

THE SUPREME COURT OF WASHINGTON

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

ORDER
Supreme Court No.
84362-7
King County No.
07-2-02323-2 SEA

FILED
JUL 14 2016
WASHINGTON STATE
SUPREME COURT
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In our continuing jurisdiction under *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012), this court determined last year that despite repeated directives to the State to provide a complete plan for fully complying with its paramount duty under Washington Constitution article IX, section 1, it failed to do so. Accordingly, the court imposed a sanction against the State of \$100,000 per day payable to a segregated account for the benefit of basic education.

The State argues that Engrossed Second Substitute Senate Bill 6195, 64th Leg., Reg. Sess. (Wash. 2016) (E2SSB 6195), enacted by the 2016 legislature, when read together with Substitute House Bill 2776, 61st Leg., Reg. Sess. (Wash. 2010) (SHB 2776) and Engrossed Substitute House Bill 2261, 61st Leg., Reg. Sess. (Wash. 2009) (ESHB 2261), constitutes a sufficient plan and shows that the legislature is on pace toward fulfilling its constitutional duty. The plaintiffs argue that none of those laws contain sufficient benchmarks for measuring purposes to satisfy our order for a plan.

Before making a decision on whether the State is in compliance, we will hear from the parties on precisely what the legislature has accomplished, what remains to be accomplished, and what significance we should attach to E2SSB 6195. The 2017 legislative session presents the last

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opportunity for complying with the State's paramount duty under article IX, section 1 by 2018. What remains to be done to achieve compliance is undeniably huge, but it is not undefinable. At this juncture, seven years since enactment of ESHB 2261 and six years since enactment of SHB 2776, the State can certainly set out for the court and the people of Washington the detailed steps it must take to accomplish its goals by the end of the next legislative session.¹

Therefore, by unanimous vote, the court directs the parties to appear before the court on September 7, 2016, for oral argument to address (1) what remains to be done to timely achieve constitutional compliance, (2) how much it is expected to cost, (3) how the State intends to fund it, and (4) what significance, if any, the court should attach to E2SSB 6195 in determining compliance with the court's order to provide a complete plan. A decision on whether to dismiss the contempt order or to continue sanctions will be determined by order following the hearing. The parties should be prepared to address these issues in addition to the other questions enumerated in this order.

Now, therefore, it is hereby

ORDERED:

(1) The parties are directed to appear before the court on September 7, 2016, where the State will be expected to provide specific and detailed answers to the following questions:

¹ The State notes, correctly, that the legislature may not constitutionally make appropriations beyond the current biennium. WASH. CONST. art. VIII, § 4. But the legislature is not constitutionally prohibited from requiring itself to make future appropriations to implement legislation. See *Wash. Ass'n of Neigh. Stores v. State*, 149 Wn.2d 359, 365-68, 70 P.3d 920 (2003) (initiative requiring legislature to use tobacco sales tax revenues for low-income health not unconstitutional because it only directs future legislatures to make certain appropriations; it does not actually make appropriations). The court rejects any suggestion that the biennial budget system hinders the State from complying with the court's order in this case.

(a) whether the State views the 2018 deadline as referring to the beginning of the 2017-2018 school year, to the end of the 2017-2018 fiscal year, to the end of 2018, or to some other date;

(b) whether E2SSB 6195, when read together with ESHB 2261 and SHB 2776, satisfies this court's January 9, 2014, order for a plan and, if not, what opportunities, if any, remain for the legislature to provide the plan required by that January 9, 2014, order;

(c) the estimated current cost of full state funding of the program of basic education identified by ESHB 2261 (RCW 28A.150.220) and the implementation program established by SHB 2776, including, but not limited to, the costs of materials, supplies, and operating costs; transportation; and reduced class sizes for kindergarten through third grade and all-day kindergarten, with the costs of reduced class sizes and all-day kindergarten to include the estimated capital costs necessary to fully implement those components and the necessary level of staffing;

(d) the estimated cost of full state funding of competitive market-rate basic education staff salaries, including the costs of recruiting and retaining competent staff and professional development of instructional staff;

(e) the components of basic education, if any, the State has fully funded in light of the costs specified above;

(f) the components of basic education, including basic education staff salaries, the State has not yet fully funded in light of the costs specified above, the cost of achieving full state funding of the components that have not been fully funded by the deadline, and how the State intends to meet its constitutional obligation to implement its plan of basic education through dependable and regular revenue sources by that deadline;

(g) whether this court should dismiss the contempt order or continue sanctions; and

(h) any additional information that will demonstrate to the court how the State will fully comply with article IX, section 1 by 2018.

(2) The State may submit a brief addressing the matters specified above no later than August 22, 2016. Plaintiffs may file an answer no later than August 29, 2016, and the State may file a reply no later than September 2, 2016. The briefs may include appendices relevant to the specified matters. Motions to file amicus briefs must be filed by August 3, 2016. If granted, the due date for amicus briefs will be established at that time.

(3) By July 29, 2016, the parties shall confer and inform the court how much time they expect to reasonably need for argument, after which a schedule for argument shall be established.

DATED at Olympia, Washington this 14th day of July, 2016.

For the Court

Madsen, C. J.
CHIEF JUSTICE