No. 84362-7

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Defendant/Appellant,

v.

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

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

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

Plaintiffs/Respondents.

PLAINTIFF/RESPONDENTS' ANSWER TO AMICUS BRIEF OF SUPERINTENDENT OF PUBLIC INSTRUCTION

Thomas F. Ahearne, WSBA No. 14844
Christopher G. Emch, WSBA No. 26457
Adrian Urquhart Winder, WSBA No. 38071
Kelly A. Lennox, WSBA No. 39583
Lee R. Marchisio, WSBA No. 45351
Foster Pepper PLLC
1111 Third Avenue, suite 3400
Seattle, WA 98101-3299
Telephone: (206) 447-8934/447-4400
Telefax: (206) 749-1902/447-9700
E-mail: ahearne@foster.com
Attorneys for Plaintiffs/Respondents

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I. INTRODUCTION

The Superintendent of Public Instruction ("SPI") filed an amicus brief ("SPI amicus") to give this Court "the Superintendent's point of view." SPI amicus at 2.

This is plaintiffs' Answer, which very briefly responds to seven of those points of view.[1]

II. DISCUSSION

1. The Superintendent's "Levy Reform" Point.

Under the heading of "Levy Reform", amicus SPI notes the legislature "has done nothing to address school districts' reliance on special levies to fund basic education." SPI amicus at 11.

To keep this point in focus, plaintiffs note that the only reform which addresses a district's need to rely on local levies to fund basic education is for the State to provide that district ample funding so it does not need local levies to fund basic education.

The evidence at trial consistently reiterated that even when State, federal, and local funding are all combined, school districts still lack the level of resources necessary to provide all children a realistic and effective

[1] *Plaintiffs note two apparent wording mistakes in the SPI brief: (1) since ESHB 2261 was enacted before trial, the paragraph on page 3 that begins "After the trial court ruled..." apparently should instead say "Before the trial court ruled...", and (2) since the State's class size reduction funding was directed to K-3, the reference in footnote 1 on page 4 to "K through 12" apparently should instead say "K through 3".*

opportunity to achieve the academic standards set by our State.[2] Any "levy reform" which simply changes the name of a dollar from "local levy dollar" to "State funding dollar" does nothing to change that combined lack of ample funding.

The type of "levy reform" which makes the State's funding comply with Article IX, §1 is reform that amply increases State funding so existing local levies are freed up to fund what local voters are told they are passing those levies to pay for when they vote for them – namely, enhancements above the basic education that Article IX, §1 requires the State to amply fund. A name-change shell game doesn't cure the constitutional violation in this case.

2. The Superintendent's "Equity" Point.

Amicus SPI notes that the above "levy reform" needed to provide ample funding under Article IX, §1 "is also required as a matter of equity." SPI amicus at 13.

To help avoid a distracting trip down a "uniformity" rabbit trail, plaintiffs note the significance of the Superintendent's basing his equity point on the "ample" mandate in **§1** of Article IX. This case does not –

[2] *E.g., RP 261:8-262:10, 263:10-264:20, 269:8-271:9 (Chimacum School District Superintendent Mike Blair); RP 775:16-777:19, 781:10-782:19 (Colville School District Superintendent Ken Emmil); RP 1861:21-1863:25, 1867:22-1868:22 (Yakima School District Superintendent Ben Soria); RP 3699:11-3700:9, 3702:24-3704:10, 3707:4-17 (Edmonds School District Superintendent Nick Brossoit).*

and never did – litigate or address the "uniformity" language in **§2** of Article IX.

Indeed, the legislature could easily provide for a uniform system under §2 by just underfunding all K-12 public schools equally. But that's not what this case is about. It's about the State's failure to amply fund its K-12 schools.

3. The Superintendent's "Opportunity" Point.

Amicus SPI notes the Article IX, §1 requirement that all students have an equal opportunity for successful achievement, without distinction on account of race, color, or caste. SPI amicus at 14.

With respect to the "opportunity" required under Article IX, §1, plaintiffs note that for an opportunity to be meaningful, it has to be a realistic and effective opportunity rather than just a hypothetical or theoretical one. The Final Judgment's declaratory ruling therefore included "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 the knowledge, skill, or substantive content of the "education" mandated by Article IX, §1. Final Judgment at ¶231(a) (CP 2929); *accord*, the repeated trial testimony that

for an opportunity to be meaningful, it has to be a "realistic and effective opportunity" rather than merely a theoretical one.[3]

4. The Superintendent's "Professional Development" Point.

Amicus SPI notes that addressing the requirements of ESHB 2261 and SHB 2776 includes (among other things) the "funding of professional development for teachers". SPI amicus at 15-16.

With respect to this need to fund professional development days to train and update teachers on new standards, curriculum, teaching skills, etc. (a/k/a "Learning Improvement Days" or "LIDs"), plaintiffs note that the need for State funding of 10 professional development or LID days has been a repeated conclusion in State studies of the reforms needed to comply with Article IX, §1.[4]

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[3] *E.g., RP 3630:13-18, 3700:10-3702:1, 3307:15-3309:23 (Edmonds School District Superintendent Nick Brossoit); RP 1202:14-17 (State Rep. Skip Priest, member of State's Washington Learns commission and State's Joint Task Force on Basic Education Finance); RP 1073:22-1074:2 (former State Superintendent of Public Instruction Judith Billings, member of Governor's Council on Education Reform and Funding); CP 4276:23-4377:3 (State Sen. Fred Jarrett, member of State's Joint Task Force on Basic Education Finance); RP 1568:13-15 (Dan Grimm, member of State's The Paramount Duty committee and Chair of State's Joint Task Force on Basic Education Finance).*

[4] *E.g., Tr.Ex.360 at p.14 (report of Governor's Council on Education Reform and Funding); RP 979:24-980:20 ("[T]he recommendation was that there be 10 days for teachers to learn and prepare how to operate in this new system, the kind of basic knowledge they needed. As it ended up, only four days were funded and that then was cut back to two days when money got tight.") (former Superintendent of Public Instruction Judith Billings, member of Governor's Council on Education Reform and Funding); Tr.Ex.125 at pp.58-59 (The Paramount Duty study); RP 1571:7-1572:3 (Dan Grimm, member of State's The Paramount Duty committee and Chair of State's Joint Task Force on Basic Education Finance); Tr.Ex.124 at p.10 (Final Report of the Joint Task Force on Basic Education Finance); accord, McCleary, 173 Wn.2d at 505.*

5. The Superintendent's "Delay The Deadline" Option.

The SPI amicus notes at one point that the Superintendent's "17-point plan" floats the option of delaying the 2017-2018 school year deadline previously promised by the State to 2020-2021 instead because of staffing and facilities challenges now at hand due to the State's years of delay complying with the court rulings in this case. SPI amicus at 16. Plaintiffs note, however, that the SPI brief's CONCLUSION omits that additional delay idea. SPI amicus at 20.

Plaintiffs also note that the court order in this case over 2½ years ago unequivocally told the State (and Washington schoolchildren) that "Year 2018 remains a firm deadline for full constitutional compliance." December 2012 Order at 2 (underlines added). The State's opting to sit on its hands for over 2½ years is not a legitimate reason to now condone the State's violating Washington children's constitutional rights even longer.

6. The Superintendent's "Education Rationale" Point.

Amicus SPI notes that if the legislature decides current grade 9-12 class sizes are adequate, then the legislature must "set out an education related rationale behind the decision." SPI amicus at 17.

Plaintiffs note the significance of that point with respect to the 2015 legislature's retroactive decision to eliminate the grade 4-12 class size reductions required by statute when it enacted the 2015-2017 budget –

for the State cannot credibly deny that its reason for retroactively eliminating those class size reductions was to eliminate a $2 billion shortfall in the budget it had enacted.

7. The Superintendent's "Special Session" Point.

Amicus SPI explains "why it is important to have a special session of the Legislature this year that can focus exclusively on implementing ESHB 2261, addressing inadequate staff, compensation, and local levies." SPI amicus at 18.

Plaintiffs note that a special session focused solely on complying with this Court's July 2012 and January 2014 Orders would be consistent with the *Thigpen* remedy discussed in Plaintiffs' 2015 Post-Budget Filing at 46-50.

III. CONCLUSION

Plaintiffs have limited this Answer to be brief and to the point. In doing so, however, they do not intend to give any impression that the above points are of little importance in this case. Each point is significant.

RESPECTFULLY SUBMITTED this 30th day of July, 2015.

Foster Pepper PLLC

s/ Thomas F. Ahearne

Thomas F. Ahearne, WSBA No. 14844
Christopher G. Emch, WSBA No. 26457
Adrian Urquhart Winder, WSBA No. 38071
Kelly A. Lennox, WSBA No. 39583
Lee R. Marchisio, WSBA No. 45351
Attorneys for Plaintiffs McCleary Family, Venema Family, and Network for Excellence in Washington Schools (NEWS)

DECLARATION OF SERVICE

Adrian Urquhart Winder declares:

I am a citizen of the United States of America and a resident of the State of Washington. I am over the age of twenty-one years. I am not a party to this action, and I am competent to be a witness herein. On Thursday, July 30, 2015, I caused PLAINTIFF/RESPONDENTS' ANSWER TO AMICUS BRIEF OF SUPERINTENDENT OF PUBLIC INSTRUCTION to be served as follows:

William G. Clark Office of the Attorney General 800 Fifth Avenue, Suite 2000 Seattle, WA 98104-3188 billc2@atg.wa.gov *Defendant State of Washington*	☒ Via Electronic Mail (cc of the same email sent to the Supreme Court for the filing) ☒ Via U.S. First Class Mail
David A. Stolier, Sr. Alan D. Copsey Office of the Attorney General 1125 Washington Street SE Olympia, WA 98504-0100 daves@atg.wa.gov alanc@atg.wa.gov *Defendant State of Washington*	☒ Via Electronic Mail (cc of the same email sent to the Supreme Court for the filing) ☒ Via U.S. First Class Mail
William B. Collins Special Assistant Attorney General 3905 Lakehills Drive SE Olympia, WA 98501 wbcollins@comcast.net *Amicus Curiae Superintendent of Public Instruction Randy Dorn*	☒ Via Electronic Mail (cc of the same email sent to the Supreme Court for the filing) ☒ Via U.S. First Class Mail

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

EXECUTED in Seattle, Washington, this 30th day of July, 2015.

s/ Adrian Urquhart Winder
Adrian Urquhart Winder