

**THE OREGON LEGISLATURE’S CONSTITUTIONAL
OBLIGATION TO PROVIDE AN ADEQUATE SYSTEM OF
PUBLIC EDUCATION: MOVING FROM BOLD RHETORIC
TO EFFECTIVE ACTION**

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I. INTRODUCTION

The gap continues to widen between actual funding levels and the resources needed to achieve Oregon’s educational goals.

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Unless the state and districts can increase funding and efficiencies, the gap will not shrink, and the progress Oregon’s schools have made over the decade will stop. The result will be an inadequate school system, a burden on the state economy, and the loss of our status as a high quality-of-life state.¹

That was the conclusion reached in December 2004 by the Oregon Quality Education Commission (the “Commission”), the entity created by the state legislature to determine the level of funding needed to achieve legislatively defined educational quality requirements. Despite the Commission’s clear and dire warning, the Oregon Legislative Assembly (the “Legislature”) sent to the Governor a budget for the 2005-07 biennium that falls an astonishing \$1.8 billion short of what the Commission determined to be required to achieve Oregon’s legally mandated educational standards.

Oregon’s national reputation has suffered recently as a result of years of inadequate school funding. The national press has reported extensively about the deficiencies in Oregon’s public schools. For example, The *New York Times* reported that “nowhere except Oregon have so many [school] districts announced plans to severely shorten

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1. OREGON QUALITY EDUCATION COMMISSION: FINAL REPORT 2-3 (Dec. 2004), <http://www.ode.state.or.us/initiatives/qualityed/qecreport04.pdf> (last visited Jan. 11, 2006).

the academic year.”² Oregon’s plans are particularly troubling, *The New York Times* reported, because “[t]he state already has the shortest school year in the nation.”³ The paper further reported that “[t]he crisis has called forth a cottage industry of volunteerism, with parents seeking to scrape together money in bake sales and auctions to restore art and music programs.”⁴ Oregon’s public school crisis was featured in stories on NBC’s and ABC’s nightly news programs, and the cartoonist Garry Trudeau featured the plight of Oregon’s public schools in his daily *Doonesbury* comic strip.

Notwithstanding the Commission’s ominous projections and the unflattering attention paid the state by the national press, the Oregon Legislature has done little to remedy the situation. Although the Legislature has ostensibly committed to producing “the best educated citizens in the nation and the world,”⁵ and “[t]o achiev[ing] the highest standards of academic content and performance,”⁶ those promises have gone unfulfilled. According to the latest statistics available from the United States Census Bureau, among the 50 states and the District of Columbia, Oregon ranks just 28th in terms of per pupil K-12 funding,⁷ down from 16th in 1992.⁸ During that same period, when measured as a percentage of the average personal incomes of the state’s citizens—in other words, looking at the issue from an affordability standpoint—Oregon’s national standing dropped even more precipitously, falling from a respectable 11th in 1992⁹ to a lowly 34th today.¹⁰ In contrast, by 2002, Oregon ranked 6th nationally in terms of

2. Sam Dillon, *Schools Ending Year Early Among Efforts to Cut Costs*, N.Y. TIMES, Jan. 12, 2003, at A16; see also *To Balance Books, Oregon Districts Try Fewer School Days*, N.Y. TIMES, Dec. 29, 2002, at A28; V. Dion Haynes, *Schools Learn Harsh Lesson in Economics—In Crisis, Portland Mulls 4-Day Week*, CHI. TRIB., Jan. 19, 2003, at A7.

3. Timothy Egan, *ECONOMIC PULSE: The Northwest; Rising Tide of the New Economy Recedes in the Pacific Northwest*, N.Y. TIMES, Mar. 3, 2003, at A18.

4. Dillon, *supra* note 2, at A16.

5. OR. REV. STAT. § 329.035(3) (2003).

6. OR. REV. STAT. § 329.035(4)(a) (2003).

7. U.S. CENSUS BUREAU, PUBLIC EDUCATION FINANCES 2003 11 (2005), <http://ftp.census.gov/govs/school/03f33pub.pdf>. [hereinafter 2003 CENSUS REPORT] (last visited Jan. 11, 2006).

8. U.S. DEPT. OF COMMERCE, ECONOMICS & STATISTICS ADMIN., BUREAU OF THE CENSUS, 1992 CENSUS OF GOVERNMENTS, VOL. 4, NO. 1 (GOVERNMENT FINANCES—PUBLIC EDUCATION FINANCES) 24, <http://www.census.gov/prod/1/gov/gc924x1.pdf> [hereinafter 1992 CENSUS REPORT] (last visited Jan. 11, 2006).

9. *Id.* at 25.

10. 2003 CENSUS REPORT, *supra* note 7, at 12.

per-capita expenditures on its corrections system.¹¹

Years of inadequate funding have severely diminished the quality of K-12 public education in Oregon. For example, based on 2004 test results from the National Assessment of Educational Progress, only approximately one-third of Oregon's fourth-graders and eighth-graders are proficient in math and reading.¹² Similarly, recent assessment tests administered in Oregon reveal that only approximately one-half of the state's 10th graders are "meeting standards" in reading, math, and science.¹³ And as of 2002, the state's 71 percent high school graduation rate ranked 32nd in the nation.¹⁴ These results may be due in part to the state's overcrowded classrooms; as of 2000, the state's average elementary class size of 23.9 students ranked 49th in the nation.¹⁵

Oregonians pay an enormous cost as a result of these deficiencies in K-12 public education. A 2004 study conducted by the Oregon Department of Education calculated the "net annual state revenue per person" (*i.e.*, the difference between an individual's economic contribution to the state and the amount the state spends on that individual in social services, the state corrections system, etc.) in four different groups: High school dropouts, high school graduates, individuals with "some college" education, and college graduates.¹⁶ The study concluded that each high school dropout *costs* Oregon taxpayers \$8,460 per year on average, and the average high school graduate with no further education *costs* Oregon taxpayers \$5,934 per year.¹⁷ In contrast, the average college graduate makes a net *contribution* to the state of \$8,250 each year.¹⁸

11. NAT'L EDUC. ASS'N, RANKINGS & ESTIMATES (RANKINGS OF THE STATES 2004 & ESTIMATES OF SCHOOL STATISTICS 2005) 48 (June 2005), <http://www.nea.org/edstats/images/05rankings.pdf> (last visited Feb. 27, 2006).

12. See <http://nces.ed.gov/nationsreportcard/states/profile.asp> (last visited Feb. 27, 2006).

13. OREGON DEPT. OF EDUC., OREGON STATEWIDE REPORT CARD (2003-04), <http://www.ode.state.or.us/data/annreportcard/rptcard2004.pdf> (last visited Feb. 27, 2006).

14. See <http://www.edweek.org/rc/states/oregon.html> (last visited Feb. 27, 2006).

15. *Id.*

16. OREGON QUALITY EDUCATION COMMISSION, FINAL REPORT 20 (Dec. 2004), available at <http://www.ode.state.or.us/initiatives/qualityed/qecreport04.pdf> (last visited Feb. 27, 2006).

17. *Id.*

18. *Id.*

In addition, nearly 80 percent of all prison inmates in Oregon are high school dropouts,¹⁹ at an average cost to taxpayers of more than \$23,000 per inmate each year.²⁰ Dropouts are also four times more likely than high school graduates to be covered by the Oregon Health Plan, more than twice as likely to be unemployed, and, if employed, earn an average of 30% less in wages.²¹

In short, as a result of inadequate funding, Oregon's K-12 public education system is not adequately preparing students to succeed in college nor is it otherwise equipping them with the skills they will need to thrive in an increasingly competitive and complex workplace. Instead, the system is producing a disproportionately high number of citizens whose consumption of public goods and services will far exceed their economic contribution to the state.

Given the vacuum of political leadership on this issue, litigation may be the only avenue by which to ensure that Oregon's children receive the quality public education to which they are entitled by the Oregon Constitution. This article explores the Legislature's constitutional obligation to fund an adequate K-12 public education system and suggests several means by which the Legislature might be compelled to do so. Part II provides a brief history of relevant legislation and voter initiatives in Oregon since 1990 and discusses the conclusions reached by the Commission and its predecessor, the Legislative Council on the Oregon Quality Education Model. Part III examines previous challenges to other states' education financing schemes, and summarizes the arguments typically asserted in the three "waves" of national school financing litigation over the past 30 years, with a focus on the most recent wave of cases brought under the "education clauses" found in all 50 state constitutions. Part IV discusses prior challenges to Oregon's school financing laws and analyzes the applicability of two separate sections of article VIII of the Oregon Constitution: section 3, which requires the Legislature to provide "a uniform, and general system of Common schools,"²² and section 8, which requires the Legislature to appropriate funds "sufficient to en-

19. OREGON DEPT. OF EDUC., DROPOUT RATES IN OREGON HIGH SCHOOLS (2001 STATE SUMMARY REPORT) 1 (Jan. 16, 2002) [hereinafter 2001 DROPOUT REPORT].

20. See OREGON LEGISLATIVE FISCAL OFFICE, ANALYSIS OF LEGISLATIVELY ADOPTED BUDGET 124 (Dec. 1, 2003), http://www.leg.state.or.us/comm/lfo/03_05_leg_adopt_budget/2003-05%20LAB.pdf (discussing \$64.25 per inmate, per day provided for in 2003-05 legislatively approved budget) (last visited Feb. 27, 2006).

21. 2001 DROPOUT REPORT, *supra* note 19, at 1.

22. OR. CONST. art. VIII, § 3.

sure that the state's system of public education meets quality goals established by law."²³ This article concludes that each of those sections provides a viable basis upon which the Legislature might be compelled to remedy the state's failure to provide a constitutionally adequate K-12 public education system.

II. BACKGROUND

A. 1991-97: Legislation and Voter Initiatives Shift Control of Educational Funding from Local Districts to the State

Before 1991, state law provided for public education funding through a combination of local property tax revenues, state general fund revenues, and other miscellaneous (including federal) funding.²⁴ By far the largest share of the funding came from local property tax revenues. Local school boards and district voters determined the size of the K-12 school district budgets, which were funded mainly with local property taxes. The state played a minimal role, providing less than 30 percent of the operating funds.

Beginning in 1990, the passage of a series of voter initiatives shifted control from the local districts to the state and dramatically changed the face of school funding in Oregon. First, in opposition to what voters believed were unacceptably high property tax rates, Measure 5 was passed by initiative in 1990; it limited the number of dollars per thousand that education districts could assess on local property.²⁵ The state was required to replace a large portion of the resulting revenue losses to the localities. As a result, control of local school funding effectively shifted to the Legislature. Two additional tax initiatives—Measures 47 and 50—were passed by the voters in 1996 and 1997, respectively. Those measures reduced property taxes even further, thus increasing the state's school funding burden.²⁶ As a

23. OR. CONST. art. VIII, § 8.

24. As of 2002, federal funds represented approximately 7 percent of the total operating resources available to Oregon's K-12 schools. QUALITY EDUCATION COMMISSION, OREGON'S QUALITY EDUCATION MODEL 2002, 20 (2002), available at <http://www.ode.state.or.us/sfda/qualityed/docs/qemrpt02.pdf> (last visited Feb. 27, 2006) [hereinafter 2002 QEC REPORT].

25. Measure 5 limited local property taxes for K-12 schools, Educational Service Districts, and community colleges to \$5 per \$1,000 of real market value. 2002 QEC REPORT, *supra* note 24, at 42. Before the passage of Measure 5, the average tax rate was \$17 per \$1,000 of real market value. *Id.*

26. Based on assessed value, Measure 47 rolled back property taxes to their 1995-96