

2-14-2007

## Answer to Petition for Declaratory Judgment Enforcing Our Constitution 07-2-02323-2-7

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KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA.

THE HONORABLE PARIS K. KALLAS

STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

MATHEW & STEPHANIE  
McCLEARY, on their own 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,

Petitioners,

v.

STATE OF WASHINGTON,

Respondent.

NO. 07-2-02323-2 SEA

ANSWER TO PETITION FOR  
DECLARATORY JUDGMENT  
ENFORCING OUR CONSTITUTION

ANSWER

Respondent State of Washington (hereinafter respondent), by and through its  
undersigned counsel of record, hereby answers petitioners' Petition for Declaratory Judgment

1 Enforcing Our Constitution (hereinafter Petition). Topical headings from the Petition are  
2 reproduced for ease of reference only.

3 Respondent admits, denies and alleges as follows:

4 **Summary of This Suit**

5 1. Answering paragraph 1 of the Petition, respondent alleges that the paragraph  
6 contains legal conclusions, argument and self-serving opinions to which no answer is  
7 required. To the extent the paragraph has factual allegations to which an answer may be  
8 required, respondent denies such allegations. Furthermore, while respondent admits that  
9 petitioners seek the relief stated in section 1 paragraph 4 of petitioners' Petition, respondent  
10 denies that it has breached any constitutional obligations with respect to the funding of  
11 education in the State of Washington and denies that petitioners are entitled to the requested  
12 relief.

13 **Parties**

14 2. Petitioner Parents and Children: Answering paragraph 2 of the Petition,  
15 respondent is without knowledge or information sufficient to form a belief as to the truth of the  
16 allegations about these petitioners' identities, interests and the alleged satisfaction of  
17 conditions precedent to bringing this suit. Therefore, respondent denies this paragraph and  
18 denies that the State has failed to comply with its constitutional obligations.

19 3. Petitioner Network for Excellence in Washington Schools ("NEWS"):  
20 Answering paragraph 3 of the Petition, respondent is without knowledge or information  
21 sufficient to form a belief as to the truth of the allegations contained in this paragraph and,  
22 therefore, denies the same.

23 4. Respondent State of Washington: Answering Paragraph 4 of the Petition, the  
24 State of Washington admits it is the named respondent and that it complies with the laws of  
25 that State, including Article IX of the Washington State Constitution. Respondent further  
26

1 admits that it provides the public schools in Washington State with funds for education.  
2 Respondent denies each and every other allegation of paragraph 4 of the Petition..

3 **Jurisdiction & Venue**

4 5. Answering paragraph 5 of the Petition, respondent admits that petitioners  
5 purport to state a claim for violations of constitutional duties over which this Court can  
6 exercise jurisdiction. However, respondent denies that this Court has jurisdiction to direct the  
7 way that the State must comply with its constitutional obligations or to order any of the  
8 specific relief requested by petitioners.

9 6. Answering paragraph 6 of the Petition, respondent incorporates by reference  
10 herein its answer to paragraph 5 above. Respondent denies each and every other allegation in  
11 this paragraph.

12 7. Respondent admits the allegations contained paragraphs 7 and 8 of the Petition.

13 **Background**

14 **Article IX's Education Mandate**

15 8. Answering paragraph 9 of the Petition, respondent states that article IX,  
16 section 1 of the Constitution speaks for itself and denies every further and contrary allegation  
17 in this paragraph..

18 9. Answering paragraph 10, respondent is without knowledge or information  
19 sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the  
20 Petition and, therefore, denies the same.

21 10. Answering paragraphs 11 through 19 of the Petition, respondent admits that  
22 Article IX of the Washington Constitution and the Court's decision in *Seattle School District*  
23 *No. 1 v. State*, 90 Wn.2d 476 (1978), speak for themselves and that respondent has complied  
24 with the constitution and the Supreme Court's construction of the constitution. Respondent  
25  
26

1 denies any contrary allegation contained in these paragraphs and denies each and every other  
2 allegation in paragraphs 11 through 19.

3 **Importance of Article IX's Education Mandate**

4 11. Respondent admits the allegation in paragraph 20.

5 12. Answering the allegations in paragraphs 21 through 23 of the Petition,  
6 respondent admits it is aware of, and complies with, its constitutional duties and that  
7 compliance with them is important. Respondent denies each and every other allegation in  
8 these paragraphs.

9 **Thirty Years of Good Intentions**

10 13. Answering paragraphs 24 through 28 of the Petition, respondent admits that the  
11 paragraphs appear to contain excerpts from past speeches the petitioners attribute to certain  
12 former Washington Governors. Respondent denies petitioners' characterizations of these  
13 speeches and denies each and every other allegation in paragraphs 24 through 28.

14 **State Defines Basic Education Under Article IX**

15 14. Answering paragraph 29 of the Petition, respondent admits that the Basic  
16 Education Act (RCW 28A.150) was enacted, in part, to fulfill the State legislature's  
17 constitutional responsibility and the legislature's exclusive prerogative to define and fund basic  
18 education. Respondent denies each and every other allegation of paragraph 29.

19 15. Answering paragraph 30 of the Petition, respondent admits that RCW  
20 28A.150.210 speaks for itself. Respondent denies that the excerpt of that statute quoted in  
21 paragraph 30 is accurate, complete or correctly characterized by petitioners and denies each  
22 and every other allegation contained in this paragraph.

23 16. Answering paragraph 31 of the Petition, respondent admits that RCW 28A.150  
24 was adopted after careful and deliberate study. Respondent denies the other allegations in this  
25 paragraph.

1 17. Respondent denies the allegations of paragraph 32 of the Petition.

2 18. Answering paragraph 33 of the petition, respondent admits that the language  
3 quoted in the paragraph pertains to the stated goal of the Basic Education Act: to provide  
4 students with “the opportunity” to become the persons described in the quote. Respondent  
5 denies each and every other allegation in this paragraph.

6 19. Answering paragraph 34 of the Petition, respondent admits that the goal of the  
7 Basic Education Act is to provide Washington students with “the opportunity” as stated in  
8 RCW 28A.150.210. Respondent denies each and every other allegation of this paragraph.

9 20. Answering paragraph 35 of the Petition, respondent admits that the State has  
10 established Essential Academic Learning Requirements (“EALRs”) which describe learning  
11 standards for students in grades K-10 and denies the other allegations in this paragraph.

12 21. Answering paragraph 36 of the Petition, respondent admits the same.

13 22. Answering paragraph 37 of the Petition, respondent admits that EALRs are part  
14 of instruction required for Washington students, but denies the other allegations in this  
15 paragraph.

16 **State’s Failure to Fully Fund Basic Education Under Article IX**

17 23. Respondent denies the allegations in paragraphs 38 through 66 of the Petition.

18 24. Answering paragraphs 67 through 69 of the Petition, respondent admits that the  
19 statements made in these paragraphs appear in the November 2006 Washington Learns Report,  
20 but denies each and every other allegation in these paragraphs.

21 25. Answering paragraphs 70 through 72 of the Petition, respondent admits that the  
22 statements in quotes appear in the November 2006 Washington Learns report, but denies each  
23 and every other allegation in these paragraphs.

24 26. Answering paragraph 73 of the Petition, respondent admits the same.  
25  
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1 27. Answering paragraph 74 of the Petition, respondent admits that the WASL has a  
2 high degree of reliability, but denies each and every other allegation in this paragraph.

3 28. Answering paragraphs 75 and 76 of the Petition, respondent admits the same.

4 29. Respondent denies the allegations in paragraphs 77 through 86 of the Petition.

5 30. Answering paragraph 87 of the Petition, respondent admits that RCW  
6 28A.150.220 calls for instruction that includes the EALRs, but denies the other allegations in  
7 this paragraph.

8 31. Respondent denies the allegations in paragraph 88 of the Petition.

9 **State's November 2006 Washington Learns Report**

10 32. Answering paragraphs 89 and 90 of the Petition, respondent admits that the  
11 State has authorized and/or commissioned a number of education studies, including the  
12 Washington Learns study described in E2SSB 5441. Respondent denies petitioners'  
13 characterizations of these studies and every other allegation in these paragraphs.

14 33. Answering paragraph 91 of the Petition, respondent admits that the intent of the  
15 legislation authorizing Washington Learns was to provide a thoughtful and thorough  
16 evaluation of Washington's education system. Respondent denies each and every other  
17 allegation in this paragraph.

18 34. Respondent denies paragraph 92 of the Petition.

19 35. Respondent admits that \$740,816.00 was paid the consultant that conducted the  
20 Washington Learns study and denies each and every other allegation in paragraph 93 of the  
21 Petition.

22 36. Respondent denies the allegations in paragraph 94 of the Petition.

23 37. Answering paragraph 95 of the Petition, respondent admits that the November  
24 2006 Washington Learns report deferred specific funding model recommendations until  
25 December 1998, but denies each and every other allegation in this paragraph.

26

1 38. Answering paragraph 96 and 97 of the Petition, respondent admits that the  
2 Washington Learns minority report section does contain some of the quoted, excerpted  
3 statements reflected in these paragraphs of the Petition. Respondent denies the  
4 characterization of the minority position, however, and denies the other allegations contained  
5 in paragraph 96 and 97.

6 39. Respondent denies paragraph 98 of the Petition.

7 **Declaratory Judgment Claim**

8 40. Respondent denies paragraphs 99 through 108 of the Petition and further denies  
9 that petitioners are entitled to the declaratory judgment requested.

10 41. Further answering the Petition and, more specifically, the Relief Requested  
11 section, respondent denies the petitioners are entitled to the judgment or other relief requested  
12 therein.

13 42. Respondent further denies each and every part of the Petition not previously or  
14 specifically addressed in this Answer.

15 **AFFIRMATIVE DEFENSES**

16 By Way of FURTHER ANSWER and FIRST AFFIRMATIVE DEFENSE, respondent  
17 alleges that in carrying out its constitutional duties, the Washington State Legislature  
18 possesses the exclusive discretion to determine what program and what level of funding are  
19 necessary and appropriate in order to meet its constitutional obligations and that the current  
20 law meets those constitutional obligations.

21 By Way of FURTHER ANSWER and SECOND AFFIRMATIVE DEFENSE,  
22 respondent alleges that Washington school districts can provide an adequate program of  
23 education as defined by the Washington State Legislature for all students with the funding  
24 provided by the Washington State Legislature.  
25  
26



1 By Way of FURTHER ANSWER and THIRD AFFIRMATIVE DEFENSE,  
2 respondent alleges that school districts expend significant funds due to the provision of  
3 constitutionally unnecessary programs and services and/or that school districts expend  
4 significant funds on matters of local district choices, local district philosophies and local  
5 district accounting practices.

6 By Way of FURTHER ANSWER and FOURTH AFFIRMATIVE DEFENSE,  
7 RESPONDENT ALLEGES that only the state legislature has the right and responsibility to  
8 define and fund basic education for Washington's students. Neither the petitioners herein nor  
9 the courts can intrude on that exclusive, legislative responsibility.

10 By Way of FURTHER ANSWER and FIFTH AFFIRMATIVE DEFENSE,  
11 respondent alleges that this Court lacks jurisdiction to award any relief to petitioners other  
12 than a simple declaration that the State is, or is not, complying with its constitutional duties.  
13 The means of satisfying its constitutional duties rest exclusively with the legislature.

14 By Way of FURTHER and SIXTH AFFIRMATIVE DEFENSE, respondent alleges  
15 that some or all of the petitioners lack standing to bring this suit.

16 By Way of FURTHER ANSWER and SEVENTH AFFIRMATIVE DEFENSE,  
17 respondent alleges that the petitioners have failed to state a claim for which relief may be  
18 granted.

19 By Way of FURTHER ANSWER and EIGHTH AFFIRMATIVE DEFENSE,  
20 petitioners have each failed to satisfy conditions precedent to establishing that the state has  
21 failed to meet its constitutional obligations.

22 **PRAYER FOR RELIEF**

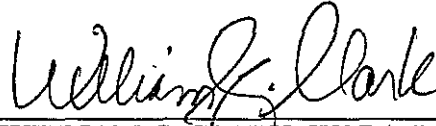
23 WHEREFORE, having fully answered the Petition, respondent prays:

- 24 1. That the Petition be dismissed with prejudice;  
25 2. For an award of costs and attorneys fees as authorized by law; and  
26

3. For such other and further relief as the Court deems appropriate.

DATED this 14<sup>th</sup> day of February, 2007.

ROBERT M. MCKENNA  
Attorney General



WILLIAM G. CLARK, WSBA # 9234  
Assistant Attorney General  
DIERK MEIERBACHTOL, WSBA #31010  
Assistant Attorney General  
Attorneys for Respondent

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1 **PROOF OF SERVICE**

2 I certify that I served a copy of this document on all parties or their counsel of record  
3 on the date below as follows:

4  US Mail Postage Prepaid via Consolidated Mail Service


5  ABC/Legal Messenger

6  State Campus Delivery

7  Hand delivered by \_\_\_\_\_

8 I certify under penalty of perjury under the laws of the state of Washington that the  
9 foregoing is true and correct.

10 DATED this 14<sup>th</sup> day of February, 2007, at Seattle, Washington

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13 AGNES ROCHE  
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