

# THE SUPREME COURT OF WASHINGTON

MATHEW & STEPHANIE McCLEARY, )  
et al., )  
 )  
Respondents/Cross-Appellants, )  
 )  
v. )  
 )  
STATE OF WASHINGTON, )  
 )  
Appellant/Cross-Respondent. )

## ORDER TO SHOW CAUSE

Supreme Court No.  
84362-7

King County No.  
07-2-02323-2 SEA

**Filed**   
**Washington State Supreme Court**

JUN 12 2014 

**Ronald R. Carpenter**  
**Clerk**

In *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012), this Court unanimously held that the State is not meeting its “paramount duty . . . to make ample provision for the education of all children residing within its borders.” WASH. CONST. art. IX, § 1. The Court recognized that the legislature had recently enacted a promising set of reforms to remedy the deficiencies in the K-12 education system, and that it was making progress toward funding those reforms. The Court therefore deferred to the legislature’s chosen means of discharging its constitutional duty, but retained jurisdiction over the case to help ensure the State’s progress in its plan to fully implement reforms by 2018. *McCleary*, 173 Wn.2d at 547.

In a subsequent order following the 2012 legislative session, the Court directed the State to report to the Court on the progress it had made in implementing its program of reforms according to the anticipated schedule. The Joint Select Committee on Article IX Litigation issued a report, and on December 20, 2012, the Court found that the State’s efforts had fallen short. The Court directed the State to submit a report after the 2013 legislative session setting out its plan for implementing education funding reforms in sufficient detail to allow the Court to measure the

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legislature's progress between then and 2018 through periodic benchmarks. This Order, like the *McCleary* decision, was based on implementing the reforms that the legislature itself had adopted but not yet funded.

Following the 2013 legislative session, the Joint Select Committee issued the required report. While acknowledging that the legislature had taken meaningful steps in the 2013 session to address its constitutional obligation to amply fund basic education, the Court found that it had not made sufficient progress to be on target to fully fund the education reforms by the 2017-18 school year. Reiterating that the State had to show through immediate and concrete action that it is making real and measurable progress, the Court issued an order on January 9, 2014, directing the State to submit by April 30, 2014, "a complete plan for fully implementing the program of basic education for each school year between now and the 2017-18 school year," including "a phase-in schedule for fully funding each of the components of basic education." Order, *McCleary v. State*, No. 84362-7, at 8 (Wash. Jan. 9, 2014). Once again, this Order was based on implementing reforms that the legislature itself decided were necessary.

After the 2014 legislative session, the Joint Select Committee issued its report to the Court by the deadline date. The report relates what the State urges to be significant progress, or even full implementation, in some areas such as transportation and funding of materials, supplies, and operating costs, and it describes various bills that were introduced but not passed. The report, however, candidly admits that "[t]he Legislature did not enact additional timelines in 2014 to implement the program of basic education as directed by the Court in its January 2014 Order." 2014 Report to the Washington Supreme Court by the Joint Select Committee on Article IX Litigation (corrected version) (May 1, 2014), at 27. The report acknowledges that "the pace of implementation must quicken," and asks this Court to "recognize that 2015 is the next and most

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critical year for the Legislature to reach the grand agreement needed to meet the State's Article IX duty by the statutorily scheduled full implementation date of 2018." *Id.* at 33. But the report recognizes that during the legislature's 2014 session "there was no political agreement reached either among the political caucuses or between the legislative chambers on what the full implementation plan should look like." *Id.* at 27. And it offers no concrete reason to believe that the "grand agreement" it envisions will more likely be implemented in 2015. *Id.* at 33.

The Joint Select Committee thus acknowledges that the State did not provide the plan that this court ordered—a plan that, we reiterate, would schedule phase-in of reforms that the legislature itself deems necessary. In its January 2014 order the Court signaled its willingness to consider enforcement measures at its disposal should the State fail to comply with the Court's directive to submit a complete funding plan.

This matter came before the Court on its June 5, 2014, En Banc Conference for consideration of the legislature's 2014 Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation (corrected version) and the responses to the report. After consideration of the matter, the Court unanimously determined that a show cause hearing should be held. Now, therefore, it is

ORDERED

That the State is hereby summoned to appear before the Supreme Court to address why the State should not be held in contempt for violation of this Court's order dated January 9, 2014, that directed the State to submit by April 30, 2014, a complete plan for fully implementing its program of basic education for each school year between now and the 2017-18 school year. The State

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should also address why, if it is found in contempt, any of the following forms of relief requested by the plaintiffs, Mathew and Stephanie McCleary, et al., should not be granted:<sup>1</sup>

1. Imposing monetary or other contempt sanctions;
2. Prohibiting expenditures on certain other matters until the Court's constitutional ruling is complied with;
3. Ordering the legislature to pass legislation to fund specific amounts or remedies;
4. Ordering the sale of State property to fund constitutional compliance;
5. Invalidating education funding cuts to the budget;
6. Prohibiting any funding of an unconstitutional education system; and
7. Any other appropriate relief.

The State should also address the appropriate timing of any sanctions.

The show cause hearing with oral argument by the parties shall be heard by the Washington Supreme Court on Wednesday, September 3, 2014, at 2:00 p.m. The State's response to this show cause order should be served and filed in this Court by not later than July 11, 2014. An answer to the State's response should be served and filed in this Court by not later than August 11, 2014. The State may serve and file a reply to the answer by not later than August 25, 2014.

DATED at Olympia, Washington this 12<sup>th</sup> day of June, 2014.

For the Court,

  
CHIEF JUSTICE

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<sup>1</sup> In listing the forms of possible relief identified by the plaintiffs, the Court takes no position on the appropriateness of any of the possible sanctions.