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**SUPREME COURT OF THE STATE OF WASHINGTON**

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WAHKIAKUM SCHOOL DISTRICT NO. 200

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

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**WAHKIAKUM SCHOOL DISTRICT'S  
RAP 10.3(f) ANSWER TO MEMORANDUM OF  
*AMICUS CURIAE*  
WASHINGTON STATE SCHOOL DIRECTORS'  
ASSOCIATION ("WSSDA")**

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**TABLE OF ABBREVIATIONS USED IN THIS BRIEF**

| ABBREVIATION              | FULL TITLE OF COURT FILING  |
|---------------------------|---|
| AFER                      | Attorneys For Education Rights ( <i>the Washington non-profit corporation formed to advance the rights of disabled students</i> )                       |
| AFER <i>Amicus</i> Brief  | 1/27/2023 <i>Amicus Curiae</i> Memorandum Of Attorneys For Education Rights   |
| AFER <i>Amicus</i> Motion | 1/27/2023 Motion For Leave To File <i>Amicus Curiae</i> Memorandum Of Attorneys For Education Rights  |
| State's Response Brief    | 11/14/2022 State of Washington's Response Brief   |
| Wahkiakum's Opening Brief | 9/12/2022 Wahkiakum School District's Opening Brief   |
| Wahkiakum's Reply Brief   | 1/13/2023 Wahkiakum School District's Reply Brief   |
| WASA                      | Washington Association of School Administrators ( <i>the Washington association whose members are the Washington school districts' administrators</i> ) |
| WASA <i>Amicus</i> Brief  | 7/26/2022 Memorandum Of <i>Amicus Curiae</i> Washington Association Of School Administrators  |

| ABBREVIATION                  | FULL TITLE OF COURT FILING   |
|-------------------------------|--|
| WASA <i>Amicus</i> Motion     | 7/26/2022 Motion To File Memorandum Of <i>Amicus Curiae</i> Washington Association Of School Administrators  |
| WSSDA                         | Washington State School Directors Association<br>( <i>the Washington State agency whose members are the Washington school districts' publicly elected school board members</i> ) |
| WSSDA<br><i>Amicus</i> Brief  | 1/24/2023 Memorandum Of <i>Amicus Curiae</i> Washington State School Directors' Associations   |
| WSSDA<br><i>Amicus</i> Motion | 1/24/2023 Motion To File Memorandum Of <i>Amicus Curiae</i> Washington State School Directors' Associations  |

RAP 10.3(f) dictates that “The brief in answer to a brief of amicus curiae should be limited solely to the new matters raised in the brief of amicus curiae.” As noted below, the new matter raised in the WSSDA *Amicus* Brief is the State School Directors’ equal *access* question. This brief answers that question.

**I. THE QUESTION RAISED BY THE STATE SCHOOL DIRECTORS’ *AMICUS* BRIEF**

The State school directors’ brief presents a straightforward “why” question to the defendant State, plaintiff school district, and this Court:

“Why should students in a poor, rural county in Southwest Washington effectively be denied the same *access* to the program of basic education as students in a wealthy, metropolitan county in Western Washington?”

WSSDA *Amicus* Brief at 1 (italics in original).

The plaintiff school district believes the unequivocal wording of Article IX, §1 mandates an unequivocal answer:

They shouldn’t be.

## **II. STATE SCHOOL DIRECTORS CONFIRM WAHAKIYAKUM STUDENTS ARE NOT ALONE**

It's easy for politicians in Olympia to dismiss and disregard the Wahkiakum School District as an insignificant backwater with less than 500 of our State's 1.1 million students, and less than 3000 of our State's 4.8 million voters.<sup>1</sup>

But the locally elected school board members running our State's 295 school districts confirm that the Wahkiakum students being marginalized in this case are not alone – for all across our State, “poor, rural students are denied the same *access* to a program of basic education as wealthy, metropolitan students because capital facility ballot measures based on local property

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<sup>1</sup>[https://www.co.wahkiakum.wa.us/DocumentCenter/View/1953/SKMBT\\_42321110816310?bidId=](https://www.co.wahkiakum.wa.us/DocumentCenter/View/1953/SKMBT_42321110816310?bidId=) (2864 registered voters in the Wahkiakum School District's most recent election);  
<https://www2.sos.wa.gov/elections/voters/> (4,798,011 active registered voters in Washington as of February 2, 2023);  
<https://washingtonstatereportcard.ospi.k12.wa.us/ReportCard/ViewSchoolOrDistrict/100280> (433 enrolled students in the Wahkiakum School District's 2022-2023 school year);  
<https://washingtonstatereportcard.ospi.k12.wa.us/ReportCard/ViewSchoolOrDistrict/103300> (1,096,304 enrolled students all Washington school districts' 2022-2023 school year).

tax values are an inherently inequitable and unreliable source of funding.” WSSDA *Amicus* Motion at 1-3 (italics in original); *accord*, WSSDA *Amicus* Brief at 2-20.

The amicus briefing previously filed by the statewide association of our State’s public school administrators similarly reiterated this inequity perpetuated all across our State by the defendant’s current system for funding (and not funding) the education facilities required to safely provide students a 21st century education. WASA *Amicus* Brief at 5-11; WASA *Amicus* Motion at 1.

In short: the “why” question presented by the WSSDA *Amicus* Brief concerns the kids in marginalized and disadvantaged communities all across our State – not just those in the one school district here.



### **III. ANSWER TO THE QUESTION RAISED BY THE STATE SCHOOL DIRECTORS' AMICUS BRIEF**

Article IX, §1's answer to the "why" question presented by Washington's school directors is simple: public school children in our State's lower economic class should not be denied the same education *access* as their peers in our State's upper economic class. The following pages address the wording in Article IX, §1 that mandates that answer.

#### **A. All Children: *wake up the echoes cheering for education and equality***

In addressing the "why" question presented in their *amicus* briefing, our State's school directors emphasize the inequality perpetuated by the State's failure to amply fund the education facilities needed to safely provide poor and rural children the 21st century education they'll need in today's world. WSSDA *Amicus* Brief at 3-20.

This focus on the critical tie between education and equality echoes the sworn testimony of our State's civil rights leaders during the *McCleary v. State* trial. For example:

- Seattle Urban League president James Kelly’s focus on how the lack of ample State funding defeats public education’s purpose of being the “great equalizer” in our democracy;<sup>2</sup> and
- El Centro de la Raza founder Roberto Maestas’s focus on education being essential to freedom because “the only way that you can be free is to be fully educated” (*paraphrasing revolution leader Jose Marti’s “el unico modo de ser libre es ser culto”*).<sup>3</sup>

This focus on the critical tie between education and equality isn’t new – for it echoes the words of other civil rights leaders throughout history. For example:

- George Washington Carver (“Education is the key to unlock the golden door of freedom.”<sup>4</sup>).
- Nelson Mandela (“Education is the most powerful weapon which you can use to change the world.”<sup>5</sup>).

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<sup>2</sup> *Report of Proceedings in McCleary v. State, Case No. 84362-7, at RP 2485-2568, page 2498.*

<sup>3</sup> *Report of Proceedings in McCleary v. State, Case No. 84362-7, at RP 2569-2661, page 2597.*

<sup>4</sup><https://www.smcm.edu/president-draft/wp-content/uploads/sites/59/2014/08/road-to-freedom.pdf>

<sup>5</sup> <https://blog.usaid.gov/2013/04/education-the-most-powerful-weapon/>

- Kofi Annan (“Education is a human right with immense power to transform. On its foundation rest the cornerstones of freedom, democracy, and sustainable human development.”<sup>6</sup>)
- Malcolm X (“Education is the passport to the future, for tomorrow belongs to those who prepare for it today.”<sup>7</sup>).
- Frederick Douglass (“It is easier to build strong children than to repair broken men.”<sup>8</sup>).

Nor is this focus on the fundamental importance of amply educating our upcoming generation limited to civil rights leaders.

For example:

- Victor Hugo (“He who opens a school door, closes a prison.”<sup>9</sup>).
- American author Jonathan Kozol (“We are going to build a lot more prisons if we do not deal with the schools and their inequalities.”<sup>10</sup>).

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<sup>6</sup><https://www.globalpartnership.org/blog/kofi-annan-knew-importance-education>

<sup>7</sup><https://commonthread.antioch.edu/sharing-education-as-the-passport-to-access-and-opportunity/>

<sup>8</sup> <https://link.springer.com/article/10.1007/s41134-019-00106-z>

<sup>9</sup> <https://inequality.stanford.edu/node/126>

<sup>10</sup> <https://changingthepresent.org/pages/Quotes-about-Education>

- Ben Franklin (“An investment in knowledge pays the best interest.”<sup>11</sup>).
- Lyndon Johnson (“We believe, that is, you and I, that education is not an expense. We believe it is an investment.”<sup>12</sup>).
- Barack Obama (“a good education is no longer just a pathway to opportunity – it is a prerequisite.”<sup>13</sup>).
- Charles Barkley (“Poor people cannot rely on the government to come to help you in times of need. You have to get your education. Then nobody can control your destiny.”<sup>14</sup>).

As the many voices noted above confirm, equality requires education. And that is why upholding and enforcing the plain, unequivocal words of Article IX, §1 is so important – for those words expressly dictate that it is the State’s paramount duty to

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<sup>11</sup><https://benjaminfranklin.yalecollege.yale.edu/about-us/about-benjamin-franklin>

<sup>12</sup><https://www.forbes.com/sites/markkantrowitz/2020/11/18/quotes-about-money-power-education-and-opportunity/?sh=5fe2209570bd>

<sup>13</sup><https://obamawhitehouse.archives.gov/issues/education/k-12#:~:text=In%20today's%20global%20economy%2C%20a,is%20a%20prerequisite%20for%20success>

<sup>14</sup> <https://scribe.usc.edu/the-book-is-on-the-table/>

make ample provision for the education of all children. Not just upper class children. All children. *McCleary*, 173 Wn.2d at 520 (the word “all” in Article IX, §1 means “every” and “each and every one”; the term “all children” in Article IX, §1 therefore “encompasses each and every child since each will be a member of, and participant in, this State’s democracy, society, and economy. No child is excluded.”) (internal quotation marks & citations omitted).

In short: Public education and equality are two sides of the same democracy coin. But as the WSSDA *Amicus* Brief confirms, the defendant’s ongoing failure to amply fund the education facilities needed to safely provide poor and rural kids the 21st century education they’ll need in today’s world perpetuates inequality. The Wahkiakum School District

respectfully submits that perpetuating inequality is not what the plain wording of Article IX, §1 means when it says:

It is the  
paramount duty of the state to make  
ample provision for the education of  
**all** children residing within its borders,  
without distinction or preference  
on account of race, color, caste, or sex.

*Article IX, §1 [bold & underline added]*

**B. Without Preference on Account of Caste: “without” does not mean “with”**

In addressing the “why” question presented by their *amicus* brief, Washington’s school directors also emphasize that the defendant’s ongoing failure to amply fund the education facilities needed to safely provide poor and rural children the 21st century education they’ll need in today’s world establishes “a modern-day caste system in which small, poor, and rural districts’ buildings are left to crumble while large, wealthy, and metropolitan districts’ buildings are improved, rebuilt, and modernized.” WSSDA *Amicus* Brief at 1-2.

The State has never disputed that the word “caste” in Article IX, §1 includes “a division of society based on differences of wealth”. E.g., Wahkiakum’s Opening Brief at 4 & 60-61.

Nor has the State ever disputed that students in poorer areas like Wahkiakum are part of the lower income caste in our State. E.g., Wahkiakum’s Opening Brief at 4 & 63-64.

And as the Washington school directors’ *amicus* brief confirms, the State cannot genuinely dispute that the current method of funding the education facilities needed to safely provide students a 21st century education actually does in fact prefer students in the upper class parts of our State. WSSDA *Amicus* Brief at 2-20.

Preferring students in Washington’s upper class castes might comply with a legal duty to provide for education with preference on account of caste.

But “with” is not what Article IX, §1 says.

It says “without”.

The Wahkiakum School District respectfully submits that an education funding system that prefers children in our State’s upper class communities is not what the plain wording of Article IX, §1 means when it says:

It is the  
paramount duty of the state to make  
ample provision for the education of  
all children residing within its borders,  
**without** distinction or preference  
on account of race, color, caste, or sex.

*Article IX, §1 [bold & underline added]*

C. **Ample Provision: it doesn’t mean partial or unobtainable assistance**

In addressing the “why” question presented by their *amicus* briefing, Washington’s school directors also emphasize that the funding buckets referenced by the State (e.g., SCAP and safety repair grants) are at best only partial – and for poorer districts like Wahkiakum, are in reality unobtainable. WSSDA *Amicus* Brief at 1-20.



Back during the French Revolution, the poorer citizens across France could not afford to pay for the bread they needed to feed their families. When told of this fact, Marie Antoinette's cavalier response was: "Then let them eat cake!"<sup>15</sup>

Today, the poorer school districts across Washington cannot afford to pay for the facilities they need to safely provide their students a 21st century education. Indeed, this suit's Rule 12(b)(6) dismissal is based on it being true that the Wahkiakum School District cannot afford to pay for the education facilities required to safely provide its students the 21st century education they will need in today's world. Wahkiakum's Opening Brief at 4-14.

As the following paragraphs explain, the State's suggesting funding buckets like SCAP and safety repair grants is akin to telling this Court "let them eat cake." Or more fittingly

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<sup>15</sup> *This commonly attributed "let them eat cake" response derives from book six of Jean-Jacques Rousseau's Confessions. See [https://en.wikipedia.org/wiki/Let\\_them\\_eat\\_cake](https://en.wikipedia.org/wiki/Let_them_eat_cake).*

here, saying with respect to funding buckets that provide only partial assistance: “take a cupcake.” And with respect to funding assistance like SCAP that’s unobtainable to poor rural districts that lack the wealth to afford construction bonds: “look at a cupcake.”

**1. “Have a cupcake”**

In addressing the “why” question presented by their *amicus* brief, the State school directors note the relatively small size of funding buckets the State invokes. WSSDA *Amicus* Brief at 17.

The State boasts, for example, that its 2022 legislature appropriated “\$8.9 million for emergency or urgent repairs affecting the health and safety of students.” State’s Response Brief at 23. That equates to about \$30,000 of health & safety repairs for each of our State’s 295 school districts. Or about \$1,800 of health & safety repairs for each of our State’s

approximately 5,000 permanent school buildings.<sup>16</sup> Or less than a third of the approximately \$33.5 million being spent for renovating and replacing HVAC, lighting, plumbing, etc. systems to provide “a safe place for the public and staff” in just one government building in Olympia.<sup>17</sup>

Even the largest funding bucket invoked by the State – the State Construction Assistance Program (SCAP) – funds only a portion of a school district’s construction costs. E.g., Wahkiakum’s Opening Brief at 22 (average of 1/3 the construction cost, but only if it’s available); State’s Response Brief at 19 & n.3 (range of 20% to 95% of formula “eligible” costs, but with various construction costs excluded); *see also* RCW 28A.525.162 & .166 (SCAP excludes districts like

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<sup>16</sup>[https://www.energy.wsu.edu/Documents/ICOS%20Leg%20Report\\_11-28-16.pdf](https://www.energy.wsu.edu/Documents/ICOS%20Leg%20Report_11-28-16.pdf) (page 9) (approximately 5,000 permanent buildings).

<sup>17</sup> Washington Supreme Court 6/27/2022 Press Release (<https://www.courts.wa.gov/newsinfo/?fa=newsinfo.pressdetail&newsid=49733>).

Wahkiakum whose voters do not pass construction bonds with the required 60% supermajority; is confined to the legislature's discretionary budget-balancing appropriation each term, and is then further restricted to only a percentage portion of eligible construction costs within that discretionary appropriation).

As for the total of all State facilities funding, the State asserts that its various buckets add up to a \$850 million supplemental budget total. State's Response Brief at 22. But as the State school directors' *amicus* brief points out, even that total equates to only a fraction of our 295 school districts' \$4 billion facilities funding costs. WSSDA *Amicus* Brief at 19.

And while the State boasts about its K-12 facilities funding being about 10% of its capital budget (State's Response Brief at 22), on January 9, 2023 the State's Superintendent of Public Instruction stated in the State's Annual K-12 Education Update

that it should be 50%.<sup>18</sup> (One doesn't need to be a math genius to know that 50% is five times as much as 10%.)

In short: The WSDDA *Amicus* Brief shows the facilities funding buckets that the State invokes might be a start towards Article IX, §1 compliance. But those buckets do not provide school districts the funding needed for the education facilities required to safely provide our State's 1.1 million public school students the 21st century education they will need in today's world. Using the previously noted Marie Antoinette analogy, those funding buckets might provide a pretty cupcake to some school districts – but they do not provide the ample funding meat that school districts like Wahkiakum need for the education facilities required to safely provide their students a 21st century education.

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<sup>18</sup> <https://tvw.org/video/state-superintendent-chris-reykdal-press-conference-2023011065/?eventID=2023011065> (reporter's question and Superintendent Reykdal's answer at time mark 59:40-1:02:00).

## 2. “Look at a cupcake”

In addressing the “why” question presented by their *amicus* brief, the State school directors further explain that poor, rural districts like Wahkiakum are effectively locked out of the largest funding bucket the State invokes to defend its facilities funding (SCAP). WSSDA *Amicus* Brief at 9-16.

That’s because SCAP – the State Construction Assistance Program – is exactly what its title says it is. It’s an assistance program. And it’s not even accessible by school districts like Wahkiakum whose voters do not enjoy the upper class property tax base and upper class income levels needed to pass and pay the property tax increases required for a capital construction bond. WSSDA *Amicus* Brief at 9-16.

This inability of our State’s poor and rural school districts to pass the bonds required to access any of the partial assistance offered by SCAP still continued after the January 24, 2023 filing of the WSSDA *Amicus* Brief – for in the ensuing February 14, 2023 elections, none of the construction bonds proposed by poor

or rural school districts were able to secure the 60% supermajority required for a bond proposition to pass.<sup>19</sup>

In short: The partial assistance available to some school districts under SCAP isn't even a pretty cupcake that a poor rural district like Wahkiakum can have. Instead, SCAP is something the State puts in the window for wealthier districts to buy – but poor rural districts can only look at.

The Wahkiakum School District appreciates that SCAP provides partial assistance to some wealthier school districts. But the State's providing partial assistance for the education of

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<sup>19</sup> <https://results.vote.wa.gov/results/20230214/graysharbor/> (**Elma School District Bond**);  
<https://results.vote.wa.gov/results/20230214/island/> (**Oak Harbor School District Bond Proposition**);  
<https://results.vote.wa.gov/results/20230214/king/> (**Enumclaw School District Proposition No.1**);  
<https://results.vote.wa.gov/results/20230214/lewis/> (**Napavine School District Proposition No.1**);  
<https://results.vote.wa.gov/results/20230214/pierce/> (**Steilacoom School District Proposition No.1**);  
<https://results.vote.wa.gov/results/20230214/pierce/> (**Orting School District Proposition No.1**);  
<https://results.vote.wa.gov/results/20230214/yakima/> (**Mabton School District Proposition No.1**).

students in wealthier school districts does not make ample provision for the education of students in poorer districts like Wahkiakum.

**3. “Ample provision” conclusion**

The Wahkiakum School District respectfully submits that giving partial or unobtainable assistance is not what the plain wording of Article IX, §1 means when it says:

It is the  
paramount duty of the state to make  
**ample provision** for the education of  
all children residing within its borders,  
without distinction or preference  
on account of race, color, caste, or sex.  
*Article IX, §1 [bold & underline added]*

**D. The Judicial Branch’s Critical Duty: *uphold electoral minority’s constitutional rights***

This Court has made the constitutional right in this case clear. “Article IX, section 1 confers on children in Washington a positive constitutional right to an amply funded education.” *McCleary*, 173 Wn.2d at 483 (underline added).



This Court has also made it clear that this right to an amply funded education is every Washington child's *paramount* right under our State Constitution. *McCleary*, 173 Wn.2d at 485 & 518 (quoting *Seattle School District*, 90 Wn.2d at 511-512).

And significantly here, studying the materials cited by the school directors' *amicus* brief illustrates the type of voter sentiments that make it critical for the judicial branch to vigilantly protect the constitutional rights of citizens in a democracy who – like the children in poor rural areas such as Wahkiakum – do not constitute the majority of voters. The public comments to the Seattle Times article cited in the WSSDA *Amicus* Brief (at 17) highlight why vigilant judicial protection is critical to protecting the paramount and positive constitutional right of Washington children – all Washington children – to an amply funded education. E.g.:

- ☑ “Other schools districts are not my concern”.
- ☑ “students in other districts are not my responsibility. I pay local taxes and local levies .... That is enough.”

- ☑ “I don’t give a hoot about the schools in Yelm, Moses Lake, or even Bellevue. It’s the job of the taxpayers in those districts to ensure their schools are amply funded, not mine.”
- ☑ “I don’t care about ‘equitable’ funding of schools across the state.”
- ☑ “education is a parental responsibility, not the state’s.”
- ☑ “Basic education is what the voters decide it is.”
- ☑ The state’s education responsibility “can be and should be removed. **Parents** have a responsibility to educate their children.”
- ☑ “Forcing taxpayers to pay for other’s children’s education is not equitable, nor in keeping with the U.S. Constitution. Government schools are unable to satisfy the needs of all children, it is a parental responsibility.”
- ☑ “Small, rural districts ... already get more than they pay for. No more subsidies!”

<https://www.seattletimes.com/opinion/editorials/school-levies-are-a-band-aid-for-stable-equitable-k-12-funding/#comments>

(by, e.g., Hopeful about tomorrow; Speedy412; thomasdoubts; user1017814; BlueDog).

This Court has declared that it must vigilantly uphold and enforce Washington children’s positive constitutional right to an

amply funded education when this Court's so doing "serves as a check on the activities of another branch of government or is contrary to the view of the constitution taken by another branch." *McCleary*, 173 Wn.2d at 515 (quoting & citing *Seattle School District*, 90 Wn.2d at 496; *In re Juvenile Director*, 87 Wn.2d 232, 241, 552 P.2d 163 (1976); *United States v. Nixon*, 418 U.S. 683, 703, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974); *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 176, 2 L.Ed. 60 (1803)).

The Wahkiakum School District respectfully submits that this Court must be similarly vigilant to uphold and enforce Washington children's positive constitutional right to an amply funded education when this Court's so doing serves as a check on a majoritarian preference to dismiss or disregard the constitutional rights of citizens in a minority. Thus, this Court should not sit on the sidelines to leave children in places like Wahkiakum without the education facilities needed to safely provide them the 21st century education they'll need to compete

in today's economy and meaningfully participate in our democracy.

**IV. CONCLUSION REGARDING THE  
QUESTION RAISED BY THE  
STATE SCHOOL DIRECTORS' *AMICUS* BRIEF**

The State school directors' *amicus* brief presented a straightforward "why" question:

"Why should students in a poor, rural county in Southwest Washington effectively be denied the same *access* to the program of basic education as students in a wealthy, metropolitan county in Western Washington?"

WSSDA *Amicus* Brief at 1 (italics in original). This RAP 10.3(f) response explained the answer mandated by the plain, unequivocal wording of Article IX, §1:

They shouldn't be.

All children means **all** children. Without preference on account of caste means **without** preference on account of caste. And ample provision means **ample provision**. Answering the "why" question presented by the State school directors' *amicus*

brief requires this Court to uphold and enforce the plain, unequivocal promise that Article IX, §1 makes to the currently marginalized public school students in places like Wahkiakum:

It is the  
paramount duty of the state to make  
**ample provision** for the education of  
**all** children residing within its borders,  
**without** distinction or preference  
on account of race, color, caste, or sex.

*Article IX, §1 [bold & underline added]*

This Court unequivocally held over a decade ago that:

The word “education” under article IX, section 1 means the basic knowledge and skills needed to compete in today’s economy and meaningfully participate in this state’s democracy.

*McCleary*, 173 Wn.2d at 483.

The lower court, however, based its dismissal as a matter of law on the following two dispositive facts being true: (1) the defendant State does not fund the education facilities required to

safely provide Wahkiakum students the above “education”;<sup>20</sup> and (2) the State’s failure to fund these needed education facilities “has caused (and continues to cause) actual, substantial, immediate, and irreparable loss, harm, and damage to the education that the Wahkiakum School District can provide to its students.”<sup>21</sup>

As the school district has accurately pointed out before, second graders do not get a second chance at second grade. Nor do the district’s other students get a second chance at the education they lose when their current lack of needed education facilities leaves them behind. If Wahkiakum children’s paramount and positive constitutional right to an amply funded

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<sup>20</sup> *Wahkiakum’s Opening Brief at 3-15 (citing the specific fact statements that the State’s CR 12(b)(6) motion and lower court ruling presumed to be true).*

<sup>21</sup> *Wahkiakum’s Opening Brief at 15 & 42 (quoting Complaint ¶150); see also Reply Brief at 40 n.13 (confirming evidence that the physical deterioration of Wahkiakum’s education facilities continues to worsen).*

education is real instead of a mirage, the defendant State's denials and delays must stop.

This Court should accordingly reverse the lower court's Rule 12(b)(6) dismissal.

With its reversal and remand for trial, this Court could also consider ordering a pause to allow the Governor and legislature to immediately assemble a viable task force with all stakeholders represented to expeditiously develop a sound prototypical funding model for the education facilities necessary to safely provide the 21st century education promised by this Court and Article IX, §1. *See* Wahkiakum's Reply Brief at 39-40.

RAP 18.17(b) & (c)(6) Word Limit Certification:

I certify that this Answer to the Washington State School Directors' Association's *amicus* brief, exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, signature blocks, and pictorial images (e.g., photographs, maps, diagrams, and exhibits), contains 3266 words (not more than 5000).

RESPECTFULLY SUBMITTED this 21st day of  
February, 2023.

Foster Garvey PC

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## CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned been, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served copies of the attached document upon the counsel of record at the email addresses listed below:

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

Executed on February 21, 2023, at Seattle, Washington.

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February 21, 2023 - 4:39 PM

## Transmittal Information

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### Comments:

Wahkiakum School District s RAP 10.3(f) Answer to Memorandum of Amicus Curiae Washington State School Directors Association ( WSSDA )

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