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Plaintiffs' Answer to the Amicus Brief of Columbia Legal Services, Children's Alliance, and Low Income Housing Alliance

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No. 84362-7

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SUPREME COURT OF THE STATE OF WASHINGTON

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,

v.

STATE OF WASHINGTON,
Defendant/Appellant.

**PLAINTIFFS' ANSWER
TO THE AMICUS BRIEF OF
COLUMBIA LEGAL SERVICES, CHILDREN'S
ALLIANCE, AND
LOW INCOME HOUSING ALLIANCE**

Thomas F. Ahearne, WSBA No. 14844
Christopher G. Emch, WSBA No. 26457
Adrian Urquhart Winder, WSBA No. 38071
Kelly A. Lennox, WSBA No. 39583
Foster Pepper PLLC
1111 Third Avenue, suite 3400
Seattle, WA 98101-3299
Telephone: (206) 447-8934/447-4400
Telefax: (206) 749-1902/447-9700
E-mail: ahearne@foster.com

Attorneys for Plaintiffs/Respondents

ORIGINAL

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I. INTRODUCTION

This Court summoned the State to address three topics:

- “why the State should not be held in contempt for violation of this Court’s order dated January 9, 2014”;
- “why, if it is found in contempt, any of the following forms of relief [list of 7 remedial sanctions] ... should not be granted”; and
- “the appropriate timing of any sanctions.”

June 12, 2014 Order To Show Cause at pp.3-4.

Columbia Legal Services, Children’s Alliance, and Low Income Housing Alliance (collectively “the Alliance Amici”) address one of the remedial sanctions listed in that second topic. They address the remedial sanction of “prohibiting expenditures on certain other matters until the Court’s constitutional ruling is complied with”, and request that the “certain other matters” identified in such a contempt sanction not include the social service programs discussed in their brief.¹

Plaintiffs did not suggest that such programs be among the expenditures prohibited. And as Part II below explains, the legal justification for not including such programs in the remedial sanction the Alliance Amici discuss rests on the purpose of a remedial contempt sanction rather than the relative merits of various social programs.

¹ *Alliance Amici’s Brief at p.18.*

II. DISCUSSION

A. The Only Remedial Contempt Sanction These Amici Discuss: Expenditure Prohibitions

The Alliance Amici focus on just one of the seven potential remedial contempt sanctions listed in this Court's Show Cause Order – i.e., “prohibiting expenditures on certain other matters until the Court's constitutional ruling is complied with.”²

B. The Purpose Of Remedial Contempt Sanctions

This remedial contempt sanction – and the specific matters chosen for its expenditure prohibition – should be crafted with the purpose of a remedial contempt sanction in mind. And here, the State's and plaintiffs' show cause briefing agree the purpose of a remedial contempt sanction is to coerce compliance with court rulings.³ For example, in this case, coerce legislators' compliance with this Court's January 2014 Order.⁴

C. Prohibiting The Type Of Expenditures These Amici Discuss Likely Would Not Effectively Serve That Remedial Contempt Sanction Purpose

To serve that coercive purpose, the expenditures chosen to be prohibited should make legislators uncomfortable and motivated – uncomfortable and motivated enough to choose to comply rather than

² *Alliance Amici's Brief at p.18.*

³ *State's Show Cause Response at p.8; Plaintiffs' Answer To Defendant's Response To The Court's Show Cause Order at p.24 & n.30.*

⁴ *Recall the State has identified its legislators as “the principal actor” in this Show Cause proceeding. State's Show Cause Response at p.26.*

continue their non-compliance. The coercive purpose of this remedial sanction is not served if the expenditures being prohibited put little pressure on legislators, but instead make poor and vulnerable families significantly more poor and more vulnerable.

Plaintiffs accordingly have not suggested that the sanction of “prohibiting expenditures on certain other matters until the Court’s constitutional ruling is complied with” should target the type of social service programs the Alliance Amici discuss. To be most effective, the “certain other matters” whose expenditures are prohibited should be those matters that this Court concludes would put the most coercive pressure on the non-complying decision-makers in this case.⁵

III. CONCLUSION

Plaintiffs agree with the Alliance Amici’s assertions that “education is a critical pathway out of poverty”,⁶ and that the social service programs they discuss are “not contained within the Legislature’s current definition of basic education.”⁷

⁵ *The State has identified its legislators as “the principal actor” in this Show Cause proceeding. State’s Show Cause Response at p.26.*

⁶ *Alliance Amici’s Brief at p.9.*

⁷ *Alliance Amici’s Brief at p.1 & n.1; accord at p.10 (“in defining basic education, the Legislature has not explicitly included nonacademic supports commonly relied upon by low-income students”).*

But that does not mean that a remedial contempt sanction in this Article IX, §1 case must include a prohibition of expenditures on those programs. Instead, the relevant legal question is whether prohibiting expenditures on those programs would serve the underlying purpose of a remedial contempt sanction – e.g., coerce legislators to comply with the Court Orders in this case. Plaintiffs have not argued that including the type of social service programs the Alliance Amici discuss would best serve that coercive purpose in this case.⁸

RESPECTFULLY SUBMITTED this 25th day of August, 2014.

Foster Pepper PLLC

s/ Thomas F. Ahearne

Thomas F. Ahearne, WSBA No. 14844

Christopher G. Emch, WSBA No. 26457

Adrian Urquhart Winder, WSBA No. 38071

Kelly A. Lennox, WSBA No. 39583

Attorneys for Plaintiffs

⁸ Although not relevant to the argument made by the Alliance Amici, plaintiffs note that those amici apparently accept the position taken in an Office of Financial Management (OFM) document that only one-third of the State budget is “unprotected and subject to cuts”. Alliance Amici’s Brief at pp.11-12 & n.19. Plaintiffs do not agree with the State’s self-serving assertions in its OFM document.

Plaintiffs also note that the Alliance Amici occasionally rely upon impermissible conclusory/speculative assertions such as “cuts or reductions to housing programs would more than cancel any gains from additional educational investments for [homeless] students.” Alliance Amici’s Brief at p.13. But since such assertions are irrelevant to the underlying legal purpose of a remedial contempt sanction, plaintiffs do not divert the Court’s and parties’ time and energy debating such assertions.

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, August 25, 2014, I caused PLAINTIFFS' ANSWER TO THE AMICUS BRIEF OF COLUMBIA LEGAL SERVICES, CHILDREN'S ALLIANCE, AND LOW INCOME HOUSING ALLIANCE 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)
 Via U.S. First Class Mail

Defendant State of Washington

David A. Stolier, Sr.
Alan D. Copsey
Office of the Attorney General
1125 Washington Street SE
Olympia, WA 98504-0100
daves@atg.wa.gov
alanc@atg.wa.gov

Via Electronic Mail (cc of the same email sent to the Supreme Court for the filing)
 Via U.S. First Class Mail

Defendant State of Washington

Stephen K. Eugster
2418 West Pacific Avenue
Spokane, WA 99201-6422
eugster@eugsterlaw.com

Via Electronic Mail (cc of the same email sent to the Supreme Court for the filing)
 Via U.S. First Class Mail

Amicus Curiae

Paul J. Lawrence
Matthew J. Segal
Jamie L. Lisagor
Pacifica Law Group LLP
1191 Second Avenue, Suite 2100
Seattle, WA 98101
paul.lawrence@pacificalawgroup.com
matthew.segal@pacificalawgroup.com
jamie.lisagor@pacificalawgroup.com

Via Electronic Mail (cc of the same email sent to the Supreme Court for the filing)
 Via U.S. First Class Mail

Amici Curiae Washington State Budget and Policy Center, Centerstone, the ElderCare Alliance, the Equity in Education Coalition, Statewide Poverty Action Network, Solid Ground, Jennifer Papest, Kristin Lindenmuth, Patrick Lenning, and Viral Shaw

Katara Jordan
Casey Trupin
Columbia Legal Services
101 Yesler Way, Suite 300
Seattle, WA 98104
katara.jordan@columbialegal.org
casey.trupin@columbialegal.org

Via Electronic Mail (cc of the same email sent to the Supreme Court for the filing)
 Via U.S. First Class Mail

Donald B. Scaramastra
Garvey Schubert Barer
1191 2nd Avenue, Suite 1800
Seattle, WA 98101-2939
DScaramastra@gsblaw.com

Amici Curiae Columbia Legal Services, The Children's Alliance, and The Washington Low Income Housing Alliance

William B. Collins
Special Assistant Attorney General
3905 Lakehills Drive SE
Olympia, WA 98501
wbcollins@comcast.net

Via Electronic Mail (cc of the same email sent to the Supreme Court for the filing)
 Via U.S. First Class Mail

Amicus Curiae Superintendent of Public Instruction Randy Dorn

Robert M. McKenna
David S. Keenan
Orrick, Herrington & Sutcliffe LLP
701 Fifth Avenue, Suite 5600
Seattle, WA 98104-7097
rmckenna@orrick.com
dkeenan@orrick.com

Via Electronic Mail (cc of the
same email sent to the Supreme
Court for the filing)
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*Amici Curiae The Honorable Daniel J. Evans, The Honorable John
Spellman, The Honorable Mike Lowry, The Honorable Gary Locke, and The
Honorable Christine Gregoire*

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 25th day of August, 2014.

s/ Adrian Urquhart Winder
Adrian Urquhart Winder

OFFICE RECEPTIONIST, CLERK

To: Adrian Urquhart Winder
Cc: Thomas Ahearne; Christopher Emch; 'Stolier, Dave (ATG)'; 'Clark, Bill (ATG)'; 'alanc@atg.wa.gov'; 'Stephen K. Eugster'; 'Bill Collins'; 'rmckenna@orrick.com'; 'dkeen@orrick.com'; 'paul.lawrence@pacificallawgroup.com'; 'matthew.segal@pacificallawgroup.com'; 'jamie.lisagor@pacificallawgroup.com'; 'katara.jordan@columbialegal.org'; 'casey.trupin@columbialegal.org'; 'DScaramastra@gsblaw.com'
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Dear Clerk of the Court:

Please find attached for filing with the Court the following document: **Plaintiffs' Answer To The Amicus Brief Of Columbia Legal Services, Children's Alliance, and Low Income Housing Alliance.**

- **Case:** McCleary et al. v. State, Case No. 84362-7
- **Court:** Supreme Court of the State of Washington
- **Counsel for Plaintiff/Respondents:** Thomas F. Ahearne, (206) 447-8934, WSBA No. 14844, ahearne@foster.com; Christopher G. Emch, (206) 447-8904, WSBA No. 26457, emchc@foster.com; Adrian Urquhart Winder, (206) 447-8972, WSBA No. 38071, winda@foster.com

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Thank you,

Adrian

Adrian Urquhart Winder
Attorney | Foster Pepper PLLC
1111 Third Avenue, Suite 3400 | Seattle, Washington 98101
P: 206.447.8972 | F: 206.749.1918
winda@foster.com | www.foster.com

