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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MATHEW & STEPHANIE MCCLEARY, on their own behalf and on behalf of KELSEY & CARTER MCCLEARY, their two children in Washington's public schools; ROBERT & PATTY VENEMA, on their own behalf and on behalf of HALIE & ROBBIE VENEMA, their two children in Washington's public schools; and NETWORK FOR EXCELLENCE IN WASHINGTON SCHOOLS ("NEWS"), a state-wide coalition of community groups, public school districts, and education organizations,
Petitioners,

v.

STATE OF WASHINGTON,
Respondent.

The Honorable John P. Erlick

No. 07-2-02323-2 SEA

FINAL JUDGMENT

This case was tried in the Superior Court of Washington, the Honorable John P. Erlick presiding. The first day of trial was August 31, 2009. The last day of trial was October 21, 2009. This case was ultimately submitted for resolution with the filing of supplemental briefing on November 25, 2009. On February 4, 2010, the court rendered its ruling in favor of Petitioners, and entered its written Findings of Fact And Conclusions of Law setting forth that ruling in more detail. After confirming the availability of the court and opposing counsel, Petitioners noted their Presentation of Judgment for 4:00 p.m., February 24, 2010.

The court hereby enters the following as the final judgment in this case:

1. The Court's Findings of Fact And Conclusions of Law, (revised) entered on February 24, 2010, are attached as Exhibit A and are the basis of this Final Judgment.

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v.

STATE OF WASHINGTON,

Respondent.

Honorable John Erlick

No. 07-2-02323-2 SEA

COURT'S REVISED
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

TABLE OF CONTENTS

I. INTRODUCTION2

II. TRIAL PROCEDURE OF THE CASE2

III. THE COURT’S FINDINGS OF FACTS AND CONCLUSIONS OF LAW.....3

A. PRELIMINARY MATTERS: THE PARTIES, JURISDICTION, VENUE, & BURDENS OF PROOF4

(a) Findings of Fact Concerning the Parties, Jurisdiction, Venue, & Burdens of Proof.....4

(i) Short procedural history of this case.4

(ii) The McCleary family.....5

(iii) The Venema family.....5

(iv) The Network for Excellence in Washington Schools (“NEWS”)6

(b) Conclusions of Law Concerning the Parties, Jurisdiction, Venue, & Burdens of Proof.....17

(c) Findings of Fact Concerning Standing and Judiciability.....18

(d) Conclusions of Law Concerning Standing and Judiciability.....20

B. GENERAL BACKGROUND: the Importance of Education in our State’s Democracy21

(a) Findings of Fact Concerning the Importance of Education in our State’s Democracy.....21

(b) Conclusions of Law Concerning the Importance of Education in our Democracy28

C. SPECIFIC BACKGROUND: ARTICLE IX, §1 OF THE WASHINGTON STATE CONSTITUTION.....31

(a) Background Findings of Fact Concerning Article IX, §131

(b) Background Conclusions of Law Concerning Article IX, §131

D. QUESTION #1 (DECLARATORY JUDGMENT): WHAT IS THE CORRECT INTERPRETATION OF “PARAMOUNT”, “AMPLE”, AND “ALL” IN ARTICLE IX, §1?33

(a) Findings of Fact relating to the interpretation of “paramount”, “ample”, and “all” in Article IX, §1.....33

1
2
3
4
5
6
7
8
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11
12
13
14
15
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17
18
19
20
21
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23
24
25
26

- (b) Conclusions of Law concerning the legal interpretation of the words “paramount”, “ample”, and “all” in Article IX, §1.....33
 - (i) *Judicial branch’s duty to interpret words used in the State Constitution*.....33
 - (ii) *“paramount”*34
 - (iii) *“ample”*36
 - (iv) *“all”*37

E. QUESTION #2 (DECLARATORY JUDGMENT): WHAT IS THE CURRENT LEGAL MEANING OF THE WORD “EDUCATION” IN ARTICLE IX, §1?.....38

- (a) Findings of Fact relating to the current legal meaning of the word “education” in Article IX, §1.....38
 - (i) *First Milepost (1978): State Supreme Court establishes the minimum knowledge and skills encompassed by the term “education” in Article IX, §1 [a “basic education”]*38
 - (ii) *Second Milepost (1993): State Legislature enacts House Bill 1209, which specifies additional substantive content beyond the “minimum” substance established by the State Supreme Court’s 1978 ruling*.....41
 - (iii) *Third Milepost: State adopts Essential Academic Learning Requirements based on House Bill 1209, which specify additional substantive content beyond the “minimum” substance established by the State Supreme Court’s 1978 ruling*.....46
 - (iv) *Fourth and Most Recent Milepost (2009): The Legislature Passes ESHB 2261 Restructuring – But Not Funding – Overhaul of the State’s School System*.....47
- (b) Conclusions of Law relating to the current legal meaning of the word “education” in Article IX, §1.....48
 - (i) *The minimum meaning of the word “education” established by the Washington Supreme Court*48
 - (ii) *The additional specification of basic knowledge and skills added by the State Legislature’s enactment of the four numbered provisions of House Bill 1209*.....50

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- (iii) *The additional specification of basic knowledge and skills added by the State’s adoption of the Washington’s Essential Academic Learning Requirements (EALRs).....51*
- (iv) *Conclusion regarding the current legal meaning of the word “education” in Article IX, §1 of the Washington Constitution.....51*

F. QUESTION #3 (DECLARATORY JUDGMENT): IS THE RESPONDENT STATE CURRENTLY COMPLYING WITH ITS LEGAL DUTY UNDER THIS COURT’S INTERPRETATION OF THE LANGUAGE IN ARTICLE IX, §1?52

- (a) Findings of Fact relating to whether the State is currently complying with its legal duty under this court’s interpretation of the language in Article IX, §1.52
- (b) Conclusions of Law relating to whether the State is currently complying with its legal duty under this court’s interpretation of the language in Article IX, §12

G. QUESTION #4 (ENFORCEMENT ORDER): WHAT (IF ANY) ORDER SHOULD THIS COURT ENTER TO UPHOLD AND ENFORCE THE STATE’S LEGAL DUTY UNDER ARTICLE IX, §1 OF THE WASHINGTON CONSTITUTION?66

- (a) Findings of Fact relating to the propriety of a Court Order.67
- (b) Conclusions of Law relating to the propriety of a Court Order69

IV. CONCLUSION.....73

I. INTRODUCTION

“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.” Washington State Constitution, Article IX, Section 1. The Washington State Constitution provides that this provision is not merely a statement of moral principle but, rather, sets forth a mandatory and judicially enforceable affirmative duty. *Seattle Sch. Dist. No. 1 of King County v. State*, 90 Wn.2d 476, 500 (1978); *School Districts' Alliance for Adequate Funding of Special Educ. v. State*, 149 Wn.App. 241, 245-246, 202 P.3d 990, 993 (2009). Strikingly, the treatment of education in the Washington Constitution is singular among states. *See Seattle Sch. Dist. No 1 v. State*, 90 Wn.2d 476, 497-98 (1978) (surveying state constitutions). Our Constitution sets education as the State's highest priority, declaring it to be the "paramount duty" of state government. Const. Art. IX, § 1. Washington has the strongest constitutional mandate in the nation to provide for education.

When the founders of our State ensconced those words into our State Constitution, it cannot be said with any certainty what inspired them to place such primary importance on education. They may not have been aware of the words of Jose Marti as quoted by Ben Soria, former Superintendent of the Yakima School District that “being educated is the only way to be free.”¹ However, the same commitment was endorsed in our Constitution – and its interpretation since the time of its enactment.

¹ A similar sentiment was expressed in the first century by the Stoic philosopher, Epictetus, in *Discourses*: “Only the educated are free.” Superintendent of the Mount Adams School District, Richard Foss, described basic education as encompassed by the Greek word “arete”: the notion of fulfillment of purpose or function.

Perhaps the framers were influenced by the words of Thomas Jefferson, in the Northwest Ordinance of 1787, where it was enunciated that since "Religion, morality, and knowledge" are "necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

Regardless of its source or inspiration, the framers codified the strongest constitutional provision for education in the nation. Since that time it has provided much guidance to legislatures and to governors and spawned much litigation, including the subject lawsuit, over its interpretation and enforcement.

II. TRIAL PROCEDURE OF THE CASE

1. The State of Washington Superior Court held a non-jury trial in this case. Trial commenced with opening statements on Monday, August 31, 2009, and concluded with closing arguments on Wednesday, October 21, 2009. Supplemental briefing was provided to the court by both sides on November 25, 2009, addressing the impact, if any, of the recent Washington Supreme Court decision in *Federal Way School District No. 10 v. State*, 167 Wn.2d 514 (2009).

2. The Petitioners were represented by Thomas F. Ahearne, Christopher Emch, Edmund Robb, Kelly Lonergan, and Adrian Winder of Foster Pepper PLLC. The Respondent State was represented by Senior Assistant Attorney General William G. Clark, Senior Assistant Attorney General David Stolier, Senior Assistant Attorney General Carrie Bashaw, Assistant Attorney General Dierk Meierbachtol of the Office of the Washington Attorney General. The Respondent State was also represented by John R. Munich and Jamie L. Boyer of the St. Louis, Missouri law firm of Stinson Morrison Hecker LLP. The issues of public importance in this case were fully, vigorously, and ably litigated and briefed by the parties and their counsel.

3. The Petitioners based their case on Article IX, §1 of the Washington State Constitution. That constitutional provision states in full:

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.

4. The four-part remedy that the Petitioners seek presents four fundamental questions for this court to resolve. Those four questions are:

Question #1 (declaratory judgment):

What is the correct interpretation of the words “paramount”, “ample”, and “all” in Article IX, §1 of the Washington State Constitution?

Question #2 (declaratory judgment):

What is the correct interpretation of the word “education” in Article IX, §1 of the Washington State Constitution?

Question #3 (declaratory judgment):

Is the Respondent State currently complying with its legal duty under this court’s interpretation of the language in Article IX, §1?

Question #4 (enforcement Order):

If the Respondent State is not currently complying with its legal duty under this court’s interpretation of Article IX, §1, what (if any) Order should this court enter to uphold and enforce the State’s legal duty?

5. The court heard testimony and considered evidence from the witnesses listed on the attached Exhibit A.

6. The court admitted into evidence and considered the trial exhibits listed on the attached Exhibit B.

III. THE COURT’S FINDINGS OF FACTS AND CONCLUSIONS OF LAW

7. Having heard and considered the testimony and other evidence presented at trial, and having considered the legal memoranda and arguments of counsel, the court enters these Findings of Fact and Conclusions of Law (“Findings and Conclusions”) in accordance with Washington Superior Court Civil Rule 52.

8. Any “finding of fact” that is more properly characterized as a “conclusion of law” should be considered a “conclusion of law” if necessary to prevent its being ignored or disregarded. Similarly, any “conclusion of law” that is more properly characterized as a “finding

of fact” should be considered a “finding of fact” if necessary to prevent its being ignored or disregarded.

9. This court recognizes that due to the public’s significant interest in this case, the Findings and Conclusions entered in this case may be widely read. Therefore, for ease of reading and comprehension, these Findings and Conclusions are subdivided into separate sections by primary subject matter, with the factual findings and legal conclusions relating to each subject matter grouped together in a single section. Each finding of fact and each conclusion of law in this document, however, relates to this case as a whole.

**A. PRELIMINARY MATTERS:
the Parties, Jurisdiction, Venue, & Burdens of Proof**

(a) Findings of Fact Concerning the Parties, Jurisdiction, Venue, & Burdens of Proof

(i) Short procedural history of this case.

10. Petitioners filed their Petition for Declaratory Judgment Enforcing Our Constitution on January 11, 2007. The State filed its Answer on February 14, 2007.

11. The court denied the parties’ extensively briefed summary judgment requests on August 24 and September 20, 2007. In light of those summary judgment proceedings, the court entered an Order on September 24, 2007 lifting the discovery stay in this case and setting a March 2, 2009 trial date.

12. Petitioners filed an Amended Petition for Declaratory Judgment Enforcing Our Constitution on December 6, 2007. The State filed its first Answer to the Amended Petition on December 31, 2007. The State filed its Amended Answer to the Petitioners’ Amended Petition on August 7, 2008. After a status conference with counsel, the court entered an Order on August 26, 2008 setting a June 1, 2009 trial date for this case. That trial date was subsequently rescheduled to the August 31, 2009 date upon which the trial of this case began.

