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Washington

8-24-2007

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07-2-02323-2-47

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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:

9:00 a.m., August 24, 2007

No. 07-2-02323-2 SEA

COURTESY COPY OF:
AUGUST 24, 2007 HEARING
DOCUMENTS

Pursuant to the Court's request, attached are true and correct copies of the documents used by Petitioners' counsel at the August 24, 2007 hearing.

DATED this 24th day of August, 2007.

FOSTER PEPPER PLLC

Thomas F. Ahearne, WSBA No. 14844
Edmund W. Robb, WSBA No. 35948
Attorneys for Plaintiffs

ORIGINAL

COURTESY COPY OF:
AUGUST 24, 2007 HEARING DOCUMENTS - 1

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The Four Issues Presented By Petitioners' Motion

- ^X 1. Interpreting “paramount”, “ample”, & “all” in Article IX, §1
- ^X 2. Interpreting RCW 29A.150.210(1)-(4)
3. Is the State currently complying with Article IX, §1:
 yes
 no
4. Enforcement:
 State determine actual dollar cost of complying
 State determine how to fund that cost with stable & dependable sources (*Seattle School District*)

Article IX, section 1

It is the paramount duty of the state to
make ample provision for the education
of all children residing within its borders,
without distinction or preference on
account of race, color, caste, or sex.

T x B 1

unfit for office." *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1. 6 L. Ed. 23 (1824). The Constitution is "intended to secure for the various ages to come, and consequently, to be adapted to the various circumstances of human affairs." *Cullom v. Maryland*, 17 Md. 5. (4 Wm. & M. 316, 416, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

[13] Consequently, the State's constitutional duty goes beyond mere reading, writing and arithmetic. It also embraces broad educational opportunities needed in the contemporary setting to equip our children for their role as citizens and as potential competitors in today's market well as in the marketplace of ideas. *Robinson v. Cahill*, 62 N.J. 473, 515, 303 A.2d 273 (1973); see also *Keyishian v. Board of Regents*, 385 U.S. 589, 603, 17 L. Ed. 2d 629, 87 S. Ct. 675 (1967). Education plays a critical role in a free society. It must prepare our children to participate intelligently and effectively in our open political system to ensure that system's survival. See *Wisconsin v. Yoder*, 406 U.S. 205, 221, 32 L. Ed. 2d 15, 92 S. Ct. 1526 (1972). It must prepare them to exercise their First Amendment freedoms both as sources and receivers of information; and, it must prepare them to be able to inquire, to study, to evaluate and to gain

TAB 2

JUDICIAL AND SERVICE PROVISIONS, AND

(4) Understand the importance of work and finance and how

BEST AVAILABLE IMAGE POSSIBLE

EXHIBIT
2

maturity and understanding. The constitutional right to have the State "make ample provision for the education of all [resident] children" would be hollow indeed if the possessor of the right could not compete adequately in our open political system, in the labor market, or in the marketplace of ideas.

and judgment as to express the same broad educational concepts in terms of constitutional rights. The court did not, nor do we, deal with the above mentioned educational concepts as fully derivative of the State's paramount duty. Rather, we hold that they constitute broad guidelines and that the effective teaching and opportunities to learn these essentials will make up a minimum of the education that is constitutionally required.

"We hold further that the mandate of Const. art. 9, § 1 is addressed to the State and requires, as a first priority, full and sufficient funds for the general and uniform system of public schools" which the Legislature is obligated to establish pursuant to Const. art. 9, § 2. Through this system our children will receive their constitutionally guaranteed education.

B. Legislative implementation of the State's mandatory duty. Although the mandatory duty of Const. art. 9, § 1 is imposed upon the State, the organization, administration, and operational details of the "general and uniform system" required by Const. art. 9, § 2 are the province of the Legislature. In the other area the judiciary is primarily concerned with whether the Legislature acts pursuant to the mandate of having acted, whether it has done so constitutionally. Within these parameters, the system devised to fulfill the duty of the Legislature.

[14] While the judiciary has the duty to construe and interpret the words "education" by providing broad constitutional guidelines, the Legislature is obligated to have spe-

RCW 28A.150.210

- (1) Read with comprehension, write effectively, and communicate successfully in a variety of ways and settings and with a variety of audiences;
- (2) Know and apply the core concepts and principles of mathematics; social, physical, and life sciences; civics and history, including different cultures and participation in representative government; geography; arts; and health and fitness;
- (3) Think analytically, logically, and creatively, and to integrate different experiences and knowledge to form reasoned judgments and solve problems; and
- (4) Understand the importance of work and finance and how performance, effort, and decisions directly affect future career and educational opportunities.

Is the State currently complying with Article IX, §1?

yes

no

(a) WASL (*State's own testimony*)

(b) high school graduation (*State's own testimony*)

(c) Washington children do not receive the "minimum of the education that is constitutionally required" (Tab 2) (*State's own testimony*).

(d) State's basic education provisions do not cover new school or classroom construction (*State's own admissions*)

(e) November 2006 Washington Learns Report
(*State's own most recent education study*)

10th Grade Washington Students Passing 10th Grade WASL
 2005 – 2006 School Year
 (Class of 2008)

Subject	All	White	Asian	Black	American Indian	Hispanic
Science	35.0%	39.5%	40.2%	12.0%	18.1%	14.1%
Math	51.0%	56.5%	59.7%	23.2%	30.1%	25.4%
Reading	82.0%	86.5%	84.6%	66.2%	67.8%	62.6%
Writing	79.8%	83.9%	84.5%	65.4%	65.6%	59.9%

[Source: Robb Multi-Year Data Dec., Exhibit KK]

Washington Students Meeting ACT Benchmarks
2007 Graduates

Subject	All	White	Asian	Black	American Indian	Hispanic
Science	40%	42%	41%	13%	31%	17%
Math	60%	61%	68%	25%	42%	35%
Reading	67%	70%	61%	31%	54%	38%
English	81%	84%	80%	48%	65%	51%
All 4	34%	35%	35%	11%	25%	14%

[Source (released after the supplemental briefing date): <http://www.act.org/news/data/07/pdf/states/Washington.pdf> (released August 15, 2007; viewed August 23, 2007)]