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Amended Answer to Amended Petition for Declaratory Judgment Enforcing Constitution 07-2-02323-2-68

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FILED

KING COUNTY, WASHINGTON

AUG 07 2008

**SUPERIOR COURT CLERK
JENNIFER L. SCHNARR
DEPUTY**

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

**AMENDED 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 submits its Amended Answer to 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:

INTRODUCTION TO AMENDED PETITION

1
2 1. Answering paragraph 1 of the Amended Petition, respondent alleges that this
3 paragraph contains legal argument and self-serving opinions to which no answer is required.
4 Respondent admits that petitioners have narrowed the focus of the case to the four issues
5 listed in paragraph 2 of the Amended Complaint; namely, the legal meaning of three terms in
6 Article IX, Section 1 of the state constitution, the legal definition of “basic education” under
7 Article IX, Section 1, the fulfillment of the State’s duty under Article IX, Section 1 and a
8 limited remedy, if the Court determines the State is not complying with that duty. To the
9 extent these paragraphs have factual allegations to which an answer may be required,
10 respondent denies such allegations. Furthermore, while respondent admits that petitioners
11 seek the relief stated in paragraphs 1 and 2 of the Amended Petition, respondent denies that it
12 has breached any constitutional obligations and denies that petitioners are entitled to the
13 requested relief.

PARTIES

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

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

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

JURISDICTION & VENUE

1
2 5. Answering paragraph 5 of the Amended Petition, respondent admits that the
3 petitioners purport to state a claim for violations of constitutional duties over which this Court
4 can exercise subject matter jurisdiction. However, respondent denies that this Court has
5 *jurisdiction to direct the way that the State must comply with its constitutional obligations or*
6 *to order any of the relief requested by the petitioners.* Respondent denies each and every other
7 allegation in this paragraph.

8 6. Answering paragraphs 6 through 8 of the Amended Petition, respondent admits
9 that this Court has jurisdiction to render a declaratory judgment concerning respondent's
10 compliance with the state constitution and that this forum is an appropriate venue.
11 Respondent realleges and incorporates by reference herein its answer to paragraph 5 of the
12 Amended Petition.

THE FOUR FUNDAMENTAL ISSUES PRESENTED BY THIS SUIT

First Issue:

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

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

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

22 9. Answering paragraph 11 of the Amended Petition, respondent admits that the
23 quoted passage is from Article IX, Section 1 of the Washington state constitution and that a
24 copy of the quoted language is contained in Tab 1 to the Amended Petition. Respondent
25 denies each and every other allegation in paragraph 11.
26

1 10. Answering paragraphs 12, 13 and 14 of the Amended Petition, respondent
2 admits that petitioners make the contentions in these paragraphs. Respondent further admits
3 that the terms used in Article IX, Section 1, including those which are addressed in
4 paragraphs 12, 13 and 14 of the Amended Answer, have been interpreted and construed by the
5 Washington Supreme Court. Respondent denies that the terms in Article IX, Section 1 require
6 any further interpretation or construction and denies each and every other allegation contained
7 in paragraphs 12, 13 and 14.

8 11. Answering paragraph 15 of the Amended Petition, respondent admits that the
9 word "paramount" in Article IX, Section 1 has already been interpreted and construed by the
10 Washington Supreme Court. Respondent denies that this term requires any further
11 interpretation or construction.

12 12. Answering paragraphs 16 and 17 of the Amended Petition, respondent admits
13 that petitioners make the contentions in these paragraphs. Respondent further admits that the
14 terms used in Article IX, Section 1, including those addressed in paragraphs 16 and 17 of the
15 Amended Petition, have been interpreted and construed by the Washington Supreme Court.
16 Respondent denies that Article IX, Section 1 requires any further interpretation or
17 construction.

18 13. Answering paragraph 18 of the Amended Petition, respondent admits that the
19 word "ample" in Article IX, Section 1 has already been interpreted and construed by the
20 Washington Supreme Court. Respondent denies that this term requires any further
21 interpretation or construction.

22 14. Answering paragraphs 19 and 20 of the Amended Petition, respondent admits
23 that petitioners make the contentions in these paragraphs. Respondent further admits that the
24 terms used in Article IX, Section 1 have been interpreted and construed by the Washington
25 Supreme Court. Respondent denies that Article IX, Section 1 requires any further
26 interpretation or construction.

1 15. Answering paragraph 21 of the Amended Petition, respondent admits that the
2 word "all" in Article IX, Section 1 has already been interpreted and construed by the
3 Washington Supreme Court. Respondent denies that this term requires any further
4 interpretation or construction.

5 Second Issue:

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

7 The "minimum" definition of basic education under our
8 State Supreme Court's Seattle School District Ruling

9 16. Answering paragraphs 22 and 23 of the Amended Petition, respondent admits
10 that the quoted excerpts in these paragraphs and the language reproduced as Tab 2 to the
11 Amended Petition are from the *Seattle School District v. State* decision. That Supreme Court
12 decision speaks for itself. Respondent denies each and every other allegation in paragraphs 22
13 and 23.

14 17. Answering paragraph 24 of the Amended Petition, respondent admits it
15 provides the resources for effective teaching and opportunities for learning for Washington's
16 students. Respondent denies each and every other allegation in paragraph 24.

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

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

23 19. Answering paragraph 26 of the Amended Petition, respondent admits that
24 petitioners appear to be contending what is contained in paragraph 26.

25 20. Answering paragraph 27 of the Amended Petition, respondent admits that the
26 Superintendent of Public Instruction, Dr. Terry Bergeson, has testified in this case and that her

1 testimony speaks for itself. Respondent denies each and every other allegation in
2 paragraph 27.

3 21. Answering paragraph 28 of the Amended Petition, respondent admits that
4 House Bill 1209 was enacted into law in 1993, that it amended RCW 28A.150.210 that
5 originally was enacted in 1977 and that the excerpted language quoted in paragraph 28 is from
6 House Bill 1209. Respondent denies each and every other allegation in paragraph 28.

7 22. Answering paragraph 29 of the Amended Petition, respondent admits that
8 House Bill 1209 contains four goals which appear in paragraph 29. Respondent denies each
9 and every other allegation in paragraph 29.

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

14 24. Respondent denies the allegations contained in paragraph 31 of the Amended
15 Petition.

16 25. Answering paragraph 32 of the Amended Petition, respondent admits that
17 petitioners interpret RCW 28A.150.210 as described in paragraph 32.

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

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

22 27. Answering paragraphs 34 and 35 of the Amended Petition, respondent admits
23 the same.

24 28. Answering paragraph 36 of the Amended Petition, respondent admits that the
25 EARLs specify skills and knowledge that Washington students are provided the opportunity
26

1 to master as they progress in the public schools. Respondent denies each and every other
2 allegation in paragraph 36.

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

6 30. Answering paragraph 38 of the Amended Petition, respondent admits that the
7 petitioners interpret the EALRs as stated in paragraph 38.

8 31. Answering paragraph 39 of the Amended Petition, respondent denies the
9 petitioners' characterization of the respondent's positions in this lawsuit and further denies
10 that the EALRs should be interpreted or construed as petitioners contend.

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

12 32. Answering paragraph 40 of the Amended Petition, respondent admits that the
13 allegations in this paragraph appear to be one of the petitioners' contentions in this lawsuit.

14 33. Answering paragraph 41 of the Amended Petition, respondent denies the
15 petitioners' characterization of the respondent's positions in this lawsuit and further denies
16 petitioners' contentions about the interpretation and construction of the statutes and case law
17 pertaining to basic education in Washington.

18 Third Issue:

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

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

21 34. Answering paragraph 42 of the Amended Petition, respondent admits that this
22 paragraph summarizes what petitioners' contend is the third issue underlying their liability
23 case. The issue, as phrased, constitutes legal argument. To the extent an answer is required,
24 respondent denies the same.

25 35. Answering paragraph 43 of the Amended Petition, respondent is without
26 knowledge and information about the quoted excerpted language in the paragraph and,

1 therefore, denies the same. Respondent further denies that the quoted, excerpted language has
2 any relevance to this case. Respondent denies each and every other allegation in this
3 paragraph.

4 36. Answering paragraphs 44 through 47 of the Amended Petition, respondent
5 denies these paragraphs in their entirety.

6 37. Answering paragraph 48 of the Amended Petition, respondent admits the
7 Superintendent of Public Instruction has provided sworn testimony in this case that speaks for
8 itself. Respondent denies each and every other allegation in this paragraph.

9 38. Respondent denies the allegations in paragraph 49 of the Amended Petition.

10 39. Answering paragraph 50 of the Amended Petition, respondent admits that
11 Washington Learns studied the public education system and issued a report in November
12 2006. Respondent denies each and every other allegation in this paragraph.

13 40. Answering paragraph 51 through 55 of the Amended Petition, respondent
14 denies the allegations of these paragraphs.

15 41. Answering paragraph 56 of the Amended Petition, respondent admits that one
16 reason for the creation of the WASL was to have an accountability measure for schools as an
17 aid in determining how to allocate resources. Respondent denies each and every other
18 allegation in paragraph 56.

19 42. Answering paragraph 57 of the Amended Petition, respondent admits that the
20 WASL and other assessments are among the most reliable assessments of a school's
21 accountability and performance. Respondent denies each and every other allegation in this
22 paragraph.

23 43. Answering paragraphs 58 through 64 of the Amended Petition, respondent
24 denies the same.

1 44. Answering paragraph 65 of the Amended Petition, respondent admits the
2 Superintendent of Public Instruction has provided sworn testimony in this case that speaks for
3 itself. Respondent denies each and every other allegation in this paragraph.

4 45. Respondent denies the allegations in paragraph 66 of the Amended Petition.

5 State's excuses

6 46. Answering paragraphs 67 through 80 of the Amended Petition, respondent
7 denies that its factual and legal positions in this case constitute "excuses." Respondent further
8 denies petitioners' attempts to characterize respondent's factual and legal positions in this
9 case and denies each and every other allegation in these paragraphs.

10 The State's current failure to fully comply with Article IX, §1

11 47. Answering paragraph 81 of the Amended Petition, respondent admits that it is
12 aware that plaintiffs in other states have made allegations that adequate funding for education
13 in their states would cost "X" dollars while their states fund less than "X" dollars.
14 Respondent denies each and every other allegation in paragraph 81.

15 48. Answering paragraph 82 of the Amended Petition, respondent admits that
16 petitioners herein do not intend to allege or prove a case of constitutionally inadequate
17 funding or that adequate funding for education in Washington would cost "X" dollars while
18 Washington funds less than "X" dollars. Respondent denies each and every other allegation
19 in paragraph 82.

20 49. Respondent admits that Petitioners make the contention alleged in paragraph 8
21 of the Amended Petition, but denies the allegations in this paragraph.

22 50. Answering paragraph 84 of the Amended Petition, respondent admits that it
23 fully complies with Article IX, Section 1 of the state constitution and denies any allegation to
24 the contrary.

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

1 51. Answering paragraphs 85 through 88 of the Amended Petition, respondent
2 admits that the quoted passages contained in these paragraphs appear in the *Seattle School*
3 *District v. State* and/or *Brown v. State* decisions. Respondent denies each and every other
4 allegation in paragraphs 85 through 88.

5 52. Respondent denies the allegations in paragraph 89 of the Amended Petition.

6 53. Answering paragraph 90 of the Amended Petition, respondent admits that the
7 quoted language appears in the *Seattle School District v. State* decision. Respondent denies
8 each and every other allegation contained in paragraph 90.

9 54. Answering paragraphs 91 through 103 of the Amended Petition, respondent
10 denies the same in their entirety.

11 55. Answering paragraph 104 of the Amended Petition, respondents admit that the
12 only remedy sought by petitioners is the enforcement Order outlined in this paragraph.
13 Respondent denies the other allegations in this paragraph and denies that petitioners are
14 entitled to any relief herein.

15 DECLARATORY JUDGMENT CLAIM

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

19 57. Answering paragraph 106 of the Amended Petition, respondent admits that a
20 judiciable controversy is alleged in the Amended Petition as to petitioners' McCleary and
21 Venema. Respondent denies each and every other allegation of paragraph 106.

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

RELIEF REQUESTED

59. 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.

60. 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 right to determine what programs and what levels of funding are necessary and appropriate for public education 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 education as defined by the Washington State Legislature for all students with the funding provided by the Washington State Legislature.

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

By Way of FURTHER ANSWER and FOURTH AFFIRMATIVE DEFENSE, RESPONDENT ALLEGES that only the state legislature has the right and responsibility to

1 define and fund basic education for Washington's students. Neither the petitioners herein nor
2 the courts can intrude on that exclusive, legislative responsibility.

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

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

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

12 **III. PRAYER FOR RELIEF**

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

- 14 1. That the Amended Petition be dismissed with prejudice;
15 2. For an award of costs and attorneys fees as authorized by law; and
16 3. For such other and further relief as the Court deems appropriate.

17 DATED this 1ST day of August, 2008.

18 ROBERT M. MCKENNA
19 Attorney General

20 

21 WILLIAM G. CLARK, WSBA #9234
22 Assistant Attorney General
23 Attorneys for Respondent
24
25
26

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 1st day of August, 2008, at Seattle, Washington.

12
13 
14 _____
15 AGNES ROCHE