63.

95. *See* Ray Budde, *Education by Charter*, 70 *PHI DELTA KAPPAN* 518, 518–20 (1989).

96. *Id.* at 519.

97. *Id.*

98. NATHAN, *supra* note 89, at 62–63.

99. *See* Albert Shanker, *Charter Schools: Open for Other 80 Percent*, 45 *SCH. ADMIN.* 72, 72 (1988).

100. Reynaldo Contreras, *The Charter School Movement in California and Elsewhere*, 27 *EDUC. & URB. SOC’Y* 213, 215 (1995).

101. Albert Shanker, *Restructuring Our Schools*, 65 *PEABODY J. OF EDUC.* 88, 98 (1988).

102. *Id.*

103. *See* Budde, *supra* note 95, at 519 (proposing charter terms of three to five years); Shanker, *supra* note 99 (proposing charter terms of five to ten years).

104. 1991 Minn. Laws ch. 265, art. 9, § 3; *see also* MURPHY & DUNN SHIFFMAN, *supra* note 35, at 27.

schools throughout the state.<sup>105</sup> The schools were free from most state and local education regulations except mandatory teaching certification requirements.<sup>106</sup> The law permitted both the local school board and the state school board to authorize charter schools.<sup>107</sup> The law provided that each charter school would have a board, comprised primarily of teachers.<sup>108</sup> Subsequent amendments to the law removed the requirements for local school board approval.<sup>109</sup> The legislature also repealed the cap on charter schools, allowing an unlimited number of charter schools.<sup>110</sup> In addition, the state authorized public and private four-year and community colleges to sponsor charter schools.<sup>111</sup>

Since the Minnesota legislation passed in 1991, the number of charter schools has grown rapidly.<sup>112</sup> In 1999, approximately 350,000 students throughout the nation attended charter schools.<sup>113</sup> Due to the proliferation of charter school legislation throughout the 1990s, that number increased to roughly 3.5 million students by 2015.<sup>114</sup> As of December 2016, forty-two states have passed legislation providing for the establishment of charter schools.<sup>115</sup> Additionally, states continue to amend and expand existing charter school policies. As of December 2016, states have considered 218 bills amending or expanding existing charter school finance legislation.<sup>116</sup>

Charter school proponents argue that the choice charter schools provide to parents to opt for an alternative educational experience for

---

105. MURPHY & DUNN SHIFFMAN, *supra* note 35, at 28.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. THOMAS L. GOOD, *THE GREAT SCHOOL DEBATE: CHOICE, VOUCHERS, AND CHARTERS*, ch. 5 (2009) (ebook).

113. *Id.*

114. NAT'L ALL. FOR PUB. CHARTER SCHS., *ESTIMATED NUMBER OF PUBLIC CHARTER SCHOOLS & STUDENTS, 2014–2015*, at 1 (Feb. 2015), [http://www.publiccharters.org/wp-content/uploads/2015/02/open\\_closed\\_FINAL.pdf](http://www.publiccharters.org/wp-content/uploads/2015/02/open_closed_FINAL.pdf) [<https://perma.cc/6W7K-WP69>].

115. *The Last Eight States Without Charter Laws*, CTR. FOR EDUC. REFORM (2016), <https://www.edreform.com/2013/01/the-last-eight-states-without-charter-school-laws/> [<https://perma.cc/UCE2-786G>].

116. *State Legislation—Choice of Schools—Charter Schools—Finance*, EDUC. COMM'N OF THE STS., <http://b5.caspio.com/dp.asp?AppKey=b7f93000695b3d0d5abb4b68bd14&id=a0y70000000Cbm6AAC> [<https://perma.cc/Z79G-W66A>].

their children increases educational quality in all schools.<sup>117</sup> Following this logic, school choice benefits even students who do not attend charter schools because traditional schools must provide better academic programs to compete for students.<sup>118</sup> Moreover, charter schools can serve as small-scale laboratories for experiments in educational innovation.<sup>119</sup> By allowing teachers and administrators greater autonomy to experiment, charter schools put the decision-making power in the hands of experts rather than politicians.<sup>120</sup>

Opponents of charter schools criticize public school privatization.<sup>121</sup> Because many states' charter school laws permit for-profit companies to sponsor charter schools, education management organizations and charter management organizations have emerged to run charter schools for a profit.<sup>122</sup> Another common objection to charter schools focuses on the lack of measurable results.<sup>123</sup> Over twenty years after the first charter schools opened in Minnesota, studies measuring the effectiveness of charter schools are still wholly inconclusive.<sup>124</sup> Further, charter school opponents often criticize charter schools for the use of “weed out” or “skimming” techniques, which are policies and tactics used by schools to selectively shape the school's student body.<sup>125</sup> This practice not only

---

117. See, e.g., NAT'L ALL. FOR PUB. CHARTER SCHS., SEPARATING FACT & FICTION: WHAT YOU NEED TO KNOW ABOUT CHARTER SCHOOLS 11 (2014), <http://www.publiccharters.org/wp-content/uploads/2014/08/Separating-Fact-from-Fiction.pdf> [<https://perma.cc/XB79-4VLW>] (describing reasons parents value school choice options).

118. See *id.*

119. See *id.*

120. See *id.*

121. See, e.g., SPRING, *supra* note 41, at 474–79 (characterizing charter schools as part of the school privatization movement); Valerie Strauss, *A Primer on the Damaging Movement to Privatize Public Schools*, WASH. POST (Jan. 7, 2016), <https://www.washingtonpost.com/news/answer-sheet/wp/2016/01/07/a-primer-on-the-damaging-movement-to-privatize-public-schools/> [<https://perma.cc/JTN2-EMUB>] (characterizing the charter school movement as an outgrowth of private corporate interests).

122. Marian Wang, *When Charter Schools Are Nonprofit in Name Only*, PROPUBLICA (Dec. 9, 2014, 10:49 AM), <https://www.propublica.org/article/when-charter-schools-are-nonprofit-in-name-only> [<https://perma.cc/QEP2-HSVF>].

123. *Charter Schools: Finding Out the Facts: At a Glance*, CTR. FOR PUB. EDUC., <http://www.centerforpubliceducation.org/Main-Menu/Organizing-a-school/Charter-schools-Finding-out-the-facts-At-a-glance> [<https://perma.cc/8BG7-UJAF>] (last visited Jan. 14, 2017).

124. See *id.*; CTR. FOR RES. ON EDUC. OUTCOMES, NATIONAL CHARTER SCHOOL STUDY EXECUTIVE SUMMARY 24 (2013), <https://credo.stanford.edu/documents/NCSS%202013%20Executive%20Summary.pdf> [<https://perma.cc/2636-BC9W>].

125. Stephanie Simon, *Special Report: Class Struggle—How Charter Schools Get Students They Want*, REUTERS (Feb. 15, 2013, 8:41 PM), <http://www.reuters.com/article/us-usa-charters-admissions-idUSBRE91E0HF20130216> [<https://perma.cc/CFE7-YYVH>]. But see *Charter Schools*

artificially inflates performance indicators, but also contributes to school segregation because students that are not admitted to charter schools return to their local district schools.<sup>126</sup> Finally, the high-stakes accountability measures in place for charters make them more likely to close than district counterparts.<sup>127</sup> Charter school opponents fear these frequent school closures may result in a transient educational landscape in already-disadvantaged areas.<sup>128</sup>

Despite inconclusive outcomes, charter schools remain a popular tool in the school reform movement.<sup>129</sup> Perhaps because of the immense variation inherent in the charter school model, the effectiveness of specific school models and curricular techniques may not become apparent for many years to come.<sup>130</sup> Nonetheless, what charter schools lack in definitive statistics, they make up for in popularity.<sup>131</sup> Although the public opinion is far from settled on the effectiveness and desirability of charter schools as an alternative to traditional district schools,<sup>132</sup> their national proliferation suggests the charter school model will continue to be a feature of the school reform movement for the foreseeable future.

## II. WASHINGTON STATE'S TURBULENT ROAD TO CHARTER SCHOOLS

### A. *Common Schools in Washington State*

In Washington State, the influence of the common school movement's ideals is evident in the text of the state Constitution and in early education laws. The Washington State Constitution, ratified in 1889, contains a provision specifically directing the legislature to provide for a system of common schools.<sup>133</sup> Likewise, passing legislation establishing a common school system was one of the

---

*Aren't Creaming the Best Students*, CTR. FOR EDUC. REFORM, <https://www.edreform.com/2013/02/charter-schools-arent-creaming-the-best-students/> [<https://perma.cc/H8GQ-K7UX>].

126. See Simon, *supra* note 124.

127. See Sarah Butrymowicz, *When Charter Schools Fail, What Happens to the Kids?*, HECHINGER REP. (Jan. 31, 2012), <http://hechingerreport.org/when-charter-schools-fail-what-happens-to-the-kids/> [<https://perma.cc/7UWJ-MDKN>].

128. See *id.*

129. See NAT'L ALL. FOR PUB. CHARTER SCHS., *supra* note 117.

130. See *supra* notes 123–24.

131. See *supra* note 115.

132. See *supra* notes 123–25.

133. WASH. CONST. amend. IX.



Washington State Territorial Legislature's first acts.<sup>134</sup> The legislation provided numerous mechanisms to ensure the school uniformity and equal access for students, including the establishment of a permanent school fund, teacher certification requirements, and procedures to elect local district directors.<sup>135</sup> Despite promising legislation, the fragmented system of districts established in the Act failed to promptly achieve the widespread uniform system of education.<sup>136</sup> Documents from this initial phase are scarce and reflect the lack of centralized accountability.<sup>137</sup>

In 1877, the legislature enacted further legislation to unify the school system and improve school laws.<sup>138</sup> The resulting education system bore many features that Washington residents may associate with modern public schools.<sup>139</sup> The law established a general course of study for common school students and established a Territorial Board of Education (the Board).<sup>140</sup> The law gave the Board the power to ensure uniform educational quality by adopting textbooks, setting school governance rules, certifying teachers, and overseeing teachers, directors, and superintendents.<sup>141</sup>

After statehood, the Washington State Supreme Court added substantially to the understanding of the bounds of the common school system with its 1907 opinion in *School District No. 20, Spokane County v. Bryan*.<sup>142</sup> In that case, the Court considered the constitutionality of the Model Training School Act,<sup>143</sup> a law passed by the Washington State Legislature that provided for the establishment of a model training school department in state normal schools.<sup>144</sup> Another outgrowth of the common school movement, normal schools were post-secondary teacher training schools.<sup>145</sup> Common school proponents emphasized that

---

134. Act of Apr. 12, 1854, 1854 Wash. Terr. Laws 319.

135. *Id.*

136. Beale, *supra* note 26, at 541.

137. *Id.*

138. Act to Provide a System of Common Schools for the Territory of Washington, 1877 Wash. Terr. Laws 259.

139. *See id.*

140. *Id.*

141. *Id.*

142. 51 Wash. 498, 504, 99 P. 28, 30 (1909).

143. 1907 Wash. Sess. Laws 181.

144. *Id.* at 500, 99 P. at 28.

145. *See, e.g.*, BRAIN L. FIFE, OLD SCHOOL STILL MATTERS 25–29 (2013) (describing the role of uniform education for instructors in achieving uniform education for students).

uniform teacher training would yield a uniform quality of education throughout the state.<sup>146</sup>

Under Washington's Model Training School Act, the normal schools would include a "model training school" comprising students from local districts.<sup>147</sup> The model training school would operate as a primary school, but student teachers would instruct the classes under the supervision of instructors.<sup>148</sup> Unlike common schools, which were governed by an elected school board, an appointed board of trustees supervised the normal schools.<sup>149</sup> The Act directed the superintendent to apportion funding for the model training school "out of the funds available for the support of the common schools"<sup>150</sup> based on the number of pupils in attendance.<sup>151</sup> The superintendent would apportion funds to the model training schools based on the number of students enrolled.<sup>152</sup>

The Cheney School District challenged the funding mechanisms of the Model Training School Act.<sup>153</sup> The District sought an injunction in Thurston County Superior Court to prevent the superintendent of public instruction from apportioning funds to the model training department of the normal school.<sup>154</sup> The court granted the injunction and issued an order directing that much of the Act relating to the model training school department of normal schools and providing apportionment of funds therefor was "unconstitutional and void."<sup>155</sup> On appeal, the State identified four assignments of error.<sup>156</sup> Each centered on the question of whether the Model Training School Act required a diversion of the common school fund in violation of the constitution.<sup>157</sup>

Resolution of the case required the Washington State Supreme Court to determine whether the model training school was a common school within the meaning of the state constitution.<sup>158</sup> Cheney School District argued that a common school is any school that "(1) [is] maintained at

---

146. *Id.*

147. *Bryan*, 51 Wash. at 500, 99 P. at 28 (1909).

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.* at 501, 99 P. at 28.

154. *Id.*

155. *Id.* at 501, 99 P. at 29.

156. *Id.*

157. *Id.*

158. *Id.* at 502, P. at 29.

public expense; [and] (2) provide[s] a course of elementary education for children of all classes of people.”<sup>159</sup> The Court rejected this definition, holding that a common school within the meaning of the Constitution is one “that is common to all children of proper age and capacity, free, and subject to, and under the control of, the qualified voters of the school district.”<sup>160</sup>

The Court next determined that model training schools were not common schools under the constitution.<sup>161</sup> The Court’s conclusion centered on the model training school’s system of governance.<sup>162</sup> It noted that the principal was not an officer authorized to found a school under the constitutional scheme.<sup>163</sup> It also observed that the teachers in the training school were not teachers within the meaning of the law, which requires teacher certification.<sup>164</sup> Most importantly, the Court emphasized that the schools were not under “complete control” of the voters “with the power to discharge [the officials] if they are incompetent.”<sup>165</sup> Because the model training school lacked these essential features, the court held it could not qualify as a common school under article IX, section 2.

In its opinion, authored by Justice Stephen Chadwick, the Court clearly circumscribed the legislature’s power to allocate common school funds: “To say that the Legislature can determine what institutions shall receive the proceeds of the school fund, and that whatever they determine to be entitled thereto becomes ipso facto a common school, is begging the whole question, and annulling the constitutional restriction.”<sup>166</sup> Despite its opinion striking down the Model Training School Act, the Court also left the door open to alternative funding pathways: “It is not that the Legislature cannot make provision for the support of a model training school, but in its attempt to do so, it has made provision for it out of the wrong fund.”<sup>167</sup>

*Bryan* is a landmark decision in Washington’s education jurisprudence. The opinion highlights the importance of legislative acts

---

159. *Id.*

160. *Id.* at 504, 99 P. at 30.

161. *Id.* at 503–04, 99 P. at 29–30.

162. *Id.* at 504, 99 P. at 30.

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.* at 504–05, 99 P. at 30 (quoting *People ex rel. Roman Catholic Orphan Asylum Soc. v. Bd. of Educ.*, 13 Barb. 400, 410 (N.Y. 1851)).

167. *Id.* at 506, 99 P. at 32.

funding schools by tethering them directly to the language of the Washington State Constitution.<sup>168</sup> The Court's decision also solidified the role of the judiciary in checking unconstitutional funding mechanisms. In its opinion, the Court set a strict, formalistic tone and made clear that appeals to convenience and efficiency would not be sufficient to overcome the constitutional mandates regarding school legislation.<sup>169</sup> The Court acknowledged the State's argument that the schools met the same educational needs and were likely superior in effectiveness to other common schools.<sup>170</sup> Nonetheless, it invalidated the law based on its holding that model training schools were not common schools.

The *Bryan* decision also provides definitions to clarify two malleable terms used in article IX, section 4. First, the court defined a common school as one that is: (1) open to all students; (2) tuition-free; and (3) subject to the control of voters.<sup>171</sup> The third element is largely what distinguishes common schools from other forms of public schools established by the State.<sup>172</sup> Thus, unlike universities and normal schools, which operate under the control of an appointed board of trustees, voters elect each member of the common school board.<sup>173</sup> Second—though not at issue in the case—the *Bryan* decision also provided some insight into the meaning of term “uniform” as used in article IX, section 2.<sup>174</sup> The Court explained that a uniform system of common schools requires that “every child shall have the same advantages and be subject to the same discipline as every other child.”<sup>175</sup>

The *Bryan* Court's formalistic analysis and its definition of common schools have informed subsequent decisions in the realm of education.<sup>176</sup> Its influence is most clearly found in the Court's opinion in *League of Women Voters*.<sup>177</sup> The *Bryan* opinion has, therefore, shaped not only constitutional jurisprudence regarding the requirements of article IX, section 2, but also education legislation by providing guidance as to the

---

168. *Id.* at 501–02, 99 P. at 29–30.

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *See id.* at 502, 99 P. at 29.

174. *See id.*

175. *Id.*

176. *See infra* section III.A.

177. *League of Women Voters of Wash. v. State*, 184 Wash. 2d 393, 355 P.3d 1131 (2015).

permissible scope of the legislature's freedom to create new school models or systems.

### B. *Charter Schools in Washington State*

The charter school debate in Washington extends over two decades. Washington voters first considered Initiative 177, which would have allowed for privately run, publicly funded schools, in 1996.<sup>178</sup> This legislation reflected the goals of the broader school choice reform movement that had taken hold throughout the nation.<sup>179</sup> That same year, voters also considered Initiative 173, which would have directed the legislature to issue vouchers allowing parents to use public education funds to allow students to attend schools of the parents' choosing.<sup>180</sup> Both initiatives failed, with sixty-four percent of voters voting against the charter school bill.<sup>181</sup> Voter initiatives and legislative proposals surfaced several times in the years following the 1996 initiative. In 2004, the Washington State Legislature passed Engrossed Second Substitute House Bill 2295 authorizing charter public schools.<sup>182</sup> However, Washington voters rejected the law using a veto referendum.<sup>183</sup> Consequently, no charter legislation has been successful in Washington until Initiative 1240 in 2012.<sup>184</sup>

#### 1. *Voters Pass Initiative 1240 Authorizing Charter Schools in 2012*

In 2012, Washington State voters passed the Washington Charter School Initiative, known as Initiative 1240.<sup>185</sup> Initiative 1240 permitted

---

178. See Dick Lilly, *School-Choice Debate Lands on State Ballot—Initiative 177 for Independent Schools; Initiative 173 for School Vouchers*, SEATTLE TIMES, (Oct. 20, 1996), <http://community.seattletimes.nwsourc.com/archive/?date=19961020&slug=2355318> [<https://perma.cc/QD3C-FRMQ>].

179. *Id.* (noting that the legislation would create schools “similar to the charter schools springing up in other states”).

180. *Id.*

181. See LEAGUE OF EDUC. VOTERS FOUND., CHARTER SCHOOLS AND WASHINGTON STATE 1–2 (2011), <http://educationvoters.org/wp-content/uploads/2012/11/White-paper-charter-schools-010511-LEVF.pdf> [<https://perma.cc/3KKM-FUV9>].

182. ch. 22, 2004 Wash. Sess. Law.

183. *Washington Charter School Authorization, Referendum 55*, BALLOTEDIA, [https://ballotpedia.org/Washington\\_Charter\\_School\\_Authorization,\\_Referendum\\_55\\_\(2004\)](https://ballotpedia.org/Washington_Charter_School_Authorization,_Referendum_55_(2004)) [<https://perma.cc/X3KH-S24L>].

184. See, e.g., H.B. 2295, 2004 Leg., 58th Leg., Reg. Sess. (Wash. 2004) (proposing charter schools).

185. Initiative Measure No. 1240, §§ 202(1), 215(1), 220, 223(1) (codified at WASH. REV. CODE §§ 28A.710.020(1), 28A.710.150(1), 28A.710.220, 28A.710.230(1) (2014)).

the state to open up to forty public charter schools during the following five years.<sup>186</sup> Many of the requirements for charter schools specified in Initiative 1240 reflected the common school requirements identified by the Washington State Supreme Court in *Bryan*.<sup>187</sup> Like traditional district schools, charter schools under Initiative 1240 were free and open to all students in the district.<sup>188</sup> Initiative 1240 also required charter schools to provide students a basic education<sup>189</sup> in compliance with the same academic standards as the district counterparts.<sup>190</sup> To ensure compliance, Initiative 1240 required charter schools to participate in the same academic learning assessments administered in all common schools.<sup>191</sup> Finally, Initiative 1240 required all instructors to meet the state teacher certification requirements.<sup>192</sup>

In many ways, the oversight mechanisms for charter schools also resembled those for district schools. In district schools, a superintendent monitors the schools.<sup>193</sup> The superintendent is accountable to the locally elected school board, which makes decisions regarding funding, staffing, curricula, and other matters essential to steering the schools.<sup>194</sup> Under Initiative 1240, a charter school board undertook many of the duties of a district's superintendent.<sup>195</sup> The board operated the school according to

---

186. *Id.* § 215(1).

187. *See* Sch. Dist. No. 20, *Spokane Cty. v. Bryan*, 51 Wash. 498, 504, 99 P. 28, 30 (1909).

188. Initiative Measure No. 1240 § 101(n)(iv). Students must apply to the charter school, but unlike many private schools the student does not need to compete for a spot at the school. WASH. REV. CODE § 28A.710.050(1) (2014). If more students want to attend a specific charter school than the school can accommodate, enrollment is determined by a random lottery. *Id.* § 28A.710.050(3).

189. Under Washington State law, a basic education does not have a static definition but is one which “provide[s] students with the opportunity to become responsible and respectful global citizens, to contribute to their economic well-being and that of their families and communities, to explore and understand different perspectives, and to enjoy productive and satisfying lives.” WASH. REV. CODE § 28A.150.210.

190. *Id.* § 28A.710.040(2)(b).

191. The superintendent establishes these assessments, which measure academic proficiency throughout elementary, middle, and high school. *Id.* § 28A.655.070. The results are used to inform educational instructional practices and to identify students who have not mastered the academic requirements appropriate for their grade. *Id.*

192. *Id.* § 28A.410.025. This requirement appears to be a direct response to the Court's holding in *Bryan*, as charter legislation in most states does not require instructors to possess education-specific credentials. *See generally* Charter Schools—Do Teachers in a Charter School Have to be Certified?, EDUC. COMM'N OF THE STS. (June 2014), <http://ecs.force.com/mbdata/mbquestNB2?rep=CS1425> [<https://perma.cc/TDG2-5UBL>].

193. WASH. REV. CODE § 28A.300.040(1).

194. *Id.* § 28A.320.015.

195. *Id.* § 28A.710.030.

the terms of its charter contract<sup>196</sup> and was accountable to its charter school authorizer.<sup>197</sup> A charter school board also provided many of the same functions as a district school board.<sup>198</sup> In addition, authorizers were required to develop and enforce policies regarding student performance, school oversight, financial management, and charter renewal.<sup>199</sup> Unlike a district school board, however, local voters do not necessarily elect a charter school authorizer.<sup>200</sup> Although district school boards could serve as authorizers, Initiative 1240 also granted the Washington Charter School Commission the authority to establish charter schools anywhere in the state.<sup>201</sup>

Initiative 1240 directed the superintendent to determine the allocations using the same school funding scheme used to determine funding for district schools.<sup>202</sup> At the state level, the funding for charter schools under Initiative 1240 was almost identical to that required for traditional district schools.<sup>203</sup> Like district schools, charter schools would receive allocations from the superintendent of public instruction.<sup>204</sup> Although Initiative 1240's funding allocation process was identical to that used for district schools, the process by which charter schools utilized that funding differed.<sup>205</sup> Initiative 1240 permitted charter schools to spend funding in accordance with the school's charter contract.<sup>206</sup>

A final point of difference between charter and district schools under Initiative 1240 was the requirement for annual reports.<sup>207</sup> Under Initiative 1240, the state Board of Education was required to issue an annual report on the state's charter schools to the governor, the

---

196. *Id.* The charter contract is the authorizing document that permits charter schools to operate. *Id.* § 28A.710.010(4). Under the contract, the charter school agrees to provide basic educational services and to conform to the academic and operational performance expectations set out in the contract. *Id.* § 28A.710.160.

197. *Id.* § 28A.710.100. Two entities can authorize charter schools: the charter school commission and local school district boards that have been approved as authorizers by the commission. *Id.* § 28A.710.080.

198. *See id.* § 28A.710.100.

199. *Id.* In addition, authorizers solicit and evaluate charter applications, execute charter contracts with each charter school, and monitor schools in accordance with charter contracts. *Id.*

200. *Id.* § 28A.710.080.

201. *Id.* § 28A.710.180(1).

202. Initiative Measure No. 1240, § 222.

203. WASH. REV. CODE § 28A.710.220.

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.* § 28A.710.250(2).

legislature, and the general public.<sup>208</sup> The report would include a comparison of charter school student performance across academic, ethnic, and economic lines;<sup>209</sup> the Board's assessments of the charter schools' successes and areas for improvement;<sup>210</sup> and a report on the sufficiency of charter school funding and charter school efficiency in utilizing those funds.<sup>211</sup>

2. *The Washington State Supreme Court Holds Initiative 1240 Unconstitutional in League of Women Voters of Washington v. State*

After voters passed Initiative 1240 in 2012, eight charter schools opened in the state.<sup>212</sup> One of the schools, First Place Scholars, faced public scrutiny because the school received \$200,000 in excess state funding due to inaccurate reports of staff and student enrollment numbers.<sup>213</sup> Unlike First Place Scholars, which operated for nearly three decades as a private school, the seven other charter schools that opened following Initiative 1240 were entirely new.<sup>214</sup> As students in Seattle, Tacoma and Spokane enrolled in the newly opened charter schools, parent and community activists mounted a legal opposition to the charter school law.<sup>215</sup>

In 2013, community members and organizations, including League of Women Voters of Washington and El Centro de la Raza, filed a suit in King County Superior Court seeking to halt implementation of the Initiative.<sup>216</sup> They sought an injunction prohibiting enforcement of the

---

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.*

212. John Higgins, *Wave of Charter Schools Debuts With All Seats Filled*, SEATTLE TIMES, (Aug. 17, 2015), <http://www.seattletimes.com/seattle-news/education/wave-of-charter-schools-debuts-with-all-seats-filled/> [https://perma.cc/9MSQ-NG9Q] (noting that, in addition to the existing charter school in Seattle, three schools planned to open in Seattle, three planned to open in Tacoma, and two planned to open in Spokane).

213. John Higgins, *State's First Charter School Was Overpaid \$200,000*, SEATTLE TIMES, (Sept. 21, 2015), <http://www.seattletimes.com/seattle-news/education/audit-comes-down-hard-on-states-first-charter-school/> [https://perma.cc/45Y9-JXF4].

214. See Higgins, *supra* note 212.

215. See Brian M. Rosenthal, *Coalition's Suit Challenges State's Charter-Schools Law*, SEATTLE TIMES, (Jul. 3, 2013), <http://www.seattletimes.com/seattle-news/coalitionrsquos-suit-challenges-statersquos-charter-schools-law/> [https://perma.cc/8R8F-FAYF].

216. Complaint for Declaratory Judgment & Injunctive Relief at \*3–8, League of Women Voters of Washington v. State, No. 13-2-24997-4 SEA, 2013 WL 11109512 (Wash. Super. Ct. Dec. 12, 2013).



Initiative and a declaratory judgment that the Initiative violated the Washington State Constitution.<sup>217</sup> After both sides moved for summary judgment, the trial court found that charter schools met the constitution's uniformity requirement but were not common schools because they were not subject to local voter control.<sup>218</sup> Consequently, the trial court held that the Initiative unconstitutionally diverted funds to non-common schools.<sup>219</sup> However, the court also found that the funding provisions were severable, and held that the Initiative was otherwise constitutional.<sup>220</sup>

On direct appeal, the Washington State Supreme Court agreed with the trial court that the Initiative improperly designated charter schools as "common schools" and unconstitutionally diverted funds from the common school fund.<sup>221</sup> The majority based much of its opinion on its 1909 *Bryan* holding.<sup>222</sup> Because charter schools are governed by appointed, rather than elected, members of the charter school board, the Court reasoned that charter schools are not subject to local voter control.<sup>223</sup> As a result, charter schools could not be common schools under the definition established in *Bryan*, and therefore could not receive constitutionally protected common school funds.<sup>224</sup>

Notably, the Court held that charter schools could not receive any funds from the general fund money—even from those accounts not allocated for the use of common schools.<sup>225</sup> The Court reasoned that the Washington State Constitution prohibits non-common schools from receiving any funds dedicated for the use of common schools.<sup>226</sup> On its face, this is a relatively narrow restriction. The only monies constitutionally dedicated for the exclusive use of common schools are the common school fund, the common school construction fund, and the state tax for common schools.<sup>227</sup> However, case law has expanded this

---

217. *Id.*

218. *League of Women Voters of Wash. v. State*, No. 13-2-24997-4 SEA, 2013 WL 11109512, at \*3 (Wash. Super. Ct. Dec. 12, 2013).

219. *Id.* at \*4–5.

220. *Id.* at \*5.

221. *League of Women Voters of Wash. v. State*, 184 Wash. 2d 393, 397–98, 355 P.3d 1131, 1133–34 (2015).

222. *Sch. Dist. No. 20, Spokane Cty. v. Bryan*, 51 Wash. 498, 99 P. 28 (1909).

223. *League of Women Voters*, 184 Wash. 2d at 405, 355 P.3d at 1137 (citing *Bryan*, 51 Wash. at 504, 99 P. at 30).

224. *Id.* at 406–07, 355 P.3d at 1138–39.

225. *Id.* at 409, 355 P.3d at 1139.

226. *Id.*

227. *See* WASH. CONST. art. IX, § 3.

category to include all money “allocated to the support of the common schools” regardless of its origin.<sup>228</sup> A majority of school funding comes from the basic education allocation.<sup>229</sup> Because the legislature appropriated the basic education allocation for the use of common schools, the Court ruled that it could not then redirect those funds to charter schools.<sup>230</sup> The Court reasoned that, because the state commingled the unrestricted funds in the general fund with restricted property levy revenue, there was no way to ensure that only common schools had access to the levy funds.<sup>231</sup>

Prohibiting charter schools from receiving even unrestricted funds from the general fund was fatal to Initiative 1240.<sup>232</sup> Without access to any funding, charter schools could neither open nor operate.<sup>233</sup> While the Court was unanimous in its holding that charter schools were not common schools, it split on the issue of severability. The majority held that the funding provisions were not severable, reasoning that the funding provisions were central to Initiative 1240’s approval and vital to its operation.<sup>234</sup> Because the funding provisions affected an unconstitutional diversion of common school funds, the Court invalidated Initiative 1240 entirely.<sup>235</sup>

The Court’s initial slip opinion also contained a footnote briefly addressing the argument that Initiative 1240 violated the article IX uniformity requirement:

---

228. State ex rel. State Bd. for Vocational Educ. v. Yelle, 199 Wash. 312, 316, 91 P.2d 573, 575 (1939).

229. OFFICE OF THE SUPERINTENDENT OF PUB. INSTRUCTION, WASHINGTON STATE EDUCATION FUNDING 101 (2015), <http://www.k12.wa.us/LegisGov/2015documents/2015LegislativePackage.pdf> [<https://perma.cc/MAE6-VUSY>].

230. *League of Women Voters*, 184 Wash. 2d at 406, 355 P.3d at 1138.

231. *Id.*

232. *Id.* at 412, 355 P.3d at 1141.

233. *Id.* (“Without a valid funding source the charter schools envisioned in I-1240 are not viable.”).

234. The test for severability is “whether the unconstitutional provisions are so connected to the remaining provisions that it cannot be reasonably believed that the legislative body would have passed the remainder of the act’s provisions without the invalid portions.” *Id.* at 411–12, 355 P.3d at 1140–41 (citing *Gerberding v. Munro*, 134 Wash. 2d 188, 197, 949 P.2d 1366, 1370 (1998); *State v. Crediford*, 130 Wash. 2d 747, 760, 927 P.2d 1129, 1135 (1996)). The Court found the funding sources were so intertwined with the rest of the Act that voters would not have passed the Act without the funding provisions. *League of Women Voters*, 184 Wash. 2d at 406, 355 P.3d at 1138. Thus, although the Act contained a severability clause, the Court concluded the invalid portions were not severable. *Id.*

235. *Id.*

Further, under *Bryan* the absence of local control by voters would also violate the article IX uniformity requirement. . . . *Bryan* held in part that the legislation in question was invalid because ‘its operation . . . would break the uniformity of the common school system,’ that is, by having students instructed by uncertified teachers. Here, the uniformity of the common school system is similarly broken in that the Charter School Act eliminates the local voter control that is a hallmark of common schools, thereby resulting in different (nonuniform) governance for charter schools as compared to common schools.<sup>236</sup>

The Court confined its discussion of the uniformity requirement to the common school system under *Bryan*. It did not address the broader import of the mandate on charter schools within the public system as a whole.

The Court declined to elaborate on its position regarding the article IV general and uniform mandate, explaining, “we do not further address [Initiative 1240’s] article IX uniformity failings or the parties’ other arguments because we find the invalidity of the Act’s funding provisions as discussed herein to be dispositive.”<sup>237</sup> Following a motion for reconsideration, the Court ultimately struck the footnote entirely, leaving the issue of article IX uniformity entirely untouched in the final, published opinion.<sup>238</sup>

### 3. *The 2016 Legislature Passes the Charter Public School Act Authorizing Charter Public Schools*

In 2016, the 64th Legislature passed the Charter Public School Act (CPSA) in response to the Court’s decision in *League of Women Voters*.<sup>239</sup> The CPSA retains much of framework for creating, governing, and operating charter schools from Initiative 1240.<sup>240</sup> However, the re-enacted provisions establish a framework for charter schools that

---

236. *League of Women Voters of Washington v. State*, No. 89714-0, slip op. at 11 n.10 (Wash. Sept. 4, 2015) (citation omitted).

237. *Id.*

238. Order Changing Opinion and Denying Further Reconsideration, *League of Women Voters of Washington v. State*, 184 Wash. 2d 393, 355 P.3d 1131 (2015) (No. 89714-0).

239. Act effective April 3, 2016, ch. 241, 2016 Wash. Sess. Laws 1207. The bill became law as Chapter 241, Laws of 2016 without the governor’s signature. See John Higgins et al., *Gov. Inslee Grudgingly Allows Charter Schools to Survive*, SEATTLE TIMES (Apr. 1, 2016), <http://www.seattletimes.com/seattle-news/education/charter-school-bill-likely-to-become-law/> [<https://perma.cc/4AAW-YP36>].

240. *Id.* §§ 101–38.

operates separately from common schools.<sup>241</sup> Instead, charter schools are defined as public schools that offer an alternative to common schools.<sup>242</sup> As in Initiative 1240, charter schools operate according to a charter contract that establishes the specific operation requirements and performance standards for each individual charter school.<sup>243</sup> As public schools, charter schools remain tuition-free and open to all children.<sup>244</sup> Charter schools remain subject to the charter school board, the authorizing agency, and the Washington State Charter Commission.<sup>245</sup> The CPSA retains the dual-authorizer structure that permits charter school founders to submit charter school proposals to either participating local districts or the Washington Charter School Commission.<sup>246</sup> Likewise, charter schools remain exempt from all rules and statutes governing common schools with the exception of certain laws enumerated in the CPSA or the charter contract.<sup>247</sup> The Washington Charter School Commission also retains the general structure outlined in the Initiative, with the exception that it now comprises eleven members rather than nine.<sup>248</sup> The two additional members are the Superintendent of Public Instruction or his or her designee and the chair of the State Board of Education.<sup>249</sup> For the remaining nine members, appointment qualification and term length remain the same as those established in Initiative 1240.<sup>250</sup>

While much of the CPSA resembles Initiative 1240, the legislation includes substantial revisions meant to directly address the Court's concerns in *League of Women Voters*. For example, the CPSA makes charter schools ineligible to receive local school levy revenues or funds from the Common School Construction Fund.<sup>251</sup> Charter schools must locate funding entirely from unrestricted sources because the legislation

---

241. See WASH. REV. CODE § 28A.710.020 (2014).

242. *Id.*

243. See *id.* § 28A.710.040.

244. *Id.* § 28A.710.020.

245. See Act effective April 3, 2016, ch. 241, 2016 Wash. Sess. Laws 1207, §§ 103, 104, 107.

246. WASH. REV. CODE §§ 28A.710.020(3), 28A.710.160.

247. *Id.* § 28A.710.040(3).

248. *Id.* §§ 28A.710.070(2)(i)–(iii).

249. *Id.*

250. See Act effective April 3, 2016, ch. 241, 2016 Wash. Sess. Laws 1207, § 107 (codified at WASH. REV. CODE § 28A.710.070) (black-line illustrates relatively few changes to this section).

251. Act effective April 3, 2016, ch. 241, 2016 Wash. Sess. Laws 1207, § 122(2)–(9) (codified at WASH. REV. CODE § 28A.710.220).

places the schools plainly outside the common school system.<sup>252</sup> Under the CPSA, the legislature will appropriate amounts to support charter schools from the Washington Opportunity Pathways Account.<sup>253</sup> From this lump sum, the superintendent of public instruction must calculate and distribute funding to charter schools “equitably with state funding provided for other public schools.”<sup>254</sup> This includes adherence to the general apportionment as well as supplementary funds based on state formulas.<sup>255</sup> While charter schools may not receive funding from the Common School Construction Fund, they may receive construction funds from other sources.<sup>256</sup> Charter schools are eligible to apply for grants to the same extent as district schools.<sup>257</sup>

The CPSA includes remedial measures intended to mitigate the consequences of the Court’s opinion in *League of Women Voters*. The CPSA provides all parties who entered into a contract under Initiative 1240 the opportunity to re-execute the contracts upon substantially the same terms and for the same duration.<sup>258</sup> Early drafts of the CPSA also required the Office of the Superintendent of Public Instruction to reimburse charter schools for the loss of state revenue for the 2015–2016 school year.<sup>259</sup> After the ruling in *League of Women Voters*, Governor Inslee authorized charter schools to operate under the supervision of district schools as alternative learning experiences.<sup>260</sup> An alternative learning experience is a course primarily characterized by its location away from the classroom setting.<sup>261</sup> Because the alternative learning

252. See *League of Women Voters of Washington v. State*, 184 Wash. 2d 393, 355 P.3d 1131 (2015) (holding that commingling of common school funds with the general funds makes it impossible “to ensure that these dollars are used exclusively to support the common schools”); *Sch. Dist. No. 20, Spokane Cty. v. Bryan*, 51 Wash. 498, 505, 99 P. 28, 30 (1909) (holding only common schools can receive common school funds).

253. Unlike the general fund, the Washington Opportunity Pathways account is a dedicated account for revenue from the state lottery. See WASH. REV. CODE § 43.20A.892. Revenue from the opportunity pathways account is statutorily restricted to eleven education-related programs. *Id.* § 28B.76.526.

254. *Id.* § 28A.710.280.

255. *Id.*

256. *Id.* § 28A.710.230(1).

257. *Id.*

258. *Id.* § 28A.710.230(3).

259. See OFFICE OF PROGRAM RESEARCH, WASH. STATE HOUSE OF REPRESENTATIVES, E2SSB 6194 BILL ANALYSIS 5 (2015), <http://lawfilesexternal.wa.gov/biennium/2015-16/Pdf/Bill%20Reports/House/6194-S2.E%20HBA%20ED%2016.pdf> [<https://perma.cc/HFR4-5RBG>].

260. See Ann Dornfeld, *Washington Charter Schools Get Creative to Keep State Funding*, KUOW.ORG (Jan. 5, 2016), <http://kuow.org/post/washington-charter-schools-get-creative-keep-state-funding> [<https://perma.cc/4F6L-E7KY>].

261. WASH. ADMIN. CODE § 392-121-182.

experience funding did not cover the entire expense of charter-school operating costs for the 2015–2016 school year, early drafts required the legislature to reimburse charter schools for the difference between expected and received funding for that school term.<sup>262</sup> However, this provision did not make it into the final legislation.<sup>263</sup>

The CPSA also creates new funding provisions for other educational programs outside the common school system.<sup>264</sup> The Court’s holding regarding commingling of the general fund created problems not just for charter schools, but for all education programs outside the common school system.<sup>265</sup> This includes the National Guard Youth Challenge Program, the Early Entrance Program or Transition School Program at the University of Washington, education programs for juvenile inmates of the Department of Corrections, education center programs, the Washington Community Learning Center Program and the state-tribal education compact programs.<sup>266</sup> Under the CPSA, each of these programs received funding through the Washington Opportunity Pathways Account.<sup>267</sup>

### III. ARTICLE IX AND THE GENERAL AND UNIFORM REQUIREMENT

The legislature sought to address the Court’s primary constitutional objections to Initiative 1240 by removing charter public schools from the common school system and making them ineligible to receive restricted funds under the CPSA.<sup>268</sup> However, because it purports to place charter schools within the public school system, the charter legislation must be consistent with the broader constitutional mandate that the legislature provide for a “general and uniform system of public schools.”<sup>269</sup> The Washington State Supreme Court has not yet considered whether charter schools fit within the general and uniform system of public schools.<sup>270</sup> In

---

262. See S.B. Rep. 6194 (Jan. 19, 2016), <http://lawfilesex.tleg.wa.gov/biennium/2015-16/Pdf/Bill%20Reports/Senate/6194%20SBA%20WM%2016.pdf> [<https://perma.cc/7M7N-BQJS>].

263. See Act effective April 3, 2016, ch. 241, 2016 Wash. Sess. Laws 1207.

264. See WASH. REV. CODE § 28B.76.526 (2014).

265. Cf. *id.*; *League of Women Voters of Washington v. State*, 184 Wash. 2d 393, 409, 355 P.3d 1131, 1139 (2015).

266. WASH. REV. CODE § 28B.76.526.

267. See *id.*

268. See *League of Women Voters*, 184 Wash. 2d at 409, 355 P.3d at 1139.

269. WASH. CONST. art. IX, § 2.

270. In a recent ruling granting defendant’s motion to dismiss, King County Superior Court Judge John Chun noted:

the handful of decisions purporting to define the scope of this requirement, the Court appears to focus on uniformity of the schools themselves, rather than on the system by which the state administers those schools.<sup>271</sup> However, because these opinions contemplate the scope of the “general and uniform” requirement in relation only to common schools, it is not yet clear how Washington courts would apply the mandate to charter schools.

In addition to the Washington State Supreme Court cases directly interpreting the general and uniform mandate in article IX, section 2, other cases interpreted similar phrases found elsewhere in the Washington State Constitution provide some insight into its operation.<sup>272</sup> Unlike the cases emphasizing the substantive uniformity of the common school system, cases applying the phrase to other contexts generally construe the terms as operating to require a uniform system of laws or procedures without regard to the substantive outcome.<sup>273</sup> Likewise, cases interpreting similar or identical clauses in other state constitutions are also instructive.<sup>274</sup> These cases also reveal that other state supreme courts have not interpreted the general and uniform mandate as requiring uniform schools, but only as requiring a uniform system of laws and procedures governing those schools.<sup>275</sup>

A. *The Washington State Supreme Court has Interpreted the Article IX “General and Uniform” Requirement Only in the Context of Common Schools*

The Washington State Supreme Court has not yet considered whether legislation providing for charter schools can meet the “general and

---

Plaintiffs contend that the Act violates article IX, section 2’s uniformity requirement for the public school system. Their argument, however, conflates common schools with public schools. Common schools are but one component of the public school system, yet Plaintiffs’ argument attempts to measure charter schools against common schools rather than the broader public school system . . . Thus, the uniformity analysis requires measurement against the public school system and not solely common schools.

Memorandum Opinion & Order Re: Summary Judgment, *El Centro De La Raza v. Washington*, No. 16-2-18527-4 SEA (Feb. 17, 2017).

271. *See* Fed. Way Sch. Dist. No. 210 v. State, 167 Wash. 2d 514, 527, 219 P.3d 941, 948 (2009); Seattle Sch. Dist. No. 1 of King Cty. v. State, 90 Wash. 2d 476, 522, 585 P.2d 71, 97 (1978); Northshore Sch. Dist. No. 417 v. Kinnear, 84 Wash. 2d 685, 729, 530 P.2d 178, 202 (1974), *overruled by* Seattle Sch. Dist. No. 1, 90 Wash. 2d at 522, 585 P.2d at 97; Sch. Dist. No. 20, Spokane Cty. v. Bryan, 51 Wash. 498, 504, 99 P. 28, 30 (1909).

272. *See infra* section III.B.

273. *See id.*

274. *See infra* section III.C.

275. *See id.*

uniform” mandate in article IX, section 2. A handful of cases purport to define the mandate, but they did so only in the context of common schools.<sup>276</sup> Notably, in its original opinion in *League of Women Voters*, the Washington State Supreme Court initially noted in dictum that charter schools did not satisfy the requirement.<sup>277</sup> However, the Court deleted the footnote in its amended opinion.<sup>278</sup> The scope and implications of the “general and uniform” mandate, therefore, remain unsettled.

*Bryan* is the earliest case analyzing the general and uniform mandate.<sup>279</sup> In that case, the Court described a general and uniform system as one in which all students are “subject to the same discipline as every other child.”<sup>280</sup> The Court’s discussion appeared in dictum as the case was resolved on other grounds—namely the fact that the statute unconstitutionally diverted common school funds.<sup>281</sup> The Court appeared to consciously limit its discussion to the requirements of the mandate on the common school system: in addressing Spokane County’s arguments, the Court noted, “the argument of counsel emphasizes the fact that in its operation the act of 1907 would break the uniformity of the common school system.”<sup>282</sup>

More recent cases interpreting the general and uniform mandate in the context of article IX, section 2 include a handful of decisions regarding school funding.<sup>283</sup> In the 1970s, two cases discussed the mandate in the

---

276. See *Fed. Way Sch. Dist. No. 210*, 167 Wash. 2d at 527, 219 P.3d at 948; *Seattle Sch. Dist. No. 1 of King Cty.*, 90 Wash. 2d at 522, 585 P.2d at 97; *Northshore Sch. Dist. No. 417*, 84 Wash. 2d at 729, 530 P.2d at 202; *Bryan*, 51 Wash. at 504, 99 P. at 30.

277. *League of Women Voters of Wash. v. State*, No. 89714-0, slip op. at 11 n.10 (Wash. Sept. 4, 2015).

278. Order Changing Opinion and Denying Further Reconsideration, *League of Women Voters of Wash.*, 184 Wash. 2d, 355 P.3d 131 (2015) (No. 89714-0).

279. *Bryan*, 51 Wash. at 504, 99 P. at 30.

280. *Id.* at 502, 99 P. at 29. Notably, this language is nearly identical to the definition advanced in the 1890 North Carolina case *City of Greensboro v. Hodgin*, 11 S.E. 586, 589 (1890).

281. *Bryan*, 51 Wash. at 504, 99 P. at 30.

282. *Id.*

283. See, e.g., *Fed. Way Sch. Dist. No. 210 v. State*, 167 Wash. 2d 514, 527, 219 P.3d 941, 948 (2009) (challenging disparate school employee salary figures under the Basic Education Act as unconstitutional); *Seattle Sch. Dist. No. 1 of King Cty. v. State*, 90 Wash. 2d 476, 522, 585 P.2d 71, 97 (1978) (seeking a declaration that the State’s reliance on special excess levy funding for discharging its duty to provide for the education of resident children was unconstitutional); *Northshore Sch. Dist. No. 417 v. Kinnear*, 84 Wash. 2d 685, 729, 530 P.2d 178, 202 (1974), *overruled by Seattle Sch. Dist. No. 1*, 90 Wash. 2d at 522, 585 P.2d at 97 (challenging constitutionality of school finance system).



context of taxation.<sup>284</sup> In *Northshore School District v. Kinnear*,<sup>285</sup> the Court held that a tax-credit program implemented by the Department of Revenue intended to achieve equality in school support was consistent with the objectives of article IX, section 2.<sup>286</sup> The Court also held that using local school levies to fund common schools did not violate the general and uniform mandate despite the fact that it resulted in disparate funding sources for schools in different districts.<sup>287</sup> The *Northshore* Court defined a general and uniform system as “one in which every child in the state has free access to certain minimum and reasonably standardized educational and instructional facilities and opportunities.”<sup>288</sup> Four years later, the Court overruled *Northshore*, holding that “compliance with [the Washington State Constitution] can be achieved only if sufficient funds are derived, through dependable and regular tax sources, to permit school districts to provide a ‘basic education’ . . . in a ‘general and uniform System of public schools.’”<sup>289</sup> Most recently, in *Federal Way School District No. 210 v. State*,<sup>290</sup> the Court held that funding disparities for staff salaries did not violate the general and uniform mandate.<sup>291</sup> The Court explained, “the provision requires uniformity in the educational program provided, not the minutiae of funding.”<sup>292</sup>

In each of these cases, the Court discussed the general and uniform mandate, but only in the context of the common school system. Although the *Bryan* Court explicitly constrained its definitions of “general and uniform” to the common schools, the definitions advanced by the Court in *Northshore* and *Federal Way* arose from challenges to laws concerning the common school system. Consequently, there is a relative lack of authority on the interpretation of the term as it applies outside the common school context.

---

284. See *Seattle Sch. Dist. No. 1*, 90 Wash. 2d at 522, 585 P.2d at 71; *Northshore*, 84 Wash. 2d at 685, 530 P.2d at 178.

285. 84 Wash. 2d 685, 530 P.2d 178 (1974).

286. *Id.* at 729, 530 P.2d at 202.

287. *Id.*

288. *Id.*

289. *Seattle Sch. Dist. No. 1*, 90 Wash. 2d at 522, 585 P.2d at 97 (quoting WASH. CONST. art. IX, § 2).

290. 167 Wash. 2d 514, 219 P.3d 941 (2009).

291. *Id.* at 527, 219 P.3d at 948.

292. *Id.*

*B. Other Interpretations of the Term “Uniform” in the Washington State Constitution Conflict with the Substance-Based Definitions Articulated in the Common School Context*

The term “uniform” appears in several provisions throughout the Washington State Constitution. In nearly every instance, it appears in the form of a mandate to the legislature to establish laws, rules or procedures.<sup>293</sup> However, outside the common school context, courts generally treat the term uniform as a procedural standard rather than a substantive guideline.<sup>294</sup> While the independent context of each constitutional provision must be taken into account, these conflicting interpretations provide important insight into the original understanding of the term as it was used in the constitutional scheme. Taken together, these cases illustrate that the substance-based interpretations advanced in the common school cases are an exception to the Court’s general treatment of uniformity as a procedural requirement.

Early cases interpreting the uniformity mandate illustrate the Court’s procedure-based interpretation.<sup>295</sup> In 1890, the Washington State Legislature passed a statute authorizing the commissioners of each county to appoint county deputies and fix the salaries of such officers as the needs of the county required.<sup>296</sup> Article XI, section 5, requires the legislature to provide “by general and uniform laws” for the election and compensation of all county officers.<sup>297</sup> Mr. Nelson, a resident taxpayer of Clallam County, challenged the statute, arguing that the legislature’s delegation of power to the individual counties and the resulting inter-

---

293. WASH. CONST. art. XI, § 4 (“The legislature shall establish a system of county government, which shall be uniform throughout the state except as hereinafter provided, and by general laws shall provide for township organization . . . .”); *id.* art. XI, § 5 (“The legislature, by general and uniform laws, shall provide for the election in the several counties of boards of county commissioners, sheriffs, county clerks, treasurers, prosecuting attorneys and other county, township or precinct and district officers, as public convenience may require, and shall prescribe their duties, and fix their terms of office.”); *id.* art. IV, § 24 (“The judges of the superior courts, shall from time to time, establish uniform rules for the government of the superior courts.”); *id.* art. XII, § 19 (“The legislature shall, by general law of uniform operation, provide reasonable regulations to give effect to this section.”). Notably, art. XII, § 19, which relates to regulation of telephone and telegraph companies, states: “The legislature shall, by general law of uniform *operation*, provide reasonable regulations to give effect to this section.” WASH. CONST. art. XII, § 19 (emphasis added). This language strongly suggests the term uniform applies to procedure, and not substance.

294. *See infra* section III.C.

295. *Nelson v. Troy*, 11 Wash. 435, 39 P. 974 (1895); *State v. Fleming*, 88 Wash. 583, 153 P. 347 (1915).

296. *Nelson*, 11 Wash. at 437, 39 P. 975.

297. *Id.* at 436–37, 39 P. 974–75 (citing WASH. CONST. art. XI § 5).

county variation in deputy salaries “destroy[ed] the uniformity of the operation of law.”<sup>298</sup>

In support of this argument, Mr. Nelson cited the California case of *Dougherty v. Austin*,<sup>299</sup> in which the California Supreme Court had invalidated similar legislation as violating an analogous “general and uniform” mandate in the California State Constitution.<sup>300</sup> In that case, the California Supreme Court held that the law was not general in nature and uniform in operation because it delegated the authority to hire supporting staff to only certain classes of counties.<sup>301</sup> The Washington State Supreme Court rejected the case as inapposite because the Washington legislation extended to all counties within the state.<sup>302</sup>

The Court also rejected Mr. Nelson’s substance-based argument that the resulting inter-county salary variation destroyed the uniformity of the laws, explaining that the fact that the law produced inter-county variation in deputy salaries was not determinative of the issue.<sup>303</sup> Instead, the Court assessed whether the statute operated in such a way that “like conditions insur[ed] like results.”<sup>304</sup> Because the deputy-appointment statute was a “general provision . . . applicable to all classes of counties,” the Court held that it satisfied the uniformity requirement imposed by article XI, section 5.<sup>305</sup>

In *State ex rel Maulsby v. Fleming*,<sup>306</sup> the Court again applied a procedural analysis to hold that a law which facially discriminated between counties throughout the state violated article XI, section 5.<sup>307</sup> The statute at issue authorized prosecuting attorneys and justices of the peace to assume the duty of coroners in all counties “except counties of the first class.”<sup>308</sup> The Court held that such facial discrimination violated the uniformity requirement of the constitution: “It is plain that this is not a uniform system . . . [for] the Legislature certainly has no right, under

---

298. *Id.*

299. 29 P. 1092 (Cal. 1892).

300. *Id.* at 1092.

301. *Id.*

302. *Nelson*, 11 Wash. at 440, 39 P. at 976.

303. *Id.*

304. *Id.* at 446, 39 P. at 977.

305. *Id.* at 445, 39 P. at 977.

306. 88 Wash. 583, 153 P. 347 (1915).

307. *Id.* at 586–87; 153 P. at 349.

308. *Id.* at 584, 153 P. at 348.

[article XI], to provide for officers in the counties of the first class which are not provided for in other counties.”<sup>309</sup>

The Court’s opinion in *Mount Spokane Skiing Corporation v. Spokane County*<sup>310</sup> provides a more recent example of a Washington court applying a procedural-based interpretation of the uniformity mandate.<sup>311</sup> In that case, Mount Spokane Skiing Corporation (Spokane Skiing) entered into a twenty-year agreement with the State Parks and Recreation Commission to operate an outdoor recreation facility in the publicly owned Mount Spokane State Park.<sup>312</sup> In 1990, a state-commissioned consultant concluded that Spokane Skiing was providing “substandard” service.<sup>313</sup> Based on these concerns, the Board of Spokane County Commissioners created the Public Development Authority, a public corporation, to manage the Mount Spokane State Park recreation facility.<sup>314</sup> Spokane Skiing filed suit, seeking a declaratory judgment that the Authority was an illegal entity and that RCW 35.21.730—which authorized cities and counties to charter public corporations to participate in federally assisted programs addressing the living conditions in urban areas—violated the “general and uniform” requirement in article XI, section 4.<sup>315</sup>

Spokane Skiing argued the different public corporations permitted under RCW 35.21.730 violated article XI, section 4 by creating an unconstitutional lack of uniformity.<sup>316</sup> Under its interpretation of article XI, section 4, the Constitution required “one system applicable alike in all its parts and continuously operating equally in all of the counties of the state.”<sup>317</sup> The Court rejected Spokane Skiing’s definition, reasoning that “[s]uch a strict requirement of ‘uniform’ fails to allow for the discretion necessary to meet the particular needs of each county.”<sup>318</sup> Instead, the Court employed a more procedure-focused approach: “Under, RCW 35.21.730, all counties have the authority to create public corporations. The statute further provides the proper purposes for which

---

309. *Id.* at 585, 153 P. at 348.

310. 86 Wash. App. 165, 936 P.2d 1148 (1997).

311. *Id.* at 180, 936 P.2d at 1155–56.

312. *Id.* at 169, 936 P.2d at 1150.

313. *Id.*

314. *Id.*

315. *Id.* at 169–70, 936 P.2d at 1151; *see also* WASH. CONST. art. XI, § 4.

316. *Mount Spokane Skiing Corp.*, 86 Wash. App. at 180, 936 P.2d at 1155–56.

317. *Id.* (The *Mount Spokane Skiing Corp.* Court relied on a definition taken from *Coulter v. Pool*, 201 P. 120, 125 (Cal. 1921).).

318. *Id.* at 181, 936 P.2d at 1156.

a corporation may be created. Such a system is uniform.”<sup>319</sup> The Court emphasized that the uniformity stemmed from the fact that “each county has the authority [to create municipal corporations] available to it.”<sup>320</sup> It went on to explain that variation in the corporations created by the county did not violate the Constitution because “[t]he manner in which the county exercises this discretion should not be required to be strictly uniform.”<sup>321</sup>

The procedure-based interpretation of the uniformity mandate applied by the judiciary in *Nelson, Fleming*, and *Mount Spokane Skiing* is also consistent with the text of the Washington State Constitution. Article VII, section 1 states, “[a]ll taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only.”<sup>322</sup> This constitutional recognition of inter-class variation is significant because it recognizes the authority of the legislature to differentiate between constitutionally recognized classes so long as laws have uniform application within a class. Thus, outside the common school context, the procedural nature of the term uniform in the Washington State Constitution is plain.

C. *Other States with Similar Constitutional Language Have Interpreted the Uniformity Requirement to Mandate Uniform Laws but Not Uniform Schools*

When the meaning of a term is not clear from the Constitution’s text, courts look to other contemporaneous uses and interpretations.<sup>323</sup> Washington framers borrowed liberally from the constitutions of other states, including Oregon, California, and Wisconsin.<sup>324</sup> Moreover, because of the constitutional pluralism prevalent amongst most western-territories turned states, it is common to find certain clauses lifted

---

319. *Id.*

320. *Id.*

321. *Id.*

322. WASH. CONST. art. VII, § 1.

323. *Northshore Sch. Dist. No. 417 v. Kinnear*, 84 Wash. 2d 685, 727, 530 P.2d 178, 201–02 (1974), *overruled by Seattle Sch. Dist. No. 1 of King Cty. v. State*, 90 Wash. 2d 476, 522, 585 P.2d 71, 97 (challenging constitutionality of school finance system); *see also Yelle v. Bishop*, 55 Wash. 2d 286, 291, 347 P.2d 1081, 1084 (1959) (recognizing that when interpreting what the framers of the Washington State Constitution meant by a “general and uniform system,” the Court should consider the history of events preceding and contemporary to the adoption of the Washington State Constitution).

324. James M. Dolliver, *The Mind of the Founders: An Assessment of the Washington Constitution of 1889*, in *WASHINGTON COMES OF AGE* 135, 135 (David H. Stratton ed., 1992).

directly from the constitutions of earlier colonial states.<sup>325</sup> The phrase “general and uniform system of free public schools” first appeared in the North Carolina State Constitution drafted over a century earlier in 1776.<sup>326</sup> Consequently, interpretations of analogous provisions in other states’ constitutions may shed light on the original understanding of the language used in the Washington State Constitution.

### 1. *Oregon*

Before Washington’s territorial grant, Oregon governed much of the land that is now Washington State.<sup>327</sup> The first schools established in present-day Washington State were established under Oregon’s constitutional framework.<sup>328</sup> Thus, the interpretation of Oregon’s education provisions may be particularly indicative of the Washington Constitution’s education mandates. Article VIII, section 3 of the Oregon State Constitution charges the legislative assembly with the creation of “a uniform, and general system of Common schools.”<sup>329</sup> Like the Washington Constitution, Oregon’s appears to contemplate a distinction between public schools and common schools: “[t]he legislative assembly shall provide by law for the establishment of a uniform and general system of common schools.”<sup>330</sup>

In the 1898 case of *Harris v. Burr*,<sup>331</sup> the Oregon State Supreme Court emphasized that its constitution delegated to the legislature the “plenary power” to establish a system of public schools.<sup>332</sup> In that case, Laura A. Harris sued Sherwood Burr and others for denying her the privilege of voting in a local school district election.<sup>333</sup> The trial court found in Ms. Harris’ favor, holding that Mr. Burr’s actions violated the legislative act conferring upon women the right to vote at school district elections.<sup>334</sup> After closely analyzing the Oregon Constitution, the Court concluded that the Oregon Constitution did not prescribe the requirements for

---

325. See Robert F. Utter & Sanford E. Pitler, *Presenting a State Constitutional Argument: Comment on Theory and Technique*, 20 IND. L. REV. 635, 645–52 (1987).

326. N.C. CONST. art. IX, § 2 (1776).

327. THOMAS WILLIAM BIBB, HISTORY OF EARLY COMMON SCHOOL EDUCATION IN WASHINGTON 4 (1929).

328. *Id.*

329. OR. CONST. art. VIII, § 3.

330. *Id.*

331. 52 P. 17 (Or. 1898).

332. *Id.* at 20.

333. *Id.*

334. *Id.*

school district officials or elections.<sup>335</sup> As a result, the Court reasoned, the state constitution vested discretion to regulate those matters in the legislature.<sup>336</sup>

Perhaps because of the clear delineation of power to the legislature recognized in *Harris v. Burr*, Oregon courts have not addressed a challenge to charter schools on the basis that the schools violate the uniform and general system of schools. In 1999, Oregon passed Senate Bill 100<sup>337</sup> authorizing charter schools. In the interceding decades, the courts have not considered a constitutional challenge to the legislation on the grounds that it violates the uniformity of the public school system. The legislation has many of the same features as charter legislation in Washington.<sup>338</sup> It permits both local school districts and the central State Board of Education to authorize charter schools.<sup>339</sup> The schools are open to all students, with over-enrolled schools determining enrollment by a lottery.<sup>340</sup> However, unlike Washington's charter school legislation, Oregon's charter school legislation does not require all teachers to hold state certifications.<sup>341</sup> It also does not apply collective bargaining agreements to non-district sponsored charter schools.<sup>342</sup>

## 2. *Colorado*

While Oregon courts had no occasion to consider a uniformity challenge to charter school legislation, the Colorado State Supreme Court considered such an action in a 2009 case.<sup>343</sup> Colorado enacted charter school authorizing legislation in 1993.<sup>344</sup> Under the original Act, charter schools could be authorized only by local school district approval.<sup>345</sup> In 2004, the legislature amended the Act by adding a set of

---

335. *Id.*

336. *See id.*

337. Act of May 27, 70th Leg., 1999 Or. Laws ch. 200.

338. *See* OR. REV. STAT. §§ 338.005–.165.

339. *See id.* § 338.005 (defining “sponsor” to include the board of the common school district or the union high school district in which the public charter school is located, the State Board of Education, or an institution of higher education).

340. *Id.* § 338.125(2)–(3).

341. *See id.* § 338.135 (this section defines employee requirements but does not include state certification).

342. *Id.*

343. *Boulder Valley Sch. Dist. RE-2 v. Colo. State Bd. of Educ.*, 217 P.3d 918 (Colo. App. 2009).

344. *Id.*; Charter Schools Act, ch. 227, 1993 Colo. Sess. Laws 1051.

345. *See Boulder Valley*, 217 P.3d at 921.

amendments known as Part Five.<sup>346</sup> The Part Five amendments established an alternative means of establishing charter schools by creating an independent state agency, termed the Institute, authorized to approve or deny applications for charter schools.<sup>347</sup> The Part Five amendments thus resulted in two types of charter schools: district charter schools, which contract with the school boards of local districts; and institute charter schools, which contract with the Institute.<sup>348</sup>

An Institute charter school is “a public school within the state, [that is] unaffiliated with a school district.”<sup>349</sup> Institute charter schools are open to all children living within the State of Colorado, not just to children residing within the district where the institute charter school is physically located.<sup>350</sup> The Colorado Department of Education funds the institute charter schools based on the number of students in attendance using the same formula as if the students attended a public school in the local school district where the institute charter school is located.<sup>351</sup> School districts are not, however, required to support institute charter schools with locally raised funds.<sup>352</sup>

Three Colorado school districts and several individual plaintiffs brought cases challenging the validity of the Part Five amendments.<sup>353</sup> The trial court consolidated the claims, granted partial summary judgment in favor of the State on constitutional claims, and dismissed the remaining claims with prejudice.<sup>354</sup> Only one of the plaintiff school districts, Boulder Valley, pursued an appeal.<sup>355</sup> Although the motion for summary judgment involved constitutional and non-constitutional claims, Boulder Valley appealed only the ruling that Part Five does not violate the Colorado Constitution.<sup>356</sup> On appeal, the Colorado Court of Appeals affirmed the trial court, holding that the statute was constitutional.<sup>357</sup>

---

346. *Id.*; Act of June 3, ch. 358, 2004 Colo. Sess. Laws 1594.

347. *Boulder Valley*, 217 P.3d at 921.

348. *See id.*

349. *Id.* (quoting COLO. REV. STAT. § 22-30.5-507(1)(b)).

350. *Id.*

351. *Id.* at 921–22 (citing COLO. REV. STAT. § 22-30.5-507(2)).

352. *Id.* at 922.

353. *Id.*

354. *Id.*

355. *Id.*

356. *Id.*

357. *Id.* at 928.



One of Boulder Valley's constitutional objections on appeal centered on the following language in the Colorado Constitution: "The general assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state, wherein all residents of the state, between the ages of six and twenty-one years may be educated gratuitously."<sup>358</sup>

Boulder Valley argued that the plain meaning of this section required the General Assembly to establish a "single uniform system of public schools consisting of school districts . . . governed by locally elected officials."<sup>359</sup> Boulder Valley argued that this duty prohibits the General Assembly from establishing "a second and different system" governed by unelected individuals.<sup>360</sup>

The Court rejected Boulder Valley's argument, observing that nothing in the text of the Colorado Constitution necessarily required the School District's restrictive reading: "We find no language in the provision that engrafts these criteria onto the phrase 'thorough and uniform system.'"<sup>361</sup> Relying on its previous interpretation in *Lujan v. Colorado State Board of Education*,<sup>362</sup> the Court explained that the provision is satisfied if "thorough and uniform educational opportunities are available through state action in each school district."<sup>363</sup> Consequently, the Court held that the Institute charter schools established under Part Five satisfied the uniformity mandate because the Institute schools were equally available to all districts and students throughout the states.<sup>364</sup>

### 3. *North Carolina*

Interpretations of nearly identical constitutional language in North Carolina are also instructive. Early cases examining the North Carolina provision suggest the term "uniform" implicates a procedural requirement. That is, the term "uniform" requires laws of equal application throughout the state. In the 1890 case *City of Greensboro v. Hodgin*,<sup>365</sup> the North Carolina Supreme Court explained the term "general" meant "not local; not limited to one or more places or

---

358. COLO. CONST. art. IX, § 2.

359. *Boulder Valley*, 217 P.3d at 928.

360. *Id.*

361. *Id.* (quoting COLO. CONST. art. IX, § 2).

362. 649 P.2d 1005 (Colo. 1982).

363. *Id.* at 1025.

364. *Boulder Valley*, 217 P.3d at 928.

365. *City of Greensboro v. Hodgin*, 11 S.E. 586 (N.C. 1890).

localities in the state.”<sup>366</sup> The term “uniform” required that the system must operate in the same way throughout the state: “[T]he system cannot be so regulated by statute as that it will apply and operate as a whole in some places, localities and sections of the state, and not in the same, but in different ways, in other places, localities, and sections.”<sup>367</sup> The Court then concluded that the purpose of the clause was to ensure that “all the children within the prescribed ages, wherever they may reside in the state, [have] the same opportunity to obtain the benefits of education in free public schools.”<sup>368</sup> Based on this language, the meaning of uniform seems to apply to the procedural operation of the laws. Thus, the laws established by the legislature to create the public school system must operate with equal force upon all subjects within the class.

In a later case, the North Carolina Supreme Court concluded that state-funded high schools did not violate the state constitution even though not all districts had established high schools.<sup>369</sup> The Court explained that “[t]he term ‘uniform’ here clearly does not relate to ‘schools[;]’ . . . the term has reference to and qualifies the word ‘system.’”<sup>370</sup> The Court went on to explain that, although not all districts had established a high school, “provision is made for establishment of schools of like kind throughout all sections of the state and available to all of the school population of the territories contributing to their support.”<sup>371</sup>

The North Carolina Supreme Court relied on a parallel line of cases interpreting the phrase in California. In the 1905 case *Ex Parte Sohncke*,<sup>372</sup> the California Supreme Court explained that the word uniform in the constitution “does not mean ‘universal.’”<sup>373</sup> Instead, it requires “simply that the effect of general laws shall be the same to and upon all persons who stand in the same relation to the law.”<sup>374</sup> The California and North Carolina Supreme Courts’ interpretations of the general and uniform requirement place the emphasis on the legal procedures by which schools are established and governed rather than on the schools themselves.

---

366. *Id.* at 587.

367. *Id.*

368. *Id.*

369. *Bd. of Educ. v. Bd. of Comm’rs of Granville Cty.*, 93 S.E. 1001 (N.C. 1917).

370. *Id.* at 1002 (citing *Ex Parte Sohncke*, 82 P. 956 (Cal. 1905)).

371. *Id.*

372. 82 P. at 956 (Cal. 1905).

373. *Id.* at 958.

374. *Id.*

#### IV. THE SYSTEM OF CHARTER SCHOOLS ESTABLISHED BY THE 2016 LEGISLATURE IS CONSISTENT WITH THE WASHINGTON CONSTITUTION

When the Washington State Legislature passed the Amended Charter School Legislation, it did so against the backdrop of the 2015 litigation in *League of Women Voters*. At the trial court level, the League asserted two constitutional challenges. First, the League argued that charter schools under the Initiative 1240 were not common schools and, therefore, unconstitutionally diverted constitutionally restricted common school funds.<sup>375</sup> Second, the League asserted that the charter schools under Initiative 1240 violated the Constitution's requirement that the system of public schools be "general and uniform."<sup>376</sup> Ultimately, the Washington State Supreme Court invalidated Initiative 1240 on the grounds that it unconstitutionally diverted common school funds but did not decide the general and uniform issue.<sup>377</sup> The amendments resulting from the Court's decision incorporated into the CPSA reflect both reactive and proactive steps to bring charter schools within compliance with the Constitution.<sup>378</sup> These changes—coupled with an appropriately framed understanding of the scope of the "general and uniform mandate"—should be sufficient to bring the system of charter schools within the general and uniform system of public schools required by the Constitution.

A. *The Legislature Has Remedied the Constitutional Funding Issues Identified in League of Women Voters of Washington v. State by Removing Charter Schools from the Common School System*

The CPSA specifically addresses the funding concerns identified by the Court in *League of Women Voters*. The Court's invalidation of the funding mechanisms for charter schools dealt a fatal blow to the system of charter schools established under Initiative 1240.<sup>379</sup> Because the Court unanimously found that charter schools under Initiative 1240 were not common schools, the schools were, therefore, ineligible to receive common school funds.<sup>380</sup> Further, the majority's reasoned that, because

---

375. Complaint for Declaratory Judgment & Injunctive Relief at 3–8, *League of Women Voters of Wash. v. State*, No. 13-2-24997-4 SEA, 2013 WL 11109512 (Wash. Super. Ct. Dec. 12, 2013).

376. *Id.*

377. *League of Women Voters of Wash. v. State*, 184 Wash. 2d 393, 355 P.3d 1131 (2015).

378. *See infra* section IV.A.

379. *League of Women Voters*, 184 Wash. 2d at 412–13, 355 P.3d at 1141.

380. *Id.* at 409–10, 355 P.3d at 1139–40.

common school funds were located in the general fund, there was “no way to track restricted common school funds or to ensure that these dollars [were] used exclusively to support the common schools.”<sup>381</sup> This co-mingling rationale effectively precluded charter schools from receiving any monies stored in the general fund.<sup>382</sup>

The CPSA contains two substantive changes to remedy the constitutional funding issues that existed under Initiative 1240. First, the legislature removed charter schools from the common school system entirely.<sup>383</sup> In *League of Women Voters*, the Court held that charter schools could not operate as common schools because they were not subject to local voter control—a key feature of the common school system.<sup>384</sup> The legislature was, therefore, left with two possible solutions: restructure charter schools to conform to the local control requirement established by the Court in *Spokane County v. Bryan*, or remove charter schools from the common school system entirely. It chose the latter.<sup>385</sup> Because charter schools are no longer within the common school system, the schools are no longer subject to the *Bryan* precedent requiring local voter control.<sup>386</sup>

Although removing charter schools from the common school system addressed the Court’s objection to the charter school system’s lack of voter control, it also means that charter schools cannot receive any constitutionally restricted common school funds.<sup>387</sup> The majority’s reasoning rendered the entire general fund off-limits to charter schools when prohibited the commingling of funds. The general fund is the state’s largest fund and receives its revenues from taxes, revenues, federal grants and revenues from licenses, permits and fees.<sup>388</sup> To overcome this restriction, the legislature chose to fund charter schools under the CPSA from the Washington Opportunity Pathways Account

---

381. *Id.* at 409, 355 P.3d at 1139.

382. OFFICE OF FIN. MGMT., A GUIDE TO THE WASHINGTON STATE BUDGET PROCESS 6 (2016), <http://www.ofm.wa.gov/reports/budgetprocess.pdf> [<https://perma.cc/DZ2E-WD9K>] [hereinafter BUDGET GUIDE]. The general fund supports not only common schools, but also numerous other public education programs. Taking the majority’s reasoning in *League of Women Voters* to its logical extreme, many public education programs—including high schools and running start programs—could lose funding.

383. WASH. REV. CODE § 28A.710.010(5) (2014).

384. *League of Women Voters*, 184 Wash. 2d at 405, 355 P.3d at 1137.

385. WASH. REV. CODE § 28A.710.010(5).

386. *See* Sch. Dist. No. 20, *Spokane Cty. v. Bryan*, 51 Wash. 498, 504, 99 P. 28, 30 (1909) (identifying local voter control as an essential element of the *common* school system).

387. *League of Women Voters*, 184 Wash. 2d at 409, 355 P.3d at 1139.

388. *See* Budget Guide, *supra* note 382.

(the Pathways Account).<sup>389</sup> The Pathways Account is a separate account that operates entirely independently from the general fund.<sup>390</sup>

Allocating funds from the Pathways Account is a constitutional solution to the funding problems identified in *League of Women Voters*. The Pathways Account does not contain any funds restricted for the use of common schools, sidestepping any potential constitutional issues arising from CPSA appropriations.<sup>391</sup> Several other educational programs that, like charter schools, are not subject to local voter control receive funding from the Pathways Account.<sup>392</sup> This suggests that local voter control is not a prerequisite to receive funds from the Pathways Account as it would be from the general fund.

### *B. The CPSA Establishes a General and Uniform System of Charter Schools*

Parties challenging the CPSA began to challenge the new law in court just days after its passage.<sup>393</sup> If one or more of these cases reaches the Washington State Supreme Court, the Court will likely be confronted with the question of whether the CPSA satisfies the uniformity requirement in article IX, section 2 of the Washington State Constitution.<sup>394</sup> Despite the Court's footnote in its slip opinion in *League of Women Voters* warning that the charter schools under Initiative 1240 likely violated the "general and uniform" requirement, if confronted with a similar challenge to the CPSA, the Court should find that the law satisfies the constitutional uniformity mandate. Although unsettled in the educational context, cases interpreting the term "uniform" suggest the term requires uniform operation of laws such that like conditions produce like results under the law.<sup>395</sup> The phrase does not appear to require uniformity in the substantive results of the law so long as its operation is uniform. Because the CPSA provides a uniform system for

---

389. WASH. REV. CODE § 28A.710.270.

390. See BUDGET GUIDE, *supra* note 382.

391. See WASH. REV. CODE § 28B.76.526.

392. *Id.*

393. Complaint, *El Centro de la Raza v. State*, No. 16-2-18527-4 SEA (Wash. Super. Ct. Aug. 16, 2016). North Carolina also considered a similar suit challenging the validity of charter school legislation under its nearly identical constitutional provision. See *Sugar Creek Charter Sch., Inc. v. State*, 712 S.E.2d 730 (2011).

394. *League of Women Voters of Wash. v. State*, No. 89714-0, slip op. at 11, n.10 (Wash. Sept. 4, 2015).

395. See *supra* Part III.

the establishment and administration of charter schools, the law satisfies this procedural-based understanding of the uniformity requirement.

1. *The “General and Uniform Mandate” Does Not Require Substantive Uniformity Between Schools; Rather, It Requires That Each School Be Governed By General And Uniform Laws And Procedures*

The “general and uniform” mandate requires that each class of school be governed by a general and uniform system of laws. It does not, however, require that the schools within the public school be uniform to one another. Washington cases considering the scope of the general and uniform mandate seem to focus on the uniformity of the schools themselves. However, the text of Constitution, the structure of the public school system, and interpretations reflecting the common understanding of the phrase all weigh in favor of a procedure-based interpretation.

The text of article IX, section 2 suggests that the general and uniform requirement requires uniform procedures for the administration of public schools. The meaning of the term “general” is relatively straightforward. Contemporary dictionaries indicate that the term had two common meanings: “of, for, or from the whole or all” or “not particular; not local.”<sup>396</sup> Both definitions are consistent with the common school movement’s goal of creating schools open to all students throughout the state regardless of income or locality.<sup>397</sup> The use of the term “general” elsewhere in the Washington State Constitution reflects the second definition. Article XI, section 5 section requires legislature, “by general and uniform laws,” to “provide for the election” of various county officials.<sup>398</sup> The section goes on to contrast general laws with “special” or “private” laws.<sup>399</sup> A special law is one that applies only to specific things or persons within a class.<sup>400</sup> By contrast, a general law applies to all persons or things within a class.<sup>401</sup> Following this logic, the term “general” as used in article IX, section 2 requires the legislature to establish a system of schools that is equally available to all students

---

396. See Beale, *supra* note 26, at 550 (citing WEBSTER’S NEW UNIVERSAL UNABRIDGED DICTIONARY 762 (2d ed. 1983)).

397. MURPHY & DUNN SHIFFMAN, *supra* note 35, at 52–55.

398. WASH. CONST. art. XI, § 5.

399. *Id.*

400. See *Young Men’s Christian Ass’n v. Parish*, 89 Wash. 495, 497–98, 154 P. 785, 785–86 (1916).

401. See *id.*

throughout the state. Thus, a system is general if it is not limited to a particular class or locality.

a. *The Text of Article IX, Section 2 Suggests the Uniformity Requirement Mandates a Uniform System Rather than Uniform Schools*

While the term “general and uniform system” is open to at least two interpretations, both the structure and the purpose of article IX, section 2 provide greater support for a procedural definition. Although not entirely clear, the phrase “general and uniform” appears to modify the term “system” rather than “schools.” Thus, it is the procedural system that must be uniform rather than the substantive outcomes of the schools themselves. This procedure-based interpretation is also consistent with varied system of public schools described in the section.<sup>402</sup> The constitution contemplates a public school system including common schools, high schools, and post-secondary vocational schools.<sup>403</sup> A procedure-based interpretation of uniformity permits this legislature to effectuate this varied system of public schools by focusing on the uniformity of the laws by which the public schools are administered rather than the schools themselves.

The text of article IX, section 2 presents interpretative difficulties. The sentence structure requiring a “general and uniform system of public schools” obscures the referent, making it difficult to determine what, exactly, must be general and uniform.<sup>404</sup> Fundamentally, the phrase “general and uniform” modifies the term “system.”<sup>405</sup> However, the term “system” is further modified by the phrase “of common schools.”<sup>406</sup> The phrase is, therefore, susceptible to two different interpretations: one that requires a general and uniform *system* for the administration of public schools, and another that requires the *schools* themselves to be general and uniform.

With respect to the term “general,” the two interpretations do not substantially impact the meaning of the requirement. By their very nature, the schools within the public school system are open to all students of eligible age throughout the state.<sup>407</sup> Therefore, whether the

---

402. See WASH. CONST. art. IX, § 2.

403. *Id.*

404. *Id.*

405. *Id.*

406. *Id.*

407. See WASH. REV. CODE § 28A.150.010 (2014).

term general operates on the term system or on the term schools, the outcome will be the same. However, these alternative constructions substantially affect the meaning of the uniformity requirement. On the one hand, a uniform *system* would require a consistent set of laws, regulations, and procedures by which the legislature administers public schools. Thus, so long as the laws operate uniformly on all schools within a class, the uniformity of the schools themselves is not necessarily of constitutional import.<sup>408</sup> On the other hand, if the mandate requires uniformity amongst the schools, it would likely preclude most alternative instructional schemes, including charter schools.<sup>409</sup>

The sentence immediately following the “general and uniform” mandate suggests that the uniformity requirement is based in procedure rather than substantive outcomes. It states, “[t]he public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established.”<sup>410</sup> This sentence illustrates that the drafters contemplated a system comprising several classes of schools. Common schools and high schools both provide the type of education generally associated with modern district-based schools. But the drafters also included in the public school system normal schools and technical schools—post-secondary schools that offer vocational training. As illustrated in *Bryan*, normal schools were operated by a director and subject to the control of a board of trustees; the schools operated in an entirely different manner than common schools, and were not subject to voter control.<sup>411</sup> However, the Constitution plainly states that such schools are within the public school system.<sup>412</sup> This variation within the public school system, therefore, supports an interpretation that focuses on the uniformity of the system by which the schools are established rather than the schools themselves.

*b. If Applied Beyond the Common School Context, a Substantive Interpretation of Uniformity Would Frustrate the System of Public Schools Required by the Washington State Constitution*

While a substantive interpretation of uniformity is a passable proxy for a procedurally uniform system in the common school context, applying the interpretation to non-common schools would severely

---

408. See *Mount Spokane Skiing Corp.*, 86 Wash. App. at 165, 936 P.2d at 1148.

409. Cf. *Sch. Dist. No. 20, Spokane Cty. v. Bryan*, 51 Wash. 498, 99 P. 28 (1909).

410. WASH. CONST. art. IX, § 2.

411. *Bryan*, 51 Wash. 498, 99 P. 28.

412. See WASH. CONST. art. IX, § 2.



restrict the legislature's ability to establish other constitutionally permissible classes of schools. Cases applying the mandate in the context of common schools advanced definitions emphasizing substantive uniformity despite the mandate's language suggesting it applies to the system rather than the individual schools. Although this definition produces accurate results in the common school context, it fails when applied to other forms of public schools. Because the cases advancing a substantive interpretation of uniformity do so only in the context of common schools, future courts can easily avoid these problems by limiting the substantive definition to the common school context and embracing a procedure-based definition when assessing other systems of public schools.

For example, in *Federal Way School District No. 210*, the Court stated that the Constitution required "uniformity in the educational program provided."<sup>413</sup> Likewise, the Court in *Bryan* defined a general and uniform system as one in which all students "shall have the same advantages and be subject to the same discipline as every other child."<sup>414</sup> These definitions conflate the uniformity of the school system with the uniformity of the schools themselves. In the context of common schools, this subtle shift produces little, if any, difference in the analysis. The common school movement's focus on uniformity and equality means that a properly administered system of common schools will be uniform in both procedure and outcomes.<sup>415</sup> Inconsistency in the schools themselves necessarily signals a flaw in the system by which it is administered.<sup>416</sup> Thus, when analyzing common schools, definitions based on substance, such as the one articulated in *Federal Way School District No. 210* requiring "uniformity in the educational program provided,"<sup>417</sup> function well as a screen for procedural deficits.

The Court's opinion in *Bryan*—the only case considering the general and uniform mandate involving both common and non-common schools—self-consciously restrained its discussion of the general and uniform mandate to the common school system.<sup>418</sup> When contemplating the constitutionality of the statute, the Court noted that it would "break

---

413. *Fed. Way Sch. Dist. No. 210 v. State*, 167 Wash. 2d 514, 527, 219 P.3d 941, 948 (2009).

414. *Bryan*, 51 Wash. at 502, 99 P. at 29. Notably, this language is nearly identical to the definition advanced in the 1890 North Carolina case *City of Greensboro v. Hodgin*, 11 S.E. 586, 587 (1890).

415. *Cf. FIFE*, *supra* note 145.

416. *Cf. id.*

417. *Fed. Way Sch. Dist. No. 210*, Wash. 2d at 527, 219 P.3d at 948.

418. *See Bryan*, 51 Wash. at 498, 99 P. at 28.

the uniformity of the common school system.”<sup>419</sup> The Court’s word choice is significant, because the case involved three different classes of schools: common schools, normal schools, and model training schools.<sup>420</sup> Throughout its opinion, the Court emphasized that model training schools could not be common schools because they differed substantially in school governance, pupil selection, and teacher qualifications.<sup>421</sup> However, the Court’s opinion also makes clear that these differences were not, in and of themselves, a constitutional violation.<sup>422</sup> On this point, the Court remarked, “It is not that the Legislature cannot make provision for the support of a model training school, but in its attempt to do so, it has made provision for it out of the wrong fund.”<sup>423</sup> Thus, although brief, the Court’s treatment of the general and uniform mandate suggests that it viewed article IX, section 2 as requiring uniformity within the common school system, but not necessarily across the public school system as a whole.

By constraining its application of the substantive interpretations of the uniformity requirement, the *Bryan* Court avoided the problems that would result from extending the definition to a non-common school. For instance, the Constitution provides that vocational schools are part of the public school system.<sup>424</sup> However, vocational schools necessarily do not share “uniformity in the educational program[s] provided.”<sup>425</sup> Students of auto mechanics must study a wholly different curriculum than apprenticing electricians. This clearly illustrates that a substance-based understanding of the uniformity requirement frustrates the system of public education contemplated in article IX, section 2. The definitions advanced by the Court in *Northshore* and *Federal Way* would provide similarly unworkable results outside the common school system. Certainly, the Constitution does not require that all public schools share uniform educational programs as the *Federal Way* Court’s definition suggests.<sup>426</sup> If this were the case, seventh-graders and electricians alike would read from the same textbooks and sit for the same examinations.

---

419. *Id.* at 504, 99 P. at 30.

420. *See id.* at 500, 99 P. at 28.

421. *See id.* at 503, 99 P. at 29.

422. *See id.* at 506, 99 P. at 31.

423. *Id.* at 506, 99 P. at 31.

424. WASH. CONST. art. IX, § 2.

425. *Fed. Way Sch. Dist. No. 210 v. State*, 167 Wash. 2d 514, 527, 219 P.3d 941, 948 (2009).

426. *Id.*

Such a result is plainly at odds with the public school system described in article IX of the Washington State Constitution.<sup>427</sup>

Like the *Bryan* Court, Washington courts can avoid the problems implicated by a substantive-based interpretation of uniformity with relative ease. This is so because the cases in which the Courts advanced such definitions did so only in the context of common schools, allowing courts to distinguish when considering laws applying to non-common schools. In *Northshore, Seattle School District No. 1*, and *Federal Way*, the question before the Court concerned laws operating upon common schools.<sup>428</sup> Because each case dealt exclusively with common schools, future courts may simply decline to extend the substantive-based uniformity interpretation beyond this class of schools.

*c. A Procedure-Based Interpretation of the Uniformity Requirement Is Consistent with the Judicial Interpretations of Uniformity in Other Contexts*

Cases interpreting the term uniform outside the common school context indicate a procedural requirement rather than a substantive standard. In *Nelson v. Troy*,<sup>429</sup> *State ex rel. Maulsby v. Fleming*, and *Mount Spokane Skiing Corp. v. Spokane County*, the Washington State Supreme Court applied a procedure-based interpretation of the phrase when interpreting other portions of the Washington State Constitution. Likewise, courts interpreting similar constitutional provisions in other states employed a procedure-focused analysis of the challenged laws. Accordingly, a procedure-focused interpretation of the uniformity mandate in article IX, section 2 is the most consistent with the judicial consensus on the meaning of the term.

Washington Courts adopted a procedure-based interpretation when analyzing the term “uniform” as used in article IX of the Washington State Constitution. Early cases suggest the Court’s original understanding of the term implicated an analysis of the operation of the law, rather than the substantive outcomes. In *Nelson v. Troy*, the Court

---

427. Cf. FIFE, *supra* note 145 (discussing Horace Mann’s early reports on teacher training schools and common schools); *Washington Trade Schools and Vocational Schools*, REAL WORK MATTERS, <http://www.rwm.org/washington-trade-schools/> [https://perma.cc/62X9-H2KN] (describing courses of study including Dental and Mechanics).

428. See *Northshore Sch. Dist. No. 417 v. Kinnear*, 84 Wash. 2d 685, 688, 530 P.2d 178, 181 (1974), *overruled by* *Seattle Sch. Dist. No. 1 of King Cty. v. State*, 90 Wash. 2d 476, 522, 585 P.2d 71, 97 (challenging constitutionality of school finance system); *Seattle Sch. Dist. No. 1*, 90 Wash. 2d at 476, 585 P.2d at 71; *Fed. Way Sch. Dist. No. 210*, 167 Wash. 2d at 527, 219 P.3d at 948.

429. 11 Wash. 435, 39 P. 974 (1895).

held that a statute permitting each county to appoint and set a salary for new deputies based on the county's needs was constitutional because it operated equally on all counties throughout the state.<sup>430</sup> Likewise, in *State ex rel. Maulsby v. Fleming*, the Court again used a procedure-based analysis in its opinion holding a law that facially discriminated between counties within the state violated article IX, section 4 of the Washington State Constitution.<sup>431</sup> The Court applied a similar analysis in reaching its opinion in its more recent decision in *Mount Spokane Skiing Corp. v. Spokane County*.<sup>432</sup> In that case, the Court held a statute permitting local municipalities to charter private municipal corporations did not violate the constitutional requirement that the "system of county government . . . be uniform throughout the state."<sup>433</sup>

The Washington Supreme Court's reasoning in cases interpreting the term "uniform" in article IX closely tracks the procedure-based interpretations advanced by other state courts interpreting similar language in the education context. For example, the Colorado State Supreme Court held that the state constitution's requirement that the legislature provide for a "thorough and uniform" public school system was satisfied if "thorough and uniform educational opportunities are available through state action in each school district."<sup>434</sup> This interpretation places the Court's analysis squarely on the laws and procedures established by the legislature to provide for a system of public education. Like the procedure-based definitions applied in *Nelson, Fleming*, and *Mount Spokane*, the definition of uniformity articulated by the Colorado Supreme Court permits variation amongst the entities within the system, so long as the system itself operates uniformly throughout the state.<sup>435</sup> Similarly, in North Carolina, the State Supreme Court explained that the Court explained the term "uniform" in the phrase "a general and uniform system of public schools"

clearly does not relate to 'schools' . . . the term has reference to and qualifies the word 'system,' and is sufficiently complied with where, by statute or authorized regulation of the public school authorities, provision is made for establishment of schools of like kind throughout all sections of the state and

---

430. *Id.* at 445, 39 P. at 976.

431. *State v. Fleming*, 88 Wash. 583, 586–87, 153 P. 347, 348–49 (1915) (citing WASH. CONST. art. 11, § 4).

432. 86 Wash. App. 165, 936 P.2d 1148 (1997).

433. WASH. CONST. art. XI, § 4.

434. *Lujan v. Colo. Bd. of Educ.*, 649 P.2d 1005, 1025 (Colo. 1982).

435. *Lujan*, 649 P.2d at 1025.

available to all of the school population of the territories contributing to their support.<sup>436</sup>

The prominence of the procedure-based interpretation of constitutional uniformity requirements suggests courts generally understand the term uniform as a standard applying to the laws and systems established by the legislature. Both Washington and other state courts were unconcerned with the uniformity of the resulting systems so long as the laws by which the systems were established operated uniformly throughout the state.<sup>437</sup> Unlike the substantive-focused applications of the uniformity requirement in common school cases, a procedure-based interpretation applies to other forms of schools within the public school system. For example, vocational schools need not provide identical curricula or certification paths.<sup>438</sup> But so long as the procedures by which the schools are established, monitored, and administered are uniform throughout the state, the system by which the schools are established satisfies the procedural uniformity requirement.<sup>439</sup> Because the procedure-based application of uniformity preserves the variety of schools comprising the public school system as contemplated by the Constitution, Courts should reject the substantive application of the uniformity provision in favor of the procedural based application.

## 2. *The Charter School System Established Under CPSA Satisfies the Constitution's Procedure-Based Uniformity Requirement*

If the Court uses a procedure-based interpretation of the uniformity requirement in, it will very likely find that the CPSA provides sufficient uniformity to withstand a constitutional challenge. As the Court explained in *Nelson*, a uniform system is one in which “like conditions insur[e] like results.”<sup>440</sup> Because the CPSA applies on equal terms to all charter schools operating throughout the state, charter school system established under the CPSA meets the constitutional requirement for a general and uniform system.

Under Initiative 1240, which attempted to define charter schools as common schools, the operation of the laws on the common school system was not uniform because the law treated similarly situated

---

436. Bd. of Educ. v. Bd. of Comm'rs of Granville Cty., 93 S.E. 1001, 1002 (N.C. 1917).

437. See *supra* section IV.B.1.

438. *Washington Trade Schools and Vocational Schools*, *supra* note 427.

439. See *id.*

440. *Nelson*, 11 Wash. at 437, 39 P. at 977.

common schools differently depending on whether the school was district- or charter- based.<sup>441</sup> The CPSA cures this problem by placing charter schools in a single class separate from common schools.<sup>442</sup> Thus, the CPSA must operate uniformly upon charter schools throughout the state, but the uniformity of its operation is no longer tethered to the treatment of common schools. The CPSA satisfies this standard by providing uniform standards for school authorization, charter contract terms, teacher certification, student achievement testing, and charter review and renewal procedures.<sup>443</sup>

Notably, the authorization process established in the CPSA may operate differently depending upon the county or district in which the charter school is located. This is because the law's dual-authorizer system permits either local districts or the Washington Charter School Commission to serve as authorizers.<sup>444</sup> Individuals or organizations seeking to establish a charter school in a charter-friendly district will have access to two modes of authorization while schools in districts that do not wish to participate in charter authorizers must use the Charter School Commission.<sup>445</sup> Despite this potential distinction in the authorizing body, the laws will not operate differently because the oversight mechanisms are the same whether the authorizer is a district or the Charter School Commission.<sup>446</sup> Thus, so long as all individuals and organizations throughout the state have access to the ability to establish schools within the charter schools system, the authorizing entity will not interfere with the procedure-based uniformity of the system.

In *Mount Spokane Skiing*, the Court explained that the uniformity of a system of laws was not determined by “[t]he manner in which [a] county exercises its discretion” but by the fact that “each county has the authority available to it.”<sup>447</sup> The CPSA meets this procedure-based standard. While not all counties or districts throughout the state will necessarily choose to establish charter schools, the CPSA grants citizens throughout the state the authority to do so. Similarly, although charter

---

441. Initiative Measure No. 1240 § 101(1)(m) (approved Nov. 6, 2012), [https://wei.sos.wa.gov/agency/osos/en/press\\_and\\_research/PreviousElections/2012/General-Election/Documents/I-1240\\_complete\\_text.pdf](https://wei.sos.wa.gov/agency/osos/en/press_and_research/PreviousElections/2012/General-Election/Documents/I-1240_complete_text.pdf) [http://perma.cc/NJ4N-FYYH].

442. WASH. REV. CODE § 28A.710.010 (2014).

443. See WASH. REV. CODE §§ 28A.710.010–.901.

444. *Id.* § 28A.710.080.

445. See *id.*

446. See *id.* § 28A.710.160.

447. *Mount Spokane Skiing Corp. v. Spokane Cty.*, 86 Wash. App. 165, 181, 936 P.2d 1148, 1156 (1997).

schools may differ in their curricula, goals, and mission statements, the CPSA ensures that the schools are uniform in their establishment, operation, and review. Consequently, despite the League of Women Voters Court's warning in its now-deleted footnote that charter schools likely violated the uniformity of the common school system, the charter school system established under the CPSA satisfies the uniformity requirement in article IX, section 2 of the Washington State Constitution.

## CONCLUSION

Legislation intended to establish public charter schools as an alternative to district-based common and high schools has been the subject of considerable scrutiny.<sup>448</sup> In its most recent form, Washington's charter legislation has remedied the constitutional deficiencies that led the Washington State Supreme Court to invalidate Initiative 1240.<sup>449</sup> Nonetheless, the political nature of charter schools practically ensures the new legislation will be the subject of continued litigation and constitutional objections.<sup>450</sup> Because the CSPA creates a separate class of charter public schools that are treated equally under the laws,<sup>451</sup> the legislation will likely withstand constitutional objections based in the article IX general and uniform mandate.

---

448. *See, e.g.*, Brown, *supra* note 17 (describing community members' reactions to the Washington State Supreme Court's 2014 ruling); John Higgins, *State's Largest Teacher's Union Plans to Sue Over Charter-School Law*, SEATTLE TIMES (April 7, 2016 at 8:42 PM), <http://www.seattletimes.com/seattle-news/education/wea-preps-lawsuit-against-new-charter-schools-law/> [<https://perma.cc/482M-ZNUE>] (detailing legal and political opposition to revised charter school legislation); Lilly, *supra* note 178 (discussing early school choice legislation).

449. *See supra* section IV.A.

450. *See Higgins, supra* note 448.

451. *See* WASH. REV. CODE § 28A.710.020 (2014).