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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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**STATEMENT OF GROUNDS FOR DIRECT REVIEW  
UNDER RAP 4.2**

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## I. NATURE OF CASE & DECISION

*“Article IX, section 1 confers on children in Washington a positive constitutional right to an amply funded education.”*

McCleary v. State, 173 Wn.2d  
477, 483, 269 P.3d 227 (2012)

The pure question of law at issue in this appeal is whether the constitutional right conferred by Article IX, section 1 excludes the education facilities needed to safely provide the above education. The ultimate answer to this fundamental question of constitutional law materially impacts every school district and public school student across our State every school day. The plaintiff school district believes that public education is critical to our residents and democracy. It accordingly seeks direct review because this appeal involves “a fundamental and urgent issue of broad public import which requires prompt and ultimate determination.” RAP 4.2(a)(4).

**A. Substance of the Case Below**

This case is based on the constitutional command stated in Article IX, §1 of our State Constitution:

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 substance of this case is the parties' disagreement about whether this education mandate excludes education facilities.

The plaintiff school district believes the State's paramount duty under Article IX, §1 does not exclude the education facilities needed to provide an education – and filed this suit because it lacks funding for the education facilities needed to safely provide its students an education.

The defendant State, on the other hand, contends that its paramount education duty under Article IX, §1 excludes education facilities – and therefore filed a CR 12(b)(6) motion to dismiss the school district's Complaint with prejudice.

The lower court granted the State's dismissal motion.

**B. Basis for the Superior Court Decision**

**1. Factual Basis**

The factual basis for the lower court’s decision is undisputed – for its decision is based on every fact alleged in the Complaint being true. State’s February 28, 2022 Motion To Dismiss at 10:13-14 (“The facts as alleged in the Complaint are presumed true”) (citing CR 12(b)(6) & *Trujillo v. Northwest Trustee Servs.*, 183 Wn.2d 820, 830, 355 P.3d 1100 (2001)).

A copy of the presumed-to-be-true Complaint upon which the lower court based its decision is attached as APPENDIX ONE. The following pages outline several of the corresponding facts upon which the lower court’s decision is based, with each fact’s paragraph number in the Complaint identified in brackets. (For example: “[¶6]” means “Complaint at ¶6”.)

**(a) *The 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 typical wealthier school district in our State 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 part of the lower income caste in our State [¶¶39-40, 42].

***(b) Wahkiakum's education facilities***

The Wahkiakum 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 privileged enough to live in our State's more affluent areas [¶2].

Wahkiakum's elementary school is an outdated facility built back in 1950-1952 to teach the World War II baby boomers as they reached grade school [¶155].

Its high school is an outdated facility built 1959-1962 to teach those World War II baby boomers as they reached high school [¶161].

And its middle school is an outdated facility built 1992-1994 to create space as student population grew [¶158].

***(c) The “education” at issue in this case***

The “education” at issue in this case is the “education” this 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 corresponding right in this case is what this Court’s published *McCleary* decision declared to be every Washington child’s “positive constitutional right to an amply funded education” [¶¶17-18 (quoting *McCleary*, 173 Wn.2d at 483), ¶¶25-26].

***(d) Needed funding for Wahkiakum’s education facilities***

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

***(e) Local funding for Wahkiakum’s education facilities***

The school district tried to fund at least some of its above facilities’ construction needs by asking local voters to pass a school bond [¶¶157, 160, 163].

Since school bonds are funded with local property taxes, they are tied directly to the assessed value of the real property within a school district [¶111]. This means that the same facilities project in two school districts imposes a different tax rate on the local voter 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].

Wahkiakum voters did not pass the facilities funding bond needed to safely provide Wahkiakum students the previously noted education to which they have a positive constitutional right under Article IX, §1 [¶¶157, 160, 163]. (This was not the first time – for Wahkiakum voters have declined to pass a facilities bonds all but one time in the past. KING 5 T.V. Article (2022).)

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

Nor does State funding for education facilities 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)].

## 2. **Legal Basis**

The State based its motion for dismissal with prejudice on CR 12(b)(6) and the State's interpretation of its paramount duty under Article IX, §1.<sup>1</sup>

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<sup>1</sup> *Although the State's motion also included a CR 12(b)(1) request to dismiss the Complaint's third claim (monetary relief) for lack of jurisdiction, that 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. 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 order granting that motion did not state the lower court's legal reasoning (copy attached as APPENDIX TWO). But since the lower court granted the State's motion for dismissal with prejudice based on CR 12(b)(6) and Article IX, §1, the legal basis for its decision must have been CR 12(b)(6) and Article IX, §1.

## **II. ISSUE PRESENTED FOR REVIEW**

This appeal presents the following question of constitutional law for review:

Does the paramount education duty commanded by Article IX, §1 of our State Constitution exclude the education facilities needed to safely provide an education?

The Wahkiakum School District states the obvious: this fundamental question of constitutional law materially impacts the 295 school districts and over 1 million public school students across our State.

### **III. GROUNDS FOR DIRECT REVIEW**

The Wahkiakum School District seeks direct review of the above question of constitutional law pursuant to RAP 4.2(a)(4):

*Public Issues.* A case involving a fundamental and urgent issue of broad public import which requires prompt and ultimate determination.

RAP 4.2(a)(4).

#### **A. Fundamental Issue Requiring Ultimate Determination**

There is nothing more fundamental to a democracy than its Constitution.

Article IX, §1 of our State Constitution 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.

This Court's published 2012 *McCleary* decision expressly declared that "Article IX, section 1 confers on children in Washington a positive constitutional right to an amply funded education." 173 Wn.2d at 483 (underline added).

The issue presented in this appeal is whether the State’s corresponding education duty under Article IX, §1 excludes the education facilities needed to safely provide a school district’s students an education. This is a *fundamental* question of State constitutional law to which only this State Supreme Court can provide the *ultimate* answer.

**B. Urgent Issue Requiring Prompt Determination**

A second grader doesn’t get a second chance at second grade. But the lower court’s decision is based on the fact that due to local voters’ declining to tax themselves for school bonds, Wahkiakum’s second graders must attend an over 70-year-old elementary school that does not safely provide them the “education” to which this Court has held they have a positive constitutional right [¶¶17-18, 25-26, 45-47, 128, 131, 134, 150, 155, 157].

Indeed, the lower court’s decision is based on the fact that due to local voters’ declining to tax themselves for school bonds, none of Wahkiakum’s kindergarten through 12th graders attend

education facilities that safely provide them the “education” to which this Court has held they have a positive constitutional right. [¶¶17-18, 25-26, 45-47, 128, 131, 134, 150, 155, 157-158, 160-161, 163].

The Wahkiakum School District respectfully submits that whether the State’s ongoing failure to fund the education facilities needed to safely provide Wahkiakum students the “education” to which they have a positive constitutional right is not an inconsequential issue whose determination can be delayed without prejudicing the education of the Wahkiakum children Article IX, §1 protects. Unless the positive constitutional right conferred on Washington school children every year is just a hollow, half-hearted promise, this appeal presents an *urgent* issue requiring *prompt* determination.<sup>2</sup>

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<sup>2</sup> Another example of how second graders illustrate the need for a prompt determination, this Court will recall that Carter McCleary was in second grade when his parents filed the *McCleary v. State* lawsuit. Carter, however, had graduated from high school before the *McCleary* suit finally ended. The wheels

**C. Broad Public Import**

Whether the State's paramount education duty under Article IX, §1 excludes the education facilities needed to safely provide students an education is not an isolated, one-off question affecting only the Wahkiakum School District.

It's a fundamental question of constitutional law that materially impacts every school district across our State. All 295 of them. OSPI School Districts (295 public school districts in Washington).

And the answer to this question materially impacts the constitutional right of every child in our State to have an amply funded education. Not an insignificant number since there are more than 1 million public school students across our State. OSPI Report Card (Washington's 2021-2022 public school enrollment was 1,091,429).

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*of justice need not turn so slowly for Wahkiakum's second graders here.*

**1. School bond failures endemic across our State**

Wahkiakum is not the only Washington school district whose students are handicapped by local voters' declining to pass needed school bonds. For example, voters declined to pass local school bonds over 80% of the time in this year's school bond elections. OSPI Election Detail (2022).

One could argue that these bond failures occurring primarily in the poorer parts of our State do not significantly prejudice the education of children living in our State's wealthier areas. Or harm the education of students living in districts whose voters can afford to tax themselves to provide the school facilities needed to prepare their local students for today's world.

But this preference for students living in and among our State's upper income caste does not amply fund the education of all children across our State. The issue presented by this appeal – *i.e.*, whether the State's paramount education duty under Article IX, §1 excludes the education facilities needed to safely provide students an education – is therefore not narrowly

important to just the Wahkiakum students whose education is being irreparably harmed in this particular case. Instead, the issue presented by this appeal is broadly important to school-age children all across our State – especially those living in our State’s poorer regions.

**2. Known education harm from poor facilities**

The lower court’s decision is based on the following fact:

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].

The fact that poor education facilities hamstring children’s education has long been known to the defendant State – for education research has been confirming this on-the-ground reality for many 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: when providing an education, facilities matter.

3. **Known physical harm from poor facilities**

Facilities also matter for student safety.

The lower court's decision is based on the following fact:

The level of facilities funding that the State provides to the Wahkiakum School District has a tangible negative effect on student safety.

[¶134].

The fact that poor education facilities endanger student safety is well known – for it's an obvious on-the-ground reality illustrated by (but not limited to) the following three examples:

**(a) School buildings with inadequate seismic protection**



Middle school after earthquake.<sup>3</sup>

The State’s own seismic danger investigations have confirmed that it is 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.

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<sup>3</sup> *Almay Photograph (2008) (printed here per purchase invoice IY027502050).*

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.

Too great not just in Wahkiakum.

Too great broadly across our State.




***(b) School buildings with inadequate shooter protection***



Elementary school after classroom shooting.<sup>4</sup>























The defendant State knows that the lack of adequate school building security infrastructure can be fatal to school children.

Columbine. Sandy Hook. Parkland. Uvalde. They aren't uncommon outliers. Between just January 18 and May 25 of this year (2022), K-12 students in the U.S. were shot at:

-  Oliver Academy
-  Seminole High School
-  Magruder High School

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<sup>4</sup> *Sky News Article (2022).*

 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 defendant State knows that the lack of adequate building security in our State’s public schools is a ticking time bomb waiting to explode somewhere within our State’s borders.

Again....



*(c) School buildings with inadequate fire protection*

The defendant State knows that an old school building's wiring and lack of modern fire suppression systems can be fatal.



Almira (Washington) elementary school.<sup>5</sup>

Like the Wahkiakum School District's elementary school, the Almira School District's school was built in 1952. Spokesman Review Article (2021). The photograph above is from the fire that started in that 1952 school building around

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<sup>5</sup> *Columbia Basin Herald Article (2021); see also KHQ T.V. Video Footage (2021).*

4:00pm on Tuesday, October 12, 2021, and burned the school to the ground. Spokesman Review Article (2021).

Like Wahkiakum's 70-year-old elementary school, Almira's 70-year-old elementary school had old electrical wiring – and it's the building's electrical wiring that's the suspected cause of that October Tuesday fire. 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 day. NCW Life T.V. Article (2021).

In short: the defendant State knows that outdated wiring and the lack of adequate fire protection systems in a public school endangers the lives and safety of students attending that school. Not just public school students in Wahkiakum, but students broadly across our State.

***(d) Student safety conclusion***

The Wahkiakum School District respectfully submits that the safety of children while they are in school is important. The

school district accordingly believes that the issue presented by this appeal – *i.e.*, whether the State’s paramount education duty under Article IX, §1 excludes the education facilities needed to safely provide students an education – is an issue of broad public import in our State. Especially for the Washington children attending school buildings that lack needed seismic, security, and fire protections.

The broad public import of child safety in boats supports the law making it illegal to put children in a boat without a life jacket. RCW 79A.60.160(4) (“No person shall operate a vessel under nineteen feet in length on the waters of this state with a child twelve years old and under, unless the child is wearing a personal flotation device that meets or exceeds the United States coast guard approval standards of the appropriate size, while the vessel is underway”).

The broad public import of child safety in cars supports the law making it illegal to put children in a car without a seat belt. RCW 46.61.688(4) (“No person may operate a motor

vehicle unless all child passengers under the age of sixteen years are either: (a) Wearing a safety belt assembly or (b) are securely fastened into an approved child restraint device”).

The broad public import of child safety in school supports this Court’s promptly deciding the question of constitutional law at issue in this appeal – *i.e.*, whether the State’s paramount education duty under Article IX, §1 excludes the education facilities needed to safely provide students an education. As the above seismic, shooting, and fire examples illustrate, the safety of school children while they are in school buildings is an issue of broad public import to students, families, and communities all across our State.

**4. Education conclusion: facilities matter**

The discussion in this Part III.C of the school district’s filing can be accurately summarized in one sentence: when it comes to Washington children’s education ... and their physical safety in school ... *facilities matter*.

#### IV. CONCLUSION

Kids don't get a second chance to recoup the education they miss when their school district lacks the education facilities needed to safely provide them the education to which Article IX, §1 grants them a positive constitutional right. The Wahkiakum School District accordingly believes that the corresponding constitutional question presented in this appeal deserves a prompt, ultimate answer by this Court:

Does the paramount education duty commanded by Article IX, §1 of our State Constitution exclude the education facilities needed to safely provide an education?

This fundamental question of constitutional law materially impacts 295 school districts and more than 1 million public school students across our State.

As the lower court acknowledged at the April 4, 2022, hearing on the constitutional question in this case: "It's an important issue, not just for our community, but for communities across the state." Superior Court CD of oral argument at 35:17-23. On that point, the Wahkiakum School District agrees.

And it respectfully submits that this Court should accordingly accept direct review pursuant to RAP 4.2(a)(4).

RAP 18.17(b) & (c)(1) 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 3933 words (not more than 4000).

RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of July, 2022.

Foster Garvey PC

*s/ Thomas F. Ahearne*

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*Attorneys for Wahkiakum School District No. 200*

## **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 defendant State's attorneys 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 July 12, 2022, at Tacoma, Washington.

*s/ McKenna Filler*  
McKenna Filler



FILED

2021 DEC 28 PM 2:06

KAY M. HOLLAND, CLERK  
WAHKIAKUM COUNTY, WA

BY JK DEPUTY

SUPERIOR COURT OF WASHINGTON FOR WAHKIAKUM COUNTY

WAHKIAKUM 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**

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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 14. Fact. The Washington Supreme Court has in fact held that (a) Article IX, §1 “is  
2 unique among state constitutions”, and (b) “Careful examination of our constitution reveals that  
3 the framers declared only once in the entire document that a specified function was the State’s  
4 Paramount duty. That singular declaration is found in Constitution art. 9, s 1. Undoubtedly, the  
5 imperative wording was intentional. ... No other State has placed the common school on so high  
6 a pedestal.” [See *Seattle School District No. 1 v. State*, 90 Wn.2d 476, 498 & 510-511, 585 P.2d  
7 71 (1978).]

8 15. Basis for information & belief allegations. The primary basis for this Complaint’s  
9 allegations on information and belief is: (a) the information contained in the Washington Supreme  
10 Court rulings quoted in this Complaint and (b) the belief that the State’s Answer will comply with  
11 Rule 11.

12 16. Allegation on information & belief. The State agrees that no other State’s Constitution  
13 has a stronger education mandate than the Washington State Constitution.

14 **B. Constitutional Right**

15 17. **Constitutional Right.** **The Wahkiakum School District’s students have a positive**  
16 **constitutional right to an amply funded education.**

17 18. Fact. The Washington Supreme Court has in fact held that “Article IX, section 1  
18 confers on children in Washington a positive constitutional right to an amply funded education.”  
19 [See *McCleary v. State*, 173 Wn.2d 477, 483, 269 P.3d 227 (2012).]

20 19. Allegation on information & belief. The State agrees that the Wahkiakum School  
21 District’s students have a positive constitutional right to an amply funded education.

22 20. **Positive Right.** Students having a positive constitutional right to an amply funded  
23 education is important because positive constitutional rights require affirmative government  
24 action. This in turn requires Washington courts to take an active stance to ensure the State  
25 complies with its affirmative constitutional duty to an amply fund the Wahkiakum School District  
26 students’ education.

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 an 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’

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).]

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)]

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).]



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  
15 *E. “State”*

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

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

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

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

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.**

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).]



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.



1           131.   **Knowledge & Skills Correlation.** The funding that the State provides to the  
2   Wahkiakum School District does not correlate to the level of resources needed to provide  
3   all Wahkiakum School District students the safe facilities needed to provide them a realistic  
4   and effective opportunity to gain the knowledge and skills outlined in  
5   **RCW 28A.150.210(1)-(4) and Washington’s state learning standards.**

6           132.   Fact. The Washington Supreme Court has in fact found a violation of  
7   Article IX, §1 when “state underfunding of student transportation had a tangible effect on student  
8   safety.” [See *McCleary*, 173 Wn.2d at 535 & n.27.]

9           133.   Allegation on information & belief. The State agrees that the funding it provides  
10  to the Wahkiakum School District violates Article IX, §1 if the level of that State funding has a  
11  tangible negative effect on student safety.

12          134.   **Student Safety.** The level of facilities funding that the State provides to the  
13  Wahkiakum School District has a tangible negative effect on student safety.

14  
15                                   **VI. FIRST CLAIM: DECLARATORY RELIEF**

16          135.   The school district incorporates into this paragraph the other allegations in this  
17  Complaint that are not inconsistent with this claim for declaratory relief.

18          136.   The Wahkiakum School District does not have the facilities needed to safely  
19  provide all its students the “education” to which they have a positive, constitutional right under  
20  Article IX, §1 of the Washington State Constitution.

21          137.   The State does not amply fund the facilities needed to safely provide all  
22  Wahkiakum School District students the “education” to which they have a positive, constitutional  
23  right under Article IX, §1 of the Washington State Constitution.

24          138.   The State’s failure to amply fund the facilities needed to safely provide all  
25  Wahkiakum School District students the “education” to which they have a positive, constitutional  
26  right violates Article IX, §1 of the Washington State Constitution.



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.

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.

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.

1  
2 **IX. CONCLUSION**

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

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

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

18 FOSTER GARVEY PC

19 s/ Thomas F. Ahearne

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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

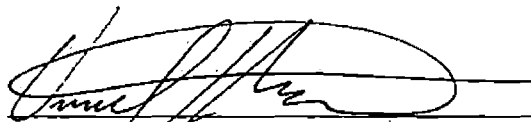
**COURT'S RULING ON DEFENDANTS  
MOTION TO DISMISS**

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

# FOSTER GARVEY PC

July 12, 2022 - 4:00 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

### The following documents have been uploaded:

- 1010524\_Briefs\_20220712155830SC838964\_3014.pdf  
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