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No. 101052-4

SUPREME COURT OF THE STATE OF WASHINGTON

WAHKIAKUM SCHOOL DISTRICT NO. 200,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

MEMORANDUM OF *AMICUS CURIAE* WASHINGTON
ASSOCIATION OF SCHOOL ADMINISTRATORS

Lester Porter, Jr., WSBA No. 23194
F. Chase Bonwell, WSBA No. 58358
PORTER FOSTER RORICK LLP
601 Union Street, Suite 800
Seattle, Washington 98101
Tel: (206) 622-0203
Fax: (206) 223-2003
E-mail: buzz@pfrwa.com
chase@pfrwa.com

*Attorneys for Amicus Curiae
Washington Association of School
Administrators*

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WEBSITE ADDRESSES & ABBREVIATIONS**

Abbreviation	Website Address
CTE Media (2021)	CTE Media Connections, <i>CTE Pathways: Washington Superintendent Chris Reykdal on New Graduation Options</i> , YOUTUBE (Jan. 15, 2021), https://www.youtube.com/watch?v=jQr_fJd3SjU&ab_channel=CTEMediaConnections
Highline Bond (2022)	2022 Bond, HIGHLINE PUB. SCHS., https://www.highlineschools.org/departments/business-finance/2022-bond
Lindsay (2022)	Jeanie Lindsay, <i>WA Schools Chief Wants to Sever Connection Between Timber Sales, K-12 Construction</i> , Seattle Times (July 19, 2022), available at https://www.seattletimes.com/education-lab/reykdal-calls-for-legislature-to-sever-connection-between-timber-sales-k-12-construction/
OSPI Election Detail (2022)	Wash. St. Off. of Superintendent of Pub. Instruction, <i>Election Results for School Financing</i> , available at https://www.k12.wa.us/policy-funding/school-apportionment/election-results-school-financing

Abbreviation	Website Address
OSPI Enrollment Report Card (2022)	Wash. St. Off. of Superintendent of Pub. Instruction, <i>Enrollment Report Card 2021-22 School Year</i> , https://data.wa.gov/education/Report-Card- Enrollment-2021-22-School-Year/yml4-syjr
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I. INTEREST OF *AMICUS CURIAE*

The Washington Association of School Administrators (“WASA”) is an organization of professional administrators committed to leadership in providing equity and excellence in student learning. WASA’s membership includes more than 1,900 members and is open to all educational administrators in central office, building management, and educational agency positions. WASA members prepare the annual budgets for school districts; plan and supervise the construction of school facilities; and design the educational programs offered to students.

WASA believes that the commitment of resources to the education and welfare of children is an investment in quality for our future. WASA files this brief as *amicus curiae* in furtherance of that commitment, as it has done in the past. *See* Brief of Amici Curiae, WASA et al., in Support of Respondents, *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012) (No. 84362-7).

II. ISSUES ADDRESSED BY *AMICUS CURIAE*

This Court should accept direct review of the Wahkiakum County Superior Court's dismissal of Appellant's action to clarify whether the State's paramount duty to provide ample education to the one million public school students in the state excludes funding for educational facilities.

III. STATEMENT OF THE CASE

WASA joins in the statement of the case presented by Appellant.

IV. ARGUMENT

This case implicates a fundamental and urgent issue of broad public import which requires prompt and ultimate determination by this Court: whether the State's paramount duty to amply fund public education excludes funds for educational facilities. WASA supports Appellant's petition for direct review because (1) the scope of the State's duty to amply fund education is a fundamental issue of public importance; (2) a prompt decision on this issue is timely and urgent; and (3) this Court has

the “primary responsibility” to determine this pure question of constitutional interpretation. *See McCleary v. State*, 173 Wn.2d 477, 515, 269 P.3d 227 (2012).

A. The funding of school facilities is a fundamental issue of broad public importance.

The issue involved in this case is fundamental because the funding for a basic education program and the funding for educational facilities go hand-in-hand—they cannot be separated. This is true both educationally and financially. Furthermore, the issue in this case is of broad public importance because its impact is both numerically and financially massive.

First, from a purely educational perspective, a basic education as defined by this Court and the legislature requires safe and appropriate facilities. In *McCleary*, this Court noted that the “education” required under article IX, section 1 consists of providing students “the opportunity to obtain the knowledge and skills” to “become responsible citizens,” and “to contribute to their own economic well-being and to that of their families and

communities.” 173 Wn.2d at 522-26; *see also* RCW 28A.150.210. This focus on the knowledge and skills necessary to contribute economically in the 21st century is consistent with Superintendent of Public Instruction Chris Reykdal’s emphasis on the need for career and technical education through hands-on practical experience, either through work programs or on-campus classrooms. *See, e.g.*, CTE Media (2021).

Gaining such necessary “knowledge and skills” requires safe and appropriate facilities for both academic and career-oriented subjects. Students cannot learn the chemistry prerequisite to becoming a medical doctor in a classroom with only desks and chairs; they must have access to a safe laboratory space. Students cannot learn the technical and mechanical skills to fix the electric vehicles of today in an art room; they must have access to an auto workshop. Students cannot learn photo development skills in a brightly lit portable classroom, they must have access to a dark room. Students cannot learn culinary skills

in a history classroom, they must have access to a kitchen. Even in the field of law, students cannot learn the rhetorical and word processing skills to make arguments to the courts of tomorrow in a gymnasium; they must have classrooms equipped with presentation hardware. In short, it is impossible to separate the acquisition of skills and knowledge from the facilities in which such subjects are taught.

Second, from a financial perspective, the dollars available to provide a program of basic education are inextricably intertwined with the dollars available to provide safe and appropriate school facilities. An outdated school building with an aging roof or HVAC system requires greater annual expenditures on maintenance and custodial services, directly cutting into the annual operational revenue available for curriculum, teachers, and support staff to meet the educational needs of students. School districts who cannot pass bonds to fund updated wiring, door locks, and seismic upgrades face an annual budgetary

dilemma whether to prioritize student safety or smaller class sizes.

Third, the source of school facility funding and its status under the state constitution is of broad public importance because of its massive statewide scale as measured by number of students or dollars. As already noted by Appellant, the Court's decision would directly impact the one million public school students in all 295 school districts in Washington State. *See* OSPI Enrollment Report Card (2022). Since 2015, Washington school districts have put 176 bond measures on ballots around the state. *See* OSPI Election Detail (2022). 51 percent of those measures failed, *id.*, negatively impacting hundreds of thousands of students. This year alone, more than 80 percent of bond measures failed to garner the required 60 percent of the vote, preventing nine school districts from providing nearly 20,000 students appropriate facilities. *Id.*; *see also* OSPI Enrollment Report Card

(2022). Those 20,000 students were denied \$483,813,270 in education facility funding.¹ OSPI Election Detail (2022).

Despite more than half of school district bond measures failing since 2015, school districts still spend roughly \$4 billion on school construction each year. Lindsay (2022). Where these funds come from is of significant importance to all students, taxpayers, and lawmakers in our state. The State’s Supplemental Capital Budget only allocates \$537,824,000 “for school construction assistance grants for qualifying public school construction projects.” Laws of 2022, ch. 296, § 5004.

B. Prompt determination is urgent and will immediately impact all 295 school districts in Washington.

School districts must rely on local bond measures to fund most—if not all—of their educational facilities. As noted above, these bonds are more often than not unsuccessful and may only

¹ So far this year, only two bond measures have passed: Northshore School District’s \$425,000,000 bond and Bellingham School District’s \$122,000,000 bond. OSPI Election Detail (2022).

be sought four times a year: February, April, August, and November. *See* RCW 29A.04.321. Any delay in a decision regarding the constitutional status of school facility funding will put more elections, more school buildings, and more students at risk.

Whether the State's system of funding school facilities through local bond votes violates the positive constitutional right of students to an amply-funded education is not an issue of past history or future speculation. More bond measures will be on the ballot this year. *See, e.g.*, Highline Bond (2022); Renton Bond (2022). These bonds are slated for safety and educational projects critical to providing safe and appropriate educational facilities such as interior door hardware/lock updates, main entry video intercoms, entryway improvements to provide front door line-of-sight for office staff, updated seismic and structural systems in older buildings, updated HVAC systems with 25+ years of service life, and new high school facilities to provide a modern

learning environment and equitable educational opportunities for all students in some of the most racially and ethnically diverse communities in our state.

C. This Court must provide an ultimate determination.

Whether the State’s paramount duty to provide ample education excludes educational facilities is an issue of constitutional interpretation for which only this Court may provide ultimate determination. Nearly 45 years ago, this Court held that “the judiciary has the ultimate power and the duty to interpret, construe and give meaning to words, sections, and articles of the constitution.” *Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d 476, 503, 269 P.3d 227 (1978). This Court must wield that power and duty even “when an interpretation serves as a check on the activities of another branch of government or is contrary to the view of the constitution taken by another branch.” *Id.* Further, because this Court has the ultimate power and duty to interpret the constitution, “it becomes a judicial issue rather than a matter to be left to the legislative discretion.” *Id.*; *see also State*

v. Huntley, 175 Wn.2d 901, 914, 287 P.3d 584 (2012) (“The legislature may change a statutory interpretation, but it cannot modify or impair a judicial interpretation of the constitution.”). Because this Court is charged with interpreting and construing the words and phrases in the constitution, only it can provide an ultimate determination as to whether the State’s paramount duty to provide ample education in article IX, section 1 excludes educational facilities.

V. CONCLUSION

For the foregoing reasons, WASA respectfully requests that this Court grant discretionary review pursuant to RAP 4.2(a)(4) and expeditiously decide whether the paramount duty to provide an amply-funded education to Washington State’s children excludes school facilities.

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This document contains 1496 words, 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) pursuant to RAP 18.17.

DATED this 26th day of July, 2022.

PORTER FOSTER RORICK LLP

A handwritten signature in blue ink that reads "Lester Porter, Jr." written over a horizontal line.

By: Lester Porter, Jr., WSBA No. 23194
F. Chase Bonwell, WSBA No. 58358

Attorneys for *Amicus Curiae*
Washington Association of School
Administrators

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 Respondent's attorneys at the email addresses listed below:

Cristina Marie Hwang Sepe, WSBA No. 53609
Lauryn Kay Fraas, WSBA No.53238
Washington State Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, Washington 98104-3188
Cristina.Sepe@atg.wa.gov
Lauryn.Fraas@atg.wa.gov
Nicole.beck-thorne@atg.wa.gov
ComCEC@atg.wa.gov

Leslie Ann Griffith, WSBA No. 47197
Office of the Attorney General
P.O. Box 40100
Olympia, Washington 98504-0100
Leslie.Griffith@atg.wa.gov

Williams McGinty, WSBA No. 41868
Washington State AGO
7141 Cleanwater Drive SW
P.O. Box 40124
Olympia, Washington 98504-0124
William.McGinty@atg.wa.gov

and to Attorneys for Appellant at the following email address:

Thomas F. Ahearne, WSBA No. 14844
Bianca Chamusco, WSBA No. 54103
Christopher G. Emch, WSBA No. 26457
Adrian Urquhart Winder, WSBA No. 38071
Foster Garvey PC
1111 Third Avenue, Suite 3000
Seattle, Washington 98101-3299
ahearne@foster.com

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

Executed on July 26, 2022 at Seattle, Washington.



Cindy Sands, Legal Assistant

PORTER FOSTER RORICK

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