

Recent Decisions in Education Adequacy Litigation

Presented by the Center for Negotiation and Justice

Disclaimer: This presentation contains legal information but it is not legal advice and does not establish an attorney-client relationship. It is an academic review prepared for educational and informational purposes only.



Two New Cases

- ▶ *McCleary v. Washington*

- ▶ Decided January 2012
- ▶ Washington Supreme Court decision
- ▶ Court still determining appropriate mechanism for judicial oversight of legislative response to case

- ▶ *Lobato v. Colorado*

- ▶ Decided December 2011
 - ▶ Colorado trial court decision
 - ▶ Case has been appealed the Colorado Supreme Court
-



Colorado: The *Lobato* Case

Colorado: The *Lobato* Case

▶ **Plaintiffs** (pp. 1-8)

- ▶ Individual Plaintiffs: Parents and children, wide variety of needs
- ▶ School District Plaintiffs: School districts facing variety of challenges
- ▶ Plaintiff-Intervenors: Parents and children, ELL students and students on free and reduced lunch

▶ **Defendants** (p. 8)

- ▶ State of Colorado
 - ▶ Colorado State Board of Education
 - ▶ Commissioner of Education
 - ▶ Governor of Colorado
-



Colorado: The *Lobato* Case

- ▶ **Basis for Claim: Constitutional Language**

Colorado Constitution's Education Clause (article 9, section 2):

“The general assembly shall . . . [p]rovide 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.”



For Reference: Minnesota's Education Clause

Minnesota Constitution's Education Clause (article 13, section 1) :

“The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a **general and uniform system of public schools**. The legislature shall make such provisions by taxation or otherwise as will secure a **thorough and efficient system of public schools** throughout the state.”



Colorado: The *Lobato* Case

- ▶ Legal Question/Test Applied by the Court
 - ▶ Whether Colorado's public school finance system is **rationaly related** to the constitutional mandate requiring a "thorough and uniform system" of public education. (p. 1).
 - ▶ Court determined that education mandates and standards-based education requirements set out by the legislature were the "minimum standard against which the rationality of the system of public school funding must be measured." (p. 174).
 - ▶ Court defined "rational" as logical and reasonable. (p. 174).
-



Colorado: The *Lobato* Case

▶ Legal Question/ Test Applied by the Court

- ▶ Court said that for the public school funding system to be rationally related to the requirement for a thorough and uniform system of education, the funding system must:

1. Identify the relevant educational standards that must be met,

2. Determine the resources necessary to meet those standards, and

3. Institute and fund a public school finance system that provides resources to meet the those standards

(p. 174).



Colorado: The *Lobato* Case

▶ Court's Decision

- ▶ Court held that the State had only completed step 1: Only identified the educational standards that had to be satisfied. (pp. 174-75).
- ▶ State failed on step 2 and step 3: Failed to determine the resources needed to meet educational standards and failed to create a finance system that provides the resources needed to meet those standards. (pp. 174-75).
- ▶ **Court concluded that the Colorado public school finance system was not rationally related to the constitutional requirement for a thorough and uniform system of public schools and was therefore unconstitutional. (p. 182).**



Colorado: The *Lobato* Case

▶ Important Facts and Findings (pp. 59-65, 173-82)

1. Social Science Findings
2. Legislative Links
3. Funding Formula Before Standards
4. No Alignment
5. Budget Cuts
6. Levy Option Not Enough
7. Unfunded Mandates
8. Unfunded Programs and Capital Costs
9. Not District's Fault
10. Not About Unions and Salary Schedules
11. Not About Feasibility
12. Not About the Economy



Colorado: The *Lobato* Case

▶ Remedy

- ▶ Legislature **must not** adopt or use a finance system that fails to meet constitutional requirement for a thorough and uniform system of public schools. (p. 182).
- ▶ Legislature **must** create finance system that funds schools in a manner that meets the requirement for a thorough and uniform system of public schools. (p. 182).
- ▶ **But:** These requirements are put on hold at least until the end of the 2012 session and also while the case is appealed. (pp. 182-83).
- ▶ Colorado's governor announced an appeal soon after the decision was handed down and the Colorado State Board of Education voted 4-3 to appeal. A notice of appeal was filed by Colorado's Attorney General on January 23, 2012.



Colorado: The *Lobato* Case

- ▶ What is Different About Colorado?
 - ▶ Colorado's statistics on student performance and school funding are worse than Minnesota's
 - ▶ Local Control Clause
 - ▶ TABOR Issues
 - ▶ Initial Colorado Supreme Court decision that laid out the test for the Trial Court



Washington: The *McCleary* Case

Washington: The *McCleary* Case

- ▶ **Plaintiffs** (p. 1)

- ▶ Individual Plaintiffs: Parents and children
- ▶ Organizational Plaintiff: Network for Excellence in Washington Public Schools (NEWS)
 - ▶ Coalition of school districts, community groups, education organizations

- ▶ **Defendant** (p. 1)

- ▶ State of Washington



Washington: The *McCleary* Case

▶ Basis for Claim: Constitutional Language

Washington Constitution's Education Clause (article IX, sections 1 and 2):

“It is the **paramount** duty of the state to make **ample provision for the education of all children** residing within its bordersThe legislature shall provide for a general and uniform system of public schools.”



For Reference: Minnesota's Education Clause

Minnesota Constitution's Education Clause (article 13, section 1) :

“The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a **general and uniform system of public schools**. The legislature shall make such provisions by taxation or otherwise as will secure a **thorough and efficient system of public schools** throughout the state.”



Washington: The *McCleary* Case

- ▶ Legal Question/Test Applied by the Court
 - ▶ Whether the State's education funding system achieves or is reasonably likely to achieve the constitutional requirement for a basic education as established under Washington's Education Clause. (p. 46).



Washington: The *McCleary* Case

▶ Legal Question/Test Applied by the Court

- ▶ To satisfy its duty, the State's funding system would have to fund "education" that was "ample" for "all" children and this had to be the State's "paramount" duty, as stated in by Washington's Constitution.

1. **Education** = Opportunity to obtain knowledge and skills as articulated in various legislative acts (opportunity but not a right to an actual outcome)

2. **Ample** = Sufficient, more than adequate provision for education, must be derived from "dependable and regular tax source"

3. **All** = Every child

4. **Paramount** = Having the highest rank, supreme, more important than others

(pp. 46-55)



Washington: The *McCleary* Case

▶ Court's Decision

- ▶ “Substantial evidence confirms that the State’s funding system neither achieved nor was reasonably likely to achieve the constitutionally prescribed end under article IX, section 1.” (p. 69).



Washington: The *McCleary* Case

▶ Important Facts and Findings (pp. 47-69)

1. Legislative Links Between Standards-Based Education and Education Clause
2. State Must Use Education Rationale to Determine What Programs are Part of Basic Education
3. Funding Formula Before Standards
4. No Correlation Between Funding Formula and Basic Education/No Alignment
5. State Cannot Rely on Levies
6. State Cannot Rely on Federal Funds



Washington: The *McCleary* Case

▶ Remedy

- ▶ State argued that its costing-out study and new legislation implemented while case was pending addressed Plaintiffs' claims, State wants court to just defer to legislature. (p. 70).
- ▶ Trial court rejected that argument and ordered the legislature to do a costing-out study to determine basic education costs and provide funding, as Plaintiffs requested. (p. 70).
- ▶ On appeal, Supreme Court orders more limited and balanced remedy. (pp. 71-72, 76-77).
 - ▶ Will not order legislature to do another costing out study
 - ▶ Judicial branch will retain jurisdiction and monitor implementation of new legislation
 - ▶ Mechanism for judicial monitoring not yet established, but State has asked that the Supreme Court serve as oversight entity



Washington: The *McCleary* Case

- ▶ What is different about Washington?
 - ▶ “Paramount” and “ample” language in Washington Constitution
 - ▶ More extensive history of broadly framed school funding litigation and more back and forth between courts and legislature on this issue in Washington than in Minnesota
 - ▶ Not clear what that Minnesota would use a “positive right” test like that used in the *McCleary* case



Minnesota School Funding in the Context of *Lobato* and *McCleary*

- ▶ Minnesota funding case, *Skeen v. State* might provide for a higher standard of review than that used in Colorado.
 - ▶ Minnesota might require that the State show that the school funding system is **necessary** to meet the requirement of a general and uniform system of public schools, rather than just **rationaly related** to this requirement.
 - ▶ *Skeen* held that the right to education in Minnesota is a fundamental right and when a fundamental right is at issue, a higher level of scrutiny is used. (*Skeen*, pp. 313-14). However *Skeen* also said that if challenge is to the funding system, the lesser “rational basis” standard is used. (*Skeen*, pp. 315-16).
 - ▶ Not exactly clear how *Skeen* would be read by Minnesota courts in a *Lobato*- or *McCleary*-type challenge, but language of case leaves open the possibility of there being a high burden placed on the state.
-



Key Questions for Minnesota

1. What has the legislature said about its duties under the Education Clause in connection with standards-based education?
 2. When was Minnesota's funding formula created and how and why has it been changed? How, if at all, has the funding formula reflected state educational mandates?
 3. What specific laws have created additional mandates and what kind of funding, or lack thereof, has been provided to meet those mandates?
-



Key Questions for Minnesota

4. What has the legislature done, if anything, to determine the resources necessary to meet educational standards?
 5. What has the legislature done, if anything, to institute and fund a public school finance system that provides resources to meet those educational standards?
 6. How have school districts been coping and what have they done in facing budget crises? How do these actions demonstrate that it is truly a lack of sufficient funds and not fund mismanagement that is limiting districts' ability to provide an adequate education?
-



Lobato and McCleary: The Takeaway for Minnesota

- ▶ Colorado and Washington cases demonstrate an exciting new trend in school funding litigation
- ▶ Colorado and Washington cases are examples of broad attacks on basic funding formulas
- ▶ Courts are making the broad finding that state's entire funding system is unconstitutional
- ▶ Courts are telling legislatures that they have to take some rational, logical steps to determine the cost of the education that they require
- ▶ No alignment of education standards and funding formula in Colorado and Washington, and no alignment in Minnesota

