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NO. 84362-7

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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.

SUPPLEMENTAL REPLY BRIEF OF APPELLANT

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I. INTRODUCTION

In the Decision issued on January 5, 2012, the Court stated its intent to “retain jurisdiction over this case to monitor implementation of the reforms under ESHB 2261, and more generally, the State’s compliance with its paramount duty.” *McCleary v. State*, 173 Wn.2d 477, 545–46, 269 P.3d 227 (2012). To provide for that monitoring, the State’s supplemental brief proposed annual reports to the Court from the Legislature’s Joint Select Committee on Article IX Litigation. The proposal invites the Court, in its sound judgment, to determine whether any interim briefing, hearings, and/or judicial rulings are necessary during the course of the State’s implementation of the remedy identified in the *McCleary* decision.

The proposal would allow the parties to communicate with the Court regarding the case and would allow the Court to respond appropriately where necessary, but (in contrast to the counter-proposal by the *McCleary* Plaintiffs/Respondents) it would not establish annual compliance proceedings that contemplate ongoing discovery, briefing, and argument, leading to annual hearings and annual decisions by the Court. Nor, would it expand the remedy endorsed by the Court. The State urges the Court to accept the State’s proposal and reject the ongoing annual litigation contemplated in the counter-proposal.

II. REPLY TO MODIFICATIONS PROPOSED BY MCCLEARY RESPONDENTS

The legislature recently enacted sweeping reforms to remedy the deficiencies in the funding system, and it is currently making progress toward phasing in those reforms. We defer to the legislature's chosen means of discharging its article IX, section 1 duty, but the judiciary will retain jurisdiction over the case to help ensure progress in the State's plan to fully implement education reforms by 2018.

McCleary, 173 Wn.2d at 547. This quote captures the two competing principles recognized by the Court throughout the Remedy section of its Decision: (1) preserve the Legislature's autonomy to fully engage in the legislative process, but (2) help ensure progress in the Legislature's implementation of the educational reforms the Court endorsed. The State's proposal maintains an appropriate balance of these principles. The "clarifications" proposed by McCleary respondents upset that balance.¹

¹ In the Supplemental Brief of Appellant, at 7-8, the State described the Legislature's initial effort to establish a communication process through House Concurrent Resolution (HCR) 4410 to foster "dialogue and cooperation between coordinate branches of state government in facilitating the constitutionally required reforms." *McCleary*, 173 Wn.2d at 546. The Joint Select Committee identified in HCR 4410 was established as the point of contact for communication between the branches.

Subsequent to the Supplemental Brief's filing date, the Legislature established a separate task force and process for substantively responding to the Court's decision in this case. It enacted HB 2824 (attached as Appendix A) creating a Joint Task Force for Education Funding charged with submitting to the Legislature recommendations for fully funding basic education programs, including the requirements of ESHB 2261 and SSB 2776. The task force must develop a proposal for a reliable and dependable funding mechanism to support basic education programs. If the task force recommends an option with no new revenues, it must identify what areas already in the budget would be eliminated or reduced. Laws of 2012, 1st Spec. Sess., ch. 10, § 2. The final report must be submitted by December 31, 2012. *Id.*

A. The Court Should Decline to Establish Annualized Judicial Rulings on Constitutional Sufficiency or Adequacy

After concluding that the State was out of compliance with article IX, section 1, the Court endorsed as one possible route of compliance the remedy identified by the Legislature pursuant to the work of its education funding work groups. This endorsement comes with the expectation that the Legislature follows through on implementation, within the time frame identified in ESHB 2261 and SSB 2776 (and endorsed by the Court).

The Court declined to establish any yearly benchmarks for the Legislature to meet prior to 2018, in favor of a continuing dialogue between co-equal branches of state government. There are, therefore, no incremental standards against which to measure the adequacy of the steps taken year to year as the Legislature phases in ESHB 2261 and otherwise responds to the *McCleary* decision. Yet, the McCleary Respondents propose that “this Court rule as a matter of law on the adequacy of the ‘compliance’ claimed by the State in each of the State’s periodic reports to this Court.” Pl./Resp’ts.’ Supp. Br. Re: Retained Juris. at 3 (April 16, 2012).

There are three serious problems with Respondents’ proposal, no matter how one interprets it. First, it invites the Court to assess the Legislature’s annual progress against constitutional benchmarks identified

by the Respondents or the Court only *after* the Legislature has acted each legislative session and has adjourned. Holding the Legislature to post hoc benchmarks serves no monitoring purpose since the Legislature's interim actions cannot reasonably be assessed against unknown interim standards.

Second, a yearly judicial referendum on the Legislature's enactments leads to incremental judicial review—and incremental judicial management—of the Legislature's developing education policy decisions one legislative session at a time. This type of piecemeal review of the legislative process invites judicial intervention in the legislative function, improperly intruding on the Legislature's "general authority to select the *means* of discharging" its duty under article IX, section 1. *McCleary*, 173 Wn.2d at 517, quoting *Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d 476, 520, 585 P.2d 71 (1978) (emphasis by the Court).²

Third, the Respondents' proposal effectively asks the Court to impose a different remedy than set out in the decision—a remedy that includes yearly benchmarks.³ The Respondents had an opportunity to seek modification of the Court's decision during the period for

² As the Court observed, "The legislature's uniquely constituted fact-finding and opinion gathering processes 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 quote omitted).

³ Because Chief Justice Madsen's dissent discussed the use of interim benchmarks where jurisdiction is retained, *McCleary*, 173 Wn.2d at 548–50, it appears the Court fully considered whether to establish benchmarks and decided not to do so.

reconsideration under RAP 12.4 if they were dissatisfied with the remedy. They failed to do so.

To the extent the Respondents' proposal instead asks the Court to assess full constitutional compliance on a yearly basis, it is again asking for a remedy that the Court already rejected.⁴ As noted above, the time to seek reconsideration has passed.

For all these reasons, the Court should reject the proposed yearly judicial rulings on compliance with article IX, section 1. The Court can set a progress review at any time based on its review of the Legislature's actions. However, an assessment of compliance with article IX, section 1 should wait until either (1) the State claims that it has come into full compliance and seeks termination of the Court's continuing jurisdiction, or (2) the Court believes the Legislature is not sufficiently progressing toward fully implementing educational reform by 2018.

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⁴ McCleary respondents sought to compel immediate full compliance as part of their cross-appeal. *See* Pl./Resp'ts' Br. at 62 (asking the Court to "set the next school year as a firm deadline for compliance"). The Court explicitly declined, calling that request "unrealistic." *McCleary*, 173 Wn.2d at 545.

B. The Court Should Decline to Establish Automatic Fact-Finding Trials Each Year When Requested by the Plaintiffs, With All Costs Borne Entirely by the State

In the portion of its Decision addressing the remedy and its decision to retain jurisdiction, the Court twice cautioned that failure to retain jurisdiction could result in continuing litigation.⁵ Ignoring that caution, the McCleary respondents propose a scheme that keeps the parties in perpetual litigation for the next six years. Each year, under their proposal, the Joint Select Committee would issue its report on legislative enactments and, at the Respondents' election, the Legislature's enactments would be subject to a fact-finding trial, almost certainly to be followed by briefing and argument in this Court, and a decision required of the Court. The process would occur each year the Court retains jurisdiction over this case. Under the Respondents' scheme, they would need only identify a factual dispute somewhere to trigger the process. Pl./Resp'ts.' Supp. Br. Re: Retained Juris. at 11, 16.⁶ It is not difficult to imagine a factual dispute being "identified" merely from the give and take inherent in the

⁵ See *McCleary*, 173 Wn.2d at 541 ("The immediate result was another lawsuit, ensuing litigation, and a second trial court ruling . . .") (referring to the result of the Court rejecting the trial court's order retaining jurisdiction in *Seattle Sch. Dist.*, 90 Wn.2d 476); *id.* at 544 ("[T]oo much deference may set the stage for another major lawsuit challenging the legislature's failure to adhere to its own implementation schedule.").

⁶ The McCleary Plaintiff/Respondents are motivated litigants. Although they assert their proposed fact finding would occur only if requested by a party, it seems unlikely that the Plaintiff/Respondents would forego an opportunity to compel yearly fact finding, especially under their proposal that all costs be borne by the State. Pl./Resp'ts.' Supp. Br. Re: Retained Juris. at 14, 16 (April 16, 2012).

variety of educational policy initiatives considered and debated in the legislature each year.

At some point in the implementation timeline, this Court may determine that some fact finding is necessary. That determination should be made by the Court and not driven by the Respondents, and costs should be shared by the parties to encourage efficiency and prudence. The Respondents' proposal to have the State bear all the costs of the fact-finding proceedings creates an incentive for Respondents to identify factual disputes and conduct perpetual annual litigation over the Legislature's progress toward compliance with article IX, section 1.

C. The State Agrees That the Respondents Should Have an Opportunity to Provide Responsive Comment to the Court

The State did not propose that the Joint Select Committee's reports to the Court also contain legal argument on article IX compliance. Rather, the State suggested the reports as interim status reports from the legislative branch to the judicial branch informing the Court of actions taken that may address the iterative process of achieving compliance with article IX, section 1. They would not be legal briefs.⁷

⁷ The Joint Select Committee was established "to facilitate communication with the Washington state Supreme Court on school funding legislation and other actions of the legislature related to the duty set forth in article IX of the Washington state Constitution." HCR 4410.

The State does not object to the Respondents providing a responsive comment to the Joint Committee's report through their legal counsel, so long as the State has a fair opportunity to respond. If the Court thereafter identifies a need for further judicial proceedings based on the filings, then it should issue an appropriate order to the parties.

D. The Respondents' Proposed Modification to the Timing of Annual Reports Injects Uncertainty into the Process, and Thus Should Be Rejected

The State proposed that the report from the Joint Select Committee be due at the conclusion of each legislative session, within 60 days after the biennial or supplemental operating budget is signed into law and at such other time as the Court may order. As the Respondents have recognized, this language was intended to prescribe only *when* a report will be due. The Respondents proposed eliminating any reference to the end of session, eliminating the reference to the operating budget, and making the report due within 60 days after *any* biennial or supplemental budget is signed into law. Unfortunately, this proposed clarification actually muddies the waters.

In any given year, the Legislature may enact biennial or supplemental operating, transportation and capital budgets. Sometimes it will enact both biennial and supplemental budgets. Increasingly often, there will be more than one supplemental budget—one to adjust the final

months of the current fiscal year and one to adjust the second fiscal year of the biennium. For example, the Legislature convened in December 2011 and enacted a very limited supplemental operating budget signed by the Governor on December 20, 2011. Laws of 2011, 2d Spec. Sess., ch. 9. A supplemental transportation budget was signed March 23, 2012. Laws of 2012, ch. 86. A supplemental capital budget was signed on April 23, 2012. Laws of 2012, 2d Spec. Sess., ch. 2. Finally, a supplemental operating budget was signed on May 2, 2012. Laws of 2012, 2d Spec. Sess., ch. 7.

Under the State's proposal, the due date for a report from the Joint Select Committee would be July 1, 2012.⁸ Under the Respondents' proposal, there would be four reports for 2012, overlapping one another, and wasting judicial and legislative resources.

III. CONCLUSION—AMENDED PROPOSAL

The State concurs with some of the Respondents' proposed modifications, taking into consideration their stated concerns for clarity. As explained above, other portions of Respondents' proposals lead to continuous litigation, potential judicial interference in the legislative

⁸ Depending on the timing of the Court's resolution of the arguments and recommendations offered in the supplemental briefing, the Court may decide to establish a special schedule for the 2012 Legislature, and then begin the schedule for annual reporting with the 2013 Legislature. Alternatively, the Court could simply require that the first annual report be filed in 2013.

process, and the waste of limited judicial and legislative resources.

Accordingly, the State amends its initial proposal to read as follows:

The Legislature, through its Joint Select Committee on Article IX Litigation (and legal counsel), will file a report with the Washington State Supreme Court summarizing all legislative action taken toward implementing the reforms initiated by Laws of 2009, ch. 548 (ESHB 2261), and achieving compliance with article IX, section 1 of the Washington Constitution, as directed by this Court in its decision in *McCleary v. State*. The report will be submitted (a) at the conclusion of each legislative session from 2013 through 2018 inclusive, within 60 days after the final biennial or supplemental operating budget is signed by the Governor; or (b) at such other time as the Court may order. The report for the 2012 legislative session will be submitted on _____.

A copy of the report will be filed in the Court and served on the Respondents' counsel. The report will be a public document, which may be published on the Legislature's web page. Within 30 days after receiving a copy of the report, the Respondents may file written

comments with the Court addressing the report. Within 30 days thereafter, the State may file responsive comments. After reviewing each report received and comments, if any, the Court, in its discretion, will determine whether to request additional information, written briefing or argument, and whether to issue any further order or decision.

RESPECTFULLY SUBMITTED this 18th day of May, 2012.

ROBERT M. MCKENNA
Attorney General

A handwritten signature in cursive script that reads "David A. Stoler". The signature is written in black ink and is positioned above the typed name and contact information.

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CERTIFICATE OF SERVICE

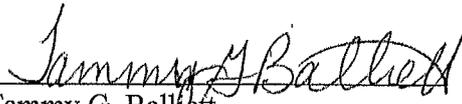
I certify under penalty of perjury in accordance with the laws of the State of Washington that an electronic copy of the original preceding *Supplemental Reply Brief of Appellant* was emailed to the court at SUPREME@COURTS.WA.GOV for filing by Tammy Balliett in the Washington State Supreme Court.

And that a copy of the preceding *Supplemental Reply Brief of Appellant* was served on Respondents' counsel by U.S. Mail Postage Prepaid via Consolidated Mail Service at the address below:

Thomas F. Ahearne
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A courtesy copy was provided via email to Mr. Ahearne and Mr. Emch at: ahearne@foster.com; emchc@foster.com

DATED this 18th day of May, 2012, at Olympia, Washington.


Tammy G. Balliett

APPENDIX A

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2824

Chapter 10, Laws of 2012

62nd Legislature
2012 1st Special Session

EDUCATION FUNDING

EFFECTIVE DATE: 07/10/12

Passed by the House April 10, 2012
Yeas 74 Nays 24

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 10, 2012
Yeas 28 Nays 20

BRAD OWEN

President of the Senate

Approved May 2, 2012, 2:07 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is HOUSE BILL 2824 as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 2, 2012

Secretary of State
State of Washington

HOUSE BILL 2824

AS AMENDED BY THE SENATE

Passed Legislature - 2012 1st Special Session

State of Washington 62nd Legislature 2012 1st Special Session

By Representatives Eddy and Hunter

Read first time 04/03/12. Referred to Committee on Ways & Means.

1 AN ACT Relating to addressing comprehensive funding for education
2 by developing a plan for full funding and by freeing certain existing
3 revenues for support of the basic education program; amending RCW
4 28A.600.405, 43.135.045, 67.70.340, and 83.100.230; reenacting and
5 amending RCW 28A.150.380 and 84.52.0531; repealing RCW 28A.505.210 and
6 28A.505.220; creating new sections; and providing an expiration date.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** (1) Legislation enacted in 2009 (chapter
9 548, Laws of 2009) and in 2010 (chapter 236, Laws of 2010) revised the
10 definition of the program of basic education, established new methods
11 for distributing state funds to school districts to support this
12 program of basic education, and provided an outline of specific
13 enhancements to the program of basic education that are required to be
14 implemented by 2018. In order to meet the required deadlines to
15 implement full funding of the enhancements, the joint task force in
16 section 2 of this act is created to develop and recommend options for
17 a permanent funding mechanism.

18 (2) Initiative Measure No. 728 (chapter 3, Laws of 2001) dedicated
19 a portion of state revenues to fund class size reductions and other

1 education improvements. Because class size reductions and similar
2 improvements are incorporated in the reforms that were enacted in
3 chapter 548, Laws of 2009, and chapter 236, Laws of 2010, and that are
4 being incrementally implemented through 2018, Initiative Measure No.
5 728 is repealed in order to make these dedicated revenues available for
6 implementation of basic education reform and to facilitate the funding
7 reform recommendations of the joint task force in section 2 of this
8 act.

9 (3) Nothing in this act alters or amends the elements included in
10 the school district levy base set forth in RCW 84.52.0531.

11 NEW SECTION. **Sec. 2.** (1) The joint task force on education
12 funding is established. The task force shall make recommendations on
13 how the legislature can meet the requirements outlined in chapter 548,
14 Laws of 2009 and chapter 236, Laws of 2010. In particular, the task
15 force shall develop a proposal for a reliable and dependable funding
16 mechanism to support basic education programs. At a minimum, the
17 proposed funding mechanism must support full implementation of the
18 programmatic enhancements required in chapter 548, Laws of 2009, and
19 chapter 236, Laws of 2010, including full-day kindergarten; reduced K-3
20 class size; increased allocations for maintenance, supplies, and
21 operating costs; and a new pupil transportation formula. The task
22 force shall also consider the specific recommendations for the
23 transitional bilingual instructional program from the quality education
24 council to the legislature dated January 6, 2012. It shall provide
25 recommendations for: Implementation of a scaled funding formula based
26 on levels of English language proficiency, a supplemental formula based
27 on students exiting the program due to demonstrated English language
28 proficiency, and implementing legislation.

29 (2)(a) The joint task force on education funding shall consist of
30 the following members:

31 (i) Eight legislators, with two members from each of the two
32 largest caucuses of the senate appointed by the president of the senate
33 and two members from each of the two largest caucuses of the house of
34 representatives appointed by the speaker of the house of
35 representatives; and

36 (ii) Three individuals, to be appointed by the governor.

1 (b) The task force may recommend multiple options, but shall
2 recommend one preferred alternative, including an outline of necessary
3 implementing legislation. Should the task force recommend an option to
4 fully fund the program of basic education with no new revenues, the
5 task force must identify what areas already in the budget would be
6 eliminated or reduced.

7 (c) The task force shall be staffed by the house of representatives
8 office of program research, senate committee services, and the office
9 of financial management, with assistance from the Washington state
10 institute for public policy and other agencies as necessary.

11 (3) The task force shall submit a final report to the legislature
12 by December 31, 2012.

13 **Sec. 3.** RCW 28A.150.380 and 2009 c 548 s 110 and 2009 c 479 s 16
14 are each reenacted and amended to read as follows:

15 (1) The state legislature shall, at each regular session in an odd-
16 numbered year, appropriate for the current use of the common schools
17 such amounts as needed for state support to school districts during the
18 ensuing biennium for the program of basic education under RCW
19 28A.150.200.

20 (2) In addition to those state funds provided to school districts
21 for basic education, the legislature may appropriate funds to be
22 distributed to school districts for other factors and for other special
23 programs to enhance or enrich the program of basic education.

24 ~~((3) The state legislature shall also, at each regular session in
25 an odd-numbered year, appropriate from the general fund and education
26 construction fund for the purposes of and in accordance with the
27 provisions of the student achievement act during the ensuing
28 biennium.))~~

29 **Sec. 4.** RCW 28A.600.405 and 2007 c 355 s 4 are each amended to
30 read as follows:

31 (1) For purposes of this section and RCW 28B.50.534, "eligible
32 student" means a student who has completed all state and local high
33 school graduation requirements except the certificate of academic
34 achievement under RCW 28A.655.061 or the certificate of individual
35 achievement under RCW 28A.155.045, who is less than age twenty-one as

1 of September 1st of the academic year the student enrolls at a
2 community and technical college under this section, and who meets the
3 following criteria:

4 (a) Receives a level 2 (basic) score on the reading and writing
5 content areas of the high school (~~Washington assessment of student~~
6 ~~learning~~) statewide student assessment;

7 (b) Has not successfully met state standards on a retake of the
8 assessment or an alternative assessment;

9 (c) Has participated in assessment remediation; and

10 (d) Receives a recommendation to enroll in courses or a program of
11 study made available under RCW 28B.50.534 from his or her high school
12 principal.

13 (2) An eligible student may enroll in courses or a program of study
14 made available by a community or technical college participating in the
15 pilot program created under RCW 28B.50.534 for the purpose of obtaining
16 a high school diploma.

17 (3) For eligible students in courses or programs delivered directly
18 by the community or technical college participating in the pilot
19 program under RCW 28B.50.534 and only for enrollment in courses that
20 lead to a high school diploma, the superintendent of public instruction
21 shall transmit to the colleges participating in the pilot program an
22 amount per each full-time equivalent college student at statewide
23 uniform rates. The amount shall be the sum of (a), (b), and (c) (~~and~~
24 ~~d~~)) of this subsection, as applicable.

25 (a) The superintendent shall separately calculate and allocate
26 moneys appropriated for basic education under RCW 28A.150.260 for
27 purposes of making payments under this section. The calculations and
28 allocations shall be based upon the estimated statewide annual average
29 per full-time equivalent high school student allocations under RCW
30 28A.150.260, excluding small high school enhancements, and applicable
31 rules adopted under chapter 34.05 RCW.

32 (b) The superintendent shall allocate an amount equal to the per
33 funded student state allocation for the learning assistance program
34 under chapter 28A.165 RCW for each full-time equivalent college student
35 or a pro rata amount for less than full-time enrollment.

36 (~~The superintendent shall allocate an amount equal to the per~~
37 ~~full-time equivalent student allocation for the student achievement~~

1 ~~program under RCW 28A.505.210 for each full-time equivalent college~~
2 ~~student or a pro rata amount for less than full-time enrollment.~~

3 (d)) For eligible students who meet eligibility criteria for the
4 state transitional bilingual instruction program under chapter 28A.180
5 RCW, the superintendent shall allocate an amount equal to the per
6 student state allocation for the transitional bilingual instruction
7 program or a pro rata amount for less than full-time enrollment.

8 (4) The superintendent may adopt rules establishing enrollment
9 reporting, recordkeeping, and accounting requirements necessary to
10 ensure accountability for the use of basic education, learning
11 assistance, and transitional bilingual program funds under this section
12 for the pilot program created under RCW 28B.50.534.

13 (5) All school districts in the geographic area of the two
14 community and technical colleges selected pursuant to section 8,
15 chapter 355, Laws of 2007 to participate in the pilot program shall
16 provide information about the high school completion option under RCW
17 28B.50.534 to students in grades ten, eleven, and twelve and the
18 parents or guardians of those students.

19 **Sec. 5.** RCW 43.135.045 and 2011 1st sp.s. c 50 s 950 are each
20 amended to read as follows:

21 The education construction fund is hereby created in the state
22 treasury.

23 (1) Funds may be appropriated from the education construction fund
24 exclusively for common school construction or higher education
25 construction. During the 2007-2009 fiscal biennium, funds may also be
26 used for higher education facilities preservation and maintenance.
27 During the 2009-2011 and 2011-2013 fiscal biennia, the legislature may
28 transfer from the education construction fund to the state general fund
29 such amounts as reflect the excess fund balance of the fund.

30 (2) Funds may be appropriated for any other purpose only if
31 approved by a two-thirds vote of each house of the legislature and if
32 approved by a vote of the people at the next general election. An
33 appropriation approved by the people under this subsection shall result
34 in an adjustment to the state expenditure limit only for the fiscal
35 period for which the appropriation is made and shall not affect any
36 subsequent fiscal period.

1 (3) (~~Funds for the student achievement program in RCW 28A.505.210~~
2 ~~and 28A.505.220 shall be appropriated to the superintendent of public~~
3 ~~instruction strictly for distribution to school districts to meet the~~
4 ~~provisions set out in the student achievement act. Allocations shall~~
5 ~~be made on an equal per full-time equivalent student basis to each~~
6 ~~school district.~~

7 (4)) After July 1, 2010, the state treasurer shall transfer one
8 hundred two million dollars from the general fund to the education
9 construction fund by June 30th of each year.

10 **Sec. 6.** RCW 67.70.340 and 2010 1st sp.s. c 27 s 4 are each amended
11 to read as follows:

12 (1) The legislature recognizes that creating a shared game lottery
13 could result in less revenue being raised by the existing state lottery
14 ticket sales. The legislature further recognizes that the fund most
15 impacted by this potential event is the Washington opportunity pathways
16 account. Therefore, it is the intent of the legislature to use some of
17 the proceeds from the shared game lottery to make up the difference
18 that the potential state lottery revenue loss would have on the
19 Washington opportunity pathways account. The legislature further
20 intends to use some of the proceeds from the shared game lottery to
21 fund programs and services related to problem and pathological
22 gambling.

23 (2) The Washington opportunity pathways account is expected to
24 receive one hundred two million dollars annually from state lottery
25 games other than the shared game lottery. For fiscal year 2011 and
26 thereafter, if the amount of lottery revenues earmarked for the
27 Washington opportunity pathways account is less than one hundred two
28 million dollars, the commission, after making the transfer required
29 under subsection (3) of this section, must transfer sufficient moneys
30 from revenues derived from the shared game lottery into the Washington
31 opportunity pathways account to bring the total revenue up to one
32 hundred two million dollars.

33 (3) (a) The commission shall transfer, from revenue derived from the
34 shared game lottery, to the problem gambling account created in RCW
35 43.20A.892, an amount equal to the percentage specified in (b) of this
36 subsection of net receipts. For purposes of this subsection, "net
37 receipts" means the difference between (i) revenue received from the

1 sale of lottery tickets or shares and revenue received from the sale of
2 shared game lottery tickets or shares; and (ii) the sum of payments
3 made to winners.

4 (b) In fiscal year 2006, the percentage to be transferred to the
5 problem gambling account is one-tenth of one percent. In fiscal year
6 2007 and subsequent fiscal years, the percentage to be transferred to
7 the problem gambling account is thirteen one-hundredths of one percent.

8 (4) The commission shall transfer the remaining net revenues, if
9 any, derived from the shared game lottery "Powerball" authorized in RCW
10 67.70.044(1) after the transfers pursuant to this section into the
11 state general fund for (~~the student achievement program under RCW~~
12 ~~28A.505.220~~) support for the program of basic education under RCW
13 28A.150.200.

14 (5) The remaining net revenues, if any, in the shared game lottery
15 account after the transfers pursuant to this section shall be deposited
16 into the Washington opportunity pathways account.

17 **Sec. 7.** RCW 83.100.230 and 2010 1st sp.s. c 37 s 953 are each
18 amended to read as follows:

19 The education legacy trust account is created in the state
20 treasury. Money in the account may be spent only after appropriation.
21 Expenditures from the account may be used only for (~~deposit into the~~
22 ~~student achievement fund~~) support of the common schools, and for
23 expanding access to higher education through funding for new
24 enrollments and financial aid, and other educational improvement
25 efforts. (~~During the 2009-2011 fiscal biennium, moneys in the account~~
26 ~~may also be transferred into the state general fund.~~)

27 **Sec. 8.** RCW 84.52.0531 and 2010 c 237 s 1 and 2010 c 99 s 11 are
28 each reenacted and amended to read as follows:

29 The maximum dollar amount which may be levied by or for any school
30 district for maintenance and operation support under the provisions of
31 RCW 84.52.053 shall be determined as follows:

32 (1) For excess levies for collection in calendar year 1997, the
33 maximum dollar amount shall be calculated pursuant to the laws and
34 rules in effect in November 1996.

35 (2) For excess levies for collection in calendar year 1998 and

1 thereafter, the maximum dollar amount shall be the sum of (a) plus or
2 minus (b), (c), and (d) of this subsection minus (e) of this
3 subsection:

4 (a) The district's levy base as defined in subsections (3) and (4)
5 of this section multiplied by the district's maximum levy percentage as
6 defined in subsection (6) of this section;

7 (b) For districts in a high/nonhigh relationship, the high school
8 district's maximum levy amount shall be reduced and the nonhigh school
9 district's maximum levy amount shall be increased by an amount equal to
10 the estimated amount of the nonhigh payment due to the high school
11 district under RCW 28A.545.030(3) and 28A.545.050 for the school year
12 commencing the year of the levy;

13 (c) Except for nonhigh districts under (d) of this subsection, for
14 districts in an interdistrict cooperative agreement, the nonresident
15 school district's maximum levy amount shall be reduced and the resident
16 school district's maximum levy amount shall be increased by an amount
17 equal to the per pupil basic education allocation included in the
18 nonresident district's levy base under subsection (3) of this section
19 multiplied by:

20 (i) The number of full-time equivalent students served from the
21 resident district in the prior school year; multiplied by:

22 (ii) The serving district's maximum levy percentage determined
23 under subsection (6) of this section; increased by:

24 (iii) The percent increase per full-time equivalent student as
25 stated in the state basic education appropriation section of the
26 biennial budget between the prior school year and the current school
27 year divided by fifty-five percent;

28 (d) The levy bases of nonhigh districts participating in an
29 innovation academy cooperative established under RCW 28A.340.080 shall
30 be adjusted by the office of the superintendent of public instruction
31 to reflect each district's proportional share of student enrollment in
32 the cooperative;

33 (e) The district's maximum levy amount shall be reduced by the
34 maximum amount of state matching funds for which the district is
35 eligible under RCW 28A.500.010.

36 (3) For excess levies for collection in calendar year 2005 and
37 thereafter, a district's levy base shall be the sum of allocations in
38 (a) through (c) of this subsection received by the district for the

1 prior school year and the amounts determined under subsection (4) of
2 this section, including allocations for compensation increases, plus
3 the sum of such allocations multiplied by the percent increase per full
4 time equivalent student as stated in the state basic education
5 appropriation section of the biennial budget between the prior school
6 year and the current school year and divided by fifty-five percent. A
7 district's levy base shall not include local school district property
8 tax levies or other local revenues, or state and federal allocations
9 not identified in (a) through (c) of this subsection.

10 (a) The district's basic education allocation as determined
11 pursuant to RCW 28A.150.250, 28A.150.260, and 28A.150.350;

12 (b) State and federal categorical allocations for the following
13 programs:

14 (i) Pupil transportation;

15 (ii) Special education;

16 (iii) Education of highly capable students;

17 (iv) Compensatory education, including but not limited to learning
18 assistance, migrant education, Indian education, refugee programs, and
19 bilingual education;

20 (v) Food services; and

21 (vi) Statewide block grant programs; and

22 (c) Any other federal allocations for elementary and secondary
23 school programs, including direct grants, other than federal impact aid
24 funds and allocations in lieu of taxes.

25 (4) For levy collections in calendar years 2005 through 2017, in
26 addition to the allocations included under subsection (3)(a) through
27 (c) of this section, a district's levy base shall also include the
28 following:

29 (a)(i) For levy collections in calendar year 2010, the difference
30 between the allocation the district would have received in the current
31 school year had RCW 84.52.068 not been amended by chapter 19, Laws of
32 2003 1st sp. sess. and the allocation the district received in the
33 current school year pursuant to RCW 28A.505.220;

34 (ii) For levy collections in calendar years 2011 through 2017,
35 ~~((the difference between))~~ the allocation rate the district would have
36 received in the prior school year using the Initiative 728 rate ~~((and~~
37 ~~the allocation rate the district received in the prior school year~~

1 ~~pursuant to RCW 28A.505.220~~) multiplied by the full-time equivalent
2 student enrollment used to calculate the Initiative 728 allocation for
3 the prior school year; and

4 (b) The difference between the allocations the district would have
5 received the prior school year using the Initiative 732 base and the
6 allocations the district actually received the prior school year
7 pursuant to RCW 28A.400.205.

8 (5) For levy collections in calendar years 2011 through 2017, in
9 addition to the allocations included under subsections (3)(a) through
10 (c) and (4)(a) and (b) of this section, a district's levy base shall
11 also include the difference between an allocation of fifty-three and
12 two-tenths certificated instructional staff units per thousand full-
13 time equivalent students in grades kindergarten through four enrolled
14 in the prior school year and the allocation of certificated
15 instructional staff units per thousand full-time equivalent students in
16 grades kindergarten through four that the district actually received in
17 the prior school year, except that the levy base for a school district
18 whose allocation in the 2009-10 school year was less than fifty-three
19 and two-tenths certificated instructional staff units per thousand
20 full-time equivalent students in grades kindergarten through four shall
21 include the difference between the allocation the district actually
22 received in the 2009-10 school year and the allocation the district
23 actually received in the prior school year.

24 (6)(a) A district's maximum levy percentage shall be twenty-four
25 percent in 2010 and twenty-eight percent in 2011 through 2017 and
26 twenty-four percent every year thereafter;

27 (b) For qualifying districts, in addition to the percentage in (a)
28 of this subsection the grandfathered percentage determined as follows:

29 (i) For 1997, the difference between the district's 1993 maximum
30 levy percentage and twenty percent; and

31 (ii) For 2011 through 2017, the percentage calculated as follows:

32 (A) Multiply the grandfathered percentage for the prior year times
33 the district's levy base determined under subsection (3) of this
34 section;

35 (B) Reduce the result of (b)(ii)(A) of this subsection by any levy
36 reduction funds as defined in subsection (7) of this section that are
37 to be allocated to the district for the current school year;

1 (C) Divide the result of (b)(ii)(B) of this subsection by the
2 district's levy base; and

3 (D) Take the greater of zero or the percentage calculated in
4 (b)(ii)(C) of this subsection.

5 (7) "Levy reduction funds" shall mean increases in state funds from
6 the prior school year for programs included under subsections (3) and
7 (4) of this section: (a) That are not attributable to enrollment
8 changes, compensation increases, or inflationary adjustments; and (b)
9 that are or were specifically identified as levy reduction funds in the
10 appropriations act. If levy reduction funds are dependent on formula
11 factors which would not be finalized until after the start of the
12 current school year, the superintendent of public instruction shall
13 estimate the total amount of levy reduction funds by using prior school
14 year data in place of current school year data. Levy reduction funds
15 shall not include moneys received by school districts from cities or
16 counties.

17 (8) The definitions in this subsection apply throughout this
18 section unless the context clearly requires otherwise.

19 (a) "Prior school year" means the most recent school year completed
20 prior to the year in which the levies are to be collected.

21 (b) "Current school year" means the year immediately following the
22 prior school year.

23 (c) "Initiative 728 rate" means the allocation rate at which the
24 student achievement program would have been funded under chapter 3,
25 Laws of 2001, if all annual adjustments to the initial 2001 allocation
26 rate had been made in previous years and in each subsequent year as
27 provided for under chapter 3, Laws of 2001.

28 (d) "Initiative 732 base" means the prior year's state allocation
29 for annual salary cost-of-living increases for district employees in
30 the state-funded salary base as it would have been calculated under
31 chapter 4, Laws of 2001, if each annual cost-of-living increase
32 allocation had been provided in previous years and in each subsequent
33 year.

34 (9) Funds collected from transportation vehicle fund tax levies
35 shall not be subject to the levy limitations in this section.

36 (10) The superintendent of public instruction shall develop rules
37 and inform school districts of the pertinent data necessary to carry
38 out the provisions of this section.

1 (11) For calendar year 2009, the office of the superintendent of
2 public instruction shall recalculate school district levy authority to
3 reflect levy rates certified by school districts for calendar year
4 2009.

5 NEW SECTION. **Sec. 9.** The following acts or parts of acts are each
6 repealed:

- 7 (1) RCW 28A.505.210 (Student achievement funds--Use and accounting
8 of funds--Public hearing--Report) and 2009 c 479 s 17, 2005 c 497 s
9 105, & 2001 c 3 s 3; and
10 (2) RCW 28A.505.220 (Student achievement program--General fund
11 allocation) and 2011 1st sp.s. c 17 s 1.

12 NEW SECTION. **Sec. 10.** Section 8 of this act expires January 1,
13 2018.

Passed by the House April 10, 2012.

Passed by the Senate April 10, 2012.

Approved by the Governor May 2, 2012.

Filed in Office of Secretary of State May 2, 2012.

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Subject: State v. McCleary; Case No. 84362-7

Sent on behalf of David A. Stolier, Senior Assistant Attorney General and William G. Clark, Senior Counsel

Attached for filing is the Supplemental Reply Brief of Appellant in the above referenced case. Filed by David A. Stolier, Senior Assistant Attorney General, WSBA #24071 and William G. Clark, Senior Counsel, WSBA #9234.

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