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SUPREME COURT OF THE STATE OF WASHINGTON

MATHEW & STEPHANIE McCLEARY, on their own behalf and on behalf of Kelsey & Carter McCleary, their two children in Washington's public schools;

ROBERT & PATTY VENEMA, on their own behalf and on behalf of Halie & Robbie Venema, their two children in Washington's public schools; and

NETWORK FOR EXCELLENCE IN WASHINGTON SCHOOLS ("NEWS"), a state-wide coalition of community groups, public school districts, and education organizations,

Plaintiffs/Respondents,

v.

STATE OF WASHINGTON,

Defendant/Appellant.

**PLAINTIFFS' ANSWER
TO THE AMICUS BRIEF OF
THE WASHINGTON STATE BUDGET &
POLICY CENTER, ET AL.**

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ORIGINAL

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I. INTRODUCTION

This Court summoned the State to address three topics:

- “why the State should not be held in contempt for violation of this Court’s order dated January 9, 2014”;
- “why, if it is found in contempt, any of the following forms of relief [list of 7 remedial sanctions] ... should not be granted”; and
- “the appropriate timing of any sanctions.”

June 12, 2014 Order To Show Cause at pp.3-4.

The non-profit organization Washington State Budget & Policy Center, joined by five other organizations and four college students (collectively “the Policy Amici”), propose an addition to the contempt sanctions this Court listed in the second topic.¹ They ask this Court to order the State to evaluate tax reform.²

Since tax reform could be a significant part of the *means* the legislature employs to provide the significantly increased amounts necessary to amply fund the State’s K-12 schools, it’s logical for the legislature to earnestly evaluate such reform. As Part II below explains, however, plaintiffs’ understanding is that the purpose of a contempt sanction here is to coerce the legislature to comply with the January 2014 Order – not to direct what the legislature must or must not evaluate as it complies.

¹ *Policy Amici’s Brief at pp.3-4.*

² *Policy Amici’s Brief at p.20.*

II. DISCUSSION

A. The Relief These Amici Request: Order A Good Faith Evaluation Of Tax Reform

With respect to the first topic identified in this Court's Show Cause Order, the Policy Amici agree that the legislature is in contempt because it did not comply with this Court's Order.³ And they do not address the third topic (timing).

But they do address the second topic (sanctions). Since the last category of contempt sanction listed in this Court's Show Cause Order is "7. Any other appropriate relief", the Policy Amici request that "any order resulting from this show cause proceeding should include, at a minimum, direction to the State to evaluate in good faith tax reform, including raising tax rates, broadening the tax base and eliminating special tax preferences."⁴

B. The Purpose Of Contempt Sanctions In This Proceeding: Coerce Compliance With This Court's Prior Rulings

As the State's and plaintiffs' prior show cause briefing has explained, there are generally two types of contempt sanctions: punitive and remedial.⁵

³ See *Policy Amici's Brief* at pp.16-17, p.19.

⁴ *Policy Amici's Brief* at p.20.

⁵ E.g., *State's Show Cause Response* at p.8; *Plaintiffs' Answer To Defendant's Response To The Court's Show Cause Order* at p.24 & n.30.

It is plaintiffs' understanding that remedial contempt sanctions are the type at issue in this proceeding, and that the purpose of a remedial contempt sanction is to coerce compliance with the violated court ruling – e.g., coerce legislators' compliance with this Court's January 2014 Order.⁶

That January 2014 Order ordered the State legislature's 2014 session to:

- (1) take “immediate, concrete action” to make “real and measurable *progress*, not simply promises” to meet the 2018 full funding deadline in this case; and
- (2) submit a “complete plan for fully implementing its program of basic education for each school year between now and the 2017-18 school year” – including “a phase-in schedule for fully funding each of the components of basic education” identified in ESHB 2261 and SHB 2776.

January 2014 Order at p.8 (emphasis added).⁷

⁶ See, e.g., *State's Show Cause Response at p.8; Plaintiffs' Answer To Defendant's Response To The Court's Show Cause Order at p.24 & n.30. Recall too that the State has identified its legislators as “the principal actor” in this Show Cause proceeding. State's Show Cause Response at p.26.*

⁷ *With respect to this Order's progress requirement, see also January 2014 Order at p.8 (“The need for immediate action could not be more apparent. Conversely, failing to act would send a strong message about the State's good faith commitment toward fulfilling its constitutional promise.”) (underline added). As noted in prior briefing, the State acknowledges knowing about this Court's progress requirement (e.g., State's Show Cause Response at p.5, noting that this Court's prior July 2012 Order ordered that “the State must ‘show real and measurable progress’ toward achieving full compliance” by the 2018 deadline in this case), as well as knowing about this Court's complete plan requirement (e.g., State's Show Cause Response at p.6, stating with respect to this Court's January 2014 Order that “The Court ordered the State to submit ... a complete plan for fully implementing its program of basic education for each school year between now and the 2017-18 school year that addresses each of the areas of K-12 education identified in ESHB 2261, as well as the implementation plan called for by SHB 2776 [Laws of 2010, ch.236] that includes a phase-in schedule for fully funding each of the components of basic education.” (internal quotation marks omitted)).*

It is therefore plaintiffs' understanding that the purpose of contempt sanctions resulting from this show cause proceeding would be to coerce legislators' compliance with those two mandates in the January 2014 Order.

C. **A Serious Evaluation Of Tax Reform Is Logical, But Ordering That Evaluation May Not Serve The Purpose Of Coercing Compliance With The January 2014 Order**

Many of the points made by the Policy Amici are correct. For example:

- In the three legislative sessions after this Court's January 2012 decision, the legislature made only modest, unsustainable (e.g., one-shot) funding increases above the levels previously declared unconstitutionally low in this case.⁸
- The legislature has still not secured stable and reliable ample funding for the State's K-12 schools, or articulated its plan to do so by the 2017-2018 school year deadline promised by the legislature in this case.⁹
- There are multiple *means* the legislature can employ to raise additional revenue to comply with this Court's rulings and stop the State's ongoing violation of Washington children's positive constitutional right to an amply funded K-12 education.¹⁰

Moreover, as explained earlier, plaintiffs agree that since tax reform could be a significant part of the *means* employed to provide the significantly increased amounts necessary to amply fund the State's K-12

⁸ *Policy Amici's Brief at p.1 and pp.8-9.*

⁹ *Policy Amici's Brief at p.1, p.4, p.19.*

¹⁰ *Policy Amici's Brief at pp.14-16.*

schools, it's logical for the legislature to earnestly evaluate such revenue reforms.

But as also explained earlier, it is plaintiffs' understanding that the purpose of a remedial contempt sanction in this show cause proceeding is to coerce the legislature to comply with the two previously noted mandates of this Court's January 2014 Order – not to direct what the legislature must or must not evaluate as it complies.

III. CONCLUSION

Many of the Policy Amici's points are correct with respect to the legislature's delays, lack of serious effort, and missed opportunities in the State's ongoing violation of this Court's Orders and Washington children's positive constitutional right to an amply funded K-12 education. And the Policy Amici's call for a serious evaluation of tax reform as a potentially significant *means* in providing that ample funding is logical. But plaintiffs respectfully are not convinced that ordering that evaluation will serve the purpose of coercing compliance with this Court's January 2014 Order.¹¹ Plaintiffs believe the 3-part Order they have

¹¹ *Although not relevant to the argument made by the Policy Amici, plaintiffs note that those amici apparently accept the position taken in an Office of Financial Management (OFM) document that only one-third of the State budget can be cut. Policy Amici's Brief at p.12 & n.32. Plaintiffs do not agree with the State's self-serving assertions in its OFM document.*

Plaintiffs also note that the Policy Amici occasionally rely upon impermissible conclusory/speculative assertions such as "Cutting [listed] public programs and services would undermine any benefit from additional investments in public schools." Policy

proposed would more effectively coerce compliance in this case at this time.¹²

RESPECTFULLY SUBMITTED this 25th day of August, 2014.

Foster Pepper PLLC

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Amici's Brief at p.13. But since such assertions are not legally relevant to the "require an evaluation of tax reform" order they request, plaintiffs do not waste the Court's and parties' time and energy debating such assertions.

¹² See Plaintiffs' Answer To State's Response To The Court's Show Cause Order at pp.24-28.

DECLARATION OF SERVICE

Adrian Urquhart Winder declares:

I am a citizen of the United States of America and a resident of the State of Washington. I am over the age of twenty-one years. I am not a party to this action, and I am competent to be a witness herein. On Monday, August 25, 2014, I caused PLAINTIFFS' ANSWER TO THE AMICUS BRIEF OF THE WASHINGTON STATE BUDGET & POLICY CENTER, ET AL. to be served as follows:

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*Amici Curiae The Honorable Daniel J. Evans, The Honorable John
Spellman, The Honorable Mike Lowry, The Honorable Gary Locke, and The
Honorable Christine Gregoire*

I declare under penalty of perjury under the laws of the State of
Washington that the foregoing is true and correct.

EXECUTED in Seattle, Washington, this 25th day of August, 2014.

s/ Adrian Urquhart Winder
Adrian Urquhart Winder

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Received 8/25/14

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Subject: McCleary v. State (Supreme Court No. 84362-7) - Plaintiffs' Answer To The Amicus Brief Of The Washington State Budget & Policy Center, Et Al.

Dear Clerk of the Court:

Please find attached for filing with the Court the following document: **Plaintiffs' Answer To The Amicus Brief Of The Washington State Budget & Policy Center, Et Al.**

- **Case:** McCleary et al. v. State, Case No. 84362-7
- **Court:** Supreme Court of the State of Washington
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Thank you,

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