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SUPREME COURT
STATE OF WASHINGTON
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No. 84362-7

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SUPREME COURT OF THE STATE OF WASHINGTON

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,

v.

STATE OF WASHINGTON,
Defendant/Appellant.

**PLAINTIFFS' ANSWER
TO THE AMICUS BRIEF OF
COLUMBIA LEGAL SERVICES, CHILDREN'S
ALLIANCE, AND
LOW INCOME HOUSING ALLIANCE**

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I. INTRODUCTION

This Court summoned the State to address three topics:

- “why the State should not be held in contempt for violation of this Court’s order dated January 9, 2014”;
- “why, if it is found in contempt, any of the following forms of relief [list of 7 remedial sanctions] ... should not be granted”; and
- “the appropriate timing of any sanctions.”

June 12, 2014 Order To Show Cause at pp.3-4.

Columbia Legal Services, Children’s Alliance, and Low Income Housing Alliance (collectively “the Alliance Amici”) address one of the remedial sanctions listed in that second topic. They address the remedial sanction of “prohibiting expenditures on certain other matters until the Court’s constitutional ruling is complied with”, and request that the “certain other matters” identified in such a contempt sanction not include the social service programs discussed in their brief.¹

Plaintiffs did not suggest that such programs be among the expenditures prohibited. And as Part II below explains, the legal justification for not including such programs in the remedial sanction the Alliance Amici discuss rests on the purpose of a remedial contempt sanction rather than the relative merits of various social programs.

¹ *Alliance Amici’s Brief at p.18.*

II. DISCUSSION

A. The Only Remedial Contempt Sanction These Amici Discuss: Expenditure Prohibitions

The Alliance Amici focus on just one of the seven potential remedial contempt sanctions listed in this Court's Show Cause Order – i.e., “prohibiting expenditures on certain other matters until the Court's constitutional ruling is complied with.”²

B. The Purpose Of Remedial Contempt Sanctions

This remedial contempt sanction – and the specific matters chosen for its expenditure prohibition – should be crafted with the purpose of a remedial contempt sanction in mind. And here, the State's and plaintiffs' show cause briefing agree the purpose of a remedial contempt sanction is to coerce compliance with court rulings.³ For example, in this case, coerce legislators' compliance with this Court's January 2014 Order.⁴

C. Prohibiting The Type Of Expenditures These Amici Discuss Likely Would Not Effectively Serve That Remedial Contempt Sanction Purpose

To serve that coercive purpose, the expenditures chosen to be prohibited should make legislators uncomfortable and motivated – uncomfortable and motivated enough to choose to comply rather than

² *Alliance Amici's Brief at p.18.*

³ *State's Show Cause Response at p.8; Plaintiffs' Answer To Defendant's Response To The Court's Show Cause Order at p.24 & n.30.*

⁴ *Recall the State has identified its legislators as “the principal actor” in this Show Cause proceeding. State's Show Cause Response at p.26.*

continue their non-compliance. The coercive purpose of this remedial sanction is not served if the expenditures being prohibited put little pressure on legislators, but instead make poor and vulnerable families significantly more poor and more vulnerable.

Plaintiffs accordingly have not suggested that the sanction of “prohibiting expenditures on certain other matters until the Court’s constitutional ruling is complied with” should target the type of social service programs the Alliance Amici discuss. To be most effective, the “certain other matters” whose expenditures are prohibited should be those matters that this Court concludes would put the most coercive pressure on the non-complying decision-makers in this case.⁵

III. CONCLUSION

Plaintiffs agree with the Alliance Amici’s assertions that “education is a critical pathway out of poverty”,⁶ and that the social service programs they discuss are “not contained within the Legislature’s current definition of basic education.”⁷

⁵ *The State has identified its legislators as “the principal actor” in this Show Cause proceeding. State’s Show Cause Response at p.26.*

⁶ *Alliance Amici’s Brief at p.9.*

⁷ *Alliance Amici’s Brief at p.1 & n.1; accord at p.10 (“in defining basic education, the Legislature has not explicitly included nonacademic supports commonly relied upon by low-income students”).*

But that does not mean that a remedial contempt sanction in this Article IX, §1 case must include a prohibition of expenditures on those programs. Instead, the relevant legal question is whether prohibiting expenditures on those programs would serve the underlying purpose of a remedial contempt sanction – e.g., coerce legislators to comply with the Court Orders in this case. Plaintiffs have not argued that including the type of social service programs the Alliance Amici discuss would best serve that coercive purpose in this case.⁸

RESPECTFULLY SUBMITTED this 25th day of August, 2014.

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⁸ Although not relevant to the argument made by the Alliance Amici, plaintiffs note that those amici apparently accept the position taken in an Office of Financial Management (OFM) document that only one-third of the State budget is “unprotected and subject to cuts”. Alliance Amici’s Brief at pp.11-12 & n.19. Plaintiffs do not agree with the State’s self-serving assertions in its OFM document.

Plaintiffs also note that the Alliance Amici occasionally rely upon impermissible conclusory/speculative assertions such as “cuts or reductions to housing programs would more than cancel any gains from additional educational investments for [homeless] students.” Alliance Amici’s Brief at p.13. But since such assertions are irrelevant to the underlying legal purpose of a remedial contempt sanction, plaintiffs do not divert the Court’s and parties’ time and energy debating such assertions.

DECLARATION OF SERVICE

Adrian Urquhart Winder 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 Monday, August 25, 2014, I caused PLAINTIFFS' ANSWER TO THE AMICUS BRIEF OF COLUMBIA LEGAL SERVICES, CHILDREN'S ALLIANCE, AND LOW INCOME HOUSING ALLIANCE to be served as follows:

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*Amici Curiae The Honorable Daniel J. Evans, The Honorable John
Spellman, The Honorable Mike Lowry, The Honorable Gary Locke, and The
Honorable Christine Gregoire*

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 25th day of August, 2014.

s/ Adrian Urquhart Winder
Adrian Urquhart Winder

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Subject: RE: McCleary v. State (Supreme Court No. 84362-7) - Plaintiffs' Answer To The Amicus Brief Of Columbia Legal Services, Children's Alliance, and Low Income Housing Alliance

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Subject: McCleary v. State (Supreme Court No. 84362-7) - Plaintiffs' Answer To The Amicus Brief Of Columbia Legal Services, Children's Alliance, and Low Income Housing Alliance

Dear Clerk of the Court:

Please find attached for filing with the Court the following document: **Plaintiffs' Answer To The Amicus Brief Of Columbia Legal Services, Children's Alliance, and Low Income Housing Alliance.**

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- **Court:** Supreme Court of the State of Washington
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Thank you,

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