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 THE STATE'S AUGUST 22, 2016 FILING

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I. INTRODUCTION

Plaintiffs agree with the first sentence in the State's August 22, 2016 filing – i.e., "In 2014, the Court held the State in contempt for failing *to submit a complete plan* for meeting the Court's 2018 deadline for constitutional compliance, not for failing to meet the 2018 deadline that had not yet arrived."[1]

But as the following pages explain, plaintiffs do not agree that the State's response to the questions asked in this Court's July 14 Order establishes the State even has the type of complete plan ordered by this Court – never mind that the State has submitted one.

II. THE COURT'S FOUR GENERAL QUESTIONS

This Court's July 14 Order prefaced its questions with the following explanation:

> Before making a decision on whether the State is in compliance, we will hear from the parties on precisely what the legislature has accomplished, what remains to be accomplished, and what significance we should attach to E2SSB 6195. The 2017 legislative session presents the last opportunity for complying with the State's paramount duty under article IX, section 1 by 2018. What remains to be done to achieve compliance is undeniably huge, but it is not undefinable. At this juncture, seven years since enactment of ESHB 2261 and six years since enactment of SHB 2776, the State can certainly set out for the court and the people of Washington the detailed steps it must take to accomplish its goals by the end of the next legislative session. *[July 2016 Order at pp.1-2.]*

[1] *State Of Washington's August 22 Brief Responding To Order Dated July 14, 2016.*

This Court's July 14 Order accordingly directed the parties to address four general questions, and be prepared to address several follow-up questions relating to those four:

> Therefore, by unanimous vote, the court directs the parties to appear before the court on September 7, 2016, for oral argument to address (1) what remains to be done to timely achieve constitutional compliance, (2) how much it is expected to cost, (3) how the State intends to fund it, and (4) what significance, if any, the court should attach to E2SSB 6195 in determining compliance with the court's order to provide a complete plan. A decision on whether to dismiss the contempt order or to continue sanctions will be determined by order following the hearing. The parties should be prepared to address these issues in addition to the other questions enumerated in this order. *[July 2016 Order at p.2.]*

Plaintiffs address the four general questions below. Part III of this filing then addresses the other questions enumerated by the Court.

1. What remains to be done to timely achieve constitutional compliance?

Answering the Court's first general question requires an answer to three questions: (a) what does constitutional compliance require? (b) by when must full compliance be done to be timely? (c) what remains to be done to achieve that compliance?

(a) What does constitutional compliance require?

The State's August 22 filing did not address this foundation for the Court's first question. But this Court's 2012 rulings did:

- "Article IX, section 1 confers on children in Washington a positive constitutional right to an amply funded education",

- "the State must amply provide for the education of all Washington children as the State's first and highest priority before any other State programs or operations",
- "ample" means "considerably more than just adequate",
- the State is violating this constitutional mandate, and
- 2018 is the "firm deadline for full constitutional compliance."

See Discussion Part III.B below (underlines added).

That's Washington law. And in a constitutional democracy, everyone – even lawmakers – must obey the law.

(b) By when must full compliance be done to be timely?

With respect to the "2018" compliance deadline, this Court's July 2016 Order emphasized that "The 2017 legislative session presents the last opportunity for complying with the State's paramount duty under article IX, section 1 by 2018."[2]

The **2017-2018 school year** is the one after that 2017 legislative session. It is also the one funded by the State's "FY 2018" budget (the July 1, 2017 – June 30, 2018 fiscal year). And the one in which the K-12 "Class of 2018" graduates (the 2017-2018 school year seniors). And the deadline repeatedly specified for the compliance plan ordered by this Court ("a complete plan for fully implementing its [the State's] program

[2] *July 14, 2016 Order at pp.1-2.*

of basic education for each school year between now and the 2017-18 school year").[3]

The State's most recent filing nonetheless asserts "2018" means the 2018-2019 school year instead.[4] The State's request for an additional year of delay is understandable given the huge task that its longstanding procrastination has punted to the 2017 legislature. But as Part III.D below explains, the State's claim that this Court's compliance plan Orders set a 2018-2019 school year deadline is not correct.

(c) What remains to be done to achieve timely constitutional compliance?

The State's most recent filing takes the position that not much remains to be done because the State is now fully funding all but two of the State's basic education program components – namely: (1) "complete" the full funding of K-3 class size reduction in the 2017-2018 school year, and (2) "fully fund" the compensation necessary to attract and retain school personnel.[5]

But the State's "full funding" claims are based on the State funding its *funding formulas* – not on its funding the actual cost of implementing

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[3] *January 9, 2014 Order at p.8; again in June 8, 2015 Order at pp.2-3.*

[4] *State's August 22, 2016 filing at pp.5-8.*

[5] *State's August 22, 2016 filing at pp.33-34, accord, pp.2-3 ("fully funding" all but K-3 and compensation, as long as maintenance level funding for the other components' existing State funding formulas is appropriated).*

its basic education program. That's important because this Court's January 2012 decision held that the State cannot declare "full funding" for any component of the State's basic education program if the State's funding formula leaves part of a school's actual costs to implement that component unfunded. That's fatal to the State's "full funding" claims because, as detailed in Part III.C below, the State's *funding formulas* on their face continue to leave types of actual implementation costs unfunded.

Although some of the State's funding formulas are meaningfully better today than they were in the past, that does not change the fact that partial funding still is not full funding. This Court's July 2016 Order is accordingly correct: "What remains to be done to achieve compliance is undeniably huge".[6]

2. How much is the State's timely constitutional compliance expected to cost?

As noted in Part III.E below, this question is no surprise. The February 2010 Final Judgment ordered the State to determine its answer to this question, and that order remained binding on the State until it was vacated in January 2012.[7] Moreover, the State assured this Court in 2010 and 2011 that it did not need any more studies to determine its answer because the State was already well on its way to finalizing that

[6] *July 14, 2016 Order at p.2.*
[7] *Plaintiffs' **2012** Post-Budget Filing at p.40 and nn.110 & 111.*

determination. The State also had to calculate the answer to this question to comply with the series of ensuing court orders requiring the State to produce its complete year-by-year phase in plan for fully funding all the components of the State's basic education program by the 2017-2018 school year. And it is now less than five months before the 2017 session that this Court's most recent Order emphasized "presents the last opportunity for complying with the State's paramount duty under article IX, section 1 by 2018."[8]

The State's August 22, 2016 filing nonetheless fails to answer this long pending "how much will it cost" question.

With respect to amply funding the most expensive component of its basic education program (the compensation required to attract and retain competent personnel), the State claims it doesn't know the answer. So this year it created a task force to give the 2017 legislature some sort of numbers at the last minute when its regular session starts.

And with respect to amply funding the actual cost of all the other components, the State does not give an actual cost answer. It instead points to the partial funding amounts provided by its funding formulas.

[8] *July 14, 2016 Order at pp.1-2.*

In short, the State's most recent filing does not address the actual cost of amply funding full implementation of the State's basic education program in compliance with Article IX, section 1. Part III.C below.

3. How does the State intend to fund its timely constitutional compliance?

Part III.E below explains why this question is similarly no surprise: The February 2010 Final Judgment ordered the State to answer this question. That court order remained binding on the State until it was vacated in January 2012. The State assured this Court in 2010 and again in 2011 that it was already well on its way to answering this question. And the State assured this Court in 2014 that the State's 2015 legislative session was going to focus on securing the revenue needed to comply with the ample funding mandate of Article IX, section 1.

The State's August 22, 2016 filing nonetheless fails to answer this long pending "how will you pay for it" question. That's because, despite all the advance warnings given to the State and the State's assurances to this Court in response, the State still has not figured out how it is going to fund the actual cost of full constitutional compliance in this case.

4. Does E2SSB 6195 comply with the court's order to provide a complete plan?

The court orders in this case have been clear. To ensure the State did not make full constitutional compliance impractical by putting too much off until the last year before the deadline, this Court has for the past four years been repeatedly ordering the State to produce the State's complete year-by-year plan for phasing in the State's ample funding of each component of its basic education program. Part III.F below.

E2SSB 6195 created a task force to come up with possible ideas for the 2017 legislature to consider. That's an exercise which might come up with ideas for some sort of last-minute enactment. One which might provide for amply funding all the State's K-12 public schools by the firm deadline for full constitutional compliance in this case.

But this Court did not order the State to start an exercise in 2016 to try to come up with possible ideas for a last-minute enactment in 2017. This Court has repeatedly been ordering the State to produce its complete year-by-year phase in plan making steady, real, and measurable progress towards full compliance with Section 1's ample funding mandate by the firm deadline in this case. E2SSB 6195's punt to come up with possible ideas for trying to do something at the last minute is not the complete

year-by-year phase in plan this Court has been repeatedly ordering the State to submit since 2012. Part III.F below.

III. DISCUSSION

A. Underlying Meaning of "Basic Education" and "Basic Education Program"

The court rulings in this case distinguish between the meaning of "education" in Section 1 ("***basic education***") and the State's program to provide children a realistic and effective opportunity to receive that education ("***basic education program***").[9]

With respect to substantive content, the court rulings in this case have held the term "basic education" includes the knowledge and skills specified in ESHB 1209 (Laws of 1993, currently codified as RCW 28A.150.210).[10] For example, the basic knowledge and skills to:

- ✓ "know and apply core concepts and principles of...civics and history";
- ✓ "know and apply core concepts and principles of mathematics";
- ✓ "think ... logically";
- ✓ "understand the importance of work and finance"; and
- ✓ "read with comprehension".

RCW 28A.150.210(2), (2), (3), (4), & (1) (quoted in full at *McCleary*, 173 Wn.2d at 523, n.20).

[9] *See Plaintiffs' **2016** Post-Budget Filing at pp.6-7 and nn.4-7.*
[10] *See Plaintiffs' **2016** Post-Budget Filing at pp.6-7 and nn.4-7.*

Plaintiffs note these five substantive elements of a basic education because, as the following discussion illustrates, they directly relate to the insufficiency of the State's most recent filing.

B. Basic Civics & History: Lawmakers Are Not Above The Law
["know and apply core concepts and principles of … civics and history" RCW 28A.150.210(2)]

Plaintiffs recognize that one reason many elected officials have been disregarding the urgency of complying with the court rulings in this case is their insistence that the judicial branch has no business telling members of other branches what to do.

As a matter of basic civics and history, those elected officials are wrong. Constitutional democracies are governed by the rule of law. In a constitutional democracy, elected officials must comply with constitutional rights, civil rights, and court orders. Even if compliance is not politically popular or convenient. And it is the judicial branch's duty to uphold the rule of law when elected officials find it more politically popular or convenient not to.

1. Civics

This Court celebrated the 800th anniversary of the Magna Carta last year because that document established the bedrock principle that no person is above the law – even royalty sitting at the top of government.[11]

That same principle applies here. No person is above the law – even high ranking elected officials in State government.

And with respect to education funding, the law each and every one of our current lawmakers swore to uphold when taking office was unequivocally clear before they took that oath:

- "Article IX, section 1 confers on children in Washington a positive constitutional right to an amply funded education",
- "the State must amply provide for the education of all Washington children as the State's first and highest priority before any other State programs or operations",
- "ample" means "considerably more than just adequate",
- the State is violating this constitutional mandate, and
- 2018 is the "firm deadline for full constitutional compliance."

See Plaintiffs' 2016 Post-Budget Filing at pp.6-12 (quoting *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012) and this Court's December 2012 Order at p.2).

In a democracy, constitutional rights matter. They are rights guaranteed to all citizens – regardless of whether they are in the electoral

[11] *See Plaintiffs' **2016** Post-Budget Filing at p.50 & n.95; cf. Plaintiffs' **2014** Answer To Defendant's Response To The Court's Show Cause Order With Errata at pp.34-35 (rule of law in a democracy).*

majority or have political influence with elected officials.[12] And the legal rulings in this case have long reiterated that

- the ample funding right conferred by Section 1 is each Washington child's paramount right under our State Constitution,
- this right to an amply funded K-12 education is a crucial civil right in our democracy, and
- the court orders in this case must be obeyed.

See Plaintiffs' 2016 Post-Budget Filing at pp.6-12 & p.46, n.89; see also 2014 Contempt Order at p.3 ("These orders are not advisory or designed only to get the legislature's 'attention'; the court expects them to be obeyed even though they are directed to a coordinate branch of government. When the orders are not followed, contempt is the lawful and proper means of enforcement in the orderly administration of justice.").[13]

These legal rulings are no surprise to Washington lawmakers. Nor are the repeated Supreme Court orders requiring them to submit the State's complete ample funding phase in plan to ensure full constitutional compliance by the deadline.

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[12] *See Plaintiffs' **2014** Answer To Defendant's Response To The Court's Show Cause Order With Errata at pp.34-35 (rule of law in a democracy).*

[13] *As this Court knows from the plaintiff school district's briefing in the Seattle School District case, the word "Preamble" is is NOT in Article IX, section 1 of the actual Washington State Constitution. It's instead a stylistic heading added by the code reviser. Supreme Court No. 44845, September 29, 1977 Brief Of Respondents at pp.32-33 and that appeal's CP 784. A pdf of the actual handwritten constitution is available on the Secretary of State's website: https://www.sos.wa.gov/legacy/constitution.aspx .*

In short, a core concept and principle of civics in a constitutional democracy is that no government official is above the law. Even lawmakers. As a basic matter of civics, lawmakers must comply with the constitutional rights, civil rights, and court orders established in this case – even when they find compliance politically unpopular or difficult.

2. History

As this Court well knows from the prior briefing in this case, some of the most unfortunate chapters in our democracy have been when the judicial branch stood on the sidelines or looked the other way when elected officials chose to violate the constitutional rights of citizens who were not in the political majority.[14]

This Court likewise knows from this suit's prior briefing that some of the most meaningful chapters in our democracy have been when the judicial branch instead stood up and protected the constitutional rights of citizens who are not in the political majority.[15]

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[14] *See Plaintiffs' **2016** Post-Budget Filing at pp.43-44 & n.88 (re: Korematsu v. United States, 323 U.S. 214 (1944), later proceeding granting writ of coram nobis, 584 F.Supp. 1406 (N.D. Cal. 1984)).*

[15] *See Plaintiffs' **2016** Post-Budget Filing at p.44 & n.89 (re: Brown v. Board of Education, 347 U.S. 483 (1954) & 349 U.S. 294 (1955), reversing Plessy v. Ferguson, 163 U.S. 537 (1896)); Plaintiffs' **2015** Answer To The Amicus Brief Of Mr. Eugster at pp.3-5 (discussing courts' enforcing the constitutional right of children to a desegregated public education after Brown v. Board of Education, 347 U.S. 483 (1954) & 349 U.S. 294 (1955), reversing Plessy v. Ferguson, 163 U.S. 537 (1896)); Plaintiffs' **2014** Post-Budget Filing at pp.38-42 (discussing same).*

Plaintiffs recognize that State government officials historically object when a court orders them to comply with constitutional rights that are expensive to implement or not popular with the majority of voters – e.g., elected officials in Kansas,[16] New Jersey,[17] New York,[18] Alabama,[19] Georgia,[20] Mississippi,[21] South Carolina,[22] Virginia,[23] and Louisiana.[24]

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[16] *E.g., http://www.hdnews.net/news/local/from-m-to-contempt-of-court-what-could-happen-in/article_9a8e8936-7454-56c5-b114-fdca4cd50cc8.html (State Senator Park on defying Kansas Supreme Court's school funding order: "They have one job and one job only. And that is to reason and listen to the evidence and make the opinion. And that's all it is, an opinion. They can't tell us what to do, they can opine and that's the end of their authority."); http://www.kansas.com/news/politics-government/article81056542.html (State Sen. Ostmeyer lamenting "the Legislature should have defied the court back in 2005 when it ruled school funding insufficient"); http://www2.ljworld.com/news/2016/jun/01/kansas-lawmakers-their-own-words-dropping-little-t/ (State Sen. Melcher objecting: "They're going to continue dropping little turds like they have at the appropriate times to do everything that they can to try to distract the Legislature. And for us to play this game with them is just encouraging them to continue engaging in this bad behavior. Eventually we're going to have to stand up to this court and let them know that we are the Legislature. They are not the Legislature. Capitulating with them, I think, is a poor strategy....").*

[17] New York Times*, May 18, 1976, p.71 (quoting State legislators' accusations that the State Supreme Court's school funding rulings were "'overstepping' its jurisdiction and 'usurping the constitutional powers and prerogatives of the Legislature'").*

[18] *1/26/88* Newsday *32, 1988 WLNR 193445 ("'We will continue to fight [against the court's housing desegregation order],' said [Yonkers City] Councilman Henry Spallone, who represents the city's white southeast section. 'There is no surrender.'"); 1/29/88* New York Times *B1, 1988 WLNR 1366153 (councilmember's refusing to comply with Judge Sand's desegregation order saying: "Nuts to you, Judge Sand. You wanna take me in? Come on and try it!"); 8/1/88* Los Angeles Times *1, 1988 WLNR 1866198 (council member declaring: "There is no surrender for me.... This is total war."); 8/2/88* Los Angeles Times *1, 1988 WLNR 1870050 (council members' explaining their defiance of the court's desegregation order: "Am I supposed to simply bow to a judge who would destroy a city?" (council member Spallone); "It's a sad day when a madman federal judge wants to punish elected officials for representing their constituencies as their constituencies demand" (councilmember Longo)).*

[19] *See Plaintiffs' **2014** Post-Budget Filing at p.38 (Governor Wallace's famous speech defying a court's desegregation order, declaring the court order to be an "unwelcomed, unwanted, unwarranted and force induced intrusion upon the campus of the University of Alabama....There has been no legislative action...justifying this intrusion.... I stand here today, as Governor of this sovereign State, and refuse to willingly submit to illegal usurpation of power.... My action does not constitute disobedience to legislative and*

constitutional provisions. It is not defiance -- for defiance sake, but...a call for...a cessation of usurpation and abuses.").

[20] Atlanta Constitution*, June 1, 1955, p.6 (Georgia House of Representatives Speaker Marvin Moate's response to Brown v. Board of Education: "we are going to use all means possible to put it off in Georgia"; Georgia Attorney General Eugene Cook declaring we cannot and will not levy taxes to comply with the Supreme Court's ruling);* Atlanta Constitution*, June 2, 1955, front page (Georgia Attorney General Eugene Cook declaring the court's "psycho-political decision" had "forfeited the last vestige of respect with those who believe in constitutional government might have held for it");* Augusta Chronicle*, June 1, 1955, front page (former Gov. Talmadge insisting that Georgia "will not submit" because it is the "Supreme Court which has departed from the Constitution and the law, not us", and "Under no circumstances will we sacrifice the welfare and best interests of our children to satisfy such an unconstitutional decision of the Supreme Court");* Augusta Chronicle*, June 2, 1955, p.1 (Georgia State Attorney General Eugene Cook insisting the Supreme Court's desegregation ruling was contrary to the law and constitution, and usurped powers of the legislative branch);* Aikin [S.C] Standard & Review*, June 1, 1955, front page (Georgia School Superintendent M.D. Collins' objections that his State can't levy taxes to fund compliance with the Supreme Court's desegregation ruling);* Anniston [Alabama] Star*, June 1, 1955, front page (Gov. Marvin Griffin declaring Georgia's schools will remain segregated notwithstanding what the court says, because "No matter how much the Supreme Court seeks to sugarcoat its bitter pill of tyranny, the people of Georgia and the South will not swallow it.");* Atlanta Constitution*, June 1, 1955, front page ("Gov. Griffin defiantly proclaimed Tuesday that Georgians will not accept the U.S. Supreme Court's desegregation ruling");* Atlanta Constitution*, June 1, 1955, front page (former Gov. Talmadge declaring "The people of Georgia will not comply with the decision for a long, long time");* New Orleans Times-Picayune*, June 1, p.3 (Georgia State School Superintendent M.D. Collins objecting that the State cannot levy taxes to pay for what the Supreme Court ordered);* New Orleans Times-Picayune*, June 1, p.3 (Georgia Gov. Marvin Griffin declaring his State will continue its segregated schools since his State was not a party to the Brown v. Board of Education suit).*

[21] New York Times*, June 3, 1955, p.10 (Mississippi's U.S. Senator John Stennis declaring the Supreme Court Justices had "abandoned their role as judges of the law and organized themselves into a group of social engineers);* Augusta Chronicle*, June 1, 1955, front page (Mississippi's U.S. Senator Eastland calling the Supreme Court a "crowd of racial politicians" and insisting "To resist them is the only answer. We must resist them....").*

[22] Aikin [S.C] Standard & Review*, June 3, 1955, pp.1-2 (Reporting Clarendon County, South Carolina, Superintendent of Education L.B. McCord's reaction that the school board will close the schools rather than submit to the Supreme Court's desegregation ruling);* Aikin [S.C] Standard & Review*, June 2, 1955, p.2 (Greenville, South Carolina News reporting that "in the final analysis better education is the aim of the public school system. To this end, integration of the races in South Carolina is neither feasible nor desirable at this time.").*

[23] Danville [Va.] Bee*, June 1, 1955, p.1 ("political leaders declared flatly they will do nothing");* Danville [Va.] Bee*, June 1, 1955, p.2 (Virginia Governor declines to call a*

Plaintiffs also appreciate that State legislators here in Washington have declared similar objections to the court orders in this case – e.g., responding that this Court can simply pound sand,[25] that legislators will not recognize any contempt ruling,[26] and that the "Washington Supreme Court has gone rogue. It is time for articles of impeachment."[27]

But this Court has repeatedly assured Washington's over 1 million public school children that it will not stand on the sidelines cheering; that it will instead vigilantly enforce Washington children's positive,

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special session, saying he thinks action requires more study); Aikin [S.C] Standard & Review*, June 2, 1955, front page (reporting Prince Edward County Virginia Board of Supervisors' unanimously voting to not approve next fiscal year's budget for school operations as a result of the Supreme Court's desegregation ruling);* New Orleans Times-Picayune*, June 2, p.5 (reporting Prince Edwards County, Virginia Board of Supervisors' unanimous decision to reject school operating budget rather than comply with Supreme Court's desegregation ruling).*

[24] New Orleans Times-Picayune*, June 1, p.2 (Louisiana's U.S. Representative F. Edward Herbert objecting that "once again, politics has superseded the constitution", and reiterating Andrew Jackson's response to a Marshall Court ruling he didn't like: "Justice Marshall has given his decision, now let him enforce it");* New Orleans Times-Picayune*, June 1, p.l (New Orleans school board's unanimous objection that "the education of both races can proceed more effectively under a segregated system").*

[25] *See Plaintiffs' **2014** Post-Budget Filing at p.38, n.113 (State Senator Sen. Baumgartner's widely tweeted "pound sand" response to this Court's Order, available at http://www.seattlemet.com/news-and-profiles/publicola/articles/fizz-for-jan-16-januarytricky-2014).*

[26] *See Plaintiffs' **2014** Post-Budget Filing at p.38, n.113 (several lawmakers' January 17, 2014 letter to the Supreme Court on Washington State Legislature letterhead stating: "After reviewing the court's 'order', we respectfully reject the court's attempt to wrongfully intrude upon the constitutional prerogatives of the legislative branch. ... The court lacks the authority to hold the Legislature in contempt of its [McCleary] decision and we the undersigned will not recognize any such order from the court. ... It is our sincere hope that you will not continue to perpetuate a constitutional crisis.... It is a crisis in which you will not prevail.").*

[27] Tacoma News Tribune*, August 13, 2015 (quoting Washington State Representative Manweller) http://www.thenewstribune.com/news/politics-government/article31008225.html .*

constitutional right to an amply funded K-12 education; and that the 2018 deadline in this case is a firm deadline for the State's full constitutional compliance.[28]

In short, history confirms that a critical role of an independent judicial branch in our democracy is to vigilantly protect citizens' legal rights when officials in the other branches find it politically popular or financially expedient to do otherwise. Which is the case here.

C. Basic Math Concept: Partial ≠ Full

["know and apply core concepts and principles of mathematics" RCW 28A.150.210(2)]

A math teacher would put it this way: $\frac{3}{4}\,x \neq x$. That's the basic math concept of fractions.[29]

This Court's January 2012 decision put it this way: funding a portion of a school district's actual cost is not fully funding that cost.[30] That's Washington law.

The State's Department of Revenue would put it this way: paying a portion of your taxes is not fully paying your taxes. That's basic accounting.

And a lay person would put it this way: partially filling a hole isn't fully filling that hole. That's common sense.

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[28] *See Plaintiffs' **2016** Post-Budget Filing at pp.44-45 & n.89, p.14, pp.6-11.*
[29] *Unless $x = 0$.*
[30] *See Plaintiffs' **2016** Post-Budget Filing at pp.18-19 & n.35, p.23.*

These basic points of math, law, taxes, and common sense lead to the same truth:

Partial ≠ Full.

And as the following pages briefly explain, this basic truth defeats the "full funding" claims asserted in the State's most recent filing.

1. To/From Pupil Transportation

We've been here before in this case:

- This Court's January 2012 decision affirmed that Section 1 requires the State to amply fund pupil transportation.
- That January 2012 decision also held the State cannot declare "full funding" if its funding formula leaves part of a district's actual cost unfunded – noting as one example that "If the State's funding formulas provide only a portion of what it actually costs a school to ... get kids to school..., then the legislature cannot maintain that it is fully funding basic education through its funding formulas."
- The State's transportation funding formula does not fund a school district's actual cost of getting kids to and from school. Instead, it funds the lower of two numbers: (1) that district's costs last year, or (2) the State-wide average cost last year.
- The State has nonetheless repeatedly declared it is "fully funding" each district's transportation costs.

See Plaintiffs' 2016 Post-Budget Filing at pp.22-25 (detailing the above).

The State's most recent filing repeats the same "full funding" declaration.[31] But declaring full funding based on a formula's partial funding does not comply with the above court rulings in this case.

Nor does it make sense. For example, legislators would not say the State "fully funded" this year's legislative pay raise of 11.2% if the State instead paid legislators their lower salary from last year. Nor would legislators from Pend Orielle or Asotin say the State "fully funded" their travel expenses to and from Olympia if the State instead paid only the State-wide average for legislators (most of whom have to travel a much shorter distance).

Knowing and applying the basic math concept of fractions confirms the State's claim to have achieved "full funding" of its school districts' pupil transportation costs is false. Partial ≠ Full.

2. Materials, Supplies, and Operating Costs (MSOCs)

We've also been here before in this case:

- This Court's January 2012 decision affirmed that Section 1 requires the State to amply fund it school districts' Materials, Supplies, and Operating Costs (MSOCs).
- That January 2012 decision also held the State cannot declare "full funding" if its formula leaves part of a district's actual cost unfunded – noting as one example that "If the State's funding formulas provide only a portion of what it actually costs a school to ... keep the lights on, then the legislature

[31] *State's August 22, 2016 filing at pp.9-10 (transportation funding formula fully funded).*

cannot maintain that it is fully funding basic education through its funding formulas."

- That decision (and ensuing court orders) also held that when an earlier snapshot does not correlate to constitutionally ample funding today, fully funding that outdated snapshot is not "full funding".
- The State's MSOC funding formula does not fund a school district's actual materials, supplies, and operating costs today. Instead, it is limited to (1) a snapshot of what districts purchased with the unconstitutional underfunding they had in the 2007-2008 school year, and (2) the State-wide average cost in that old snapshot.
- The State has nonetheless repeatedly declared it is "fully funding" each district's materials, supplies, and operating costs (MSOCs).

See Plaintiffs' 2016 Post-Budget Filing at pp.22-25 (detailing the above).

The State's most recent filing asserts the same "full funding" declaration.[32] But declaring full funding based on a formula limited to partial funding does not comply with the court rulings in this case.

Nor does it make sense. For example, the University of Washington would not say that funding the costs it had in the 2007-2008 school year would "fully fund" its costs today. Nor would the State

[32] *State's August 22, 2016 filing at pp.10-11 (dollars per student funding formula funded). The State's assertion at p.18, n.28 that its MSOC funding formula funds "professional development" is misleading if one reads that assertion to say the MSOC formula funds the staff time and employee compensation costs for professional development. It doesn't. As this Court's January 2012 decision noted, Materials, Supplies, and Operating Costs (MSOCs) is the new name for what used to be called Non-Employee Related Costs (NERCs). The MSOC "professional development" allocation to which the State's filing refers accordingly does not include the employee compensation & benefits costs relating to professional development, but rather materials, supplies, and related costs for professional development. The dollar figures in the MSOC statute the State cites (RCW 28A.150.260(8)) confirm this fact ($18.89 to $24.93 allocation for a district's "professional development" Materials, Supplies, and Operating Costs).*

Department Of Transportation's Eastern Region (based in Spokane) say that funding the State-wide average cost for snow plowing and snow removal would "fully fund" that region's actual snow plowing and snow removal costs.

Knowing and applying the basic math concept of fractions confirms the State's claim to "fully fund" its school districts' materials, supplies, and operating costs (MSOCs) is false. Partial ≠ Full.

3. All-Day Kindergarten and K-3 Class Size Reduction

We've been here before in this case too:

- This Court's January 2012 decision affirmed that Section 1 requires the State to amply fund all-day kindergarten and K-3 class size reduction.
- That decision also held the State cannot declare "full funding" when it leaves part of a district's actual costs unfunded.
- This Court's ensuing Orders have further reiterated that actual costs include the capital expense of building the additional classrooms needed to fully implement all-day kindergarten and K-3 class size reduction.
- The State's funding formulas do not fund the actual cost of implementing all-day kindergarten and K-3 class size reduction. Instead, the State limits its funding to (1) a portion of its school districts' actual personnel costs, and (2) less than ¼ of the cost of building the additional classrooms required to implement all-day kindergarten and K-3 class size reduction.
- The State has nonetheless repeatedly declared it is "fully funding" each district's all-day kindergarten and K-3 class size reduction costs.

See Plaintiffs' 2016 Post-Budget Filing at pp.18-21 (detailing the above).

The State's most recent filing repeats the same "full funding" declaration.[33] But declaring full funding based on partial funding does not comply with the court rulings in this case.

Nor does it make sense. For example, with respect to personnel costs, the Washington State Patrol would not say the State "fully funded" its personnel costs if the State paid only a portion of those costs instead. Especially if the State Patrol was staring down the barrel of an impending shortage of troopers like the significant shortage of K-3 teachers currently aimed at the State's school districts.

The State's "full funding" declaration similarly does not make sense with respect to the cost of constructing the additional classrooms needed to implement all-day kindergarten and K-3 class size reduction. For example, the Washington State Department Of Transportation would not say the State "fully funds" its construction costs for the State highway system if the State funded ¼ instead.

Moreover, with respect to classroom construction costs, the State does not dispute that:

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[33] *State's August 22, 2016 filing at p.11 (full statewide implementation of all-day kindergarten fully funded in the 2016-2017 school year [FY 2017]); and at pp.11-12 (State on schedule to fully fund K-3 class size reduction by the 2017-2017 school year deadline).*

- this Court's January 2012 decision held the State cannot declare "full funding" when it leaves part of a district's actual costs unfunded;
- the State's school districts must construct additional classrooms to fully implement the all-day kindergarten and K-3 class size reduction components of the State's basic education program; and
- the State's funding formulas leave the actual cost of constructing those additional classrooms largely unfunded.

The State nonetheless declares "full funding", claiming that the State isn't responsible for the cost of building the additional classrooms required to implement the all-day kindergarten and K-3 class size reduction components of the State's basic education program.[34]

But that's not what this Court's rulings say. This Court held over four years ago that the State cannot declare "full funding" when it leaves part of a district's actual costs unfunded. And as noted earlier, this Court's ensuing Orders expressly reiterated that these actual costs include the capital expense of building the additional classrooms needed to fully implement all-day kindergarten and K-3 class size reduction.

The State therefore offers several justifications for its refusal to abide by this capital expense mandate in the Court's prior Orders:

- The State suggests it doesn't have to amply fund construction costs going forward because it hasn't amply funded those costs in the past.[35] But if that's a valid argument, then the State also

[34] *State's August 22, 2016 filing at pp.19-21.*

[35] *State's August 22, 2016 filing at p.19 (State has always assumed local voters pay for facilities).*

doesn't have to amply fund its basic education program as a whole going forward because it hasn't amply funded those costs in the past.

- The State suggests it doesn't have to amply fund construction costs because school districts are allowed to ask local voters to pass a bond to fund the construction costs the State does not fund.[36] But if that's a valid argument, then the State doesn't have to amply fund any part of its basic education program, because school districts are also allowed to ask local voters to pass a levy to fund basic education costs the State does not fund.
- The State suggests it doesn't have to amply fund construction costs because the constitution establishes at least one source of school construction funding from revenue such as timber sales.[37] But the constitution doesn't say that's the only source of school construction funding.
- The State suggests the *Edmonds School District* case supports its claim that the State doesn't have to amply fund construction costs.[38] That case simply held that a local jurisdiction (the City of Mountlake Terrace) could require a building permit for high school construction because the State has not prohibited cities from requiring a school district to have a building permit or comply with municipal building codes.[39] It did not hold that the State's constitutional duty to amply fund its K-12 public schools excludes the capital costs.

In summary, the State's funding formulas leave the actual cost of implementing all-day kindergarten and K-3 class size reduction largely unfunded – especially with respect to compensation sufficient to attract and retain the thousands of additional teachers needed to fill our schools' looming teacher shortage in those grades, and build the thousands of

[36] *State's August 22, 2016 filing at pp.19-20.*
[37] *State's August 22, 2016 filing at p.20.*
[38] *State's August 22, 2016 filing at pp.20-21 (citing Edmonds School District v. City of Mountlake Terrace, 77 Wn.2d 609, 465 P.2d 177 (1970).*
[39] *Edmonds School District v. City of Mountlake Terrace, 77 Wn.2d at 614.*

additional classrooms needed to expand kindergarten from half day to all day and lower K-3 class sizes to 17 students. Knowing and applying the basic math concept of fractions confirms the State's "full funding" claim for these two components of its basic education program is false. Partial ≠ Full.

4. Other Program Components (e.g., highly capable students, special education students, and Core 24)

Consistent with the State's past approach of sweeping many components of its basic education program under the rug in this case, the State's most recent filing does not mention the following components. But these components are in this case:

- This Court's January 2012 decision affirmed that the basic education program components Section 1 requires the State to amply fund include highly capable students, special education students, and Core 24 – and that the State cannot declare "full funding" when it leaves part of a district's actual costs for such components unfunded.
- The State's funding formulas do not fund the actual cost of implementing those components. For example, the State (1) imposed more expensive highly capable student and Core 24 requirements on school districts, while (2) maintaining the past level of State funding. As another example, the State's special education funding formula (1) limits funding to a maximum number of students instead of the actual number of special education students the district serves, and (2) limits compensation funding to less than the number and salaries of personnel actually required.
- The State has nonetheless repeatedly declared it is "fully funding" all components of its basic education program.

See Plaintiffs' 2016 Post-Budget Filing at p.25 & n.52 (Highly Capable component); Plaintiffs' 2014 Post-Budget Filing at pp.25-26 (Core 24 component); June 7, 2016 Amicus Curiae Memorandum Of The Arc Of Washington State, et al. (Special Education component).

The State's most recent filing repeats the same "full funding" declaration with respect to its basic education program.[40] But as noted before, declaring full funding based on partial funding does not comply with the court rulings in this case.

Nor does it make sense. For example, if the State imposed more expensive wildlife management requirements on its Department Natural Resources (DNR), DNR would not say the State "fully funded" its wildlife management program by simply maintaining its past level of funding. Legislators would not say the State "fully funded" the cost of legislative staff if the State (1) limited its funding to staff for 130 legislators (instead of the actual 147 legislators in the legislature), and (2) limited compensation funding to less than the number and salaries of staff the legislature actually requires.

Knowing and applying the basic math concept of fractions confirms that the State's "full funding" claims concerning basic education

[40] *State's August 22, 2016 filing at pp.33-34.*

program components relating to highly capable students, special education students, and Core 24 are false. Partial ≠ Full.

5. K-12 Personnel Costs

Finally, we've been here many times in this case as well:

- This Court's January 2012 decision and ensuing court orders have repeatedly emphasized that Section 1 requires the State to amply fund the compensation needed to attract and retain competent personnel.
- The State accordingly assured this Court that ESHB 2261 required the State to implement new compensation funding formulas as their technical details were established by ESHB 2261's technical working group.
- That technical working group's June 2012 Final Report determined the salaries needed to attract and retain competent K-12 personnel required an over $2.9 billion/year compensation funding increase above the many years of accumulating Cost Of Living Adjustments (COLAs) mandated by Initiative 732, and stressed that "immediate implementation" is needed "in order to attract and retain the highest quality educators to Washington schools through full funding of competitive salaries."
- This Court's August 2015 Sanctions Order nonetheless found the State still had not implemented any such compensation increase – and emphasized at least one concrete consequence of the State's ongoing failure is the looming shortage of 4,000 K-3 teachers in the State's public schools.
- The State has repeatedly responded that it's thinking about doing something next year.

See Plaintiffs' 2016 Post-Budget Filing at pp.14-21 (detailing the above legal rulings and court filings these past several years).

The State's August 22, 2016 filing claims the State has not increased compensation funding to attract and retain competent personnel simply because "the estimated cost is not yet known".[41]

But that's not a legitimate excuse for the State's continuing delays:

- The State has known for over four years that the cost is huge – e.g., the over $2.9 billion/year amount that the ESHB 2261 technical working group's June 2012 Final Report found required "immediate implementation".[42]
- The State has for years known that its school districts are staring down the barrel of a significant teacher shortage with the current compensation levels they are able to pay – even when local levy and federal dollars are added on top of current State funding.[43]
- The State has known for at least seven years that it lacks the "data" its most recent filing now claims is needed to increase compensation funding – for the State's own witness testified under oath about the State not having that data during the 2009 trial.[44]

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[41] *State's August 22, 2016 filing at p.26.*

[42] *Supra, p.27, 3rd bullet point (ESHB 2261 Compensation Technical Working Group's June 2012 Final Report).*

[43] *See Plaintiffs' **2016** Post-Budget Filing at pp.8-9 & n.10.*

[44] *E.g., Trial testimony of OSPI's Director of School Apportionment and Financial Services, Calvin Brodie, at RP 4179:1-11 (the State dictates the type of data that school districts provide in their F-196 Reports because they do it on the system the State provides), at RP 4363:1-11 (the resulting information requested by the State "really doesn't define what the State is funding versus what the local money is funding"); and also at Tr.Ex.1470 at slide 2 & RP 4241:19-4242:8, 4248:23-4250:5, 4255:10-14, 4257:8-4258:23, 4267:9-4268:12, 4287:3-16, 4288:9-15 (testifying the need for more information was recognized by the State's Joint Task Force for Basic Education Finance in 2008 – "Question and Task (per Chair): •State and local funds are co-mingled in accounting categories •Do not know if local funds are expended to subsidize state responsibilities •Need to establish systems that clearly distinguish state funding from local funding.").*

In short, the huge funding increase the State must enact to start amply funding salaries and benefits to attract and retain competent personnel is no surprise to the State. And its ongoing "maybe next year" approach does nothing for the over 1 million kids in our State's K-12 public schools or the looming teacher shortage their schools face this upcoming 2017-2018 school year.

6. "Full Funding" Conclusion

This Court's most recent Order did not ask which basic education funding formulas are (or will be) fully funded. It asked which basic education program components are (and will be) fully funded. This distinction is dispositive – for as the above pages explain, the State's existing formulas *partially* fund the program components the State claims to be fully funding this year, and the State submits no credible assurance that its formulas will do more than *partially* fund the remaining program components it alleges will be fully funded next year. Partial funding is not full funding. As the basic points of math, law, taxes, and common sense noted at the very beginning of this Part III.C confirm: Partial ≠ Full.

D. Basic Logic: the 2017-2018 School Year Seniors Are The State's Class of "2018"

["think...logically" RCW 28A.150.210(3)]

The legislature also established that the substantive content of a basic education under Section 1 includes the knowledge and skill to think logically.[45] And here, basic logic confirms that the 2017-2018 school year is the "2018" deadline in this case.

This Court's December 2012 Order mandated that "Year 2018 remains a firm deadline for full constitutional compliance."[46] And ever since that 2012 Order, plaintiffs' filings have repeatedly noted many of the logical reasons why this school suit's "2018" deadline is the 2017-2018 school year. For example:

- The court orders in this case require the State's compliance plan to show compliance by the "2017-2018 school year" – which is logical (and consistent) only if the "2018" deadline in this case is that 2017-2018 school year.
- The legislature's self-imposed SHB 2776 compliance schedule sets the last deadline as the "2017-2018 school year" – which is logical (and consistent) only if the corresponding "2018" deadline in this case is that 2017-2018 school year.
- The State identifies time periods that cross between two years by the second of those two years (e.g., the State's "2018" fiscal year is its 2017-2018 fiscal year) – making it only logical (and consistent) that the "2018" deadline in this school funding case is the corresponding 2017-2018 school year.
- The State's public schools identify their 2017-2018 school year seniors as the class of "2018" – making it only logical (and

[45] *Supra, p.9 and five check-mark bullet points regarding ESHB 1209.*
[46] *December 2012 Order at p.2 (underlines added).*

consistent) that the "2018" deadline in this public school case is the corresponding 2017-2018 school year.

See Plaintiffs' 2016 Post-Budget Filing at p.13 (citing the relevant court filings these past several years), see also State's August 22, 2016 filing at pp.12, 13, 18, 19, 33, & 34 (identifying the 2017-2018 fiscal year as "FY 2018" and the 2018-2019 fiscal year as "FY 2019").

Until seven days ago, the State never disputed or questioned that this suit's "2018" deadline is therefore the 2017-2018 school year.

But now the State wants to buy more time – so its August 2016 filing offers two reasons why this suit's "2018" deadline should instead be when students in the Class of **2019** are seniors:

- Subsubsubsection 114(5)(b)(iii) of ESHB 2261 directed the QEC to recommend a phase in schedule for completion by September 1, 2018.[47] But the 2016 legislature repealed that provision, and enacted E2SSB 6195 reiterating that the legislatively-set deadline for fully funding the State's basic education program is the end of the 2017 legislative session.[48]
- This Court is requiring the State to submit its final compliance report after the 2018 legislative session.[49] But that's logically consistent with the compliance deadline being the 2017-2018

[47] *State's August 22, 2016 filing at pp.5-8 (claiming **2018** means the 2018-2019 school year commencing on September 1, 2018)(which is funded by the State's FY **2019** budget).*

[48] *Laws of 2016, ch.162, §5 (repealing RCW 28A.290.010, which contained the subsequent codification of the September 1, 2018, date in §114(5)(b)(iii) of ESHB 2261); State's August 22, 2016 filing at 8th bullet point on p.15 (E2SSB 6195 commits the legislature to fully fund the State's basic education program by the end of the 2017 legislative session) and at p.32 (same). Further confirming the legislature's understanding that all compliance must be completed by the commencement of the 2017-2018 fiscal year (July 1, 2017 – June 30, 2018) that funds the 2017-2018 school year, E2SSB 6195 sunsets the day before that fiscal year starts (June 30, 2017). Laws of 2016, ch.3, §6 ("This act expires June 30, 2017").*

[49] *State's August 22, 2016 filing a p.8.*

> school year because the 2018 legislature's development of funding adjustments in the 2018-2019 supplemental budget would provide a valuable assessment of whether the 2017 legislature's funding for the 2017-2018 school year had in fact amply funded all components of the State's basic education program.

The contempt and sanction orders in this case further confirm this 2017-2018 school year deadline. The September 2014 Contempt Order was based on the 2017-2018 school year deadline: "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 2017-2018 school year".[50] And then the corresponding August 2015 Sanctions Order was based on that same school year, imposing its $100,000 per day sanction until the State "adopts a complete plan for complying with article IX, section 1 by the 2018 school year."[51]

In short, the State's newly asserted interpretation of this suit's longstanding deadline is convenient. But given all the above, it's not credible. It's instead just another excuse for more delay and procrastination.

E. Basic Finance: Paying Bills Requires Money

["understand the importance of work and finance" RCW 28A.150.210(4)]

A teacher in the personal finance courses commonly offered to Washington high school students would put it this way: plan ahead to

[50] *See State's August 22, 2016 filing at p.37 (quoting this ruling).*
[51] *See State's August 22, 2016 filing at p.37 (quoting this ruling).*

make sure you have enough money to pay your bills as they come due. That's basic finance.

As noted earlier, the court rulings in this case have for years been putting it this way: the State must establish stable and dependable State tax sources to amply fund its K-12 schools by the firm deadline in this case for full constitutional compliance. That's Washington law.

And thus as also noted earlier, in 2014 the State assured this Court that its 2015 legislature would accordingly focus on establishing new revenue to pay the huge ample funding bill that's due in full next year.

1. The Multi-Billion Dollar Bill Due In Full Next Year

The State has long known that the actual cost of amply funding the basic education mandated by Section 1 would require the State to increase State per-pupil funding to at least $12,701 per student before adding inflation and capital costs. That's the number consistent with the State's own testimony and submission at trial.[52] When the approximately $2 billion cost of the additional classrooms needed to implement the State's K-3 class size reduction and all-day kindergarten components are included, that figure rises to over $14,700 per student by the compliance deadline.[53]

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[52] *See Plaintiffs' **2013** Post-Budget Filing at pp.12-13.*

[53] *The $2 billion capital cost for that classroom construction is explained in Plaintiffs' **2016** Post-Budget Filing at p.20, n.39; Plaintiffs' **2015** Post-Budget Filing at pp.34-35;*

When the February 2010 Final Judgment ordered the State to follow up on its trial testimony to determine and specify the actual cost of amply funding the basic education mandated by Section 1, the State convinced this Court to vacate that order by arguing such follow-up wasn't necessary – assuring this Court that the State was already well on its way to completing its cost determinations and declaring that "No additional court-ordered studies are necessary."[54]

According to the State's prior filings with this Court, its per-pupil funding for the upcoming 2016-2017 school year is $9,024.[55] That means State funding must increase by over $5,600 per pupil to achieve the previously-noted over $14,700 per pupil amount.[56] For the over 1 million kids in our State's K-12 public schools, that comes to an over $5.6 billion increase in school district funding for the next year.[57] Not next two-year biennium. Next single year. That's a huge bill.

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*and Plaintiffs' **2013** Post-Budget Filing at pp.30-32. That comes to about $2,000/pupil if spread over 1 million students. $12,701 + $2,000 = $14,701.*

[54] *August 2010 Brief Of Appellant (Corrected) at p.59; see, also, e.g., Plaintiffs' **2012** Post-Budget Filing at pp.6-8; Plaintiffs' **2013** Post-Budget Filing at pp.5-6; Plaintiffs' **2014** Post-Budget Filing at p.8, Plaintiffs' **2016** Post-Budget Filing at pp.35-36 & nn.72-73.*

[55] *See Chart B in the State's 2015 Report To The Supreme Court By The Joint Select Committee On Article IX Litigation.*

[56] *$14,700 - $9,024 = $5,676.*

[57] *Over $5,600/pupil x over 1 million pupils = over $5.6 billion.*

2. The State Still Doesn't Know How It Will Pay That Bill

The February 2010 Final Judgment also ordered the State to determine and specify how the State is going to fully fund the actual cost of Section 1 compliance with stable and dependable State revenue.[58] That order remained binding on the State until it was vacated in January 2012.[59] And as noted earlier, the State secured that vacation by assuring this Court that it was already well on its way to doing what the trial court ordered.

But now in August 2016, the State acknowledges it still has not done that.[60] Instead, the State's 2016 legislature punted by creating a task force to come up with possible last-minute ideas for the State's 2017 legislature to hopefully consider. In short, after all these years, the State still does not know how it will come up with the billions of additional dollars needed to pay the long-pending ample funding bill that is due in full next year. From a basic finance perspective, that's like a person telling the bank he's still thinking about getting some sort of a job at the last minute to pay the huge balloon mortgage payment he's known about for several years.

Another basic finance error in the State's filing is its suggestion that school districts would have the ample funding they currently lack if

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[58] *See Plaintiffs' **2016** Post-Budget Filing at p.34 & n.71.*
[59] *Plaintiffs' **2012** Post-Budget Filing at p.40 and nn.110 & 111.*
[60] *State's August 22, 2016 filing at pp.34-36.*

the State enacts "levy reform" to take local levy dollars away from school districts and then hand those dollars back calling them "State" dollars.[61] From a basic finance perspective, that makes as much sense as a person suggesting he can pay for the groceries he's buying by taking dollars out of the grocery store's cash register and then handing them back to the cashier calling them "his" dollars.[62]

Thus, as this Court's August 2015 Sanctions Order unequivocally warned the State: "Local levy reform is not part of the court's January 9, 2014 order."[63] Compliance with the State's paramount constitutional duty under Section 1 requires the State to amply fund its K-12 public schools – not play a "reform" shell game that cosmetically changes the name on school district dollars instead of substantively increasing the amount of those dollars.[64]

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[61] *State's August 22, 2016 filing at p.35, 9th bullet point.*

[62] *As shown in this suit's prior filings, school districts' TOTAL revenues (State, federal, local levy, and private donations combined) are not sufficient to provide all students with a realistic or effective opportunity to learn the knowledge and skills in the "basic education" mandated by Article IX, section 1. E.g., Plaintiffs' **2016** Post-Budget Filing at pp.8-9 & n.10. Changing the name of some of those dollars from "local levy" to "State" does not change that fact.*

[63] *August 2015 Sanctions Order at p.7, n.1 (underline added) (rejecting the State's claim that its ongoing violation of the January 9, 2014 Order should be excused because increased State salary funding "must be tied to reform of the local levy system").*

[64] *See Plaintiffs' **2016** Post-Budget Filing at pp.40-42; Plaintiffs' **2015** Post-Budget Filing at pp.31-32.*

3. Basic Finance Conclusion

The legislature established that the substantive content of a basic education under Section 1 includes an understanding of the importance of finance.[65] Even an elementary understanding of finance dictates that for the State to fund its full compliance with Section 1, it must establish the revenue to do so. The State's August 2016 filing, however, confirms the State still has not determined how it will do that by the firm deadline in this case. Ongoing procrastination is not a legitimate financing plan.

F. Read with Comprehension: Complete Year-By-Year Phase In Plan Means Complete Year-By-Year Phase In Plan

["read with comprehension" RCW 28A.150.210(1)]

The legislature established that the substantive content of a basic education under Section 1 also includes the knowledge and skill to read with comprehension.[66] That's relevant here because reading and comprehending the court orders in this case confirms that E2SSB 6195 is not the plan ordered by this Court.

The court orders in this case have been clear. To ensure State officials did not make full constitutional compliance impractical by putting too much off until the last year before the deadline, this Court has for the past four years been repeatedly ordering the State to produce the

[65] *Supra, p.9 and five check-mark bullet points regarding ESHB 1209.*
[66] *Supra, p.9 and five check-mark bullet points regarding ESHB 1209.*

State's complete year-by-year plan for phasing in the State's ample funding of each component of its basic education program,[67] as well as demonstrate how the State's budget each year meets that phase-in plan.[68]

Before the State's **2014** legislative session commenced, this Court reiterated its Order in plain English that's easy to read and comprehend:

> it is hereby ordered: the State shall submit, no later than 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. This plan .... must include a phase-in schedule for fully funding each of the components of basic education. ... it is clear that the pace of progress must quicken.

January 9, 2014 Order at p.8 (underlines added).

Before the State's **2015** legislative session adjourned, this Court reiterated its Order again in plain English that's easy to read and comprehend, ordering that the plan submitted by the State

> (a) must be a complete plan for fully implementing the State's program of basic education for each school year between now and the 2017-2018 school year, addressing each of the areas of K-12 education within ESHB 2261 and SHB 2776; and
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> (b) must include a phase-in schedule for fully funding each of the components of basic education.

June 8, 2015 Order at pp.2-3 (underlines added).

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[67] ***December 2012 Order*** *at pp.2-3;* ***January 2014 Order*** *at p.8;* ***June 2014 Show Cause Order*** *at pp.2-3;* ***September 2014 Contempt Order*** *at pp.1-4;* ***August 2015 Sanctions Order*** *at pp. 1-3.*

[68] ***December 2012 Order*** *at pp.2-3;* ***September 2014 Contempt Order*** *at p.1;* ***August 2015 Sanctions Order*** *at p.2.*

E2SSB 6195 created a task force to come up with possible ideas for the 2017 legislature to consider. That's an exercise which could hopefully come up with ideas for a last-minute enactment that amply funds all components of the State's basic education program in all of the State's K-12 public schools by the firm deadline for full constitutional compliance in this case.

But this Court did not order the State to start an exercise in 2016 to try to come up with possible ideas to produce a last-minute enactment in 2017. This Court has repeatedly been ordering the State to produce its complete ample funding plan for each school year between now and the 2017-2018 school year, making steady, real, and measurable progress to achieve full compliance with Section 1's ample funding mandate by the firm deadline in this case.

The State's filing last week suggested that this Court's *Washington Association of Neighborhood Stores* decision prohibited the 2016 legislature from adopting the year-by-year phase in plan ordered by this Court.[69] But that's not what the case says. It establishes that the 2016 legislature could not make an appropriation for the next biennium's 2017-2018 school year (the State's FY 2018 budget). It did not prohibit

[69] *State's August 22, 2016 filing at pp.38-40 (citing Washington Association of Neighborhood Stores v. State, 149 Wn.2d 359, 70 P.3d 920 (2003)).*

the 2016 legislature (or any prior legislature) from enacting legislation requiring future legislatures to make appropriations that fully fund the actual cost of all components of the State's basic education program – for as the State's own filing candidly admits, that case held "A direction to the legislature (even the use of the word 'shall') to make an appropriation is not itself an appropriation".[70]

In short, E2SSB 6195's punt to come up with possible ideas to try to do something in the last legislative session before that firm deadline in this case is not the complete year-by-year phase in plan this Court has been repeatedly ordering the State to submit since 2012. In at least one respect, the legislature has been correct: reading with comprehension is a basic skill all citizens in our democracy should have.

G. Constitutional Rights, Civil Rights, and Court Orders Should Be Enforced

This Court's July 2016 Order recognized that the State is now at the end of the road, emphasizing the State's "2017 legislative session presents the last opportunity for complying with the State's paramount duty under article IX, section 1 by 2018."[71]

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[70] *State's August 22, 2016 filing at p.40 (quoting Washington Association of Neighborhood Stores, 149 Wn.2d at 368).*

[71] *July 14, 2016 Order at pp.1-2.*

Plaintiffs' prior briefing has already explained why they believe constitutional rights, civil rights, and court orders matter.[72] Their prior briefing likewise demonstrated the ineffectiveness of the contempt and monetary sanctions orders issued in this case.[73] And the State's most recent filing did not refute that ineffectiveness.

The Supreme Court rulings in this case have repeatedly promised the school children of our State that this Court will vigilantly enforce their paramount and positive constitutional right under Article IX, section 1 to an amply funded education.[74] Plaintiffs ask this Court to keep that promise.

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[72] *See Plaintiffs' **2016** Post-Budget Filing at pp.43-44.*

[73] *See Plaintiffs' **2016** Post-Budget Filing at pp.45-46.*

[74] ***McCleary**, 173 Wn.2d at 483 ("Article IX, section 1 confers on children in Washington a positive constitutional right to an amply funded education") and 547 ("This court intends to remain vigilant in fulfilling the State's constitutional responsibility under article IX, section 1"); **December 2012 Order** at p.2 ("Each day there is a delay risks another school year in which Washington children are denied the constitutionally adequate education that is the State's paramount duty to provide") & p.3 ("We cannot wait until 'graduation' in 2018 to determine if the State has met minimum constitutional standards"); **January 2014 Order** at p.8 ("This court also made a promise to the school children of Washington: We will not 'idly stand by as the legislature makes unfulfilled promises for reform.' McCleary, 173 Wn.2d at 545. Our decision in this case remains fully subject to judicial enforcement."); **September 2014 Contempt Order** at p.3 ("These orders are not advisory or designed only to get the legislature's 'attention'; the court expects them to be obeyed even though they are directed to a coordinate branch of government. When the orders are not followed, contempt is the lawful and proper means of enforcement in the orderly administration of justice.") & pp.3-4 ("In retaining jurisdiction in McCleary, the court observed that it 'cannot stand idly by as the legislature makes unfulfilled promises for reform.' McCleary, 173 Wn.2d at 545. Neither can the court 'stand idly by' while its lawful orders are disregarded. To do so would be to abdicate the court's own duty as a coordinate and independent branch of the government."); **August 2015 Sanctions Order** at p.8 ("The State urges the court to hold off on imposing sanctions, to wait and see if the State achieves full compliance by the*

The State acknowledges that the purpose of a contempt sanction is to ***coerce*** a defendant's decision-makers to choose to comply with a court order by making compliance a better choice for those decision-makers than continued non-compliance.[75]

This Court accordingly imposed a large monetary fine that would be significant to most Washington State citizens. But that monetary fine was not at all significant to Washington State officials.[76]

This Court's August 2015 Sanctions Order repeatedly warned that firmer sanctions – "including directing the means the State must use to come into compliance with the court's order" – could and would be imposed if State decision-makers chose to continue the State's ongoing violation of the court orders in this case.[77]

2018 deadline. But time is simply too short for the court to be assured that, without the impetus of sanctions, the State will timely meet its constitutional obligations. There has been uneven progress to date, and the reality is that 2018 is less than a full budget cycle away. As this court emphasized in its original [December 2012] order in this matter, 'we cannot wait until 'graduation' in 2018 to determine if the State has met minimum constitutional standards.' ") & p.9 (imposing sanctions because of "the gravity of the State's ongoing violation of its constitutional obligation to amply provide for public education" and "the need for expeditious action").

[75] *State's 2014 Show Cause Response at p.8; Plaintiffs' **2014** Answer To Defendant's Response To The Court's Show Cause Order With Errata at p.24 & n.30.*

[76] *See Plaintiffs' **2016** Post-Budget Filing at p.45.*

[77] ***August 2015 Sanctions Order** at p.9 ("Given the gravity of the State's ongoing violation of its constitutional obligation to amply provide for public education, and in light of the need for expeditious action, the time has come for the court to impose sanctions. A monetary sanction is appropriate to emphasize the cost to the children, indeed to all of the people of this state, for every day the State fails to adopt a plan for full compliance with article IX, section 1. At the same time, this sanction is less intrusive than other available options, including directing the means the State must use to come*

The State's decision-makers chose to continue the State's violation. This Court could now say it was only kidding when it previously assured the school children of our State that it would vigilantly enforce their constitutional rights. But as plaintiffs' prior briefing pointed out, most young children would object that "crossies don't count."

The State's decision-makers have knowingly left this Court with only two options: either (1) tell Washington's public school children that constitutional rights are empty platitudes and court orders are just suggestions, or (2) impose one of the firm sanctions previously briefed in this case to effectively compel State decision-makers to finally fulfill the State's ***paramount duty*** under Article IX, section 1 to ***amply*** fund the education of ***all*** Washington school children by the firm deadline in this case.

To be effective, that contempt sanction must make compliance with Section 1's ample funding mandate a more desirable option for State decision-makers to choose than continued non-compliance. Plaintiffs

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into compliance with the court's order.") & pp.8-9 ("The court has inherent power to impose remedial sanctions when contempt consists of the failure to perform an act ordered by the court that is yet within the power of a party to perform. .... Monetary sanctions are among the proper remedial sanctions to impose, though the court also may issue any order designed to ensure compliance with a prior order of the court. When, as here, contempt results in an ongoing constitutional violation, sanctions are an important part of securing the promise that a court order embodies: the promise that a constitutional violation will not go unremedied.").

accordingly renew their request that this Court issue one of the following two contempt sanctions previously briefed in this case:

One: Issue a contempt sanctions order that gives the State's 2017 regular session two options:

(a) choose to fully comply with the court orders and declaratory judgments issued in this case, or

(b) choose to have the State's unconstitutionally funded school statutes struck down as unconstitutional, effective the first day of the 2017-2018 school year.[78]

Either way, it's the 2017 session's choice. The 2016 session's prompt and concrete action in response to this Court's striking down the unconstitutionally funded charter schools statute illustrates that lawmakers respond swiftly to school statute invalidation.

Two: Issue a contempt sanctions order that gives the State's 2017 regular session two options:

(a) choose to fully comply with the court orders and declaratory judgments issued in this case, or

(b) choose to have all tax exemption statutes enacted by the legislature (instead of amply funding K-12 schools) struck down as unconstitutional, effective the first day of the 2017-2018 school year.[79]

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[78] *See, e.g., Plaintiffs' **2014** Answer To Defendant's Response To The Court's Show Cause Order With Errata at pp.45-47.*

[79] *Since the sales tax exemption on food (Initiative 345) was enacted by the voters rather than by the legislature, this sanction would not affect that exemption if the State chose to continue its non-compliance.*

Either way, it's the 2017 session's choice. But the 2013 session's prompt and concrete action in response to Boeing's tax break request illustrates that lawmakers respond swiftly when State tax exemption statutes are involved.

IV. CONCLUSION

"It's like deja vu all over again"

Yogi Berra[80]

We've been here before in this case.

At trial, the State argued that fully funding the State's basic education program means fully funding the State's funding formulas. The February 2010 Final Judgment rejected the State's tautological argument. So did this Court's January 2012 decision. And ever since that decision, State lawmakers have been responding to Supreme Court Orders requiring a complete, year-by-year phase in plan with promises of "we'll come up with one next year."

Constitutional democracies are governed by the rule of law. Lawmakers must accordingly comply with constitutional rights, civil rights, and court orders. Even when not politically popular or easy.

[80] *Unfortunately, this isn't the first time Yogi Berra's comment applied to the defendant State's position in this case. See Plaintiff/Respondents' November 19, 2010 Reply Brief at p.14 (same Yogi Berra quote).*

And as explained above, this Court's 2012 rulings made the law with which Washington lawmakers must comply clear:

- "Article IX, section 1 confers on children in Washington a positive constitutional right to an amply funded education",
- "the State must amply provide for the education of all Washington children as the State's first and highest priority before any other State programs or operations",
- "ample" means "considerably more than just adequate",
- the State is violating this constitutional mandate, and
- 2018 is the "firm deadline for full constitutional compliance."

These legal rulings are no surprise to Washington lawmakers. Nor are the repeated court orders requiring them to submit the State's complete ample funding plan to ensure full constitutional compliance by the deadline. Elected officials are important. But they are not above the law.

The State's 2016 session did not put the State on track for timely compliance with the constitutional rights, civil rights, and court orders in this case. To the contrary, the State's August 2016 filing demonstrates that:

- With only one year left before the deadline, the State's full funding claims continue to be based on partial funding.
- The State still doesn't know how it will finance the cost of full compliance with Section 1 by the impending deadline.
- E2SSB 6195 is not the complete year-by-year phase in plan this Court has been ordering the State to submit since 2012.

Plaintiffs continue to believe that constitutional rights, civil rights, and court orders matter. And as this Court's July 2016 Order reiterated,

the State's "2017 legislative session presents the last opportunity for complying with the State's paramount duty under article IX, section 1 by 2018."[81] Plaintiffs accordingly renew their prior requests that this Court take the firm action necessary to timely uphold and enforce the constitutional rights, civil rights, and court orders in this case. Contempt and monetary sanctions have unfortunately proven ineffective.

RESPECTFULLY SUBMITTED this 29th day of August, 2016.

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[81] *July 14, 2016 Order at pp.1-2.*

DECLARATION OF SERVICE

Adrian Urquhart Winder declares:

I am a citizen of the United States of America and a resident of the State of Washington. I am over the age of twenty-one years. I am not a party to this action, and I am competent to be a witness herein. On Monday, August 29, 2016, I caused PLAINTIFF/RESPONDENTS' ANSWER TO THE STATE'S AUGUST 22, 2016 FILING to be served as follows:

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Amicus Curiae Washington's Paramount Duty

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

EXECUTED in Seattle, Washington, this 29th day of August, 2016.

s/ Adrian Urquhart Winder
Adrian Urquhart Winder