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' 2014 POST-BUDGET FILING

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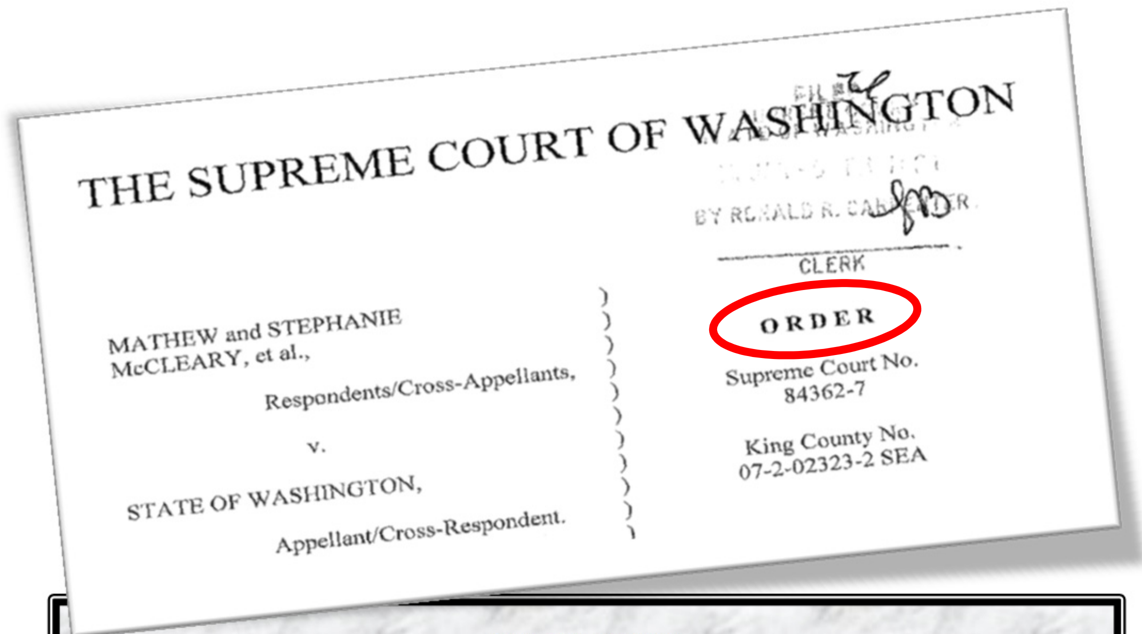

THE SUPREME COURT OF WASHINGTON

CLERK

MATHEW and 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

IT IS THE
PARAMOUNT DUTY OF THE STATE TO MAKE
AMPLE PROVISION FOR THE
EDUCATION OF
ALL CHILDREN RESIDING WITHIN ITS BORDERS….

Article IX, section 1, Washington State Constitution

I. INTRODUCTION

Do court orders or constitutional rights really matter? That's the fundamental issue placed before this Court by the State's 2014 filing, entitled "State Of Washington's Response To The Court's Order Dated January 9, 2014: The Legislature's 2014 Post-Budget Report".

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A. Three Questions Resolved Years Ago In This Case.

This Court's January 2012 decision identified the four questions raised by the January 2007 Petition in this case.[1] The first three have now been resolved for many years:

1. The Meaning Of "Paramount", "Ample", And "All" In Article IX, §1.

The meaning of "paramount", "ample", and "all" was established by the trial court's February 2010 declaratory judgments, and then unanimously affirmed by this Court in January 2012.[2]

- ***paramount duty*** means that "the State must amply provide for the education of all Washington children as the State's first and highest priority before any other State programs or operations".[3]
- ***ample provision*** means "considerably more than just adequate".[4]
- ***all children*** means "each and every child" in Washington – "No child is excluded."[5]

2. The Meaning (And Importance) Of "Education" Under Article IX, §1.

The meaning of "education" was established by the February 2010 declaratory judgments and unanimously affirmed by this Court:[6]

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[1] *McCleary v. State, 173 Wn.2d 477, 512, 269 P.3d 227 (2012).*

[2] *February 2010 Final Judgment [CP 2866-2971] at ¶¶151-169; McCleary, 173 Wn.2d at 539 & 547-548; fuller description of unanimous affirmance of February 2010 declaratory judgments in Plaintiffs' 2013 Post-Budget Filing at p.1, n.1.*

[3] *McCleary, 173 Wn.2d at 520 (underline added) (internal quotation marks omitted); see additional citation in Plaintiffs' 2013 Post-Budget Filing at p.1, n.2. This Court has emphasized that "[t]his is the only 'paramount duty' our founders inscribed in our constitution." January 9, 2014 Order at p.1; accord, Ex.192, p.2.*

[4] *McCleary, 173 Wn.2d at 484; see additional citations in Plaintiffs' 2013 Post-Budget Filing at p.1, n.3.*

[5] *McCleary, 173 Wn.2d at 520 (internal quotation marks omitted); see Plaintiffs' 2013 Post-Budget Filing at p.2, n.5.*

- ***education*** means "the basic knowledge and skills needed to compete in today's economy and meaningfully participate in this state's democracy" – which are the knowledge and skills specified in the State's academic learning standards.[7]

This Court's Article IX, §1 rulings have emphasized that "Education plays a critical role in a free society".[8]

The Final Judgment's unchallenged findings further confirm the critical role education plays in our State's economy, democracy, and civil rights.[9] For example:

- "[B]road public education builds the well educated workforce necessary to attract more stable and higher wage jobs to this State's

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[6] *February 2010 Final Judgment [CP 2866-2971] at ¶¶170-213; McCleary, 173 Wn.2d at 539 & 547-548; fuller description of unanimous affirmance of February 2010 declaratory judgments in Plaintiffs' 2013 Post-Budget Filing at p.1, n.1.*

[7] *McCleary, 173 Wn.2d at 483 (the knowledge & skills specified in the State's Essential Academic Learning Requirements (EALRs), the four numbered provisions from ESHB 1209, and the Seattle School District decision), and 522-524 & n.21 (holding this definition of "education" is the same as the definition of "basic education"); see additional citations in Plaintiffs' 2013 Post-Budget Filing at p.2, n.4.*

[8] *McCleary, 173 Wn.2d at 516, quoting Seattle School District No. 1 v. State, 90 Wn.2d 476, 517-518, 585 P.2d 71 (1978) (also Ex.2); accord February 2010 Final Judgment [CP 2866-2971] at ¶¶174, 204 (quoting Seattle School District) and at p.1 n.1 [CP 2872] ("Only the educated are free", quoting Epictetus, Discourses, Bk. II, ch. 1). One of the Latino-American civil rights leaders at trial similarly summarized this point when he explained, "the only way that you can be free is to be fully educated." RP 2597:16-18 (Roberto Maestas, explaining why El Centro de la Raza had named its early learning program after the revolutionary who had stressed that point (José Martí)). This Court's January 2012 decision also noted the conclusion of the State's in-depth Washington Learns study: "Education is the single most important investment we can make for the future of our children and our state". McCleary, 173 Wn.2d at 500 (internal quotation marks omitted). The trial court made this same point when it noted with respect to the cost of complying with Article IX, §1: it may sound like a lot of money, but "you know the old adage: if you think education is expensive, try ignorance." RP 5580:16-18.*

[9] *February 2010 Final Judgment [CP 2866-2971] at ¶¶118-142. Such unchallenged findings are now verities in this case. McCleary, 173 Wn.2d at 514 ("Unchallenged findings of fact are verities on appeal") (citations and internal quotation marks omitted).*

economy, and provides the living wage jobs and employment necessary to provide gainful employment to this State's citizens";

- "A healthy democracy depends on educated citizens";
- "Education also plays a critical civil rights role in promoting equality in our democracy. For example, amply provided, free public education operates as the great equalizer in our democracy, equipping citizens born into underprivileged segments of our society with the tools they need to compete on a level playing field with citizens born into wealth or privilege"; and
- "[E]ducation ... is the number one civil right of the 21st century."[10]

3. The State's Longstanding Violation Of Article IX, §1.

The State's long time (and long known) constitutional violation was established by the trial court's February 2010 declaratory judgments and then unanimously affirmed by this Court:[11]

- "Article IX, section 1 confers on children in Washington a ***positive constitutional right*** to an ***amply funded*** education";[12]
- this right to an amply funded education is each Washington child's ***paramount constitutional right***;[13] and
- the State has ***consistently*** failed to adequately fund the education required by Article IX, section 1.[14]

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[10] *February 2010 Final Judgment [CP 2866-2971] at ¶¶133, 119, 132, 134. The member entities of plaintiff NEWS accordingly include many civil rights organizations in our State, such as El Centro de la Raza, Urban League, Equitable Opportunity Caucus, Minority Executive Directors Coalition, Lutheran Public Policy Office, African-American professionals' Seattle Breakfast Group, and the Vietnamese Friendship Association (each described in the February 2010 Final Judgment [CP 2866-2971] at ¶¶24-27 & 31-33).*

[11] *Supra footnotes 2 & 6; accord, this Court's January 2014 Order at p.1 ("Two years ago, this court held unanimously that the State is not meeting its paramount duty").*

[12] *McCleary, 173 Wn.2d at 483 (bold italics added).*

[13] *McCleary, 173 Wn.2d at 485 & 518.*

[14] *McCleary, 173 Wn.2d at 529-530 & 539 (State "has failed to adequately fund the 'education' required by article IX, section 1", "the State has consistently failed to provide adequate funding", and this fact is so well known by the State that "[w]e do not believe this conclusion comes as a surprise.") (underline added); further citations in Plaintiffs' 2013 Post-Budget Filing at pp.2-3, n.9; cf. January 2014 Order at p.1 ("Two*

This Court also made clear over two years ago that the State's constitutional violation in this case concerns lack of State funding – explaining in its January 2012 decision that "this case concerns the overall funding adequacy of K-12 education".[15] This Court's January 2014 Order reiterated that lack-of-funding point again, explaining that it has retained jurisdiction "to ensure timely and full compliance with the mandate to amply fund education."[16]

B. The Fourth Question Still Awaiting Final Resolution: What Remedy Should This Court Employ To Ensure The State Complies With Article IX, §1?

The Court Orders in this case unequivocally told State officials, parents, and students alike that "Year 2018 remains a firm deadline for full constitutional compliance."[17] This Court's most recent Order accordingly ordered the State's 2014 filing to:

(1) demonstrate that the 2014 session had taken "immediate, concrete action" to make "real and measurable progress, not simply promises" to meet that firm deadline for full constitutional compliance; and

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years ago, this court held unanimously that the State is not meeting its paramount duty"). Indeed, the State's 2014 filing expressly acknowledges this Court's finding that the State has "failed to meet its paramount constitutional duty by 'consistently providing school districts with a level of resources that falls short of the actual costs of the basic education program.'" State's 2014 filing at attached Report, p.1 (quoting McCleary, 173 Wn.2d at 537).

[15] *McCleary, 173 Wn.2d at 483 (underline added).*

[16] *January 2014 Order at p.1 (underline added).*

[17] *December 20, 2012 Order at p.2 (underline added).*

> (2) submit a "complete plan for fully implementing its 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" identified in ESHB 2261 and SHB 2776.

January 2014 Order at p.8 (underline added).

That was an Order.

Not a suggestion.

As the following pages explain, however, the State's 2014 filing did not comply with that Order.

Instead, the State did what it had been ordered to **not** do. It offered promises about trying to submit a plan and take significant action *next* year – along with excuses for why the State's ongoing violation of kids' constitutional rights and court orders should be excused *this* year.

Plaintiffs[18] respectfully submit that this Court should not condone the State's violation of court orders or constitutional rights. Plaintiffs accordingly request that this Court take immediate, concrete action to compel compliance with the court orders and constitutional rights that the State continues to violate in this case.

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[18] *The plaintiffs are the McCleary family, Venema family, and Network for Excellence in Washington Schools ("NEWS"). The 428 community groups, school districts, and education organizations in NEWS are listed at http://www.waschoolexcellence.org/about_us/news-members.*

II. THE STATE'S 2014 FILING DID NOT COMPLY WITH THE COURT ORDERS IN THIS CASE.

A. The State's Filing Admits It Did Not Submit A Plan.

"The dog ate my homework"

Age-old student excuse

Given the State's prior assurances about the work of its Joint Task Force on Education Funding (JTFEF), Quality Education Council (QEC), ESHB 2261 Compensation Technical Workgroup, etc., this Court's December 2012 Order required the State's **2013** filing to lay out the State's detailed phase-in plan for how it was going to fully comply with Article IX, §1 by the 2017-2018 school year deadline the State had previously promised to the Court.[19] That December 2012 Order clearly stated what the State's **2013** filing had to include: "there must in fact be a plan" – the State must "lay out a detailed plan and then adhere to it."[20]

The State did not comply with the December 2012 Order's detailed-plan requirement.[21]

This Court's January 2014 Order gave defendant another chance. This Court unequivocally ordered the State's **2014** filing to submit a

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[19] *December 2012 Order at pp.1-3; see additional explanation in Plaintiffs' 2013 Post-Budget Filing at pp.5-8 & n.24.*

[20] *December 2012 Order at p.2; noted again in January 2014 Order at p.1; see additional explanation in Plaintiffs' 2013 Post-Budget Filing at pp.7-8 & n.24.*

[21] *See Plaintiffs' 2013 Post-Budget Filing at pp.19-20 (no school salary plan), p.23 (no pupil transportation plan), pp.28-29 (no MSOC plan), p.31 (no full-day kindergarten plan), pp.33-34 (no K-3 class size reduction plan), & p.38 (no highly capable program plan).*

"complete plan for fully implementing its 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" identified in ESHB 2261 and SHB 2776.[22]

The State never objected that the Court's Order was an unreasonable command.

Indeed, it couldn't. Recall that the trial court had ordered the State to determine (1) the actual dollar cost of amply providing all Washington children the education mandated by Article IX, §1, and (2) how the State will fully fund that actual cost.[23] The State urged this Court to vacate that order because the State had already done the studies it needed, had enacted ESHB 2261 and SHB 1776, and would be amply funding the education mandated by Article IX, §1 for all Washington children by no later than the school year ending 2018.[24] This Court accepted the State's promise and vacated that part of the trial court's order.[25]

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[22] *January 2014 Order at p.8 (underline added).*

[23] *McCleary, 173 Wn.2d at 513; see additional explanation in Plaintiffs' 2013 Post-Budget Filing at p.6, n.19.*

[24] *See explanation in Plaintiffs' 2013 Post-Budget Filing at pp.5-6 & nn.17-20.*

[25] *See McCleary, 173 Wn.2d at 484; Plaintiffs' 2013 Post-Budget Filing at p.6. This Court has noted that the State continues to make that promise to this Court – e.g., the State's 2013 Report "confirms that the State remains committed to ESHB 2261 and SHB 2776 and intends to fully fund its reforms, consistent with the reports of the QEC and JTFEF." January 2014 Order at p.3.*

The State's 2014 filing shows the State **understood** the January 2014 Order's complete-phase-in-plan requirement. The State initially notes that its **2013** filing had promised funding increases of:

(1) $857 million for MSOCs in the next [2015-2017] biennial budget,
(2) $316 million for all-day kindergarten by 2018, and
(3) $1.08 billion for K-3 class size reduction by 2018.[26]

The State then acknowledges that this Court responded to the State's **2013** filing by ordering the 2014 legislative session to "'increase the pace of its basic education investments'", and "further ordered: 'the State shall submit, no later than 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'."[27]

The State's 2014 filing also admits it **did not comply** with that complete-phase-in-plan requirement – candidly stating, "[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."[28]

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[26] *State's 2014 filing at attached Report, pp.6-7.*

[27] *State's 2014 filing at attached Report, p.7.*

[28] *State's 2014 filing at attached Report, p.27. Instead, the State's 2014 filing suggests that perhaps bills that did not pass in the 2014 session "may lay the groundwork for successful bills in a subsequent Legislature." Id. at p.28. Plaintiffs respectfully submit that a defendant's expressing the possibility that maybe it might submit a plan next year does not comply with a court order requiring that submission this year. Nor does it comply with the State's constitutional duty in this case – for Article IX, §1 mandates that it is the paramount duty to make ample provision, not to talk about ample provision.*

This Court must decide whether court orders really matter. The defendant in this case understood the January 2014 Order's complete-phase-in-plan requirement. But it did not comply. Just like it did not comply with the similar mandate in this Court's December 2012 Order. A defendant's violating court orders is perfectly fine if court orders don't really matter in our State. But plaintiffs respectfully submit that court orders do matter, and that all defendants – even the government – must obey court orders.

B. The State's Filing Did Not Demonstrate Immediate, Concrete Action Making A Significant Step To Full Funding.

> *"Where's the beef?"*
> *Wendy's hamburger commercial (1984)*[29]

This Court's December 2012 Order also ordered the State's post-budget filings every year to show steady, real, and measurable progress towards full constitutional compliance by the 2017-2018 school year.[30] And the prior filings in this case confirmed the straightforward English meaning of this Court's progress mandate:

- ***steady*** means "even development, movement, or action: not varying in quality, intensity, or direction", "UNIFORM", "CONTINUOUS", "consistent in performance or behavior: DEPENDABLE, RELIABLE".[31]

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[29] *https://www.youtube.com/watch?v=R6_eWWfNB54.*

[30] *Full explanation in Plaintiffs' 2013 Post-Budget Filing at pp.8-10.*

[31] *Plaintiffs' 2013 Post-Budget Filing at p.9, n.30 (quoting the dictionary this Court used in Seattle School District and McCleary, and citing related rulings by this Court).*

- ***real*** means "AUTHENTIC", "GENUINE", "not illusory : INDUBITABLE, UNQUESTIONABLE".[32]
- ***measurable*** means not merely "capable" of being measured, but "great enough to be worth consideration: SIGNIFICANT".[33]

The State's 2013 filing, however, did not comply with the progress mandate in this Court's December 2012 Order.[34] While the State took some steps in 2013, this Court ruled that the State "cannot realistically claim to have made significant progress".[35]

This Court's January 2014 Order gave the State another chance. But it reiterated in no uncertain terms that it was incumbent upon the State to make significant progress in its 2014 session – ordering the State's 2014 filing to demonstrate that the State had taken "immediate, concrete action" in its 2014 session to make "real and measurable progress, not simply promises", towards meeting the previously noted firm deadline for full constitutional compliance ordered by this Court.[36]

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[32] *Plaintiffs' 2013 Post-Budget Filing at p.10 & n.32 (quoting the dictionary this Court used in Seattle School District and McCleary, and citing related rulings by this Court).*

[33] *Plaintiffs' 2013 Post-Budget Filing at p.10 & n.31 (quoting the dictionary this Court used in Seattle School District and McCleary, and citing related rulings by this Court).*

[34] *See Plaintiffs' 2013 Post-Budget Filing at pp.20-21 (school salary "progress"), pp.23-26 (pupil transportation "progress"), pp.29-30 (MSOC "progress"), p.31-32 (full-day kindergarten "progress"), pp.34-36 (K-3 class size reduction "progress"), & p.38 (highly capable program "progress").*

[35] *January 2014 Order at p.6.*

[36] *January 2014 Order at p.8; December 2012 Order at p. 2 ("Year 2018 remains a firm deadline for full constitutional compliance") (underline added).*

To prevent any doubt about the magnitude of progress needed to comply with its January 2014 Order, this Court expressly explained:

> The legislature is embarking on a short session in 2014, where it has an opportunity to take a significant step forward. We are aware that OSPI has submitted a supplemental budget request of approximately $544 million, with $461 million addressing basic education funding. The need for immediate action could not be more apparent. Conversely, failing to act would send a strong message about the State's good faith commitment toward fulfilling its constitutional promise. .... [I]t is incumbent upon the State to demonstrate, through immediate, concrete action, that it is making real and measurable progress, not simply promises.[37]

The State's 2014 filing responded by noting a relatively minor $58 million added to MSOC funding, and saying some legislators are doing "significant work" that "may lay the groundwork" for some subsequent legislature complying with this Court's Orders and Article IX, §1.[38] But as the following seven examples illustrate, the State's filing did not demonstrate immediate, concrete action in the 2014 session to make real and measurable progress towards meeting the firm deadline for full constitutional compliance ordered by this Court.

1. The State's Filing Did Not Demonstrate *Any* 2014 Action To Make Progress Fully Funding The Personnel Cost Component Of Basic Education.

"nothing could be more basic than adequate pay"
This Court's January 2014 Order at p.6.

[37] *January 2014 Order at p.8.*
[38] *State's 2014 filing at attached Report, pp.15-17 & 27-31.*

This Court's January 2012 decision held that a significant part of the constitutional violation in this case is the State's underfunding of school salaries.[39] This Court held that the State has "consistently underfunded staff salaries and benefits" – providing "far short of the actual cost of recruiting and retaining competent teachers, administrators, and staff."[40] This Court further reiterated: "This is the second time in recent years that we have noted that state funding does not approach the true cost of paying salaries for administrators and other staff."[41] And this Court cited State studies which have been confirming for decades that the State's salary funding levels are below market requirements.[42]

One of the "promising" parts of ESHB 2261 called out by this Court was accordingly ESHB 2261's acknowledgment that attracting and retaining high quality educators required increased investments – and the

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[39] *E.g., McCleary, 173 Wn.2d at 533 (emphasizing that school salaries are one of the "major areas of underfunding" highlighted by the evidence in this case); January 2014 Order at p.6 ("Our decision in this case identified salaries as a significant area of underfunding by the State, noting OSPI data suggesting that sizable salary gaps remain to be filled at the district level."); see fuller description of this Court's rulings on this point in Plaintiffs' 2013 Post-Budget Filing at pp.16-21.*

[40] *McCleary, 173 Wn.2d at 535-536; see also at 514 ("We will not disturb findings of fact supported by substantial evidence even if there is conflicting evidence" and "Unchallenged findings of fact are verities on appeal.") (internal quote marks omitted).*

[41] *McCleary, 173 Wn.2d at 536n.29 (underline added).*

[42] *E.g., McCleary, 173 Wn.2d at 493-494 (noting the 1995 fiscal report's conclusion that the State provides "inadequate funding for administrative salaries"), at 508 (quoting QEC findings that "funding studies have already confirmed ... that our salary allocations are no longer consistent with market requirements") & at 532 (QEC findings that studies confirm State salary allocations are not consistent with market requirements).*

State's corresponding promise in ESHB 2261 that it would therefore "enhance the current salary allocation model" upon receipt of the compensation work group's 2012 report.[43]

The ESHB 2261 compensation work group's Final Report concluded State funding of market rate salaries will require an over $2 billion/year increase on top of the annual inflation increases mandated by Initiative 732.[44] That ESHB 2261 Final Report further found that "immediate implementation" of full salary funding was needed "in order to attract and retain the highest quality educators to Washington schools through full funding of competitive salaries."[45]

The January 2014 Order reiterated this underfunding again:

> Another area in which the State's [2013] Report falls short concerns personnel costs. Quality educators and administrators are the heart of Washington's education system. The [2013] Report ... skims over the fact that state funding of educator and administrative staff salaries remains constitutionally inadequate. ... The inescapable fact is that [state-funded] salaries for educators in Washington are no better now than when this case went to trial. This despite the report of the ESHB 2261 compensation work group concluding that the State needs to invest at least a billion dollars a year—above inflationary adjustments—to bring salary funding in line with actual costs. It is deeply troubling that the

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[43] *McCleary, 173 Wn.2d at 507 (internal quotation marks omitted); see also at 510 (noting SHB 2776 expedited report's deadline to be sooner than its original December 2012 deadline).*

[44] *See full discussion in Plaintiffs' 2013 Post-Budget Filing at pp.18-19.*

[45] *See full discussion in Plaintiffs' 2013 Post-Budget Filing at p.18 & n.55.*

> State's [2013] Report does not address this component of ESHB 2261 or offer any plan for meeting its goals.[46]

The State's response to that Order did not address personnel costs at all.

Instead, the State's 2014 filing repeated the same "deeply troubling" omission. Just like its **2013** filing, the State's **2014** filing demonstrated <u>no</u> progress increasing the State's funding of school salary levels above those declared unconstitutionally low by the February 2010 Final Judgment in this case.

The personnel cost component of basic education is therefore the ***first*** example of where the State violated the progress mandate in January 2014 Order – for the State's 2014 filing did not demonstrate <u>any</u> "immediate, concrete action" in the 2014 session to make <u>any</u> "real and measurable progress" increasing the State's funding of school salary levels above those declared unconstitutionally low over four years ago.

2. The State's Filing Did Not Demonstrate ***Any*** 2014 Action To Make Progress Fully Funding The <u>Pupil Transportation</u> Component Of Basic Education.

> *"If the State's funding formulas provide only a portion of what it actually costs a school to...get kids to school,...the legislature cannot maintain that it is fully funding basic education"*
>
> *This Court's January 2012 decision, 173 Wn.2d at 532*

This Court held another part of the constitutional violation in this case is the State's failure to fully fund the <u>actual cost</u> of transporting

[46] *January 2014 Order at pp.5-6 (internal citations omitted).*

students to and from school.[47] This Court reiterated that actual cost point in no uncertain terms: "If the State's funding formulas provide only a portion of what it actually costs a school to ... get kids to school, ... the legislature cannot maintain that it is fully funding basic education through its funding formulas."[48] The State, moreover, clearly understands this actual cost requirement – for the State's 2014 filing acknowledges that "the January 2014 Order emphasized that full funding must account for actual costs of the state program".[49]

The State's 2014 filing does not identify any additional action in 2014 to make progress fully funding the pupil transportation component of basic education. Instead, it maintains that no additional action was needed because the State's newly adopted funding formula "fully funds" its school districts' pupil transportation costs.[50]

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[47] *E.g., McCleary, 173 Wn.2d at 533 (student to/from transportation is another one of the "major areas of underfunding" highlighted by the evidence in this case); see fuller description of this Court's rulings on this point in Plaintiffs' 2013 Post-Budget Filing at pp.22-26.*

[48] *McCleary, 173 Wn.2d at 532 (underline added); accord, January 2014 Order at p.4 ("We cautioned in 2012 that revised funding formulas cannot be used to declare 'full funding,' when the actual costs of meeting the education rights of Washington students remain unfunded."). Although the State suggest that plaintiffs claim the State must fund whatever a district spends (State's 2014 filing at attached Report, p.40), that is not accurate. Consistent with this Court's rulings, plaintiffs assert that the State must fund what it actually costs a district to provide the basic education component at issue.*

[49] *State's 2014 filing at attached Report, p.52 (underline added).*

[50] *State's 2014 filing at attached Report, pp.11-14 & 46-50. More narrowly, the State's 2014 filing asserts the State's formula "adequately" compensates districts' transportation costs (id. at p.12) – which not only overlooks the factual point that the State's formula is designed to compensate last year's prices instead of the current year's higher prices (see Plaintiffs' 2013 Post-Budget Filing at pp.24-25), but also overlooks*

That new formula is an improvement since it funds a larger portion of most districts' actual transportation costs than the State's prior formula did. But it still funds only a portion. As plaintiffs' 2013 filing pointed out, the State's "full funding" formula does not fund current transportation costs. Even though the State is well aware that rising fuel prices increase transportation costs every year,[51] the State's revised formula is based on the past school year's fuel prices and transportation costs.[52]

The significance of rising fuel costs is well known to the State, for this Court's January 2012 decision expressly noted that one of the problems rendering the State's prior transportation funding formula unconstitutional "was its failure to properly account for increases in fuel prices."[53] And, as plaintiffs' filing last year noted, the State's own analysis confirms that the State's revised "full funding" formula fails to even cover last year's transportation costs for the majority of Washington school districts.[54]

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*the legal point that merely "adequate" does not satisfy the "**ample**" funding mandate of Article IX, §1 (supra Part I.A.1 of this brief).*

[51] *Plaintiffs' 2013 Post-Budget Filing at p.22, n.69.*

[52] *Plaintiffs' 2013 Post-Budget Filing at pp.24-25.*

[53] *McCleary, 173 Wn.2d at 535. See also, e.g., Ex.359, p.4.*

[54] *Plaintiffs' 2013 Post-Budget Filing at pp.24-25. The State's revised formula also employs a limitation factor based on the prior year's Statewide average if lower than a particular district's costs that prior year. Id.*

This Court's January 2014 Order accordingly reiterated that the State cannot use its revised funding formula to declare "full funding" if that formula leaves actual costs unfunded.[55]

The State's 2014 filing did not dispute that its revised formula leaves a portion of what it actually costs to get kids to and from school unfunded.[56]

Instead, the State's 2014 filing simply declared that its revised formula fully funds pupil transportation, and suggested that this Court's prior rejection of the State's naked "full funding" declaration was based on the Court's "confusion" or misunderstanding arising from fiscal years and school years not beginning and ending on the same date.[57]

But the State's observations about dates misses the point.[58] The State's 2014 filing did not refute the flaw pointed out by plaintiffs a year

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[55] *January 2014 Order at p.4 ("We cautioned in 2012 that revised funding formulas cannot be used to declare 'full funding,' when the actual costs of meeting the education rights of Washington students remain unfunded." [citing McCleary, 173 Wn.2d at 532]).*

[56] *Indeed, the State's own documents show that the State's "full funding" formula leaves over $31 million unfunded. OSPI has estimated based on the supplemental budget that districts will receive $389,723,225 in State funding for transportation in the 2014-15 school year.* http://www.k12.wa.us/safs/Misc/BudPrep14/Estimated%2014-15%20Transportation%20Allocations.xlsx. *OSPI also reports that is only a portion of its districts' actual costs of $420,866,666 two years earlier (2012-13).* http://www.k12.wa.us/safs/PUB/FIN/1213/Section3_pdf/5_1213_GF_Total_Exp_by_Program_by_Enroll.pdf. *The difference between those figures is over $31 million.*

[57] *State's 2014 filing at attached Report, p.46 (citing possible "confusion" because year spans are named after the year they end [e.g., 2014-2015 fiscal year is called the "2015" year], but State fiscal years run July 1-June 30, while school district school years typically run September 1-August 31).*

[58] *The short difference between fiscal and school years used for the State's full funding argument also does not account for or refute the fact that the State's "full funding*

earlier. This flaw causes the State's revised formula to not provide what it actually costs a district to get kids to and from school this year. That is fatal to the State's "full funding" declaration because, as previously explained, this Court has made it clear that the State cannot declare fully funding with a formula that does not provide what it actually costs to get kids to and from school.

Pupil transportation is thus a ***second*** example of the State's failure to comply with the January 2014 Order – for the State's 2014 filing did not demonstrate any action in 2014 to make any additional progress towards funding what it actually costs to get kids to and from school.

3. The State's Filing Did Not Demonstrate *Any* 2014 Action To Make Progress Fully Funding The K-3 Class Size Component Of Basic Education.

> *"SHB 2776 required increased funding for ... class sizes to be reduced to 17 students by the 2017-18 school year."*
> *This Court's January 2012 decision, 173 Wn.2d at 545*

The January 2012 decision in this case noted another part of the State's ample funding obligation includes its promise to reduce K-3 class sizes to 17 students per classroom by the 2017-2018 school year.[59]

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formula" does not fully fund its school districts' current, actual costs of transporting the districts' students to and from school. Plaintiffs also note that the unverified timeline illustrations submitted by the State as Exhibits 1 & 2 purport to show "Pupil Transportation costs" paid by the State's formula rather than actual pupil transportation costs to the districts.

[59] *McCleary, 173 Wn.2d at 510; see fuller description of this Court's rulings on this point in Plaintiffs' 2013 Post-Budget Filing at p.33.*

As plaintiffs' 2013 filing pointed out, however, the limited K-1 funding added in the State's 2013 session did not even fill the hole dug by the State's class size funding cuts in the prior budget.[60]

This Court's January 2014 Order accordingly reiterated the K-3 class size reduction component of basic education once again, and emphasized that the State's constitutionally required ample funding includes not just the operating costs of providing those reduced class sizes, but also the capital costs of providing the facilities needed for those reduced class sizes.[61] This Court unequivocally ordered "the State must account for the actual cost to schools of providing these components of basic education."[62]

The State's response to that Order did not address the actual costs of K-3 class size reduction, and did not identify any additional action in 2014 to make any progress fully funding this component of basic education. Instead, the State admits its 2014 session did not make any funding changes for K-3 class size reduction.[63]

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[60] *Plaintiffs' 2013 Post-Budget Filing at p.34 & n.104, and more generally at pp.33-36.*

[61] *January 2014 Order at pp.4-5.*

[62] *January 2014 Order at p.5 (underline added); accord, January 2014 Order at p.4 (State cannot declare "full funding" when the actual costs of meeting the education rights of Washington students remain unfunded [citing McCleary, 173 Wn.2d at 532]).*

[63] *State's 2014 filing at attached Report, p.16 ("In 2014, the Legislature made no further investments in either kindergarten through third grade class size reduction or expansion of all-day kindergarten beyond the additional investments made in the original 2013-15 biennial budget.").*

K-3 class size reduction is thus a ***third*** example of the State's failure to comply with this Court's January 2014 Order – for the State's 2014 filing did not demonstrate any action in 2014 to make any additional progress towards funding what K-3 class size reductions actually cost.

4. The State's Filing Did Not Demonstrate *Any* 2014 Action To Make Progress Fully Funding The Full-Day Kindergarten Component Of Basic Education.

> *"ESHB 2261 expanded the program of basic education to include ... all-day kindergarten"*
>
> *This Court's January 2012 decision, 173 Wn.2d at 526 n.22*

Over two years ago, this Court noted that another part of the State's ample funding obligation in this case includes the State's designation of full-day kindergarten as part of a "basic education", and its corresponding mandate that full-day kindergarten "reach statewide implementation by the 2017-18 school year."[64]

As plaintiffs' 2013 filing pointed out, however, the full-day kindergarten funding added in the State's 2013 session fell short of steady, real, and measurable progress for operating costs, and funded nothing for corresponding capital costs.[65]

This Court's January 2014 Order accordingly reiterated the full-day kindergarten component of basic education once again, and

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[64] *McCleary, 173 Wn.2d at 506, 510, & 526n.22; see fuller description of this Court's rulings on this point in Plaintiffs' 2013 Post-Budget Filing at pp.30-31.*

[65] *Plaintiffs' 2013 Post-Budget Filing at pp.30-32.*

emphasized that funding the actual cost of full-day kindergarten includes not just the operating costs of providing full-day kindergarten, but also the capital costs of providing the facilities needed for expanding kindergarten from half-day to full day.[66] This Court also ordered "the State must account for the actual cost to schools of providing these components of basic education."[67]

The State's response to that Order did not address the actual costs of full-day kindergarten, and did not identify any additional action in 2014 to make any progress fully funding this component of basic education. Instead, the State admits the 2014 session did not make any funding changes for full-day kindergarten.[68]

Full-day kindergarten is thus a ***fourth*** example of the State's failure to comply with this Court's January 2014 Order – for the State's 2014 filing did not demonstrate any action in 2014 to make any additional progress towards funding what full-day kindergarten actually costs.

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[66] *January 2014 Order at pp.4-5.*

[67] *January 2014 Order at p.5 (underline added); accord, January 2014 Order at p.4 (State cannot declare "full funding" when the actual costs of meeting the education rights of Washington students remain unfunded [citing McCleary, 173 Wn.2d at 532]).*

[68] *State's 2014 filing at attached Report, p.16 ("In 2014, the Legislature made no further investments in either kindergarten through third grade class size reduction or expansion of all-day kindergarten beyond the additional investments made in the original 2013-15 biennial budget.").*

5. The State's Filing Did Not Demonstrate *Any* 2014 Action To Make Progress Fully Funding The Highly Capable Component Of Basic Education.

> *"ESHB 2261 broadened the instructional program of basic education by specifically adding ... the program for highly capable students"*
>
> *This Court's January 2012 decision, 173 Wn.2d at 506.*

This Court's January 2012 decision expressly recognized that the highly capable student program added by ESHB 2261 is another part of the basic education program requiring ample State funding under Article IX, §1.[69]

As plaintiffs' 2013 filing pointed out, the State issued regulations imposing additional costs on its school districts by requiring them to implement highly capable K-12 programs beginning in the 2013-2015 biennium, but the State's 2013 session did not make any progress towards funding the costs of the highly capable program the State had added to basic education.[70]

As noted earlier, this Court's subsequent January 2014 Order reiterated that the State must account for the actual cost to schools of providing components of basic education.[71]

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[69] *McCleary, 173 Wn.2d at 506, and at 526n.22; see fuller description of this Court's rulings on this point in Plaintiffs' 2013 Post-Budget Filing at p.37.*

[70] *Plaintiffs' 2013 Post-Budget Filing at pp.37-38 & n.116 & n.118.*

[71] *Supra footnotes 62 & 66.*

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The State's response to that Order acknowledges that the Highly Capable Program is one of the programs within the State's defined program of basic education.[72] But it did not identify <u>any</u> action in 2014 to make <u>any</u> progress funding it.

The highly capable student program is thus a ***fifth*** example of the State's failure to comply with this Court's January 2014 Order – for the State's 2014 filing did not demonstrate <u>any</u> action in 2014 to make <u>any</u> progress towards funding what that highly capable program actually costs.

6. The State's Filing Did Not Demonstrate 2014 Action To Make *Progress* Fully Funding The <u>Increased Hours/Credits</u> Component Of Basic Education.

> *"ESHB 2261 broadened the instructional program of basic education by specifically adding ... 'Core 24' "*
>
> *This Court's January 2012 decision, 173 Wn.2d at 506.*

Over two years ago, this Court expressly recognized the credits/hours added by ESHB 2261's "Core 24" program is another part of the basic education program requiring ample State funding under Article IX, §1.[73]

The State's 2014 filing accordingly acknowledges the "increase in instructional hours and the number of credits required for high school

[72] *State's 2014 filing at attached Report, p.43.*

[73] <u>*McCleary*</u>*, 173 Wn.2d at 506 ("ESHB 2261... broadened the instructional program of basic education by specifically adding ... 'Core 24'.... ESHB 2261 also ... increased yearly instructional hours from 1,000 to 1,080 for grades 7-12 to accomodate the new Core 24 requirements") and at 504 n.11 (explaining the Core 24 credits and hours).*

graduation are components in the expanded definition of the program of basic education adopted under ESHB 2261 in 2009."[74] And it discusses action taken in the 2014 session to change the State's funding of this hour/credit component of basic education.[75]

But that 2014 change did not make any net **progress** funding this component – for as the State's 2014 filing concedes, the funding action taken was to shift (euphemistically: "repurpose" or "reallocate") $97 million away from the hours part of this basic education component to the credits part of this basic education component.[76]

Redirecting an existing appropriation from the hours part to the credits part was "immediate, concrete action". And the State may well have had good reason for doing so.

But redirecting money from one thing to another isn't **progress**. Repurposing existing funds isn't the same as adding new funds. The 2014 session's shifting (but not increasing) State funding for the hours/credit component of basic education's Core 24 is thus a ***sixth*** example of the State's failure to comply with this Court's January 2014 Order – for the State's 2014 filing did not demonstrate concrete action

[74] *State's 2014 filing at attached Report, p.17.*
[75] *State's 2014 filing at attached Report, pp.17-22.*
[76] *State's 2014 filing at attached Report, pp.18-22.*

in 2014 to make progress towards fully funding this component by the 2017/2018 school year.

7. The State's Filing Did Not Demonstrate 2014 Action To Make *Steady, Real, & Measurable* Progress Fully Funding The MSOC Component Of Basic Education.

> *"woefully underfunded"*
>
> *This Court's January 2012 decision, 173 Wn.2d at 508, 532-533.*

This Court's January 2012 decision held that a significant part of the constitutional violation in this case is the State's underfunding of materials, supplies, and operating costs ("MSOCs", f/k/a "NERCs").[77]

The State, however, assured this Court that it would be fully funding MSOCs by the 2015/16 school year under SHB 2776.[78]

This Court's January 2014 Order pointed out the State's significant lack of progress towards that promised MSOC full funding:

> Even more troubling is the apparent lack of progress toward fully funding essential materials, supplies and operation costs (MSOCs). The JTFEF identified MSOCs as the area requiring the greatest increase in state funding, estimating a need for $597.1 million in 2013-15, followed by $1.410.9 billion in 2015-17 and $1.554.7 billion in 2017-19…. Underfunding MSOCs places an unsustainable burden on school districts.[79]

This significant MSOC underfunding was one of the basic education components this Court had called out in the January 2014 Order

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[77] *McCleary, 173 Wn.2d at 533; see fuller description of this Court's rulings on this point in Plaintiffs' 2013 Post-Budget Filing at pp.26-30.*

[78] *McCleary, 173 Wn.2d at 510.*

[79] *January 2014 Order at p.4 (internal citations omitted).*

requiring the State's 2014 filing to demonstrate that the State had taken "immediate, concrete action" in its 2014 session to make "real and measurable progress" towards meeting the deadline for full compliance in this case.[80]

And as noted earlier, this Court left no doubt about the magnitude of 2014 progress required, by noting OSPI's $461 million supplemental budget request addressing basic education to exemplify the "significant step forward" the State had to make in its 2014 session.[81] The January 2014 Order expressly warned the State with respect to its 2014 session that "it is clear that the pace of progress must quicken".[82]

The State's response was to put a drop in the woefully underfilled MSOC bucket. It decreased the $1.5 billion MSOC underfunding gap identified in this Court's January 2014 Order to "only" over $1.4 billion – by increasing 2014-2015 MSOC funding $58 million.[83] (An "increase" that's even less than the $295 million the State says it "saved" by

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[80] *January 2014 Order at p.8; see also December 2012 Order at p. 2 ("Year 2018 remains a firm deadline for full constitutional compliance") (underline added).*

[81] *January 2014 Order at p.8.*

[82] *January 2014 Order at p.8 (underline added).*

[83] *State's 2014 filing at attached Report, pp.15-17.*

suspending the cost-of-living-increases for school employees that had been mandated by voters' 63%-37% adoption of I-732.[84])

The 2014 session's $58 million MSOC increase was concrete action. And it was some progress.

But it's not the steady, real, and measurable progress ordered in this case.[85] The 2014 session's drop-in-the-bucket MSOC increase is thus a ***seventh*** example of the State's failure to comply with this Court's January 2014 Order – for the State's 2014 filing did not demonstrate concrete action in 2014 to make steady, real, and measurable progress towards fully funding the MSOC component of basic education by the 2015/16 deadline the State promised in SHB 2776 or the overall 2017/18 deadline ordered by this Court.

C. Compliance Conclusion: Like Its Prior 2012 & 2013 Filings, The State's 2014 Filing Failed To Comply With The Court Orders In This Case.

This Court held the State's **2012** post-budget filing fell short of complying with the Court Orders in this case.[86] Strike one.

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[84] *Plaintiffs' 2013 Post-Budget Filing at pp.20-21. A critical observer could conclude that the State in essence took $295 million from teachers and school staff, but then used $58 million of that money to increase MSOC funding.*

[85] *See supra footnotes 31 ("steady" definition), 32 ("real" definition), and 33 ("measurable" definition); see further discussion of State's MSOC underfunding and the underfunding gap's being understated due to surveys being based on what districts are able to scrape together while the State is underfunding MSOCs as opposed to what ample funding would be, at Plaintiffs' 2013 Post-Budget Filing, pp.27-28, n.82.*

[86] *December 2012 Order at p.1.*

This Court later held the State's **2013** post-budget filing fell short of complying with the Court Orders in this case as well, concluding that the State "cannot realistically claim to have made significant progress".[87] Strike two.

Unfortunately, the State's **2014** filing did not comply with the Court Orders in this case either. It did not comply with the complete-phase-in-plan mandate in this Court's January 2014 Order. Nor did it comply with the real-and-measurable-progress mandate in this Court's Orders. If court orders or kids' positive constitutional right to an amply funded education mean anything in our State, that is now strike three.

III. THE EXCUSES SUGGESTED BY THE STATE DO NOT JUSTIFY A CONTINUING VIOLATION OF COURT ORDERS OR CONSTITUTIONAL RIGHTS.

A. This Being A "60-Day Session Year" Is Not An Excuse.

> ***Get The Hell Out Of Dodge**: To leave somewhere immediately, to evacuate or scram*
>
> *The Urban Dictionary*[88]

The State's 2014 filing suggests that compliance with the Court Orders in this case should be excused for yet another year because the

[87] *January 2014 Order at p.6. Although the State's 2014 filing implies that the 2013 session increased basic education funding by almost one billion dollars (State's 2014 filing at attached Report, p.8), this Court knows from last year's filings that the net increase was really less than $325 million/year (Plaintiffs' 2013 Post-Budget Filing at pp.12-16).*

[88] *http://www.urbandictionary.com/define.php?term=get%20the%20hell%20out%20of%20dodge*

legislature chose to leave Olympia as soon as this year's 60-day session was over.[89]

But the legislature commonly meets in additional, special sessions to take action that the legislature or Governor deems urgent or important. For example, the legislature stayed in Olympia to finish business it deemed important in both of the two prior 60-day session years (2012 and 2010).[90] It could have done the same this year, but opted to immediately get the heck out of town instead.

As another example, the State's 2014 filing acknowledges that the legislature's 2013 session and 2014 session are both conducted by the same "63rd Legislature".[91] That 63rd Legislature held three special sessions last year to take care of business the legislature or Governor

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[89] *State's 2014 filing at p.3 and at attached Report, pp.8-10 & 34-38. "Minimum" is used because the legislature can – and frequently does – hold legislative sessions for more than the "regular" 60 days. See, e.g., infra footnote 90.*

[90] *"Session Dates of the Washington State Legislature" (2014 ed.), available at* http://www.leg.wa.gov/LIC/Documents/Statistical%20Reports/Leg_Session_Dates.pdf *(showing 2010 session convened in special session after its 60-day regular session for two extra sessions lasting 30 days, and that 2012 session convened in special session after its 60-day regular session for two extra sessions lasting 31 days). The legislature can extend any session by simply entering into special session, either by proclamation of the governor or by resolution passed with an affirmative vote of two-thirds of the elected members of each house of the legislature. Wash. Const. art. II, § 12. And that is not unusual – for in 2013, 2012, 2011, and 2010, the legislature convened in special session after its regular session adjourned. "Session Dates of the Washington State Legislature" (2014 ed.).*

[91] *State's 2014 filing at attached Report, p.50 ("The 63rd Legislature ... convened in January of 2013 and will be replaced by the 64th Legislature in January of 2015").*

deemed important.[92] For example: sensing an urgency to accomodate Boeing, the 63rd Legislature came back to Olympia for a special session in November 2013, and ultimately enacted an $8.7 billion legislative package to entice Boeing to keep its 777X operations in Washington.[93]

Prior legislatures have likewise taken immediate, concrete action when they sensed an urgency to appease threats by the Mariners, the Seahawks, or Boeing:

- **Baseball:** Under threat that the Mariners might leave after King County voters rejected a tax increase to replace the Kingdome with a new stadium, the Governor called the 54th Legislature into special session in October 1995 solely to address stadium financing for the Mariners.[94] That special session adopted EHB 2115 (the "Stadium Act") to authorize formation of a public facilities district for a new baseball stadium and provide a way for the State and King County to generate additional revenue to defray construction costs.[95]

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[92] *"Session Dates of the Washington State Legislature" (2014 ed.), available at* http://www.leg.wa.gov/LIC/Documents/Statistical%20Reports/Leg_Session_Dates.pdf *(showing 63rd Legislature concluded its 2013 regular session on April 28, 2013, then held a 30-day special session May 13 to June 11, 2013, an 18-day special session from June 12 to June 29, 2013, and a 3-day special session from Nov. 7 to Nov. 9, 2013).*

[93] *Laws of 2013, 3d Spec. Sess., ch. 2 (SB 5952). The State's own fiscal note for that legislation confirms that it will cost the State over $8.7 billion (which does not include the over $3.1 billion cost to the State of the special session tax breaks enacted for Boeing in 2003). Wash. State Dep't of Revenue, Fiscal Note, SB 5952, 63rd Leg., 3d Spec. Sess. (2013). That short session tax legislation extended to Boeing "the largest corporate tax break in the history of the United States". Reid Wilson, "Boeing Machinists Agree to 777X Contract on Narrow Vote,"* The Washington Post *(Jan. 4, 2014), available at* http://www.washingtonpost.com/blogs/govbeat/wp/2014/01/04/boeing-machinists-agree-to-777x-contract-on-narrow-vote/; *see also Dan Catchpole & Jerry Cornfield, "Boeing got huge tax breaks, state go no job guarantees,"* Herald Net *(May 4, 2014) (noting the $8.7 billion tax break package did not require Boeing to maintain a specific number of workers in Washington), available at* http://www.heraldnet.com/article/20140504/BIZ/140509578.

[94] *<u>CLEAN v. State</u>, 130 Wn.2d 782, 787-788, 928 P.2d 1054 (1997).*

[95] *<u>CLEAN</u>, 130 Wn.2d at 788-791 & nn.3-4 (citing Laws of 1995, 3d Spec. Sess., ch. 1, §201(1) at 4, §201(4)(b) at 5, §102(2), & §104).*

- **Football:** Faced with a similar threat that the Seahawks might leave unless they got a new stadium too, the 55th Legislature took immediate, concrete action in 1997 to authorize the construction and financing of the stadium complex that now exists just north of the new Mariners stadium.[96]
- **Airplanes:** Faced with Boeing's threat to build its 787 elsewhere, the 58th Legislature took immediate, concrete action in a June 2003 special session to enact $3.1 billion in tax breaks for Boeing.[97]

In short, the legislature takes large-dollar, immediate, concrete action – often in additional, special sessions – when the legislature senses an urgency to do so. When an airplane company wants something, the legislature meets in special session to formulate and enact multi-billion dollar packages to comply. When professional sports teams want a new stadium, the legislature acts quickly to comply.

Plaintiffs do not mean to suggest that sports and airplanes have no importance. But at the same time, professional sports and commercial airplanes are not the State's paramount constitutional duty.

And with respect to the State's paramount counstitutional duty, this Court's December 2012 Order reiterated the urgency at hand:

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[96] *Brower v. State, 137 Wn.2d 44, 49, 969 P.2d 42 (1998).*

[97] *Laws of 2003, 2d Spec. Sess., ch. 1 (HB 2294). The State's own fiscal note for the 2013 legislation extending that 2003 tax break confirms that that 2003 tax break costs the State over $3.1 billion. Wash. State Dep't of Revenue, Fiscal Note, SB 5952, 63rd Leg., 3d Spec. Sess. (2013); see also Dominic Gates, "A resounding no from Machinists,"* Seattle Times *(originally published Nov. 13, 2013, modified Nov. 14, 2013) (when numerous states submitted bids for a site to build Boeing's 787 Dreamliner, the Washington Legislature and Gov. Gary Locke enacted a $3.2 billion, 20-year tax-break package for the aerospace industry), available at http://seattletimes.com/html/businesstechnology/2022253577_boeingmachinistvotexml.html.*

> Each day there is a delay risks another school year in which Washington children are denied the constitutionally adequate education that is the State's paramount duty to provide.
>
> Year 2018 remains a firm deadline for full constitutional compliance. ...
>
> Given the scale of the task at hand, 2018 is only a moment away ....
>
> We cannot wait until "graduation" in 2018 to determine if the State has met minimum constitutional standards.[98]

This Court's January 2014 Order reiterated that urgency again when it firmly declared: "The need for immediate action could not be more apparent" and "it is clear that the pace of progress must quicken."[99]

Although the State's 2014 filing occasionally said the word "urgency", its content demonstrated that the 63rd Legislature does not sense any urgency to comply with this Court's Orders. The fact that it chose to adjourn its 2014 session after 60 days and leave town is not a legitimate excuse for punting compliance with Supreme Court Orders or constitutional rights to "maybe next year".[100]

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[98] *December 2012 Order at pp.2-3 (underline added).*

[99] *January 2014 Order at p.8 (underline added).*

[100] *The State's 2014 filing also suggests that legislators consider the 60-day supplemental budget year as a time for simply making changes that "typically represent mid-course corrections". State's 2014 filing at attached Report, p.35. Plaintiffs respectfully submit that obeying a Supreme Court Order enforcing the paramount, positive constitutional right of Washington children is an urgent and important mid-course correction – but the State obviously does not see urgency or importance under this Court's currently worded Orders.*

B. January 2012 Being "Only Two Years Ago" Is Not An Excuse.

> *"We have already delayed too long.... full funding of K-12 is mandated by the courts. We should do it now."*
>
> *Washington Governor Dixie Lee Ray*
> *1979 State of the State Address (Ex.578 at p.141, 2nd & 3rd paras., underline added)*

The State's 2014 filing suggests that compliance with the Court Orders in this case should be excused for another year because "this Court's decision in this case was issued only two years ago."[101]

But that's not a credible excuse for at least two reasons.

First, two years is a long time. Especially to school children subjected to two grade levels of unconstitutionally underfunded education in that time. As plaintiffs' prior filings have explained, these children are not just faceless statistics – as the following summary of the trial testimony by one of the (now-former) State Legislators who served on both Washington Learns and the Basic Education Finance Task Force emphasizes:

> Every day, every week, every month, every year we delay means additional students drop out, and additional students who don't drop out are left unable to meet the requirements of today's society. It's easy to talk about numbers. It's easy to talk about statistics. But when it comes right down to it, every kid we lose is something that is very, very real. The great

[101] *State's 2014 filing at p.1 ("This case has received so much public attention that it sometimes is difficult to remember that this Court's decision in this case was issued only two years ago.").*

> tragedy of the State's long debate and delay is that we're not talking about numbers. We're talking about real world kids.[102]

Second, this Court's January 2012 decision was no surprise to the State – for the State has long known that it is significantly underfunding its public schools.

Over 36 years ago, this Court's *Seattle School District* decision held the State's funding levels were unconstitutionally low, and trusted the State to promptly cure this constitutional violation.[103]

The State then spent 36 years studying the various increases needed to fully fund its public schools. As the Final Judgment explained in one of its unchallenged findings of facts:

> In the years after the Supreme Court's *Seattle School District* ruling against the Respondent State, the Legislature has conducted over 17 studies (not including research for specific legislation or projects) to address the school financing concerns of the State's public schools.
>
> Since 1990 alone, the Respondent State has also conducted over 100 K-12 education finance studies.[104]

For example, the Basic Education Finance Task Force's January 2009 Final Report provided the framework for ESHB 2261.[105] And it

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[102] *See Plaintiffs' 2012 Post-Budget Filing at pp.36-37; similarly Plaintiffs' 2013 Post-Budget Filing at p.41, n.123.*

[103] *McCleary, 173 Wn.2d at 484-486 (explaining Seattle School District No. 1 v. State, 90 Wn.2d 476, 585 P.2d 71 (1978)).*

[104] *FOF/COL ¶¶ 260-261 [CP 2939]. The reports for some (but not all) of those State studies are, e.g., Trial Exhibits 333, 125, 360, 262 at p.171, 262 at p.161, 262 at p.119, 357, 16, 262, 215, 261, 356, 124. This Court took note of the State's repeated commissions and studies. McCleary, 173 Wn.2d at 491-494, 500-509.*

concluded that if the State did not cut other State funding for K-12 education (such as the I-728 Student Achievment Fund appropriations which the State later eliminated), the State's underfunding was at least \$6.3-\$8.9 billion a biennium[106] – without considering any capital construction or pupil transportation costs.[107]

The Senate majority leader of the 63rd Legislature (Senator Rodney Tom) was a member of that Basic Education Finance Task Force, and he accordingly testified under oath in this case that the State does not need any more studies to move forward:

> Q: Do you think there's any need for another study?
>
> A: No.[108]

The February 2010 Final Judgment in this case confirmed the State's unconstitutional underfunding with declaratory judgments that remained legally binding upon the State throughout its appeal.[109]

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[105] *McCleary, 173 Wn.2d at 542.*

[106] *McCleary, 173 Wn.2d at 505 & n.12 (citing Ex.124 at p.24, which in full provided a higher \$7.5-10.1 billion/biennium cost estimate without including other funding such as I-728 Student Achievement Funding).*

[107] *McCleary, 173 Wn.2d at 503n.10.*

[108] *CP 4798. As the Chairman of that Basic Education Finance Task Force study also confirmed in his sworn testimony in this case, that study was "basically the same" as the Paramount Duty committee he had served on as a State Legislator from 1982-1985. RP 1564:19-24. The State's Basic Education Finance Task Force Final Report is Ex.124; the State's Paramount Duty Committee Report is Ex.125. One other example of the State's repeated re-studying rather than full funding is the State's Washington Learns Report (Ex.16).*

[109] *See supra Parts I.A-I.B of this filing with respect to the declaratory judgments; see Plaintiffs' 2012 Post-Budget Filing at p.40 & nn.110-111 with respect to those declaratory judgments remaining legally binding during the appeal.*

The State's unconstitutional underfunding was then reiterated to the State again in this Court's January 2012 decision approximately 2½ years ago.[110] Unanimously affirming the February 2010 declaratory judgments, this Court held that substantial evidence showed the State "has failed to adequately fund the 'education' required by article IX, section 1", that "the State has consistently failed to provide adequate funding", and that this fact is so well known by the State that **"[w]e do not believe this conclusion comes as a surprise**."[111]

In short, the State's unconstitutional underfunding of its public schools is no surprise to State officials. This Court's decision being issued "only two years ago" does not excuse State officials' continued violation of court orders or punting what they were ordered to do until "maybe next year".

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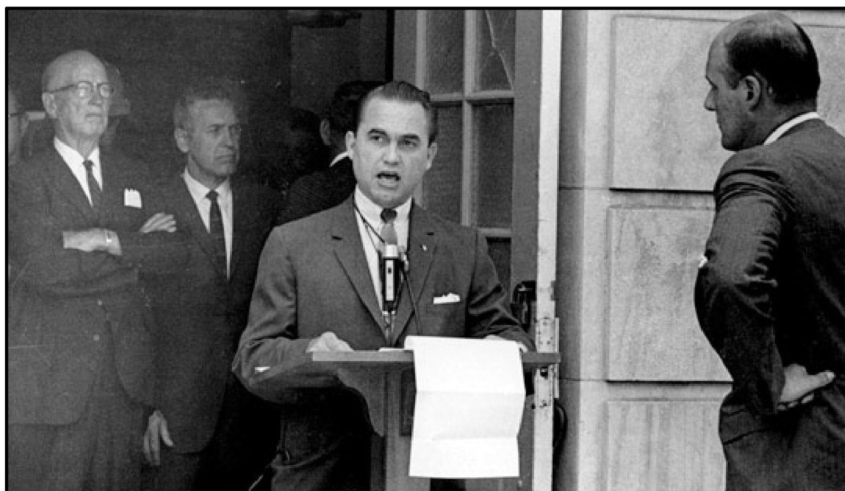
[110] *See supra Parts I.A-I.B of this filing.*

[111] *McCleary, 173 Wn.2d at 529 & 539 (underline and bold added, some internal quotation marks omitted).*

C. Veiled "Separation Of Powers" Threats Are Not An Excuse.



This is an "unwelcomed, unwanted, unwarranted and force-induced intrusion upon the campus of the University of Alabama.... There has been no legislative action...justifying this intrusion.... I stand here today, as Governor of this sovereign State, and refuse to willingly submit to illegal usurpation of power.... My action does not constitute disobedience to legislative and constitutional provisions. It is not defiance -- for defiance sake, but...a call for...a cessation of usurpation and abuses."

Governor George Wallace, June 11, 1963 (declaring why the State was declining to obey a court order that the constitution required the State to desegregate that public school)[112]

Although it omits the in-your-face separation of powers threats previously submitted by some legislators,[113] the State's 2014 filing

[112] *http://digital.archives.alabama.gov/utils/getfile/collection/voices/id/2050/filename/2051.pdf.*

[113] *E.g., several legislators' January 17, 2014 letter to the Supreme Court on* ***Washington State Legislature*** *letterhead stating, "After reviewing the court's 'order', we respectfully reject the court's attempt to wrongfully intrude upon the constitutional prerogatives of the legislative branch. ... The court lacks the authority to hold the Legislature in contempt of its [McCleary] decision and we the undersigned will not recognize any such order from the court. ... It is our sincere hope that you will not continue to perpetuate a constitutional crisis.... It is a crisis in which you will not prevail."); accord, Sen. Baumgartner's widely tweeted "pound sand" response to this Court's Order, available at http://www.seattlemet.com/news-and-profiles/publicola/articles/fizz-for-jan-16-januarytricky-2014.*

specifically calls this Court's attention to legislators' "significant debate over the separation of powers and the role of the judiciary", and cautions that this Court should not take measures that result "in a constitutional conflict that is counterproductive".[114] The State's 2014 filing then concludes that this Court should "give deep consideration to its response", should "not be counterproductive", and should "recognize that 2015 is the next and most critical year" for elected officials to comply.[115]

Separation of powers, however, does not excuse legislative or executive branch officials from having to comply with court orders or citizens' constitutional rights. To the contrary, powers are separated to <u>stop</u> – not shelter – government violations of constitutional rights.

After reviewing the defendant State's history of consistently failing to amply fund its public schools, this Court's January 2012 decision accordingly explained:

> What we have learned from experience is that this court cannot stand on the sidelines and hope the State meets its constitutional mandate to amply fund education. Article IX, section 1 is a mandate, not to a single branch of government, but to the entire state. We will not abdicate our judicial role.[116]

Noting the legislative branch's ongoing failures to provide the increased funding it had promised for matters such as MSOCs, all-day kindergarten,

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[114] *State's 2014 filing at attached Report, p.11.*
[115] *State's 2014 filing at attached Report, p.33.*
[116] *<u>McCleary</u>, 173 Wn.2d at 541 (internal citations omitted).*

K-3 class size reduction, and pupil transportation, this Court held that it "cannot idly stand by as the legislature makes unfulfilled promises", and concluded that: "Ultimately, it is our responsibility to hold the State accountable to meet its constitutional duty under article IX, section 1."[117]

Our government has an independent judiciary for a reason. As the filings in this case have previously explained, the judicial branch has the primary responsibility and duty to give force and effect to our Constitution.[118] This Court has accordingly declared in this case that one of its central roles is to serve as "a check on the activities of another branch" – even when "contrary to the view of the constitution taken by another branch."[119] The judicial branch's role (and duty) to serve as a check against another branch's constitutional violation is important – for as the U.S. Supreme Court has long recognized, if separation of powers gave elected officials a free pass to disregard constitutional rights when

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[117] *McCleary, 173 Wn.2d at 545-546. In this case, this Court is also enforcing what the State itself has promised. This Court did not make up the State's means of achieving constitutional compliance with Article IX, §1. Rather, it has accepted what the defendant State had promised in order to secure this Court's reversal of the trial court's remedy order (i.e., full funding of 2261, 2776, etc. by the school year ending in 2018). See supra page 8 and footnotes 23-25.*

[118] *Plaintiffs' 2013 Post-Budget Filing at pp.39-40, n.121 (discussing case law).*

[119] *McCleary, 173 Wn.2d at 515 [citing Seattle School District, 90 Wn.2d at 496; In re Juvenile Director, 87 Wn.2d 232, 241, 552 P.2d 163 (1976); U.S. v. Nixon, 418 U.S. 683, 703, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974); Marbury v. Madison, 5 U.S. (1 Cranch) 137, 176, 2 L.Ed. 60 (1803)]; see also State v. Rice, 174 Wn.2d 884, 900-901, 279 P.3d 849 (2012) (the constitutional division of government into three branches is for the protection of individuals against centralized authority and abuses of power); see also Plaintiffs' 2013 Post-Budget Filing at p.40, n.122 (discussing case law).*

politically expedient to do so, those rights "would be but impotent phrases", and "the constitution itself becomes a solemn mockery".[120]

Case law accordingly recognizes that when the legislative branch violates the constitution, "judicial action is entirely consistent with separation of powers principles and the judicial role".[121] As the Kansas Supreme Court succinctly reminded recalcitrant legislators in another education funding case,

> state courts consistently reaffirm their authority, indeed their duty, to engage in judicial review and, when necessary, ***compel*** the legislative and executive branches to conform their actions to that which the constitution requires.[122]

This Court's January 2012 decision accordingly declared (twice) that Article IX, §1 "imposes a ***judicially enforceable*** affirmative duty on the State".[123] This Court's January 2014 Order reminded the State (yet again): "Our decision in this case remains fully subject to judicial enforcement."[124]

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[120] *Cooper v. Aaron, 358 U.S. 1, 18, 78 S.Ct. 1401, 3 L.Ed.2d 5 (1958) (explaining that if elected officials could, at will, annul the judgment of a court and destroy the rights acquired under that judgment, "the constitution itself becomes a solemn mockery" and the rights guaranteed by the constitution "would be but impotent phrases") (internal quotation marks omitted); see also Plaintiffs' 2013 Post-Budget Filing at pp.42-43 & n.128 (discussing additional case law).*

[121] *Montoy v. Kansas, 112 P.3d 923, 930-931 (Kan. 2005); see also Plaintiffs' 2013 filing at pp.42-43 & n.127 (discussing case law).*

[122] *Montoy, 112 P.3d at 930 (bold italics added); see also Plaintiffs' 2013 Post-Budget Filing at pp.43-44 & n.129 (discussing case law).*

[123] *McCleary, 173 Wn.2d at 485 & 514 (bold italics added).*

[124] *January 2014 Order at p.8.*

Such enforcement is entirely consistent with separation of powers because powers are separated to ensure citizens the protection of an independent judiciary. Not onlooking by an irrelevant judiciary. And as this Court has long recognized, if a court does not enforce its orders and judgments, "it would then be nothing more than a mere advisory body."[125] As the prior filings in this case have detailed, courts accordingly do not hand a separation-of-powers pass to the other branches when they fail to comply with a court order to stop violating constitutional rights.[126]

In short: This Court's January 2014 Order was clear. The State's 2014 filing did not comply with that Order. Separation of powers does not give the State's continuing violation of court orders and constitutional rights a free pass until "maybe next year".

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[125] *Keller v. Keller, 52 Wn.2d 84, 88, 323 P.2d 231 (1958); see also Plaintiffs' 2013 Post-Budget Filing at p.44 & n.130 (discussing case law).*

[126] *See discussion of cases in Plaintiffs' 2013 Post-Budget Filing at pp.44-46 and Plaintiffs' 2012 Post-Budget Filing at pp.41-44.*

IV. THE VIGILANCE PROMISED BY THIS COURT REQUIRES CONCRETE COURT ACTION

"Like anyone else, the State is not free to walk away from judicial orders enforcing constitutional obligations."
New Jersey Supreme Court[127]

A. This Court's Promises To Washington Public School Children.

This Court's January 2012 decision promised that this Court will "remain vigilant in fulfilling the State's constitutional responsibility under article IX, section 1".[128] This Court assured students that "Article IX, section 1 confers on children in Washington a positive constitutional right to an amply funded education",[129] and that "Positive constitutional rights do not restrain government action; they require it."[130] This Court has also promised that "2018 remains a firm deadline for full constitutional compliance."[131]

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[127] *Abbott ex rel. Abbott v. Burke, 20 A.3d 1018, 1024 (N.J. 2011) (ordering State to fully fund School Funding Reform Act of 2008 after noting that the State was "reneging on the representations it made" to the court eariler).*

[128] *McCleary, 173 Wn.2d at 547; see also January 2014 Order at p.8 ("This court also made a promise to the school children of Washington: We will not 'idly stand by as the legislature makes unfulfilled promises for reform.'") (quoting McCleary, 173 Wn.2d at 545).*

[129] *McCleary, 173 Wn.2d at 483 (underline added).*

[130] *McCleary, 173 Wn.2d at 518-519 (underline added) ("This distinction between positive and negative constitutional rights is important because it informs the proper orientation for determining whether the State has complied with its article IX, section 1 duty in the present case. ... [A]nalyzing positive constitutional rights ... the court is concerned not with whether the State has done too much, but with whether the State has done enough. Positive constitutional rights do not restrain government action; they require it.").*

[131] *December 2012 Order at p.2 (underline added).*

B. <u>Urgency: Washington Schoolchildren Need This Court To Enforce Their Constitutional Right To An Amply Funded Education *Before* They Leave School.</u>

> *"[I]t's not enough to tell [the] parents [of last years's fourth-graders] that our schools will do better with next year's first and second graders. Last year's fourth-graders need help now – and so do this year's second, third, and fourth-graders."*
>
> *Washington Governor Gary Locke*
> *1998 State of the State Address*
> *(Ex.580, p.50, 2nd para., underline added)*

Kids in the Class of 2018 have been waiting a long time. They were in **1st grade** when this suit was filed. **4th grade** when the declaratory judgments were entered against the State. **6th grade** when this Court affirmed those declaratory judgments. **7th grade** the first time the 63rd Legislature failed to comply with this Court's Orders. **8th grade** the second time the 63rd Legislature failed to comply with this Court's Orders. And will be in **High School** next year.

The State's stalling and delay may work out fine for State officials. But for the children continuing through the State's public schools, each year of amply funded education delayed is a year of amply funded education forever lost. As the State Board of Education's Mary Jean Ryan succinctly put it during the trial of this case: "The 1 million children in our state's public schools can ill afford more delay. They get only one shot at their education."[132]

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[132] *Ex.238, last paragraph; RP 2431:9-20. This Court's December 2012 Order likewise noted that "Each day there is a delay risks another school year in which*

This Court's January 2014 Order clearly reiterated the urgency at hand: "The need for immediate action could not be more apparent", and "it is clear that the pace of progress must quicken."[133]

Unfortunately, the State's 2014 filing confirmed that State officials still do not sense that urgency. Washington schoolchildren therefore need this Court to enforce their constitutional right to an amply funded education – and to do so before it's too late for them.

C. This Court Should Take Concrete Action To Stop The State's Ongoing Violation Of Court Orders & Constitutional Rights.

> *"While we recognize that the issue is complex and no option may prove wholly satisfactory, this is not a reason for the judiciary to throw up its hands and offer no remedy at all. Ultimately, it is our responsibility to hold the State accountable to meet its constitutional duty under article IX, section 1."*
>
> *This Court's January 2012 decision, 173 Wn.2d at 546.*

This Court clearly explained the significance of Article IX, §1 conferring on Washington school children a ***positive*** constitutional right to an amply funded education:

> This distinction between positive and negative constitutional rights is important because it informs the proper orientation for determining whether the State has complied with its article IX, section 1 duty in the present case. .... Positive constitutional rights do not restrain government action; they require it.[134]

Washington children are denied the constitutionally adequate education that is the State's paramount duty to provide." December 2012 Order at pp.2-3.

[133] *January 2014 Order at p.8 (underlines added).*

[134] *McCleary, 173 Wn.2d at 518-519.*

And that in turn "requir[es] the court to take a more active stance in ensuring that the State complies with its affirmative constitutional duty."[135] This Court accordingly assured every child in our State's public schools that this Court would not just "stand on the sidelines and *hope* the State meets its constitutional mandate to amply fund education."[136]

This is not the first time a State has failed to timely comply with court orders upholding the constitutional rights of school children. And as the defendant in this case knows from last year's court filings, the courts in such <u>other</u> States find such foot-dragging unacceptable.[137] The *McCleary* plaintiffs respectfully submit that State foot-dragging should be unacceptable in <u>our</u> State as well.

The defendant in this case has been given many years (in fact, decades) to comply with court rulings requiring it to amply fund its K-12 public schools. Plaintiffs respectfully submit that this Court should take concrete action to do more than stand on the sidelines rooting for a better result "maybe next year".

The State knows from the prior filings in this case that its failure to comply with a court order is contempt,[138] and that courts consistently

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[135] *<u>McCleary</u>, 173 Wn.2d at 519.*
[136] *<u>McCleary</u>, 173 Wn.2d at 541 (italics added).*
[137] *See the cases discussed in Plaintiffs' 2013 Post-Budget Filing at pp.39-48.*
[138] *Plaintiffs' 2013 Post-Budget Filing at pp.47-48 & nn.144-145 (discusssing statutes and case law).*

impose sanctions against branches of government that fail to comply with a court order enforcing constitutional rights.[139] The State also knows from those filings that examples of court sanctions and enforcement orders include:

- holding the governmental body or elected officials in contempt of court;[140]
- imposing monetary or other contempt sanctions against the governmental body or elected officials;[141]
- prohibiting expenditures on certain other matters until the court's constitutional ruling is complied with;[142]
- ordering the legislature to pass legislation to fund specific amounts or remedies;[143]
- ordering the sale of State property to fund constitutional compliance;[144]
- invalidating education funding cuts to the budget;[145] and
- prohibiting any funding of an unconstitutional education system (put bluntly: shutting down the school system unless the constitutional violation is stopped).[146]

This Court's January 2014 Order unequivocally explained that:

> The legislature is embarking on a short session in 2014, where it has an opportunity to take a significant step forward. ... The need for immediate action could not be more apparent.[147]

[139] *Plaintiffs' 2013 Post-Budget Filing at pp.45-46 (discussing case law).*
[140] *Plaintiffs' 2013 Post-Budget Filing at p.45 & n.134 (discussing case law).*
[141] *Plaintiffs' 2013 Post-Budget Filing at p.45 & n.135 (discussing case law).*
[142] *Plaintiffs' 2013 Post-Budget Filing at pp.45-46 & n.136 (discussing case law).*
[143] *Plaintiffs' 2013 Post-Budget Filing at p.46 & n.137 (discussing case law).*
[144] *Plaintiffs' 2013 Post-Budget Filing at p.46 & n.139 (discussing case law).*
[145] *Plaintiffs' 2013 Post-Budget Filing at p.46 & n.140 (discussing case law).*
[146] *Plaintiffs' 2013 Post-Budget Filing at pp.46-47 & n.141 (discussing case law).*
[147] *January 2014 Order at p.8.*

Then it issued a clear warning which left no doubt that the State's continued failure to comply with this Court's Orders would result in a holding of contempt, sanctions, or other appropriate judicial enforcement:

> Our decision in this case remains fully subject to judicial enforcement.
>
> We have no wish to be forced into entering specific funding directives to the State, or, as some state high courts have done, holding the legislature in contempt of court. But, it is incumbent upon the State to demonstrate, through immediate, concrete action, that it is making real and measurable progress, not simply promises. Toward that end, it is hereby ordered: the State shall submit, no later than 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. This plan must address each of the areas of K-12 education identified in ESHB 2261, as well as the implementation plan called for by SHB 2776, and must include a phase-in schedule for fully funding each of the components of basic education. We recognize that the April 30, 2014 deadline shortens the time for the State's report, but it is clear that the pace of progress must quicken.[148]

The only way this Court could have been clearer would have been for it to add: "And we really mean it."

But saying "we really mean it" shouldn't be necessary. This Court clearly stated what the State was required to do to avoid a holding of contempt and strong enforcement orders. Yet the State's 2014 filing shows the State sensed no urgency to do what this Court had ordered.

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[148] *January 2014 Order at p.8.*

Plaintiffs' respectfully submit that the school children of our State need this Court to create that urgency by following through and firmly enforcing its rulings in this case. Strike one was bad. Strike two was worse. But strike three is completely unacceptable if court orders or constitutional rights matter in this State. Plaintiffs submit that at the very least, this Court should accordingly:

- Hold the legislature in contempt of court at least until the State fully complies with the Court Orders in this case.
- Enjoin the State from digging the unconstitutional underfunding hole deeper by imposing any more unfunded or underfunded mandates on its schools.[149]
- Declare that if the State does not fully comply with this Court's January 2014 Order by December 31, 2014, this Court will in January 2015 issue strong judicial enforcement orders (such as those by other courts noted above) in order to compel the State to comply with this Court's Orders and with Washington childrens' positive constitutional right to an amply funded eduction.

V. CONCLUSION

This Court's January 2014 Order noted the important "message" that the 2014 session's failure to take significant concrete action would send.

[149] *Part of ESHB 2261's "promising" reform was its assurance that no new requirements would be imposed on school districts without an accompanying increase in resources. Laws of 2009, ch. 548, §112(1) (ESHB 2261). Yet as the prior filings in this case confirm, the State has done otherwise – imposing additional costs on its public schools without corresponding funding. Plaintiffs' 2013 Post-Budget Filing at pp.15-16.*

Plaintiffs respectfully submit that this Court's now failing to take significant concrete action would send an important message as well. It would teach Washington school children and their parents that court orders and constitutional rights don't really matter in our State. That a kid's constitutional right isn't really a right – just a nice sounding platitude. That elected officials don't have to obey the constitution – they're above it. That court orders aren't a mandate – just a suggestion. And that our courts don't hold <u>all</u> citizens accountable to obey the law – just those citizens who don't have an official government title like "senator" or "representative".

Plaintiffs, however, believe court orders and constitutional rights matter. They accordingly request that this Court take the type of firm, concrete action explained in Part IV.C above to compel the State's compliance (1) with the Court Orders in this case, and (2) with all Washington children's positive constitutional right to an amply funded education by no later than the <u>firm</u> 2017/2018 school year deadline this Court set for <u>full</u> constitutional compliance.

RESPECTFULLY SUBMITTED this 21st day of May, 2014.

Foster Pepper PLLC

s/ Thomas F. Ahearne

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Attorneys for Plaintiffs McCleary Family, Venema Family, and Network for Excellence in Washington Schools (NEWS)

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 Wednesday, May 21, 2014, I caused PLAINTIFF/RESPONDENTS' 2014 POST-BUDGET FILING to be served as follows:

William G. Clark Office of the Attorney General 800 Fifth Avenue, Suite 2000 Seattle, WA 98104-3188 billc2@atg.wa.gov *Defendant State of Washington*	☒ Via Electronic Mail (cc of the same email sent to the Supreme Court for the filing of this 2014 POST-BUDGET FILING) ☒ Via U.S. First Class Mail
David A. Stolier, Sr. Alan D. Copsey Office of the Attorney General 1125 Washington Street SE Olympia, WA 98504-0100 daves@atg.wa.gov alanc@atg.wa.gov *Defendant State of Washington*	☒ Via Electronic Mail (cc of the same email sent to the Supreme Court for the filing of this 2014 POST-BUDGET FILING) ☒ Via U.S. First Class 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 21st day of May, 2014.

s/ Adrian Urquhart Winder
Adrian Urquhart Winder