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NO. 89714-0

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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LEAGUE OF WOMEN VOTERS OF WASHINGTON, a Washington non-profit corporation; EL CENTRO DE LA RAZA, a Washington non-profit corporation; WASHINGTON ASSOCIATION OF SCHOOL ADMINISTRATORS, a Washington non-profit corporation; WASHINGTON EDUCATION ASSOCIATION, a Washington non-profit corporation; WAYNE AU, PH.D., on his own behalf; PAT BRAMAN, on her own behalf; DONNA BOYER, on her own behalf and on behalf of her minor children; and SARAH LUCAS, on her own behalf and on behalf of her minor children,

Appellants,

v.

STATE OF WASHINGTON,

Respondent,

and

WASHINGTON STATE CHARTER SCHOOLS ASSOCIATION; LEAGUE OF EDUCATION VOTERS; DUCERE GROUP; CESAR CHAVEZ SCHOOL; TANIA DE SA CAMPOS; and MATT ELISARA,

Intervenors.

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**REPLY BRIEF OF RESPONDENT/CROSS-APPELLANT STATE OF WASHINGTON**

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## I. INTRODUCTION

Plaintiffs ask this Court to override the will of Washington's voters based on an extreme, antiquated approach to article IX. But Plaintiffs' briefing shows that even Plaintiffs cannot stomach the full consequences of their position. The Court should reject their unworkable approach.

Plaintiffs claim that it was impermissible for voters to categorize public charter schools as "common schools" because, in Plaintiffs' view, the Framers intended for common schools to be under the "complete control" of school districts. But this supposed constitutional requirement is never mentioned in the constitution and is not met by any school in Washington, given the sizable regulatory role of the legislature and Superintendent of Public Instruction. Moreover, Plaintiffs ask this Court to adhere rigidly to the Framers' supposed (but unstated) intent, while ignoring that the Framers explicitly distinguished between "common schools" and "high schools." Today, no one—not even Plaintiffs—questions the legislature's decision to classify high schools as common schools, and that article IX is flexible enough to allow that classification. Plaintiffs provide no reason why article IX must nonetheless be so inflexible as to forbid voters' decision to classify public charter schools as common schools. Plaintiffs cannot have it both ways: either article IX is locked in time, or it can evolve as society's needs change.

This Court has already made clear that article IX is adaptable to modern needs. *See, e.g., Seattle Sch. Dist. v. State*, 90 Wn.2d 476, 517, 585 P.2d 71 (1978) ("the constitution was not intended to be a static

document incapable of coping with changing times”). In *Seattle School District*, the Court flatly rejected an argument that article IX, section 1 should be interpreted in light of the school financing system in place shortly after statehood. *Id.* at 514-15. This Court should reject Plaintiffs’ restrictive view of “common schools” just as quickly, recognizing that century-old cases reflected features of common schools and their funding as they then existed, while article IX allows a more modern approach.

Plaintiffs’ arguments similarly lack consistency and ignore precedent as to the constitution’s common school funding restrictions. For example, they argue that local voter control over hiring and firing of staff is an essential characteristic of common schools, but they also assert that Running Start, the UW highly capable program, and privately contracted basic education instruction are within the realm of common schools, despite a lack of local voter control over hiring and firing of their teachers. *Compare* Appellants’ Op. Br. at 21, 35 *and* Appellants’ Reply at 17-18 *with* Appellants’ Reply at 19. Plaintiffs initially argued the entire “basic education allocation” was constitutionally restricted, but they now admit that the legislature can use unrestricted revenues to support non-common schools. Appellants’ Op. Br. at 3, 25; Appellants’ Reply at 18. Their argument is now circular: restricted common school funds are whatever is appropriated for common schools. Appellants’ Reply at 18.

Rather than attempting to reconcile these shifting and inconsistent arguments, this Court should resolve this case using the plain language of article IX. The constitution identifies the specific revenues and accounts

that are restricted to support of common schools: the irreducible Permanent Common School Fund, revenue from the state tax for common schools, and the Common School Construction Fund. Currently, the state tax for the support of common schools is the state property tax imposed under RCW 84.52.065. The total amount appropriated for public education in Washington vastly exceeds the revenue collected from this tax. Plaintiffs admit that nothing prevents the legislature from using unrestricted general fund money from other revenue sources for charter schools. Thus, this court should reject this facial challenge to the constitutionality of the Charter School Act.

## II. COUNTERSTATEMENT OF THE CASE

### A. Charter Schools Must Comply With Multiple Statutes, Regulations, and Contract Requirements, and They Are Regulated By Multiple Entities, Including the Superintendent

Public charter schools are subject to rigorous accountability. *See generally*, State's Op. Br. at 8-13. They must meet the same academic standards as other public schools and they must teach the Essential Academic Learning Requirements (EALRs) to their students. RCW 28A.710.040(2); RCW 28A.150.210. While Plaintiffs describe the EALRs as "goals," in truth, the EALRs establish what each public school student in Washington must know about each subject at each grade level. *E.g.*, CP at 371-504. Both traditional<sup>1</sup> and charter public schools develop

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<sup>1</sup> For purposes of this case, "traditional school" refers to a traditional public school setting, while "non-traditional" refers to public school programs outside the traditional setting.

their curricula and choose the texts they will use to teach the knowledge and skills covered in the EALRs. RCW 28A.710.040(3); RCW 28A.320.230.

Plaintiffs acknowledge that charter schools must also comply with the laws and regulations identified in the Charter Schools Act *and* any laws identified in the charter school's contract. Appellants' Reply at 30. Though Plaintiffs claim that the Act exempts charter schools from many statutes, such as RCW 28A.150.220, state and federal student discipline laws (e.g., RCW 28A.150.300; RCW 28A.600.410-490), and laws concerning English language learners, the charter school contracts expressly require compliance with these statutes. *See* Charter School Commission, 2014 Sample Charter Contract at §§ 4.3.2, 4.3.10, and 4.3.8.<sup>2</sup> Plaintiffs thus cannot show that charter schools are relieved of any of these requirements. While Plaintiffs complain that charter schools are not expressly required to comply with RCW 28A.230 (compulsory coursework), they have not identified any aspect of that statute that is not covered either by the EALRs' specific instructional requirements or by the charter contracts. Finally, Plaintiffs ignore the rigorous application process and the extensive plans and curricula that charter schools must submit to be approved in the first instance. *See* RCW 28A.710.130(2); WAC 108-20-070 (listing more than 20 requirements);<sup>3</sup> *see also* WAC

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<sup>2</sup> Available at <http://www.governor.wa.gov/issues/education/commission/documents/2014WSCSContract.pdf>.

<sup>3</sup> Plaintiffs also ignore that the Act allows a one-year start-up period, RCW 28A.710.160(5). Thus, applications need not reflect a completely developed school.

108-30-020 (holding charter schools accountable if they fail to meet legal or contract requirements). Plaintiffs ask the Court to assume violations of both the law and the contracts before charter schools have even opened.

Charter schools are accountable to the Superintendent of Public Instruction, the State Board of Education, and the Professional Education Standards Board. RCW 28A.710.040(2), (3), (5). Charter schools must meet the same academic standards as traditional public schools, participate in statewide student assessments and annual school performance reviews, be accountable for performance improvement, and teachers must meet state certification standards. RCW 28A.710.040. Charter schools must remain above the bottom quartile of all public schools or risk cancellation of their contract, while traditional public schools risk closure only if they are in the bottom five percent. RCW 28A.710.200; RCW 28A.657.

In sum, charter schools are subject to rigorous accountability to multiple entities. While Plaintiffs claim charter schools are exempt from a broad swath of unidentified “uniform” school laws, Appellants’ Reply at 8, they fail to account for contract requirements that require compliance with all of the statutes Plaintiffs claim to be constitutionally significant. Finally, they fail to show how any other unspecified difference between traditional public schools and charter schools violates the constitution.

**B. Existing Appropriations for Public Schools Are Much Broader than Appropriations for Programs That Would Meet the Plaintiffs’ Restrictive Definition of Common Schools**

Retreating from their assertion that the entire “basic education allocation” is constitutionally restricted, Plaintiffs now argue that any

money the legislature has appropriated specifically for common schools cannot be spent for non-common school purposes. *Compare* Appellants' Op. Br. at 3, 25 with Appellants' Reply at 21, 24. Yet the legislature does not specifically identify in its operating budget appropriations that are exclusively for "common schools." *See generally* Laws of 2013, 2d Spec. Sess., ch. 4, §§ 501-516. Even if it did, the legislature's current definition of "common schools" is broader than Plaintiffs' narrow definition of the term because the requirement that common schools be under the control of school boards was long ago removed. *Compare* Laws of 1897, ch. CXVIII, § 64, p. 384 with RCW 28A.150.020. Most importantly, the total appropriations for K-12 education far exceed the revenue from the state property tax for common schools, and those appropriations fund a diverse spectrum of public education programs. CP at 1029-32.

Under the legislature's budget structure, appropriations for K-12 public schools are made in Part V of the operating budget. *E.g.*, Laws of 2013, 2d Spec. Sess., ch. 4, §§ 501-516. Traditional public school programs are funded under "general apportionment," based on formulas that rely, in part, on student enrollment. *See* Laws of 2013, 2d Spec. Sess., ch. 4, § 502; RCW 28A.150.250-.275 (funding formulas).<sup>4</sup> However, this "general apportionment" section also expressly provides funding for non-traditional programs, including some programs where teachers cannot be

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<sup>4</sup> For purposes of this discussion, "student enrollment" means "average annual full-time equivalent students" as used in RCW 28A.150's funding formulas. RCW 28A.150.260.

hired and fired by school districts. *See e.g.*, Laws of 2013, 2d Spec. Sess., ch. 4, § 502(10) (Alternative Learning Experience); (18) (Running Start); (15)(b) (skill training). In separate sections of the budget bill, the legislature also appropriates funding for transportation, special education, highly capable programs, transitional bilingual instruction, and learning assistance programs, based in part on the number of qualifying students, for ultimate allocation to both traditional and non-traditional public schools. *See id* at §§ 505, 507, 511, 514, 515. The legislature does not separate what portion of any of these appropriations is for the support of “common schools.”

Plaintiffs are correct that some non-traditional public school programs are funded through specific appropriations, but this is because their costs and formulas are different. *See, e.g.*, Laws of 2013, 2d Spec. Sess., ch. 4, § 510 (DSHS residential rehabilitation, juvenile rehabilitation, department of corrections, and municipal jail programs). Nevertheless, the legislature does not state whether these are appropriations for common schools or not. More importantly, appropriations for other non-traditional public school programs are intermingled with the appropriation for general apportionment in § 502 and the appropriations for other categories of basic education funding in §§ 505, 507, 511, 514, and 515. Thus, under the current education funding structure, it is impossible for Plaintiffs to identify specific appropriations made exclusively for “common schools.”

### III. ARGUMENT

#### A. Plaintiffs Must Show Charter Schools Cannot Be Operated Constitutionally Under Any Circumstances

Plaintiffs seek a declaration that the entire Charter Schools Act is unconstitutional. This facial challenge must fail unless Plaintiffs have shown beyond a reasonable doubt that there is no set of circumstances under which charter schools could be operated constitutionally. *Tunstall ex. rel. Tunstall v. Bergeson*, 141 Wn.2d 201, 221, 5 P.3d 691 (2000).

#### B. Charter Schools Are Common Schools

##### 1. Where Article IX Does Not Define a Term, This Court Has Used Legislative Definitions to Inform Its Interpretation

While legislative pronouncements do not conclusively determine the meaning of constitutional terms, this Court has often used modern statutes as tools to interpret article IX, recognizing the legislative branch's role in defining the contours of the public education system. *E.g.*, *McCleary v. State*, 173 Wn.2d 477, 526, 269 P.3d 227 (2012) (legislature must provide substantive content to the word "education"). While Plaintiffs point to *Tunstall* to argue that legislative definitions of constitutional terms are not controlling, Appellants' Reply at 13, the *Tunstall* court did not hesitate to look to modern statutes to inform the common and ordinary understanding of a constitutional term, there "children." *Tunstall*, 141 Wn.2d at 218 (looking broadly at state statutes).

This Court has also emphasized that the constitution's education provisions cannot remain static. *Seattle School District*, 90 Wn.2d at 517. Article IX allows flexibility for the legislative branch to customize public

education programs to meet modern needs. *Tunstall*, 141 Wn.2d at 223. This flexibility is not boundless, but this Court has always considered the need for new and innovative education options “as the needs of students and the demands of society evolve.” *McCleary*, 173 Wn.2d at 526.

This Court should consider the evolution of the term “common school” over time in Washington’s education statutes, which have added both high schools and kindergarten to the definition. Laws of 1895, ch. CL, § 1, p. 373; *Seattle School Dist.*, 90 Wn.2d at 534 (citing RCW 28A.01.060 (1978)). The *Bryan* court relied in part on a now long-abandoned statutory definition of “common school.” *Sch. Dist. No. 20, Spokane County v. R .B. Bryan*, 51 Wash. 498, 503, 99 P. 28 (1909) (referring to the requirements in the Constitution and *the code of public instruction*). This Court has, since *Bryan*, recognized the legislature’s ability to expand and contract the concept of “common school” through legislation. See *Moses Lake Sch. Dist. v. Big Bend Cmty. College*, 81 Wn.2d 551, 503 P.2d 86 (1972).

**2. Before and After *Bryan*, This Court Has Found No Problem With the Legislature’s Express Expansion or Contraction of the Concept of “Common School”**

This Court has never questioned the expansion of “common schools” to include high schools, even though article IX, section 2 expressly distinguishes high schools and normal schools from common schools. (“The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established.”). In 1893, taxpayers in Seattle challenged the funding of

Seattle's high school. Dennis C. Troth, *History and Development of Common School Legislation in Washington*, 159-60 (1927). High school proponents renamed it a "graded school" until the legislature could add high schools to "common schools" in 1895. *Id.* at 160. This Court has never questioned the constitutionality of the 1895 legislation.

Then, in 1945, the legislature further expanded common schools to include the thirteenth and fourteenth grades. Laws of 1945, ch. 115, § 2. Specifically, the 1945 legislature authorized school districts to "establish and maintain . . . educational programs . . . as thirteenth (13th) and fourteenth (14th) years in high schools *and as part of the common school system of the state . . .*" *Id.* These grades remained part of the common schools until the Community College Act of 1967, when the legislature made the thirteenth and fourteenth grades expressly "'separate from . . . the common school system.'" *Moses Lake*, 81 Wn.2d at 553 (quoting RCW 28B.50.020(5)). The *Moses Lake* Court emphasized that school districts are creatures of statute, whose rights and responsibilities are subject to legislative definition, and did not question the legislature's ability under article IX to expand and then contract the "common schools." *Id.* at 556.

Plaintiffs claim that despite these clearly accepted legislative changes to the scope of "common schools," their core characteristic is that they must be subject to local voter control through elected school boards. In particular, Plaintiffs rely on the *Bryan* Court's statement that in order to qualify as a common school under the "requirement of the Constitution

*and code of public instruction,*” the voters must be able to “select qualified teachers” and have the “power to discharge them if they are incompetent.” *Bryan*, 51 Wash. at 503-04 (emphasis added). Local voter control over hiring and firing has never been expressed in the text of the constitution, however. When *Bryan* was decided, it was the public school code that required common schools to be subject to “the control of [school] boards.” Laws of 1897, ch. CXVIII, § 64, p. 384. This requirement was taken out of the modern statute. *See* RCW 28A.150.020.

The absence of a local voter control requirement in article IX’s text is significant. Newspaper articles, written while the constitution was being drafted, emphasized the Framers were aware that what they left unsaid in constitutional text would be subject to later development by the legislative branch. *E.g., Washington Constitutional Convention, Contemporary Newspaper Articles*, vol. 3, pg. 23, col 1 (judicial departments could be created by legislature if constitution remained silent); pg. 26, col. 3 (debating whether certain jurisdiction questions should be left to the legislature); pg. 34, col. 2 (noting a particular section expressed only limitations on the legislature’s power) (compiled 1998). While the Framers certainly were aware that control by local school boards was an aspect of territorial schools, *see e.g.,* Laws of 1854, ch. II, pp. 320-22, they chose not to include such a requirement in article IX even though other states had done so. *Contrast with, e.g., California Const., art. IX, § 3.3* (creating county school boards). This court has since emphasized that school districts are purely creatures of statute. *Tunstall,*

141 Wn.2d at 232; *Moses Lake*, 81 Wn.2d at 556. Even *Holmes*, cited by Plaintiffs, emphasized soon after statehood that the creation and powers of school districts rested entirely with the legislature. Appellants' Reply at 14; *Holmes & Bull Furniture Co. v. Hedges*, 13 Wash. 696, 700, 43 P. 944 (1896).<sup>5</sup> If the Constitution did not require creation of school districts (as it clearly did not), how could it have required school districts to have "complete control of the schools," as Plaintiffs have claimed? Appellants' Op. Br. at 21.

In addition, if this Court adopts Plaintiffs' narrow definition of common schools, along with their broad definition of what funding is constitutionally restricted, such a holding would jeopardize several successful public school programs. Community college teachers and professors cannot be hired and fired by school boards, so Running Start could not be part of the common schools. See RCW 28A.600.310-.400. Professors teaching for the UW program for highly capable students likewise are not subject to hiring and firing by a local school board. See RCW 28A.185.040. Tribal teachers at tribal compact schools, teachers at the National Guard residential schools, and teachers working for educational service districts or for private, non-sectarian contractors providing basic education to select students all lack a direct employment

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<sup>5</sup> Plaintiffs cite former article VI, section 2 (allowing women to vote on school elections only) and former article VIII, section 6 (restricting municipal indebtedness) as evidence that the Framers anticipated the existence of school districts, but that does not mean the Framers constitutionally *required* school districts or otherwise limited legislative control over them.

relationship with a school board.<sup>6</sup> To the extent Plaintiffs argue that contractual control can be enough, Appellants' Reply at 18-19, public charter schools are also parties to detailed contracts.

Consistent with the full historical context surrounding "common schools" in Washington, this Court should recognize that *Bryan* combined its discussions of constitutional and statutory requirements. Local voter control is not required by the constitution's text, and while it used to be a statutory requirement, it is no longer. In modern times, just as a high school can now be a common school, a school need not be under direct control of local boards to constitute a common school. Even if voter control were required, charter schools are sufficiently accountable to elected officials to meet the *Bryan* Court's core concern. *See* Appellants' Reply at 19 (acknowledging accountability to Superintendent is enough).

**C. Even if They Were Not Common Schools, Charter Schools Could Operate Without Constitutionally Restricted Funds**

Even if charter schools were not common schools, they can be funded without constitutionally restricted education revenues or accounts: the Permanent Common School Fund, the state property tax for common schools, and the Common School Construction Fund.<sup>7</sup> While Plaintiffs now assert that charter schools cannot receive money that has been

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<sup>6</sup> *See* RCW 28A.715 (tribal compact schools); RCW 28A.150.305 (drop-out prevention by National Guard, educational service district, or private entities); WAC 392-121-188; WAC 392-172A-04080 to -04110 (special education and basic education services).

<sup>7</sup> The Common School Construction Fund's revenue sources—interest from the Permanent Common School Fund and proceeds from timber and crop sales from state and school lands—are also protected. Article IX, § 3.

“appropriated” for common schools, Plaintiffs have failed to establish which appropriations somehow create a constitutional restriction. Plaintiffs seem to suggest that a calculation of charter school allocation that is based in part on student enrollment somehow diverts constitutionally protected funds, but the constitution does not prevent a method of calculation, nor does it prevent charter school appropriations and common school appropriations from being made in the same budget section.

**1. This Court Has Always Recognized That the Legislature May Appropriate Money From the General Fund for Public Schools That Are Not Common Schools**

Since at least 1889, the public school system has included more than just common schools, and public school funding under article IX has included more than just funding for common schools. Article IX, section 1 requires ample provision for “the education of all children,” not just ample provision for common schools, while section 2 provides that common schools are one of many types of schools within the public school system.

Shortly after statehood, this Court acknowledged that school districts were being funded with money from sources other than just the restricted common school fund. *Pacific Mfg. Co. v. Sch. Dist. No. 7*, 6 Wash. 121, 122, 33 P. 68 (1893). Not long after, in *Bryan*, the Court held that normal schools could be funded from general state funds, even though they were not common schools. *Bryan*, 51 Wash. at 506-07.

Then, in *Moses Lake*, the Court explained that “common schools are but one part of the entire public school system. It is neither synonymous with nor inclusive thereof.” *Moses Lake*, 81 Wn.2d at 559-60. Moreover, not all public funds used for public education are constitutionally restricted. *See id.* at 559. Significantly, the Court placed the burden on the plaintiffs to show that constitutionally restricted funds were being diverted, but they failed to do so. *See id.* at 559. When the legislature transferred property from school districts to the community college system without compensation, this did not unconstitutionally divert common school funds. *Id.* at 558-60 (“While the instant funds may have been public school funds, none were ‘common school funds.’”); *see also Seattle School District*, 90 Wn.2d at 521-22 (“the constitutional draftsmen must have contemplated that funds, [o]ther than common school funds, were available for [a]nd used to educate our resident children”). As a practical matter, after *Seattle School District* and *McCleary*, the funding required to meet the State’s article IX duty vastly exceeds revenues from the state property tax for common schools, RCW 84.52.065.

In sum, this Court has always recognized that funding appropriated for public schools is broader than that provided to the more limited subset of “common schools.” Plaintiffs acknowledge that the legislature can appropriate from the general fund for schools that do not meet their restrictive definition of common schools. Appellants’ Reply at 18. There is no reason why unrestricted general fund money cannot be used to fund charter schools, even if this court holds they are not common schools.

**2. The Restricted State Tax for Common Schools Is Imposed by RCW 84.52.065, and Defining the Tax by Appropriation Would Be Unworkable**

Relying on *Vocational Education v. Yelle*, 199 Wash. 312, 91 P.2d 573 (1939), Plaintiffs assert that the state tax for common schools is circularly defined by the legislature's appropriations, rather than by an established state property tax revenue stream, RCW 84.52.065. Plaintiffs originally asserted that *Vocational Education's* reference to "appropriations" converted "all basic education funds" into a constitutionally restricted "state tax for the support of common schools." Appellants' Op. Br. at 3, 24. But this reasoning flatly contradicted the *Moses Lake* and *Seattle School District* reasoning that *not* all public school appropriations are restricted for common schools. *See supra* at 15. This perhaps explains Plaintiffs' new articulation of their argument: money that has been "appropriated for common schools" constitutes "the state tax for common schools." Appellants' Reply at 23-24. This argument fails.

The plain language of the constitution restricts a revenue stream, "the state tax for common schools," not appropriations. Const. art. IX, § 2. Even so, reference to appropriations made some sense under the taxing scheme in place when *Vocational Education* was decided. *See State's Op. Br.* at 33-34. At the time, the tax rate, and therefore the amount of state tax collected for common schools, was calculated according to need, which was determined using a per-pupil formula. Laws of 1939, ch. 174, § 4. The needed amount, but no more, was deposited in "the current school fund" for appropriation to the common schools. Laws

of 1939, ch. 225, § 31, p. 1016. Thus, the amount to be “appropriated” from the “current school fund” established the effective rate of the tax—the amount of the appropriation and the tax were inextricably linked.<sup>8</sup>

In contrast, the rate of the current state property tax for common schools is set in statute at \$3.60 per thousand dollars of assessed value, subject to certain caps. RCW 84.52.065. The “current school fund” no longer exists, and the rate for the state tax for common schools is no longer set according to the amount to be appropriated to the “current school fund.” As a result, appropriations are now irrelevant to the task of identifying the “state tax for common schools.” Article IX, § 2. Instead, RCW 84.52.065 imposes the state tax for common schools.

It is Plaintiffs’ burden to show that constitutionally restricted revenues or accounts will be improperly spent under the Charter Schools Act. *See Moses Lake*, 81 Wn.2d at 559. Yet Plaintiffs cannot articulate how *Vocational Education’s* appropriation reasoning could be applied under the legislature’s modern budgeting system. Here, Plaintiffs have not specifically identified *which* appropriations in the modern budget are restricted under their theory. Perhaps this is because the legislature does not (nor must it) designate what portion of the more than 6.4 billion dollars per year in overall public school funding is being appropriated for a subset of schools meeting Plaintiffs’ narrow definition of “common schools.”

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<sup>8</sup> *Mitchell v. Consol. Sch. Dist.* was also decided under this old taxing scheme. 17 Wn.2d 61, 66, 135 P.2d 79 (1943).

Plaintiffs also rely on RCW 28A.150.380. While that statute requires the legislature to appropriate state funding for the support of common schools, RCW 28A.150.380(1), it also acknowledges that additional funds will be appropriated for broader public school programs. *See* RCW 28A.150.380(2). Contrary to Plaintiffs' assertions, the statute does not somehow prevent general fund money from being appropriated to non-common school programs based on enrollment.

Plaintiffs suggest that a calculation based on enrollment establishes that funding associated with a student will be diverted from common schools if that student chooses a charter school. This reasoning leads to absurd results. The legislature's appropriations have long been set based on a formula that accounts for changes in student enrollment. Plaintiffs' argument calls this funding system into question in ways that reach far beyond charter schools. For example, if a student leaves a traditional public school to enter a residential or juvenile rehabilitation school, is the legislature constitutionally prohibited from shifting corresponding funding to the residential school? What if a student moves out of state or chooses to enroll in a private school? What if the school age population declines because a baby boom ends? Could the legislature never appropriate the resulting savings to other non-common school programs?

Under the current system, as long as the revenue stream from the state property tax for common schools is always spent on common schools, appropriations of unrestricted general fund money can be revised to account for shifts in student enrollment. Under Plaintiffs' reasoning,

however, any reductions in appropriations to “common schools” as a result of declines in enrollment would be “diversions” and would amount to constitutional violations. Yet nothing in the constitution or case law indicates that the Framers intended to constitutionally freeze “common school” funding, regardless of actual student enrollment.

Plaintiffs’ appropriation argument also ignores the constitutional distinction between appropriation bills and other laws. *See Washington State Legislature v. State*, 139 Wn.2d 129, 145, 985 P.2d 353 (1999); *State ex. rel. Washington Toll Bridge Authority v. Yelle*, 54 Wn.2d 545, 551, 342 P.2d 588 (1959). Article VIII, section 4 provides that appropriations must be complete by one month after the close of each biennium, and each new biennial budget must set forth new appropriations. Thus, each biennial legislature has plenary power to reduce or add appropriations at any time, subject to other constitutional limitations. *E.g.*, Article II, § 40; Article VII, § 5. Put another way, budget or appropriation bills are temporary under article VIII, section 4. Here, *revenues* from the state property tax for common schools are restricted, but so long as those revenues are spent on common schools, the legislature can otherwise adjust its *appropriations* with any new biennial budget. To constitutionalize a level of appropriation, unhinged from any restriction on tax revenue, would contravene each legislature’s authority to adjust appropriations within the education budget.

Finally, Plaintiffs emphasize the Framers’ concern with protecting the common school fund, but they fail to recognize that the Framers were

primarily concerned with protecting the Permanent Common School Fund described in article IX, section 3, derived in part from income from lands the federal government ceded to the State for the support of its schools. Maximizing income from these lands and protecting that income from mismanagement were the Framers' central concerns. Theodore L Stiles, *The Constitution of the State and Its Effects Upon Public Interests* 284 (1913);<sup>9</sup> Wash. Constitutional Convention, Contemporary Newspaper Articles (Compiled 1998), e.g., vol. 1 at 2, 5, 55 (debating how to maximize income from lands); vol. 2 at 12-13, 24, 26 (same).

In sum, Plaintiffs' reliance on *Vocational Education* is misplaced because the school funding system at issue in that case no longer exists. As a result, Plaintiffs cannot specifically identify what the purportedly protected "appropriations" actually are. Moreover, if this Court were to adopt Plaintiffs' argument that an appropriation constitutionalizes a level of funding forever, regardless of shifts in enrollment or education policy, that would lead to absurd inflexibility and ignore another constitutional provision giving each legislature the plenary power to set a budget. This Court can avoid these complications simply by acknowledging that the plain language of the constitution restricts a defined revenue source, the state tax for common schools established by RCW 84.52.065. Because general fund K-12 education appropriations vastly exceed the revenue

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<sup>9</sup> "[T]he convention was familiar with the history of school funds in older states, and the attempt was made to avoid the tale of dissipation and utter loss. *At the minimum rate at which school lands can be sold, the state will, sometime, have an irreducible fund for its common schools of more than \$25,000,000, an endowment greater than that of any other education system now existing.*" Emphasis added.

from that constitutionally restricted tax, charter schools can easily be funded without any constitutionally restricted revenues. CP at 1029-32.

**3. Charter Schools Need Not Use Common School Construction Funds in Order to Operate**

If charter schools are not common schools, they will be ineligible to receive restricted common school construction funds. Article IX, § 3. But charter schools need not access the Common School Construction Fund to operate. *See* Laws of 2013, 2d Spec. Sess., ch. 19, §§ 5001-5020 (also appropriating State Building Construction Account money to the School Construction Assistance Program); RCW 28A.710.230 (contemplating that charter schools will rent or lease facilities).

Plaintiffs suggest that charter schools cannot lease or use facilities built with Common School Construction Fund money. Appellants' Reply at 25. Their theory is that because article IX, section 3 requires that certain funds be used solely to build common schools, schools built with such funds can never be used for any other purpose. *Id.* Accepting that argument would lead to the absurd result that school districts would be prohibited from leasing or selling schools they no longer need. Article IX, section 3 imposes no such restriction on subsequent *use* of property. Indeed, school districts have long been authorized to rent out their surplus facilities, even to private schools. RCW 28A.335.040. Early school statutes expressly allowed non-common school use of school facilities. Laws of 1889-1890, p. 365. The *Moses Lake* Court did not hold otherwise. Instead, the Court simply noted that none of the funds used to

purchase the property at issue there were constitutionally restricted. *Moses Lake*, 81 Wn.2d at 559-60.<sup>10</sup> Neither article IX, section 3 nor *Moses Lake* discusses whether non-common school *use* of property built with restricted construction funds is allowed where the school district receives compensation through purchase or lease payments. In fact, *Moses Lake* involved only a full transfer of property without any compensation. *Id.*

Moreover, Plaintiffs have not shown that ownership of a facility built with Common School Construction Fund money will be transferred to a charter school. Nor have they even shown that a charter school will be housed, rent free, in a facility built solely with restricted funds. Thus, even if Plaintiffs were correct on the law, their facial challenge still fails.

**D. Even if They Were Not Common Schools, Provisions Defining Charter Schools as Common Schools and Giving Them Access to Constitutionally Protected Funds Could Be Severed**

Even if charter schools were not common schools, the trial court was correct to conclude that contrary portions of the Charter School Act can be severed. Because the Act contains a severability clause, Initiative 1240, § 402, this Court presumes that any invalid provisions are severable and treats the clause as conclusive unless it is obviously false. *League of Educ. Voters v. State*, 176 Wn.2d 808, 827, 295 P.3d 743 (2013).

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<sup>10</sup> The *Moses Lake* court did not analyze the specific Common School Construction Fund restriction in article IX, section 3, instead focusing on the Permanent Common School Fund addressed in section 2 and section 3. *Id.* at 559-60.

While Plaintiffs rely on *Leonard v. City of Spokane*, 127 Wn.2d 194, 201-02, 897 P.2d 358 (1995), to urge that the elimination of a funding source destroys severability, that case is clearly distinguishable. There, the court concluded that a portion of the Community Redevelopment Financing Act was unconstitutional because it diverted state property tax dollars for the common schools collected under RCW 84.52.065 from common schools to public improvements. *Leonard*, 127 Wn.2d at 199. The Court held that the Financing Act's funding provision could not be severed because it was the "heart and soul of the Act." *Id.* at 201-02. Of course, *Leonard* involved a *financing* statute, intended to provide a funding source to repay bonds issued to finance public improvements. *Id.* at 196. Financing was the statute's central goal. *Id.*

Here, the voters intended to allow up to 40 charter schools to open in Washington in the next five years, as part of the state's overall public education system. RCW 28A.710.005. The majority of state funding for K-12 education is derived from unrestricted general fund revenues, with only about 29 percent of that funding derived from the constitutionally restricted state tax for common schools. CP at 1029-32. If the legislature must fund charter schools with unrestricted revenues from the general fund, that will in no way defeat the purpose of the Charter School Act. Further, Washington voters have enacted education requirements in the past without specifically addressing their funding, leaving it to the legislature to determine how to fund them. *E.g., Federal Way Sch. Dist. v.*

*State*, 167 Wn.2d 514, 520, 219 P.3d 941 (2009). Given the voters' history of relying on the legislature to develop a funding mechanism for other education improvements, Plaintiffs cannot overcome the presumption of severability.

#### IV. CONCLUSION

This Court should affirm the superior court on all issues but one, holding instead that charter schools are common schools. But even if this Court disagrees, it should recognize that charter schools can easily be operated without any constitutionally restricted funds, and thus any reference to common schools in the Charter School Act is severable. In either case, this Court should reject Plaintiffs' facial challenge.

RESPECTFULLY SUBMITTED this 11th day of July, 2014.

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**SUPREME COURT OF THE STATE OF WASHINGTON**

LEAGUE OF WOMEN VOTERS OF WASHINGTON, a Washington non-profit corporation; EL CENTRO DE LA RAZA, a Washington non-profit corporation; WASHINGTON ASSOCIATION OF SCHOOL ADMINISTRATORS, a Washington non-profit corporation; WASHINGTON EDUCATION ASSOCIATION, a Washington non-profit corporation; WAYNE AU, PH.D., on his own behalf; PAT BRAMAN, on her own behalf; DONNA BOYER, on her own behalf and on behalf of her minor children; and SARAH LUCAS, on her own behalf and on behalf of her minor children,

Appellants/Cross-Respondents,

v.

STATE OF WASHINGTON,

Respondent/Cross-Appellant,

and

WASHINGTON STATE CHARTER SCHOOLS ASSOCIATION; LEAGUE OF EDUCATION VOTERS; DUCERE GROUP; CESAR CHAVEZ SCHOOL; TANIA DE SA CAMPOS; and MATT ELISARA,

Intervenors.

CERTIFICATE OF SERVICE

I certify under penalty of perjury in accordance with the laws of the State of Washington that a copy of the Reply Brief of Respondent/Cross-Appellant State of Washington was served on all counsel at the following addresses by electronic mail and US Mail, postage paid via Consolidated Mail Service:

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DATED this 11th day of July 2014, at Olympia, Washington.

  
KRISTIN D. JENSEN

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Dear Clerk and Counsel:

Attached for filing in the above-entitled matter, please find the Reply Brief of Respondent/Cross-Appellant The State of Washington with Certificate of Service.

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No. 89714-0

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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LEAGUE OF WOMEN VOTERS OF WASHINGTON, a Washington non-profit corporation; EL CENTRO DE LA RAZA, a Washington non-profit corporation; WASHINGTON ASSOCIATION OF SCHOOL ADMINISTRATORS, a Washington non-profit corporation; WASHINGTON EDUCATION ASSOCIATION, a Washington non-profit corporation; WAYNE AU, PH.D., on his own behalf; PAT BRAMAN, on her own behalf; DONNA BOYER, on her own behalf and on behalf of her minor children; and SARAH LUCAS, on her own behalf and on behalf of her minor children,

Appellants,

v.

STATE OF WASHINGTON,

Respondent.

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**APPENDIX TO REPLY BRIEF OF APPELLANTS**

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Appellants hereby submit the following supplemental authorities cited in the Reply Brief of Appellants:

1. *Sch. Dist. No. 20, Spokane Cnty. v. Bryan*, No. 7685, Supreme Court Briefs (Wash. 1908).
2. Order, *McCleary v. State*, No. 84362-7 (Wash. June 12, 2014).<sup>1</sup>
3. Wash. Official Voters Pamphlet, S.J.R. 22 (1966).<sup>2</sup>

Other authorities cited therein were submitted in the Appendix to Brief of Appellants.

RESPECTFULLY SUBMITTED this 20th day of June, 2014.

PACIFICA LAW GROUP LLP

By   
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<sup>1</sup> Supreme Court orders and other pleadings from *McCleary v. State* are available at [http://www.courts.wa.gov/appellate\\_trial\\_courts/SupremeCourt/?fa=supremecourt.McCleary\\_Education](http://www.courts.wa.gov/appellate_trial_courts/SupremeCourt/?fa=supremecourt.McCleary_Education).

<sup>2</sup> A copy of the Washington Official Voters Pamphlet (1966) is available at [http://wsldocs.sos.wa.gov/library/docs/osos/voterspamphlet66\\_77/voterspamphlet\\_1966\\_2007\\_000223.pdf](http://wsldocs.sos.wa.gov/library/docs/osos/voterspamphlet66_77/voterspamphlet_1966_2007_000223.pdf).



IN THE  
SUPREME COURT  
OF THE  
STATE OF WASHINGTON.

SCHOOL DISTRICT No. 20, SPOKANE COUNTY,  
a Public Corporation,

*Plaintiff and Respondent,*

vs.

R. B. BRYAN, as Superintendent of Public  
Instruction of the State of Washington,  
and CHARLES P. LUND, G. A. FELLOWS,  
and H. W. COLLINS, as Board of Trustees  
of the State Normal School at Cheney,  
Washington,

*Defendants and Appellants.*

APPEAL FROM THE SUPERIOR COURT OF  
THURSTON COUNTY.

*Hon. O. V. Linn, Judge.*

APPELLANTS' OPENING BRIEF.

JOHN D. ATKINSON,  
*Attorney General*

WILLIAM W. MANIER,  
*Assistant Attorney General.*

*Attorneys for Appellants.*

#### STATEMENT.

This is an action instituted by School District No. 20, Spokane County, to restrain R. B. Bryan, as Superintendent of Public Instruction, from apportioning to the model training department of the State Normal School situate at Cheney, Washington, out of the state funds available for the support of the common schools of the said district, such proportion of the funds to which such school district shall be entitled, as the number of pupils in attendance upon the model training school department (which is a part of the curriculum of the said State Normal School) bears to the whole number of pupils upon which the apportionment is to be made in such district. Such an apportionment of the funds was provided for by the Laws of 1907, chapter 97, and the plaintiff herein attacks the constitutionality of said act.

The matter came on regularly to be heard before the Hon. O. V. Linn, judge of the Superior Court of the State of Washington for Thurston county, on the 13th day of February, 1903, upon the demurrer of the defendant to the complaint or affidavit of the plaintiff, at which time an order was entered overruling said demurrer. The de-

defendants refused in open court to plead further and stood upon their demurrer, and the plaintiff moved for judgment therein, and the motion was granted. Whereupon a decree was issued out of the said court restraining the defendants, as follows:

"R. B. Bryan, as Superintendent of Public Instruction of the State of Washington, and his assistants and deputies and each of them, their agents and servants and employes from apportioning or appropriating, and Charles P. Lund, G. A. Fellows and H. W. Collins, as Board of Trustees of the State Normal School at Cheney, and each of them, as members of said Board of Trustees, from receiving or in any way expending any part of the common school fund or revenue therefrom or state tax for the support of the common schools, to which the plaintiff school district has been, now is, or may hereafter be entitled under the enabling act, admitting the State of Washington into the union, the constitution of the State of Washington, and the laws thereunder, for the use, benefit or support of the model training school of the State Normal School at Cheney."

Also reciting:

"That so much of chapter 97, Laws 1907, 'Entitled an act relating to the model training school department of normal schools, authorized by section 7468 of Pierce's Code, section 2550 of Ballinger's Annotated Codes and Statutes of Washington, and providing for apportion-

ment of funds therefor,' approved March 11, 1907, which seeks to apportion or appropriate any part of the common school fund or revenue therefrom or state tax for the support of the common schools is unconstitutional and void."

To all of which defendants excepted and the exceptions were allowed. From this decree defendants appealed.

## ASSIGNMENTS OF ERROR.

### I.

The court erred in overruling the demurrer of defendants.

### II.

The court erred in issuing an injunction enjoining the defendants herein from apportioning the moneys of the common school fund in accordance with Laws of 1907, chapter 97.

### III.

The court erred in restraining Charles P. Lund, G. A. Fellows and H. W. Collins, as Board of Trustees of the State Normal School at Cheney, from receiving any portion of the common school fund for the use, benefit or support of the model training school department of the State Normal School at Cheney.

### IV.

The court erred in declaring so much of chapter 97, Laws 1907, which seeks to apportion or appropriate any part of the common school fund or revenue therefrom, or state taxes for the support of common schools, to the use of the model training school department of the State Normal School at Cheney unconstitutional and void.

## ARGUMENT.

The statute of 1907 (Laws 1907, chapter 97) relating to the apportionment of common school funds to the use of model training departments of the State Normal Schools is valid:

Section 1 of the act provides for the certifying to the Board of Directors of the school district in which a normal school having a model training department shall be located by the Board of Trustees of such normal school the number of pupils that will be required for each grade of the model training department.

Section 2 of the act makes it the duty of the Board of Directors of such district to furnish to such model training school the number of pupils so required, reserving to the principal of the Normal School the right to reject incorrigible and undesirable pupils who would effect the efficiency of the model training school.

Section 3 of the act provides for the certifying to the Board of Directors of the district of the attendance of such pupils upon the model training school. Also that

the clerk of the district shall keep said attendance segregated from that of the other schools of the district.

Section 4 of the act provides:

"That it shall be the duty of the Superintendent of Public Instruction to apportion to the support of such normal training school out of the funds available for the support of the common schools of the district in which each normal school is situated, such proportion of the funds to which such school district shall be entitled as the number of pupils in attendance upon each such model training school bears to the whole number of pupils upon which the apportionment was made for the common schools in the school district in which such normal school is situated, and the funds so apportioned shall be distributed by the board of trustees for the maintenance of such model training school."

This is the section which the plaintiff claims to be unconstitutional and void.

There are two sections of the constitution which must be considered in our attempt to arrive at a determination of the constitutionality of this law.

Section 2, article 9 provides as follows:

"But the entire revenue derived from the common school fund, and the state tax for common schools, shall be exclusively applied to the support of the common schools."

Section 3, article 9 provides in part:

"The interest accruing on said fund together with all rentals and other revenues derived therefrom and from lands and other property devoted to the common school fund, shall be exclusively applied to the current use of the common schools."

The wording of these sections seems clear. No portion of the common school fund shall be applied to the use of any other branch or department of our public school system than the common schools. Now, what are the common schools within the meaning and intent of these sections?

It is self evident that no legislative definition of the expression "common schools" can be considered of any force in our attempt to arrive at the meaning which the framers of the constitution intended to convey by the said expression. It is for the courts to interpret the constitution and not the legislature.

In the case of *People v. Brooklyn Board of Education*, 13 Barb. 400-410, the court said:

"The word 'common,' as applied to our schools, bears the broadest and most comprehensive signification, it being equivalent to public, universal, open to all, and they are common to all children in the sense that public highways

are common to all persons who may choose to ride or drive thereon."

"The word 'common' has no reference to the kind of studies to be taught in such school, nor as to any method or rule of conduct or government."

*Roach v. Board of Directors*, 7 Mo. App. 567.

"Without being able to give any accurate definition of a 'common school,' it is safe to say that the common understanding is that it is a school that begins with the rudimental elements of education, whatever changes it may embrace, as contra-distinguished from academies or universities."

The phrase "common schools" is synonymous with "public schools."

*Jenkins v. Andover*, 103 Mass. 94.

Both have been defined by lexicographers and by judicial interpretation to mean "free schools."

*Merick v. Inhabitants of Amherst*, 12 Allen. 509;

*Roach v. The Board, etc.*, 77 Mo. 484;

*Collins v. Henderson et al.*, 74 Ky. 74;

*Irvin v. Gregory (Ga.)*, 13 S. E. 120;

*Roach v. The Board*, 7 Mo. App. 567;

*People v. Board*, 13 Barb. 400.

Common or public schools are, as a general rule, schools supported by general taxation, open to all suitable age, and attainments, free of expense."

25 Am. & Eng. Encyc. of Law, 8.

Mr. Black in his Law Dictionary, defines common schools to be "schools maintained at the public expense and administered by a bureau of the state, district, or municipal government, for the gratuitous education of the children of all citizens, without distinction."

Mr. Anderson, in his Law Dictionary, says: "Common or public schools are schools supported by general taxation, open to all free of expense."

Repalje & Lawrence define common schools to be "public or free schools, maintained at public expense, for the elementary education of children of all classes."

Mr. Bouvier, in his Law Dictionary, says that common schools are "schools for general elementary instruction, free to all the public."

Chancellor Kent, in his Commentaries, Vol. 2, p. 195, in discussing free common schools in the several states of the Union, on the continent, and in many European countries, uses the phrase "common schools" exclusively.

The essential characteristics, therefore, of a "common school" are:

1. They must be maintained at public expense.
2. They must provide a course of elementary education for children of all classes of people.

Does the model training school answer these requirements? There is no authority holding that the board of directors of a school district cannot select certain pupils or certain pupils in a certain district or a certain portion of the district and compel them to attend a certain school, provided, of course, they are reasonable in their selection, having due regard for the rights of the pupils. Certain pupils of one grade may be sent to one school, those of another to another building in the district. It is absolutely essential that the principal having charge of the model training school of a normal school should have power to refuse admittance to the incorrigible or the diseased. That is a right given to the person in control of any common school.

Here we have a model training school, which is a portion of a state normal, which has as principal a person chosen for that position because of his experience as an educator; who gives personal supervision to the instruc-

tion of a certain number of the pupils who would otherwise be attending other graded schools of the district. This principal has under his charge a corps of teachers who are making a study, a science, of the art of school teaching. Experience will show the benefits to the pupils attending this department. The pupils are chosen in some way, mayhap, by lot by the directors of the district; mayhap, as being residents within a certain portion of the district in the vicinity of the normal school; mayhap, as being pupils in a certain grade or grades. They are residents of the same district; they pursue the same studies; in all probability receive better and more careful instruction than do the others who attend the other common schools within the district. Why is that not a common school within the meaning of the men who framed the constitution? There are no essentials lacking.

The legislature could separate it entirely from the normal school without violating any constitutional provision. Should they choose so to do, what do we have?

We have a school teaching the elementary branches of education, open to pupils either of certain grades or to a certain number of pupils designated by the proper officers, of the district. This school is under the supervision and

control of a person qualified to teach in any common school of the state. The pupils are taught by persons generally eminently qualified as such instructors. At all events, they are within any provisions of the constitution as to the requirements for teachers. Does not this school meet all the requirements of the authorities as to what constitutes a common school? There is certainly no provision in our constitution defining or implying anything different to be a common school.

The plaintiff below seemed to go astray on the idea that this money was not being properly applied since it went for the support of a normal school. It does nothing of the kind. It goes directly for the payment for instruction of the pupils who are attending it. They would otherwise be attending a school carrying on the same courses of work but a different course of instruction in the district; *i. e.*, the graded school. The school district in which they reside has in the past been paid by the state for their attendance in the other public schools, in the apportioning of the school funds, when the pupils were in fact attending the model training department of the Normal School.

Now, these people object, when they can no longer get something for nothing, and come into a court of equity

and secure the protection of the strongest arm of the equity courts; *i. e.*, an injunction. By the State maintaining within their district the model training school they are saved the expense of hiring teachers and maintaining rooms for a large number of pupils. Yet they were paid out of the state funds, while the state at large again had to pay for the instruction of these pupils by raising the money to pay the general appropriation for the maintenance of the model training school at the various normal schools, thereby paying twice for the instruction of the same pupils. This is eminently unfair.

On the other hand, if this law is constitutional, we have a self-supporting model training school where the pupils are benefited by being taught by instructors not actuated by the mere desire of getting their daily bread, but by men and women making a careful study of the science which is to be their future life work.

An examination of the law creating, and the statutes relating to model training schools will convince the court that the legislature has attempted to place the model training schools upon the same footing as the other common schools of the State. This attempt should, if constitutional, be commended, and the burden is upon the respond-

ents herein to demonstrate that the said act of 1907 is unconstitutional.

The constitutionality of the act must be clearly shown.

*Board of Directors v. Peterson*, 4 Wash. 147;  
*State v. Grimes*, 7 Wash. 270.

The law will not be declared unconstitutional unless it clearly violates some express provision of the constitution.

See Remington's Digest, Vol. 1, page 517, and cases there cited.

JOHN D. ATKINSON,  
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*Attorneys for Appellants.*

IN THE  
Supreme Court  
OF THE  
STATE OF WASHINGTON.

SCHOOL DISTRICT No. 20, SPO-  
KANE COUNTY, a public corpora-  
tion,

*Respondent.*

*vs.*

R. S. BRYAN, as Superintendent of  
Public Instruction of the State of  
Washington, and CHARLES P.  
LUND, G. A. FELLOWS and H.  
W. COLLINS, as Board of Trus-  
tees of the State Normal School  
at Cheney, Washington,

*Appellants.*

RESPONDENT'S BRIEF

APPEAL FROM THE SUPERIOR COURT OF  
THURSTON COUNTY.  
HON. O. V. LINN, Judge.

W. H. WINFREE,  
*Attorney for Respondent,*  
Spokane, Washington.

## STATEMENT.

The statement of the case by appellants is substantially correct. The case was decided by the Superior Court on complaint and demurrer, and the object of the suit is to test the constitutionality of that part of Chapter 97, Laws of 1907 (Laws '07, page 180), which attempts to divert a part of the revenue of the permanent common school fund from the support of the common schools to the maintenance of the state normal schools.

## ARGUMENT.

Chapter CVII of the Session Laws of 1893, provides for the management and control of state normal schools. Section 12 of that act (Laws of 1893, p. 258), makes provision for a training department in each normal school. The legislature of 1897 enacted a code of public instruction. (Session Laws of 1897, pp. 356, 449 inclusive.) This law has been amended, but very slightly, and is a compliance on the part of our legislature with the requirements of that part of Sec. 2, Art. IX, of our constitution, which requires the legislature to "provide

for a general and uniform system of public schools." Section 1 of this act provides:

"A general and uniform system of public schools shall be maintained throughout the State of Washington and shall consist of common schools (in which all high schools shall be included), normal schools, technical schools." etc.

Title IV of this act (Laws of '97, p. 427) deals with "higher and special institutions." Chapter 3 of this title pertains to normal schools, and Sec. 219 of the act, and a part of this chapter, provides as follows:

"A model school or training department shall be provided for each state normal school contemplated by this act, in which all students, before graduation, shall have actual practice in teaching for not less than twenty weeks under the supervision and observation of critic and training teachers. A manual training department for each school under its control shall also be provided, and a suitable teacher employed for each."

The legislature of 1907 passed a law "Relating to the Model Training School Department of Normal Schools," (Session Laws of 1907, p. 180). Section 1 provides that the board of trustees of any normal school having a model school or training department in connection therewith, as authorized by the law of 1907 above quoted, shall file with the board of the school

district in which the normal school is situated, an estimate of the number of public school pupils required for the model school. Section 2 makes it the duty of the board to furnish such pupils, but

"That the principal of said normal school may refuse to accept such pupils *as in his judgment, by reason of incorrigibility or mental defects, would tend to reduce the efficiency of said training department.*" (Italics ours.)

Section 4 provides:

"That it shall be the duty of the Superintendent of Public Instruction to apportion to the support of such normal training school out of the funds available for the support of the common schools of the district in which each normal school is situated, such proportion of the funds to which such school district shall be entitled as the number of pupils in attendance upon each such model training schools, bears to the whole number of pupils upon which the apportionment was made for the common schools in the school district in which such normal school is situated, and the funds so apportioned shall be distributed by the board of trustees for the maintenance of such model training school."

Sections 10 and 13 of the Enabling Act grant to the State of Washington certain government lands, and a part of the proceeds of the sale of government lands within this state, as a trust fund, the interest or revenue from which to be expended for the support of common

schools. This act grants to the state a large amount of public land for other educational purposes. In each instance the particular purpose is specified. In Section 17 is granted "for state normal schools one hundred thousand acres."

Section 11 provides that the interest and income only from the lands granted for educational purpose "shall be expended in the support of said schools."

The framers of our constitution were apparently satisfied with the contract between the United States and this state as to the purposes for which the granted lands were to be used, with the exception of the lands granted for common schools. In their anxiety to make it clear that the revenue only of the common school fund was to be used, and that it was to be used only for the support of the common schools, they so declared in succeeding sections of the same article.

Section 2 of Article IX of the constitution makes provision for a uniform system of public schools and defines the schools which shall be included in that system, naming "common schools," "normal school" and others. These schools are placed in different classes and there is nothing in the language used which would indi-

cate that one class might include the other, or that the funds belonging to one class might be used for the benefit of the other, but apparently for fear that by some possible construction either of the results named might follow, they close the section with this language:

"But the entire revenue derived from the common school fund, and the state taxes for common schools, shall be exclusively appropriated to the support of the common schools."

Section 3, same article, provides, that the common school fund shall remain permanent and irreducible, and that it shall be derived from the sources therein named, and concludes:

"The interest accruing on said fund, together with all rentals and other revenues derived therefrom, and from lands and other property devoted to the common school fund, shall be exclusively applied to the current use of the common schools."

That is not all. The constitution also provides, Article 2, "Section 28. SPECIAL LEGISLATION.— The legislature is prohibited from enacting any private or special laws in the following cases: \* \* \* 7. For authorizing the apportionment of any part of the school fund. \* \* \* 15. Providing for the management of common schools."

Our courts have been just as zealous in preventing encroachments upon this fund as were the framers of the constitution in making it clear that it was to be used only for the support of the common schools. This Court has attempted to carry out both the spirit and letter of our constitution. That fixed intent is well shown in the language used on pages 104 and 105 of 40th Wash. Reports. (*State ex rel. Port Townsend vs. Clausen.*)

The foregoing references would seem to be sufficient in themselves to show the unconstitutionality of that part of the act of 1907 which seeks to take a part of the revenue of the permanent school fund and turn it over to the trustees of the normal school for the maintenance of a department of such schools. The question is of such importance that we have not felt that our duty ended in so doing, but that we should make a careful research of the authorities and give the Court the benefit thereof.

In determining the constitutionality of that part of the act which attempts to give to the normal schools a part of the revenue of the common school fund three questions are involved, viz:

1. Whether any part of the revenue of said fund can be applied to the support or maintenance of the normal schools of this state, and,

2. If not, then, whether the training departments of the normal schools constitute "common schools" in the sense that such term is used in the Enabling Act and in the state constitution, and thus entitling a state normal school, which has such a department, to a part of the revenue of the permanent common school fund for its support or maintenance; and,

3. In either event, whether an appropriation of a part of the revenue of this fund towards the maintenance of a branch of the normal schools is in violation of the constitutional provision against special legislation, and contrary to the constitutional provision that there must be a "UNIFORM system of public schools."

If the first two questions are answered in the negative, or the third in the affirmative, then the decree of the Superior Court must be affirmed.

#### FIRST PROPOSITION.

Counsel for appellants have nothing to say in support of the affirmative of this question. We take their silence to be a confession that no part of the revenue of the permanent common school fund can be used for either the support or maintenance of state normal schools. Notwithstanding this confession, it will be well to consider some of the cases, holding that the revenue from this fund cannot be used either directly or indirectly for normal schools or any similar institution, to show the insidious attacks which have been attempted upon this fund in a number of the states. See,

*State Female School vs. The Auditors*, 79 Virginia, 233.

*Grodon vs. Cornes*, 47 N. Y., 608, 616.

*State vs. Westerfield* (Nevada), 49 Pac., 119.

*People vs. Board of Education*, 13 Barber, 410.

*Underwood vs. Wood*, (Ky.), 19 S. W. Rep., 405.

*Hall's Free School vs. Horne*, 80 Virginia, 470.

*Halbert vs. Sparks*, 72 Ky. (9 Bush), 259.

*Collins vs. Henderson*, 74 Ky. (11 Bush), 74.

If the model training department is a part of the normal school, if it is inseparable from it, then it would seem to follow that this act is an attempt to use a part of the revenue of this fund for the normal schools. The

act itself says that the model training school is a department of the normal school. This department forms no part of the uniform school system. It is under an entirely different management. It is for the benefit of the normal school and the normal school pupils. The welfare of the common school pupils attending this department is no more considered than is the good of any of the books or apparatus used by the normal school pupils.

#### SECOND PROPOSITION.

Appellants' brief is devoted to a discussion of this proposition from their point of view. They attempt to separate the model training department from the normal schools; and, to find that, when it is so separated, it becomes a common school in the sense that this term is used in the Enabling Act and in the constitution.

On page 15 of their brief they seek to justify this use of the revenue of the common school fund by lauding the qualifications of the principal and teachers of these schools, suggesting that the pupils are better taught than they would be in the common schools, and saying that this district is saved the expense of teaching

these pupils; that this district has been paid in the past for the attendance of common school pupils at the normal school, and that this practice is unfair. This is no argument to be addressed to a Court. If entitled to consideration at any time or place, it should have been addressed to Congress when it was considering the Enabling Act and to the framers of the constitution. It is the same argument which has been used in times past in other states when special interests were seeking to divert a part of the revenue of this fund for the benefit of schools other than common schools. It would apply with equal force to support an act of the Legislature attempting to give to a private school, which taught the same branches as a common school, that portion of the revenue of this fund which is accredited to the school district by reason of the attendance of pupils at such private school.

Laws of 1907, Subdiv. 9, Section 22, page 607, provides that attendance upon a private school, within certain restrictions, shall be accredited to the school district within which the private school is situated for the purpose of computing the apportionment of the revenue of this fund to which said district is entitled. This has

been the practice of all school districts in the state in making reports of the school attendance, and of the state superintendent of public instruction in making apportionments, and is in keeping with the law of this state.

However, as above stated, this contention is not worthy of consideration by a Court. A school is either a common school or it is not a common school. If it does not possess the essential characteristics necessary to make it a common school, then it is not entitled to any apportionment out of the revenue of the common school fund. This appears to be the unanimous opinion of the Courts of the United States wherever the question has arisen for judicial construction.

The authorities to which appellants cite us for definition of the public school do not support their "essential characteristics" of a common school; nor does the training department of the normal school meet the requirements of counsels' "essential characteristics."

Page 11 of their brief has a quotation from 25 Am. & Eng. Enc. of Law, page 8. Counsel has (we trust inadvertently) omitted a part of this definition. They

quote from this book as follows: "Common of public schools are, as a general rule, schools supported by general taxation, open to all of suitable age, and attainments, free of expense." Following the word "expense" we find a comma and the following: "AND UNDER THE CONTROL OF AGENTS APPOINTED BY THE VOTERS and are distinguishable," etc. It is true that counsel does not attempt to show that the model training department of our normal schools are "*under the control of agents appointed by the voters.*"

We also find that the quotation from Anderson's Law Dictionary fails to complete the definition given by that author, omitting, "*and under the control of agents appointed by the voters.*"

On page 102 of 103rd Mass. (*Jenkins vs. Andover*), cited by appellant, we find the following:

"If a school can possibly exist which is not under the control of the town authorities and yet can be called a common or public school within the meaning of the eighteenth article, this is such a school. The fact that it is not under the control of the town authorities is its objectionable feature and constitutes the reason why money raised by taxes or appropriated by the commonwealth for the support of common schools cannot be applied to its support."

We also find the following at page 508 of 12th Allen (*Merick vs. Inhabitants of Amherst*), cited by appellants, viz.:

"The phrases 'public schools' and 'common schools' have acquired under the legislation and practice of this state a well settled signification, \* \* \* but the broad line of distinction between these (academies and colleges) and the 'public or common schools' is, that the latter are supported by general taxation, that they are open to all free of expense, and that they are under the immediate control and support of agents appointed by the voters of each town and city."

Counsels have omitted from their "essential characteristics" of a "common school" that part of the definition of common schools which is omitted from their quotations. It is needless to multiply authorities giving definitions of common schools. The citations by appellants are sufficient and have defined common schools to be,

- (a) Supported by general taxation;
- (b) Open to all of suitable age and attainment;
- (c) Free of expense; and,
- (d) Under the control of agents appointed by the voters.

In *Board of Education vs. Dick* (Kansas), 78 Pacific Rep., 812, the point to be determined was whether

or not a common school was a free school. But the Court considered the various definitions of common schools and approves that given in 25 Am. & Eng. Enc. of Law, Supra, and says that the term "common schools," as used in the constitution of Kansas, had acquired a technical meaning prior to the adoption of their constitution. We believe that this term had acquired a technical meaning prior to the adoption of our constitution and that that meaning is as above defined. The model training department of normal schools is certainly not under the management and control of agents appointed by electors or voters. They are under the management and control of a principal or superintendent who is appointed by a board of trustees of the normal school, who in turn are appointed by the governor of the state, by and with the consent of the Senate: (Pierce's Code, Secs. 7456, 7457, 7458, 7459.)

If this essential characteristic is lacking, then it is certain that the model training departments are not common schools.

But not only is this characteristic wanting, but another requisite is lacking. It is not open to all of suitable age and attainment. The second subdivision of

counselors' characteristics might include this requisite, but they have not attempted to tell us how the training departments are open to all of suitable age and attainments.

Pupils who attend the training department are first selected by the board of the school district and then the principal of the normal school may refuse to accept such pupil "AS IN HIS JUDGMENT, by reason of incorrigibility or mental defects, WOULD TEND TO REDUCE THE EFFICIENCY OF THE SAID TRAINING DEPARTMENT." (Laws 1907, page 181, Sec. 2.) The pupils are *selected* by the school board. Our understanding is that in a common school the pupils are not *selected* or *chosen*. They are entitled to attend a common school as a matter of *right*. The principal of the normal school may *arbitrarily* reject any pupil who has been chosen by the school board. It was said in *People vs. Board of Education*, 13 Barb., 410:

"Our common schools are not confined to any class, but are open to all; the trustees have no power to attempt to reject pupils arbitrarily. \* \* \* They are common to all children in the same sense that the public highways are common to all persons who may choose to ride or drive thereon."

A child within respondent's district who would be entitled to attend its schools as a matter of right, would not be entitled to attend the training department of the Cheney Normal School as a matter of right.

If it should be suggested, that inasmuch as the Legislature has attempted to appropriate a part of the revenue of the permanent common school fund to the normal schools for the benefit of a department of the normal schools, that such fact makes such department a common school, the language of the judge who rendered the opinion of *People vs. Board of Education*, supra, is sufficient answer. It is,

"To say that the Legislature can determine what institution shall receive the proceeds of the common school fund and whatever they determine to be entitled thereto becomes *ipso facto* a common school is begging the whole question and annulling the constitutional restrictions."

Our Legislature was not without precedent in its attempt to divert part of the revenue of this fund, but every such attempt has met the same fate. The Courts have, without exception, declared such enactments unconstitutional.

In *Hall's Free School vs. Horne*, 80 Va., 470, was considered an act of the Legislature of that state providing that from the revenue of the common school fund, apportioned to the district in which Hall's Free School was situated, there should be paid to the trustees of said school a sum equal to the sum paid to any teacher or any school in the district having like attendance of pupils; such sum to be applied by the trustees to the support of said free school. This school taught the same branches as the common schools, was just as free to the children of that district as were the common schools. In fact, exactly like the common schools in every particular, except that it was governed by trustees appointed under the will of one Aaron Hall, who had founded the school. The Court held that the act in question was unconstitutional, and, concluding, says:

"There is no doubt as to the merits of the school and the benefit resulting from its operations to the people in its neighborhood. It is also true that many of those whose children attend it are taxpayers, of whom school taxes are annually collected which go to the support of other schools. But these considerations can have no weight in determining the legal question involved in the present case; that must be determined with reference to the provisions of the constitution alone and as in our judgment the act in question is repugnant to the constitution, the latter must prevail."

In *Underwood vs. Wood* (Ky.), 19 Southwestern, 405, will be found a case exactly like this case except that the school which was to receive a part of the revenue from the common school fund was not a normal school in name. It was chartered by the state and called "Taylor's Academy," but its purposes seemed to be the same as a normal school. The Court says,

"The patrons of the college within the district who send their children to the academy are relieved from the burden of maintaining and keeping in repair the school houses, and, in the second place they are given the benefit of the school fund in proportion to the number of children sent to the academy, the number not exceeding one hundred."

The opinion continues,

"If a case could exist where such legislative action would be sanctioned, it is found in the case before us; but, if ample remedies are afforded by the law regulating common schools to prevent such results as is now attempted to justify this character of legislation, there is no reason for establishing a precedent that must, if followed, destroy the very existence of common schools."

In *Los Angeles County vs. Kirk* (Cal.), 83 Pac., 250, it is held that while the state might make provision for kindergartens, and although a kindergarten might be a part of the public school system, it was not a "common school."

In addition to authorities cited under the first proposition and giving definitions of common schools, see the following:

*Halbert vs. Sparks*, 72 Ky. (11 Bush), 259.  
*Collins vs. Henderson*, 74 Ky. (11 Bush), 74.

### THIRD PROPOSITION.

Section 28 of Article II of the Constitution provides: "The Legislature is prohibited from enacting any private or special laws in the following cases: \* \* \* 7. For authorizing the apportionment of any part of the school fund. \* \* \* 15. Providing for the management of common schools. \* \* \*" Section 2 of Article IX provides in part: "The Legislature shall provide for a general and uniform system of public schools."

Does this law violate the constitutional provision prohibiting a special law authorizing the apportionment of any part of the school fund? In every district of the state, except those in which normal schools are located, one system of apportionment is in force. In the districts having normal schools within their boundaries, another and different basis of apportionment is sought to be established. The bare statement of the proposition is sufficient. See

*Terry vs. King County*, 43 Wash., 61.  
*Louisville School Board vs. City of Louisville*  
 (Ky.), 45 Southwestern, 1047.  
*Plummer vs. Borsheim* (N. Dak.), 80 Northwestern, 690.

If this department of the normal school is a common school, then this act is a special law "providing for the management of common schools," and the system of public schools is not "general and uniform."

The management of all of the common schools in the state would differ from the management of the model training departments of the normal schools in the following particulars, among others, viz.:

#### *Common Schools.*

1. Open to all children between the ages of six and twenty-one, residing in the school district. (Pierce's Code, Sec. 7295.)
2. Under management and control of trustees elected by voters. These trustees employing and discharging teachers and having charge of all funds and property. (Laws of 1907, page 611, amending Sec. 7271, Pierce's Code, and Sec. 7286, Pierce's Code.)

3. Every teacher in a common school must hold a certificate of qualification. (Laws of 1907, p. 613, amending Sec. 7282, Pierce's Code.)

#### TRAINING DEPARTMENTS.

1. Open to such pupils as are selected by the school board and not arbitrarily rejected by the principal of the normal school. (Laws 1907, p. 181.)

2. Under management and control of trustees appointed by the governor and of the normal school principal appointed by these trustees. (Pierce's Code, Sec. 7456, *et seq.*) These trustees appoint teachers and critics. (Pierce's Code, 7459.)

3. Taught by students of the normal school (Pierce's Code, 7463.)

In *Ellis vs. Greaves* (Miss.), 34 Southern, 81, the Court held unconstitutional an act of the Legislature which attempted to appoint certain persons trustees for one school district in a state. The opinion is in part,

"The purpose of the constitution of 1869, Art. VIII, Sec. 1, declaring that it should be the duty of the Legislature to establish a uniform system of public schools was to make the system uniform in all that related to the executive administration of the common schools. It was

meant that the 'system' should be administered uniformly, on a uniform plan, the same throughout the state. \* \* \* The object of the constitution was perfectly plain, and no amount of statement can either make it plainer or obscure that plainly declared purpose."

See also,

*Scellers vs. Cox* (Ga.), 56 Southeastern, 284.  
*Louisville School Board vs. City of Louisville*,  
*supra.*  
*Plummer vs. Borshein*, *supra.*

It is respectfully submitted that that part of Chapter 97, Laws of 1907, which provides that the state superintendent of public instruction shall apportion to the normal schools a part of the revenue of the common school fund, is an attempt to use a part of the revenue of this fund for the maintenance of normal schools; that the training departments of such normal schools are not "common schools" in the sense that such term is used in the Enabling Act and in the state constitution; and that it violates Subdivisions 7 and 15 of Sec. 28, Art. II, and Sec. 2, Art. IX of the state constitution.

W. H. WINFREE,  
*Attorney for Respondent.*

IN THE  
**SUPREME COURT**  
OF THE  
STATE OF WASHINGTON

SCHOOL DISTRICT No. 20, SPOKANE COUNTY,  
a Public Corporation.

*Plaintiff and Respondent,*

vs.

R. B. BRYAN, as Superintendent of Public  
Instruction of the State of Washington,  
and CHARLES P. LUND, G. A. FELLOWS,  
and H. W. COLLINS, as Board of Trustees  
of the State Normal School at Cheney,  
Washington,

*Defendants and Plaintiffs.*

APPEAL FROM THE SUPERIOR COURT OF  
THURSTON COUNTY.

**APPELLANTS' REPLY BRIEF.**

JOHN D. ATKINSON,  
*Attorney General.*

WILLIAM W. MANIER,  
*Assistant Attorney General.*

*Attorneys for Appellants.*

#### STATEMENT.

The statement of the cause of action should be quite plain to the court, without further explanation. Yet, respondent insists upon the fact of the diversion of the "common school fund" to the support of the State Normal School. The statute provides for the application of this portion of the "common school fund" to the maintenance of the Model Training Department of the State Normal School.

#### ARGUMENT.

Respondent in its answering brief makes no attack upon the constitutionality of the act in question (Laws 1907, chapter 97), other than that a portion of the "common school fund" is diverted by the provision of section 4 of the act. I will again quote this section of the law to remove the impression which seems to be lingering in the mind of respondent, and which might be made to appear to the court, that these funds are being used to support the Normal School. Section 4 of the act provides as follows:

"That it shall be the duty of the superintendent of public instruction to apportion to the support of such normal

training school out of the funds available for the support of the common schools of the district in which each normal school is situated, such proportion of the funds to which such school district shall be entitled as the number of pupils in attendance upon each such model training school, bears to the whole number of pupils upon which the apportionment was made for the common schools in the school district in which such normal school is situated, and the funds so apportioned shall be distributed by the board of trustees for the maintenance of such model training school."

The funds are especially provided to aid in the support of the training school department. We admit this department is a part of the curriculum of the State Normal School. This fact does not prevent the training department from possessing all the requirements of a common school. It is looked after and governed partially by the principal of the normal school. There is nothing in that repugnant to the constitution. It is taught by pupils of such normal school. There is nothing in that repugnant to the constitution, if they are qualified. They meet any requirement set forth by the constitution and are legally qualified by this act of the legislature, which is of as much force, dignity and effect as the provision cited by respondent

ent which requires all teachers in common schools to have a certificate.

Respondent does not contend that the directors of school district No. 20 have not the right to select any number of pupils from the schools of such district as may be desired by the board of trustees of the Cheney Normal School; or that they could not compel such pupils to attend the Model Training School in the same manner as if it were a school under the control of such board of directors.

The law attacked in this cause is certainly not a special act, when it applies to the several State Normal Schools already established, and any other normal schools which may be established, "having a model training school or training department in connection therewith."

*Holmes & Bull Furniture Co. v. Hedges*, 13 Wash. 707.

The citation given by respondent to the 40th of Washington certainly directs your Honor's attention to good law, but it is not applicable to the case at bar. It simply defines the right of the Board of State Land Commissioners to accept "non-liability bonds" as municipal bonds.

as defined by the constitutional provision applying to the investment of school funds.

The respondent insists that a common school must be under the control of "agents appointed by the voters." I did not think this a material portion of the definition, since the management of a state normal school is directly responsible to the governor as the agent of the people. Respondent's citations are to cases concerning schools under the absolute control of the private individual. Would respondent have a school, in a district where the duly elected directors or two of them, have removed therefrom, cease to be a common school for that reason? Certainly not. The county superintendent would appoint men to fill the vacancy and the district would be entitled to and would receive its proportion of the "common school fund." Notwithstanding the fact that such school is not directly under the control of "agents appointed by the voter."

Laws 1907, page 180, do not interfere with any of the established principles of advantageous education. Respondent does not attempt to show that it is injured by the application of these funds to the payment of a portion

of the cost of educating such pupils of the district. In fact, the district is not injured but benefited by having within its borders a normal school which maintains a model training department in connection therewith. For the mere portion of the common school fund which is apportioned to each pupil in the district attending the model training school, the district has the pupil both housed and taught. The benefits to the pupil and to the respondent district are not in any manner measured by the amount of money directed to be paid to the Model Training School. The only effect upon plaintiff which I can see is that School District No. 20, Spokane county, is placed upon, but a slightly advantageous footing to the other school districts which do not have a State Normal School within their borders, which maintains a model training school.

We submit that the honorable trial court disregarded the maxims of equity and granted an injunction which worked a hardship upon defendant where the plaintiff neither offered to do equity nor showed any damage to itself.

The act of which plaintiff complains, Laws 1907, page 180, should be declared constitutional and valid.

Respectfully submitted,

JOHN D. ATKINSON,  
*Attorney General,*

WILLIAM W. MANIER,  
*Assistant Attorney General,*  
*Attorneys for Appellant.*



# THE SUPREME COURT OF WASHINGTON

MATHEW & STEPHANIE McCLEARY, )  
et al., )  
Respondents/Cross-Appellants, )  
v. )  
STATE OF WASHINGTON, )  
Appellant/Cross-Respondent. )

## ORDER TO SHOW CAUSE

Supreme Court No.  
84362-7

King County No.  
07-2-02323-2 SEA

**Filed** *EE*  
**Washington State Supreme Court**

JUN 12 2014 *JB*

**Ronald R. Carpenter**  
**Clerk**

In *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012), this Court unanimously held that the State is not meeting its “paramount duty . . . to make ample provision for the education of all children residing within its borders.” WASH. CONST. art. IX, § 1. The Court recognized that the legislature had recently enacted a promising set of reforms to remedy the deficiencies in the K-12 education system, and that it was making progress toward funding those reforms. The Court therefore deferred to the legislature’s chosen means of discharging its constitutional duty, but retained jurisdiction over the case to help ensure the State’s progress in its plan to fully implement reforms by 2018. *McCleary*, 173 Wn.2d at 547.

In a subsequent order following the 2012 legislative session, the Court directed the State to report to the Court on the progress it had made in implementing its program of reforms according to the anticipated schedule. The Joint Select Committee on Article IX Litigation issued a report, and on December 20, 2012, the Court found that the State’s efforts had fallen short. The Court directed the State to submit a report after the 2013 legislative session setting out its plan for implementing education funding reforms in sufficient detail to allow the Court to measure the

691/143

ORDER TO SHOW CAUSE  
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legislature's progress between then and 2018 through periodic benchmarks. This Order, like the *McCleary* decision, was based on implementing the reforms that the legislature itself had adopted but not yet funded.

Following the 2013 legislative session, the Joint Select Committee issued the required report. While acknowledging that the legislature had taken meaningful steps in the 2013 session to address its constitutional obligation to amply fund basic education, the Court found that it had not made sufficient progress to be on target to fully fund the education reforms by the 2017-18 school year. Reiterating that the State had to show through immediate and concrete action that it is making real and measurable progress, the Court issued an order on January 9, 2014, directing the State to submit by April 30, 2014, "a complete plan for fully implementing the program of basic education for each school year between now and the 2017-18 school year," including "a phase-in schedule for fully funding each of the components of basic education." *Order, McCleary v. State*, No. 84362-7, at 8 (Wash. Jan. 9, 2014). Once again, this Order was based on implementing reforms that the legislature itself decided were necessary.

After the 2014 legislative session, the Joint Select Committee issued its report to the Court by the deadline date. The report relates what the State urges to be significant progress, or even full implementation, in some areas such as transportation and funding of materials, supplies, and operating costs, and it describes various bills that were introduced but not passed. The report, however, candidly admits that "[t]he Legislature did not enact additional timelines in 2014 to implement the program of basic education as directed by the Court in its January 2014 Order." 2014 Report to the Washington Supreme Court by the Joint Select Committee on Article IX Litigation (corrected version) (May 1, 2014), at 27. The report acknowledges that "the pace of implementation must quicken," and asks this Court to "recognize that 2015 is the next and most

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critical year for the Legislature to reach the grand agreement needed to meet the State's Article IX duty by the statutorily scheduled full implementation date of 2018." *Id.* at 33. But the report recognizes that during the legislature's 2014 session "there was no political agreement reached either among the political caucuses or between the legislative chambers on what the full implementation plan should look like." *Id.* at 27. And it offers no concrete reason to believe that the "grand agreement" it envisions will more likely be implemented in 2015. *Id.* at 33.

The Joint Select Committee thus acknowledges that the State did not provide the plan that this court ordered—a plan that, we reiterate, would schedule phase-in of reforms that the legislature itself deems necessary. In its January 2014 order the Court signaled its willingness to consider enforcement measures at its disposal should the State fail to comply with the Court's directive to submit a complete funding plan.

This matter came before the Court on its June 5, 2014, En Banc Conference for consideration of the legislature's 2014 Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation (corrected version) and the responses to the report. After consideration of the matter, the Court unanimously determined that a show cause hearing should be held. Now, therefore, it is

ORDERED

That the State is hereby summoned to appear before the Supreme Court to address why the State should not be held in contempt for violation of this Court's order dated January 9, 2014, that directed the State 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 2017-18 school year. The State

ORDER TO SHOW CAUSE  
Supreme Court No. 84362-7

should also address why, if it is found in contempt, any of the following forms of relief requested by the plaintiffs, Mathew and Stephanie McCleary, et al., should not be granted:<sup>1</sup>

1. Imposing monetary or other contempt sanctions;
2. Prohibiting expenditures on certain other matters until the Court's constitutional ruling is complied with;
3. Ordering the legislature to pass legislation to fund specific amounts or remedies;
4. Ordering the sale of State property to fund constitutional compliance;
5. Invalidating education funding cuts to the budget;
6. Prohibiting any funding of an unconstitutional education system; and
7. Any other appropriate relief.

The State should also address the appropriate timing of any sanctions.

The show cause hearing with oral argument by the parties shall be heard by the Washington Supreme Court on Wednesday, September 3, 2014, at 2:00 p.m. The State's response to this show cause order should be served and filed in this Court by not later than July 11, 2014. An answer to the State's response should be served and filed in this Court by not later than August 11, 2014. The State may serve and file a reply to the answer by not later than August 25, 2014.

DATED at Olympia, Washington this 12<sup>th</sup> day of June, 2014.

For the Court,

Madsen, C.J.  
CHIEF JUSTICE

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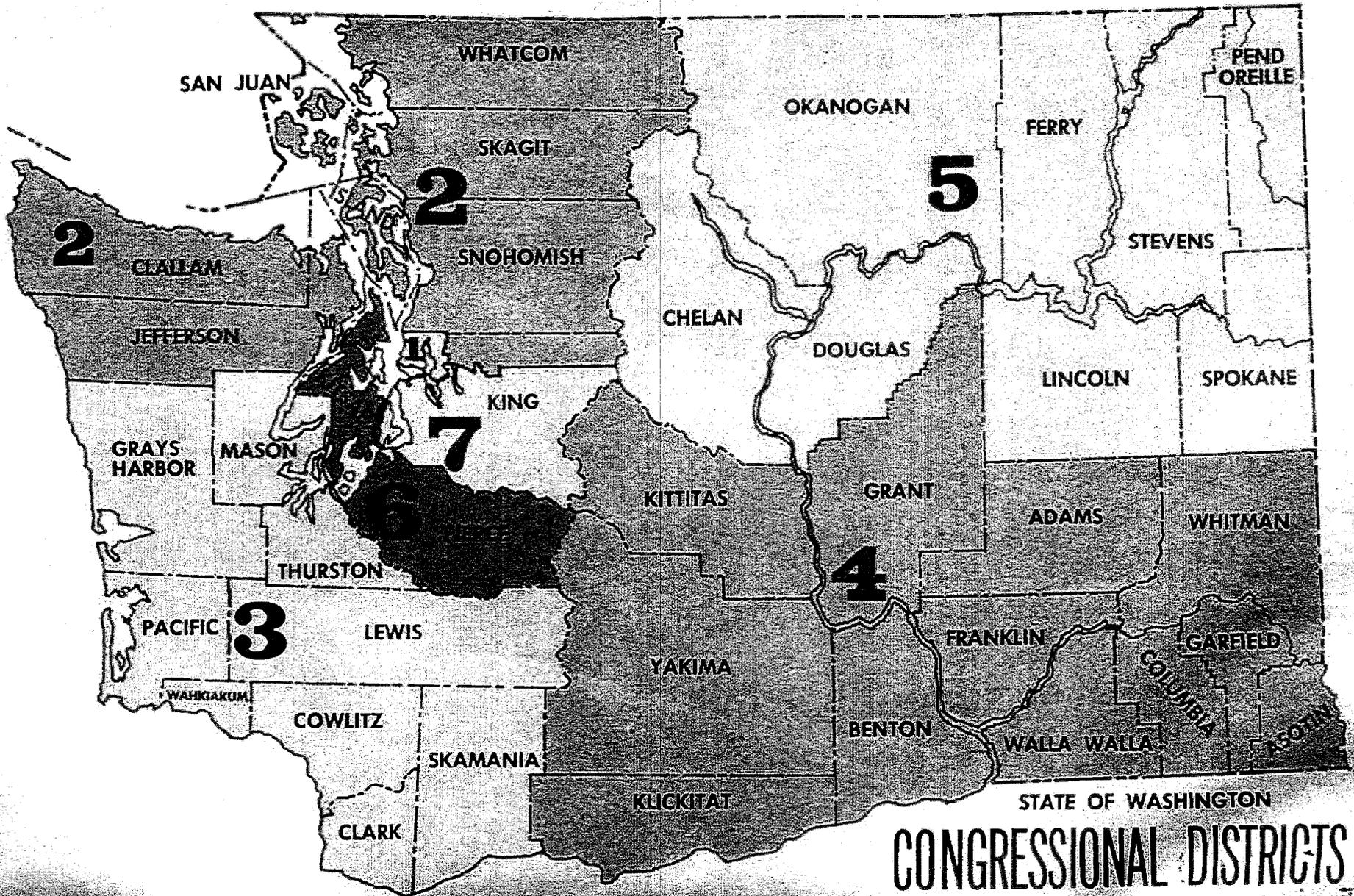
<sup>1</sup> In listing the forms of possible relief identified by the plaintiffs, the Court takes no position on the appropriateness of any of the possible sanctions.





# OFFICIAL VOTERS PAMPHLET

*Published by A. LUDLOW KRAMER, Secretary of State*



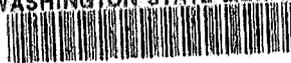
STATE OF WASHINGTON  
**CONGRESSIONAL DISTRICTS**

Established by Chapter 149, Laws of 1957 as amended by Chapter 288, Laws of 1959

# LIBRARY USE ONLY

## Introduction

WASHINGTON STATE LIBRARY



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As Secretary of State, one of my most satisfying duties is to present to you this 1966 edition of the official voters' pamphlet, containing the official ballot titles, full explanations and complete texts of the 14 state measures to be voted upon at the November 8, 1966 state general election.

Of these 14 measures, 3 are initiatives (initiated directly by the people), 3 are legislative referendum bills (measures adopted by the legislature but referred by it to the people for decision) and 8 are proposed constitutional amendments (also initiated by the legislature and referred to the people).

The official ballot titles and the explana-

tions have been prepared by the Attorney General as required by law. The statements for and against have been prepared by committees appointed under a procedure established by law and are only arguments. I have no authority to evaluate their truth or accuracy.

A substantial effort has been made to make this edition the most useful ever and in this connection many changes have been made in format, design, size and the like. Your comments will be welcome. Extra copies can be obtained at the offices of city clerks and county auditors, at public libraries, or directly from my office.

A. LUDLOW KRAMER  
Secretary of State

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**SENATE JOINT 22**  
**RESOLUTION** PART 1  
 Proposed Constitutional Amendment

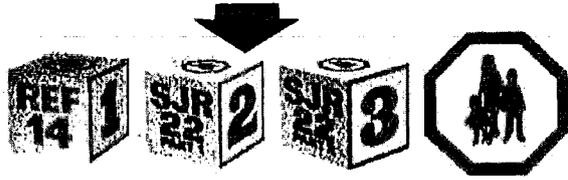
Official Ballot Title:\*

**ESTABLISHING COMMON SCHOOL CONSTRUCTION FUND**

Shall Article IX, section 3, of the state constitution be amended to establish a common school construction fund to be used to finance common school construction, with funds to be derived from (1) certain proceeds from timber and other crops from school and state lands, (2) certain interest, rentals and revenues from the permanent common school fund and from lands devoted to the permanent common school fund, and (3) such other sources as the legislature may provide?

Vote cast by members of the 1965 Legislature on final passage:  
 SENATE: (49 members) Yeas, 44; Nays, 1; Absent or not voting, 4.  
 HOUSE: (99 members) Yeas, 84; Nays, 8; Absent or not voting, 7.  
 \*Ballot Title as issued by the Attorney General.

**Statement FOR**



**SJR 22, Part 1 is one of the building blocks for a business-like program of school construction financing:**

Another of the three companion SPACE measures, (see pages 10 and 22 for the other parts of this plan), SJR 22 PART 1 creates the Common School Construction Fund. This Fund will provide a continuing source of income for future school construction. The money made available over the years will be distributed around the state to local school districts for needed building projects, helping to ease the tax burden of local property owners.

**Creates a fund for future school construction:**

This new Fund will be created with the interest from funds which have been flowing from the Washington State School lands since the framing of the Constitution in 1889. This income, invested in the Permanent School Fund now stands at more than \$100 million. The interest from this fund will establish

the Common School Construction Fund, making over \$5 million each biennium available to retire future school construction bond issues (like REF. 14). Other incomes from the School Lands will be made available every biennium for direct contributions to local school district building programs. These include such income as money from crop and timber sales, and rentals.

**Build the schools we must have— and No New Taxes!**

All these moneys are made available without reducing the reserves of the Permanent School Fund—which will continue to grow. And, the Common School Construction Fund can be established without raising any new taxes! Vote FOR SJR 22, PART 1 . . . support SPACE for children.



Committee appointed to compose the argument FOR SJR 22, Part 1:  
 FRED DORE, State Senator; FRANK BUSTER BROUILLET, State Representative; FRANCIS E. HOLMAN, Chairman, SPACE.  
 Advisory Committee: Statewide Parents And Citizens for Education (SPACE); Area #2 Chairman, John Rutter (Lynnwood); Area #5 Co-chairman, Bob Gibbs (Wenatchee); Area #3 Chairman, William E. Young (Olympia).

*Explanatory comment issued by the  
Attorney General as required by law*

**The Law as it now exists:**

Under the state constitution as adopted in 1888 there exists a fund known as the common school fund. The primary sources of this fund include money obtained (1) from the sale of lands and other property granted by the federal government to the state for the support of its common schools, and (2) from the sale of timber, stone, minerals or other property from those school or state lands which have not been granted to the state for some specific purpose.

The present constitutional provision declares that the principal of the fund shall remain permanent and irreducible. It permits interest accruing to the fund, as well as rental or other revenues derived from lands or other property devoted to the fund, to be used for current support of the common schools. However, neither the principal of this fund nor any of its income can presently be used to construct school buildings or other school facilities.

**Effect of Senate Joint Resolution**

**No. 22—Part 1—if approved into Law:**

If this constitutional amendment is approved, the principal of the common school fund as the same existed on June 30, 1965, will remain permanent and irreducible. The fund will continue to receive

money from all of its former sources except certain of them which will become sources of a new fund. This new fund will be known as the common school construction fund and will be available to be used for financing the construction of common school facilities. The sources of this new fund will be (1) the interest accruing on the permanent common school fund from and after July 1, 1967; (2) all rentals and other revenues obtained from and after July 1, 1967, from lands and other property presently devoted to the permanent common school fund; (3) certain proceeds from the sale or appropriation of timber and other crops from school and state lands subsequent to June 30, 1965; and (4) such other sources as the legislature may direct.

The proposed amendment further provides that the first of these four sources, the interest accruing on the permanent common school fund after July 1, 1967, may be used only to pay off such bond issues as may be authorized by the legislature for construction of common schools. The remainder of the new common school construction fund may be used for direct financing of common schools.

Lastly, the amendment provides that in the event there should be moneys in the common school construction fund in excess of amounts needed to fulfill its purpose, they shall be available for deposit in the permanent common school fund or for current use of the common schools as the legislature may direct.

*Note: Complete text of Senate Joint Resolution No. 22 starts on Page 41.*

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## Statement **AGAINST**

This proposed constitutional amendment was approved by an overwhelming majority of the members of the 1965 Legislature in its Extraordinary Session. Further, no member of the Legislature could be enlisted to write a statement against the proposal for publication in this pamphlet.

A. LUDLOW KRAMER, *Secretary of State*

# SENATE JOINT 22 RESOLUTION PART 2

Proposed Constitutional Amendment

Official Ballot Title:\*

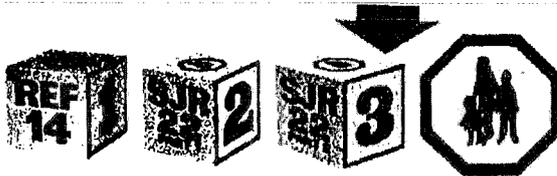
## INVESTMENT OF PERMANENT SCHOOL FUND

Shall Article XVI, section 5, (Amendment 1) of the state constitution, restricting investment of the state's permanent school fund to national, state, county, municipal or school district bonds, be amended by removing this restriction and thereby permitting the permanent school fund to be invested in such manner as may be authorized by act of the legislature?

Vote cast by members of the 1965 Legislature on final passage:  
SENATE: (49 members) Yeas, 44; Nays, 1; Absent or not voting, 4.  
HOUSE: (99 members) Yeas, 84; Nays, 8; Absent or not voting, 7.

\*Ballot Title as issued by the Attorney General.

## Statement FOR



SJR 22, Part 2 is one of the "building blocks" for a business-like program of school construction financing:

The last of the three companion SPACE measures, SJR 22 Part 2 will permit the Legislature to expand the investment opportunities of the Permanent School Fund. This will create up to 50% more revenue from interest on this \$100 million-plus school resource. This increased income can amount to as much as \$5 million per biennium to be used to retire needed school construction bond issues in the future. With a sure source of retirement funds, precarious and expensive elections every two years (like REF 14) will be reduced.

Permits greater returns from school fund investments:

Now investments are confined to low-yield municipal issues producing as little as 2% interest! SJR 22 Part 2 permits expanding

these investments to include governmental revenue bonds, class "AA" corporate bonds, insured bank and savings and loan accounts . . . realizing 4½% interest and more.

**Build the schools we must have—  
and No New Taxes!**

This extra income is one more way of helping to keep local property taxes lower. SJR 22 Part 2 and the other two SPACE "building block" measures have received wide support from education, labor, business and the leaders of both political parties. Each deserves your support. All three must pass to provide a businesslike basis for school construction financing—to benefit the children of our state.

Vote FOR SJR 22 PART 2 . . . for SPACE for children.

# VOTE "YES"



Committee appointed to compose the argument FOR SJR 22, Part 2:

FRED DORE State Senator; FRANK BUSTER BROUILLET, State Representative; FRANCIS E. HOLMAN, Chairman, SPACE.

Advisory Committee: Statewide Parents And Citizens for Education (SPACE); Area #1 Chairman, Lloyd P. Cooney (Seattle); Yakima County Chairman, Charles J. O'Connor (Yakima); Clark County Chairman, Albert L. Koons (Vancouver).

*Explanatory comment issued by the  
Attorney General as required by law*

**The Law as it now exists:**

Article XVI, section 5 (Amendment 1) of the state constitution presently restricts the state in investing money in the state permanent school fund (derived from the proceeds of leases or sales of lands granted to the state by the federal government at the time of statehood for the support of public educational institutions) to investments in national, state, county, municipal or school district general obligation bonds.

**Effect of Senate Joint Resolution**

**No. 22—Part 2 if approved into Law:**

The proposed constitutional amendment would eliminate this restriction. Additionally, it would expressly permit the permanent common school fund to be invested in such manner as may be authorized by act of the legislature.

*Note: Complete text of Senate Joint Resolution No. 22 starts on Page 41.*

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## Statement **AGAINST**

This proposed constitutional amendment was approved by an overwhelming majority of the members of the 1965 Legislature in its Extraordinary Session. Further, no member of the Legislature could be enlisted to write a statement against the proposal for publication in this pamphlet.

A. LUDLOW KRAMER, *Secretary of State*

## OFFICE RECEPTIONIST, CLERK

---

**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Friday, June 20, 2014 4:06 PM  
**To:** 'Dawn Taylor'; donnaalexander@dwt.com; rebeccag@atg.wa.gov; josephhoag@dwt.com; patriciaholman@dwt.com; harrykorrell@dwt.com; rmckenna@orrick.com; aileenm@atg.wa.gov; brian.moran@orrick.com; micheleradosevich@dwt.com; daves@atg.wa.gov; colleenw@atg.wa.gov; aardinger@orrick.com  
**Cc:** Paul Lawrence; Jessica Skelton; Jamie Lisagor; Bill Hill; Cindy Bourne  
**Subject:** RE: League of Women Voters of WA. et al. v. State, Cause No.: 89714-0: Reply Brief of Appellants and Supporting Documents

Rec'd 6-20-14

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:** Dawn Taylor [mailto:Dawn.Taylor@pacificallawgroup.com]  
**Sent:** Friday, June 20, 2014 4:03 PM  
**To:** OFFICE RECEPTIONIST, CLERK; donnaalexander@dwt.com; rebeccag@atg.wa.gov; josephhoag@dwt.com; patriciaholman@dwt.com; harrykorrell@dwt.com; rmckenna@orrick.com; aileenm@atg.wa.gov; brian.moran@orrick.com; micheleradosevich@dwt.com; daves@atg.wa.gov; colleenw@atg.wa.gov; aardinger@orrick.com  
**Cc:** Paul Lawrence; Jessica Skelton; Jamie Lisagor; Bill Hill; Cindy Bourne; Dawn Taylor  
**Subject:** RE: League of Women Voters of WA. et al. v. State, Cause No.: 89714-0: Reply Brief of Appellants and Supporting Documents

I apologize for the inconvenience.

Attached is the correct Appendix to the Reply Brief of Appellants for filing and service in the above-referenced matter.

Please disregard the Appendix that was filed/sent at 3:49 p.m.

Thank you.

*Dawn M. Taylor*

---

**From:** Dawn Taylor  
**Sent:** Friday, June 20, 2014 3:49 PM  
**To:** Washington State Supreme Court ([supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)); donnaalexander@dwt.com; rebeccag@atg.wa.gov; josephhoag@dwt.com; patriciaholman@dwt.com; harrykorrell@dwt.com; rmckenna@orrick.com; aileenm@atg.wa.gov; brian.moran@orrick.com; micheleradosevich@dwt.com; daves@atg.wa.gov; colleenw@atg.wa.gov; aardinger@orrick.com  
**Cc:** Paul Lawrence; Jessica Skelton; Jamie Lisagor; Bill Hill; Cindy Bourne; Dawn Taylor  
**Subject:** League of Women Voters of WA. et al. v. State, Cause No.: 89714-0: Reply Brief of Appellants and Supporting Documents

Good afternoon.

On behalf of Paul J. Lawrence, attached for filing and service please find Reply Brief of Appellants; Appendix to Reply Brief of Appellants; and a Proof of Service in the above-referenced matter.

Should you have any difficulty with the attachments, please do not hesitate to contact me.

Thank you.

Dawn M. Taylor  
Assistant to Paul J. Lawrence;  
Matthew J. Segal; Sarah C. Johnson  
& Taki V. Flevaris



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