

6-7-2016

**Amici Curiae of Columbia Legal Services, Equity in Education
Coalition, the Children's Alliance, and the Washington Law Income
Housing Alliance**

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wasupreme>

Recommended Citation

Amici Curiae of Columbia Legal Services, Equity in Education Coalition, the Children's Alliance, and the Washington Law Income Housing Alliance (2016), <https://digitalcommons.law.uw.edu/wasupreme/56>

This Amicus Brief is brought to you for free and open access by the School Finance Litigation: McCleary v. State of Washington at UW Law Digital Commons. It has been accepted for inclusion in Washington Supreme Court Documents by an authorized administrator of UW Law Digital Commons. For more information, please contact cnyberg@uw.edu.

No. 84362-7

SUPREME COURT OF THE STATE OF WASHINGTON

MATHEW & STEPHANIE McCLEARY et al.,

Respondents,

v.

STATE OF WASHINGTON,

Appellant.

**AMICI CURIAE BRIEF OF COLUMBIA LEGAL SERVICES,
EQUITY IN EDUCATION COALITION,
THE CHILDREN'S ALLIANCE, AND
THE WASHINGTON LOW INCOME HOUSING ALLIANCE**

*COLUMBIA LEGAL SERVICES
EQUITY IN EDUCATION COALITION*

Katara Jordan, WSBA #44352
Michael Althausser, WSBA #49842
Columbia Legal Services
101 Yesler Way, Ste. 300
Seattle, WA 98104
(206) 287-6819

*THE CHILDREN'S ALLIANCE AND
THE WASHINGTON LOW INCOME
HOUSING ALLIANCE*

Donald B. Scaramastra
WSBA #21416
Garvey Schubert Barer
1191 2nd Ave., Ste. 1800
Seattle, WA 98101-2939
(206) 464-3939

TABLE OF CONTENTS

I. INTRODUCTION 1

II. INTEREST OF PARTIES 1

III. ARGUMENT 4

 A. Low-income Students and Students of Color Face Significant
 Barriers to Educational Opportunity 4

 i. Over 35,000 Homeless Students Are Struggling in Washington’s
 Schools..... 5

 ii. Nearly 5,000 Foster Care Students Are Far Behind Their Peers
 Academically 6

 iii. Students of Color Face Additional Barriers to Educational
 Opportunity..... 7

 B. Social Programs Provide Educational Opportunity for Low-income
 Students and Students of Color 9

 C. Social Programs Are at Risk and Relief Directed by This Court
 Must Not Aggravate That Risk 9

 i. Housing Supports Are at Risk..... 11

 ii. Washington's Foster Care System is at Risk 12

 iii. Temporary Assistance to Needy Families and the Social Safety
 Net are at Risk 13

 iv. State Food Assistance is at Risk..... 16

 D. Sanctions or Enforcement Remedies Impacting Non-academic
 Supports Exacerbate Existing Inequalities and
 Disproportionalities in Washington's Public School System 17

IV. CONCLUSION..... 19

TABLE OF AUTHORITIES

Cases

<i>Braam v. State of Washington</i> , 150 Wn.2d 689 (2003).....	2, 3, 12, 13
<i>McCleary v. State</i> , 173 Wn.2d 477 (2012)	4, 5, 9
<i>Washington State Coalition for the Homeless v. DSHS</i> , 133 Wn.2d 894 (1997).....	2, 3

Constitutional Provisions

Const. art. IX.....	9, 10
---------------------	-------

Statutes

42 U.S.C. § 11434a(2)(A) (2002)	5
42 U.S.C. § 11434a(2)(B) (2002)	5
RCW 28A.150.220(1)(d)	10
RCW 28A.165.005.....	10

Other Authorities

Beverly J. Bradley & Amy C. Greene, <i>Do Health and Education Agencies in the United States Share Responsibility for Academic Achievement and Health? A review of 25 Years of Evidence About the Relationship of Adolescents' Academic Achievement and Health Behaviors</i> , 52 <i>J. of Adolescent Health</i> 523, 527 (2013).	17
Casey Family Programs, <i>Foster Care by the Numbers</i> (Sept. 2011).....	7
Children's Alliance, <i>Fight Childhood Hunger: Restore State Food Assistance</i> (2014).	16
Dan Newell et al., Wash. State Superintendent of Pub. Instruction Report to the Legislature., 2013-14 Demographics Spreadsheet (2015).	6
Early Childhood Educ. & Assistance Program, <i>ECEAP Outcomes 2014-15</i>	8
Econ. Servs. Admin., Wash. Dep't of Soc. & Health Servs., <i>TANF/SFA/WorkFirst ESA Briefing Book, 4</i> (2015)	14, 15

Educ. Opportunity Gap and Accountability Oversight Comm., <i>Closing the Opportunity Gaps in Washington’s Public Education System</i> (2010).....	18
Equity in Educ. Coalition, <i>Achieving an Equitable Student Centered Funding Formula in Washington State: A Comprehensive Approach to a Weighted Student Formula towards Racial Equity in Education</i> (forthcoming 2016).....	19
Kids Count Data Ctr., <i>Children Below 200 Percent Poverty</i> (2014).....	7
Kids Count Data Ctr., <i>Children Below 200 Percent Poverty by Race</i> (2013).....	7
Lisa M. Coleman et al., <i>Educating Children Without Housing</i> , 28 (Amy E. Horton-Newell & Casey Trupin eds., 4th ed. 2014).....	4
Margaret L. Plecki et al., Univ. of Wash. Coll. of Educ., <i>Who’s Teaching Washington’s Children?</i> , 6 (2003).....	18
Marguerite Roza and Jim Simpkins, <i>Can Decentralization Improve Seattle Schools?</i> (2014).	18
Marguerite Roza, <i>Educational Economics: Where Do School Funds Go?</i> , 8 (2010).....	18
Melissa Ford Shah et al., Dep’t of Soc. & Health Servs., <i>Homeless and Unstably Housed K-12 Students in Washington State</i> , 2 (2015).....	5
National Center for Children in Poverty. <i>Low-Income Children in the United States, National and State Trend Data, 1998-2008</i> (2009).....	8
Partners for our Children, <i>Child Well-Being Data Portal, Children in Out-of-Home Care (Count)</i> (2015).	6
Press Release, Wash. State Dep’t of Soc. & Health Servs., Food Assistance Bonus to end November 1 (Sept. 19, 2013).....	16
Robin G. Munson et al. Wash. State Superintendent of Pub. Instruction, <i>Graduation and Dropout Statistics Annual Report</i> at 3, 7 (2015).	6, 7
Statewide Poverty Action Network, <i>2011 Safety Net Report: Impacts of TANF & Disability Lifeline Reductions</i> ,3 (Oct. 2011).	15
U.S. Dep’t of Educ., OMB NO. 1810-0724, Consolidated State Performance Report: Part I, 17-21, 64 (2015).	5

Wash. State Superintendent of Pub. Instruction, *Washington State Report Card* 10

Wash. State Superintendent of Pub. Instruction, *Washington State Report Card: Statewide Assessment Trend*..... 8

Wash. State Superintendent of Pub. Instruction, *Washington State Report Card: Washington Kindergarten Inventory of Developing Skills*..... 8

I. INTRODUCTION

Two years ago, *Amici* submitted a brief about why “prohibiting [the legislature’s] expenditures on certain other matters until the Court’s constitutional ruling is complied with” could have a catastrophic effect on nonacademic supports needed by low-income students and students of color.¹ Subsequent actions in this case, and in the legislature, schools and social services, have only underscored the need for this Court’s latest order to take into account its impact on children who already have diminished educational opportunities.

II. INTEREST OF PARTIES

Columbia Legal Services (CLS) advocates for people facing injustice and poverty. CLS seeks to achieve social and economic justice for all using policy reform, litigation, and innovative partnerships to reveal and end actions that harm the communities we serve. CLS has extensive expertise advocating for the rights of homeless families and children (including students who are homeless) and foster children. CLS also advocates to fund programs that provide supports to families with children, such as Temporary Assistance to Needy Families (TANF). CLS

¹ For the purposes of this brief, the term “nonacademic supports” refers to all state-funded services, whether provided by schools or other agencies, such as after school care, homeless student supports, housing, foster care, and other social and non-academic benefits and services that help low-income students not contained within the Legislature’s current definition of basic education.

has litigated cases on these issues before this Court, including *Braam*² and *Washington State Coalition for the Homeless*.³ CLS has also worked extensively on housing issues, including issues on behalf of school-age children whose families are homeless. In sum, CLS has deep institutional knowledge about the close connections between social service programs, housing, and educational opportunity.

The Equity in Education Coalition (EEC) is a state-wide coalition of communities of color working towards a more targeted and comprehensive approach to improve educational achievement and growth as well as closing the opportunity gap throughout Washington State. EEC works to ensure that the educational system in Washington State works to provide an excellent, equitable education to children of color, children that live in low-income households, children that have special education or language needs, and children who come from immigrant and refugee communities.

The mission of the Children's Alliance (CA) is to improve the well-being of children by effecting positive changes in public policies, priorities, and programs. For over 30 years, CA has advocated for

² *Braam v. State of Washington*, 150 Wn.2d 689, 81 P.3d 851 (2003) (establishing constitutional rights of foster children, leading to comprehensive settlement addressing services to foster children, including school related services).

³ *Washington State Coalition for the Homeless v. DSHS*, 133 Wn.2d 894, 949 P.2d 1291 (1997) (DSHS required to develop plan for providing services to homeless children).

Washington's children, especially children in low-income families and children of color. CA is a membership-based organization with 10,000 individual and 58 organizational members. CA has expertise in several areas of child and family policy, including health, education, child welfare, and food policy. CA is a recognized convener of public and private agencies involved with issues affecting children and families. CA, the lead grantee for the national KIDS COUNT project, has expertise in child and family data. CA has contributed to many aspects of state policy regarding education, including the re-definition and funding of basic education enacted by ESHB 2261 and SHB 2776. CA's long history of advocacy for kids includes amicus roles in *Braam* and *Washington State Coalition for the Homeless*.

The Washington Low Income Housing Alliance's mission is to ensure that everyone in Washington has the opportunity to live in a safe, healthy, affordable home. Since 1988, the Housing Alliance has worked to improve public policy and public investments in affordable homes and services to achieve that mission. In 2011, the Housing Alliance merged with the Washington State Coalition for the Homeless, the plaintiff in *Washington State Coalition for the Homeless*. The Housing Alliance has 140 organizational members, including nonprofit housing providers, social

service providers, and homeless services providers. The Housing Alliance has a network of more than 8,000 individual members.

III. ARGUMENT

A. Low-income Students and Students of Color Face Significant Barriers to Educational Opportunity

Poverty and its attendant causes and results—lack of affordable housing, economic and food insecurity, health issues, and limited family assets—force a less stable existence on its victims. With this instability come changes in schools, often many times within a year. Each time a student moves, he or she falls four to six months behind their peers academically and, thus, is more likely to have lower test scores and suffer academically.⁴ The Constitutional promise of *McCleary* can never be met if at-risk students are allowed—or worse, compelled—to fall further behind.⁵

In Washington, two groups of children—those who are homeless and those in foster care—are particularly vulnerable. Focusing on these two groups as an example, along with students of color and low-income students generally, this brief offers insight into how the enforcement remedies contemplated by the Court could destroy the promise of educational opportunity for hundreds of thousands of academically vulnerable students.

⁴ Lisa M. Coleman et al., *Educating Children Without Housing*, 28 (Amy E. Horton-Newell & Casey Trupin eds., 4th ed. 2014).

⁵ *McCleary v. State*, 173 Wn.2d 477, 494, 269 P.3d 227 (2012).

i. Over 35,000 Homeless Students Are Struggling in Washington's Schools

In the 2014-2015 school year, 35,511 children and youth attending Washington's public schools—one in 30—were homeless.⁶ The number is likely higher, and the numbers of homeless children and youth may be as high as 54,000.⁷

Homeless children and youth tend to struggle academically and are more likely to fall below proficiency in math, reading, and science than their housed peers.⁸ In the 2014-15 school year, only 24 percent of homeless students were proficient in math, compared to 49.2 percent of all students.⁹ Similarly, only 30.3 percent of homeless students were proficient in reading, compared to 55.6 percent of all students.¹⁰

The graduation rate for homeless students is significantly lower than their peers with stable housing. For Washington's class of 2014, the

⁶ Federal law considers students homeless if they lack a fixed, regular, adequate, nighttime residence. This definition includes children living in shelters, on the streets, or temporarily living with others due to lack of alternative accommodations. 42 U.S.C. § 11434a(2)(A) (2002); 42 U.S.C. § 11434a(2)(B) (2002).

⁷ Melissa Ford Shah et al., Dep't of Soc. & Health Servs., *Homeless and Unstably Housed K-12 Students in Washington State*, at 2 (2015). The following report indicated that in 2011-12, DSHS identified 53 percent more homeless students (42,038) than schools (27,390) that year. If we take 53 percent and apply it to the total number of homeless students identified in 2014-15 (35,511), we get an estimated total number of 18,820 which we add to 35,511 to get a total of 54,331.

⁸ *McCleary v. State*, 173 Wn.2d 477, 494 (identifying that these areas represent three of the critical content areas for the EALRs).

⁹ U.S. Dep't of Educ., OMB NO. 1810-0724, Consolidated State Performance Report: Part I, 17-21, 64 (2015).

¹⁰ *Id.*

four-year graduation rate for homeless students was just 46.1 percent compared to 77.2 percent of all students statewide, and the four-year dropout rate was 31.5 percent compared to 12.3 percent for all students.¹¹

Children of color are also far more likely to suffer homelessness. For example, in the 2014-15 academic year, Washington Schools identified one in thirteen (1:13) black students as homeless, with similarly high ratios for other students of color: American Indian (1:13); Pacific Islander (1:16); and Latino (1:25). Among white students, the homelessness ratio was 1:43.¹²

ii. *Nearly 5,000 Foster Care Students Are Far Behind Their Peers Academically*

There are 4,878 school-aged children in foster care.¹³ These students face many of the same challenges as their homeless peers due to the often-temporary nature of foster care placements.¹⁴ Foster youth have the lowest graduation rate and highest dropout rate of any student group in Washington. In the class of 2014, the four-year graduation rate for foster students was 41.5 percent compared to 77.2 percent for all students, and

¹¹ See Robin G. Munson et al. Wash. State Superintendent of Pub. Instruction, Graduation and Dropout Statistics Annual Report at 3, 7 (2015).

¹² See Dan Newell et al., Wash. State Superintendent of Pub. Instruction Report to the Legislature., 2013-14 Demographics Spreadsheet, (2015), <http://www.k12.wa.us/HomelessEd/pubdocs/2013-14DistrictDemographics.xlsx>.

¹³ Partners for our Children, *Child Well-Being Data Portal, Children in Out-of-Home Care (Count)* (2015), <http://www.vis.pocdata.org/graphs/ooh-counts#>.

¹⁴ See Coleman, *supra* note 2, at 63.

the four-year dropout rate was 34 percent compared to 12.3 percent for all students.¹⁵ The average child placed in foster care is likely to switch placements at least three times, placing the child's education at significant risk.¹⁶ With each move, a student in foster care falls behind in credits, loses important school connections, and is denied the crucial stability that continuity at a single school provides. Most of these students will not have meaningful academic opportunity without a well-supported foster care system. And without that opportunity, their door to success as an independent adult is shut.

iii. Students of Color Face Additional Barriers to Educational Opportunity

Forty percent of Washington State's children live in families with incomes below 200 percent of the federal poverty line.¹⁷ Children of color represent a disproportionate number of low-income children: for example, African American and Latino children are more than twice as likely to be low-income than their white peers.¹⁸ African American, Latino, American Indian/Alaska Native, and Pacific Islander students also perform less well

¹⁵ See Munson, *supra* note 4, at 5-7.

¹⁶ Casey Family Programs, *Foster Care by the Numbers* (Sept. 2011), http://www.casey.org/media/MediaKit_FosterCareByTheNumbers.pdf.

¹⁷ Kids Count Data Ctr., *Children Below 200 Percent Poverty* (2014), <http://datacenter.kidscount.org/data#WA/2/0> (follow "Children Below 200 Percent Poverty" hyperlink).

¹⁸ Kids Count Data Ctr., *Children Below 200 Percent Poverty by Race* (2013), <http://datacenter.kidscount.org/data#WA/2/0> (follow "Children Below 200 Percent Poverty by Race" hyperlink).

than their white peers in select achievement indicators such as kindergarten preparedness, third grade reading and eighth grade math standards, and four-year high school graduation rates.¹⁹

This opportunity gap is especially troubling when one recognizes that education is the primary vehicle for lifting children out of poverty. Compared to adults without a high school diploma, a high school diploma and some college improves an adult's chances of family self-sufficiency by 70 percent.²⁰

¹⁹ While this brief focuses on nonacademic supports to students, we note that supports to children prior to entering the K-12 system have at least as much to do with academic achievement. For example, the state-funded Early Childhood Education and Assistance Program (ECEAP) provides a comprehensive preschool program that provide free services to low-income families and their children. Data bears out ECEAP's potential to increase educational outcomes for those it serves. A recent report from the Department of Early Learning shows significant language, math and cognitive gains among ECEAP students. After one year of enrollment, nearly all ECEAP students were at or above age-level in the following indicators: language (90 percent); cognitive development (95 percent); literacy development (94 percent); and math skills (83 percent). Despite the proven effectiveness of early learning programs, ECEAP is not part of basic education and not a constitutionally protected program. Should the Court prohibit non-basic education expenditures, this and other similar programs may be rationed, cut, or eliminated entirely. Early Childhood Educ. & Assistance Program, *ECEAP Outcomes 2014-15*, http://www.del.wa.gov/publications/eceap/docs/ECEAP_Outcomes_2014-15.pdf (last visited June. 1, 2016); Wash. State Superintendent of Pub. Instruction, *Washington State Report Card: Washington Kindergarten Inventory of Developing Skills*, <http://reportcard.ospi.k12.wa.us/WaKidsDetailPage.aspx?year=2014-15> (Last visited Jun. 1, 2016); Wash. State Superintendent of Pub. Instruction, *Washington State Report Card: Statewide Assessment Trend*, <http://reportcard.ospi.k12.wa.us/wasltrend.aspx?schoolId=1&reportLevel=State&gradeLevelId=3&waslCategory=1&chartType=1&domain=MSPHSPE> (Last visited Jun. 1, 2016).

²⁰ National Center for Children in Poverty. *Low-Income Children in the United States. National and State Trend Data, 1998-2008*, 10-15, (2009), http://www.nccp.org/publications/pdf/text_907.pdf.

B. Social Programs Provide Educational Opportunity for Low-income Students and Students of Color

Amici's collective advocacy on behalf of countless students and their families reinforces what the evidence shows: education is a critical pathway out of poverty. *Amici* agree with this Court that a child's right to education under Article IX, section 1, requires provision of considerably more than merely "adequate" support.²¹ But what may be more than adequate for students from middle- and upper-income, stable families may be wholly inadequate for students living in poverty. For low-income students and students of color facing the barriers created by poverty and institutionalized racism, what happens outside school is just as important to their education as what happens inside the classroom. If the sole result of this case is to increase financial support for basic education while nonacademic supports for low-income students remain only stable or decrease, low-income students and students of color will still fail to realize their constitutional right to educational opportunity.

C. Social Programs Are at Risk and Relief Directed by This Court Must Not Aggravate That Risk

Article IX, section 1, guarantees to all students, including Washington's 482,024 low-income school-aged children, the *opportunity*

²¹ *McCleary*, 173 Wn.2d at 484.

to gain skills and receive a meaningful education.²² However, in defining basic education, the Legislature has not included nonacademic supports commonly utilized by low-income students.

Investments made to basic education do provide some supplemental resources through the Learning Assistance Program.²³ However, these resources specifically address academic shortcomings, not the barriers to opportunity commonly faced by low-income students and students of color. For example, the Learning Assistance Program fails to address housing instability for homeless students or placement instability for foster youth.²⁴ Students who require nonacademic supports rely upon state services, including housing supports, foster care supports, and other safety-net programs, to give them a fair shot at attaining educational opportunity.

The Court's approach to enforcement of Article IX, section 1, if it comes at the expense of needed supports for the most vulnerable students, will fall short of ensuring educational opportunity for "all students."²⁵ The options for significant budget cuts are limited, due to constitutional and

²² 482,024 students eligible for free and reduced lunch in 2014-15. Wash. State Superintendent of Pub. Instruction, *Washington State Report Card*, <http://reportcard.ospi.k12.wa.us/summary.aspx?year=2014-15&yrs=2014-15> (Last visited May 31, 2016).

²³ RCW 28A.150.220(1)(d).

²⁴ RCW 28A.165.005 (stating that the purpose of the Learning Assistance Program is to improve literacy).

²⁵ Const. art. IX § 1.

federal requirements. Much of the funding for non-academic supports is included in the estimated one-third of the budget that is unprotected.²⁶ In fact, recent history has shown that these supports are far from sacrosanct and continue to be the subject of budget cuts that threaten the well-being of the most vulnerable among us.

i. Housing Supports Are at Risk

Between 2006 and 2014, average rents across the state increased 11 percent, while incomes for the lowest income quintile of Washington households dropped 7 percent.²⁷ The severe shortage of affordable housing is increasing the need for housing support. State support for housing is primarily funded by document recording fees and through other capital and operating budget investments, including the Housing Trust Fund and the Washington Families Fund.²⁸ These programs support a multitude of homeless grant projects including domestic violence shelters, emergency shelters, rapid rehousing, and other forms of rental assistance that keep families stably housed. According to the annual point in-time count of

²⁶ Economic and Revenue Forecast Council, *Alternative Outlook for Enacted 2016 Supplemental Budget (May 2016)*, http://www.ercf.wa.gov/budget/documents/20160518_AlternativeOutlook.pdf; Office of Financial Management, *State Budget Update: More Big Challenges Ahead (July 2014)*, http://ofm.wa.gov/budget/documents/State_budget_prelim_outlook_pres_2014.pdf.

²⁷ See Attachment 1 (demonstrating how rents are increasing but income growth is not increasing at the same rate for middle and low income households).

²⁸ See generally, Wash. Dep't of Commerce, *Report to the Legislature, Homelessness in Washington State: Annual Report on the Homeless Grant Programs* (2013), <http://www.commerce.wa.gov/Documents/Commerce-Homelessness-in-Washington-State-2013.pdf>

homelessness, together these programs helped reduce the overall incidence of homelessness by 29 percent between 2006 and 2013.²⁹

Despite their effect on attainment of educational opportunity, these programs are vulnerable to underfunding or complete defunding in an effort to meet the state's constitutional obligation particularly because a portion of the fees are currently scheduled to sunset in 2019. If that happens, 22,000 fewer people will receive housing support.³⁰ As noted above, homeless students and those in foster care already lag behind their peers in terms of educational opportunity. Further cuts or reductions to housing programs would negate any gains from additional educational investments for this population of students.

ii. Washington's Foster Care System is at Risk

Students in the foster care system also require numerous state services to overcome the barriers posed by their unique needs. These services are guaranteed by the state's due process clause. In *Braam*, this Court held that foster children have a substantive due process right to be free from unreasonable risks of harm and a right to reasonable safety.³¹ This Court further determined that to meet its constitutional duty to provide reasonable safety, the state must provide adequate services that

²⁹ *Id.* at 1.

³⁰ See *Attachment 2* (providing a four-year forecast of document recording fees dedicated to homelessness in each county).

³¹ 150 Wn. 2d at 700.

meet children's basic needs.³² Critical services for foster care students include health and mental health care, transportation to and from schools upon placement changes, as well as support from a caseworker who can adequately attend to all their needs, including education. Each of these services work together to increase the possibility of a foster child having an acceptable level of educational opportunity.

Reducing or prohibiting expenditures on foster care services will adversely affect an already vulnerable population. Foster care students are already the most vulnerable in terms of academic outcomes and success in a public school environment. Additionally, reducing supports to vulnerable families could result in more children entering an already overtaxed foster care system. Reduction of or spending prohibitions to these services would thus have a deteriorating effect upon any additional educational investment for these students.

iii. Temporary Assistance to Needy Families and the Social Safety Net are at Risk

Temporary Assistance for Needy Families (TANF) is a critical safety net for low-income families with school-aged children. The maximum monthly TANF grant for a family of three is \$521, though the

³² *Id.*

average benefit is \$374.³³ This modest cash grant assists families by helping them meet their most basic needs, such as rent, utilities, groceries, and toiletries.

More than 56,000—greater than 70 percent—of TANF recipients are children.³⁴ Nearly 60 percent of children on TANF identify as non-white.³⁵ Many of these children live in vulnerable communities and housing situations. More than 2,600 children on TANF have parents that lack documentation of citizenship.³⁶ Undocumented immigrant parents may apply for TANF on behalf of their citizen children, but they themselves are ineligible from most public benefits including cash or medical.³⁷ More than 4,000 children on TANF have parents who are permanently disabled and receive Supplemental Security Income.³⁸ Disabled parents are also barred from receiving TANF benefits, but their minor children can still be eligible. Nearly 7,000 children are in some type of kinship care, not living with their birth parents.³⁹ About 650 families

³³ Econ. Servs. Admin., Wash. Dep't of Soc. & Health Servs., *TANF/SFA/WorkFirst ESA Briefing Book*, 4 (2015), https://www.dshs.wa.gov/sites/default/files/ESA/briefing-manual/2015TANF_WorkFirst.pdf.

³⁴ *Id.*

³⁵ *Id.* at 30.

³⁶ *Id.* at 17 (children of individuals who lack documentation may themselves be U.S. citizens and therefore may be eligible for TANF).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

have teens 18 or under that are the head of that household.⁴⁰ Finally, 10.8 percent – more than 5,400 – of children who receive TANF benefits are homeless.⁴¹

In recent times of fiscal crisis, the Legislature has turned to the TANF program for cuts and budget savings despite the program’s role as a safety net for thousands of school-aged children. In 2011, the TANF program sustained cuts totaling \$380 million.⁴² These cuts included decreasing the monthly TANF benefit level by 15 percent, which consequently “reduced the income threshold families must fall under in order [to] qualify for TANF.”⁴³ A strict 60-month lifetime limit on benefit receipt was also imposed.⁴⁴ Since these cuts and policy changes were enacted, the average monthly caseload has dropped from 65,127 in 2011 to 35,158 in 2015.⁴⁵

When low-income students’ basic needs are not being met outside school, they lack equal opportunity to achieve their full potential in the classroom. Constant fear of homelessness and hunger inhibits their ability

⁴⁰ *Id.* at 19.

⁴¹ *Id.* at 29.

⁴²Statewide Poverty Action Network, *2011 Safety Net Report: Impacts of TANF & Disability Lifeline Reductions*,3 (Oct. 2011), https://www.povertyaction.org/subdirectspan/wp-content/uploads/2012/09/Poverty-Action_Budget-Cuts-2011.pdf.

⁴³ *Id.* at 4.

⁴⁴ *Id.* at 3.

⁴⁵ *Supra* note 33, at 5.

to focus in the classroom. The support provided by TANF helps ensure that low-income children can focus on being students and concentrate on the important things, like learning their multiplication tables and reading. Cuts to this program will have a disproportionate impact on vulnerable children and students of color, further impairing their opportunity to obtain a basic education.

iv. State Food Assistance is at Risk

The Food Assistance Program (FAP) was created by the state Legislature in 1997 in response to federal changes that rendered some documented immigrant families ineligible for the Supplemental Nutrition Assistance Program (also known as SNAP or “food stamps”). Households receiving FAP receive 100 percent of what they would receive if they were eligible for SNAP.⁴⁶ Funding for State Food Assistance has been unsteady. It was substantially reduced in 2012, putting nearly 14,000 children in immigrant families at greater risk of hunger,⁴⁷ and only restored in the state’s 2015-17 operating budget.

⁴⁶ Press Release, Wash. State Dep’t of Soc. & Health Servs., Food Assistance Bonus to end November 1 (Sept. 19, 2013)

(<http://www.dshs.wa.gov/mediareleases/2013/pr13033.shtml>).

⁴⁷ Children’s Alliance, *Fight Childhood Hunger: Restore State Food Assistance* (2014), <http://www.childrensalliance.org/resource-center/fight-childhood-hunger-restore-state-food-assistance>.

Studies have shown an “inverse relationship between inadequate nutrition and academic achievement.”⁴⁸ For example, in five studies examining nutrition-related risk behaviors and academic achievement, “inadequate dietary intake was associated with at least one or more of the following: lower grades, lower standardized test scores, or increased likelihood of grade level retention.”⁴⁹ Diminished nutritional support through State Food Assistance would affect the educational opportunity of children of color, who are disproportionately harmed by childhood poverty, inequitable school funding and other, related forms of inequity.

D. Sanctions or Enforcement Remedies Impacting Non-academic Supports Exacerbate Existing Inequalities and Disproportionalities in Washington’s Public School System

Sanctions or enforcement remedies ordered without respect to how certain programs outside basic education serve marginalized populations will exacerbate race and income disparity, because even with the progress made by the legislature under *McCleary*, funding for Washington’s public schools still remains inadequate and inequitable. The lack of sustainable and equitable funding has created a segregated educational system for our state’s children as they try to overcome the circumstances in their life

⁴⁸ Beverly J. Bradley & Amy C. Greene, *Do Health and Education Agencies in the United States Share Responsibility for Academic Achievement and Health? A review of 25 Years of Evidence About the Relationship of Adolescents’ Academic Achievement and Health Behaviors*, 52 *J. of Adolescent Health* 523, 527 (2013), <http://www.sciencedirect.com/science/article/pii/S1054139X13000505>.

⁴⁹ *Id.*

perpetuated by poverty and institutionalized and systemic racism.

Research shows that low-income schools are predominantly staffed by junior teachers and fewer salary dollars than schools staffed with veteran teachers.⁵⁰

The migration pattern of teachers means that students who attend high-minority and high-poverty schools have a lower chance of encountering a teacher at the peak of his or her effectiveness than students who attend more affluent schools with fewer students of color.⁵¹ Levy-poor school districts are staffed with less experienced teachers who must teach students coming through the door with a multitude of barriers like hunger, homelessness, domestic violence, English as a second language, or the trauma of racism – without the tools, resources of material, or funding to mitigate these circumstances.⁵² Further, districts often compound these inequities by distributing a smaller share of unrestricted funds to the same schools that are shortchanged in salary dollars.⁵³ Even after the salary differences between high- and low-poverty schools are

⁵⁰ Margaret L. Plecki et al., Univ. of Wash. Coll. of Educ., *Who's Teaching Washington's Children?*, 6 (2003), <https://depts.washington.edu/ctpmail/PDFs/WATeacherReport.pdf>.

⁵¹ Marguerite Roza, *Educational Economics: Where Do School Funds Go?*, 8 (2010).

⁵² Educ. Opportunity Gap and Accountability Oversight Comm., *Closing the Opportunity Gaps in Washington's Public Education System*, (2010), <http://www.k12.wa.us/Workgroups/EOGOAC/pubdocs/ClosingOpportunityGapsinWashingtongpublicedsystemjan2010.pdf>.

⁵³ Marguerite Roza and Jim Simpkins, *Can Decentralization Improve Seattle Schools?*, (2014), <http://edunomicslab.org/wp-content/uploads/2015/01/Can-decentralization-improve-Seattle-schools.pdf>.

accounted for, high income schools still get more than their share of unrestricted dollars.⁵⁴

This inequitable distribution of funding creates a system of education that is not working for children of color, children who are low-income, and children who come from migrant, immigrant, or refugee communities. These children demonstrate that not all students start their K-12 years equally situated.⁵⁵ Nothing shows this better than Washington State's graduation rate and ever growing opportunity gap, which are directly affected by inequities in funding.⁵⁶

IV. CONCLUSION

Amici submit this brief to illustrate that the Court's enforcement remedy will affect programs that support families with school-aged children and could destroy—not ensure—their constitutionally-guaranteed opportunity to receive a basic education. Any enforcement remedy must consider the unique needs of low-income students and students of color. Students living in low-income households and students of color already suffer disproportionately poor academic outcomes because of economic

⁵⁴ Equity in Educ. Coalition, *Achieving an Equitable Student Centered Funding Formula in Washington State: A Comprehensive Approach to a Weighted Student Formula towards Racial Equity in Education* (forthcoming 2016) (manuscript on file with Equity in Education Coalition).

⁵⁵ *Supra* note 19.

⁵⁶ *Id.*

and food insecurity, lack of affordable housing, health issues, limited family assets, and many other barriers. The court should strive to reach a result that reduces or eliminates these barriers. Relief directed by this court must not aggravate the already-fragile educational opportunity of this population.

Respectfully submitted this 7th day of June, 2016.

*COLUMBIA LEGAL SERVICES AND
EQUITY IN EDUCATION COALITION*

By: s/Katara Jordan
Katara Jordan, WSBA #44352
Michael Althaus, WSBA #49842
Columbia Legal Services
101 Yesler Way, Ste. 300
Seattle, WA 98104
(206) 287-6819

*THE CHILDREN'S ALLIANCE AND
THE WASHINGTON LOW INCOME
HOUSING ALLIANCE*

By: s/Donald B. Scaramastra
Donald B. Scaramastra
WSBA #21416
Garvey Schubert Barer
1191 2nd Ave., Ste. 1800
Seattle, WA 98101-2939
(206) 464-3939

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on this date I caused a true and correct copy of this *Amicus Curiae Brief of Columbia Legal Services, Equity in Education Coalition, The Children's Alliance, and The Washington Low Income Housing Alliance* to be served on the following parties, in the manner indicated:

Via Email and Hand-Delivery

William G. Mark
billc2@atg.wa.gov
Office of the Attorney General
Office
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188

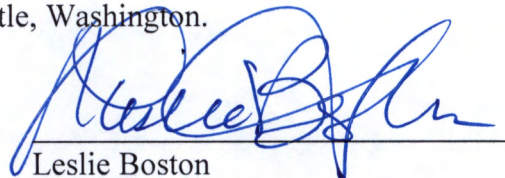
Via Email and U.S. Mail

David A. Stolier
daves@atg.wa.gov
Office of the Attorney General
1125 Washington Street SE
Olympia, WA 98504-0100

For the State of Washington

Attached Amici Service List

Dated June 7, 2016, at Seattle, Washington.



Leslie Boston

Via Email and Hand-Delivery

Thomas F. Ahearne
ahearne@foster.com
Christopher G. Emch
emchc@foster.com
Adrian U. Winder
winda@foster.com
Foster Pepper PLLC
1111 3rd Ave., Ste. 3400
Seattle, WA 98101

*For Mathew and Stephanie
McCleary, et al*

Amici Service List

Via Email and Regular US Mail to All

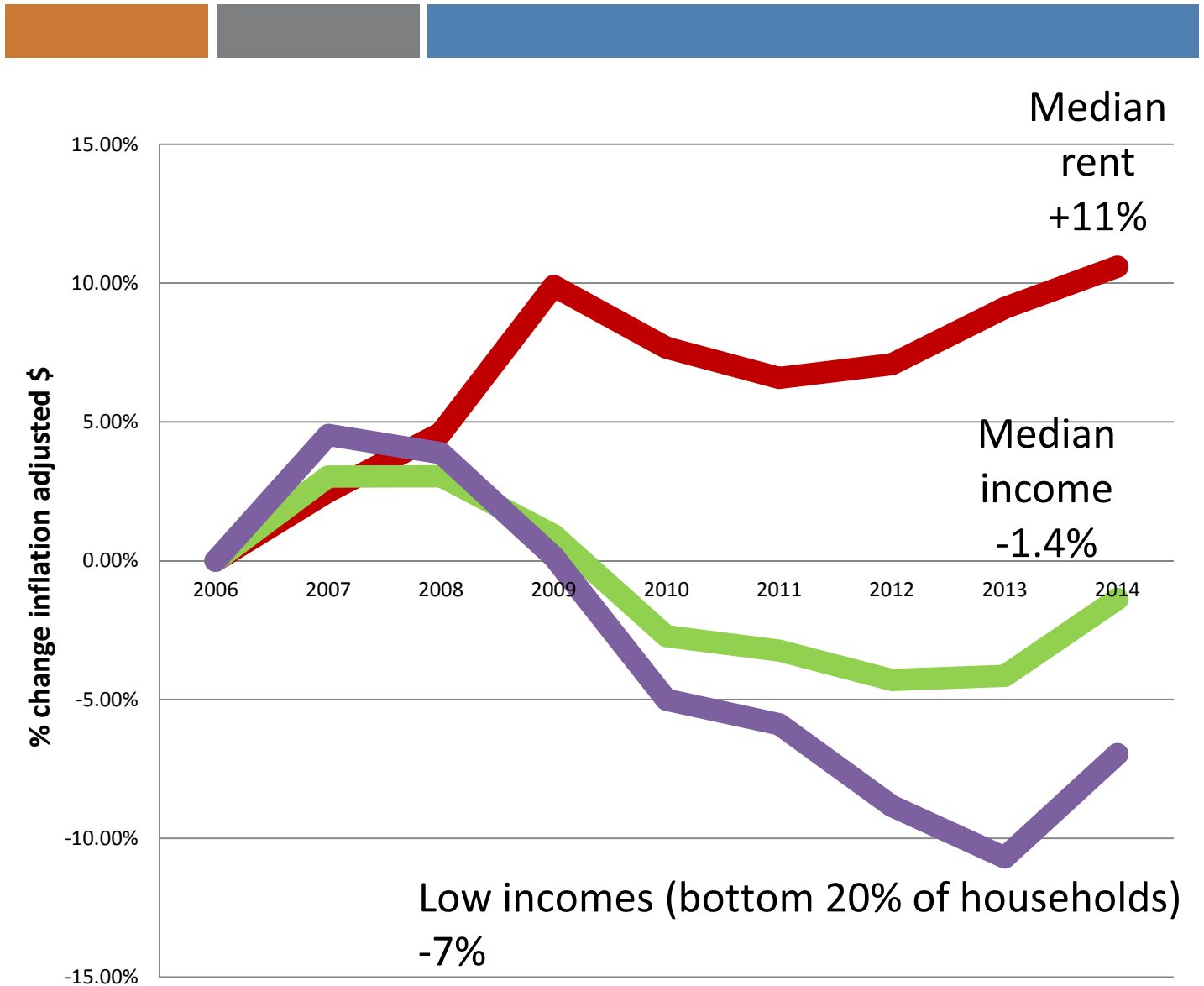
<u>Attorneys</u>	<u>Amici</u>
<p>Paul Lawrence paul.lawrence@pacificalawgroup.com Matthew J. Segal matthew.segal@pacificalawgroup.com Jamie L. Lisagor jamie.lisagor@pacificalawgroup.com Pacifica Law Group 1191 2nd Ave., Ste. 2000 Seattle, WA 98101</p>	<p>Centerstone Eldercare Alliance Equity in Education Coalition Patrick Lenning Kristin Lindenmuth Jennifer Papest Viral Shaw Solid Ground Statewide Poverty Action Network Washington State Budget & Policy Center</p>
<p>Sarah A. Dunne sarahadunne@yahoo.com US Dept. of Education 915 2nd Ave., Ste. 3310 Seattle, WA 98174</p> <p>Nancy Talner talner@aclu-wa.org Attorney at Law 901 5th Ave., Ste. 630 Seattle, WA 98164</p> <p>Cynthia Jones cjones@joneslegalgroup.net Jones Legal Group LLC 1425 Broadway No. 544 Seattle, WA 98122</p>	<p>American Civil Liberties Union</p>

<u>Attorneys</u>	<u>For Amici</u>
<p>Lester Porter Jr. buzz@pfrwa.com Kathleen Haggard kathleen@pfrwa.com Porter Foster Rorick LLP 601 Union St., Ste. 800 Seattle, WA 98101</p> <p>Grant Wiens Lewis Rice & Fingersh 600 Washington Ave., Ste. 2500 Saint Louis, MO 63101 gwiens@lewisrice.com</p>	<p>Association of Washington School Principals Washington Association of School Administrators Washington Association of School Business Officials</p>
<p>William Collins Attorney at Law 3905 Lakehills Dr SE Olympia, WA 98501 wbcollins@comcast.net</p>	<p>Randy Dorn Superintendent of Public Instruction</p>
<p>Stephen K. Eugster Eugster Law Office PSC 2418 W Pacific Ave. Spokane, WA 99201 eugster@eugsterlaw.com</p>	<p>Stephen K. Eugster</p>
<p>Robert McKenna rmckenna@orrick.com David Keenan dkeenana@orrick.com Orrick Herrington & Sutcliffe LLP 701 5th Ave., Ste. 5600 Seattle, WA 98104</p>	<p>Daniel J. Evans Christine Gregoire Gary Locke Mike Lowry</p>

<u>Attorneys</u>	<u>For Amici</u>
<p>Michael E. Bindas mbindas@ij.org Institute for Justice – WA Chapter 10500 NE 8th St., Ste. 1760 Bellevue, WA 98004</p>	<p>Institute for Justice</p>
<p>Hozaifa Y. Cassubhai hozaifa@cassubhailaw.com Cassubhai Law PLLC 701 5th Ave., Ste. 4200 Seattle, WA 98104</p> <p>David C. Tarshes davidt@nwjustice.org Northwest Justice Project 401 2nd Ave. S, Ste. 407 Seattle, WA 98104</p>	<p>League of Education Voters Foundation</p>

ATTACHMENT 1

Rents are growing with the economy, but middle & low income growth lags



Data sources: U.S. Census Bureau American Community Survey one-year estimates; inflation adjusted using the Bureau of Labor Statistics CPI-U.



Department of Commerce

ATTACHMENT 2

Forecast of Document Recording Fees Dedicated to Homelessness

RCW 36.22.179 and RCW 36.22.1791

	2017-19 Forecast - Current Law - Fee \$48	2019-21 Forecast Current Law - Fee declines from \$48 to \$18	Change in Funding - (62.5%)	Estimated change in number of people facing homelessness housed
Adams	\$222,346	\$83,380	(\$138,966)	(44)
Asotin	\$888,494	\$333,185	(\$555,309)	(178)
Benton	\$2,784,239	\$1,044,090	(\$1,740,149)	(557)
Chelan	\$1,409,473	\$528,552	(\$880,920)	(282)
Clallam	\$1,101,055	\$412,896	(\$688,159)	(220)
Clark	\$8,207,288	\$3,077,733	(\$5,129,555)	(1,642)
Columbia	\$73,960	\$27,735	(\$46,225)	(15)
Cowlitz	\$1,464,488	\$549,183	(\$915,305)	(293)
Douglas	\$344,184	\$129,069	(\$215,115)	(69)
Ferry	\$137,975	\$51,741	(\$86,234)	(28)
Franklin	\$1,075,391	\$403,272	(\$672,120)	(215)
Garfield	\$38,967	\$14,613	(\$24,354)	(8)
Grant	\$1,119,838	\$419,939	(\$699,899)	(224)
Grays Harbor	\$1,117,568	\$419,088	(\$698,480)	(224)
Island	\$1,626,390	\$609,896	(\$1,016,494)	(325)
Jefferson	\$670,320	\$251,370	(\$418,950)	(134)
King	\$33,508,784	\$12,565,794	(\$20,942,990)	(6,704)
Kitsap	\$4,062,123	\$1,523,296	(\$2,538,827)	(813)
Kittitas	\$900,556	\$337,708	(\$562,847)	(180)
Klickitat	\$4,932	\$1,850	(\$3,083)	(1)
Lewis	\$1,139,025	\$427,134	(\$711,891)	(228)
Lincoln	\$240,445	\$90,167	(\$150,278)	(48)
Mason	\$1,151,557	\$431,834	(\$719,723)	(230)
Okanogan	\$633,066	\$237,400	(\$395,666)	(127)
Pacific	\$510,847	\$191,568	(\$319,280)	(102)
Pend Oreille	\$273,189	\$102,446	(\$170,743)	(55)
Pierce	\$13,382,149	\$5,018,306	(\$8,363,843)	(2,677)
San Juan	\$431,502	\$161,813	(\$269,689)	(86)
Skagit	\$2,136,158	\$801,059	(\$1,335,099)	(427)
Skamania	\$216,022	\$81,008	(\$135,013)	(43)
Snohomish	\$12,796,298	\$4,798,612	(\$7,997,686)	(2,560)
Spokane	\$7,063,113	\$2,648,667	(\$4,414,446)	(1,413)
Stevens	\$721,761	\$270,660	(\$451,100)	(144)
Thurston	\$4,111,240	\$1,541,715	(\$2,569,525)	(823)
Wahkiakum	\$86,603	\$32,476	(\$54,127)	(17)
Walla Walla	\$780,255	\$292,595	(\$487,659)	(156)
Whatcom	\$3,378,540	\$1,266,952	(\$2,111,587)	(676)
Whitman	\$457,873	\$171,702	(\$286,171)	(92)
Yakima	\$2,491,277	\$934,229	(\$1,557,048)	(498)
STATEWIDE	\$112,759,289	\$42,284,733	(\$70,474,556)	(22,559)