THE HONORABLE BETH M. ANDRUS

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

RANDY DORN, in his official capacity as SUPERINTENDENT OF PUBLIC INSTRUCTION,

Plaintiff,

v.

STATE OF WASHINGTON, SEATTLE SCHOOL DISTRICT NO. 1, EVERETT SCHOOL DISTRICT, BELLEVUE SCHOOL DISTRICT, SPOKANE SCHOOL DISTRICT, TACOMA SCHOOL DISTRICT, EVERGREEN SCHOOL DISTRICT, and PUYALLUP SCHOOL DISTRICT,

Defendants.

No. 16-2-17134-6 SEA

SEATTLE, EVERETT, BELLEVUE, TACOMA, AND PUYALLUP SCHOOL DISTRICTS' MOTION TO STAY



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## I. INTRODUCTION

Our state is in the midst of fundamental public school finance reform—a reform ordered by the state's highest court. *See McCleary v. State*, 173 Wn.2d 477 (2012). The Washington Supreme Court set a deadline of 2018 for the State to achieve compliance with its "paramount duty . . . to make ample provision for the education of all children." Wash. Const. art. IX, § 1. The Supreme Court retained jurisdiction "to monitor [the Legislature's] implementation of reforms." *McCleary*, 173 Wn.2d at 545. Just weeks ago, the court directed the State to appear September 7 "to provide specific and detailed answers" as to how it "intends to meet its constitutional obligation to implement its plan of basic education through dependable and regular revenue sources by [2018]." Order of July 14, 2016 at 2-3.

Days later, Randy Dorn filed this case. As the Superintendent of Public Instruction, Dorn is playing an active role in the *McCleary* case, testifying at trial and filing briefs as amicus curiae in the Supreme Court. Dorn now seeks in this lawsuit the very relief that he has requested from the Supreme Court in *McCleary*—restricting the expenditure of school district levy funds. The use of district levies to fund teacher compensation was a central issue in the Supreme Court's 2012 decision in *McCleary*, Compl. ¶ 1, and it remains perhaps *the* most critical issue in the ongoing remedial proceedings. Whatever the precise contours of the school funding system that emerges from the *McCleary* case, it will significantly alter the legal and factual landscape underlying Dorn's claims, if not moot them entirely. Litigating Dorn's claims now would waste State, school district, and judicial resources. Even if Dorn had any cognizable stake in the outcome of this declaratory judgment action (and he does not), his lawsuit should not go forward now. This Court should exercise its authority to stay Dorn's case until the Supreme Court relinquishes jurisdiction in *McCleary*.



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## II. BACKGROUND[1]

### A. The *McCleary* Trial

The plaintiffs in *McCleary* include two families with children in Washington public schools (and a coalition of school districts, including three districts named as defendants in this case). They sought a declaratory judgment that Washington's system of public school funding fails to meet the State's paramount duty. The case proceeded to a lengthy bench trial before Judge Erlick. Over 50 witnesses testified, including Dorn. Dorn testified about districts' use of local levy funds to cover the cost of basic education programs and his view that a new statewide "funding source" was necessary. *See McCleary*, 173 Wn.2d at 543-44.

The local levy issue was front and center at trial. As the trial court found, the testimony from district superintendents and principals was consistent: "year in and year out school districts, schools, teachers and parents have to 'cobble' together sufficient funding to keep their basic education programs operational," Trial Ct. Finding of Fact ¶ 222, "through local levy funding and other funds," *id.* ¶ 237. Expert witnesses in education finance testified that the State's "funding formulas" leave school districts "to rely heavily on local levies to be able to operate" and to "fund their teaching of the basic knowledge and skills included within the substantive 'education' mandated by Article IX, § 1." *Id.* ¶ 229. Ultimately, Judge Erlick found that "basic education is not being funded by a stable and dependable source of funds provided by the State, but rather continues to be supplemented by local funding (through special levies and otherwise)." *Id.* ¶ 256. The trial court entered a

[1] The *McCleary* materials cited in this motion (including the trial court's decision, the Supreme Court's decision and orders, briefs by parties and amici, and legislative reports submitted to the court) are available on the Supreme Court's website at http://www.courts.wa.gov/appellate_trial_courts/SupremeCourt/?fa=supremecourt.McCleary_Education. Hyperlinks to the specific document referenced are also embedded in citations herein.



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final declaratory judgment in favor of the plaintiffs, concluding that the State had failed to fulfill its paramount duty.

**B. The Supreme Court's Decision**

Following acceptance of direct review, the Supreme Court affirmed that the State's education finance system violated the state constitution. *McCleary*, 173 Wn.2d at 539. Like Judge Erlick, the Supreme Court focused on the "inescapable" evidence that the State's funding system required districts to "fill the gap" in basic education through local levy funds. *Id.* at 538-39. For that reason, among others, the State's school finance system was ruled unconstitutional. The "more difficult issue" for the Supreme Court was "what remedy" it should order to ensure that school districts had ample State funds without the need to rely on local levies. *Id.* at 540. Declining the "State's invitation for the court simply to defer to the legislature's implementation" of funding reforms, the Supreme Court "retain[ed] jurisdiction over this case to monitor implementation of [recent legislative] reforms . . . and more generally, the State's compliance with its paramount duty." *Id.* at 545-46. The court acknowledged the delicate and complex challenges of judicially managing statewide institutional reform, *id.* at 546, but deliberately chose to take a "more active stance" to ensure the State's compliance. *Id.* at 519.

**C. Initial Remedial Proceedings**

The Supreme Court directed the State to file "periodic reports" summarizing its progress toward achieving full constitutional compliance with the *McCleary* decision by 2018. Order of July 18, 2012 at 2, ¶ 1. The Legislature formed a committee to represent it in "formal interbranch dialogue" with the Supreme Court. Comm. Rep. 2012 at 5. But its "first report f[e]ll[] short," the Supreme Court found, noting that the "overall level of



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funding remains *below* the levels that have been declared constitutionally inadequate." Order of Dec. 20, 2012 at 1, 2 (emphasis added).

In the 2013 legislative session, the Legislature increased education spending, but did not set benchmarks for the court to assess its progress toward full compliance. Order of Jan. 9, 2014 at 3. The Supreme Court noted that "salaries for educators in Washington are no better now than when this case went to trial" and that the State's report did not "offer any plan for meeting its [salary funding] goals." *Id.* at 6. The Supreme Court ordered the State to submit a "complete plan for fully implementing its program of basic education," including a "phase-in schedule for fully funding each of the components of basic education." *Id.* at 8. Because of the lack of political agreement, Comm. Rep. 2014 at 27, the Legislature did not adopt a new plan in response to the Supreme Court's January 2014 Order.

**D. Contempt Proceedings**

The Supreme Court ordered the State to show cause why it should not impose contempt sanctions, ranging from monetary sanctions to prohibitions of certain State expenditures to the ordering of legislation. Order of June 12, 2014. Dorn then filed his first amicus brief in *McCleary*, opposing any sanctions against the State, pointing to "the complexity of the problem" and "legitimate policy differences in resolving the challenge of fully funding basic education." Amicus Br. 2014 at 5. Dorn urged the Supreme Court to wait until after the 2015 legislative session before imposing sanctions. *Id.* at 5-7. He also vigorously opposed plaintiffs' request that the court cut school funding as a cudgel to prod the Legislature, likening that approach to "destroy[ing] a village in order to save it," and arguing that the "Court should not be in the business of harming schools." *Id.* at 4 n.1.

The Supreme Court found the State in contempt but, as Dorn had requested, the court delayed imposing sanctions until after the 2015 legislative session. In that session, the



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Legislature again failed to adopt a plan to achieve full constitutional compliance. Order of Aug. 13, 2015 at 1. Plaintiffs again sought sanctions. This time, Dorn joined them. Amicus Br. 2015 at 16. The Supreme Court assessed sanctions in the amount of $100,000 per day, rejecting the State's contention that it could not correct "underfunding of the actual cost of recruiting and retaining competent" teachers until "reform of the local levy system." Order of Aug. 13, 2015 at 6, 7 n.1. In its order, the court again criticized "the use of local levy funds to make up for shortfalls caused by the State's failure to pay the full cost of staff salaries," saying "the State has had ample time to deal with this matter." *Id.* at 7 n.1.

**E. Dorn's Request to the Attorney General Rejected**

On November 17, 2015, Dorn requested a legal opinion from the Washington Attorney General on whether school boards have the authority to use "local excess levy funding to pay compensation to district employees . . . for services that are a part of the program of basic education established" under Chapter 28A RCW. Declaration of Valerie L. Hughes ("Hughes Decl."), Ex. A at 4. The Attorney General's Office declined Dorn's request in light of the ongoing litigation in *McCleary*. Citing its "long practice" of "declin[ing] to provide opinions on matters that are at issue in litigation," the Attorney General's Office explained to Dorn that "the issues raised in *McCleary* so intertwine with the question that you pose that we conclude that we cannot respond . . . without implicating constitutional questions that arise in the ongoing litigation." Hughes Decl., Ex. B at 9, 10.

**F. The Supreme Court's Order of July 14, 2016**

In 2016, the Legislature passed E2SSB 6195 (Laws of 2016, ch. 3). In its submission to the Supreme Court accompanying the committee's report, the State explained that this bill "expresses the Legislature's full commitment to fund the State's program of basic education . . . and to eliminate school district dependency on local levies to fund the



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State's program," thus purging its contempt; the State asked the Supreme Court to lift the sanctions. State Mem. 2016 at 2. The plaintiffs opposed the State's request, as did Dorn. In an amicus brief submitted in June (his third in *McCleary*), Dorn asked the Supreme Court to impose "[m]ore effective sanctions," such as holding individual legislators in contempt and enjoining the payment of "special levy funds to school districts." Amicus Br. 2016 at 6-8, 9.

On July 14, 2016, the Supreme Court ordered the parties to appear for oral argument on September 7, 2016, to address "precisely what the legislature has accomplished, what remains to be accomplished, . . . what significance we should attach to E2SSB 6195," and, ultimately, whether the State had indeed purged its contempt. Order of July 14, 2016 at 1. The Supreme Court ordered the parties to brief and then orally address "the estimated cost of full state funding of competitive market-rate basic education staff salaries, including the costs of recruiting and retaining competent staff and professional development of instructional staff." *Id.* at 3. Underscoring the urgency of the September hearing, the Supreme Court observed that the "2017 legislative session presents the last opportunity for complying with the State's paramount duty under article IX, section 1 by 2018." *Id.* at 1-2.

**G. Dorn's Lawsuit**

Five days later, Dorn filed this lawsuit. In addition to the State, Dorn named as defendants seven local school districts: Seattle, Everett, Bellevue, Spokane, Tacoma, Evergreen, and Puyallup (the "Districts"). Although as an amicus in *McCleary* Dorn took the position that legislative underfunding had "*forced* [school districts] to pay certificated teachers additional salary funded through local excess levies," he has changed his tune in this lawsuit. Amicus Br. 2015 at 9 (emphasis added). Dorn now alleges that the Districts "have been complicit in [the] abdication of responsibility in agreeing to larger and larger" supplemental "time, responsibility, or incentive" ("TRI") packages. Compl. ¶ 6.5.



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## III. THIS COURT SHOULD STAY DORN'S CASE IN THE INTERESTS OF FAIRNESS AND EFFICIENCY

To conserve the resources of the court, the parties before it, and the public, a trial court has authority to stay a case that presents issues related to a separate, pending case. That is precisely the situation here. Dorn's lawsuit strikes at the heart of a central legal and factual issue in *McCleary*: whether the Districts' use of local levy funds for teacher pay covers services that constitutionally must be funded by the State. It is impossible to answer that question without first knowing *how much* of the cost of teacher pay must be provided by the State to meet its constitutional obligation. And that antecedent question is precisely what the Supreme Court is poised to answer in *McCleary*.

Because this is a declaratory judgment action, Compl. § 3.1, this Court has express authority to "stay . . . any court proceedings prior to final judgment." RCW § 7.24.190. The statute authorizes the Court to exercise such authority "in its discretion and upon such conditions . . . as it deems necessary and proper." *Id.* In addition to its statutory authority, the Court has the inherent "power to stay the trial of an action pending an appeal from a judgment in another action." *Lloyd v. Superior Court*, 42 Wn.2d 908, 909 (1953); *see also Clinton v. Jones*, 520 U.S. 681, 706 (1997) ("The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket."). A motion to stay the case at its outset invokes the inherent authority of a court to manage its own proceedings, conserve judicial resources, and avoid hardship to the parties, nonparties, and the public. *King v. Olympic Pipeline Co.*, 104 Wn. App. 338, 350 (2000). As the seminal U.S. Supreme Court decision on stay practice explains, "[t]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Id*. (quoting *Landis v.*



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*North American Co.*, 299 U.S. 248, 254-55 (1936)). The trial court has wide discretion in deciding whether the circumstances warrant a stay of its proceedings due to the pendency of a related action. *Id.*; *Lloyd*, 42 Wn.2d at 909.

A variety of equitable, fact-intensive factors guide the exercise of the court's judgment in evaluating a motion to stay. *Olympic Pipeline*, 104 Wn. App. at 349-50 (noting that "the factors considered by the federal courts" are "sensible, if inexact, and provide for a thematic approach to these issues," and "adopt[ing] the factors . . . as appropriate considerations for analysis in Washington courts"). Although some of the *Olympic Pipeline* factors are limited to the Fifth Amendment waiver context in which that case arose, others apply generally, including: (1) overlap between the issues in the cases; (2) complexity and importance of the issues and the public interest; (3) judicial economy and efficiency interests; and (4) the balance of hardship. *Id*. Each factor weighs in favor of a stay here.

**A. The Issues in Dorn's Case and *McCleary* Overlap**

It does not take an expert in public education to see that Dorn's lawsuit would require this Court to adjudicate legal and factual questions at issue in *McCleary*. Dorn seeks a declaratory judgment that the Districts' supplemental TRI contracts for teachers and the local levies that allegedly fund them are unlawful in their present form, Compl. ¶¶ 5.6, 6.6, 7.6, because (according to Dorn) they "pay for basic education services" that legally must be funded by the State, *id.* ¶ 5.6. In *McCleary*, the Supreme Court has already concluded that the "shortfall in state funding" of public education has "forced school districts to increasingly rely on local levies to meet the actual costs of the basic education program." 173 Wn.2d at 537-38. Having retained jurisdiction to craft a remedy for that violation, the Supreme Court must now decide whether the State's compliance plan covers the "cost of full state funding of competitive market-rate basic education staff salaries, including the



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costs of recruiting and retaining competent staff and professional development of instructional staff." Order of July 14, 2016 at 3. The *McCleary* parties have been ordered to address that question at oral argument on September 7. Dorn has argued that the Legislature "has done nothing to address school districts[']reliance on special levies to fund basic education," Amicus Br. 2015 at 11, and he asked the Supreme Court to "enjoin the payment of special levy funds to school districts" by county treasurers, Amicus Br. 2016 at 9. Dorn seeks the same relief from this Court, asking it to declare the use of levies unconstitutional, Compl. ¶ 6.6, and to enjoin the Districts from using local levy funds. *Id*. at 12, ¶ 2.

The Supreme Court's upcoming rulings are likely to moot Dorn's claims. If the Legislature's 2017 budget *does* establish a plan to cover the full costs of "competitive market-rate basic education staff salaries," Order of July 14, 2016 at 3, supplemental contracts would exceed the amounts necessary to pay for basic education services. On the other hand, if the Supreme Court finds the State's latest plan inadequate, it would fall again to the Legislature to develop a plan that fully funds basic education to the Supreme Court's satisfaction—which would also moot Dorn's claims. *See, e.g.*, *State ex rel. Evans v. Amusement Ass'n of Wash., Inc.*, 7 Wn. App. 305, 307 (1972) ("The issues in this appeal became moot when the legislature repealed or substantially amended all of the statutes upon which the declaratory judgment and injunction were based.").

The overlap of the issues in this case with *McCleary* strongly weighs in favor of a stay. As then-Judge Anthony Kennedy has explained, the "trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case," even if "the issues in such proceedings are [not] necessarily controlling of the action before



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the court." *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979).[2] Here, the outcome of *McCleary is* likely to control the resolution of this case, and at minimum the Supreme Court's ultimate remedy will significantly narrow the legal and factual landscape on which this case would be litigated and decided. The Attorney General declined Dorn's request for an opinion because "the issues raised in *McCleary* so intertwine with [his] question that" answering it would be impossible "without implicating constitutional questions that arise in the ongoing litigation." Hughes Decl., Ex. B at 10. To avoid adjudicating the overlapping questions, this Court should stay Dorn's case.

**B. The Public Interest Favors a Stay Pending Resolution of Important and Complex Issues by the Supreme Court**

The issues in this case and *McCleary* are not just intertwined, they are complex and of immense public importance. The education of all Washington children is the State's "paramount duty." Wash. Const. art. IX, § 1. And "quality educators and administrators are the heart of Washington's education system." Order of Aug. 13, 2015 at 3. The constitutional question of the components of basic education, "including basic education staff salaries," Order of July 14, 2016 at 3, remains squarely before the Supreme Court, and is of great interest to students, parents, teachers, school districts, and all Washingtonians.

This public interest further counsels in favor of a stay. *McCleary* is a clear-cut case of "extraordinary public moment," presenting issues of "far-reaching importance to the parties and the public." *Landis*, 299 U.S. at 256. Where such a case is already pending, it is entirely appropriate for a related lawsuit to be stayed. *Id.*; *see also U.S. Fid. & Guar. Co. v.*

[2] *See also UnionBanCal Corp. & Subsidiaries v. United States*, 93 Fed. Cl. 166, 167-68 (2010) ("Here, like the stay requested in *Landis*, is a request to stay further proceedings pending the resolution of an appeal in a separate case that addresses a similar issue. . . . The Federal Circuit's decision will most likely help clarify and simplify evidence to be presented at trial and will conserve judicial resources."); *Powell v. Breslin*, 59 A.3d 531, 540 (Md. 2013) (referring to stay as "useful tool" when "parallel related cases are pending judicial action simultaneously").



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*Murphy Oil USA, Inc.*, 21 F.3d 259, 263 (8th Cir. 1994) (affirming district court's decision to stay case in favor of pending state court proceeding where it "presented difficult questions of state law on a matter of great public interest").

**C. The Interests of Judicial Economy and Efficiency Support a Stay**

The grant of a stay in this case would avoid wasting significant judicial resources to adjudicate a fundamentally duplicative proceeding that is likely to be mooted by the remedy ordered in *McCleary*. This Court has the authority to enter a stay to promote efficiency and the orderly administration of justice. *See Olympic Pipeline*, 104 Wn. App. at 350.

Dorn's claims not only implicate the legal issues in *McCleary*, but also involve fact-intensive allegations regarding the educational programs, collective bargaining agreements, instructional responsibilities, budgetary practices, and other institutional workings of the Districts. Compl. ¶¶ 4.2-4.8. As the *McCleary* case demonstrates, litigating those issues would involve a massive expenditure of time and judicial resources in the trial court and beyond—all likely for naught once the Supreme Court approves a final remedial plan in *McCleary*. It is hard to conceive of a more obvious waste of this Court's time and effort.

More importantly, proceeding with this case would ignore the Supreme Court's considered decision to retain jurisdiction in *McCleary*. Judicial economy supports a stay when a parallel case is pending in another tribunal that is merely coordinate or co-equal. *See, e.g., Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 663-64 (1978) (affirming stay due to parallel litigation in state court). A stay is more warranted where a related case is pending on appeal in a higher judicial body of the same jurisdiction. *Canal Props. LLC v. Alliant Tax Credit V, Inc.*, No. C04-03201 SI, 2005 WL 1562807, at *3 (N.D. Cal. June 29, 2005).

This lawsuit implicates those hierarchical concerns. Dorn's lawsuit defies the Supreme Court's decision to retain jurisdiction to oversee an appropriate remedy. To



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proceed with Dorn's collateral attack on the eve of the Supreme Court's September 7, 2016 hearing—likely the final hearing before the critical 2017 legislative session—would upset the basic order of the state judicial hierarchy.

### D. The Balance of Hardships Requires a Temporary Stay

The balance of equities in this case clearly favors a stay. It is more than a little ironic that in the *McCleary* litigation Dorn decried the Legislature's chronic underfunding of school districts, yet he has now forced these District administrators to spend time and incur attorneys' fees to defend themselves. If Dorn's lawsuit is allowed to proceed, the Districts would be forced to mount a time-consuming and costly legal defense.

Imposing a temporary stay pending the Supreme Court's resolution of *McCleary*, on the other hand, will not prejudice Dorn. Whatever remedy emerges from *McCleary* will significantly affect—if not entirely moot—Dorn's claims, and temporarily staying his lawsuit will not harm his interests: If the Supreme Court adopts the positions Dorn has taken as amicus, he would be *helped*, not *hurt*, by this lawsuit's delay—for presumably the main issues in dispute would be resolved. Or if the remedy the Supreme Court approves is inconsistent with Dorn's positions in *McCleary*, he would be no worse off from having had to wait for the stay to be lifted. Because the legal questions would be more sharply focused and the legislative record further developed, Dorn is not prejudiced by a stay. Dorn's requested declaratory judgments plainly can wait until after *McCleary* is resolved.

## IV. CONCLUSION

While the Districts understand—and share—the Superintendent's frustration that the Legislature has not fully funded the State's public schools, this Court should exercise its discretion to stay this case until the Supreme Court concludes its active monitoring of the remedy for the State's constitutional violations and relinquishes jurisdiction in *McCleary*.



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DATED: August 8, 2016

s/ *Valerie L. Hughes*

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## CERTIFICATE OF SERVICE

On August 8, 2016, I caused to be served upon counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the following document:

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I certify under penalty of perjury that the foregoing is true and correct.

DATED this 8th day of August, 2016.

/s/ *Mary L. Lyles*
Mary L. Lyles, Legal Secretary



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