THE SUPREME COURT OF WASHINGTON

MATHEW & STEPHANIE McCLEARY, et al.,	)	**ORDER**
Respondents/Cross-Appellants,	)	Supreme Court No. 84362-7
v.	)	
STATE OF WASHINGTON,	)	King County No. 07-2-02323-2 SEA
Appellant/Cross-Respondent.	)	

Following the 2016 legislative session, the State through the Joint Select Committee on Article IX Litigation (Joint Select Committee) filed its annual postbudget report on its progress toward achieving full compliance with its paramount duty to amply fund public education under article IX, section 1 of the Washington Constitution, also addressing the State's compliance with the court's order of January 9, 2014, requiring it to provide a complete plan for achieving full compliance by 2018, and whether the State is no longer in contempt of that order, as the court had previously found it to be. This order is in response to the State's latest report.

Background

In *McCleary v. State*, we held that the State's "paramount duty" under article IX, section 1 is of first and highest priority, requiring fulfillment before any other State program or operation. 173 Wn.2d 477, 520, 269 P.3d 227 (2012). This duty not only obligates the State to act in amply providing for public education, but also confers on the children of the state the right to be amply provided with an education. *Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d 476, 513, 585 P.2d 71 (1978). And while we recognized that the legislature enjoys broad discretion in deciding what is necessary to deliver the constitutionally required basic education, we

emphasized that to satisfy the State's obligation to make "ample" provision for basic education, any program the legislature establishes must be fully and sufficiently funded from regular and dependable state, not local, revenue sources, a requirement that the court found the State was not meeting. *McCleary*, 173 Wn.2d at 484, 527-29. The court deferred to the legislature's chosen means of discharging its constitutional duty, but it retained jurisdiction over the case to monitor the State's progress in implementing the reforms that the legislature had recently adopted. The legislature itself established the deadline of 2018. Pursuant to its retention of jurisdiction, the court called for periodic reports from the State on its progress. Following the State's first report in 2012, the court issued an order finding the State was not demonstrating sufficient progress to fully fund education reforms by 2018 and directing the State to provide the court with a "phase-in plan for achieving the State's mandate to fully fund basic education and demonstrate that its budget meets its plan." Order, *McCleary v. State*, No. 84362-7, at 2-3 (Wash. Dec. 20, 2012). The court directed that the plan be laid out "in sufficient detail to allow progress to be measured according to periodic benchmarks between now and 2018," and it specified that the plan address all areas of basic education identified in Engrossed Substitute H.B. 2261, 61st Leg., Reg. Sess. (Wash. 2009) (ESHB 2261). *Id.*

Following the 2013 legislative session, the Joint Select Committee issued the second of these reports. Based on the second report, the court again found in a January 9, 2014, order that the State was not demonstrating sufficient progress to be on target to fully fund education reforms by 2018. Order, *McCleary v. State*, No. 84362-7 (Wash. Jan. 9, 2014). In that order, the court noted specifically that funding appeared to remain inadequate for student transportation and that the legislature had made no significant progress toward fully funding essential materials, supplies, and operating costs (MSOCs). *Id.* at 3-5. Further, the court stressed the need for adequate

capital expenditures to ensure implementation of all-day kindergarten and early elementary class size reductions. *Id.* at 4-5. Finally, the court determined that the State's latest report fell short on personnel costs. *Id.* at 5-6. Stressing, as it had in *McCleary*, that quality educators and administrators are the heart of Washington's education system, the court noted that the latest report "skim[med] over the fact that state funding of educator and administrative staff salaries remains constitutionally inadequate." *Id.* Overall, the court observed, the State's report showed that it knew what progress looked like and had taken some steps forward, but it could not "realistically claim to have made significant progress when its own analysis shows that it is not on target to implement ESHB 2261 and SHB 2776 [Substitute H.B. 2776, 61st Leg., Reg. Sess. (Wash. 2010)]." *Id.* at 6. Reiterating that the State had to show through immediate and concrete action that it was achieving real and measurable progress, not simply making promises, the court directed the State to submit by April 30, 2014, "a complete plan for fully implementing its program of basic education for each school year between now and the 2017-18 school year," which addresses "each of the areas of K-12 education identified in ESHB 2261, as well as the implementation plan called for by SHB 2776, and must include a phase-in schedule for fully funding each of the components of basic education." *Id.* at 8. From this order and from the decision in *McCleary* itself, it was plain and clear that any plan for meeting the State's obligation had to show how the State intended make "ample provision" for basic education through regular and dependable state revenue sources.

After the 2014 legislative session, the Joint Select Committee issued its third report to the court, acknowledging that the legislature "did not enact additional timelines in 2014 to implement the program of basic education as directed by the Court in its January 2014 Order." REPORT TO THE WASHINGTON STATE SUPREME COURT BY THE JOINT SELECT COMMITTEE ON ARTICLE IX LITIGATION at 27 (May 1, 2014) (corrected version). The report included summaries of legislation

that had been proposed, but not enacted, addressing revenue sources for public education. In light of the State's concession, the court directed the State to appear before the court and show cause why it should not be held in contempt for violating the court's January 2014 order and why, if it was found in contempt, sanctions or other relief requested by the plaintiffs in this case should not be granted.

Following a hearing, the court issued an order on September 11, 2014, finding the State in contempt for failing to comply with the court's January 9, 2014, order. The court held in abeyance any sanctions or other remedial measures to allow the State the chance to comply with the January 2014 order during the 2015 legislative session. The court directed that if by the end of that session the State had not purged the contempt, the court would reconvene to impose sanctions and other remedial measures as necessary. At a third special session in 2015, the legislature adopted a 2015-17 biennial budget that included some funding for basic education. At the court's direction, the State submitted its annual postbudget report to the court.

The court subsequently determined that the legislature had made significant progress in appropriating sufficient funds to key areas and appeared to have even achieved full funding of some components of basic education, including transportation, MSOCs, and all-day kindergarten. But the State's progress lagged in other areas, and it still had not submitted a complete plan demonstrating it was on track to achieve full state funding of basic education by 2018. While the court noted progress in the area of K-3 class size reductions, it found no assurance that that component of basic education would be fully achieved by the deadline. Further, the court noted that the Joint Select Committee's third report referred to an analysis estimating a shortage of about 4,000 teachers in 2017-18 for all-day kindergarten and class size reduction, yet the report said nothing about how that shortfall will be made up and what it will cost.

The court then turned more specifically to the subject of personnel costs, finding that the State had wholly failed to offer any plan for achieving constitutional compliance. As this court had discussed in *McCleary*, a major component of the State's deficiency in meeting its constitutional obligation is its consistent underfunding of the actual cost of recruiting and retaining competent teachers, administrators, and staff. *McCleary*, 173 Wn.2d at 536. The court specifically identified this area in its January 2014 order as one in which the State continued to fall short. Order (Jan. 9, 2014) at 6. When the legislature enacted ESHB 2261, it recognized that "continuing to attract and retain the highest quality educators will require increased investments," and it established a technical work group, which issued its final report and recommendations in 2012. ESHB 2261 at 57; LAWS OF 2009, ch. 548, § 601. In its 2015-17 budget, the State neither adopted nor offered any plan for achieving a sustained, fully state-funded system that will attract and retain the educators necessary to actually deliver a constitutionally adequate program of basic education. The legislature approved only modest salary increases (across state government) and Initiative 732 cost of living increases (which had long been suspended), as well as provided for some benefit increases. LAWS OF 2001, ch. 4.

Again, the State has failed to offer any plan on how it would fully fund basic education through regular and dependable revenue sources, instead offering, as it had before, a laundry list of bills that were considered but not enacted.

As a result of the State's failure to purge its contempt by presenting a complete plan for full funding of basic education by 2018, the court on August 13, 2015, imposed a monetary sanction of $100,000 per day to be deposited into a segregated account for the benefit of public education. The governor did not immediately call a special session in response to the sanction but convened a work group of legislators for the purpose of attempting to reach a consensus by November 19,

2015, that would justify calling a special session. Evidently, no consensus was reached, and the governor did not call a special session. The next time the legislature convened was at its regular 2016 supplemental budget session.

The 2016 Legislative Session

It is mainly on the matter of compensation that the legislature took some action during the 2016 session, enacting, besides the supplemental budget itself, one piece of relevant legislation, Engrossed Second Substitute S.B. 6195, 64th Leg., Reg. Sess. (Wash. 2016) (E2SSB 6195). LAWS OF 2016, ch. 3. In that enactment, the legislature states it is "fully committed to funding its program of basic education . . . and eliminating school district dependency on local levies for implementation of the state's program of basic education," and it expresses its intent "to provide state funding for competitive salaries and benefits that are sufficient to hire and retain competent certificated instructional staff, administrators, and classified staff." *Id.* § 1. The legislation goes on to describe the difficulty of gathering complete data due to the lack of transparency within school districts about how local levy funds are used, and it relates the need for "foundational data" concerning compensation that districts pay above basic salary allocations for the statutory prototypical school model; the source of funding for this compensation; and the duties, uses, or categories for which such compensation is paid. *Id.*

To the end of gathering this information and formulating recommendations, E2SSB 6195 established an "Education Funding Task Force." To assist the task force in this job, the legislation directs the hiring of an independent consultant to conduct the following tasks:

> (a) Collect K-12 public school staff total compensation data, and within that data, provide an analysis of compensation paid in addition to basic education salary allocations under the statutory prototypical school model, source of funding, and the duties, uses, or categories for which that compensation is paid;
>
> (b) Identify market rate salaries that are comparable to each of the staff types in the prototypical school funding model; and

> (c) Provide analysis regarding whether a local labor market adjustment formula should be implemented and if so which market adjustment factors and methods should be used.

Id. § 3(1). The superintendent of public instruction must collect, and school districts must provide, compensation data necessary to accomplish the consultant's task in time for the consultant to provide an interim report to the task force and the governor by September 1, 2016, and final data and analysis by November 15, 2016. *Id.* § 3(2)-(4). Based on this information, the task force must then at a minimum make recommendations for compensation "sufficient to hire and retain the staff funded under the prototypical school funding model and an associated salary allocation model." *Id.* § 2(2). The recommendations must also include provisions on whether a system for future salary adjustments should be incorporated into the salary allocation model and the method for providing such adjustments, and a local labor market adjustment formula, with considerations for rural and remote districts and economically distressed districts where challenges to recruitment and retention exist. *Id.* Further, the task force must determine whether additional legislation is needed to support state-funded all-day kindergarten and K-3 class size reductions, and it must make recommendations for improving or expanding existing educator recruitment and retention programs. *Id.* § 2(3)-(4). Finally, the task force must make recommendations on the following matters: (1) local maintenance and operation levies and local effort assistance, (2) local school district collective bargaining, (3) clarification of the distinction between services provided as part of the state's statutory program of basic education and services that may be provided as local enrichment, (4) necessary district reporting, accounting, and transparency of data and expenditures, (5) provision and funding method for school employee health benefits, and (6) sources of state revenue to support the state's statutory program of basic education. *Id.* § 2(5). The task force must submit its recommendations and proposed legislation by January 9, 2017, and the legislature promises that "[l]egislative action shall be taken by the

end of the 2017 session to eliminate school district dependency on local levies for implementation of the state's program of basic education." *Id.* §§ 2(11), 4.

The supplemental budget bill enacted during the 2016 session similarly states that the legislature confirms its obligation to provide state funding during the 2017 session for competitive staff compensation while eliminating school district dependency on local levies to implement basic education. SECOND ENGROSSED SUBSTITUTE H.B. 2376, at 235, 64th Leg., 1st Spec. Sess. (Wash. 2016). The budget bill also provides that, to facilitate school districts' budget and personnel planning for the 2017-18 school year, the task force must either determine by April 1, 2017, that the legislature will meet its full funding obligation by April 30, 2017, or introduce legislation that extends the current state levy policy for one year with the objective of enacting such legislation by April 30, 2017. *Id.*

Following the 2016 session, the Joint Select Committee submitted its postbudget report and the parties submitted briefs. Pursuant to an order issued on July 14, 2016, the parties appeared before the court for oral argument on September 7, 2016, to answer specific questions that the court posed in its July 14 order.

The State's Compliance

The State urges that ESHB 2261 and SHB 2776, with the addition of E2SSB 6195, constitutes the "plan" this court required in its January 2014 order, and the State asserts that it is on pace toward fulfilling that plan. But consistently throughout these proceedings, the court has required the State to explain not just what it expects to achieve by the 2018 deadline (it has done that), but to set forth in complete detail *how* it will achieve its identified goals. This includes specifically how it will fully *pay for* basic education through regular and dependable revenue sources, since the State can comply with its constitutional obligation only if sufficient funds are

available from such sources, as this court first held nearly four decades ago. *Seattle Sch. Dist.*, 90 Wn.2d at 522. In *McCleary*, this court determined that ESHB 2261 constituted a promising reform package that *if* fully funded will remedy deficiencies in the funding system, but it held that the State had not made the necessary expenditures or complied with its obligation to provide ample funding by means of dependable and regular tax sources. 173 Wn.2d at 484. The court has never directed the State to fully fund everything at once, but neither has it suggested that it is sufficient simply to specify each year how much the State has appropriated for each component of basic education and how much it hopes to appropriate in the future. Rather, the court has required the State to demonstrate to the court how it intends to succeed by 2018 in implementing and sustaining ample state funding of basic education consistent with its constitutional obligation.

The State's actions confirm it is fully aware of its constitutional obligation and understands that it must explain how it intends to fund basic education with dependable revenue sources. The Joint Task Force on Education Funding that the legislature established in 2012 recognized that it had been assigned "the task of developing a proposal for a reliable and dependable funding mechanism to support basic education." JOINT TASK FORCE ON EDUCATION FUNDING FINAL REPORT at 2 (Dec. 2012) (FINAL REPORT); *see* LAWS OF 2012, 1st Spec. Sess., ch. 10, § 2. And in its report, the Task Force in fact proposed numerous funding options. FINAL REPORT, *supra*, at 5-7. As indicated, the legislature in sessions since then has considered various funding proposals but has not enacted any of them, and the State has yearly reported on proposed funding legislation, but it has yet to explain how it plans to fully fund basic education through dependable and regular revenue sources. Further, the State early on (in ESHB 2261) commissioned a study to develop recommendations for full state funding of basic education salaries, and the Compensation Technical Working Group issued a detailed report in June 2012. But again, in the years since, the

legislature has not acted on the recommendations of the report or explained how it intends to fully fund basic education salaries. The State has thus known all along what a plan on *how* to constitutionally achieve full state funding of basic education looks like; it has simply not provided a complete plan, nor has it acted on any of the recommendations suggested through the years concerning funding sources and compensation.

In its latest report, the State continues to provide a promise—"we'll get there next year"—rather than a concrete plan for how it will meet its paramount duty. It forestalls taking action while awaiting the recommendations of its latest task force. In terms of demonstrating measurable progress, the State's 2016 report offers no more than the previous reports the court has determined fell short. Following the 2014 legislative session, for instance, the State acknowledged it had not enacted additional timelines to implement the program of basic education as this court had directed in its January 2014 order, and it recognized that "the upcoming biennial budget developed in the 2015 legislative session must address how the targets will be met," characterizing that session as "the next and most critical year for the Legislature to reach the grand agreement needed to meet the state's Article IX duty by the statutorily scheduled full implementation date of 2018." 2014 REPORT TO THE WASHINGTON SUPREME COURT BY THE JOINT SELECT COMMITTEE ON ARTICLE IX LITIGATION 32-33 (corrected version) (May 1, 2014). This court found the State in contempt, but held sanctions in abeyance because the State pledged to reach the "grand agreement" in 2015. It failed to do so. Particularly with respect to funding sources and salaries, the 2015 legislature did not address funding sources at all and it assured as to the latter only that the legislature was "engaged in serious and ongoing discussion about how to assume state responsibility for costs of basic education salaries." State of Wash.'s Mem. Transmitting Legislature's 2015 Post-Budget Report at 13. It had spent much time "grappling" with the issue but again offered no plan and

reported only on legislation that had been considered but not passed. *Id.* at 13, 22-23; *see* 2015 REPORT TO THE WASHINGTON SUPREME COURT BY THE JOINT SELECT COMMITTEE ON ARTICLE IX LITIGATION 13-34 (July 2015). With 2016 came further "grappling" but essentially a return to 2012, with the commissioning of another study to come up with recommended options, a host of which were available to the legislature in the 2012 reports but were neither acted on nor committed to by plan. While the State insists in its latest report that it is on schedule to comply with the 2018 deadline, it does not demonstrate how. A pledge, regardless of good intentions, is still not a plan for achieving full constitutional compliance.

The court emphasizes that it is not judging whether the State has appropriated sufficient funds to fully pay for the components of basic education. The order of contempt is based on the State's failure to demonstrate steady and measurable progress and to provide a complete plan; the sufficiency of specific appropriations cannot be evaluated until the State has completed its task.

The court recognizes that the legislature has committed itself in E2SSB 6195 to satisfying the State's paramount duty by the end of the 2017 legislative session. The court recognizes that at this point, the legislature cannot realistically determine the appropriations necessary for full funding of basic education, including salaries, without the updated data that the current task force is charged with gathering and presenting. And the court acknowledges that the task force's report will contain concrete recommendations, including recommendations for funding sources. But as explained, a call for further study and recommendations does not constitute a plan demonstrating how the State will meet its constitutional obligation. The State therefore remains in contempt of the January 9, 2014, order. The State acknowledged at oral argument that the finding of contempt and the resulting monetary sanction at least spurred the legislature to take action in the 2016 session, committing itself to complete its task by the end of the 2017 session and setting up a process aimed

at doing so. The court believes this to be true and that therefore the finding of contempt and the sanction still have coercive force and should remain in place.

Further supporting the continuation of sanctions is the State's failure to comply with the sanction order itself. The court in its order directed that the $100,000 penalty "shall be payable daily to be held in a segregated account for the benefit of basic education." Order, *McCleary v. State*, No. 84362-7, at 9-10 (Wash. Aug. 13, 2015). The State acknowledges that since the issuance of the order, the legislature has neither established a segregated account for the benefit of education nor appropriated any funds to be paid into such an account in accordance with the court's order. The State urges that sufficient reserve state funds exist to cover the sanctions that have accumulated to date, and it represents that the Office of Financial Management is computing the accumulated amount on a daily basis and reporting weekly to the legislature and the state treasurer. But keeping an accounting of the sanctions as they accumulate does not comply with the court's order to pay the sanction daily into an established account for the benefit of basic education.

Finally, the question has arisen as to the deadline for the State's full compliance with its constitutional duty. The legislature in ESHB 2261 established the Quality Education Council and directed it to recommend a phase-in schedule for the program of basic education that "shall have full implementation completed by September 1, 2018." LAWS OF 2009, ch. 548, § 114(5)(b)(iii). Any program for full state funding of basic education must therefore be fully implemented not later than September 1, 2018.[1] But in E2SSB 6195, the legislature committed itself to *enacting* a

[1] Plaintiffs note that in its 2016 session, the legislature repealed the statute that had created the Quality Education Council. *See* LAWS OF 2016, ch. 162, § 5(1). But that legislation eliminated the council only going forward. The original statute called for the council to submit its recommendations, including its recommended phase-in schedule, by January 1, 2010, which it

fully complying program by the end of the 2017 session. This court has never purported to alter the compliance deadline. We conclude, based on the relevant legislation, that the State has until September 1, 2018, to fully implement its program of basic education, and that the remaining details of that program, including funding sources and the necessary appropriations for the 2017-19 biennium, are to be in place by final adjournment of the 2017 legislative session.

Now, therefore, it is hereby

ORDERED:

(1) The monetary sanction of $100,000 per day shall remain in place and continue to accrue until the State purges its contempt by adopting a complete legislative plan demonstrating how it will fully comply with article IX, section 1 of the Washington Constitution by September 1, 2018. Sanctions shall be paid into a segregated account for the benefit of basic education.

(2) In accordance with the court's order of July 18, 2012, the State through the legislative Joint Select Committee on Article IX Litigation shall file and serve on plaintiffs' counsel its report summarizing the actions taken during the 2017 session to implement the State's program of basic education. The State shall also file and serve a brief addressing the adequacy of its compliance with constitutional requirements. The report and brief shall be filed within 30 days after the final biennial operating budget is signed by the governor. Within 30 days after receipt of the report and the State's brief, plaintiffs may file and serve a brief addressing the report and answering the State's brief.

(3) Upon reviewing the parties' submissions, the court will determine what, if any, additional actions to take.

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did. *See McCleary*, 173 Wn.2d at 508. The fact that the legislature has since disbanded the council does not alter the phase-in schedule that the council recommended at the legislature's direction.

DATED at Olympia, Washington this 6th day of October, 2016.

Madsen, C.J.

WE CONCUR:

Johnson, J.

Owens, J.

González, J.

Fairhurst, J.

Stephens, J.

Gordon McCloud, J.

No. 91934-8

WIGGINS, J. (concurring)—I respectfully concur in the order insofar as the continuation of contempt is based on the State's failure to pay the $100,000 per day sanction and hold the accumulated sanction in a segregated account for the benefit of basic education.

No. 91934-8

I agree with the majority that the State has made "significant progress in appropriating sufficient funds to key areas and appear[s] to have even achieved full funding of some components of basic education, including transportation, [materials, supplies, and operating costs], and all-day kindergarten." Majority at 4. I further agree with the majority and, indeed, with the State, that the State's progress—on these components and on its duty to provide a "plan" for full compliance—was due in large part to our court's orders. The State's own lawyer said as much during the September 7, 2016, hearing before our court, when he acknowledged that *the sanctions did work*. *McCleary v. State*, No. 84362-7 (Sept. 17, 2016), at 14 min., 54 sec., *audio recording by* TVW, Washington State's Public Affairs Network, http://www.tvw.org.[1]

[1] The State's lawyer agreed that those sanctions motivated the legislature to develop the Engrossed Second Substitute S.B. 6195, 64th Leg., Reg. Sess. (Wash. 2016) "plan" and the Governor to convene the meetings that led to the enactment of that bill. Wash. Supreme Court oral argument, *supra*, at 14 min., 54 sec.; *accord* majority at 11 (concluding that the sanctions have been partially effective, having "at least spurred the legislature to take

This is a critically important acknowledgement. It implicitly admits that our 2014 order for a "plan"; our later September 11, 2014, order finding that the State contemptuously failed to produce such a "plan";[2] and our following August 13, 2015, order imposing sanctions for continued failure to produce that "plan"[3] were all clearly within this court's power to coerce compliance. In other words, these orders were lawful, constitutional, and properly coercive. Wash. Supreme Court oral argument, *supra*, at 14 min., 54 sec.

I diverge from the majority solely on whether that contempt has now been purged and whether those sanctions should now be lifted.

To address that issue, we have to start with the applicable legal rules. The applicable legal rules are that a court can hold a party in contempt for failure to comply with a specific order of that court,[4] and that the court can order civil sanctions for the sole purpose of coercing compliance with its specific order.[5]

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action in the 2016 session, committing itself to compete its task by the end of the 2017 session and setting up a process aimed at doing so").

[2] Order, *McCleary v. State*, No. 84362-7, at 4 (Wash. Sept. 11, 2014).

[3] Order, *McCleary v. State*, No. 84362-7, at 9 (Wash. Aug. 13, 2015).

[4] *See Schmidt v. Lessard*, 414 U.S. 473, 476, 94 S. Ct. 713, 38 L. Ed. 2d 661 (1974).

[5] *In re Pers. Restraint of King*, 110 Wn.2d 793, 800, 756 P.2d 1303 (1988) ("the purpose of a civil contempt sanction is to coerce future behavior that complies with a court order"); *United States v. Lippitt*, 180 F.3d 873, 876-78 (7th Cir. 1999) (civil contempt

Our unanimous decision to impose sanctions complied with that rule to the letter. We imposed sanctions on the State because it failed to comply with one specific order: our January 9, 2014, order directing the State to produce a "plan." Order, *McCleary v. State*, No. 84362-7 (Wash. Jan. 9, 2014).

Today, we continue to follow those rules. We therefore measure the sufficiency of Engrossed Second Substitute S.B. 6195, 64th Leg., Reg. Sess. (Wash. 2016) (E2SSB 6195) as a "plan" against the specific language of that January 9, 2014, order, the violation of which justified our imposition of sanctions.

The majority concludes that this 2014 order was "plain and clear" in directing the legislature to produce a "plan" that identified the precise source of education funding. Majority at 3.

I have reviewed the same materials, and I come to a different conclusion. I read our January 9, 2014, order as requiring a plan with many parts—but specifying the precise source of education funding in advance of the 2018 deadline was not one of them. I believe that the majority has incorrectly conflated the requirements of the January 9, 2014, order with the requirements of the 2012 *McCleary* decision itself. Majority at 3 ("[f]rom this order and from the decision in *McCleary* itself, it was

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sanction "is designed primarily to coerce the contemnor into complying with the court's demands").

plain and clear that any plan for meeting the State's obligation had to show how the State intended to make 'ample provision' for basic education through regular and dependable state revenue sources"); *see McCleary v. State*, 173 Wn.2d 477, 546-47, 269 P.3d 227 (2012) ("[t]he legislature must develop a basic education program geared toward delivering the constitutionally required education, and it must fully fund that program through regular and dependable tax sources").

The January 9, 2014, order alone, in contrast, provided only a brief description of the "plan" required. The majority acknowledges this in a different portion of its opinion. Majority at 3 (quoting Order, *McCleary v. State*, No. 84362-7, at 8 (Wash. Jan. 9, 2014)). That 2014 order directed the State to provide "a complete plan for fully implementing its program of basic education for each school year between now and the 2017-2018 school year." Order, *McCleary*, No. 84362-7, at 8 (Wash. Jan. 9, 2014). It described that plan in a single sentence: "This plan must address each of the areas of K-12 education identified in [Engrossed Substitute H.B. 2261, 61st Leg., Reg. Sess. (Wash. 2009)], as well as the implementation plan called for by [Substitute H.B. 2776, 61st Leg., Reg. Sess. (Wash. 2010)], and must include a phase-in schedule for fully funding each of the components of basic education." *Id.* Nothing in this language clearly directs the legislature to identify the specific source of the revenue it will use to fund basic education in this "plan."

I therefore agree completely with the majority's holding that E2SSB 6195 failed to identify a specific (or even a general) source of funding. But I disagree that this constitutes a fatal defect when measured against the January 9, 2014, order. And, as the majority acknowledges, E2SSB 6195 does create an education task force whose mandate is to make recommendations, based on necessary recent data and on a specific timeline, regarding a number of education-related issues, including "[s]ources of state revenue to support the state's statutory program of basic education." LAWS OF 2016, ch. 3, § 2(f). Most significantly, it also commits the legislature to "action . . . by the end of the 2017 session to eliminate school district dependency on local levies for implementation of the state's program of basic education." *Id.* § 4.

I certainly acknowledge reasonable minds might differ as to whether E2SSB 6195 constitutes the "phase-in schedule for full[] funding" described in our January 9, 2014, order. Order, *McCleary*, No. 84362-7, at 8 (Wash. Jan. 9, 2014). But ambiguities in our order must be construed in favor of the contemnor, not the court. *See Schmidt v. Lessard*, 414 U.S. 473, 476, 94 S. Ct. 713, 38 L. Ed. 2d 661 (1974) (federal rule requiring specificity in injunctions necessary because "basic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed").

The majority's contrary conclusion amounts to continuing sanctions for the purpose of showing the State that we are serious about the 2018 deadline for full compliance. As discussed above, that is an impermissible purpose.

We should therefore lift the sanctions that were imposed to coerce compliance with our January 9, 2014, order at this time.