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STATE OF WASHINGTON
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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'
SUBMISSION OF:

- (1) CASE CITATION FOR THE
"ALL DELIBERATE SPEED"
DISCUSSION JUSTICE
J. JOHNSON BROUGHT UP
DURING ORAL ARGUMENT;
- (2) TRIAL EXHIBIT
CITATION COUNSEL SAID
HE'D PROVIDE AFTER ORAL
ARGUMENT; and
- (3) TWO POSTERS FROM
ORAL ARGUMENT

FILED
SUPREME COURT
STATE OF WASHINGTON
2011 JUL - 8 A 9:18
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Plaintiffs submit the following citations and courtesy copies relating to this week's oral argument on Tuesday, June 28:

(1) **"All deliberate speed" and too much delay cites.** *At the beginning of plaintiff counsel's argument, Justice James Johnson referenced the Supreme Court's "all deliberate speed" language in the four segregation cases consolidated in Brown v. Board of Education, and plaintiffs' counsel noted the Court's "too much deliberation / not enough speed" case ten years later. The case citations are:*

- *Brown v. Board of Education*, 349 U.S. 294, 301 (1955) ("During this period of transition, the courts will retain jurisdiction of these cases. ... [T]he cases are remanded to the District Courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases.") [Note: this 1955 decision addressed the remedy to enforce *Brown v. Board of Education*, 347 U.S. 483 (1954).]
- *Griffin v. School Board of Prince Edward County*, 377 U.S. 218, 229 (1964) ("There has been entirely too much deliberation and not enough speed in enforcing the constitutional rights which we held in *Brown v. Board of Education*, supra, had been denied....").

(2) **State's Cost Estimate Re: HB 2261.** *During oral argument, plaintiffs' counsel noted he could not recall the exhibit number for State witness Ben Rarick's \$9.7 billion figure regarding HB 2261, but said he could provide it later. The exhibit number and State witness's associated testimony are:*

- State's Trial Exhibit No. 1483 (total \$9,691,377,144 per year estimate) (courtesy copy attached for Court's convenience).
- Exhibit author's associated testimony relating to that figure: RP 3951:10-3954:4, 3965:16-3967:2, 3969:20-3970:17, 4019:12-

4026:9, 4031:22-4038:11 (explaining that since HB 2261 does not contain specifics [accord, Finding Of Fact ¶266 & Conclusion Of Law ¶274], his \$9,691,377,144 figure was based on assumptions the State's trial counsel told the witness to make about what future legislatures might do); witness's full testimony on that exhibit is RP 3951-3970, 4018-4026, and 4031-4038.

(3) Two Posters. *The State's counsel provided this Court color copies of the State's stacked bar chart poster.*

- Attached is a color courtesy copy of plaintiffs' corresponding stacked bar chart poster, as well as a copy of the black & white photograph from the very start of plaintiff counsel's argument.

RESPECTFULLY SUBMITTED this Friday, 1st day of July, 2011.

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
Attorneys for Plaintiffs/Respondents

State's Trial Exhibit 1483

[Note: at RP 3952:6-3953:2, exhibit's author explains title should say "Estimates of the Incremental Costs of Components of House Bill 2261 Under Certain Assumptions As Provided By Counsel", and at RP 4035:23-4036:6 that the "(Dollars in Thousands)" should be stricken.]

2007-09 Revised Omnibus Operating Budget (2008 Supp)						RT/EX1483.00001
Enacted						
Near General Fund - State						
(Dollars in Thousands)						
ITEMS	ESTIMATED PER PUPIL COSTS ¹	ESTIMATED ITEM COST PER PUPIL ²	ESTIMATED AGGREGATE TOTAL COSTS/YR	ESTIMATED AGGREGATE DIFFERENCE PER ITEM	ESTIMATED CUMULATIVE DIFFERENCE PER PUPIL	
HB2261 -- under various assumptions	\$ 9,710	na	\$ 9,691,377,144	na	na	
Eliminate Learning Improvement Days (10 reduced to zero)	\$ 9,433	\$ (277)	\$ 9,415,030,296	\$ 276,346,848	\$ (277)	
NERC Instructional Professional Development	\$ 9,313	\$ (120)	\$ 9,295,260,521	\$ 396,116,623	\$ (397)	
Advanced Placement/International Baccalaureate Class Size Increased to 25	\$ 9,303	\$ (10)	\$ 9,284,898,052	\$ 406,479,092	\$ (407)	
Eliminate Class Size Poverty Subsidy in 9-12	\$ 9,273	\$ (30)	\$ 9,254,904,277	\$ 436,472,867	\$ (437)	
Eliminate Class Size Poverty Subsidy in Grades 4-8	\$ 9,223	\$ (49)	\$ 9,205,851,945	\$ 485,525,199	\$ (486)	
CTE & Perf Arts in Middle School Class Size Increased to 25	\$ 9,203	\$ (21)	\$ 9,185,333,129	\$ 506,042,015	\$ (307)	
CTE & Lab Science in High School Class Size Increased to 25	\$ 9,119	\$ (84)	\$ 9,101,126,367	\$ 590,250,777	\$ (591)	
Class Size in Grades 9-12 Increased from 25 to 29.2 Except Vocational Education	\$ 9,005	\$ (114)	\$ 8,987,358,449	\$ 704,018,695	\$ (705)	
Class Size in Grades 4-8 Increased from 25 to 27	\$ 8,814	\$ (191)	\$ 8,796,769,059	\$ 894,608,085	\$ (896)	
Remaining NERC at 71%	\$ 8,481	\$ (332)	\$ 8,465,286,422	\$ 1,226,090,722	\$ (1,228)	
Class Size in Grades K-3 Increased from 15 to 18	\$ 8,163	\$ (319)	\$ 8,147,373,971	\$ 1,544,003,173	\$ (1,547)	
Class Size in Grades K-3 Increased from 18 to 20	\$ 8,004	\$ (159)	\$ 7,988,811,618	\$ 1,702,565,526	\$ (1,706)	
Class Size in Grades K-3 Increased from 20 to 26.2	\$ 7,666	\$ (339)	\$ 7,650,926,245	\$ 2,040,450,899	\$ (2,044)	
Professional Development Coaches	\$ 7,572	\$ (94)	\$ 7,557,555,808	\$ 2,133,821,336	\$ (2,138)	
Full Day Kindergarten Replaced by Half Day Kindergarten ³	\$ 7,363	\$ (209)	\$ 7,348,880,828	\$ 2,342,496,316	\$ (2,347)	
Substitute Unit Cost Model - Transportation	\$ 7,330	\$ (12)	\$ 7,336,451,317	\$ 2,354,925,827	\$ (2,359)	
¹ Totals do not include costs associated with Early Learning or a Highly Capable Safety Net.						
² Costs per item are sensitive to the order in which they are included in the model.						
³ Assumes denominator of student FTEs stays the same, solely for the purpose of depicting costs in per pupil manner.						

House Office of Program Research-Fiscal Committees

DECLARATION OF SERVICE

Adrian 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 Friday, July 1, 2011, I caused the "PLAINTIFF/RESPONDENTS' SUBMISSION OF: (1) CASE CITATION FOR THE "ALL DELIBERATE SPEED" DISCUSSION JUSTICE J. JOHNSON BROUGHT UP DURING ORAL ARGUMENT; (2) TRIAL EXHIBIT CITATION COUNSEL SAID HE'D PROVIDE AFTER ORAL ARGUMENT; AND (3) TWO POSTERS FROM ORAL ARGUMENT" to be served on the following counsel as follows:

William G. Clark David A Stolier, Sr. Office of the Attorney General 800 Fifth Avenue, Suite 2000 Seattle, WA 98104-3188 bille2@atg.wa.gov daves@atg.wa.gov	<input checked="" type="checkbox"/> Via Electronic Mail (cc to the same email sent to the Supreme Court for the filing of these Answers to the Amicus Brief) <input checked="" type="checkbox"/> Via U.S. First Class Mail
<i>Defendant State of Washington</i>	
Sarah A. Dunne Nancy L. Talner Cynthia B. Jones dunne@aclu-wa.org talner@aclu-wa.org jones.cynthiab@gmail.com	<input checked="" type="checkbox"/> Via Electronic Mail (cc to the same email sent to the Supreme Court for the filing of these Answers to the Amicus Brief)
<i>Amicus American Civil Liberties Union</i>	

<p>Hozaiifa Y. Cassubhai HozaiifaCassubhai@dwt.com</p> <p><i>Amicus League of Education Voters</i></p>	<p><input checked="" type="checkbox"/> Via Electronic Mail (cc to the same email sent to the Supreme Court for the filing of these Answers to the Amicus Brief)</p>
<p>Lester "Buzz" Porter buzz@dionne-rorick.com</p> <p><i>Amici school administrators (WASA, AWSP, WABO)</i></p>	<p><input checked="" type="checkbox"/> Via Electronic Mail (cc to the same email sent to the Supreme Court for the filing of these Answers to the Amicus Brief)</p>
<p>Michael E. Bindas mbindas@ij.org</p> <p><i>Amicus "Institute For Justice"</i></p>	<p><input checked="" type="checkbox"/> Via Electronic Mail (cc to the same email sent to the Supreme Court for the filing of these Answers to the Amicus Brief)</p>

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 1st day of July, 2011.

s/ Adrian Winder
Adrian Winder

OFFICE RECEPTIONIST, CLERK

To: Adrian Urquhart Winder
Subject: RE: State of WA v. McCleary, et al. (Supreme Court No. 84362-7) - Submission of Oral Argument Citations/Posters

Received 7-11-11

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Adrian Urquhart Winder [<mailto:WindA@foster.com>]
Sent: Friday, July 01, 2011 2:23 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Clark, Bill (ATG); daves@atg.wa.gov; mbindas@ij.org; dunne@aclu-wa.org; talner@aclu-wa.org; jones.cynthiab@gmail.com; buzz@dionne-rorick.com; HozalfaCassubhai@dwt.com; Thomas Ahearne; Christopher Emch
Subject: State of WA v. McCleary, et al. (Supreme Court No. 84362-7) - Submission of Oral Argument Citations/Posters

Dear Clerk of the Court:

Please find attached for filing with the Court the following documents:

- (1) Plaintiff/Respondents' Submission Of: (1) Case Citation For The "All Deliberate Speed" Discussion Justice J. Johnson Brought Up During Oral Argument; (2) Trial Exhibit Citation Counsel Said He'd Provide After Oral Argument; And (3) Two Posters From Oral Argument; and
- (2) Declaration of Service.
 - State of Washington v. McCleary et al.
 - Supreme Court of the State of Washington, Case No. 84362-7
 - Thomas F. Ahearne, (206) 447-8934, WSBA #14844, ahearne@foster.com

Thank you.

Adrian Urquhart Winder

Attorney

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