

6-29-2007

Declaration of William G. Clark in Opposition to Protective Order Preventing Discovery, in Support of Order Compelling Discovery and in Compliance with CR26(i) and KCLR 37 07-2-02323-2-31

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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

DECLARATION OF WILLIAM G.
CLARK IN OPPOSITION TO
PROTECTIVE ORDER
PREVENTING DISCOVERY, IN
SUPPORT OF ORDER
COMPELLING DISCOVERY AND
IN COMPLIANCE WITH CR26(i)
AND KCLR 37

I, WILLIAM G. CLARK, declare as follows:

1. I am one of the attorneys representing Respondent State of Washington and testify to the matters herein based on my personal knowledge.

2. On April 20, 2007, Respondent served its first discovery requests in this case. The set was comprised of 30 document requests, the majority of which requested documents

1 that refer or relate to contentions asserted by Petitioners in their pleadings. On May 21, 2007,
2 Respondent served blanket objections to every document request and refused to provide
3 responsive documents. A copy of our discovery requests and Petitioners' objections are
4 attached as Exhibits 1 and 2.

5 3. One of the objections raised was that all requested discovery was unnecessary
6 because Petitioners expect to prevail on a pending summary judgment motion. That motion,
7 however, was continued by the Court to August 24, 2007. Under Petitioners' proposed
8 Protective Order, when Petitioners lose their Motion, Respondent will not begin to get
9 responsive documents until September, at the earliest, which means that my client will lose
10 nine months of the time allowed for discovery. Instead of beginning depositions this Spring as
11 planned, Respondent will have to wait until the late Fall. This stay of discovery will reduce the
12 discovery period under the current schedule from seventeen months to eight months.

13 4. The second objection is based on work product allegations. Petitioners' counsel
14 has stated that the identification and production of responsive documents that "refer or relate"
15 to Petitioners' liability and remedy claims will reveal what their lawyers believe are important
16 documents, thereby revealing mental impressions. Therefore, they offer to point out websites
17 and other potential sources of documents—all of which contain publicly available materials—
18 but will not specify or categorize responsive documents they have gathered from public
19 websites and third parties, as required by CR 34.

20 5. The final broad objection is a boilerplate claim that all the requests are overly
21 broad and burdensome. In their Motion for Protective Order, they raise the specter that, based
22 upon information gleaned from two out-of-state challenges to the adequacy of education
23 funding, discovery in school funding cases can be very complex and expensive. Petitioners,
24 however, do not specify or provide facts that establish what burden they would have in
25 responding to straight-forward document requests that are tied to contentions they make in
26

1 their pleadings. As they claim the only responsive documents they have are from the State or
2 third parties—that they have no documents of their own—no burden exists.

3 6. When the Court continued the pending summary judgment motion, it ordered
4 the parties to meet and confer about Respondent’s discovery requests. We met at Petitioners’
5 counsels’ offices on June 12. I emailed opposing counsel on June 8, outlining the issues for
6 discussion. A copy of this email is attached as Exhibit 3. At that meeting, we reviewed the
7 objections and each of our requests. Opposing counsel represented that all documents
8 Petitioners had, that were responsive to our discovery, had been obtained from the numerous
9 public disclosure requests Petitioners had made in 2006 and 2007—before this litigation
10 began—and from State-sponsored websites. The only exceptions were the Washington
11 Education Association’s study, referred to in the Petition and in Petitioners’ summary
12 judgment pleadings, and some material counsel had obtained from third-party websites and
13 electronic services dealing with national education funding issues. Counsel claimed that
14 Petitioners had no other documents in their custody or control.

15 7. In the meeting, I reiterated that our discovery was designed to obtain whatever
16 documents they believe supported or related to the broad allegations in the Petition. I pointed
17 out that the documents they were holding back were not work product documents, particularly
18 materials obtained from public disclosure requests and websites. Counsel responded by saying
19 that even identifying these documents on a privilege log would reveal mental impressions.
20 When I pointed out that they would have to produce this alleged work product as potential trial
21 exhibits or otherwise disclose them if they intended to use them to prove their case, Counsel
22 responded they would disclose documents under the schedule for exchange of exhibits. I
23 stated it was not satisfactory to sit on documents until that time because Respondent had the
24 right to discover, well in advance of trial, what Petitioners had for evidence in this case.

25 8. At the close of the June 12 meeting, I requested that Petitioners reconsider their
26 objections to 27 of our 30 requests, particularly 12 of the document requests that were directed

1 at specific allegations made in the Petition (Nos. 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 26 and
2 27). I did not agree to limit our discovery to those requests. I did not agree to revise, modify
3 or withdraw these requests. Indeed, I identified several others (Nos. 4, 5, 6, 7, 13, 16 and 19)
4 that also related to contentions made by Petitioners in this case, that I asked them to reconsider
5 and produce responsive documents. If Petitioners claim they are no longer making these
6 contentions (or never were), they can so indicate and remove that contention from the case.

7 9. Of our outstanding discovery, I agreed no further response was necessary to
8 three of our requests: Nos. 22 and 23 (related to experts) and No. 28 (media statements). We
9 want and expect full and complete responses to all 27 of our remaining document requests.

10 10. Our document requests relate to several relevant topics:

11 a. Request Nos. 1 to 3 relate to Petitioners' claim that ample funding is not
12 provided by Washington, that Washington has never analyzed the cost of basic education and
13 request studies that Petitioners contend do analyze such costs for Washington or other states.

14 b. Request No. 8 relates to the WEA-sponsored study discussed in the
15 Petition, and attached to, Petitioners' summary judgment pleadings.

16 c. Request Nos. 20 and 21 relate to communications between Petitioners
17 and the State regarding state-provided education funding and the process whereby Washington
18 funds education—both issues raised in the Petition as germane to liability and remedy.

19 d. Request No. 24 asks for documents about the formation and business of
20 Petitioner NEWS.

21 11. As mentioned above, the other document requests at issue (Nos. 4 through 7, 9
22 through 19, 24 through 27, and 29 and 30) address specific contentions that Petitioners have
23 interjected in the case.

24 12. We had a second telephonic discussion on June 15, but reached no agreement.
25 Petitioners declined to reconsider or withdraw their objections to any of our document requests
26 and adhered to their three general objections: (1) work product; (2) the documents are not

1 relevant until they lose their summary judgment motion; and (3) production would be too
2 burdensome. They committed to bring a Motion for Protective Order, but did not do so until
3 June 25.

4 13. On the afternoon of June 27, Petitioners supplemented their discovery
5 responses. They produced a few documents responsive to Request No. 24 (the formation and
6 business of NEWS). Otherwise, they claimed that we agreed to revise certain requests and that
7 they assume we will wait for others until after the summary judgment motion is denied. We
8 did not agree to these propositions. We agreed that the parties should promptly bring these
9 disputes to the Court's attention for resolution.

10 14. In our opposition to Petitioners' Motion for Summary Judgment, filed on
11 May 21, we briefed and provided counsel's Declaration that discussed why the requested
12 discovery is needed to defeat summary judgment. Though Petitioners' claim that the adequacy
13 of funding for education is irrelevant, the allegations of constitutional violations and the
14 remedy requested by Petitioners are inseparable from contentions that the State is not amply
15 funding basic education. Petitioners cannot claim that this Court should order the State to
16 study how much, and by what funding sources, to fund education, with guaranteed student
17 outcomes a constitutional requirement, and claim, at the same time, that funding adequacy is
18 irrelevant to the case.

19 15. What Petitioners really want is to prevent Respondent from conducting any
20 discovery until later this year when their summary judgment motion is denied. It is not about if
21 they will provide the requested documents, but when.

22 16. Petitioners also want court permission to avoid their responsibilities to produce
23 documents in compliance with Civil Rule 34. That rule requires Petitioners to organize and
24 produce documents according to the specific categories requested or as they are kept in the
25 ordinary course of business. The Rule is not satisfied by listing websites or other potential
26 sources of documents that may contain responsive materials. If Petitioners have downloaded

1 or made copies of specific documents that are responsive to our requests, they must be
2 produced specifically in compliance with CR 34. Compliance with discovery obligations is not
3 satisfied, for example, by pointing out that the library has responsive books and that
4 Respondent can go find them for themselves. The Civil Rules do not permit Petitioners to bury
5 responsive materials under unresponsive documents.

6 17. By the time the Court decides this discovery motion, Respondent will have lost
7 several months of the discovery period. We need the requested documents now to conduct
8 further discovery, including party depositions tentatively scheduled for mid-July, as well as to
9 prepare for the August 24 summary judgment hearing. If the Court allows Petitioners to delay
10 this discovery further, then the Court should strike the current pretrial schedule and trial date
11 and order a pretrial conference with counsel under CR 16 to reset all deadlines, including a
12 new trial date, to compensate Respondent for opportunities and time lost due to Petitioners'
13 refusal to conduct discovery.

14 18. A proposed Order denying Protective Order and compelling discovery is
15 provided with these pleadings.

16 WILLIAM G. CLARK declares under penalty of perjury of the laws of the state of
17 Washington that the foregoing is true and correct.

18 SIGNED this 29th day of June, 2007, at Seattle, Washington.

19 
20 _____
21 WILLIAM G. CLARK
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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 _____
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9 I certify under penalty of perjury under the laws of the state of Washington that the
10 foregoing is true and correct.

11 DATED this 29th day of June, 2007, at Seattle, Washington.

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15 AGNES ROCHE

EXHIBIT 1

COPY RECEIVED
By _____ Time _____

APR 20 2007

FOSTER PEPPER PLLC

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

RESPONDENT'S FIRST
REQUESTS FOR PRODUCTION
TO ALL PETITIONERS

TO: ALL PETITIONERS

AND TO: THOMAS F. AHEARNE and RAMSEY RAMERMAN of Foster Pepper LLC,
Their Attorneys

COPY

1 **REQUEST FOR PRODUCTION NO. 1:** Produce all documents that support,
2 negate, refer or relate to the contention that respondent does not provide ample funding for the
3 education of Washington's school children.

4 **RESPONSE:**
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9 **REQUEST FOR PRODUCTION NO. 2:** Produce all documents that study or
10 analyze the cost of providing education to Washington's school children.

11 **RESPONSE:**
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16 **REQUEST FOR PRODUCTION NO. 3:** Produce all documents that refer or relate
17 to studies or analyses of the cost of providing education to Washington's school children.

18 **RESPONSE:**
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23 **REQUEST FOR PRODUCTION NO. 4:** Produce all documents that support,
24 negate, refer or relate to your contention that respondent has not determined the cost of
25 providing education to Washington's school children.
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RESPONSE:

REQUEST FOR PRODUCTION NO. 5: Produce all documents that support, negate, refer or relate to your contention that Washington has not provided stable, regular and reliable sources of funding for the education of Washington's school children.

RESPONSE:

REQUEST FOR PRODUCTION NO. 6: Produce all documents that support, negate, refer or relate to your contention that respondent does not provide the funding needed to provide Washington school children with the opportunity to meet the goals stated in RCW 28A.150.210.

RESPONSE:

1 **REQUEST FOR PRODUCTION NO. 7:** Produce all documents that support,
2 negate, refer or relate to the contention that respondent does not provide the funding needed to
3 meet the standards expressed in the Essential Academic Learning Requirements ("EALRS").

4 **RESPONSE:**
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9 **REQUEST FOR PRODUCTION NO. 8:** Produce all documents that refer or relate
10 to the study "Washington Adequacy Funding Study 2007", dated January 2007 and conducted
11 by the Educational Policy Improvement Center and/or Dr. David Conley.

12 **RESPONSE:**
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17 **REQUEST FOR PRODUCTION NO. 9:** Produce all documents that support,
18 negate, refer or relate to the contention in paragraph 100 of the Petition that the Washington
19 Legislature has recognized that Article IX requires the State to ensure that each child receives
20 the broad education described by the state Supreme Court in paragraph 13 of the Petition.

21 **RESPONSE:**
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1 **REQUEST FOR PRODUCTION NO. 10:** Produce all documents that support,
2 negate, refer or relate to the contention in paragraph 101 of the Petition that the Washington
3 Legislature has defined basic education to include the statutory provisions quoted in paragraph
4 30 of the Petition and the resulting EALR requirements noted in paragraph 36 of the Petition.

5 **RESPONSE:**
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10 **REQUEST FOR PRODUCTION NO. 11:** Produce all documents that support,
11 negate, refer or relate to the contention in paragraph 102 of the Petition that the legislature has
12 defined the minimum content of education required by Article IX of the state Constitution in
13 establishing the provisions and requirements noted in paragraphs 30 and 36 of the Petition.

14 **RESPONSE:**
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19 **REQUEST FOR PRODUCTION NO. 12:** Produce all documents that support,
20 negate, refer or relate to the contention in paragraph 103 of the Petition that the State has not
21 determined how much the basic education (that incorporates the provisions and requirements in
22 paragraphs 30 and 36 of the Petition) actually costs.

23 **RESPONSE:**
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REQUEST FOR PRODUCTION NO. 13: Produce all documents that demonstrate, refer or relate to the amount(s) petitioners believe represent the actual costs of basic education in Washington for school years 2001 to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 14: Produce all documents that support, negate, refer or relate to the contention in paragraph 104 of the Petition that the State has not determined how much it costs to provide the constitutionally required basic education to Washington's school children.

RESPONSE:

REQUEST FOR PRODUCTION NO. 15: Produce all documents that support, negate, refer or relate to the contention in paragraph 105 of the Petition that the State's process for funding education is not to first determine the amount of money it actually costs to provide to provide the required basic education to every child and then fully fund that amount.

RESPONSE:

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REQUEST FOR PRODUCTION NO. 16: Produce all documents that support, negate, refer or relate to the contention in paragraph 106 of the Petition that the State's process for funding education is to first consider how much of the state budget will be allocated for education, as opposed to other state operations and then fund that allocated amount.

RESPONSE:

REQUEST FOR PRODUCTION NO. 17: Produce all documents that support, negate, refer or relate to the contentions in paragraphs 108(a) through (d) of the Petition that the Washington State Constitution requires the funding and/or basic education alleged in these paragraphs.

RESPONSE:

REQUEST FOR PRODUCTION NO. 18: Produce all documents that support, negate, refer or relate to the contention in paragraphs 108(h) through (i) of the Petition that the Washington State Constitution requires the State to follow the steps or process described in these paragraphs.

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RESPONSE:

REQUEST FOR PRODUCTION NO. 19: Produce all documents that support, negate, refer or relate to the contention in paragraph 108(j) of the Petition that the State of Washington currently is not – and for the past 30 years has not been – complying with its paramount education duty.

RESPONSE:

REQUEST FOR PRODUCTION NO. 20: Produce all documents that constitute, refer or relate to communications between petitioners and representatives of respondent about the funding of basic education by the State of Washington or about the process of funding basic education.

RESPONSE:

1 **REQUEST FOR PRODUCTION NO. 21:** Produce all documents that constitute,
2 refer or relate to communications between any of the entities described in paragraph 3 of the
3 Petition and respondent about the funding of, or respondent's process of funding for, basic
4 education.

5 **RESPONSE:**
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10 **REQUEST FOR PRODUCTION NO. 22:** Produce all documents that constitute,
11 refer or relate to facts, opinions or conclusions about which any expert(s), retained by
12 petitioners, are expected to testify at trial.

13 **RESPONSE:**
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18 **REQUEST FOR PRODUCTION NO. 23:** Produce a resume, curriculum vitae and a
19 description of prior engagements (including a listing of prior deposition or trial testimony) for
20 each expert retained to testify at trial.

21 **RESPONSE:**
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1 **REQUEST FOR PRODUCTION NO. 24:** Produce all documents that relate to the
2 formation, incorporation, or that describe the principal activities, of petitioner Network for
3 Excellence in Washington Schools.

4 **RESPONSE:**
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9 **REQUEST FOR PRODUCTION NO. 25:** Produce all documents that demonstrate,
10 analyze or discuss the exact dollar amount(s) of state funding, per Washington student, that
11 you contend is necessary to meet the State's constitutional obligations regarding education.

12 **RESPONSE:**
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17 **REQUEST FOR PRODUCTION NO. 26:** Produce all documents that demonstrate,
18 analyze or discuss the average class size (see paragraph 49 of the Petition) for each of grades K
19 through 12 that you contend is necessary in order for Washington to provide all children the
20 education required by the State constitution.

21 **RESPONSE:**
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1 **REQUEST FOR PRODUCTION NO. 27:** Produce all documents that demonstrate,
2 analyze or discuss the amount(s) in compensation you contend (see paragraph 52 of the
3 Petition) is the "fair pay" for teachers and other professionals needed to provide Washington's
4 students with the education required by the State constitution.

5 **RESPONSE:**
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10 **REQUEST FOR PRODUCTION NO. 28:** Please produce all media or other
11 statements you have made in any form to any person regarding the acts, programs, events, or
12 claims referred to in the Petition.

13 **RESPONSE:**
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18 **REQUEST FOR PRODUCTION NO. 29:** Produce all documents that support,
19 negate, refer or relate to the contention that property taxes and sales taxes do not constitute
20 regular and dependable or sustainable tax source(s) to fund the basic program of education in
21 Washington State.

22 **RESPONSE:**
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VERIFICATION

_____ hereby declares the following to be true and correct under penalty of perjury pursuant to the laws of Washington.

I am the _____, of the Petitioner McCleary, and am authorized to make this verification on its behalf. I have read the foregoing responses to RESPONDENT'S FIRST REQUESTS FOR PRODUCTION TO ALL PETITIONERS, know the contents thereof, and believe the same to be true.

DATED this ____ day of _____, 2007, at _____, Washington.

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VERIFICATION

_____ hereby declares the following to be true and correct under penalty of perjury pursuant to the laws of Washington.

I am the _____, of the Petitioner Venema, and am authorized to make this verification on its behalf. I have read the foregoing responses to RESPONDENT'S FIRST REQUESTS FOR PRODUCTION TO ALL PETITIONERS, know the contents thereof, and believe the same to be true.

DATED this ____ day of _____, 2007, at _____, Washington.

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VERIFICATION

_____ hereby declares the following to be true and correct under penalty of perjury pursuant to the laws of Washington.

I am the _____, of the Petitioner Network for Excellence in Washington Schools (NEWS), and am authorized to make this verification on its behalf. I have read the foregoing responses to RESPONDENT'S FIRST REQUESTS FOR PRODUCTION TO ALL PETITIONERS, know the contents thereof, and believe the same to be true.

DATED this _____ day of _____, 2007, at _____, Washington.

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CERTIFICATION

The undersigned attorney for the State of Washington has read the foregoing Interrogatories and the answers thereto, and they are in compliance with CR 26(g).

DATED this ____ day of _____, 2007, at Seattle, Washington.

Thomas F. Ahearne, WSBA No. 14844
Ramsey Ramerman, WSBA No. 30423
Attorneys for Petitioner

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PROOF OF SERVICE

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

- US Mail Postage Prepaid via Consolidated Mail Service
- ABC/Legal Messenger
- State Campus Delivery
- Hand delivered by _____

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

DATED this 20th day of April, 2007, at Seattle, Washington



AGNES ROCHE

EXHIBIT 2

RECEIVED
MAY 21 2007

ATTORNEY GENERAL'S OFFICE
COMPLEX LITIGATION
SEATTLE

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MATHEW & STEPHANIE McCLEARY, on
their own and on behalf of KELSEY &
CARTER McCLEARY; ROBERT & PATTY
VENEMA, on their own behalf and on behalf
of HALIE & ROBBIE VENEMA; and
NETWORK FOR EXCELLENCE IN
WASHINGTON SCHOOLS ("NEWS"),

Petitioners,

v.

STATE OF WASHINGTON,

Respondent.

The Honorable Paris K. Kallas

No. 07-2-02323-2 SEA

PETITIONERS' INITIAL RESPONSES
TO RESPONDENT'S FIRST REQUESTS
FOR PRODUCTION

ORIGINAL

I. PRELIMINARY STATEMENT

A brief preliminary statement is necessary to put the State's document requests into context because the State's requests overlook two crucial facts:

First, unlike the broad and expansive education funding lawsuits in other states, this is a declaratory judgment action does not ask the Court to determine the exact dollar amount that the State must fund to comply with the education clause of the state constitution. Instead, this action asks the Court to declare the legal meaning of the education mandate in Washington's Constitution (a pure question of law), and confirm that the State is currently not complying with that meaning. This case does not present a factually complex matter-of-degree question (how badly is the State failing?) but a binary yes-or-no question (is the State failing?). And, as the pending summary judgment motion in this case explains, the State's own data and testimony

PETITIONERS RESPONSES TO RESPONDENT'S
FIRST REQUESTS FOR PRODUCTION - 1

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 confirm that the State is, as Governor Gregoire recently declared, failing our students. In short,
2 the State's numerous requests for a voluminous production of documents serves no legally
3 legitimate purpose because he limited relief sought by the McClearys, Venemas, and the
4 Network for Excellence in Washington Schools ("NEWS") (collectively, "Petitioners") means
5 that there can be no genuine dispute of material fact in this case. (Pure harassment is not a
6 legitimate purpose.)

7 Second, Petitioners have filed a motion for summary judgment that is scheduled for
8 hearing on June 1, 2007 because the State's own admissions, and own documents, confirm that
9 Petitioners are as a matter of law entitled to the limited relief they seek – i.e., that the Court order
10 the State to (1) determine the actual dollar cost of providing all children in our State with the
11 basic education mandated by the Court's legal interpretation of our Constitution, and (2)
12 determine how it will fully fund that cost. The State is ignoring the limited scope of this relief to
13 instead demand a sweeping search for and production of documents that are relevant only to the
14 degree of the State's constitutional violation. The State is demanding that both parties and non-
15 parties engage in this intensive document search. But as Petitioners explain below, this search is
16 not warranted – especially before the Court resolves the pending summary judgment motion in
17 this case.

18 **II. GENERAL OBJECTIONS**

19 A. Petitioners object to producing any documents before the pending summary
20 judgment motion is decided because, as Petitioners' motion for summary judgment and the
21 foregoing preliminary statement explain, this case should properly be decided as a matter of law.
22 If the Court's ruling on the motion for summary judgment leaves any factual issues for trial,
23 Petitioners will arrange to produce their documents that are not privileged or otherwise subject to
24 protection and that are responsive to the State's requests in light of the Court's ruling.

25 B. Petitioners object to the State's 30-request set of document requests because they
26 are unreasonable, unduly burdensome given the needs of this case, and are not reasonably

1 calculated to lead to the discovery of admissible evidence. This case poses only two questions:
2 (1) what is the State's legal duty under Article IX, § 1? (a pure legal question), and (2) is the
3 State currently complying with the Court's ruling on that duty? Petitioners are not attempting to
4 establish – as the State's voluminous document requests assume – the degree of the State's
5 constitutional violation by, for example, asking the Court to decide what amount of funding the
6 State must provide. That question (which would be factually intense and perhaps justify the
7 State's scorched-earth document requests) is not before the Court. The questions this lawsuit
8 actually presents are answered by the State's own documents, and there is no legally legitimate
9 need for burdensome exercise the State demands.

10 C. Petitioners object to the State's 30-request set of document requests because the
11 State is asking the individual members of NEWS to produce documents even though they are not
12 parties to this lawsuit and not subject to CR 34. The State's attempt to serve CR 34 document
13 requests on non-parties is – like the requests themselves – overreaching and unwarranted under
14 the rules of civil procedure. This tactic appears calculated to increase the cost of this lawsuit and
15 harass those who have associated together to challenge the State's ongoing constitutional
16 violation. CR 34 does not apply to non-party NEWS members, and they are not required to
17 voluntarily engage in a tremendously expensive and irrelevant document search.

18 NEWS, the non-profit corporation, is a party to this lawsuit, and it is responding to the
19 State's requests by serving these objections. If the Court's ruling on the pending motion for
20 summary judgment leaves any factual issues for trial, NEWS will arrange to produce its
21 documents that are not privileged or otherwise subject to protection and that are responsive to the
22 State's requests in light of the Court's ruling. That production would cover the time frame when
23 Petitioner NEWS was incorporated to the present (not January 1, 2001 to the present, as the State
24 has demanded).

25 D. Petitioners object to the State's 30-request set of document requests because they
26 seek documents that fall within the attorney client privilege, that are within the work product

1 doctrine, that constitute trial preparation materials within the meaning of CR 26(b)(3), and that
2 constitute expert witness information that is not discoverable under CR 26(b)(4). Without
3 limiting this objection, Petitioners specifically object to the following:

4 1. Petitioners object to producing any documents in response to the State's repeated
5 request for documents that "support, negate refer or relate to" a particular legal contention
6 because the request would require counsel to analyze documents and produce the ones that most
7 reveal counsel's legal strategy and theories. The documents in Petitioners' possession, custody
8 or control that are potentially responsive to these requests are the approximately 42,000
9 documents that the State produced to comply with our Public Records Act requests; publicly
10 available State and other documents that Petitioners' counsel has selected and retained; and legal
11 research. To comply with the State's requests, Petitioners' counsel would mostly have to
12 analyze the State's own documents and tell the State which of these documents Petitioners'
13 counsel believes are central to this case. Petitioners will not engage in and then produce this
14 opinion work product, as it would reveal counsel's mental impressions, legal strategy, intended
15 lines of proof, perceived strengths and weaknesses of this case, and would require Petitioners to
16 put on a dress rehearsal for trial by identifying what its counsel thinks are the relevant and most
17 persuasive documents for both the State's and its own case.

18 2. Petitioners object to producing any documents that their counsel selected,
19 compiled and retained from documents that the State makes available to the public (e.g., the
20 State's webpages, archives, and court records) in anticipation of this litigation. Petitioners also
21 object to producing other documents their counsel obtained through legal research (e.g., finance
22 studies and case law) conducted in anticipation of this litigation. By producing the documents
23 that Petitioners' counsel has gathered and used to develop legal theories, Petitioners' counsel
24 would reveal mental impressions, legal strategy, intended lines of proof and other opinion work
25 product. The State has access to these documents – all of them are publicly available and most
26

1 are already in the State's possession – and Petitioners' counsel should not be required to tell the
2 State which materials it used for formulate and prepare for this litigation.

3 E. Petitioners do not know of any justification under the civil rules for the sweeping
4 scope and demands of the State's document requests. There is no legitimate reason for the State
5 to cast such a wide net, which seeks to capture irrelevant documents both from the parties to this
6 lawsuit and from non-parties. Petitioners' counsel will make himself available on any day and at
7 any time he does not already have a binding commitment in order to have any discovery
8 conference the Respondent State's counsel wishes to have to explain why the State's discovery
9 requests as submitted are proper – and if Petitioners do not agree with that explanation,
10 Petitioners will promptly undertake the burden of filing a motion for a protective order to resolve
11 whatever discovery disputes remain at the conclusion of that discovery conference.

12 F. The following responses are made without waiving or intending to waive – but, to
13 the contrary, reserving and intending to reserve – the right to object on any grounds to the use of
14 any documents or information that ultimately may be produced in reply to the State's requests,
15 whether at trial of this action or in any connection with this or any other action or proceeding.

16 III. RESPONSES

17 Subject to and incorporating the above, Petitioners responds to State's document requests
18 as follows:

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

20 *As stated in Petitioners' General Objections, Petitioners will not produce documents*
21 *until the Court resolves Petitioners' pending motion for summary judgment because, as that*
22 *motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be*
23 *decided as a matter of law.*

24 *Please note, moreover, that as currently written, the State's above production request*
25 *demands documents that are neither relevant nor reasonably calculated to lead to the discovery*
26 *of admissible evidence in this case. The State's request that Petitioners select from State*
documents, including the over 42,000 documents that the State hand delivered under the Public
Records Act, the documents that its attorneys believe "support, negate, refer or relate" to the
production request's contention is an impermissible request for Petitioners' attorneys to engage
in and produce work product. The State's request is also ambiguous, overbroad, and without the
requisite specificity for a document request under CR 34 – and if taken literally, it would require
a search and production that is hopelessly overbroad and unduly burdensome and harassing,

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1 both to Petitioners and the non-parties to whom this request is addressed. It also seeks
2 information that currently is equally or more available to the State, as it is the State's own
3 publicly available documents resolve this case. Responding to the request also calls for the
4 making of a legal conclusion (e.g., the request's use of "ample"). And it seeks information that
5 is privileged or confidential (e.g., attorney-client communications).

6 Petitioners accordingly ask that the State agree to narrow this discovery request to cure
7 the above objections so Petitioners can respond without, for example, disclosing protected work
8 product. If the State does not so agree, or if the State insists instead that Petitioners incur the
9 expense of preparing and pursuing a motion for a protective order to have the Court rule on the
10 above document request as propounded by the State, Petitioners ask that the State so inform
11 Petitioners in writing so Petitioners can schedule the necessary discovery conference under
12 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification
13 for this request as currently worded so that, if the State doesn't, Petitioners can file an
14 appropriate motion for a protective order.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

9 As stated in Petitioners' General Objections, Petitioners will not produce documents
10 until the Court resolves Petitioners' pending motion for summary judgment because, as that
11 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be
12 decided as a matter of law.

13 Please note, moreover, that as currently written, the State's above production request
14 demands documents that are neither relevant nor reasonably calculated to lead to the discovery
15 of admissible evidence in this case. The State's catch-all "study or analyze" phrase renders this
16 request's scope ambiguous, overbroad, and without the requisite specificity for a document
17 request under CR 34 – and if taken literally, demands a search and production that is hopelessly
18 overbroad and unduly burdensome and harassing, both to Petitioners and the non-parties to
19 whom this request is directed. It also seeks information that currently is equally or more
20 available to the State, as it is the State's own publicly available documents resolve this case.
21 Responding to the request also calls for the making of a legal conclusion (e.g., the request's use
22 of "education" when the legal meaning of that word is a central legal issue). And it seeks
23 information that is privileged or confidential (e.g., attorney-client communications).

24 Petitioners accordingly ask that the State agree to narrow this discovery request to cure
25 the above objections so Petitioners can respond without, for example, disclosing protected work
26 product. If the State does not so agree, or if the State insists instead that Petitioners incur the
expense of preparing and pursuing a motion for a protective order to have the Court rule on the
above document request as propounded by the State, Petitioners ask that the State so inform
Petitioners in writing so Petitioners can schedule the necessary discovery conference under
CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification
for this request as currently worded so that, if the State doesn't, Petitioners can file an
appropriate motion for a protective order.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

23 As stated in Petitioners' General Objections, Petitioners will not produce documents
24 until the Court resolves Petitioners' pending motion for summary judgment because, as that
25 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be
26 decided as a matter of law.

Please note, moreover, that as currently written, the State's above production request
demands documents that are neither relevant nor reasonably calculated to lead to the discovery
of admissible evidence in this case. The State's catch-all "refer or relate to" phrase renders this

1 request's scope ambiguous, overbroad, and without the requisite specificity for a document
2 request under CR 34 – and if taken literally, demands a search and production that is hopelessly
3 overbroad and unduly burdensome and harassing, both to Petitioners and the non-parties to
4 whom this request is directed. It also seeks information that currently is equally or more
5 available to the State, as it is the State's own publicly available documents resolve this case.
6 Responding to the request calls for the making of a legal conclusion (e.g., the request's use of
7 "education" when the legal meaning of that word is a central legal issue). And it seeks
8 information that is privileged or confidential (e.g., attorney-client communications).

9 Petitioners accordingly ask that the State agree to narrow this discovery request to cure
10 the above objections so Petitioners can respond without, for example, disclosing protected work
11 product. If the State does not so agree, or if the State insists instead that Petitioners incur the
12 expense of preparing and pursuing a motion for a protective order to have the Court rule on the
13 above document request as propounded by the State, Petitioners ask that the State so inform
14 Petitioners in writing so Petitioners can schedule the necessary discovery conference under
15 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification
16 for this request as currently worded so that, if the State doesn't, Petitioners can file an
17 appropriate motion for a protective order.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

19 As stated in Petitioners' General Objections, Petitioners will not produce documents
20 until the Court resolves Petitioners' pending motion for summary judgment because, as that
21 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be
22 decided as a matter of law.

23 Please note, moreover, that as currently written, the State's above production request
24 mischaracterizes Petitioners' contention and demands documents that are neither relevant nor
25 reasonably calculated to lead to the discovery of admissible evidence in this case. The State's
26 request that Petitioners select from State documents, including the over 42,000 documents that
the State hand delivered under the Public Records Act, the documents that its attorneys believe
"support, negate, refer or relate" to the production request's contention is an impermissible
request for Petitioners' attorneys to engage in and produce work product. The State's request is
also ambiguous, overbroad, and without the requisite specificity for a document request under
CR 34 – and if taken literally, it would require a search and production that is hopelessly
overbroad and unduly burdensome and harassing, both to Petitioners and the non-parties to
whom this request is addressed. It also seeks information that currently is equally or more
available to the State, as it is the State's own publicly available documents resolve this case.
Responding to the request also requires the making of a legal conclusion (e.g., the request's use
of "education" when the legal meaning of that word is a central legal issue). And it seeks
information that is privileged or confidential (e.g., attorney-client communications).

Petitioners accordingly ask that the State agree to narrow this discovery request to cure
the above objections so Petitioners can respond without, for example, disclosing protected work
product. If the State does not so agree, or if the State insists instead that Petitioners incur the
expense of preparing and pursuing a motion for a protective order to have the Court rule on the
above document request as propounded by the State, Petitioners ask that the State so inform
Petitioners in writing so Petitioners can schedule the necessary discovery conference under
CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification
for this request as currently worded so that, if the State doesn't, Petitioners can file an
appropriate motion for a protective order.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

26
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1 As stated in Petitioners' General Objections, Petitioners will not produce documents
2 until the Court resolves Petitioners' pending motion for summary judgment because, as that
3 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be
4 decided as a matter of law.

5 Please note, moreover, that as currently written, the State's above production request
6 mischaracterizes Petitioners' contention and demands documents that are neither relevant nor
7 reasonably calculated to lead to the discovery of admissible evidence in this case. The State's
8 request that Petitioners select from State documents, including the over 42,000 documents that
9 the State hand delivered under the Public Records Act, the documents that its attorneys believe
10 "support, negate, refer or relate" to the production request's contention is an impermissible
11 request for Petitioners' attorneys to engage in and produce work product. The State's request is
12 also ambiguous, overbroad, and without the requisite specificity for a document request under
13 CR 34 – and if taken literally, it would require a search and production that is hopelessly
14 overbroad and unduly burdensome and harassing, both to Petitioners and the non-parties to
15 whom this request is addressed. It also seeks information that currently is equally or more
16 available to the State, as it is the State's own publicly available documents resolve this case.
17 Responding to it calls for the making of a legal conclusion (e.g., the request's use of "stable,
18 regular and reliable" and "education" when the legal meaning of that word is a central legal
19 issue). And it seeks information that is privileged or confidential (e.g., attorney-client
20 communications).

21 Petitioners accordingly ask that the State agree to narrow this discovery request to cure
22 the above objections so Petitioners can respond without, for example, disclosing protected work
23 product. If the State does not so agree, or if the State insists instead that Petitioners incur the
24 expense of preparing and pursuing a motion for a protective order to have the Court rule on the
25 above document request as propounded by the State, Petitioners ask that the State so inform
26 Petitioners in writing so Petitioners can schedule the necessary discovery conference under
CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification
for this request as currently worded so that, if the State doesn't, Petitioners can file an
appropriate motion for a protective order.

27 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

28 As stated in Petitioners' General Objections, Petitioners will not produce documents
29 until the Court resolves Petitioners' pending motion for summary judgment because, as that
30 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be
31 decided as a matter of law.

32 Please note, moreover, that as currently written, the State's above production request
33 mischaracterizes Petitioners' contention and demands documents that are neither relevant nor
34 reasonably calculated to lead to the discovery of admissible evidence in this case. The State's
35 request that Petitioners select from State documents, including the over 42,000 documents that
36 the State hand delivered under the Public Records Act, the documents that its attorneys believe
"support, negate, refer or relate" to the production request's contention is an impermissible
request for Petitioners' attorneys to engage in and produce work product. The State's request is
also ambiguous, overbroad, and without the requisite specificity for a document request under
CR 34 – and if taken literally, it would require a search and production that is hopelessly
overbroad and unduly burdensome and harassing, both to Petitioners and the non-parties to
whom this request is addressed. It also seeks information that currently is equally or more
available to the State, as it is the State's own publicly available documents resolve this case.
Responding to it calls for the making of a legal conclusion (e.g., the request's use of "goals" and
RCW 28A.150.210). And it seeks information that is privileged or confidential (e.g.,
attorney-client communications).

1 *Petitioners accordingly ask that the State agree to narrow this discovery request to cure*
2 *the above objections so Petitioners can respond without, for example, disclosing protected work*
3 *product. If the State does not so agree, or if the State insists instead that Petitioners incur the*
4 *expense of preparing and pursuing a motion for a protective order to have the Court rule on the*
5 *above document request as propounded by the State, Petitioners ask that the State so inform*
6 *Petitioners in writing so Petitioners can schedule the necessary discovery conference under*
7 *CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification*
8 *for this request as currently worded so that, if the State doesn't, Petitioners can file an*
9 *appropriate motion for a protective order.*

6 **REQUEST FOR PRODUCTION NO. 7:**

7 *As stated in Petitioners' General Objections, Petitioners will not produce documents*
8 *until the Court resolves Petitioners' pending motion for summary judgment because, as that*
9 *motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be*
10 *decided as a matter of law.*

11 *Please note, moreover, that as currently written, the State's above production request*
12 *mischaracterizes Petitioners' contention and demands documents that are neither relevant nor*
13 *reasonably calculated to lead to the discovery of admissible evidence in this case. The State's*
14 *request that Petitioners select from State documents, including the over 42,000 documents that*
15 *the State hand delivered under the Public Records Act, the documents that its attorneys believe*
16 *"support, negate, refer or relate" to the production request's contention is an impermissible*
17 *request for Petitioners' attorneys to engage in and produce work product. The State's request is*
18 *also ambiguous, overbroad, and without the requisite specificity for a document request under*
19 *CR 34 – and if taken literally, it would require a search and production that is hopelessly*
20 *overbroad and unduly burdensome and harassing, both to Petitioners and the non-parties to*
21 *whom this request is addressed. It also seeks information that currently is equally or more*
22 *available to the State, as it is the State's own publicly available documents resolve this case.*
23 *Responding to it calls for the making of a legal conclusion (e.g., the request's "EALRS"*
24 *contention). And it seeks information that is privileged or confidential (e.g., attorney-client*
25 *communications).*

26 *Petitioners accordingly ask that the State agree to narrow this discovery request to cure*
27 *the above objections so Petitioners can respond without, for example, disclosing protected work*
28 *product. If the State does not so agree, or if the State insists instead that Petitioners incur the*
29 *expense of preparing and pursuing a motion for a protective order to have the Court rule on the*
30 *above document request as propounded by the State, Petitioners ask that the State so inform*
31 *Petitioners in writing so Petitioners can schedule the necessary discovery conference under*
32 *CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification*
33 *for this request as currently worded so that, if the State doesn't, Petitioners can file an*
34 *appropriate motion for a protective order.*

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

23 *As stated in Petitioners' General Objections, Petitioners will not produce documents*
24 *until the Court resolves Petitioners' pending motion for summary judgment because, as that*
25 *motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be*
26 *decided as a matter of law.*

27 *Please note, moreover, that as currently written, the State's above production request*
28 *demands documents that are neither relevant nor reasonably calculated to lead to the discovery*
29 *of admissible evidence in this case. The State's catch-all "refer or relate to" phrase renders this*
30 *request's scope ambiguous, overbroad, and without the requisite specificity for a document*
31 *request.*

1 request under CR 34 – and if taken literally, it would require a search and production that is
2 hopelessly overbroad and unduly burdensome and harassing, both to Petitioners and the non-
3 parties to whom this request is addressed. It also seeks information that currently is equally or
more available to the State or other parties. And it seeks information that is privileged or
confidential (e.g., attorney-client communications or work product).

4 Petitioners accordingly ask that the State agree to narrow this discovery request to cure
the above objections so Petitioners can respond without, for example, disclosing protected work
5 product. If the State does not so agree, or if the State insists instead that Petitioners incur the
expense of preparing and pursuing a motion for a protective order to have the Court rule on the
6 above document request as propounded by the State, Petitioners ask that the State so inform
Petitioners in writing so Petitioners can schedule the necessary discovery conference under
7 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification
for this request as currently worded so that, if the State doesn't, Petitioners can file an
appropriate motion for a protective order.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

9
10 As stated in Petitioners' General Objections, Petitioners will not produce documents
until the Court resolves Petitioners' pending motion for summary judgment because, as that
11 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be
decided as a matter of law.

12 Please note, moreover, that as currently written, the State's above production request
mischaracterizes Petitioners' contention and demands documents that are neither relevant nor
13 reasonably calculated to lead to the discovery of admissible evidence in this case. The State's
request that Petitioners select from State documents, including the over 42,000 documents that
14 the State hand delivered under the Public Records Act, the documents that its attorneys believe
"support, negate, refer or relate" to the production request's contention is an impermissible
15 request for Petitioners' attorneys to engage in and produce work product. The State's request is
also ambiguous, overbroad, and without the requisite specificity for a document request under
16 CR 34 – and if taken literally, it would require a search and production that is hopelessly
overbroad and unduly burdensome and harassing, both to Petitioners and the non-parties to
17 whom this request is addressed. It also seeks information that currently is equally or more
available to the State, as it is the State's own publicly available documents resolve this case.
And it seeks information that is privileged or confidential (e.g., attorney-client communications).

18 Petitioners accordingly ask that the State agree to narrow this discovery request to cure
the above objections so Petitioners can respond without, for example, disclosing protected work
19 product. If the State does not so agree, or if the State insists instead that Petitioners incur the
expense of preparing and pursuing a motion for a protective order to have the Court rule on the
20 above document request as propounded by the State, Petitioners ask that the State so inform
Petitioners in writing so Petitioners can schedule the necessary discovery conference under
21 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification
for this request as currently worded so that, if the State doesn't, Petitioners can file an
22 appropriate motion for a protective order.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

24 As stated in Petitioners' General Objections, Petitioners will not produce documents
25 until the Court resolves Petitioners' pending motion for summary judgment because, as that
motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be
26 decided as a matter of law.

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1 Please note, moreover, that as currently written, the State's above production request
2 demands documents that are neither relevant nor reasonably calculated to lead to the discovery
3 of admissible evidence in this case. The State's request that Petitioners select from State
4 documents, including the over 42,000 documents that the State hand delivered under the Public
5 Records Act, the documents that its attorneys believe "support, negate, refer or relate" to the
6 production request's contention is an impermissible request for Petitioners' attorneys to engage
7 in and produce work product. The State's request is also ambiguous, overbroad, and without the
8 requisite specificity for a document request under CR 34 – and if taken literally, it would require
9 a search and production that is hopelessly overbroad and unduly burdensome and harassing,
10 both to Petitioners and the non-parties to whom this request is addressed. It also seeks
11 information that currently is equally or more available to the State, as it is the State's own
12 publicly available documents resolve this case. And it seeks information that is privileged or
13 confidential (e.g., attorney-client communications).

14 Petitioners accordingly ask that the State agree to narrow this discovery request to cure
15 the above objections so Petitioners can respond without, for example, disclosing protected work
16 product. If the State does not so agree, or if the State insists instead that Petitioners incur the
17 expense of preparing and pursuing a motion for a protective order to have the Court rule on the
18 above document request as propounded by the State, Petitioners ask that the State so inform
19 Petitioners in writing so Petitioners can schedule the necessary discovery conference under
20 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification
21 for this request as currently worded so that, if the State doesn't, Petitioners can file an
22 appropriate motion for a protective order.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

24 As stated in Petitioners' General Objections, Petitioners will not produce documents
25 until the Court resolves Petitioners' pending motion for summary judgment because, as that
26 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be
decided as a matter of law.

1 Please note, moreover, that as currently written, the State's above production request
2 demands documents that are neither relevant nor reasonably calculated to lead to the discovery
3 of admissible evidence in this case. The State's request that Petitioners select from State
4 documents, including the over 42,000 documents that the State hand delivered under the Public
5 Records Act, the documents that its attorneys believe "support, negate, refer or relate" to the
6 production request's contention is an impermissible request for Petitioners' attorneys to engage
7 in and produce work product. The State's request is also ambiguous, overbroad, and without the
8 requisite specificity for a document request under CR 34 – and if taken literally, it would require
9 a search and production that is hopelessly overbroad and unduly burdensome and harassing,
10 both to Petitioners and the non-parties to whom this request is addressed. It also seeks
11 information that currently is equally or more available to the State, as it is the State's own
12 publicly available documents resolve this case. And it seeks information that is privileged or
13 confidential (e.g., attorney-client communications).

14 Petitioners accordingly ask that the State agree to narrow this discovery request to cure
15 the above objections so Petitioners can respond without, for example, disclosing protected work
16 product. If the State does not so agree, or if the State insists instead that Petitioners incur the
17 expense of preparing and pursuing a motion for a protective order to have the Court rule on the
18 above document request as propounded by the State, Petitioners ask that the State so inform
19 Petitioners in writing so Petitioners can schedule the necessary discovery conference under
20 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification
21 for this request as currently worded so that, if the State doesn't, Petitioners can file an
22 appropriate motion for a protective order.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

2 *As stated in Petitioners' General Objections, Petitioners will not produce documents*
3 *until the Court resolves Petitioners' pending motion for summary judgment because, as that*
4 *motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be*
5 *decided as a matter of law.*

6 *Please note, moreover, that as currently written, the State's above production request*
7 *mischaracterizes Petitioners' contention and demands documents that are neither relevant nor*
8 *reasonably calculated to lead to the discovery of admissible evidence in this case. The State's*
9 *request that Petitioners select from State documents, including the over 42,000 documents that*
10 *the State hand delivered under the Public Records Act, the documents that its attorneys believe*
11 *"support, negate, refer or relate" to the production request's contention is an impermissible*
12 *request for Petitioners' attorneys to engage in and produce work product. The State's request is*
13 *also ambiguous, overbroad, and without the requisite specificity for a document request under*
14 *CR 34 – and if taken literally, it would require a search and production that is hopelessly*
15 *overbroad and unduly burdensome and harassing, both to Petitioners and the non-parties to*
16 *whom this request is addressed. It also seeks information that currently is equally or more*
17 *available to the State, as it is the State's own publicly available documents resolve this case.*
18 *And it seeks information that is privileged or confidential (e.g., attorney-client communications).*

19 *Petitioners accordingly ask that the State agree to narrow this discovery request to cure*
20 *the above objections so Petitioners can respond without, for example, disclosing protected work*
21 *product. If the State does not so agree, or if the State insists instead that Petitioners incur the*
22 *expense of preparing and pursuing a motion for a protective order to have the Court rule on the*
23 *above document request as propounded by the State, Petitioners ask that the State so inform*
24 *Petitioners in writing so Petitioners can schedule the necessary discovery conference under*
25 *CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification*
26 *for this request as currently worded so that, if the State doesn't, Petitioners can file an*
appropriate motion for a protective order.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

2 *As stated in Petitioners' General Objections, Petitioners will not produce documents*
3 *until the Court resolves Petitioners' pending motion for summary judgment because, as that*
4 *motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be*
5 *decided as a matter of law.*

6 *Please note, moreover, that as currently written, the State's above production request*
7 *mischaracterizes Petitioners' contentions in this case (see Petitioners' motion for summary*
8 *judgment and the above Preliminary Statement), and demands documents that are neither*
9 *relevant nor reasonably calculated to lead to the discovery of admissible evidence in this case.*
10 *The State's catch-all "refer or relate to" phrase renders this request's scope ambiguous,*
11 *overbroad, and without the requisite specificity for a document request under CR 34 – and if*
12 *taken literally, it would require a search and production that is hopelessly overbroad and unduly*
13 *burdensome and harassing, both to Petitioners and the non-parties to whom this request is*
14 *addressed. And it seeks information that is privileged or confidential (e.g., attorney-client*
15 *communications or work product).*

16 *Petitioners accordingly ask that the State agree to narrow this discovery request to cure*
17 *the above objections so Petitioners can respond without, for example, disclosing protected work*
18 *product. If the State does not so agree, or if the State insists instead that Petitioners incur the*
19 *expense of preparing and pursuing a motion for a protective order to have the Court rule on the*
20 *above document request as propounded by the State, Petitioners ask that the State so inform*
21 *Petitioners in writing so Petitioners can schedule the necessary discovery conference under*
22 *CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification*
23 *for this request as currently worded so that, if the State doesn't, Petitioners can file an*
24 *appropriate motion for a protective order.*

1 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification
2 for this request as currently worded so that, if the State doesn't, Petitioners can file an
3 appropriate motion for a protective order.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

5 *As stated in Petitioners' General Objections, Petitioners will not produce documents*
6 *until the Court resolves Petitioners' pending motion for summary judgment because, as that*
7 *motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be*
8 *decided as a matter of law.*

9 *Please note, moreover, that as currently written, the State's above production request*
10 *mischaracterizes Petitioners' contention and demands documents that are neither relevant nor*
11 *reasonably calculated to lead to the discovery of admissible evidence in this case. The State's*
12 *request that Petitioners select from State documents, including the over 42,000 documents that*
13 *the State hand delivered under the Public Records Act, the documents that its attorneys believe*
14 *"support, negate, refer or relate" to the production request's contention is an impermissible*
15 *request for Petitioners' attorneys to engage in and produce work product. The State's request is*
16 *also ambiguous, overbroad, and without the requisite specificity for a document request under*
17 *CR 34 – and if taken literally, it would require a search and production that is hopelessly*
18 *overbroad and unduly burdensome and harassing, both to Petitioners and the non-parties to*
19 *whom this request is addressed. It also seeks information that currently is equally or more*
20 *available to the State, as it is the State's own publicly available documents resolve this case.*
21 *And it seeks information that is privileged or confidential (e.g., attorney-client communications).*

22 *Petitioners accordingly ask that the State agree to narrow this discovery request to cure*
23 *the above objections so Petitioners can respond without, for example, disclosing protected work*
24 *product. If the State does not so agree, or if the State insists instead that Petitioners incur the*
25 *expense of preparing and pursuing a motion for a protective order to have the Court rule on the*
26 *above document request as propounded by the State, Petitioners ask that the State so inform*
27 *Petitioners in writing so Petitioners can schedule the necessary discovery conference under*
28 *CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification*
29 *for this request as currently worded so that, if the State doesn't, Petitioners can file an*
30 *appropriate motion for a protective order.*

31 **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

32 *As stated in Petitioners' General Objections, Petitioners will not produce documents*
33 *until the Court resolves Petitioners' pending motion for summary judgment because, as that*
34 *motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be*
35 *decided as a matter of law.*

36 *Please note, moreover, that as currently written, the State's above production request*
37 *mischaracterizes Petitioners' contention and demands documents that are neither relevant nor*
38 *reasonably calculated to lead to the discovery of admissible evidence in this case. The State's*
39 *request that Petitioners select from State documents, including the over 42,000 documents that*
40 *the State hand delivered under the Public Records Act, the documents that its attorneys believe*
41 *"support, negate, refer or relate" to the production request's contention is an impermissible*
42 *request for Petitioners' attorneys to engage in and produce work product. The State's request is*
43 *also ambiguous, overbroad, and without the requisite specificity for a document request under*
44 *CR 34 – and if taken literally, it would require a search and production that is hopelessly*
45 *overbroad and unduly burdensome and harassing, both to Petitioners and the non-parties to*
46 *whom this request is addressed. It also seeks information that currently is equally or more*

1 available to the State, as it is the State's own publicly available documents resolve this case.
2 And it seeks information that is privileged or confidential (e.g., attorney-client communications).

3 Petitioners accordingly ask that the State agree to narrow this discovery request to cure
4 the above objections so Petitioners can respond without, for example, disclosing protected work
5 product. If the State does not so agree, or if the State insists instead that Petitioners incur the
6 expense of preparing and pursuing a motion for a protective order to have the Court rule on the
7 above document request as propounded by the State, Petitioners ask that the State so inform
8 Petitioners in writing so Petitioners can schedule the necessary discovery conference under
9 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification
10 for this request as currently worded so that, if the State doesn't, Petitioners can file an
11 appropriate motion for a protective order.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

8 As stated in Petitioners' General Objections, Petitioners will not produce documents
9 until the Court resolves Petitioners' pending motion for summary judgment because, as that
10 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be
11 decided as a matter of law.

12 Please note, moreover, that as currently written, the State's above production request
13 demands documents that are neither relevant nor reasonably calculated to lead to the discovery
14 of admissible evidence in this case. The State's request that Petitioners select from State
15 documents, including the over 42,000 documents that the State hand delivered under the Public
16 Records Act, the documents that its attorneys believe "support, negate, refer or relate" to the
17 production request's contention is an impermissible request for Petitioners' attorneys to engage
18 in and produce work product. The State's request is also ambiguous, overbroad, and without the
19 requisite specificity for a document request under CR 34 – and if taken literally, it would require
20 a search and production that is hopelessly overbroad and unduly burdensome and harassing,
21 both to Petitioners and the non-parties to whom this request is addressed. It also seeks
22 information that currently is equally or more available to the State, as it is the State's own
23 publicly available documents resolve this case. And it seeks information that is privileged or
24 confidential (e.g., attorney-client communications).

25 Petitioners accordingly ask that the State agree to narrow this discovery request to cure
26 the above objections so Petitioners can respond without, for example, disclosing protected work
product. If the State does not so agree, or if the State insists instead that Petitioners incur the
expense of preparing and pursuing a motion for a protective order to have the Court rule on the
above document request as propounded by the State, Petitioners ask that the State so inform
Petitioners in writing so Petitioners can schedule the necessary discovery conference under
CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification
for this request as currently worded so that, if the State doesn't, Petitioners can file an
appropriate motion for a protective order.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

22 As stated in Petitioners' General Objections, Petitioners will not produce documents
23 until the Court resolves Petitioners' pending motion for summary judgment because, as that
24 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be
25 decided as a matter of law.

26 Please note, moreover, that as currently written, the State's above production request
mischaracterizes Petitioners' contention and demands documents that are neither relevant nor
reasonably calculated to lead to the discovery of admissible evidence in this case. The
paragraphs referred to by this request describe the legal relief that Petitioners are seeking from

1 the Court based on its interpretation of Article IX, § 1, and the State's request for documents is
2 an impermissible request for attorney work product. Additionally, the State's request that
3 Petitioners select from State documents, including the over 42,000 documents that the State hand
4 delivered under the Public Records Act, the documents that its attorneys believe "support,
5 negate, refer or relate" to the production request's contention is an impermissible request for
6 Petitioners' attorneys to engage in and produce work product. The State's request is also
7 ambiguous, overbroad, and without the requisite specificity for a document request under CR 34
8 – and if taken literally, it would require a search and production that is hopelessly overbroad
9 and unduly burdensome and harassing, both to Petitioners and the non-parties to whom this
10 request is addressed. It also seeks information that currently is equally or more available to the
11 State, as it is the State's own publicly available documents resolve this case. And it seeks
12 information that is privileged or confidential (e.g., attorney-client communications).

13 Petitioners accordingly ask that the State agree to narrow this discovery request to cure
14 the above objections so Petitioners can respond without, for example, disclosing protected work
15 product. If the State does not so agree, or if the State insists instead that Petitioners incur the
16 expense of preparing and pursuing a motion for a protective order to have the Court rule on the
17 above document request as propounded by the State, Petitioners ask that the State so inform
18 Petitioners in writing so Petitioners can schedule the necessary discovery conference under
19 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification
20 for this request as currently worded so that, if the State doesn't, Petitioners can file an
21 appropriate motion for a protective order.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

23 As stated in Petitioners' General Objections, Petitioners will not produce documents
24 until the Court resolves Petitioners' pending motion for summary judgment because, as that
25 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be
26 decided as a matter of law.

27 Please note, moreover, that as currently written, the State's above production request
28 mischaracterizes Petitioners' contention and demands documents that are neither relevant nor
29 reasonably calculated to lead to the discovery of admissible evidence in this case. The
30 paragraphs referred to by this request describe the legal relief that Petitioners are seeking from
31 the Court based on its interpretation of Article IX, § 1, and the State's request is an
32 impermissible request for attorney work product. Additionally, the State's request that
33 Petitioners select from State documents, including the over 42,000 documents that the State hand
34 delivered under the Public Records Act, the documents that its attorneys believe "support,
35 negate, refer or relate" to the production request's contention is an impermissible request for
36 Petitioners' attorneys to engage in and produce work product. The State's request is also
37 ambiguous, overbroad, and without the requisite specificity for a document request under CR 34
38 – and if taken literally, it would require a search and production that is hopelessly overbroad
39 and unduly burdensome and harassing, both to Petitioners and the non-parties to whom this
40 request is addressed. It also seeks information that currently is equally or more available to the
41 State, as it is the State's own publicly available documents resolve this case. And it seeks
42 information that is privileged or confidential (e.g., attorney-client communications).

43 Petitioners accordingly ask that the State agree to narrow this discovery request to cure
44 the above objections so Petitioners can respond without, for example, disclosing protected work
45 product. If the State does not so agree, or if the State insists instead that Petitioners incur the
46 expense of preparing and pursuing a motion for a protective order to have the Court rule on the
47 above document request as propounded by the State, Petitioners ask that the State so inform
48 Petitioners in writing so Petitioners can schedule the necessary discovery conference under
49 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification

1 for this request as currently worded so that, if the State doesn't, Petitioners can file an
2 appropriate motion for a protective order.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

4 *As stated in Petitioners' General Objections, Petitioners will not produce documents*
5 *until the Court resolves Petitioners' pending motion for summary judgment because, as that*
6 *motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be*
7 *decided as a matter of law.*

8 *Please note, moreover, that as currently written, the State's above production request*
9 *demands documents that are neither relevant nor reasonably calculated to lead to the discovery*
10 *of admissible evidence in this case. The paragraph referred to by this request describes the legal*
11 *relief that Petitioners are seeking from the Court based on its legal interpretation of Article IX,*
12 *§ 1, and the State's request for documents is an impermissible request for attorney work product.*
13 *Additionally, the State's request that Petitioners select from State documents, including the over*
14 *42,000 documents that the State hand delivered under the Public Records Act, the documents*
15 *that its attorneys believe "support, negate, refer or relate" to the production request's*
16 *contention is an impermissible request for Petitioners' attorneys to engage in and produce work*
17 *product. The State's request is also ambiguous, overbroad, and without the requisite specificity*
18 *for a document request under CR 34 – and if taken literally, it would require a search and*
19 *production that is hopelessly overbroad and unduly burdensome and harassing, both to*
20 *Petitioners and the non-parties to whom this request is addressed. It also seeks information that*
21 *currently is equally or more available to the State, as it is the State's own publicly available*
22 *documents resolve this case. And it seeks information that is privileged or confidential (e.g.,*
23 *attorney-client communications).*

24 *Petitioners accordingly ask that the State agree to narrow this discovery request to cure*
25 *the above objections so Petitioners can respond without, for example, disclosing protected work*
26 *product. If the State does not so agree, or if the State insists instead that Petitioners incur the*
27 *expense of preparing and pursuing a motion for a protective order to have the Court rule on the*
28 *above document request as propounded by the State, Petitioners ask that the State so inform*
29 *Petitioners in writing so Petitioners can schedule the necessary discovery conference under*
30 *CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification*
31 *for this request as currently worded so that, if the State doesn't, Petitioners can file an*
32 *appropriate motion for a protective order.*

33 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

34 *As stated in Petitioners' General Objections, Petitioners will not produce any documents*
35 *at this time because, as Petitioners' motion for summary judgment explains, the State's own*
36 *documents establish its constitutional failing, and this case should be decided as a matter of law.*

37 *Please note, moreover, that as currently written, the State's above production request*
38 *demands documents that are neither relevant nor reasonably calculated to lead to the discovery*
39 *of admissible evidence in this case. The State's catch-all "constitute, refer or relate to" phrase*
40 *renders this request's scope ambiguous, overbroad, and without the requisite specificity for a*
41 *document request under CR 34 – and if taken literally, it would require a search and production*
42 *that is hopelessly overbroad and unduly burdensome and harassing, both to Petitioners and the*
43 *non-parties to whom this request is addressed. It also seeks information that currently is equally*
44 *or more available to the State. And it seeks information that is privileged or confidential (e.g.,*
45 *attorney-client communications).*

46 *Petitioners accordingly ask that the State agree to narrow this discovery request to cure*
47 *the above objections so Petitioners can respond without, for example, disclosing protected work*

1 product. If the State does not so agree, or if the State insists instead that Petitioners incur the
2 expense of preparing and pursuing a motion for a protective order to have the Court rule on the
3 above document request as propounded by the State, Petitioners ask that the State so inform
4 Petitioners in writing so Petitioners can schedule the necessary discovery conference under
CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification
for this request as currently worded so that, if the State doesn't, Petitioners can file an
appropriate motion for a protective order.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

6 As stated in Petitioners' General Objections, Petitioners will not produce documents
7 until the Court resolves Petitioners' pending motion for summary judgment because, as that
8 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be
9 decided as a matter of law.

10 Please note, moreover, that as currently written, the State's above production request
11 demands documents that are neither relevant nor reasonably calculated to lead to the discovery
12 of admissible evidence in this case. The State's catch-all "constitute, refer or relate to" phrase
13 renders this request's scope ambiguous, overbroad, and without the requisite specificity for a
document request under CR 34 – and if taken literally, it would require a search and production
that is hopelessly overbroad and unduly burdensome and harassing, both to Petitioners and the
non-parties to whom this request is addressed. It also seeks information that is not in
Petitioners' possession, custody or control, and that is equally or more available to the State.
Responding to the request also calls for the making of a legal conclusion (e.g., the request's use
of "basic education" when the legal meaning of that word is a central legal issue). And it seeks
information that is privileged or confidential (e.g., attorney-client communications).

14 Petitioners accordingly ask that the State agree to narrow this discovery request to cure
15 the above objections so Petitioners can respond without, for example, disclosing protected work
16 product. If the State does not so agree, or if the State insists instead that Petitioners incur the
17 expense of preparing and pursuing a motion for a protective order to have the Court rule on the
18 above document request as propounded by the State, Petitioners ask that the State so inform
19 Petitioners in writing so Petitioners can schedule the necessary discovery conference under
20 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification
21 for this request as currently worded so that, if the State doesn't, Petitioners can file an
22 appropriate motion for a protective order.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

24 As stated in Petitioners' General Objections, Petitioners will not produce documents
25 until the Court resolves Petitioners' pending motion for summary judgment because, as that
26 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be
decided as a matter of law.

Please note, moreover, that as currently written, the State's above production request is
actually an interrogatory asking Petitioners to identify the facts and conclusions that its experts
are expected to testify to at trial. Petitioners will answer this interrogatory if and when it is
properly characterized as such. Additionally, the State's request for "all documents that
constitute, refer or relate" to anticipated expert testimony renders this request's scope
ambiguous, overbroad, and without the requisite specificity for a document request under CR 34
– and if taken literally, it would require a search and production that is hopelessly overbroad
and unduly burdensome and harassing, both to Petitioners and the non-parties to whom this
request is addressed. It also seeks information that currently is equally or more available to the

1 State. And it seeks information that is privileged or confidential (e.g., attorney-client
communications).

2 Subject to these objections, Petitioners respond that they have at this time not retained
3 any testifying experts to testify at trial because, as their pending summary judgment motion
4 explains, a trial is not necessary. Should testifying trial experts become necessary, Petitioners
will retain and disclose their trial testimony experts by the date stated in the Court's scheduling
order.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

6 See response to request number 22.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

8 As stated in Petitioners' General Objections, Petitioners will not produce documents
9 until the Court resolves Petitioners' pending motion for summary judgment because, as that
motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be
decided as a matter of law.

10 Please note, moreover, that as currently written, the State's above production request
11 demands documents that are neither relevant nor reasonably calculated to lead to the discovery
12 of admissible evidence in this case. The State's catch-all "relate to" phrase renders this
request's scope ambiguous, overbroad, and without the requisite specificity for a document
13 request under CR 34 – and if taken literally, it would require a search and production that is
hopelessly overbroad and unduly burdensome and harassing, both to Petitioners and the non-
parties to whom this request is addressed. And it seeks information that is privileged or
confidential (e.g., attorney-client communications and work product).

14 Petitioners accordingly ask that the State agree to narrow this discovery request to cure
15 the above objections so Petitioners can respond without, for example, disclosing protected work
product. If the State does not so agree, or if the State insists instead that Petitioners incur the
16 expense of preparing and pursuing a motion for a protective order to have the Court rule on the
above document request as propounded by the State, Petitioners ask that the State so inform
17 Petitioners in writing so Petitioners can schedule the necessary discovery conference under
CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification
18 for this request as currently worded so that, if the State doesn't, Petitioners can file an
appropriate motion for a protective order.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

20 As stated in Petitioners' General Objections, Petitioners will not produce documents
21 until the Court resolves Petitioners' pending motion for summary judgment because, as that
motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be
decided as a matter of law.

22 Please note, moreover, that as currently written, the State's above production request
23 mischaracterizes Petitioners' contentions in this case (see Petitioners' motion for summary
judgment and the above Preliminary Statement), and demands documents that are neither
24 relevant nor reasonably calculated to lead to the discovery of admissible evidence in this case.
Petitioners further object because this document request is actually an interrogatory, and it
should be asked as such. And it seeks information that is privileged or confidential (e.g.,
25 attorney-client communications or work product).

26 Petitioners accordingly ask that the State agree to narrow this discovery request to cure
the above objections so Petitioners can respond without, for example, disclosing protected work

1 product. If the State does not so agree, or if the State insists instead that Petitioners incur the
2 expense of preparing and pursuing a motion for a protective order to have the Court rule on the
3 above document request as propounded by the State, Petitioners ask that the State so inform
4 Petitioners in writing so Petitioners can schedule the necessary discovery conference under
5 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification
6 for this request as currently worded so that, if the State doesn't, Petitioners can file an
7 appropriate motion for a protective order.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

9 *As stated in Petitioners' General Objections, Petitioners will not produce documents
10 until the Court resolves Petitioners' pending motion for summary judgment because, as that
11 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be
12 decided as a matter of law.*

13 *Please note, moreover, that as currently written, the State's above production request
14 mischaracterizes Petitioners' contentions in this case (see Petitioners' motion for summary
15 judgment and the above Preliminary Statement), and demands documents that are neither
16 relevant nor reasonably calculated to lead to the discovery of admissible evidence in this case.
17 Petitioners further object because this document request is actually an interrogatory, and it
18 should be asked as such. And it seeks information that is privileged or confidential (e.g.,
19 attorney-client communications or work product).*

20 *Petitioners accordingly ask that the State agree to narrow this discovery request to cure
21 the above objections so Petitioners can respond without, for example, disclosing protected work
22 product. If the State does not so agree, or if the State insists instead that Petitioners incur the
23 expense of preparing and pursuing a motion for a protective order to have the Court rule on the
24 above document request as propounded by the State, Petitioners ask that the State so inform
25 Petitioners in writing so Petitioners can schedule the necessary discovery conference under
26 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification
for this request as currently worded so that, if the State doesn't, Petitioners can file an
appropriate motion for a protective order.*

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

18 *As stated in Petitioners' General Objections, Petitioners will not produce documents
19 until the Court resolves Petitioners' pending motion for summary judgment because, as that
20 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be
21 decided as a matter of law.*

22 *Please note, moreover, that as currently written, the State's above production request
23 mischaracterizes Petitioners' contentions in this case (see Petitioners' motion for summary
24 judgment and the above Preliminary Statement), and demands documents that are neither
25 relevant nor reasonably calculated to lead to the discovery of admissible evidence in this case.
26 Petitioners further object because this document request is actually an interrogatory, and it
should be asked as such. And it seeks information that is privileged or confidential (e.g.,
attorney-client communications or work product).*

*Petitioners accordingly ask that the State agree to narrow this discovery request to cure
the above objections so Petitioners can respond without, for example, disclosing protected work
product. If the State does not so agree, or if the State insists instead that Petitioners incur the
expense of preparing and pursuing a motion for a protective order to have the Court rule on the
above document request as propounded by the State, Petitioners ask that the State so inform
Petitioners in writing so Petitioners can schedule the necessary discovery conference under
CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification*

1 for this request as currently worded so that, if the State doesn't, Petitioners can file an
2 appropriate motion for a protective order.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

4 *As stated in Petitioners' General Objections, Petitioners will not produce documents*
5 *until the Court resolves Petitioners' pending motion for summary judgment because, as that*
6 *motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be*
7 *decided as a matter of law.*

8 *Please note, moreover, that as currently written, the State's above production request*
9 *demands documents that are neither relevant nor reasonably calculated to lead to the discovery*
10 *of admissible evidence in this case. The State's catch-all request for "all media or other*
11 *statements" renders this request's scope ambiguous, overbroad, and without the requisite*
12 *specificity for a document request under CR 34 – and if taken literally, it would require a search*
13 *and production that is hopelessly overbroad and unduly burdensome and harassing, both to*
14 *Petitioners and the non-parties to whom this request is addressed. (For example, a similar*
15 *request from Petitioners might require the State to locate and produce any statement that any*
16 *legislator has made over the last five years regarding education, the appropriations process, or*
17 *the State's education failings.) The request also seeks information that is privileged or*
18 *confidential (e.g., attorney-client communications).*

19 *Petitioners accordingly ask that the State agree to narrow this discovery request to cure*
20 *the above objections so Petitioners can respond without, for example, disclosing protected work*
21 *product. If the State does not so agree, or if the State insists instead that Petitioners incur the*
22 *expense of preparing and pursuing a motion for a protective order to have the Court rule on the*
23 *above document request as propounded by the State, Petitioners ask that the State so inform*
24 *Petitioners in writing so Petitioners can schedule the necessary discovery conference under*
25 *CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification*
26 *for this request as currently worded so that, if the State doesn't, Petitioners can file an*
appropriate motion for a protective order.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

2 *As stated in Petitioners' General Objections, Petitioners will not produce documents*
3 *until the Court resolves Petitioners' pending motion for summary judgment because, as that*
4 *motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be*
5 *decided as a matter of law.*

6 *Please note, moreover, that as currently written, the State's above production request*
7 *mischaracterizes Petitioners' contentions and demands documents that are neither relevant nor*
8 *reasonably calculated to lead to the discovery of admissible evidence in this case. The State's*
9 *request that Petitioners select from State documents, including the over 42,000 documents that*
10 *the State hand delivered under the Public Records Act, the documents that its attorneys believe*
11 *"support, negate, refer or relate" to the production request's contention is an impermissible*
12 *request for Petitioners' attorneys to engage in and produce work product. The State's request is*
13 *also ambiguous, overbroad, and without the requisite specificity for a document request under*
14 *CR 34 – and if taken literally, it would require a search and production that is hopelessly*
15 *overbroad and unduly burdensome and harassing, both to Petitioners and the non-parties to*
16 *whom this request is addressed. It also seeks information that currently is equally or more*
17 *available to the State, as it is the State's own publicly available documents resolve this case.*
18 *Responding to the request also calls for the making of a legal conclusion (e.g., the request's use*
19 *of "basic program of education" when the legal meaning of that phrase is a central legal issue).*
20 *And it seeks information that is privileged or confidential (e.g., attorney-client communications).*

1 *Petitioners accordingly ask that the State agree to narrow this discovery request to cure*
2 *the above objections so Petitioners can respond without, for example, disclosing protected work*
3 *product. If the State does not so agree, or if the State insists instead that Petitioners incur the*
4 *expense of preparing and pursuing a motion for a protective order to have the Court rule on the*
5 *above document request as propounded by the State, Petitioners ask that the State so inform*
6 *Petitioners in writing so Petitioners can schedule the necessary discovery conference under*
7 *CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification*
8 *for this request as currently worded so that, if the State doesn't, Petitioners can file an*
9 *appropriate motion for a protective order.*

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**

7 *As stated in Petitioners' General Objections, Petitioners will not produce documents*
8 *until the Court resolves Petitioners' pending motion for summary judgment because, as that*
9 *motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be*
10 *decided as a matter of law.*

11 *Please note, moreover, that as currently written, the State's above production request*
12 *mischaracterizes Petitioners' contentions and demands documents that are neither relevant nor*
13 *reasonably calculated to lead to the discovery of admissible evidence in this case. The State's*
14 *request that Petitioners select from State documents, including the over 42,000 documents that*
15 *the State hand delivered under the Public Records Act, the documents that its attorneys believe*
16 *"support, negate, refer or relate" to the production request's contention is an impermissible*
17 *request for Petitioners' attorneys to engage in and produce work product. The State's request is*
18 *also ambiguous, overbroad, and without the requisite specificity for a document request under*
19 *CR 34 – and if taken literally, it would require a search and production that is hopelessly*
20 *overbroad and unduly burdensome and harassing, both to Petitioners and the non-parties to*
21 *whom this request is addressed. It also seeks information that currently is equally or more*
22 *available to the State, as it is the State's own publicly available documents resolve this case.*
23 *Responding to the request also calls for the making of a legal conclusion (e.g., the request's use*
24 *of "basic program of education" when the legal meaning of that phrase is a central legal issue).*
25 *And it seeks information that is privileged or confidential (e.g., attorney-client communications).*

26 *Petitioners accordingly ask that the State agree to narrow this discovery request to cure*
27 *the above objections so Petitioners can respond without, for example, disclosing protected work*
28 *product. If the State does not so agree, or if the State insists instead that Petitioners incur the*
29 *expense of preparing and pursuing a motion for a protective order to have the Court rule on the*
30 *above document request as propounded by the State, Petitioners ask that the State so inform*
31 *Petitioners in writing so Petitioners can schedule the necessary discovery conference under*
32 *CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification*
33 *for this request as currently worded so that, if the State doesn't, Petitioners can file an*
34 *appropriate motion for a protective order.*

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1 OBJECTIONS ASSERTED this 21st day of May, 2007.

2 FOSTER PEPPER PLLC

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4 _____
5 Thomas F. Ahearne, WSBA No. 14844
6 Edmund W. Robb, WSBA No. 35948
7 Attorneys for Petitioner
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PETITIONERS RESPONSES TO RESPONDENT'S
FIRST REQUESTS FOR PRODUCTION - 22

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

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6 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

7 MATHEW & STEPHANIE MCCLEARY, on their own
8 behalf and on behalf of KELSEY & CARTER
9 MCCLEARY, their two children in Washington's
10 public schools; et al.,

Petitioners,

v.

11 STATE OF WASHINGTON,

Respondent.

The Honorable Paris Kallas

No. 07-2-02323-2 SEA

DECLARATION OF SERVICE

12 I, Kellie DeVera, hereby state that on this 21st day of May, 2007, I caused the following:


- 13 1. Petitioner's Initial Responses to Respondent's First Requests for Production; and
14 2. this Declaration of Service

15 to be served via hand-delivery upon:

16 William G. Clark
17 Office of the Attorney General
18 800 5th Ave., Suite 2000
Seattle, WA 98104-3188
Attorneys for Respondent

19 I declare under penalty of perjury under the laws of the State of Washington, that the
20 foregoing is true and correct.

21 Executed in Seattle, Washington this 21st day of May, 2007.

22
23 
24 Kellie DeVera
25
26

DECLARATION OF SERVICE - 1

COPY

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
◆ 206-447-4400

EXHIBIT 3

Clark, Bill (ATG)

From: Clark, Bill (ATG)
Sent: Friday, June 08, 2007 1:15 PM
To: 'ahearne@foster.com'; 'ramer@foster.com'; 'Edmund Robb'
Cc: Williams, Aaron (ATG); Roche, Agnes (ATG)
Subject: McCleary V. State -- DISCOVERY CONFERENCE OF COUSEL ON JUNE 11

Dear Counsel:

I write in anticipation of our Monday conference about discovery. As a preliminary matter, I will come to your offices to meet face-to-face or, if you prefer, we can discuss over the phone. Just let me know.

At the conference I would like to discuss first the Respondent's outstanding Document Production Requests. You have objected, generally and specifically, to every request. The grounds asserted are: 1. Your pending summary judgment motion; 2. Production would reveal privileged or work product materials; 3. Producing responsive materials is burdensome because the requests are overly broad and ambiguous; 4. The requests go beyond the limited claims and relief sought in the Petition; 5. Responsive documents are either public records or those obtained from the State; and 6. We have asked that the component members of NEWS produce documents.

The Court's directive that we meet and confer to resolve outstanding discovery issues has eliminated the first objection. Had she not done so, there is still no basis for refusing discovery because such motions are pending. I assume Petitioners will not persist in this position.

Similarly, there is no valid basis for the privilege and work product objection simply because responsive documents were located by or on behalf of counsel. This is particularly true of documents that are not themselves communications in confidence between lawyer and client for purposes of legal advice or created in anticipation of litigation. You certainly can produce them without indicating what, if any, significance legal counsel or the clients assign to them. At a minimum, you should provide a log of what you are withholding on these grounds so that we have enough information about the documents and the basis for withholding them to allow us to evaluate and challenge the alleged privilege or other grounds for refusal to produce.

As to the third, fourth and fifth grounds stated above, we will need to review each contention document request to ascertain precisely what Petitioners are, and are not, contending. Each document request was directed at discovering what Petitioners have as potential evidence to support the broad assertions about the nature of the State's duty, its alleged non-performance of that duty and the remedy sought to cure that non-performance. Yet, in your Reply summary judgment pleadings, you claim that the adequacy of funding provided by the State is not relevant to your case. I find that hard to believe when the only remedy you ask for is a directive that the State study the actual costs of providing a basic education and indicate how it intends to fully fund them. You have clearly tied funding to whatever you believe the State's obligations to be and to your preferred remedy if the Court finds that the State is not meeting those obligations. If I am incorrect then perhaps we should stipulate that the amount of funding the State provides, or should provide, is out of the case. If your case relates only to whether the State guarantees educational outcomes and that your evidence (principally WASL test results) proves non-compliance, then stipulate to that. Similarly, your objections imply that your evidence consists entirely of documents obtained from the State. If that is all you have, then say so.

Finally, you have objected to producing documents from NEWS' component members. If you insist, we will go through the cumbersome third-party discovery process. But be advised that we will object to Petitioners' use of documents they obtain from third-parties unless Petitioners agree to make those documents available to us in a timely and complete manner during the discovery period.

In addition to the document discovery we want to schedule the petitioners' depositions. Depending on the resolution of issues about our outstanding discovery and the production of documents, we anticipate taking those depositions during the latter half of July. I will need to know about your clients' (and counsel's) availability.

I look forward to our conference at 10:30 on Monday.