

7-2-2007

Reply Declaration Concerning Motion for Protective Order 07-2-02323-2-34

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2007 JUL -2 PM 1:00

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MATHEW & STEPHANIE MCCLEARY, on their own
behalf 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.

Honorable Paris K. Kallas

*Hearing Date (without oral
argument): July 3, 2007*

No. 07-2-02323-2 SEA

REPLY DECLARATION
CONCERNING MOTION FOR
PROTECTIVE ORDER

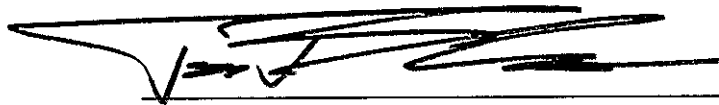
Original

THOMAS F. AHEARNE declares as follows:

1. Declarant. I am one of the attorneys for the petitioners in this action. As such, I
have personal knowledge of the facts stated below and am competent to testify to those facts.

2. Petitioners' Supplemental Responses & the Underlying Discovery Conferences.
Attached is a true and correct copy of the previously served Supplemental Responses that the
State's opposition papers refer to. The statements in those Supplemental Responses about the
underlying discovery conferences that produced those Supplemental Responses are true. As the
Court can see by reading those Supplemental Responses, they refute the incorrect innuendo and
accusations asserted in the State's opposition papers.

I declare under penalty of perjury under the laws of the State of Washington that the
foregoing is true and correct. Executed at Seattle, Washington this 2nd day of July, 2007.



Thomas F. Ahearne

REPLY DECLARATION CONCERNING MOTION FOR A
PROTECTIVE ORDER - 1

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

Exhibit 1

1
2
3 RECEIVED
4

5 JUN 28 2007

6 ATTORNEY GENERAL OFFICE
7 SEATTLE

8 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

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

16 Petitioners,

17 v.

18 STATE OF WASHINGTON,

19 Respondent.

The Honorable Paris K. Kallas

No. 07-2-02323-2 SEA

PETITIONERS' *SUPPLEMENTAL*
RESPONSES TO RESPONDENT'S
FIRST REQUESTS FOR PRODUCTION
(RE THE REQUESTS ADDRESSED IN
THE JUNE DISCOVERY
CONFERENCES)

20 **Petitioners submit these Supplemental Responses pursuant to the two discovery**
21 **conferences held between counsel on June 12 and June 15. It is the understanding of**
22 **Petitioners' counsel that with the exception of the three categories of documents that are**
23 **the subject of Petitioners' pending Motion For A Protective Order, these responses now**
24 **satisfy the requests addressed at those two June discovery responses (i.e., Document**
25 **Request Nos. 14-24 & 26-30). To help differentiate these Supplemental Responses from the**
26 **Initial Responses, these post-discovery conference supplements are in bold face type with**
background shading.

PETITIONERS *SUPPLEMENTAL* RESPONSES TO RESPONDENT'S
FIRST REQUESTS FOR PRODUCTION (RE THE REQUESTS
ADDRESSED IN THE JUNE DISCOVERY CONFERENCES) - 1

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

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

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

Supplement after June discovery conferences: Pursuant to the discussion at the June discovery conferences, the above two points are addressed in Petitioners' pending Motion For A Protective Order.

II. GENERAL OBJECTIONS

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

Supplement after June discovery conferences: Pursuant to the discussion at the June discovery conferences, the above point is addressed in Petitioners' pending Motion For A Protective Order.

B. Petitioners object to the State's 30-request set of document requests because they are unreasonable, unduly burdensome given the needs of this case, and are not reasonably calculated to lead to the discovery of admissible evidence. This case poses only two questions: (1) what is the State's legal duty under Article IX, § 1? (a pure legal question), and (2) is the

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

8 **Supplement after June discovery conferences: Pursuant to the discussion at the June**
9 **discovery conferences, the above point is addressed in Petitioners' pending Motion For A**
10 **Protective Order.**

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

19 **Supplement after June discovery conferences: Petitioners' counsel understands from the**
20 **June discovery conferences that this objection is moot because the State is no longer**
21 **demanding CR 34 discovery from non-party NEWS members.**

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

29 **Supplement after June discovery conferences: Pursuant to the discussion at the June**
30 **discovery conferences, the above point with respect to the pending summary judgment**
31 **motion is addressed in Petitioners' Motion For A Protective Order. The fact that**
32 **Petitioner NEWS did not exist back in January 1, 2001 is simply a fact – see the**
33 **September 22, 2006 Certificate Of Incorporation issued by the Washington Secretary of**
34 **State, copy of which was attached to Petitioners' May 4 summary judgment submission.**

35 D. Petitioners object to the State's 30-request set of document requests because they
36 seek documents that fall within the attorney client privilege, that are within the work product
37 doctrine, that constitute trial preparation materials within the meaning of CR 26(b)(3), and that
38 constitute expert witness information that is not discoverable under CR 26(b)(4). Without
39 limiting this objection, Petitioners specifically object to the following:

40 **Supplement after June discovery conferences: Petitioners' counsel understands from the**
41 **discussion about the work product objection at the June discovery conferences that the**
42 **State is did not intend its Requests to demand attorney-client communications, and**
43 **understands from the discussion at those discovery conferences about Request Nos. 22 and**
44 **23 that expert-related requests are on hold until after resolution of the pending summary**

judgment motion as neither side is retaining testifying experts until after that motion is resolved. See Supplement to Request Nos. 22 and 23 below. Pursuant to the discussion at the June discovery conferences, the above work product objection (which includes the trial preparation materials referenced above) is addressed in Petitioners' pending Motion For A Protective Order. [Note: as the above "trial preparation materials" and "expert witness information" descriptions confirm, "(b)(4)" and "(b)(5)" were mistakenly typed above as "(b)(3)" and "(b)(4)" instead.]

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

Supplement after June discovery conferences: Petitioners' counsel understands from the June discovery conferences that this objection is moot with respect to legal research documents (e.g., case law, statutory materials, law review articles, and pleadings) collected by Petitioners counsel because the State did not intend its requests to request legal research documents. Pursuant to the discussion at the June discovery conferences, the objection with respect to the documents that Petitioners counsel collected from the State is addressed in Petitioners' pending Motion For A Protective Order.

2. Petitioners object to producing any documents that their counsel selected, compiled and retained from documents that the State makes available to the public (e.g., the State's webpages, archives, and court records) in anticipation of this litigation. Petitioners also object to producing other documents their counsel obtained through legal research (e.g., finance studies and case law) conducted in anticipation of this litigation. By producing the documents that Petitioners' counsel has gathered and used to develop legal theories, Petitioners' counsel would reveal mental impressions, legal strategy, intended lines of proof and other opinion work product. The State has access to these documents – all of them are publicly available and most are already in the State's possession – and Petitioners' counsel should not be required to tell the State which materials it used for formulate and prepare for this litigation.

Supplement after June discovery conferences: Petitioners' counsel understands from the June discovery conferences that this objection is moot with respect to legal research documents (e.g., case law, statutory materials, law review articles, and pleadings) collected by Petitioners counsel because the State did not intend its requests to request legal research documents. Pursuant to the discussion at the June discovery conferences, the objection with respect to the documents that Petitioners counsel collected from the State is addressed in Petitioners' pending Motion For A Protective Order.

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

6 Supplement after June discovery conferences: This was done in the June discovery
7 conferences that have resulted in the Petitioners' pending Motion For A Protective Order.

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

10 Supplement after June discovery conferences: This is a statement of Petitioners' intent
11 rather than an objection to be resolved or ruled upon at this time.

12 III. RESPONSES

13 Subject to and incorporating the above, Petitioners respond to the State's document
14 requests as follows:
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1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

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

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.

27 **Supplement after June discovery conferences:** The State's counsel did not raise this
28 **Document Request in the June discovery conferences.** (Petitioners will not argue that that
29 **silence was a waiver by the State of any disagreement it may have with respect to the**
30 **Petitioners' objections to this request, but will take that silence to be nothing more than a**
31 **choice by the State to not spend time arguing about this request while the May 4 summary**
32 **judgment motion is pending.)**

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

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

17 *Petitioners accordingly ask that the State agree to narrow this discovery request to cure*
18 *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*
20 *expense of preparing and pursuing a motion for a protective order to have the Court rule on the*
21 *above document request as propounded by the State, Petitioners ask that the State so inform*
22 *Petitioners in writing so Petitioners can schedule the necessary discovery conference under*
23 *CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification*
24 *for this request as currently worded so that, if the State doesn't, Petitioners can file an*
25 *appropriate motion for a protective order.*

26 **Supplement after June discovery conferences:** The State's counsel did not raise this
Document Request in the June discovery conferences. (Petitioners will not argue that that
silence was a waiver by the State of any disagreement it may have with respect to the
Petitioners' objections to this request, but will take that silence to be nothing more than a
choice by the State to not spend time arguing about this request while the May 4 summary
judgment motion is pending.)

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

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

17 *Petitioners accordingly ask that the State agree to narrow this discovery request to cure*
18 *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*
20 *expense of preparing and pursuing a motion for a protective order to have the Court rule on the*
21 *above document request as propounded by the State, Petitioners ask that the State so inform*
22 *Petitioners in writing so Petitioners can schedule the necessary discovery conference under*
23 *CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification*
24 *for this request as currently worded so that, if the State doesn't, Petitioners can file an*
25 *appropriate motion for a protective order.*

26 **Supplement after June discovery conferences:** The State's counsel did not raise this
Document Request in the June discovery conferences. (Petitioners will not argue that that
silence was a waiver by the State of any disagreement it may have with respect to the
Petitioners' objections to this request, but will take that silence to be nothing more than a
choice by the State to not spend time arguing about this request while the May 4 summary
judgment motion is pending.)

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

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 *Responding to the request also requires the making of a legal conclusion (e.g., the request's use*
19 *of "education" when the legal meaning of that word is a central legal issue). And it seeks*
20 *information that is privileged or confidential (e.g., attorney-client 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*
27 *CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification*
28 *for this request as currently worded so that, if the State doesn't, Petitioners can file an*
29 *appropriate motion for a protective order.*

30 **Supplement after June discovery conferences:** The State's counsel did not raise this
31 **Document Request in the June discovery conferences.** (Petitioners will not argue that that
32 **silence was a waiver by the State of any disagreement it may have with respect to the**
33 **Petitioners' objections to this request, but will take that silence to be nothing more than a**
34 **choice by the State to not spend time arguing about this request while the May 4 summary**
35 **judgment motion is pending.)**

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

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 *Responding to it calls for the making of a legal conclusion (e.g., the request's use of "stable,*
19 *regular and reliable" and "education" when the legal meaning of that word is a central legal*
20 *issue). And it seeks information that is privileged or confidential (e.g., attorney-client*
21 *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 **Supplement after June discovery conferences:** *The State's counsel did not raise this*
32 *Document Request in the June discovery conferences. (Petitioners will not argue that that*
33 *silence was a waiver by the State of any disagreement it may have with respect to the*
34 *Petitioners' objections to this request, but will take that silence to be nothing more than a*
35 *choice by the State to not spend time arguing about this request while the May 4 summary*
36 *judgment motion is pending.)*

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

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 *Responding to it calls for the making of a legal conclusion (e.g., the request's use of "goals" and*
19 *RCW 28A.150.210). And it seeks information that is privileged or confidential (e.g.,*
20 *attorney-client 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*
27 *CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification*
28 *for this request as currently worded so that, if the State doesn't, Petitioners can file an*
29 *appropriate motion for a protective order.*

30 **Supplement after June discovery conferences:** The State's counsel did not raise this
31 **Document Request in the June discovery conferences.** (Petitioners will not argue that that
32 **silence was a waiver by the State of any disagreement it may have with respect to the**
33 **Petitioners' objections to this request, but will take that silence to be nothing more than a**
34 **choice by the State to not spend time arguing about this request while the May 4 summary**
35 **judgment motion is pending.)**

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

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 *Responding to it calls for the making of a legal conclusion (e.g., the request's "EALRS"*
19 *contention). 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*
27 *CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification*
28 *for this request as currently worded so that, if the State doesn't, Petitioners can file an*
29 *appropriate motion for a protective order.*

30 **Supplement after June discovery conferences:** *The State's counsel did not raise this*
31 *Document Request in the June discovery conferences. (Petitioners will not argue that that*
32 *silence was a waiver by the State of any disagreement it may have with respect to the*
33 *Petitioners' objections to this request, but will take that silence to be nothing more than a*
34 *choice by the State to not spend time arguing about this request while the May 4 summary*
35 *judgment motion is pending.)*

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

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

15 *Petitioners accordingly ask that the State agree to narrow this discovery request to cure*
16 *the above objections so Petitioners can respond without, for example, disclosing protected work*
17 *product. If the State does not so agree, or if the State insists instead that Petitioners incur the*
18 *expense of preparing and pursuing a motion for a protective order to have the Court rule on the*
19 *above document request as propounded by the State, Petitioners ask that the State so inform*
20 *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*
22 *for this request as currently worded so that, if the State doesn't, Petitioners can file an*
23 *appropriate motion for a protective order.*

24 **Supplement after June discovery conferences:** The State's counsel did not raise this
25 **Document Request in the June discovery conferences.** (Petitioners will not argue that that
26 **silence was a waiver by the State of any disagreement it may have with respect to the**
Petitioners' objections to this request, but will take that silence to be nothing more than a
choice by the State to not spend time arguing about this request while the May 4 summary
judgment motion is pending.)

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

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.

Supplement after June discovery conferences: The State's counsel raised the "work product/equally or more available to the State" and "mischaracterizes" objections to this Request in the June discovery conferences.

Petitioners' counsel understands from the June discovery conferences that one major component of the above "work product/equally or more available to the State" objection is now moot because the State is not requesting legal research documents (e.g., case law, statutory materials, law review articles, and pleadings). Pursuant to the discussion at the June discovery conferences, the other major component of that work product objection is addressed in Petitioners' pending Motion For A Protective Order.

With respect to the "mischaracterizes" objection, this Request's statement of "the contention in paragraph 100 of the Petition" simply is not the contention actually stated in paragraph 100. Petitioners understand that the State therefore wishes to revise this Request to state the actual language of paragraph 100 instead.

This supplement confirms in writing what Petitioners' counsel indicated during the discovery conference discussions: The documents that the Petitioners are currently aware of that are responsive to this revised Request (other than the work product documents noted above and attorney-client communications) are as follows: (1) the documents discussed at the February 21 Bergeson Deposition, and (2) the documents filed by the parties in this lawsuit.

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RESPONSE TO REQUEST FOR PRODUCTION NO. 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 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 demands documents that are neither relevant nor 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 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. 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.

Supplement after June discovery conferences: The State's counsel raised the "work product/equally or more available to the State" objection to this Request in the June discovery conferences. The major component of this objection is now moot because the "paragraph 101 of the Petition" referenced in this Request is a legal conclusion, and Petitioners' counsel understands from the June discovery conferences that the State is not requesting legal research documents (e.g., case law, statutory materials, law review articles, and pleadings). Pursuant to the discussion at those discovery conferences, the other major component of this objection is addressed in Petitioners' pending Motion For A Protective Order.

This supplement confirms in writing what Petitioners' counsel indicated during the discovery conference discussions: The documents that the Petitioners are currently aware of that are responsive to this Request (other than the work product documents noted above and attorney-client communications) are as follows: (1) the documents discussed at the February 21 Bergeson Deposition, and (2) the documents filed by the parties in this lawsuit.

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RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

As stated in Petitioners' General Objections, Petitioners will not produce documents 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.

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 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. 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.

Supplement after June discovery conferences: The State's counsel raised the "work product/equally or more available to the State" objection to this Request in the June discovery conferences. The major component of this objection is now moot because the "paragraph 102 of the Petition" referenced in this Request is a legal conclusion, and Petitioners' counsel understands from the June discovery conferences that the State is not requesting legal research documents (e.g., case law, statutory materials, law review articles, and pleadings). Pursuant to the discussion at those discovery conferences, the other major component of this objection is addressed in Petitioners' pending Motion For A Protective Order.

This supplement confirms in writing what Petitioners' counsel indicated during the discovery conference discussions: The documents that the Petitioners are currently aware of that are responsive to this Request (other than the work product documents noted above and attorney-client communications) are as follows: (1) the documents discussed at the February 21 Bergeson Deposition, and (2) the documents filed by the parties in this lawsuit.

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RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

As stated in Petitioners' General Objections, Petitioners will not produce documents 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.

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 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, 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. 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.

Supplement after June discovery conferences: The State's counsel raised the "work product/equally or more available to the State" and "mischaracterizes" objections to this Request in the June discovery conferences.

Petitioners' counsel understands from those conferences that one major component of that work product objection is now moot because the State is not requesting legal research documents (e.g., case law, statutory materials, law review articles, and pleadings). Pursuant to the discussion at those discovery conferences, the other major component of this objection is addressed in Petitioners' pending Motion For A Protective Order.

With respect to the "mischaracterizes" objection, this Request's statement of "the contention in paragraph 103 of the Petition" simply is not the contention actually stated in paragraph 103. Petitioners understand that the State therefore wishes to revise this Request to state the actual language of paragraph 103 instead.

This supplement confirms in writing what Petitioners' counsel indicated during the discovery conference discussions: The documents that the Petitioners are currently aware of that are responsive to this revised Request (other than the work product documents noted above and attorney-client communications) are as follows: (1) the documents discussed at the February 21 Bergeson Deposition, and (2) the documents filed by the parties in this lawsuit.

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RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

As stated in Petitioners' General Objections, Petitioners will not produce documents 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.

Please note, moreover, that as currently written, the State's above production request mischaracterizes Petitioners' contentions in this case (see Petitioners' motion for summary judgment and the above Preliminary Statement), and 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 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. 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 for this request as currently worded so that, if the State doesn't, Petitioners can file an appropriate motion for a protective order.

Supplement after June discovery conferences: The State's counsel did not raise this Document Request in the June discovery conferences. (Petitioners will not argue that that silence was a waiver by the State of any disagreement it may have with respect to the Petitioners' objections to this request, but will take that silence to be nothing more than a choice by the State to not spend time arguing about this request while the May 4 summary judgment motion is pending.)

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

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.

Supplement after June discovery conferences: The State's counsel raised the "work
product/equally or more available to the State" and "mischaracterizes" objections to this
Request in the June discovery conferences.

Petitioners' counsel understands from those conferences that one major component of that
work product objection is now moot because the State is not requesting legal research
documents (e.g., case law, statutory materials, law review articles, and pleadings).
Pursuant to the discussion at those discovery conferences, the other major component of
this objection is addressed in Petitioners' pending Motion For A Protective Order:

With respect to the "mischaracterizes" objection, this Request's statement of "the
contention in paragraph 104 of the Petition" simply is not the contention actually stated in
paragraph 104. Petitioners understand that the State therefore wishes to revise this
Request to state the actual language of paragraph 104 instead.

This supplement confirms in writing what Petitioners' counsel indicated during the
discovery conference discussions: The documents that the Petitioners are currently aware
of that are responsive to this revised Request (other than the work product documents
noted above and attorney-client communications) are as follows: (1) the documents
discussed at the February 21 Bergeson Deposition, and (2) the documents filed by the
parties in this lawsuit.

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

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.

Supplement after June discovery conferences: The State's counsel raised the "work product/equally or more available to the State" and "mischaracterizes" objections to this Request in the June discovery conferences.

Petitioners' counsel understands from those conferences that one major component of that work product objection is now moot because the State is not requesting legal research documents (e.g., case law, statutory materials, law review articles, and pleadings). Pursuant to the discussion at those discovery conferences, the other major component of this objection is addressed in Petitioners' pending Motion For A Protective Order.

With respect to the "mischaracterizes" objection, this Request's statement of "the contention in paragraph 105 of the Petition" simply is not the contention actually stated in paragraph 105. Petitioners understand that the State therefore wishes to revise this Request to state the actual language of paragraph 105 instead.

This supplement confirms in writing what Petitioners' counsel indicated during the discovery conference discussions: The documents that the Petitioners are currently aware of that are responsive to this revised Request (other than the work product documents noted above and attorney-client communications) are as follows: (1) the documents discussed at the February 21 Bergeson Deposition, and (2) the documents filed by the parties in this lawsuit.

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RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

As stated in Petitioners' General Objections, Petitioners will not produce documents 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.

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 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. 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.

Supplement after June discovery conferences: The State's counsel raised the "work product/equally or more available to the State" objection to this Request in the June discovery conferences. Petitioners' counsel understands from those discovery conferences that one major component of this objection is now moot because the State is not requesting legal research documents (e.g., case law, statutory materials, law review articles, and pleadings). Pursuant to the discussion at those discovery conferences, the other major component of this objection is addressed in Petitioners' pending Motion For A Protective Order.

This supplement confirms in writing what Petitioners' counsel indicated during the discovery conference discussions: The documents that the Petitioners are currently aware of that are responsive to this Request (other than the work product documents noted above and attorney-client communications) are as follows: (1) the documents discussed at the February 21 Bergeson Deposition, and (2) the documents filed by the parties in this lawsuit.

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RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

As stated in Petitioners' General Objections, Petitioners will not produce documents 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.

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 the Court based on its interpretation of Article IX, § 1, and the State's request for documents is an impermissible request for attorney work product. Additionally, 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, 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. 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.

Supplement after June discovery conferences: The State's counsel raised the "work product/equally or more available to the State" and "mischaracterizes" objections to this Request in the June discovery conferences.

The major component of that work product objection is now moot because the "paragraphs 108(a) through (d) of the Petition" referenced in this Request are legal conclusions, and Petitioners' counsel understands from the June discovery conferences that the State is not requesting legal research documents (e.g., case law, statutory materials, law review articles, and pleadings). Pursuant to those discovery conferences, the other major component of this objection is addressed in the pending Motion For A Protective Order.

With respect to the "mischaracterizes" objection, this Request's characterization of those referenced paragraphs as "funding and/or basic education" allegations is, at best, misleading or vague. Petitioners understand that the State therefore wishes to revise this Request to reference the actual language of those paragraphs instead.

This supplement confirms in writing what Petitioners' counsel indicated during the discovery conference discussions: The documents that the Petitioners are currently aware of that are responsive to this revised Request (other than the work product documents noted above and attorney-client communications) are as follows: (1) the documents discussed at the February 21 Bergeson Deposition, and (2) the documents filed by the parties in this lawsuit.

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RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

As stated in Petitioners' General Objections, Petitioners will not produce documents 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.

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 the Court based on its interpretation of Article IX, § 1, and the State's request is an impermissible request for attorney work product. Additionally, 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, 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. 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.

Supplement after June discovery conferences: The State's counsel raised the "work product/equally or more available to the State" and "mischaracterizes" objections to this Request in the June discovery conferences.

The major component of that work product objection is now moot because the "paragraphs 108(h) through (i) of the Petition" referenced in this Request are legal conclusions, and Petitioners' counsel understands from the June discovery conferences that the State is not requesting legal research documents (e.g., case law, statutory materials, law review articles, and pleadings). Pursuant to those discovery conferences, the other major component of this objection is addressed in the pending Motion For A Protective Order.

With respect to the "mischaracterizes" objection, this Request's characterization of those referenced paragraphs as "stems or process" allegations is, at best, misleading or vague. Petitioners understand that the State therefore wishes to revise this Request to reference the actual language of those paragraphs instead.

This supplement confirms in writing what Petitioners' counsel indicated during the discovery conference discussions: The documents that the Petitioners are currently aware of that are responsive to this revised Request (other than the work product documents noted above and attorney-client communications) are as follows: (1) the documents discussed at the February 21 Bergeson Deposition, and (2) the documents filed by the parties in this lawsuit.

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RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

As stated in Petitioners' General Objections, Petitioners will not produce documents 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.

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 paragraph referred to by this request describes the legal relief that Petitioners are seeking from the Court based on its legal interpretation of Article IX, § 1, and the State's request for documents is an impermissible request for attorney work product. Additionally, 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, 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. 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.

Supplement after June discovery conferences: The State's counsel raised the "work product/equally or more available to the State" objection to this Request in the June discovery conferences. Petitioners' counsel understands from those discovery conferences that one major component of this objection is now moot because the State is not requesting legal research documents (e.g., case law, statutory materials, law review articles, and pleadings). Pursuant to the discussion at those discovery conferences, the other major component of this objection is addressed in Petitioners' pending Motion For A Protective Order.

This supplement confirms in writing what Petitioners' counsel indicated during the discovery conference discussions: The documents that the Petitioners are currently aware of that are responsive to this Request (other than the work product documents noted above and attorney-client communications) are as follows: (1) the documents discussed at the February 21 Bergeson Deposition, and (2) the documents filed by the parties in this lawsuit.

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RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

As stated in Petitioners' General Objections, Petitioners will not produce any documents at this time because, as Petitioners' motion for summary judgment explains, the State's own documents establish its constitutional failing, and this case should be 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 "constitute, refer or relate to" phrase 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 State. 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.

Supplement after June discovery conferences: The State's counsel raised this Request in the June discovery conferences and, pursuant to the discussion at those discovery conferences, the "funding" aspect of the above scope objection is addressed in Petitioners' pending Motion For A Protective Order. Moreover, as noted above on page 3 of this Supplemental Response, the "non-parties" scope objection is now moot because Petitioners' counsel understands from the June discovery conferences that the State is no longer demanding CR 34 discovery from non-party NEWS members.

This supplement confirms in writing what Petitioners' counsel indicated during the discovery conference discussions: Petitioners are not currently aware of any documents responsive to this Request (other than attorney-client communications) that concern (1) communications between the McCleary family and the Respondent, (2) communications between the Venema family and the Respondent, or (3) communications between the NEWS entity and Respondent, with the possible exception of communications concerning the meeting that the Governor called with representatives of NEWS to try to pressure NEWS to not pursue this suit. Petitioners are searching to see if documents (other than attorney-client communications) concerning that meeting exist, and if they do, NEWS will produce its discoverable documents relating to that meeting which are responsive to this Request.

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RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

As stated in Petitioners' General Objections, Petitioners will not produce documents 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.

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 "constitute, refer or relate to" phrase 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).

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.

Supplement after June discovery conferences: The State's counsel raised this Request in the June discovery conferences. Petitioners' counsel understands that this Request is now moot to the extent it relates to entities beyond NEWS itself because, as noted above on page 3 of this Supplemental Response, the State is no longer demanding CR 34 discovery from non-party NEWS members (the "entities described in paragraph 3 of the Petition" that go beyond NEWS itself). Pursuant to the discussion at those discovery conferences, the "funding" aspect of the above scope objection is also addressed in Petitioners' pending Motion For A Protective Order.

This supplement confirms in writing what Petitioners' counsel indicated during the discovery conference discussions: With respect to that NEWS entity itself, Petitioners are not currently aware of any documents responsive to this Request (other than attorney-client communications) that concern communications between the NEWS entity and Respondent, with the possible exception of communications concerning the meeting that the Governor called with representatives of NEWS to try to pressure NEWS to not pursue this suit. Petitioners are searching to see if documents (other than attorney-client communications) concerning that meeting exist, and if they do, NEWS will produce its discoverable documents relating to that meeting which are responsive to this Request.

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RESPONSE TO REQUEST FOR PRODUCTION NO. 22:

As stated in Petitioners' General Objections, Petitioners will not produce documents 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.

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

Subject to these objections, Petitioners respond that they have at this time not retained any testifying experts to testify at trial because, as their pending summary judgment motion 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.

Supplement after June discovery conferences: Petitioners' counsel understands from the June discovery conferences that the State has not retained testifying experts yet either, and is putting this Request on hold until after the Court resolves the pending Motion For Summary Judgment Concerning Legal Interpretation.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

See response to request number 22.

Supplement after June discovery conferences: Petitioners' counsel understands from the June discovery conferences that the State has not retained testifying experts yet either, and is putting this Request on hold until after the Court resolves the pending Motion For Summary Judgment Concerning Legal Interpretation.

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

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 *demand documents that are neither relevant nor reasonably calculated to lead to the discovery*
8 *of admissible evidence in this case. The State's catch-all "relate to" phrase renders this*
9 *request's scope ambiguous, overbroad, and without the requisite specificity for a document*
10 *request under CR 34 – and if taken literally, it would require a search and production that is*
11 *hopelessly overbroad and unduly burdensome and harassing, both to Petitioners and the non-*
12 *parties to whom this request is addressed. And it seeks information that is privileged or*
13 *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*
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 **Supplement after June discovery conferences:** Petitioners' counsel understands from the
24 June discovery conferences that the State is seeking the following documents under this
25 Request in addition to the documents previously filed this case: NEWS's minute book,
26 which contains NEWS' Articles of Incorporation, Articles of Amendment, Certificate of
Incorporation, Consent to Serve as Registered Agent, Organizational Meeting and Bylaws,
Consent in Lieu of the Organizational Meeting of the Board of Directors for Excellence in
Washington Schools (with attachment), Consent in Lieu of a Meeting of the Board of
Trustees of Network for Excellence in Washington Schools (with attachments), and an
Application for Employment Identification Number and Federal Tax ID/EIN. NEWS is
also producing a hard copy the NEWS website's description of the principal activities of
petitioner Network for Excellence in Washington Schools.

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

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 *Petitioners further object because this document request is actually an interrogatory, and it*
11 *should be asked as such. And it seeks information that is privileged or confidential (e.g.,*
12 *attorney-client communications or work product).*

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 **Supplement after June discovery conferences:** The State's counsel did not raise this
23 Document Request in the June discovery conferences. (Petitioners will not argue that that
24 silence was a waiver by the State of any disagreement it may have with respect to the
25 Petitioners' objections to this request, but will take that silence to be nothing more than a
26 choice by the State to not spend time arguing about this request while the May 4 summary
judgment motion is pending.)

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

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 *Petitioners further object because this document request is actually an interrogatory, and it*
11 *should be asked as such. And it seeks information that is privileged or confidential (e.g.,*
12 *attorney-client communications or work product).*

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 **Supplement after June discovery conferences:** The State's counsel raised the "work
23 product" and "mischaracterizes" objections to this Request in the June discovery
24 conferences.

25 Petitioners' counsel understands from the June discovery conferences that one
26 major component of the above work product objection is now moot because the State is not
requesting legal research documents (e.g., case law, statutory materials, law review articles,
and pleadings). Pursuant to the discussion at the June discovery conferences, the other
major component of that objection is addressed in Petitioners' pending Motion For A
Protective Order.

 With respect to the "mischaracterizes" objection, the State bases this Request on
"the average class size (see paragraph 49 of the Petition) for each of grades K through 12
that [Petitioners] contend is necessary in order for Washington to provide all children the
education required by the State constitution" – but neither paragraph 49 of the Petition
nor the Petition in general make a contention of what the average class size is for each of
grades K through 12 that is necessary in order for Washington to provide all children the
education required by the State Constitution. In short, this "contention" Request makes no
sense because it is based on a contention not currently made in this case.

 As explained in the Preliminary Statement and May 4 Summary Judgment Motion
Concerning Legal Interpretation cited in the original objections above, such funding or
education system "input" contentions are not material to the dispositive education system
"output" issue in this case. Pursuant to the discussion at the June discovery conferences,
this "funding" aspect of the above scope objection is addressed in Petitioners' pending
Motion For A Protective Order.

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RESPONSE TO REQUEST FOR PRODUCTION NO. 27:

As stated in Petitioners' General Objections, Petitioners will not produce documents 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.

Please note, moreover, that as currently written, the State's above production request mischaracterizes Petitioners' contentions in this case (see Petitioners' motion for summary judgment and the above Preliminary Statement), and demands documents that are neither 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., 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 for this request as currently worded so that, if the State doesn't, Petitioners can file an appropriate motion for a protective order.

Supplement after June discovery conferences: The State's counsel raised the "work product" and "mischaracterizes" objections to this Request in the June discovery conferences.

Petitioners' counsel understands from the June discovery conferences that one major component of the above work product objection is now moot because the State is not requesting legal research documents (e.g., case law, statutory materials, law review articles, and pleadings). Pursuant to the discussion at the June discovery conferences, the other major component of that objection is addressed in Petitioners' pending Motion For A Protective Order.

With respect to the "mischaracterizes" objection, the State bases this Request on "the amount(s) in compensation you contend (see paragraph 52 of the Petition) is the 'fair pay' for teachers and other professionals needed to provide Washington's students with the education required by the State constitution" – but neither paragraph 52 of the Petition nor the Petition in general make a contention of what amount is the fair pay needed to provide Washington's students with the education required by the State Constitution. In short, this "contention" Request makes no sense because it is based on a contention not currently made in this case.

As explained in the Preliminary Statement and May 4 Summary Judgment Motion Concerning Legal Interpretation cited in the original objections above, such funding or education system "input" contentions are not material to the dispositive education system "output" issue in this case. Pursuant to the discussion at the June discovery conferences, this "funding" aspect of the above scope objection is addressed in Petitioners' pending Motion For A Protective Order.

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

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

17 *Petitioners accordingly ask that the State agree to narrow this discovery request to cure*
18 *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*
20 *expense of preparing and pursuing a motion for a protective order to have the Court rule on the*
21 *above document request as propounded by the State, Petitioners ask that the State so inform*
22 *Petitioners in writing so Petitioners can schedule the necessary discovery conference under*
23 *CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification*
24 *for this request as currently worded so that, if the State doesn't, Petitioners can file an*
25 *appropriate motion for a protective order.*

26 **Supplement after June discovery conferences: Petitioners' counsel understands from the**
June discovery conferences that the State is putting this document request on hold as the
State reconsiders whether Petitioners' objection is well taken.

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).*

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.

 Supplement after June discovery conferences: The State's counsel raised the above
"work product/equally or more available to the State" and "mischaracterizes" objections
in the June discovery conferences.

 Petitioners' counsel understands from those discovery conferences that one major
component of the above work product objection is now moot because the State is not
requesting legal research documents (e.g., case law, statutory materials, law review articles,
and pleadings). Pursuant to the discussion at the June discovery conferences, the other
major component of that objection is addressed in Petitioners' pending Motion For A
Protective Order.

 With respect to the "mischaracterizes" objection, the State bases this Request on
Petitioners' "contention that property taxes and sales taxes do not constitute regular and
dependable or sustainable tax source(s) to fund the basic program of education in
Washington State" – but the Petition does not make that contention. Indeed, it makes no
contention whatsoever about "sales taxes" or "property taxes". In short, this "contention"
Request makes no sense because it is based on a contention not currently made in this case.

 As explained in the Summary Judgment Motion Concerning Legal Interpretation
cited in the original objections above, such funding or education system "input"
contentions also are not material to the dispositive education system "output" issue in this
case. Pursuant to the discussion at the June discovery conferences, this "funding" aspect of
the above scope objection is addressed in the pending Motion For A Protective Order.

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

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).*

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

30 **Supplement after June discovery conferences:** The State's counsel raised the above
31 "work product/equally or more available to the State" and "mischaracterizes" objections
32 in the June discovery conferences.

33 Petitioners' counsel understands from those conferences that one major component
34 of the above work product objection is now moot because the State is not requesting legal
35 research documents (e.g., case law, statutory materials, law review articles, and pleadings).
36 Pursuant to the discussion at the June discovery conferences, the other major component of
37 that objection is addressed in Petitioners' pending Motion For A Protective Order.

38 With respect to the "mischaracterizes" objection, the State bases this Request on
39 Petitioners' "contention that tax source(s) other than property taxes and sales taxes
40 constitute regular and dependable tax source(s) to fund the basic program of education in
41 Washington State" – but the Petition does not make that contention. Indeed, it makes no
42 contention whatsoever about "sales taxes" or "property taxes". In short, this "contention"
43 Request makes no sense because it is based on a contention not currently made in this case.

44 As explained in the Summary Judgment Motion Concerning Legal Interpretation
45 cited in the original objections above, such funding or education system "input"
46 contentions also are not material to the dispositive education system "output" issue in this
47 case. Pursuant to the discussion at the June discovery conferences, this "funding" aspect of
48 the above scope objection is addressed in the pending Motion For A Protective Order.

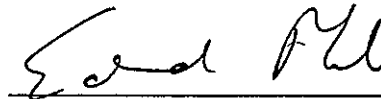
1 OBJECTIONS ASSERTED this 21st day of May, 2007.

2 FOSTER PEPPER PLLC

3
4
5 Thomas F. Ahearne, WSBA No. 14844
6 Edmund W. Robb, WSBA No. 35948
7 Attorneys for Petitioners

8
9 SUPPLEMENTAL RESPONSES AFTER THE JUNE DISCOVERY CONFERENCES
10 DATED this ____ day of June, 2007.

11 FOSTER PEPPER PLLC

12 

13 Thomas F. Ahearne, WSBA No. 14844
14 Edmund W. Robb, WSBA No. 35948
15 Attorneys for Petitioners