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NO. 84362-7

SUPREME COURT OF THE STATE OF WASHINGTON

MATHEW and STEPHANIE McCLEARY, et al.

Respondents,

v.

STATE OF WASHINGTON,

Appellant.

**STATE OF WASHINGTON'S RESPONSE TO THE COURT'S
ORDERS DATED JULY 18, 2012, AND DECEMBER 20, 2012:**

THE LEGISLATURE'S 2013 POST-BUDGET REPORT

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The State of Washington, acting through the Washington State Legislature, hereby submits the 2013 *Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation* (Report). This post-budget Report has been prepared following the 2013 legislative session, as directed in this Court's July Order (Order, *McCleary v. State*, No. 84362-7 (July 18, 2012)). Consistent with this Court's December Order (Order, *McCleary v. State*, No. 84362-7 (Dec. 20, 2012)), the Report is filed as an attachment to this pleading. The Report is also available online at the Legislature's website at <http://www.leg.wa.gov/JointCommittees/AIXLJSC/Pages/default.aspx>

I. INTRODUCTION

On January 5, 2012, this Court issued a decision holding that the State was not meeting its obligation to amply provide for the education of all children within its borders as required in article IX, section 1 of the state constitution. *McCleary v. State*, 173 Wn.2d. 477, 545-6, 269 P.3d 227, 261 (2012). As a remedy, the Court endorsed the Legislature's enacted reforms embodied in ESHB 2261 (Laws of 2009, ch. 548) and subsequent legislation. However, the Court retained jurisdiction over the case to "monitor implementation of the reforms under ESHB 2261, and more generally, the State's compliance with its paramount duty." *McCleary*, 173 Wn.2d. at 545-6. The Court described the benefit of

retaining jurisdiction as “fostering dialogue and cooperation between coordinate branches of state government in facilitating the constitutionally required reforms.” *Id.*

Following supplemental briefing, the Court issued its July Order establishing a schedule in which the State, through the Legislature’s Joint Select Committee on Article IX Litigation, would file an annual report summarizing its actions toward implementing the reforms initiated by ESHB 2261. Consistent with the July Order, the State filed its first Report in September 2012, and the Respondents timely responded with a “Post-Budget Filing.” This Court’s December Order followed.

II. THE STATE’S IMPLEMENTATION STEPS IN 2013

In its July Order, the Court explained that its review of the Legislature’s Report will focus on whether the legislative actions show “real and measurable progress toward achieving full compliance with article IX, section 1 by 2018.” July Order at 3. The Court recognized that it is “unrealistic” to measure each yearly step taken by the Legislature against full constitutional compliance; consequently, the Court would look for “steady progress according to the schedule anticipated by . . . ESHB 2261.” *Id.* In other words, the Court afforded the Legislature latitude to establish its own path toward constitutional compliance.

In its December Order, the Court observed that there must be “steady progress” toward compliance, which it described as “forward movement” toward ample funding. December Order at 2. The Court stated it would defer to the Legislature’s own plan for achieving compliance—again affording the Legislature constitutionally appropriate latitude—but it asked that the Legislature’s next Report lay out its phase-in plan for achieving full funding of basic education in “sufficient detail to allow progress to be measured according to periodic benchmarks between now and 2018.” *Id.* at 2-3. The Court reiterated that benchmarks should be set by the Legislature, not the Court (“legislative benchmarks help guide judicial review”), *id.* at 3, and not by the Respondents.

In SHB 2776 (Laws of 2010, ch. 236), the Legislature established target dates and a plan for implementing some of the priorities in ESHB 2261, including targeted amounts for MSOCs (Materials, Supplies, and Operating Costs) by 2015-16¹; K-3 class-size reduction by 2017-18²; phase-in of all-day kindergarten by 2017-18³; and full phase-in of a new transportation distribution formula by the 2013-15 biennium.⁴

¹ RCW 28A.150.260(8)(b).

² RCW 28A.150.260(4)(b).

³ RCW 28A.150.315.

⁴ RCW 28A.160.192. This full phase-in was accomplished in the 2013-15 operating budget. *See* 2013 Report at 12-13; Laws of 2013, 2d Spec. Sess. ch. 4, § 505 (3ESSB 5034).

In compliance with the two Orders, the Legislature's 2013 post-budget Report demonstrates "forward movement" toward ample funding and implementation of ESHB 2261, including transportation, MSOCs, all-day kindergarten, and class size reduction. That movement is more rapid in some areas than in others, but there is progress toward implementing the reforms identified in ESHB 2261 and SHB 2776.

The Report also details the substantial work that the Legislature has done to prepare for full compliance with article IX, section 1 by 2018. Because the Legislature is engaged in a multi-year endeavor involving a shifting array of difficult policy considerations that broadly affect state revenue and budgeting, these plans inevitably will evolve and mature between now and 2018.⁵ This ongoing effort is squarely within the legislative function, *Hale v. Wellpinit Sch. Dist. No. 49*, 165 Wn.2d 494, 504-06, 198 P.3d 1021 (2009), and the Legislature must be allowed to develop workable and effective legislation that implements the policy choices forged in the legislative process, subject finally to this Court's review for compliance with article IX, section 1.

These plans also will be shaped by developing information about effective educational funding and implementation models obtained

⁵ The Respondents' suggestion in their response to the 2012 Report that the State somehow admitted to a specific dollar amount at trial is factually wrong and legally unsustainable.

through the legislature's "uniquely constituted fact-finding and opinion gathering processes," which provide "the best forum for addressing the difficult policy questions inherent in forming the details of an education system." *McCleary*, 173 Wn.2d at 517 (internal quotes omitted). The 2013 Report necessarily provides only a static snapshot of a process that is ongoing.

The Court should find that the State is making progress toward implementing the reforms initiated in ESHB 2261 and achieving full compliance with article IX, section 1 by 2018 as detailed in the attached Report.

RESPECTFULLY SUBMITTED this 29th day of August, 2013.

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Attached for filing is the State of Washington's Response in the below listed case. Please conform the top page of each document and return to this email address. Thank you.

McCleary v. State of Wash. (No. 84362-7)
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