

12-31-2007

Answer to Amended Petition for Declaratory Judgment Enforcing Our Constitution 07-2-02323-2-65

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

Recommended Citation

"Answer to Amended Petition for Declaratory Judgment Enforcing Our Constitution" 07-2-02323-2-65. *King County Superior Court Documents*. 74.
<https://digitalcommons.law.uw.edu/king/74>

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

FILED

2007 DEC 31 AM 10:11

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

THE HONORABLE PARIS K. KALLAS

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

MATHEW & STEPHANIE McCLEARY,
on their own 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.

NO. 07-2-02323-2 SEA

ANSWER TO AMENDED
PETITION FOR DECLARATORY
JUDGMENT ENFORCING
CONSTITUTION

I. ANSWER

Respondent State of Washington (hereinafter respondent), by and through its undersigned counsel of record hereby answers the Amended Petition for Declaratory Judgment (hereinafter Amended Petition). Topical headings from the Amended Petition are reproduced for ease of reference only.

Respondent admits, denies and alleges as follows:

1 INTRODUCTION TO AMENDED PETITION

2 1. Answering paragraphs 1 and 2 of the Amended Petition, respondent alleges
3 that these paragraphs contain legal conclusions, argument and self-serving opinions to which
4 no answer is required. To the extent these paragraphs have factual allegations to which an
5 answer may be required, respondent denies such allegations. Furthermore, while respondent
6 admits that petitioners seek the relief stated in paragraphs 1 and 2 of the Amended Petition,
7 respondent denies that it has breached any constitutional obligations and denies that
8 petitioners are entitled to the requested relief.

9 PARTIES

10 2. Answering paragraph 3(a) and (b) of the Amended Petition, respondent is
11 without knowledge or information sufficient to form a belief as to the truth of the allegations
12 about these petitioners' identities, interests and the alleged satisfaction of conditions precedent
13 to bringing this suit. Therefore, respondent denies this paragraph and denies that the State has
14 failed to comply with its constitutional obligations.

15 3. Answering paragraph 3(c) of the Amended Petition, respondent is without
16 knowledge or information sufficient to form a belief as to the truth of the allegations
17 contained in this paragraph and, therefore, denies the same.

18 4. Answering paragraph 4 of the Amended Petition, the State of Washington
19 admits that it is the named respondent and that it complies with the laws of Washington,
20 including Article IX of the state constitution. Respondent denies each and every other
21 allegation of paragraph 4.

22 JURISDICTION & VENUE

23 5. Answering paragraph 5 of the Amended Petition, respondent admits that the
24 petitioners purport to state a claim for violations of constitutional duties over which this Court
25 can exercise subject matter jurisdiction. However, respondent denies that this Court has
26 jurisdiction to direct the way that the State must comply with its constitutional obligations or

1 to order any of the relief requested by the petitioners. Respondent denies each and every other
2 allegation in this paragraph.

3 6. Answering paragraphs 6 through 8 of the Amended Petition, respondent admits
4 that this forum is an appropriate venue. Respondent otherwise realleges and incorporates by
5 reference herein its answer to paragraph 5 of the Amended Petition.

6 THE FOUR FUNDAMENTAL ISSUES PRESENTED BY THIS SUIT

7 Respondent denies that there are four fundamental issues presented by this suit.
8 Respondent further denies that the issues in this case include or are limited to those described
9 in paragraphs 9 through 104 of the Amended Petition. The specific response to those
10 paragraphs is as follows:

11 First Issue:

12 Legal interpretation of the words "paramount", "ample" and "all" in Article IX, §1

13 7. Answering paragraph 9 of the Amended Petition, respondent admits that the
14 quotation contained in this paragraph appears to be an excerpt from the Supreme Court
15 opinion of *Seattle School District v. State*. Respondent denies each and every other allegation
16 in paragraph 9.

17 8. Answering paragraph 10 of the Amended Petition, respondent admits that the
18 quotation contained in this paragraph appears to be an excerpt from the Supreme Court
19 opinion of *Seattle School District v. State*. Respondent denies each and every other allegation
20 in paragraph 10.

21 9. Answering paragraph 11 of the Amended Petition, respondent admits that the
22 quoted passage appears to be taken from Article IX, Section 1 of the Washington state
23 constitution and that a copy of the quoted language is contained in Tab 1 to the Amended
24 Petition. Respondent denies each and every other allegation in paragraph 11.

25 10. Answering paragraphs 12, 13 and 14 of the Amended Petition, respondent
26 admits that the terms used in Article IX, Section 1 have been interpreted and construed by the

1 Washington Supreme Court. Respondent denies that Article IX, Section 1 requires any
2 further interpretation or construction and denies each and every other allegation contained in
3 paragraphs 12, 13 and 14.

4 11. Answering paragraph 15 of the Amended Petition, respondent admits that the
5 word "paramount" in Article IX, Section 1 has already been interpreted and construed by the
6 Washington Supreme Court. Respondent denies that this term requires any further
7 interpretation or construction and, therefore, denies each and every other allegation in
8 paragraph 15.

9 12. Answering paragraphs 16 and 17 of the Amended Petition, respondent admits
10 that the terms used in Article IX, Section 1 have been interpreted and construed by the
11 Washington Supreme Court. Respondent denies that Article IX, Section 1 requires any
12 further interpretation or construction and denies each and every other allegation contained in
13 paragraphs 16 and 17.

14 13. Answering paragraph 18 of the Amended Petition, respondent admits that the
15 word "ample" in Article IX, Section 1 has already been interpreted and construed by the
16 Washington Supreme Court. Respondent denies that this term requires any further
17 interpretation or construction and, therefore, denies each and every other allegation in
18 paragraph 18.

19 14. Answering paragraphs 19 and 20 of the Amended Petition, respondent admits
20 that the terms used in Article IX, Section 1 have been interpreted and construed by the
21 Washington Supreme Court. Respondent denies that Article IX, Section 1 requires any
22 further interpretation or construction and denies each and every other allegation contained in
23 paragraphs 19 and 20.

24 15. Answering paragraph 21 as the Amended Petition, respondent admits that the
25 word "all" in Article IX, Section 1 has already been interpreted and construed by the
26 Washington Supreme Court. Respondent denies that this term requires any further

1 interpretation or construction and, therefore, denies each and every other allegation in
2 paragraph 21.

3 Second Issue:

4 Legal Interpretation of the basic "education" mandated by Article IX, §1

5 *The "minimum" definition of basic education under our*
6 *State Supreme Court's Seattle School District Ruling*

7 16. Answering paragraphs 22 and 23 of the Amended Petition, respondent admits
8 that the quoted excerpts in these paragraphs appear to be from the *Seattle School District v.*
9 *State* decision. That Supreme Court decision speaks for itself. Respondent denies each and
10 every other allegation in paragraphs 22 and 23.

11 17. Answering paragraph 24 of the Amended Petition, respondent denies the same.

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

14 18. Answering paragraph 25 of the Amended Petition, respondent admits that the
15 quoted language is excerpted from the Washington Supreme Court opinion in *Seattle School*
16 *District v. State*. That decision speaks for itself. Respondent denies each and every other
17 allegation in paragraph 25.

18 19. Answering paragraph 26 of the Amended Petition, respondent admits that
19 petitioners appear to be contending what is contained in paragraph 26. Respondent denies
20 each and every other allegation in paragraph 25.

21 20. Answering paragraph 27 of the Amended Petition, respondent admits that the
22 Superintendent of Public Instruction, Dr. Terry Bergeson, has testified in this case and that her
23 testimony speaks for itself. Respondent denies each and every other allegation in
24 paragraph 27.

25 21. Answering paragraph 28 of the Amended Petition, respondent admits that
26 House Bill 1209 was enacted into law in 1993, that it amended RCW 28A.150.210 that

1 originally was enacted in 1977 and that the excerpted language quoted in paragraph 28
2 appears to be from House Bill 1209. Respondent denies each and every other allegation in
3 paragraph 28.

4 22. Answering paragraph 29 of the Amended Petition, respondent admits that
5 House Bill 1209 contains the four goals which appear to be quoted in paragraph 29.
6 Respondent denies each and every other allegation in paragraph 29.

7 23. Answering paragraph 30 of the Amended Petition, respondent admits that the
8 Legislature again amended RCW 28A.150.210 in 2007 and that the four goals apparently
9 quoted in paragraph 30 are included in the amendment. Respondent denies each and every
10 other allegation in paragraph 30.

11 24. Respondent denies the allegations contained in paragraph 31 of the Amended
12 Petition.

13 25. Answering paragraph 32 of the Amended Petition, respondent admits that
14 petitioners interpret RCW 28A.150.210 as described in paragraph 32. Respondent denies
15 each and every other allegation contained in paragraph 32.

16 26. Answering paragraph 33 of the Amended Petition, respondent admits that the
17 State denies that Section 210 should be interpreted or construed as the petitioners contend.

18 *The additional substantive content defined by the State's adoption*
19 *of the eight Essential Academic Learning Requirements (EARLs)*

20 27. Answering paragraphs 34 and 35 of the Amended Petition, respondent admits
21 the same.

22 28. Answering paragraph 36 of the Amended Petition, respondent admits that the
23 EARLs specify skills and knowledge that Washington students are provided the opportunity
24 to master as they progress in the public schools. Respondent denies each and every other
25 allegation in paragraph 36.

1 29. Answering paragraph 37 of the Amended Petition, respondent admits that the
2 EALRs were promulgated, in part, pursuant to RCW 28A.150.210. Respondent denies each
3 and every other allegation in paragraph 37.

4 30. Answering paragraph 38 of the Amended Petition, respondent admits that the
5 petitioners interpret the EALRs as provided in paragraph 38. Respondent denies each and
6 every other allegation in paragraph 38.

7 31. Answering paragraph 39 of the Amended Petition, respondent denies the
8 petitioners' characterization of the respondent's positions in this lawsuit and denies each and
9 every other allegation contained in paragraph 39.

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

11 32. Answering paragraph 40 of the Amended Petition, respondent admits that the
12 allegations in this paragraph appear to be one of the petitioners' contentions in this lawsuit.
13 Respondent denies each and every other allegation contained in paragraph 40.

14 33. Answering paragraph 41 of the Amended Petition, respondent denies the
15 petitioners' characterization of the respondent's positions in this lawsuit and denies each and
16 every other allegation contained in paragraph 41.

17 Third Issue:

18 The State's Current Lack of Full Compliance With Article IX, §1

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

20 34. Answering paragraphs 42 through 64 of the Amended Petition, respondent
21 alleges that these paragraphs contain many legal conclusions, arguments and self-serving
22 opinions to which no answer is required. To the extent these paragraphs contain factual
23 allegations to which an answer may be required, respondent denies such allegations.

24 35. Answering paragraph 65 of the Amended Petition, respondent admits that the
25 Superintendent of Public Instruction, Terry Bergeson, has provided deposition testimony in
26

1 this case. Respondent further admits that this testimony speaks for itself. Respondent denies
2 each and every other allegation contained in paragraph 65.

3 36. Answering paragraphs 66 through 83 of the Amended Petition, respondent
4 alleges that these paragraphs contain legal conclusions, argument and self-serving opinions to
5 which no answer is required. To the extent these paragraphs contain factual allegations to
6 which an answer may be required, respondent denies such allegations.

7 37. Answering paragraph 84 of the Amended Petition, respondent admits that it is
8 currently in full compliance with its legal obligations under Article IX, Section 1 of the state
9 constitution. Respondent denies each and every other allegation in paragraph 84.

10 Fourth Issue:
11 Remedy for the Respondent State's Current Lack of Full Compliance
12 With Article IX, §1

13 38. Answering paragraphs 85 through 88 of the Amended Petition, respondent
14 admits that the quoted passages contained in these paragraphs appear to be excerpted from the
15 *Seattle School District v. State* and/or *Brown v. State* decisions. Respondent denies each and
16 every other allegation in paragraphs 85 through 88.

17 39. Respondent denies the allegations in paragraph 89 of the Amended Petition.

18 40. Answering paragraph 90 of the Amended Petition, respondent admits that the
19 quoted language appears to be excerpted from the *Seattle School District v. State* decision.
20 Respondent denies each and every other allegation contained in paragraph 90.

21 41. Answering paragraphs 91 through 104 of the Amended Petition, respondent
22 denies the same in their entirety.
23
24
25
26

DECLARATORY JUDGMENT CLAIM

42. Answering paragraph 105 of the Amended Petition, respondent realleges and incorporates by reference herein its prior admissions, denials and allegations in this answer to the Amended Petition.

43. Answering paragraph 106 of the Amended Petition, respondent admits that there appears to be a judiciable controversy stated in the Amended Petition as to petitioners' McCleary and Venema. Respondent denies each and every other allegation of paragraph 106.

44. Answering paragraphs 107 and 108 of the Amended Petition, respondent denies these paragraphs in their entirety.

RELIEF REQUESTED

45. Answering the prayer for relief contained on pages 21 and 22 of the Amended Petition, respondent denies that the petitioners are entitled to the judgment and/or any of the relief requested therein.

46. Further answering the Amended Petition, respondent denies each and every other allegation not previously addressed herein.

II. AFFIRMATIVE DEFENSES

Further answering the Amended Petition by way of affirmative defenses, respondent alleges:

By Way of FURTHER ANSWER and FIRST AFFIRMATIVE DEFENSE, respondent alleges that in carrying out its constitutional duties, the Washington State Legislature possesses the exclusive discretion to determine what programs and what levels of funding are necessary and appropriate and that the current statutes, programs and funding meet those constitutional obligations.

By Way of FURTHER ANSWER and SECOND AFFIRMATIVE DEFENSE, respondent alleges that Washington school districts can provide an adequate program of

1 education as defined by the Washington State Legislature for all students with the funding
2 provided by the Washington State Legislature.

3 By Way of FURTHER ANSWER and THIRD AFFIRMATIVE DEFENSE,
4 respondent alleges that school districts expend significant funds due to the provision of
5 constitutionally unnecessary programs and services and/or that school districts expend
6 significant funds on matters of local district choices, local district philosophies and local
7 district accounting practices.

8 By Way of FURTHER ANSWER and FOURTH AFFIRMATIVE DEFENSE,
9 RESPONDENT ALLEGES that only the state legislature has the right and responsibility to
10 define and fund basic education for Washington's students. Neither the petitioners herein nor
11 the courts can intrude on that exclusive, legislative responsibility.

12 By Way of FURTHER ANSWER and FIFTH AFFIRMATIVE DEFENSE,
13 respondent alleges that this Court lacks jurisdiction to award any relief to petitioners other
14 than a simple declaration that the State is, or is not, complying with its constitutional duties.
15 The means of satisfying its constitutional duties rest exclusively with the legislature.

16 By Way of FURTHER and SIXTH AFFIRMATIVE DEFENSE, respondent alleges
17 that some or all of the petitioners lack standing to bring this suit.

18 By Way of FURTHER ANSWER and SEVENTH AFFIRMATIVE DEFENSE,
19 respondent alleges that the petitioners have failed to state a claim for which relief may be
20 granted.

21 III. PRAYER FOR RELIEF

22 WHEREFORE, having fully answered the Amended Petition, respondent prays:

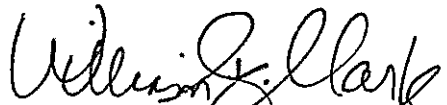
- 23 1. That the Amended Petition be dismissed with prejudice;
 - 24 2. For an award of costs and attorneys fees as authorized by law; and
- 25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

3. For such other and further relief as the Court deems appropriate.

DATED this 31st day of December, 2007.

ROBERT M. MCKENNA
Attorney General



WILLIAM G. CLARK, WSBA #9234
Assistant Attorney General
Attorneys for Respondent

1 **PROOF OF SERVICE**

2 I certify that I served a copy of this document on all parties or their counsel of record
3 on the date below as follows:

4 US Mail Postage Prepaid via Consolidated Mail Service

5 ABC/Legal Messenger

6 State Campus Delivery

7 Hand delivered by _____
8

9 I certify under penalty of perjury under the laws of the state of Washington that the
10 foregoing is true and correct.

11 DATED this 31st day of December, 2007, at Seattle, Washington.

12
13 
14 _____
15 AGNES ROCHE