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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 OPENING BRIEF**

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School Seismic Safety Assessments (2021)	Washington State School Seismic Safety Assessments Project, <i>ASCE 41-17 Screening Reports</i> (June 2021), available at <a href="https://fortress.wa.gov/dnr/geologydata/school_seismic_safety/phase2/SSSP_2021_Engineering_Vol3_ASCE41_Screening_Reports.pdf">https://fortress.wa.gov/dnr/geologydata/school_seismic_safety/phase2/SSSP_2021_Engineering_Vol3_ASCE41_Screening_Reports.pdf</a>

ABBREVIATION	WEBSITE ADDRESS
School Seismic Safety Report (2021)	Washington School Seismic Safety Project 2019–2021 Legislative Report (June 30, 2021), available at <a href="https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=School_Seismic_Safety_Project_2021_Final_Report_DNR_2e596f5f-a8dc-49ef-8cdb-01c1d00a0fce.pdf">https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=School_Seismic_Safety_Project_2021_Final_Report_DNR_2e596f5f-a8dc-49ef-8cdb-01c1d00a0fce.pdf</a>
Sky News Article (2022)	Sky News network, <i>Texas shooting: School where 19 pupils and two teachers were shot dead is to be demolished</i> (June 22, 2022), available at <a href="https://news.sky.com/story/texas-shooting-school-where-19-pupils-and-two-teachers-were-shot-dead-is-to-be-demolished-12638192">https://news.sky.com/story/texas-shooting-school-where-19-pupils-and-two-teachers-were-shot-dead-is-to-be-demolished-12638192</a>
Spokesman Review Article (2021)	Spokane Spokesman-Review, <i>Almira School fire: Residents gather to grieve ‘heart and soul of our community’</i> (October 14, 2021) available at <a href="https://www.spokesman.com/stories/2021/oct/13/after-fire-destroys-almira-school-community-gather/">https://www.spokesman.com/stories/2021/oct/13/after-fire-destroys-almira-school-community-gather/</a>
U.S. Departments of Education & Justice Report (2022)	U.S. Department of Education & U.S. Department of Justice, <i>Report on Indicators of School Crime and Safety: 2021</i> (June 2022) available at <a href="https://nces.ed.gov/pubs2022/2022092.pdf">https://nces.ed.gov/pubs2022/2022092.pdf</a>

ABBREVIATION	WEBSITE ADDRESS
Uline & Tschannen-Moran (2008)	Cynthia Uline and Megan Tschannen-Moran, <i>The Walls Speak: The Interplay of Quality Facilities, School Climate, and Student Achievement</i> , 46 J. EDUC. ADMIN. 55 (2008), available at <a href="https://www.emerald.com/insight/content/doi/10.1108/09578230810849817/full/html">https://www.emerald.com/insight/content/doi/10.1108/09578230810849817/full/html</a>

**I. INTRODUCTION:**  
**The Dispositive Question Of Constitutional Law**

The lower court's Rule 12(b)(6) dismissal of the school district's Complaint did two significant things.

**First:** Instead of putting the cart before the horse, it put the legally critical horse in front of this suit's factually loaded cart. Its Rule 12(b)(6) dismissal presumed the Complaint's factual allegations about the school district's education facilities are true, but nonetheless dismissed that Complaint as a matter of law pursuant to the dismissal motion's theory that Article IX, §1 should be read to categorically *exclude* any education facility that is required to provide an education.

**Second:** The other significant thing the lower court's dismissal did was err as a matter of law – for the plain, unequivocal wording of Article IX, §1 has no such exclusion.

Article IX, §1 expressly commands that:

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*

The above wording does not exclude needed education facilities. And Washington law requires the judicial branch to uphold the above wording as written – not engraft an unwritten exclusion into it to save the State money.

As the following pages explain, the lower court's dismissal should therefore be reversed. If the State wishes to refute any of the facts detailed in the school district's Complaint, the State can attempt to do so at trial. But Washington law does not allow the State to instead give itself a get-out-of-jail-free card by inserting an unwritten exclusion into the paramount education duty imposed upon it by the plain, unequivocal wording of Article IX, §1.

## **II. ASSIGNMENT OF ERROR**

The lower court's Rule 12(b)(6) dismissal was error as a matter of Washington law because the paramount education duty imposed upon the State by Article IX, §1 does not exclude the education facilities needed to safely provide an education.

## **III. STATEMENT OF THE CASE**

### **A. The Undisputed Facts upon which the Rule 12(b)(6) Dismissal is Based**

The facts upon which the dismissal order is based are undisputed. That's because, as the State candidly acknowledged in its Rule 12(b)(6) motion: "The facts as alleged in the Complaint are presumed true." CP 43:13-14 (citing CR 12(b)(6) & *Trujillo v. Northwest Trustee Servs.*, 183 Wn.2d 820, 830, 355 P.3d 1100 (2001)).

APPENDIX ONE is a courtesy copy of the school district's presumed-to-be-true Complaint (CP 1-29). The following pages outline several of its presumed-true facts, with a specific citation for each fact. For example: the citation "[¶6]" means "Complaint at ¶6".



## **1. Wahkiakum school district**

The Wahkiakum school district is a poor, rural school district [¶6]. Its voters have a per capita income of about \$29,000 [¶6]. Approximately 57% of its students are low income [¶6].

This compares, for example, to a wealthier Washington school district whose voters have over three times Wahkiakum's per capita income, and only 4% of whose students are low income [¶43].

Under the Merriam-Webster dictionary definition of the word "caste" – *i.e.*, "a division of society based on differences of wealth" – Wahkiakum's students are members of the lower income caste in our State [¶¶39-40, 42].

## **2. Wahkiakum's education facilities**

The Wahkiakum school district lacks the facilities needed to equip its students with the education required in today's economy to compete on a level playing field with their peers privileged enough to live in our State's more affluent areas [¶2].

That's one of the undisputed facts upon which the lower court's Rule 12(b)(6) dismissal is based.

The plaintiff school district's school buildings are:

- an outdated elementary school built back in 1950-1952 to teach World War II baby boomers as they reached grade school [¶155].
- an outdated high school built in 1959-1962 to teach those World War II baby boomers as they reached high school [¶161].
- an outdated middle school built in 1992-1994 to create space as student population grew [¶158].

And as explained in the school district's Complaint, the education "facilities" it lacks are not simply three bare shells standing alone. The education facilities it needs include necessary components and infrastructure such as roofing, exteriors, windows, flooring, restrooms, classrooms, Science Technology Engineering & Math ("STEM") spaces, labs, Career & Technical Education ("CTE") spaces, arts and assembly spaces, educational technology spaces, health & fitness spaces, school nurse & medical spaces, capital equipment, HVAC, plumbing, wiring, internet connections, Information Technology

(“IT”) components, structural components, electrical components, fire protection components, seismic safety components, building security components, ADA/IDEA components, and life/safety protection components [¶121].

### **3. The “education” at issue in this case**

The school district’s Complaint specifies that the “education” at issue in its suit is limited to the Article IX, §1 “education” that the Court defined in its published *McCleary* decision [¶¶45-46]:

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 [¶¶45-46].

The school district’s Complaint also specifies that its students’ corresponding constitutional right to that “education” is what the Court’s published *McCleary* decision declared is each and every Washington child’s “positive constitutional right to an amply funded education” [¶¶17-18 (underline added; quoting *McCleary*, 173 Wn.2d at 483); ¶¶25-26].

**4. Needed funding for Wahkiakum’s education facilities**

The school district’s outdated education facilities require over \$50 million of construction funding to safely provide its students the above “education” at issue in this suit [¶155 (elementary school over \$15 million), ¶161 (high school over \$30 million), ¶158 (middle school over \$5 million)].

This \$50 million does not include a single enhancement beyond what’s needed to safely provide Wahkiakum students that “education” – it’s just the education facilities needed to safely provide Wahkiakum students that “education” [¶¶155, 161, 158].

This over \$50 million education facilities need is one of the undisputed facts upon which the lower court’s Rule 12(b)(6) dismissal is based.

**5. Local funding for Wahkiakum’s education facilities**

Since school bonds are funded with local property taxes, they are tied directly to the assessed value of the taxable real property within a school district [¶111]. This means that the

same facilities project in two school districts imposes a different tax rate on local voters when funded by bonds [¶112-113]. For example, funding a \$30 million project with a voter-approved bond imposes:

- a property tax rate of almost **four dollars** per thousand dollars of assessed property value on a Wahkiakum school district property owner [¶112], but
- a property tax rate of about **twelve pennies** per thousand dollars of assessed property value on a Mercer Island school district property owner [¶113].

The Wahkiakum school district nonetheless tried to fund at least some of its previously-noted education facility needs by asking local voters to pass a school bond (and thus impose upon themselves the corresponding local property tax rate increase) [¶¶157, 160, 163].

Local voters, however, declined to pass the school bond needed to safely provide Wahkiakum students the previously noted “education” to which each and every one of them has a

positive constitutional right under Article IX, §1 [¶¶157, 160, 163].<sup>1</sup>

## 6. **State funding for Wahkiakum’s education facilities**

The funding the State provides to the Wahkiakum school district for education facilities does not correlate to what’s required to provide all Wahkiakum students the safe facilities needed to provide them a realistic and effective opportunity to

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<sup>1</sup> *This was not the first time local Wahkiakum voters declined to impose upon themselves the increased property tax rates required for a school facilities bond – for they have declined to pass facilities funding bonds every time but once in the past. KING 5 T.V. Article (2022). The Washington Secretary of State’s public record website also confirms that (a) the year before the district filed this suit, local voters rejected a property tax increase to fund the district’s bond request with a vote of 66% no / 34% yes; (b) local voters have quite consistently rejected a property tax increase to fund district bond request; and (c) this year local voters passed a \$997,000 levy by only 50 votes – meaning that if 25 voters had voted the other way, even this under-a-million-dollar levy would have failed. See <https://results.vote.wa.gov/results/20200211/wahkiakum/>; <https://results.vote.wa.gov/results/20220208/wahkiakum/> . Wahkiakum, moreover, is not the only Washington school district whose students are handicapped by local voters’ declining to pass needed school bonds. E.g., voters declined to pass local school bonds over 80% of the time in this year’s February school bond elections. OSPI Election Detail (2022).*

meet the learning standards specified by the State [¶128 (no correlation to state learning standards), ¶134 (no correlation to student safety)].

That's another undisputed fact upon which the lower court's Rule 12(b)(6) ruling is based.

This undisputed fact does not imply the State must fully fund all possible capital expenses. It simply confirms that State funding in fact does not provide Wahkiakum students the safe facilities needed to provide them a realistic and effective opportunity to meet the learning standards specified by the State.

The funding the State provides to the Wahkiakum school district for education facilities also does not correlate to what's required to provide all Wahkiakum students the safe facilities needed to provide them a realistic and effective opportunity to gain the knowledge and skills specified under State law [¶131 (no correlation to knowledge and skills specified in state law), ¶134 (no correlation to student safety)].

That's another undisputed fact upon which the lower court's Rule 12(b)(6) ruling is based.

This undisputed fact does not imply the State must fully fund all possible capital expenses. It simply confirms that State funding in fact does not provide Wahkiakum students the safe facilities needed to provide them a realistic and effective opportunity to gain the knowledge and skills specified under State law.

These shortcomings in the funding that the State provides to the Wahkiakum school district for education facilities have a tangible negative effect on student safety [¶134]. This is another undisputed fact upon which the lower court's Rule 12(b)(6) ruling is based.

In short, while the State has mistakenly asserted that the school district claims Article IX, §1 imposes on the State “a constitutional duty to fully fund all of [the district's] school capital projects” (CP 34:24-26), that is not what the Complaint dismissed by the lower court says.



Instead, the school district’s Complaint says Article IX, §1 requires the State to amply fund the facilities which are needed to safely provide its students the previously-noted “education” to which Article IX, §1 grants them a positive constitutional right.

For example:

141. Declaratory Relief. For the reasons outlined in this Complaint, this court should enter a declaratory judgment declaring that the State’s failure to amply fund the facilities needed to safely provide all Wahkiakum School District students the “education” to which they have a positive, constitutional right violates Article IX, §1 of the Washington State Constitution.

\* \* \* \*

152. Injunctive Relief. This court should enter an injunction enjoining the State’s failure to amply fund the facilities needed to safely provide all Wahkiakum School District students the “education” to which they have a positive, constitutional right under Article IX, §1.

[¶¶141 & 152 (underline added)]. The Complaint’s limitation to facilities needed to provide Wahkiakum students the “education” to which they have a positive constitutional right under

Article IX, §1 is consistently reiterated an additional sixteen times throughout the Complaint.<sup>2</sup>

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<sup>2</sup> *Complaint at ¶2 (“the physical facilities & infrastructure needed to equip all its students with the education required in today’s economy to compete on a level playing field with students privileged enough to live in our State’s more affluent areas”); ¶4 (“needed facilities & infrastructure”); ¶122 (“the facilities needed to safely provide all its students a realistic and effective opportunity to obtain the knowledge and skills encompassed within the word “education” in Article IX, §1”); ¶125 (“the real cost of providing the safe facilities needed to amply provide all Wahkiakum School District students a realistic and effective opportunity to obtain the knowledge and skills encompassed within the word “education” in Article IX, §1”); ¶128 (“the safe facilities needed to provide [Wahkiakum students] a realistic and effective opportunity to meet Washington’s state learning standards”); ¶131 (“the safe facilities needed to provide [Wahkiakum students] a realistic and effective opportunity to gain the knowledge and skills outlined in RCW 28A.150.210(1)-(4) and Washington’s state learning standards”); ¶136 (“the facilities needed to safely provide all its students the “education” to which they have a positive, constitutional right under Article IX, §1”); ¶137 (“the facilities needed to safely provide all Wahkiakum School District students the “education” to which they have a positive, constitutional right under Article IX, §1”); ¶138 (“the facilities needed to safely provide all Wahkiakum School District students the “education” to which they have a positive, constitutional right violates Article IX, §1”); ¶148 (“the facilities needed to safely provide all Wahkiakum School District students the “education” to which they have a positive, constitutional right under Article IX, §1”); ¶149 (“the facilities needed to safely provide*

The school district recognizes that facilities which are not needed to safely provide the above “education” can be enrichments that the State is not constitutionally required to amply fund. *E.g., McCleary*, 173 Wn.2d at 486; *Seattle School District*, 90 Wn.2d at 526.

But the Complaint that the lower court dismissed is expressly limited to education facilities which are needed to

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*all Wahkiakum School District students the “education” to which they have a positive, constitutional right violates Article IX, §1”); ¶150 (“the facilities needed to safely provide all Wahkiakum School District students the “education” to which they have a positive, constitutional right”); ¶156 (“the construction costs needed to safely provide the Wahkiakum School District’s elementary school students the “education” to which they have a positive, constitutional right under Article IX, §1”); ¶159 (“the construction costs needed to safely provide the Wahkiakum School District’s middle school students the “education” to which they have a positive, constitutional right under Article IX, §1”); ¶162 (“the construction costs needed to safely provide the Wahkiakum School District’s high school students the “education” to which they have a positive, constitutional right under Article IX, §1”); ¶164 (“the construction costs needed to safely provide the Wahkiakum School District’s elementary school, middle school, and high school students the “education” to which they have a positive, constitutional right under Article IX, §1”).*

safely provide the above “education”. And one of the presumed-true facts upon which the lower court’s Rule 12(b)(6) dismissal is based is that: “The State’s failure to amply fund the facilities needed to safely provide all Wahkiakum School District students the “education” to which they have a positive, constitutional right 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” [¶150].

## **B. Procedural History**

The following is a chronology of the relevant court proceedings below:

- December 28, 2021: school district files/serves its Complaint. CP 1-19.
- February 28, 2022: State files/serves its dismissal motion in lieu of an Answer. CP 32-59.<sup>3</sup>
- April 4, 2022: Superior Court hearing on the State's dismissal motion. RP 1-29.
- June 24, 2022: Superior Court grants the State's dismissal motion. CP 160 (courtesy copy attached as APPENDIX TWO.)
- June 27, 2022: school district files/serves this appeal. CP 161-166.

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<sup>3</sup> *Although the State's dismissal motion included a CR 12(b)(1) request to dismiss the Complaint's third claim (monetary relief) for lack of jurisdiction, the lower court expressly stated it was granting the State's CR 12(b)(6) request. Indeed, CR 12(b)(1) could not have been the basis for the lower court's dismissal with prejudice because a dismissal for lack of jurisdiction is a dismissal without prejudice. E.g., Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County, 135 Wn.2d 542, 556, 958 P.2d 962 (1998) (lack of jurisdiction "renders the superior court powerless to pass on the merits"); Scott v. Goldman, 82 Wn.App.*

**IV. ARGUMENT:**  
**The Plain, Unequivocal Wording of Article IX, §1**  
**Does Not Exclude Needed Education Facilities**

Article IX, §1 declares the defendant State's education duty in plain, unequivocal language:

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.

And as the Washington Supreme Court has emphasized with respect to the above language:

Undoubtedly, the imperative wording was intentional. ....

No other State has placed the common school on so high a pedestal.

*Seattle School District No. 1 v. State*, 90 Wn.2d 476, 510-511, 585 P.2d 71 (1978); *accord*, 90 Wn.2d at 499 (“There is no doubt the imperative wording of Const. art. 9, §1 was intentional”).

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*1, 10, 917 P.2d 131, 135 (1996); Zarbell v. Bank of Am. Nat. Tr. & Sav. Ass'n*, 52 Wn.2d 549, 554, 327 P.2d 436, 439 (1958).

The following pages address the intentionally imperative wording of Article IX, §1.

**A. “The Paramount Duty”**

**1. The Law**

The word “paramount” in Article IX, §1 means “having the highest rank that is superior to all others, having the rank that is preeminent, supreme, and more important to all others” – and thus “in the context of article IX, section 1, ‘paramount’ means the State must amply provide for the education of all Washington children as the State’s first and highest priority before any other State programs or operations.” *McCleary v. State*, 173 Wn.2d 477, 520, 269 P.3d 227 (2012) (underlines added; internal quotation marks omitted).

**2. Why imposing “the paramount duty” matters**

***(a) “the” does not mean  
“merely one of many”***

The education duty commanded by Article IX, §1 is the only duty that the Washington constitution declares to be the State’s paramount duty. *Seattle School District*, 90 Wn.2d at 498

& 510 (Article IX, §1 “is unique among state constitutions”, and our constitution has “declared only once in the entire document that a specified function was the State’s Paramount duty”).

In short: “the paramount duty” does not mean “merely one of many important duties”. It unequivocally means the one and only paramount duty of the State.

***(b) “the paramount” duty does not mean  
“a shared” duty***

The State has suggested that an education facilities exclusion should be inserted into Article IX, §1 because the State considers the funding of necessary education facilities to be a “shared responsibility” that the State is not solely responsible for. CP 53:14-15.

But that’s not what the plain, unequivocal wording of Article IX, §1 says. Article IX, §1 expressly declares that its education mandate is the paramount duty of the defendant State. Article IX, §1 does not say its education mandate is a shared responsibility or a mere suggestion that the State can evade by



pointing its finger at others such the district's local voters or low taxable property values.

***(c) helping the State pay for a needed education facility does not negate the State's paramount duty to provide that needed education facility***

The State has pointed to statutory and constitutional provisions that can sometimes help the State fund an education facility – and argued that the Court should therefore amend the plain, unequivocal wording of Article IX, §1 to insert an exclusion that exempts any education facility needed to provide an education from the paramount education duty that Article IX, §1 imposes upon the State. *See, e.g.,* CP 40:13-42:10.

The district acknowledges that there are statutory and constitutional provisions that can sometimes help defray or reduce the State's net expenditures for education facilities. But a provision that can sometimes help the State pay for an education facility does not nullify the plain, unequivocal wording of Article IX, §1 that makes it the paramount duty of the

State to make ample provision for the education of all Washington children, with no wording whatsoever in that Article IX, §1 mandate saying the education facilities needed to provide that education need not be provided.

**B. “Ample Provision”**

**1. The Law**

The word “ample” in Article IX, §1 means “considerably more than just adequate”. *McCleary*, 173 Wn.2d at 484 & 528. As a matter of Washington law, ample provision really does mean ample provision.

**2. Why mandating “ample provision” matters**

*(a) the State knows the critical importance of making “ample provision” for the education of all Washington children*

The State well understands the paramount significance of its ample provision duty – for its own reports have long confirmed that “Education is the single most important investment we can make for the future of our children and our state.” *McCleary*, 173 Wn.2d at 500; *see also* the trial court

Findings & Conclusions which the published *McCleary* decision affirmed (2010 WL 9073395, at ¶¶141, 142, & 168).

**(b) “ample provision” does not mean  
“some provision”**

The State has defended the level of funding it provides by pointing to State programs that sometimes allow the State to partially fund a portion of some school building construction costs – e.g., the School Construction Assistance Program (“SCAP”), which allows the State to contribute an average of 1/3 the construction cost of some projects if (and only if) local voters pass a bond to fund that project. CP 39:6-15, 40:6-7, 41:3-17 & n.5.

But some provision is not what the plain, unequivocal wording of Article IX, §1 says.

It says ample provision.

Moreover, since Wahkiakum voters declined to pass a bond, the State’s claim of making some provision under SCAP actually means no provision under SCAP for Wahkiakum students.

In short: the Wahkiakum school district acknowledges that some partial funding programs allow the State to contribute money to partially assist some districts with some construction costs. But making some provision or a partial provision is not what Article IX, §1 commands. It commands the State to make ample provision – which is “considerably more than just adequate”. *Supra*, Part IV.B.1.

Close-enough works in horse shoes and hand grenades. But not with a child’s paramount constitutional right.

***(c) State government having “always done it this way” does not make it constitutional***

The State has argued that an education facilities exclusion should be inserted into the plain, unequivocal wording of Article IX, §1 because State government has always treated education facilities as if they were excluded. CP 34:2-4 (“since statehood”); 34:8-10 (“have always”); 36:22-24 (“since the time of statehood”).

But the government’s having always done something in the past does not mean it’s constitutional.

For example, certain States had always operated segregated schools since the founding of our country. But that did not make those States' longstanding conduct constitutional.

It is true that the trial judge in one of the cases consolidated into *Brown v. Board of Education* adopted the defendant State's "we've always done it this way" argument to uphold school segregation as constitutional:

Separation of white and colored "children" in the public schools of Virginia has for generations been a part of the mores of her people. To have separate schools has been their use and wont.

The school laws chronicle separation as an unbroken usage in Virginia for more than eighty years.

*Davis v. Cty. Sch. Bd. of Prince Edward Cty.*, 103 F. Supp. 337, 339 (E.D. Va. 1952).<sup>4</sup>

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<sup>4</sup> More fully, the *Davis* trial judge's ruling held: "It indisputably appears from the evidence that the separation provision rests neither upon prejudice, nor caprice, nor upon any other measureless foundation. Rather the proof is that it declares one of the ways of life in Virginia. Separation of white and colored 'children' in the public schools of Virginia has for generations been a part of the mores of her people. To have separate schools has been their use and wont. The school laws chronicle

But *Brown v. Board of Education* expressly overturned that trial judge's decision. *Brown*, 349 U.S. 294, 299 n.3 (1955).

Closer to home here in Washington, our State government had consistently underfunded school district operating costs before the *McCleary* lawsuit. 173 Wn.2d at 529 (“the State has

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*separation as an unbroken usage in Virginia for more than eighty years. The General Assembly of Virginia in its session of 1869-70, in providing for public free schools, stipulated ‘that white and colored persons shall not be taught in the same school, but in separate schools, under the same general regulations as to management, usefulness and efficiency’. It was repeated at the session 1871-2, and carried into the Code of 1873. As is well known, all this legislation occurred in the period of readjustment following the Civil War when the interests of the Negro in Virginia were scrupulously guarded. The same statute was reenacted by the Legislature of 1877 and again in 1878 , still within the Reconstruction years of Virginia. In almost the same words separation in the schools was carried into the Acts of Assembly of 1881-2 , and similarly embodied in the Code of 1887, in the Code of 1919 , and now it is placed in the Code of 1950, in a single section, 22-221, in the same words: ‘White and colored persons shall not be taught in the same school, but shall be taught in separate schools, under the same general regulations as to management, usefulness and efficiency.’ The importance of the school separation clause to the people of the State is signaled by the fact that it is the only racial segregation direction contained in the constitution of Virginia.” Davis, 103 F.Supp at 339 (footnotes omitted)”*

consistently failed to provide adequate funding for ... essential operational costs”). But that did not make the State’s longstanding conduct constitutional. *McCleary*, 173 Wn.2d at 539 (“We affirm the trial court’s declaratory ruling and hold that the State has not complied with its article IX, section 1 duty to make ample provision for the education of all children in Washington”).

Neither *Brown* nor *McCleary* are abnormalities – for constitutional case law holds that past historic practice, convenience, and efficiency “will not save [a practice] if it is contrary to the Constitution.” *I.N.S. v. Chadha*, 462 U.S. 919, 944 (1983) (one-house Congressional veto unconstitutional despite its longstanding use); accord, *Walz v. Tax Comm’n of City of New York*, 397 U.S. 664, 678 (1970) (“[N]o one acquires a vested or protected right in violation of the Constitution by long use, even when that span of time covers our entire national existence and indeed predates it.”); *United States v. Woodley*, 751 F.2d 1008, 1011 (9th Cir. 1985) (“[H]istorical acceptance

alone cannot conclusively establish a practice’s constitutionality”); *Obergefell v. Hodges*, 576 U.S. 644, 664 (2015) (while past history and tradition may help guide a constitutional analysis, they “do not set its outer boundaries”).

In short: the defendant State’s longstanding practice of treating education facilities as being excluded from its paramount education duty under Article IX, §1 does not make that exclusion constitutional. To the contrary, the plain, unequivocal wording of Article IX, §1 does not contain that exclusion.

***(d) a district’s owning its education facilities does not engraft an education facilities exclusion into the wording of Article IX, §1***

The State has argued that “it makes sense” to insert an education facilities exclusion into the plain, unequivocal wording of Article IX, §1 because education facilities are the school district’s facilities – not the State’s. CP 52:20-53:12.

But it is the State’s argument that does not make sense. For example, teacher contracts are the school district’s contracts – not the State’s. But the State’s ample funding duty under



Article IX, §1 does not exclude the cost of the district’s teacher contracts. *E.g., McCleary*, 173 Wn.2d at 535-537 (discussing State’s unconstitutional underfunding of school district staff salaries and benefits).

Nor does the State’s “it makes sense” argument reflect public education reality – for it’s an inescapable fact that the quality of a student’s education facility materially impacts the quality of that student’s education. CP 84 n.13 & 95-157; *infra* Part IV.C.2(a).

This public education reality is why courts across the country have recognized that safe and adequate school facilities are essential to a student’s education. *See, e.g., Abbeville Cty. Sch. Dist. v. State*, 515 S.E.2d 535, 540 (S.C. 1999) (“We define this minimally adequate education required by our Constitution to include providing students adequate and safe facilities”); *DeRolph v. State*, 677 N.E.2d 733, 747 (Ohio 1998) (constitutionally adequate system of schools “includes facilities in good repair”); *Campaign for Fiscal Equity, Inc. v. State*, 86

N.Y.2d 307, 316, 655 N.E.2d 661, 631 N.Y.S.2d 565 (1995) (“Children are entitled to minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn.”); *Idaho Sch. for Equal Educ. Opportunity v. State*, 976 P.2d 913, 914 (Idaho 1998) (“a safe environment conducive to learning is inherently a part of a thorough system of public, free common schools”); *Abbott v. Burke*, 710 A.2d 450, 470 (N.J. 1998) (“The State’s constitutional educational obligation includes the provision of adequate school facilities”); *Robinson v. Cahill*, 303 A.2d 273, 297 (N.J. 1973) (“The State’s obligation includes as well the capital expenditures without which the required educational opportunity could not be provided”).

Courts across the country have accordingly held quality facilities so central to public education that funding mechanisms which perpetuate inequities are unconstitutional. For example, the Arizona Supreme Court struck down as unconstitutional the State’s school funding system that relied on local property taxes

to fund capital improvements because of that system’s resulting disparities in capital facilities funding between school districts. *Roosevelt Elementary School District No. 66 v. Bishop*, 179 Ariz. 233, 877 P.2d 806, 809-810, 814-815 (1994). As one of the concurring Justices explained: the State’s facilities funding formula afforded students from affluent districts “the privilege of access to public schools containing basic facilities and equipment, thus affording them an opportunity to obtain the minimum education that we recognized ... as their [constitutional] right”, while depriving students in property-poor districts “an *equal opportunity* by forcing them to use substandard facilities and equipment.” 877 P.2d at 818 (Feldman, C.J., concurring) (italics in original). *Accord, Campbell Cty. Sch. Dist. v. State*, 907 P.2d 1238, 1275 (Wyo. 1995) (striking down capital construction system because “deficient physical facilities deprive students of an equal educational opportunity and any financing system that allows such deficient facilities to exist is unconstitutional”).

Indeed, the significance of education facilities to equality in our democracy is one of the legacies of *Brown v. Board of Education*. In what have now become known as the *Green* factors, the U.S. Supreme Court identifies physical facilities as one of the six aspects of a public school system that determines compliance with *Brown*'s desegregation order. *Green v. Sch. Bd. of New Kent Cty.*, 391 U.S. 430, 435 (1968). It similarly “makes sense” that physical facilities are a key aspect of the State's compliance with its paramount education duty under Article IX, §1.

In short, it does not “make sense” for this Court to disadvantage Wahkiakum children by inserting an education facilities exclusion into the unequivocal “paramount duty” and “ample provision” wording of Article IX, §1.

***(e) case law allowing a school district to fund capital costs does not make it constitutional for the State to require a school district to fund capital costs***

The State has argued that an education facilities exclusion should be inserted into the plain, unequivocal wording of Article IX, §1 because some cases have allowed school district voters to pay for school construction costs when those voters had wanted to. CP 36:26-37:10.

But allowing someone to do something is not the same as requiring them to do it. Thus, *even if* the school construction projects in such cases had in fact been limited to the type of facilities in this Wahkiakum case (*i.e.*, facilities needed to safely provide students the “education” to which they have a positive constitutional right under Article IX, §1), such cases having allowed local voters to fund that construction would not be a holding that it’s constitutional for the State to require local voters to fund it.

For example, the State’s dismissal motion focused on *Sheldon v. Purdy*, 17 Wash. 135, 49 P. 228 (1897). CP 34:4-6,

46:18-37:18. The four judges who signed that opinion agreed the construction bond interest payments in that case were not “common expenses” under the version of the Common School Fund statute in existence at that time, but noted that, “in consonance with the constitution”, that statute allowed local funds to be used to make that interest payment. 17 Wash. at 140-141. The *Sheldon* case never discussed (or ruled upon) the State’s paramount ample education duty under Article IX, §1. Nor did it discuss or rule upon the fundamental question of constitutional law presented in this case – *i.e.*, does the State’s paramount ample education duty under Article IX, §1 *exclude* needed education facilities?

The school district acknowledges that Washington law allows local voters to fund a facility’s construction if they want to. But the plain, unequivocal wording of Article IX, §1 does not allow the State to require local voters to fund the education facilities needed to safely provide students the “education” to which those students have a positive constitutional right under

Article IX, §1. Instead, the plain, unequivocal wording of Article IX, §1 commands that amply providing that funding is the paramount duty of the State. Not the responsibility or duty of local voters.

***(f) another Article’s enabling some provision of funding does not nullify the State’s paramount Article IX, §1 duty to make ample provision***

The State has argued that an education facilities exclusion should be inserted into the plain, unequivocal wording of Article IX, §1 because Articles VII, §2(a)&(b) & VIII, §1(e)&6 “contemplate” that local voters can (and are allowed to) impose property taxes on themselves for extra school construction if they opt to do so. CP 34:11-14, 48:1-5.

But offering this ballot option to Wahkiakum voters does not change the unequivocal wording of Article IX, §1 that commands it is the paramount constitutional duty of the State to amply fund the education of all Wahkiakum children.

The State has similarly argued that an education facilities exclusion should be inserted into the plain, unequivocal wording

of Article IX, §1 because Article IX, §3 now directs money in the State’s Common School Construction Fund to help fund school construction. CP 38:17-39:2.

Providing money to help the State comply with its ample funding duty under Article IX, §1 does exactly that. It helps the State comply with its ample funding duty. It does not amend or lessen the State’s ample funding duty.

As explained earlier, “paramount” and “ample” mean paramount and ample. The plain, unequivocal wording of Article IX, §1 mandates that the State’s ample provision duty is the State’s paramount duty above, and more important than, all others – including the other Articles the State cited in an attempt to evade its paramount duty to ample fund the education of all Wahkiakum school district students.

***(g) the unpublished 2017 status order regarding the State’s prototypical school formula for school operating costs***

The State has quoted snippets from one of the unpublished orders regarding the status of its progress implementing its



prototypical school funding model for operating costs to argue that an unwritten education facilities exclusion has been engrafted into the plain, unequivocal wording of Article IX, §1. CP 45:12-46:17. When taken out of context, those snippets could make it seem like *McCleary* was a facilities case that held Article IX, §1 excludes facilities costs. But as summarized below, several factors confirm that such a characterization is not accurate.

**Not a published decision:** The Supreme Court knows how to a publish precedential decision when it intends to publish a precedential decision. But it did not do so with the unpublished 2017 status order the State’s dismissal motion cited. This unpublished fact was not changed by the State’s motion misleadingly citing it as a “slip. op.” and calling it “published” since it appeared on a website (CP 35 n.1). Nor was this unpublished fact changed by Westlaw’s decision in 2022 to add that 2017 status order to its database (thus giving it the same type of “WL” cite that litigants’ briefs are commonly given).

***McCleary not a facilities cost case:*** As the Supreme Court’s published *McCleary* decision explained, the *McCleary* trial concerned the cost of operating a school – operational costs like utilities & insurance, student transportation costs, and personnel costs like salaries & benefits. *McCleary*, 173 Wn.2d at 533 (the trial addressed three areas of State funding: “basic operational costs or NERCS [now called MSOCs]; student to/from transportation; and staff salaries and benefits”).

The State has therefore acknowledged in this Wahkiakum case that the *McCleary* decision’s holding was that the “State had not made ample provision for operating expenses of schools.” CP 44:26-45:2 (citing *McCleary*, 173 Wn.2d at 532-537; underline added).

In short: the Article IX, §1 facilities cost issue in this Wahkiakum case was not the Article IX, §1 issue in the published *McCleary* decision.

**Prototypical school model:** The published 2012 *McCleary* decision recognized that a new statute (ESHB 2261)

planned to increase the State’s funding of operating expenses by implementing a new prototypical school allocation model consistent with the State’s Basic Education Finance Task Force report. *McCleary*, 173 Wn.2d at 505-506 & n.16. This new allocation model is at RCW 28A.150.260, and explains that “Prototypical schools illustrate the level of resources needed to operate a school of a particular size with particular types and grade levels of students using commonly understood terms and inputs, such as class size, hours of instruction, and various categories of school staff.” RCW 28A.150.260(3)(a) (underline added).

This prototypical model’s addressing only the operating cost portion of education is understandable – for the Task Force report upon which ESHB 2261’s prototypical school model was based did not address school construction related costs. *McCleary*, 173 Wn.2d at 503 n.10.

**Annual status reports:** In 2012 the Supreme Court retained jurisdiction to monitor the State’s progress

implementing the above prototypical school funding model to increase the operating cost funding level that had failed to comply with Article IX, §1. *McCleary*, 173 Wn.2d at 545-546. The parties in the *McCleary* case accordingly filed a status report each year regarding that progress.

**2017 status order:** The unpublished status order that the State has invoked in this Wahkiakum case concerned the State’s 2017 progress report and plaintiffs’ objection that the Court should retroactively require the State to add some K-3 capital construction costs to the prototypical school model that the Court had endorsed for operating costs. But as the State itself acknowledges, that objection was rejected when the 2017 status order noted that “in *McCleary*, this Court did not address capital costs” and “[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.” CP 46:23 & 46:1-3 (quoting the unpublished 2017 status order; underline added).

**In short:** The context noted above shows that the unpublished 2017 status order was not a Supreme Court decision declaring that the plain, unequivocal wording of Article IX, §1 categorically *excludes* any education facility that is in fact required to educate a district's students.

***(h) an amply funded education is a positive constitutional right of Wahkiakum students***

The Court's published *McCleary* decision affirmed that "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 published decision also reiterated that the 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 W.2d at 511-512).

A student's constitutional rights regarding his or her education matter.

One example: *Brown v. Board of Education* held that the 14th Amendment confers on every child in America a

constitutional right to a desegregated education. *Brown v. Board of Education of Topeka*, 347 U.S. 483, 494-495 (1954).<sup>5</sup>

Another example: The published *McCleary* decision held that “Article IX, section 1 confers on children in Washington a positive constitutional right to an amply funded education.” *McCleary*, 173 Wn.2d at 483.

The undisputed facts upon which the lower court’s Rule 12(b)(6) dismissal is based, however, repeatedly confirm that the State is not amply funding the education facilities needed to safely provide the school district’s students a realistic and effective opportunity to meet the learning standards specified by the State, or to gain the knowledge and skills specified under State law. *Supra*, Part III.A.6. For example, the following is just

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<sup>5</sup> *E.g.*, 347 U.S. at 494-495 (“*Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment*”).

one of the undisputed facts upon which the lower court's

Rule 12(b)(6) ruling is based:

The State's failure to amply fund the facilities needed to safely provide all Wahkiakum School District students the "education" to which they have a positive, constitutional right 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.

[¶150].

As noted earlier, Washington law holds that the word "ample" in Article IX, §1 means "considerably more than just adequate". Part IV.B.1 (quoting *McCleary*, 173 Wn.2d at 484 & 528). But the undisputed facts upon which the lower court's Rule 12(b)(6) dismissal is based confirm that "ample" is not a word that can accurately be used to describe the education facilities funding provided by the State for the education of Wahkiakum students.

## **C. “All Children”**

### **1. The Law**

The word “all” in Article IX, §1 means “every” and “each and every one”. *McCleary*, 173 Wn.2d at 520 (internal citations omitted). 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.” *McCleary*, 173 Wn.2d at 520 (internal quotation marks & citations omitted).

### **2. Why covering “all children” matters**

#### ***(a) the State knows that poor education facilities hamstring a student’s education***

The State has long known that poor education facilities hamstring a student’s education – for education research has been confirming this on-the-ground reality for many years.

For example, Harvard’s meta-analysis of more than 200 peer-reviewed studies confirmed that the quality of a school’s physical environment has a real, measurable effect on student educational outcomes, ultimately concluding from this research



that “the evidence is unambiguous – the school building influences student health, thinking, and performance.” Eitland et al. (2017) at 4; *see also* Maxwell (2016) at 207 (“Significant correlations between negative structural and aesthetic attributes of school buildings and poor student learning and achievement have been documented at the school and district level”); Earthman (2002) at 1 (“School building design features and components have been proven to have a measurable influence upon student learning”); Filardo et al. (2019) at 28 (“Decades of research confirm that the conditions and qualities of school facilities affect students, teachers, and overall academic achievement”); Durán-Narucki (2008) at 283 (“the conditions of school buildings predicted both attendance and academic achievement after controlling for other possible predictors”).

Even controlling for student-related background characteristics, numerous education studies link substandard education facilities – including, *e.g.*, poor indoor air quality, temperature control, lighting, acoustics, etc. – to significant

decreases in standardized academic test scores. Eitland & Allen (2019) at 35; Earthman (2002) at 7; Maxwell (2016) at 208; Durán-Narucki (2008) at 283 (finding that students in run-down buildings attend fewer school days and score lower on English and math standardized tests).

A similar review of the education literature confirms that, on average, student achievement in substandard school buildings trails student achievement in better school buildings by between 17 and 5 percentage points. Filardo et al. (2019) at 28; Schneider (2002) at 1-24; Uline & Tschannen-Moran (2008) at 56.

Education studies also link inadequate school facilities to resulting education obstacles such as truancy, dropout rates, suspension rates, bullying, and other behavioral challenges. Maxwell (2016) at 208; Uline & Tschannen-Moran (2008) at 59-60.

For example, a study of 226 schools in Houston, Texas, found that poor facility quality significantly reduced daily

attendance and increased student dropout rates. Branham (2004) at 1120-1125.

Education research also confirms that poor school facilities disproportionately harm the education of students in low-income areas. Filardo et al. (2019) at 29 (“Inadequate facilities disproportionately affect the poor”); *see also* Durán-Narucki (2008) at 279 (noting that children living in poor urban environments are particularly affected by the condition of the school buildings they attend, and discussing the relationship between school facilities and student achievement as “a social justice issue”).

In short: the State well knows that poor education facilities seriously damage a student’s education, and that failing to make ample provision for needed education facilities in places like Wahkiakum is a conscious failure to make ample provision for the education of all Washington children.

***(b) the State knows that education facilities with inadequate seismic protection endanger students' lives***

As noted earlier, one of the undisputed facts upon which the lower court's dismissal is based is that "The level of facilities funding that the State provides to the Wahkiakum School District has a tangible negative effect on student safety" [¶134].

Indeed, the State's own seismic danger investigations have confirmed that it's unsafe for students to be attending class in a large number of our State's public school buildings. For example, between 2019 and 2021, the State examined a sample of 561 public school buildings for seismic collapse dangers, and gave 93% of them a structural safety rating of One on a scale of One to Five – "with One being the lowest, and most vulnerable." School Seismic Safety Report at 3-4.

Doing triage, the State then designated 63% of the public school buildings it investigated as being in high or very high need of seismic retrofit for student safety. School Seismic Safety Report at 4 & 94-124.

Wahkiakum’s elementary school was one of the school buildings in that 63%, with the State putting Wahkiakum’s elementary school on the State’s “high priority for seismic retrofit” triage list. School Seismic Safety Report at 123; School Seismic Safety Assessments at 10085-10114. (Wahkiakum’s middle and high schools were not on that list because they were not part of the State’s limited 561 building sample. School Seismic Safety Report at 94-141.)

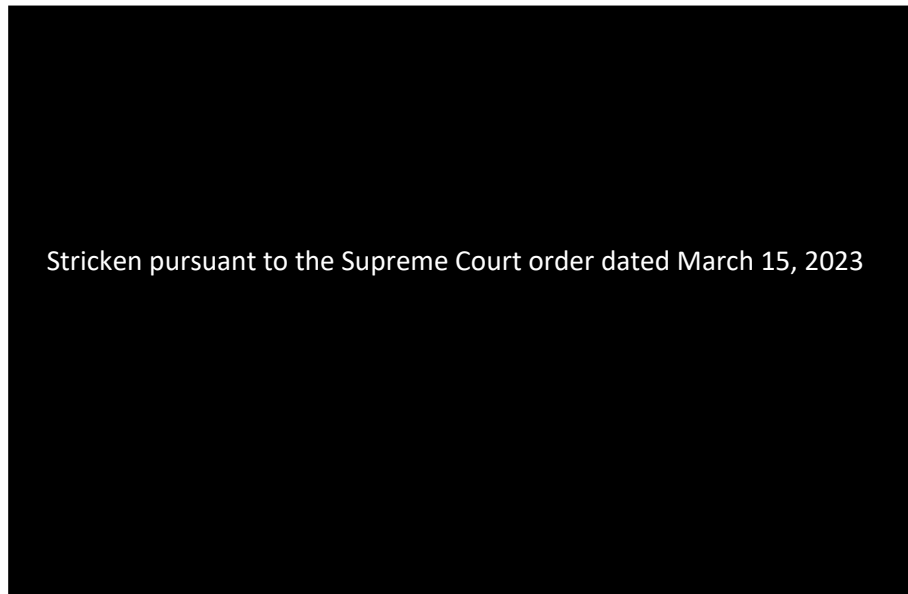
As the State’s Seismic Safety Report acknowledged, “the cost of inaction on seismic safety is too great for children, parents, teachers, and our communities”. School Seismic Safety Report at 5.

The State has dismissed as gratuitously pointless the school district’s illustrating the seriousness of this danger with a photo from a school building collapse after a seismic event.<sup>6</sup>

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<sup>6</sup> *State’s 7/26/2022 Answer To Appellant’s Statement Of Grounds For Direct Review at 22 (answering school district’s 7/12/2022 Statement Of Grounds For Direct Review).*

But to people in Wahkiakum (including the school district's Superintendent, who recovered dead children out of a collapsed building while serving in the U.S. Navy), the horrible fact illustrated by this photo is not gratuitous or pointless. It bears directly on the significance of providing all Washington children – including those in Wahkiakum – education facilities with adequate seismic protection:



Middle school after earthquake.<sup>7</sup>

<sup>7</sup> *Almay Photograph (2008) (printed here per purchase invoice IY027502050).*

*(c) the State knows that education facilities with inadequate shooter protection endanger students' lives*

Education facilities like Wahkiakum's with inadequate building security are another example of the previously-noted fact upon which the lower court's dismissal is based (*i.e.*, that "The level of facilities funding that the State provides to the Wahkiakum School District has a tangible negative effect on student safety" [¶134]). Indeed, the State well knows that the lack of adequate school building security infrastructure can be fatal to public school students.

Columbine.

Sandy Hook.

Parkland.

Uvalde.

They aren't uncommon outliers. Between just January 18 and May 25 of this year, K-12 students in the U.S. were shot at:



Oliver Academy



Seminole High School

- 🏫 Magruder High School
- 🏫 Beloit Memorial High School
- 🏫 Auburn High School
- 🏫 King High School
- 🏫 South Richfield Education Center
- 🏫 Wenonah High School
- 🏫 Catonsville High School
- 🏫 McKinley High School
- 🏫 Minneapolis Public Schools
- 🏫 Eisenhower High School
- 🏫 TechBoston Academy
- 🏫 Dunbar High School
- 🏫 Kingman Unified School
- 🏫 Oakdale Elementary School
- 🏫 Tanglewood Middle School
- 🏫 Olathe East High School
- 🏫 East Des Moines High School
- 🏫 Justin F. Kimball High School
- 🏫 North Gardens High School
- 🏫 Edmund Burke School
- 🏫 Erie High School
- 🏫 Heights High School



¶ Walt Disney Chicago Magnet School

¶ East Kentwood High School

¶ Robb Elementary School

Education Week School Shootings Report; *cf. also* U.S. Departments of Education & Justice Report (2022) at 3 (reporting “93 school shootings with casualties – the highest number since 2000–01”). In short: the State is well aware that the lack of adequate building security in a public school is a deadly ticking time bomb waiting to explode.

The State has dismissed as gratuitously pointless the school district’s illustrating the seriousness of this danger with a photograph from Robb Elementary School.<sup>8</sup>

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<sup>8</sup> *State’s 7/26/2022 Answer To Appellant’s Statement Of Grounds For Direct Review at 22 (answering school district’s 7/12/2022 Statement Of Grounds For Direct Review)*.

But to students, teachers, and parents in Wahkiakum, the deadly on-the-ground reality illustrated by this photograph is not gratuitous or pointless. It bears directly on the significance of providing all Washington children – including those in Wahkiakum – education facilities with adequate building security infrastructure and shooter protection:



Elementary school after classroom shooting.<sup>9</sup>

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<sup>9</sup> *Sky News Article (2022).*

***(d) the State knows that education facilities with inadequate fire protection endanger students' lives***

Education facilities like Wahkiakum's with inadequate fire protection systems are another example of the previously-noted fact upon which the lower court's dismissal is based (*i.e.*, that "The level of facilities funding that the State provides to the Wahkiakum School District has a tangible negative effect on student safety" [¶134]). And the State is well aware that old school building wiring and the lack of modern fire suppression systems can be fatal.

A recent example well known to the State is the Almira school district's school building, which was built the same time as Wahkiakum's elementary school: 1952. Spokesman Review Article (2021). And like Wahkiakum's 70-year-old elementary school, Almira's 70-year-old school building had old electrical wiring – which is the attributed cause of the Tuesday afternoon fire last October that destroyed Almira's school building. NCW Life T.V. Article (2021); Columbia Basin Herald Article (2021).

Random luck ensured that no children were killed or injured in that fire – for classes happened to have been cancelled on that Tuesday. NCW Life T.V. Article (2021); *see also* Spokesman Review Article (2021) (fire started around 4:00pm on Tuesday, October 12, 2021, and burned the school to the ground).

The State has dismissed as meaningless the school district’s illustrating the seriousness of such fire dangers with a photograph from the Almira school fire – suggesting that such fires are not a serious issue because the State chose to contribute a lot of money to help the Almira school district rebuild its burned-down school.<sup>10</sup>

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<sup>10</sup> *State’s 7/26/2022 Answer To Appellant’s Statement Of Grounds For Direct Review at 21 (answering school district’s 7/12/2022 Statement Of Grounds For Direct Review).*

But to the Wahkiakum students and teachers threatened with burning and death if such a fire occurs on a day that school is not cancelled, the flaming oven illustrated by this photograph is not meaningless. It bears directly on the significance of providing all Washington public school students – including those in Wahkiakum – education facilities with adequate fire protections:



Almira (Washington) elementary school.<sup>11</sup>

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<sup>11</sup> *Columbia Basin Herald Article (2021); see also KHQ T.V. Video Footage (2021).*

***(e) “all children” does not mean  
“only the fortunate children”***

The facts upon which the lower court’s Rule 12(b)(6) dismissal is based confirm that the plaintiff school district does not have the facilities needed to equip its students with the education required in today’s economy to compete on a level playing field with their peers living in our State’s more affluent areas. *Supra*, Parts III.A.1-6.

It might be true that students fortunate enough to live in areas more affluent than Wahkiakum have the education facilities needed to safely provide them the “education” to which they have a positive constitutional right under Article IX, §1. But the facts upon which the lower court’s Rule 12(b)(6) dismissal is based confirm that Wahkiakum students do not. *Supra*, Parts III.A.1-6.

This fact is dispositive because fortunate children is not what the plain, unequivocal wording of Article IX, §1 says. It says all children. Article IX, §1 does not limit the ample

education mandate it imposes on the State to children who win the zip code lottery. Its ample education mandate applies to all children – which includes each and every one of the Wahkiakum school district’s students.

**D. “State”**

**1. The Law**

Article IX, §1 imposes the duty to amply fund the education of every Wahkiakum student on our State government. *McCleary*, 173 Wn.2d at 528 (affirming that “the State must fully fund basic education with stable and dependable *State* sources”, and “the State cannot rely on non-State funds to finance basic education”) (italics in original, internal quotation marks & citations omitted).

**2. Why Article IX, §1 imposing its paramount duty on “the state” matters**

**(a) “the state” is not “the school district”**

Article IX, §1 does not impose its ample funding duty on the plaintiff school district. *Tunstall v. Bergeson*, 141 Wn.2d

201, 232, 5 P.3d 691 (2000) (“school districts have no duty under Washington’s constitution. Article IX makes no reference whatsoever to school districts”).

***(b) “the state” is not  
“the school district’s voters”***

Article IX, §1 does not impose its ample funding duty on the school district’s voters. *McCleary*, 173 Wn.2d at 486 & 528 (rejecting State’s reliance on voter-approved funding to satisfy Article IX, §1 because such funding is “wholly dependent upon the whim of the electorate”); *Seattle School District*, 90 Wn.2d at 525 (same).

***(c) “the state” is not  
“the school district’s local property tax base”***

Article IX, §1 does not impose its ample funding duty on the school district’s property tax base. *McCleary*, 173 Wn.2d at 486 (rejecting State’s reliance on local property taxes for Article IX, §1 compliance because property tax dollars “rely on the assessed valuation of real property at the local level”) & 528 (rejecting State’s claim that “the legislature can discharge its



duty to make ample provision for funding education by authorizing nonstate tax sources”, holding the State’s reliance on local property tax dollars “fails to provide the ample funding article IX, section 1 requires”, and explaining that requiring local property tax dollars “implicates both the equity and the adequacy of the K–12 funding system” since districts with high property values can raise more money than districts with low property values); *accord, Seattle School District*, 90 Wn.2d at 525.

***(d) “the state” is not  
“the federal government”***

Article IX, §1 does not impose its ample funding duty on the federal government. *McCleary*, 173 Wn.2d at 529 (rejecting the State’s contention that it can satisfy its funding duty under Article IX, §1 with federal dollars the State directs to school districts).

**E. “Caste”**

**1. The Law**

Words not defined in our State Constitution are given their plain meaning under standard English language dictionaries.

*E.g., Gerberding v. Munro*, 134 Wn.2d 188, 199, 949 P.2d 1366 (1998) (“As the term itself is undefined in the Constitution, we apply its ordinary meaning. *See Boeing Co. v. Aetna Cas. & Sur. Co.*, 113 Wash.2d 869, 877, 784 P.2d 507 (1990) (undefined terms are given their “plain, ordinary and popular” meaning; and courts look to standard English language dictionaries to determine the ordinary meaning of such terms).”).

And in this case, the lower court’s Rule 12(b)(6) dismissal is based the fact that the Merriam-Webster dictionary is a standard English language dictionary that defines the word “caste” to include “a division of society based on differences of wealth” [¶¶39-40].

The word “caste” in Article IX, §1 accordingly includes “a division of society based on differences of wealth”. *See supra, Gerberding*, 134 Wn.2d at 199; *Boeing*, 113 Wn.2d at 877.

2. **Why the command prohibiting preference on account of “caste” matters**

*(a) the fundamental civil rights purpose of public education is to be the great equalizer between the haves & have-nots in our democracy*

The purpose of public education is to be the great **equalizer** in our democracy, which levels the playing field between the haves and the have-nots in our State. The Findings Of Fact/Conclusions Of Law affirmed by the Supreme Court’s published *McCleary* decision summarize this equity and equality purpose underlying Article IX, §1 as follows:

Education ... plays a critical civil rights role in promoting equality in our democracy. For example, amply provided, free public education operates as the great equalizer in our democracy, equipping citizens born into the underprivileged segments of our society with the tools they need to compete on a level playing field with citizens born into wealth or privilege.

*McCleary v. State* Findings Of Fact & Conclusions Of Law, 2010 WL 9073395 (2010) at \*16, ¶132.

Amending the plain, unequivocal language of Article IX, §1 to insert an exclusion that excludes ample funding for the education facilities needed by school districts serving

members of our State’s lower income caste (like the Wahkiakum school district here) would not serve the above equity and equality purpose – for it would instead endorse Article IX, §1 as being a great **perpetuator** of inequality between the children of the haves and have-nots in our State.

*(b) “without preference on account of caste”  
does not mean  
“with preference for the upper income caste”*

As noted earlier, one of the facts upon which the lower court’s Rule 12(b)(6) dismissal is based is that Wahkiakum’s students are part of the lower income caste in our State. *Supra*, Part III.A.1. And as noted below, inserting an education facilities exclusion into Article IX, §1 would constitutionalize the current State funding system’s preference against the lower income caste residents and students in Wahkiakum.

For example: The lower court’s Rule 12(b)(6) dismissal is based on the undisputed fact that the current State funding system for education facilities grants a significant property tax rate preference to citizens in our State’s upper income caste.

*Supra*, Part III.A.1 & 5 (upper income caste property tax rate of 12 cents per thousand; lower income caste property tax rate of 4 dollars per thousand).

Another example: The lower court's dismissal is also based on the undisputed fact that the current State funding system for education facilities deprives the children in lower income Wahkiakum of the education facilities needed to equip them with the education needed in today's economy to compete on a level playing field with their peers living in our State's more affluent areas. *Supra*, Parts III.A.1 -6.

In short: adding the facilities exclusion upon which the lower court's Rule 12(b)(6) dismissal is based contradicts the plain, unequivocal wording of Article IX, §1 because the State's providing education funding with a preference favoring the upper income caste is not what Article IX, §1 says. It says without preference.

**F. “Education”**

**1. The Law**

The word “education” in Article IX, §1 means the basic knowledge and skills that Washington children will need to compete in today’s global economy and meaningfully participate in our democracy. *McCleary*, 173 Wn.2d at 483 (“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”).

Yes, the undersigned counsel knows that putting a long block quote in a brief is discouraged. But here, the Washington Supreme Court’s long explanation of the “education” duty Article IX, §1 imposes on the defendant State is critical:

[T]he State’s constitutional duty to provide an “education” goes beyond mere reading, writing and arithmetic. It also embraces broad educational opportunities needed in the contemporary setting to equip our children for their role as citizens and as potential competitors in today’s market as well as in the marketplace of ideas. Education plays a critical role in a free society. It must prepare our children to participate intelligently and effectively in our open political system to ensure that system’s survival. It must prepare them to exercise their First Amendment freedoms

both as sources and receivers of information; and, it must prepare them to be able to inquire, to study, to evaluate and to gain maturity and understanding. The constitutional right to have the State “make ample provision for the education of all [resident] children” would be hollow indeed if the possessor of the right could not compete adequately in our open political system, in the labor market, or in the marketplace of ideas.

*McCleary*, 173 Wn.2d at 516 (bracketed “[resident]” in original);  
*Seattle School District*, 90 Wn.2d at 517-518.

Also critical is the Washington Supreme Court’s long-standing declaration that the “education” described in the above block quote is the *minimum* that Article IX, §1 requires the State to amply provide – a constitutional floor below which the “education” provided by the State cannot constitutionally fall. *McCleary*, 173 Wn.2d at 485 (the “*minimum* of the education that is constitutionally required”) (italics in original), 516 (“the effective teaching and opportunities for learning these essential skills make up the *minimum* of the education that is constitutionally required”) (italics in original), 521 (“the *minimum* education that is constitutionally required” and “a constitutional floor below which the definition of ‘education’

cannot fall”) (italics in original); *accord, Seattle School District*, 90 Wn.2d at 518.

The Washington Supreme Court has also acknowledged what these essential skills in an Article IX, §1 “education” are:

The current substantive content of the requisite knowledge and skills for “education” comes from three sources: the broad educational concepts outlined in *Seattle School District*, the four learning goals in Engrossed Substitute House Bill (ESHB) 1209, 53d Leg., Reg. Sess. (Wash.1993); and the State’s essential academic learning requirements (EALRs).

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

More fully, the “three sources” identified above are:

**Source One:** The *Seattle School District* explanation that is the long block quote on pages 65-66 of this brief.

**Source Two:** The four learning goals in ESHB 1209 that are now codified at RCW 28A.150.210. They cover reading, writing, math, science, civics, history, geography, health & fitness, technology, and finance – and they are fully quoted in the school district’s Complaint [¶¶61-65].



**Source Three:** The EALRs that are now called the “state learning standards”. They “identify the knowledge and skills all public school students need to know and be able to do based on the student learning goals in RCW 28A.150.210.” RCW 28A.655.070(1). The State tells the public that these academic standards identify the knowledge and skills all public school students need to know and be able to do at each grade level in (1) the Arts; (2) Computer Science; (3) Educational Technology; (4) English Language Arts; (5) English Language Proficiency; (6) Environment and Sustainability; (7) Financial Education; (8) Health & Physical Education; (9) Mathematics; (10) Science; (11) Social Studies; and (12) World Languages. They are detailed in the school district’s Complaint [¶¶67-91].

## **2. Why the above “education” matters**

The previously quoted *Seattle School District* explanation (“Source One”) summarizes why the State’s amply providing the above “education” mandated by Article IX, §1 matters. If amply

provided by the State, the “education” mandated by Article IX, §1

- equips our State’s upcoming generation for their role as citizens and as potential competitors in today’s economic market and marketplace of ideas;
- plays a critical role in our free society by preparing our State’s upcoming generation to participate intelligently and effectively in our open political system to ensure our democratic system’s survival;
- prepares our State’s upcoming generation to exercise their First Amendment freedoms both as sources and receivers of information; and
- prepares our State’s upcoming generation to be able to inquire, to study, to evaluate and to gain maturity and understanding.

*McCleary*, 173 Wn.2d at 516; *Seattle School District*, 90 Wn.2d at 517-518; *see also* ¶¶118-143 of the previously-noted Findings Of Fact/Conclusions Of Law affirmed by the Supreme Court’s published *McCleary* decision, which explain in great detail the importance of the State amply providing the “education” mandated by Article IX, §1. 2010 WL 9073395 (2010) at \*12-\*19, ¶¶118-143.

And as the Washington Supreme Court has repeatedly made clear, a Wahkiakum student’s constitutional right to have the State “make ample provision” for that student’s education “would be hollow indeed if [that Wahkiakum student] could not compete adequately in our open political system, in the labor market, or in the marketplace of ideas.” *McCleary*, 173 Wn.2d at 516; *Seattle School District*, 90 Wn.2d at 517-518.

But under the currently undisputed facts in this Rule 12(b)(6) proceeding, hollow indeed is what Wahkiakum students’ positive constitutional right to an amply funded education would be if the plain, unequivocal wording of Article IX, §1 is amended to insert the education facilities exclusion demanded by the State.

**V. CONCLUSION:**  
**The Plain, Unequivocal Wording Of Article IX, §1**  
**Does Not Exclude Needed Education Facilities**

As noted on the first page of this brief, the lower court (to its credit) put the legally critical horse squarely in front of this matter’s factually loaded cart – for the ultimate resolution of this

case turns on the judicial branch’s ultimate answer to whether the paramount ample education duty imposed on the State by Article IX, §1 does or does not *exclude* necessary education facilities. Cf. *McCleary*, 173 Wn.2d at 520 (“In order to determine whether the State has met its constitutional duty under article IX, section 1, we must know what that duty is”).

This Court “cannot abdicate [its] judicial duty to interpret and construe article IX, section 1.” *McCleary*, 173 Wn.2d at 520. And as detailed above, the plain wording of Article IX, §1 declares the constitutional duty imposed on the defendant unequivocally: “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.”

The Wahkiakum school district respectfully submits that the judicial branch’s role and duty is to uphold the plain, unequivocal wording of Article IX, §1. Not amend it to engraft an exclusion that excludes the education facilities needed to

provide that education. Especially since such an amendment would effectively rob children in school districts like Wahkiakum of the amply funded education to which Washington law declares they have a positive constitutional right.

For the reasons explained above, the plaintiff school district believes that upholding the plain, unequivocal wording of Article IX, §1 as written requires this Court to hold as a matter of Washington law that the paramount education duty Article IX, §1 imposes on the State does not *exclude* the education facilities required to provide Washington students that education.

The lower court's dismissal of the school district's Complaint should accordingly be reversed, and this case remanded for trial to allow the defendant State to try to dispute any (or all) of the facts alleged in that Complaint.

RAP 18.17(b) & (c)(2) Word Limit Certification:

I certify that this Statement Of Grounds For Direct Review, 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 9,860 words (not more than 12,000).

RESPECTFULLY SUBMITTED this 12th day of September,  
2022.

Foster Garvey PC

*s/ Thomas F. Ahearne*

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OPENING BRIEF

APPENDIX ONE

FILED

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KAY M. HOLLAND, CLERK  
WAHAKIACUM COUNTY, WA

BY JK DEPUTY

SUPERIOR COURT OF WASHINGTON FOR WAHAKIACUM COUNTY

WAHAKIACUM SCHOOL DISTRICT NO. 200,  
Plaintiff,

v.

STATE OF WASHINGTON,  
Defendant.

No. 21-2-00053-35

COMPLAINT FOR  
DECLARATORY JUDGMENT &  
RELATED RELIEF ENFORCING  
OUR CONSTITUTION

**I. INTRODUCTION**

1. The Wahkiakum School District is a poor, rural district with less than 500 students. It's therefore easy for State government in Olympia to disregard the education needs of this school district and its students. But the State's disregard violates our State Constitution.

2. The Wahkiakum School District does not have the physical facilities & infrastructure needed to equip all its students with the education required in today's economy to compete on a level playing field with students privileged enough to live in our State's more affluent areas.

3. Public education is supposed to be the great equalizer in our democracy. Our State government's failure to amply fund the Wahkiakum School District's capital needs, however, does the opposite. It makes our public schools a perpetuator of caste inequality.

4. Our State Constitution commands that it is the paramount duty of our State government to make ample provision for the education of all children in our State – not just the children lucky enough to win the zip code lottery. The State's failure to amply fund the Wahkiakum School District's needed facilities & infrastructure violates the State's paramount constitutional duty.

5. Put bluntly: the Wahkiakum School District files this suit to compel the State of Washington to obey the Constitution of Washington.

COMPLAINT FOR DECLARATORY JUDGMENT  
& RELATED RELIEF ENFORCING OUR CONSTITUTION - 1

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**II. OUTLINE**

**I. INTRODUCTION ..... 1**

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**III. PARTIES ..... 3**

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**V. BACKGROUND ..... 3**

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    C. “Ample”, “Paramount”, “All Children”, & “Caste” ..... 6

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**VII. SECOND CLAIM: INJUNCTIVE RELIEF..... 25**

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**IX. CONCLUSION ..... 29**

1 **III. PARTIES**

2 6. Plaintiff. The Wahkiakum School District is a poor, rural school district located along  
3 the banks of the Columbia River. It has less than 500 students. Approximately 57% of its students  
4 are low income. It has less than 3500 registered voters. And the per capita income of its voters  
5 is approximately \$29,000. It is a school district organized under the laws of the State of  
6 Washington and has satisfied all conditions precedent to bring this action.

7 7. Defendant. The defendant is the State of Washington. The defendant State of  
8 Washington is required to comply with the Constitution of Washington.

9 **IV. JURISDICTION & VENUE**

10 8. Jurisdiction. This superior court has jurisdiction for this action. E.g., RCW 2.08.010  
11 (original jurisdiction); RCW 4.92.010 (action against the State); chapter 7.24 RCW (declaratory  
12 judgment).

13 9. Filing. This Complaint is properly filed in this superior court.

14 10. Venue. Venue for this action against the State is proper in this superior court. E.g.,  
15 RCW 4.92.010(1) (district's principal place of business), RCW 4.92.010(2) (where cause of  
16 action arose), RCW 4.92.010(3) (where the real property is situated).

17 **V. BACKGROUND**

18 **A. Constitutional Duty**

19 11. State Constitution. Article IX, §1 of the Washington State Constitution states:  
20 "It is the paramount duty of the state to make ample provision for the education of all  
21 children residing within its borders, without distinction or preference on account of race,  
22 color, caste, or sex."

23 12. Unique. No other State Constitution states the education of that State's children is the  
24 paramount duty of the State.

25 13. Strongest. No other State Constitution has a stronger education mandate than the  
26 Washington State Constitution.



1           21. Fact. The Washington Supreme Court has in fact held that (a) the “distinction between  
2 positive and negative constitutional rights is important because it informs the proper orientation  
3 for determining whether the State has complied with its article IX, section 1 duty”; (b) in a  
4 positive constitutional rights case, “the court is concerned not with whether the State has done too  
5 much, but with whether the State has done enough. Positive constitutional rights do not restrain  
6 government action; they require it”; (c) “limits on judicial review such as the political question  
7 doctrine or rationality review are inappropriate”; and (d) enforcing positive rights requires “the  
8 court to take a more active stance in ensuring that the State complies with its affirmative  
9 constitutional duty.” [See *McCleary*, 173 Wn.2d 518-519.]

10           22. Allegation on information & belief. The State agrees that positive constitutional rights  
11 require affirmative government action.

12           23. Allegation on information & belief. The State agrees that Washington courts must  
13 take an active stance to ensure the State complies with the State’s affirmative constitutional duty  
14 to amply fund the education of the Wahkiakum School District’s students.

15           24. Paramount Right. The constitutional right of the Wahkiakum School District’s  
16 students to an amply funded education is their paramount right under the Washington State  
17 Constitution.

18           25. Fact. The Washington Supreme Court has in fact held that the State’s duty under  
19 Article IX, §1 “gives rise to a corresponding right of school children to have the State make ample  
20 provision for their education. And because the constitution describes the State’s duty as  
21 ‘paramount,’ the corresponding right is likewise elevated to a paramount status.” [See *McCleary*,  
22 173 Wn.2d at 485 (internal quotation marks and citations omitted).]

23           26. Fact. The Washington Supreme Court has in fact held that “By imposing upon the  
24 State a *paramount duty* to make ample provision for the education of all children residing within  
25 the State’s borders, the constitution has created a ‘duty’ that is supreme, preeminent or dominant.  
26 Flowing from this constitutionally imposed ‘duty’ is its jural correlative, a correspondent ‘right’

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1 permitting control of another’s conduct. Therefore, all children residing within the borders of the  
2 State possess a ‘right,’ arising from the constitutionally imposed ‘duty’ of the State, to have the  
3 State make ample provision for their education. Further, since the ‘duty’ is characterized as  
4 *paramount* the correlative ‘right’ has equal stature.” [See *McCleary*, 173 Wn.2d at 518 (italics in  
5 original).]

6 27. Allegation on information & belief. The State agrees that the right to an amply funded  
7 education is the Wahkiakum School District students’ paramount right under our State  
8 Constitution.

9 **C. “Ample”, “Paramount”, “All Children”, & “Caste”**

10 28. Ample. Ample means ample. The word “ample” in Article IX, §1 means  
11 considerably more than just adequate. It means liberal, unrestrained, and without  
12 parsimony.

13 29. Fact. The Washington Supreme Court has in fact held that the word “ample” in  
14 Article IX, §1 means “liberal, unrestrained, without parsimony”, and “considerably more than  
15 just adequate”. [See *McCleary*, 173 Wn.2d at 527 & 484.]

16 30. Allegation on information & belief. The State agrees that the word “ample” in  
17 Article IX, §1 means liberal, unrestrained, without parsimony, and considerably more than just  
18 adequate.

19 31. Paramount. Paramount means paramount. The word “paramount” in  
20 Article IX, §1 means the highest rank that is superior to all others. It means having the  
21 rank that is preeminent, supreme, and more important to all others. In the context of  
22 Article IX, §1, “paramount” means the State must amply provide for the education of all  
23 Washington children – including the Wahkiakum School District’s students – as the State’s  
24 first and highest priority before any other State programs or operations.

25 32. Fact. The Washington Supreme Court has in fact (a) affirmed defining the word  
26 “paramount” in Article IX, §1 to mean “having the highest rank that is superior to all others,

1 having the rank that is preeminent, supreme, and more important to all others”, and (b) affirmed  
2 that “in the context of article IX, section 1, ‘paramount’ means the State must amply provide for  
3 the education of all Washington children as the State’s first and highest priority before any other  
4 State programs or operations.” [See *McCleary*, 173 Wn.2d at 520 (internal quotation marks  
5 omitted).]

6 33. Allegation on information & belief. The State agrees that the word “paramount” in  
7 Article IX, §1 means the State must amply provide for the education of all Washington children  
8 as the State’s first and highest priority before any other State programs or operations.

9 34. All Children. All children means all children. The term “all children” in  
10 Article IX, §1 means each and every child. No child is excluded. Article IX, §1 accordingly  
11 requires the State to make ample provision for the education of every child residing in our  
12 State – including all of the Wahkiakum School District’s students.

13 35. Fact. The Washington Supreme Court has in fact (a) affirmed defining the word “all”  
14 in Article IX, §1 to mean “every” and “each and every one”; and (b) affirmed that “All children  
15 under article IX, section 1 therefore encompasses each and every child since each will be a  
16 member of, and participant in, this State’s democracy, society, and economy. No child is  
17 excluded.” [E.g. *McCleary*, 173 Wn.2d at 520 (internal citations omitted).]

18 36. Allegation on information & belief. The State agrees the term “all children” in  
19 Article IX, §1 means each and every child residing in our State – including every one of the  
20 Wahkiakum School District’s students.

21 37. Caste. The word “caste” in Article IX, §1 includes a division of society based on  
22 differences of wealth.

23 38. Fact. The Washington Supreme Court has in fact held that when a “term itself is  
24 undefined in the Constitution, we apply its ordinary meaning. See *Boeing Co. v. Aetna Cas. &*  
25 *Sur. Co.*, 113 Wash.2d 869, 877, 784 P.2d 507 (1990) (undefined terms are given their “plain,  
26 ordinary and popular” meaning; and courts look to standard English language dictionaries to

1 determine the ordinary meaning of such terms).” [See *Gerberding v. Munro*, 134 Wn.2d 188,  
2 199, 949 P.2d 1366 (1998).]

3 39. Fact. The Merriam-Webster dictionary is a standard English language dictionary.

4 40. Fact. The Merriam-Webster dictionary’s definition of the word “caste” includes “a  
5 division of society based on differences of wealth”. [See Merriam-Webster dictionary at  
6 <https://www.merriam-webster.com/dictionary/caste> (defining “caste” as meaning “a division of  
7 society based on differences of wealth, inherited rank or privilege, profession, occupation, or  
8 race”).]

9 41. Allegation on information & belief. The State agrees that the word “caste” in  
10 Article IX, §1 includes a division of society based on differences of wealth.

11 42. Lower Income Caste. Approximately 57% of the Wahkiakum School District’s  
12 students are low income. The per capita income in the Wahkiakum School District is  
13 approximately \$29,000. The Wahkiakum School District’s students are part of a lower income  
14 caste.

15 43. Upper Income Caste Example. Approximately 4% of the Mercer Island School  
16 District’s students are low income. The per capita income in that district is approximately  
17 \$90,000. The Mercer Island School District’s students are part of an upper income caste.

18 44. Simply an Example. The above example is noted merely to illustrate a contrast  
19 between an upper income caste and a lower income caste. The Wahkiakum School District is not  
20 contending that the State is in fact amply funding that other district. Instead, the harsh reality is  
21 that an upper income district has the wealth to better mitigate the harm to its students caused by  
22 the State’s unconstitutional underfunding of school facilities than does a lower income district  
23 like Wahkiakum.

1 **D. "Education"**

2 **45. Education.** The word "education" in Article IX, §1 means the basic knowledge  
3 and skills needed to compete in today's economy and meaningfully participate in this State's  
4 democracy.

5 **46. Fact.** The Washington Supreme Court has in fact held that "The word 'education'  
6 under article IX, section 1 means the basic knowledge and skills needed to compete in today's  
7 economy and meaningfully participate in this state's democracy." [See *McCleary*, 173 Wn.2d at  
8 483.]

9 **47. Allegation on information & belief.** The State agrees that the word "education" in  
10 Article IX, §1 means the basic knowledge and skills needed to compete in today's economy and  
11 meaningfully participate in our State's democracy.

12 **48. Fact.** The Washington Supreme Court has in fact held that "the State's constitutional  
13 duty to provide an 'education' goes beyond mere reading, writing and arithmetic. It also embraces  
14 broad educational opportunities needed in the contemporary setting to equip our children for their  
15 role as citizens and as potential competitors in today's market as well as in the marketplace of  
16 ideas. Education plays a critical role in a free society. It must prepare our children to participate  
17 intelligently and effectively in our open political system to ensure that system's survival. It must  
18 prepare them to exercise their First Amendment freedoms both as sources and receivers of  
19 information; and, it must prepare them to be able to inquire, to study, to evaluate and to gain  
20 maturity and understanding. The constitutional right to have the State 'make ample provision for  
21 the education of all [resident] children' would be hollow indeed if the possessor of the right could  
22 not compete adequately in our open political system, in the labor market, or in the marketplace of  
23 ideas." [See *McCleary*, 173 Wn.2d at 516 (quoting from *Seattle School District*, 90 Wn.2d at  
24 517-518).]

25 **49. Allegation on information & belief (equip).** The State agrees that the education  
26 required by Article IX, §1 embraces the broad educational opportunities needed in today's world



1 to equip the Wahkiakum School District's students for their role as citizens, participants in the  
2 market, and competitors in the marketplace of ideas.

3 50. Allegation on information & belief (*free society*). The State agrees that providing the  
4 Wahkiakum School District's students the education required by Article IX, §1 plays a critical  
5 role in a free society.

6 51. Allegation on information & belief (*participation*). The State agrees that the education  
7 required by Article IX, §1 must prepare the Wahkiakum School District's students to participate  
8 intelligently and effectively in our open political system.

9 52. Allegation on information & belief (*first amendment freedoms*). The State agrees that  
10 the education required by Article IX, §1 must prepare the Wahkiakum School District's students  
11 to exercise their First Amendment freedoms both as sources and receivers of information.

12 53. Allegation on information & belief (*abilities*). The State agrees that the education  
13 required by Article IX, §1 must prepare the Wahkiakum School District's students to be able to  
14 inquire, to study, to evaluate and to gain maturity and understanding.

15 54. Allegation on information & belief (*competition*). The State agrees that the  
16 Wahkiakum School District students' constitutional right to have the State make ample provision  
17 for the education required by Article IX, §1 would be hollow if the Wahkiakum School District's  
18 students could not compete adequately in our open political system, in the labor market, and in  
19 the marketplace of ideas.

20 55. Education Minimum. The knowledge and skills quoted in this Complaint's  
21 paragraph 48 constitute the minimum education that the State is constitutionally required to  
22 provide for the Wahkiakum School District's students.

23 56. Fact. The Washington Supreme Court has in fact held that the education described in  
24 *Seattle School District*, 90 Wn.2d at 517-518, constitutes "the *minimum* education that is  
25 constitutionally required." [See *McCleary*, 173 Wn.2d at 521 (internal citations & quotation  
26 marks omitted).]

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1           57. Allegation on information & belief. The State agrees that the knowledge and skills  
2 quoted in this Complaint’s paragraph 48 constitute the minimum education that the State is  
3 constitutionally required to provide for the Wahkiakum School District’s students.

4           58. Education Floor. The knowledge and skills quoted in this Complaint’s paragraph 48  
5 constitute a constitutional floor below which the education the State provides for the Wahkiakum  
6 School District’s students cannot constitutionally fall.

7           59. Fact. The Washington Supreme Court has in fact held that “the educational concepts  
8 discussed in *Seattle School District* represent a constitutional floor below which the definition of  
9 ‘education’ cannot fall.” [See *McCleary*, 173 Wn.2d at 521 (internal citations & quotation marks  
10 omitted).]

11           60. Allegation on information & belief. The State agrees that the knowledge and skills  
12 quoted in this Complaint’s paragraph 48 constitute a constitutional floor below which the  
13 education the State provides for the Wahkiakum School District’s students cannot constitutionally  
14 fall.

15           61. ESHB 1209. The current version of the four learning goals enacted in ESHB 1209 are  
16 codified in RCW 28A.150.210.

17           62. Knowledge & Skills (1). The first category of knowledge and skills listed in  
18 RCW 28A.150.210 is “Read with comprehension, write effectively, and communicate  
19 successfully in a variety of ways and settings and with a variety of audiences”. [See  
20 RCW 28A.150.210(1).]

21           63. Knowledge & Skills (2). The second category of knowledge and skills listed in  
22 RCW 28A.150.210 is “Know and apply the core concepts and principles of mathematics; social,  
23 physical, and life sciences; civics and history, including different cultures and participation in  
24 representative government; geography; arts; and health and fitness”. [See  
25 RCW 28A.150.210(2).]  
26

1           **64. Knowledge & Skills (3).** The **third** category of knowledge and skills listed in  
2 RCW 28A.150.210 is “Think analytically, logically, and creatively, and to integrate technology  
3 literacy and fluency as well as different experiences and knowledge to form reasoned judgments  
4 and solve problems”. [See RCW 28A.150.210(3).]

5           **65. Knowledge & Skills (4).** The **fourth** category of knowledge and skills listed in  
6 RCW 28A.150.210 is “Understand the importance of work and finance and how performance,  
7 effort, and decisions directly affect future career and educational opportunities”. [See  
8 RCW 28A.150.210(4).]

9           **66. Fact.** The State has directed that “school districts must provide instruction of sufficient  
10 quantity and quality and give students the opportunity to complete graduation requirements that  
11 are intended to prepare them for postsecondary education, gainful employment, and citizenship”,  
12 and that this instruction “shall include ... Instruction in the essential academic learning  
13 requirements under RCW 28A.655.070.” [See RCW 28A.150.220(1) & (3)(a).]

14           **67. Fact.** In 2019, the State changed the term “essential academic learning requirements”  
15 to “state learning standards”. [See Laws of 2019, chapter 252, section 119 (striking out “essential  
16 academic learning requirements” and replacing with “state learning standards”);  
17 <https://www.k12.wa.us/sites/default/files/public/curriculuminstruct/pubdocs/standardsfaq.pdf>  
18 (“What is the difference between Essential Academic Learning Requirements (EALRs) and  
19 Learning Standards? Nothing. Washington’s 1993 Basic Education Act defines Essential  
20 Academic Learning Requirements (EALRs) as what “students need to know and be able to do”.  
21 In recent years, Washington has shifted to using the overarching term “learning standards” instead  
22 of EALRs.”).]

23           **68. Allegation on information & belief.** The State agrees that what used to be called the  
24 Essential Academic Learning Requirements (EALRs) are now called the state learning standards.

25           **69. Fact.** After the Washington Supreme Court’s 2012 *McCleary* ruling, the State’s  
26 legislature enacted Laws of 2014, chapter 217, section 1, stating that “The legislature recognizes

1 that preparing students to be successful in postsecondary education, gainful employment, and  
2 citizenship requires increased rigor and achievement”. [See Laws of 2014, chapter 217,  
3 section 1.]

4 **70. State Learning Standards.** After the Washington Supreme Court’s 2012 *McCleary*  
5 ruling, the State’s legislature enacted Laws of 2019, chapter 252, section 119(1), stating that “The  
6 superintendent of public instruction shall develop state learning standards that identify the  
7 knowledge and skills all public school students need to know and be able to do based on the  
8 student learning goals in RCW 28A.150.210”. [See RCW 28A.655.070(1).]

9 **71. Allegation on information & belief.** The State agrees that the State’s superintendent  
10 of public instruction has developed state learning standards that identify the knowledge and skills  
11 that all Wahkiakum School District students need to know and be able to do.

12 **72. Allegation on information & belief.** The State agrees that the state learning standards  
13 developed by the State’s superintendent of public instruction are based on the student learning  
14 goals in RCW 28A.150.210.

15 **73. Fact.** The State has directed that “The superintendent of public instruction shall ...  
16 periodically revise the state learning standards, as needed, based on the student learning goals in  
17 RCW 28A.150.210.” [See RCW 28A.655.070(2)(a).]

18 **74. Allegation on information & belief.** The State agrees that the State’s superintendent  
19 of public instruction has periodically revised the state learning standards, as needed, based on the  
20 student learning goals in RCW 28A.150.210.

21 **75. Fact.** The State’s superintendent of public instruction tells the public that the state  
22 learning standards have been “developed through collaborative, public processes informed by  
23 educators, administrators, community members, parents and guardians, and stakeholder groups  
24 across the state and nation.” [See [https://www.k12.wa.us/student-success/learning-standards-](https://www.k12.wa.us/student-success/learning-standards-instructional-materials)  
25 [instructional-materials.](https://www.k12.wa.us/student-success/learning-standards-instructional-materials)]  
26

1           76. Allegation on information & belief. The State agrees that Washington’s state learning  
2 standards have been developed through collaborative, public processes informed by educators,  
3 administrators, community members, parents and guardians, and stakeholder groups across the  
4 state and nation.

5           77. Fact. The State’s superintendent of public instruction tells the public that  
6 Washington’s state learning standards “define what all students need to know and be able to do  
7 at each grade level”. [See [https://www.k12.wa.us/student-success/learning-standards-](https://www.k12.wa.us/student-success/learning-standards-instructional-materials)  
8 [instructional-materials.](https://www.k12.wa.us/student-success/learning-standards-instructional-materials)]

9           78. Allegation on information & belief. The State agrees that Washington’s state learning  
10 standards define what all Wahkiakum School District students need to know and be able to do at  
11 each grade level.

12           79. Fact. The State’s superintendent of public instruction tells the public that  
13 Washington’s state learning standards identify the knowledge and skills all public school students  
14 need to know and be able to do at each grade level in at least the following areas:

- 15           (a) the Arts;
- 16           (b) Computer Science;
- 17           (c) Educational Technology;
- 18           (d) English Language Arts;
- 19           (e) English Language Proficiency;
- 20           (f) Environment and Sustainability;
- 21           (g) Financial Education;
- 22           (h) Health and Physical Education;
- 23           (i) Mathematics;
- 24           (j) Science;
- 25           (k) Social Studies; and
- 26           (l) World Languages.

[See [https://www.k12.wa.us/student-success/learning-standards-instructional-materials.](https://www.k12.wa.us/student-success/learning-standards-instructional-materials)]

1           80. Allegation on information & belief (arts). The State agrees that Washington's state  
2 learning standards identify the knowledge and skills that all Wahkiakum School District students  
3 need to know and be able to do at each grade level in the area of the Arts.

4           81. Allegation on information & belief (computer science). The State agrees that  
5 Washington's state learning standards identify the knowledge and skills that all Wahkiakum  
6 School District students need to know and be able to do at each grade level in the area of Computer  
7 Science.

8           82. Allegation on information & belief (ed. tech.). The State agrees that Washington's  
9 state learning standards identify the knowledge and skills that all Wahkiakum School District  
10 students need to know and be able to do at each grade level in the area of Educational Technology.

11           83. Allegation on information & belief (language arts). The State agrees that  
12 Washington's state learning standards identify the knowledge and skills that all Wahkiakum  
13 School District students need to know and be able to do at each grade level in the area of English  
14 Language Arts.

15           84. Allegation on information & belief (language proficiency). The State agrees that  
16 Washington's state learning standards identify the knowledge and skills that all Wahkiakum  
17 School District students need to know and be able to do at each grade level in the area of English  
18 Language Proficiency.

19           85. Allegation on information & belief (environment/sustainability). The State agrees that  
20 Washington's state learning standards identify the knowledge and skills that all Wahkiakum  
21 School District students need to know and be able to do at each grade level in the area of  
22 Environment and Sustainability.

23           86. Allegation on information & belief (finance). The State agrees that Washington's state  
24 learning standards identify the knowledge and skills that all Wahkiakum School District students  
25 need to know and be able to do at each grade level in the area of Financial Education.  
26

1           87. Allegation on information & belief (health & fitness). The State agrees that  
2 Washington’s state learning standards identify the knowledge and skills that all Wahkiakum  
3 School District students need to know and be able to do at each grade level in the area of Health  
4 and Physical Education.

5           88. Allegation on information & belief (math). The State agrees that Washington’s state  
6 learning standards identify the knowledge and skills that all Wahkiakum School District students  
7 need to know and be able to do at each grade level in the area of Mathematics.

8           89. Allegation on information & belief (science). The State agrees that Washington’s state  
9 learning standards identify the knowledge and skills that all Wahkiakum School District students  
10 need to know and be able to do at each grade level in the area of Science.

11           90. Allegation on information & belief (civics). The State agrees that Washington’s state  
12 learning standards identify the knowledge and skills that all Wahkiakum School District students  
13 need to know and be able to do at each grade level in the area of Social Studies.

14           91. Allegation on information & belief (world languages). The State agrees that  
15 Washington’s state learning standards identify the knowledge and skills that all Wahkiakum  
16 School District students need to know and be able to do at each grade level in the area of World  
17 Languages.

18           92. Fact. The Washington Supreme Court has in fact held that “We agree with the  
19 [McCleary] trial court that the legislature provided specific substantive content to the word  
20 ‘education’ in *Seattle Sch. Dist.*, 90 Wash.2d at 518, 585 P.2d 71, by adopting the four learning  
21 goals in ESHB 1209 and developing the EALRs. Building on the educational concepts outlined  
22 in *Seattle School District*, ESHB 1209 and developing the EALRs identified the knowledge and  
23 skills specifically tailored to help students succeed as active citizens in contemporary society. In  
24 short, these measures together define a ‘basic education’ – the substance of the constitutionally  
25 required ‘education’ under article IX, section 1.” [See *McCleary*, 173 Wn.2d at 523-524  
26 (citations and internal quotation marks omitted).]

COMPLAINT FOR DECLARATORY JUDGMENT  
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1           93. Fact. The Washington Supreme Court has in fact held with respect to Article IX, §1  
2 that “The current substantive content of the requisite knowledge and skills for ‘education’ comes  
3 from three sources: the broad educational concepts outlined in *Seattle School District*, the four  
4 learning goals in Engrossed Substitute House Bill (ESHB) 1209, 53d Leg., Reg. Sess.  
5 (Wash.1993); and the State’s essential academic learning requirements (EALRs).” [See  
6 *McCleary*, 173 Wn.2d at 483.]

7           94. Not Cut Back or Reduced. The knowledge and skills described in the Supreme Court’s  
8 *Seattle School District* decision (90 Wn.2d at 517-518), the four learning goals in ESHB 1209,  
9 and the State’s Essential Academic Learning Requirements (EALRs), were not cut back or  
10 reduced after the Washington Supreme Court’s 2012 *McCleary* ruling.

11           95. “Education” Content (*Seattle School District*). The knowledge and skills quoted in  
12 this Complaint’s paragraph 48 from the Supreme Court’s *Seattle School District* decision are one  
13 part of the substantive content of the “education” that Article IX, §1 requires the State to amply  
14 provide for the Wahkiakum School District’s students.

15           96. “Education” Content (*RCW 28A.150.210*). The knowledge and skills specified in  
16 the four numbered provision in RCW 28A.150.210 are one part of the substantive content of the  
17 “education” that Article IX, §1 requires the State to amply provide for the Wahkiakum School  
18 District’s students.

19           97. “Education” Content (*state learning standards*). The knowledge and skills specified  
20 in Washington’s state learning standards are one part of the substantive content of the “education”  
21 that Article IX, §1 requires the State to amply provide for the Wahkiakum School District’s  
22 students.

23           98. Fact. The Washington Supreme Court has in fact (a) held that “The ‘education’  
24 required under article IX, section 1 consists of the *opportunity* to obtain the knowledge and skills  
25 described in *Seattle School District*, ESHB 1209, and the EALRs. It does not reflect a right to a  
26 guaranteed educational outcome”, (b) held that the State’s providing “effective teaching and



1 opportunities for learning these essential skills make up the *minimum* of the education that is  
2 constitutionally required”, and (c) emphasized the sworn testimony of the chair of the State’s  
3 Basic Education Task Force that “we need to prove that we have provided the opportunity, and if  
4 taken advantage of, that it is realistic.” [See *McCleary*, 173 Wn.2d at 483-484, 516, & 525 (italics  
5 in original; underlines added).

6 99. Outcome Guarantee. Our Constitution is not a guarantee that every Wahkiakum  
7 School District student will successfully obtain the knowledge and skills encompassed within the  
8 word “education” in Article IX, §1.

9 100. Realistic & Effective Opportunity. Our Constitution promises every  
10 Wahkiakum School District student that the State will amply provide him or her a realistic  
11 and effective opportunity to obtain the knowledge and skills encompassed within the word  
12 “education” in Article IX, §1.

13  
14 ***E. “State”***

15 101. State. The word “state” in Article IX, §1 means the Washington State  
16 government. It does not mean a local school district. Nor does it mean the federal  
17 government.

18 102. Fact. The Washington Supreme Court has in fact affirmed with respect to  
19 Article IX, §1 that (a) “the State must fully fund basic education with stable and dependable *State*  
20 sources”, and (b) “the State cannot rely on non-State funds to finance basic education”. [See  
21 *McCleary*, 173 Wn.2d at 528 (italics in original, internal quotation marks and citations omitted).]

22 103. Allegation on information & belief. The State agrees that the word “state” in  
23 Article IX, §1 means the Washington State government.

24 104. Fact. The Washington Supreme Court has in fact rejected the contention that the  
25 State can satisfy its constitutional funding duty under Article IX, §1 with the federal dollars it  
26

1 directs to school districts “Because federal dollars generally come with strings attached” (e.g.,  
2 supplement-but-not-supplant restrictions), and “while federal funding is routed to school districts  
3 through the State’s Office of Superintendent of Public Instruction (OSPI), it is in a sense pass-  
4 through money for local school districts.” [See *McCleary*, 173 Wn.2d at 529.]

5 105. Allegation on information & belief. The State agrees that the word “state” in  
6 Article IX, §1 does not mean the federal government.

7 106. Fact. The Washington Supreme Court has in fact held that “school districts have  
8 no duty under Washington’s constitution. Article IX makes no reference whatsoever to school  
9 districts.” [See *Tunstall v. Bergeson*, 141 Wn.2d 201, 232, 5 P.3d 691 (2000).]

10 107. Allegation on information & belief. The State agrees that the word “state” in  
11 Article IX, §1 does not mean the Wahkiakum School District.

12 108. Local Voters. Requiring an element of education funding to be approved by  
13 **a school district’s local voters makes the funding of that element dependent upon the whim**  
14 **of the district’s voters instead of the education needs of the district’s students.**

15 109. Fact. The Washington Supreme Court has in fact held that voter-approved funding  
16 is “wholly dependent upon the whim of the electorate”, is “subject to the whim of the electorate”,  
17 and that “reliance on local dollars to support the basic education program fails to provide the  
18 ample funding article IX, section 1 requires.” [See *McCleary*, 173 Wn.2d at 486 & 528 (internal  
19 quotation marks omitted).]

20 110. Allegation on information & belief. The State agrees that requiring an element of  
21 Wahkiakum School District funding to be approved by district voters makes the funding of that  
22 element dependent upon the whim of the electorate.

23 111. Local Tax Base. Requiring an element of education funding to be based on a  
24 **school district’s local tax base makes the funding of that element rely on the assessed value**  
25 **of the real property within that school district.**  
26

1           112. Example. Property owners in the Wahkiakum School District would have to pay  
2 property taxes of almost **four dollars** per thousand dollars of assessed property value to fund  
3 \$30 million of school facilities repairs.

4           113. Example. Property owners in the Mercer Island School District would have to pay  
5 property taxes of about **twelve pennies** per thousand dollars of assessed property value to fund  
6 \$30 million of school facilities repairs.

7           114. Fact. The Washington Supreme Court has in fact (a) held that requiring the  
8 funding of a component of education falling within Article IX, §1 to be based on local property  
9 taxes violates Article IX, §1 because that funding must “rely on the assessed valuation of real  
10 property at the local level”, (b) noted “the inherent instability in a system that relies on the  
11 assessed valuation of taxable real property within a district to support basic education”, and  
12 (c) held that the State cannot rely on local property taxes for the “dependable and regular” funding  
13 required by Article IX, §1 “because they are too variable insofar as [they] depend on the assessed  
14 valuation of taxable real property at the local level. This ... implicates both the equity and the  
15 adequacy of the K–12 funding system. Districts with high property values are able to raise more  
16 levy dollars than districts with low property values, thus affecting the equity of a statewide system.  
17 Conversely, property-poor districts, even if they maximize their local levy capacity, will often  
18 fall short of funding a constitutionally adequate education. All local-level funding, whether by  
19 levy or otherwise, suffers from this same infirmity.” [See *McCleary*, 173 Wn.2d at 486, 527-528  
20 (internal quotation marks omitted).]

21           115. Allegation on information & belief. The State agrees that requiring an element of  
22 Wahkiakum School District funding to be based on the district’s local tax base makes the funding  
23 of that element rely on the assessed value of the real property within the Wahkiakum School  
24 District.

1 **F. Judicial Enforcement**

2 116. **Judicial Enforcement.** Article IX, §1 imposes a judicially enforceable  
3 affirmative duty on the State to make ample provision for the education of all Wahkiakum  
4 School District students.

5 117. Fact. The Washington Supreme Court has in fact held that (a) “article IX,  
6 section 1 imposes a judicially enforceable affirmative duty on the State to make ample provision  
7 for the education of all children residing within its borders”, and (b) “The judiciary has the  
8 primary responsibility for interpreting article IX, section 1 to give it meaning and legal effect.”  
9 [See *McCleary*, 173 Wn.2d at 485 & 515.]

10 118. Fact. The Washington Supreme Court has in fact held that (a) “It is the proper  
11 function of the judiciary to interpret, construe and enforce the constitution of the State of  
12 Washington”, and (b) “The power of the judiciary to enforce rights recognized by the  
13 constitution, even in the absence of implementing legislation, is clear. Just as the Legislature  
14 cannot abridge constitutional rights by its enactments, it cannot curtail mandatory provisions by  
15 its silence. The judicial obligation to protect constitutionally declared fundamental rights of  
16 individuals is as old as the United States. See *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163,  
17 2 L.Ed. 60, 69 (1803).” [See *Seattle School District*, 90 Wn.2d at 482 & 503 n.7 (citations omitted).]

18 119. Fact. The Washington Supreme Court has in fact held that (a) Article IX, §1 “is  
19 mandatory and imposes a judicially enforceable affirmative duty” upon the State, and (b) “the  
20 judiciary has the ultimate power and the duty to interpret, construe and give meaning to words,  
21 sections and articles of the constitution. It is emphatically the province and duty of the judicial  
22 department to say what the law is. *United States v. Nixon*, 418 U.S. 683, 703, 94 S.Ct. 3090, 41  
23 L.Ed.2d 1039 (1974); *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 2 L.Ed. 60 (1803). This duty  
24 must be exercised even when an interpretation serves as a check on the activities of another branch  
25 of government or is contrary to the view of the constitution taken by another branch.” [See *Seattle*  
26 *School District*, 90 Wn.2d at 482 & 503-504 (citations omitted).]

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1           125. **Cost Correlation.** The funding that the State provides to the Wahkiakum  
2 School District does not correlate to the real cost of providing the safe facilities needed to  
3 amply provide all Wahkiakum School District students a realistic and effective opportunity  
4 to obtain the knowledge and skills encompassed within the word “education” in  
5 Article IX, §1.

6           126. **Fact.** The Washington Supreme Court has in fact found a violation of  
7 Article IX, §1 when State funding “did not correlate to the level of resources needed to provide  
8 all students with an opportunity to meet the State’s education standards.” [See *McCleary*, 173  
9 Wn.2d at 530.]

10           127. **Allegation on information & belief.** The State agrees that the funding it provides  
11 to the Wahkiakum School District violates Article IX, §1 if that funding does not correlate to the  
12 level of resources needed to provide all Wahkiakum School District students a realistic and  
13 effective opportunity to meet the State’s education standards.

14           128. **Learning Standards Correlation.** The funding that the State provides to the  
15 Wahkiakum School District does not correlate to the level of resources needed to provide  
16 all Wahkiakum School District students the safe facilities needed to provide them a realistic  
17 and effective opportunity to meet Washington’s state learning standards.

18           129. **Fact.** The Washington Supreme Court has in fact found State funding violates  
19 Article IX, §1 when there is “no correlation between the funding formulas and the level of  
20 resources needed to provide students with an opportunity to gain the knowledge and skills  
21 outlined in ESHB 1209 and the EALRs.” [See *McCleary*, 173 Wn.2d at 531.]

22           130. **Allegation on information & belief.** The State agrees that the funding it provides  
23 to the Wahkiakum School District violates Article IX, §1 if that funding does not correlate to the  
24 level of resources needed to provide all Wahkiakum School District students a realistic and  
25 effective opportunity to gain the knowledge and skills outlined in RCW 28A.150.210(1)-(4) and  
26 Washington’s state learning standards.

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1 139. The State contends that its Wahkiakum School District funding does not violate  
2 Article IX, §1 of the Washington State Constitution.

3 140. This action presents an actual, present, and existing dispute between parties with  
4 genuine and opposing interests which are direct and substantial, a judicial determination of which  
5 will be final and conclusive. This dispute is a justiciable controversy between the Wahkiakum  
6 School District and the State regarding the parties' rights and obligations under Article IX, §1 of  
7 the Washington State Constitution.

8 141. **Declaratory Relief.** For the reasons outlined in this Complaint, this court should  
9 enter a declaratory judgment declaring that the State's failure to amply fund the facilities needed  
10 to safely provide all Wahkiakum School District students the "education" to which they have a  
11 positive, constitutional right violates Article IX, §1 of the Washington State Constitution.

12 142. **The Urgency of Now.** A second grader does not get a second chance at second  
13 grade. This action's claim for declaratory relief should be granted a speedy hearing and be  
14 advanced on the court's calendar for prompt resolution. [See, e.g., CR 57.]

15 143. **Bifurcation.** To minimize unnecessary delays and allow a more prompt resolution  
16 of whether the State is or is not liable for violating Article IX, §1, this court should bifurcate this  
17 action's claim for declaratory relief (legal liability) from this action's claim for monetary relief  
18 (resulting damages amount).

19 144. **Additional Relief.** This court should grant the school district whatever additional  
20 relief relating to this declaratory relief claim that appears just and equitable. Such relief includes  
21 (but is not limited to) an award of the school district's attorney fees relating to its having to pursue  
22 this action to compel the State's constitutional compliance.

23 **VII. SECOND CLAIM: INJUNCTIVE RELIEF**

24 145. The school district incorporates into this paragraph the other allegations in this  
25 Complaint that are not inconsistent with this claim for injunctive relief.  
26

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1           146. The Constitution. The Wahkiakum School District has a clear legal or equitable  
2 right to have the State comply with its Article IX, §1 duty under the Washington Constitution.

3           147. The Law. The Wahkiakum School District has a clear legal or equitable right to  
4 have the State comply with its Article IX, §1 duty as declared by the Washington Supreme Court.

5           148. Right. The Wahkiakum School District has a clear legal or equitable right to have  
6 the State amply fund the facilities needed to safely provide all Wahkiakum School District  
7 students the “education” to which they have a positive, constitutional right under Article IX, §1.

8           149. Invasion. The State’s failure to amply fund the facilities needed to safely provide  
9 all Wahkiakum School District students the “education” to which they have a positive,  
10 constitutional right violates Article IX, §1.

11           150. Harm. The State’s failure to amply fund the facilities needed to safely provide all  
12 Wahkiakum School District students the “education” to which they have a positive, constitutional  
13 right has caused (and continues to cause) actual, substantial, immediate, and irreparable loss,  
14 harm, and damage to the education that the Wahkiakum School District can provide to its students.

15           151. Equity. Examining the three injunction elements (right, invasion, & harm) in light  
16 of equity and the balancing of legally relevant interests supports granting the injunctive relief the  
17 school district requests.

18           152. Injunctive Relief. This court should enter an injunction enjoining the State’s  
19 failure to amply fund the facilities needed to safely provide all Wahkiakum School District  
20 students the “education” to which they have a positive, constitutional right under Article IX, §1.  
21 The three injunction elements (right, invasion, & harm) exist in this action, and this requested  
22 injunction is further supported by the fourth consideration (equity).

23           153. Additional Relief. This court should grant the school district whatever additional  
24 relief relating to this injunctive relief claim that appears just and equitable. Such relief includes  
25 (but is not limited to) an award of the school district’s attorney fees relating to its having to pursue  
26 this action to compel the State’s constitutional compliance.

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1 **VIII. THIRD CLAIM: MONETARY RELIEF**

2 154. The school district incorporates into this paragraph the other allegations in this  
3 Complaint that are not inconsistent with this claim for monetary relief.

4 155. **Elementary School.** The Wahkiakum School District's elementary school was  
5 built 1950-1952. It is an outdated facility that requires over \$15 million of construction costs to  
6 safely provide the Wahkiakum School District's elementary school students the "education" to  
7 which they have a positive, constitutional right under Article IX, §1 of the Washington State  
8 Constitution.

9 156. **State Obligation.** Article IX, §1 requires the State to amply fund the construction  
10 costs needed to safely provide the Wahkiakum School District's elementary school students the  
11 "education" to which they have a positive, constitutional right under Article IX, §1.

12 157. **Attempted Mitigation.** The Wahkiakum School District attempted to finance some  
13 of the construction needed to safely provide its elementary school students the "education" to  
14 which they have a positive, constitutional right under Article IX, §1 by asking local voters to pass  
15 a bond measure to finance that construction. Voters did not approve that bond measure.

16 158. **Middle School.** The Wahkiakum School District's middle school was built  
17 1992-1994. It is an outdated facility that requires over \$5 million of construction costs to safely  
18 provide the Wahkiakum School District's middle school students the "education" to which they  
19 have a positive, constitutional right under Article IX, §1 of the Washington State Constitution.

20 159. **State Obligation.** Article IX, §1 requires the State to amply fund the construction  
21 costs needed to safely provide the Wahkiakum School District's middle school students the  
22 "education" to which they have a positive, constitutional right under Article IX, §1.

23 160. **Attempted Mitigation.** The Wahkiakum School District attempted to finance some  
24 of the construction needed to safely provide its middle school students the "education" to which  
25 they have a positive, constitutional right under Article IX, §1 by asking local voters to pass a bond  
26 measure to finance that construction. Voters did not approve that bond measure.

1           161.   **High School.** The Wahkiakum School District’s high school was built 1959-1962.  
2 It is an outdated facility that requires over \$30 million of construction costs to safely provide the  
3 Wahkiakum School District’s high school students the “education” to which they have a positive,  
4 constitutional right under Article IX, §1 of the Washington State Constitution.

5           162.   **State Obligation.** Article IX, §1 requires the State to amply fund the construction  
6 costs needed to safely provide the Wahkiakum School District’s high school students the  
7 “education” to which they have a positive, constitutional right under Article IX, §1.

8           163.   **Attempted Mitigation.** The Wahkiakum School District attempted to finance some  
9 of the construction needed to safely provide its high school students the “education” to which  
10 they have a positive, constitutional right under Article IX, §1 by asking local voters to pass a bond  
11 measure to finance that construction. Voters did not approve that bond measure.

12           164.   **Monetary Relief.** This court should require the State to amply fund the  
13 construction costs needed to safely provide the Wahkiakum School District’s elementary school,  
14 middle school, and high school students the “education” to which they have a positive,  
15 constitutional right under Article IX, §1 of the Washington State Constitution. This amount  
16 exceeds \$50 million. The full amount will be proven at trial.

17           165.   **Additional Relief.** This court should grant the school district whatever additional  
18 relief relating to this monetary relief claim that appears just and equitable. Such relief includes  
19 (but is not limited to) an award of the school district’s attorney fees relating to its having to pursue  
20 this action to compel the State’s constitutional compliance.

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**IX. CONCLUSION**

It is the judicial branch’s duty to uphold and enforce our State Constitution. The Wahkiakum School District accordingly requests the following relief from this court to compel the State of Washington to obey the Constitution of Washington:

1. Issuance of the declaratory judgment requested in this Complaint’s First Claim: Declaratory Relief.
2. Issuance of the injunction requested in this Complaint’s Second Claim: Injunctive Relief.
3. Issuance of the monetary judgment requested in this Complaint’s Third Claim: Monetary Relief.
4. An award of attorney fees, expenses, and costs to the full extent allowed by equity and/or law.
5. Permission to amend the pleadings and/or add additional claims to conform to discovered evidence or the proof offered at the time of hearing or trial.
6. Such other relief as appears to the court to be just, equitable, or otherwise proper.

RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of December, 2021.

FOSTER GARVEY PC

s/ Thomas F. Ahearne

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COMPLAINT FOR DECLARATORY JUDGMENT  
& RELATED RELIEF ENFORCING OUR CONSTITUTION - 29

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OPENING BRIEF

APPENDIX TWO

FILED

2022-JUN 24 PM 2:33

KAY M. HOLLAND, CLERK  
WAHKIAKUM COUNTY, WA

BY JR DEPUTY

Superior Court of Washington, County of Wahkiakum

WAHKIAKUM SCHOOL DISTRICT NO. 200,

Plaintiff,

v.

STATE OF WASHINGTON,

Defendants.

NO.: 21-2-00053-35

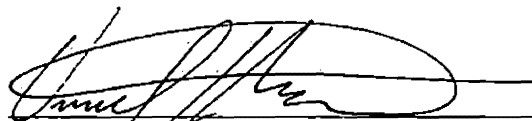
**COURT'S RULING ON DEFENDANTS  
MOTION TO DISMISS**

THIS MATTER having come on regularly for hearing before the undersigned judge of the above-entitled court upon the motion of Defendant, State of Washington, to dismiss pursuant to CR 12(b)(6). This court having heard the argument of counsel and having considered all material submitted in support of and in opposition to Defendant's motion and the records of the Court in this matter

The Court being fully advised in the premises now, hereby GRANTS Defendant's Motion to Dismiss.

This action is hereby DISMISSED WITH PREJUDICE.

DATED this 24 day of June, 2022.

  
JUDGE DONALD J. RICHTER

## 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 September 12, 2022, at Seattle, Washington.

*s/ McKenna Filler*  
McKenna Filler



# FOSTER GARVEY PC

September 12, 2022 - 4:22 PM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 101,052-4  
**Appellate Court Case Title:** Wahkiakum School District No. 200 v. State of Washington  
**Superior Court Case Number:** 21-2-00053-9

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