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SUPREME COURT
STATE OF WASHINGTON
May 29, 2015, 1:50 pm
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NO. 84362-7

SUPREME COURT OF THE STATE OF WASHINGTON

MATHEW and STEPHANIE McCLEARY, et al.,

Respondents,

v.

STATE OF WASHINGTON,

Appellant.

STATE OF WASHINGTON'S MEMORANDUM RESPONDING TO
ORDER DATED APRIL 30, 2015

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 ORIGINAL

I. INTRODUCTION

In its Order dated September 11, 2014, the Court found the State in contempt for failing to submit a complete plan for fully implementing its program of basic education for each school year between January 2014 and the 2017-18 school year, as directed in the Court's Order of January 9, 2014. Order, *McCleary v. State*, No. 84362-7, at 4 (Wash. Sept. 11, 2014). The September 2014 Order stated that the Court would reconvene to impose sanctions and other remedial measures as necessary if the State did not purge contempt by complying with the Court's January 9, 2014, Order by the adjournment of the 2015 legislative session. *Id.* at 5. If the State had not complied with the Court's January 2014 Order by the close of the 2015 legislative session, the Court directed the State to file a "memorandum explaining why sanctions or other remedial measures should not be imposed." *Id.* The memorandum was due on "the date following adjournment of the 2015 session." *Id.*

On April 27, 2015, the State filed a memorandum, explaining (1) that there were promising legislative proposals introduced in both houses; (2) that the Legislature had not taken final action on the budget or on other bills relating to this case; (3) that a special session would be convened; and (4) that until the 2015 Legislature concluded its special session, the State could not represent to the Court whether the actions

taken achieved compliance with the Court's orders. The Court responded in an Order dated April 30, 2015, denying Plaintiffs' request to file a response and directing the following action by the State:

On the day following adjournment of the special session which commenced April 29, 2015, the State should file in this Court the response that was ordered in the September 11, 2014, order. As indicated previously, this memorandum is separate from the court's order requiring an annual progress report. No other pleadings should be filed by any of the parties except at the direction of the court.

Order, *McCleary v. State*, No. 84362-7, at 2 (Wash. Apr. 30, 2015). This memorandum is filed in response to that Order.

II. STATUS OF LEGISLATIVE ACTION AT THE CLOSE OF THE FIRST SPECIAL SESSION ON MAY 28, 2015

The Legislature convened in special session on April 29, 2015, and adjourned on May 28, 2015. All the legislative proposals summarized in the State's memorandum filed on April 27, 2015, are still under formal consideration in the Legislature. As explained in that memorandum, the budget proposals provide appropriations for timely implementation of the plan called for by SHB 2776 (Laws of 2010, ch. 236).

III. THE SECOND SPECIAL SESSION CONVENED ON MAY 29, 2015

On May 28, 2015, the Governor issued a proclamation convening the Legislature into a second special session on May 29, 2015.¹ In addition to referencing the need to complete a budget before the new biennium commences on July 1, 2015, the proclamation specifically calls out the State's article IX duty. The second special session will conclude no later than June 27, 2015. Until the Legislature has enacted that budget, the associated legislation necessary to implement the budget, and any other education-related legislation, the State cannot represent to the Court whether actions taken by the 2015 Legislature achieve compliance with the Court's orders. The Court should defer reconvening to consider whether the State has purged contempt and whether to impose sanctions or other remedial measures until the second special session has concluded.

Therefore, unless the Court orders otherwise, the State will respond to the September 11, 2014, Order to file "a memorandum explaining why sanctions or other remedial measures should not be imposed" by filing an updated memorandum after the second special session adjourns.

¹ See www.governor.wa.gov/sites/default/files/proclamations/proc_15-09.pdf.

IV. CONCLUSION

Because the Governor has called the Legislature into a second special session beginning May 29, 2015, the State will assume, unless the Court directs otherwise, that (1) the Court will expect the State to file an updated memorandum at the close of the second special session of the 2015 Legislature, and (2) that updated memorandum will be due the day after the second special session adjourns. Consistent with the Court's Orders dated September 11, 2014, and April 30, 2015, the State also will assume, unless the Court directs otherwise, that the required annual progress report is separate from the updated memorandum and will be due in the normal course, as directed in the Court's July 2012, Order. Order, *McCleary v. State*, No. 84362-7, at 2 (Wash. July 18, 2012).

RESPECTFULLY SUBMITTED this 29th day of May 2015.

ROBERT W. FERGUSON

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CERTIFICATE OF SERVICE

I certify that I served a copy of the State of Washington's Memorandum Responding to Order Dated April 30, 2015, via electronic mail and U.S. Mail, postage paid, upon the following:

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

DATED this 29th day of May 2015, at Olympia, Washington.


KRISTIN D. JENSEN
Confidential Secretary

OFFICE RECEPTIONIST, CLERK

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Subject: RE: 84362-7, McCleary v. State of Washington, State's Memorandum

Received 5-29-15

Supreme Court Clerk's Office

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From: Jensen, Kristin (ATG) [mailto:KristinJ@ATG.WA.GOV]
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To: OFFICE RECEPTIONIST, CLERK
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Subject: 84362-7, McCleary v. State of Washington, State's Memorandum

Dear Clerk and Counsel:

Attached for filing in the above referenced case, please find the State of Washington's Memorandum Responding to Order Dated April 30, 2015.

Respectfully,
Kristin
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