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Amended Petition for Declaratory Judgment Enforcing Our Constitution 07-2-02323-2-61

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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, their two children in Washington's public schools; ROBERT & PATTY VENEMA, on their own behalf and on behalf of HALIE & ROBBIE VENEMA, their two children in Washington's public schools; and NETWORK FOR EXCELLENCE IN WASHINGTON SCHOOLS ("NEWS"), a state-wide coalition of community groups, public school districts, and education organizations,

Petitioners,

v.

STATE OF WASHINGTON,

Respondent.

Honorable Paris K. Kallas

No. 07-2-02323-2 SEA

AMENDED
PETITION FOR DECLARATORY
JUDGMENT ENFORCING OUR
CONSTITUTION

ORIGINAL

The above Petitioners allege as follows against the Respondent State of Washington:

INTRODUCTION TO THIS AMENDED PETITION

1. Petitioners believe that the proceedings in this case have served to significantly focus the fundamental issues in dispute. Petitioners file this Amended Petition to narrowly focus on those issues in the hope that it will allow this suit to be resolved in a more efficient manner under this Court's Civil Rules.

2. In short, the Petitioners seek four types of relief from this Court.

First, the proceedings to date confirm that the Petitioners and Respondent State disagree on the legal meaning of the words "paramount", "ample", and "all" as used in Article IX, §1 of

1 our State Constitution. Petitioners seek a declaratory judgment ruling to resolve that dispute
2 under Washington law. See paragraphs 9 – 21 and 107 – 108 below.

3 *Second*, the proceedings to date confirm that the Petitioners and Respondent State
4 disagree on the current legal definition of the basic “education” mandated by Article IX, §1.
5 Petitioners seek a declaratory judgment ruling to resolve that dispute under Washington law.
6 See paragraphs 22 – 41 and 107 – 108 below.

7 *Third*, the proceedings to date confirm that the Petitioners and Respondent State
8 disagree on the following yes-or-no question: “Is the Respondent State currently fully
9 complying with its legal duty under Article IX, §1?” Petitioners seek a declaratory judgment
10 ruling to resolve that dispute under Washington law. See paragraphs 42 – 84 and 107 – 108
11 below.

12 *Fourth*, the proceedings to date confirm that the Petitioners and Respondent State
13 disagree on what judicial remedy is appropriate to enforce Article IX, §1 of our State
14 Constitution. Petitioners seek what they contend is a narrowly tailored Court order to enforce
15 the declaratory judgment rulings they seek concerning the Respondent State’s legal duty under
16 Article IX, §1 of our State Constitution. See paragraphs 85 – 104 and 107 – 108 below.

17 PARTIES

18 3. Petitioners: This Amended Petition does not change the Petitioners in this case.
19 They continue to be:

20 (a) The McCleary Family: Carter and Kelsey McCleary attend Washington public
21 schools. When this suit was filed, Carter was a 7 year old second grader at Chimacum Creek
22 Primary School, and his sister Kelsey was a 13 year old seventh grader at Chimacum Middle
23 School. Thirteen is the same age Kelsey’s mom was when the Washington Supreme Court
24 issued its *Seattle School District* decision.

1 Carter's and Kelsey's parents are Matt and Stephanie McCleary. They are voters and
2 taxpayers living in Jefferson County, Washington. They bring this action on their own behalf
3 and as legal guardians on behalf of their two children.

4 The McCleary petitioners have satisfied all conditions precedent to bring this suit.

5 (b) The Venema Family: Robbie and Halie Venema attend Washington public
6 schools. When this suit was filed, Robbie was a 12 year old sixth grader at Cathcart Elementary
7 School, and his sister Halie was a 15 year old ninth grader at the Snohomish High School
8 (Freshman Campus). High School is the same level Halie's mom was when the Washington
9 Supreme Court issued its *Seattle School District* decision.

10 Robbie's and Halie's parents are Robert and Patty Venema. They are voters and
11 taxpayers living in Snohomish County, Washington. They bring this action on their own behalf
12 and as legal guardians on behalf of their two children.

13 The Venema petitioners have satisfied all conditions precedent to bring this suit.

14 (c) Network for Excellence in Washington Schools ("NEWS"): The Network for
15 Excellence in Washington Schools ("NEWS") is a State-wide coalition of community groups,
16 education organizations, public school districts, and others who support better education in the
17 public schools of our State. NEWS is a non-profit corporation organized under the laws of the
18 State of Washington, and has satisfied all conditions precedent to bring this suit.

19 The members of NEWS include the 150,000-member Washington State PTA; the
20 23-chapter League of Women Voters of Washington; the Urban League of Metropolitan Seattle;
21 the Washington State Special Education Coalition; the American Association of University
22 Women of Washington; the Pierce County Black Collective; the Equitable Opportunity Caucus;
23 the Minority Executive Directors Coalition; the Washington Protection and Advocacy System;
24 the 74,000-member Washington Education Association; the Arlington, Bainbridge Island,
25 Bellevue, Chimacum, Edmonds, Lakewood, North Kitsap, Omak, Pasco, Peninsula, Seattle,
26 Snohomish, South Kitsap, and Spokane school districts (which range in size from 1,200 to

1 45,800 students, and location from Jefferson and Pierce to Okanogan, Franklin, and Spokane
2 counties); as well as the 15 local teacher & educator associations in each of those school
3 districts. See http://www.waschoolexcellence.org/about_us/news_members.

4 4. Respondent: This Amended Petition does not change the Respondent in this case. It
5 continues to be the State of Washington. The Respondent State of Washington is required to
6 comply with the Constitution of Washington.

7 JURISDICTION & VENUE

8 5. This Court has jurisdiction to issue a declaration that the State is, or is not,
9 complying with the State's Constitutional duties.

10 6. This Court has jurisdiction to enforce the Washington State Constitution.

11 7. This Court has jurisdiction over this action.

12 8. Venue for this action properly lies in this Court.

13 THE FOUR FUNDAMENTAL ISSUES PRESENTED BY THIS SUIT

14 First Issue:

15 Legal Interpretation of the words "paramount", "ample", and "all" in Article IX, §1

16 9. The Washington Supreme Court has held that it "is the proper function of the
17 judiciary to interpret, construe and enforce the constitution of the State of Washington". *Seattle*
18 *School District v. State*, 90 Wn.2d 476, 482 (1978).

19 10. The Washington Supreme Court has held that "the judiciary has the ultimate power
20 and the duty to interpret, construe and give meaning to words, sections and articles of the
21 constitution. It is emphatically the province and duty of the judicial department to say what the
22 law is. This duty must be exercised even when an interpretation serves as a check on the
23 activities of another branch of government or is contrary to the view of the constitution taken by
24 another branch." *Seattle School District v. State*, 90 Wn.2d 476, 503-504 (1978).

25 11. Article IX, §1 of the Washington State Constitution states: "It is the paramount duty
26 of the state to make ample provision for the education of all children residing within its borders,

1 without distinction or preference on account of race, color, caste, or sex.” A copy of
2 Article IX, §1 is attached as Tab 1.

3 12. Petitioners contend that the word “paramount” in Article IX, §1 should be
4 interpreted to mean “having the highest rank that is superior to all others”.

5 13. Petitioners contend that the word “paramount” in Article IX, §1 is not a mere
6 synonym of “important”, but rather means superior in rank above all others – preeminent,
7 supreme, and more important than all other things concerned.

8 14. Given the plain English meaning of the word “paramount”, Petitioners contend that
9 Article IX, §1 requires the Respondent State to make the State’s ample provision for the
10 education of all Washington children the State’s first and highest priority above all other
11 programs and operations.

12 15. The Respondent State does not agree with the Petitioners’ interpretation of the word
13 “paramount” in Article IX, §1.

14 16. Petitioners contend that the word “ample” in Article IX, §1 should be interpreted to
15 mean “more than adequate” or “considerably more than adequate or sufficient.”

16 17. Given the plain English meaning of the word “ample”, Petitioners contend that
17 Article IX, §1 requires the Respondent State’s provision to be more than merely “adequate” or
18 “sufficient” to provide for the education of all Washington’s children – and thus, for example,
19 not require supplementation or backfilling by local levies, PTA fundraisers, private donations,
20 or other non-State sources.

21 18. The Respondent State does not agree with the Petitioners’ interpretation of the word
22 “ample” in Article IX, §1.

23 19. Petitioners contend that the word “all” in Article IX, §1 should be interpreted to
24 mean “every” or “each and every one of”.

25 20. Given the plain English meaning of the word “all”, Petitioners contend that
26 Article IX, §1 requires the Respondent State to make ample provision for the education of every

1 child residing in our State – not just those children who are in convenient, popular, advantaged,
2 or politically expedient subsets of our State’s children.

3 21. The Respondent State does not agree with the Petitioners’ interpretation of the word
4 “all” in Article IX, §1.

5 **Second Issue:**
6 **Legal Interpretation of the basic “education” mandated by Article IX, §1**

7
8 *The “minimum” definition of basic education under*
9 *our State Supreme Court’s Seattle School District Ruling*

10 22. The Washington Supreme Court has declared the following with respect to the scope
11 of “education” mandated by Article IX, §1:

12 [T]he State’s constitutional duty goes beyond mere reading, writing and
13 arithmetic. It also embraces broad educational opportunities needed in the
14 contemporary setting to equip our children for their role as citizens and as
15 potential competitors in today’s market as well as in the market place of ideas.
16 Education plays a critical role in a free society. It **must** prepare our children to
17 participate intelligently and effectively in our open political system to ensure that
18 system’s survival. It **must** prepare them to exercise their First Amendment
19 freedoms both as sources and receivers of information; and, it must prepare them
20 to be able to inquire, to study, to evaluate and to gain maturity and
21 understanding. The constitutional right to have the State “make ample provision
22 for the education of all (resident) children” would be hollow indeed if the
23 possessor of the right could not compete adequately in our open political system,
24 in the labor market, or in the market place of ideas.

18 *Seattle School District v. State*, 90 Wn.2d 476, 517-18 (1978) (emphasis added; internal
19 citations omitted). A copy of the above ruling is attached as Tab 2.

20 23. The Washington Supreme Court referred to the education described in Tab 2 as a
21 “basic education”, and held that “**effective** teaching and opportunities for learning of these
22 essential skills make up the *minimum* of the education that is constitutionally required.” *Seattle*
23 *School District v. State*, 90 Wn.2d 476, 518 (1978) (underline added; italics in original).

24 24. The State agrees that effective teaching and opportunities for learning the essential
25 skills described in Tab 2 make up the minimum of the education that is constitutionally
26 required.

1
2 The *additional* substantive content defined by the
3 Legislature's enactment of the four numbered provisions in §.210 of the Basic Education Act

4 25. The Washington Supreme Court held that the "basic education" described in Tab 2 is
5 not "fully descriptive of the State's paramount duty". *Seattle School District v. State*, 90 Wn.2d
6 476, 518 (1978) (emphasis added). The Washington Supreme Court accordingly ordered the
7 legislature to do at least two things:

- 8 (1) further define "basic education" with additional substantive content beyond that
9 described in Tab 2, and
10 (2) define a basic program of education to provide that basic education.

11 E.g., *Seattle School District v. State*, 90 Wn.2d at 482 ("The Legislature must act to carry out its
12 constitutional duty by defining and giving substantive content to 'basic education' and a basic
13 program of education") (underline added), at 519 (noting that in 1978 the legislature had not yet
14 passed legislation "defining or giving substantive content to 'basic education' or a basic
15 program of education. Thus, the Legislature must hereafter act to comply with its constitutional
16 duty by defining and giving substantive meaning to them." (underlines added), at 537 ("We
17 have great faith in the Legislature and its ability to define 'basic education' and a basic program
18 of education") (underline added), and thus at 484 ("The Legislature has the duty to define 'basic
19 education' ").

20 26. Petitioners contend that the legislature complied with its duty to provide further
21 substantive content for the definition of "basic education" when it enacted the four numbered
22 provisions of §.210 of the Basic Education Act (RCW 28A.150.210(1)-(4)).

23 27. The Respondent State's Superintendent of Public Instruction (Dr. Terry Bergeson)
24 has acknowledged in her sworn testimony in this case that the four numbered provisions of
25 §.210 of the Basic Education Act "are the substantive content of what drives education in our
26 State".

1 28. The legislature first enacted those four numbered provisions in 1993 when it passed
2 House Bill 1209 into law. The first section of House Bill 1209 explained the legislature's intent
3 to establish substantive student performance standards for our State's education system:

4 The legislature finds that student achievement in Washington must be improved
5 to keep pace with societal changes, changes in the workplace, and an
6 increasingly competitive international economy.

7 To increase student achievement, the legislature finds that the state of
8 Washington needs to develop a public school system that focuses more on the
9 educational performance of students....

10 The legislature further finds that improving student achievement will require
11 (1) Establishing what is expected of students, with standards set at internationally
12 competitive levels....

13 House Bill 1209, Sec. 1 (emphasis added).

14 29. The next section of House Bill 1209 established the substantive content for those
15 student performance standards by specifying the following knowledge and skills:

16 (1) Read with comprehension, write with skill, and communicate effectively and
17 responsibly in a variety of ways and settings;

18 (2) Know and apply the core concepts and principles of mathematics; social,
19 physical, and life sciences; civics and history; geography; arts; and health and
20 fitness;

21 (3) Think analytically, logically, and creatively, and to integrate experience and
22 knowledge to form reasoned judgments and solve problems; and

23 (4) Understand the importance of work and how performance, effort, and
24 decisions directly affect future career and educational opportunities.

25 House Bill 1209, Sec. 101 (codified as §.210 of the Basic Education Act, RCW 28A.150.210).

26 30. The wording of the four numbered provisions of §.210 of the Basic Education Act
were amended in 2007 to specify the following knowledge and skills:

(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.

1 E2SSB 5841, Sec. 1 (codified as §.210 of the Basic Education Act, RCW 28A.150.210).

2 31. The Respondent State has confirmed in this case that the above amendment does not
3 change the substantive content of §.210 of the Basic Education Act (RCW 28A.150.210).

4 32. Petitioners interpret the four numbered provisions of RCW 28A.150.210 to provide
5 the current legislative definition of the substantive content of “basic education” in our State
6 under the Washington Supreme Court ruling attached at Tab 2.

7 33. The Respondent State disagrees with the Petitioners’ interpretation of
8 RCW 28A.150.210.

9
10 *The additional substantive content defined by the*
11 *State’s adoption of the eight Essential Academic Learning Requirements (EARLs)*

12 34. The Respondent State has established Essential Academic Learning Requirements
13 (EARLs) for the following core subjects: (1) Reading; (2) Mathematics; (3) Science;
14 (4) Writing; (5) Communication; (6) Social Studies: civics, economics, geography, & history;
15 (7) Arts; and (8) Health & Fitness.

16 35. The Respondent State admits that the Essential Academic Learning Requirements
17 (EARLs) are part of the instruction required for Washington students.

18 36. The Essential Academic Learning Requirements (EARLs) specify the skills and
19 knowledge in core subjects that all students are expected to master as they move through
20 Washington’s public schools.

21 37. The Respondent State admits that it adopted the Essential Academic Learning
22 Requirements (EARLs) to specify the basic skills established by RCW 28A.150.210.

23 38. Petitioners interpret the Respondent State’s Essential Academic Learning
24 Requirements (EARLs) to further define the current substantive content of “basic education” in
25 our State under the Washington Supreme Court ruling attached at Tab 2.
26

1 39. The Respondent State disagrees with the Petitioners' interpretation of the
2 Respondent State's Essential Academic Learning Requirements (EALRs).

3
4 *The current legal definition of the basic education mandated by Article IX, §1*

5 40. With respect to the second issue raised in this case, the Petitioners accordingly
6 contend that the scope of education described by the Washington Supreme Court ruling attached
7 as Tab 2 is the *minimum* basic "education" mandated by Article IX, §1 of our State
8 Constitution, and that the current substantive content for that constitutionally mandated basic
9 education has been further defined by the four numbered provisions of §.210 of the Basic
10 Education Act (RCW 28A.150.210(1)-(4)) and the Respondent State's eight Essential Academic
11 Learning Requirements (EALRs).

12 41. The Respondent State disagrees with the Petitioners' interpretation of the basic
13 education mandated by Article IX, §1 of our State Constitution.

14 **Third Issue:**
15 **The State's Current Lack Of Full Compliance With Article IX, §1**

16 *The education provided to Washington's children confirms the State's noncompliance*

17 42. The third issue raised in this case is not a matter-of-degree question. It does not seek
18 a ruling on the degree or amount by which the Respondent State is currently failing to fully
19 comply with its education duty under Article IX, §1. Instead, the third issue raised in this case
20 is a binary yes-or-no question: As we stand here today, is the State fully complying this Court's
21 interpretation of the State's paramount education duty under Article IX, §1 – yes or no?

22 43. As another court noted in a prior constitutional challenge to a State's education
23 system, "This case involves the fundamental law of our land and this Court has no discretion
24 whatsoever in whether it will be enforced and preserved. There is no higher duty of any judicial
25 officer than to see to the adherence of government to our Constitutions. There is no such thing
26 as "a little bit pregnant" and there is no such thing as "slightly unconstitutional." " *Montoy v.*

1 *State of Kansas* (case no. 99-C-1738, Shawnee County District Court, Memorandum Decision
2 dated December 2, 2003, at second-to-last page). Similarly here, there is no such thing as our
3 State's current education system being "slightly unconstitutional" under Article IX, §1. It's
4 either constitutional or it's not.

5 44. Article IX, §1 of our State Constitution does not have a "close enough for
6 government work" exception to excuse failures in the education provided by our State to our
7 State's children.

8 45. Currently, the Respondent State is not fully complying with its Constitutional duty
9 under the correct legal interpretation of Article IX, §1.

10 46. All children residing within the State of Washington are not receiving the education
11 mandated by Article IX, §1 of our State Constitution.

12 47. The Respondent State does not provide every child in our State's public schools with
13 the basic education mandated by Article IX, §1 of our State Constitution.

14 48. The Respondent State's Superintendent of Public Instruction has acknowledged in
15 her sworn testimony in this case that the State is not currently providing all children in our State
16 the education described in the State Supreme Court ruling attached as Tab 2.

17 49. The Respondent State's 2005-2006 Washington Learns study concluded that the
18 Respondent State is failing to provide students the education they need in today's society.

19 50. After exhaustively studying the State's public education system in 2005-2006, the
20 Respondent State's November 2006 Washington Learns report stated that "our education system
21 is not preparing our students to compete" and that "Our students are falling behind other states
22 and nations".

23 51. The Respondent State's Governor has publicly stated to the citizens of our State that
24 "Obviously the system has failed for our students."

25 52. An unacceptable number of students in our State fail to graduate from high school
26 with their peers.

1 53. The students in our State who fail to graduate from high school with their peers are
2 disproportionately from our State's minority populations.

3 54. The students in our State who fail to graduate from high school with their peers are
4 disproportionately from our State's lower income populations.

5 55. An unacceptable number of the students in our State who receive a high school
6 diploma each year are not earning a diploma backed by skills they need to succeed.

7 56. The Respondent State created the Washington Assessment of Student Learning
8 ("WASL") to measure whether students in our public school system are mastering the
9 fundamental skills in mathematics, science, reading, and writing identified in the Essential
10 Academic Learning Requirements (EALRs).

11 57. According to the State, the Washington Assessment of Student Learning ("WASL")
12 is one of the most reliable assessments of student achievement in the country.

13 58. The Respondent State's WASL assessment is the only existing assessment of
14 whether students are or are not learning the substantive content established by the Respondent
15 State's Essential Academic Learning Requirements (EALRs).

16 59. An unacceptable number of students in our State fail to pass the Science WASL.

17 60. An unacceptable number of students in our State fail to pass the Math WASL.

18 61. An unacceptable number of students in our State fail to pass the Reading WASL.

19 62. An unacceptable number of students in our State fail to pass the Writing WASL.

20 63. The students in our State who fail to pass the WASL are disproportionately from our
21 State's minority populations.

22 64. The students in our State who fail to pass the WASL are disproportionately from our
23 State's lower income populations.

24 65. The Respondent State's Superintendent of Public Instruction has acknowledged in
25 her sworn testimony in this case that "struggling students are disproportionately ethnic students
26 or low income students."

1 66. The above examples of our State's educational failures confirm the following fact:
2 The Respondent State does not provide for all of the teachers, staff, training, curriculum,
3 materials, supplies, equipment, technology & infrastructure support, facilities, construction,
4 maintenance, operations, kindergarten readiness, transportation, special education, bilingual,
5 arts, health & fitness, and other elements necessary to provide all children residing in our State
6 with the basic education mandated by Article IX, §1 of our State Constitution.

7 *State's excuses*

8 67. The Respondent State has suggested that its current failure to fully comply with
9 Article IX, §1 is disproven by (or should be ignored because of) the fact that, under some
10 measures, the State's provision for the education of our State's children might now be getting
11 better.

12 68. Petitioners contend that such a "trending better" argument does not negate or
13 disprove that the Respondent State is currently failing to fully comply with Article IX, §1.
14 Instead, that argument addresses how long the Respondent State's current failure will continue
15 into the future.

16 69. The Respondent State has suggested that its current failure to fully comply with
17 Article IX, §1 is disproven by (or should be ignored because of) the fact that, under some
18 measures, the education many of our State's children receive is better than that received by
19 children in other States.

20 70. Petitioners contend that purportedly favorable comparisons to other States do not
21 negate or disprove the Respondent State of Washington's failure to fully comply with our
22 State's Constitution.

23 71. No other State's Constitution has a stronger education mandate than our State's
24 Constitution.
25
26

1 72. The only assessment by the Respondent State of whether students are learning the
2 substantive content established by §.210 of Washington's Basic Education Act and
3 Washington's corresponding EALRs is the Respondent State's WASL assessment.

4 73. The Respondent State has suggested that its current failure to fully comply with
5 Article IX, §1 is disproven by (or should be ignored because of) the fact that, under some
6 measures, the State is not failing as badly as some of the data indicates.

7 74. Petitioners contend that the Respondent State's arguments over the extent to which
8 the Respondent State is currently failing to fully comply with Article IX, §1 do not refute the
9 fact that the Respondent State is currently failing to fully comply with Article IX, §1.

10 75. The Respondent State has suggested that its current failure to fully comply with
11 Article IX, §1 is disproven by (or should be ignored because of) the fact that the Respondent
12 State believes that inadequate funding might not be the cause of the State's current failure to
13 provide the education mandated by Article IX, §1 to all children in our State.

14 76. Petitioners contend that the Respondent State's arguments over the cause of the
15 Respondent State's current failure to provide the education mandated by Article IX, §1 to all
16 children in our State do not refute the fact that the Respondent State is currently failing to
17 provide the education mandated by Article IX, §1 to all children in our State.

18 77. The Respondent State has suggested that its current failure to fully comply with
19 Article IX, §1 is disproven by (or should be ignored because of) the fact that the Respondent
20 State believes school districts (or school district teachers and other employees) might be to
21 blame for our State's current failure to provide the education mandated by Article IX, §1 to all
22 children in our State.

23 78. Petitioners contend that the Respondent State has no legal basis for its suggestion
24 that it can shift the blame to someone else for our State's current failure to provide the education
25 mandated by Article IX, §1 to all children in our State. See, for example *Bellevue School*
26 *District v. Brazier*, 103 Wn.2d 111, 116 (1984) ("The state has ... made the local school district

1 its corporate agency for the administration of a constitutionally required system of free public
2 education”); *Tunstall v. Bergeson*, 141 Wn.2d 201, 232 (2000) (“school districts have no duty
3 under Washington’s constitution. Article IX makes no reference whatsoever to school
4 districts.”); *Orion Corp. v. State*, 109 Wn.2d 621, 643-44 (1987) (State liable for
5 unconstitutional taking from County’s enactment of regulations as agent of the State because
6 “As the principal of an agent acting within its authority, the State must take full responsibility if
7 a taking occurred”).

8 79. The Respondent State has suggested that its current failure to fully comply with
9 Article IX, §1 is disproven by (or should be ignored because of) the fact that the State believes
10 that providing children a mere “opportunity” to get an education should suffice.

11 80. Petitioners contend that even if such a mere “opportunity” theory were legally valid,
12 the substantial achievement gap in our State refutes any notion that the Respondent State is in
13 fact currently providing ample “opportunity” to all children in our State.

14
15 *The State’s current failure to fully comply with Article IX, §1*

16 81. Plaintiffs in other States have employed the following “inadequate funding”
17 approach to prove the defendant State’s violation its State Constitution: (1) it would cost
18 x dollars to adequately fund the education required by the defendant State’s Constitution, and
19 (2) the fact that the defendant State funds less than x dollars proves the State is not providing
20 students the education required by that State’s Constitution.

21 82. As the above paragraphs show, however, the Petitioners in this case employ a
22 different approach to establish the Respondent State’s violation: (1) the *Seattle School District*
23 ruling at Tab 2, §.210 of the Basic Education Act, and the corresponding EALRs define the
24 basic education that Article IX, §1 of the Washington Constitution requires the State to provide
25 all children in our State, and (2) the performance of our State’s education system confirms that
26

1 the Respondent State is not currently meeting its Constitutional duty with respect to providing
2 that basic education to all children in our State.

3 83. With respect to the third issue raised in this case, the Petitioners accordingly contend
4 that the Respondent State currently is not fully complying with its legal duty under
5 Article IX, §1 of our State Constitution.

6 84. The Respondent State disagrees, and contends that the Respondent State currently is
7 fully complying with its legal duty under Article IX, §1.

8
9 **Fourth Issue:**
10 **Remedy For The Respondent State's Current Lack Of Full Compliance With**
11 **Article IX, §1**

12 85. The Washington Supreme Court has held that Article IX, §1 of our State
13 Constitution "is unique among state constitutions" (*Seattle School District v. State*, 90 Wn.2d at
14 498), and has explained that:

15 Careful examination of our constitution reveals that the framers declared only
16 once in the entire document that a specified function was the State's paramount
17 duty. That singular declaration is found in Constitution Article IX, §1.
18 Undoubtedly, the imperative wording was intentional. ... No other State has
19 placed the common school on so high a pedestal.

20 *Seattle School District v. State*, 90 Wn.2d at 510-11.

21 86. The Washington Supreme Court has held that Article IX, §1 "is mandatory and
22 imposes a judicially enforceable affirmative duty" upon the State. *Seattle School District v.*
23 *State*, 90 Wn.2d at 482 (1978).

24 87. The Washington Supreme Court has held that Article IX, §1 "is substantive and
25 enforceable" in the courts. *Brown v. State*, 155 Wn.2d 254, 258 (2005).

26 88. The Washington Supreme Court has held that the Article IX, §1 grants all children in
our State a Constitutional right:

1 [A]ll children residing within the borders of the State possess a “right”, arising
2 from the constitutionally imposed “duty” of the State, to have the State make
3 ample provision for their education. Further, since the “duty” is characterized as
4 paramount the correlative “right” has equal stature.

5 *Seattle School District v. State*, 90 Wn.2d at 511-512.

6 89. As the prior paragraphs explain, Petitioners contend that the Respondent State
7 currently is not fully complying with Article IX, §1. The fourth issue raised in this case is
8 therefore one of how this Court should tailor its enforcement Order to ensure compliance with
9 this Court’s legal rulings.

10 90. The Washington Supreme Court has held that Article IX, §1 requires the Respondent
11 State to provide “fully sufficient funds” and a “level of funding that is fully sufficient”. *Seattle
12 School District v. State*, 90 Wn.2d at 518 & 537.

13 91. The Washington Supreme Court has held that Article IX, §1 requires the Respondent
14 State to provide that fully sufficient funding with State funds (rather than local or other
15 non-State funds), provide that fully sufficient State funding from dependable and regular State
16 sources, and make that fully sufficient State funding the State’s first priority. *Seattle School
17 District v. State*, 90 Wn.2d at 484, 518, 520, & 525-26.

18 92. To fulfill its duty to fully fund the basic education mandated by Article IX, §1 of our
19 State Constitution, the Respondent State must at least know the actual dollar cost of providing
20 the basic education mandated by Article IX, §1 of our State Constitution.

21 93. The Respondent State has not determined the actual dollar cost of providing the
22 basic education mandated by Article IX, §1 of our State Constitution.

23 94. The Respondent State does not know the actual dollar cost of providing the basic
24 education mandated by Article IX, §1 of our State Constitution.

25 95. The Picus & Odden cost study done as part of the Respondent State’s 18-month
26 Washington Learns study determined that the actual dollar cost of providing Washington’s
children with an adequate education would require significantly more state funding.

1 96. The Respondent State's Superintendent of Public Instruction has acknowledged in
2 her sworn testimony in this case that State funds do not amply provide for the education of our
3 State's public high school students today.

4 97. The Respondent State's Superintendent of Public Instruction has acknowledged in
5 her sworn testimony in this case that school districts today are left to rely heavily on local levies
6 to fund basic education.

7 98. In fact, the funds provided by the Respondent State do not fully pay for the teachers,
8 staff, training, curriculum, materials, supplies, equipment, technology & infrastructure support,
9 facilities, construction, maintenance, operations, kindergarten readiness, transportation, special
10 education, bilingual, arts, health & fitness, and other costs necessary to provide all children
11 residing in our State with the basic education mandated by Article IX, §1 of our State
12 Constitution

13 99. The Respondent State does not provide the stable, dependable, and regular State
14 funding necessary to provide every child in our State the basic education mandated by
15 Article IX, §1 of the Washington State Constitution.

16 100. The Respondent State does not provide the stable, dependable, and regular State
17 funding necessary to provide every child in our State the basic education described in the
18 Washington State Supreme Court ruling attached as Tab 2.

19 101. The Respondent State does not provide the stable, dependable, and regular State
20 funding necessary to provide every child in our State the education described in the four
21 numbered provisions of §.210 of the Basic Education Act.

22 102. The Respondent State does not provide the stable, dependable, and regular State
23 funding necessary to provide every child in our State the basic education specified in the
24 Respondent State's eight Essential Academic Learning Requirements (EALRs).

1 103. The State has not designed and implemented a funding system that determines,
2 and then fully funds, the actual dollar cost of providing the basic education mandated by
3 Article IX, §1 to all children residing in our State.

4 104. Petitioners accordingly seek a narrowly tailored enforcement Order that requires
5 the Respondent State to simply take two initial steps towards curing its current lack of full
6 compliance with its paramount duty under Article IX, §1. That enforcement Order simply
7 requires the Respondent State to (1) determine the actual dollar cost of complying with this
8 Court’s legal interpretation of Article IX, §1, and (2) determine how the State will fully fund
9 that actual cost with stable and dependable sources as required by the Washington Supreme
10 Court’s *Seattle School District v. State* decision.

11
12 **DECLARATORY JUDGMENT CLAIM**

13 105. The Petitioners incorporate in this paragraph the allegations in this Petition not
14 inconsistent with this Declaratory Judgment Claim, and in addition allege:

15 106. This Court has jurisdiction over this action pursuant to, *inter alia*, chapter 7.24
16 RCW because this action presents a justiciable controversy between the Petitioners and the
17 Respondent regarding the parties’ rights and obligations under Article IX of the Washington
18 Constitution. This is an actual and existing dispute within the meaning of chapter 7.24 RCW,
19 between parties with genuine and opposing interests which are direct and substantial, a judicial
20 determination of which will be final and conclusive.

21 107. The Respondent State currently is not fully complying with its *paramount* duty
22 under Article IX, §1 to make *ample* provision for the education of *all* Washington children.

23 108. For the reasons explained more fully above, this Court should enter the following
24 declaratory judgments to halt the State’s ongoing violation of its paramount education duty
25 under our State Constitution:
26

1 (a) "Paramount" means paramount. As used in Article IX, §1, the word
2 "paramount" means "having the highest rank that is superior to all others". As used in
3 Article IX, §1, the word "paramount" is not a mere synonym of "important", but rather means
4 "superior in rank above all others – preeminent, supreme, and more important than all other
5 things concerned." Article IX, §1 accordingly requires the Respondent State to make the State's
6 ample provision for the education of all Washington children the State's first and highest
7 priority above all other programs and operations.

8 (b) "Ample" means ample. As used in Article IX, §1, the word "ample" means
9 "more than adequate" or "considerably more than adequate or sufficient." Article IX, §1
10 accordingly requires the Respondent State's provision for the education of all Washington
11 children to be more than merely "adequate" or "sufficient" to provide the Constitutionally
12 required education to all Washington's children, without any supplementation or backfilling by
13 local levies, PTA fundraisers, private donations, or other non-State sources

14 (c) "All" means all. As used in Article IX, §1, the word "all" means "every" or
15 "each and every one of". Article IX, §1 accordingly requires the Respondent State to make
16 ample provision for the education of every child residing in our State, not just those children
17 who are in convenient, popular, advantaged, or politically expedient subsets of our State's
18 children.

19 (d) The basic "education" mandated by the Washington State Constitution is a solid
20 constitutional floor below which the State cannot fall. At the very *minimum*, Article IX, §1
21 requires the Respondent State to provide every child residing in our State the full,
22 comprehensive, well-rounded education described by the Washington Supreme Court in the
23 *Seattle School District v. State* ruling attached as Tab 2. The substantive content of that
24 Constitutionally mandated basic education currently includes the substantive content specified
25 in the four numbered provisions of §.210 of the Basic Education Act
26

1 (RCW 28A.150.210(1)-(4)) and the Respondent State's eight Essential Academic Learning
2 Requirements (EALRs).

3 (e) The Respondent State currently is not fully complying with its Constitutional
4 duty under Article IX, §1. The Respondent State is not satisfying its paramount Constitutional
5 duty to make ample provision for the education of every child residing in our State.

6 (f) The Respondent State must fully comply with Article IX, §1 of our State
7 Constitution. Mere first steps, partial steps, or half steps do not satisfy the Respondent State's
8 Constitutional duty.

9 (g) The Respondent State must promptly comply with Article IX, §1 of our State
10 Constitution. The Respondent State's approximately 30-year delay after the Washington
11 Supreme Court's *Seattle School District v. State* ruling in 1978 has, as a matter of law, been far
12 too long.

13 (h) To halt the Respondent State's longstanding lack of full compliance with
14 Article IX, §1 of our State Constitution, the Respondent State must promptly (1) determine the
15 actual dollar cost of providing all children in our State with the education mandated by this
16 Court's legal interpretation of Article IX, §1, and (2) determine how the Respondent State will
17 fully fund that actual dollar cost with stable and dependable State sources.

18 **RELIEF REQUESTED**

19 It is the judicial branch's duty to uphold and enforce the Constitution. The Petitioners
20 accordingly seek the following relief from this Court to require the State of Washington to obey
21 the Constitution of Washington:

22 1. The declaratory judgments requested in this Petition concerning the State's
23 paramount education duty under Article IX, §1 of our State Constitution;

24 2. An enforcement Order requiring the State to promptly determine the complete,
25 actual dollar cost of providing the Constitutionally mandated basic education to every child
26

1 residing in our State, and to determine how it will fully fund that actual dollar cost with stable,
2 dependable, and regular State funding sources.

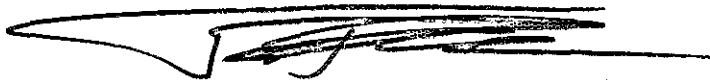
3 3. An award reimbursing Petitioners' attorney fees, expenses, and costs to the full
4 extent allowed by law.

5 4. Permission to amend the pleadings to add additional claims or parties to conform to
6 discovered evidence or the proof offered at the time of hearing or trial.

7 5. Such other relief and/or writs as appears to the Court to be just and equitable.

8 RESPECTFULLY SUBMITTED this 6th day of December, 2007.

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10 

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Tab 1

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.

TAB I

Tab 2

unfit for office." *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 136, 1824.
 6 L. Ed. 23 (1824). The Constitution is "intended to adapt the various ages to common and consequently, to be adapted to the various ages of human affairs." *Cullom v. State of Maryland*, 17 U.S. (4 Wheat.) 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.

When we are dealing with words that also have a constitutional act, we must realize that they have been called into being by the development of which country not have had a foreseen completion of the most gifts of its beginnings. It was enough for them to realize that a century had passed and that such progress much swifter and bloodier than the progress of a nation. The progress before us must be considered in the light of our whole experience and not merely in that of the past.

[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 as 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

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 trial 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 for learning these essential skills 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 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 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 latter 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 the parameters, then, the system devised to remain the domain of the Legislature.

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

EXHIBIT
 2
 2/107 Boyer