7-27-2015

Plaintiff/Respondents' 2015 Post-Budget Filing

No. 84362-7

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Defendant/Appellant,

v.

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,

Plaintiffs/Respondents.

PLAINTIFF/RESPONDENTS' 2015 POST-BUDGET FILING

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I. SIGNIFICANCE OF TODAY'S COURT FILINGS

The State assured this Court that 2015 was the year its legislature would make a "grand agreement" to enact the ***progress*** and ***plan*** mandated by the court orders in this case.

This Court trusted the State's assurance, and thus held contempt sanctions in abeyance to allow the State another opportunity to purge its contempt by fully complying with those court orders.

Although the State's legislature reports that "much has happened" in 2015,[1] none of that "much" included enactment of the court-ordered ***plan***. Nor (with three minor exceptions), did it include enactment of legislation making additional ***progress*** beyond what was already in statute when the State was held in contempt. Instead, the "much" about which the State boasts was another year of talking while the State kept violating Washington children's constitutional rights.

Unfortunately, the significance of the court orders in this case seems to have been lost on many of our State's decision-makers.

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[1] *2015 Report To The Washington State Supreme Court By The Joint Select Committee On Article IX Litigation, draft report approved by the Article IX Committee on Tuesday, July 21, 2015 (the legislature's "2015 Report"), at p.2. Plaintiffs are citing that Report on the assumption that the State Attorney General's filing today will be attaching that same Report.*

A. Civil Rights.

"the number one civil right of the 21st century"

Final Judgment's reference to education[2]

This Court has unequivocally told every government official taking the oath of office that:

> Article IX, section 1 confers on children in Washington a positive constitutional right to an amply funded education,

and that the word "ample" in Article IX, section 1 means:

> considerably more than just adequate.

McCleary, 173 Wn.2d at 483 (underline added), and at 484.

This case always was... still is... and will in Washington State history forever be... a civil rights case. Complete with judicial findings confirming the critical civil rights purpose of an amply funded public education in our State's democracy.[3]

The civil rights leaders who testified at trial confirmed this civil rights purpose.[4] As just one example, the testimony of El Centro de la Raza founder Roberto Maestas pointed out that – especially for the

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[2] *February 2010 Final Judgment at ¶134 (CP 2898-2899) (noting that one thing even "Newt Gingrich and civil rights advocate Al Sharpton" agree on is that "education ... is the number one civil right of the 21st century").*

[3] *February 2010 Final Judgment at ¶¶118-142 (CP 2866-2971).*

[4] *See, e.g., RP 2594:17-25, 2656:14-24, 2597:7-25 (Roberto Maestas, founder of El Centro de la Raza); RP 2497:23-2498:4, 2519:5-24 (James Kelly, Pres. and CEO of Urban League of Metropolitan Seattle); accord RP 1181:4-1182:4, 1201:1-1202:13 (Rep. Skip Priest); RP 4427:1-4428:10 (Sen. Fred Jarrett); Trial Designation of Dr. Frances Contreras testimony (State Commission on Hispanic Affairs) at 62:16-63:3, 93:13-21; RP 1585:1-20 (Dan Grimm, Chair of State's Joint Task Force on Basic Education Finance); Trial Designation of Sen. Rodney Tom testimony at 61:23-62:9.*

minority and underprivileged kids he served – "the only way you can be free is to be fully educated."[5] This suit's civil rights core is precisely why plaintiff NETWORK FOR EXCELLENCE IN WASHINGTON SCHOOLS includes so many of our State's civil rights organizations, and why amicus parties have included civil rights advocates like the ACLU.[6]

The civil rights core of this case is why the Final Judgment acknowledged education as "the number one civil right of the 21st century", and found from the evidence at trial that public education

> plays a critical civil rights role in promoting equality in our democracy. For example, amply provided, free public education operates as the great equalizer in our democracy, equipping citizens born into underprivileged segments of our society with the tools they need to compete on a level playing field with citizens born into wealth or privilege.

Final Judgment at ¶¶134 & 132.[7]

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[5] *Expounding on the 19th century revolutionary José Martí's observation about education being the prerequisite to freedom, and that "You need to have the fundamental skills to compete for a job, to contribute to society, and you have to know that the economics, political social processes, becoming involved in them to shape the future of the homeland of your community for your people and yourself." RP 2596:16-2598:2.*

[6] *The February 2010 Final Judgment describes the initial civil rights members of plaintiff Network for Excellence in Washington Schools ("NEWS") at CP 2866-2971, ¶¶24-27 & 31-33). The full current list of NEWS members is at http://waschoolexcellence.org/about/news-members/ ; see also the June 8, 2011 Amicus Curiae Brief Of The American Civil Liberties Union Of Washington in this case.*

[7] *See generally Final Judgment at ¶¶129-143 (CP 2897-2902); see also Final Judgment at p.1 n.1 (CP 2872) ("Only the educated are free", quoting Epictetus, Discourses, Bk. II, ch. 1) and at ¶119 (CP 2892-2893) (noting the State's straightforward admission in this case that "A healthy democracy depends on educated citizens"); McCleary, 173 Wn.2d at 500 (noting the conclusion of the State's in-depth Washington Learns study: "Education is the single most important investment we can make for the future of our children and our state") (internal quotation marks omitted); RP 5580:16-18. (the trial court making this same point when noting with respect to the cost of*

The civil rights core of this case is also why the Final Judgment quoted *Brown v. Board of Education* to reiterate that:

> Today, education is perhaps the most important function of state and local governments. ... It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.

Final Judgment at ¶138 (CP 2899) (quoting *Brown v. Board of Education of Topeka, Kansas*, 347 U.S. 483, 493, 74 S.Ct. 686, 98 L.Ed. 873 (1954)).

And the importance of this civil right is why this Court emphasized those same *Brown v. Board of Education* principles in its *Seattle School District* decision, holding

> 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 market place of ideas. 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. 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 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 market place of ideas.

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complying with Article IX, §1: it may sound like a lot of money, but "you know the old adage: if you think education is expensive, try ignorance").

Trial Exhibit 2 (*Seattle School District v. State*, 90 Wn.2d 476, 517-518, 585 P.2d 71 (1978)); accord, Final Judgment at ¶174 (CP 2910) (quoting same); *McCleary*, 173 Wn.2d at 516 (quoting same).

This Court has repeatedly reminded State officials that the education right conferred by Article IX, §1 is each Washington child's ***paramount*** right under our State Constitution.[8] It has unequivocally held that "Article IX, section 1 confers on children in Washington a positive constitutional right to an amply funded education", and clearly explained what being a "positive" constitutional right means: Unlike most other constitutional rights which are framed in a negative sense that restrict government action, a positive constitutional right requires government action. *McCleary*, 173 Wn.2d at 483 (underline added) & 518-519. In a positive rights case like this, the Court's role is not to decide whether the State has done too much – rather, it's to decide whether the State has done enough. *McCleary*, 173 Wn.2d at 519.

As Parts II & III of this filing will later confirm, however, the State did not do enough in 2015 to comply with the court orders in this case.

[8] *Seattle School District, 90 Wn.2d at 510-513; McCleary, 173 Wn.2d at 514-522.*

B. Delay.

It's easy to talk about numbers.
It's easy to talk about statistics.
But when it comes right down to it,
every [child] lost is something that is very real....

That's one of the great tragedies...of this long debate and delay....
We're not talking about numbers.
We're talking about real-world kids.

September 2009 trial testimony of Representative Skip Priest (member of State's Washington Learns Commission and Basic Education Finance Task Force).[9]

The record in this case confirms that the State has been knowingly violating Washington children's constitutional rights for a long, long time:

- ***September 1978:*** *Seattle School District v. State*. This Court orders the State to comply with the ample funding mandate of Article IX, §1 by no later than July 1, 1981, and trusts the State to comply.[10] Plaintiff Stephanie McCleary is 13 years old.[11] Plaintiff Patty Venema is in high school.[12]

- ***January 1979:*** Gov. Dixy Lee Ray State of the State Address: "We have already delayed too long.... full funding of K-12 is mandated by the courts. We should do it now."[13]

[9] *RP 1168-1170; see also Plaintiffs' November 2010 Reply Brief at p.22.*
[10] *Seattle School District v. State, 90 Wn.2d 476, 538, 585 P.2d 71 (1978); pages 517-518 of this Court's decision was also this suit's Trial Exhibit 2.*
[11] *Final Judgment at ¶16 (CP 2876).*
[12] *Final Judgment at ¶20 (CP 2876).*
[13] *Trial Exhibit 578, p.141, 2nd & 3rd paras. (underline added).*

- ***January 1984:*** Gov. John Spellman State of the State Address: "Education is the number-one business of this state government.... We must finish the work of meeting our mandate to provide fully for basic education...."[14]

- ***January 1985:*** State's The Paramount Duty report on the programs and increased investments needed for K-12 education under Article IX, §1.[15]

- ***December 1992:*** State's Putting Children First report by Governors' Council on Education Reform and Funding on the programs and increased funding needed for K-12 education under Article IX, §1.[16]

- ***January 1998:*** Gov. Gary Locke State of the State Address: "Last year's fourth-graders need help now – and so do this year's second, third and fourth-graders."[17]

- ***November 2006:*** State's Washington Learns report on the programs and significantly increased funding needed for K-12 education under Article IX, §1.[18]

- ***November 2006:*** Gov. Christine Gregoire's Washington Learns introductory statement: "It is time for bold, purposeful action. It is time to make some big changes to Washington's education system. ... It is time to get to work**.**"[19]

- ***January 2007:*** A generation has passed since this Court's *Seattle School District* ruling. Stephanie McCleary's daughter Kelsey is now 13 years old, her son Carter is in second grade.[20] Patty Venema's daughter Halie is now in high school, her son Robbie is in sixth grade.[21] Plaintiffs file this suit.[22]

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[14] *Trial Exhibit 579, p.43, 7th para. (underline added).*

[15] *Trial Ex. 125; see also McCleary, 173 Wn.2d at 501 (referencing "at least 17 previous legislative studies"). Trial Exhibit 125 was one of them.*

[16] *Trial Ex. 360; see also McCleary, 173 Wn.2d at 491-493.*

[17] *Trial Exhibit 580, p.50, 2nd para. (underline added).*

[18] *Trial Ex. 16; see also McCleary, 173 Wn.2d at 499-502.*

[19] *Trial Exhibit 16, p.3, last 3 paras.*

[20] *Final Judgment at ¶¶16 &15 (CP 2876).*

[21] *Final Judgment at ¶¶20 & 19 (CP 2876).*

[22] *CP 3-26 (original complaint); CP 950-975 (Amended Complaint).*

- ***January 2009:*** State's Joint Task Force On Basic Education Finance reports on the programs and significantly increased funding needed for K-12 education under Article IX, §1.[23]

- ***May 2009:*** State enacts ESHB 2261 to implement K-12 financing reforms, including the Picus & Odden prototypical school model from the above State studies.[24]

- ***August-October 2009:*** Trial with 55 witnesses and 566 exhibits.[25]

- ***February 2010:*** Final Judgment holds the State's K-12 funding still violates Article IX, §1, and orders the State to (1) establish the actual cost of amply providing all Washington children with the education mandated by the court's interpretation of Article IX, §1, and (2) establish how it will fully fund that actual cost with stable and dependable State sources.[26]

- ***August 2010:*** State insists this Court should vacate the trial court's remedial order because "No additional court-ordered studies are necessary", and assures this Court that the State's ESHB 2261 working groups, Quality Education Council, and Joint Task Force on Education Finance were busy determining the actual costs and funding sources for ample funding by the 2017-2018 school year.[27]

- ***January 2012:*** This Court accepts the State's assurances, vacates the trial court's remedial order, but reiterates the State must fully comply with the court's interpretation of Article IX, §1 by the promised 2017-2018 school year.[28]

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[23] *Trial Ex. 124; see also McCleary, 173 Wn.2d at 503-505.*

[24] *Trial Ex. 239; see also McCleary, 173 Wn.2d at 505-508.*

[25] *CP 2866 & 2946-2971; RP 1 – RP 5258.*

[26] *Final Judgment at final judgment order ¶2 [CP 2867] and, e.g., findings & conclusions ¶¶230-230(a) [CP 2928-2929], ¶¶250-252 [CP 2935-2936], ¶¶267-268 [CP 2941].*

[27] *August 20, 2010 Brief Of Appellant (Corrected) at p.59; see, also, e.g., Plaintiffs' **2012** Post-Budget filing at pp.6-8; Plaintiffs' **2013** Post-Budget filing at pp.5-6; Plaintiffs' **2014** Post-Budget filing at p.8.*

[28] *McCleary, 173 Wn.2d at 541-546; see also Plaintiffs' **2012** Post-Budget filing at pp.6-8; Plaintiffs' **2013** Post-Budget filing at pp.5-6; Plaintiffs' **2014** Post-Budget filing at p.8.*

- ***June 2012:*** ESHB 2261's Compensation Technical Working Group Final Report on the over $2.9 billion/year the State's school districts would need to fund competitive market rate salaries.[29]

- ***July 2012:*** This Court orders the State to make steady, real, and measurable ***progress*** each year to reach the 2017-2018 school year finish line in this case.[30]

- ***December 2012:*** This Court holds the State's 2012 progress "falls short", orders the State to make steady, real, and measurable ***progress*** in 2013 to meet the promised 2017-2018 school year deadline, orders the State's 2013 Report to set out the State's detailed ***plan*** and phase-in schedule for full compliance by that deadline, and reiterates the State's procrastination must stop:

  > Given the scale of the task at hand, 2018 is only a moment away.... We cannot wait until "graduation" in 2018 to determine if the State has met minimum constitutional standards.[31]

- ***January 2014:*** This Court finds the State "cannot realistically claim to have made significant ***progress***", and again orders the State to submit a detailed year-by-year ***plan*** to implement and fund the State's full compliance with Article IX, §1 by the 2017-2018 school year.[32]

- ***September 2014:*** This Court rules the State in contempt for its ongoing failure to comply with the court orders in this case, and again orders the State to submit a detailed year-by-year plan to implement and fund the State's full compliance with Article IX, §1 by the 2017-2018 school year.[33]

- ***Fall 2015:*** Second-grader Carter McCleary has now grown up to be a high school Junior (11th grade). His sister Kelsey, Halie Venema, and Robbie Venema have graduated under the State's ongoing violation of their constitutional rights and the court orders in this case.

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[29] *June 30, 2012 report at http://www.k12.wa.us/Compensation/default.aspx .*
[30] *July 18, 2012 Order at ¶¶1 & 4.*
[31] *December 20, 2012 Order at pp.1-3.*
[32] *January 9, 2014 Order at p.6 (bold italics added).*
[33] *September 11, 2014 Order at pp.4-5.*

Some of plaintiffs' prior filings have included a well known civil rights photo from the 1960s to underline the unfortunate parallel between:

(1) Washington legislators' refusing to comply with court orders holding that the constitution requires their State to do something difficult with the State's public schools (amply fund them), and

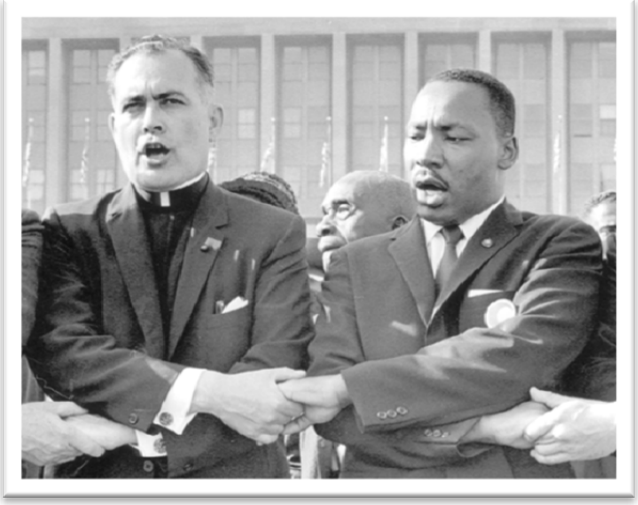
(2) Alabama Governor Wallace's refusing to comply with court orders holding that the constitution required his State to do something difficult with the State's public schools (desegregate them).[34]

But using that "negative" civil rights photo from the South apparently irritates some elected officials up here in the Great Northwest.

So plaintiffs highlight the main point of their next section – *whether* this Court should decisively act – with a "positive" civil rights photo from that same era:

[34] *See, e.g., Plaintiffs' **2014** Post-Budget filing at p.38; Plaintiffs' August 25, 2014 Answer To The Amicus Brief Of Mr. Eugster at pp.3-5; Plaintiffs' **2013** Post-Budget filing at p.39.*

C. ***Whether*** **To Act.**



In the early 1960s, Martin Luther King, Jr. was dismissed by many Americans as a troublemaking rabble-rouser.[35] So in 1964, when he asked the Chicago Mayor and Chicago Archbishop to attend a civil rights rally with him at Chicago's Soldier Field, they said no.[36] But then on the morning of that rally, the president of a small, all-boys Catholic university in neighboring Indiana was asked to attend – and his only question before immediately getting in a car to drive there was "what time?"[37] His lack of hesitation was not surprising to those who knew the basic principle he lived by:

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[35] *See, e.g., http://hesburgh.nd.edu/funeral-mass/ at minutes 30:21 - 31:24 of that page's "Funeral Mass for Rev. Theodore M. Hesburgh" video. [That recording is also available at https://youtu.be/h7x1kQ3u_dU].*

[36] *Id.*

[37] *Id.; Soldier Field photo at http://hesburgh.nd.edu/fr-teds-life/champion-of-civil-rights/ .*

My basic principle is that
You don't make decisions because they are easy.
You don't make them because they are cheap.
You don't make them because they're popular.
You make them because they're right.[38]

It would be ***easy*** for the members of this Court to throw up their hands and say they can't do anything about State officials' ongoing violation of Washington children's positive constitutional right to an amply funded K-12 education.

It would be ***cheap*** for the State treasury if this Court pretended the "full funding" claims by State politicians were true.

And it would be ***popular*** with the elected officials in the other branches if this Court kicked the can down the road instead of taking strong measures to coerce compliance with the court orders in this case.

But plaintiffs respectfully submit that hiding behind those excuses would not be ***right***. As explained above, this Court assured our State's public school children that "Article IX, section 1 confers on children in Washington a positive constitutional right to an amply funded education", and repeatedly ordered the State to demonstrate steady progress and produce a complete phase-in plan to ensure the constitutionally required ample funding by the 2017-2018 school year. Despite all the court rulings

[38] *http://hesburgh.nd.edu/funeral-mass/ at minutes 32:28-33:00 of that page's "Funeral Mass for Rev. Theodore M. Hesburgh" video. [recording also available at https://youtu.be/h7x1kQ3u_dU].*

in this case, the statement plaintiffs made eight years ago in paragraph 1 of their Complaint is still true today:

> The simple fact remains...that justice delayed is justice denied.
>
> . . . .
>
> Enough is enough. The time for first steps or initial down payments has long passed. It is time for compliance.[39]

As the remainder of this filing explains, plaintiffs respectfully ask that this Court not give up and choose the path that's easy. Not choose the path that's cheap. Not choose the path that might be more popular with State officials. But instead choose the path that's right. Choose to be the separate and independent branch of State government that upholds and enforces citizens' constitutional rights when other branches find it easier, cheaper, or more popular not to.

D. *When* To Act.

"Year 2018 remains a firm deadline for full constitutional compliance"

December 20, 2012 Order at p.2 (underline added).

The rulings in this case are not an eleventh-hour surprise to State officials.

The February 2010 Final Judgment was detailed and clear. CP 2866-2971.

[39] *CP 4 at lines 1 & 17-18 (January 11, 2007 Complaint).*

So was this Court's January 2012 decision. It unanimously held the State "has failed to adequately fund the 'education' required by article IX, section 1", "the State has consistently failed to provide adequate funding", and this fact is so well known by State officials that "[w]e do not believe this conclusion comes as a surprise." *McCleary*, 173 Wn.2d at 529-530 & 539.[40]

This Court's December 2012 Order unequivocally reiterated to every State government official taking the oath of office that "Year 2018 remains a firm deadline for full constitutional compliance." December 20, 2012 Order at p.2 (underline added). And now the State's ongoing failure to comply with the court orders in this case has resulted in the State's being ruled in contempt of court. September 11, 2014 Order at pp.4-5.

To purge that contempt, this Court ordered the State's filing today to include:

(1) the ***progress*** report required by this Court's July 2012 Order; and
(2) the ***plan*** required by this Court's January 2014 Order.

June 8, 2015 Order at pp.2-3.

[40] *See also January **2014** Order at p.1 ("Two years ago, this court held unanimously that the State is not meeting its paramount duty"). The State has expressly acknowledged this Court's finding that the State has "failed to meet its paramount constitutional duty by 'consistently providing school districts with a level of resources that falls short of the actual costs of the basic education program.'" State's **2014** filing at attached Report, p.1 (quoting McCleary, 173 Wn.2d at 537).*

To ensure there's no doubt about the type of ***plan*** required, this Court reiterated that the State's ***plan*** must include both of the following:

> **Complete Implementation:** It must be a complete plan for fully implementing the State's program of basic education for each school year between now and the 2017-2018 school year, addressing each of the areas of K-12 education within ESHB 2261 and SHB 2776.
>
> **Full Funding Phase-In:** It must include a phase-in schedule for fully funding each of the components of basic education.

June 8, 2015 Order at pp.2-3.

Although plaintiffs have not yet seen the Attorney General's filing today, plaintiffs know what that filing cannot do:

(1) it cannot demonstrate the ***progress*** required by the July 2012 Order; and

(2) it cannot produce the ***plan*** required by the January 2014 Order.

The following pages outline how plaintiffs know that.

The time for this Court to act is now.

II. DID THE STATE MAKE THE COMPLIANCE *PROGRESS* REQUIRED BY THIS COURT'S JULY 2012 ORDER?

A. The Progress Required By This Court's July 2012 Order: *Steady*, *Real*, And *Measurable* Progress Each Year To Reach Full Compliance By The 2017-2018 School Year.

To ensure the State got (and stayed) on track to complete the compliance it had promised, this Court ordered the State to submit a post-budget filing every year that:

(a) demonstrates "***steady*** progress" implementing ESHB 2261, and

(b) shows "***real*** and ***measurable*** progress" towards full Article IX, §1 compliance by 2018.

July 18, 2012 Order at ¶¶1 & 4 (bold italics added).

And as the State knows from the prior filings in this case, "steady", "real", and "measurable" are not empty, meaningless words:

> ***steady*** means "even development, movement, or action: not varying in quality, intensity, or direction", "UNIFORM", "CONTINUOUS", "consistent in performance or behavior: DEPENDABLE, RELIABLE". [41]

> ***real*** means "AUTHENTIC", "GENUINE", "not illusory : INDUBITABLE, UNQUESTIONABLE".[42]

> ***measurable*** means not merely "capable" of being measured, but in fact "great enough to be worth consideration: SIGNIFICANT".[43]

B. The State Did Not Make The Court-Ordered Progress In 2012, 2013, Or 2014.

2012: The State did not make the court-ordered progress.[44]

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[41] *E.g., Plainitffs' **2012** Post-Budget Filing at p.16 & n.45.*

[42] *E.g., Plainitffs' **2012** Post-Budget Filing at p.24 & n.69; cf. McCleary, 173 Wn.2d at 545 (noting the 2012 Budget's $33.6 million "increase" in K-**3** class size reduction funding was illusory because that same Budget's $214 million decrease in K-**4** class size reduction funding resulted in "a significant net loss in K-3 class reductions").*

[43] *E.g., Plainitffs' **2012** Post-Budget Filing at p.24 & n.68; cf. December 20, 2012 Order at p.2 ("constitutional compliance will never be achieved by making modest funding restorations") (underline added); McCleary, 173 Wn.2d **at 505** (noting ESHB 2261's assurance of "bold reforms to the entire educational system") **at 506** (ESHB 2261's promised "bold reforms to the K-12 funding system") (underline added), **at 545** (noting the 2012 Budget's $5 million transportation funding increase "will barely make a dent" in the State's underfunding of pupil transportation).*

[44] *December 2012 Order at p.1 ("The State's first report falls short."); for details see Plaintiffs' **2012** Post-Budget Filing at pp.15-29.*

2013: The State again did not make the court-ordered progress.[45] To eliminate any possible misunderstanding about the significant progress required, this Court explained that 2014 required "immediate, concrete action" to make "real and measurable progress, not simply promises."[46]

2014: The State again did not make the court-ordered progress.[47]

C. The State's "Historic $1.3 Billion Increase" Did Not Make The Court-Ordered Progress In 2015.

Some claim the State's 2015-2017 budget increased K-12 education funding by an historic $1.3 billion.[48]

There are at least four reasons why that claim does not establish ***steady***, ***real***, and ***measurable*** progress beyond the funding already in statute when the State was held in contempt.

1. The State Made Only A Few Minor Funding Increases Above Those Already In Statute When The State Was Held In Contempt.

Most of the funding increases cited as "progress" in response to this Court's September 2014 contempt ruling had nothing to do with that contempt ruling – for most were already in statute before that ruling.

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[45] *January 2014 Order at p.6 (the State "cannot realistically claim to have made significant progress"); for details see Plaintiffs' **2013** Post-Budget Filing at pp.12-38.*

[46] *January 2014 Order at p.8.*

[47] *For details see Plaintiffs' **2014** Post-Budget Filing at pp.10-28.*

[48] *E.g., http://houserepublicans.wa.gov/news/kristiansen-july1515-enewsletter/ .*

Three of the funding increases listed in the legislature's 2015 Report, however, were added after this Court's contempt ruling. But they are relatively minor:

(1) A new $200 million program this biennium to assist school districts with the $2 billion cost of additional classrooms required for the K-3 class size reduction and full-day kindergarten components of basic education;[49]

(2) A temporary $152 million salary funding increase this biennium to address the over $5.8 billion/biennium cost of the market rate salary component of basic education;[50] and

(3) A $24 million health insurance benefit increase this biennium to provide an additional $12 per month for K-12 staff (rather than the $60 to $114 per month added for State employees).[51]

With the exception of those relatively minor changes, the State's response to this Court's contempt ruling did not include new enactments to make progress beyond what was already in statute when the State was ruled in contempt.

2. "Historic" Isn't "Compliance".

Calling a funding increase "historic" says nothing about whether it complies with a court ruling. Two examples illustrate this point:

- When Holmes County, Mississippi desegregated the first of its public schools in the late 1960s, that was "historic" in that county.[52] But plaintiffs doubt the Washington Attorney

[49] *See discussion below at Section III.C.2(b) & III.C.3(b)(i).*

[50] *See discussion below at Section III.C.1(b)(i).*

[51] *See discussion below at Section III.C.1(b)(iii).*

[52] *See Alexander v. Holmes County Board of Education, 396 U.S. 19, 20 (1969) (ordering the school district to comply "at once"). This Mississippi example was*

General would defend that delay as "compliance" with the *Brown v. Board of Education* ruling more than a decade earlier.

- When a deadbeat dad who has traditionally paid only 50% of his court-ordered child support starts paying 75%, that's a relatively "historic" funding increase. But plaintiffs doubt the Washington Attorney General would defend that 75% as "compliance" with the court's order.

The compliance question here is whether the true amount of funding increases during this biennium's upcoming two years constitute ***steady***, ***real***, and ***measurable*** progress towards achieving ample funding by the ensuing third year (the 2017-2018 school year deadline). Whether that true amount could be called "historic" is legally irrelevant.

3. The Commonly Cited $1.3 Billion Isn't An "Increase".

The State's own budget documents confirm that the claimed "$1.3 billion increase" was not an increase above what was already in statute before the 2015 legislative session began.

At the beginning of each budget session, the State determines what it would cost to just maintain the *status quo* – i.e., continue funding the State's legal obligations as they stood at the beginning of that session, accounting for anticipated caseload and expense changes like enrollment increases in existing programs and statutorily mandated salary increases

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previously brought to this Court's attention by the May 27, 2011 Brief Of Amicus Curiae League Of Education Voters Foundation, at p.20.

for existing employees. The State calls this *status quo* benchmark the "maintenance level" funding amount.[53]

The State determined the maintenance level amount for K-12 funding in the 2015-2017 biennium was $**19.5** billion.[54] It then adopted a budget with a K-12 funding amount of under $**18.2** billion .[55] That's not a $1.3 billion increase. It's a $1.3 billion decrease. *[See graph in Appendix A.]*

Progress means "to move forward : to proceed or advance".[56] A decrease from maintenance level funding is not "progress".

4. $650 Million In First And Second Year Isn't *Steady*, *Real*, And *Measurable* Progress To Be At Over $5 Billion In Third Year.

Even if the upcoming biennium budget had a $1.3 billion increase over K-12 maintenance level funding, that would still equate to about $650 million in the first year and about $650 million in the second year.

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[53] *OFM, 2015-17 Biennium Operating Budget Instructions at ch.5, p.26 ("Maintenance level reflects the cost of mandatory caseload, enrollment, inflation, and other legally unavoidable costs not contemplated in the current budget."), available at http://www.ofm.wa.gov/budget/instructions/operating/2015_17/default.asp .*

[54] *2015-2017 Operating Budget, Amendment To SSB 6052, Agency Detail And Statewide Summary, June 29, 2015 at p.177 (NGF-P = $19,512,336) http://leap.leg.wa.gov/leap/Budget/Detail/2015/csAgyDetail_0629.pdf .*

[55] *2015-2017 Operating Budget, Amendment To SSB 6052, Agency Detail And Statewide Summary, June 29, 2015 at p.178 (NGF-P = $18,156,004) http://leap.leg.wa.gov/leap/Budget/Detail/2015/csAgyDetail_0629.pdf .*

[56] *E.g., Plaintiffs' 2012 Post-Budget Filing at p.16 & n.45; see also December 20, 2012 Order at p.2 ("Steady progress requires forward movement").*

The State's prior court testimony and submissions, however, assured that implementation of ESHB 2261 would increase Washington school districts' annual K-12 funding by over $5,000 per pupil before adding capital construction needs and inflation.[57] Since there are over 1 million children in our State's K-12 public schools,[58] over $5,000 per pupil comes to over $5 billion. (The State also acknowledged this year that building the additional classrooms required for K-3 class size reductions and full-day kindergarten adds $2 billion more.[59])

There are now only three school years left for the State to make (and complete) the ***steady***, ***real***, and ***measureable*** progress required by this Court's July 2012 Order. Even if the "$1.3 billion increase" claim were true, its corresponding $650 million increase for the 2015-2016 school year and $650 million increase for the 2016-2017 school year would just put off several billion dollars of heavy lifting until the final 2017-2018 school year. *[See graphs in Appendices B & C.]*

5. Compliance *Progress* Conclusion.

The State has made progress since this Court's January 2012 decision.

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[57] *See Plaintiffs' **2013** Post-Budget Filing at Section III.A.1, pp.12-13 and at Appendix B. $12,701 - $7,279 = $5,422, which is over $5,000.*

[58] *E.g, http://www.k12.wa.us/safs/rep/enr/1415/s1251s.pdf ; http://reportcard.ospi.k12.wa.us/summary.aspx?groupLevel=District&schoolId=1&reportLevel=State&year=2013-14 .*

[59] *See new classroom cost discussion below at Section III.C.2(b) & 3(b)(i).*

But with only three years left until the firm 2017-2018 school year deadline for full constitutional compliance,[60] the State's 2015-2017 budget made few changes beyond the funding obligations already in statute when the State was ruled in contempt. That's not ***steady***, ***real***, and ***measurable*** progress.

The Section II heading at the top of this filing's compliance ***progress*** discussion asked a straightforward question:

DID THE STATE MAKE THE COMPLIANCE PROGRESS
REQUIRED BY THIS COURT'S JULY 2012 ORDER?

As the above discussion explains, the straightforward answer is

NO.

III. DID THE STATE PRODUCE THE COMPLIANCE *PLAN* REQUIRED BY THIS COURT'S JANUARY 2014 ORDER?

A. The Plan Required By This Court's January 2014 Order.

This Court told the State back in 2012 that "there must in fact be a plan."[61] And the State has for years been ignoring this Court's Orders to produce that plan.[62]

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[60] *December 20, 2012 Order at p.2 ("Year 2018 remains a firm deadline for full constitutional compliance") (underline added).*

[61] *December 2012 Order at p.2.*

[62] *September 2014 Order at pp.1-4.*

To prevent any conceivable uncertainty or misunderstanding by the State about today's filing, this Court reiterated that the compliance ***plan*** mandated by its January 2014 Order:

> (a) must be a complete plan for fully implementing the State's program of basic education for each school year between now and the 2017-2018 school year, addressing each of the areas of K-12 education within ESHB 2261 and SHB 2776; and
>
> (b) must include a phase-in schedule for fully funding each of the components of basic education.

June 8, 2015 Order at pp.2-3 (underlines added).

B. Six Of The Basic Education Components Defined By The Legislature.

Based on the areas of K-12 education specified by the legislature in ESHB 2261 and SHB 2776, this Court's January 2012 decision identified the following as being part of the basic education that Article IX, §1 requires the State to amply fund "as the State's first and highest priority before any other State programs or operations":[63]

[63] *McCleary, 173 Wn.2d at 520 (underlines added).*

(1) Market rate staff compensation,

(2) Full-day kindergarten,

(3) Class size reduction,

(4) To & from school transportation,

(5) Materials, Supplies, and Operating Costs (MSOCs), and

(6) Highly capable education.[64]

C. The State's 2015 Compliance "Plan".

The State's 2015 legislature did not produce a compliance plan in response to the above court orders. The Attorney General's filing today might therefore repeat his "*de facto*" claim from last year's contempt proceedings – i.e., that since there are only three years left until the 2017-2018 school year deadline, this Court can figure out the State's *de facto* 3-year plan for itself:

- The budget's first year is the State's "plan" for year one.
- The budget's second year is the State's "plan" for year two.
- Everything left over is the State's "plan" for year three.[65]

[64] *E.g., Plaintiffs' **2013** Post-Budget Filing at pp.16-38; Plaintiffs' **2014** Post-Budget Filing at pp.12-28. Plaintiffs notice that some of this year's education-related funding legislation suggests the legislature may be recognizing Early Learning and Higher Education as additional components of basic education – but for the purposes of today's filing, plaintiffs focus on the previously-identified components (1)-(6) above.*

[65] *State's July 2014 Opening Brief Addressing Order To Show Cause at p.30 ("[T]he actions of the 2015 Legislature necessarily will constitute the de facto 'complete plan' for meeting the 2018 deadline.... Whatever is not provided in the 2015-17 biennium necessarily must be provided in the 2017-19 biennium to meet the 2018 deadline.").*

That could in one sense be loosely called a 3-year "plan". But plaintiffs doubt it's the kind of complete implementation and full funding phase-in plan this Court contemplated with its January 2014 Order.

1. K-12 Compensation "Plan".

(a) K-12 compensation background.

The old adage that "you get what you pay for" is an old adage because it's true. State officials know that attracting and retaining competent professionals for our State's educational institutions requires the funding of competitive market rate salaries. For example: over $2.5 million/year for a head football coach and over $1 million/year for a head basketball coach.[66]

But as this Court's January 2012 decision repeatedly confirmed, our State does not fund market rate salaries for its K-12 public schools.[67]

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[66] *Washington State Fiscal Information, State Employee Salaries (select box "2014 Salary Range From: $200,000", type "coach" in "Job Title Filter", and click "View Report"), available at* http://fiscal.wa.gov/Salaries.aspx .

[67] *E.g.,* McCleary*, 173 Wn.2d* ***at 533*** *(emphasizing that school salaries are one of the "major areas of underfunding" highlighted by the evidence in this case);* ***at 535-536*** *(the State has "consistently underfunded staff salaries and benefits" – providing "far short of the actual cost of recruiting and retaining competent teachers, administrators, and staff");* ***at 536n.29*** *(reiterating that this Court's January 2012* McCleary *decision was "the* second *time in recent years that we have noted that state funding does not approach the true cost of paying salaries for administrators and other staff") (underline added);* ***at 493-494*** *(noting the conclusion of the State's 1995 fiscal report that the State provides "inadequate funding for administrative salaries");* ***at 508*** *(quoting QEC findings that "funding studies have already confirmed ... that our salary allocations are no longer consistent with market requirements");* ***at 532*** *(QEC findings that studies confirm State salary allocations are not consistent with market requirements);* ***at 533*** *(emphasizing that school salaries are one of the "major areas of underfunding" highlighted by the evidence in this case); accord, January 2014 Order at p.6 ("Our decision in this case identified*

This Court accordingly pointed to K-12 compensation increases as one of ESHB 2261's "promising" reforms. *McCleary*, 173 Wn.2d at 507 & 543.

And then five months later, ESHB 2261's Compensation Technical Working Group issued its Final Report concluding that funding market rate salaries would require school district's annual K-12 funding to be increased by over $2.9 billion on top of the annual Cost Of Living Adjustments ("COLAs") mandated by Initiative 732.[68] That June **2012** Final Report also emphasized the urgency at hand, stressing that "immediate implementation" of full salary funding is needed "in order to attract and retain the highest quality educators to Washington schools through full funding of competitive salaries."[69]

The State sat on its hands. (One of the bills listed in the legislature's 2015 Report illustrates a looming teacher shortage resulting from the State's having sat on its hands for the past three years instead of immediately implementing full competitive salary funding.[70])

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salaries as a significant area of underfunding by the State, noting OSPI data suggesting that sizable salary gaps remain to be filled at the district level.");

[68] *Fuller discussion is at Plaintiffs' **2013** Post-Budget Filing at pp.18-19.*

[69] *Fuller discussion is at Plaintiffs' **2013** Post-Budget Filing at p.18 & n.55.*

[70] *Legislature's 2015 Report at pp.15-16 (confirming school district resources for staff compensation currently do not attract and retain enough people into the Washington workforce for all the new elementary school teachers needed to implement the State's long-promised full-day kindergarten and K-3 class size reductions – resulting in an*

This Court's January 2014 Order explained the lack of ample K-12 compensation funding increases was one of the "deeply troubling" areas where the State had failed to make the court-ordered progress in **2013**.[71]

In **2014** the State continued sitting on its hands, and was ruled in contempt. September 2014 Order at pp.4-5.

(b) State's K-12 compensation "plan".

(i) Market rate salaries.

The previously-noted ESHB 2261 compensation report recognized that competitive market rate salaries are expensive. It concluded school districts would need an annual funding increase of over $2.9 billion (on top of Initiative 732's annual COLAs) to pay those salaries – and stressed

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anticipated shortage of 4,000 teachers for those two basic education components under school districts' current compensation resources).

[71] *January 2014 Order at pp.5-6 ("Quality educators and administrators are the heart of Washington's education system. The [State's 2013] Report...skims over the fact that State funding of educator and administrative staff salaries remains constitutionally inadequate. ... The inescapable fact is that salaries for educators in Washington are no better now than when this case went to trial. ... It is deeply troubling that the State's [2013] Report does not address this component of ESHB 2261 or offer any plan for meeting its goals.") (underlines added & internal citations omitted). Just to avoid potential mischaracterizations by others later, plaintiffs note that the ESHB 2261 compensation working group figure was over $2 billion per year (instead of the per biennium measure commonly used when reciting State budget numbers). See supra Section III.C.1(a). Although $2 billion per year is "at least a billion dollars a year", a casual reader might incorrectly read this Court's "at least a billion" comment to mean this Court has cut the ESHB 2261 Compensation Technical Working Group's over $2.9 billion/year number down to just $1 billion/year.*

immediate implementation was needed to attract and retain high quality educators.[72]

The State's 2015-2017 budget does nothing close. Instead, it provides about $60 million above the I-732 COLA in 2015-2016 and about $92 million above the I-732 COLA in 2016-2017.[73] That means the State's *de facto* 3-year plan must be to delay until year three. *[See graph in Appendix D.]*

"Let's put off the biggest part until the last minute" is one kind of a plan. But not the kind that complies with this Court's January 2014 Order.

(ii) Inflation cost of living adjustments (COLAs).

ESHB 2261's final compensation report was premised on the State funding the I-732 COLA every year to keep K-12 salaries from falling behind inflation.[74]

That makes sense – for the I-732 COLAs simply require K-12 salary levels to tread water instead of sinking lower due to inflation:

> Providing quality education for all children in Washington requires well-qualified and experienced teachers and other school employees. However, salaries for educators have not kept up with the increased cost-of-living in the state. The failure to keep up

[72] *Supra, Section III.C.1(a).*

[73] *See Laws of 2015, 3d Spec. Sess., ch. 4, §504(1) (ESSB 6052, Operating Budget) (providing a 1.2% increase for 2015-16 and 0.6% for 2016-17, both of which expire August 31, 2017), for a biennium total of about $152.3 million. See 2015-17 OPR Budget Detail at 233-234. That total divides to about $60.5 million for 2015-16 and $91.8 million for 2016-17.*

[74] *Supra, Section III.C.1(a).*

> with inflation threatens Washington's ability to compete with other states to attract first-rate teachers to Washington classrooms and to keep well-qualified educators from leaving for other professions. The state must provide a fair and reasonable cost-of-living increase to help ensure that the state attracts and keeps the best teachers and school employees for the children of Washington.

I-732, section 1.[75]

The State suspended those COLAs every year after the 2008-2009 school year.[76] Restoring them to at least bring salary funding levels back **up** to their unconstitutionally low 2008-2009 levels would require this biennium's budget to fund a 15.4% catch-up COLA.[77]

The State instead decided to fund 1.8% in the biennium's first year, and then add another 1.2% (for a 3.0% total) in the biennium's

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[75] *Washington voters enacted that measure into law by a 63% - 37% vote. Office of the Secretary of State, Elections & Voting: Initiatives to the People, available at http://www.sos.wa.gov/elections/initiatives/statistics_initiatives.aspx (Initiative 732 votes over 1.5 million for, 893,000 against).*

[76] *Laws of 2009, ch. 573, § 1(1)(a) (nullifying COLAs for 2009-10 and 2010-11); Laws of 2011, 1st Spec. Sess., ch. 18, § 1(1)(a) (nullifying COLAs for 2011-12 and 2012-13); Laws of 2013, 2nd Spec. Sess. ch. 5, § 1(1)(a) (nullifying COLAs for 2013-14 and 2014-15).*

[77] *The I-732 COLA is based on the previous year's annual average consumer price index (CPI) covering the most people in Washington, which is the CPI for Seattle-Tacoma-Bremerton. See RCW 28A.400.205(2). The applicable CPI figures are therefore: 2008-4.2%, 2009-0.6%, 2010-0.3%, 2011-2.7%, 2012-2.5%, 2013-1.2%. See U.S. Dept. of Labor, Bureau of Labor Statistics, Seattle-Tacoma-Bremerton CPI Index Table, available at http://www.bls.gov/regions/west/data/consumerpriceindex_seattle_table.pdf ; see also Economic and Revenue Forecast Council, Washington State Economic and Revenue Forecast, at p.112 (June 2015, Vol. XXXVIII, No.2), available at http://www.erfc.wa.gov/publications/documents/jun15pub.pdf. Compounded annually for the 2009-10 school year through the 2014-15 school year calculates to 12% [1.042 * 1.006 *1.003 * 1.027 * 1.025 * 1.012 = 1.12, which is a 12% increase above the base of 1.00]. The 15.4% figure comes from this biennium's 1.8% (2015-16) and 1.2% (2016-17) COLAs compounded annually against that 12% for the 2009-10 through 2014-15 school years.*

second year.[78] That leaves the State's *de facto* 3-year plan being to fund the remaining 12.4% inflation adjustment catch-up in year three.[79] *[See graph in Appendix E.]*

"Put most off until the end" is a plan. But it's not the kind that complies with this Court's January 2014 Order.

(iii) Health insurance benefits.

Health insurance benefits are a part of K-12 compensation.[80] And it's one of the few areas that the 2015-2017 budget increases K-12 funding above the maintenance level already in statute at the time of this Court's contempt ruling – producing a $24 million/biennium increase ($12 million/year).[81] This increased State funding of K-12 health insurance benefits by $12/month above maintenance level.[82]

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[78] *Laws of 2015, 3d Spec. Sess., ch. 4, § 504(1) (ESSB 6052, Operating Budget) (providing a 1.8% COLA for 2015-16 and a 1.2% COLA for 2016-17).*

[79] *15.4% - 3.0% = 12.4%.*

[80] *See McCleary, 173 Wn.2d at 535-36 (the State has "consistently underfunded staff salaries and benefits ... far short of the actual cost") (underline added). The State's budget also recognizes these insurance benefits as part of basic education salary funding. See, e.g., Laws of 2015, 3d Spec. Sess., ch. 4, §§ 502(7) ("Insurance benefit allocations shall be calculated at the maintenance rate specified in section 504 of this act…."), 504(2)(e) ("Changes for general apportionment (**basic education**) are based on the salary allocation schedules and methodology in sections 502 and 503 of this act.") (bold added) (ESSB 6052, Operating Budget).*

[81] *2015-2017 Operating Budget, Amendment To SSB 6052, Agency Detail And Statewide Summary, June 29, 2015 at p.178 http://leap.leg.wa.gov/leap/Budget/Detail/2015/csAgyDetail_0629.pdf .*

[82] *Id. at p.181 (health benefit rate increased from $768/month to $780/month). $780/month - $768/month = $12/month.*

That $12 increase is $60 and $114 lower than the State's corresponding health insurance increase for State employees[83] – even though the State's own analysis found that K-12 employees' higher health risks cause their health insurance premiums to be higher than State employees'.[84] The State's *de facto* 3-year ample funding plan for K-12 staff must therefore be to just wait and catch up in year three. *[See graph in Appendix F.]*

(c) K-12 compensation conclusion.

Despite the State's assurance to this Court in last year's contempt proceedings that the State's 2015 legislature would focus on raising additional revenue for school districts, that's not what the State's 2015 legislature did.

Instead of addressing how to raise revenue for school districts, the legislature's 2015 Report lists several proposals that would raid revenue from school districts by tying a State funding increase to a corresponding

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[83] *The 2015-2017 budget funds $**840**/month for 2015-2016 and $**894**/month for 2016-2017. Laws of 2015, 3d Spec. Sess., ch. 4, §§ 932(1)(a) & 933(1)(a) (ESSB 6052, Operating Budget).* ***$840/month - $780/month = $60/month*** *(for 2015-2016);* ***$894/month - $780/month = $114/month*** *(for 2016-2017).*

[84] *Washington State Health Care Authority, Report to the Governor, Legislature and Joint Legislative Audit and Review Committee: K-12 Employee Benefits—Equity, Affordability, and the Impacts of System Consolidation (June 1, 2015), available at http://www.hca.wa.gov/documents_legislative/K12EmployeeBenefits.pdf (recognizing increased premium costs for existing PEBB participants if K-12 employees join the PEBB "due to differences in anticipated health risks between K-12 and PEBB populations").*

local funding decrease. (This is sometimes called the "levy-swap" or, more accurately, "levy-swipe" maneuver.)

But taking away local money that local voters approved for local enhancements above basic education, then handing it back and calling it "State" money, does not fill Washington school districts' underfunding hole. If simply changing the source of a dollar is all that matters, then:

- The State could "increase" funding for full-day kindergarten by taking the money many parents currently pay their school district to place their child in full-day kindergarten, and then handing that money back to the district calling it "State" money.
- The State could "increase" funding for the Arts by taking the money local band and theater booster clubs pay to fund school programs, and then handing that money right back to the district calling it "State" money.

The hollowness of such a funding "increase" may be why the levy-swipe proposals listed in the State's 2015 Report did not advance.

Instead of securing additional revenue to fund market rate competitive salaries for its K-12 schools, the 2015 legislature adjourned after adopting a 2015-2017 budget with a very simple *de facto* plan for K-12 compensation funding: put it off until the 2017-2018 school year. *[See graphs in Appendices D, E, & F.]*

2. Full Day Kindergarten "Plan".

(a) Full-day kindergarten background.

This Court's 2012 decision affirmed that the State's ample funding obligation under Article IX, §1 includes the State's designation of full-day kindergarten as part of basic education, with "statewide implementation by the 2017-18 school year." *McCleary*, 173 Wn.2d at 506, 510, & 526n.22.

The State's ensuing 2013 budget made little progress funding the operating costs of expanding kindergarten from half to full day (e.g., the additional teachers needed for full-day classes), and absolutely no progress funding that expansion's corresponding capital costs (e.g., the additional classrooms needed for full-day classes).[85]

This Court's January 2014 Order accordingly emphasized that amply funding full-day kindergarten required the ample funding of both operating costs and capital costs, and unequivocally mandated that "the State must account for the actual cost to schools of providing these components of basic education."[86]

The State's 2014 legislature ignored that court order – candidly admitting it did not produce any plan or funding changes for full-day

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[85] *Plaintiffs' 2013 Post-Budget Filing at pp.30-32.*

[86] *January 2014 Order at pp.4-5 (underline added); accord, January 2014 Order at p.4 (State cannot declare "full funding" when the actual costs of meeting the education rights of Washington students remain unfunded [citing McCleary, 173 Wn.2d at 532]).*

kindergarten.[87] This Court ruled the State in contempt. September 2014 Order at pp.1-4.

(b) State's full-day kindergarten "plan".

The legislature's 2015 Report says the legislature "fully funds all-day kindergarten at 100% of kindergarten enrollment beginning in school year 2016-2017".[88]

But saying something doesn't make it true.

With respect to operating costs, the State knows that its "full" funding of the additional staff needed to expand kindergarten from half-day to full-day does not fund that staff's actual cost.[89]

With respect to capital costs, the State knows that its "full" funding of the additional classrooms needed to expand kindergarten from half-day to full-day is at best only partial funding. The State knows that full-day kindergarten and reduced K-3 class sizes require about 5,698 more

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[87] *State's 2014 filing at attached Report, p.16 ("In 2014, the Legislature made no further investments in either kindergarten through third grade class size reduction or expansion of full-day kindergarten beyond the additional investments made in the original 2013-15 biennial budget.").*

[88] *2015 Report at p.8, also at p.4 (saying it "funds full implementation of all-day kindergarten in the 2016-2017 school year"). The State's 2015-2017 budget makes the same claim. ESSB 6052, Sec. 502(12). The legislature also acknowledges, however, that its failure thus far to amply fund competitive market rate salaries has failed to attract and retain 4,000 teachers needed for this full-day kindergarten expansion and the K-3 class size reductions. 2015 Report at pp.15-16.*

[89] *As prior pleadings in this case have pointed out, the State does not fund the actual costs of market rate salaries for its K-12 public schools. E.g., Plaintiffs' **2012** Post-Budget Filing at pp.22-23 & 27-28; Plaintiffs' **2013** Post-Budget Filing at pp.17-21; Plaintiffs' **2014** Post Budget Filing at pp.12-15.*

classrooms at a cost of $2 billion.[90] But to "fully fund" that $2 billion cost, the 2015-2017 budget provides $200 million for an "assistance" program that allows a school district to apply to *potentially* receive a *portion* of the needed classrooms' construction costs *if* that district can certify it has local funds for the rest.[91]

The State's *de facto* 3-year ample funding plan for full-day kindergarten must therefore be to put those capital and operating costs off until the 2017-2018 school year. *[See graph in Appendix G.]*

"Say we're providing full funding when we're really not" is one kind of plan. But not one that complies with the January 2014 Order.

3. Class Size Reduction "Plan".

(a) Class size reduction background.

ESHB 2261 adopted the prototypical school model based on the Picus & Odden report to the State's Washington Learns Commission, and created the Quality Education Council ("QEC") to oversee the corresponding phase-in of ESHB 2261. *McCleary*, 173 Wn.2d at 506, 502, & 508.

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[90] *See Superintendent of Public Instruction 2015-2017 Capital Budget Request and 2015-2025 Capital Plan at pp.6 & 8 (pp.9 & 11 of the pdf), available at* http://www.k12.wa.us/LegisGov/2015documents/2015-17CapitalBudgetRequest.pdf . *This does not include the additional classrooms needed for reduced class sizes in grades 4-12. Id.*

[91] *See Laws of 2015, 3d Spec. Sess., ch. 3 (2EHB 1115) at Sec. 5028, and Laws of 2015, 3d Spec. Sess., ch. 41 (2ESSB 6080) at Sec. (1)(c)(iii) and (1)(d)(i)(B).*

(i) Grade K-3 background.

The QEC's January 2010 report concluded the grade K-3 class size reductions should be implemented first. *McCleary*, 173 Wn.2d at 509 ("reductions in K-3 class sizes immediately").

The 2010 legislature's enactment of SHB 2776 accordingly required the reduction of K-3 class sizes to start the very next year, ending with 17-student class sizes by the 2017-2018 school year. *McCleary*, 173 Wn.2d at 509-510. This Court's January 2012 decision confirmed that the State's Article IX, §1 duty includes the ample funding of those 17-student class sizes by the 2017-2018 school year. *McCleary*, 173 Wn.2d at 510.

This Court's January 2014 Order once again reiterated this K-3 class size reduction component of basic education, and emphasized the State's constitutionally required ample funding includes not just the operating costs of smaller class sizes but also the capital costs of the additional classrooms needed for those smaller classes.[92] This Court unequivocally ordered "the State must account for the actual cost to schools of providing these components of basic education."[93]

The State ignored that court order – candidly admitting it did not produce any plan or funding changes for the smaller class sizes.[94]

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[92] *January 2014 Order at pp.4-5.*

[93] *Supra footnote 86.*

[94] *State's 2014 filing at attached Report, p.16 ("In 2014, the Legislature made no further investments in either kindergarten through third grade class size reduction or*

(ii) Grade 4-12 background.

As noted earlier, ESHB 2261 adopted the prototypical school model based on the Picus & Odden report to the State's Washington Learns Commission. And as OSPI's September 2009 Issue Paper to the QEC reported, that prototypical school model reduced the size of grade 4-12 classrooms to 25 students.[95]

Although the State's legislature began the immediate phase-in of the prototypical school model's K-3 class size reductions with its **2010** enactment of SHB 2776, it did not start phasing in the prototypical school model's corresponding grade 4-12 class size reductions that year.

Or the next year (**2011**). Or the next (**2012**). Or next (**2013**).

The legislative authority of the State, however, is not vested solely in the Washington legislature. Washington's voters can exercise that exact same legislative authority by passing an Initiative.[96]

And in **2014,** that's what Washington voters did. They enacted a phase-in of the prototypical school model's reduced class size of

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expansion of full-day kindergarten beyond the additional investments made in the original 2013-15 biennial budget.").

[95] *QEC Issue Papers prepared by OSPI at p.4 (p.8 of pdf) Sept. 29, 2009 ("The expert consultants for Washington Learns recommended that certified instructional staff allocations be sufficient to fund class sizes of ... 25 for grades 4-12"), available at* http://www.k12.wa.us/QEC/pubdocs/QECIssuePapers.pdf.

[96] *E.g.,* Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 204, 11 P.3d 762, 779 (2000) ("In approving an initiative measure, the people exercise the same power of sovereignty as the Legislature does when enacting a statute.") (citations omitted).*

25 students for grade 4-12 classrooms. Initiative 1351, section 2 (codified at RCW 28A.150.260).

(b) State's class size reduction "plan".

(i) K-3 class size "plan".

The 2015-2017 biennium budget says it funds K-3 class sizes of no more than 22 students in the 2016-2017 school year.[97]

But as noted earlier, just saying something doesn't make it true.

As with its "full funding" claim concerning full-day kindergarten, the State knows its "full funding" of smaller K-3 classes does not fund the actual cost of the additional staff and additional classrooms needed for those smaller classes.[98] The State's *de facto* 3-year ample funding plan for smaller K-3 classes is therefore to put those capital and actual operating costs off until the 2017-2018 school year. *[See graph in Appendix H.]* That simply kicks State funding for most of the capital costs and significant operating costs of smaller K-3 classrooms over to the 2017-2018 school year. Plaintiffs respectfully submit that crossing ones fingers and punting is not the type of complete implementation and full funding plan this Court intended with its January 2014 Order.

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[97] *ESSB 6052, Sec. 502(2). See also 2015 Report at pp.4 & 9.*
[98] *Supra Section III.C.2(b).*

(ii) 4-12 class size "plan".

The State's 2015-2017 biennium budget was enacted and signed on June 30, 2015.[99]

When that budget was enacted and signed, Washington law required the State to implement (and thus fund) the prototypical school model's 25-student classrooms for grades 4-12. RCW 28A.150.260 (Initiative 1351, section 2).

The State had expressly told voters in the Voters Pamphlet that "The fiscal impact of this section is $2 billion for the 2015-2017 biennium."[100] The State's budget documents reaffirmed that $2 billion cost.[101]

But the budget enacted and signed on June 30 did not provide any of that $2 billion for the grade 4-12 class size reductions required by law on June 30.[102]

So, after June 30, the legislature "saved" that $2 billion by holding a 6-minute hearing to justify an "emergency" delay of the prototypical school model's grade 4-12 class size reductions until the 2019-2020

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[99] *Laws of 2015, 3d Spec. Sess., ch. 4 (ESSB 6052).*

[100] *See https://wei.sos.wa.gov/agency/osos/en/press_and_research/PreviousElections/2014/General-Election/Pages/Online-Voters-Guide.aspx.*

[101] *See June 29, 2015 Proposed Operating Budget Compromise at pp.3 & 8 (pp.4 & 9 of pdf), available at http://leap.leg.wa.gov/leap/Budget/Detail/2015/cOverview_0629.pdf.*

[102] *Laws of 2015, 3d Spec. Sess., ch. 4 (ESSB 6052).*

school year.[103] The State cannot credibly deny that it hurriedly adopted a four-year deferral of the prototypical school model's grade 4-12 class size reductions because those class size reductions are – as the voters had been told before they enacted them – very expensive.[104]

The State's *de facto* plan for achieving the prototypical school model's smaller class sizes in grades 4-12 is thus to wait until two years after the 2017-2018 school year is over. *[See graph in Appendix I.]* That's just procrastination – not compliance with the January 2014 Order.

4. Transportation "Plan".

(a) Transportation background.

This Court's January 2012 decision held that student to/from transportation is another one of the "major areas of underfunding" highlighted by the evidence in this case – and one which has "a tangible effect on student safety."[105]

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[103] *Laws of 2015, 3d Spec. Sess., ch. 38 (EHB 2266). See http://www.tvw.org/index.php?option=com_tvwplayer&eventID=2015060073 , starting at 1:53:00 and ending at 1:58:54. EHB 2266, Sec. 4 recites an emergency clause to allow that rushed last minute "saving" to take effect immediately.*

[104] *See, e.g., http://q13fox.com/2015/07/09/class-size-initiative-overturned-by-state-lawmakers/ and http://www.seattletimes.com/seattle-news/politics/lawmakers-in-limbo-over-class-size-cuts-biology-test-and-loose-ends-from-budget-deal/.*

[105] *McCleary, 173 Wn.2d at 533 & 535n.27; see also at 489-490, 496.*

The State responded with an improved transportation funding formula that it says fully funds its districts' to/from transportation costs.[106]

The State's new transportation funding formula is a meaningful improvement, and the State's tautological argument that it funds the new funding formula it funds is correct.

But as the State knows from the prior filings in this case, its new formula does not fund a school district's current transportation costs.[107] Instead, the State's new formula funds a district's cost last year or the statewide average cost last year – whichever is less.[108] The State's own analysis accordingly confirmed as far back as March 2013 that fully funding the State's new transportation funding formula does not fully fund its school districts' transportation costs.[109]

This Court's January 2012 decision clearly told States officials that funding less than the districts actual transportation costs is not constitutional compliance: "If the State's funding formulas provide only a portion of what it actually costs a school to...get kids to school,... the

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[106] *2015 Report at p.10 (saying the legislature has "fully funded and implemented the expected cost pupil transportation funding model" under SHB 2776); State's **2013** filing at attached Report, pp. 12-13; State's **2014** filing at pp. 46-50.*

[107] *Plaintiffs' **2013** Post-Budget Filing at pp.22-26 and nn.73 & 74; Plaintiffs' **2014** Post-Budget Filing at pp.15-19.*

[108] *Plaintiffs' **2013** Post-Budget Filing at pp.22-26 and nn.73 & 74; Plaintiffs' **2014** Post-Budget Filing at pp.15-19.*

[109] *Plaintiffs' **2013** Post-Budget Filing at p.24 and n.75.*

legislature cannot maintain that it is fully funding basic education".[110] This Court's January 2014 Order reiterated yet again that the State cannot declare "full funding" if its formula leaves actual costs unfunded.[111]

(b) State's transportation "plan".

Declaring "full funding" of this year's transportation costs by paying last year's costs is not full funding. *[See graph in Appendix J.]* For example, plaintiffs doubt the State would claim it can "fully fund" the 11% pay raise legislators got in the 2015-2017 budget by paying those legislators their last year's salary instead.[112]

The State assured this Court at the September Show Cause Hearing that the State's 2015 legislature would focus on raising revenue. And with respect to transportation, it did. It raised several billion dollars of new revenue for transportation – but then directed that new revenue to matters outside of the State's paramount education funding duty.[113]

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[110] *McCleary, 173 Wn.2d at 532 (underline added).*

[111] *January 2014 Order at p.4 ("We cautioned in 2012 that revised funding formulas cannot be used to declare 'full funding,' when the actual costs of meeting the education rights of Washington students remain unfunded. [citing McCleary, 173 Wn.2d at 532]"). The State admits it understands this actual cost requirement – e.g., acknowledging in its 2014 post-budget filing that "the January 2014 Order emphasized that full funding must account for actual costs of the State program" State's 2014 filing at attached Report, p.52 (underline added).*

[112] *See Washington Citizens' Commission On Salaries for Elected Officials, 2015 and 2016 Salary Schedule, available at http://www.salaries.wa.gov/salary.htm (providing legislators with an 11% biennial salary increase).*

[113] *OFM, New Law Transportation Balance Sheet, available at http://leap.leg.wa.gov/leap/Budget/Detail/2015/cTBalSheet0629.pdf .*

Plaintiffs respectfully submit that "continue disregarding actual transportation costs" is not the type of complete implementation plan and full funding phase-in that complies with this Court's January 2014 Order.

5. MSOC Plan.

(a) MSOC background.

Article IX, §1 requires the State to amply fund its school districts' Materials, Supplies, and Operating Costs ("MSOCs").[114]

The State's own documents acknowledge, however, that its MSOC formula's funding levels are low because they are based on a snapshot of what school districts were able to buy while they were being unconstitutionally underfunded back in the 2007-2008 school year.[115]

The prior rulings in this case confirm that funding levels "based on a snapshot" of historic expenditures do not equal constitutionally ample

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[114] *This Court's January 2012 decision accordingly held that the State's underfunding of these MSOCs is another part of the State's constitutional violation in this case. McCleary, 173 Wn.2d at 533. This Court's January 2014 Order also called attention to the State's significant lack of progress towards MSOC full funding. January 2014 Order at p.4 ("Even more troubling is the apparent lack of progress toward fully funding essential materials, supplies and operation costs (MSOCs). The JTFEF [Joint Task Force on Education Funding] identified MSOCs as the area requiring the greatest increase in state funding, estimating a need for $597.1 million in 2013-15, followed by $1.410.9 billion in 2015-17 and $1.554.7 billion in 2017-19. The State's 2013-15 operating budget includes $374 million for MSOCs. By its own estimates, this leaves a gap of about $857 million to make up in the 2015-17 biennium... and the JTFEF figures suggest the gap is even wider.... Underfunding MSOCs places an unsustainable burden on school districts.") (internal citations omitted).*

[115] *Plaintiffs' **2013** Post-Budget Filing at pp.27-28 & n.82. (The State has changed the website for the 2009 Funding Formula Final Report to http://www.ofm.wa.gov/reports/k12/2009_K12_Funding_Formula_Technical_Working_Group.pdf).*

funding – for unless the State's formula actually correlates to constitutionally ample funding, the State's assertion that it is fully funding the snapshot in its formula "amounts to little more than a tautology."[116]

Statewide-average MSOC funding also does not account for differences between school districts. For example, using a statewide average does not recognize that the actual cost of a district's snow removal and winter heating in colder Eastern Washington exceeds that of a district in milder Western Washington.[117]

(b) State's MSOC "plan".

The State's continued failure to update its 2007-2008 snapshot to include new mandates and actual costs that are not "statewide average" means that the State's *de facto* plan must be to put off funding those MSOC expenses until the 2017-2018 school year. *[See graph in Appendix K.]* As with the transportation component of basic education,

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[116] McCleary, *173 Wn.2d at 530 & 532, see also at 532 ("[E]ven assuming the funding formulas represented the actual costs of the basic education program when the legislature adopted them ... the same is simply not true today"); accord January 2014 Order at p.4 ("We cautioned in 2012 that revised funding formulas cannot be used to declare 'full funding,' when the actual costs of meeting the education rights of Washington students remain unfunded.").*

[117] *RCW 28A.150.260(8). Another example is the continuing underfunding of MSOCs for students' technology literacy and Career and Technical Education (CTE). See, e.g., OSPI 2015-2017 Biennial Budget Request, Technology Literacy, October 1, 2014 at p.2, http://www.k12.wa.us/LegisGov/2015documents/N4TechnologyLiteracy.pdf; OSPI Press Release, April 1, 2015, http://www.k12.wa.us/Communications/PressReleases2015/Statement-ProposedBudget2015-17.aspx .*

plaintiffs respectfully submit that "continue disregarding actual expenses" is not a plan that complies with the January 2014 Order.

6. Highly Capable "Plan".

(a) Highly capable background.

This Court's January 2012 decision held the highly capable student program added by ESHB 2261 is another component of the basic education that Article IX, §1 requires the State to amply fund.[118]

The prior post-budget filings in this case have outlined the significant costs of this program that the State has imposed on its school districts by regulation, but then failed to fund.[119]

The State's 2015-2017 budget does not change that.

(b) State's highly capable "plan".

The 2015-2017 budget's silence leaves a simple *de facto* plan for full compliance by the 2017-2018 school year: do everything the last year. *[See chart at Appendix L.]*

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[118] McCleary, *173 Wn.2d at 506 ("ESHB 2261 broadened the instructional program of basic education by specifically adding ... the program for highly capable students"); again at 526 n.22 ("ESHB 2261 expanded the program of basic education to include ... the highly capable program").*

[119] *Plaintiffs' **2013** Post-Budget Filing at pp.37-38; Plaintiffs' **2014** Post-Budget Filing at pp.23-24.*

Plaintiffs respectfully submit that "continue to ignore this component of basic education for two more years" is not a plan that complies with this Court's January 2014 Order.

7. Compliance Plan Conclusion.

The section heading at the beginning of this filing's compliance ***plan*** discussion asked a straightforward question:

DID THE STATE PRODUCE THE COMPLIANCE PLAN REQUIRED BY THIS COURT'S JANUARY 2014 ORDER?

As the above discussion explains, the straightforward answer is

NO.

IV. CONTEMPT SANCTIONS OR OTHER REMEDIAL MEASURES.

"This is a narrative of frustration and failure."

Opening line in the Thigpen case quoted by past Governors' 2014 Amicus Brief.[120]

This Court's most recent Order provided "the court will convene to consider the adequacy of the State's compliance and, if necessary, the imposition of contempt sanctions or other remedial measures." June 8, 2015 Order at p.3.

[120] *Thigpen v. Meyers, 231 F.Supp. 938 (W.D. Wash. 1964) (quoted in past Governors' 2014 Amicus Brief at p.18).*

Plaintiffs believe such sanctions or measures are necessary to secure compliance with the firm 2017-2018 school year deadline this Court set for full constitutional compliance in this case. Plaintiffs' prior filings have noted several tools this Court can employ to coerce compliance:

1. impose monetary or other contempt sanctions against the governmental body or elected officials;

2. prohibit expenditures on certain other matters until the Court's constitutional ruling is complied with;

3. order the legislature to pass legislation to fund specific amounts or remedies;

4. order the sale of State property if the Court's constitutional ruling is not complied with;

5. invalidate education funding cuts; and

6. prohibit any funding of an unconstitutional education system (put bluntly: shut down the State's unconstitutionally underfunded school system until the State's constitutional violation is stopped).[121]

Others have identified at least two additional tools:

7. order the legislature to comply with the court orders in this case before attending to any other legislation;[122] and

8. invalidate existing State tax exemptions until the State complies with the court orders in this case.[123]

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[121] *Plaintiffs' Answer To Defendant's Response To The Court's Show Cause Order at pp.28-47 & nn.39-75; Plaintiffs' **2014** Post-Budget Filing at pp.46-47 & nn.140-146; Plaintiffs' **2013** Post-Budget Filing at pp.45-47 & nn.134-137 & 139-141.*

[122] *2014 Brief of Amici Curiae of Past Governors at pp.18-19.*

The *Thigpen* decision previously cited by certain past Governors employed the above remedial option number 7 after the Washington legislature's repeated failure to remedy our State's unconstitutional legislative district apportionment system.[124] Like this Court, the *Thigpen* court initially trusted the State's assurances that it would comply with the court's ruling at its upcoming legislative session.[125] But the legislature failed to take action as promised, and the court enjoined elections under the unconstitutional statutory scheme.[126]

Despite the court's orders, the legislature continued to do nothing.[127]

The *Thigpen* court thus required the State legislature to call a special session for the "sole and limited purpose of enacting redistricting legislation on a constitutional basis".[128] While recognizing that crafting an

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[123] *See September 3, 2014 Show Cause Hearing, at minutes 43:39-45:29, available at http://www.tvw.org/index.php?option=com_tvwplayer&eventID=2014090001* .

[124] Thigpen v. Meyers, *231 F.Supp. 938 (W.D. Wash. 1964); see also* id. at 939 *(citing its December 13, 1962 opinion declaring the legislative districts of the State "invidiously discriminatory and hence unconstitutional" (*Thigpen v. Meyers*, 211 F.Supp. 826 (W.D. Wash. 1962))).*

[125] Thigpen, *231 F.Supp. at 939 ("We took notice of the fact that a new legislature would convene on January 14, 1963, and after being assured that the legislature would perform its constitutional duty and validly reapportion itself if given the opportunity to do so, we continued the matter until April 8, 1963, for the purpose of affording such opportunity.").*

[126] Thigpen, *231 F.Supp. at 939 (enjoining further elections by order of May 27, 1963).*

[127] Thigpen, *231 F.Supp. at 939-940.*

[128] Thigpen, *231 F.Supp. at 940-941 (underline added).*

appropriate remedy was difficult, the court noted that inconvenience and difficulty for the legislature were not reasons to issue no remedy at all:

> If we must choose between a solution inconvenient to the electorate and one inconvenient to the legislature, we choose the latter because, after all, any such inconvenience is the product of the legislature's own inertia.
>
> We do not claim this to be the ideal solution. It has some limitations, to be sure, but it is workable even though inconvenient.[129]

Just as the *Thigpen* court did not throw up its hands when the State legislature continued to ignore its orders, neither should this Court.

Given the State's continued failure to comply with this Court's Orders and purge the State's contempt, plaintiffs respectfully submit that this Court should at the very least:

1. Continue its Order holding the State in contempt of court until the State fully complies with the court orders in this case; and

2. Order one or more of the following to coerce compliance with the court orders in this case:

   (a) Enjoin the State from acting on any other legislation until it has fully complied with the court orders in this case;[130]

   (b) Invalidate all tax exemptions authorized or re-authorized after this Court's January 2012 decision, with that invalidation lasting until the State convinces this Court that the State has fully complied with the court orders in this case;[131] and/or

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[129] Thigpen, *231 F.Supp. at 941 (underline added).*

[130] *This would avoid non-paramount duties distracting the State's legislature.*

[131] *This also relates to the State's lack-of-revenue-to-comply "defense". Other valid start dates relating to this case would be its February 2010 Final Judgment, its January 2007 filing, or this Court's September 1978 Seattle School District decision.*

(c) Impose any of the seven remedial measures listed in this Court's 2014 Show Cause Order, until the State convinces this Court that the State has fully complied with the court orders in this case.

V. CONCLUSION

The State's ongoing violation of its paramount education funding duty – and of Washington children's corresponding paramount constitutional right – has been continuing for far too long. Plaintiffs therefore respectfully submit that the time has come for this Court to make what some would call a "fish or cut bait" decision. Either stand up and enforce Washington schoolchildren's positive constitutional right to an amply funded education, or sit down and confess it was only kidding when it assured Washington schoolchildren that this Court would vigilantly protect them from the government's violation of their constitutional rights.

Plaintiffs respectfully request that this Court not choose the path that's easy. Not choose the path that's cheap. Not choose the path that might be more popular. But instead choose the path that's right. Choose to be the separate and independent branch of our State government that upholds and enforces Washington children's positive constitutional right to an amply funded K-12 education when other branches find it easier, cheaper, or more popular to instead violate the civil rights of children residing in our State.

RESPECTFULLY SUBMITTED this 27th day of July, 2015.

Foster Pepper PLLC

s/ Thomas F. Ahearne

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Christopher G. Emch, WSBA No. 26457
Adrian Urquhart Winder, WSBA No. 38071
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Lee R. Marchisio, WSBA No. 45351
Attorneys for Plaintiffs McCleary Family, Venema Family, and Network for Excellence in Washington Schools (NEWS)

DECLARATION OF SERVICE

Adrian Urquhart Winder declares:

I am a citizen of the United States of America and a resident of the State of Washington. I am over the age of twenty-one years. I am not a party to this action, and I am competent to be a witness herein. On Monday, July 27, 2015, I caused PLAINTIFF/RESPONDENTS' 2015 POST-BUDGET FILING to be served as follows:

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

☒ Via Electronic Mail (cc of the same email sent to the Supreme Court for the filing of this 2014 POST-BUDGET FILING)
☒ Via U.S. First Class Mail

Defendant State of Washington

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☒ Via Electronic Mail (cc of the same email sent to the Supreme Court for the filing of this 2014 POST-BUDGET FILING)
☒ Via U.S. First Class Mail

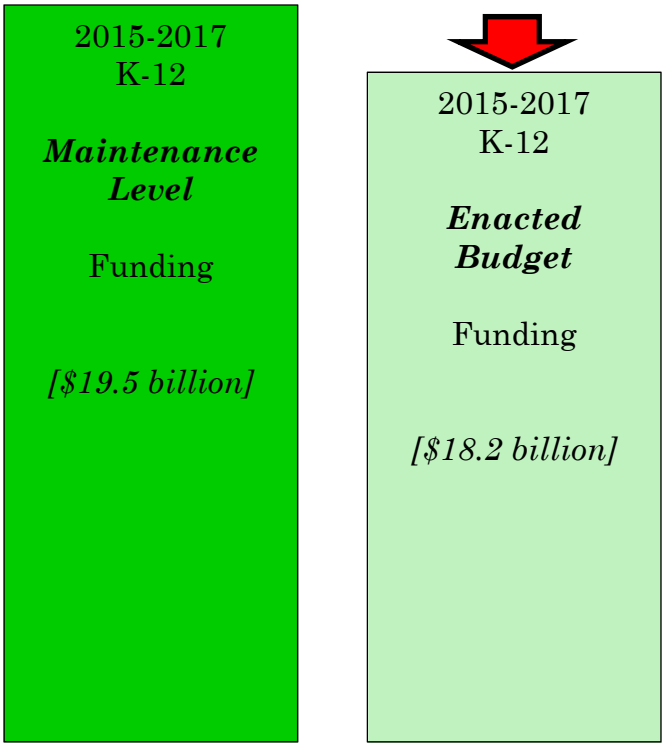
Defendant State of Washington

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED in Seattle, Washington, this 27th day of July, 2015.

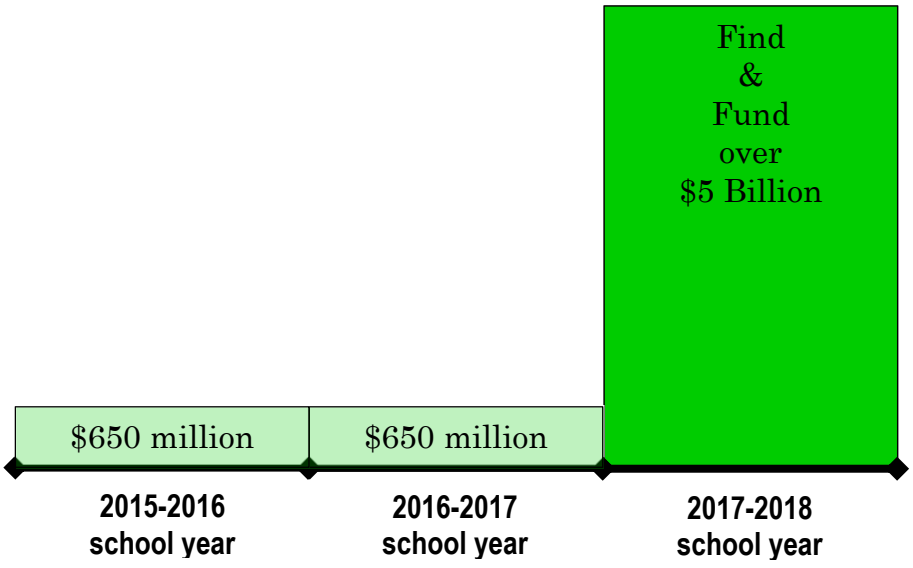
s/ Adrian Urquhart Winder
Adrian Urquhart Winder

APPENDIX A


2015-2017
K-12
Maintenance Level
Funding
[$19.5 billion]
2015-2017
K-12
Enacted Budget
Funding
[$18.2 billion]

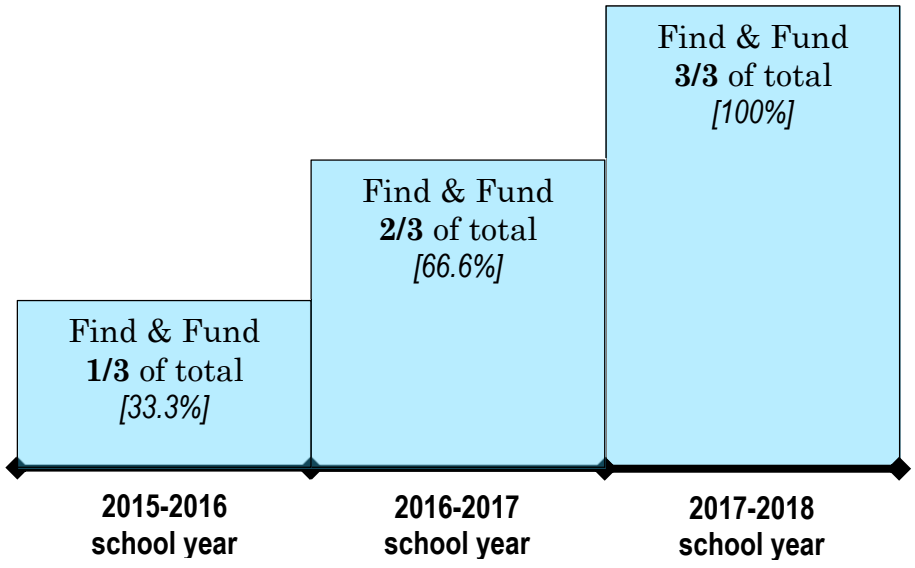
APPENDIX B

DE FACTO **COMPLIANCE PLAN**
(implementation & funding phase-in under 2015-2017 budget)



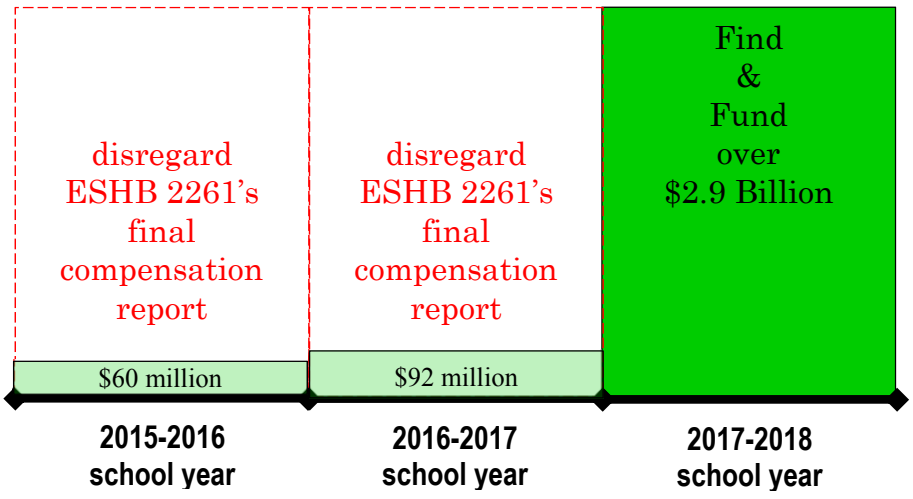
APPENDIX C

***STEADY PROGRESS* COMPLIANCE PLAN**
(if actual implementation & funding phase-in these last 3 years)



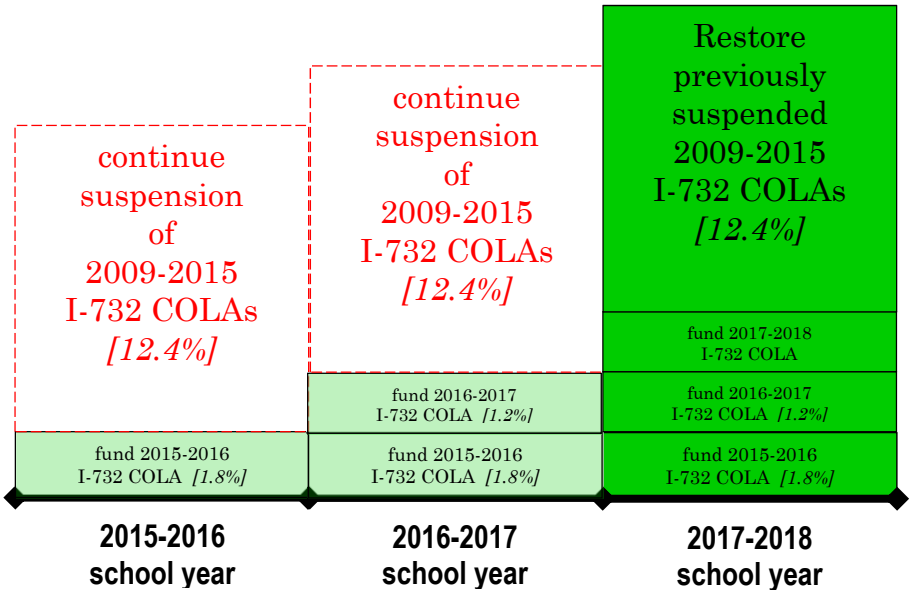
APPENDIX D

DE FACTO **MARKET RATE SALARY PLAN**
(implementation & funding phase-in under 2015-2017 budget)



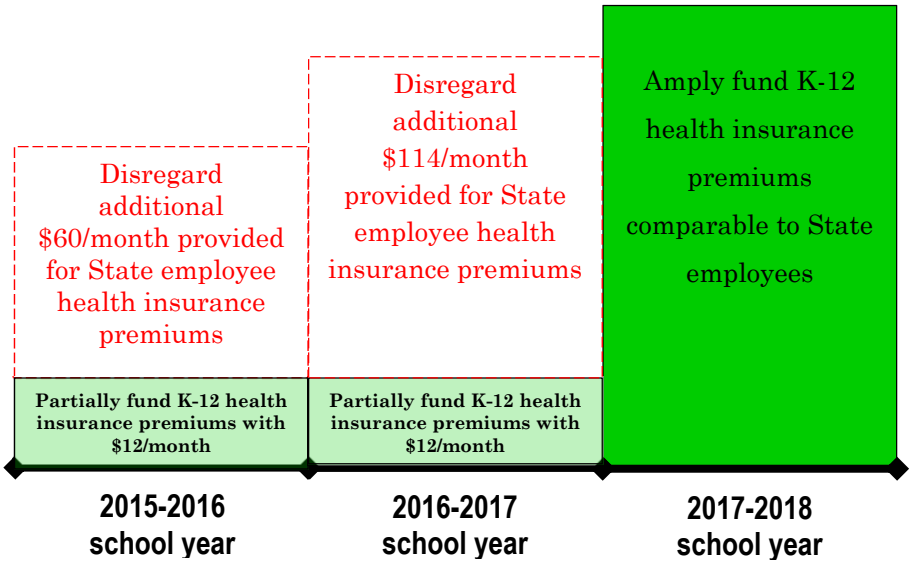
APPENDIX E

DE FACTO **INFLATION ADJUSTMENT PLAN**
(implementation & funding phase-in under 2015-2017 budget)



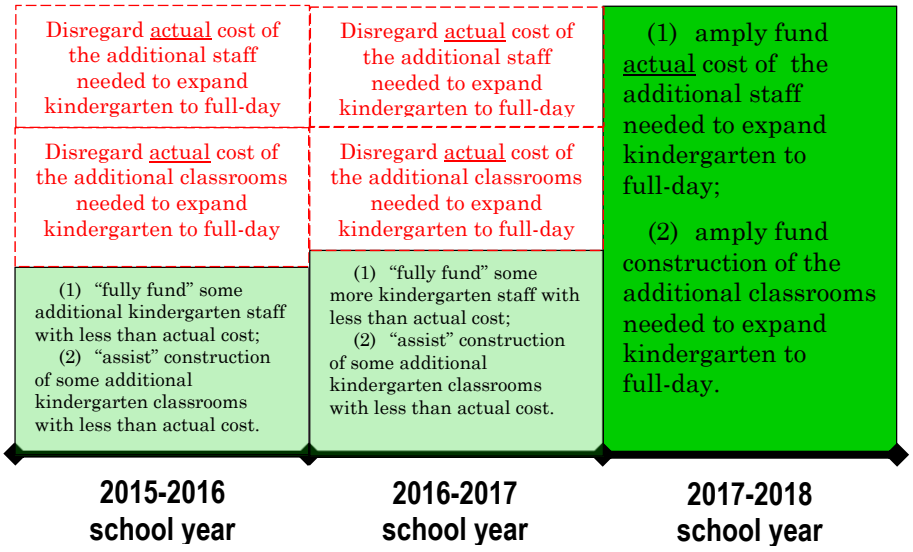
APPENDIX F

DE FACTO **HEALTH INSURANCE BENEFIT PLAN**
(implementation & funding phase-in under 2015-2017 budget)



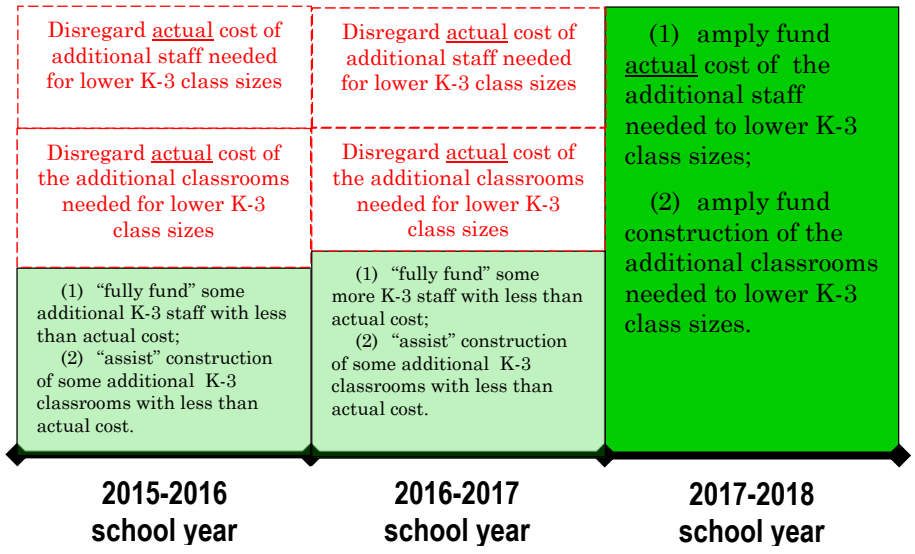
APPENDIX G

DE FACTO **FULL-DAY-KINDERGARTEN PLAN**
(implementation & funding phase-in under 2015-2017 budget)



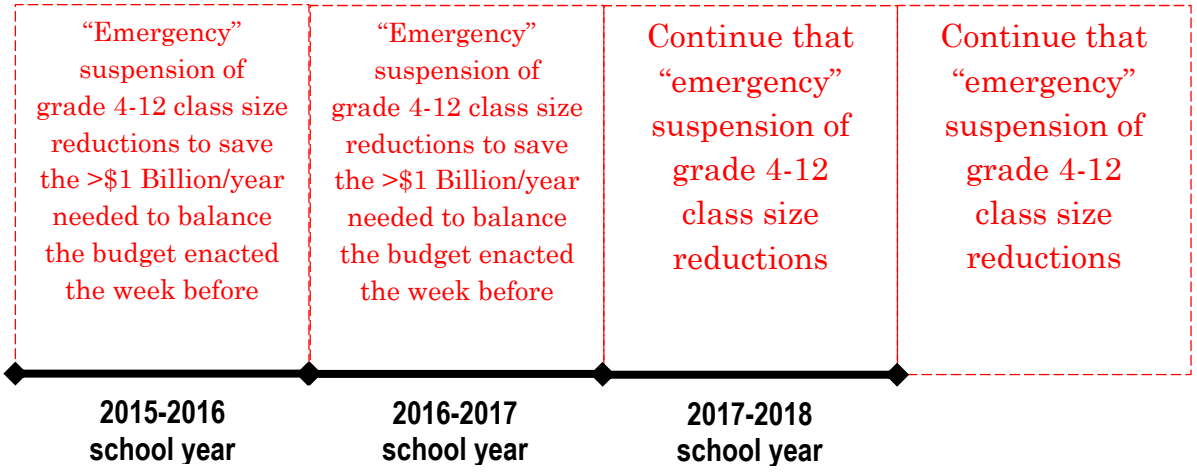
APPENDIX H

DE FACTO **K-3 CLASS SIZE REDUCTION PLAN**
(implementation & funding phase-in under 2015-2017 budget)



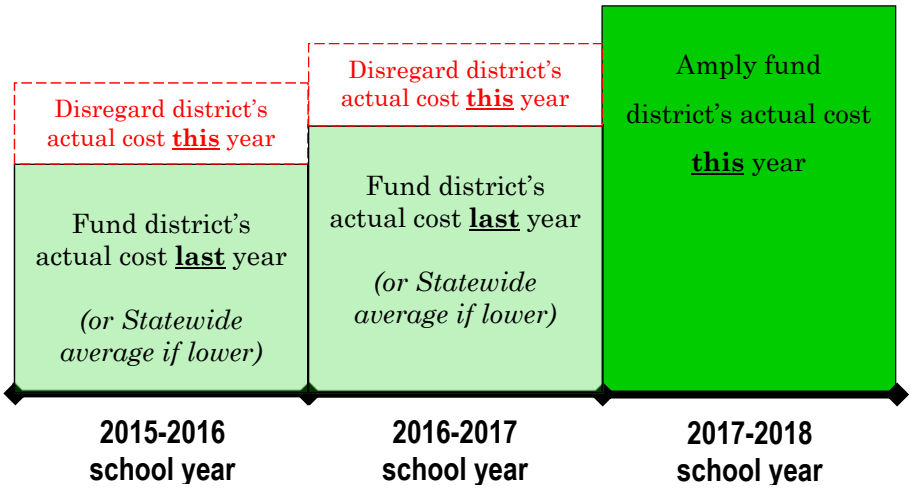
APPENDIX I

DE FACTO **GRADE 4-12 CLASS SIZE REDUCTION PLAN**
*(all implementation & funding phase-in **after** 2015-2017 budget)*



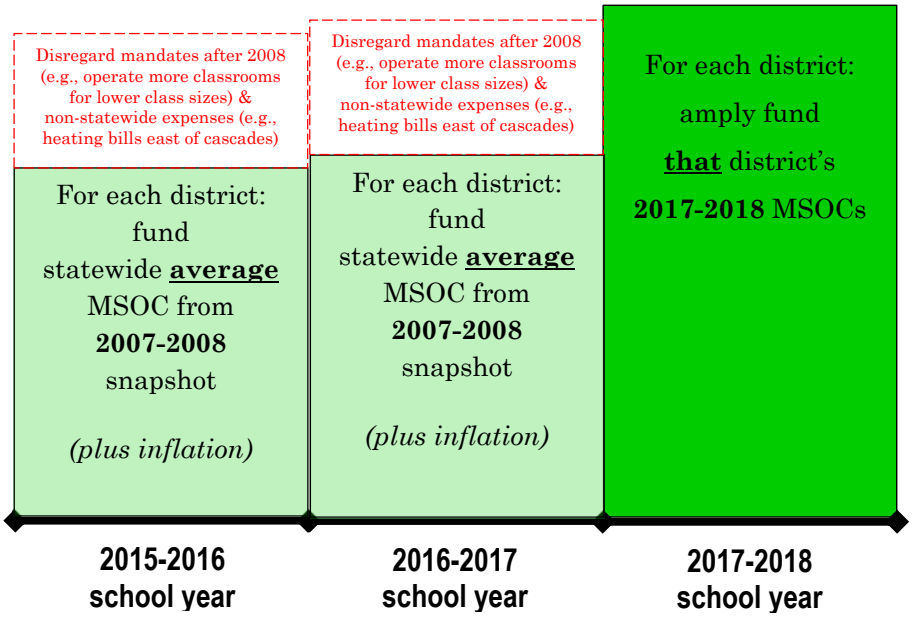
APPENDIX J

DE FACTO **TRANSPORTATION PLAN**
(implementation & funding phase-in under 2015-2017 budget)



APPENDIX K

DE FACTO **MSOC PLAN**
(implementation & funding phase-in under 2015-2017 budget)



APPENDIX L

DE FACTO **HIGHLY CAPABLE PLAN**
(implementation & funding phase-in under 2015-2017 budget)