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SUPREME COURT OF THE STATE OF WASHINGTON

WAHKIAKUM SCHOOL DISTRICT NO. 200,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

MEMORANDUM OF *AMICUS CURIAE* WASHINGTON
STATE SCHOOL DIRECTORS' ASSOCIATION

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 State School Directors'
Association*

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I. INTRODUCTION

The Washington State School Directors' Association (“WSSDA”) is a non-partisan state agency that has, for over a century, advocated for the effective and equitable administration of Washington’s public schools on behalf of all locally-elected school district directors. WSSDA urges the Court to reverse the trial court’s dismissal and remand for trial on the merits.

The issue in this case presents a critical question: why should students in a poor, rural county in Southwest Washington effectively be denied the same *access* to the program of basic education as students in a wealthy, metropolitan county in Western Washington? Instead of addressing this important question, the State essentially argues “it’s always been this way.” This issue—equitable access to the program of basic education—reveals a modern-day caste system in which small, poor, and rural districts’ buildings are left to crumble while large, wealthy, and metropolitan districts’ buildings are improved, rebuilt, and

modernized. WSSDA urges the Court to recognize this perverse inequality, reverse the trial court’s dismissal, and remand Appellant Wahkiakum School District’s (“District”) action for trial on the merits.

II. STATEMENT OF THE CASE

WSSDA adopts the Statement of the Case contained in the District’s Opening Brief.

III. ARGUMENT

This Court should reverse the trial court and remand for a trial because the current school funding system has a fatal flaw: inequity in the ability of all 1.1 million students in Washington school districts to access the knowledge and skills necessary to succeed in the 21st century. This flaw is an unconstitutional defect because (1) inadequate school facilities prevent disadvantaged students from accessing the State’s program of basic education; (2) reliance on local ballot measures—which are dependent on property values—is inherently unreliable and

inequitable; and (3) school districts lack any meaningful alternative to using local ballot measures to fund necessary capital facilities improvements.

A. Inadequate school facilities prevent disadvantaged students from accessing the State’s constitutionally guaranteed program of basic education.

It is impossible to separate the acquisition of skills and knowledge relevant to the 21st century from the facilities in which such subjects are taught.¹ This is true academically and financially. It makes no sense why the State considers *operational*

¹ The State argues this Court foreclosed this argument in an unpublished order issued in 2017. *See* Resp’t’s Response Br. at 41-44 (citing *McCleary v. State*, No. 84362-7, 2017 WL 11680212 (Wash. Nov. 15, 2017)). In that order, this Court confirmed, however, that “*McCleary . . . did not address capital costs or suggest that capital expenditures are a component of basic education for purposes of article IX, section 1.*” *McCleary*, 2017 WL 11680212 at *47 (emphasis added). The Court was reviewing the State’s tardy compliance with an order to fund operational costs. This Court has never been asked to rule on the precise question of whether capital costs necessary to deliver a basic education are included within the paramount duty of the State under article IX, section 1 of the state constitution.

costs, like insurance and the utilities to heat and power a school building, to be part of the program of basic education, but not the acquisition or construction of the building itself in which that program is to be delivered. *See, e.g.*, RCW 28A.150.260(8)(a) (allocating state funds to each school district for “utilities and insurance” each year under the prototypical school funding model).

From an academic perspective, a basic education as defined by this Court and the legislature requires appropriate school facilities. In *McCleary*, this Court held 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.” *McCleary v. State*, 173 Wn.2d 477, 522-26, 269 P.3d 227 (2012). 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); *see also* RCW 28A.150.210(4) (requiring basic education to educate students on how decisions will “affect future career and educational opportunities”).

Gaining the necessary “knowledge and skills” for meaningful career and technical education requires safe and appropriate facilities for both academic and career-oriented subjects. For example, students cannot (and cannot be expected to) learn the chemistry prerequisite to becoming a medical doctor in a classroom fitted only with desks and chairs; they must have access to a safe laboratory space in which they can experiment. Just like students who cannot learn photographic development skills without access to a dark room, students cannot learn culinary arts without a safe and appropriate kitchen in which to

practice. 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 or open field; they must have classrooms equipped with presentation hardware.²

From a financial perspective, the dollars available to provide a program of basic education are inextricably intertwined with the dollars required to provide safe and appropriate school facilities. The State's prototypical school funding model, the consequence of *McCleary*, allocates funds to school districts for costs associated with *operating* a school, like utilities and insurance, curriculum and textbooks, and teacher salaries. RCW 28A.150.260; *see also* *McCleary*, 173 Wn.2d at 533 (the *McCleary* trial highlighted areas of “underfunding” including “basic *operational costs* . . . and staff salaries and benefits”) (emphasis

² Even Washington school districts' recent experience with remote learning during the COVID-19 pandemic highlighted the necessity of capital technology infrastructure in order to provide any kind of learning without classrooms.

added). The cost of building upkeep, e.g., repairing the HVAC system, updating bathroom fixtures, or replacing the roof, are *operational* costs of delivering the program of basic education.

The State's prototypical model's inclusion of school facility operational costs prompts several questions: Why are operational costs for heating and lighting a building included as part of the basic education program, but the construction of the building that needs to be heated and lit is not? Why is funding for curriculum materials and books necessary to deliver a basic education part of the basic education program, but the instructional space in which the curriculum is to be delivered is not? Why are teacher salaries considered part of the basic education program, but the building in which those teachers would work and teach is not? If a school district does not have an adequate building, how can it deliver a basic education program to all its students? If a school building has ten classrooms, but the school has students that need fifteen classes, do those five extra

classes get taught outside in an open field? How do those students outside access the same basic education program as those being taught under cover?³

The State's exclusion of funding for appropriate school facilities from the program of basic education is not logical. With no appropriate place to deliver the basic education program, the State's constitutionally mandated basic education program cannot actually be meaningfully delivered to students. A school that cannot pass a bond to fund important updates to its buildings has to decide whether to prioritize student safety or smaller class sizes. This dilemma is made worse with buildings that have aging roofs or HVAC systems that require greater annual expenditures on maintenance and custodial services. Those costs directly cut into the annual operational revenue (provided by the state as a part of its paramount duty) available for curriculum, teachers,

³ Even the open field classrooms require a capital expenditure as the field is real property that must be acquired.

and support staff to meet the educational needs of students. Moreover, the condition and safety of a student's school building has an impact on that student's opportunity for learning. Indeed, as one scholar put it: "[t]he overall impact a school building has on students can be either positive or negative, depending upon the condition of the building." Earthman (2002).

B. Districts with high property values are more likely to pass a local levy or bond measure.

School districts must rely on local ballot measures to fund most—if not all—of their educational facilities. If a bond measure fails to garner at least 60 percent of the vote—like most do—the district cannot put the bond on the ballot again until the next statutorily permitted election.⁴ The State has argued that this opportunity for a second try makes bond elections an acceptable source of revenue, citing recent success stories in the

⁴ School districts may put a bond measure on the ballot four times each year: February, April, August, and November. RCW 29A.04.321.

Zillah, Cheney, and Liberty school districts. Resp’t’s Answer to Mem. of *Amicus Curiae* Washington Association of School Administrators at 10-12 (“*Amicus Answer*”). However, a few success stories should not cause this Court to ignore the converse (and more common) reality: mere repetition does not guaranty a positive outcome. For example, the Quilcene School District put a \$12.3 million bond measure up in February 2022 that was estimated to cost \$1.76 per thousand dollars of assessed property value; it failed after garnering 59.40 percent of the vote. February 2022 Special Election Voters’ Pamphlet (Quilcene) at 2 (2022); OSPI Election Detail (2023). Quilcene put the measure up for a vote again two months later, in April, and it failed again with 48.98 percent—*losing* support within the community. *See* OSPI Election Detail (2023). The State’s argument that a failed bond can be put up for a vote again and again fails to consider that the community’s support rarely *increases* for the same or nominally lower amount.

Of Washington’s 295 public school districts, 52 have not passed a bond in the last ten years. Those failed bonds total over \$5 billion not raised to make necessary facilities improvements. *See id.* Moreover, of the 109 bond measures put on a ballot between 2018 and 2023, only 43 were approved by voters—a 39 percent pass rate. *Id.* Last year alone, more than 70 percent of bond measures failed, preventing 15 school districts from providing nearly 30,000 students with updated and safe facilities. *See id.*; *see also* OSPI Enrollment Report Card (2022). Those 30,000 students were denied a total of \$778,362,770 in education facility funding.⁵ OSPI Election Detail (2023).

Unsurprisingly, as the Appellant District has pointed out, school districts with higher assessed property values are more

⁵ Only four bond measures passed in 2022, all of which were in more urban areas: Bellingham School District’s \$122,000,000 bond; Northshore School District’s \$425,000,000 bond; Highline School District’s \$518,397,000 bond; and Renton School District’s \$676,000,000 bond. OSPI Election Detail (2023).

likely to pass a bond measure. For example, in 2014, the Mercer Island School District put a \$98.8 million bond proposal on the February 2014 ballot so it could build an additional elementary school and expand both Islander Middle School and Mercer Island High School. February 2014 Special Election Voters' Pamphlet (Mercer Island) at 2 (2014). It was estimated to cost about \$0.25 per thousand dollars of assessed property value. *Id.* The bond passed with 74.07 percent of the vote.⁶ King County Elections, February 2014 Special Election Results at 3 (2014). That year, Mercer Island had a reported taxable assessed property value of over \$8.8 billion. Property Taxes, Mercer Island (2023).

⁶ Similarly, the Bellevue School District's February 2014 bond measure for \$450,000,000, which included rebuilding five schools and adding another, passed with 72.42 percent. King County Elections, February 2014 Special Election Results at 4 (2014). It was estimated to cost about \$0.40 per thousand dollars of assessed property value. February 2014 Special Election Voters' Pamphlet (Bellevue) at 3 (2014).

In contrast, the Ocean Beach School District put a \$96.15 million bond proposal on the April 2022 ballot to renovate Ilwaco High School, construct athletic fields, and construct a new elementary school outside of the tsunami inundation zone. KXRO News Radio (2022). The bond measure was proposed to cost taxpayers \$0.86 per thousand dollars of assessed value. *Id.* The measure failed with 75.75 percent voting “no.” Pacific County Auditor (2022).

This reality is not new: the State and this Court have been aware since the 1970s that reliance on local tax measures inherently favor well-to do school districts with higher property values:

[T]he levy system’s instability is demonstrated by the special excess levy’s dependence upon the assessed valuation of taxable real property within a district. Some districts have substantially higher real property valuations than others thus making it easier for them to raise funds. Such variations provide neither a dependable nor regular source of revenue for meeting the State’s obligation.

Seattle Sch. Dist. v. State, 90 Wn.2d 476, 525-26, 585 P.2d 71 (1978) (emphasis added). In striking down the statutory scheme of funding basic education through local levies, the Court held that local levies were not “dependable” or “regular” because they are “wholly dependent upon the whim of the electorate,” and are available only on a temporary basis. *Id.* at 525. As shown above, bond measures are equally “dependent upon the whim of the electorate,” are not regular, and are thus an unconstitutional method for the State and school districts to fund facilities necessary to provide a basic education program under article IX, section 1. As in *Seattle Sch. Dist.* and *McCleary*, this Court must act on behalf of Washington’s 1.1 million public school students; school districts cannot single-handedly change the inequitable way the State funds facilities to provide the basic program of education.

C. School districts do not have any meaningful alternatives to capital bonds.

The reality of school funding in Washington State is that local school districts do not have meaningful alternatives to running capital bonds to fund necessary facility improvements. The State ignores this reality and insists that school districts *do* have a variety of methods to raise facility funding outside of capital bonds. *See* Resp't's Response Br. at 22-23.

One source of revenue the State points to is the School Construction Assistance Program ("SCAP") which provides funding assistance (through grants) to school districts undertaking major construction or modernization projects, subject to eligibility requirements. *Id.* at 22; *see also* RCW 28A.525.166. In 2022, the legislature allocated \$537,824,000 to the SCAP, which the State touts as "the largest single appropriation" in the State's capital budget. Laws of 2022, ch. 296, § 5004; Resp't's Br. at 22. While that description of the

aggregated appropriation for all school projects is accurate, the State conveniently leaves out the requirement that each local school district must put up an amount “equal to or greater than” the difference between a project’s cost and the amount of the grant in order to take advantage of the SCAP. RCW 28A.525.162(2). The practical implication of this is that school districts who *cannot* pass a bond to fund a “major construction or modernization project,” and do not otherwise have a lump sum “equal to or greater than” the difference between the total cost of the project and the hypothetical amount of the SCAP grant, have no ability to utilize the SCAP—or tap into the “single largest appropriation” in the State’s budget. *See also* Appellant’s Opening Br. at 22. The SCAP ultimately does not address or relieve the inequity among rural and urban school districts’ ability to fund appropriate education facilities; instead, it serves to exacerbate and emphasize it.

In addition to the SCAP, the State points to small line-item allocations in the State's budget to show that the State provides significant assistance to school districts outside of the SCAP. Resp't's Br. at 23. These allocations include \$100 million to help school districts with seismic safety, \$49.7 million for grants to small school districts and state-tribal compact schools, and \$8.9 million for emergency or urgent repairs affecting the health and safety of students. *Id.* However, none of these line-item allocations are meaningful alternatives to a local school district running bond measures to fund the school facilities necessary to provide a basic education program. They are instead band-aids for acute problems, but not a dependable and regular source of revenue for the fundamental need to have facilities in order to provide a program of basic education. *See, e.g.,* Seattle Times Editorial Board (2022) (arguing that requiring school districts to rely on local tax levies is shortsighted and inherently inequitable).

Last, the State argues that when capital *levies* are considered along with capital *bonds*, the state of facility funding is much more positive. *See Amicus Answer* at 9. However, school districts are permitted to run a capital levy for no more than six years before the district must replace it with another. RCW 84.52.053(1). A bond, however, can be issued for over 30 years, much like a mortgage, so the district has a more “dependable” and “regular” income source to fund its long-term capital projects. Capital levies are only “dependable” and “regular” during the levy’s term. *See Seattle Sch. Dist.*, 90 Wn.2d at 525 (ruling reliance on local tax levies to fund basic education was unconstitutional because levies are neither dependable nor regular sources of income). What happens if a capital levy to build a safer, new high school expires, the building is not complete, and the local taxpayers *reject* a replacement levy? Would that district be stuck with an unfinished high school?

Collectively or individually, the State's examples do not constitute meaningful alternatives to running capital bonds to fund necessary facility improvements. The SCAP program essentially locks out small, rural school districts who are unable to pass a bond; the line-item allocations are negligible when considering school districts spend about \$4 billion a year on school facilities, Lindsay (2022); and capital bonds, just like capital levies, are an unconstitutional method to fund school facilities because they are "wholly dependent upon the whim of the electorate." *Seattle Sch. Dist.*, 90 Wn.2d at 525. For Washington's 295 school districts, running capital bonds is the best method to fund school facilities, and absent a fundamental change in the State's funding model, poor, rural districts will continue to be denied the same *access* to the program of basic education as students in wealthier, metropolitan districts.

IV. CONCLUSION

WSSDA respectfully requests that this Court reverse the trial court and remand this case for a trial on the merits. This case reveals an unconstitutional flaw in the way this State funds basic education: property-poor school districts cannot pass bond measures to fund necessary facilities updates, and therefore are unable to give their students the same opportunity to access the State's basic education program as property-wealthy districts. With no meaningful alternatives to local bond measures, property-poor districts are at a distinct disadvantage in fulfilling their duty to provide students with the knowledge and skills necessary to succeed in the 21st century.

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DATED this 24th day of January, 2023.

PORTER FOSTER RORICK LLP



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

Attorneys for *Amicus Curiae*
Washington State School Directors'
Association

PORTER FOSTER RORICK

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