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SUPREME COURT
STATE OF WASHINGTON

10 APR -8 PM 3:26

BY RONALD R. CARPENTER

CLERK *ryh*

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

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,

Petitioners,

v.

STATE OF WASHINGTON,

Respondent.

The Honorable John P. Erlick

No. 07-2-02323-2 SEA

(Supreme Court Cause No. 84362-7)

NOTICE OF CROSS-REVIEW
TO SUPREME COURT
[RAP 5.1(d)]

Clerk's Action Required

TO: The Clerk of the Court

AND TO: The Appellant/Cross-Appellee/Respondent State of Washington
and its Counsel of Record

The State of Washington has already appealed the entirety of the Final Judgment in the above-captioned case. Petitioners in this case file this Notice Of Cross-Review To Supreme Court [RAP 5.1(d)] in response to that Notice Of Appeal filed by the State on March 25, 2010.

In light of education funding cuts since the Final Judgment was entered on February 24, 2010, Petitioners seek cross-review of the Superior Court's ruling that the Legislature must merely proceed with real and measurable "progress" to establish (1) the actual

NOTICE OF CROSS-REVIEW
TO SUPREME COURT [RAP 5.1(d)]- 1

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1 cost of amply providing all Washington children with the education mandated by the Superior
2 Court's interpretation of Article IX, §1 of the Washington State Constitution, and (2) how the
3 State will fully fund that actual cost with stable and dependable State sources (paragraph 275 of
4 the Final Judgment's Revised Findings Of Fact And Conclusions Of Law).

5 Attached to this Notice is a copy of the Final Judgment, dated February 24, 2010.

6 Dated this 8th day of April, 2010.

7
8 FOSTER PEPPER PLLC

9 

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11 Christopher G. Emch, WSBA No. 26457
12 Edmund W. Robb, WSBA No. 35948
13 Attorneys for
14 Appellees/Cross-Appellants/Petitioners
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NOTICE OF CROSS-REVIEW
TO SUPREME COURT [RAP 5.1(d)]- 2

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SUPREME COURT
STATE OF WASHINGTON

DECLARATION OF SERVICE

10 APR -8 PM 3:36

1
2 Christopher G. Emch declares:

BY RONALD R. CARPENTER

3 I am a citizen of the United States of America and a resident of the State of Washington.

4 I am over the age of twenty-one years. I am not a party to this action, and I am competent to be a
5 witness herein. Today, I caused the attached Notice Of Cross-Review To Supreme Court
6 [RAP 5.1(d)] to be served on the following counsel as follows:
7

8 William G. Clark
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- Via CM/ECF KCSC E-Service
- Via Hand-Delivery by Legal Messenger
- Via Electronic Mail
- Via Fax
- Via U.S. Mail

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- Via CM/ECF KCSC E-Service
- Via Hand-Delivery by Legal Messenger
- Via Electronic Mail
- Via Fax
- Via U.S. Mail

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

24 EXECUTED in Seattle, Washington this 8th day of April, 2010.

25 

26 Christopher G. Emch

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FILED
KING COUNTY, WASHINGTON

FEB 24 2010

BY NANCYL SLYE
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

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,
Petitioners,

v.

STATE OF WASHINGTON,
Respondent.

The Honorable John P. Erlick

No. 07-2-02323-2 SEA

FINAL JUDGMENT

This case was tried in the Superior Court of Washington, the Honorable John P. Erlick presiding. The first day of trial was August 31, 2009. The last day of trial was October 21, 2009. This case was ultimately submitted for resolution with the filing of supplemental briefing on November 25, 2009. On February 4, 2010, the court rendered its ruling in favor of Petitioners, and entered its written Findings of Fact And Conclusions of Law setting forth that ruling in more detail. After confirming the availability of the court and opposing counsel, Petitioners noted their Presentation of Judgment for 4:00 p.m., February 24, 2010.

The court hereby enters the following as the final judgment in this case:

1. The Court's Findings of Fact And Conclusions of Law, (revised) entered on February 24, 2010, are attached as Exhibit A and are the basis of this Final Judgment.

FINAL JUDGMENT - 1

ORIGINAL

JOHN P. ERLICK, JUDGE
401 FOURTH AVENUE NORTH
KENT, WA 98032-4429
(206)296-9345

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

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,

Petitioners,

v.

STATE OF WASHINGTON,

Respondent.

Honorable John Erlick

No. 07-2-02323-2 SEA

COURT'S REVISED
FINDINGS OF FACT AND
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I. INTRODUCTION

“It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.” Washington State Constitution, Article IX, Section 1. The Washington State Constitution provides that this provision is not merely a statement of moral principle but, rather, sets forth a mandatory and judicially enforceable affirmative duty. *Seattle Sch. Dist. No. 1 of King County v. State*, 90 Wn.2d 476, 500 (1978); *School Districts' Alliance for Adequate Funding of Special Educ. v. State*, 149 Wn.App. 241, 245-246, 202 P.3d 990, 993 (2009). Strikingly, the treatment of education in the Washington Constitution is singular among states. *See Seattle Sch. Dist. No 1 v. State*, 90 Wn.2d 476, 497-98 (1978) (surveying state constitutions). Our Constitution sets education as the State's highest priority, declaring it to be the "paramount duty" of state government. Const. Art. IX, § 1. Washington has the strongest constitutional mandate in the nation to provide for education.

When the founders of our State ensconced those words into our State Constitution, it cannot be said with any certainty what inspired them to place such primary importance on education. They may not have been aware of the words of Jose Marti as quoted by Ben Soria, former Superintendent of the Yakima School District that “being educated is the only way to be free.”¹ However, the same commitment was endorsed in our Constitution – and its interpretation since the time of its enactment.

¹ A similar sentiment was expressed in the first century by the Stoic philosopher, Epictetus, in *Discourses*: “Only the educated are free.” Superintendent of the Mount Adams School District, Richard Foss, described basic education as encompassed by the Greek word “arete”: the notion of fulfillment of purpose or function.

Perhaps the framers were influenced by the words of Thomas Jefferson, in the Northwest Ordinance of 1787, where it was enunciated that since "Religion, morality, and knowledge" are "necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

Regardless of its source or inspiration, the framers codified the strongest constitutional provision for education in the nation. Since that time it has provided much guidance to legislatures and to governors and spawned much litigation, including the subject lawsuit, over its interpretation and enforcement.

II. TRIAL PROCEDURE OF THE CASE

1. The State of Washington Superior Court held a non-jury trial in this case. Trial commenced with opening statements on Monday, August 31, 2009, and concluded with closing arguments on Wednesday, October 21, 2009. Supplemental briefing was provided to the court by both sides on November 25, 2009, addressing the impact, if any, of the recent Washington Supreme Court decision in *Federal Way School District No. 10 v. State*, 167 Wn.2d 514 (2009).

2. The Petitioners were represented by Thomas F. Ahearne, Christopher Emch, Edmund Robb, Kelly Lonergan, and Adrian Winder of Foster Pepper PLLC. The Respondent State was represented by Senior Assistant Attorney General William G. Clark, Senior Assistant Attorney General David Stolier, Senior Assistant Attorney General Carrie Bashaw, Assistant Attorney General Dierk Meierbachtol of the Office of the Washington Attorney General. The Respondent State was also represented by John R. Munich and Jamie L. Boyer of the St. Louis, Missouri law firm of Stinson Morrison Hecker LLP. The issues of public importance in this case were fully, vigorously, and ably litigated and briefed by the parties and their counsel.

3. The Petitioners based their case on Article IX, §1 of the Washington State Constitution. That constitutional provision states in full:

It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

4. The four-part remedy that the Petitioners seek presents four fundamental questions for this court to resolve. Those four questions are:

Question #1 (declaratory judgment):

What is the correct interpretation of the words "paramount", "ample", and "all" in Article IX, §1 of the Washington State Constitution?

Question #2 (declaratory judgment):

What is the correct interpretation of the word "education" in Article IX, §1 of the Washington State Constitution?

Question #3 (declaratory judgment):

Is the Respondent State currently complying with its legal duty under this court's interpretation of the language in Article IX, §1?

Question #4 (enforcement Order):

If the Respondent State is not currently complying with its legal duty under this court's interpretation of Article IX, §1, what (if any) Order should this court enter to uphold and enforce the State's legal duty?

5. The court heard testimony and considered evidence from the witnesses listed on the attached Exhibit A.

6. The court admitted into evidence and considered the trial exhibits listed on the attached Exhibit B.

III. THE COURT'S FINDINGS OF FACTS AND CONCLUSIONS OF LAW

7. Having heard and considered the testimony and other evidence presented at trial, and having considered the legal memoranda and arguments of counsel, the court enters these Findings of Fact and Conclusions of Law ("Findings and Conclusions") in accordance with Washington Superior Court Civil Rule 52.

8. Any "finding of fact" that is more properly characterized as a "conclusion of law" should be considered a "conclusion of law" if necessary to prevent its being ignored or disregarded. Similarly, any "conclusion of law" that is more properly characterized as a "finding

of fact” should be considered a “finding of fact” if necessary to prevent its being ignored or disregarded.

9. This court recognizes that due to the public’s significant interest in this case, the Findings and Conclusions entered in this case may be widely read. Therefore, for ease of reading and comprehension, these Findings and Conclusions are subdivided into separate sections by primary subject matter, with the factual findings and legal conclusions relating to each subject matter grouped together in a single section. Each finding of fact and each conclusion of law in this document, however, relates to this case as a whole.

**A. PRELIMINARY MATTERS:
the Parties, Jurisdiction, Venue, & Burdens of Proof**

(a) Findings of Fact Concerning the Parties, Jurisdiction, Venue, & Burdens of Proof

(i) Short procedural history of this case.

10. Petitioners filed their Petition for Declaratory Judgment Enforcing Our Constitution on January 11, 2007. The State filed its Answer on February 14, 2007.

11. The court denied the parties’ extensively briefed summary judgment requests on August 24 and September 20, 2007. In light of those summary judgment proceedings, the court entered an Order on September 24, 2007 lifting the discovery stay in this case and setting a March 2, 2009 trial date.

12. Petitioners filed an Amended Petition for Declaratory Judgment Enforcing Our Constitution on December 6, 2007. The State filed its first Answer to the Amended Petition on December 31, 2007. The State filed its Amended Answer to the Petitioners’ Amended Petition on August 7, 2008. After a status conference with counsel, the court entered an Order on August 26, 2008 setting a June 1, 2009 trial date for this case. That trial date was subsequently rescheduled to the August 31, 2009 date upon which the trial of this case began.

(ii) The McCleary Family.

13. Petitioners Mathew and Stephanie McCleary are Washington State citizens, voters, and taxpayers. They reside in Jefferson County, Washington with their two children, Carter and Kelsey. Mathew and Stephanie McCleary brought this action on their own behalf, and as legal guardians on behalf of their children.

14. Carter and Kelsey McCleary attend the State's public schools.

15. Carter McCleary was a 7-year-old second grader at Chimacum Creek Primary School when this suit was filed. When this case went to trial, he was a 10-year-old fifth grader at Chimacum Elementary School.

16. Kelsey McCleary was a 13-year-old seventh grader at Chimacum Middle School when this suit was filed. Kelsey's mother was 13 when the Washington Supreme Court issued the *Seattle School District* decision discussed later in these Findings & Conclusions. When this case went to trial, Kelsey was a 15-year-old sophomore at Chimacum High School.

(iii) The Venema Family.

17. Petitioners Robert and Patty Venema are Washington State citizens, voters, and taxpayers. They reside in Snohomish County, Washington with their two children, Robbie and Halie. Robert and Patty Venema brought this action on their own behalf, and as legal guardians on behalf of their son Robbie and daughter Halie.

18. Robbie and Halie Venema attend Washington public schools.

19. Robbie Venema was a 12-year-old sixth grader at Cathcart Elementary School when this suit was filed. When this case went to trial, he was a 14-year-old freshman at Glacier Peak High School.

20. Halie Venema was a 15-year-old freshman at the freshman campus of Snohomish High School when this suit was filed. Halie's mother was in high school when the Washington Supreme Court issued the *Seattle School District* decision discussed later in these Findings &

Conclusions. When this case went to trial, Halie was a 17-year-old senior at Glacier Peak High School.

(iv) The Network for Excellence in Washington Schools ("NEWS").

21. Petitioner Network for Excellence in Washington Schools ("NEWS") is a State-wide coalition of community groups, school districts, and education organizations. Its stated mission is to support better education in Washington's public schools. It is a non-profit corporation organized under the laws of the State of Washington. At the time of trial, its members included the members identified below.

22. Washington State PTA. The Washington State Parent Teacher Association is a State-wide association with over 150,000 members in over 900 local PTA units throughout Washington. The vast majority of its members are parents of children in the State's public schools. The Washington State PTA's stated mission is to be a powerful voice for all children, a relevant resource for families and communities, and a strong advocate for the education and well-being of every child. It has a history of speaking on behalf of children and youth in the schools, in the community, and before government bodies and other organizations that make decisions affecting children; supporting parents in developing the skills to raise, protect, and advocate for their children; and encouraging parent and community involvement in education.

23. Washington State League of Women Voters. The League of Women Voters of Washington is a State-wide, non-partisan organization with local chapters in 23 locations across Washington -- i.e., the Bellingham-Whatcom Counties chapter, Benton-Franklin Counties chapter, Clallam County chapter, Clark County chapter, Cowlitz County chapter, Grays Harbor County chapter, Jefferson County chapter, King County South chapter, Kitsap County chapter, Kittitas County chapter, Mason County chapter, Methow Valley chapter, Pullman chapter, San Juan County chapter, Seattle chapter, Skagit County chapter, Snohomish County chapter, South Whidbey Island chapter, Spokane Area chapter, Tacoma-Pierce chapter, Thurston County chapter, Whidbey Island chapter, and Yakima County chapter. The Washington League of

Women Voters' stated mission is to encourage the informed and active participation of citizens in government and to influence public policy through education and advocacy. It has a longstanding interest in education dating back to the 1930s, when the organization worked for the then-Superintendent of Public Instruction. Since that time, the Washington League of Women Voters has published several studies on Washington's public school system and joined State-wide coalitions to enhance its school funding lobbying efforts.

24. El Centro de la Raza. El Centro de la Raza is a non-profit organization based in the old Beacon Hill School in King County. It runs a variety of education-related programs and services for children and families in low income, Latino American, and other historically disadvantaged segments of our State's population. These programs include before- and after-school assistance, summer school classes, and an early childhood educational center. El Centro de la Raza's stated mission is to build unity across all racial and economic sectors; to organize, empower, and defend our most vulnerable and marginalized populations; and to bring justice, dignity, equality, and freedom to all the peoples of the world. It has a history of providing mentoring and tutoring services to Washington's public school children and offering an educational environment that enhances the physical, emotional, social, and intellectual potential of children.

25. Urban League. The Urban League of Metropolitan Seattle is a non-profit organization in the larger urban areas of King County. It runs a variety of education-related programs and services for children and families in low income, African American, and other historically disadvantaged segments of our State's population. The Urban League of Metropolitan Seattle was established in 1929 and incorporated in 1936 as one of the 115 affiliates of the National Urban League. The Urban League of Metropolitan Seattle's stated mission is to empower, enable, and assist African Americans, other people of color, and disadvantaged individuals in becoming self sufficient through public advocacy, providing services, and developing strong business and community partnerships. It has a history of

providing the community with imperative cultural and educational resources, including tutoring, programs for academic enrichment, and scholarships.

26. Equitable Opportunity Caucus (EOC). The Equitable Opportunity Caucus is a coalition of Washington State student and family advocates, tribal leaders, leaders of diverse cultural communities, advocates for students with disabilities, and educators who advocate for the educational interests of all children. The Equitable Opportunity Caucus has a history of working toward the improvement of education for all children in Washington's public schools.

27. Minority Executive Directors Coalition (MEDC). The Minority Executive Directors Coalition is a non-profit organization comprised of over 80 Executive Directors and Program Directors who are persons of color working in private sector, non-profit human service, and community development agencies in the King County area. It was founded in 1981 to unite the Asian Pacific American, African American, Native American, and Chicano Latino communities in advocacy for people of color. It is the region's longest standing and broadest based multi-ethnic coalition of its kind. It has a history of working with legislators, government officials, and school districts to shape public policies affecting people of color.

28. Washington State Special Education Coalition (WSSEC). The Washington State Special Education Coalition is a State-wide, non-profit organization with over 30 member organizations, as well as several individual members throughout the State of Washington – the majority who have family members who are children with special education needs in the State's public schools. The Washington State Special Education Coalition was formed in 1977. Its stated mission is to bring together parent and professional organizations who are interested in the special needs and concerns of students in need of special education and support services. It has a history in this State of advocating for quality education for all children, particularly those receiving special education services in our State.

29. Disability Rights Washington (DRW). Disability Rights Washington, formerly known as the Washington Protection and Advocacy System, Inc., is a State-wide, non-profit organization in the State of Washington. The majority of its members are individuals with

disabilities and/or have family members with disabilities. Disability Rights Washington's stated mission is to advance the dignity, equity, and self-determination of people with disabilities and to pursue justice on matters related to human and legal rights. It has a history of placing a priority on ensuring that students with disabilities receive free appropriate public education.

30. American Association of University Women of Washington (AAUW). The American Association of University Women of Washington is a State-wide, non-profit organization with over 1,800 members. It was established in 1881 and consists of 37 local branches: Anacortes, Bellingham, Clallum, Colville, Cowlitz County, Dayton, Edmonds, Everett, Federal Way, Gig Harbor, Highline, Hudson's Bay, Issaquah, Kirkland-Redmond, Lake Washington (Bellevue), Lewis County, Mount Vernon, Okanogan-Omak, Olympia, Palouse-Garfield, Port Townsend, Puyallup Valley, Ritzville, Seattle, Southeast King County, Spokane, Stanwood-Camano Island, Tacoma, Tri-Cities, Twin Harbors, Vancouver, Walla Walla, Wenatchee, Whidbey Island, Willapacific, Yakima, and an Online branch. The American Association of University Women of Washington's stated mission is to advance equity for women and girls through advocacy, education, and research. It believes that "Education is the key to women's economic security." It has a history of advocating for responsible, ample, and stable State funding for all levels of education.

31. Lutheran Public Policy Office of Washington State. The Lutheran Public Policy Office of Washington State is one of the 20 State Public Policy Offices of the Evangelical Lutheran Church in America. The Lutheran Public Policy Office of Washington State was formed in 1984. Its stated mission is to advocate justice for all of creation, particularly those who are impoverished and marginalized. It has a history of advocating for a quality education system for Washington's children.

32. The Seattle Breakfast Group. The Seattle "Breakfast Group" is a Seattle non-profit organization dedicated to leadership and community service. It is an organization of African American business and professional men that have been active in the Seattle community for more than 30 years. One of the primary focuses of the organization is to provide support for

youth in achieving their educational objectives. The Breakfast Group's stated mission is to bring together African American men of true value for community service and to provide economic empowerment through leadership. It has a history of working with high-risk young men to help them complete school and access higher education.

33. Vietnamese Friendship Association. The Vietnamese Friendship Association was originally established in 1978 to help Vietnamese refugees and immigrants adjust to life in the United States after the Vietnam War. Since that time, it has shifted its focus to promoting academic success, leadership development, parental involvement, cultural enrichment, and community building among underprivileged families with school-age children. The Vietnamese Friendship Association's stated mission is to empower the Vietnamese community to succeed while bridging, preserving, and promoting cultural heritage. It has a history of providing mentoring, parent advocacy services, tutoring, and summer and after-school programs for Washington's public school children.

34. Arlington School District. Arlington School District No. 16 is one of the State's school districts in Snohomish County, with a student population of approximately 5,600 students.

35. Auburn School District. Auburn School District No. 408 is one of the State's school districts in King County, with a student population of approximately 14,900 students.

36. Bainbridge Island School District. Bainbridge Island School District No. 303 is one of the State's school districts in Kitsap County, with a student population of approximately 4,000 students.

37. Bellevue School District. Bellevue School District No. 405 is one of the State's school districts in King County, with a student population of approximately 17,200 students.

38. Bellingham School District. Bellingham School District No. 501 is one of the State's school districts in Whatcom County, with a student population of approximately 10,700 students.

39. Chimacum School District. Chimacum School District No. 49 is one of the State's school districts in Jefferson County, with a student population of approximately 1,100 students.

40. Clover Park School District. Clover Park School District No. 400 is one of the State's school districts in Pierce County, with a student population of approximately 12,200 students.

41. Edmonds School District. Edmonds School District No. 15 is one of the State's school districts in Snohomish County, with a student population of approximately 20,700 students.

42. Federal Way School District. Federal Way School District No. 210 is one of the State's school districts in King County, with a student population of approximately 22,400 students.

43. Highline School District. Highline School District No. 401 is one of the State's school districts in King County, with a student population of approximately 17,500 students.

44. Kelso School District. Kelso School District No. 458 is one of the State's school districts in Cowlitz County, with a student population of approximately 5,200 students.

45. Kent School District. Kent School District No. 415 is one of the State's school districts in King County, with a student population of approximately 27,400 students.

46. Lakewood School District. Lakewood School District No. 306 is one of the State's school districts in Snohomish County, with a student population of approximately 2,600 students.

47. Marysville School District. Marysville School District No. 25 is one of the State's school districts in Snohomish County, with a student population of approximately 11,900 students.

48. North Kitsap School District. North Kitsap School District No. 400 is one of the State's school districts in Kitsap County, with a student population of approximately 6,800 students.

49. Northshore School District. Northshore School District No. 417 is one of the State's school districts in King County, with a student population of approximately 19,800 students.
50. Olympia School District. Olympia School District No. 111 is one of the State's school districts in Thurston County, with a student population of approximately 9,400 students.
51. Omak School District. Omak School District No. 19 is one of the State's school districts in Okanogan County, with a student population of approximately 1,800 students.
52. Orcas Island School District. Orcas Island School District No. 137 is one of the State's school districts in San Juan County, with a student population of approximately 500 students.
53. Pasco School District. Pasco School District No. 1 is one of the State's school districts in Franklin County, with a student population of approximately 13,900 students.
54. Peninsula School District. Peninsula School District No. 401 is one of the State's school districts in Pierce County, with a student population of approximately 9,400 students.
55. Puyallup School District. Puyallup School District No. 3 is one of the State's school districts in Pierce County, with a student population of approximately 21,700 students.
56. San Juan Island School District. San Juan Island School District No. 149 is one of the State's school districts in San Juan County, with a student population of approximately 900 students.
57. Seattle School District. Seattle School District No. 1 is one of the State's school districts in King County, with a student population of approximately 46,000 students.
58. Shoreline School District. Shoreline School District No. 412 is one of the State's school districts in King County, with a student population of approximately 9,200 students.
59. Snohomish School District. Snohomish School District No. 201 is one of the State's school districts in Snohomish County, with a student population of approximately 9,800 students.

60. South Kitsap School District. South Kitsap School District No. 402 is one of the State's school districts in Kitsap County, with a student population of approximately 10,300 students.

61. Spokane School District. Spokane School District No. 81 is one of the State's school districts in Spokane County, with a student population of approximately 29,700 students.

62. Tahoma School District. Tahoma School District No. 409 is one of the State's school districts in King County, with a student population of approximately 7,400 students.

63. Vancouver School District. Vancouver School District No. 37 is one of the State's school districts in Clark County, with a student population of approximately 22,600 students.

64. Yakima School District. Yakima School District No. 7 is one of the State's school districts in Yakima County, with a student population of approximately 14,600 students.

65. Washington Education Association. The Washington Education Association is a State-wide organization of approximately 78,000 teachers and educators working in the State's public schools. Approximately 63,000 of its active members are certificated teachers in the State's K-12 public schools. Approximately 12,000 more are educational support professionals in the State's K-12 public schools. The Washington Education Association's stated mission statement includes making public education "the best it can be for students, staff, and communities." It has a history in this State of improving the quality of and access to public education for all students.

66. Arlington Education Association. The Arlington Education Association is the labor organization that represents approximately 301 non-supervisory education employees in the Arlington School District.

67. Auburn Education Association. The Auburn Education Association is the labor organization that represents approximately 861 non-supervisory education employees in the Auburn School District.

68. Bainbridge Island Education Association. The Bainbridge Island Education Association is the labor organization that represents approximately 260 non-supervisory education employees in the Bainbridge Island School District.

69. Bellevue Education Association. The Bellevue Education Association is the labor organization that represents approximately 1,150 non-supervisory education employees in the Bellevue School District.

70. Bellingham Education Association. The Bellingham Education Association is the labor organization that represents approximately 767 non-supervisory education employees in the Bellingham School District.

71. Chimacum Independent Association. The Chimacum Independent Association is the labor organization that represents approximately 39 non-supervisory education employees in the Chimacum School District.

72. Chimacum Education Association. The Chimacum Education Association is the labor organization that represents approximately 66 non-supervisory education employees in the Chimacum School District.

73. Clover Park Education Association. The Clover Park Education Association is the labor organization that represents approximately 794 non-supervisory education employees in the Clover Park School District.

74. Edmonds Education Association. The Edmonds Education Association is the labor organization that represents approximately 1,351 non-supervisory education employees in the Edmonds School District.

75. Federal Way Education Association. The Federal Way Education Association is the labor organization that represents approximately 1,397 non-supervisory education employees in the Federal Way School District.

76. Highline Education Association. The Highline Education Association is the labor organization that represents approximately 1,320 non-supervisory education employees in the Highline School District.

77. Kelso Education Association. The Kelso Education Association is the labor organization that represents approximately 330 non-supervisory education employees in the Kelso School District.

78. Kent Education Association. The Kent Education Association is the labor organization that represents approximately 1,812 non-supervisory education employees in the Kent School District.

79. Lakewood Education Association. The Lakewood Education Association is the labor organization that represents approximately 148 non-supervisory education employees in the Lakewood School District.

80. Marysville Education Association. The Marysville Education Association is the labor organization that represents approximately 685 non-supervisory education employees in the Marysville School District.

81. North Kitsap Education Association. The North Kitsap Education Association is the labor organization that represents approximately 405 non-supervisory education employees in the North Kitsap School District.

82. Northshore Education Association. The Northshore Education Association is the labor organization that represents approximately 1,201 non-supervisory education employees in the Northshore School District.

83. Olympia Education Association. The Olympia Education Association is the labor organization that represents approximately 564 non-supervisory education employees in the Olympia School District.

84. Omak Education Association. The Omak Education Association is the labor organization that represents approximately 103 non-supervisory education employees in the Omak School District.

85. Orcas Island Education Association. The Orcas Island Education Association is the labor organization that represents approximately 39 non-supervisory education employees in the Orcas Island School District.

86. Pasco Association of Educators. The Pasco Association of Educators is the labor organization that represents approximately 781 non-supervisory education employees in the Pasco School District.

87. Peninsula Education Association. The Peninsula Education Association is the labor organization that represents approximately 583 non-supervisory education employees in the Peninsula School District.

88. Puyallup Education Association. The Puyallup Education Association is the labor organization that represents approximately 1,246 non-supervisory education employees in the Puyallup School District.

89. San Juan Island Education Association. The San Juan Island Education Association is the labor organization that represents approximately 61 non-supervisory education employees in the San Juan Island School District.

90. Seattle Education Association. The Seattle Education Association is the labor organization that represents approximately 4,532 non-supervisory education employees in the Seattle School District.

91. Shoreline Education Association. The Shoreline Education Association is the labor organization that represents approximately 593 non-supervisory education employees in the Shoreline School District.

92. Snohomish Education Association. The Snohomish Education Association is the labor organization that represents approximately 547 non-supervisory education employees in the Snohomish School District.

93. South Kitsap Education Association. The South Kitsap Education Association is the labor organization that represents approximately 623 non-supervisory education employees in the South Kitsap School District.

94. Spokane Education Association. The Spokane Education Association is the labor organization that represents approximately 2,923 non-supervisory education employees in the Spokane School District.

95. Tahoma Education Association. The Tahoma Education Association is the labor organization that represents approximately 409 non-supervisory education employees in the Tahoma School District.

96. Vancouver Education Association. The Vancouver Education Association is the labor organization that represents approximately 1,366 non-supervisory education employees in the Vancouver School District.

97. Yakima Education Association. The Yakima Education Association is the labor organization that represents approximately 901 non-supervisory education employees in the Yakima School District.

98. The Respondent State. The Respondent is the State of Washington. Pursuant to Article IX, §1 of our State Constitution, the Respondent State provides each of the State's public school districts with funds for education.

(b) Conclusions of Law Concerning the Parties, Jurisdiction, Venue, & Burdens of Proof

99. Venue for this action properly lies in this Washington State Superior Court for King County.

100. The court has jurisdiction over this action, and the Petitioners have satisfied all conditions precedent to bringing this action.

101. To prove the existence of a fact, the party alleging that fact must show that that fact is more likely than not true. In other words, that fact must be proven by a preponderance of the evidence at trial. Accord, *Seattle School District v. State*, 90 Wn.2d 476, 528 (1978) (when court is "concerned with legislative compliance with a specific constitutional mandate ... the normal civil burden of proof, i.e., preponderance of the evidence, applies"). Petitioners' fundamental contention is that the Respondent State has failed to take the action required to fully comply with a specific constitutional mandate – namely, the State's paramount constitutional duty under Article IX, §1. The "preponderance of the evidence" standard accordingly applies in this case. See, e.g., *Seattle School District v. State*, 90 Wn.2d at 528.

102. This contrasts with the situation where the constitutionality of a statute is challenged, and the burden is on the party challenging that statute to prove its unconstitutionality beyond a “reasonable doubt”. E.g., *Island County v. State*, 135 Wn.2d 141, 146 (1998). The Washington Supreme Court has explained, however, that even when a specific statutory provision is being challenged, the “reasonable doubt” standard is not the same as the one applied in a criminal case: “The ‘reasonable doubt’ standard, when used in the context of a criminal proceeding as the standard necessary to convict an accused of a crime, is an evidentiary standard and refers to ‘the necessity of reaching a subjective state of certitude of the facts in issue.’ In contrast, the ‘beyond a reasonable doubt’ standard used when a statute is challenged as unconstitutional refers to the fact that one challenging a statute must, by argument and research, convince the court that there is no reasonable doubt that the statute violates the constitution.” *Island County v. State*, 135 Wn.2d at 147. Here, because Petitioners’ fundamental contention is not that a specific statutory provision is unconstitutional, but rather that the State has failed to comply with the specific constitutional mandate of Article IX, §1, the “preponderance of the evidence” standard applies. See *Seattle School District v. State*, 90 Wn.2d at 528.

103. This court has determined that each finding of fact and each conclusion of law set forth in these Findings & Conclusions satisfy the standards of proof under Washington law.

(c) *Findings of Fact Concerning Standing and Justiciability*

104. Neither side has raised the issue of standing of the parties or justiciability of the petitioner’s claims. Nonetheless, in light of the recent decision in *Federal Way School Dist. No. 210 v. State*, 167 Wn.2d 514 (2009), the court will address those issues.

105. Plaintiff Stephanie McCleary described the challenges of her daughter, Kelsey, while attending the Chimacum public schools and her brief transfer to Port Townsend High School. At the Port Townsend school, Kelsey did not have textbooks in many of her classes. In French class, the textbooks were so old that they could not be taken home because of their fragility. For the other classes, there were handwritten worksheets and photostatted copies of

workbooks, reduced in font size to save paper. The lack of workable textbooks presented difficulties for Kelsey to obtain assistance from her parents on her homework. The building where Kelsey attended school was characterized as dilapidated, and the administration building as "condemned." After one year, Kelsey returned to the Chimacum schools. Ms. McCleary has observed her daughter's academic performance trending downward.

106. As to her son, Carter, Ms. McCleary described him as spending a fair amount of class time preparing various types of crafts for fundraising purposes. Carter failed his fourth grade WASL in writing.

107. Ms. McCleary, as a parent, expressed her concerns that her children would face the same challenges and handicaps that she faced when she graduated from public high school, in not being equipped to enter the workforce or college.

108. Patricia Venema is the co-president of the Glacier Peak High School Parent Organization and sits on the Transportation Committee for the Snohomish School District. She has two children, Halie and Robbie. At the time of trial, Halie was a senior at Glacier Peak High School, and Robbie was in the ninth grade, a freshman at Glacier Peak High School. She was previously a member of Cathcart Parent Organization, which raised funds for student and teachers needs. The organization funded acquisition of such equipment and supplies as world globes and maps (because the school maps were substantially outdated), math manipulatives, reading books, voice enhancement systems (so that teachers could be heard), document cameras, and vacuum cleaners.

109. Ms. Venema described the physical structures of some of the school buildings as follows:

Patricia Venema: The schools in our district were dilapidated, over-crowded, in some cases should have been condemned.

Q. (By Mr. Emch) Can you give an example from a school that your children were attending?

A. When we went through Valley View Middle School, where both of my children attended Middle School. I was amazed that there was only one girls' bathroom in the main building. The building housed seven to eight hundred kids. It was one bathroom with five stalls.

Q. One bathroom with five stalls for seven or eight hundred kids?

110. Halie Venema did not pass the eighth grade or tenth WASL exams in math. Ultimately, she was able to receive equivalent credit through the Collection of Evidence alternative to the written WASL exam.

111. Robbie Venema passed the WASL exams in each of the grades in which it was given.

(d) Conclusions of Law Concerning Standing and Justiciability

112. Petitioners have brought this action pursuant to The Uniform Declaratory Judgments Act. That Act grants standing to persons "whose rights ... are affected by a statute." RCW 7.24.020. This is consistent with the general rule that a party must be directly affected by a statute to challenge its constitutionality. *To- Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411-12, 27 P.3d 1149 (2001). Petitioners must show they are being affected or denied some benefit; mere interest in State funding mechanisms is not sufficient to make a claim justiciable. *See Walker v. Munro*, 124 Wn.2d 402, 419 (1994). The Washington Supreme Court held in *Seattle School District No. 1* that both parent and children plaintiffs had standing where the adverse impact of insufficient revenue on educational programs for individual students was demonstrated by the record. *Seattle Sch. Dist. No. 1*, 90 Wn.2d at 495 (holding that students "are the intended and immediate objects of Title 28A RCW"). *See Federal Way School Dist. No. 210 v. State*, 2009 WL 3766092, 6, November 12, 2009).

113. "The purpose of a high school diploma is to declare that a student is ready for success in post-secondary education, gainful employment and citizenship and is equipped with the skills to be a lifelong learner." HB 1292. The record reflects that there is a legitimate and

justiciable concern that the McCleary and Venema children—children resident in the State of Washington—are not receiving the basic education mandated under our Constitution.

114. Based on the record before this court and the findings made herein, the court concludes that the individual petitioners, the McCleary petitioners and the Venema petitioners, have standing and have presented to this court a justiciable controversy.

115. The other petitioners are State-funded school districts, community organizations, parent-teacher associations, teacher associations and other organizations committed to and charged with the responsibilities for ensuring that the State's basic education programs equip our children with the tools necessary and skills needed to compete in today's economy and meaningfully participate in this State's democracy.

116. The adverse impact of insufficient revenue on educational programs for the individual students was demonstrated by the record, as noted above.

117. The adverse impact of insufficient revenue on educational programs for the students throughout the State and its impact on organizations committed to and charged with the responsibilities for ensuring that the State's basic education programs equip our children with the tools necessary and skills needed to compete in today's economy and meaningfully participate in this State's democracy, was supported by the record, as stated herein.

**B. GENERAL BACKGROUND:
the Importance of Education in our State's Democracy**

(a) Findings of Fact Concerning the Importance of Education in our State's Democracy

118. In an Independence Day address in 1823, Horace Mann, the father of American public education, outlined for the first time his core beliefs that education, the intelligent use of the ballot, and religious freedom are the keys to preserving the nation's liberties.

119. The Respondent State has straightforwardly admitted in this suit that "A healthy democracy depends on educated citizens." Original Petition at ¶20 ("20. A healthy democracy depends on educated citizens.") and original Answer at ¶11 ("11. Respondent State admits the

allegation in paragraph 20.”). The evidence at trial and statutory framework of this State, some of which is outlined below, confirmed the factual accuracy of that statement, especially in the type of broad, populist democracy established in this State by Washington law.

120. The citizens of this State publicly elect a broad array of, and large number of, the public officials who run the State and local governments in Washington. For example, the citizens of this State:

- elect their Governor, Lieutenant Governor, Attorney General, Secretary of State, Treasurer, Auditor, Commissioner of Public Lands, Insurance Commissioner, and Superintendent of Public Instruction in State-wide elections.²
- elect their 49 State Senators and 98 State Representatives in Legislative District elections.³
- elect the Auditors, Clerks, Commissioners, Sheriffs, and Treasurers in each of their 39 Counties.⁴
- elect the Mayors, Commissioners, and members of the City Councils of this State’s over 280 cities and towns.⁵
- elect the 9 justices of this State’s Supreme Court.⁶
- elect the 24 judges of this State’s Courts of Appeal.⁷
- elect the 181 judges of this State’s Superior Courts.⁸
- elect the 110 judges of this State’s District Courts.⁹
- elect the 109 judges of this State’s Municipal Courts.¹⁰

² Wash. Const. art. III §1 (Governor, Lieutenant Governor, Secretary of State, Treasurer, Auditor, Attorney General, Superintendent of Public Instruction, and Commissioner of Public Lands); RCW 48.02.010 (Insurance Commissioner).

³ Wash. Const. art. II §§ 4, 6; RCW 44.05.090(4).

⁴ RCW 36.16.030; Bureau of the Census, U.S. Dep’t of Commerce, 2007 Census of Governments: Individual State Description, Washington, available at <http://ftp2.census.gov/govs/cog/2007/wa.pdf>.

⁵ RCW 35.17.020, 35.18.010, 35.22.200, 35.23.021, 35.27.070; Bureau of the Census, U.S. Dep’t of Commerce, 2007 Census of Governments: Individual State Description, Washington, available at <http://ftp2.census.gov/govs/cog/2007/wa.pdf>.

⁶ Wash. Const. art. IV §3; RCW 2.04.070-.071.

⁷ Wash. Const. art. IV §30; RCW 2.06.020.

⁸ Wash. Const. art. IV §5; RCW 2.08.060; see 2008 Washington State Yearbook 16-32 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

⁹ RCW 3.34.050; see 2008 Washington State Yearbook 16-32 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

- elect the members of the Boards of Commissioners of each of this State's 373 Fire Protection Districts.¹¹
- elect the members of the School Boards of each of this State's 295 School Districts.¹²
- elect the members of the Boards of Commissioners of each of this State's 56 Public Hospital Districts.¹³
- elect the members of the Boards of Commissioners of each of this State's 185 Water-Sewer Districts.¹⁴
- elect the members of the Boards of Commissioners of each of this State's 27 Public Utilities Districts.¹⁵
- elect the members of the Boards of Commissioners of each of this State's 42 Park and Recreation Districts.¹⁶
- elect the members of the Boards of Commissioners of each of this State's 75 Port Districts.¹⁷
- elect the members of the Boards of Directors of each of this State's 98 Irrigation Districts.¹⁸
- elect the members of the Boards of Commissioners of each of this State's 103 Cemetery Districts.¹⁹

¹⁰ RCW 3.50.050; see *2008 Washington State Yearbook* 16-32 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

¹¹ RCW 52.14.060; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 4 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see *2008 Washington State Yearbook* 232-39 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

¹² RCW 28A.343.300; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 11 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; Bureau of the Census, U.S. Dep't of Commerce, 2007 Census of Governments: Individual State Description, Washington, available at <http://ftp2.census.gov/govs/cog/2007/wa.pdf>.

¹³ RCW 70.44.040; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 10 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see *2008 Washington State Yearbook* 240 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

¹⁴ RCW 57.12.030; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 13 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see *2008 Washington State Yearbook* 253-56 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

¹⁵ RCW 54.12.010; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 10 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see *2008 Washington State Yearbook* 252 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

¹⁶ RCW 36.69.090; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 8 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see *2008 Washington State Yearbook* 249-50 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

¹⁷ RCW 53.12.172; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 9 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see *2008 Washington State Yearbook* 250-52 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

¹⁸ RCW 87.03.080; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 7 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see *2008 Washington State Yearbook* 241-42 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

- elect the members of the Boards of Commissioners of each of this State's 107 Diking and Drainage Districts.²⁰
- elect the majority of the members of the Boards of Commissioners of each of this State's 47 Conservation Districts.²¹
- elect the members of the Boards of Directors of each of this State's 10 Flood Control Districts.²²
- elect the members of the Boards of Directors of each of this State's 11 Weed Districts.²³

121. In short, Washington citizens democratically elect more of their State and local government officials than do the citizens in most other States in our Nation.²⁴

122. The citizens of this State routinely exercise their right to amend the Washington State Constitution pursuant to Article XXIII. For example, in the past 30 years the citizens of this State have considered and voted upon 49 proposed Amendments to their State Constitution, adopting 31 Amendments to their State Constitution and rejecting 18 other proposed Amendments.²⁵

¹⁹ RCW 68.52.220; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 1 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 Washington State Yearbook 227-28 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

²⁰ RCW 85.38.070; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 2 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 Washington State Yearbook 230-32 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

²¹ RCW 89.08.030; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 1 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 Washington State Yearbook 229-30 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

²² RCW 85.38.070, 86.09.259; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 5 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 Washington State Yearbook 239 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

²³ RCW 17.04.070; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 14 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 Washington State Yearbook 249 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

²⁴ Bureau of the Census, U.S. Dep't of Commerce, 1992 Census of Governments Vol. 1, No. 2, Popularly Elected Officials tbl. 2 and tbl. 17 (1995), available at http://www.census.gov/prod/2/gov/gc92_1_2.pdf.

²⁵ See Wash. Sec'y of State, Elections & Voting, Previous Elections, http://www.secstate.wa.gov/elections/previous_elections.aspx.

123. Washington is also one of the two States in our country where voters have the right and power to initiate legislation both directly (to the People) and indirectly (to the legislature).²⁶

124. The citizens of this State established for themselves the right and power to propose and enact State-wide legislation by way of Initiative in a 1912 Amendment to their State Constitution, which is now Article II, §1(a). Washington citizens routinely exercise this right of direct democracy. The citizens of this State have:

- filed and circulated for signature over 1,030 Initiative petitions proposing new State-wide legislation to be submitted to the citizens of Washington for a State-wide vote.²⁷
- filed and circulated for signature over 430 Initiative petitions proposing new State-wide legislation to be voted upon by the Legislature.²⁸
- certified to the State-wide ballot over 130 Initiative Measures by securing the required number of signatures (currently 241,153) to submit State-wide legislation to the citizens of Washington for a State-wide Initiative vote.²⁹
- certified to the Legislature an additional 30 Initiative Measures by securing the required number of signatures (currently 241,153) to submit State-wide legislation to an Initiative vote in the Legislature.³⁰
- enacted in State-wide elections 80 Initiative Measures as the law of this State.³¹

125. Washington citizens' exercise of their constitutional initiative power has increased in the time period after the Washington Supreme Court's *Seattle School District* ruling.

²⁶ Initiative & Referendum Inst., *The Initiative & Referendum Process in America – A Primer* 9 & app. A, tbl. 1.1 (M. Dane Waters ed. 1992).

²⁷ See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

²⁸ See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

²⁹ See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

³⁰ See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

³¹ See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

Washington citizens voted on 46 State-wide Initiative Measures in the 30 years before that 1978 ruling, and voted on 71 in the 30 years after.³²

126. The citizens of this State have also established for themselves the right and power to put a hold on laws adopted by the State Legislature until those laws are subjected to (and approved by) a Referendum vote of the People (Article II, §1(b)). Washington citizens routinely exercise this right of direct democracy.

127. The citizens in this State's democracy also routinely exercise their right to directly enact (or reject) local legislation at the ballot box pursuant to Washington State statutes (e.g., RCW 35.22.200), local government charters (e.g., King County Charter §230), and local ordinances (e.g., City of Woodinville, Ordinance 119).

128. To help citizens inform themselves about the various candidates and ballot measures they will be voting upon in the State elections noted above, Washington's Constitution and State statutes require the Washington Secretary of State to publish and mail to every household in this State a Voters' Pamphlet. Wash. Const., Art. II, §1(e); RCW 29A.32.010; RCW 29A.32.031. That Voters' Pamphlet provides information concerning the measures and candidates on the ballot, such as the full text of each Initiative, Referendum, or Constitutional Amendment being submitted for a vote, a fiscal impact statement explaining various fiscal impacts of such ballot measures, "for" and "against" statements by proponents and opponents of each ballot measure, and candidacy statements by each person running for State office. Washington law provides for similar local Voters' Pamphlets relating to local elections as well. RCW 29A.32.210.

129. For a citizen of this State to participate meaningfully in this State's democratic process and intelligently cast his or her vote on the broad array of State and local government offices and ballot measures noted above, that citizen must be meaningfully equipped to learn about, understand, and evaluate the candidates, ballot measures, positions, and issues being

³² See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

debated and decided in that election. Having an educated citizenry is critical to this State's democracy. ("To be educated is to be free," Marti.)

130. Having an educated citizenry is also vital to the operation of this State's justice system. For example, the jury system upon which this State's justice system is based depends upon each juror being meaningfully equipped to read, understand, comprehend, and debate the evidence, issues, and arguments presented to the jury for decision.

131. Having an educated citizenry also plays a vital role in preserving the cohesiveness of this State's pluralistic society as a whole. For example, broad public education provides each member of this State's citizenry a shared knowledge and understanding of the common history, common values, and common ideals that all citizens in this State share. This unifying awareness and understanding is especially important to maintain the cohesiveness of a widely diverse society like the one in this State, which is an amalgamation of citizens from a wide range of different cultures, backgrounds, lifestyles, orientations, neighborhoods, and family roots.

132. Education also plays a critical civil rights role in promoting equality in our democracy. For example, amply provided, free public education operates as the great equalizer in our democracy, equipping citizens born into the underprivileged segments of our society with the tools they need to compete on a level playing field with citizens born into wealth or privilege.

133. Education also plays a critical role in building and maintaining the strong economy necessary to support a stable democracy—one that is free and independent from outside power and influence. For example, broad public education builds the well educated workforce necessary to attract more stable and higher wage jobs to this State's economy, and provides the living wage jobs and employment necessary to provide gainful employment to this State's citizens, and lessening the burdens on this State's citizens of social services, crime, and incarceration.

134. The importance of and challenges facing our educational system are not limited to Washington. Politically-diverse figures, U.S. Secretary of Education, Arne Duncan, former U.S. Speaker of the House, Newt Gingrich, and civil rights advocate Al Sharpton, have recently

joined forces to promote reforms in education. Speaker Gingrich noted: "First of all, education is the number one factor in our future prosperity;... I agree with Al Sharpton, this is the number one civil right of the 21st century....There is no excuse for accepting failure."

135. Washington's crisis in education is a microcosm of that of the nation. On a national level, Arne Duncan, Secretary of Education, warned that "[w]e're perpetuating social failure" through our current educational system. Similarly, our own Superintendent of Public Instruction, Randy Dorn, noted that "In our global economy, students who drop out of school without skills will likely face a life of unemployment and poverty." (Dorn at 29.)

136. Former U.S. Supreme Court Justice, Sandra Day O'Connor, in a recent visit to Seattle, lamented the lack of civics education in schools. She noted a study that found "Two-thirds of Americans know at least one of the judges on the Fox TV show 'American Idol,' but less than one in ten can name the Chief Justice of the United States Supreme Court."

137. In sum, a well-educated population is the foundation of our democracy, our economy, and the American dream.

(b) Conclusions of Law Concerning the Importance of Education in our Democracy

138. Prior legal rulings have been, and this court's legal ruling in this matter is, consistent with the above facts concerning the importance of education in our democracy. As the *Brown v. Board of Education of Topeka, Kansas* Court declared:

Today, education is perhaps the most important function of state and local governments. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.

Brown v. Board of Education of Topeka, Kansas, 347 U.S. 483, 493, 74 S.Ct. 686, 98 L.Ed. 873 (1954). And as in the *Board of Education, Island Trees Union Free School District v. Pico* Court has reiterated:

[T]he right to receive ideas is a necessary predicate to the recipient's meaningful exercise of his own rights of speech, press, and political freedom. Madison admonished us: 'A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.'

Board of Education, Island Trees Union Free School District No. 26 v. Pico, 457 U.S. 853, 867, 102 S.Ct. 2799, 73 L.Ed.2d 435 (1982); accord, *Plyler v. Doe*, 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982) ("We have recognized 'the public schools as a most vital civic institution for the preservation of a democratic system of government'" (quoting *Ambach v. Norwick*, 441 U.S. 68, 76, 99 S.Ct. 1589, 60 L.Ed.2d 49 (1979))). In short, the law recognizes that public education plays an essential role in our democracy.

139. The law recognizes that education is the key to a citizen's meaningful exercise of his or her First Amendment freedoms. For example, as the *Richmond Newspapers v. Virginia* Court declared:

No aspect of [the First Amendment] guarantee is more rightly treasured than its protection of the ability of our people through free and open debate to consider and resolve their own destiny.... '[The] First Amendment is one of the vital bulwarks of our national commitment to intelligent self-government.' ... It embodies our Nation's commitment to popular self-determination and our abiding faith that the surest course for developing sound national policy lies in a free exchange of views on public issues. And public debate must not only be unfettered; it must also be informed.

Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 587 n.3, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980)" (quoting *Saxbe v. Washington Post Co.*, 417 U.S. 843, 862-63, 94 S.Ct. 2811, 41 L.Ed.2d 514 (Powell, J., dissenting)).

140. The Washington Supreme Court has accordingly held that the "education" constitutionally required by Article IX, §1 of the Washington Constitution "must prepare [children] to exercise their First Amendment freedoms both as sources and receivers of

information". *Seattle School District v. State*, 90 Wn.2d 476 (1978). Accord, *Claremont Sch. Dist. v. Governor*, 142 N.H. 462, 473, 703 A.2d 1353 (1997) ("[E]ven a minimalist view of educational adequacy recognizes the role of education in preparing citizens to participate in the exercise of voting and first amendment rights. The latter being recognized as fundamental, it is illogical to place the means to exercise those rights on less substantial constitutional footing than the rights themselves.").

141. Education is a bulwark of this democracy. A system of free public schools, like a system of open courts, not only helps make life worth living but sustains our long-cherished ideas of individual liberty. Where the nation's constitution provides for a system of open courts, however, it makes no mention of free public schools. The people of this state found this oversight unacceptable in 1889 when they brought Washington Territory into the Union. Not only did they establish a judicial system, but at the same time they provided for a system of free public schools, imposing then and there a duty upon the State to make ample provision for the education of all children within its borders. *Northshore School Dist. No. 417 v. Kinnear*, 84 Wn.2d 685, 686-687 (1975), overruled insofar as inconsistent, *Seattle School District No. 1*, 90 Wn.2d 476, 513 (1978).

142. The law recognizes that broad public education is also critically important to our democracy because it teaches children democratic values and ideals and unites the wide array of cultures present in our democratic society through a sharing of common values and ideals. E.g., *Ambach v. Norwick*, 441 U.S. 68, 76-77, 99 S.Ct. 1589, 60 L.Ed.2d 49 (1979) ("The importance of public schools in the preparation of individuals for participation as citizens, and in the preservation of the values on which our society rests, long has been recognized by our decisions", and acknowledging the role that a public education accordingly plays as "an 'assimilative force' by which diverse and conflicting elements in our society are brought together on a broad but common ground" and "inculcating fundamental values necessary to the maintenance of a democratic system"); *Brown v. Board. of Education of Topeka, Kansas*, 347 U.S. 483, 493, 74 S.Ct. 686, 98 L.Ed. 873 (1954) (public education is "a principal instrument in

awakening the child to cultural values"); *Abington School District v. Schempp*, 374 U.S. 203, 230 (1963) (Brennan, J., concurring) (public education is "the primary vehicle for transmitting 'the values on which our society rests'"); *McCullum v. Board of Education*, 333 U.S. 203, 216, 68 S.Ct. 461, 92 L.Ed. 649 (1948) (Frankfurter, J., concurring) ("The public school is 'the most powerful agency for promoting cohesion among a heterogeneous democratic people ... and the most pervasive means for promoting our common destiny'"); RCW 28A.150.210 (expressly listing "civics and history, including different cultures and participation in representative government" in its specification of the knowledge and skills with which all students in this State should be equipped).

143. With the above general background findings and conclusions in mind, this court now turns to some more specific background findings and conclusions concerning Article IX, §1 of the Washington State Constitution.

**C. SPECIFIC BACKGROUND:
Article IX, §1 of the Washington State Constitution**

(a) Background Findings of Fact Concerning Article IX, §1

144. The constitutional provision at the center of this case is Article IX, §1 of our State Constitution. That constitutional provision states in full:

It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

(b) Background Conclusions of Law Concerning Article IX, §1

145. Washington law recognizes that the education duty specified in Article IX, §1 is the only duty that is the State's paramount duty. As the Washington State Supreme Court has held:

Careful examination of our constitution reveals that the framers declared only once in the entire document that a specified function was the State's paramount duty. That singular declaration is found in Constitution Article IX, §1. Undoubtedly, the imperative wording was intentional.

Seattle School District v. State, 90 Wn.2d at 510-11.

146. Washington law recognizes that no other State Constitution imposes a higher education duty upon the State than Article IX, §1 of the Washington State Constitution does. The Washington Supreme Court has held that the education duty mandated by Article IX, §1 "is unique among State constitutions", and that "No other State has placed the common school on so high a pedestal." *Seattle School District v. State*, 90 Wn.2d at 498 & 510-511.

147. Washington law holds that Article IX, §1 grants each child residing in this State a constitutional right to the "education" specified in that provision. The Washington Supreme Court has thus held with respect to Article IX, §1 that "all children residing within the borders of the State possess a 'right', arising from the constitutionally imposed 'duty' of the State, to have the State make ample provision for their education." *Seattle School District v. State*, 90 Wn.2d at 511-512.

148. Washington law holds that the right to the "education" specified in Article IX, §1 is the paramount right granted to each child by our State Constitution. The Washington Supreme Court has accordingly held with respect to the mandate of Article IX, §1 that "since the 'duty' is characterized as Paramount the correlative 'right' has equal stature." *Seattle School District v. State*, 90 Wn.2d at 511-512.

149. Washington law holds that Article IX, §1 imposes an affirmative, judicially enforceable duty upon the State. The Washington Supreme Court has thus held that Article IX, §1 "is mandatory and imposes a judicially enforceable affirmative duty" upon the State. *Seattle School District v. State*, 90 Wn.2d at 482; accord, *Brown v. State*, 155 Wn.2d 254, 258 (2005) (Article IX, §1 "is substantive and enforceable" in the courts).

150. With the above background findings and conclusions in mind, this court now addresses each part of the four-part remedy Petitioners seek in this case and the fundamental question each part raises.

D. QUESTION #1 (DECLARATORY JUDGMENT):

What is the correct interpretation of “paramount”, “ample”, and “all” in Article IX, §1?

(a) Findings of Fact relating to the interpretation of “paramount”, “ample”, and “all” in Article IX, §1.

151. Article IX, §1 of the Washington State Constitution states:

It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

152. The parties in this case disagree on the meaning of the words “paramount”, “ample”, and “all” in the above constitutional provision. E.g., Petitioners’ Amended Petition at ¶108(a)-(c) and Respondent State’s Amended Answer to that Amended Petition at ¶58.

(b) Conclusions of Law concerning the legal interpretation of the words “paramount”, “ample”, and “all” in Article IX, §1.

(i) Judicial branch’s duty to interpret words used in the State Constitution.

153. Washington law holds that it is the proper function of the judiciary to interpret, construe, and enforce our Constitution. E.g., *Seattle School District v. State*, 90 Wn.2d at 482 (it “is the proper function of the judiciary to interpret, construe and enforce the constitution of the State of Washington.”).

154. Washington law holds that the judiciary must exercise its duty to interpret and enforce our Constitution even when the judiciary’s interpretation of our Constitution is contrary to the interpretation of another branch. As the Washington Supreme Court has accordingly declared:

the judiciary has the ultimate power and the duty to interpret, construe and give meaning to words, sections and articles of the constitution. It is emphatically the province and duty of the judicial department to say what the law is. This duty must be exercised even when an interpretation serves as a check on the activities of another branch of government or is contrary to the view of the constitution taken by another branch.

Seattle School District v. State, 90 Wn.2d at 503-504 (citations omitted), similarly at 496-97.

155. Washington law holds that interpreting the words used in our State Constitution presents a pure question of law for the court to resolve. E.g., *State v. Pulfrey*, 154 Wn.2d 517, 522 (2005) (interpreting State Constitution is a question of law); *Mt. Spokane Skiing v. Spokane County*, 86 Wn.App. 165, 172 (1997) (“The interpretation of Washington constitutional provisions is also a question of law”); *Humiston v. Meyers*, 61 Wn.2d 772, 777 (1963) (construction or interpretation of a provision of the constitution is a judicial question). Interpreting the words used in Article IX, §1 of the Washington State Constitution accordingly presents a pure question of law for this court to resolve.

156. Washington law holds that the words used in this State’s Constitution must be given their common English meaning – a meaning which is appropriately determined by referring to the dictionary. *Zachman v. Whirlpool Financial*, 123 Wn.2d 667, 670-71 (1994) (“In construing constitutional language, words are given their ordinary meaning unless otherwise defined.... When the common, ordinary meaning is not readily apparent, it is appropriate to refer to the dictionary.”); *Seattle School District v. State*, 90 Wn.2d at 511 (and quoting WEBSTER’S THIRD NEW INT’L DICTIONARY for the meaning of words used in Article IX, §1).

(ii) “paramount”

157. WEBSTER’S THIRD NEW INT’L DICTIONARY is the dictionary that the Washington Supreme Court used to interpret the meaning of words used in Article IX, §1. *Seattle School District v. State*, 90 Wn.2d at 511, 512, n.12.

158. WEBSTER'S THIRD NEW INT'L DICTIONARY defines the word "paramount" to mean "having a higher or the highest rank or authority" that is "superior to all others". WEBSTER'S THIRD NEW INT'L DICTIONARY (1993) at 1638.

159. The Washington Supreme Court has accordingly interpreted the word "paramount" in Article IX, §1 as follows:

"Paramount" is not a mere synonym of "important." Rather, it means superior in rank above all others, chief, preeminent, supreme, and in fact dominant....

When a thing is said to be paramount, it can only mean that it is more important than all other things concerned.

Seattle School District v. State, 90 Wn.2d at 511. This meaning of paramount is one of the reasons the Washington Supreme Court has ruled that the education mandate in Article IX, §1 "is unique among state constitutions", and has held with respect to the Washington Constitution's use of the word paramount: "Undoubtedly, the imperative wording was intentional." *Seattle School District v. State*, 90 Wn.2d at 498 and 510-11. The Washington Supreme Court has accordingly held that the Respondent State must fully comply with Article IX, §1 as its "first priority". *Seattle School District v. State*, 90 Wn.2d at 518.

160. During the trial, the State cross-examined many of the Petitioners' education witnesses as to whether they would prioritize education at the expense of other worthy causes and services, such as health care, nutrition services, and transportation needs. But this is not the prerogative of these witnesses – or even of the Legislature – that decision has been mandated by our State Constitution. The State must make basic education funding its top legislative priority.³³ Indeed, as Judge Robert Doran opined, "[f]ull funding of the education program

³³ *Seattle School District*, 90 Wn.2d at 511. ("No other state has placed the common school on so high a pedestal. One who carefully reads Article IX might also wonder whether, after giving to the school fund all that is here required to be given, anything would be left for other purposes. But the convention was familiar with the history of school funds in other states, and the attempt was made to avoid the possibility of repeating the tale of dissipation and utter loss." (quoting T. Stiles, *The Constitution of the State and its Effects Upon Public Interests*, 4 WASH. HISTORICAL Q. 281, 284 (1913))).

required by Article IX, Sections 1 and 2, must be provided as a first priority before any statutory program is funded."³⁴

161. This court concludes that the word "paramount" in Article IX, §1 means what it says. It means having the highest rank that is superior to all others, having the rank that is preeminent, supreme, and more important than all others. It is not a mere synonym of "important". The word "paramount" means that the State must fully comply with its duty under Article IX, §1 as its first priority before all others. Article IX, §1 accordingly requires the Respondent State to amply provide for the education of all Washington children as the State's first and highest priority before any other State programs or operations.

(iii) "ample"

162. WEBSTER'S THIRD NEW INT'L DICTIONARY is the dictionary that the Washington Supreme Court used to interpret the meaning of words used in Article IX, §1. *Seattle School District v. State*, 90 Wn.2d at 511 and 512, n.12.

163. WEBSTER'S THIRD NEW INT'L DICTIONARY defines the word "ample" to mean "more than adequate", and explains that the word "AMPLE always means considerably more than adequate or sufficient." WEBSTER'S THIRD NEW INT'L DICTIONARY (1993) at 74.

164. Consistent with this meaning, the Washington Supreme Court has held that Article IX, §1 requires the Respondent State to provide "fully sufficient funds" and a "level of funding that is fully sufficient" to provide for the education of all Washington children. *Seattle School District v. State*, 90 Wn.2d at 518, 537. Further confirming this broad meaning of "ample", the Washington Supreme Court expressly held that it was therefore unconstitutional for the Respondent State to rely on local levies to fund any part of the education mandated by Article IX, §1. *Seattle School District v. State*, 90 Wn.2d at 526.

³⁴ This principle is set forth by Judge Robert Doran in the trial court opinion known as "Doran II," or "School Funding II." This opinion was not appealed but is widely regarded as law. *Seattle School District, et al. v. State of Washington, et al.*, Thurston County Super. Ct. No. 81-2-1713-1 Findings of Fact and Conclusions of Law, Conclusion of Law 62 (1983).

165. This court concludes that the word "ample" in Article IX, §1 means what it says. It means considerably more than just adequate or merely sufficient. Article IX, §1 accordingly requires the State's provision for the education of all Washington children to be considerably more than just adequate or merely sufficient to scrape by. Article IX, §1 requires the Respondent State's provision for the education of Washington children to be ample so no public school has to turn to or rely upon local levies, PTA fundraisers, private donations, or other non-State sources to provide all of its children the "education" specified in Article IX, §1.

(iv) "all"

166. WEBSTER'S THIRD NEW INT'L DICTIONARY is the dictionary that the Washington Supreme Court used to interpret the meaning of words used in Article IX, §1. *Seattle School District v. State*, 90 Wn.2d at 511, 512, n.12.

167. WEBSTER'S THIRD NEW INT'L DICTIONARY defines the word "all" to mean "every member or individual component of", "each one of - used distributively with a plural noun or pronoun to mean that a statement is true of every individual considered", and explains with respect to a group or class: "of members of a class: each and every one of". WEBSTER'S THIRD NEW INT'L DICTIONARY (1993) at 54.

168. This court concludes that the word "all" in Article IX, §1 means what it says. It means "every" and "each and every one of". It encompasses each and every child since each will be a member of, and participant in, this State's democracy, society, and economy. Article IX, §1 accordingly requires the Respondent State to amply provide for the education of every child residing in our State - not just those children who enjoy the advantage of being born into one of the subsets of our State's children who are more privileged, more politically popular, or more easy to teach.

169. Having ruled on the legal meaning of "paramount", "ample", and "all" in Article IX, §1 of the Washington State Constitution, this court now turns to the meaning of the word "education" in that constitutional provision.

E. **QUESTION #2 (DECLARATORY JUDGMENT):**

What is the current legal meaning of the word "education" in Article IX, §1?

(a) *Findings of Fact relating to the current legal meaning of the word "education" in Article IX, §1.*

170. Article IX, §1 of the Washington State Constitution states:

It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

Trial Exhibit 1.

171. The parties in this case disagree on the current legal meaning of the word "education" in the above constitutional provision. E.g., Petitioners' Amended Petition at ¶108(d) and Respondent State's Amended Answer to that Amended Petition at ¶58.

172. The following paragraphs outline what this court finds to be four major historical mileposts along the evolutionary road that has led to the current legal meaning of the word "education" in Article IX, §1 of the State Constitution.

(i) *First Milepost (1978): State Supreme Court establishes the minimum knowledge and skills encompassed by the term "education" in Article IX, §1 [a "basic education"].*

173. In 1977, Governor Dan Evans noted that school finance was a "compelling and overriding issue." Acknowledging the pending appeal of the Seattle School District case before the Washington Supreme Court, the Governor characterized school finance as "a ticking time bomb." He admonished the Legislature "to provide long-term, consistent, and dependable financing for basic education. Adequate financial support means that administrators can return to administering, teachers can return to teaching, parents and students can be involved in the learning process, rather than spending inordinate amounts of time passing special levies."

Governor Evans' concerns about the significance and impact of the pending Supreme Court decision were prescient.

174. In *Seattle School Dist. No. 1 v. State*, 90 Wn.2d 476 (1978), the Supreme Court held that Const. Art. IX, § 1 imposes upon the State the paramount duty of making ample provision for the education of all resident children. That Court ordered the Legislature to define "basic education" and to make ample provision for its funding through regular and dependable tax sources by July 1, 1981. *Id.*, at 537. By that decision, the Court made "basic support of the common schools" a constitutional mandate:

[T]he State's constitutional duty goes beyond mere 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 in the market place of ideas. Education plays a critical role in a free society. It 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 ... of these essential skills make up the minimum of the education that is constitutionally required.

Seattle School District v. State, 90 Wn.2d at 517-18.

175. That 1978 Supreme Court ruling accordingly provided that the Respondent State was to (1) define additional substantive content for the above-described "basic education", and (2) define a "program of basic education" to provide that substantive content to all Washington children. The Supreme Court's language repeatedly made it clear that "basic education" and "basic program of education" are not synonymous. Instead, they are two distinct terms. E.g., 90 Wn.2d at 482 ("The Legislature must act to carry out its constitutional duty by defining and giving substantive content to 'basic education' and a basic program of education"), at 519

(noting that in 1978 the Legislature had not yet passed legislation "defining or giving substantive content to 'basic education' or a basic program of education. Thus, the Legislature must hereafter act to comply with its constitutional duty by defining and giving substantive meaning to them."), and at 537 ("We have great faith in the Legislature and its ability to define 'basic education' and a basic program of education").

176. In short, "basic education" is substance – the minimum, basic knowledge and skills described by the Supreme Court's above quoted ruling. A "basic program of education", on the other hand, is exactly what it's called – a program instituted to deliver that substance. This distinction is important. And as subsections (ii) & (iii) below explain, this court finds that in the years following the 1978 *Seattle School District* decision, the Respondent State did in fact define additional substantive content for a "basic education" in Washington that goes beyond the minimum, basic knowledge and skills described by the Supreme Court's above quoted ruling.

177. The Supreme Court held that in order to satisfy the Constitution, the Legislature must provide sufficient funds derived "through dependable and regular tax sources, to permit school districts to provide 'basic education' through a basic program of education in a 'general and uniform system of public schools.'" *Seattle School Dist.*, 90 Wn.2d at 522 (emphasis omitted) (quoting Const. Art. IX, § 2). The Court ruled that levies cannot fund basic education, as they do not provide a dependable and regular tax source. *Id.* at 526. Levies can, however, be used to "fund programs, activities and support services of a district which the State is not required to fund under its mandate." *Id.* The Court declined to decide what constitutes "basic education," holding that it is the Legislature's responsibility to define basic educational requirements. *Id.* at 519-20. Nonetheless, the Court did charge the Legislature with the duty of defining and giving substantive content to basic education. Additionally, the Court charged the Legislature with a basic program of education to provide basic education.

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(ii) *Second Milepost (1993): State Legislature enacts House Bill 1209, which specifies additional substantive content beyond the "minimum" substance established by the State Supreme Court's 1978 ruling.*

178. In 1977, following the trial court decision that the State's system for funding K-12 schools was unconstitutional, the Legislature enacted the Basic Education Act. That Act as amended is found in RCW 28A.150. The Act contains three elements that together constitute the current definition of basic education: (1) education system goals, (2) education program requirements, and (3) funding ratio/formula mechanisms. The Act emphasizes that the State is providing "opportunities" for education. Since 1977, the Legislature has created other substantive programs that are part of basic education: special education under RCW 28A.155, some degree of student transportation under RCW 28A.160, the learning assistance program under RCW 28A.165, and the transitional bilingual program under RCW 28A.180. Though not declared part of basic education, the State provides funding and other support and resources for school construction and renovation.

179. The Legislature, in response to the trial court's direction, and the Governor's leadership, defined "basic education" in RCW 28A.58.750-760 (Laws of 1977, 1st Ex. Sess., ch. 359) (later recodified at RCWA 28A.150.010, et seq.), and appropriated funds for the 1981 school budget in accordance with these guidelines. RCW 28A.41.130 provides that "(b)asic education shall be considered to be fully funded by those amounts of dollars appropriated by the Legislature pursuant to (the Basic Education Act of 1977)". Laws of 1977, 1st Ex.Sess., ch. 359, s 4. *See currently R.C.W. 28A.150.250 ("Basic education shall be considered to be fully funded by those amounts of dollars appropriated by the Legislature pursuant to RCW 28A.150.250 and 28A.150.260 to fund those program requirements identified in RCW 28A.150.220.")* West's RCWA 28A.150.250

180. This results in a tautological conclusion: full funding is whatever the Legislature says it is. This is without regard to whether such funding is "ample" in providing children with the tools necessary and skills needed to compete in today's economy and meaningfully

participate in this State's democracy. Further, such funding is without regard to the constitutional mandate to establish a basic program of education to provide basic education.

181. After the Washington Supreme Court's 1978 *Seattle School District* ruling, the Respondent State engaged in many years of study to determine substantive standards for the education that children need in order to be adequately equipped for their role as citizens in our State's democracy, and as potential competitors in our State's open political system, in today's labor market, and in the marketplace of ideas.

182. In response to *Seattle School District*, the Legislature reformed the State's education system for children in kindergarten through high school. It passed the Basic Education Act, established basic education funding formulas, and enacted legislation limiting school district levies. As the State noted during the trial, the funding formulas are complex. Additional legislation has been passed from time to time establishing or relating to various educational programs. Some of the legislation has been determined to be part of basic education and some has not (either by the Legislature or by a court determination).

183. In 1993, the State Legislature enacted House Bill 1209 as a result of those many years of study.

184. Washington's transition to a performance-based education system was set in motion, though by no means completed, by the enactment of HB 1209 in 1993. HB 1209 set in motion a deliberate, multi-year process which included the development of the State's Essential Academic Learning Requirements (the "EALRs"), and of the assessments to be developed and then implemented (the "WASL") for use at different grade levels in all Washington school districts. HB 1209 contemplated that this transition would be accomplished no earlier than the 2000-2001 school year. State assessments in reading, writing, communication and math were developed and implemented within that period. The science assessment, however, was not implemented completely until the 2004-05 school year.

185. The first section of House Bill 1209 explained that law's intent to establish substantive student performance standards for Washington's education system, stating that:

The Legislature finds that student achievement in Washington must be improved to keep pace with societal changes, changes in the workplace, and an increasingly competitive international economy.

To increase student achievement, the Legislature finds that the state of Washington needs to develop a public school system that focuses more on the educational performance of students....

The Legislature further finds that improving student achievement will require (1) Establishing what is expected of students, with standards set at internationally competitive levels....

(House Bill 1209, Sec. 1).

186. The next section of House Bill 1209 specified the substantive content for those student performance standards, specifically establishing the following four areas of substantive knowledge and skills that all Washington students need to be equipped with:

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

(House Bill 1209, Sec. 101).

187. The substantive knowledge and skills specified in these four numbered provisions in House Bill 1209, Sec. 101 are codified as the four numbered provisions in §.210 of the Basic Education Act. RCW 28A.150.210 (1)-(4).

188. Funding for the expected costs of developing and implementing the transition was spelled out in HB 1209, primarily through the Appropriation Acts and grants of state funds to assist teachers and other school district staff to pay for the additional time and resources needed to implement practices to improve student learning. Along with those funding streams, in 1995, the Legislature enacted sweeping reforms to the programs and funding of special education.

HB 1209 also created a Fiscal Study Committee to examine the State's public school funding system and, by January 1995, that Committee was to report back to the Legislature its findings and recommendations for a new funding model, if one was needed.

189. HB 1209 also provided for the development of a new statewide accountability system for all basic education subject areas and grade levels in all districts by December 1998. This deadline was later extended to June 30, 1999. The accountability system would provide information on student performance that would account for performance levels by school and by school district according to the students' gender, ethnicity, socio-economic status and other factors. The accountability system, when fully implemented, would allow the State, the school districts, and the public at large to evaluate student performance, overall and by sub-group, by school, by district and statewide.

190. In 2005, the State turned its attention to the development of a new funding system for K-12 public schools. In the 2005 legislative session, the Governor sponsored and the Legislature passed E2SSB 5441 which created *Washington Learns*, a sixteen-month process for studying all sectors of the State's education system, from early learning to the basic education K-12 system to higher education and workforce preparation. *Washington Learns* was the steering committee and it had three advisory committees, one for each level of education. The steering committee was responsible for coordinating the feedback and reports from the advisory committees, and was chaired by the Governor. The K-12 Advisory Committee was chaired by then-Superintendent Terry Bergeson. *Washington Learns* included a study by an out-of-state consultant, Picus and Odden, who presented "prototype" schools as a basis for examining staff compensation and potential costs of prototypical elementary, middle and high schools that could be used as a model for building a new finance structure for Washington's schools.

191. *Washington Learns* also had the benefit of the first round of WASL test results. Key indicators for improvement of student performance included observations that 50% of children entering kindergarten were reported by *Washington Learns* as not ready to succeed;

54% of minority students on average were graduating from high school on time; and 74% of high school freshman went on to graduate on time.

192. *Washington Learns* produced the final report on November 13, 2006. The report concluded, in part, that building a “world class” education system would require significant additional funds as well as the strategic reallocation of the substantial, existing educational resources. The report contemplated a number of focused initiatives to implement the transition to a “world class” system, a recommended commitment to obtain more resources and a ten-year plan of action to complete the process. “Next steps” included recommendations for the design of a new K-12 funding structure and accountability system by December 2008. In addition, *Washington Learns* recommended a number of more immediate steps that the Legislature adopted during the 2007 legislative session.

193. The phrasing of the substantive knowledge and skills specified in the four numbered provisions of §.210 of the Basic Education Act was updated in 2007. That update occurred after the Final Report of the Respondent State’s 18-month *Washington Learns* study concluded that the State should “redefine basic education” by amending §.210 of the Basic Education Act. Although the 2007 Legislature ultimately did not adopt the *Washington Learns Report’s* recommended wording for that redefinition, it did slightly redefine the substantive skills specified in the four numbered provisions of §.210 by amending them as follows:

- (1) Read with comprehension, write ~~with skill~~ effectively, and communicate ~~effectively and responsibly~~ 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 ~~experience~~ 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.

Redline of Engrossed Second Substitute Senate Bill (E2SSB) 5841, Sec. 1.

194. The 2007 update of the four numbered provisions in Basic Education Act §.210 did not water down or lower the substantive educational standards previously established by the enactment of House Bill 1209 in 1993.

195. The knowledge and skills originally specified in the four numbered provisions of House Bill 1209 (now codified in §.210 of the Basic Education Act) are in fact the substantive content of what drives education in this State. Those four numbered provisions specify basic knowledge and skills that the State has determined a child needs to possess to be equipped to succeed in today's world. This court accordingly finds that the four numbered provisions of Basic Education Act §.210 do in fact provide additional substantive content for the basic education of our State's children beyond the minimum substantive skills described by the Washington Supreme Court in its 1978 *Seattle School District* ruling.

(iii) Third Milepost: State adopts Essential Academic Learning Requirements based on House Bill 1209, which specify additional substantive content beyond the "minimum" substance established by the State Supreme Court's 1978 ruling.

196. After the Legislature enacted the above four numbered provisions in Basic Education Act §.210, the State established Essential Academic Learning Requirements (EALRs) for eight core academic subjects. Those eight core subjects are:

- (1) Science;
- (2) Mathematics;
- (3) Reading;
- (4) Writing;
- (5) Communication;
- (6) Social Studies: civics, economics, geography, & history;
- (7) Arts; and
- (8) Health & Fitness.

Relatively recently, the State also established Essential Academic Learning Requirements (EALRs) for a ninth core academic subject:

(9) Educational Technology.

197. The Respondent State adopted this State's Essential Academic Learning Requirements (EALRs) in order to more specifically describe the basic skills established by the four numbered provisions of Basic Education Act §.210. The State's Essential Academic Learning Requirements (EALRs) are part of the academic instruction that the State requires for all Washington students. They specify basic skills and knowledge in core subject areas that the State expects all students to master as they move through Washington's public schools, so those children can be equipped to compete in today's world. The State's Essential Academic Learning Requirements specify basic knowledge and skills that the State has determined a child needs to possess to be equipped to succeed in today's world. This court accordingly finds that the State's Essential Academic Learning Requirements do in fact provide additional substantive content for the basic education of our State's children beyond the minimum substantive skills described by the Washington Supreme Court in its 1978 *Seattle School District* ruling.

(iv) ***Fourth and Most Recent Milepost (2009): The Legislature Passes ESHB 2261 Restructuring – But Not Funding – Overhaul of the State's School System.***

198. Based in part on recommendations of the State-sponsored Basic Education Financing Task Force, the Washington State Legislature passed ESHB 2261 in 2009.

199. This new law enacted and implemented some, but not all, of the Task Force recommendations, with full implementation by 2018. The enactment created a Quality Education Council (QEC) to oversee the implementation of reforms and funding options. Teacher certification standards would be in place for the 2011-12 school year. Work groups would develop and recommend enhanced staff compensation models, a new system for local funding to supplement other funding for K-12 education, the development and implementation

of a comprehensive data system tracking and coordinating teacher and student performance and a standardized, statewide accounting system.

200. ESHB 2261 specified the structure, mechanisms and deadlines for continuing the State's K-12 reform. Overall funding levels and potential tax sources for funding were not included as those issues are to be addressed by the Funding Formula Technical Work Group and by the QEC. Changes requiring legislative enactment are to be adopted by the Legislature, if deemed appropriate, with full implementation of ESHB 2261 to be completed by 2018.

201. The enactment of ESHB 2261 was endorsed by educators, school districts and by state and local officials.

202. No funding is provided for the future execution or implementation of ESHB 2261 by future legislatures. In other words, future legislatures are under no mandate to fund, execute on, or continue implementation of ESHB 2261, as may be contemplated by the current legislature.

(b) Conclusions of Law relating to the current legal meaning of the word "education" in Article IX, §1.

203. As noted earlier, it is the duty of the judiciary to interpret, construe, and enforce our State Constitution – a duty the judiciary must exercise even when its interpretation of the Constitution is contrary to that taken by another branch. And, as also noted earlier, interpreting the words used in Article IX, §1 presents a pure question of law for the judicial branch to resolve. With those two fundamental legal principles in mind, this court now turns to interpreting the legal meaning of the term "education" in Article IX, §1.

(i) The minimum meaning of the word "education" established by the Washington Supreme Court.

204. The Washington Supreme Court has held the following with respect to the substantive content of the "education" mandated by Article IX, §1:

[T]he State's constitutional duty goes beyond mere 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 in the market place of ideas. Education plays a critical role in a free society. It 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.

Seattle School District v. State, 90 Wn.2d 476, 517-18 (1978).

205. This trial court is bound by the above ruling of the Washington Supreme Court.

This trial court accordingly concludes that "education" mandated by Article IX, §1:

- (a) includes the reading, writing, and arithmetic skills needed to compete in today's contemporary setting;
- (b) also goes beyond merely the reading, writing, and arithmetic skills needed to compete in today's contemporary setting;
- (c) must equip the children of this State to intelligently and effectively compete in today's economy and labor market;
- (d) must equip the children of this State to intelligently and effectively compete in today's market place of ideas;
- (e) must prepare the children of this State to intelligently and effectively participate in this State's open political system;
- (f) must prepare the children of this State to intelligently and effectively exercise their First Amendment freedoms – both in communicating information to others as well as understanding information communicated from others;
- (g) must equip the children of this State to meaningfully perform their roles as citizens in this State's democracy; and
- (h) must prepare the children of this State to be able to inquire, to study, to evaluate, and to gain maturity and understanding in today's contemporary setting.

206. The Washington Supreme Court referred to the above as being "essential skills" in this State's democracy, and held that "the effective teaching ... of these essential skills make

up the *minimum* of the education that is constitutionally required". *School District v. State*, 90 Wn.2d 476, 518 (1978) (*bold italics in original*). This court accordingly concludes that the skills described above are essential skills in our democracy, and that the effective teaching of those essential skills make up the minimum of the "education" that is constitutionally required by Article IX, §1.

(ii) *The additional specification of basic knowledge and skills added by the State Legislature's enactment of the four numbered provisions of House Bill 1209.*

207. As noted above, The Supreme Court referred to the substantive skills broadly described in its 1978 *Seattle School District* ruling as being a "basic education", and provided that the Respondent State could further define that "basic education" with additional substantive content beyond the knowledge and skills described in the Supreme Court ruling quoted above because that description was not "fully definitive of the State's paramount duty". (*Seattle School District v. State*, 90 Wn.2d at 518-19.)

208. This court concludes that the Legislature complied with the *Seattle School District* Court's direction to further define "basic education" with additional substantive content beyond the substantive knowledge and skills described in the Supreme Court ruling quoted above. This court concludes the Legislature did that by specifying the basic knowledge and skills specified in the four numbered provisions of House Bill 1209 (now §.210(1)-(4) of the Basic Education Act, RCW 28A.150.210(1)-(4)).

209. This court accordingly concludes that the basic knowledge and skills specified in the four numbered provisions of House Bill 1209 (now §.210(1)-(4) of the Basic Education Act, RCW 28A.150.210(1)-(4)) are an additional, substantive component of the current legal definition of the basic "education" required under Article IX, §1.

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(iii) *The additional specification of basic knowledge and skills added by the State's adoption of the Washington's Essential Academic Learning Requirements (EALRs).*

210. This court concludes that after the State enacted the above four numbered provisions of House Bill 1209, the State complied further with the *Seattle School District* ruling's direction to further define "basic education" with additional substantive content beyond the knowledge and skills described in the Supreme Court ruling. This court concludes that the State did that by adopting the basic knowledge and skills specified in the State's Essential Academic Learning Requirements (EALRs).

211. This court accordingly concludes that the basic knowledge and skills specified in the State's Essential Academic Learning Requirements (EALRs) are an additional, substantive component of the current legal definition of the basic "education" required under Article IX, §1.

(iv) *Conclusion regarding the current legal meaning of the word "education" in Article IX, §1 of the Washington Constitution.*

212. The word "education" in Article IX, §1 is substantive. It means the basic knowledge and skills needed to compete in today's economy and meaningfully participate in this State's democracy. Today, the current definition of that requisite knowledge and skill under Washington law is defined by the following:

(a) at minimum, the substantive skills specified by the Washington Supreme Court in the *Seattle School District* ruling that is quoted in subsection (i) above [90 Wn.2d 476, 517-18 (1978)];

(b) the basic knowledge and skills enacted by the State in the four numbered provisions of House Bill 1209 that are discussed in subsection (ii) above [now §.210(1)-(4) of the Basic Education Act, RCW 28A.150.210(1)-(4)]; and

(c) the basic knowledge and skills established by the State in the Essential Academic Learning Requirements that are discussed in subsection (iii) above [the State's "EALRs"].

213. Having now ruled on the current legal meaning of "education", "paramount", "ample", and "all" in Article IX, §1 of the Washington Constitution, this court now turns to the issue of whether the Respondent State is, or is not, complying with its legal duty under this Court's interpretation of the language in that constitutional provision.

**F. QUESTION #3 (DECLARATORY JUDGMENT):
Is the Respondent State currently complying with its legal duty under this court's interpretation of the language in Article IX, §1?**

214. The parties disagree on whether the Respondent State is currently complying with its legal duty under Article IX, §1.

The Respondent State asserts it is.

Petitioners assert that the Respondent State is not.

This court accordingly answers that "yes" or "no" question.

(a) Findings of Fact relating to whether the State is currently complying with its legal duty under this court's interpretation of the language in Article IX, §1.

215. All aspects of the policies pertaining to basic education and the funding for basic education are contained in, and governed by, Washington State statutes and regulations. Annual State funding for basic education is specifically provided in the enacted Appropriation Acts. Improvements and proposed reforms to the policies pertaining to the definition of basic education, and the programs and funding associated with basic education are also contained in statute.

216. At the time of trial, there were 295 school districts in the State of Washington. Most, if not all, of the districts receive funding for their K-12 schools from the federal government, the State of Washington, and through their local taxing authority.

217. The process by which the State of Washington funds the cost of basic education involves both the executive and legislative branches. In anticipation of each biennial funding

session of the Legislature, the Governor, through the Office of Financial Management (OFM), develops a proposed budget for education and other programs.

218. The Office of the Superintendent of Public Instruction (OSPI) contributes to the education budget development process by suggesting enhancements above the base funding already determined by OFM to be needed for basic education costs. OSPI has no legal authority or responsibility for establishing what funding levels are needed for the basic education program. The Legislature and Governor jointly have that responsibility.

219. As biennial funding typically covers the ensuing two years, the K-12 education budget must necessarily forecast what will be needed, in part, based upon past historical experience. Staffing ratios and non-employee related cost ("NERC") factors that are contained in the Basic Education Act, as well as school-district reported and projected enrollment figures, determine and update of the annual costs of basic education. Basic education program costs then are funded by the Legislature through annual appropriations obtained in the State's biennial Appropriations Acts. (RCW 28A.150.380). In addition to school construction funding authorized by RCW 28A.150.270, the State also contributes to school construction and renovation costs through the separate Capital budget appropriation acts.

220. The Respondent State uses arithmetic equations (program "funding formulas") to calculate a dollar number for an annual dollar "allocation" to the Respondent State's public schools. Those arithmetic equations, however, are not correlated to what it actually costs to operate this State's public schools. Those arithmetic equations are not correlated to what it would cost this State's public schools to equip all children with the basic knowledge and skills mandated by this State's minimum education standards (e.g., the State's Essential Academic Learning Requirements). Those arithmetic equations are not correlated to what it would currently cost this State's public schools to equip all children with the basic knowledge and skills included within the substantive "education" mandated by Article IX, §1. In short, the Respondent State's arithmetic equations do not determine the amount of resources actually required to amply provide for the education of all children residing within this State's borders.

221. The Legislature continues to allow local school districts to submit excess property tax levy measures to the voters, and if approved, the revenue may be used to fund enrichment programs beyond "basic education." Levy revenue also may be used to enhance state or federal programs. Local districts also may use federal revenues, within certain restrictions, to carry out federal programs or, in some circumstances, to supplement state programs. These are funds that cannot constitutionally be allocated for required basic education. *Seattle School Dist.*, 90 Wn.2d at 526.

222. The testimony from the "boots on the ground" – the district superintendents and principals – was consistent: year in and year out school districts, schools, teachers and parents have to "cobble" together sufficient funding to keep their basic education programs operational.

223. This is further corroborated by the observation of the chair of the Quality Education Council in its recently-issued initial report to the Governor and the Legislature, as directed by ESHB 2261, that "(s)chool districts use most of their local revenues (largely levy and equalization) to hire extra staff and make up for shortfalls in transportation, operating costs, supplies, and state salary allocations. Most of these costs are clearly a state responsibility; ... Funding studies have already confirmed that our state pays for too few instructional and operating staff, that our salary allocations are no longer consistent with market requirements, and that operating costs are woefully underfunded." QEC Initial Report, dated January 13, 2010.

224. The actual cost of operating the State's public schools is significantly higher than the amount of resources provided by the Respondent State's arithmetic equations (program "funding formulas"). This fact is confirmed by the Respondent State's studies and public documents. It is confirmed by the Respondent State's education and finance personnel. And, as another example, it is confirmed by Superintendents of focus districts in this case, and by the current and past Superintendents of the Office of Public Instruction.

225. The actual cost of equipping all children residing in this State with the basic knowledge and skills mandated by this State's minimum education standards (e.g., the State's Essential Academic Learning Requirements) is significantly higher than the amount of resources

provided by the Respondent State's arithmetic equations (its program "funding formulas"). This fact is confirmed by the Respondent State's studies and public documents. It is confirmed by the Respondent State's education and finance personnel. And, as another example, it is confirmed by Superintendents of focus districts in this case, and by the current and past Superintendents of the Office of Public Instruction.

226. The actual cost of equipping all children residing in this State with the basic knowledge and skills included within the substantive "education" mandated by Article IX, §1 is significantly higher than the amount of resources provided by the Respondent State's arithmetic equations (program "funding formulas"). This fact is confirmed by the Respondent State's studies and public documents. It is confirmed by the Respondent State's education and finance personnel. And, as another example, it is confirmed by Superintendents of focus districts in this case, and by the current and past Superintendents of the Office of Public Instruction.

227. In short, the Respondent State's arithmetic equations (program "funding formulas") produce far less than the resources actually required to amply provide for the education of all children residing within this State's borders. The Respondent State's arithmetic equations (program "funding formulas") do not make ample provision for the facilities and services needed to equip all children residing in this State with the basic knowledge and skills included within the "education" mandated by Article IX, §1. These facts are confirmed by the Respondent State's studies and public documents. They are confirmed by the Respondent State's education and finance personnel. And, as another example, they are confirmed by Superintendents of focus districts in this case, and by both the current and past Superintendents of the Office of Public Instruction.

228. The level of resources provided to the Respondent State's public schools, moreover, is not stable and dependable from year to year. The Respondent State does not provide its public schools stable and dependable resources to fund the actual cost of operating the State's public schools. The Respondent State does not provide its public schools stable and dependable ample resources to equip all children with the basic knowledge and skills mandated

by this State's minimum education standards (e.g., the State's Essential Academic Learning Requirements). The Respondent State does not provide its public schools stable and dependable ample resources to equip all children with the basic knowledge and skills included within the substantive "education" mandated by Article IX, §1. These facts are confirmed by the Respondent State's studies and public documents. They are confirmed by the Respondent State's education and finance personnel. And, as another example, they are confirmed by Superintendents of focus districts in this case, and by both the current and past Superintendents of the Office of Public Instruction.

229. The Respondent State's arithmetic equations (program "funding formulas") continue to leave the State's public schools to rely heavily on local levies to be able to operate. The Respondent State's arithmetic equations leave the State's public schools to rely heavily on local levies to fund their teaching of the basic knowledge and skills mandated by this State's minimum education standards (e.g., the State's Essential Academic Learning Requirements). The Respondent State's arithmetic equations continue to leave the State's public schools to rely heavily on local levies to fund their teaching of the basic knowledge and skills included within the substantive "education" mandated by Article IX, §1. These facts are confirmed by the Respondent State's studies and public documents. They are confirmed by the Respondent State's education and finance personnel. And, as another example, they are confirmed by Superintendents of focus districts in this case, and by the current and past Superintendents of the Office of Public Instruction.

230. Even with the local levies and the other non-State resources that school districts scrape together from year to year, the State's public schools are failing to equip all children residing in this State with the basic knowledge and skills mandated by this State's minimum education standards (e.g., the State's Essential Academic Learning Requirements). The State's public schools are failing to equip all children residing in this State with the basic knowledge and skills included within the substantive "education" mandated by Article IX, §1. These facts are confirmed by the Respondent State's own testing of the education that has been provided to this

State's public school children (the Washington Assessment of Student Learning, or "WASL"). These facts are confirmed by the high school dropout rates in the State's public schools. These facts are confirmed by the significant gaps in the education of lower income and minority students in the Respondent State's public schools compared to the education of those students' more privileged counterparts. These facts are confirmed by the Respondent State's studies and public documents. These facts are confirmed by the Respondent State's education personnel. And, as another example, these facts are confirmed by Superintendents of focus districts in this case, and by the current and past Superintendents of the Office of Public Instruction.

231. In short, the Respondent State is not amply providing for the actual cost of operating the State's public schools. The Respondent State is not amply providing for the equipping of all children residing in this State with the basic knowledge and skills mandated by this State's minimum education standards. The Respondent State is not amply providing for the equipping of all children residing in this State with the basic knowledge and skills included within the substantive "education" mandated by Article IX, §1.

231(a). When this ruling holds the State is not making ample provision for the equipping of all children with the knowledge, skills, or substantive "education" discussed in this ruling, that holding also includes the court's determination that the State's provisions for education do not provide all children residing in our State with a realistic or effective opportunity to become equipped with that knowledge, skill, or substantive "education".

232. Respondent State's experts testified – persuasively – that providing additional funding systemically does not *ipso facto* translate into greater systemic achievement results. Rather, a student's socioeconomic status and the quality of teaching factor more greatly as a predictor of positive results. This was also corroborated by some of Petitioners' witnesses as well, including school district superintendents. The Basic Education Financing Task Force also referenced the significant achievement gap between students from lower income families and

those from higher income families.³⁵ However, these are predictive factors, not determinative factors.

233. Petitioner's witnesses testified equally convincingly that their experiences have shown that increased resources: smaller class sizes, personalized learning, alternative forms of education, and the quality of teaching do create higher graduation rates and better achievement goals.

234. These apparent contradictions are, in fact reconcilable. As noted, the State's expert opinions demonstrated that from a statistical standpoint providing additional funding does not necessarily result in higher achievement. In contrast, this court heard significant anecdotal evidence from superintendents, who were themselves former teachers and principals, of individual success stories resulting from resources that would require additional funding: smaller class sizes for struggling students, availability of co-curricular activities (such as sports, theatre, art) and vocational training, and individualized attention. Thus, notwithstanding disadvantaging predictive factors, given the proper and adequate resources, these students can succeed. The guarantee of achievement by all children may, or may not be, attainable. But the State will ensure that all children will not perform up to their capabilities if it does not give them the educational *opportunity* to achieve. The State is failing to provide that opportunity.

235. It would be an inappropriate role for the court, respecting separation of powers, to set the outcome standards for the State. It is the Washington Legislature that has set the academic standards for the children resident in this State. The overwhelming evidence is that the State's students are not meeting those standards and that the State is not fully funding the programs, even currently available, to meet such standards. Nor should this court determine what level of "ample" input is needed to achieve such standards and goals — that also is the prerogative of the legislative body.

³⁵ "We need to look no further than the fact that the bottom quartile of American kids graduate from college at a rate of only 8.6 percent, whereas 74 percent of upper quartile students receive a degree." See *Initial Report to Joint Task Force*, October 2007; *Working to Improve Student Achievement*; Senator Rodney Tom, commenting on findings of Task Force.

236. As noted by Eric Hanushek, State's expert, the success of schools also depends on other individuals and institutions to provide the health, intellectual stimulus, and family support upon which the public school systems can build. Schools cannot and do not perform their role in a vacuum, and this is an important qualification of conclusions reached in any study of adequacy in education. And the State has met many of these challenges by providing funding for special education, ELL (English Language Learners), and for struggling students (Learning Assistance Program, or "LAP.") But the State can – and must – do more. Where there is that absence of support for students outside the school, the schools are capable of compensating, given proper and adequate resources. Petitioners' witnesses presented evidence of student after student who were able to overcome these "predictive factors" through individualized attention or alternative opportunities. Moreover, both sides agree that the quality of teaching is a prominent factor in determining achievement. The consistent evidence was that school districts routinely supplement the State funding for teacher salaries and benefits in order to attract and retain quality teachers and to compete with other districts' salary schedules. The State is providing funding; the funding is inadequate and does not fully and amply fund the basic education owed to all students.

237. Respondent State's own experts conducted numerous and extensive site visits to schools in the focus districts. These experts, in their own words, found the educational facilities "adequate," and the educational opportunities "adequate." By its own experts' observations, Respondent State is not amply providing for the equipping of all children residing in this State with the basic knowledge and skills included within the substantive "education" mandated by Article IX, §1. First, the constitutional mandate provides for ample, i.e., more than adequate provision for education. Secondly, even this "adequate" standard is not being maintained by State funding, but rather with supplementation through local levy funding and other funds "cobbled together" by school districts and local schools. Lastly, although the State's experts investigated the physical structures and teaching environment in some of the focus districts, testimony from some of Petitioners' witnesses established overcrowding in some schools where

classes were held in hallways, on a stage, and in one instance, in a converted bus. Witnesses described many classroom buildings that had inadequate or no bathroom facilities for students in the building. Others described inadequate libraries, out-of-date or limited number of textbooks, and antiquated infrastructure, e.g., electrical systems, which could not support computers, and poorly functioning HVAC systems. There was significant disparity in the quality and functioning of school facilities within districts and facilities among the school districts.

238. This court recognizes the social science debate over the correlation between classroom size, teacher/student ratio, and the condition of physical facilities, on the one hand, and student achievement, on the other. The fact is that Washington students are underperforming and failing to achieve in large numbers. It is incumbent upon the State to determine what educational resources are necessary and how to provide those resources to ensure that all children resident in the State of Washington have the opportunity to acquire the basic knowledge and skills included within the substantive "education" mandated by Article IX, §1. Moreover, resources and efforts expended by school administrators, teachers, and parents in getting levies passed for maintenance, operations, capital and other projects could otherwise be spent on the learning and education process.

239. Even before the issuance of the Supreme Court decision in the *Seattle School District* case, the State Legislature has undertaken reform of both defining basic education and financing basic education programs. Reform has been continual since then and neither the Legislature's commitment nor its sincerity in addressing this perennial problem should be in doubt.

240. The evidence demonstrated that basic education funding by the State has grown steadily over time, in actual dollars, but has remained constant when adjusted for inflationary factors, and excluding contributions to the State's retirement system. As a percentage of the State's general fund, spending on K-12 public school had steadily decreased from 1993 to the current biennium. (47.6% in 1993-95; 40.9% in 2007-09.) See Washington State Senate Ways and Means Committee, *Citizen's Guide to Washington State K-12 Finance* (January 2009).

241. Notwithstanding Washington's pre-eminent status of education in our State Constitution, more than any other state, Washington's per student spending ranked 32nd compared to the other states in the most recent statistics, which were for the 2007-08 school year. See Senate Ways and Means Committee, A Citizen's Guide to Washington State K-12 Finance, at 20 (January 2009).

242. Because of the need to further review the financing structure for basic education, the 2007 Legislature enacted statutory authorization for the creation of the Basic Education Finance Task Force (Task Force), to carry on the work of *Washington Learns* and develop detailed recommendations for a new funding system for K-12 public schools. The Task Force was directed to complete its work and issue a comprehensive report and set of recommendations by December 2008 so that the Legislature would have the opportunity to take action on some or all of the recommendations beginning in the 2009 legislative session.

243. From the fall of 2007 through December 2008, the Task Force conducted numerous meetings and heard many presentations from educators, school districts, and state agencies about the need for, and components of, a new approach to basic education funding and accountability. In the summer of 2008, the Task Force received a number of proposals, including the one that the Task Force substantially adopted in the fall of 2008. The successful proposal was developed and sponsored by the six state legislators on the Task Force.

244. The final Task Force report and recommendation was unanimously adopted by its members and issued on January 14, 2009. The report contained detailed staffing models and prototypical schools for each school level. The report proposed reduced class sizes, early learning programs for three and four-year-olds from families with low incomes, increased funding for struggling students, students with disabilities and for students whose primary language was not English. The report called for significant changes in the qualifications, promotion and compensation of teachers, and recommended substantial increases in state funding to offset the costs of utilities, insurance, supplies, technology and other non-employee

costs. The report called for increased quality review and accountability by all entities and players in the educational delivery system.

245. The Task Force Report contained three significant observations: the estimated cost of reform, the extended period of time necessary for implementation of any recommended changes, and a forecast of the hoped-for benefits of making the investment. Cost estimates range from 6.3 to 8.9 billion dollars per biennium. The Task Force indicated that implementation would need to take at least six years following the enactment of reform legislation. Finally, the Report contained an analysis that student outcome might improve by an estimated 9% (nine percent) rise in the State's graduation rate 14 years after full implementation of the Task Force recommendations. Alternatively, the same analysis forecasted that if reform of current basic education policies occurred without substantial sums of increased state funding, graduation rates might increase by a factor of less than 1% (one percent) over the same 14-year time frame. The Washington State Institute for Public Policy (WSIPP) produced these projections.

246. The Washington State Institute for Public Policy cautioned that the projections identified in the preceding paragraph reflected the findings of national research indicating that the true link between funding and outcomes was uncertain. This was consistent with the testimony of State's experts at trial who opined that statistically additional funding of educational programs was no guarantee of systemic higher achievement.

247. A new law, ESHB 2261, took a more measured approach to enactment and implementation of the Task Force recommendations, with full implementation by 2018. The enactment created a Quality Education Council (QEC) to oversee the implementation of reforms and funding options. Teacher certification standards would be in place for the 2011-12 school year. Work groups would develop and recommend enhanced staff compensation models, a new system for local funding to supplement other funding for K-12 education, the development and implementation of a comprehensive data system tracking and coordinating teacher and student performance and a standardized, statewide accounting system.

248. ESHB 2261 specified the structure, mechanisms and deadlines for continuing the State's K-12 reform. Overall funding levels and potential tax sources for funding were not included as those issues are to be addressed by the Funding Formula Technical Work Group and by the QEC. Changes requiring legislative enactment are to be adopted by the Legislature, if deemed appropriate, with full implementation of ESHB 2261 to be completed by 2018.

249. The enactment of ESHB 2261 was endorsed by educators, school districts and by state and local officials. Some endorsers included the constituent members of NEWS.

(b) Conclusions of Law relating to whether the State is currently complying with its legal duty under this court's interpretation of the language in Article IX, §1

250. The provisions of the Washington State Constitution are mandatory. Article I, §29 ("The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise."); *T.S. v. Boy Scouts of America*, 157 Wn.2d 416, 434 (2006); *City of Seattle v. Mighty Movers*, 152 Wn.2d 343, 372 (2004). The Respondent State has no discretion in whether or not it will comply with the duties mandated by the Washington State Constitution. *Benjamin v. Washington State Bar Association*, 138 Wn.2d 506, 549 (1999) ("Mandatory means *mandatory*."). (Italics in original). Simply put, the State of Washington must comply with the Constitution of Washington.

251. As explained earlier, the Washington Supreme Court holds that because Article IX, §1 of the Washington Constitution establishes the State's paramount constitutional duty, Article IX, §1 also establishes a corresponding paramount constitutional right on the part of all children residing within our State's borders. *Seattle School District v. State*, 90 Wn.2d at 511-512 ("all children residing within the borders of the State possess a 'right', arising from the constitutionally imposed 'duty' of the State, to have the State make ample provision for their education", and "since the 'duty' is characterized as Paramount the correlative 'right' has equal stature"). The Respondent State's constitutional duty to amply provide for equipping all children with the basic knowledge and skills established by the current definition of the

“education” required by Article IX, §1 is therefore a solid constitutional floor below which the Respondent State cannot lawfully go.

252. This case involves the fundamental constitutional law of our State, and this court has no discretion in whether the mandate of Article IX, §1 must be enforced and preserved. There is no higher duty of any judicial officer than to ensure the government’s adherence to our Constitution.

253. The Respondent State cannot avoid the question of whether it is currently complying with its legal duty under Article IX, §1 by stating its intent to correct a legal violation sometime in the future. Thus, the Respondent State’s assertions about what it hopes future State legislatures might chose to do over the course of the next nine years under the current version of ESHB 2261 are not relevant to the compliance issue, but may be relevant to the appropriate enforcement order. A defendant’s intent to cease its legal violation in the future does not negate the existence of a defendant’s violation contemporarily.

254. The State likewise cannot avoid the question of whether it is currently complying with its legal duty under Article IX, §1 by delegating responsibility to others such as the State’s school districts. Article IX, §1 imposes its paramount education duty upon the State – not upon others such as the State’s school districts. E.g., *Tunstall v. Bergeson*, 141 Wn.2d 201, 232 (2000) (“school districts have no duty under Washington’s constitution. Article IX makes no reference whatsoever to school districts.”). Washington law instead holds that the State’s school districts are the State’s agents in providing education to the children of this State. *Bellevue School District v. Brazier*, 103 Wn.2d 111, 116 (1984) (“The state has ... made the local school district its corporate agency for the administration of a constitutionally required system of free public education”). Washington law further holds that the principle cannot shift responsibility to its agent. E.g., *Orion Corp. v. State*, 109 Wn.2d 621, 643-44 (1987) (when County enacts regulation as agent of the State, the State is liable for the County regulation’s unconstitutional taking because “As the principal of an agent acting within its authority, the State must take full responsibility if a taking occurred”).

255. Nor is it sufficient for the Respondent State to avoid the question of whether it is currently complying with its legal duty under Article IX, §1 by claiming that school districts can scrape by with non-State funds such as local levies. The Washington Supreme Court's *Seattle School District* ruling against the Respondent State expressly held that it is unconstitutional for the Respondent State to rely on local levies to fund any part of the education mandated by Article IX, §1. *Seattle School District v. State*, 90 Wn.2d at 526. As the Washington Supreme Court also explained, local levies are neither dependable nor regular because they are "wholly dependent upon the whim of the electorate," and are available only on a temporary basis. 90 Wn.2d at 525. As the Washington Supreme Court accordingly held, that "unstable statutory system destroys a district's ability to plan for a known or definite funding base for either the current year or for future years." 90 Wn.2d at 525. Moreover, superintendents and other school officials repeatedly testified about the substantial resources and efforts employed to ensure that local levies pass. These are resources that otherwise could be expended on education itself so that "administrators can return to administering, teachers can return to teaching, parents and students can be involved in the learning process, rather than spending inordinate amounts of time passing special levies." (Governor Dan Evans, *supra*.) In short, the question of whether the Respondent State is currently complying with its legal duty under this court's interpretation of the language in Article IX, §1 is a binary yes-or-no question. This court concludes that the answer to that question is "no". The Respondent State is not currently complying with its legal duty under Article IX, §1 of the Washington Constitution. The Respondent State is not complying with its paramount constitutional duty to make ample provision for the education of all children residing within the borders of this State.

256. Although this court has determined that the proper burden of proof for this analysis is "preponderance of the evidence," this court is persuaded that Petitioners have proven even the higher standard of "beyond a reasonable doubt." In this instance, this court is left with no doubt that under the State's current financing system the State is failing in its constitutional duty to make ample provision for the education of all children residing within the borders of this

State. This court is convinced that basic education is not being funded by a stable and dependable source of funds provided by the State, but rather continues to be supplemented by local funding (through special levies and otherwise) and non-State resources.

257. This court accordingly turns to the fourth and final part of the four-part remedy that the Petitioners seek, and the question of what (if any) enforcement Order this court should enter to uphold and enforce the paramount duty imposed upon the State by our State Constitution.

G. QUESTION #4 (ENFORCEMENT ORDER):

What (if any) Order should this court enter to uphold and enforce the State's legal duty under Article IX, §1 of the Washington Constitution?

258. The parties disagree on whether this court should enter any enforcement Order beyond the declaratory judgments sought above.

Petitioners contend that if this court finds that the Respondent State is not complying with its legal duty under this court's interpretation of Article IX, §1, then this court should Order the Respondent State to promptly establish (1) the actual cost of amply providing all Washington children with the education mandated by this court's interpretation of Article IX, §1, and (2) how the Respondent State will fully fund that actual cost with stable and dependable State sources. Petitioners contend that the Respondent State can comply with such an enforcement Order by promptly implementing a State system that (1) determines the actual cost of amply providing all Washington children with the education mandated by this court's interpretation of Article IX, §1, and (2) fully funds that actual cost with stable and dependable State sources.

Petitioners contend that the above is a narrowly tailored Order that would require the Respondent State to take two long overdue steps towards complying with the paramount duty clause of our State Constitution.

The Respondent State disagrees with the request and this approach.

(a) Findings of Fact relating to the propriety of a Court Order.

259. Over the past 30 years, Washington State Governors from Dan Evans and Dixie Lee Ray through Gary Locke and Christine Gregoire have declared to the People of this State their desire and intent to bring the Respondent State into compliance with Article IX, §1 of our State Constitution. Most recently, in Governor Gregoire's annual State of the State address, she acknowledged that "building a bright economic future also starts with providing our children a first-class education." The Governor also recognized that although "we are making progress ... we can and must do more."

260. In the years after the Supreme Court's *Seattle School District* ruling against the Respondent State, the Legislature has conducted over 17 studies (not including research for specific legislation or projects) to address the school financing concerns of the State's public schools.

261. Since 1990 alone, the Respondent State has also conducted over 100 K-12 education finance studies.

262. Despite the Respondent State's many studies and expressions of good intentions during the 30 years following the Supreme Court's *Seattle School District* ruling, the Respondent State has not fully determined, or fully funded, what it actually costs to operate this State's public schools. The State has not determined, or funded, what it would cost the State's public schools to equip all children with the basic knowledge and skills mandated by the State's minimum education standards (e.g., the State's Essential Academic Learning Requirements). The State has not determined, or funded, what it would cost the State's public schools to equip all children with the basic knowledge and skills included within the substantive "education" mandated by Article IX, §1. In short, despite the passage of over 30 years since the Supreme Court's *Seattle School District* ruling against the Respondent State, the Respondent State still has not determined the amount of resources actually required to amply provide for the education of all children residing within this State's borders.

263. Instead, as explained earlier, the Respondent State uses arithmetic equations (program “funding formulas”) to calculate a dollar number for an annual dollar “allocation” to the Respondent State’s public schools – arithmetic equations that are not correlated to what it actually costs to operate this State’s public schools, what it would cost this State’s public schools to equip all children with the basic knowledge and skills mandated by this State’s minimum education standards (e.g., the State’s Essential Academic Learning Requirements), or what it would currently cost this State’s public schools to equip all children with the basic knowledge and skills included within the substantive “education” mandated by Article IX, §1.

264. As noted, the State has passed legislation, it has ordered countless studies, it has commissioned a multiplicity of reports. And yet there remains one harsh reality – it has not and is not amply and fully funding basic education. Notwithstanding the legislation, the reports, the studies, and the commissions, per pupil state spending, adjusted for inflation, has remained essentially flat, from 1994 to the present. (\$4,083 per FTE K-12 student in 1994 vs. \$4,208 per FTE student in 2008, adjusted for inflation and excluding state pension amounts. *See Education Reform and Implications for School Finance.*)

265. Society will ultimately pay for these students. The State will pay for their education now or society will pay for them later through unemployment, welfare, or incarceration. (*Washington Learns Report*, November 2006, citing Perry Preschool Report that early education “significantly reduces costs associated with remedial education, special education, abuse and neglect, health care, school drop-out rates, teen pregnancy, crime, and incarceration.”) “For these are all our children. We will profit by, or pay for, whatever they become.” James Baldwin, as quoted by State Senator Fred Jarrett.

266. The Respondent State has not designed or implemented a State system that (1) determines the actual cost of amply providing all Washington children with the education mandated by this court’s interpretation of Article IX, §1, and (2) fully funds that actual cost with stable and dependable State sources.

(b) Conclusions of Law relating to the propriety of a Court Order

267. As explained earlier, the Respondent State of Washington is required to comply with the Constitution of Washington. E.g., Article I, §29 (“The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.”); *Benjamin v. Washington State Bar Association*, 138 Wn.2d 506, 549 (1999) (“Mandatory means mandatory.”) (italics in original).

268. An entire generation has passed through this State’s public schools since the Supreme Court’s *Seattle School District* ruling against the Respondent State over 30 years ago. The Respondent State has made progress toward but has not reached its full compliance with its paramount education duty under Article IX, §1. When the U.S. Supreme Court ordered desegregation in *Brown v. Board of Education*, it ordered its implementation with all “deliberate speed.” And yet decades later, school districts and courts continue to implement the directive from the nation’s highest court. When our own Supreme Court issued its decision in *Seattle School District*, no such amorphous timetable was established.³⁶ And yet Washington finds itself 30 years later asking many of the same questions.

269. This court is sensitive to the fact that our state government is divided into legislative, executive and judicial branches with the sovereign powers allocated among the co-equal branches. The court is equally aware that those charged with the exercise of power in one branch must not encroach upon power exercisable by another. But, the compartments of government are not rigid. In fact, the practicalities of government require that each branch take into account the power of the others. None was intended to operate with absolute independence. *Moran v. State*, 88 Wn2d 867, 873 (1977); *In re Juvenile Director*, 87 Wn.2d 232 (1976); *United States v. Nixon*, 418 U.S. 683, 707, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974). Recognition of this fact is particularly important where, as here, Const. Art. IX, § 1 is addressed to the “State” not merely to the Legislature. Thus, all three branches of government are charged by the

³⁶ In 1977, the trial court ordered implementation by 1979, and the Supreme Court established a deadline of 1981.

constitutional command and with the mandatory provisions of Const. Art. IX, § 29. In addition, the judiciary is charged by Const. Art. 4 with exercising the judicial power which, as stated in *Seattle School District* "includes interpretation and construction of the constitution itself." *Seattle School Dist. No. 1 of King County v. State*, 90 Wn.2d 476, 505-506 (1978).

270. This court must acknowledge the deep financial crisis that the State currently faces. It is the Constitutional duty and responsibility of the courts to determine ultimately the scope and reasoning of Const. Art. IX, § 1, and whether the Legislature is complying therewith. *See generally Seattle School District No. 1, supra*. And it is the Constitutional duty and responsibility of the Legislature to act and fulfill *its* own Constitutional mandate. In the words of President John F. Kennedy, "There are risks and costs to any program of action. But they are far less than the long-range risks and costs of comfortable inaction." *All children in Washington "have a 'right' to be amply provided with an education. That 'right' is constitutionally paramount and must be achieved through a 'general and uniform system of public schools.' "* *School Districts' Alliance for Adequate Funding of Special Educ. v. State*, 149 Wn. App. 241, 263 (2009). It is the framers of our Constitution who established the pre-eminence of education in this state. It is the responsibility of the Legislature to effectuate that primary priority of funding basic education, and to determine how that can be accomplished. But it must be accomplished.

271. This court cannot and should not dictate how basic education is to be delivered. By way of example, it would not be appropriate for the court to declare smaller - or larger - classroom sizes, or more or fewer computers, or the number of core education hours each student should have in order to graduate. Nor would it be appropriate for the court to dictate how such education decisions should be funded. There are two fundamental reasons that this court should

not interject itself into such management. First, the science is inconclusive as to what works. This court heard varying testimony as to the effectiveness of additional funding on improved educational achievement. Respondent State's experts presented convincing studies demonstrating that systemically increased school funding does not *ipso facto* translate into educational achievement results. Conversely, petitioners' witnesses provided equally compelling testimony that individualized attention on challenged learners has yielded great successes. The court does not find these differing – and apparently conflicting – conclusions irreconcilable. Rather, it simply demonstrates that what may be true on a systemic and statistical level may not easily translate into actual experiences with individual students. The testimony of school district superintendents and former teachers and principals who had worked with challenged learners was equally persuasive as the statistics presented by the State's experts. With a constitutional mandate to make ample provision for basic education, the State must consider that mandate for all children residing in the State, and determine what is necessary to provide the opportunity for all children to learn. The parties have greater and more appropriate resources to make these determinations. As indicated, the State has already undertaken countless studies, many of which address (although not provide any definitive conclusions on) the cost of full State financing of basic education. Secondly and perhaps more importantly, this determination should be made by the Legislature and its delegates. This court will not micromanage education and will give great deference to the acts of the Legislature. *See Seattle Sch. Dist.*, 90 Wn.2d at 518-19. Nonetheless, it is uniquely within the province of this court to interpret this State's constitution and laws. *Cf. Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L.Ed. 60 (1803); *Brown v. State*, 155 Wn.2d 254, 257-258 (2005).

272. As noted, recent legislation has set in motion a proposed transformation of our current education system. In the final analysis, however, this court shares the same concern expressed by our Supreme Court in *Seattle School District* that “it is not the failure of our early legislatures that troubles the Court. Rather, the current concern is the failure of subsequent legislatures to “make ample provision for . . . education . . .” *Seattle School Dist. No. 1 of King*

County v. State 90 Wn.2d 476, 515 (1978). Without funding, reform legislation for basic education may be an empty promise. Absent a court mandate, the residents of this State, and their children, risk another 30 years of underfunding of basic education.

273. This court accordingly grants Petitioner's petition requiring Respondent State to comply with its paramount duty under our State Constitution to: (1) establish the actual cost of amply providing all Washington children with the education mandated by this court's interpretation of Article IX, §1, and (2) establish how the Respondent State will fully fund that actual cost with stable and dependable State sources. This court must acknowledge, nonetheless, that recently-enacted legislation is intended to address these issues.

274. ESHB 2261 represents a comprehensive, constitutionally permissive legislative effort to reform education and purports to address the alleged liability and requested remedy issues in this case. However, ESHB 2261 does not require future legislatures -- or governors -- to do anything. Rather, the legislation is the expressed intent of a current legislature as to what future legislatures should or might do. "[I]t is not the failure of our early legislatures that troubles the Court. Rather, the current concern is the failure of subsequent legislatures to "make ample provision for . . . education . . ." *Seattle School Dist. No. 1, supra*. The State, through its legislative and executive bodies, must fulfill their Const. Art. IX, § 1 mandate. They may choose to do so, as directed above, through its intended implementation of ESHB 2261, or otherwise. Full funding levels for the provision of mandated basic education were not included in ESHB 2261 and thus must be addressed by the Funding Formula Technical Work Group, by the Quality Education Council, or as determined by the Legislature or its delegates.

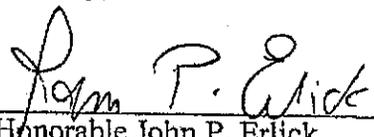
275. For the foregoing reasons, the Legislature must be afforded the opportunity to exercise its proper legislative authority to comply with Article IX, § 1, and to fulfill the State's paramount educational duty, as set forth in this decision. That said, the Legislature must proceed with real and measurable progress to the dual outcomes sought by the petitioners in this case: (1) to establish the actual cost of amply providing all Washington children with the education mandated by this court's interpretation of Article IX, §1, and (2) to establish how the Respondent

State will fully fund that actual cost with stable and dependable State sources. "The choice and manner of financing public schools is for the Legislature." *Northshore*, 84 Wn.2d, 685, 770 (1974), (Stafford, J. dissenting, and adopted, in principle, in *Seattle School District I*, *supra*; "While the Legislature must act pursuant to the constitutional mandate to discharge its duty, the general authority to select the means of discharging that duty should be left to the Legislature."); *See Newman v. Schlarb*, 184 Wash. 147, 153 (1935).

IV. CONCLUSION

Thirty years have passed since our State Supreme Court directed the State to provide stable and dependable funding for basic education. The State has made progress toward this Constitutional obligation, but remains out of compliance. State funding is not ample, it is not stable, and it is not dependable. Local school districts continue to rely on local levies and other non-State resources to supplement state funding for a basic program of education. Recent legislation addresses, but does not resolve, the perennial underfunding of basic education. Accordingly, the State is directed to determine the cost of amply providing for basic education and a basic program of education for all children resident in the State of Washington. The State must also comply with the Constitutional mandate to provide stable and dependable funding for such costs of basic education. Funding must be based as closely as reasonably practicable on the actual costs of providing such programs of basic education. The means of fulfilling this Constitutional mandate properly fall within the prerogative of the Legislature.

DONE IN OPEN COURT this 24th day of February, 2010.



The Honorable John P. Erlick
Judge, Superior Court of the State of Washington
For King County

EXHIBIT A – McCleary v. State Witness List

The following witnesses were sworn and examined during trial:

Steve Aos
Dr. David Armor
Michael S. Blair
Dr. Judith A. Billings
Calvin W. Brodie
Dr. Nicholas Brossoit
Dr. Robert M. Costrell
Kenneth A. Emmil
Daniel K. Grimm
Dr. Eric Hanushek
Erin Jones
James Kelly
Eldon S. Lonborg
Roberto Maestas
Stephanie McCleary
Dr. Rick Melmer
Victor Moore
Dr. John A. Murphy
Jennifer Priddy
Rep. Skip Priest
Ben Rarick
Mary Jean Ryan
Julie Salvi
Prof. Roger Soder
Benjamin Soria
Dr. Lori L. Taylor
Patricia Venema
Dr. Michael J. Wolkoff

The following witnesses appeared via sworn deposition testimony:

Loella Adams
Glenn Anderson
Terry Bergeson
Rochonne Bria
Alan Burke
Bradford Burnham
Steve Chestnut
Frances Contreras
Richard Cole
Ann Daley
Howard DeLeeuw
Randy Dorn
Richard Foss

Mary Alice Heuschel
Ross Hunter
Fred Jarrett
Deborah LeBeau
Bryon Moore
Steve Rasmussen
Sam S. Reed
Rod Regan
Rose Search
Thomas Seigel
George Sneller
Rodney Tom
Bryan Wilson
Janice Yoshiwara

EXHIBIT B – McCleary v. State Admitted Exhibits

<u>Ex #</u>	<u>Description</u>
1	Article IX, Section 1 to the Washington State Constitution
2	Seattle School District v. State, 90 Wn.2d 476, pages 517-518
4	Curriculum & Instruction, Essential Academic Learning Requirements (EALR)
5	Curriculum & Instruction, EALR, pages 1 & 2
6	EALR - Reading
7	EALR - Mathematics
8	EALR - Science
9	EALR - Writing
10	EALR - Communication
11	EALR - Social Studies: Geography, History, Civics, Economics
12	EALR - The Arts
13	EALR - Health and Fitness
14	Engrossed Substitute House Bill 1209, Effective Date 7-25-93
15	2006 Reaching Higher: Learning Goals and Assessments for Washington Students in Grades 3-8
16	Washington Learns: World-Class, Learner-Focused, Seamless Education, Nov. 2006
17	2005 WASA/AWSP Summer Conference - Success for all Students: Progress Made, Challenges Ahead
18	RFP No. 06-800 – K-12 Funding Analysis
19	Engrossed Second Substitute Senate Bill 5441, Effective Date 7-24-05
20	Proposed 2007-2009 Budget Recommendation Summaries, Dec. 2006
21	Notice of 30(b)(6) Deposition (Brodie)

<u>Ex #</u>	<u>Description</u>
26	Administrative Budgeting & Financial Reporting (ABFR) Handbook of Policies & Procedures for Public SDs, May 2006
29	Financial Reporting Summary: School District and Educational Service District, Fiscal Year 9/1/06 – 8/31/07, March 2008
30	Accounting Manual for Public School Districts, September 2007
32	Addendum to Bulletin 025-07, 8-17-07
34	IMAP Kids website printout [imapkids.com]
35	Concern for Absences and Tardies, from Chimacum SD to McCleary
43	Declaration of Julie Salvi In Opposition to Mtn for Summary Judgment, 5/18/07
48	Basic Education Costs By School Year, dated February 2007
50	Basic Education Costs By School Year, dated February 2007
52	Pupil Transportation Funding Formula Options, 12-5-08
54	K-12 Funding: How Does State Distribute Revenue To School Districts? 10/5/01
56	Governor Gregoire's Proposed 2009-11 Biennial Budget, K-12 Policy Changes
57	E-mail from Pennucci to Skei dated 7-30-08, with attached WASL Analysis of Student Achievement Data / Assessment Alternatives
66	School District Personnel Summary Reports, 2007-2008 School Yr, Oct. 2008
67	Public schools: Depth, Breadth And Causes Of A Looming Finance Crisis
68	E-mail from Priddy to Morrill dated 9-16-08, with attached K-12 Finance: Looming Problems, Presentation to Renton SD
71	A Funding System To Support Student Success, 6-9-08
74	Education Reform And Implications For School Finance
79	E-mail from Priddy to Jones dated 11-29-06, re Emergency Fuel
83	E-mail from Crawford to Wirkkala and others, 9-28-07, with attached Draft NERC report
91	OSPI Report Cards, 2003-2008, Edmonds SD
92	NEWS Subpoena Response, Funding Announcement, Form 1497s (Minimum Basic Educations Requirement Compliance), Edmonds SD
94	OSPI Report Cards, 2003-2008, Moses Lake SD
96	Amended Notice of 30(B)(6) Deposition of Wash. State Board for Community and Technical Colleges,

Ex #	Description
97	SBCTC Frequently Asked Questions
98	Research report No. 07-2, Role of Pre-College (Developmental and Remedial) Education, December 2007
99	Research report No. 09-2, Access and Success for People of Color, March 2009
100	SBCTC System Direction: Creating Opportunities for Washington's Future
101	Research report No. 06-2, Building Pathways to Success for Low-Skill Adult Students, April 2005
102	Amended notice of 30(b)(6) Deposition of Wash. Workforce Training & Education Coordinating Board
103	Washington Learns: High Skills, High Wages: 2004
104	11th and 12th Grades - Looking Ahead to the World Outside High School
105	Secondary Career and Technical Education Works
106	High Skills, High Wages, 2008-22018: Wash. Strategic Plan For Workforce Development
107	Post-Secondary Career and Technical Education Works
108	2007 Employers Workforce Needs and Practices Survey, Statewide Report
109	Basic Education Financing and Workforce Development
111	Wash. State Auditor's Office Financial Statements And Federal Single Audit Report, 9/1/05 – 8/31/06, Edmonds SD
112	Wash. State Auditor's Office Accountability Audit Report, 3-19-07, Edmonds SD
113	2008 Annual Report to Citizens: The State of Audit
114	Wash. State Auditor's Office Protocols, Issue Date: January 2009
115	Auditor's Office Website printout: What Is An Audit?
116	FAQs About Performance Audits Of State Government Entities
117	An Agency Guide to Hosting a Performance Audit: Helpful Tips & Best Practices, 8-3-06
118	OSPI Report Card, 2007-08, Issaquah SD
119	OSPI Report Card, 2006-07, Issaquah SD
120	OSPI Report Card, 2005-06, Issaquah SD
121	Issaquah SD, F-196 Annual Financial Statements 2007-2008

<u>Ex #</u>	<u>Description</u>
122	Issaquah SD, F-196 Annual Financial Statements, 2006-2007
123	State Funding Inequities Applied to Issaquah SD: Local Impact of a Statewide Problem
124	Final Report of the Joint Task Force on Basic Education Finance, 1-14-09
125	The Paramount Duty: Report of Wash. State Temporary Committee on Education Policies, Structure & Management, Jan. 1985
126	The Paramount Duty, Part I: Interim Report of Temporary Committee on Educational Policies, Structure and Management
127	Washington State Historical Society website pages: 2007 Annual Report
128	House Resolution No. 2007-4624
129	Engrossed Second Substitute Senate Bill 5627, Basic Education Funding, 5/9/07
131	Engrossed Second Substitute Senate Bill 5441, Comprehensive Education Study Steering Committee, 7/24/05
133	Engrossed Substitute House Bill 1209, Education Reform - Improvement Of Student Achievement, 7-25-93
135	E-mail from Grimm to task force members, 11-24-08, with correspondence from Full Funding Coalition re "grave concerns"
140	Basic Education Finance Joint Task Force Agendas & Minutes
141	OSPI Report Card, 2007-2008, Royal SD
142	OSPI Report Card, 2003-2004, Royal SD
144	Teaching and Learning, EALR, pages 1 and 2
146	EALR - Health and Fitness
147	EALR - The Arts
149	EALR - Communication
150	EALR - Writing
151	EALR - Science
152	EALR - Reading
154	OSPI Report Card, 2007-08, Yakima SD
155	OSPI Report Card, 2003-04, Yakima SD
156	Wash. State Auditor's Office, Financial Statements and Federal Single Audit Report, 9/1/02 - 8/31/03, Mount Adams SD

<u>Ex #</u>	<u>Description</u>
157	Wash. State Auditor's Office, Financial Statements and Federal Single Audit Report, 9/1/05 – 8/31/06, Mount Adams SD
158	Wash. State Auditor's Office, Financial Statements and Federal Single Audit Report, 9/1/06 – 8/31/07, Mount Adams SD
159	Wash. State Auditor's Office, Accountability Report, 6/18/08, Mount Adams SD
160	OSPI Report Card, 2007-08, Mt. Adams SD
161	OSPI Report Card, 2003-2004, Mt. Adams SD
162	OSPI Report Card, 2007-08, Sunnyside SD 2007-08
163	OSPI Report Card, 2003-2004, Sunnyside SD
164	"All Students Can Learn" CD
165	OSPI Report Card, 2007-08, Renton SD
166	OSPI Report Card, 2006-2007, Renton SD
167	OSPI Report Card, 2005-2006, Renton SD
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195	Senator Fred Jarrett Website: E-mail re "Devastated at this News"
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198	Senator Fred Jarrett Website: E-mail re "Education task force recommendations"
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200	Report of the Capital Budget K-12 School Construction 2002 Interim Work Group
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1212	Bethel SD, F-196 Annual Financial Statements, 2006-2007
1214	Website printouts: Today in Colville SD, and information about schools

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1217	Colville SD Website printout: Comments of Superintendent re "personal ownership"
1225	Colville School Board Responds to Budget Cuts
1227	Colville Chamber of Commerce Brochure – Discover Our Good Nature
1228	Colville SD, Form 1497s Minimum Basic Ed Requirement Compliance, 2001 - 2008
1317	Second Substitute Senate Bill 5114, Student Transportation Funding, 7/22/07
1333	Curriculum Vitae, Lori L. Taylor
1334	S-275 Personnel Reporting Handbook October 2007
1335	Curriculum vitae, Dr. A. John Murphy
1337	Curriculum Vitae ,Eldon Lonborg
1338	Curriculum Vitae, Michael Wolkoff
1339	Excerpts of Evaluation of Wash. Adequacy Funding Study, Jan, 2007, by Robert Costrell
1340	Curriculum Vitae, Robert M. Costrell
1347	Curriculum Vitae, Dr. Rick Melmer
1348	Curriculum Vitae, Eric A. Hanushek
1349	Curriculum Vitae, David J. Armor
1350	Subpoena to Wash. Education Association, and subpoenaed WEA documents
1352	CD "Show Me the Money"
1354	Letter dated April 18, 2009, to Mary Lindquist from Laura Bay
1355	Letter dated January 28, 1983, to Don Johnson from Faith Hanna
1358	OSPI website: Migrant Education Program Services
1370	History of Education Reform in Wash. State: Transition to a Performance-Based, Student-Learning Education System, February 1995
1371	A Framework for Excellence – High Standards, Opportunities to Learn, Career Preparation – Wash. State Comprehensive Plan for Improvement of Student Learning
1372	Report to the Legislature on Implementation of Education Reform Act 1995-96, Dec. 1996
1373	Annual Report to the Wash. Legislature - Implementation of Education Reform in Wash. State, January 1995

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1374	2 nd Annual Report to the Wash. Legislature - Implementation of Education Reform in Wash. State, January 1996
1375	3 rd Annual Report to the Wash. Legislature - Implementation of Education Reform in Wash. State, January 1997
1376	Joint Legislative Fiscal Study Committee Final Report to Washington State Legislature December 1995
1406	Overview of K-12 Finance, by Legislative Fiscal Staff, 10/22/2007
1407	OSPI Tables on Financing, Expenditures, Enrollment, Public K-12 Schools
1425	OSPI Educational Technology – 2008-09 School Technology Inventory – FAQs
1426	Battle Ground SD, F-196 Certification Page 2007-2008
1427	Bethel SD, F-196 Certification Page 2007-2008
1428	Chimacum SD, F-196 Certification Page 2007-2008
1429	Clover Park SD, F-196 Certification Page 2007-2008
1430	Colville SD, F-196 Certification Page 2007-2008
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1438	Yakima SD, F-196 Certification Page 2007-2008
1466	2007-2008 OSPI Technology Survey Results for Focus Districts
1469	OSPI Educational Technology: School Technology Inventory pages
1470	Accounting Work Session - Basic Education Finance Task Force 9/16/08
1483	2007-09 Revised Omnibus Operating Budget Analysis HB 2261 under various assumptions
1509	Declaration of Eric Hanushek in Opposition to Mtn for Summy Jdgmt 5/21/07
1510	"The Failure of Input-Based Schooling Policies," The Economic Journal

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1511	National Assessment of Education Progress Graph -- Mathematics Grade 8 -- 2005
1518	Supplemental Declaration of Julie Salvi in Opposition to Mtn for Summ Jdgmt, 8/1/07
1521	Second Substitute House Bill 1573, Dropout Prevention, Intervention, & Retrieval, 7/22/07
1524	Final Bill Report, ESHB 2261
1530	Armor Analyses -- SES, Poverty, Race, and ELL Tables
1531	Armor Analysis -- Focus Tables & Graphs Grades 3-8, various factors and achievement
1532	Armor Analysis -- Focus Tables & Graphs Grades 9-12, various factors & achievement
1533	Armor Analysis -- Effect of Student SES & School Resources: Regression Results
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1563	SBE Recommendation re Approval of PSAT/SAT/ACT Mathematics Cutscores, from meeting of 11/27-11/28/2006
1564	SBE Recommendation re Cut Scores for SAT-Reading, SAT-Writing, & ACT-Reading for CAA Options, from 11/1/2007 hearing
1566	SBE Minutes of Regular Meeting, 11/1/2007
1569	OSPI, School Apportionment & Financial Services, FAQ's
1570	Wash. Public SDs: Enrollment, General Fund Expenditure, Revenue, & Fund Balance-- Actual, & Budget vs. Actual History
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