

No. 84362-7

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Defendant/Appellant,

v.

MATHEW & STEPHANIE McCLEARY, on their own behalf and on behalf of
Kelsey & Carter McCleary, their two children in Washington's public schools;

ROBERT & PATTY VENEMA, on their own behalf and on behalf of Halie &
Robbie Venema, their two children in Washington's public schools; and

NETWORK FOR EXCELLENCE IN WASHINGTON SCHOOLS ("NEWS"), a
state-wide coalition of community groups, public school districts, and education
organizations,

Plaintiffs/Respondents.

**PLAINTIFF/RESPONDENTS'
CONSOLIDATED ANSWER TO
THE FOUR AUGUST 30 AMICUS BRIEFS**

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TABLE OF ABBREVIATIONS USED IN THIS ANSWER

<i>Abbreviation</i>	<i>Full Phrase</i>
Budget/Policy amici	Washington State Budget & Policy Center, Equity In Education Coalition, Senator Jamie Pedersen, Representative Laurie Jinkins, and Representative Gerry Pollet
Budget/Policy Amicus Brief	Brief Of Amici Curiae Washington State Budget & Policy Center, Equity In Education Coalition, Senator Jamie Pedersen, Representative Laurie Jinkins And Representative Gerry Pollet
Budget/Policy Amicus Motion	Motion By Washington State Budget And Policy Center, Equity In Education Coalition, <i>Senator David Frockt</i> , Senator Jamie Pedersen, Representative Laurie Jinkins And Representative Gerry Pollet For Leave To File Amicus Curiae Brief <i>[note: movant Frockt's name was dropped from the brief filed after the above amicus motion was granted.]</i>

<i>Abbreviation</i>	<i>Full Phrase</i>
Civil Rights amici	National Association For The Advancement Of Colored People (NAACP), Chinese Information Service Center, Multicultural Education Rights Alliance, Rainier Beach Action Coalition, Southeast Seattle Education Coalition, United Indians Of All Tribes Foundation
Civil Rights Amicus Brief	Amicus Curiae Brief Of National Association For The Advancement Of Colored People (NAACP), Chinese Information Service Center, Multicultural Education Rights Alliance, Rainier Beach Action Coalition, Southeast Seattle Education Coalition, United Indians Of All Tribes Foundation
Civil Rights Amicus Motion	<p>Civil Rights Organizations’ Motion To File Amicus Curiae Brief on behalf of the National Association for the Advancement of Colored People (NAACP), <i>El Centro de la Raza</i>, Chinese Information Service Center, Multicultural Education Rights Alliance, <i>Urban League of Metropolitan Seattle</i>, Rainier Beach Action Coalition, Southeast Seattle Education Coalition, <i>Vietnamese Friendship Organization</i>, United Indians Of All Tribes Foundation</p> <p><i>[Note: movants El Centro de la Raza, Urban League of Metropolitan Seattle, and Vietnamese Friendship Organization were denied leave to join the Civil Rights amicus brief.]</i></p>

<i>Abbreviation</i>	<i>Full Phrase</i>
Paramount Duty amici	Washington's Paramount Duty organization
Paramount Duty Amicus Brief	Brief Of Amicus Curiae, Washington's Paramount Duty, A Washington Nonprofit Corporation And 501(c)(4) Organization
Paramount Duty Amicus Motion	Motion For Leave To File Brief On Behalf Of Amicus Curiae Washington's Paramount Duty, A Washington Nonprofit Corporation And 501(c)(4) Organization
Special Ed amici	The Arc Of King County, The Arc Of Washington State, TeamChild, Washington Autism Alliance & Advocacy, Open Doors For Multicultural Families, Seattle Special Education PTSA, Bellevue Special Needs PTA, Gary Stobbe, M.D., James Mancini And Rep. Gerry Pollet
Special Ed Amicus Brief	Amicus Curiae Memorandum Of The Arc Of King County, The Arc Of Washington State, TeamChild, Washington Autism Alliance & Advocacy, Open Doors For Multicultural Families, Seattle Special Education PTSA, Bellevue Special Needs PTA, Gary Stobbe, M.D., James Mancini And Rep. Gerry Pollet
Special Ed Amicus Motion	Motion For Leave To File Amicus Brief By The Arc Of King County, The Arc Of Washington State, TeamChild, Washington Autism Alliance & Advocacy, Open Doors For Multicultural Families, Seattle Special Education PTSA, Bellevue Special Needs PTA, Gary Stobbe, M.D., James Mancini, And State Rep. Gerry Pollet

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1. *Answer To Amici's Civil Rights Point.*

The NAACP, Chinese Service Center, United Indians of All Tribes, et al. (“Civil Rights amici”) emphasize that public education plays a “vital civil rights role” in our democracy, is “critical to closing the opportunity gap” in our State, and “is key to leveling the playing field in society”.¹

Plaintiffs agree with amici’s civil rights point. The fact that this suit is at its core a civil rights case, with repeated declarations in the February 2010 Final Judgment reiterating its civil rights foundation, is a key point that elected officials today conveniently choose to overlook or ignore.²

This Court held over five years ago that “Article IX, section 1 confers on children in Washington a positive constitutional right to an

¹ *Civil Rights Amicus Brief at 1-5. The Paramount Duty and Budget/Policy amici further note the pervasive opportunity gap in the State’s public schools that “disproportionately harms students of color” in our State. Paramount Duty Amicus Brief at 14 (citing 2016 Annual Report of the State’s Educational Opportunity Gap Oversight & Accountability Committee that the opportunity gap in the State’s public schools continues to be both persistent and pervasive); Budget/Policy Amicus Brief at 2 & 16-18 (citing State reports confirming the persistent and widening opportunity gap in Washington’s public schools, and the State’s awareness of the additional funding the State is not providing to remedy that gap). Moreover, the State knows the number of children harmed is not trivial – for the State reports that students of color now comprise over 40% of the kids in Washington’s K-12 public schools. <http://reportcard.ospi.k12.wa.us/summary.aspx?groupLevel=District&schoolId=1&reportLevel=State&yrs=2015-16&year=2015-16>.*

² *See, e.g., Plaintiffs’ 2015 Post-Budget Filing at 2 (“This case always was... still is... and will in Washington State history forever be... a civil rights case. Complete with judicial findings confirming the critical civil rights purpose of an amply funded public education in our State’s democracy”, and summarizing the numerous civil rights declarations in the February 2010 McCleary Final Judgment against the State).*

amply funded education.”³ And Article IX, section 1 expressly reiterates that **all** Washington children have this constitutional right – “without distinction or preference on account of race, color, caste, or sex.”⁴

The State’s own reports, however, confirm that the K-12 education it provides has persistent “systemic inequity” that “structurally disadvantages certain demographics of students, particularly students of color” – yielding a 20-30% gap in achievement between students of color and White and many Asian students.⁵

The Civil Rights Division of our State Attorney General’s Office would not accept that kind of disparate impact if it existed in the business sector. It similarly should not be accepted in the State’s underfunded K-12 public schools.

³ *McCleary*, 173 Wn.2d at 483; accord, August 2015 *McCleary* Order at 2 (“In *McCleary*, 173 Wn.2d at 520, we held that the State’s ‘paramount duty’ under article IX, section 1 ... not only obligates the State to act in amply providing for public education, it also confers upon the children of the state the right to be amply provided with an education. *Seattle Sch. Dist. 1 v. State*, 90 Wn.2d 476, 513....”) (underline added); *McCleary* Final Judgment at CP 2903, ¶148 (quoting that *Seattle School District* ruling).

⁴ Article IX, section 1 states in full: “It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.” (underline added.) Plaintiffs note the legislature continues to falsely insert the word “Preamble” in the Article IX, section 1 text it distributes for the public to read (e.g., <http://leg.wa.gov/LawsAndAgencyRules/Pages/constitution.aspx>), for the word “Preamble” is **not** in section 1 of our State Constitution. See Plaintiffs’ August 2016 Answer To State Filing at 12 n.13 (with State Archives’ link to image of our actual signed constitution).

⁵ Washington Educational Opportunity Gap Oversight and Accountability Committee’s 2017 Annual Report at 3 & 13 [<http://www.k12.wa.us/Workgroups/EOGOAC/pubdocs/EOGOAC2017AnnualReport.pdf>]; see also this Committee’s 2016 Annual Report at 6 (“It is not acceptable for there to be a consistent 20–30 percentage point gap in student achievement between students of color and White and many Asian students”) [<http://www.k12.wa.us/Workgroups/EOGOAC/pubdocs/EOGOAC2016AnnualReport.pdf>].

Plaintiffs' August 30 Post-Budget Filing explained how the legislature's 2017 Report failed to demonstrate the full constitutional compliance ordered by this Court. The Civil Rights amici correctly emphasize a related point – namely, elected officials' ongoing practice of covering their eyes to the State's corresponding violation of minority students' civil rights. Amici's point is important – for the 2017 legislature's rushed June 30 enactments did not even pay lip service to (never mind provide all necessary appropriations for) the amply funded K-12 education to which all children of color are constitutionally entitled as a basic civil right under Article IX, section 1.

2. *Answer To Amici's Paramount Means Paramount Point*

Quoting this Court's January 2012 *McCleary* decision, the Special Ed amici emphasize this Court ordered full constitutional compliance instead of mere ESHB 2261 statutory compliance – specifically: “the State's compliance with its paramount duty” under Article IX, section 1.⁶ The Paramount Duty amici reiterate this Court's ruling that “paramount” means the State must amply fund its K-12 public schools as its first and highest priority before any other State program or operation – and point out that the legislature chose instead to put non-paramount matters

⁶ *Special Ed Amicus Brief* at 5 (quoting *McCleary*, 173 Wn.2d at 545-546) & at 14. The Budget/Policy amici also note the constitution's “paramount duty” mandate. *Budget/Policy Amicus Brief* at 5.

(e.g., passing several new tax exemptions) ahead of providing ample funding by the September 1, 2018 deadline.⁷

Plaintiffs agree with amici's paramount duty point. Plaintiffs further note that the State's putting tax exemptions for the private sector ahead of ample funding for its public schools is not new. For example, after this Court's January 2012 decision made the meaning of the State's "paramount duty" unequivocally clear, the 2013 legislature focused instead on a special session to give an airplane company a multi-billion dollar tax break.⁸ All told, the State's recent tax exemption study reported that 694 of the tax exemptions handed out by the State totalled \$50.4 billion in the 2015-2017 biennium – with 114 of those exemptions enacted after the January 2007 filing of this suit.⁹ The State's paramount constitutional duty is ample K-12 funding – not tax exemptions.

3. *Answer To Amici's Separation Of Powers Point.*

With respect to separation of powers and judicial restraint, the Paramount Duty amici show that relative to other constitutions, the Washington constitution establishes a relatively weak legislative branch, a relatively strong judicial branch, and a merely implied separation of

⁷ *Paramount Duty Amicus Brief at 5-9 & n.3 (identifying at least 13 new tax cuts and extensions enacted in 2017).*

⁸ *See Plaintiffs' 2014 Post-Budget Filing at 30-32 (\$8.7 billion); Plaintiffs' 2015 Post-Budget Filing at 46-50; Plaintiffs' 2016 Post-Budget Filing at 47-49.*

⁹ http://dor.wa.gov/content/aboutus/statisticsandreports/2016/Tax_Exemptions_2016/Default.aspx (at *Introduction & Summary Of Findings; and Summary Listing Of All Exemptions*).

powers theory.¹⁰ Citing this Court’s ruling that Article IX, section 1 specifically imposes its paramount duty mandate on all three branches of State government, amici emphasize that this Court has a specifically mandated duty under Article IX, section 1 that is broader than the Court’s more traditional role under Article IV.¹¹

Plaintiffs agree with amici’s point about separation of powers and this Court’s independent Article IX, section 1 duty. Plaintiffs further note that when our constitution assigns a duty primarily to one branch, our constitution says so. For example, Article IX, **section 2** provides that “The legislature shall provide for a general and uniform system of public schools” (underline added). Traditional separation of powers restraint might therefore come into play in a section 2 uniformity suit attacking the system established by the legislature on the grounds that its underfunding is not uniform or its underfunding is not equitably spread among districts. But the State admits this is not a section 2 equity case.¹²

Instead, this is a **section 1** ample funding case. And as this Court previously made clear, our constitution assigns the paramount duty under section 1 to all three branches of our State government – legislative, executive, and judicial. A straightforward comparison of section 1’s

¹⁰ *Paramount Duty Amicus Brief* at 17-18.

¹¹ *Paramount Duty Amicus Brief* at 1, 2-5 & 16-19.

¹² *See, e.g., Plaintiffs’ 2017 Post-Budget Filing* at 19-20.

ample funding mandate and section 2's equity mandate accordingly confirms amici's separation of powers and independent judicial duty point.

4. *Answer To Amici's Burden Of Proof Point*

The Paramount Duty amici note that the State turns the court orders in this case on their head by arguing this Court must "presume" that (this time) the State is complying with the court orders in this case, "presume" that (this time) the State will keep the commitments it asserts in its court filings, and require plaintiffs to prove those presumptions false.¹³

Plaintiffs agree that the State puts the burden of demonstrating compliance backwards. This Court's January 2012 ruling was clear. That ruling contained no surprises for State officials. It affirmed the prior February 2010 Final Judgment against the State (which the State never asked to be stayed¹⁴), and reiterated the *Seattle School District* decision against the State that had been issued over 30 years before that. This Court then accepted the State's commitment to achieve full constitutional compliance by September 1, 2018, and ordered the State's post-budget filings each year to demonstrate that the State budget signed that year made real and measurable progress toward meeting that September 1, 2018 deadline – culminating with its October 2016 Order requiring the State's post-budget filing this year show the 2017 legislature made "the

¹³ *Paramount Duty Amicus Brief at 2-5 & 7.*

¹⁴ *See, e.g., Plaintiffs' 2012 Post-Budget Filing at 40.*

necessary appropriations for the 2017-19 biennium” to finally achieve the full constitutional compliance long ordered by this Court.¹⁵

The court orders in this case accordingly put the burden of proof on the State to demonstrate the State’s compliance. Indeed, that’s why this Court gives the State the opportunity to file a Reply Brief – for it is the State that has the burden of proving its compliance with this Court’s orders. Not the other way around. Suggesting that the State can simply declare “compliance” with this Court’s orders without showing compliance is akin to the State declaring “full funding” without showing ample funding of districts’ actual implementation costs. In neither case does “presumption” of fact prove that fact.

5. *Answer To Amici’s 1% Property Tax Limit Point.*

The Budget/Policy amici note the State’s July 31 filing hid the ball with respect to the fiscal impact of the 2017 legislature’s reinstatement of the 1% property tax limit in 2022, and argue the State property tax alone cannot be a regular and dependable source of funding for the State’s basic education program with that 1% limitation.¹⁶

Plaintiffs agree that amici’s points are factually correct. But they’re also legally irrelevant – for the State property tax is not the only

¹⁵ *October 2016 McCleary Order at 13 (underline added).*

¹⁶ *Budget/Policy Amicus Brief at 10 (1% argument) & at 14-15 (hiding the ball argument). Other amici also note the 1% cap’s revenue constraint. Paramount Duty Amicus Brief at 15.*

funding source for the State's basic education program. The undeniable fiscal reality is that the State's General Fund regularly and dependably draws more than enough tax revenue to amply fund the actual cost of fully implementing the State's basic education program.¹⁷ Thus, while the State's failure to disclose the impact of its reinstating the 1% property tax limit in 2022 was an omission, it was not a material omission (at least under a securities fraud test) since the State's General Fund has more than enough regular and dependable tax revenue to amply fund full constitutional compliance by the September 1, 2018 deadline.¹⁸

6. *Answer To Amici's Special Education Point*

The Special Ed and Paramount Duty amici note why compliance with the law's Individual Education Plan mandate for each of the 130,000 children with disabilities in the State's public schools is expensive.¹⁹ They show the State knows that its funding formula falls far short of the actual cost of providing each of those 130,000 children the special education

¹⁷ See *Plaintiffs' 2017 Post-Budget Filing at 20-21*.

¹⁸ *The Paramount Duty amici note that if the State needs additional revenue, readily available options are the recently proposed capital gains tax or revisiting collection of the Washington State income tax that the legislature has never repealed. Paramount Duty Amicus Brief at 21 n.20. The State also knows from the Washington Department of Revenue's relatively recent FY2014 tax study that Washington's General Fund tax revenues would be \$9.6 billion/year more if our State simply adopted Idaho's tax code, and \$10.2 billion/year more if our State simply adopted Oregon's tax code. <https://www.documentcloud.org/documents/2715904-Tax-Rate-Comparison.html>. But additional tax revenue for Washington's General Fund is not an issue in this case because there is no dispute that existing taxes provide more than enough dependable and regular revenue to amply fund the State's K-12 schools.*

¹⁹ *Special Ed Amicus Brief at 9-10*.

mandated by law,²⁰ that its “safety net” funding backfills far less than its formula’s funding shortfall,²¹ that its formula’s 13.5% cap excludes special education students in 90 Washington school districts,²² and that “levy reform” making it illegal to use levy funds to fill State funding shortfalls hamstrings school districts’ ability to lawfully implement the State’s basic education program for special education students.²³

Plaintiffs agree with amici’s special education point. Each kid in our public schools today will have to set out to sea in the real world when he or she leaves school. And teaching the ones with disabilities to keep their head above water and swim in that sea is not easy. Or cheap. But each one of those 130,000 kids with disabilities is one of the “**all** children” entitled to an amply funded education under Article IX, section 1.

7. *Answer To Amici’s Remediation Point (LAP).*

The Civil Rights and Budget/Policy amici note that amply funding remediation is critical to closing the opportunity gap and leveling the playing field for students from disadvantaged backgrounds and those struggling in school.²⁴ They show that State reports specify and confirm

²⁰ *Special Ed Amicus Brief at 15-17; Paramount Duty Amicus Brief at 13-14 (noting the multi-million dollar State funding shortfall in school districts across the State from Spokane to Yakima to Seattle).*

²¹ *Special Ed Amicus Brief at 12-14.*

²² *Special Ed Amicus Brief at 4 & 9-11.*

²³ *Special Ed Amicus Brief at 12-13 & 17-18; Paramount Duty Amicus Brief at 13.*

²⁴ *Civil Rights Amicus Brief at 8-10; Budget/Policy Amicus Brief at 18.*

the shortcomings in the remediation State formulas fund,²⁵ and that the 2017 legislature’s adding a little extra support for kids in some schools (50% free-and-reduced-price-lunch) excludes the equally needy students in other schools who are entitled to the same amply funded education under Article IX, section 1.²⁶

Plaintiffs agree with amici’s remediation point. For example, with respect to the State formula’s 50% cutoff’s exclusion for LAP students, State reports confirm that this cutoff excludes remediation funding for over 185,000 free-and-reduced-price-lunch students in our public schools (e.g., excludes 939 low income students at Wenatchee High School, 842 at Kentwood High School, 832 at Walla Walla High School, 830 at Southridge High School, and 813 at Cascade High School).²⁷

Amici also note that the disproportionate impact of the State formula’s underfunding of remediation aligns with class.²⁸ Social “class” alignment is important because Article IX, section 1 expressly applies to all Washington children “without distinction or preference on account of

²⁵ *Civil Rights Amicus Brief at 9-13.*

²⁶ *Civil Rights Amicus Brief at 12-13.*

²⁷ <http://www.k12.wa.us/SAFS/Misc/BudPrep17/LAPCalculatorfor2017-18FinalVersion.xlsx> (OSPI’s LAP Excel Spreadsheet Calculator for the 2017-2018 school year, showing the amount and percentage of students for each school classified as “students in poverty” (eligible for free and reduced price lunch), as well as whether their school qualifies as a “high poverty” school). Total of 185,660 students comes from using that Excel spreadsheet to calculate the sum of the “Total Students in Poverty” column for all schools that were NOT eligible for High Poverty School status.

²⁸ *Budget/Policy Amicus Brief at 18.*

... caste” – which as prior briefing in this case has explained, includes a student’s economic status or social class.²⁹ Yet, State reports confirm the State knows the education it provides in its K-12 public schools continues to yield distinction and preference on account of a student’s economic status or “caste” – e.g., the ongoing 20-30% achievement gap between our low income and non-low income public school students.³⁰ Kids from low income families have the same constitutional right to a realistic and effective educational opportunity that’s amply funded as other kids.

8. *Answer To Amici’s English Language Learners Point (TBIP).*

The Civil Rights, Paramount Duty, and Budget/Policy amici note that amply funding bilingual education is critical to closing the opportunity gap and leveling the playing field for students who lack English fluency,³¹ that State reports specify and confirm the shortcomings in the transitional bilingual education State formulas fund,³² and that the 2017 legislature’s adding a little extra support for kids in high school

²⁹ See *supra* footnote 4; see *Amicus Curiae Brief Of The American Civil Liberties Union Of Washington* (dated May 31, 2011, and filed on June 8, 2011) at 11-15.

³⁰ See, e.g., *Washington Educational Opportunity Gap Oversight and Accountability Committee’s 2016 Annual Report* at 13 (percent of low income and non-low income 8th graders scoring proficient on Smarter Balance Math Assessment). [<http://www.k12.wa.us/Workgroups/EOGOAC/pubdocs/EOGOAC2016AnnualReport.pdf>].

³¹ *Civil Rights Amicus Brief* at 13-15; cf. *Paramount Duty Amicus Brief* at 14 (noting English Language Learners component of the State’s basic education program).

³² *Civil Rights Amicus Brief* at 9-13.

neglects the majority of English language learners because over 77% of them are instead in the State’s elementary school classrooms.³³

Plaintiffs agree with amici’s English language learners point. Plaintiffs further note that while the State now proposes to add a biennium amount of \$26.9 million for this component of its basic education program,³⁴ the State knows from its own reports that its formulas leave an annual funding gap of over \$40 million with respect to its school districts’ actual implementation costs.³⁵ (That’s an \$80 million biennium amount.) Writing a relatively small funding formula change on the wall at the last minute, calling it “good”, and going home, is not the full constitutional compliance this Court ordered lawmakers to make.

9. *Answer To Amici’s Early Elementary Education Point (K-3)*

The Civil Rights amici note that amply funding smaller K-3 class sizes is “a critical element to level the playing field” for disadvantaged and low income students,³⁶ and that State reports specify and confirm the

³³ *Civil Rights Amicus Brief at 14; Budget/Policy Amicus Brief at 18.*

³⁴ *Legislature’s 2017 Report at 35.*

³⁵ *The State’s Apportionment Report shows school districts’ actual TBIP expenditures were approximately \$163 million in the 2015-2016 school year, and that the State allocated approximately \$122 million, leaving a funding gap of approximately \$41 million that school year. See: 2015-2016 Statewide Apportionment Report at <http://www.k12.wa.us/SAFS/month.asp>, navigate to the 2015-2016 section, and click “State Summary” under the “Final” tab to yield the following link: <http://www.k12.wa.us/SAFS/rep/app/1516/Final/00000.zip>.*

³⁶ *Civil Rights Amicus Brief at 16; see also at 9-10.*

importance of smaller K-3 classrooms.³⁷ The Paramount Duty amici note further that the 2017 legislature failed to fund any of the classroom construction required to fully implement the basic education program's K-3 components by the September 1, 2018 full implementation deadline.³⁸

Plaintiffs agree with amici's K-3 education point. Ignoring K-3 implementation costs such as classroom construction and pay increases large enough to actually recruit and keep the thousands of additional teachers needed fill our State's ongoing K-3 teacher shortage does not make those costs disappear. It just strands them without ample funding.

10. *Answer To Amici's Overall Funding Point.*

The Civil Rights and Paramount Duty amici note that closing the opportunity gap and leveling the playing field for students in our State's public schools requires all components of the State's basic education program to be amply funded, and that the State's last-minute June 30 enactments instead made the overall funding for many Washington school districts even worse by adding "levy reform" that prohibits districts from using levy dollars to cover the basic education program costs that State formulas fail to fund.³⁹ With respect to the 2017-2019 Biennium Budget's compliance with the court orders in this case, the Budget/Policy amici

³⁷ *Civil Rights Amicus Brief at 15-16.*

³⁸ *Paramount Duty Amicus Brief at 9.*

³⁹ *Civil Rights Amicus Brief at 17; Paramount Duty Amicus Brief at 12.*

likewise conclude that “State funding levels for this biennium are insufficient to pay for the State’s basic education program.”⁴⁰

Plaintiffs agree with amici’s point concerning school districts’ overall level of funding after lawmakers’ rushed June 30 enactments.

With one hand, the June 30 Biennium Budget funds formulas which do not amply fund the actual cost of fully implementing all components of the State’s basic education program by September 1, 2018. For example, the newer Transportation, Special Education, and MSOC formulas are improvements over what they were before this suit was filed – but they do not amply fund actual cost.⁴¹

And with the other hand, the State’s June 30 “levy reform” takes billions of dollars away from school districts.⁴²

Amici correctly point out that giving money with one hand while taking money away with the other is a decrease (not increase) for some districts (e.g., Tacoma). The phrase “justice is blind” refers to judges being blind to a defendant’s power, prestige, and status – not their being blind to the net effect of what a defendant’s two hands are doing.

⁴⁰ *Budget/Policy Amicus Brief at 9; accord at 4 n.1.*

⁴¹ *See generally Plaintiffs’ 2017 Post-Budget Filing at 24-26 & 28-29. Recently posted F195 Reports also show that underfunding of actual costs. <https://www.oesd114.org/Page/1053> (ESD 114 school districts’ 2017-2018 F195 Reports, showing actual Transportation, Special Education, and MSOC costs – with, e.g., underfunding of North Kitsap actual costs for those components by \$1.1 million, \$3.0 million, & \$1.2 million; Central Kitsap by \$1.3 million, \$5.6 million, & \$1.6 million; and South Kitsap by \$2.0 million, \$2.5 million, & \$2.8 million).*

⁴² *See Plaintiffs’ 2017 Post-Budget Filing at 18-20.*

11. *Answer To Amici's All Means All Point.*

“Life’s a beach.”TM That’s the registered trademark for a particular company that focuses on travel and leisure activities.⁴³

But for each kid in our K-12 public schools today, life’s gonna be an ocean once their school years are done. An ocean on which they’ll have to successfully navigate through unpredictable storms, strong winds, rough waters, and swift currents. An ocean which, sitting here today, is largely uncharted – for we cannot see what lies over the horizon for them. Today’s kids will be competing for jobs that haven’t even been invented yet. The “good ole days” – where kids could simply rely on growing up to work the same job as their grandparents or parents – are gone.

The purpose of our public schools is to equip **all** Washington children – each and every one of them – with the basic knowledge and skills they’ll need when they leave school and are cast upon that ocean. Specifically: “the basic knowledge and skills needed to compete in today’s economy and meaningfully participate in this state’s democracy”⁴⁴ – which are specified in the *Seattle School District* ruling, ESHB 1209, and

⁴³ *The Travel Channel, LLC* (Registration Serial No. 86455379; Reg. No. 5182030).

⁴⁴ *McCleary*, 173 Wn.2d at 524 n.21 (“For our purposes, the terms ‘education’ under article IX, section 1 and ‘basic education’ are synonymous”), at 483 (“The word ‘education’ under article IX, section 1 means the basic knowledge and skills needed to compete in today’s economy and meaningfully participate in this state’s democracy”) & at 521.

EALRs.⁴⁵ Some kids are relatively easy and less expensive to teach. But several amici focus on the many kids who are not – e.g., the kids weighed down with burdens relating to disability, language, and poverty.

The Civil Rights, Paramount Duty, Special Ed, and Budget/Policy amici rightly emphasize that our constitution’s “all children” mandate covers each and every one of those kids – regardless of how easy or how expensive it is to teach them.⁴⁶ As one of the amicus briefs succinctly put it: “The State must do more for children who need more, and that necessarily involves more funding.”⁴⁷

Plaintiffs agree with amici’s all-means-all point. As the *McCleary* Final Judgment against the State reiterated over 7 years ago, each and every child currently in our public schools will be a member of (and participant in) the democracy, society, and economy on which we all depend – not just the kids who are more privileged, more politically

⁴⁵ *Supra* footnote 44 and *McCleary*, 173 Wn.2d at 523-524 (the legislature provided specific substantive content to the word education by adopting the four numbered provisions in ESHB 1209 and developing the EALRs: “Building on the educational concepts outlined in *Seattle School District* [90 Wn.2d at 517-518], ESHB 1209 [now RCW 28A.150.210] and the EALRs [the State’s corresponding Essential Academic Learning Requirements] identified the knowledge and skills specifically tailored to help students succeed as active citizens in contemporary society. In short, these measures together define a ‘basic education’ – the substance of the constitutionally required ‘education’ under article IX, section 1.”).

⁴⁶ *Paramount Duty Amicus Brief* at 14 (all means all highly capable kids, all special education kids, all English language learners, all poor kids, all kids of color, etc.); *Special Ed Amicus Brief* at 2 & 6 (quoting this Court’s *McCleary* decision); *Civil Rights Amicus Brief* at 1 (quoting this Court’s *McCleary* decision); *Budget/Policy Amicus Brief* at 18 (State must accordingly do more for kids who need more).

⁴⁷ *Budget/Policy Amicus Brief* at 18.

popular, or more easy to teach, but **all** of them.⁴⁸ The State's June 30 enactments might adequately fund its school districts' ability to provide many public school students a realistic and effective opportunity to become equipped with the knowledge and skills our State has specified as being a basic education under Article IX, section 1. But to say that those rushed June 30 enactments amply fund the actual cost of districts' fully implementing the State's basic education program for all students by September 1, 2018 is fiction.

12. Answer To Amici's Enforcement Order Point.

State reports show that 1,103,269 kids are in the State's K-12 public schools.⁴⁹ All amici maintain that this Court should issue orders to uphold and enforce the positive, constitutional right of each and every one of those children to an amply funded K-12 education.⁵⁰

⁴⁸ More fully, the February 2010 McCleary Final Judgment declared that "the word 'all' in Article IX, §1 means what it says.... It encompasses each and every child since each will be a member of, and participant in, this State's democracy, society, and economy. Article IX, §1 accordingly requires the Respondent State to amply provide for the education of every child residing in our State – not just those children who enjoy the advantage of being born into one of the subsets of our State's children who are more privileged, more politically popular, or more easy to teach." CP 2908, ¶168.

⁴⁹ <http://www.k12.wa.us/DataAdmin/enrollment.aspx>.

⁵⁰ *Civil Rights Amicus Brief at 18* (enter orders "appropriate to firmly uphold and enforce" kids' constitutional right to amply funded education); *Special Ed Amicus Brief at 1, 14 & 18* (retain jurisdiction to "enforce" the ample funding constitutional mandate and "require the State to fully fund special education"); *Budget/Policy Amicus Brief at 2 & 19* (enter order striking down statutory provision that limits one tax source for the State's General Fund); *Paramount Duty Amicus Brief at 21-22* (order "sanctions serious enough to compel" compliance; "increase sanctions to ensure compliance").

Plaintiffs agree with amici's point that the State's half-steps and delays thus far prove that a firm enforcement order is now necessary if this Court is serious about upholding the positive constitutional right of every Washington child to an amply funded K-12 education.

Plaintiffs also agree that the enforcement order advocated by the Paramount Duty amici is appropriate – i.e., compel lawmakers to choose to obey the law by issuing an enforcement order mandating that if the State does not comply by enacting (no later than March 15, 2018) a supplemental budget that the State shows will amply fund the actual cost of its school districts fully implementing all components of the State's basic education program by the September 1, 2018 full compliance deadline, then all legislatively enacted tax exemptions will be suspended (effective April 1, 2018).⁵¹ *[Plaintiffs note that limiting this suspension to tax exemptions enacted by the legislature does not affect the sales tax exemption on food enacted by the voters with Initiative 345.]* While the March 15 and April 1 dates suggested by the Paramount Duty amici differ from the dates proposed by plaintiffs, this enforcement order is still of no surprise to lawmakers since its “choose to comply or have tax exemptions

⁵¹ *Paramount Duty Amicus Brief at 20-22.*

suspended” is one of the two alternatives fully briefed in this case’s many prior years of post-budget filings.⁵²

Article IX, section 1 makes it the paramount duty of the State – all three branches: legislative, executive, and judicial – to ensure that our public schools are amply funded so they can provide every child a realistic and effective opportunity to become equipped with the basic education required for their generation’s upcoming journey.

The State convinced this Court to vacate the trial court’s remedial order by committing itself to fully provide that ample funding for all children by no later than September 1, 2018. Back in January 2012, this Court ordered the State to do what it promised and thus achieve full constitutional compliance by that 2018 deadline. So did this Court’s ensuing enforcement orders. And its most recent enforcement order therefore expressly required the State’s 2017-2019 Biennium Budget to finish the job by making all appropriations necessary to implement that full constitutional compliance by the September 1, 2018 deadline.

The court orders in this case have consistently required the State’s post-budget filing every year to demonstrate progress towards crossing that September 1, 2018 full constitutional compliance finish line. In prior years, the State’s filings have fallen short. And unfortunately, for the

⁵² See, e.g., *Plaintiffs’ 2015 Post-Budget Filing at 46-50; Plaintiffs’ 2016 Post-Budget Filing at 47-49.*

reasons outlined above, the amicus briefs filed last week confirm that the State's post-budget filing this year failed to demonstrate the full constitutional compliance this Court ordered the State to show.

This Court has long held that Article IX, section 1 “imposes a judicially enforceable duty” on the State.⁵³ This Court promised the over 1 million kids in our State's public schools that it would be vigilant in enforcing the positive, constitutional right each one of them has to an amply funded basic education.⁵⁴ Timely keeping that promise is imperative – for the kids in our public schools “get only one shot at their education.”⁵⁵ Plaintiffs respectfully ask this Court to keep its promise.

RESPECTFULLY SUBMITTED this 8th day of September, 2017.

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⁵³ McCleary, 173 Wn.2d at 485 (underlines added) (“article IX, section 1 imposes a judicially enforceable affirmative duty on the State” [citing Seattle School District, 90 Wn.2d at 520]) & at 514 (“More than 30 years ago, we held that article IX, section 1 imposes a judicially enforceable affirmative duty on the State” [citing Seattle School District, 90 Wn.2d at 520]).

⁵⁴ See Plaintiffs' 2017 Post-Budget Filing at 43-50.

⁵⁵ See Plaintiffs' 2014 Post-Budget Filing at 44-45; Ex.238 (last para.); RP 2431:9-20. This Court has likewise noted that “Each day there is a delay risks another school year in which Washington children are denied the constitutionally adequate education that is the State's paramount duty to provide.” December 2012 McCleary Order at pp.2-3.

DECLARATION OF SERVICE

Laura G. White declares:

I am a citizen of the United States of America and a resident of the State of Washington. I am over the age of twenty-one years. I am not a party to this action, and I am competent to be a witness herein. On Friday, September 8, 2017, I caused PLAINTIFF/RESPONDENTS' CONSOLIDATED ANSWER TO THE FOUR AUGUST 30 AMICUS BRIEFS to be served as follows:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED in Seattle, Washington, this 8th day of September, 2017.

s/ Laura G. White
Laura G. White, Legal Assistant

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