

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

MATTHEW & STEPHANIE) No. 84362-7
McCLEARY, et al,)
Respondents/Cross-Appellants,)
) MOTION FOR CLARIFICATION
v.) OF RULING
)
STATE OF WASHINGTON,)
Appellant/Cross-Respondent.)
_____)

I. IDENTITY OF PARTY

COMES NOW *Amicus Curiae* WASHINGTON'S PARAMOUNT DUTY ("WPD"), a Washington Nonprofit Corporation and 501(c)(4) organization, by and through counsel *pro bono*, Summer Stinson, No. 40059, and Kathryn A. Russell Selk, No. 23879, and upon all the files, records and proceedings herein, moves the Court for the relief indicated herein.

II. STATEMENT OF RELIEF SOUGHT

Pursuant to RAP Title 17, RAP 1.2(a), RAP 18.8 and RAP 10.6(a), WPD respectfully asks this Court to clarify its Order of October 6, 2016.

III. IDENTITY OF PARTY

Washington's Paramount Duty (WPD) is a grassroots, non-profit advocacy organization with a single mission: to compel Washington to amply fund basic education and swiftly fulfill its constitutional paramount duty. WPD formed in September 2015 in response to Washington's chronic underfunding of basic education, the decisions of this Court in this case and the State's ongoing

contempt. The group consists primarily of parents, some of whom are also legislators or educators. WPD has previously requested and been granted status as *amicus curiae* in this matter and has filed two pleadings pursuant to that status.

IV. FACTS RELEVANT TO MOTION

On January 1, 2018, the “levy lid” extension will sunset. *See* Laws of 2010, ch. 237, §§ 8, 9, 10 (SHB 2893). This date is commonly called the “levy cliff.” The News Tribune, ‘*Levy cliff*’ looms over Legislature’s education funding debate, (Jan. 10, 2016), available at <http://www.thenewstribune.com/news/politics-government/article54019170.html>.

The levy cliff will occur on January 1, 2018, when the State’s temporary increase in the levy lid and Local Effort Assistance (levy equalization) for local school districts expires. RCW 84.52.0531(4), (8). The temporary levy lid lift allowed many school districts to raise up to 28 percent of the total the district received from state and federal allocations. SHB 2893. The school districts were able to generate this 28 percent from local levy money. *See* SHB 2893. Likewise, the state funding for levy equalization was raised by two percent. *See* SHB 2893.

On January 1, 2018, when the temporary levy lid and levy equalization both expire, school districts will be capped at generating only 24 percent from the local levy authority. SHB 2893. Therefore, the levy cliff will reduce the total amount of money school districts can collect from levies on local property values. *See* SHB 2893. School districts that currently collect more than 24 percent in

levies will have their budgets decreased. *See* SHB 2893.

The impact of the “levy cliff” is occurring right now. In the Olympia School District, the district will have to cut its annual budget of \$110 million by 6 percent. The Olympian, *School districts plan for cuts due to Legislature’s inaction on ‘levy cliff,’* (April 9, 2016), available at <http://www.theolympian.com/news/politics-government/article70974347.html>. In the Bethel school district, “Bethel officials will have to cut \$10.2 million from the school district’s 2017-18 budget.” The News Tribune, *‘Levy cliff’ looms over Legislature’s education funding debate*. Overall, the levy cliff “threatens about \$500 million per year in funding for the state’s 295 school districts.” The Olympian, *School districts plan for cuts due to Legislature’s inaction on ‘levy cliff.’* School districts budget based on the school year, not on the calendar year. *Id.* (“Most school districts need to start planning their budgets in January or earlier to be ready for the 2017-18 school year, officials said.”).

Under this Court’s October 6 Order, “the State has until September 1, 2018, to fully implement its program of basic education, and that the remaining details of that program, including funding sources and the necessary appropriations for the 2017-19 biennium, are to be in place by final adjournment of the 2017 legislative session.” Order (Oct. 6, 2016) at 13. Although the sources of funding must be identified during the 2017 legislative session, the State is not required to amply fund basic education by funding Laws of 2009, chapter 548

(ESHB 2261), until September 1, 2018. *Id.*

WPD discussed the effect of the levy cliff statute in its briefing, WPD Amicus (Aug. 22, 2016) at 7, 9. This Court’s Order did not address that issue. *See generally*, Order (Oct. 6, 2016).

The Order relied on the belief that compliance with Laws of 2016, ch. 3 (E2SSB 6195) would be sufficient to fully fund education as constitutionally required. *Id.*

E2SSB 6195 provides in relevant part that the levy lid and levy equalization issues should be considered by the blue-ribbon panel and that some action “shall be taken” to eliminate dependency on local levies, not that any action must be taken to ensure these draconian cuts do not occur. *See* E2SSB 6195 (“[l]egislative action shall be taken by the end of the 2017 session to eliminate school district dependency on local levies for implementation of the state’s program of basic education”).

IV. ARGUMENT IN SUPPORT OF CLARIFICATION

IN THE INTERESTS OF JUSTICE AND BASED ON ITS INDEPENDENT DUTIES UNDER ARTICLE 9, §1, THIS COURT SHOULD CLARIFY WHETHER THE STATE MUST PREVENT THE “LEVY CLIFF” FROM TAKING EFFECT JANUARY 1, 2018, IN ORDER TO ENSURE IT MEETS THE REQUIREMENT OF “STEADY AND MEASURABLE PROGRESS”

Under RAP 1.2, this Court has the authority to take steps necessary to ensure the fair and orderly process of a case, and to even waive the provisions of

the Rules in order to serve “the ends of justice.” The focus of the Court’s efforts is to ensure a decision on the merits, rather than one which elevates form over function. *State v. Aho*, 137 Wn.2d 736, 740, 975 P.2d 512 (1999).

Amicus WPD is asking the Court to clarify its October 6, 2016 ruling, because it is unclear whether the requirement in that Order that the State “demonstrate steady and measurable progress” requires the Legislature to eliminate its current scheduled automatic reduction in public education funding set to occur January 1, 2018.

When this Court retained jurisdiction earlier in this case, it did so in part based on concerns over cuts to public education, made at the same time the State promised the intent to fully fund:

Recent cuts to K–12 funding confirm that too much deference may set the stage for another major lawsuit challenging the legislature’s failure to adhere to its own implementation schedule. . . . The legislature’s failure to fund promised reforms perpetuates the \$500 million biennial shortfall in MSOC allocations, requiring school districts to continue to rely on levy funding for basic education costs. Schools will likewise be forced to turn to levy funding to cushion the budget’s 1.9 percent cut to teacher salaries and 3 percent cut to administrator salaries.

McCleary v. State, 173 Wn.2d 477, 544, 269 P.3d 277 (2012). In 2012, this Court ordered that the State’s “progress must be both ‘real and measurable’ and must be designed to achieve “full compliance with article IX, section 1 by 2018.” Order (Dec. 20, 2012) at 1 (citing Order (July 18, 2012) at 3).

In its September 11, 2014 contempt order, this Court cited its December

20, 2012 Court Order and ruled:

That the State is in contempt of court for violating the court's order dated January 9, 2014. The State failed to submit by April 30, 2014 a complete plan for fully implementing its program of basic education for each school year between now and the 2017-18 school year.

Order (Sept. 11, 2014) at 4. Another two years after that, this Court found the State in continuing contempt for having failed to “demonstrate steady and measurable progress and to provide a complete plan” for full funding of public education in this state in order to comply with its Article 9, § 1 duties. Order (Oct. 6, 2016) at 11; *see also id.* at 13. The Court continued imposition of sanctions, holding that “[t]he monetary sanction of \$100,000 per day shall remain in place and continue to accrue until the State purges its contempt by adopting a complete legislative plan demonstrating how it will fully comply with article IX, section 1 of the Washington Constitution by September 1, 2018. *Id.* at 13.

The levy cliff will occur on January 1, 2018, when the State’s temporary increase in the levy lid and levy equalization for local school districts expires. RCW 84.52.0531(4), (8); SHB 2893. The temporary levy lid lift allowed many school districts to raise up to 28 percent of the total the district received from state and federal allocations. SHB 2893. The school districts were able to generate this 28 percent from local levy money. *See* SHB 2893. Likewise, the state funding for levy equalization was raised by two percent. *See* SHB 2893.

However, on January 1, 2018, the temporary levy lid and levy equalization

both expire. SHB 2893. School districts will be capped at generating only 24 percent from the local levy authority. SHB 2893. Therefore, the levy cliff will reduce the total amount of money school districts can collect from levies on local property values. *See* SHB 2893. School districts that currently collect more than 24 percent in levies will have their budgets decreased. *See* SHB 2893. The final bill report for E2SSB 6195 states that 205 of the 295 school districts in the state are currently at 28 percent and the other 90 school districts exceed 28 percent.

E2SSB 6195 Final Bill Report, *available at*

<http://lawfilesexternal.wa.gov/biennium/2015->

[16/Pdf/Bill%20Reports/Senate/6195-S2.E%20SBR%20FBR%2016%20E1.pdf](http://lawfilesexternal.wa.gov/biennium/2015-16/Pdf/Bill%20Reports/Senate/6195-S2.E%20SBR%20FBR%2016%20E1.pdf).

In its 2016 post-session report to this Court, the Legislature addressed the levy cliff by promising that if the Legislature chooses to not “meet its obligation to provide state funding for the competitive compensation and eliminating dependency on local levies” then the Legislature must “introduce legislation . . . with the objective of enacting” an extension to the levy cliff by April 30, 2017. Leg. Report (May 18, 2016) at 21. However, E2SSB 6195 does not explicitly state a requirement to introduce legislation to further extend the levy cliff or LEA adjustments so desperately needed by the public schools just to keep the inadequate funding level they already suffer. *See generally*, E2SSB 6195.

The hard reality is that *even if* the Legislature enacts legislation by the end of the 2017 legislative session allowing the State to meet its obligations to amply

fund basic education by September 1, 2018, the levy cliff means that many school districts' budgets will be reduced by millions of dollars from January 1, 2018 until September 1, 2018. *See e.g., The Olympian, School districts plan for cuts due to Legislature's inaction on "levy cliff."*

Specifically, the levy cliff "threatens about \$500 million per year in funding for the state's 295 school districts." *Id.* Moreover, the problem with this timing is exacerbated because, as explained above school, districts budget based on the school year, and not on the calendar year. As described above, many school districts will have to cut millions from their budgets. Just a few examples are:

- "In the Tacoma School District, the loss would be about \$26 million, Superintendent Carla Santorno told The News Tribune editorial board." The News Tribune, *Don't let schools go over levy cliff*, (Feb. 18, 2016), available at <http://www.thenewstribune.com/opinion/editorials/article61187607.html>.
- "Bethel Superintendent Tom Seigel says his district would be out \$10.2 million—forcing the district to send out 114 pink slips, mostly to recently hired teachers." *Id.*

Across the state, schools already suffering from years of deprivation of resources are having to plan to notify teachers, librarians, and school nurses in May 2017 "that they might not have their contract renewed." The Olympian, *'Levy cliff' should be more slippery for lawmakers* (Apr. 16, 2016), available at <http://www.theolympian.com/opinion/editorials/article71962587.html>. In many districts, these cuts will likely require numerous educator and staff layoffs:

In 2017-18, the levy-cliff cuts in a district like Olympia will be large—equivalent to 50 staff positions. It's equal to about 55 jobs in the following year. In the larger North Thurston Public Schools, the impact is equivalent to 100 positions.

Id. This Court's most recent Order declared, as follows:

[I]n E2SSB 6195, the legislature committed itself to *enacting* a fully complying program by the end of the 2017 session. This court has never purported to alter the compliance deadline. We conclude, based on the relevant legislation, that the State has until September 1, 2018, to fully implement its program of basic education, and that the remaining details of that program, including funding sources and the necessary appropriations for the 2017-19 biennium, are to be in place by final adjournment of the 2017 legislative session.

Order (Oct. 6, 2016) at 12-13 (emphasis added).

The local levy revenues and levy equalization amounts do not suffice for the State amply funding basic education. As this Court ruled in 2012, “[t]he constitution . . . requires the State to make ample provision for funding a basic education ‘by means of dependable and regular tax sources.’” *McCleary*, 173 Wn.2d at 486 (internal citations omitted). Essentially, the issue is that, with the automatic levy cliff scheduled to take effect, the patient (the public school system) will be off life support (the local levies) before the new heart (regular and dependable State tax sources) is available for surgery.

Thus, WPD is asking the Court to clarify whether the automatic elimination of amount the levy lid extension and the levy equalization raise for education funding, which will go into effect unless further action is taken, must be addressed in order for the Legislature to “demonstrate steady and measurable

progress and to provide a complete plan.” *Id.* at 11. As explained above, even if the Legislature fulfills its obligations under the constitution and this Court’s orders to identify appropriations in 2017, the levy cliff—created by the Legislature—will automatically go into effect *before* the projected funding and resolution date of September 1, 2018.

This Court’s rulings in this case have been consistent in condemning the existing unconstitutional conditions caused by the years of underfunding our state’s public schools. *See generally e.g.*, Order (Oct. 6, 2016). This request for clarification is also supported by this Court’s ruling and reasoning retaining jurisdiction over the *McCleary* case in 2012 where the Court explained that school districts’ reliance on levies to make up for the State’s chronic underfunding is understandable. *See McCleary*, 173 Wn.2d at 544 (“Schools will likewise be forced to turn to levy funding to cushion the budget’s 1.9 percent cut to teacher salaries and 3 percent cut to administrator salaries”).

Without clarification, the Court’s Order appears to approve *worsening* the emergency situation across the state—an effect already causing significant harm to children as districts without sufficient resources are now being forced to *cut* effective September 1, 2017. *See e.g.*, The Olympian, *School districts plan for cuts due to Legislature’s inaction on ‘levy cliff.’* This Court has already found that the conditions existing in our schools and the funding system violate the fundamental rights of our more than 1 million public school kids. *See e.g.*,

McCleary, 173 Wn.2d at 483-84, 532-37. Thus, this Court should clarify that the Legislature must take action to eliminate the current automatic reduction in school funding options needed to keep the lights on and doors open across the state until full funding of public education occurs according to the Legislature, on September 1, 2018.

VII. CONCLUSION

For the reasons stated above this Court should clarify its October 6, 2016, ruling, because it is unclear whether the requirement that the State “demonstrate steady and measurable progress” requires the Legislature to retreat from its current automatic reduction in public education funding set to become effective on January 1, 2018, and which is already causing increasing reductions in the already inadequate funding supporting our public school system.

RESPECTFULLY SUBMITTED this 7th day of November, 2016.

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DECLARATION OF SERVICE BY EMAIL:

The undersigned hereby declares under penalty of perjury under the laws of the State of Washington that she transmitted a true and correct copy of the attached Motion to the parties via electronic mail based on previous agreement as follows:

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DATED this 7th day of November, 2016.

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