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Superintendent of Public Instruction's Motion to File an Amicus Brief Addressing the 2015 Legislature's Compliance with McCleary

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SUPREME COURT OF THE STATE OF WASHINGTON

MATHEW and STEPHANIE
McCLEARY, et al.,

Respondents,

v.

STATE OF WASHINGTON,

Appellant.

SUPERINTENDENT OF
PUBLIC INSTRUCTION'S
MOTION TO FILE AN
AMICUS BRIEF
ADDRESSING THE 2015
LEGISLATURE'S
COMPLIANCE WITH
McCLEARY

The Washington State Superintendent of Public Instruction, Randy Dorn, respectfully requests permission to file an amicus curiae brief addressing the 2015 Legislature's compliance with *McCleary*.

I. INTEREST OF THE APPLICANT

Randy Dorn is Washington's Superintendent of Public Instruction, a nonpartisan elected state officer whose constitutional duty is to "have supervision over all matters pertaining to public schools." Const. art. III, § 22. As the State's chief school officer, the Superintendent plays a unique role. He is the sole statewide elected official constitutionally responsible for overseeing public education. He heads up Washington's state education agency, the Office of Superintendent of Public Instruction, whose nearly 400 employees are legally responsible for implementing, on behalf of the Superintendent, all facets of public education in the State. These

responsibilities include, among many other things, designing state learning standards (RCW 28A.655.070), apportioning state and federal funds to school districts (RCW 28A.150.290), administering the state student assessment system (RCW 28A.655.061), and ensuring that local school officials comply with the law (*see, e.g.*, RCW 28A.150.250, 28A.642.050).

The Superintendent has two very specific interests in this case. First, this Court “retain[ed] jurisdiction over this case to monitor implementation of the reforms under ESHB 2261 [Laws of 2009, ch. 548], and more generally, the State’s compliance with its paramount duty.” *McCleary v. State*, 173 Wn.2d 477, 545-46, 269 P.3d 227 (2012). ESHB 2261 tasked OSPI with specific responsibilities to implement the program of basic education envisioned by ESHB 2261. Along with the Office of Financial Management (OFM), OSPI was made responsible for convening and staffing technical working groups to develop the details of implementing ESHB 2261. ESHB 2261 § 112(2)(a)-(c), Laws of 2009, ch. 548. The Legislature and the Quality Education Council (QEC) are responsible for monitoring these working groups, and OSPI and OFM also staffed the QEC. ESHB 2261 §§ 112(4), 114(6). OSPI has been intimately involved in the recommendations required by ESSB 2261. In addition, the Superintendent developed a 17-point plan to implement ESSB 2261 and

SHB 2776, Laws of 2010, ch. 236. OSPI has unique expertise and it is important that the Court have the Superintendent's point of view.

The Superintendent's second unique interest is his prior participation in this case as amicus curiae. In the Superintendent's Amicus Curiae Brief Addressing Order to Show Cause, dated August 4, 2014, the Superintendent acknowledged that the State had not complied with the Court's Order dated January 9, 2014. However, the Superintendent urged the Court not to impose sanctions, and to give the Legislature an opportunity in the 2015 legislative session to comply with the Order. Now the 2015 regular session and three special sessions have come and gone. Having previously asked the Court to stay its hand, the Superintendent believes he has a duty to inform the Court whether the Legislature has made sufficient progress and, if not, what sanctions or other remedial measures the Court should order.

Pursuant to RAP 10.6(a) counsel for the Superintendent discussed filing the amicus brief with counsel for the State and the Respondents. Although neither counsel had the opportunity to review the Superintendent's brief, neither counsel objected to the filing of the brief.

II. APPLICANT'S FAMILIARITY WITH THE ISSUES

As we explained in the Interest of the Applicant, the Superintendent is very familiar with the issues in this case. The Superintendent was a

witness in the proceeding before the trial court. He has submitted budget requests to the Governor that phase-in adequate funding for basic education, and has proposed legislation that would reform local excess levies and which identified new revenue sources. He has also issued his own plan to fully fund basic education by the 2020-21 school year.

III. ISSUES THE AMICUS CURIAE WILL ADDRESS

1. This Court held the State in contempt for failure to comply with the Court's Order dated January 9, 2014. Were the actions of the 2015 Legislature sufficient to purge the contempt?

2. If the actions of the 2015 Legislature were not sufficient to purge the contempt, what sanctions or other remedial measures should the Court order?

IV. REASONS ADDITIONAL ARGUMENT IS NECESSARY

Additional argument is necessary for two reasons. First, it is important for the Court to understand that the Legislature did not fully implement the reforms required in ESHB 2261, Laws of 2009, ch. 548, during the 2015 legislative session. The 2015 Legislature did make some progress but the majority of the work remains undone. With the exception of reducing class size in grades K through 3, the Legislature has not addressed inadequate State funding for sufficient numbers of certificated instructional staff, certificated administrative staff, and classified staff. The

Legislature has also not addressed inadequate compensation and local excess levy reform. Finally, and most importantly, the Legislature has not addressed the need for additional state funds for basic education from a regular and dependable source. As the single statewide elected official who is solely responsible for supervising Washington's public school system, the Superintendent is in a unique position to explain these shortcomings.

The second reason additional argument is necessary concerns the sanctions or other remedial measures that may be imposed. The Superintendent urges the Court to issue an order enjoining spending from the General Fund at some date prior to the next regular legislative session (for example, October 1, 2015), unless the Legislature returns in special session and makes substantial progress in adopting the reforms mandated by ESHB 2261. Additional argument from the Superintendent is necessary to explain why the Court should adopt this remedy.

RESPECTFULLY SUBMITTED this 27th day of July, 2015.

/s/
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