

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' ANSWER
TO THE AMICUS BRIEF OF
WASA, AWSP, & WASBO**

Thomas F. Ahearne, WSBA No. 14844
Christopher G. Emch, WSBA No. 26457
Adrian Urquhart Winder, WSBA No. 38071
Kelly Lennox, WSBA No. 39583
Foster Pepper PLLC
1111 Third Avenue, suite 3400
Seattle, WA 98101-3299
Telephone: (206) 447-8934/447-4400
Telefax: (206) 749-1902/447-9700
E-mail: ahearne@foster.com
Attorneys for Respondents/Plaintiffs

TABLE OF CONTENTS

	<i>Page</i>
Table Of Authorities	ii
I. INTRODUCTION	1
II. DISCUSSION	2
A. The trial court’s finding that State funding fails to provide students a realistic or effective “opportunity”	2
B. The State’s “local autonomy” allegations.....	4
C. The inequality between school districts caused by their having to rely on local voter approval for levy and bond funding	4
D. The State’s post-judgment decision to exacerbate that inequality by shifting more school district funding to local levies	10
III. CONCLUSION.....	12

TABLE OF AUTHORITIES

WASHINGTON CONSTITUTION

Article IX, §1 passim

CASES

Griffin v. County School Board of Prince Edward County, Virginia,
377 U.S. 218 (1964)..... 12

In re J.R.H.,
83 Wn.App. 613, 922 P.2d 206 (1996)..... 11

In re Marriage of Mathews,
70 Wn.App. 116, 853 P.2d 462, *rev. denied*, 122 W.2d 1021
(1993)..... 11

State v. WWJ Corp.,
138 Wn.2d 595, 980 P.2d 1257 (1999)..... 11

OTHER AUTHORITIES

RAP 10.4(e) 1

Brief of Washington State Attorney General, *Solis v. State of Washington*,
No. C08-5479 (federal docket number 100)
2010 WL 3493670 (W.D.Wash. Apr. 5, 2010)..... 12

Note: This case was brought by the McCleary family, the Venema family, and the Network for Excellence in Washington Schools (http://www.waschoolexcellence.org/about_us/news_members) provides the current list of that plaintiff organization's over 360 member entities). The following refers to them as "plaintiffs" (and to the State as "defendant") to avoid confusion between the "Petitioners" below who are now "Respondents" on appeal and the "Respondent" below that is now the "Petitioner" on appeal. Cf. RAP 10.4(e).

I. INTRODUCTION

The amicus brief jointly filed by the Washington Association of School Administrators, the Association of Washington School Principals, and the Washington Association of School Business Officials (collectively the "Washington school administrators") presents four arguments that focus on:

- The trial court's finding that State funding fails to provide students a realistic or effective "opportunity" to become equipped with the knowledge and skills set by our State's minimum academic standards;
- The relevance of the State's "local autonomy" allegations;
- The inequality between school districts caused by districts' having to rely on local voter approval for needed levy and bond funding; and
- The State's post-judgment action to exacerbate that inequality by shifting more school funding to local levies by raising the "levy lid" to let some districts backfill some of the State cuts in K-12 education funding.

This Answer provides plaintiffs' position on how the new matters raised in that amicus brief relate to the 5 issues currently before this Court.

As noted in this case's prior briefing, the 5 issues for review raised in the State's and plaintiffs' briefing can be summarized as follows:

1. State's first issue ("education"): Did the trial court err in ruling that the term "education" in Article IX, §1 has the meaning that it held it has?
2. State's second issue (actual vs. fictional cost): Did the trial court err in ruling that Article IX, §1 requires the State to base its funding on actual costs (*instead of the existing funding formulas*)?
3. State's third issue ("stable & dependable"): Did the trial court err in ruling that Article IX, §1 requires the State to provide "stable and dependable State funding" (*instead of State funding from "regular and dependable tax sources"*)?
4. State's fourth issue (State's failure): Did the evidence at trial support the trial court's ruling that the State is currently failing to comply with Article IX, §1?
5. Plaintiffs' issue (compliance deadline): Did the trial court err in ruling that the legislature can merely proceed with real and measurable "progress" to comply with the court's ruling (*instead of setting a hard compliance deadline*)?¹

As the following pages explain, the Washington school administrators' arguments relate to issue #4 (State's failure) and issue #5 (compliance deadline).

II. DISCUSSION

A. The trial court's finding that State funding fails to provide students a realistic or effective "opportunity"

The Washington school administrators' brief explains that the trial court did not rule that Article IX, §1 is a mandate to guaranty outcomes,

¹ See *Plaintiffs' September 20 Brief* (Plaintiff/Respondents' Brief [with Errata] dated September 20, 2010) at pages 2-6.

but rather a mandate to amply provide every Washington student a realistic and effective *opportunity* to become equipped with the basic knowledge and skills that the State has determined all students need in today's world – and that the State is not providing that realistic or effective *opportunity*.²

This first point is consistent with the evidence at trial.³ And it relates to issue #4 (State's failure) because it confirms the trial court was correct when it held the State is failing to comply with Article IX, §1.

² *Washington school administrators' Brief at pages 2-4.*

³ *E.g., RP 3697:2-3699:3 and 3857:21-3858:14 (Edmonds school district's inability to provide programs such as focused WASL assistance due to lack of funding, and that to provide needed opportunities for one group requires it to pull resources from others - which is like "robbing Peter to pay Paul"); RP 1953:7-1954:13 (Yakima school district unable to run its successful dropout prevention and retrieval programs if had to rely on State funding); RP 664:5-666:13 (Colville school district elimination of programs that help teach kids State standards due to State cuts in I-728 funding); RP 164:2-165:10 (Chimacum school district's loss of three full-day kindergarten classes due to State funding cuts despite clear research tht those classes help close the achievement gap for low-income students); RP 146:3-147:11, 195:17-25 (Chimacum school district's levy funded classes to provide students with the State mandated knowledge and skills); RP 195:17-199:21 (although co-curriculars are part of teaching the State mandated Essential Academic Learning Requirements [EALRs] such as arts, P.E., and learning to compete in today's world, Chimacum school district can only provide those programs if it raises non-State funds such as student-raised ASB funds, parent funds, or other community donations); RP 3709:9-12 (Edmonds school district's lack of financial resources to provide needed additional instructional support for at-risk kids); CP 5317:10-5319:11 (Sunnyside school district reductions in staff, focused instruction, reading programs, and new curriculum due to State funding cuts); CP 4976:3-4977:2 (Mt. Adams school district's need for additional funding for intervention and after-school programs for district's high number of at-risk students); CP 6299:1-18 (Royal City school district's inability to provide the type of appropriate programs for students requiring language assistance which other districts can afford due to that district's lack of funding); RP 1251:20-1254:1, 1255:1-15, 1257:20-1260:4, 1308:9-1309:4 (re 2009 legislature's K-12 education funding cuts).*

B. The State’s “local autonomy” allegations

The Washington school administrators’ brief explains how the State’s “local autonomy” argument has no relevance to – and creates no legal justification for – the State’s violation of Article IX, §1.⁴

This second point relates to issue #4 (State’s failure) because it confirms the State’s “local autonomy” assertions on appeal do not support its claim that the trial court erred in ruling that the State is violating Article IX, §1.

C. The inequality between school districts caused by their having to rely on local voter approval for levy and bond funding

The Washington school administrators’ brief discusses inequalities between the educational opportunities provided to students in the State’s various school districts – inequalities that are created by the State funding system’s requiring public schools to so heavily rely upon local voter approved funds.⁵

That point is consistent with the evidence at trial establishing that the State’s school districts:

- would not be able to attract and retain qualified teachers and staff without non-State revenues such as local voter-approved funding;⁶

⁴ *Washington school administrators’ brief at pages 4-6.*

⁵ *Washington school administrators’ brief at pages 6-12.*

⁶ *E.g., RP 1473:19-1474:25 (OSPI Asst. Supt. for Financial Resources Priddy confirming that districts have to make up shortfall in classified staff funding with local levy money); CP 5051:7-12; (districts would not be able to hire and retain competent teachers with the dollar amount the State funds); RP 1472:6-1473:18 (OSPI Asst. Supt.*

- would not be able to build their schools without non-State revenues such as local voter-approved funding;⁷

for Financial Resources confirming that Everett’s higher salary allocation allows it to draw away the best teachers from neighboring districts); Tr.Ex. 67, p.8 (depicting Everett’s additional allocation); RP 1476:15-23 (OSPI Asst. Supt. for Financial Resources confirming that State funding formulas significantly underfund what districts actually have to pay to keep and retain staff); RP 3996:4-9 (State’s K-12 Senior Fiscal Analyst Rarick testimony that the amount the State funds for teacher salaries is less than the actual market salaries school districts pay); RP 1184:10-1185:21 (Rep. Priest confirming that State funds less than the actual market salaries school districts have to pay); RP 3268:18-3271:21 (State funding does not allow Edmonds school district to be competitive, so the district has to pay more out of local funds to attract and retain quality teachers, principals, and administrators); RP 3270:2-3271:17 (Tumwater school district’s loss of its quality teachers to Olympia because Olympia could pay \$5,000 more); RP 178:13-179:18, 186:8-19, 384:16-385:22 (Chimacum school district’s inability to attract and retain quality teachers, principals, or a superintendent with only the State funding amount); RP 1805:14-1806:1, 1814:25-1815:12 (Yakima school district pays more than State funding because it cannot attract and retain quality teachers or principals with the amount the State funds); RP 697:7-20 (Colville school district pays more than State funding for principals because the State funding amount is “nowhere close to what the market value is for our principal, not even – it’s ridiculous.”); CP 5773:2-5774:7 (Battle Ground school district a “training ground for Vancouver and Evergreen, Camas and Washougal” because teachers can work there for a few years and then leave for districts that have the non-State funds to pay more money); CP 5805:15-24 (Battle Ground school district’s difficulty attracting teachers because it has a reputation for failing levies and thus the district can’t guarantee teachers that they’ll still have a job in two years); CP 1815:16-1816:21 (Renton school district has to pay more than the State salary schedule to stay competitive).

⁷ E.g., *Tr.Ex. 262, p.15 (showing the portion of State funds for school construction has decreased and now represents less than 15% of the total spent by school districts); RP 3626:13-3628:7 (State funds anywhere from 20-80% of construction cost, and school district must pass a local bond measure or “they don’t have a project”); RP 4334:19-4335:3 (OSPI Director of School Apportionment & Financial Services explaining that the State’s Basic Education program “doesn’t address capital at all” and that, other than some matching funds, school construction is left to the local community); RP 1422:16-22 (OSPI Asst. Supt. for Financial Resources testifying that on average local school districts must pay 66% of school construction costs with local money); CP 5599:9-15 (State funding has never been designed to pay the actual costs of school construction and it does not pay the actual cost today); Tr.Exs. 647-659 (what State calls its basic ed funding payments); RP 784:10-12 (in Colville school district “every single one of our building budgets is levy money. There is no building budget out of what the State gives us; none.”); RP 759:5-762:21 (although the State provides some funding for construction it requires local funding first - but it’s like “civil war” when Colville school district runs a levy – the idea that local levies are a beneficial “opportunity” for the community to support local schools is a “horrible, sick, nasty joke” in districts like Colville);*

- would not be able to maintain their schools without non-State revenues such as local voter-approved funding;⁸ and
- would not be able to keep their schools open without non-State revenues such as local voter-approved funding.⁹

RP 774:9-15 (the bond for Colville’s high school passed by six or seven votes and only after they ran the bond about seven times); RP 1959:10-1960:10 (Yakima school district could not upgrade its deteriorated high schools any sooner because the bond had failed twice, and they can’t get any State contributions without passing a bond first); RP 3688:12-3690:25 (although Edmonds school district’s High School was “just flat worn out”, it took three tries to pass a bond, and then the State only contributed \$15 million of the high school’s \$100 million construction cost)

⁸ *E.g., Tr.Ex. 71, 3rd page (showing decline in maintenance funds to that 58% level); RP 1497:15-1498:12 (OSPI Asst. Supt. for Financial Resources confirming that the State funds only 58% of its public schools’ maintenance costs); RP 1496:4-25 (OSPI Asst. Supt. for Financial Resources confirming that State funding for maintenance of school facilities is lower than the amount the State funds to maintain State buildings and other comparables); Tr.Ex. 266, p.4 (listing comparable maintenance rates); RP 1499:2-11 (OSPI Asst. Supt. for Financial Resources acknowledging that State underfunding has led to deferred maintenance of \$485 million); Tr.Ex. 71, 4th page (discussing deferred maintenance problem); RP 1500:15-1501:10 (OSPI Asst. Supt. for Financial Resources describing small repair grant program where applications far exceed available funds).*

⁹ *E.g., RP 266:17-22 (if Chimacum school district had to rely on just the State’s funding formula amounts, “that would result in us closing the doors”); RP 743:9-748:8 (State funding formulas don’t provide enough money for Colville school district to open its school doors, not with electricity and water and anything for anybody to use); RP 1840:25-1843:6 (Yakima school district would have to close its doors if it had to operate on just the State funding formulas); RP 3704:7-10 (Edmonds school district could not even stay solvent with just the State funding formula); CP 5013:13-25 (if Mt. Adams school district had to rely only on State funding, it “would go out of business” – “We would not exist.”); RP 561:14-15 (“it would be hard [for Chimacum school district] to survive without our levy dollars”); RP 1832:5-16 (in trying to close the achievement gap, Yakima school district has to “cobble things together to try to make it work” including local levies and grants); CP 5702:21-5703:7; Tr.Ex. 67, p.49 (depicting school districts’ increasing reliance on local levies); RP 2187:5-11 (without local fundraising efforts the schools would not be able to provide basic services necessary for kids to learn); RP 542:14-543:2 (local fundraising activities necessary for classroom supplies and activities); RP 1190:5-8 (Rep. Priest confirming that according to OSPI, “we are providing out of levies basic education dollars to supplement to the tune of about \$1.3 billion”); CP 5072:11-15 (school districts use local levies to provide children with a basic education); RP 2413:6-2415:3 (State Bd. of Education Chair Ryan confirming that schools have had to increasingly rely on local levies to pay their operating expenses); RP 1847:8-1850:3 (Yakima school district has to fill its funding gap with local levy dollars, grants, ASB funds, etc.); RP 250:15-251:16 (The gap between State funding and the actual cost of operating the Chimacum school district is only getting larger: “Well,*

As the evidence at trial confirmed, the above is true because the State's public school funding bears no correlation to the real world costs its public schools face.¹⁰

the trend is trending, so that more local dollars are needed to fill that gap. They are scraping dollars together. That gap has fund raising activities. It has auctions, those kinds of activities. We try to fill those as we go out and beg and go to the community and see what they can do to help us fill the gap.”); RP 765:4-766:5 (when Colville school district is lucky it can try to fill its State funding gap with levies and local donations, but it can't count on levies because just about every other levy double fails); RP 692:25-693:16 (Colville school district superintendent describing the predicament he is put in without more local levy funding: “what I do on a daily basis is triage. I determine what's the most important vital, crucial thing that we have to do amongst lots of vital crucial things and I pick and choose which programs live and which programs die, you know, because, you know, we can't afford to do all that.”); RP 736:22-738:10 (Colville school district superintendent confirming that during trial additional kids enrolled for kindergarten, requiring him to scurry to find funding for another teacher from sources like his levy: “We are going to do triage again and kill another something for another group of kids some place else that is less important than kindergarten.”); RP 3315:1-3316:4, 3857:21-3858:14 (Edmonds school district superintendent likening his job to a Japanese acrobat spinning plates on sticks – taking resources from one place to another causes plates to fall and creates a whole new group of at-risk kids); RP 268:14-269:7 (Chimacum school district relies on levies to teach the basic knowledge and skills mandated by the State's minimum academic standards); RP 780:20-781:9 (Colville school district same); RP 1867:12-22 (Yakima school district the same); RP 3706:16-3707:3 (Edmonds school district the same); RP 368:14-22 (Chimacum school district superintendent “hopeful” for local funding because “I need that funding to just get by. If I didn't get that funding, it's catastrophic. Programs are cut, folks are – kids are hurt. And without 20 percent, one out of every \$5 of your budget, you would end up closing some doors.”); RP 3328:11-3329:13 (Edmonds has to rely on its three levies - maintenance and operations, bond, and technology – to fill the funding gap between the actual costs of operating the schools and State funding); RP 773:1-774:15 (Colville school district can't as a practical matter get funding from local fundraisers, PTA, etc., because if people pay money at fundraisers they won't vote for the levies; the largest levy they've passed is 12%, which passed by a margin of about 18 votes); RP 3252:10-3254:18 (all technology in Edmonds school district is purchased with a special technology levy or teachers going out and getting grants or private donations or using their own money to purchase additional technology); RP 782:21-784:9 (Colville school district has to use levy money for teacher development; although the State originally promised ten learning improvement days it only funded three, and then cut down to one).

¹⁰ E.g., RP 1183:2-3 (Rep. Priest confirming “there is no rational basis for the State's current allocation system.”); RP 1260:13-1262:16 (Rep. Priest confirming that in the course of all of his education related work, he has not seen any correlation between the

State's program funding formulas and the actual costs of operating the State's public schools); CP 4412:13-19 (Sen. Jarrett confirming that in the State's funding system, there is no relationship between what the State says it wants its K-12 schools to deliver and the mechanism it uses to fund those schools); CP 1701:24-1704:15 ("disconnects" between basic education and the State's funding formulas, noting that those 30-year-old formulas do not consider the diverse learning needs of what we have in our local schools" (e.g., technology, ELL)); RP 3995:6-19 (State's K-12 Senior Fiscal Analyst Rarick confirming that the State's funding for non-employee related costs or "NERCs", certificated instructional staff salaries, administrators, and classified staff is less than their actual cost); RP 266:23-267:14 (State's funding formulas are just mathematical equations and are not correlated to the knowledge and skills that kids need to learn); RP 780:9-19 (State's funding formulas have nothing to do with learning the required knowledge and skills, but are just a way for people to do accounting); CP 5815:1-4 (State's funding formulas are antiquated); CP 4555:10-4556:17 (State's Supt. of Public Instruction Dorn confirming that the school funding formulas are based on numbers from 30 years ago and that a myriad of studies have determined that they are inequitable and inadequate); RP 1866:13-18 (State's funding formula amounts are not even in the ballpark of the actual costs to operate the Yakima school district); RP 3322:5-15, 3705:21-3706:2 (State's funding formula doesn't even come close to the Edmonds school district's actual operating costs – "if you just look at what we're doing now, operating in a minimal way, it doesn't even come close to our cost"); RP 3329:14-3330:18 (every year the Edmonds school district has to make more reductions just to operate and it's like we are "cannibalizing" ourselves – "it's, like, which finger do you cut off in order to keep the rest of the body alive. And it is painful whichever one you pick. You can go through a rational conversation about, well, thumbs are pretty valuable, and, you know, the index fingers, and so these little guys on the end start to get a little nervous. But the reality is, we have that conversation with our system about what is it that we have to do less of, what do we have to cut or reduce in order just to operate."); RP 266:17-22 (if Chimacum school district had to rely on just the State's funding formula amounts, "that would result in us closing the doors"); RP 743:9-748:8 (State funding formulas don't provide enough money for Colville school district to open its school doors, not with electricity and water and anything for anybody to use); RP 1840:25-1843:6 (Yakima school district would have to close its doors if it had to operate on just the State funding formulas); RP 3704:7-10 (Edmonds school district could not even stay solvent with just the State funding formula); CP 5013:13-25 (if Mt. Adams school district had to rely only on State funding, it "would go out of business" – "We would not exist."); CP 6204:17-6205:17 (State funding formulas do not reflect the actual cost of what needs to be done, "So as a result, even though some people say the state fully funds education, they don't. They fund a formula that is grossly inadequate to do the job that the state requires."); Tr.Ex. 67 ("Public Schools: Depth, Breadth, and Causes of a Looming Finance Crisis"); RP 1482:1-17 (OSPI Asst. Supt. for Financial Resources confirming that districts spend "much more than the State funds on the basic operating costs associated with utilities, insurance, facilities, maintenance supplies, textbooks, curriculum, that kind of thing"); Tr. 616, p.1 and 67, p.20 (depicting gap in State funding and actual costs for NERCs); RP 1461:4-1462:14 (OSPI Asst. Supt. for Financial Resources explaining that the JLARC study that confirmed the State is underfunding transportation costs by \$92-114 million

The Washington school administrators' point about the State funding system's forcing districts to so heavily rely upon local levies and bonds – and the resulting inequity between the educational opportunity provided to students in different districts – relates to issue #4 (State's failure) because the State's heavy and inequitable reliance upon local voter funding confirms that the trial court was correct when it held the State is failing to comply with its paramount duty under Article IX, §1.

each year); Tr.Ex. 357; RP 1464:11-1466:18 (OSPI Asst. Supt. for Financial Resources confirming that spikes in diesel costs increase the gap between actual costs and State funding); RP 1465:15-1467:5 (OSPI Asst. Supt. for Financial Resources explaining that the state tracks actual fuel costs and that every 1 cent increase in the cost of fuel translates to a \$100,000 increase in costs for schools); RP 1474:17-25 (OSPI Asst. Supt. for Financial Resources confirming that districts have to make up shortfall in staff funding with local levy money); Tr.Ex. 67, p.11 (depicting the gap between actual staff salaries and the salary amounts funded by the State); RP 1485:11-1486:12 (OSPI Asst. Supt. for Financial Resources confirming drops in ending fund balances that are leaving districts unable to respond to emergencies); RP 1487:5-24 (OSPI Asst. Supt. for Financial Resources confirming that small districts hit hardest by the lack of ending fund balances because some costs aren't scalable – i.e., a boiler is a boiler); Tr. Ex. 67, p.29 (depicting decline in ending fund balances); RP 1514:3-21 (OSPI Asst. Supt. for Financial Resources confirming that in contrast to rising costs, State funding per pupil excluding pension contributions was flat from 1994-2008 when adjusted for inflation); Tr.Ex. 74, p.24 (depicting flat funding pattern); RP 3541:1-3542:7 (OFM Director Victor Moore confirming that the State does not fund all school district expenditures because the statute is very clear that they fund only a certain limited amount); RP 3583:21-25 (OFM Director Victor Moore confirming that “the State doesn't calculate the costs of what a school districts [sic] needs to operate”); RP 3584:18-3585:2 (OFM Director Victor Moore conceding that the State doesn't calculate the amount needed to provide all kids with a “realistic and effective opportunity to learn” the EALRs because that is not part of the State's funding model”); RP 3585:17-3586:7 (OFM Director Victor Moore confirming that the State does not use “market rate salaries” when calculating the amount it will fund); RP 3586:10-3587:3 (OFM Director Victor Moore confirming that the State does not determine the actual costs for NERCs as part of budgeting process); RP 3603:5-13 (OFM Director Victor Moore admitting that the “salary mix” used to calculate district salary reimbursements is not based on actual average salaries that districts pay to teachers); Tr.Ex. 347 (describing OFM's budget process).

D. The State's post-judgment decision to exacerbate that inequity by shifting more school district funding to local levies

The Washington school administrators' brief explains that after the trial court entered its February 2010 ruling that the State's heavy reliance upon local levies is unconstitutional, the defendant State increased that reliance by raising the State's "lid" on such funding in order to allow the State's more fortunate districts to backfill some of the education funding cuts that the State was making.¹¹

Plaintiffs recognize that the defendant State has appealed the trial court's ruling that defendant's heavy reliance on local voter-approved funding is unconstitutional. But the State's having appealed that court ruling does not provide the State a legal excuse to disregard that court ruling. As the defendant State well knows, a party commits contempt even if the court ruling it violates was erroneous or is later reversed or ruled invalid.¹² The State's decision to disregard the court ruling against it and increase reliance on local levies is an unfortunate illustration of the respect that State officials have for the court ruling in this case.

¹¹ *Washington school administrators' brief at pages 12-14.*

¹² *E.g., In re J.R.H., 83 Wn.App. 613, 616 (1996); In re Marriage of Mathews, 70 Wn.App. 116, 126, review denied, 122 Wn.2d 1021 (1993) (once trial court ruling is entered, the defendant appealing that ruling commits contempt if he ignores it without first securing a stay); Cf. State v. WWJ Corp., 138 Wn.2d 595, 600 (1999) (State Attorney General's Office securing maximum civil penalty against defendant mortgage broker when defendant continued his violations of State law "even after the State filed its action against him").*

The defendant's demonstrated contempt for the court ruling against it relates to issue #5 (compliance deadline) because it confirms the necessity for this Court to firmly and unequivocally set a hard deadline for the defendant State to comply with Article IX, §1. The Washington school administrators' brief confirms that a hard compliance deadline is essential if the paramount right to an amply provided education is to be protected for the hundreds of thousands of students being left behind today in the defendant State's public schools.

When the State was asserting in another case last year that the federal government was violating the law, the State's briefing demanded that the federal government's disregard for the authority of the court "should not be tolerated" because "the government expects its citizens to abide by the law – nothing less is expected of those charged with the duty to faithfully administer the law."¹³ The same demand and expectation should apply here. The Washington school administrators' brief confirms the propriety of this Court setting a hard compliance deadline for the State to fully comply with its paramount duty under Article IX, §1.

¹³ *Brief of Washington State Attorney General, Solis v. State of Washington, No. C08-5479, federal docket number 100, at pages "11 of 13" to "12 of 13"; 2010 WL 3493670 at WestLaw screen pages 7-8 (W.D.Wash. Apr. 5, 2010).*

III. CONCLUSION

Plaintiffs' September 20 brief detailed why this Court should affirm the trial court's ruling on this review's issue #4 (State's failure).¹⁴ The Washington school administrators' amicus brief provides further support for that conclusion.

Plaintiffs' September 20 and November 19 briefs detailed why this Court should set the hard compliance deadline requested in plaintiffs' narrow cross-appeal (issue #5).¹⁵ The Washington school administrators' amicus brief provides further support for that conclusion as well.

Ten years after its *Brown v. Board of Education* ruling that the Constitution required State officials to desegregate their State's public schools, the U.S. Supreme Court rejected Virginia officials' excuses for their delayed compliance – declaring that “there has been entirely too much deliberation and not enough speed.”¹⁶

The points raised in the Washington school administrators' amicus brief confirm the same conclusion applies in this case. Thirty-three years after this Court's ruling against the defendant State in *Seattle School*

¹⁴ Plaintiff/Respondents' Brief [with Errata] dated September 20, 2010, at pages 22-35 and 51-59.

¹⁵ Plaintiff/Respondents' Brief [with Errata] dated September 20, 2010, at pages 35-51 and 59-64; Plaintiff/Respondents' Reply Brief [re: their cross-appeal] dated November 19, 2010, at pages 1-25.

¹⁶ *Griffin v. County School Board of Prince Edward County, Virginia*, 377 U.S. 218, 229 (1964).

District, there still continues to be entirely too much deliberation and not nearly enough speed in the State's compliance with its paramount Constitutional duty to amply fund its public schools to provide all Washington children the education mandated by Article IX, §1. The additional matters raised in the Washington school administrators' amicus brief accordingly provide further support for the rulings requested in plaintiffs' September 20 and November 19 briefs.

RESPECTFULLY SUBMITTED this 17th day of June, 2011.

Foster Pepper PLLC

s/ Thomas F. Ahearne

Thomas F. Ahearne, WSBA No. 14844
Christopher G. Emch, WSBA No. 26457
Adrian Urquhart Winder, WSBA No. 38071
Kelly Lennox, WSBA No. 39583
Attorneys for Plaintiffs/Respondents