

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.

PLAINTIFFS' RAP 10.8  
STATEMENT  
OF ADDITIONAL  
AUTHORITIES RELATING  
TO YESTERDAY'S ORAL  
ARGUMENT

Pursuant to RAP 10.8,<sup>1</sup> plaintiffs submit this statement of additional authorities with respect to yesterday's oral argument:

*October 2, 2017 Kansas Supreme Court case referenced by counsel when answering the Court's questions:*<sup>2</sup>

- ***Gannon v. State*, -- Kan. --, 402 P.3d 513, 518, 523 (Oct. 2, 2017)** (party asserting compliance with a court decision ordering remedial action in school funding case bears the burden of establishing such compliance; "Once legislation is enacted, the State will have to satisfactorily demonstrate to this court by June 30, 2018, that its proposed remedy brings the state's education financing system into compliance with Article 6 of the Kansas Constitution.... the State will continue to bear the burden of establishing such compliance and explaining its rationales for the choices made to achieve it.") (internal citations omitted).

*Case law on deference to legislative findings referenced by counsel when answering the Court's questions:*<sup>3</sup>

- ***Gonzales v. Carhart*, 550 U.S. 124, 165, 127 S.Ct. 1610, 1637, 167 L.Ed.2d 480 (2007)** ("the Attorney General urges us to uphold the Act on the basis of the congressional findings alone. Although we review congressional fact finding under a deferential standard, we do not in the circumstances here place dispositive weight on Congress' findings. The Court retains an independent constitutional duty to review factual findings where constitutional rights are at stake.") (citing *Crowell v. Benson*, 285 U.S. 22, 60 (1932) for judicial power extending to "the independent determination of all questions, both of fact and law" in cases brought to enforce constitutional rights).

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<sup>1</sup> See RAP 10.8 ("ADDITIONAL AUTHORITIES A party or amicus curiae may file a statement of additional authorities. The statement should not contain argument, but should identify the issue for which each authority is offered. The statement must be served and filed prior to the filing of the decision on the merits or, if there is a motion for reconsideration, prior to the filing of the decision on the motion.").

<sup>2</sup> <https://www.tvw.org/watch/?eventID=2017101066> (time stamp at 30:27-30:59).

<sup>3</sup> <https://www.tvw.org/watch/?eventID=2017101066> (time stamp at 42:50-43:00).

- ***Latta v. Otter*, 771 F.3d 456, 469 (9<sup>th</sup> Cir. 2014)** (“Defendants have not demonstrated that the Idaho and Nevada legislatures actually found the facts asserted in their briefs; even if they had, deference would not be warranted. Unsupported legislative conclusions ... have not been afforded deference by the Court. To the contrary, we retain an independent constitutional duty to review factual findings where constitutional rights are at stake.”) (citations and internal quotation marks omitted).
- ***In re Washington State Apple Advertising Commission*, 257 F.Supp.2d 1274, 1277 n.3 (E.D. Wash. 2003)** (defendant Commission argues “that when a legislature makes factual findings, a Court may not, under separation of powers principles, reject those findings. While the Court agrees that the Washington State Legislature’s factual findings regarding the Commission are entitled to deference, that deference cannot preclude this Court’s independent judgment of the facts necessary to decide the constitutionality of the Commission’s assessment structure.”).

*September 28, 2017 Pennsylvania Supreme Court school funding case relating to the Court’s noting separation of powers when enforcing the constitutional rights at issue.*<sup>4</sup>

- ***William Penn School District v. Pennsylvania Dept. of Education*, -- A.3d --, 2017 WL 4287879 (Penn. Sept. 28, 2017) at \*2** (“It is settled beyond peradventure that constitutional promises must be kept. Since *Marbury v. Madison*, 5 U.S. 137 (1803), it has been well-established that the separation of powers in our tripartite system of government typically depends upon judicial review to check acts or omissions by the other branches in derogation of constitutional requirements.”), **at \*16 - \*31** (“The cornerstone of our republican democracy is the principle of government divided into three separate, co-equal branches that both empower and constrain one another. Judicial review stands as a bulwark against unconstitutional or otherwise illegal actions by the two political branches.”) (citations omitted).

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<sup>4</sup> <https://www.tvw.org/watch/?eventID=2017101066> (time stamp at 39:55-41:09).

RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of October, 2017.

*s/ Thomas F. Ahearne*

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Attorneys for Plaintiffs

## **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 Wednesday, October 25, 2017, I caused PLAINTIFFS' RAP 10.8 STATEMENT OF ADDITIONAL AUTHORITIES RELATING TO YESTERDAY'S ORAL ARGUMENT to be served as follows:

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*Amici Curiae 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*

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*Amicus Curiae Washington's Paramount Duty*

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*Amici Curiae Washington State Budget & Policy Center, Equity In Education Coalition, Senator Jamie Pedersen, Representative Laurie Jenkins, and Representative Gerry Pollet*

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*Amici Curiae 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, and United Indians Of All Tribes Foundation*

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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 25<sup>th</sup> day of October, 2017.

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

# FOSTER PEPPER PLLC

October 25, 2017 - 2:07 PM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 84362-7  
**Appellate Court Case Title:** MATHEW & STEPHANIE MCCLEARY ET AL VS STATE OF WASHINGTON  
**Superior Court Case Number:** 07-2-02323-2

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### Comments:

Plaintiffs' RAP 10.8 Statement Of Additional Authorities Relating To Yesterday's Oral Argument

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