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NO. 101052-4

SUPREME COURT OF THE STATE OF WASHINGTON

WAHKIAKUM SCHOOL DISTRICT NO. 200,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

RESPONDENT'S ANSWER TO MEMORANDUM OF
AMICUS CURIAE WASHINGTON ASSOCIATION OF
SCHOOL ADMINISTRATORS

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I. INTRODUCTION

Amicus Washington Association of School Administrators asks this Court to accept direct review of Wahkiakum School District's (WSD) appeal, claiming the issue of whether article IX, section 1 of the Washington Constitution requires the State to fully fund school construction costs is a fundamental and urgent legal issue that this Court must resolve.

But in so arguing, Amicus ignores—just as WSD did—this Court's earlier pronouncement on the very issue of which it seeks review—i.e., that “full state funding of school capital costs is not part of the program of basic education constitutionally required by article IX, section 1.” *McCleary v. State*, No. 84362-7, 2017 WL 11680212, at *15 (Wash. Sup. Ct. Nov. 15, 2017). It also ignores the Washington Constitution's explicit reliance on local funding for school capital costs, which distinguishes public school construction expenditures from article IX, section 1's program of basic education that the State must fully fund using only regular and dependable sources of

revenue. Amicus's decision to ignore such pertinent authority and rely instead on the undisputed importance of school facilities provides no basis for granting direct review.

Amicus also claims urgent review is warranted based on recent school bond failures, implying that school districts are unable to raise the funds they need for capital expenditures. But Amicus's characterization of school capital funding is misleading. When both bonds *and* levies are counted—the two constitutionally-recognized means to assist with school capital costs—local school district voters have approved 71 percent of all capital funding measures for public schools placed on the ballot since 2015. This approval percentage increases even further when a bond measure's success on a subsequent ballot is considered. Amicus also mostly ignores the extensive funding provided by the Legislature on school capital projects, including funding for seismic safety and emergency repairs, further undermining its claim of urgency.

Because there is no fundamental issue requiring this Court's prompt and ultimate determination, this Court should deny direct review and transfer the case to the Court of Appeals.

II. NATURE OF THE CASE AND DECISION

The State relies on the nature of the case and decision presented in its Answer to Appellant's Statement of Grounds for Direct Review (Answer) on pages 3 to 13.

III. ISSUE PRESENTED FOR REVIEW

Is full state funding of school capital costs part of the program of basic education constitutionally required by article IX, section 1 of the Washington Constitution?

IV. DIRECT REVIEW IS NOT WARRANTED

A. Amicus Misunderstands the Nature of School Capital Funding Under the Washington Constitution

Amicus first contends that this case presents a "fundamental" legal issue requiring immediate review by this Court based on its rhetorical statement that "the funding for a basic education program and the funding for educational facilities go hand-in-hand—they cannot be separated." Mem. of

Amicus Curiae Washington Association of School Administrators (Amicus Mem.) at 5. But in so arguing, Amicus overlooks that this Court already rejected this principle as a legal matter during its period of retained jurisdiction in the *McCleary* case.

In *McCleary*, this Court considered the plaintiffs’ argument that the State had failed to comply with its article IX, section 1 obligations by not fully funding the capital costs attendant to its program of basic education (specifically the additional classroom space needed for all-day kindergarten and the reduction of K-3 class sizes). 2017 WL 11680212, at *14, 15. This Court explained that “[t]hough classroom space is obviously needed to maintain all-day kindergarten and reduced class sizes, capital costs have never been part of the prototypical school allocation model, and it is not solely a state obligation under the constitution.” *Id.* at *14. In reaching this conclusion, this Court looked to the various methods by which school construction is funded—specifically, article VII, subsections

2(a) and (b), article IX, section 3, and the statutory School Construction Assistance Program, *id.*—which are distinct from the program of basic education that the State is responsible for fully funding from dependable and regular sources of revenue.

Amicus further asserts that Appellant WSD has presented a fundamental issue here because “it is impossible to separate the acquisition of skills and knowledge from the facilities in which such subjects are taught.” Amicus Mem. at 7. But as extensively explained in the State’s Answer, since the adoption of the State’s Constitution, school capital costs have been treated differently than school operational costs and have never been found to fall within the ambit of article IX, section 1. Indeed, just after the Constitution was adopted, this Court distinguished the funds necessary for the constitutionally-required “support of the common schools” from school construction costs, which were instead characterized as “unusual and extraordinary expenditures” ineligible for payment out of the Common School Fund as originally constituted in article IX, section 3. *Sheldon v.*

Purdy, 17 Wn. 135, 140–41, 49 P. 228 (1897) (explaining that the Legislature, “in consonance with the constitution,” had provided for other means by which local school districts “alone and locally” assumed school capital costs: namely, tax levies and bonds).

Since that time, the Constitution has been amended on several occasions to further emphasize the role of local school district voters in supporting public school construction projects. *See* Wash. Const. art. VII, § 2(a), (b) (permitting school districts to levy additional local property taxes for up to six years to support the construction, remodeling, or modernization of school facilities, and permitting levies to exceed the limit of one percent of the value of property for the purpose of making required payments of principal and interest on general obligation bonds issued for capital purposes); art. VIII, § 1(e) (allowing the State to guarantee school capital debt, but clarifying that the guarantee does “not remove the debt obligation of the school district and is not state debt”); art. VIII, § 6 (authorizing school districts, with

voter approval, to incur a greater amount of municipal debt for their “capital outlays”).

Notably, it was not until 1966 that the Constitution was amended to address *the State’s role* with regard to school construction through the creation of the Common School Construction Fund—which is not part of article IX, section 1. This amendment did not impose upon the State the requirement to fully fund school capital costs; instead, it merely created an additional funding source by which the State could assist local school districts with their needed capital projects, “helping to ease the tax burden of local property owners.” A. Ludlow Kramer, Official Voters Pamphlet 20 (1966), https://www.sos.wa.gov/_assets/elections/voters'%20pamphlet%201966.pdf (1966 Voters Pamphlet); Wash. Const. art. IX, § 3.¹

¹ As discussed in the State’s Answer (at 6–8), the amendment creating the Common School Construction Fund was presented to voters along with a \$16.5 million school construction bond because, following this Court’s decision in *State ex rel. Washington State Finance Committee v. Martin*, 62 Wn.2d 645, 646–47, 384 P.2d 833 (1963), “no more funds

Ignoring this authority, Amicus instead argues review should be granted here because, in Amicus’s opinion, it would be preferable if the State were responsible for fully funding public school capital costs. That contention is beside the point. Because this Court has already explained that “full state funding of school capital costs is not part of the program of basic education constitutionally required by article IX, section 1,” *McCleary*, 2017 WL 11680212, at *14–15, there is no “fundamental” legal issue requiring this Court’s prompt and ultimate determination.

B. Amicus’s Discussion of Local Bond Measures Is Incomplete and Does Not Support a Claim of Urgency

Amicus claims that “prompt determination” of WSD’s appeal is needed because school capital bonds are often unsuccessful, and that this negatively impacts students. Amicus

[we]re available from the state to assist already overburdened local school districts in financing the construction they must have” absent an emergency bond issuance. 1966 Voters Pamphlet at 10.

Mem. at 8–9. But this argument is flawed in at least three respects.

First, Amicus’s decision to focus solely on recent bond votes is misleading because bonds are not the only means by which school districts can raise money for their capital costs. The Washington Constitution was amended more than 35 years ago to allow local school districts to propose levies for capital construction as an alternative to bonds—an option specifically added to the Constitution to help fix the exact problem of which Amicus complains. Wash. Const. amend. 79; Office of the Secretary of State, 1986 Voters & Candidates Pamphlet: State General Election at 14 (1986), <https://www.sos.wa.gov/assets/elections/voters'%20pamphlet%201986.pdf> (1986 Voters Pamphlet) (explaining that using levies rather than bonds to finance school construction would be faster and less expensive). Bonds require a 60 percent super-majority to pass, whereas capital levies require only a majority. *See* Wash. Const. art. VII, § 2; Wash. Const. amend. 101.

Notably, capital levies pass at much higher rates than bonds. Since 2015, for instance, 90 percent of all school capital levies put forward have been approved by local voters, raising more than \$7 billion in school capital funds. *See* Washington Office of Superintendent of Public Instruction, Election Results for School Financing, <https://www.k12.wa.us/policy-funding/school-apportionment/election-results-school-financing> (last visited Aug. 16, 2022) (OSPI Elections Data).² Thus, when requests for school capital levies are analyzed in conjunction with requests for school capital bonds, local voters approved 71 percent of all school capital requests between February 2015 and February 2022. *Id.*

Second, Amicus ignores the fact that a school funding measure, unsuccessful in one election, may be successful in a later election, with voters approving the desired capital funding. For example, in November of 2015, the Zillah School District

² In the same time period, school districts raised nearly \$14 billion in bonds.

placed a \$10.5 million bond on the ballot, which failed to pass. *Id.*; Yakima County Auditor’s Office, November 3, 2015 General Election, <https://results.vote.wa.gov/results/20151103/yakima/> (last visited Aug. 16, 2022). But less than two years later, in February of 2017, the district placed an even larger \$14.9 million bond on the ballot, which passed with nearly 70 percent of the vote. OSPI Elections Data; Yakima County Auditor’s Office, February 14, 2017 Special Election, <https://results.vote.wa.gov/results/20151103/yakima/> (last visited Aug. 16, 2022). Similarly, the Cheney School District was unsuccessful in passing a \$44.9 million bond measure in February of 2015. OSPI Elections Data; Spokane County Elections, February 10, 2015 Special Election, <https://results.vote.wa.gov/results/20150210/spokane/> (last visited Aug. 16, 2022). But it succeeded in passing an even larger \$52 million bond in February of 2017. OSPI Elections Data; Spokane County Elections, February 14, 2017 Special Election, <https://results.vote.wa.gov/results/20170214/spokane/> (last visited Aug. 16, 2022). And the Liberty

School District could not pass a \$12.9 million bond in November of 2015. OSPI Elections Data; Spokane County Elections, November 3, 2015 General Election, <https://results.vote.wa.gov/results/20151103/spokane/> (last visited Aug. 16, 2022). But local voters passed a \$12.2 million bond the following year. OSPI Elections Data; Spokane County Elections, February 9, 2016 Special Election, <https://results.vote.wa.gov/results/20160209/spokane/> (last visited Aug. 16, 2022). As these examples demonstrate, simply looking at bond pass/fail rates in isolation does not tell the entire story: because school districts may ask local voters up to four times a year to approve school capital bonds, they frequently renew measures that did not initially pass, and these subsequent efforts often succeed.

Third, Amicus's analysis does not account for the possibility that a school district may replace whatever funding it first attempted to raise via bonds, which require a super-majority to pass, with capital levies, which require only a majority. In the same way that a district can follow a failed bond measure with a

successful one, it can also follow a failed bond measure with a successful levy. In the February 2022 election, for instance, capital levies appeared far more frequently on the ballot than capital bonds. OSPI Elections Data (63 capital levies on the ballot compared with 11 capital bond requests). And of the 63 capital levies on the ballot, 54 passed, providing nearly \$3 billion dollars of locally approved funding over the six-year lifetime of the levies. For all of these reasons, Amicus’s incomplete depiction of school construction funding does not create an “urgent” issue necessitating this Court’s immediate review.

Moreover, Amicus’s discussion of school capital funding largely fails to address the Legislature’s extensive appropriations to support local school districts in their construction efforts, which further undercuts the claim of urgency. Although Amicus acknowledges the more than half a billion dollars appropriated to the School Construction Assistance Program in the last supplemental capital budget (Amicus Mem. at 9), it ignores the Legislature’s other capital appropriations for public schools,

including \$100 million in appropriations to support seismic safety projects, a special capital grant program for small districts and tribal compact schools, and dedicated funds to assist local school districts with emergency or urgent capital repairs that impact student health or safety. *See* Answer at 11; Laws of 2022, ch. 296, §§ 5005, 5007, 5008. These programs together account for more than \$150 million of additional State funding for school capital costs. *See id.*; *see also* Washington State Fiscal Information, 2022 Supplemental Capital Budget Reports, <http://www.fiscal.wa.gov/CapitalSummaryGraphicSupp.aspx> (last visited Aug. 16, 2022) (showing that the Legislature appropriated nearly \$850 million for public school capital projects).

Finally, Amicus claims that “urgent” intervention is warranted by this Court based on the fact that local school districts may put bond measures forward later this year, Amicus Mem. at 9–10, the idea presumably being that local school districts do not need not to seek such funds from local voters if

“the State’s system of funding school facilities through local bond votes violates the positive constitutional right of students.” Amicus Mem. at 10. But, as discussed above, the Constitution was explicitly amended to allow local school district voters to approve bonds for school capital construction; the fact that certain school districts may seek voter approval for such bonds as contemplated by the Constitution hardly warrants “urgent” intervention by this Court.

C. This Court Has Already Provided Guidance on the Issue for Review and Does Not Need to Provide an Ultimate Determination Here

Amicus also contends that direct review is warranted because this Court must provide “an ultimate determination” in Appellant’s case. Amicus Mem. at 11. But, as discussed above, Amicus ignores this Court’s earlier pronouncement in *McCleary* that “full state funding of school capital costs is not part of the program of basic education constitutionally required by article IX, section 1.” 2017 WL 11680212, at *15. Because the trial court’s dismissal was consistent with this Court’s prior authority,

this Court need not intervene to provide an “ultimate determination” here.

V. CONCLUSION

For the reasons stated above and in the State’s Answer, direct review should be denied and this case should be transferred to the Court of Appeals.

This document contains 2,450 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 17th day of August

2022.

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