

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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| MATTHEW & STEPHANIE |) No. 84362-7 |
| McCLEARY, et al, |) |
| Respondents/Cross-Appellants, |) |
| |) MOTION FOR LEAVE TO FILE |
| v. |) BRIEF ON BEHALF OF <i>AMICUS</i> |
| |) <i>CURIAE</i> WASHINGTON'S |
| STATE OF WASHINGTON, |) PARAMOUNT DUTY, a |
| Appellant/Cross-Respondent. |) Washington Nonprofit Corporation |
| _____ |) and 501(c)(4) Organization |

I. IDENTITY OF PARTY

COMES NOW the Applicant, WASHINGTON'S PARAMOUNT DUTY, a Washington Nonprofit Corporation and 501(c)(4) organization, by and through counsel *pro bono*, Summer Stinson, No. 40059, and Kathryn A. Russell Selk, No. 23879, and upon all the files, records and proceedings herein, moves the Court for the relief indicated herein.

II. STATEMENT OF RELIEF SOUGHT

Pursuant to RAP 10.6(a) and (b) and RAP 1.2(a), Washington's Paramount Duty respectfully asks permission to file a brief of *amicus curiae* in the above-entitled matter.

III. INTEREST OF APPLICANT

Amicus Applicant Washington's Paramount Duty (WPD) is a grassroots, non-profit advocacy organization with a single mission: to compel Washington to amply fund basic education and swiftly fulfill its constitutional paramount duty. WPD formed in September of 2015 in response to Washington's chronic

underfunding of basic education, the decisions of this Court in this case, and the State's ongoing contempt. The group consists primarily of parents, some of whom are also legislators or educators, who see constant stark reminders of the real-life consequences our children suffer because the State has failed to comply with the Constitution and this Court's ruling to fully fund our schools. This includes the unconscionable disproportionate effect the chronic underfunding has on Washington's children of color and those from disadvantaged families and communities.

Since September 2015, when it first formed, WPD has advocated to both the executive and legislative branches, seeking to support quick resolution of whatever has prevented the State from complying with the Constitution. In that short time, WPD members have spent more than 5,000 hours in their efforts, which have included the following:

- a) providing testimony from parents, affected children, and public school allies at public hearings on proposed legislation involving K-12 education funding throughout the 2017 legislative session;
- b) coordinating parents and public school students to meet with and discuss public education funding with legislators in 2015, 2016, and 2017;
- c) co-sponsoring a rally of thousands of parents, students, teachers, and advocates to demand that the Legislature amply fund Washington public schools because basic education is a civil and constitutional right;
- d) providing testimony from parents and affected children at the 2015 Senate Education Committee statewide listening tour;

- e) attending the “Ask the Governor” discussion at the University of Washington with Governor Jay Inslee and asking him to take action;
- f) drafting a “Paramount Duty” Resolution, meeting individually with legislators to ask them to sign it and discuss with them why the rights of children continue to be violated daily and what they are doing to change it;
- g) meeting with the state Superintendent of Public Instruction regarding the existing school funding crisis;
- h) writing and filing several amicus pleadings in this case; and
- i) responding in to the Education Funding Task Force’s request for proposed basic education funding solutions from the public.

As public concern over the daily violations of the constitutional rights of children in this State has continued to grow, WPD’s members has grown as well. Starting with 5 parents in September 2015, WPD now has nearly 7,000 members in its Facebook group and an email reach of 10,000, including parents, concerned residents, and legislators engaging in daily substantive discussions on basic education funding.

IV. FAMILIARITY WITH ISSUES AND LAW

Ms. Stinson is the Vice President of the Board and one of the founders of Washington’s Paramount Duty, a statewide grassroots organization that has advocated to the State to amply fund basic education. Additionally, she is the parent of child in a Washington public school. As a former judicial clerk for Judge Johnnie B. Rawlinson, on the United States Court of Appeals for the Ninth

Circuit, Ms. Stinson has experience with and is familiar with the interplay of the state and federal constitutions, federal constitutional law, and separation of powers principles.

Ms. Russell Selk is a member of WPD and parent of two school-age children in public schools in this state. She is an appellate public defender with 22 years of experience in more than 350 appeals in all three Divisions of the court of appeals and this Court. She has taught constitutional criminal procedure as a part-time lecturer at the University of Washington School of Law. In her practice she has briefed issues involving separation of powers, the interpretation of our state's Constitution, legislative intent and constitutional history in this Court and the courts of appeals. She was an appellate judicial clerk for the Honorable Judges Kurt Rossman (Presiding) (Ret.) and Susan Leeson (Ret.) of the Oregon Court of Appeals at a time when it was the busiest state intermediate appellate court in the country. Since September 2015, Russell Selk has collected thousands of donated books and distributed them to educators and children at seven Title I (extremely high poverty) schools in Seattle, along with reams of paper, pencils, scissors and other supplies that schools without resources do not have. Russell Selk has also written on education and parenting issues as a freelance writer in publications such as *ParentMap* and *Sacramento Parent*.

Both attorneys for WPD have reviewed all of the briefs of the parties filed with the Court and the arguments presented therein. They have also authored an

article researching the history of education law and Article 9, section 1, and the clauses of other states, with comparative analysis. Kathryn Russell Selk & Summer Stinson, *McCleary: Myths and Realities About Separation of Powers and Duties Under Washington's Unique Constitution*, 3 WASHINGTON EDUCATION LAW AND POLICY REVIEW 33 (2017).¹

V. ISSUES THE BRIEFING WILL ADDRESS

The purpose of briefing by *amicus* is to “help the courts with points of law.” *See Ochoa AG Unlimited*, 128 Wn. App. 165, 172, 114 P.3d 692 (2005); *see also* RAP 10.3(g). In its previous briefing, WPD was alone in presenting significant information about how the highest courts in other states are addressing similar issues, along with information about the specific constitutional language involved. With this pleading, WPD intends to again provide information about other state courts and constitutions in light of the new issues presented. In addition, WPD intends to focus on the Court’s authority and duties in light of the specific language and history of our state’s constitution. As before, WPD expects to provide the Court with information and legal analysis not being otherwise provided by the parties or other *amici*, who are expected to focus on the specifics of the new education plan enacted this year and whether it is adequate as a matter of policy. WPD’s briefing, in contrast, will focus on the constitutional authority

¹Available at, <https://uwedlaw.files.wordpress.com/2017/04/washington-journal-of-education-law-and-policy-review-2017.pdf>

of the Court and is intended to assist the Court in evaluating the issues presented by the state's pleadings and those of the parties and other *amici* without being duplicative.

VI. REASONS THE MOTION SHOULD BE GRANTED

As described above, WPD is uniquely positioned to address the issues in this case based on its advocacy work with the legislature and executive branches. WPD can also address the constitutional issues regarding the duties of this Court and the Legislature to Washington's one million public school children. WPD has previously provided *amicus* briefing from a perspective not previously presented, with information and legal analysis intended to be of assistance to the Court regarding how other high courts are addressing similar issues. The Court should allow WPD to provide additional briefing to assist on the law in this case.

VII. CONCLUSION

Washington's Paramount Duty respectfully asks leave to file an additional amicus brief in this case.

RESPECTFULLY SUBMITTED this 18th day of August, 2017.

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DECLARATION OF SERVICE BY EMAIL:

The undersigned hereby declares under penalty of perjury under the laws of the State of Washington that she transmitted a true and correct copy of the attached Motion to the parties via electronic mail based on previous agreement, with service through this Court's upload service to the named and/or interested parties as follows: to the Office of Attorney General: daves@atg.wa.gov, alanc@atg.wa.gov; to plaintiffs' counsel at ahearne@foster.com, Adrian.winder@foster.com, Kelly.lennox@foster.com, lee.marchisio@foster.com, and *amicus* kgeorge@hbslegal.com and wbcollins@comcast.net, dscaramastra@gsblaw.com, althausen.michael@gmail.com, mary.vancleve@columbialegal.org, wbcollins@comcast.net, summerstinson@gmail.com.

DATED this 18th day of Aug, 2017.

/s/ Kathryn Russell Selk
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