



WASA - WSSDA - WASBO

# Legislative Conference

January 31–February 1, 2016

UPDATE & PERSPECTIVES

NINE YEARS

AFTER THE McCLeARY SUIT WAS FILED



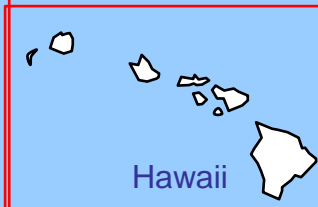
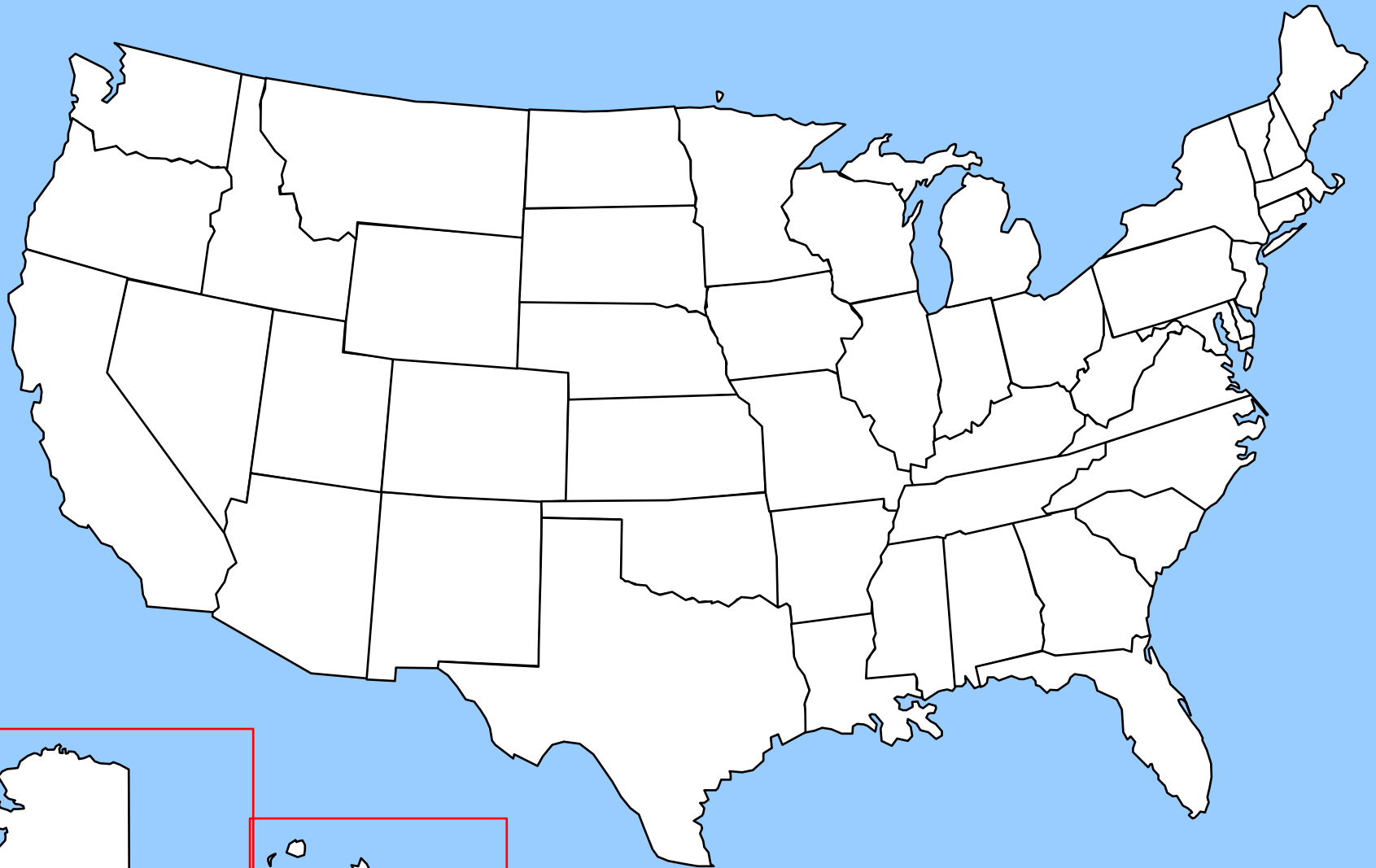
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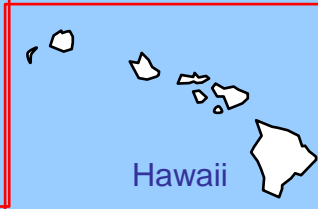
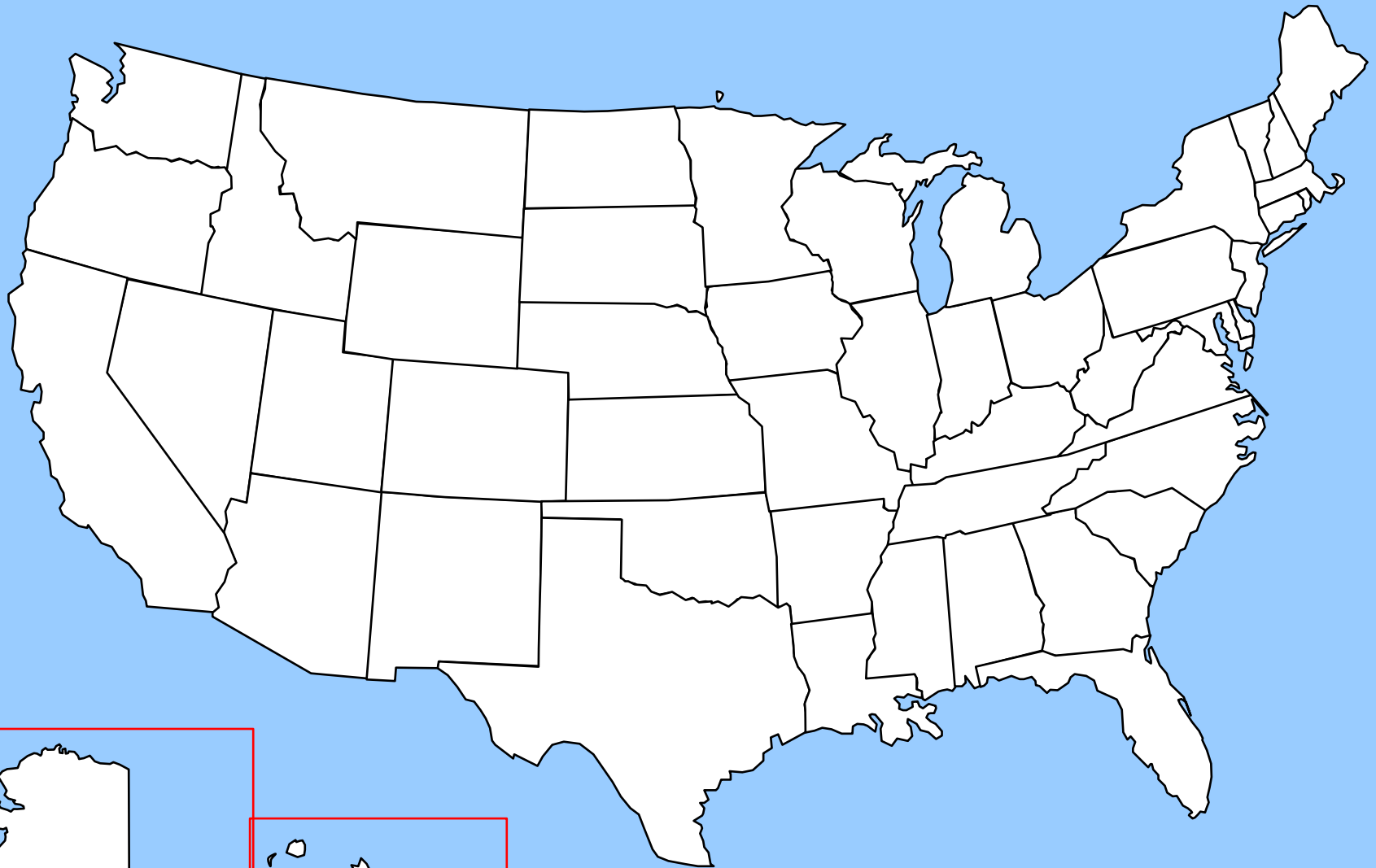
- The Nationwide Drought in School Funding
- Our State's Failure to Climb out of the Cellar
- Two Non-McCleary Distractions
- Court Enforcement of Constitutional Rights
- Reaching the Moon

# The Nationwide Drought



# The Nationwide Drought

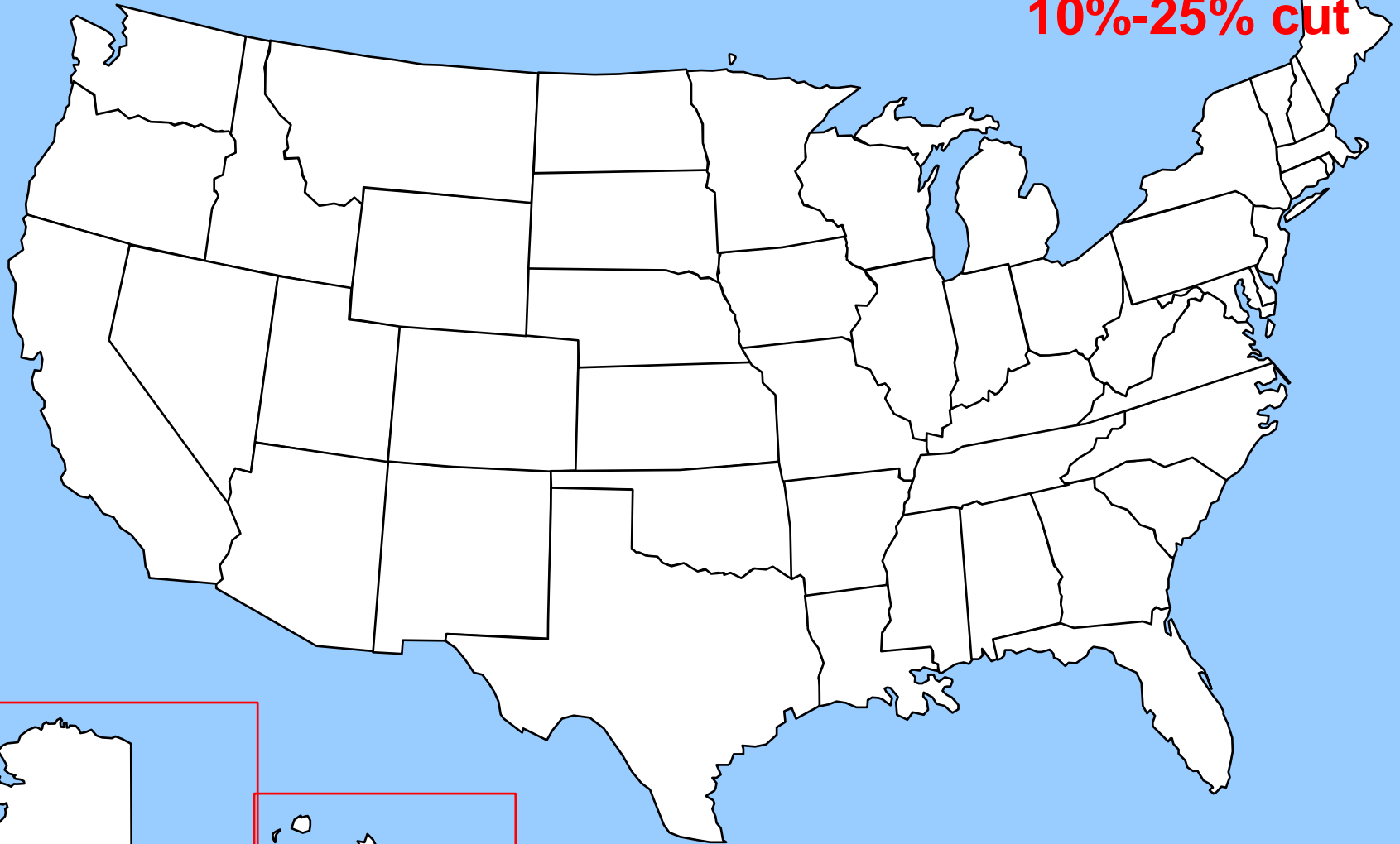
## State General Funding Per Student since 2008



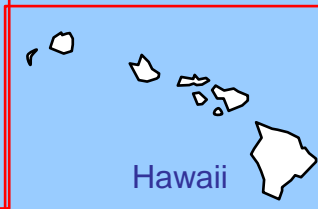
# The Nationwide Drought

## State General Funding Per Student since 2008

**Death Valley**  
**10%-25% cut**



Alaska

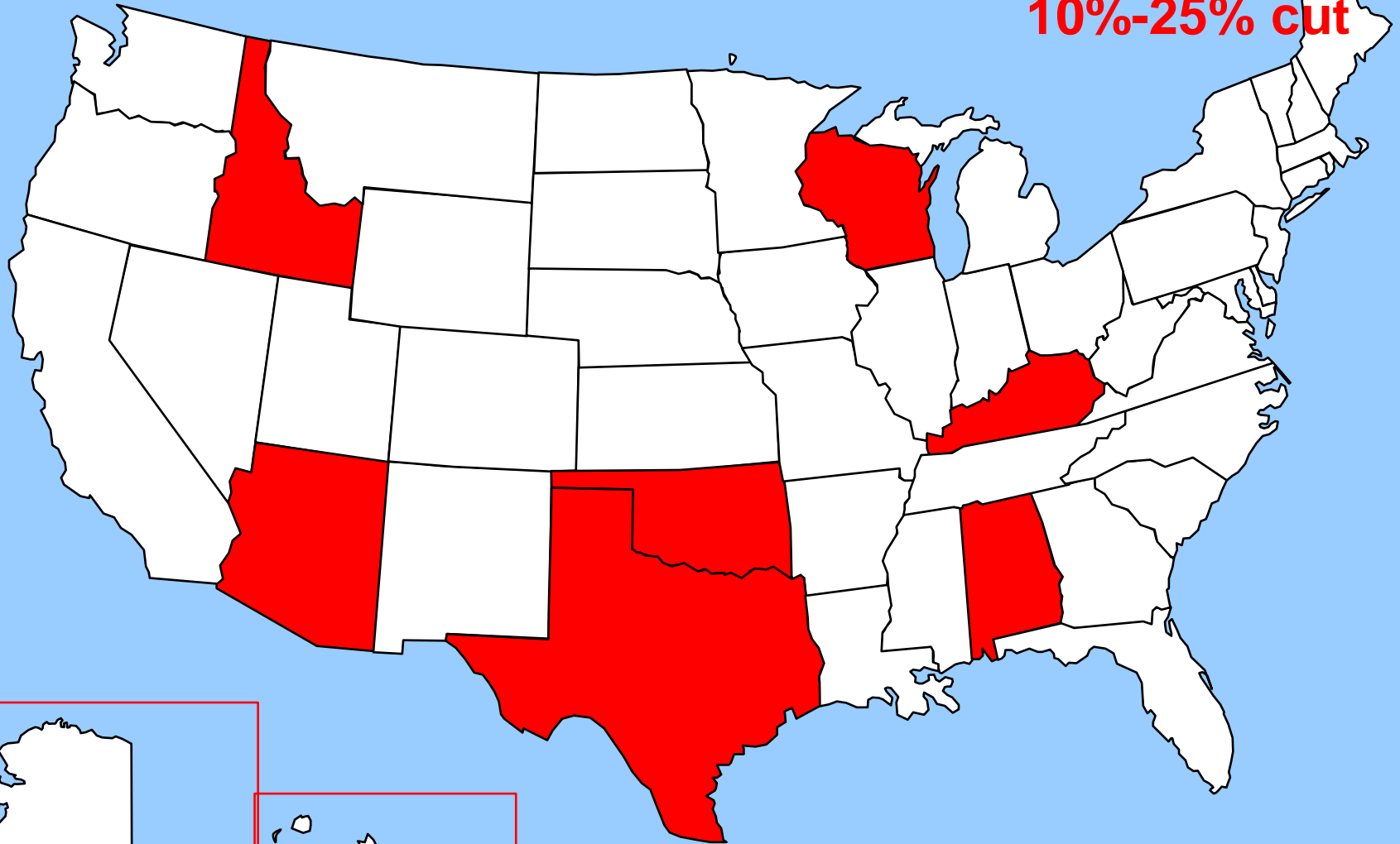


Hawaii

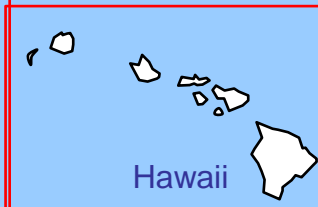
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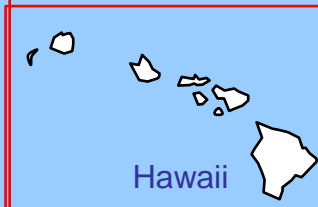
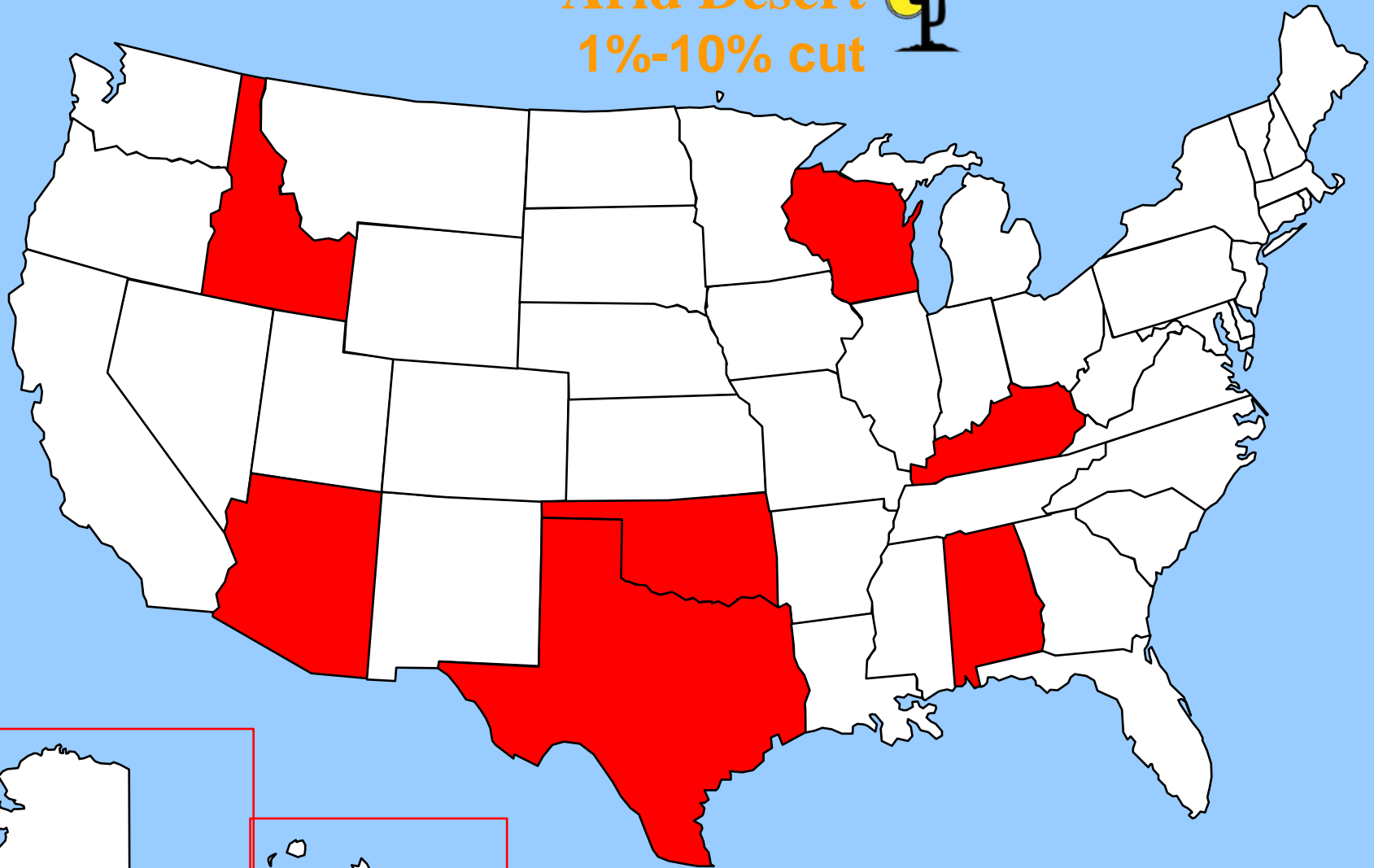
Hawaii

% changes from 12/10/2015 report entitled "Most States Have Cut School Funding, and Some Continue Cutting", by Center on Budget and Policy Priorities, at pages 5-6

# The Nationwide Drought

## State General Funding Per Student since 2008

Arid Desert ☀️  
1%-10% cut



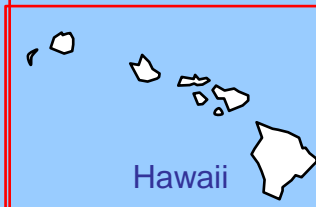
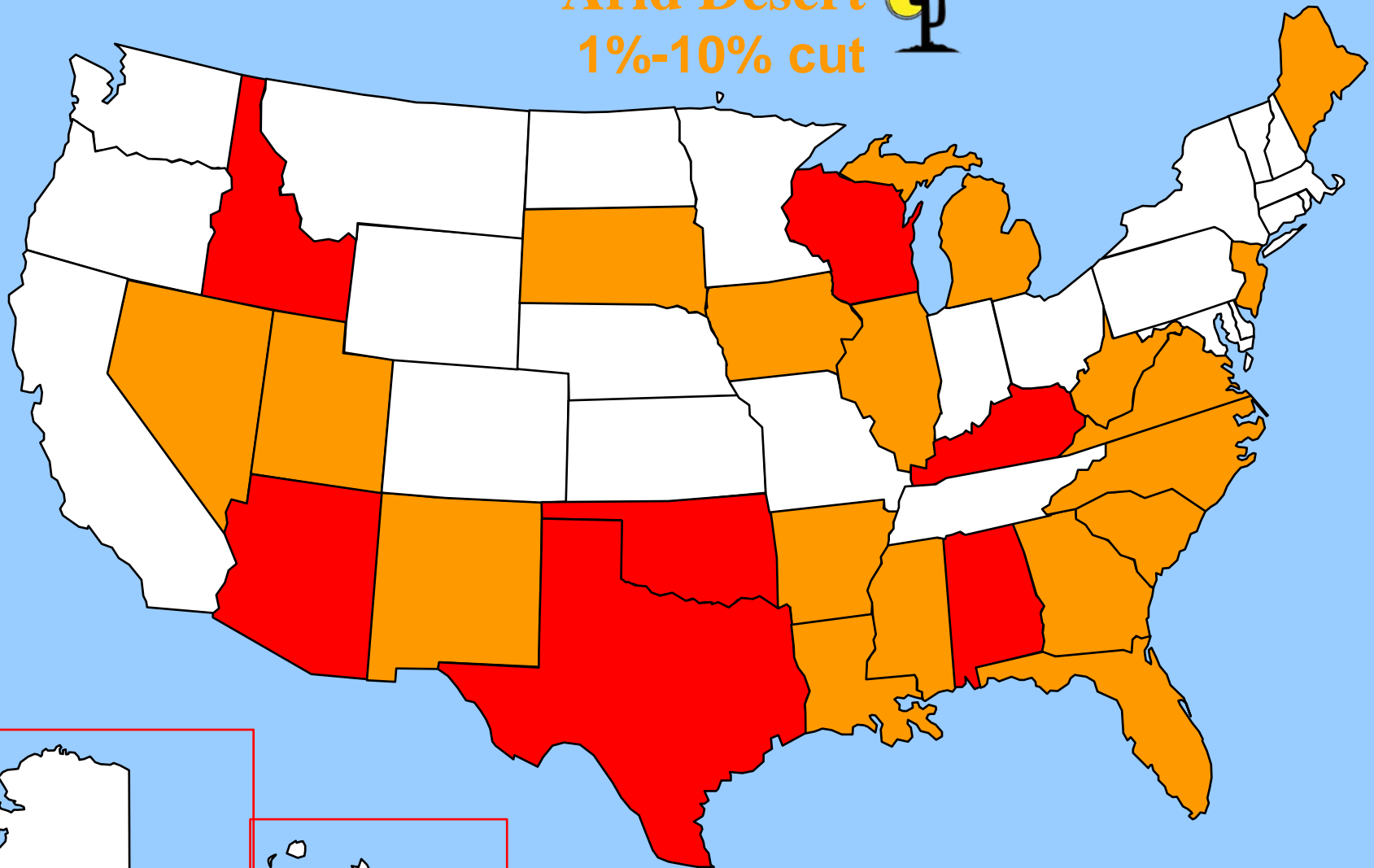
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1%-10% cut

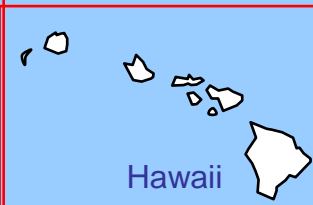
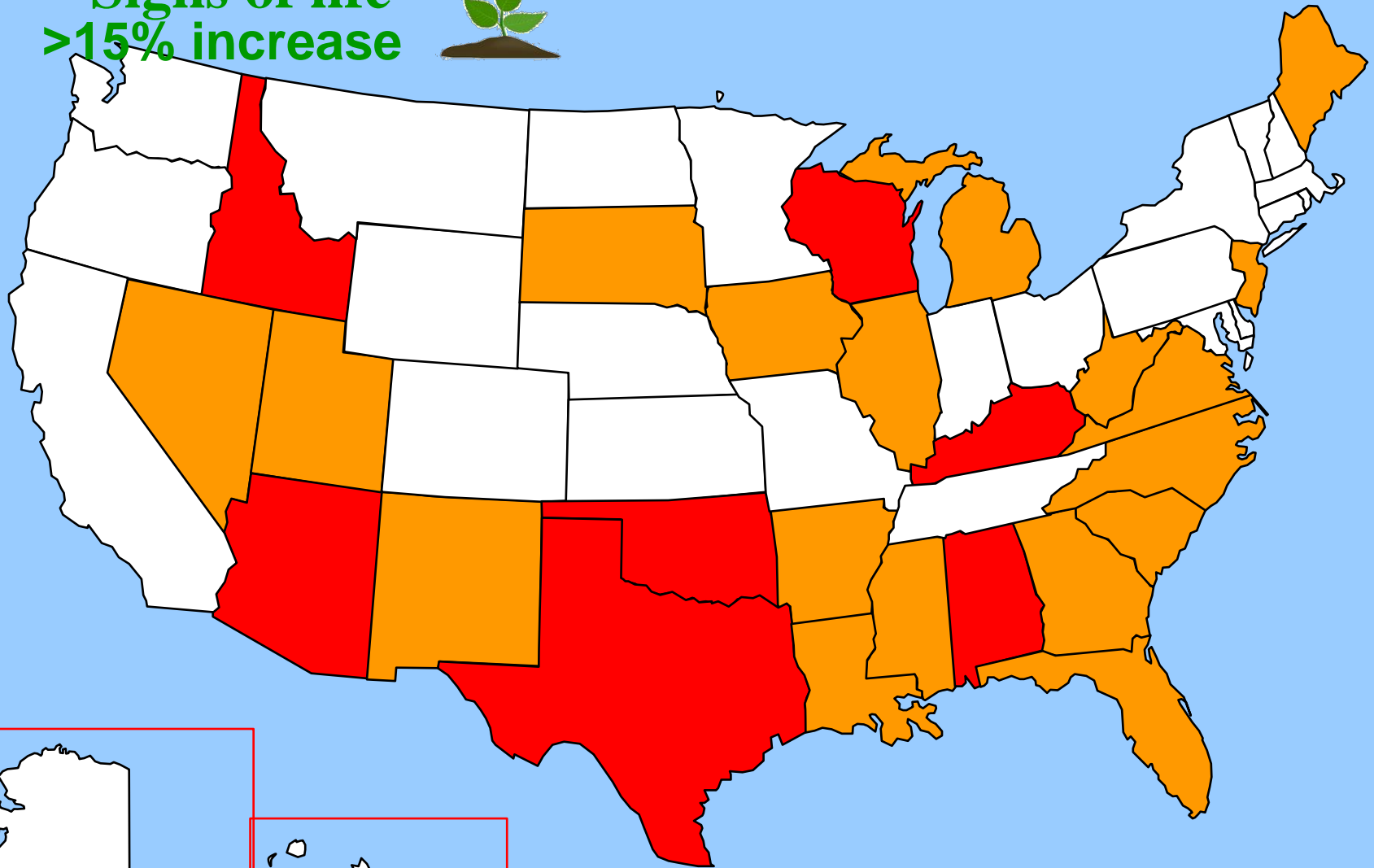




# The Nationwide Drought

## State General Funding Per Student since 2008

Signs of life  
>15% increase

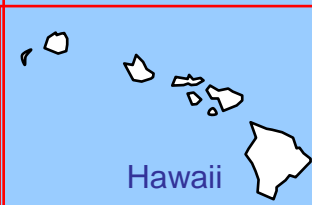
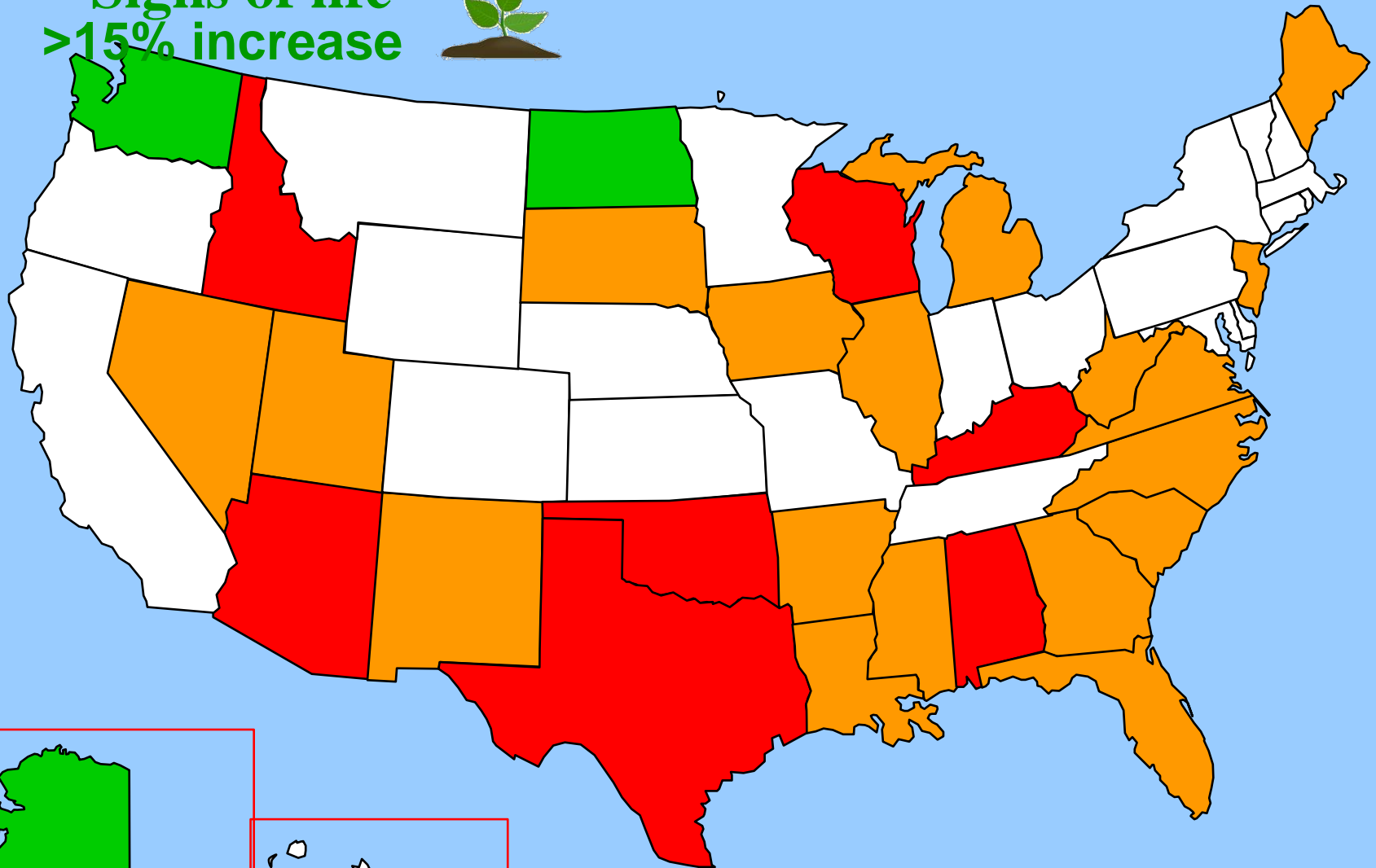


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# The Nationwide Drought

## State General Funding Per Student since 2008

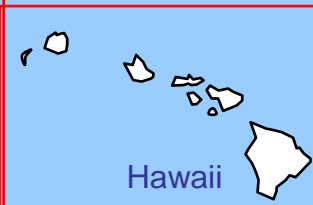
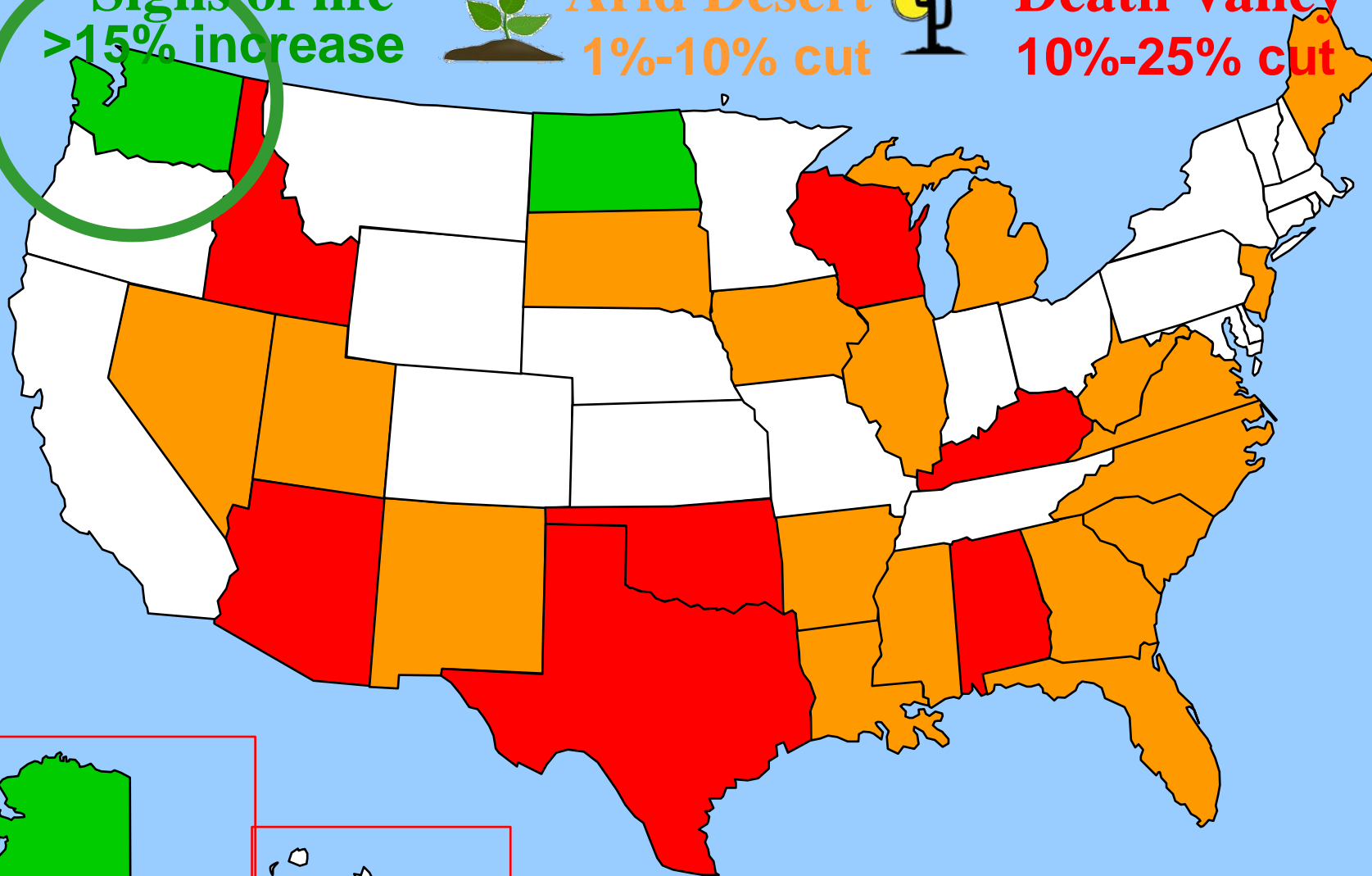
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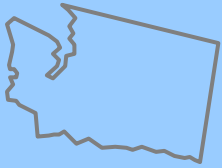
**Arid Desert**  
**1%-10% cut**



**Death Valley**  
**10%-25% cut**



# The Nationwide Drought State General Funding Per Student since 2008



Does moving in the right direction during this drought  
mean we're complying with Washington children's  
constitutional right to an amply funded K-12 education?

**No**

**First:** Doing better than another State isn't compliance with the constitutional rights of kids in our State.

As the court bluntly put it when the State of Kansas argued its school funding system is better than many others:

“This argument seems to the Court to be on a par with the following statement:  
‘Persons of color should be comforted by the fact that lynchings in Kansas are no more frequent than lynchings in many other states.’”

*Montoy v. State of Kansas*, 2003 WL 22902963 at \*43, ¶59.

**Second:** Our State's recent funding increases still leave us far BEHIND other States since we started in the national cellar.

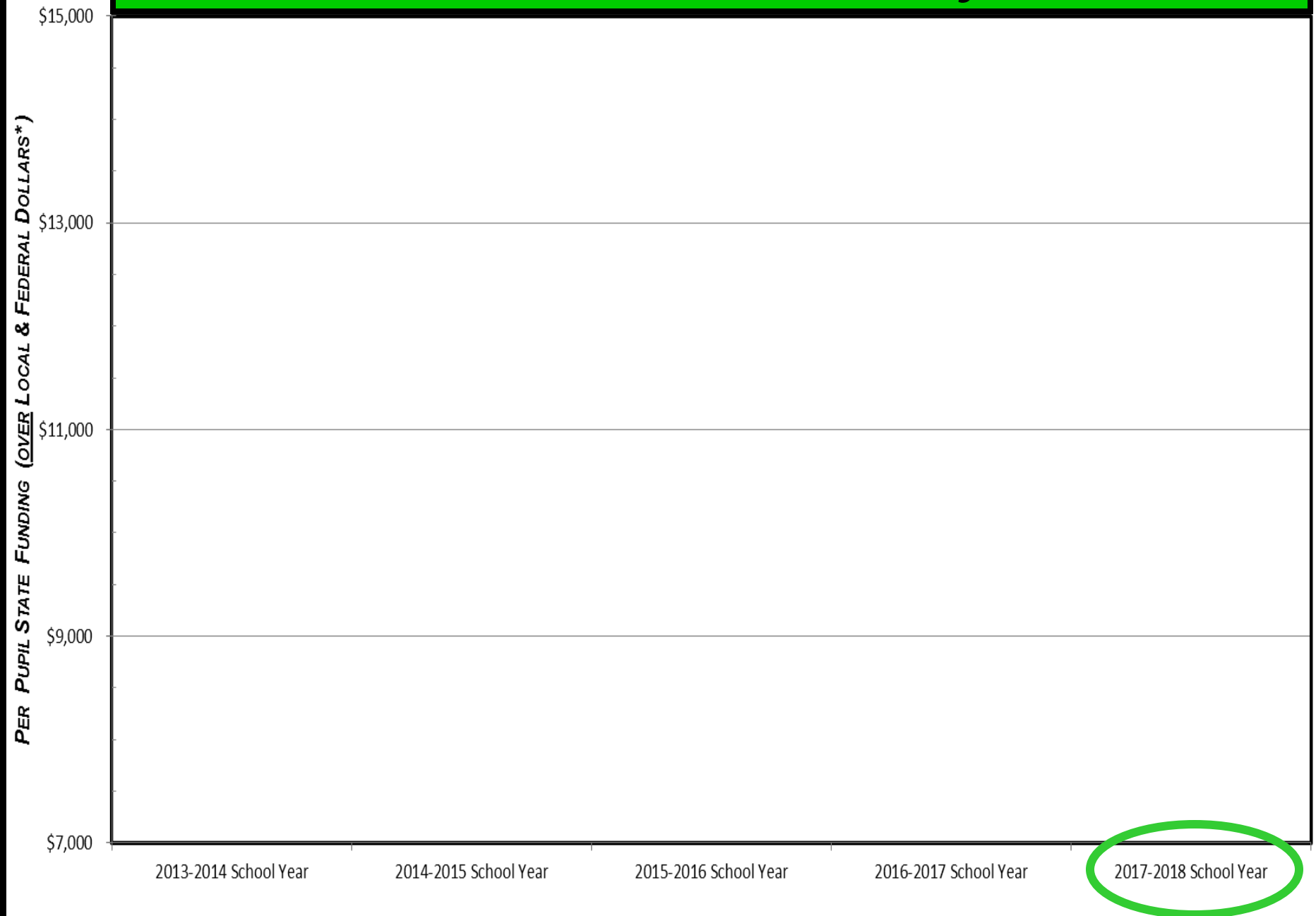
As our State's Board of Education Chair put it at trial:

Washington state is in the cellar of national education statistics. We are 44th in total expenditures per student, ... and the list goes on. We are veritable front-runners in the race to the bottom. It's time we climb out of the cellar.

*Trial Exhibit 238 (by Washington State Board of Education Chair Mary Jean Ryan)*

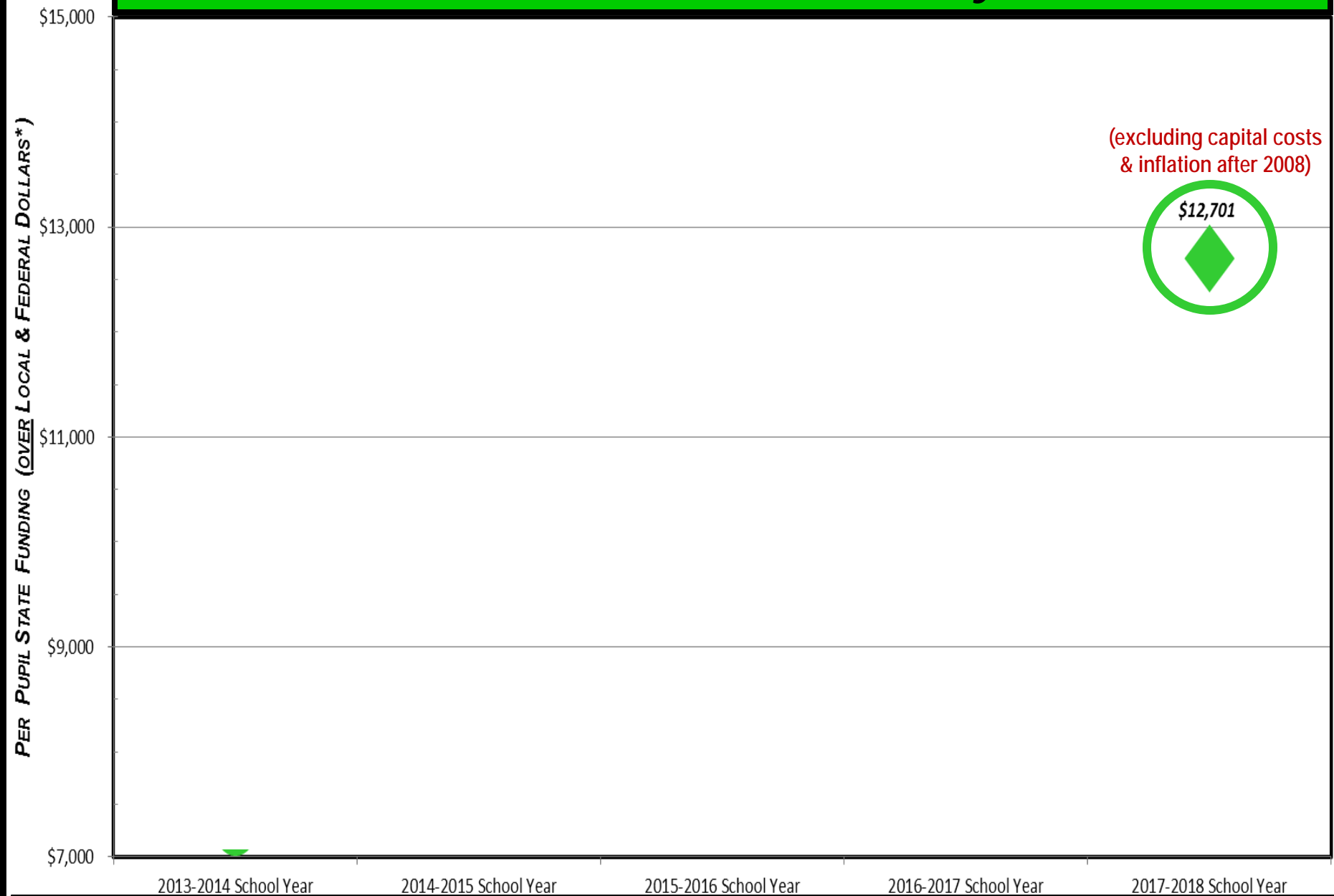
**Have We Climbed out of the Cellar?**

# What the State told the *McCleary* Court





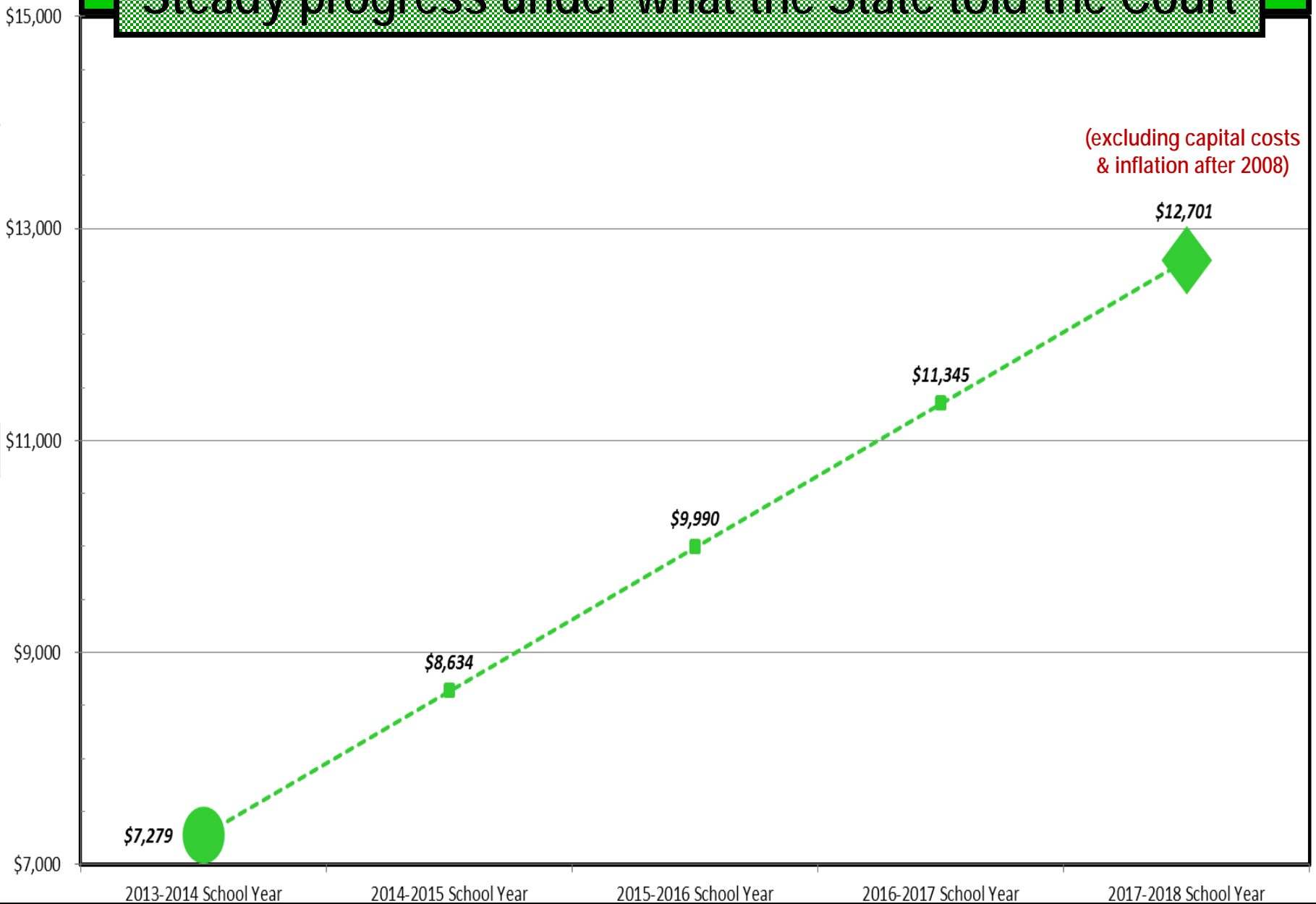
# What the State told the *McCleary* Court



State testified ESHB 2261's reforms increase State funding to \$9,710/pupil before adding market rate salaries, inflation after 2008, and capital construction needs; the 6/30/2012 Final Report of ESHB 2261's Compensation Technical Working Group then determined increases needed to cover the market rate salary component are over \$2.991 billion/year (about \$2,991/pupil for 1 million students).  $\$9,710 + \$2,991 = \$12,701$ .

# Steady progress under what the State told the Court

PER PUPIL STATE FUNDING (OVER LOCAL & FEDERAL DOLLARS\*)



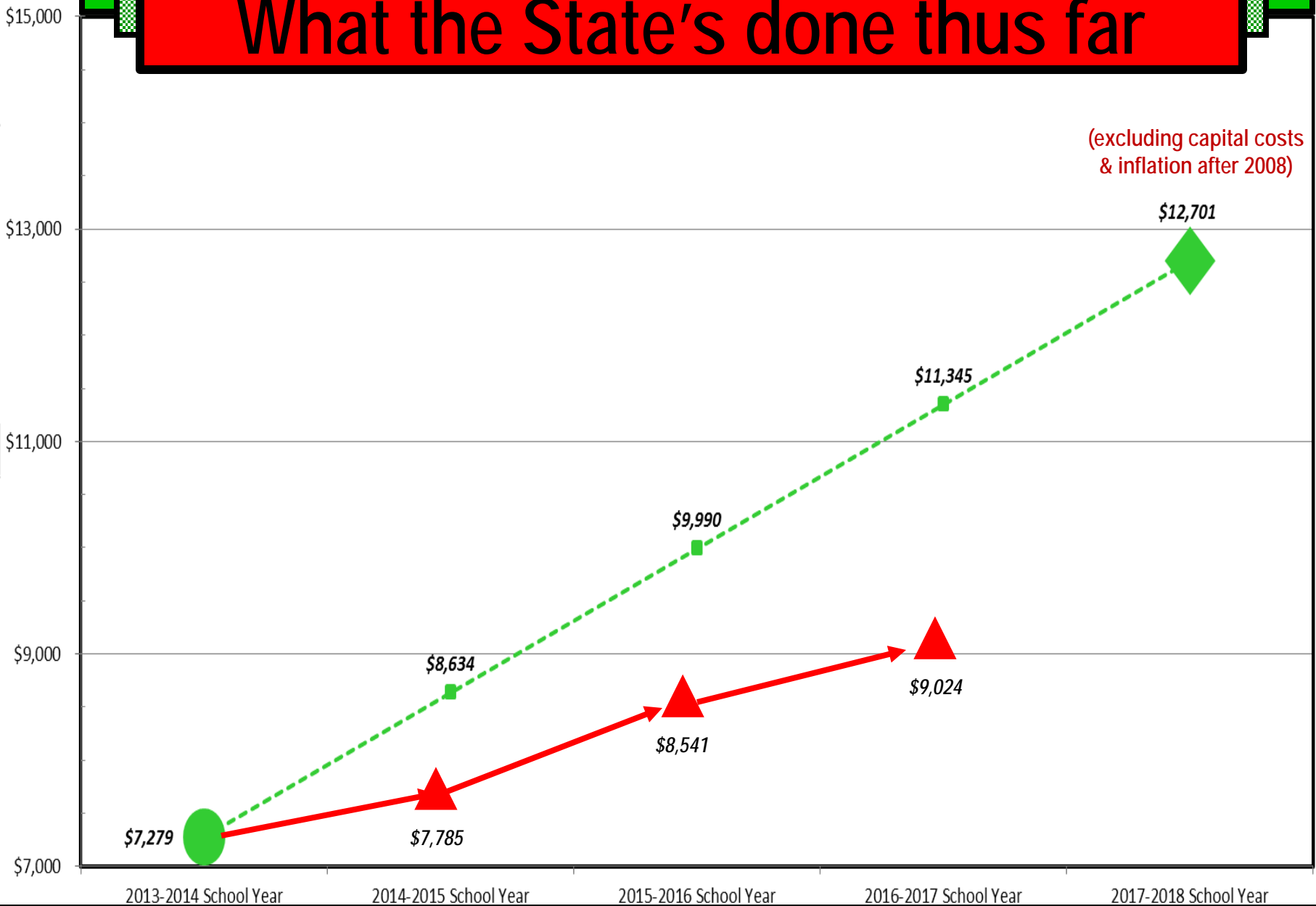
(excluding capital costs  
& inflation after 2008)

\$7,279 from State's 2013-15 Operating Budget Overview for Striking Amendment to 2ESSB 5034 [the adopted 2013-15 biennium budget] at p.6;

\$8,634, \$9,990 & \$11,345 are 1/4, 2/4, 3/4 of the difference between that \$7,279 in 2013-2014 and \$12,701 in 2017-2018.

# What the State's done thus far

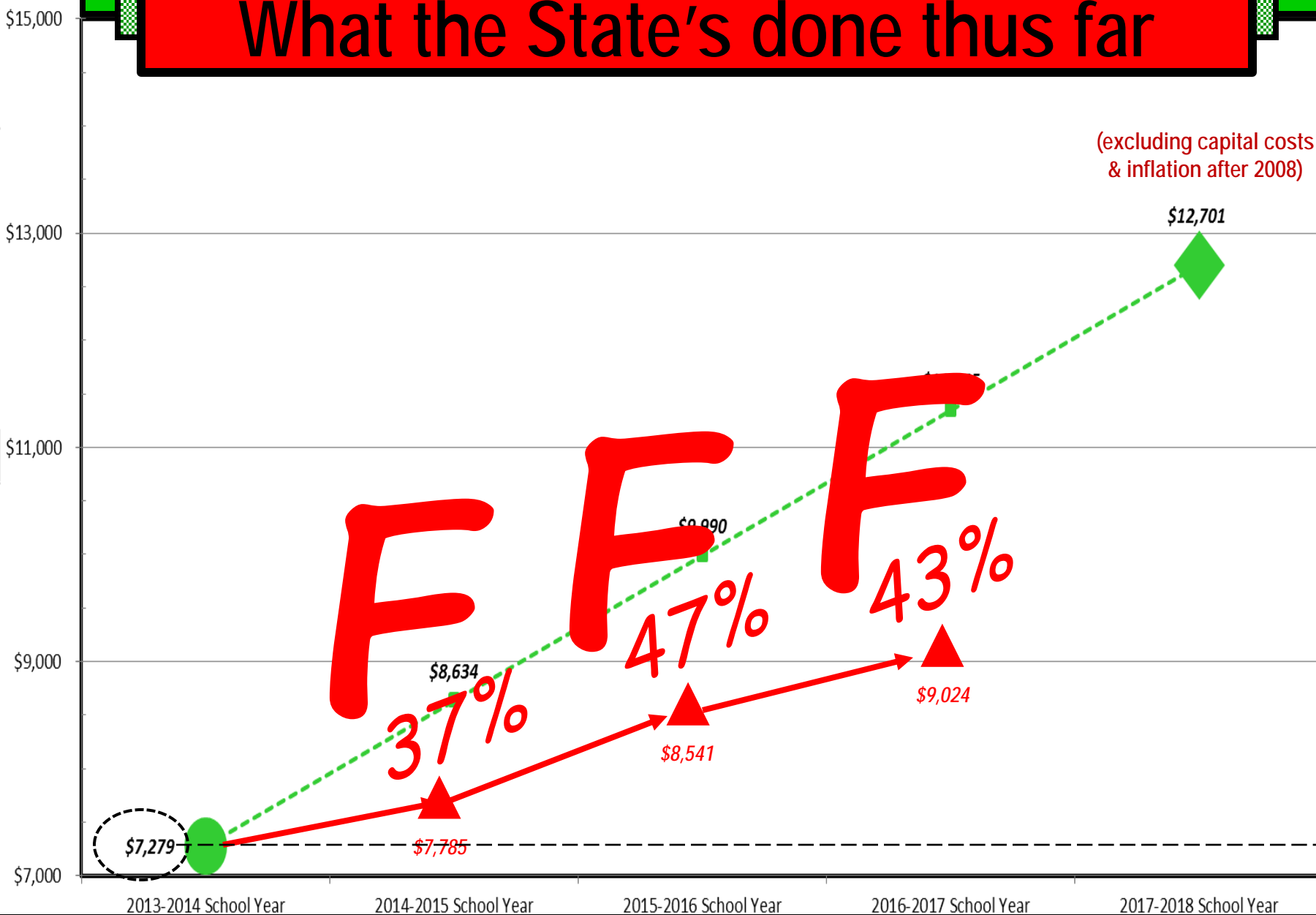
PER PUPIL STATE FUNDING (OVER LOCAL & FEDERAL DOLLARS\*)



\$7,785, \$8,541, & \$9,024 from Chart B of the legislature's 2015 Report To The Supreme Court By The Joint Select Committee On Article IX Litigation.

# What the State's done thus far

PER PUPIL STATE FUNDING (OVER LOCAL & FEDERAL DOLLARS\*)

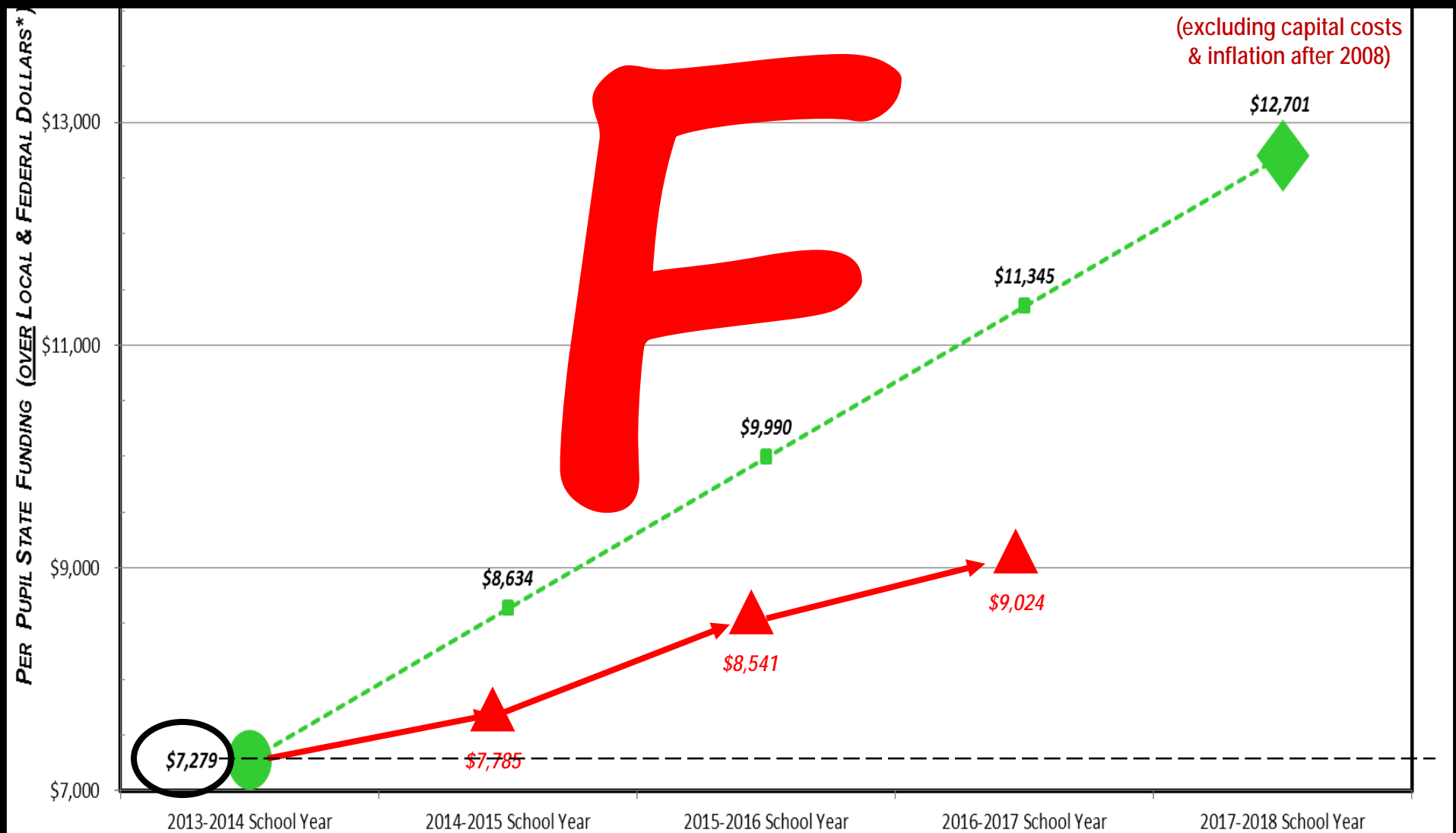


$$(\$7785 - \$7279) \div (\$8634 - \$7279) = 37\%$$

$$(\$8541 - \$7279) \div (\$9990 - \$7279) = 47\%$$

$$(\$9024 - \$7279) \div (\$11345 - \$7279) = 43\%$$

# Our State's Climb out of the Cellar thus far:



# Two Non-*McCleary* Distractions

## The *McCleary* mandate:

"Article IX, section 1  
confers on children in  
Washington a positive  
constitutional right to  
an amply funded education."

*McCleary v. State*, 173 Wn.2d at 483, 518-519 (underline added).

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



# IT IS THE PARAMOUNT DUTY OF THE

*"paramount duty" means*

"the State must amply provide for the education of all Washington children

*McCleary v. State, 173 Wn.2d at 520.*

# WITHIN ITS BORDERS....

Washington State Constitution, Article IX, section 1

# IT IS THE PARAMOUNT DUTY OF THE

*"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."

*McCleary v. State, 173 Wn.2d at 520.*

## WITHIN ITS BORDERS....

Washington State Constitution, Article IX, section 1

IT IS THE  
PARAMOUNT DUTY OF THE  
STATE TO MAKE  
**AMPLE** PROVISION FOR THE

*"ample" means*

*"considerably more than just adequate."*

*McCleary v. State, 173 Wn.2d at 484.*

WITHIN ITS BORDERS....

Washington State Constitution, Article IX, section 1



IT IS THE  
PARAMOUNT DUTY OF THE  
STATE TO MAKE  
AMPLE PROVISION FOR THE  
EDUCATION OF  
**ALL** CHILDREN RESIDING

*"all" means*

"each and every child" in Washington

"No child is excluded."

# *EDUCATION IS A CIVIL RIGHT*

“Education ... plays a critical civil rights role in promoting equality in our democracy.”

“... 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.”

“Education ... is the number one civil right of the 21st century.”

## The *McCleary* mandate:

"Article IX, section 1  
confers on children in  
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an amply funded education."

*McCleary v. State*, 173 Wn.2d at 483, 518-519 (underline added).

*Not:*

Article IX, section 1  
confers on children in  
Washington a positive  
constitutional right to

*levy reform*

# THE SUPREME COURT OF WASHINGTON

MATHEW & STEPHANIE McCLEARY,  
et al.,

Respondents/Cross-Appellants,

v.

STATE OF WASHINGTON,


Appellant/Cross-Respondent.

## ORDER

Supreme Court No.  
84362-7

King County No.  
07-2-02323-2 SEA

Filed   
Washington State Supreme Court

AUG 13 2015 

Ronald R. Carpenter  
Clerk

“Local levy reform is not part of  
the court’s January 9, 2014 order”

August 2015 Order at p.7, n.1 (underline added).



## The *McCleary* mandate:

"Article IX, section 1 confers on children in Washington a positive constitutional right to an amply funded education."

*McCleary v. State*, 173 Wn.2d at 483, 518-519 (underline added).

*Not:*

Article IX, section 1  
confers on children in  
Washington a positive  
constitutional right to  
a *uniformly* funded education.  
(a/k/a “equity”)

# Why “ample” funding instead of “uniform” funding?

- The Constitution
- Math

# The Constitution

"Uniform" & "Ample" are  
different mandates:

Uniform = Section 2 of Article IX

Ample = Section 1 of Article IX

## Section 2 of Article IX

- Legislative branch

THE LEGISLATURE SHALL  
PROVIDE FOR A GENERAL AND  
UNIFORM SYSTEM OF PUBLIC  
SCHOOLS.

# Section 2 of Article IX

- Legislative branch

All of the places plaintiffs mentioned  
Section 2 during the past nine years of the  
*McCleary* litigation....


UNIFORM SYSTEM OF PUBLIC  
SCHOOLS.

*[ This page intentionally left blank ]*



# Section 1 of Article IX

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

- 
- Legislative branch
  - Executive branch
  - Judicial branch



## The *McCleary* mandate:

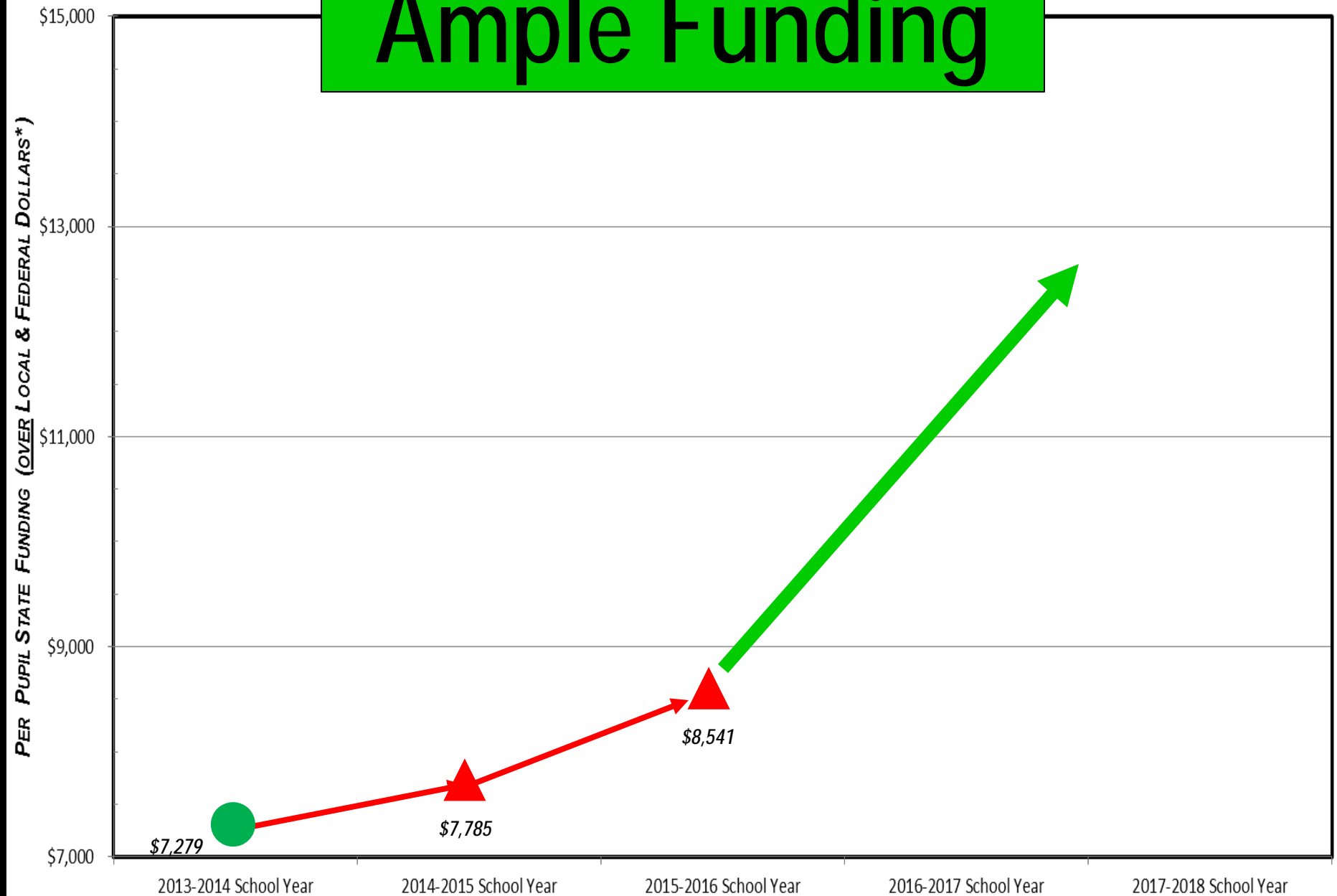
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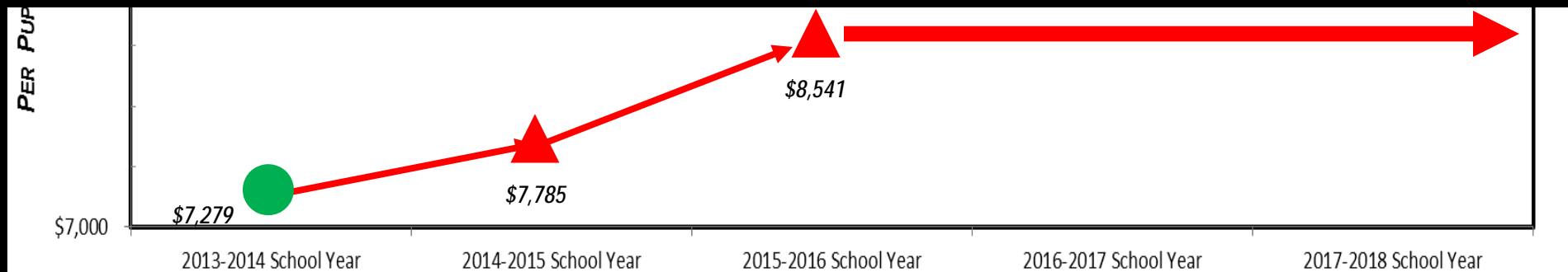
# Math

Uniform funding  
is not  
Ample funding

# Ample Funding



# Uniform Funding



## The *McCleary* mandate:

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# Judicial Enforcement of Constitutional Rights

  
**SHOWERS**  
High, 68. Low, 58. > 88  
[seattletimes.com/weather](http://seattletimes.com/weather)

FRIDAY, AUGUST 14, 2015

## The Seattle Times

WINNER OF 10 PULITZER PRIZES

 SEATTLETIMES.COM

**\$1.00**

Independent and locally owned since 1896  
1.6 million readers weekly in Western Washington, in print and online

# COURT TO STATE: PAY UP

## JUSTICES ORDER \$100K-A-DAY FINES OVER INADEQUATE EDUCATION SPENDING



# Judicial Enforcement of Constitutional Rights

  
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WTF?



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# COURT TO STATE: PAY UP

*Why The Fines?*



# *DEADLINE*

The 2017-2018 school year is a  
“firm deadline for  
full constitutional compliance.”

December 2012 Order at pp. 2-3 (underlines added).

# *ANNUAL PROGRESS*

The State must demonstrate  
steady, real, and measurable  
progress each year towards full  
compliance by the deadline.

# *PHASE-IN PLAN*

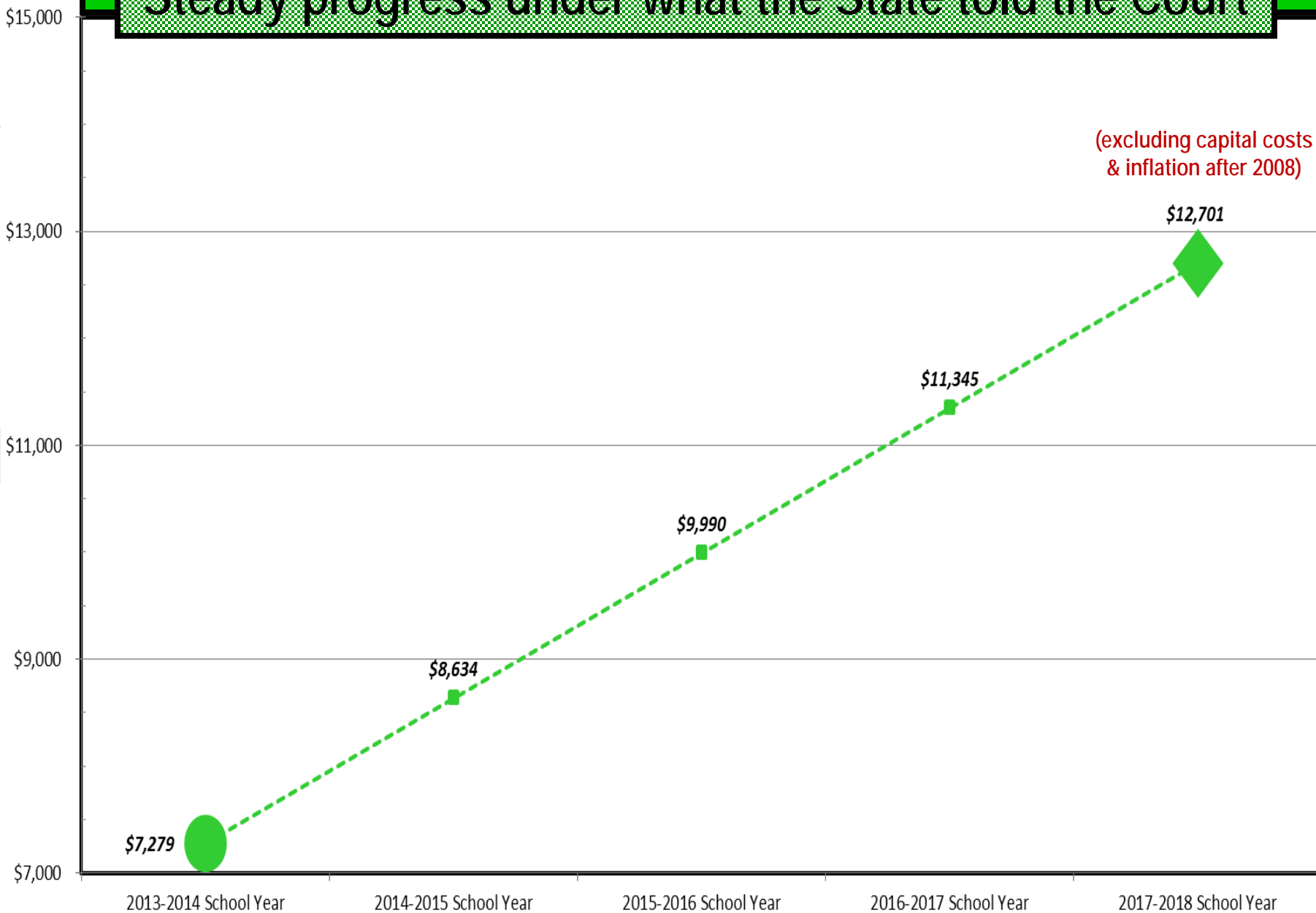
“There must in fact be a plan.”

It must be a complete plan for fully implementing the State’s program of basic education for each school year to the 2017-2018 school year, addressing each of the areas of K-12 education within ESHB 2261 and SHB 2776.

It must include a phase-in schedule for fully funding each of the components of basic education.

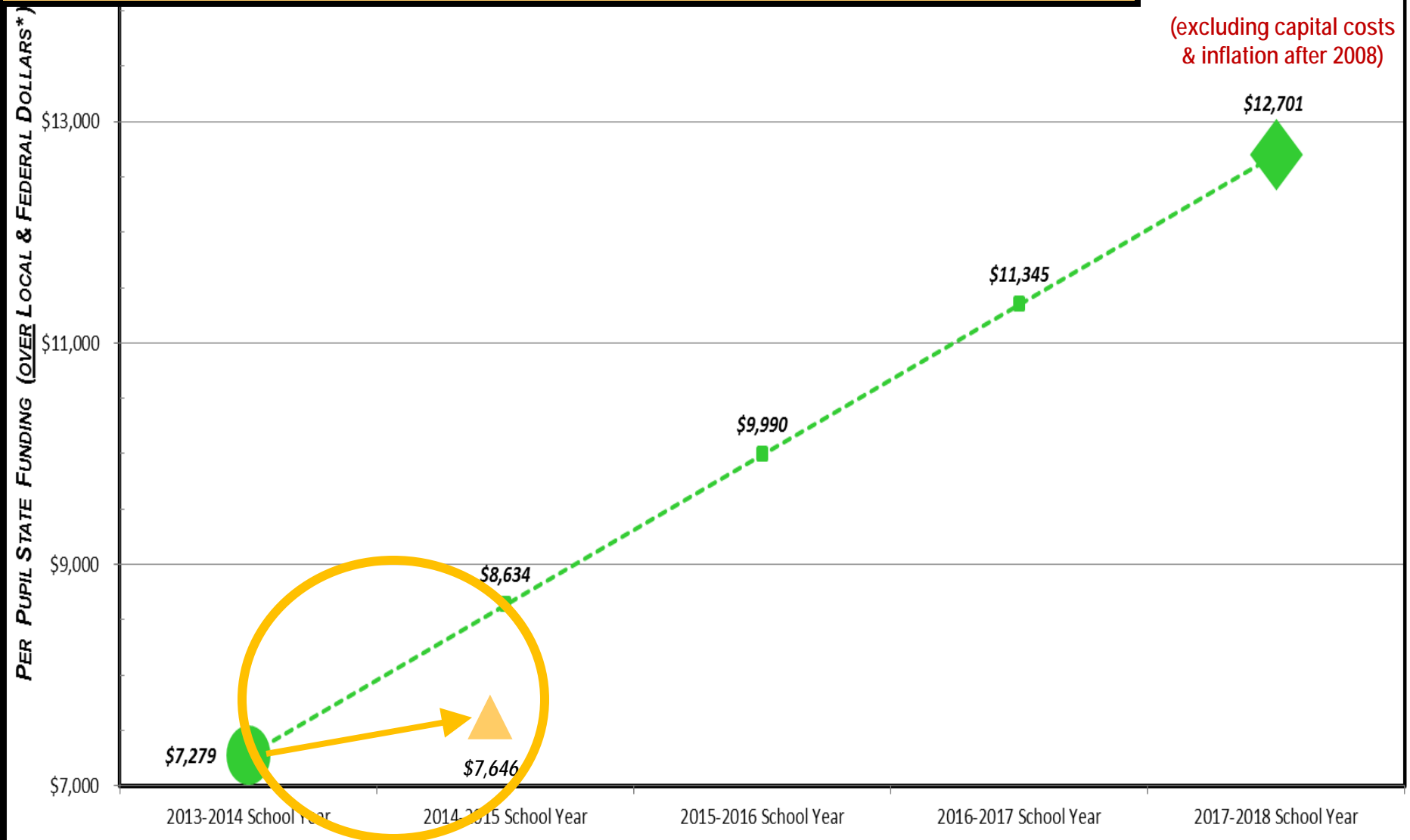
# Steady progress under what the State told the Court

PER PUPIL STATE FUNDING (OVER LOCAL & FEDERAL DOLLARS\*)



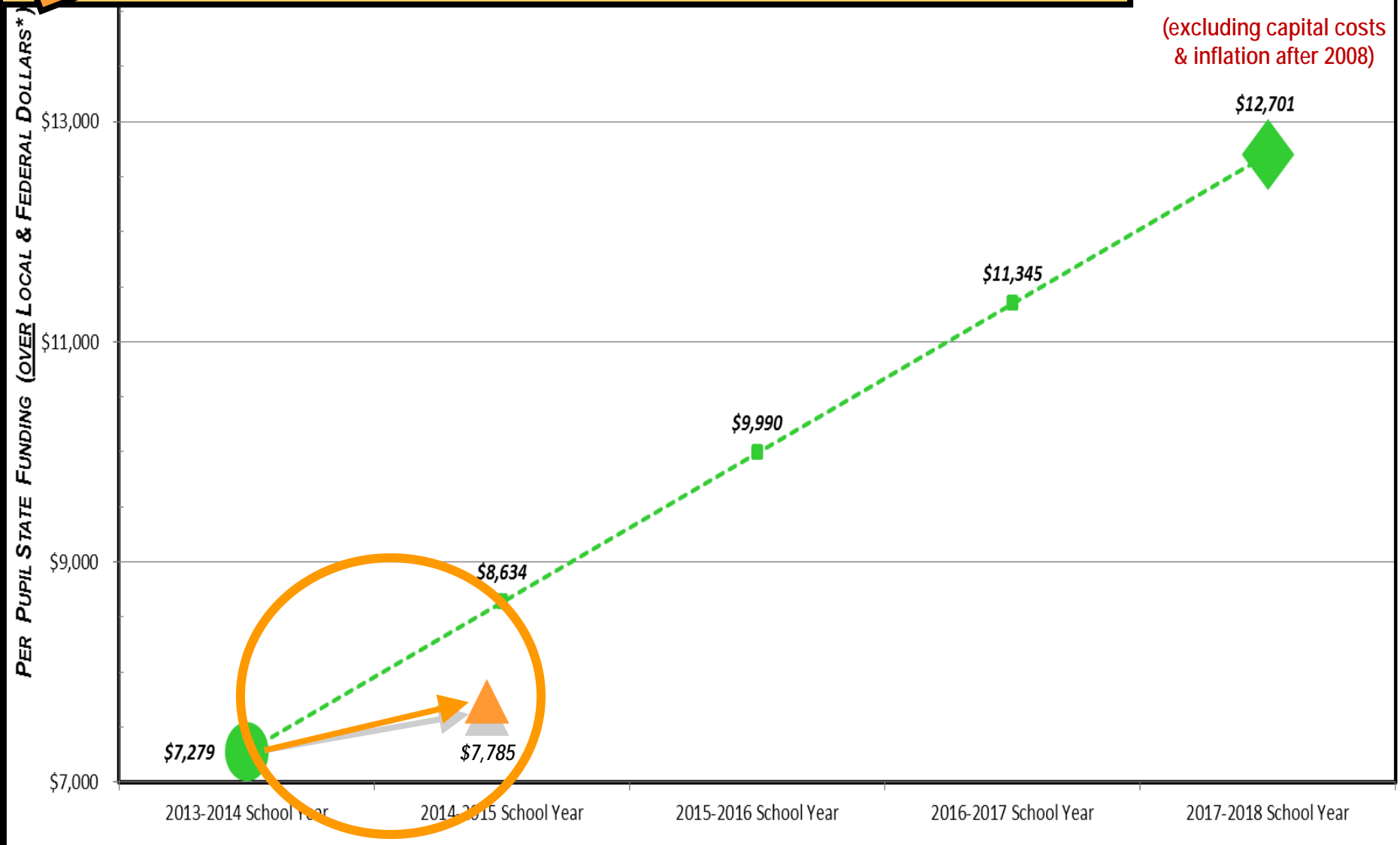
2013 Legislature: ➡ little progress  
➡ no plan

The Court



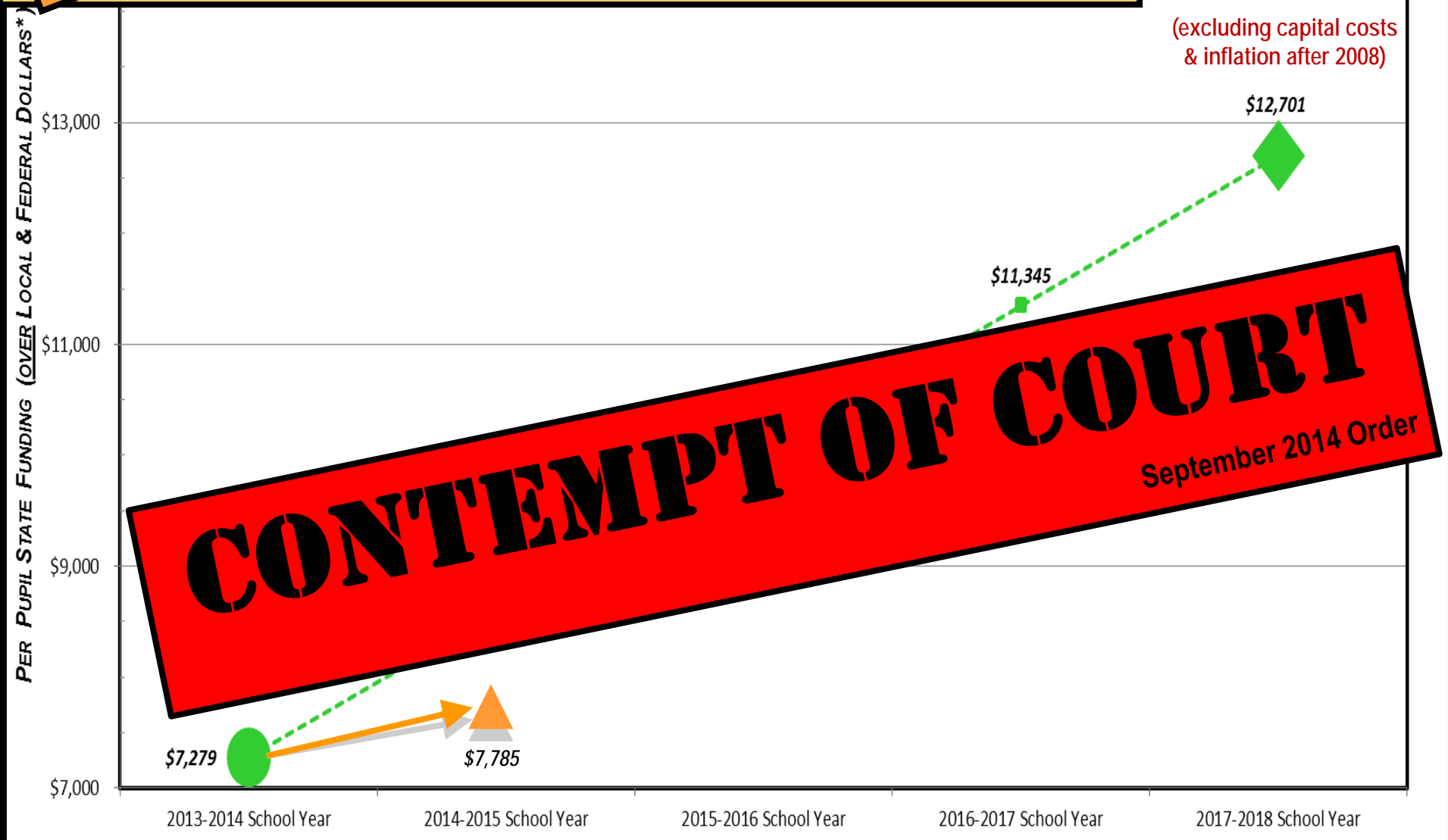
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Legislature: ➡ little progress  
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The Court



2014 Legislature: ➡ little progress  
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the Court



2015

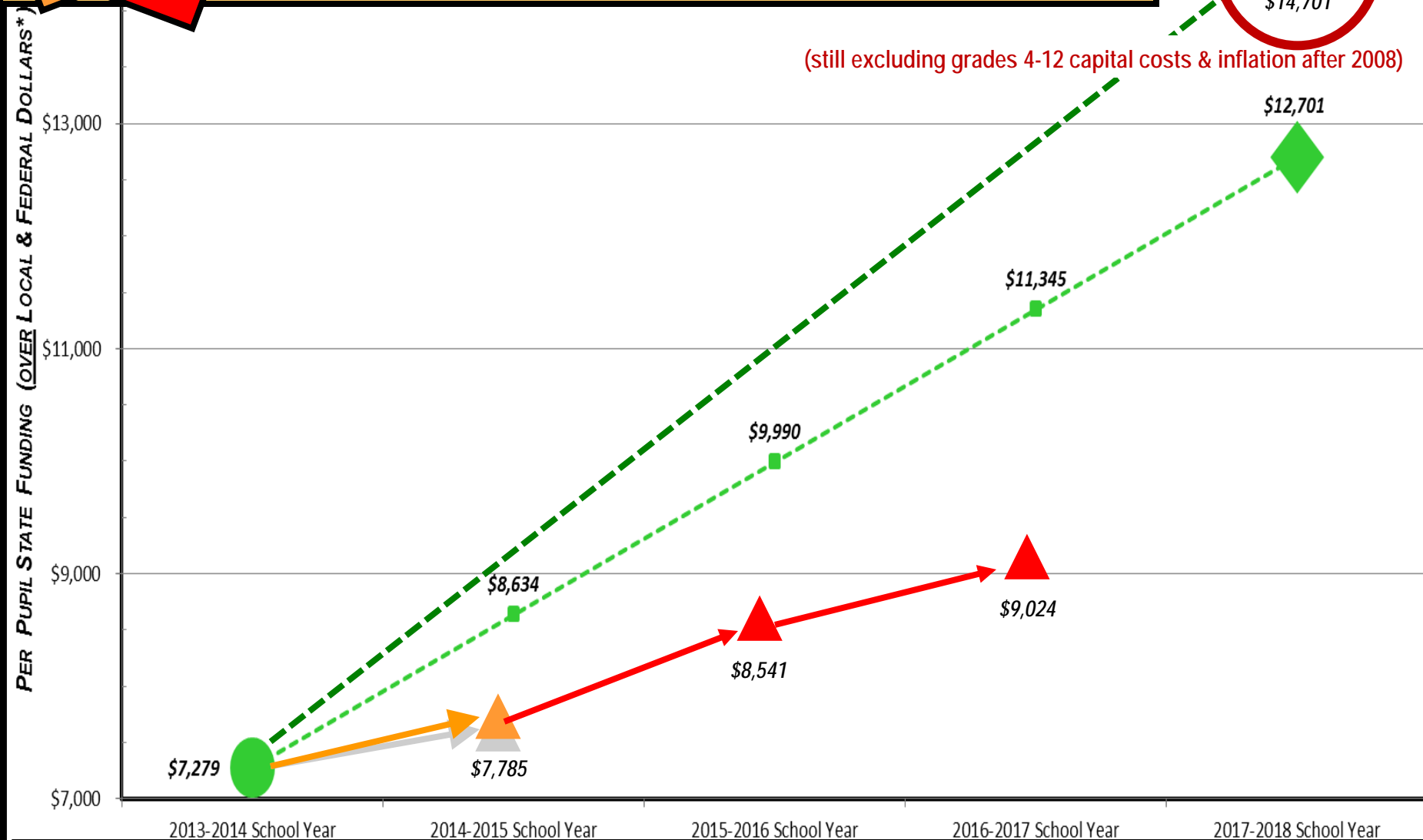
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The Court



\$14,701

(still excluding grades 4-12 capital costs & inflation after 2008)



\$7,785, \$8,541, & \$9,024 from Chart B of the legislature's 2015 Report To The Supreme Court By The Joint Select Committee On Article IX Litigation. OSPI 2015-2017 Capital Budget submission shows expanding kindergarten to full day & lowering K-3 class sizes require construction of about 5,698 more classrooms at a cost of \$2 billion (adds ≈\$2,000/pupil spread over 1 million students).



2015

Legislature: ➡ little progress  
➡ no plan

The Court



\$14,701

(still excluding grades 4-12 capital costs & inflation after 2008)

\$12,701

**STILL CONTEMPT OF COURT**

August 2015 Order

\$9,024

\$8,541

\$7,785

\$7,279

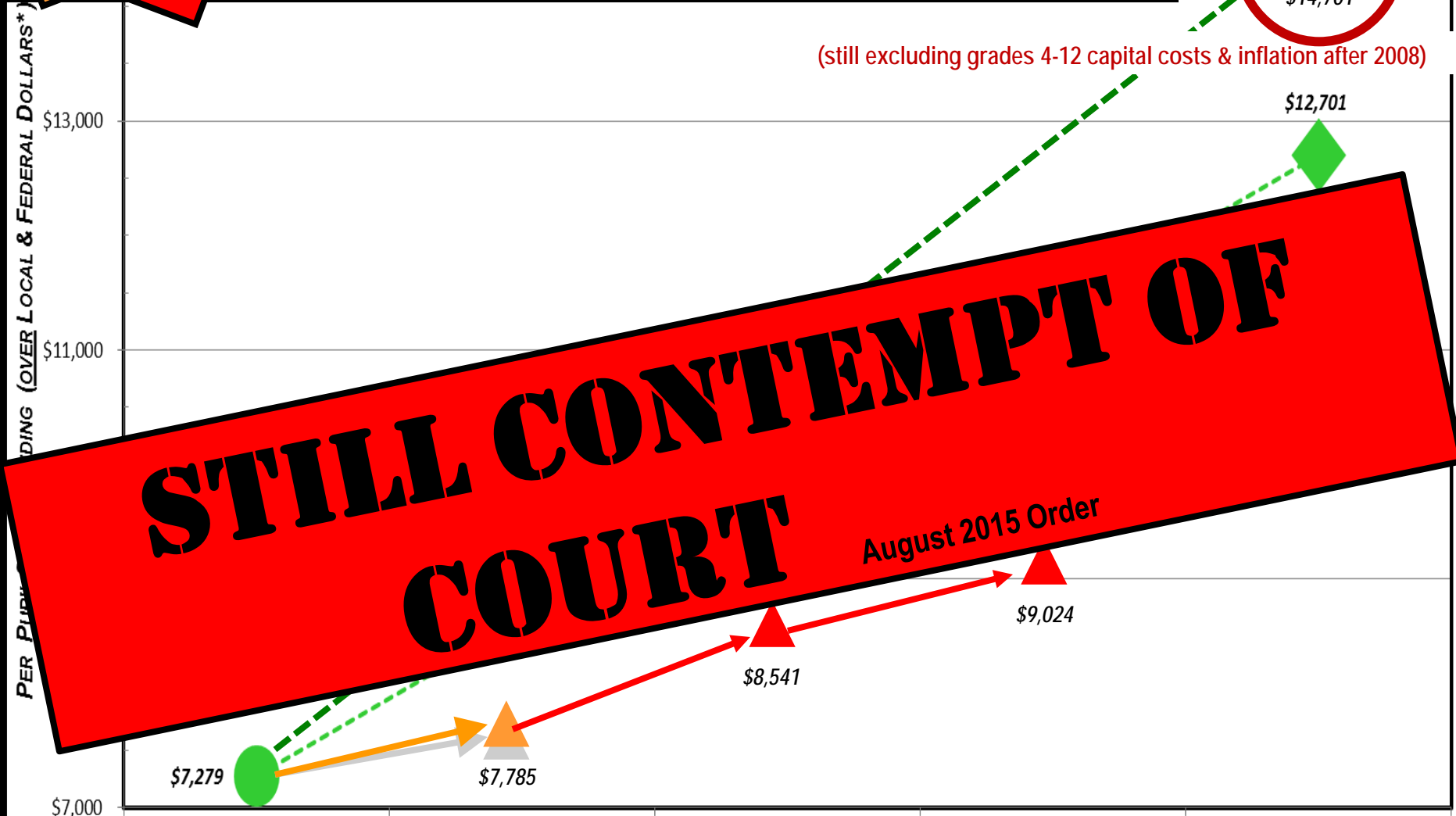
2013-2014 School Year

2014-2015 School Year

2015-2016 School Year

2016-2017 School Year

2017-2018 School Year



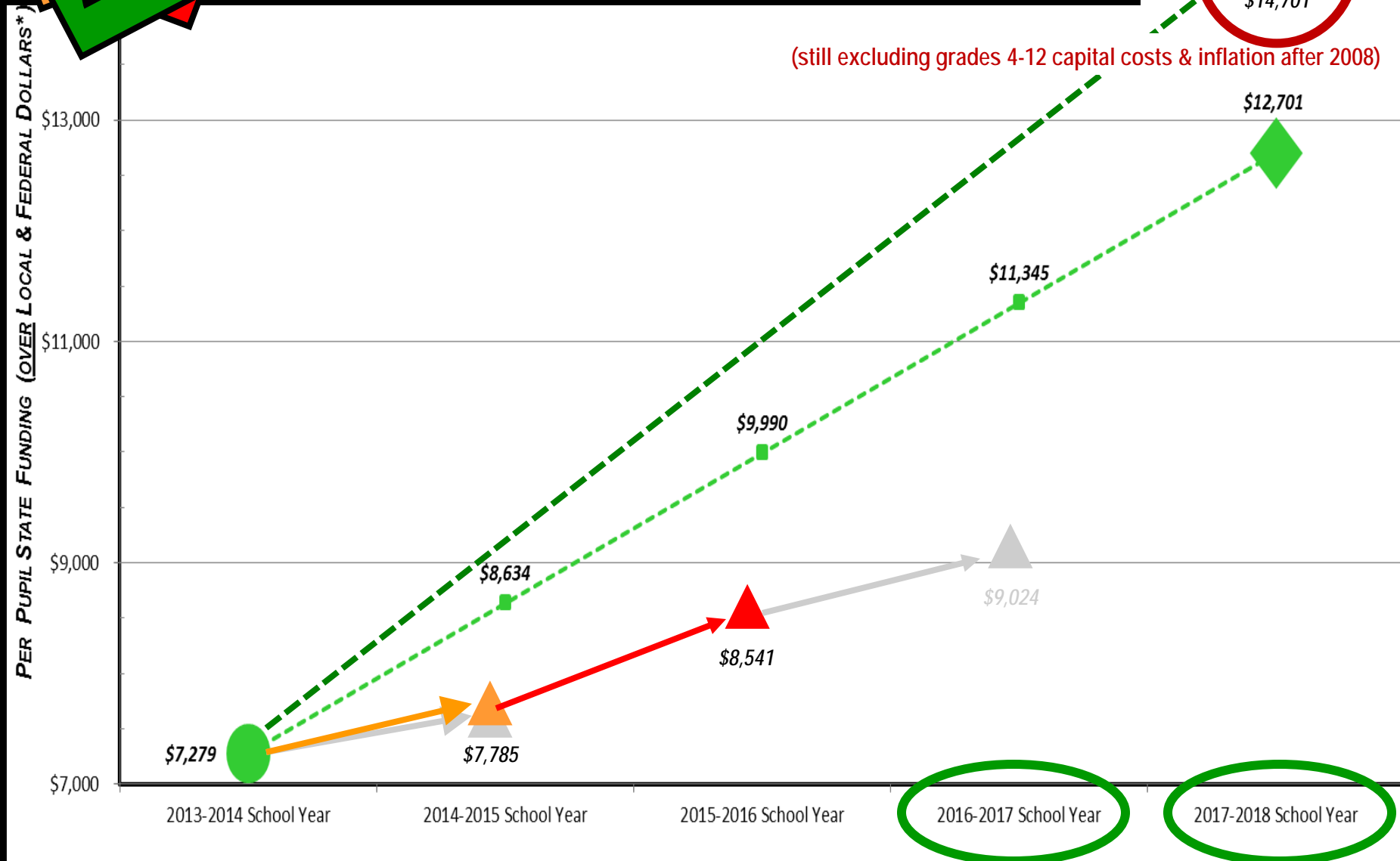
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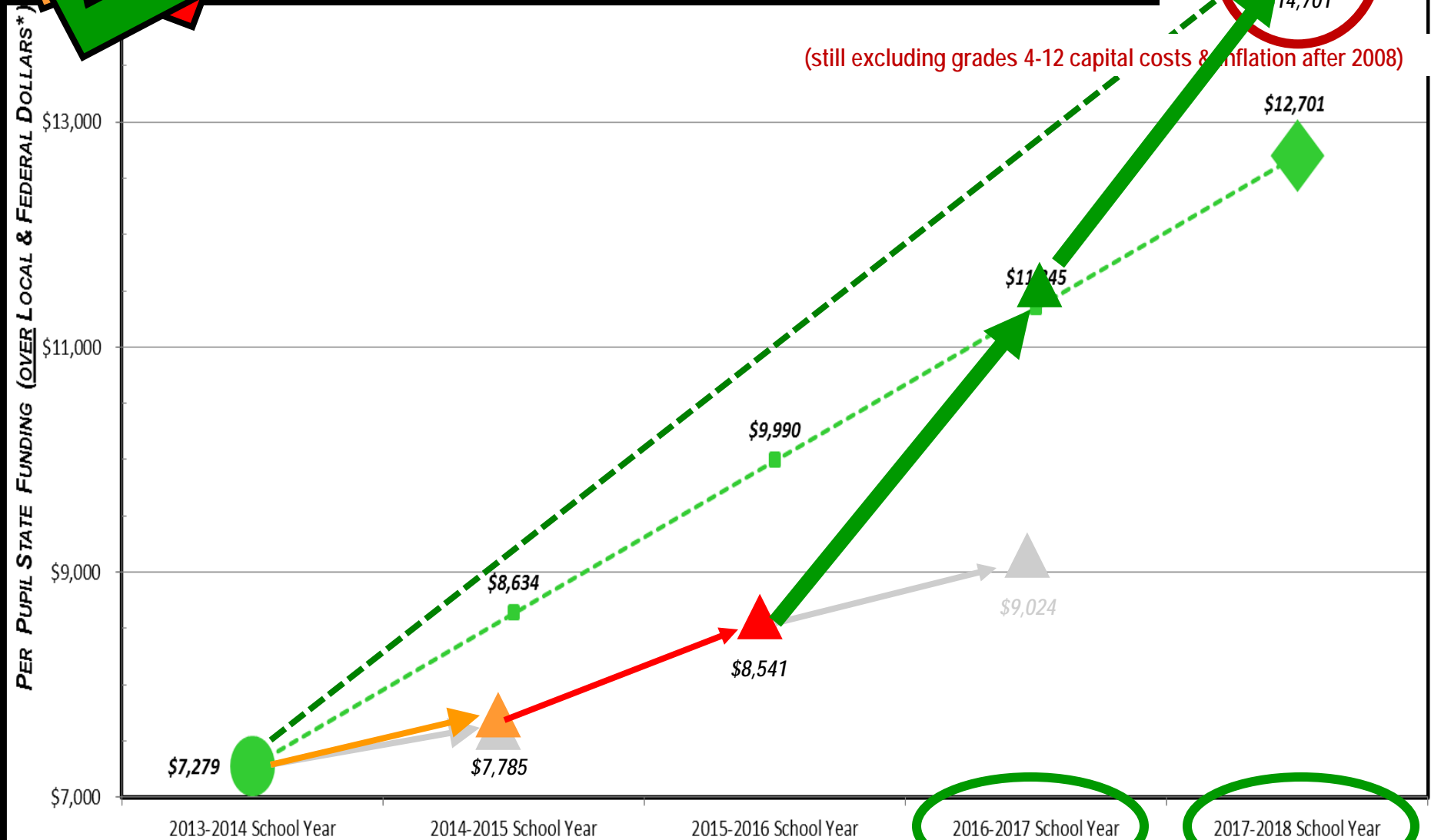
Legislature:

Annual Progress?

PHASE-IN PLAN?

Court

2016



# Judicial Enforcement of Constitutional Rights

# THE SUPREME COURT OF WASHINGTON

June 2014 Order at page 4

# THE SUPREME COURT OF WASHINGTON

June 2014 Order at page 4

1. ✓ Impose monetary or other contempt sanctions;
2. Prohibit expenditures on certain other matters until the Court's constitutional ruling is complied with; *Legislators' 11% pay raise?*  
*Transportation package?*
3. Order the legislature to pass legislation to fund specific amounts or remedies; *K-3 classroom construction?*
4. Order the sale of State property to fund constitutional compliance;
5. Invalidate education funding cuts in the budget;  
*I-728 elimination? Learning Improvement Day cuts?*
6. Prohibit any funding of an unconstitutional education system;  
*Strike down every underfunded school statute?*
7. Order any other appropriate relief  
*Invalidate tax exemption statutes by the legislature? (≈\$15 billion/year)*

*Invalidate bills enacted on other matters before school funding?*

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June 2014 Order at page 4

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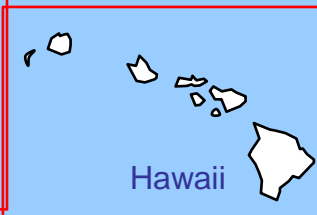
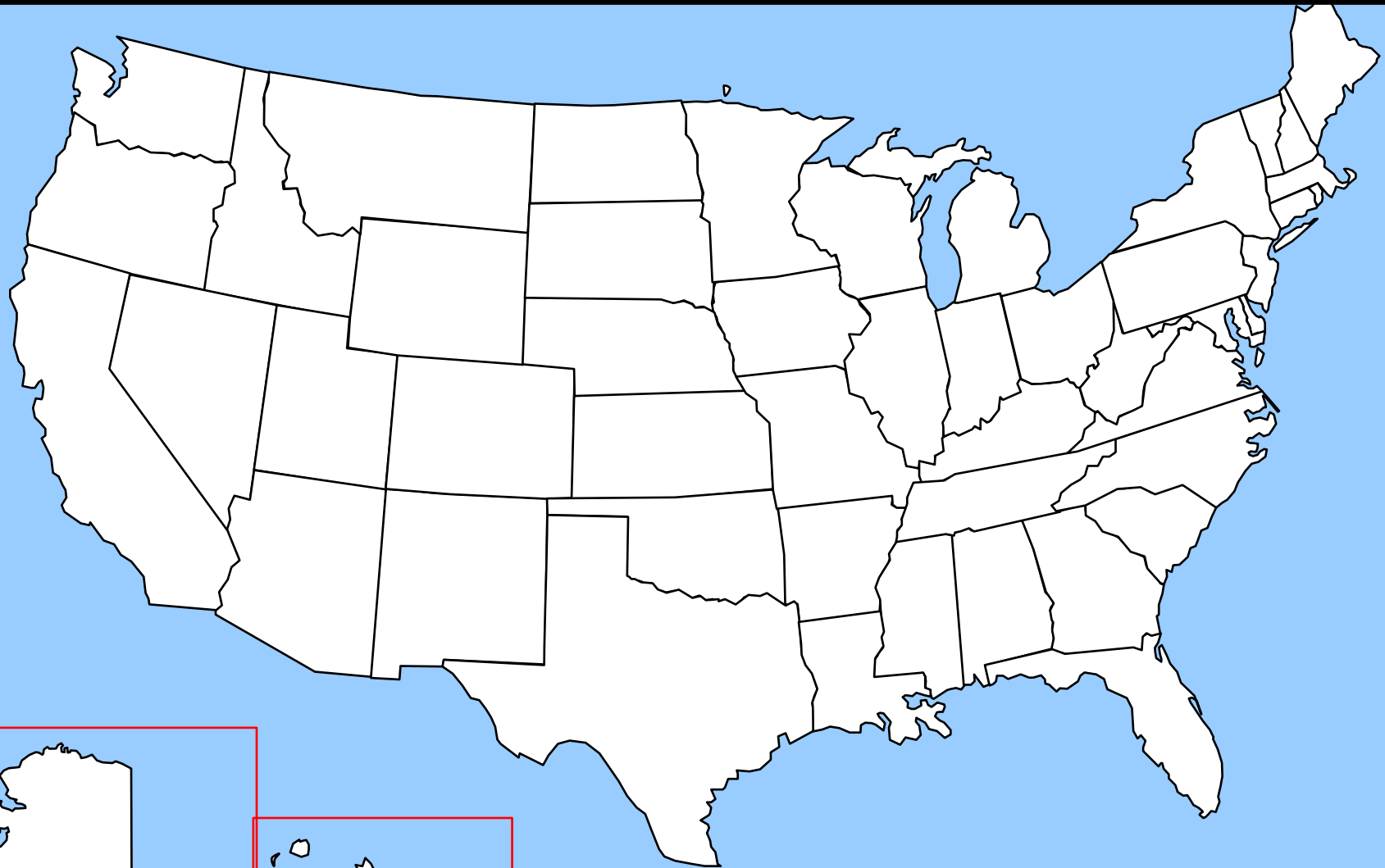
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# State Corporate Subsidies To Industry

## the Top Two List

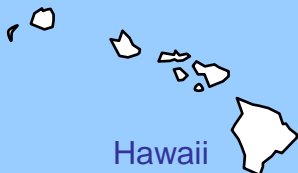


# State Corporate Subsidies To Industry

## the Top Two List



Alaska



Hawaii

Ranking for "value of corporate subsidies provided to industry" from 11/22/2015 Boston Globe article on the McCleary case:  
"Tax cuts or education: Hard lessons from a war in the West", page A18  
<https://www.bostonglobe.com/news/nation/2015/11/21/mother-battle-exposed-inequities-aren-injustices-state-held-contempt-court-flowing-corporations-save-their-tax-breaks-and-promised-education-dollars/SwEL04E3E7KYe6HaUvUiZP/story.html>

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*I-728 elimination? Learning Improvement Day cuts?*
6. Prohibit any funding of an unconstitutional education system;  
*Strike down every underfunded school statute?*
7. Order any other appropriate relief  
***Invalidate tax exemption statutes by the legislature? (≈\$15 billion/year)***  
***Not tax exemptions by voter Initiative. (e.g., I-345 sales tax exemption for food)***  
*Invalidate bills enacted on other matters before school funding?*

# Reaching the moon



# Reaching the moon



1961

John Kennedy made a speech, calling on Congress to fund a moon landing:  
“I believe that this nation should commit itself to achieving the goal,  
before this decade is out, of  
landing a man on the moon and returning him safely to the earth.  
No single space project in this period will be more impressive to mankind,...  
and none will be so difficult or expensive to accomplish....”

*President John F. Kennedy, speech to joint session of Congress (May 25, 1961)*

[https://www.nasa.gov/vision/space/features/jfk\\_speech\\_text.html#.Vnn8rfk4FD8](https://www.nasa.gov/vision/space/features/jfk_speech_text.html#.Vnn8rfk4FD8)



# Reaching the moon

1961

1969



"Houston, Tranquility Base here. The Eagle has landed."

*Apollo 11 astronaut Neil Armstrong, on the moon (July 20, 1969)*

[http://www.nasa.gov/mission\\_pages/apollo/apollo11.html](http://www.nasa.gov/mission_pages/apollo/apollo11.html)

# Reaching the moon

*2007*

The McCleary and Venema families filed a suit calling on the State to amply fund their children's public schools as the Washington State Constitution demands





# Reaching the moon

*2007*



*2016*

We can reach the moon in eight years –  
but can't reach ample funding of  
our public schools in nine.

# McCleary v. State background information



*Trial Court's February 2010 final judgment against the State:*

<http://waschoolexcellence.org/the-mccleary-case/the-trial/>

*Daily summaries of the trial:*

<http://waschoolexcellence.org/the-mccleary-case/the-trial/daily-trial-reports/>

*Supreme Court Briefs, etc.:*

<http://waschoolexcellence.org/the-mccleary-case/court-documents/>

*Supreme Court's 2012, 2013, 2014, & 2015 Rulings:*

<http://waschoolexcellence.org/the-mccleary-case/the-supreme-court/>