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NO. 84362-7

SUPREME COURT OF THE STATE OF WASHINGTON

MATHEW and STEPHANIE McCLEARY, et al.,

Respondents,

v.

STATE OF WASHINGTON,

Appellant.

STATE OF WASHINGTON'S MEMORANDUM TRANSMITTING
THE LEGISLATURE'S 2016 POST-BUDGET REPORT
AND REQUESTING THE LIFTING OF CONTEMPT
AND END OF SANCTIONS

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I. INTRODUCTION

The State has complied with the Court's orders to submit a plan for achieving compliance with article IX, section 1 of the Washington Constitution. That plan provides a workable path and evidences the Legislature's good faith and commitment to address the issues of compensation and funding. In addition, the State remains on schedule to complete the implementation plan in SHB 2776 (Laws of 2010, ch. 236) by 2018.

Because the State has complied with the Court's order to produce a plan, the Court should lift the remedial monetary sanction that continues to accrue daily and dissolve the contempt order giving rise to the sanction.

The State has not yet achieved, and does not claim to have achieved, full constitutional compliance. However, it has made significant cumulative progress over the last four years, increasing biennial funding for K-12 education by nearly \$5 billion. The State is poised to finish the legislative work necessary to achieve compliance by 2018. The State's progress to this point is detailed in the *2016 Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation* (May 18, 2016) (*2016 Report*). As directed by the Court,¹ this

¹ Order, *McCleary v. State*, No. 84362-7 (Wash. Jan. 11, 2016); Order, *McCleary v. State*, No. 84362-7 (Wash. Dec. 20, 2012).

report has been prepared following the 2016 legislative session and is filed as an attachment to this pleading.

II. STATEMENT OF THE CASE

The history of this case is summarized in the State's 2015 transmittal brief, and will not be repeated here. *See State of Washington's Memorandum Transmitting the Legislature's 2015 Post-Budget Report at 3-12 (July 27, 2015).*

III. STATEMENT OF THE ISSUE

The issue before the Court at this time is whether the State has complied with the orders requiring it to submit a plan. If so, the order of contempt should be dissolved and sanctions terminated.

IV. ARGUMENT

A. The 2016 Legislature Adopted a Plan That Complies With the Court's Orders

The first bill enacted by the 2016 Legislature was E2SSB 6195 (Laws of 2016, ch. 3), adopting a plan for addressing the State's basic education obligations. As explained below, that bill expresses the Legislature's full commitment to fund the State's program of basic education—including competitive salaries and benefits for school staff—and to eliminate school district dependency on local levies to fund the State's program, while minimizing disruptive impact to school districts

and taxpayers. E2SSB 6195 § 1. The bill establishes specific processes, with explicit deadlines, for obtaining information necessary to set competitive salaries and benefits, respond to teacher shortages, identify any gaps in support for state-funded all-day kindergarten and K-3 class size reduction, and replace local levy funding for the basic education program with state funding. E2SSB 6195 §§ 2, 3, 4. And the bill provides that legislative action “shall be taken” by the end of the 2017 legislative session to eliminate school district dependency on local levies for the implementation of the state’s program of basic education. E2SSB 6195 § 4. E2SSB 6195 satisfies the Court’s orders requiring the State to submit a plan.

B. Origin of the Court’s Requirement That the State Submit a “Plan” for Fully Implementing the State’s Program of Basic Education

1. 2012 decision and order re retained jurisdiction

In January 2012, the Court issued its decision finding the State had failed to meet its duty under article IX, section 1 of the Washington Constitution to amply provide for the education of all children within its borders. *McCleary v. State*, 173 Wn.2d 477, 546-47, 269 P.3d 227 (2012). The Court did not discuss any need for a new “implementation plan” or for interim benchmarks in that decision. Instead, it referred to ESHB 2261 (Laws of 2009, ch. 548) and SHB 2776 (Laws of 2010, ch. 236) as the

“State’s plan” and “retain[ed] jurisdiction over the case to help ensure progress in the State’s plan to fully implement education reforms by 2018.” *McCleary*, 173 Wn.2d at 547. After additional briefing—and after the 2012 Legislature had adjourned—the Court established a process for monitoring the State’s progress, directing the State to file periodic reports “summarizing its actions taken toward implementing the reforms initiated by [ESHB 2261] and achieving compliance with Washington Constitution article IX, section 1, as directed by this court in [the *McCleary* decision].” Order at 2, *McCleary v. State*, No. 84362-7 (Wash. July 18, 2012). The Court explained that it would not “measure the steps taken in each legislative session between 2012 and 2018 against full constitutional compliance”; rather, the Court required the State to “demonstrate steady progress *according to the schedule anticipated by the enactment of the program of reforms in ESHB 2261.*” *Id.* at 3 (emphasis added).

ESHB 2261 identified education reforms and set forth expectations for implementation by 2018. New funding formulas were to be implemented as their technical details were established by a technical working group and according to an implementation schedule to be adopted by the Legislature, with the goal of ensuring that increases in funding allocations “are timely, predictable, and occur concurrently with any increases in program or instructional requirements.” ESHB 2261 § 112(1).

The schedule anticipated in ESHB 2261 was enacted the following year in SHB 2776, incorporating many recommendations received from the working groups:

- Full phase-in of the new distribution formula for pupil transportation was to begin by the 2011-13 biennium and be fully implemented by the 2013-15 biennium. SHB 2776, § 8(1).
- The minimum per-student allocation for maintenance, supplies, and operating costs (MSOC) was to be more than doubled by the 2015-16 school year, and adjusted annually for inflation thereafter. SHB 2776, § 2(8)(b).
- Full statewide implementation of voluntary all day kindergarten was to be completed by the 2017-18 school year. SHB 2776, § 4(1).
- K-3 class size was to be reduced to no more than 17.0 full-time equivalent students per teacher by the 2017-18 school year, beginning in the 2011-13 biennium with schools with the highest percentage of students eligible for free and reduce-price meals. SHB 2776, § 2(4)(b).

As explained above, the Court in 2012 understood that the deadlines in ESHB 2261 and SHB 2776 committed the State both to

intermediate steps and to full implementation of its enacted education reforms by 2018. The Court described ESHB 2261 and SHB 2776, read together, as the “State’s plan to fully implement education reforms by 2018.” *McCleary*, 173 Wn.2d at 547.

Because the Court’s decision had been issued on the eve of a legislative session that was not writing a biennial budget, the Legislature wrote the first of its post-budget reports as a baseline from which to assess progress toward compliance with the 2018 deadline. *2012 Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation* at 1 (Sept. 17, 2012) (*2012 Report*).

2. 2012 compliance order

The Court responded to the *2012 Report* by criticizing the State for not having shown “steady progress” in the 2012 session. Order, *McCleary v. State*, No. 84362-7 (Wash. Dec. 20, 2012). Again referencing ESHB 2261, the Court ordered that the next report, to be submitted following the 2013 legislative session, “must set out the State’s plan in sufficient detail to allow progress to be measured according to periodic benchmarks between now and 2018.” *Id.* at 2. The report was to indicate the “phase-in” for achieving full compliance and address “all areas of K-12 education identified in ESHB 2261, including transportation, MSOCs (Materials,

Supplies, and Operating Costs), full time kindergarten, and class size reduction.” Order (Dec. 20, 2012) at 3.

3. 2014 compliance order

Consistent with the plan in SHB 2776, the 2013 Legislature adopted an operating budget for 2013-15 that increased K-12 education appropriations by \$1.9 billion above the 2011-13 level.² In its *2013 Report*, the State explained how these new appropriations were enacted to phase in the ESHB 2261 reforms consistent with the schedule enacted in SHB 2776. *2013 Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation* at 10-17 (Aug. 29, 2013) (*2013 Report*). It also explained how the Legislature had fully implemented the new student transportation formula in SHB 2776 for the 2014-15 school year—meeting the first deadline established in SHB 2776. *2013 Report* at 12-13.

Instead of acknowledging compliance with the implementation plan established in SHB 2776, the Court compared the State’s progress to the plan proposed by the Joint Task Force on Education Funding (JTFEF)—an aspirational recommendation that had not been enacted by the Legislature. The Court stated that “the current level of funding falls

² See *2015 Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation* at 38, Chart A (July 27, 2015).

short of the JTFEF plan in every category except full-day kindergarten” and “does not account for the additional capital investment needed to implement full-day kindergarten.” Order at 7, *McCleary v. State*, No. 84362-7 (Wash. Jan. 9, 2014). It faulted the State for not having committed to the levels of funding the JTFEF projected as necessary for subsequent biennia and suggested that, for the Court to find adequate progress, the State must address each of the core areas of basic education (transportation, MSOC, K-3 class size, and all-day kindergarten) identified in the JTFEF plan. *Id.* at 7. The Court then ordered the State to submit a “complete plan” for phasing in funding and fully implementing each component of its program of basic education through the 2017-18 school year. *Id.* at 8. The plan was to be submitted by April 30, 2014.

4. 2014 contempt order

In its *2014 Report*,³ the Legislature summarized the additional steps it had taken to meet that implementation schedule in SHB 2776, and corrected a misunderstanding as to full funding of pupil transportation.⁴ But the 2014 Legislature did not enact a new plan. The Court held the State in contempt for not doing so. Order at 2-4, *McCleary v. State*,

³ *2014 Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation* at 7 (Apr. 30, 2014).

⁴ *2014 Report*; see also State of Washington’s Reply at 7-11 (May 29, 2014) (further explaining the full funding of student transportation enacted in the 2013-15 biennial budget).

No. 84362-7 (Wash. Sept. 11, 2014). The Court did not further elaborate on the content of the plan in its contempt order, but threatened to impose sanctions if a plan was not enacted by the 2015 Legislature.

The 2015 Legislature increased K-12 funding by approximately \$2.9 billion over the prior biennium. *2015 Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation* at 7 (July 27, 2015) (*2015 Report*). The *2015 Report* and accompanying brief explained how that funding increase continued to meet the phase-in schedule enacted in SHB 2776 and kept the State on a trajectory to achieve constitutional compliance by the deadline established in the *McCleary* decision. See *2015 Report* at 3-13; *State of Washington's Memorandum Transmitting the Legislature's 2015 Post-Budget Report* at 13-28 (July 27, 2015). The *2015 Report* also detailed efforts to grapple with basic education compensation and local levies. In short, the State took meaningful action in 2015: the Legislature substantially increased K-12 funding and continued to meet all of its SHB 2776 deadlines. But it did not enact the new plan the Court ordered.

5. 2015 order imposing sanctions

In August 2015, the Court imposed sanctions for the State's failure to adopt a new plan. Order, *McCleary v. State*, No. 84362-7 (Wash. Aug. 13, 2015). Those sanctions continue to accrue. See *2016*

Report at 27. The Court characterized its orders as having required a written plan that explains “not just what [the State] expects to achieve by 2018, as SHB 2776 dictates,” but also “*how* it will achieve the required goals, with a phase-in schedule and benchmarks for measuring full compliance with the components of basic education.” Order (Aug. 13, 2015) at 8.

C. The Enacted Plan Fulfills the Court’s Requirements

The Court found the State in contempt and imposed sanctions *because the State failed to submit a plan*, not because the State has not yet complied with the 2018 deadline established in the Court’s 2012 decision. The State now has submitted a plan.

1. The Court’s requirements for the State’s plan

It its orders, the Court appears to have established two primary requirements for a plan. First, the plan should address both the elements of SHB 2776 (transportation, MSOC, all-day kindergarten, and K-3 class size reduction) and state funding for competitive salaries and benefits for certificated instructional staff, administrators, and classified staff implementing the state program of basic education. Second, the plan should show how the State will achieve full compliance by 2018, with sufficient detail to allow progress to be measured according to periodic benchmarks between the time of the plan and 2018.

2. The plan in E2SSB 6195 shows how the State will achieve full compliance by 2018

Both of the Court's requirements are satisfied by the plan enacted as E2SSB 6195 (Laws of 2016, ch. 3). The State will achieve compliance by completing the final phase-in of the elements identified in SHB 2776, collecting and analyzing data related to compensation and the teaching workforce, and taking legislative action to eliminate the reliance on local tax levies to fund the State's program of basic education. The Legislature previously planned the completion of the last increment of K-3 class size reduction for the 2017-19 biennium in its four-year budget outlook. E2SSB 6195 reiterates that commitment and scheduling—including review of whether additional legislation is needed to support class-size reduction and all-day kindergarten. Laws of 2016, ch. 3, § 1; *2016 Report* at 8-11, 15-17.

The plan creates and funds an Education Funding Task Force to analyze data and make recommendations to the Legislature for the 2017 legislative session. The first step entails contracting through the Washington State Institute for Public Policy for a consultant to gather and analyze current data related to compensation paid by local school districts and data related to local and state labor markets for each type of school staff. The consultant must provide an interim report to the Governor

and the Task Force by September 1, 2016, and final data and analysis by November 15, 2016. Laws of 2016, ch. 3, § 3. The Task Force already has held two public meetings, and the Washington State Institute for Public Policy has selected a consultant. *See 2016 Report* at 10 n.23; <http://leg.wa.gov/JointCommittees/EFTF/Pages/default.aspx> (last visited May 16, 2016).

The Task Force will review the consultant's analysis along with the body of work previously provided to the Legislature and must submit recommendations to the Legislature on implementing the program of basic education as defined in statute, to include the following:

- Compensation sufficient to hire and retain staff funded under the prototypical school funding model and associated salary allocation model.
- Consideration of a system of future salary adjustments.
- Consideration of a local labor market adjustment formula and methodology, including adjustments for remote and rural school districts and economic distressing factors that affect recruitment and retention.
- Whether additional legislation is needed to support implementation of all-day kindergarten and K-3 class size reduction.

- Improving educator recruitment and retention.
- Local maintenance and effort levies and local effort assistance.
- Local school district collective bargaining.
- Clarifying the distinction between services provided as part of the State's basic education program and those provided as local enrichment.
- School district reporting and accounting practices.
- Provision and funding method for school employee health benefit provisions.
- Sources of state revenue to support the program of basic education.

Laws of 2016, ch. 3, § 2; *2016 Report* at 10-11.

In the view of the Legislature, all of the above elements are interrelated and necessary considerations for making the policy decisions required to achieve full compliance. Any solution concerning compensation clearly must remedy constitutional infirmities, but it must do so in a way that is flexible enough to meet local needs, ensures fairness between districts, and sustains constitutional compliance into the future. Therefore, in addition to determining the appropriate compensation levels necessary to support the State's program of basic education, the Legislature must examine the scope of local funding authority, how to

address differential economics across various areas of the State and consider fairness across large and small, urban and rural school districts. The Task Force must submit recommendations and any supporting legislation to the Legislature by January 9, 2017. Laws of 2016, ch. 3, § 2(11).

As a final step, the Legislature commits to taking legislative action in the 2017 session to eliminate school district dependency on local levies to deliver the State's program of basic education. Laws of 2016, ch. 3, § 4. *2016 Report* at 11.

E2SSB 6195 thus establishes explicit benchmarks the Court may use to assess the Legislature's progress under this plan. By the beginning of the 2017 legislative session it will be clear whether those benchmarks have been met.

D. The Court Should Purge Its Order of Contempt and End Sanctions

As explained in the *2016 Report* and in the preceding section of this brief, the plan enacted in E2SSB 6195 shows timelines and benchmarks for obtaining the information necessary to draft effective legislation to fully fund the basic education portions of K-12 teacher and staff compensation—and the deadline for enacting that legislation.

As explained in the *2016 Report* and in this brief, each of the elements of SHB 2776 (transportation, MSOC, all-day kindergarten, and K-3 class size reduction) has been fully funded or is on schedule to be fully funded by 2018. The schedule enacted in SHB 2776 has been followed and met.

The 2015-17 biennial budget included more than \$800 million in grants and programs to help provide sufficient classrooms and teachers to implement all-day kindergarten and the class size reductions. The 2016 supplemental budget adds resources. The plan enacted in E2SSB 6195 includes provisions to identify and provide for any additional needs.

The plan enacted in E2SSB 6195 is fully funded, but it does not include a budget for legislation to be enacted in 2017, because the information necessary to craft that legislation is not yet available. The costs of fully implementing the remaining elements of SHB 2776 can be estimated and are included in the current budget outlook documents. The bill includes provisions specifically designed to estimate the cost of fully funding the basic education portions of K-12 teacher and staff compensation. Once that information is available, the Legislature can craft a budget and determine appropriate funding sources.

The State has submitted an enacted plan that meets the requirements set out in the Court's orders. It has purged contempt. The

Court should respond by dissolving the contempt order and terminating the imposition of sanctions.

E. The State Remains Committed to Complying With Article IX, Section 1

The Court required a plan to promote measurable progress toward constitutional compliance by 2018. By any measure, the State has made substantial and measurable progress in the four years since this Court's 2012 decision, and it is committed to meeting the 2018 deadline. That commitment is stated without equivocation in section 1 of E2SSB 6195:

The state is fully committed to funding its program of basic education as defined in statute and to eliminating school district dependency on local levies for implementation of the state's program of basic education. It is the intent of the legislature to provide state funding for competitive salaries and benefits that are sufficient to hire and retain competent certificated instructional staff, administrators, and classified staff.

That statement of commitment by a coordinate branch of government is entitled to respect.

1. The Legislature has met every deadline it established for itself in ESHB 2261 (2009) and SHB 2776 (2010)

The Court's 2012 decision set a 2018 deadline—six years—for the State to achieve compliance with article IX, section 1. We are now four years and two biennial budgets into that six-year time period. In those four years, state funding for K-12 education has increased 36 percent,

from \$13.4 billion in the 2011-13 biennium to \$18.2 billion in the 2015-17 biennium. *2015 Report* at 7. And in those four years the Legislature has met every benchmark and deadline established in ESHB 2261 and SHB 2776. *2016 Report* at 2.

Student transportation. Under SHB 2776, the State was to fully fund student transportation using its new cost transportation funding formula by the 2013-15 biennium.⁵ It did so. The 2013-15 biennial budget provided full funding for the actual expected costs of transportation under the new formula.⁶ The 2015-17 biennial budget carried forward that full funding.⁷

Materials, supplies, and operating costs (MSOC). SHB 2776 required the Legislature to achieve full funding for MSOC by the 2015-16 school year.⁸ It did so. The 2015-17 biennial budget fully funded MSOC for the 2015-16 and 2016-17 school years, with the funding adjusted for inflation for each school year, as required in SHB 2776.⁹

⁵ RCW 28A.160.192(1).

⁶ *2013 Report* at 12-13; Laws of 2013, 2d Sp. Sess., ch. 4, § 505 (3ESSB 5034); *see also 2014 Report* at 11-14 (explaining application of the pupil transportation funding formula); *2014 Report* at 46-50 (explaining relationship between fiscal years and school years when funding the pupil transportation expected cost model).

⁷ *2016 Report* at 17; *2015 Report* at 8; Laws of 2015, 3d Sp. Sess., ch. 4, § 502(8) (ESSB 6052)

⁸ RCW 28A.150.260(8)(b).

⁹ *2016 Report* at 14; *2015 Report* at 8; Laws of 2015, 3d Sp. Sess., ch. 4, § 502(8) (ESSB 6052).

All-day kindergarten. SHB 2776 set the 2017-18 school year as the deadline for full statewide implementation.¹⁰ The Legislature fully funded all day kindergarten for the 2016-17 school year—one year before the deadline.¹¹

K-3 class size. SHB 2776 required the Legislature to allocate funding sufficient to reach an average class size of 17 students in K-3 classes by 2018, focusing first on high poverty schools. The Legislature is on schedule to meet that deadline, and its progress compares favorably with the linear schedule recommended by the JTFEF plan.¹² Like the JTFEF plan, the Legislature’s funding schedule achieves an average class size of 17 students by the 2017-18 school year, but it does so by reducing class sizes first in high-poverty schools and for grades K-1, thereby reaching the 17-student average a year early in grades K-1 in high poverty

¹⁰ RCW 28A.150.315(1).

¹¹ *2016 Report* at 15; *2015 Report* at 8-9; Laws of 2015, 3d Sp. Sess., ch. 4, § 502(12) (ESSB 6052).

¹² Joint Task Force on Education Funding, *Final Report* at 3 (Dec. 2012), <http://leg.wa.gov/JointCommittees/Archive/EFTF2012/Documents/JTFEF%20Final%20Report%20-%20combined%20%282%29.pdf> (last visited May 16, 2016) (“The enhancements are phased in on a linear schedule to reach full implementation in either the 2017-18 school year or the current statutory deadline, whichever is first.”). The JTFEF plan acknowledged that the Legislature may consider alternate phase-in schedules to reflect Legislative priorities and emerging research. *Id.* The Court agreed. Order at 7 n.4, *McCleary v. State*, No. 84362-7 (Wash. Jan. 9, 2014).

schools and by the 2017-18 deadline for all schools. *See 2016 Report* at 15-16, 30-33.¹³

The funding to attain average K-3 class size of 17 students must be appropriated in the 2017-19 biennial budget; the Legislature cannot appropriate it prior to that biennium.¹⁴ But the necessary costs are included in the four-year balanced budget outlook for the 2015-17 operating budget and will be included in the maintenance level funding in the 2017-19 operating budget.¹⁵ This inclusion in the budget outlook evidences the Legislature's commitment to provide that funding.

Additional support for all-day kindergarten and reduced K-3 class sizes. As reported in *2015 Report*, the 2015-17 budget provided

¹³ In its 2015 order imposing sanctions, the Court expressed doubt about the State's progress toward achieving the average K-12 class size goal by 2018. The *2016 Report* responds to the Court's concern. *See 2016 Report* at 30-33.

¹⁴ *See Wash. Ass'n of Neigh. Stores v. State*, 149 Wn.2d 359, 364, 70 P.3d 920 (2003) ("Article VIII, section 4 [of the Washington Constitution] imposes a bar on appropriations continuing beyond the next ensuing biennium."); *Wash. State Legislature v. State*, 139 Wn.2d 129, 145, 985 P.2d 353 (1999) ("Appropriation bills are made temporary in nature by the provisions of Art. VIII, § 4 (amendment 11), which require that all expenditures of moneys appropriated be made within one calendar month after the end of the fiscal biennium." (quoting *State ex rel. Wash. Toll Bridge Auth. v. Yelle*, 54 Wn.2d 545, 551, 342 P.2d 588 (1959))). *Accord League of Women Voters of Wash. v. State*, 184 Wn.2d 393, 424, 355 P.3d 1131 (2015), *as amended on denial of reconsideration* (Nov. 19, 2015) ("the nature of an appropriation is that it is finite and renewed every two years"); *State v. Clausen*, 160 Wash. 618, 627, 295 P. 751 (1931) (Article VIII, section 4 did not permit continuing appropriation to State College of Washington (now Washington State University); under article VIII, section 4, state funds held by state treasurer "cannot be paid out by him save pursuant to biennial appropriations made by the Legislature in due form of law."); *id.* at 627-31.

¹⁵ *See Outlook for Enacted ESSB 6052* (July 20, 2015), http://www.erfc.wa.gov/budget/documents/20150721_Outlook.pdf (last visited May 16, 2016) (listing \$1,114 million for funding K-3 class size reductions in the 2017-19 budget).

additional funding beyond the basic education formulas to support the implementation of K-3 class-size reductions and all-day kindergarten:

- Increased funding for the Beginning Educator Support Team (BEST) program to support the expected increase in hiring beginning teachers in response to the increased funding for all-day kindergarten and K-3 class size reductions.¹⁶
- Funding to expand the Washington Kindergarten Inventory and Development Skills (WaKIDS) program to support the expansion of state-funded all-day kindergarten.¹⁷
- New funding for early learning programs and services.¹⁸
- Funding (\$611 million) for the School Construction Assistance Program to help expand facilities to support all-day kindergarten and K-3 class size reductions.¹⁹
- Funding (\$200 million) for a new program of grants specifically to support all-day kindergarten and K-3 class size reduction.²⁰

¹⁶ *2015 Report* at 12.

¹⁷ *Id.*

¹⁸ *Id.* at 12-13.

¹⁹ *Id.* at 35; Laws of 2015, 3d Sp. Sess., ch. 3, § 5013 (2EHB 1115).

²⁰ *2015 Report* at 35-37; Laws of 2015, 3d Sp. Sess., ch. 3, § 5028 (2EHB 1115); Laws of 2015, 3d Sp. Sess., ch. 41 (2ESSB 6080).

As detailed in the 2016 Report, the Legislature continued to invest in a variety of supports to the basic education program in 2016. It added \$11.9 million to support teacher recruitment and retention efforts and to support homeless students and strategies addressing the opportunity gap. *2016 Report* at 17-19. In the supplemental capital budget, the Legislature added another \$74.8 million to support school construction and class size reduction. *Id.* at 19-20.

2. There is no basis for the Court to assume that the Legislature will fail to meet the deadlines established in E2SSB 6195 (2016)

The last major task remaining for the Legislature to finish complying with the Court's 2012 decision is to establish a compensation system that is fully funded by the State. The steps toward completing that task are set out in E2SSB 6195, and have been summarized above.

Plaintiffs and others will disparage E2SSB 6195 as unworkable, too little too late, inconsequential, and worse. They will say it is not a plan and will exhort the Court to cast it aside and impose harsh sanctions on the State. But E2SSB 6195 is unquestionably a plan for addressing compensation and funding by the end of the 2017 legislative session. It provides a process—with precise timelines and benchmarks—for obtaining the information necessary to complete that task. It was duly enacted by both houses of the Legislature and signed by the

Governor. The Legislature has done what the Court ordered and there is no basis for continuing to hold the State in contempt or to continue levying sanctions.

Plaintiffs will say that even if E2SSB 6195 is a plan, the Legislature cannot be trusted to carry it out. That argument should be flatly rejected. The Legislature has demonstrated over the last four years that it will meet the deadlines it sets for itself. It has met or is on schedule to meet every deadline established in ESHB 2261 and SHB 2776. There is no basis for the Court to assume that the Legislature will not also meet the deadlines it has set for itself in E2SSB 6195. The Legislature is committed to its constitutional duty, just as is the Court. It is entitled to a presumption of regularity and good faith—a presumption that it will do what it has committed to do. The Legislature is on a trajectory to achieve constitutional compliance by the 2018 deadline adopted in the Court's 2012 decision. The Court should lift its contempt order, stop the imposition of sanctions, and give the Legislature the opportunity to finish its work of compliance.

V. CONCLUSION

The Legislature has complied with the Court's order to submit a plan for achieving compliance with article IX, section 1 and this Court's 2012 decision by 2018. The Court therefore should dissolve the order

finding the State in contempt and terminate its order imposing daily sanctions on the State.

RESPECTFULLY SUBMITTED this 18th day of May 2016.

ROBERT W. FERGUSON
Attorney General

A handwritten signature in cursive script that reads "David A. Stulier". The signature is written in black ink and is positioned below the typed name of David A. Stulier.

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CERTIFICATE OF SERVICE

I certify that I served a copy of the State Of Washington's Memorandum Transmitting The Legislature's 2016 Post-Budget Report And Requesting The Lifting Of Contempt And End Of Sanctions, via electronic mail and U.S. Mail, postage paid, upon the following:

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

DATED this 18th day of May 2016, at Olympia, Washington.


WENDY R. SCHARBER
Legal Assistant