



COLORADO  
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# WASHINGTON STATE

**WHAT NOW?  
WHO'S NEXT?**

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# PURPOSES

- Unpack the Washington State Supreme Court decision
- Learn what makes a charter statute vulnerable in light of the decision
- Discuss how state political environments affect charter school law and policy



**“The act unconstitutionally reallocates these restricted funds to charter schools, which do not qualify as common schools.”**

# WASHINGTON STATE

WHERE DO  
WE STAND?

HOW DID  
WE GET  
HERE?

NEXT STEPS?



# DOES LWV HAVE LEGS?

To assess this requires getting past the initial reaction of:

- Denial
- Anger
- Bargaining
- Depression

And to:

- Acceptance (but, then, acceptance of what?)

# WAYS OF FRAMING SIGNIFICANCE

This was the first state supreme court decision striking down an entire charter statute and is contrary to decisions in appeals courts in several states (e.g., CO, CA, MI, OH).

BUT: this is not the first appeals court to strike down a STATE system of charter authorizing.

LWV is characterized as split (6-3), reflecting a “political” decision by an “elected” court (unduly influenced by electoral processes) – is that reasonable?

Washington is said to have an unusual combination of a “common schools” clause and “old” case law that was used against charters,

BUT: *“The words ‘public schools’ are synonymous with ‘common schools,’ in the broadest sense, as used in [the constitution] ....”*

*Jenkins v. Andover, 103 Mass. 94, 98 (1869).*



# WAYS OF FRAMING SIGNIFICANCE 2

The narrative that charter schools are “private organizations” (even if they run “public schools”) is increasingly prevalent, ties directly into LWV, is indulged at times by charter advocates, and is a conscious (and potentially powerful) de-legitimizing strategy. COMPARE:

- “Here, because charter schools ... are not subject to local voter control, they cannot qualify as ‘common schools’ ...” *LWV, Slip Op.* at 11.
- “Given the undisputed method of appointment and removal of [charter school] board members, we find that none of them are responsible to public officials . . . or the general electorate.” *Chi. Math. & Sci. Acad. Charter Sch., Inc.*, 194 L.R.R.M. 1321, 359 NLRB No. 41, (N.L.R.B. Dec. 14, 2012)
- “... [C]harter school proponents . . . . can[not] mount a robust argument about how their sector fulfills the democratic imperative of public education . . . .” Jerusha Conner, *Public Schools are a Public Good*, US NEW & WORLD REPORT (April, 2015).

# FROM THE FRAME TO THE DETAILS: WHAT DOES *LWV* REALLY SAY?

*LWV* can be read as critiquing charter schools in at least four ways:

- That charters are not legitimate “common” (and perhaps therefore not truly “public”) schools, essentially because of lack of responsiveness to the local voting public.
- That charters have illegitimately tapped into funds set aside for “common” (“public?”) schools.
- That charters lack any “valid” funding source and illegitimately attempt to secure the “same” funding as “common” (“public?”) schools.
- That charters — through their separate governance — have violated the “uniformity” (equality) requirement of the state constitution.

*And Note:* *LWV* was handed down by a court that has intervened aggressively in testing the equity and adequacy of state funding for public education.



# HOW DO WE ASSESS THE RISK IN OTHER STATES (1)?

- States with “common school” clauses present some level of risk, though the form and precedent under those clauses varies tremendously from state to state.
- States that have “local control” case law are more at risk.
- States that have cited the core precedent in *LVW (School Dist. No. 20 v. Bryan, 51 Wash. 498, 99 P. 28 (1909))* are likely most at risk.
- States that have disapproved of “delegating” authority away from elected bodies have enhanced risk.
- States in which courts are actively policing equity or adequacy claims by traditional school actors should be considered (all other factors being equal) to have some enhanced risk.
- Uniformity clauses (absent other factors) present some risk.
- To the extent this informs a broader public/private debate, everyone is impacted negatively — even if not threatened with disestablishment.

# HOW DO WE ASSESS THE RISK IN OTHER STATES (2)?

While our focus has been drawn to the court decision, we should remember that the shape of the Charter Statute was a core element of this case. That statute: emphasized the state role in chartering.

And there are factors should protect the sector has in some states against spread of *LWV* – the most obvious being existing precedent.

Remember that risk relates not just to disestablishment, but to limits on charter policy.

*Given this – How do you view risk in your state?*



# POLITICAL REFLECTIONS (BEGINNING WITH GEORGIA'S STORY)

## Georgia lawsuit

- State Commission: need
- Challenged by local school district (Gwinnett County)
- State constitutional local control provision
- Supreme Court, 3-2 ruling

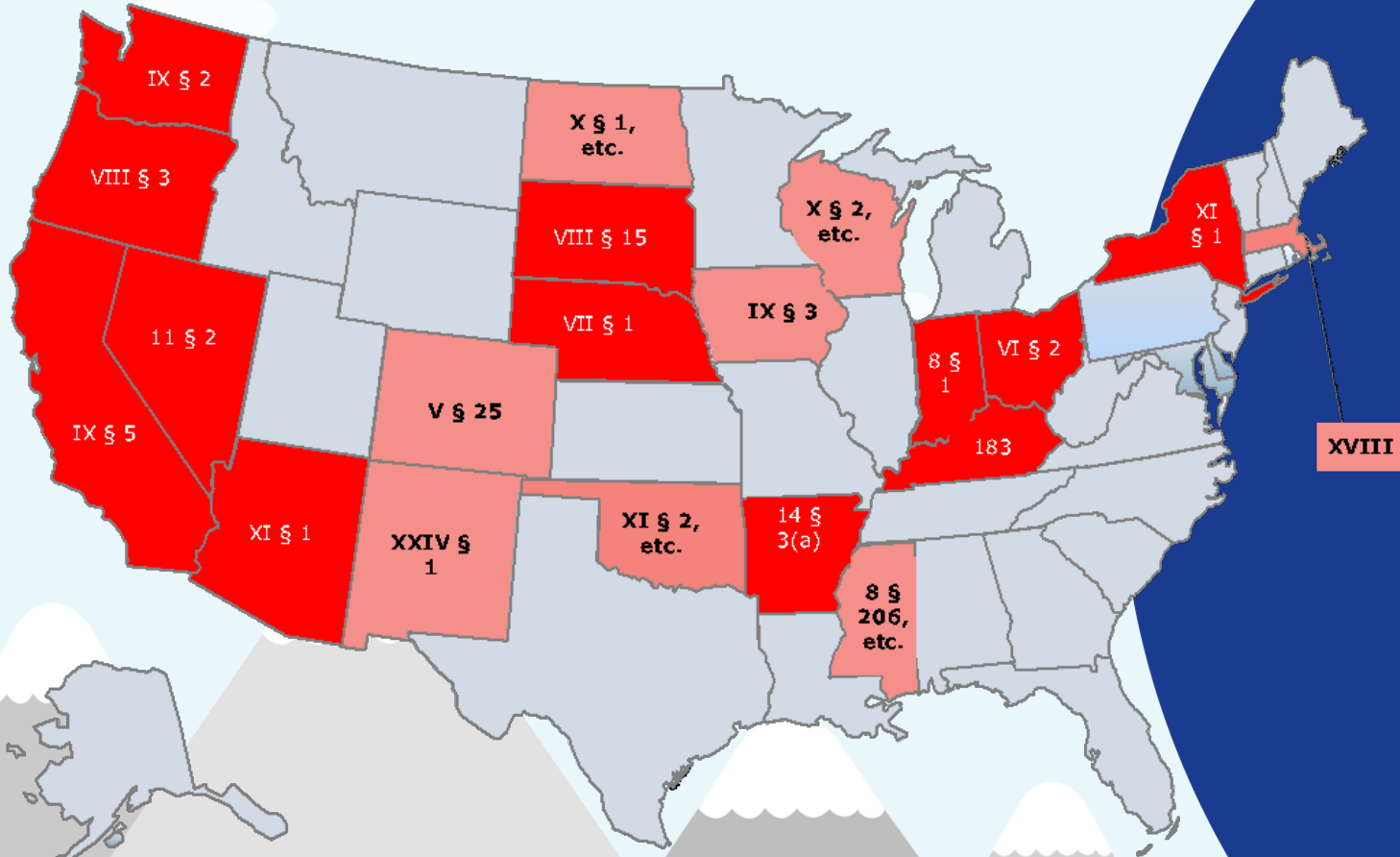
## Legislative response

- Constitutional amendment
- Referendum

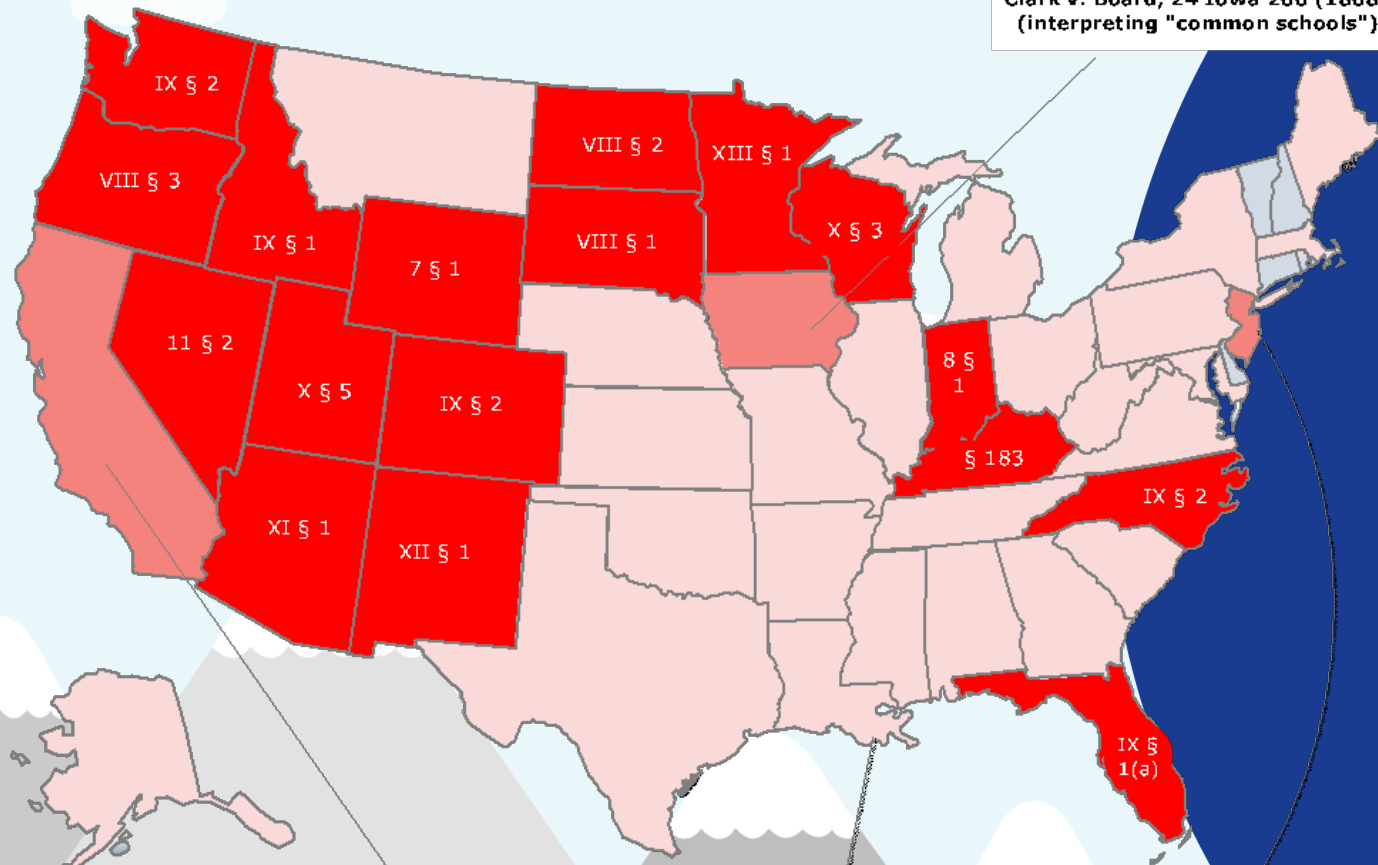
## Campaign



## Common School Clauses



## Uniform Schools Clauses



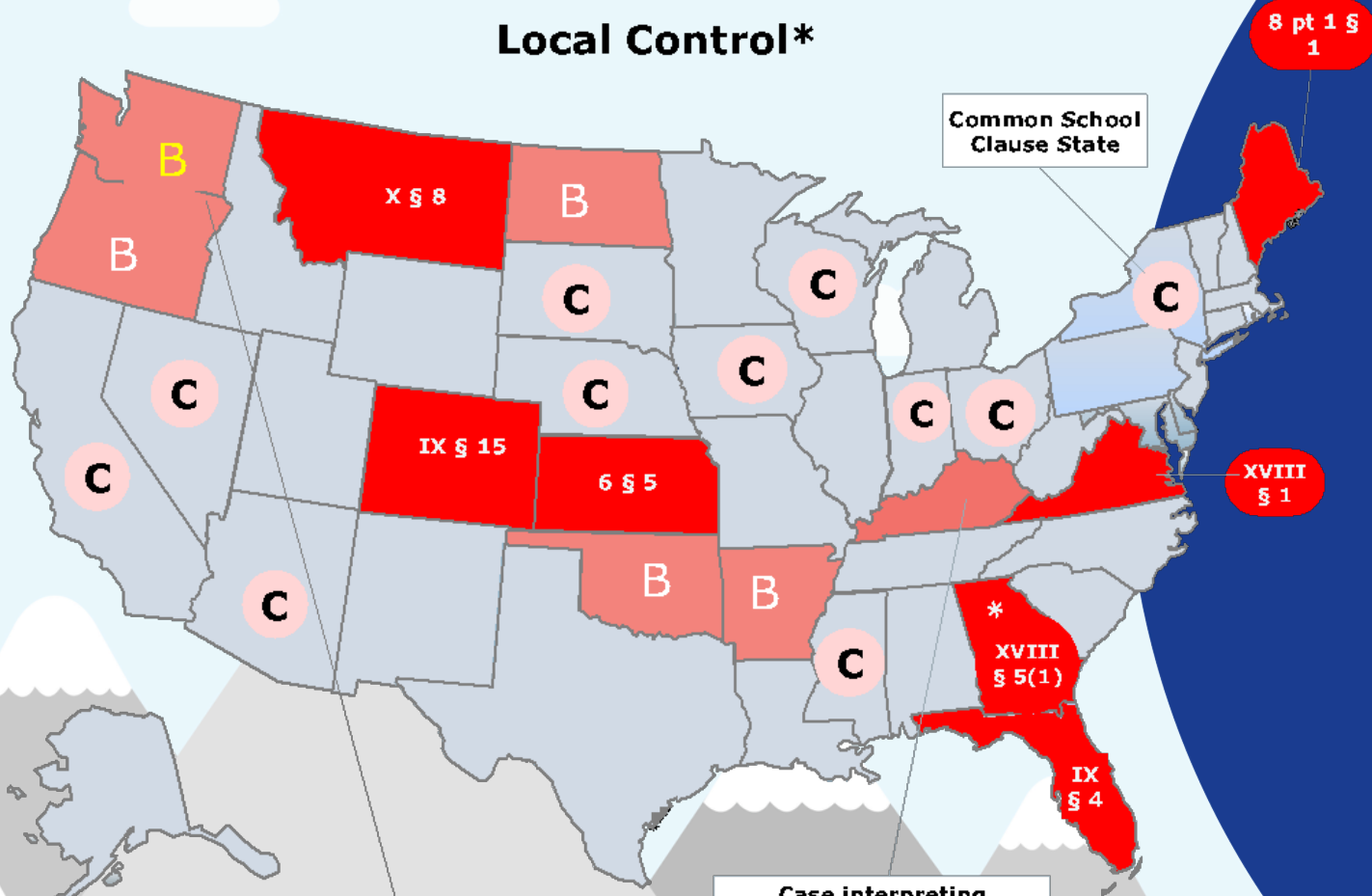
**Clark v. Board, 24 Iowa 266 (1868)**  
(interpreting "common schools")

**L.A. v. Kirk, 148 Cal. 385 (1905)**  
(interpreting "common schools")

Ricco v. Hoboken, 69 N.J.L.  
649 (1903)(1903) (applying  
"special laws" prohibition)

Jurisdiction with "special laws" clause

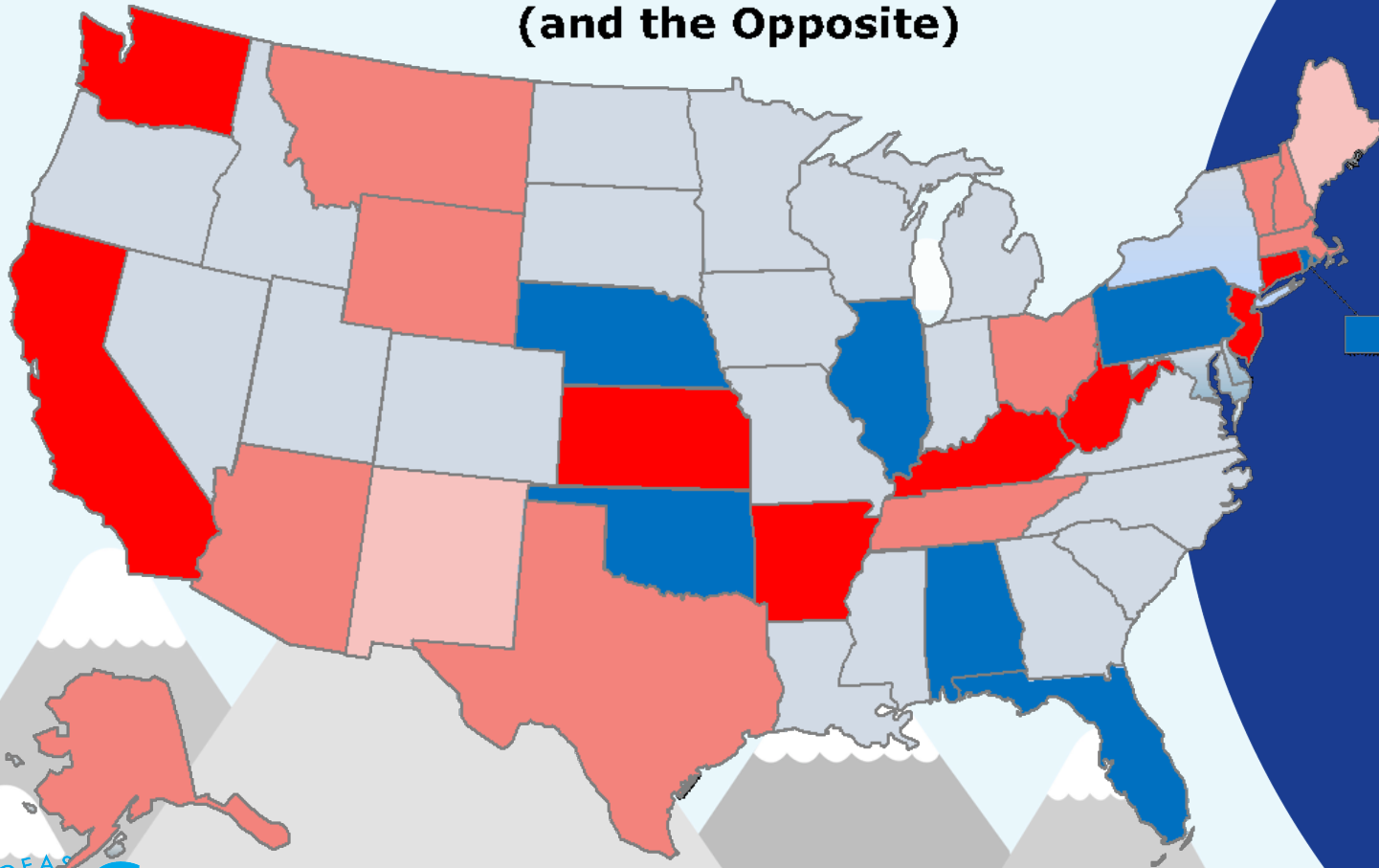
## Local Control\*



*Sch. Dist. V. Bryan*, 51 Wn. 498, 99 P. 28 (1909) (interpreting "common schools")

Case interpreting "common schools" cited in *Bryan*

## Assertive Judiciaries (and the Opposite)





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