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2021 DEC 28 PM 2:06

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WAHIAKUM COUNTY, WA

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SUPERIOR COURT OF WASHINGTON FOR WAHIAKUM COUNTY

WAHIAKUM 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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### III. PARTIES

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

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

### IV. JURISDICTION & VENUE

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

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

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

### V. BACKGROUND

#### A. Constitutional Duty

11. State Constitution. Article IX, §1 of the Washington State Constitution states: **"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."**

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

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

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

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

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

### B. Constitutional Right

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

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

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

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

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

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

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

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

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

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

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



**D. “Education”**

45. **Education.** The word “education” in Article IX, §1 means the basic knowledge and skills needed to compete in today’s economy and meaningfully participate in this State’s democracy.

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

47. Allegation on information & belief. The State agrees that the word “education” in Article IX, §1 means the basic knowledge and skills needed to compete in today’s economy and meaningfully participate in our State’s democracy.

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

49. Allegation on information & belief (equip). The State agrees that the education 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)]  
26

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

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

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

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

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

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

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.

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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.  
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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).]

120. Allegation on information & belief. The State agrees that Article IX, §1 imposes a judicially enforceable affirmative duty on the State to make ample provision for the education of all Wahkiakum School District students.

**G. Constitutional Violation**

121. **“Facilities”.** As used in this Complaint, the term “facilities” means all physical facilities and infrastructure, including (but not limited to) buildings, roofing, exteriors, windows, flooring, restrooms, classrooms, Science Technology Engineering & Math (“STEM”) spaces, labs, Career & Technical Education (“CTE”) spaces, arts and assembly spaces, educational technology spaces, health & fitness spaces, school nurse & medical spaces, capital equipment, HVAC, plumbing, wiring, internet connections, Information Technology (“IT”) components, structural components, electrical components, fire protection components, seismic safety components, building security components, ADA/IDEA components, and life/safety protection components.

122. **Sufficiency.** **The Wahkiakum School District does not have the facilities needed to safely provide all its students a realistic and effective opportunity to obtain the knowledge and skills encompassed within the word “education” in Article IX, §1.**

123. Fact. The Washington Supreme Court has in fact found a violation of Article IX, §1 when State “funding formulas did not correlate to the real cost of amply providing students with the constitutionally required ‘education.’” [See *McCleary*, 173 Wn.2d at 529.]

124. Allegation on information & belief. The State agrees that the funding it provides to the Wahkiakum School District violates Article IX, §1 if that funding does not correlate to the real cost of providing the safe facilities needed to amply provide all Wahkiakum School District students a realistic and effective opportunity to obtain the knowledge and skills encompassed in the “education” required by Article IX, §1.

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**IX. CONCLUSION**

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

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

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

FOSTER GARVEY PC

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