

# Summary of Washington Supreme Court's *McCleary v. State* Decision

[full copy of Supreme Court decision & the trial court ruling it affirmed are at <http://www.waschoolexcellence.org/>]

**IT IS THE  
PARAMOUNT DUTY OF THE STATE TO MAKE  
AMPLE PROVISION FOR THE  
EDUCATION OF  
ALL CHILDREN RESIDING WITHIN ITS BORDERS....**  
Washington State Constitution, Article IX, section 1

On January 5, 2012, the Washington Supreme Court held that the trial court was right: "We affirm the trial court's declaratory ruling and hold that the State has not complied with its Article IX, section 1 duty to make ample provision for the education of all children in Washington" [opinion at p. 70].

## Supreme Court unanimously declared what our Constitution's education mandate means

- **paramount duty** means that "the State must amply provide for the education of all Washington children as the State's first and highest priority before any other State programs or operations" [pp. 47-48 (*underline added*)].
- **ample provision** means "considerably more than just adequate" [p. 3].
- **all children** means "each and every child" in Washington – "no child is excluded" [pp. 47-48].
- **education** means "the basic knowledge and skills needed to compete in today's economy and meaningfully participate in this state's democracy" [p. 2]. They are specified in the EALRs, the four numbered provisions from ESHB 1209, and the Court's Seattle School District decision [p. 51 (*those three sources "together define a 'basic education' – the substance of the Constitutionally required 'education' under Article IX, section 1"*)].

## Supreme Court unanimously rejected the State's excuses

- **Supreme Court rejected the State's claim that the State's K-12 funding level complies with Article IX, section 1:** The State "has failed to adequately fund the 'education' required by Article IX, section 1. Substantial evidence supports this conclusion"; moreover, "the State has consistently failed to provide adequate funding" [p. 58, *underline added*].
- **Supreme Court rejected the State's claim that the "education" required by Article IX, section 1 is the same as the basic education program the legislature defines and funds:** "The legislature's definition of full funding amounts to little more than a tautology" [p. 61]. Instead, the substantive knowledge and skills specified in the EALRs, ESHB 1209, and *Seattle School District* case are the "education" mandated by our Constitution [p. 53].
- **Supreme Court rejected the State's claim that K-12 funding restrictions (or cuts) are necessary to leave money for other important State programs.** The State never disputed that it currently has plenty of tax revenue to cover the multi-billion dollar increase necessary to amply fund the State's public schools if the State is required to provide that ample funding first. The Supreme Court held that is precisely what our Constitution requires the State to do: "the State must amply provide for the education of all Washington children as the State's first and highest priority before any other State programs or operations" [pp. 47-48, *underline added*].
- **Supreme Court rejected the State's claim that a fiscal crisis can justify cuts to parts of the State's K-12 education funding:** The State may not make reductions "for reasons unrelated to education policy, such as fiscal crisis or mere expediency" [pp. 55-56].



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# Summary of Washington Supreme Court's *McCleary v. State* Decision

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[continued from other side....]

## Supreme Court refuses to stand on the sideline and “hope” the State keeps its promise to fully fund 2261

The State assured the Court that it is increasing K-12 funding so as to amply fund all Washington’s public schools by no later than the 2018 deadline noted in ESHB 2261. For example, the State assured that it will:

- fund 95% of pupil transportation costs “by 2012” [State’s 8/20/2010 Brief to Supreme Court, p. 18].
- increase State funding for reduced class sizes, full-day kindergarten, school maintenance, supplies, and operating costs “in the 2011-13 biennium” [State’s 4/9/2010 Brief to Supreme Court, p. 8].
- increase State funding “by billions of dollars” starting immediately, through full implementation of 2261 no later than 2018 [State’s 4/9/2010 Brief to Supreme Court, p. 8].
- accordingly increase State funding to at least \$9,710 per student/year under 2261 alone [State’s Exhibit 1483].

Although 2 justices believed the State should be trusted to keep its word, a 7-Justice majority held that the Supreme Court will instead retain jurisdiction to make sure that the State actually does:

- “What we have learned from experience is that this court cannot stand on the sidelines and hope the State meets its constitutional mandate to amply fund education” [p. 72].
- Noting the legislature’s recent failures to provide the increased funding it had promised for MSOCs, all-day kindergarten, K-3 class size reduction, and pupil transportation, the Supreme Court concluded that “This court cannot idly stand by as the legislature makes unfulfilled promises” [pp. 76-77].
- The Supreme Court declared it is retaining jurisdiction over this case because “Ultimately, it is our responsibility to hold the State accountable to meet its constitutional duty under Article IX, section 1” [p. 78].
- Noting that “success depends upon continued vigilance on the part of courts”, the Supreme Court reiterated it “intends to remain vigilant in fulfilling the State’s constitutional responsibility under Article IX, section 1” [p. 79].

## The big question: will our State’s elected officials obey the Constitution they took an oath to uphold?

The State did not dispute any of the trial court rulings on the importance of education to our State’s democracy – e.g., that “a healthy democracy depends on educated citizens”, that education “plays a critical civil rights role in promoting equality”, that an “amply provided, free public education operates as the great equalizer in our democracy, equipping citizens born into underprivileged segments of our society with the tools they need to compete on a level playing field with citizens born into wealth or privilege”, and that education “is the number one civil right of the 21<sup>st</sup> century.” [trial court ruling ¶¶ 118-143, which the State did not dispute, contest, or appeal].

Fittingly, the Supreme Court unequivocally declared that “Article IX, section 1 confers on children in Washington a positive constitutional right to an amply funded education” [p. 2 (underline added)].

Fifty-seven years ago, the U.S. Supreme Court held that the Constitution required States to *desegregate* their public schools. Elected officials in some States had the courage to do so promptly. Elected officials in other States used a litany of excuses and tactics to stall.

This year, the Washington Supreme Court held that our Constitution requires the State to *amply fund* its public schools. And to do so first – before funding any other program or operation. What remains to be seen is whether our State’s elected officials will comply promptly . . . or use a litany of excuses and tactics to stall.



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# Washington State Constitution

IT IS THE  
PARAMOUNT DUTY OF THE STATE TO MAKE  
AMPLE PROVISION FOR THE  
EDUCATION OF  
ALL CHILDREN RESIDING WITHIN ITS BORDERS....

Article IX, section 1

*Point #1:*

The Supreme Court

unanimously

declared what this

Constitutional mandate means

## “PARAMOUNT DUTY”

*paramount duty* means  
“the State must amply provide  
for the education of all  
Washington children as the  
State’s first and highest priority  
before any other State programs  
or operations”

*pp. 47-48 (underline added)*

# “AMPLE PROVISION”

*ample provision* means

“considerably more  
than just adequate”

*p. 3*

# “ALL CHILDREN”

*all children* means

“each and every child” in

Washington –

“no child is excluded”

*pp. 47-48*

# “EDUCATION”

*education* means

“the basic knowledge and skills  
needed to  
compete in today’s economy and  
meaningfully participate in this  
state’s democracy”

# “EDUCATION”

“goes beyond reading, writing, and arithmetic. It also embraces broad educational opportunities needed in the contemporary setting to equip our children for their role as citizens and as potential competitors in today’s market as well as the marketplace of ideas. Education plays a critical role in a free society. I must prepare our children to participate intelligently and effectively in our open political system to ensure that system’s survival. It must prepare them to exercise their First Amendment freedoms both as sources and receivers of information; and it must prepare them to be able to inquire, to study, to evaluate and to gain maturity and understanding. The constitutional right to have the State ‘make ample provision for the education of all (resident) children’ would be hollow indeed if the possessor of the right could not compete adequately in our open political system, in the labor market, or in the market place of ideas....

The effective teaching and opportunities for learning these essential skills make up the *minimum* of the education that is constitutionally required.”

*pp. 42-43 (quoting Seattle School District decision) (bold italics by the Court)*

# “EDUCATION”

is further defined by the knowledge & skills specified in ESHB 1209:

- (1) Read with comprehension, write effectively, and communicate successfully in a variety of ways and settings and with a variety of audiences;
- (2) Know and apply the core concepts and principles of mathematics; social, physical, and life sciences; civics and history, including different cultures and participation in representative government; geography; arts; and health and fitness;
- (3) Think analytically, logically, and creatively, and to integrate different experiences and knowledge to form reasoned judgments and solve problems; and
- (4) Understand the importance of work and finance and how performance, effort, and decisions directly affect future career and educational opportunities.

*pp. 49-50 (quoting current version of those provisions from **ESHB 1209**)*

# “EDUCATION”

is then further defined by the knowledge & skills established by the EARLs:

- reading,
- math,
- science,
- writing,
- communication,
- social studies,
- the arts,
- health & fitness, and
- educational technology

*pp. 50-51 (citing the State's EARLs)*

# “EDUCATION”

In short: the following three sources together define the substance of the ‘basic education’ required under Article IX, section 1:

- the State’s **EALRs**,
- the four numbered provisions of ESHB **1209**,
- the *Seattle School District* decision

# “EDUCATION”

In short: the following three sources together define the substance of the ‘basic education’ required under Article IX, section 1:

- the State’s **EALRs**,
- the four numbered provisions of ESHB **1209**,
- the *Seattle School District* decision

Note: the basic ed program statutes are not part of the Court’s “basic education” definition

*Point #2:*

The Supreme Court

unanimously

rejected the State's excuses

Excuse #1:  
the State's K-12 funding level compares with  
Article IX, section 1

# REJECTED

- The State “has failed to adequately fund the ‘education’ required by Article IX, section 1”
- “Substantial evidence supports this conclusion”
- “the State has consistently failed to provide adequate funding”

*p. 58 (underline added)*

Excuse #2:

the “education” required by Article IX, section 1 is the same as the basic education program that the legislature always funds

**REJECTED**

- “The legislature’s definition of full funding amounts to little more than a tautology” *[p. 61]*
- Instead, the substantive knowledge and skills specified in the **EALRs**, **ESHB 1209**, and the *Seattle School District* case are the “education” mandated by our Constitution *[p. 53]*

Excuse #3:

K-12 funding restrictions (or cuts) are necessary to leave money for other important State programs.

**REJECTED**

- The State never disputed that it currently has plenty of tax revenue to cover the multi-billion dollar increase necessary to amply fund the State's public schools if the State is required to provide that ample funding first
- The Supreme Court held that is precisely what our Constitution requires the State to do:
- The "State must amply provide for the education of all Washington children as the State's first and highest priority before any other State programs or operations"

*p. 47-48 (underline added)*

Excuse #4:

a fiscal crisis can justify cuts to parts of the State's  
K-12 education funding

**REJECTED**

- The State may not make reductions “for reasons unrelated to education policy, such as fiscal crisis or mere expediency”

*p. 55-56*

## *Point #3:*

The Supreme Court  
refused to  
stand on the sidelines and  
“hope” the State keeps its  
promise to fully fund 2261

## State's assurances to the Supreme Court

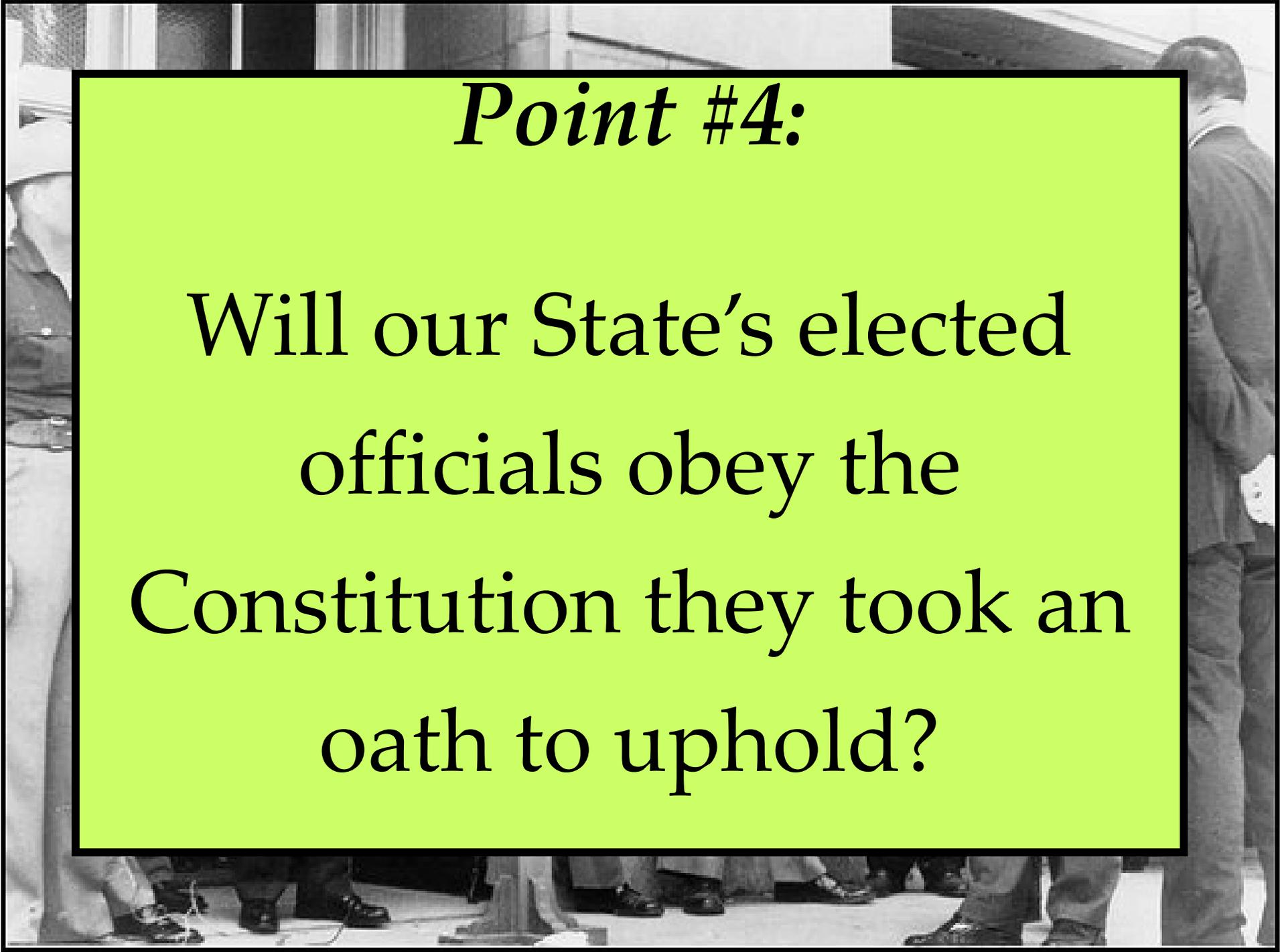
The State said it is increasing its K-12 funding so as to amply fund the education of all Washington children by no later than the 2018 deadline in ESHB 2261. For example, the State assured the Court that it will:

- fund 95% of pupil transportation costs “by 2012” [*State’s 8/20/2010 Brief to Supreme Court, p.18*]
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# Supreme Court's Response to the State's assurances

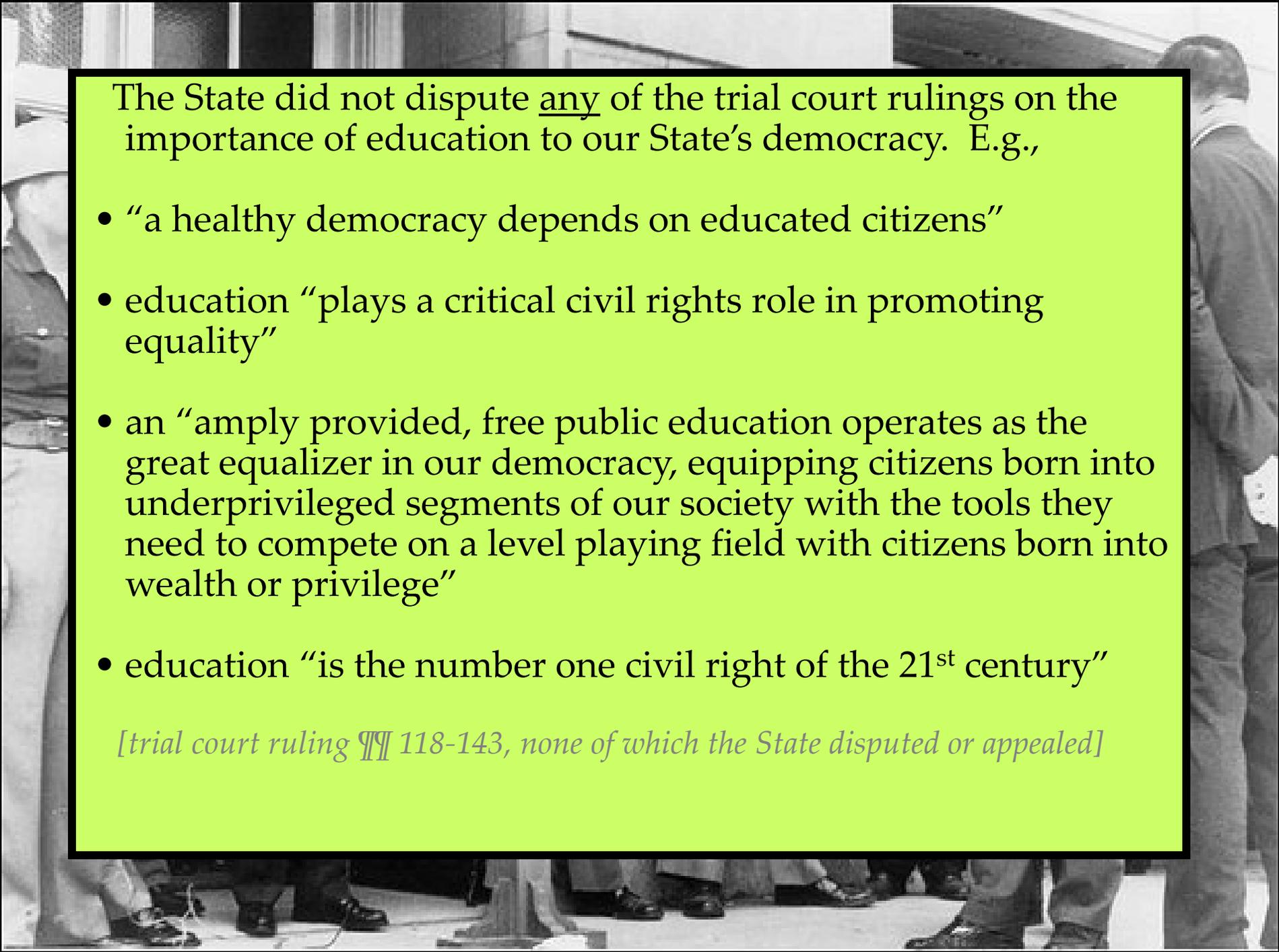
7-Justice majority held:

- “What we have learned from experience is that this court cannot stand on the sidelines and hope the State meets its constitutional mandate to amply fund education” *[p.72]*
- Noting the legislature’s recent failures to provide the increased funding it had promised for MSOCs, all-day kindergarten, K-3 class size reduction, and transportation, the majority declared: “This court cannot idly stand by as the legislature makes unfulfilled promises” *[pp.76-77]*
- The Supreme Court declared it is retaining jurisdiction over this case because “Ultimately, it is our responsibility to hold the State accountable to meet its constitutional duty under Article IX, section 1” *[p.78]*
- “Success depends upon continued vigilance on the part of courts” – the Supreme Court therefore “intends to remain vigilant in fulfilling the State’s constitutional responsibility under Article IX, section 1” *[p.79]*



*Point #4:*

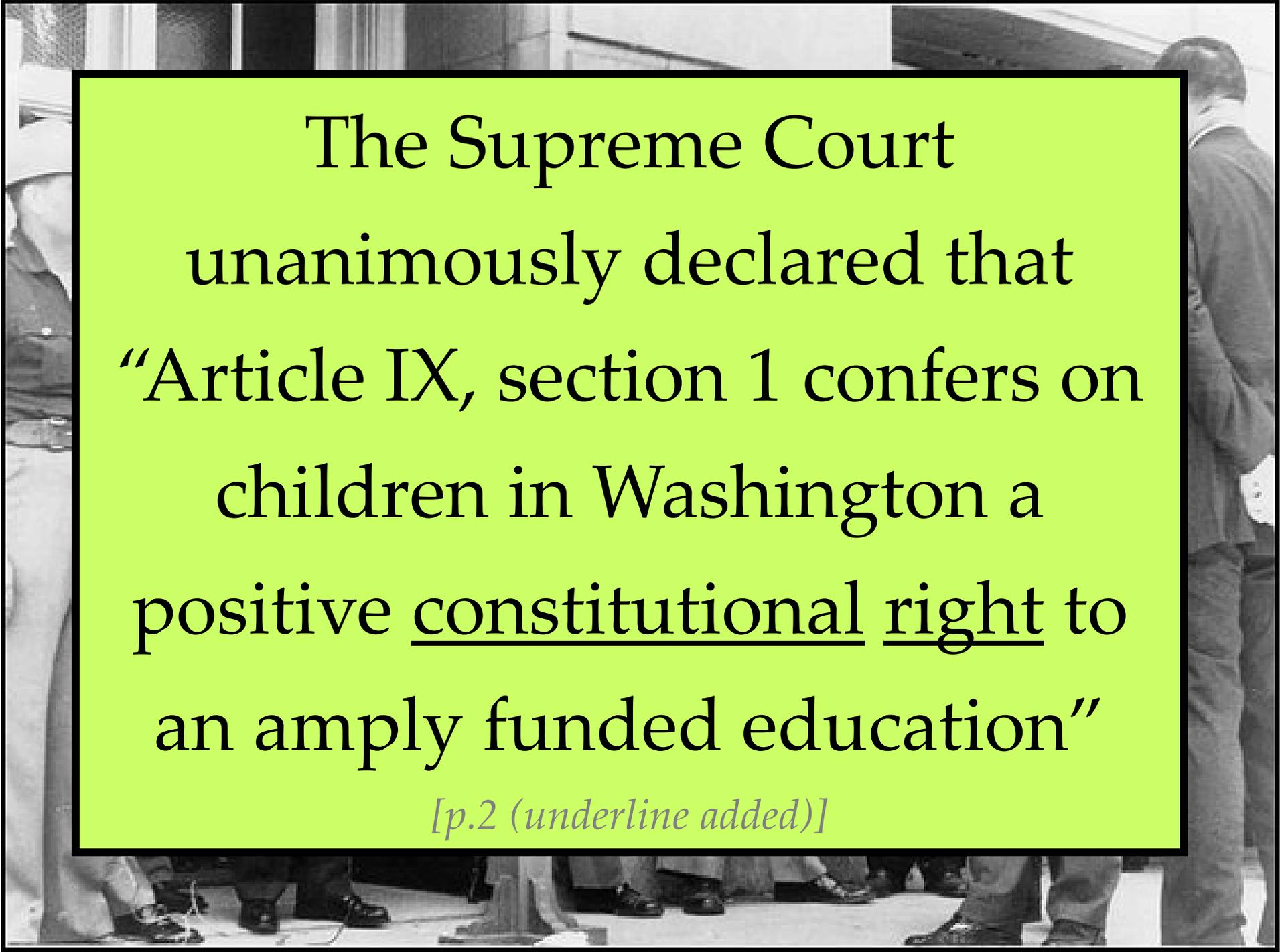
Will our State's elected  
officials obey the  
Constitution they took an  
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The State did not dispute any of the trial court rulings on the importance of education to our State's democracy. E.g.,

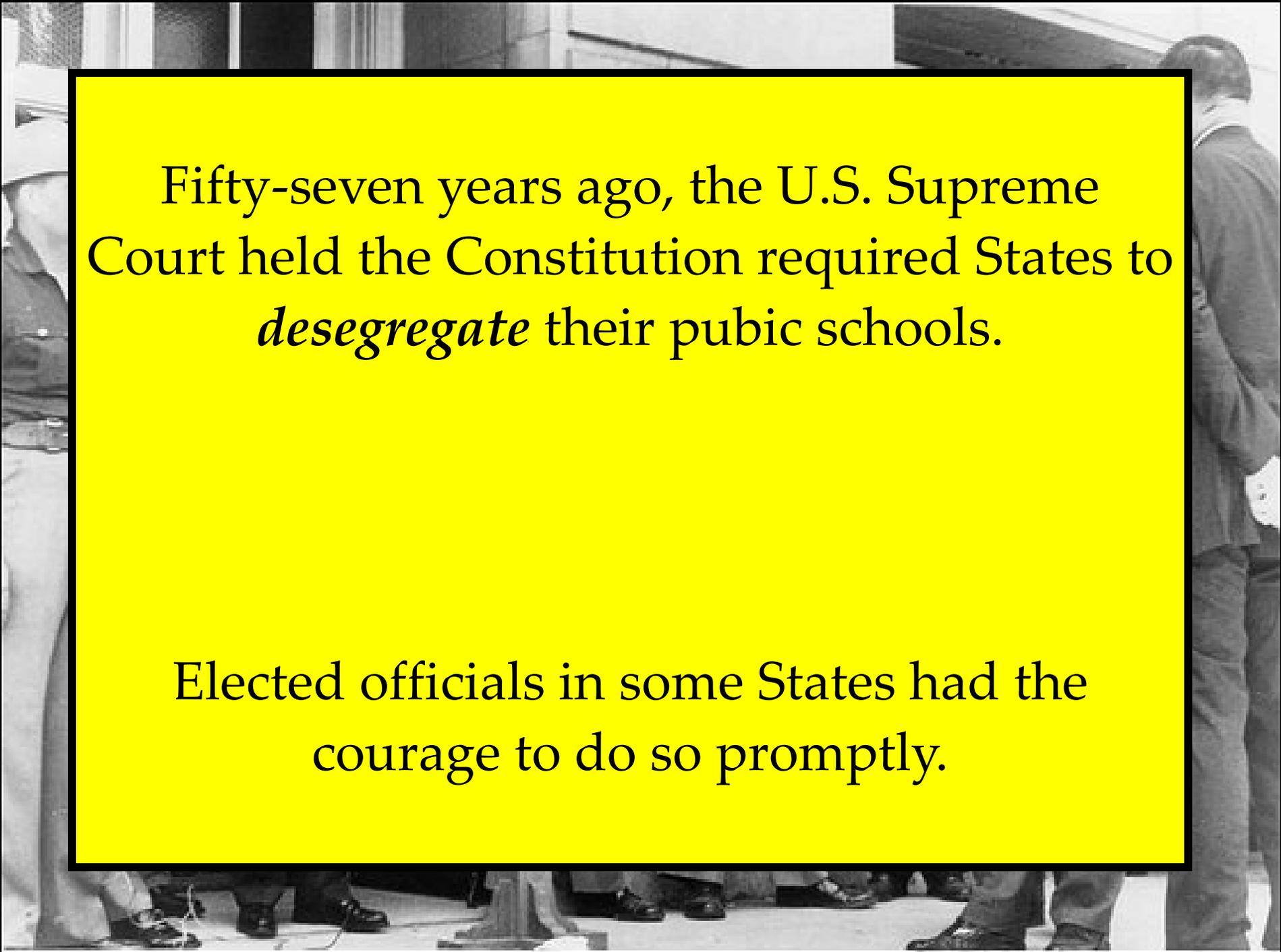
- “a healthy democracy depends on educated citizens”
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*[trial court ruling ¶¶ 118-143, none of which the State disputed or appealed]*



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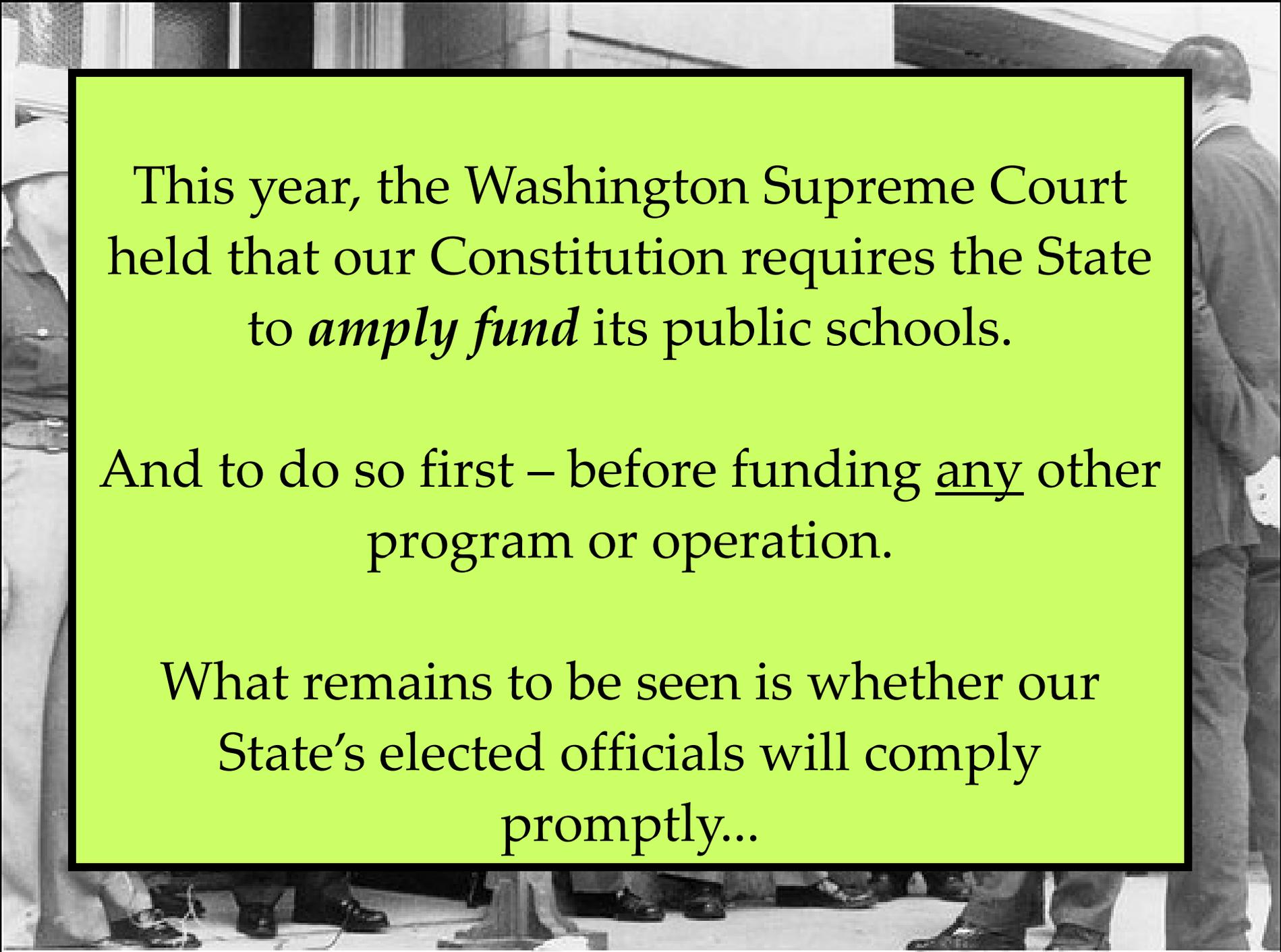


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Elected officials in some States had the courage to do so promptly.



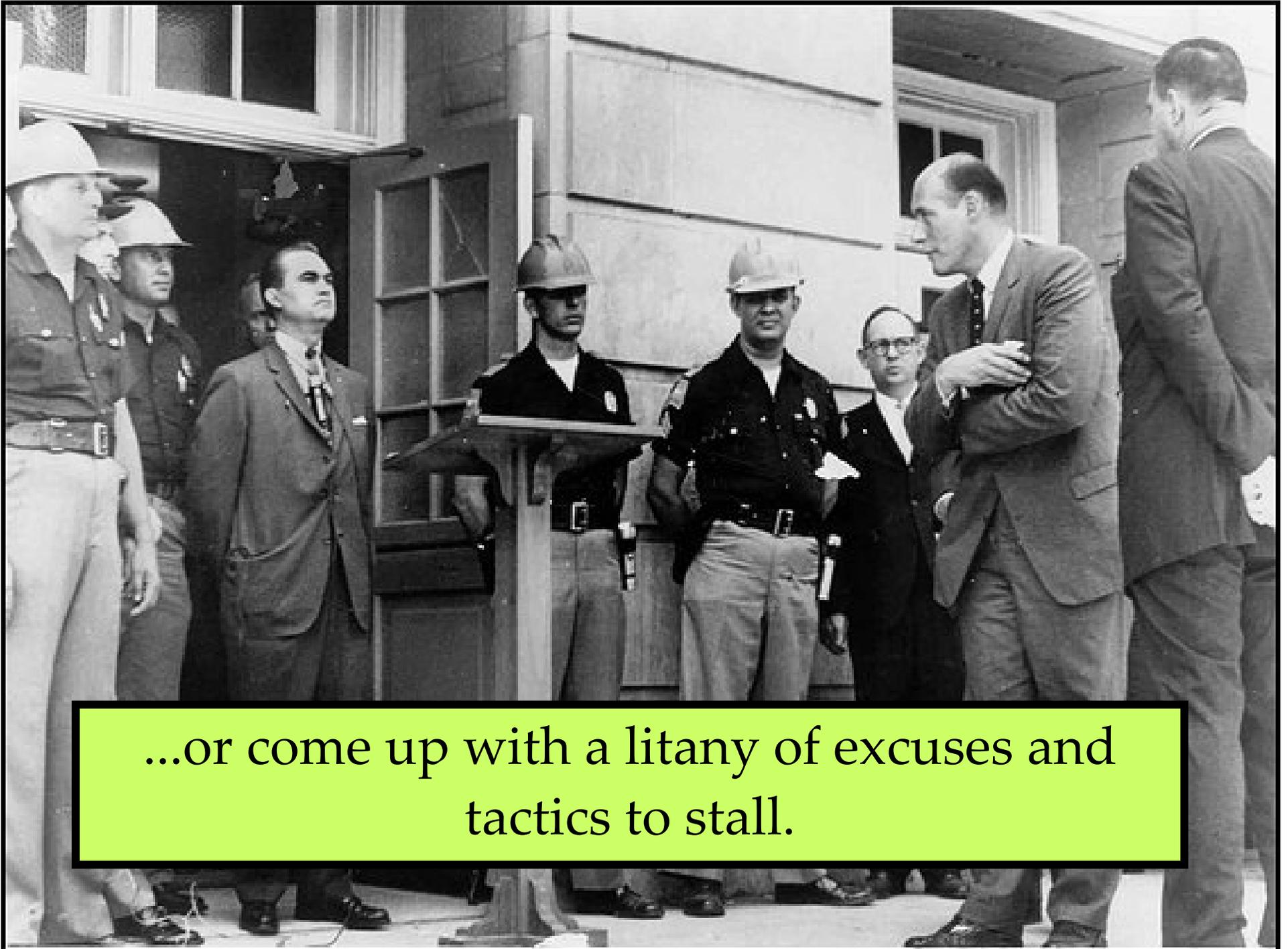
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