

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Appellant,

v.

MATHEW & STEPHANIE McCLEARY, on their own 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,

Respondents.

STATEMENT OF
GROUNDS FOR
DIRECT REVIEW

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J. JONATHAN CARTER
CLERK

Appellant State of Washington in the above-captioned case seeks direct review by the Washington Supreme Court of the Final Judgment entered by the King County Superior Court on February 24, 2010.

I. NATURE OF CASE AND DECISION

This case concerns the constitutional sufficiency of the State's funding of basic education in kindergarten through grade 12 public schools. The respondents brought a declaratory judgment action seeking a

ORIGINAL

declaration of the meaning of terms in Article IX, section 1, of the state constitution, which provides:

It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

Respondents further sought a declaration that the State is not complying with Article IX and an order directing the State to study and determine within one year the actual cost of providing the education required by Article IX to all Washington public school students and to indicate what sources of state-only funds will be used to provide funding to pay those costs.

Trial occurred for twenty-five court days between August 31 and October 21, 2009. On February 4, 2010, the Court announced its decision in favor of respondents, entering Findings of Fact and Conclusions of Law, but not a Final Judgment. On February 24, 2010, the Court entered amended Findings and Conclusions and a Final Judgment ordering the Legislature to proceed with real and measurable progress to:

(1) establish the actual cost of providing all Washington children with the education mandated by this court's interpretation of Article IX, §1, and (2) establish how the Respondent State will fully fund that actual cost with stable and dependable State sources. The court has ordered that the State "must comply with the Constitutional mandate to provide stable and dependable funding for such costs", and that such funding "must be based as closely as reasonably

practicable on the actual costs” of providing the education mandated by this court’s interpretation of Article IX.

In 1978, this Court decided *Seattle School District v. State*, 90 Wn.2d 476, 585 P.2d 71 (1978). In that case, the Court held that the State had the obligation under Article IX to define, fully fund and, where necessary, to reform basic education, which it described as:

Basic education is not “total education” in the sense of all knowledge or the offering of all programs, subjects or services....[T]he Legislature’s obligation [is] to provide basic education through a basic program of education as distinguished from total education or all other educational programs, subjects or services which might be offered.

Id. at 519. The Court also held that the State must fund basic education through “regular and dependable tax sources,” expressly excluding only locally authorized special excess levies from those sources. *Id.* at 520. Finally, the Court held that, while the judiciary had the authority to interpret and construe the Article IX terms and duty, “the general authority to select the means of discharging that duty should be left to the Legislature.” *Id.* Direct review is requested because the trial court’s decision and Judgment are departures from, and expansions of, the requirements of Article IX and the principles set forth in *Seattle School District*.

Basic education, the program for providing it, and basic education funding were enacted into law in the Basic Education Act of 1977, after

the trial court decision in *Seattle School District*, but before the Supreme Court decision in that case. Accordingly, the Basic Education Act contained three elements that together have constituted the definition of basic education since 1977: (1) basic education goals, (2) educational program requirements, and (3) funding formulae for the costs of basic education. Basic education has been defined, provided and funded through state statutes and regulations continuously since 1977.

As enacted in 1977, the Basic Education Act provided that its “goal” was to provide students with the opportunity to achieve certain basic skills. See Laws of 1977, Ex. Sess., ch. 359, § 2 (formerly RCW 28A.58.752). Consistent with the Act’s emphasis that the State was providing “opportunities” to all students, but cannot guarantee achievement by all students, the Act was changed in 1993 to provide the following:

The goal of the Basic Education Act for the schools of the state of Washington set forth in this chapter shall be to *provide students with the opportunity* to become responsible citizens, to contribute to their own economic well-being and to that of their families and communities, and to enjoy productive and satisfying lives. To these ends, the goals of each school district, with the involvement of parents and community members, shall be to *provide opportunities* for all students to develop the knowledge and skills essential to:

(1) Read with comprehension, write with skill, and communicate effectively and responsibly in a variety of ways and settings;

(2) Know and apply the core concepts and principles of mathematics; social, physical, and life sciences; civics and history; geography; arts; and health and fitness;

(3) Think analytically, logically, and creatively, and to integrate experience and knowledge to form reasoned judgments and solve problems; and

(4) Understand the importance of work and how performance, effort, and decisions directly affect future career and educational opportunities.

RCW 28A.150.210 (emphasis added).

The 1977 statutory basic education program requirements had required instruction in specific academic subject areas, including mathematics, social studies, language skills, music, art, health and physical fitness. Laws of 1977, Ex. Sess., ch. 359, § 3. Basic education program requirements were changed in 1993, with essential academic learning requirements substituted for discrete classroom subjects. *See* RCW 28A.150.220. Thus, a definition of “basic education” and a program of basic education have been in place since 1977. The 1993 statutory changes merely updated the goals and opportunities for acquiring skills that comprised basic education. Yet the trial court in this case found and concluded that the 1993 statutory changes were the Legislature’s first

“definition” of basic education and constituted “additional substantive components” of the “education” that the State must constitutionally provide. (Court’s Findings 207-211). According to the trial court, in order to meet its obligation under Article IX, the State must equip all children with the knowledge and skills identified in the Basic Education Act. (Court’s Findings and Conclusions 205, 220, 225-228, 230-231, 262-263).

Funding for basic education has always been determined through allocations derived according to staff to student ratios and funding formulae set forth in RCW 28A.150.250 and .260. Similarly, amounts appropriated for basic education have always been provided pursuant to appropriations from the state general fund, as set forth in the biennial and supplemental Appropriations Acts. RCW 28A.150.380. Pursuant to these acts, each of the State’s 295 school districts receives a “basic education allocation” amount for every student enrolled in the district. It was this statutory framework for deriving the basic education funding the State provides each year for K-12 public schools that the trial court found to be “not correlated to what it actually costs to operate the State’s public schools....[nor] to what it would cost this State’s public schools to equip all children with the basic knowledge and skills included within the substantive ‘education’ mandated by Article IX, § 1.” (Finding No. 220).

The 1993 statutory changes were the first steps toward the transition of K-12 public schools from a “seat time” to a “performance based” system. The former system focused on a student’s grade-by-grade progression, determined by local education standards and culminating in the student’s graduation after completing grade 12. A “performance based” system measures how much students are learning at various stages in their twelve years of schooling, based upon statewide standards, with graduation dependent upon the student’s performance on statewide assessments. The process of developing the State’s essential academic learning requirements, and of developing and implementing the first statewide assessments in reading, writing, mathematics and science, was not completed until the 2004-05 school year.

In 2005, the Legislature created “Washington Learns,” an exhaustive 16-month process for studying all aspects of public education from pre-kindergarten to K-12 schools to higher education. Following the issuance of Washington Learns’ final report in November 2006, the Legislature created a Basic Education Finance Task Force in 2007. The Task Force conducted numerous proceedings and heard many presentations from school districts, local educators and representatives of state agencies concerning the need for, and components of, a new approach to state funding. The Task Force considered a number of

proposals for a new public school funding system and issued a Final Report and Recommendations on January 14, 2009.

Following that Report and Recommendation, the 2009 Legislature passed HB 2261 (Laws of 2009, ch. 548). This legislation enacted comprehensive reforms (many of which were the Task Force's recommendations) to the definition, program and state funding of basic education, to be implemented over a ten-year period, beginning in 2009 and concluding in 2018. When fully implemented, HB 2261 will increase state funding of basic education by billions of dollars.

The reform process, particularly HB 2261, is the Legislature's chosen means of fulfilling its Article IX duty to define, fund and reform basic education for all Washington students. Indeed, in 2010 the Legislature enacted Substitute House Bill 2776 (Laws of 2010, ch. 236) and ESSB 6696 (Laws of 2010, ch. 235) to continue implementing the substantive changes to, and funding of, K-12 education. SHB 2776, for example, provides that new funding formulae for basic education will take effect in the 2011-13 biennium as well as enhancements to state funding for specific programs like pupil transportation, reduced class sizes, full-day kindergarten and enhanced allocations for maintenance, supplies and operating costs. The remedy ordered by the trial court improperly interferes with, and could impede, the Legislature's constitutional

prerogative, enacted into law in 2009 and 2010, to select the means of discharging the Article IX duty.

II. ISSUES PRESENTED FOR REVIEW

1. This Court held in *Seattle School District v. State* that the Legislature has a constitutional duty to define basic education. Did the superior court err by rejecting the Legislature's definition of basic education and instead mandating a definition of basic education determined by whether all students are equipped with knowledge and skills that the superior court identified?

2. This Court held in *Seattle School District v. State* that the Legislature has a constitutional duty to amply fund basic education. Did the superior court err by rejecting the Legislature's funding formulas and instead mandating funding based on the actual costs of equipping all children with the knowledge and skills that the superior court identified as basic education?

3. This court held in *Seattle School District v. State* that the Legislature has a constitutional duty to amply fund basic education from regular and dependable tax sources. Did the superior court err by instead mandating that the Legislature establish how it will provide stable and dependable state funding for basic education?

4. Did the evidence before the superior court establish that the Legislature has failed to comply with its obligation under Article IX, section 1, to amply fund basic education from regular and dependable tax sources?

III. GROUNDS FOR DIRECT REVIEW

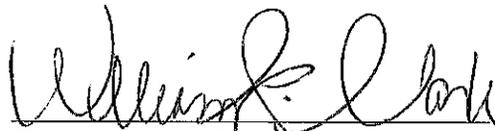
Direct review is necessary because this case concerns the constitutionality of state funding for the education of Washington's one million K-12 public school students. The State provides over six billion dollars every year for the operation of K-12 public schools, over 40% of the State's annual budget. Public school education is the State's paramount constitutional duty. Public school funding affects the lives and futures of Washington families throughout the State's 295 school districts. Direct review is particularly necessary as the State is in the middle of legislatively reforming the programs and funding of basic education, an ongoing process involving billions of taxpayer funds. The case thus involves fundamental and urgent issues of broad public import that require prompt and ultimate determination under RAP 4.2(a)(4).

Moreover, direct review is appropriate under RAP 4.2(a)(2) because, by concluding that the State's statutory provisions for funding basic education do not comply with the Article IX mandate to make ample provision for the education of all Washington students, the trial court has

held those statutes to be repugnant to the Washington State Constitution. A ruling that the state funding of basic education is unconstitutional, particularly when that ruling is based upon actual achievement instead of opportunities to achieve, and which casts constitutional doubt on the use of allocation funding formulae, imperils current and future statutory funding of basic education. A ruling of that magnitude must have direct and prompt review by the State Supreme Court.

RESPECTFULLY SUBMITTED this 9th day of April, 2010.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury in accordance with the laws of the State of Washington that the original of the preceding Statement of Grounds for Direct Review was filed by legal messenger in the Washington State Supreme Court at the following address:

Court of Appeals of Washington, Division I
One Union Square
600 University St.
Seattle, WA 98101

And that a copy of the preceding Statement of Grounds for Direct Review was served on respondents' counsel by legal messenger at the address below:

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DATED this 9th day of April, 2010, at Seattle, Washington.



AGNES ROCHE