No. 84362-7

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Defendant/Appellant,

v.

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.

PLAINTIFF/RESPONDENTS' **REPLY** TO DEFENDANT STATE'S RESPONSE TO MOTION FOR ACCELERATED REVIEW

The last paragraph of this Court's June 2, letter to counsel directed that plaintiffs' Reply "should be served and filed by not later than June 30". This is that Reply.

As with the original Motion, this Reply refers to the parties as "plaintiffs" and "defendant" to avoid confusion between the plaintiff "Petitioners" in the trial court who are the "Respondents" in this Court, and the defendant "Respondent" in the trial court that is the "Petitioner" in this Court.

I. SUMMARY OF THIS REPLY

The defendant State filed its appeal in this Court, asserting pursuant to RAP 4.2(a)(4) that the trial court's February 2010 decision against the State presents a fundamental and urgent issue of broad public import requiring a prompt and ultimate determination by this Court.

Plaintiffs agree with the State on that point – for this is the first case in over 30 years that comprehensively examines and rules upon the full context, scope, and meaning of the State's "paramount duty" under Article IX, §1 of the Washington Constitution.

Consistent with the broad public import and fundamental urgency invoked by the State, plaintiffs' Motion For Accelerated Review requested that this Court schedule oral argument for this year's Fall Term. That motion did not request an accelerated briefing schedule. Just oral

argument in the Fall Term (which commonly runs into late November or sometimes early December).

The State's Response does not dispute the propriety of such an oral argument date this year. And as explained below, the State's Response actually confirms that allowing such an oral argument date is appropriate.

II. DISCUSSION

A. Plaintiffs Agree With The State That A Prompt And Ultimate Determination By This Court Is Needed.

Plaintiffs agree with the defendant State's prior explanation to this Court that this appeal presents a fundamental and urgent issue of broad public import that requires a prompt and ultimate determination by this Court.[1] That is because, as pointed out in plaintiffs' Motion (and not disputed by the State's Response):

- The trial court's detailed decision against the State in this case examined, interpreted, and applied all four of the key components of the education mandate in Article IX, §1 – i.e., the contemporary meaning and real-world, on-the-ground application of "paramount duty", "ample provision", "education", and "all children" under that Constitutional provision. The trial court based the constitutional, historical, and educational context for its decision on the broad array of State officials, educators, and civil rights leaders who testified through the course of trial.[2]

---

[1] *E.g., Motion For Accelerated Review at page 6 & n.6.*

[2] *As noted in plaintiffs' Motion (at pages 3-4), those witnesses included the State's chief education officer under our Constitution (current and past State Superintendents of Public Instruction), the State's chief elections officer under our Constitution (Washington Secretary of State Sam Reed), the State's chief finance official (State Office of Financial*

- Based on the above testimony from State officials, educators, and civil rights leaders from across Washington, the trial court's detailed decision then analyzed and examined the State's past and current provision for our State's public schools, and ultimately found as a matter of fact – and found "beyond a reasonable doubt" – that the defendant State is violating Article IX, §1.
- To uphold and enforce our State Constitution, the trial court therefore ordered the State to proceed with "real and measurable progress" to complete certain, specific steps to cure the State's constitutional violation. (A copy of the trial court's Final Judgment with its attached Findings Of Fact And Conclusions Of Law was attached as Appendix A to plaintiffs' Motion.)

In short, the defendant State is correct on one point in this case: the State's appeal of the above trial court decision presents a fundamental and urgent issue of broad public import that requires a prompt and ultimate determination by this Court. That supports plaintiffs' request for an oral argument date at the end of this year.

Management director Victor Moore), the State's designated representatives from the Constitutionally elected State Auditor's office, the Chairman of the State Board of Education, the Superintendents of the 13 school districts across Washington that the defendant State and plaintiffs agreed were appropriate "focus districts" to assess the full meaning and application of Article IX, §1, the heads of civil rights organizations representing minority citizens in our State such as the Urban League and El Centro de la Raza, the University of Washington professor who has spent his career studying the role that education plays in a democracy, the State's chief education researcher at the Washington State Institute for Public Policy, and a wide array of the State officials, State legislators, State legislative staff, and State executive branch staff who have overseen and/or served on the various education commissions, task forces, studies, and reports that the State has completed since this Court issued its ruling against the defendant State in Seattle School District v. State, 90 Wn.2d 476 (1978).

B. The State Does Not Refute The Propriety Of Setting Oral Argument For The End Of This Year.

The State's Response points out (at page 2) that the Verbatim Report Of Proceedings (including the testimony in daily transcripts both sides have had since last October) was filed on June 15, and the State's Opening Brief is therefore due on July 30. Plaintiffs' Response is therefore due at the end of August, and the State's Reply is due at the end of September.

Plaintiffs' Motion did not request any acceleration of briefing deadlines for the prompt review that the State (correctly) insists is needed here.

Instead, plaintiffs simply requested that this Court ensure that prompt review by setting oral argument for the end of its Fall 2010 Term. (Although that term's ending date has not been published at the time of this Reply's filing, in the past Fall Terms have run into late November or even December).

In short, the State presents no argument or objection to this Court's setting oral argument at the end of this year in order to ensure the prompt review by this Court that the State (correctly) insists is needed.

C. The State Does Not Refute The Much Broader Public Import Of This *McCleary* Case (the forest) Compared To The Narrow *Special Education* and *Grandfathered Salary* Suits Recently On This Court's Docket (individual trees).

As noted in plaintiffs' Motion (at page 8), the *McCleary* decision that the State is appealing here is the only case in over 30 years that comprehensively examined and addressed the State's overall provision for education under Article IX, §1. The *McCleary* decision did that by addressing and resolving four fundamental questions:

> **Question #1 (declaratory judgment):**
> What is the correct interpretation of the words "paramount", "ample", and "all" in Article IX, §1 of the Washington State Constitution?
>
> **Question #2 (declaratory judgment):**
> What is the correct interpretation of the word "education" in Article IX, §1 of the Washington State Constitution?
>
> **Question #3 (declaratory judgment):**
> Is the State currently complying with its legal duty under the court's interpretation of the language in Article IX, §1?
>
> **Question #4 (enforcement Order):**
> If the State is not currently complying with its legal duty under Article IX, §1, what (if any) Order should the court enter to uphold and enforce the State's legal duty?

Final Judgment's Findings & Conclusions at ¶4.

The State's Response does not dispute this fundamental point.

Nor does the State dispute the fact that, in sharp contrast to this *McCleary* case, the two other education-related cases on this Court's recent docket merely nibbled at the edges of Article IX, §1 by addressing a

solitary piece of the State's claimed compliance with that Constitutional provision. More specifically, the State's Response does not dispute that:

- The Special Education Suit heard on June 22, 2010,[3] simply concerned the funding allocation level for one of the State's many education ***programs*** – i.e., the Special Education component of the State's overall provision of K-12 education.[4] As the trial judge in that Special Education suit referenced, this *McCleary* case – not that Special Education suit – is the one that addresses the constitutionality of the State's basic education funding under Article IX, §1.[5]
- The Salary Grandfathering Suit ruling in November 2009[6] simply concerned one of the many pieces of the funding allocation levels in the State's salary allocation ***formula*** – i.e., the "grandfathered" salary base assigned to the Federal Way School District as one component of the State's overall provision of K-12 education.[7]

In short, the State's Response does not dispute that those other cases are irrelevant to the need for prompt review of the State's appeal in this case, for those other cases merely concerned an individual education ***program*** or individual education funding ***formula*** – a sharp contrast to the trial court's detailed decision against the State in this *McCleary* case which examined, ruled upon, and issued an enforcement order with respect to the State's ***overall*** provision for our State's public schools under Article IX, §1 of our State Constitution.

---

[3] *School Districts' Alliance For Adequate Funding Of Special Education (alias) v. The State Of Washington; et al., Supreme Court No. 82961-6.*
[4] *Motion For Accelerated Review at page 7.*
[5] *Motion For Accelerated Review at pages 7-8 and n.7 & n.8.*
[6] *Federal Way School District v. State, 167 Wn.2d 514 (2009).]*
[7] *Motion For Accelerated Review at page 7.*

Nor does the State dispute another sharp contrast between this *McCleary* case and those two other narrower suits – i.e., that the *McCleary* case's trial and resulting decision is the only one in this State that has comprehensively examined, addressed, and ruled upon the central role that the education mandate of Article IX, §1 plays in our State's democracy, elections, judicial system, and economy.[8] That is another reason why the State's Response did not dispute the fact that neither of those other cases lessen the need for prompt review of the State's appeal in this case.

III. CONCLUSION

The defendant State's prior filings with this Court are correct on one point. The February 2010 decision against the State in this *McCleary* case presents a fundamental and urgent issue of broad public import which requires a prompt and ultimate determination by this Court.

The State's Response to plaintiffs' Motion For Accelerated Review does not refute the propriety setting an oral argument at the end of this year's Fall Term in order to ensure the prompt review that the State (correctly) insists is needed.

The State's Response accordingly does not refute the propriety of granting that Motion's request that this appeal commenced by the State be set for oral argument sometime in the end of this Court's Fall 2010 term.

---

[8] *Motion For Accelerated Review at pages 3-4 & 9; see also Final Judgment's Findings & Conclusions at ¶¶118-143.*

RESPECTFULLY SUBMITTED this 30th day of June, 2010.

FOSTER PEPPER, PLLC

Edmund W. Robb

Thomas F. Ahearne, WSBA No. 14844
Christopher G. Emch, WSBA No. 26457
Edmund W. Robb, WSBA No. 35948
Attorneys for Plaintiffs/Respondents

DECLARATION OF SERVICE

Edmund W. Robb 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. Today, I caused the attached **Plaintiff/Respondents' Reply To Defendant State's Response To Motion For Accelerated Review** to be served on the following counsel as follows:

William G. Clark Office of the Attorney General 800 Fifth Avenue, Suite 2000 Seattle, WA 98104-3188 Email: billc2@atg.wa.gov Phone: (206) 389-2794 Fax: (206) 587-4229	☒ Via Hand-Delivery by Legal Messenger ☒ Via Electronic Mail ☐ Via Fax ☐ Via U.S. Mail
David A. Stolier, Sr. Office of the Attorney General 1125 Washington Street S.E. Olympia, WA 98504-0100 Email: daves@atg.wa.gov Phone: (360) 586-0279 Fax: (360) 664-0662	☒ Via Hand-Delivery by Legal Messenger ☒ Via Electronic Mail ☐ Via Fax ☐ Via U.S. Mail
Maureen A. Hart Attorney at Law 1125 Washington St SE PO Box 40100 Olympia WA 98504-0100 Email: marnieh@atg.wa.gov Phone: 360-753-2536	☒ Via Hand-Delivery by Legal Messenger ☒ Via Electronic Mail ☐ Via Fax ☐ Via U.S. Mail

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 30th day of June, 2010.

Edmund W. Robb