

HONORABLE JOHN H. CHUN  
Hearing Date: Friday, January 27, 2017  
Hearing Time: 1:30 p.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

EL CENTRO DE LA RAZA, a Washington non-profit corporation; LEAGUE OF WOMEN VOTERS OF WASHINGTON, a Washington non-profit corporation; WASHINGTON ASSOCIATION OF SCHOOL ADMINISTRATORS, a Washington non-profit corporation; WASHINGTON EDUCATION ASSOCIATION, a Washington non-profit corporation; INTERNATIONAL UNION OF OPERATING ENGINEERS 609; AEROSPACE MACHINISTS UNION, IAM&AW DL 751; WASHINGTON STATE LABOR COUNCIL, AFL-CIO; UNITED FOOD AND COMMERCIAL WORKERS UNION 21; WASHINGTON FEDERATION OF STATE EMPLOYEES; AMERICAN FEDERATION OF TEACHERS WASHINGTON; TEAMSTERS JOINT COUNCIL NO. 28; WAYNE AU, PH.D., on his own behalf and on behalf of his minor child; PAT BRAMAN, on her own behalf; and DONNA BOYER, on her own behalf and on behalf of her minor children,

Plaintiffs,

v.

STATE OF WASHINGTON,

Defendant.

No. 16-2-18527-4 SEA

PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT

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*Washington Supreme Court Holds Charter School Act Violates State Constitution,*  
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1 **I. INTRODUCTION AND RELIEF REQUESTED**

2 For more than 125 years, the Washington Constitution has provided for a centralized and  
3 uniform system of public common schools open to all children, accountable to elected officials,  
4 and publicly funded with constitutionally protected common school funds. In 2012, voters  
5 approved, by a razor thin margin, a private charter school system in Initiative Measure No. 1240  
6 (“I-1240”). Although by its express terms I-1240 attempted to characterize charter schools as  
7 common schools entitled to receive protected funds under of Article IX the Constitution, the  
8 Washington Supreme Court disagreed. In *League of Women Voters v. State*, 184 Wn.2d 393,  
9 405, 355 P.3d 1131 (2015) (“LWV”), the Supreme Court ruled that charter schools are not  
10 common schools within the meaning of Article IX because “charter schools under I-1240 are run  
11 by an appointed board or nonprofit organization and thus are not subject to local voter control[.]”  
12 The Court further held that I-1240 diverted restricted common school funds allocated from the  
13 State’s General Fund to charter schools on the same basis as common schools in violation of  
14 Article IX. As a result, the Court ruled that I-1240’s privately operated but publicly funded  
15 charter school system was unconstitutional and struck down I-1240 in its entirety.  
16

17  
18 Following the Supreme Court’s decision in LWV, the Legislature tried to tweak the  
19 charter school system established by I-1240 so that it would pass constitutional muster by  
20 enacting the Charter School Act, Engrossed Second Substitute Senate Bill 6194, Laws of 2016,  
21 ch. 241 (“Charter School Act” or “Act”). But the tweak failed to fix the constitutional problems  
22 of charter schools. A private charter school system, established in I-1240 and only slightly  
23 altered by the Act, remains inconsistent with the stalwart protections for public education in the  
24 Constitution. Like I-1240, the Charter School Act attempts to create a charter school system as  
25 an alternative to, but funded on the same basis as, the common school system. This alternative  
26  
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1 charter school system runs contrary to every principle the founders memorialized in the  
2 Constitution regarding public education: it is not a general and uniform system of common  
3 schools governed by and accountable to elected and offering a uniform basic education program.  
4 Rather, under the Act, charter schools are operated and supervised by private companies and  
5 non-elected boards and, thus, are not accountable to taxpayers who provide funding for charter  
6 schools. The Act also exempts charter schools from most of the basic education requirements  
7 fundamental to a basic and sound education.  
8

9 Further, although there is no dispute that common school funds cannot be used for charter  
10 schools, the Legislature relied on an accounting trick designed to obscure the Act's continued  
11 diversion of these constitutionally protected funds to charter schools. Charter schools continue  
12 to be funded on the same basis as common schools. Although the Act purports to fund charter  
13 schools from a separate account, the Legislature did not raise new revenue or decrease funding  
14 for other programs as would be necessary to cut off the diversion of protected funds. Instead, as  
15 confirmed by the legislative history, the Legislature's intends to pay for the exponentially  
16 growing costs of charter schools by resorting to the General Fund, which is prohibited under  
17 *League of Women Voters*.  
18

19 Finally, the violates the constitutional provision requiring supervision of the public  
20 schools of the Superintendent of Public Instruction. The Act continues to impede the State's  
21 paramount duty to fund fully public schools by diverting already deficient public funds and  
22 unconstitutionally delegates authority to set education standards to private entities. And the Act  
23 violates Section II, Art. 37.<sup>1</sup>  
24  
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26 <sup>1</sup> These issues were raised in *LWV* but were not decided because I-1240 was declared  
27 unconstitutional for other reasons.

1 Accordingly, this Court should grant Plaintiffs' motion for summary judgment and  
2 declare, as a matter of law, that the Charter School Act is unconstitutional.

3 **II. STATEMENT OF FACTS**

4 **A. Washington's Founders Develop a Uniform System of Common Schools.**

5 The provisions in the Washington Constitution regarding public education are unique  
6 among the States and reflect the lessons learned by the State's founders both from Washington's  
7 territorial schools and from the struggles of other states. That territorial experience informs a  
8 proper understanding of the Constitutional provisions at issue here.

9  
10 When the Washington Territory was established in 1853, it was sparsely populated and  
11 the few existing schools were funded primarily through donations and tuition. *See* Dennis C.  
12 Troth, *History and Development of Common School Legislation in Washington* 86 (Univ. of  
13 Wash. Pubs. in Social Sciences 1929 ("Troth")). The first territorial legislators, who met in 1854,  
14 believed that an educated electorate was necessary to a functioning democracy and economic  
15 prosperity. *See* Message of Acting Governor L. Jay S. Turney to the Ninth Annual Session of  
16 the Legislative Assembly, Dec. 19, 1861, in *Messages of the Governors of the Territory of*  
17 *Washington to the Legislative Assembly, 1854-1889*, at 93 (Univ. of Wash. Pubs. in Social  
18 Sciences 1940); Office of the Sec'y of State, Div. of Archives & Records Mgmt., *Index to the*  
19 *Laws, Memorials and Resolutions Passed by the Washington Territorial Legislature 1853-1887*,  
20 at 3 (1993). As a result, during its first session, the territorial legislature established a system of  
21 common schools open to all children, supported primarily by local tax levies, and controlled by  
22 the local voters through an elected board of directors. *See* Laws of 1854, ch. 3, 4 at at 319.  
23 These early common schools floundered due to the lack of reliable funding and inconsistency in  
24 course offerings, teacher qualifications, or discipline. *See* Thomas William Bibb, *History of*

1 *Early Common School Education in Washington* at 73-79 (Univ. of Wash. Pubs. in Social  
2 Sciences 1929) (“Bibb”); Troth at 88, 136; L.K. Beale, *Charter Schools, Common Schools, and*  
3 *the Washington State Constitution*, 72 Wash. L. Rev. 535, 543-44 (1997) (concluding charter  
4 schools would violate the Constitution). In response, the legislature enacted a series of common  
5 school reforms to “bring uniformity” into the common school system. *See* Laws of 1871, ch. 1,  
6 § 1, at 12-13; Laws of 1877, tit. 4, § 32, at 266-68 and tit. 9, §§ 54-55, at 274-75.

8 By the 1880s, the salient features of common schools in Washington were well  
9 established: (1) uniform laws and rules establishing a minimum educational program; (2)  
10 centralized supervision of the schools by an elected Territorial Superintendent; and (3) local  
11 voter control (through elected school boards) over the day-to-day management of common  
12 schools. *See* Bibb at 145 (“Matters of local importance are in the hands of local boards; matters  
13 pertaining to law, certification, and teachers’ training are in the hands of the State  
14 Superintendent, State Board of Education and other boards.”).

#### 16 **B. The Delegates Draft a Constitution Protecting the Common School System.**

17 The Washington constitutional convention convened in 1889. Enabling Act, Feb. 22,  
18 1889, c. 180, 25 Stat. 676.<sup>2</sup> Like the territorial legislators before them, convention leaders  
19 believed that basic education for all citizens was an economic necessity because the costs of an  
20 uneducated populace would dwarf the expense of a general public school system. *See* Troth at  
21 94; Wash. State Historical Soc’y, *Building a State, Washington, 1889-1939*, at 155 (Charles  
22 Miles & O. B. Sperlin eds., 1940). And based on the experience of the territory’s “dark era,” a  
23

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25 <sup>2</sup> In 1889, Congress passed a law enabling Washington to become a state. The Enabling Act  
26 required the new state government to make provision “for the establishment and maintenance of  
27 systems of public schools, which shall be open to all the children.” *Id.*, § 4. The Enabling Act  
further required that proceeds from the federal land grant constitute a permanent school fund,  
with the income expended solely in support of the State’s common schools. *Id.*, §§ 10-11.

1 well-organized uniform public school system under state control was deemed essential to ensure  
2 that an adequate education was offered across the State. Troth at 115. The delegates drew up an  
3 education article proclaiming in no uncertain terms: “It is the paramount duty of the state to  
4 make ample provision for the education of all children residing within its borders[.]” Art. IX, § 1  
5 (emphases added). The drafters rejected the vague laudatory language found in most state  
6 constitutions. *See Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d 476, 498, 585 P.2d 71 (1978)  
7 (surveying state constitutions). Florida was the only other state with this imperative language in  
8 its constitution. *See Bush v. Holmes*, 919 So.2d 392, 402 (Fla. 2006).

10 The framers required the Legislature to establish a “general and uniform system of public  
11 schools,” Art. IX, § 2, and placed “all matters pertaining to public schools” under the supervision  
12 of an elected Superintendent of Public Instruction (“Superintendent”), Art. III, § 22. The risks  
13 inherent in local experimentation far outweighed the drawbacks of centralized control. *See*  
14 Louis Lerado, *Public Schools and the Convention, No. 2*, Tacoma Daily Ledger, July 3, 1889, at  
15 3 (acknowledging American’s “wholesome objection” to bureaucracies but concluding that a  
16 uniform statewide system would be preferable); Bibb at 74, 114, 144-45. In fact, the Territorial  
17 Board of Education submitted an influential report to the delegates emphasizing the importance  
18 of a uniform statewide system, including uniformity in books, charts, manuals, methods, and  
19 instructors. *See* J.H. Morgan, Washington Territory Superintendent of Public Instruction, *et al.*,  
20 *Washington Schools: Pertinent Suggestions to the Constitutional Convention by the Board of*  
21 *Education*, Spokane Falls Review, July 17, 1889.

24 Well aware of the funding problems that plagued the territorial schools and the public  
25 schools in many other states, the constitutional delegates created a permanent common school  
26 fund. Art. IX, § 2. Proceeds from the permanent fund and any state tax for common schools  
27

1 were designated for the exclusive use of common schools. *Id.*<sup>3</sup> The constitutional delegates  
2 were “careful to emphasize the importance, as well as the distinct character, of the common  
3 school,” *Sch. Dist. No. 20 v. Bryan*, 51 Wash. 498, 502, 99 P. 28 (1909) (“*Bryan*”), and were  
4 “practically unanimous” in drawing up an education article which protected common schools  
5 above all educational institutions, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 149  
6 Wn.2d 660, 672, 72 P.3d 151 (2003). Indeed, the delegates rejected a motion that would have  
7 permitted the Legislature to use common school funds to support any “public schools,” and  
8 instead restricted those moneys to support exclusively “common schools.” Quentin Shipley  
9 Smith, *Analytical Index to The Journal of the Washington State Constitutional Convention 1889*,  
10 at 686 (Beverly Paulik Rosenow ed., 1999).<sup>4</sup> Supreme Court Justice Theodore L. Stiles wrote,  
11 while reflecting on his participation in the 1889 constitutional convention, “One who carefully  
12 reads Article IX might also wonder whether, after giving to the school fund all that is here  
13 required to be given, anything would be left for other purposes.” Theodore J. Stiles, *The*  
14 *Constitution of the State and Its Effects Upon Public Interests*, 4 Wash. Hist. Q. 281, 284 (1913)  
15 (“Stiles”).

18 **C. The Legislature Has Established—But Failed to Provide Adequate Funding for—a**  
19 **Uniform Common School System.**

20 The Legislature established a uniform common school system in its first session. A  
21 common school was “defined to be a school that is maintained at the public expense in each  
22 school district, and under the supervision of boards of directors.” Laws of 1889, ch. 12, tit. 9, §  
23 44, at 371-72. The board of directors was elected by the local electorate, received and disbursed

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24 <sup>3</sup> Article IX was amended in 1966 to create a separate permanent construction fund  
25 (“construction fund”) for common schools, which also is earmarked for the exclusive support of  
26 common schools.

27 <sup>4</sup> Under the proposal, Section 2 would have read: “But the entire revenue derived from the  
state school fund, and the state school tax shall be exclusively applied to the support of the public  
~~common~~ schools.” *See id.*



1 state and local common school funds, and controlled the day-to-day operations of the common  
2 schools. *See id.*, ch. 12, tit. 6, at 364-67. The Legislature also adopted uniform laws in courses  
3 of instruction, minimum days of instruction, teacher certification, and reporting. *See id.*, ch. 12,  
4 tit. 9, at 371-73. These have been the salient features of the general and uniform common school  
5 system since statehood. *See* tit. 28A RCW.

6  
7 Simply establishing a common school system does not, however, meet the Constitution’s  
8 requirements for public education. In 1978, the Supreme Court concluded in *Seattle School*  
9 *District No.*, that the State was failing to meet its paramount duty to make ample provision for  
10 public education. 90 Wn.2d at 536-37. The Court articulated broad guidelines for a  
11 constitutionally adequate education: the word “education” in Article IX, Section 1 means the  
12 basic knowledge and skills necessary to compete in today’s economy and meaningfully  
13 participate in the State’s democracy. *See id.* at 517-18. The Court explained that it was the  
14 Legislature’s duty to provide “substantive content” to the word “education” and to the “program  
15 it deems necessary to provide that ‘education’ within the broad guidelines.” *Id.* at 518-19. The  
16 Court ordered the Legislature to define and fund fully “basic education” and a “basic program of  
17 education” by July 1, 1981. *Id.* at 537-38.

18  
19 During the next three decades, the Legislature adopted significant education reforms  
20 identifying the resources and offerings necessary to meet the guarantee of Article IX. *See, e.g.*,  
21 ch. 28A.150 RCW. In *McCleary*, the Supreme Court endorsed these reforms as meeting the  
22 basic education and basic education program requirements of Article IX. *McCleary v. State*, 173  
23 Wn.2d 477, 524, 269 P.3d 227 (2012). First, “basic education” means the four goals of learning,  
24 as set forth in RCW 28A.150.210, and the Essential Academic Learning Requirements  
25 (“EALRs”), which define what children should know and be able to do at each grade level. *Id.* at  
26  
27

1 523. Second, the “basic education program” includes the offerings outlined in the Basic  
2 Education Act of 1977 (Laws of 1977, 1st Exec. Sess., vol. 2, ch. 359, at 1606) and E.S.H.B.  
3 2261 (Laws of 2009, vol. 4, ch. 548, at 3331) (together, “Basic Education Act”), such as the  
4 minimum instructional requirements identified in RCW 28A.150.220. *Id.* at 526. The *McCleary*  
5 Court found, however, that the Legislature had failed to provide the school districts with  
6 adequate financial support. *Id.* at 537. To date, the State has not provided full funding to  
7 implement the Basic Education Act. Order, *McCleary v. State*, No. 85362-7, at 9 (Wash. Aug.  
8 13, 2015); Order, *McCleary v. State*, No. 84362-7, at 10-13 (Wash. Oct. 6, 2016).

9  
10 **D. The State Funds the Common Schools from the State’s General Fund.**

11 Currently, the Legislature funds the common schools by allocating basic education  
12 dollars from the General Fund, in which a host of state revenues are deposited (e.g., state  
13 common school property tax, state sales and use taxes, business and occupation taxes, among  
14 others). *See* RCW 28A.150.380(1); Declaration of Jamie Pedersen in Support of Plaintiffs’  
15 Motion for Summary Judgment (“Pedersen Decl.”), ¶ 6; Declaration of Julie K. Salvi in Support  
16 of Plaintiffs’ Motion for Summary Judgment (“Salvi Decl.”), ¶ 6. The basic education allocation  
17 includes general apportionment, categorical funding (e.g., special education, transitional  
18 bilingual instruction), and student transportation funding. *See id.* As part of the education  
19 budgeting process, the Legislature sets allocation formulas, which are largely tied to student  
20 enrollment; as a result, projections for student enrollment for the coming year are a significant  
21 driver of the total amount of funds allocated by the Legislature for basic education. *See* Laws of  
22 2016, 1st Spec. Sess., Supplemental Operating Budget (E2SHB 2376) (“Supplemental Budget”),  
23 § 502; Pedersen Decl., ¶ 6; Salvi Decl., ¶ 8. The Superintendent distributes funds from the  
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1 revenue accounts to public school districts based on the statutory formulas. RCW  
2 28A.150.250(1).

3 **E. The Washington Supreme Court Determines Charter Schools Are Not Common**  
4 **Schools and Invalidates I-1240.**

5 I-1240 provided for the establishment of charter schools operated by private  
6 organizations but funded from the General Fund allocation on the same basis as common  
7 schools. In September 2015, the Washington Supreme Court declared I-1240 unconstitutional in  
8 *LWV*, 184 Wn.2d at 412-13. The Court first held that charter schools “are run by an appointed  
9 board or nonprofit organization and thus are not subject to local voter control,” and as a result,  
10 “they cannot qualify as ‘common schools’ within the meaning of article IX.” *Id.* at 405. The  
11 Court further held that I-1240 diverted funds that were restricted to the support of common  
12 schools to charter schools in violation of Article IX of the Constitution. *Id.* at 406. The Court  
13 specifically noted that restricted funds were comingled in the State General Fund and held:  
14 “Given this absence of segregation and accountability, we find unconvincing the State's view  
15 that charter schools may be constitutionally funded through the general fund. “ *Id.* at 409. The  
16 Court determined that I-1240 “designate[d] and relie[d] on common school funds as its funding  
17 source” and that “[w]ithout those funds, [I-1240 cannot] function as intended.” *Id.* at 411.  
18 Accordingly, the Court held that I-1240 was unconstitutional in its entirety. *Id.*

21 **F. The Legislature Attempts to Resurrect I-1240 in the Charter School Act.**

22 In March 2016, the Legislature passed the Charter School Act in response to the Supreme  
23 Court’s ruling in *LWV*. On April 1, 2016, Governor Jay Inslee let the Charter School Act pass  
24 into law without his signature. In a letter explaining his decision, Governor Inslee stated that the  
25 “bill would ultimately allow unelected boards to make decisions about how to spend public  
26 money.... I can think of no other situation where the Legislature or the people would condone  
27

1 that, especially when we are fighting to meet the needs of the almost one million children in  
2 public schools.” Lawrence Decl., Ex. A.

3 Making only a few small tweaks to the charter school system established under I-1240,  
4 the Charter School Act is another unconstitutional attempt to create an alternative school system  
5 to the common school system. The Act provides for the establishment of forty charter schools  
6 by private organizations in the next five years. *See* RCW 28A.710.150(1), 28A.710.160(8), (9) ;  
7 Lawrence Decl., Ex. B at 3. New charter schools can be approved by the same methods as under  
8 I-1240. First, the Washington Charter School Commission (“Charter Commission” or  
9 “Commission”), which is comprised of nine appointed members, the Chair of the State Board of  
10 Education, and the Superintendent, RCW 28A.710.070, has the power to establish charter  
11 schools anywhere in the State, RCW 28A.710.080(1). All appointed Commission members  
12 must have a demonstrated “commitment to charter schooling as a strategy for strengthening  
13 public education.” RCW 28A.710.070(4). The Commission is an “independent state agency.”  
14 *See* RCW 28A.710.070(1). Although the Superintendent and Chair of the State Board of Higher  
15 Education hold two of eleven seats, the Commission is not subject to their oversight. *See* RCW  
16 28A.710.120(1) (Board of Education oversight of authorizers applies only to approved school  
17 district). Second, school districts may apply to the Board of Education for permission to  
18 authorize charter schools within their jurisdiction. RCW 28A.710.080(2). The Commission and  
19 school districts (generally referred to as “charter school authorizers”) solicit charter applications  
20 from private organizations, approve or deny applications, and negotiate and execute charter  
21 contracts. RCW 28A.710.100(1).

22 Charter school authorizers have limited authority to monitor performance and legal  
23 compliance of charter schools. RCW 28A.710.180. Indeed, the Act provides that oversight  
24

1 cannot “unduly inhibit the autonomy granted to charter schools,” RCW 28A.710.180(2), and  
2 must be consistent with the principles and standards developed by yet another private  
3 organization, the National Association of Charter School Authorizers, RCW 28A.710.100(3).  
4 Authorizers are only allowed to revoke or decline to renew charter contracts under specified  
5 circumstances and, even then, only after a lengthy administrative process, including notice, a  
6 written response by the charter, a full hearing, a reasonable period for deliberation, and a final  
7 written determination. RCW 28A.710.200.  
8

9 As in I-1240, charter schools are not governed by elected local school boards. Instead,  
10 charter schools are operated by a “charter school board,” RCW 28A.710.020(3), which is a  
11 “board of directors appointed or selected under the terms of a charter application to manage and  
12 operate the charter school,” RCW 28A.710.010(6). The board is responsible for functions  
13 typically handled by the elected school board, including hiring, managing, and discharging  
14 employees; receiving and disbursing funds; entering contracts; and determining enrollment  
15 numbers. RCW 28A.710.030(1).  
16

17 As was the case under I-1240, charter schools are exempt from all but a small subset of  
18 state statutes and rules applicable to common schools. With the exception of “the specific state  
19 statutes and rules” identified in RCW 28A.710.040(2) of the Act, and any “state statutes and  
20 rules made applicable to the charter school in the school’s charter contract,” charter schools are  
21 “not subject to and are exempt from all other state statutes and rules applicable to school districts  
22 and school district boards of directors” including “in areas such as scheduling, personnel,  
23 funding, and educational programs[.]” RCW 28A.710.040(3). The Act does not identify the  
24 laws and rules included in this blanket exemption, but careful review reveals that the waived  
25 provisions are both significant and extensive.  
26  
27

1 For example, the section of the Basic Education Act provision identifying the “minimum  
2 instructional requirements” for the basic education program does not apply to charter schools.  
3 RCW 28A.150.220. These requirements include minimum instructional hours and school days,  
4 the minimum number of credits that must be offered to high school students, the learning  
5 assistance program for underachieving students under RCW 28A.165.005 through 28A.165.065,  
6 the transitional bilingual instruction program under RCW 28A.180.010 through 28A.180.080,  
7 and highly capable student programs under RCW 28A.185.010 through 28A.185.030. See RCW  
8 28A.150.220(3)(b)-(g). Charter schools are also exempt from the vast majority of Common  
9 School Provisions, Title 28A RCW (“Common School Provisions”), including laws governing  
10 curriculum, discipline, and academic accountability. See, e.g., ch. 28A.230 RCW (compulsory  
11 coursework and activities), ch. 28A.600 RCW (student conduct and discipline), ch. 28A.655  
12 RCW (academic achievement and accountability; only RCW 28A.655.070 expressly applies to  
13 charter schools). The Act suggests that charter schools must provide a basic education (*i.e.*, the  
14 four educational goals identified in RCW 28A.150.210), but limits the program requirements to  
15 instruction in the EALRs and participation in the state student assessment system, RCW  
16 28A.710.040(2)(b).

17  
18  
19 The Act specifies that the Legislature shall allocate public funds for charter schools from  
20 the Opportunity Pathways Account, which holds certain state lottery revenues. See RCW  
21 28A.710.270, 28B.76.526, 67.70.240; Salvi Decl., ¶ 7. The Superintendent disburses these funds  
22 to charters school on the same basis as common schools, including the general apportionment,  
23 categorical funding, and public transportation funds. See RCW 28A.710.220, .230 (1). The Act  
24 does not, however, raise new revenue or lower funding for other state programs. Pedersen Decl.  
25 ¶ 11; Salvi Decl., ¶ 12. Indeed, as confirmed in the legislative history, State General Funds  
26  
27

1 would need to be transferred to the Opportunity Pathways Account to cover payments for charter  
2 schools. *See* Sect. IV.C.2., *infra* (detailing legislative history).

3 Plaintiffs now seek summary judgment in their favor and ask the Court to declare the  
4 Charter School Act unconstitutional and prevent its implementation.<sup>5</sup>

5  
6 **II. STATEMENT OF ISSUES**

7 A. Whether the Charter School Act violates the requirement under Article IX,  
8 Section 2 that the State provide a “general and uniform system of public schools” because it  
9 establishes a parallel system of publicly funded schools controlled by private organizations and  
10 exempt from most of the uniform laws applicable to public schools.

11 B. Whether the Charter School Act violates Article IX, Section 2, because it  
12 continues I-1240’s unconstitutional diversion of restricted state funds away from the common  
13 schools to support charter schools.

14 C. Whether the Charter School Act violates the State’s paramount duty to make  
15 ample provision for education under Article IX, Section 1, by diverting money from  
16 inadequately funded public schools to private organizations operating charter schools.

17 D. Whether the Charter School Act unconstitutionally delegates the State’s  
18 paramount duty under Article IX, Section 1, because it allows private organizations to define the  
19 components of a constitutionally adequate program of basic education.

20 E. Whether the Charter School Act violates Article III, Section 22, because it  
21 provides that a Charter Commission, rather than the Superintendent, supervises charter schools.

22 F. Whether the Charter School Act and I-1240 violate Article II, Section 37, by  
23

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<sup>5</sup> Plaintiffs ample funding claim was dismissed but is subject to reconsideration.  
26 Accordingly, Plaintiffs include argument relating to their Ample Funding Claim in this Motion.  
27 Plaintiffs also expressly reserve the right to seek appellate review of the Court’s dismissal of  
their ALE Claim.

1 revising the state collective bargaining laws and the Basic Education Act without setting forth  
2 those revisions and amendments in full.

3 **III. EVIDENCE RELIED UPON**

4 This Motion relies on the Declaration of Jamie Pedersen in Support of Plaintiffs' Motion  
5 for Summary Judgment and the exhibits attached thereto, the Declaration of Julie K. Salvi in  
6 Support of Plaintiffs' Motion for Summary Judgment and the exhibits attached thereto, the  
7 Declaration of Paul J. Lawrence and the exhibits attached thereto, and the papers and pleadings  
8 on file with this Court.

9  
10 **IV. AUTHORITY**

11 **A. Summary Judgment Standard.**

12 Summary judgment is appropriate “if the pleadings, depositions, answers to  
13 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no  
14 genuine issue as to any material fact and that the moving party is entitled to a judgment as a  
15 matter of law.” CR 56(c). Declaratory judgment actions may be decided upon a motion for  
16 summary judgment. *Tran v. State Farm Fire and Cas. Co.*, 136 Wn.2d 214, 223, 961 P.2d 358  
17 (1998). The question of the constitutionality of a statute is particularly appropriate for resolution  
18 by summary judgment. *See Optimer Int’l, Inc. v. RP Bellevue, LLC*, 170 Wn.2d 768, 771, 246  
19 P.3d 785 (2011) (“Interpretation of constitutional provisions...is a question of law”).

20  
21 Although laws benefit from a “presumption of constitutionality,” in this case there can be  
22 “no reasonable doubt that [the Act] violates the constitution,” especially in light of the Supreme  
23 Court’s decision in *LWV. Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 205,  
24 258, 11 P.3d 762 (2000), *opinion corrected*, 27 P.3d 608 (2001).



1 **B. Charter Schools Are Incompatible with the General and Uniform Public School**  
2 **System in Violation of Article IX, Section 2.**

3 Article IX, Section 2 of the Constitution envisions one general and uniform public  
4 education system made up of common schools governed by and accountable to elected officials.  
5 In contrast, the Charter School Act creates a publicly funded school system parallel to the State's  
6 common schools governed by private organizations and exempt from the school laws applicable  
7 to all public common schools. The Constitution does not allow the State to provide basic  
8 education to Washington children through a separate privatized system that does not provide an  
9 education uniform to that which other students receive. The Act is therefore unconstitutional.

10 **1. The uniformity requirement mandates a unitary public school system**  
11 **administered by elected officials and offering a basic education program.**

12 The constitutional delegates believed that the State's highest duty is to ensure that all  
13 children have access to an adequate education regardless of where they happen to live. *See* Sect.  
14 I.B., *infra*. Article IX, Section 2 therefore directs the Legislature to "provide for a general and  
15 uniform system of public schools." *See Paine v. Port of Seattle*, 70 Wash. 294, 300, 126 P. 628  
16 (1912), *aff'd*, 70 Wash. 294, 127 P. 580 (1912). A uniform system is one that is "common to all  
17 children of proper age and capacity, free, and subject to, and under the control of, the qualified  
18 voters of the school district." *LWV*, 184 Wn.2d at 405 (quoting *Bryan*, 51 Wash. at 504).

19 To satisfy the uniformity requirement, the Legislature must establish "One system" with  
20 unity of governance and educational offerings. *Northshore Sch. Dist. No. 417 v. Kinnear*, 84  
21 Wn.2d 685, 728, 530 P.2d 178 (1974) (quotation omitted), *overruled on other grounds by Seattle*  
22 *Sch. Dist. No. 1 of King Cty. v. State*, 90 Wn.2d 476, 585 P.2d 71 (1978); *see also See Fed. Way*  
23 *Sch. Dist. No. 210 v. State*, 167 Wn.2d 514, 524, 219 P.3d 941 (2009) ("access by each student  
24 of whatever grade to acquire those skills and training that are reasonably understood to be  
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1 fundamental and basic to a sound education”); *Bryan*, 51 Wash. at 504 (“every child shall have  
2 the same advantages and be subject to the same discipline as every other child”). The system  
3 must be controlled by and accountable to elected officers. *See Bryan*, 51 Wash. at 504; Art. III,  
4 § 22. Additionally, the term “uniform” requires “minimum and reasonably standardized  
5 educational and instructional facilities and opportunities,” the same discipline standards, and  
6 uniform administration that “enables a child to transfer from one district to another within the  
7 same grade without substantial loss of credit or standing.” *Fed. Way Sch. Dist.*, 167 Wn.2d at  
8 524; *Bryan*, 51 Wash. at 504.

9  
10 The Supreme Court has held that Title 28A RCW’s Common School Provisions, which  
11 includes the Basic Education Act, meets the “general and uniform” requirements. *Fed. Way Sch.*  
12 *Dist.*, 167 Wn.2d at 525. The Common School Provisions establish structural uniformity  
13 through an integrated system, including the Superintendent and local school districts, to deliver  
14 the basic education program. *See RCW 28A.150.070; see also State ex rel. DuPont-Fort Lewis*  
15 *Sch. Dist. No. 7, Pierce Cty. v. Bruno*, 62 Wn.2d 790, 797, 384 P.2d 608 (1963) (describing  
16 “integrated system of agencies” for the supervision, maintenance, and operation of public  
17 schools). With regard to educational opportunities, the Supreme Court has highlighted the  
18 uniformity requirements for education programs, curriculum, teacher certification, and minimum  
19 instructional hours applicable to common schools. *Fed. Way Sch. Dist.*, 167 Wn.2d at 524-25.

## 22 **2. Charter schools do not satisfy the uniformity requirement.**

23 The Charter School Act creates a parallel class of schools to the existing public common  
24 schools but with very different requirements, oversight, and control. This competing private  
25 school system violates the uniformity requirements of Article IX, Section 2, in at least two ways,  
26 each of which is an independent ground for striking down the Act: first, charter schools are  
27

1 controlled by private organizations, rather than elected officers; and second, charter schools do  
2 not provide the uniform basic education program as public common schools.

3 *a. Non-uniform governance.*

4 Charter schools have a governance structure that is separate from, and bears no  
5 resemblance to, the uniform system of public schools. Governance of public schools by locally  
6 elected school district boards subject to the supervision of the statewide elected Superintendent  
7 has been a hallmark of the public school system since the State’s founding. *See* Laws of 1871,  
8 ch. 1, § 1, at 12-13; Bibb at 75. This governance system ensures accountability to the taxpayers  
9 who fund the schools, as well as efficient and orderly administration of the public common  
10 schools. *See* Troth at 115. Early Supreme Court decisions emphasized the requirement of one  
11 unitary system of governance by elected officers. *See Bryan*, 51 Wash. at 504 (establishment of  
12 schools operated by a principal who was not answerable to the locally elected school board or the  
13 Superintendent would “break the uniformity of the common school system”).  
14  
15

16 Charter schools, however, are “devoid of local control from their inception to their daily  
17 operation.” *LWV*, 184 Wn.2d at 399. By design, charter schools are “[o]perated separately from  
18 the common school system as an alternative to traditional common schools.” RCW  
19 28A.710.020(1)(b). The Act delegates the management and operation of charter schools to  
20 charter school boards appointed by private organizations. RCW 28A.710.010(6). The private  
21 charter board—which is wholly unaccountable to voters—is charged with hiring, managing, and  
22 firing employees at a charter school, receives and disburses state funds, and maintains charter  
23 school facilities. RCW 28A.710.030(1). As explained in Section III.F., *infra*, charter schools are  
24 not subject to supervision by the Superintendent. Local school districts play no substantive role  
25 in charter schools authorized by the appointed Charter Commission. RCW 28A.710.070(1), (2).  
26  
27

1 Notably, a Florida court held that a similar statewide charter school commission violated the  
2 uniformity requirement by creating a “parallel system of free public education escaping the  
3 operation and control of local elected school boards.” *Duval Cnty. Sch. v. State*, 998 So.2d 641,  
4 643 (2008).

5  
6 ***b. Non-uniform educational opportunities.***

7 Charter schools do not offer the same educational opportunities to their students as the  
8 public common schools. Charter schools are exempt from the vast majority of the Common  
9 School Provisions, which have been identified by the Supreme Court as constituting a uniform  
10 basic education. Perhaps most significantly, as described above, charter schools are not required  
11 to offer many of the mandatory components of the basic education program described in the  
12 Basic Education Act. *See* RCW 28A.150.220(2). The Act provides that charter schools must  
13 “provide a basic education,” according to the four goals set forth in RCW 28A.150.210, but only  
14 requires instruction in the EALRs and participation in the statewide student assessment system.  
15 RCW 28A.710.040(2)(b). The Act does not require charter schools to provide necessary  
16 elements of the “basic education program,” including minimum instructional hours and certain  
17 basic programs. The Court has made clear that Article IX requires more than just shared goals—  
18 the specific program of basic education must also be the same. *See McCleary*, 173 Wn.2d at  
19 521; *see also Wagner v. Royal*, 36 Wash. 428, 433-34, 78 P. 1094 (1904) (a common school’s  
20 adoption and enforcement of a different course of study would destroy uniformity required by  
21 Constitution).

22  
23  
24 Charter schools also are exempt from countless other Common School Provisions  
25 covering a broad range of topics “in areas such as scheduling, personnel, funding, and  
26 educational program[s].” RCW 28A.710.040(3). This includes uniform discipline laws and  
27

1 standards for facilities. *See Fed. Way Sch. Dist.*, 167 Wn.2d at 524 (uniform includes  
2 standardized instructional facilities and being “subject to the same discipline as every other  
3 child”). The Act also waives compulsory coursework and activities, such as physiology,  
4 hygiene, and physical education, RCW 28A.230.020 (common school curriculum), which have  
5 been components of the mandatory common school curriculum since the territorial legislature  
6 adopted the first uniform standards in 1877, *see* Laws of 1877, tit. 9, at 274-75.  
7

8 Further, the Act interferes with the ability of students to transfer between public common  
9 schools and charter schools, as required by Article IX, Section 2. *See Fed. Way Sch. Dist.*, 167  
10 Wn.2d at 524. The Act provides no guarantee that credit will be awarded to public school  
11 students transferring into a charter school. *See* RCW 28A.710.060(2).  
12

13 Importantly, charter schools cannot be equated with other specialized schools and  
14 supplemental education programs offered, an argument made by the State in *LWV*.<sup>6</sup> The  
15 Legislature has established several specialized schools to serve the special needs of certain  
16 students, such as incarcerated youth, ch. 28A.193, .194 RCW; blind or deaf students, ch. 72.40  
17 RCW; high achievers, RCW 28A.185.040; and drop-outs, ch. 28A.205 RCW. Such schools  
18 meet the educational needs of children who would not be served by the general and uniform  
19 public school system. By contrast, although charter schools may offer programs aimed at  
20 discreet student populations, they, unlike the identified specialized schools, must be open to all  
21 students on an equal basis. RCW 28A.710.020(1).  
22

23 The Supreme Court in *Tunstall* highlighted this distinction between the general and  
24 uniform public school system and an education program offered to meet the unique needs of a  
25 small subset of children. *Tunstall v. Bergeson*, 141 Wn.2d 201, 221-22, 5 P.3d 691 (2000).  
26

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27 <sup>6</sup> The constitutionality of programs other than charter schools is not before this Court.  
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1 There, the Court explained that the “general and uniform” requirement in Article IX, Section 2  
2 does not prevent the State—in fulfilling its paramount duty under Article IX, Section 1 to  
3 provide an education to each child—from offering specialized programs for students whose  
4 needs would not be met by the State’s public schools (there, juveniles in adult correctional  
5 facilities). *Id.* (noting that “the State’s constitutional duty to provide educational services does  
6 not end with the creation of a ‘general and uniform’ school system” and that “a different  
7 education program...might be necessary to reasonably address special needs” of discreet student  
8 populations) (internal quotation omitted). But to allow the Legislature to establish a parallel  
9 non-uniform, private school system to compete with the general public common schools for the  
10 same general population of students and the same deficient state resources would eviscerate the  
11 uniformity required by the Constitution. *See Washington Supreme Court Holds Charter School  
12 Act Violates State Constitution*, 129 Harv. L. Rev. 1811, 1815-18 (2016) (concluding charter  
13 schools violate general and uniform requirement).

14  
15  
16 The general and uniform system requirement is an important constraint on legislative  
17 authority that cannot be ignored because the legislature disagrees with the State’s founders about  
18 education policy. The Charter School Act violates the uniformity requirement by creating a  
19 separate class of schools that are governed by private organizations and exempt from most of the  
20 uniform common school laws.

21  
22 **C. The Act Diverts Restricted Common School Funds to Private Charter Schools Not  
Subject to Voter Control in Violation of Article IX, Section 2.**

23 The Constitution requires the Legislature both to establish “common schools” and  
24 dedicate certain funds to be used solely for their support. Art. IX, § 2. In *LWV*, the Supreme  
25 Court struck down I-1240 because it diverted state funds away from common schools to support  
26 charter schools. The Charter School Act does not remedy the constitutional defects identified by  
27

1 the Supreme Court, but instead relies on an accounting trick to make it look like the Act has  
2 fixed the problem. The Act still seeks to fund charter schools on the same basis as common  
3 schools, requiring the Superintendent to use the same distribution formulas to disperse funds.  
4 And the Act relies on money from the State’s General Fund, which the Supreme Court has  
5 recognized contains restricted common school funding, to pay for up to 40 charter schools  
6 authorized under the Act. The Act is therefore unconstitutional.  
7

8 **1. The Constitution prohibits diversion of constitutionally restricted common**  
9 **school funds to support charter schools.**

10 The Constitution prohibits the Legislature from diverting state money from common  
11 schools to support non-common schools that, like charter schools, are not subject to local voter  
12 control. *LWV*, 184 Wn.2d at 406. Article IX, Section 2 provides that “the entire revenue derived  
13 from the common school fund and the state tax for common schools shall be exclusively applied  
14 to the support of the common schools.” *Id.* (emphasis added). The use of any common school  
15 funds for purposes other than to support common schools is unconstitutional, “whether the  
16 expense be small or great[.]” *Mitchell v. Consol. Sch. Dist. No. 201*, 17 Wn.2d 61, 66, 135 P.2d  
17 79 (1943) (plurality decision). The Supreme Court has been “zealous” in protecting the common  
18 school system and rejected all efforts, “however subtle,” to diminish protected common school  
19 funding. *Bryan*, 51 Wash. at 505 (striking down law that “by indirect means” attempted to take  
20 funds from common schools to support experimental schools); *see also Leonard v. City of*  
21 *Spokane*, 127 Wn.2d 194, 199-200, 897 P.2d 358 (1995) (public improvements); *Mitchell*, 17  
22 Wn.2d at 66 (transportation to private schools); *State ex rel. State Bd. for Vocational Educ. v.*  
23 *Yelle*, 199 Wash. 312, 316-17, 91 P.2d 573 (1939) (“*Yelle*”) (vocational rehabilitation); *Sheldon*  
24 *v. Purdy*, 17 Wash. 135, 141, 49 P. 228 (1897 (interest on school district bonds); *State v.*  
25  
26  
27

1 *Preston*, 79 Wash. 286, 288-89, 140 P. 350 (1914) (special schools attached to teacher training  
2 colleges).

3         There is no dispute that charter schools under the Act are not common schools within the  
4 meaning of the Constitution and that, as a result, constitutionally restricted common school funds  
5 cannot be diverted to charter schools. *LWV* is controlling. Indeed, the Act acknowledges (as it  
6 must) that charter schools are not common schools entitled to receive constitutionally restricted  
7 common school funds. *See* RCW 28A.710.020(1)(b).

8         The Supreme Court addressed the constitutional restraints on public funding for charter  
9 schools within the current common school funding scheme in *LWV*. As the Court noted, the  
10 Legislature has not maintained a dedicated account for common schools since at least 1967. 184  
11 Wn.2d at 409. Currently, the Legislature endeavors to carry out its constitutional obligation to  
12 fund common schools by allocating basic education funds from the General Fund, including the  
13 general apportionment, categorical funding, and student transportation funds. *Id.* at 408 (citing  
14 RCW 28A.150.380(1)). In turn, the Superintendent distributes basic education funds to public  
15 school districts according to statutory formulas. *Id.* at 408-09 (citing RCW 28A.150.250(1)).  
16 Under I-1240, the Superintendent distributed moneys to charter schools from the same basic  
17 education funds according to the same statutory formulas applicable to common schools. *Id.*

18         The Supreme Court held that I-1240 violated the Constitution by diverting “money that is  
19 dedicated to common schools...to charter schools.” *LWV*, 184 Wn.2d at 406. The Court  
20 determined that all of the basic education allocation from the General Fund is constitutionally  
21 protected as the “state tax for common schools” under article IX, Section 2. *Id.* at 407. The  
22 Court explained that the “state tax for common schools” was not limited to the specific common  
23 school property tax, which is only a portion of the state funds used to support common schools.  
24  
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1 *Id.* at 409. The Court rejected the State’s argument that funding for charter schools did raise  
2 constitutional concerns given I-1240’s fiscal neutrality because funding follows the student. *Id.*  
3 at 408. The enrollment-based funding scheme led to the diversion of restricted funds from  
4 common schools. *See id.*

5  
6 The Supreme Court emphasized that the problem of tapping into restricted basic  
7 education allocation was compounded by the State’s failure to segregate these restricted moneys  
8 in a dedicated account. *Id.* at 409 (identifying other constitutionally restricted state funds  
9 maintained in separate accounts, such gas taxes for transportation purposes, Art. II, § 40).  
10 Because restricted and non-restricted funds were comingled in the General Fund, the State could  
11 not “demonstrate that these restricted money [were] protected from being spent on charter  
12 schools.” *Id.* Thus, the Court concluded that charter schools may not be constitutionally funded  
13 through the General Fund. *Id.*

14  
15 **2. The Charter School Act continues the unconstitutional diversion of restricted  
16 common school funds.**

17 The Legislature failed to remedy I-1240’s violation of the constitutional restraints that  
18 protect funding the common school system above all. Instead, the Legislature resorted to an  
19 accounting sleight of hand designed to disguise the continued diversion of restricted common  
20 school funds to charter schools. As in I-1240, the Act directs the Superintendent to distribute  
21 moneys to charter schools on the same basis as common schools. *See* RCW 28A.710.280; *see*  
22 *also* RCW 28A.710.128(1) (“The legislature intends that state funding for charter schools be  
23 distributed equitably with state funding provided for other public schools.”). The Act’s funding  
24 scheme differs from I-1240 only in that the Legislature makes a separate appropriation for  
25 charter schools from the Opportunity Pathways Account, rather than tapping directly into the  
26 basic education allocation from the General Fund. RCW 28A.710.270. But the Legislature then  
27

1 anticipates that the appropriation from the Opportunity Pathways Account will be replaced with  
2 money from the General Fund. The change is really a mirage that does not fix the constitutional  
3 issues.

4           Importantly, constitutional protection for common school funds “is not dependent  
5 on...the account in which the moneys are held (i.e., the general fund or other state fund)[.]”  
6 *LWV*, 184 Wn.2d at 407 (citing *Yelle*, 199 Wash. at 316) ; *see also Yelle*, 199 Wash. at 316 (“The  
7 fact that the major portion of [common school funding] is to be derived from anticipated  
8 revenues from excise taxes makes the appropriation no less effective than had it been made from  
9 cash on hand.”). Nor does constitutional protection depend on whether the statute at issue  
10 directly appropriates restricted common school funds. *See LWV*, 184 Wn.2d at 408 (citing  
11 *Mitchell*, 17 Wn.2d at 66). The Constitution prohibits any law that (like the Charter School Act)  
12 has the effect of diverting restricted common school funds, even if accomplished by indirect  
13 means. *Id.*; *Bryan*, 51 Wash. at 505 (unconstitutional “[t]o take from the one [common school  
14 system] and give to the other by indirect methods that which was designed for a special  
15 purpose”).

16           The Charter School Act’s use of the Opportunity Pathways Account is nothing more than  
17 a shell game. *Pedersen Decl.*, ¶ 9. The state budget is a zero-sum game: the Legislature must  
18 match exactly a new expenditure by either raising new revenue or reducing funding for another  
19 program on a dollar-for-dollar basis. *Id.*, ¶ 10. In continuing state funding for charter schools  
20 under the Act, however, the Legislature did not raise new revenue or reduce funding levels for  
21 other existing programs as would be necessary for the State to pay for charter schools without  
22 relying on the General Fund and thus diverting the protected basic education allocation for  
23 common schools. *Id.*, ¶ 11; *Salvi Decl.*, ¶ 13; *see also Lawrence Decl.*, Ex. B (Fiscal Note);  
24  
25  
26  
27

1 Lawrence Decl., Ex. C (proposed amendment to raise new revenue for charter schools by  
2 eliminating certain state sales tax exemptions) (withdrawn on Mar. 9, 2016). The Act was  
3 designed to have a “net zero” impact on funding levels for the early and higher education  
4 programs that received funds from the Opportunity Pathways Account in prior years (e.g., Early  
5 Childhood Education and Assistance Program, state financial aid programs). Pedersen Decl., ¶  
6 11. The Act’s sponsors represented that none of the existing Opportunity Pathways programs  
7 would be reduced or cut in connection with the adoption of the Charter School Act. *Id.*, ¶ 12.

9 Without new revenue or decreased funding for other programs, the Act’s operation will  
10 necessarily continue the diversion of basic education funds that would have been used to support  
11 the common schools. Salvi Decl., ¶ 13; Pedersen Decl., ¶ 10. As under I-1240, charter schools  
12 under the Act compete with common schools for the same students and, of constitutional  
13 significance, the same state funds tied to each student. *See* RCW 28A.710.128(1); *LWV*, 184  
14 Wn.2d at 410-11. In fact, the Legislature intended for the Act to shift funds from common  
15 schools to charter schools. Pedersen Decl., ¶ 14. For example, at the Senate Early Learning  
16 Committee public hearing on January 12, 2016, committee staff confirmed that charter schools  
17 would not cost the state any additional money to the extent that students were previously  
18 enrolled in public common schools. *See* Lawrence Decl., ¶ 9 (Jan. 12, 2016 Public Hearing at  
19 0:08:52). As staff put it, the money would merely “shift” between common schools and private  
20 charter schools. *See id.* Similarly, the Act’s proponents testified at the Senate Ways & Means  
21 Committee public hearing, that the bill “should not be considered a loss of funding for [public  
22 school] districts, but instead a shift of resources.” Pedersen Decl., ¶ 12 and Ex. A (Senate Bill  
23 Report). But that is exactly one of the problems that the Supreme Court identified in *League of*  
24 *Woman Voters*. 184 Wn.2d at 410.

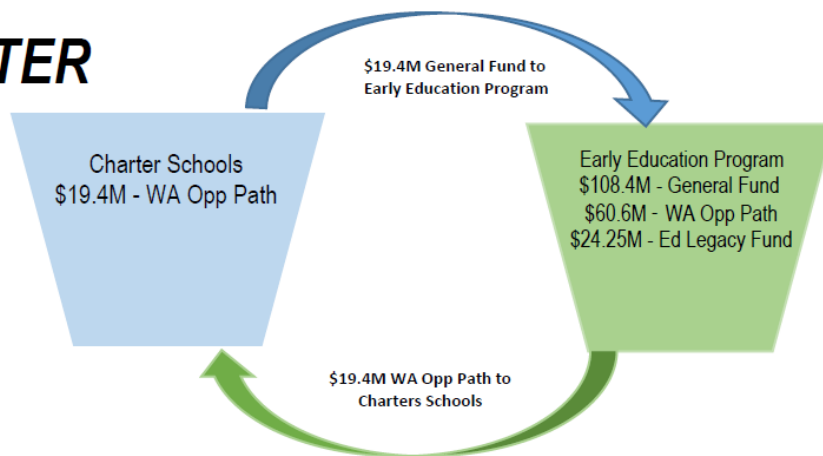
1 As evidenced in the legislative history, the Legislature intends to shift existing monies  
 2 and/or existing programs between the General Fund and the Opportunity Pathways Account as  
 3 needed to continue the diversion of state funds to charter schools while maintaining funding  
 4 levels for the other Opportunity Pathways programs. See Pedersen Decl., ¶ 14; Salvi Decl., ¶ 12.  
 5 At the request of the Senate Ways & Means Committee, staff prepared and presented a graphic  
 6 (“Fiscal Impact Report”) illustrating how the accounting device would work:  
 7

8 *BUDGET SCENARIO (Other Options are Available)*

9 **BEFORE**



14 **AFTER**



19 See Pedersen Decl., ¶ 15 and Ex. B (modified).<sup>7</sup> In this example, the budget would include an  
 20 allocation to charter schools from the Opportunity Pathways Account but replace each of those  
 21 dollars through a matching allocation to one of the other programs from the General Fund. *Id.*  
 22 Staff explained that charter schools will be funded through “just a switch of funds. Moving them  
 23  
 24  
 25

26 <sup>7</sup> The acronyms used in the original illustration have been revised for purposes of clarity. An  
 27 unaltered copy is attached as Exhibit B to the Pedersen Declaration.

1 from one fund to another.” *Id.*, ¶ 15 (Jan. 19, 2016 Executive Session at 1:36:00). During the  
2 floor debate, Senator Jamie Pedersen described the Fiscal Impact Report as an example of how  
3 state funds would “flow out of the Opportunity Pathways Account and into the general fund and  
4 back into the Opportunity Pathways Account.” *Id.* (Jan. 20, 2016 Senate Debate at 0:33:30).  
5 The following month, at the House Committee on Education public hearing, Representative  
6 Chris Reykdal described the Act’s funding mechanism as “laundering lottery money and then  
7 backfilling that with general funds, instead of going straight from general fund to these [charter]  
8 schools.” Lawrence Decl., ¶ 10 (February 19, 2016 Public Hearing at 0:20:50).

9  
10 The Act’s funding mechanism is consistent with the Legislature’s general practice of  
11 treating the General Fund and the Opportunity Pathways Account as one pot of money during the  
12 budgeting process, including in meeting its duty to enact a balanced budget. *See* RCW  
13 43.88.055 (defining “available fiscal resources” based on General Fund, Opportunity Pathways  
14 Account, and Education Legacy Trust Account); Pedersen Decl., ¶ 10; Salvi Decl., ¶ 5;  
15 Lawrence Decl., Ex. D (official budget forecast does not differentiate between General Fund and  
16 Opportunity Pathways Account). Since the creation of the Opportunity Pathways Account in  
17 2010, the Legislature has allocated available funds in the Account (lottery revenue) to eligible  
18 programs and used the General Fund to cover the balance of the programs’ total costs; the  
19 Account has not been treated like a dedicated account. Salvi Decl., ¶ 5 and Ex. B; Pedersen  
20 Decl., ¶ 14. The breakdown between General Fund and Opportunity Pathways funds for a  
21 particular program has no meaningful impact on the State’s overall budget. *Id.*

22  
23  
24 The Legislature was and remains well aware that it will need to resort to the General  
25 Fund to ensure stable funding for up to 40 charter schools. *See* Pedersen Decl., ¶¶ 13-14 .  
26 Contrary to the State’s argument that the Legislature considered but did not adopt the fund swap  
27

1 depicted in the Fiscal Impact Report, the legislative history confirms that this illustration was  
2 presented to and considered by the Legislature as an example of how the Charter School Act’s  
3 funding provisions would work going forward. At the public hearing before the Senate Early  
4 Learning and K-12 Committee, staff explained there were “unobligated” funds in the  
5 Opportunity Pathways Account that could be used for charter schools for FY 2016-17 but there  
6 would be “an expectation of some adjustments being made...so that the general funds that are  
7 now available because charter schools cannot receive general funds, those general funds could be  
8 repurposed to [the other Opportunity Pathways] programs. ... [T]hat would just need to be  
9 supplemented in the budget process.” Lawrence Decl., ¶ 9 (Jan. 12, 2016 Public Hearing at  
10 0:10:45).  
11

12 The Opportunity Pathways Account was able to absorb the \$11 million expenditure  
13 needed this school year to continue public funding for the nine charter schools established under  
14 I-1240. *Id.*, ¶ 13. But Opportunity Pathways Account revenue (which is expected to remain  
15 around \$125-140 million per year through at least 2021) cannot cover escalating costs of  
16 hundreds of millions of dollars—and likely more than one billion dollars—per year by the 2021-  
17 22 school year, assuming authorization of 40 charter schools as provided for under the Act. *Id.*;  
18 Salvi Decl., ¶ 14 and Ex. F. This dramatic increase in costs is simply not possible without  
19 shifting existing revenue to the Opportunity Pathways Account. *Id.*; *see also* LWV, 184 Wn.2d at  
20 408 (statute unconstitutional where “its intended operation would ‘necessitate[ ] the use of  
21 common school funds for other than common school purposes’ rendered it unconstitutional.”  
22 (emphasis added) (quoting *Mitchell*, 17 Wn.2d at 66)).  
23

24 Even if the Act’s funding trick passed constitutional muster (which it does not), the Act  
25 results in school districts repurposing restricted common school funds for charter purposes,  
26  
27

1 which is an independent basis for striking down the Act. For example, all school districts will  
2 expend money complying with the Act’s requirement that school districts “provide information  
3 to parents and the general public about charter schools located within the district as an  
4 enrollment option for students.” RCW 28A.710.060. Additionally, to apply for authorizer  
5 status, a school district must prepare a strategic vision for chartering, a budget, and an outline of  
6 the proposed annual charter school application process, performance framework, and renewal,  
7 revocation, and nonrenewal processes. RCW 28A.710.090(2). None of these school district  
8 expenses are not covered by allocations from the Opportunity Pathways Account, leaving school  
9 district to foot the bill. And because school districts (like the State) do not segregate restricted  
10 state common school funds from local operating funds, *Salvi Decl.*, ¶ 5, there is “no way to track  
11 the restricted common school funds or to ensure that these dollars are used exclusively to support  
12 the common schools,” *LWV*, 184 Wn.2d at 409.

15 The critical importance of the constitutional guarantee of dedicated state funding for  
16 common schools accountable to elected officials was driven home by the problems that plagued  
17 the first charter school opened under I-1240, First Place Scholars. After opening in 2014, the  
18 Washington State Auditor’s Office (“SAO”) conducted an accountability audit of the school  
19 covering the period from February 2014 to February 2015. *Lawrence Decl.*, Ex. E at 4. The  
20 SAO made multiple findings regarding First Place Scholars’ misuse of public resources,  
21 including that “First Place Scholars Charter School does not have adequate internal controls to  
22 ensure enrollment and teacher education and experience are correctly reported for apportionment  
23 funding which resulted in an overpayment of \$200,372 in public funds.” *Id.* at 5.

25 Simply put, the Charter Schools Act’s quick fix to I-1240 contravenes the letter and the  
26 spirit of the Supreme Court’s holding in *LWV*. The State’s founders decided to protect the  
27

1 common school system with the full force of the Constitution. Creating a funding pathway that  
2 hides the use of restricted General Fund dollars does not remedy the constitutional problems  
3 found in *LWV*.

4 **D. The Charter School Act Impedes the State’s Paramount Duty to Make Ample**  
5 **Provision for Education as Required by Article IX, Section 1.<sup>8</sup>**

6 There is no dispute that the State has failed and continues to fail to provide the funding  
7 needed to fulfill its paramount duty to make ample provision for education. In *McCleary*, 173  
8 Wn.2d at 537, the State argued that the program of basic education set forth in the Basic  
9 Education Act satisfies its paramount duty to provide an education under Article IX. The  
10 Supreme Court endorsed this basic education program but found that state allocations have  
11 “consistently fallen short of the actual cost” of implementation. *Id.* The Court directed the  
12 Legislature to fund fully this basic education program by 2018, but little progress has been made.  
13 Most recently, in October 2016, the Court found that “the State continues to provide a promise—  
14 ‘we’ll get there next year’—rather than a concrete plan for how it will meet its paramount duty.”  
15 Order, *McCleary v. State*, No. 85362-7, at 10 (Wash. Oct. 6, 2016).

16  
17 The Charter School Act hinders the State’s ability to fulfill its paramount duty to provide  
18 ample funding for a basic education program. Charter schools are not a part of the Basic  
19 Education Act endorsed by the Legislature and the Court in *McCleary*.<sup>9</sup> Yet, as described in  
20 above, the Act’s use of a separate account is merely a shell game designed to end run the  
21

22  
23 <sup>8</sup> Although this Court granted the State’s motion to dismiss the Ample Funding Claim,  
24 Plaintiffs’ motion for reconsideration is pending. For this reason, Plaintiffs include argument  
25 relating to their Ample Funding Claim in this Motion.

26 <sup>9</sup> Although these minimum requirements are not “etched in constitutional stone,” any  
27 reduction of programs must be accompanied by an “educational policy rationale.” *McCleary*,  
173 Wn.2d at 526-27. The Charter School Act excuses charters from offering several  
components of the basic education program. Common schools are required to offer these  
programs and, thus, it cannot be said these programs the Legislature “once considered central to  
providing basic education no longer serve[] the same educational purpose or should be replaced  
with a superior program or offering,” *id.* at 527.



1 Supreme Court’s decision in *LWV*. The Act continues the diversion of funds from public  
2 common schools to charter schools that began with I-1240 and has continued unabated despite  
3 *LWV*. Further, the cost of funding 40 charter schools, as authorized under the Act, will likely  
4 exceed one billion dollars per year. *See* Pedersen Decl., ¶ 13. This inevitably will exacerbate the  
5 funding shortfall that exists and impede the ability of the Legislature to meet the Court’s 2018  
6 deadline.  
7

8 **E. Delegation of the State’s Paramount Duty to Private Organizations Violates**  
9 **Article IX, Sections 1 and 2.**

10 The Charter School Act unconstitutionally delegates the State’s paramount duty to define  
11 a basic education program that meets the requirements of Article IX to private organizations. *Cf.*  
12 *Parents Involved in Cmty. Schs.*, 149 Wn.2d at 673 (State’s paramount duty cannot be discharged  
13 through delegation). Moreover, even if such delegation were proper (which it is not), the Act  
14 fails to provide sufficient standards, guidelines, and procedural safeguards to ensure this  
15 paramount duty will be satisfied.  
16

17 First, the Charter School Act improperly delegates the State’s paramount duty to define a  
18 basic education program to private organizations. Under Article IX, the Legislature has a  
19 constitutional duty to provide substantive content to “basic education” and the components of the  
20 “basic education program.” *See McCleary*, 173 Wn.2d at 521; *Seattle Sch. Dist.*, 90 Wn.2d at  
21 518-19. In *Seattle School District*, the Supreme Court held that the Legislature had violated  
22 Article IX by failing to define the components of a basic education program. 173 Wn.2d at 526.  
23

24 The Charter School Act does not require charter schools to offer all the components of  
25 the Basic Education Act. RCW 28A.150.220. Instead, the Act unconstitutionally delegates the  
26 duty to define a basic education program to private organizations operating charter schools. In  
27 so doing, the Act brushes aside most of the education standards applicable to public common

1 schools and provides no guidelines as to what a charter school should substitute as a basic  
2 education program. *See, e.g.*, RCW 28A.710.040 (charter schools define their own basic  
3 education programs); *see also* RCW 28A.710.130 (same). Simply requiring that charter schools  
4 provide a “basic” education constitutes the same failure to provide content to the educational  
5 program that the Washington Supreme Court determined was unconstitutional in *Seattle School*  
6 *District*. 90 Wn.2d at 518-19.

7  
8 The Constitution’s assignment of legislative responsibility to provide substantive content  
9 to the basic education program under Article IX, cannot be modified through legislation. *See*  
10 *McCleary*, 173 Wn.2d at 516-17. As the Washington Supreme Court has explained, the  
11 Legislature has “uniquely constituted fact-finding and opinion gathering processes [that] provide  
12 the best forum for addressing the difficult policy questions inherent in forming the details of an  
13 education system.” *Id.* at 517 (quotation omitted).

14  
15 The Act’s delegation of the duty to define a basic education program is especially  
16 problematic because the delegation is made to private organizations. *United Chiropractors of*  
17 *Wash., Inc. v. State*, 90 Wn.2d 1, 5, 578 P.2d 38 (1978) (“Delegation to a private organization  
18 raises concerns not present in the ordinary delegation of authority to a governmental  
19 administrative agency.”). Unlike governmental agencies, private organizations are not subject to  
20 the same public oversight. That is, delegating the authority to define a basic education program  
21 to private charter schools creates no opportunity for the taxpaying public to assert itself. This  
22 abdication of the Legislature’s paramount duty to private organizations, which lack the “uniquely  
23 constituted fact-finding and opinion gathering processes” of the legislative branch, interferes  
24 with the “delicate balancing of constitutional responsibilities.” *See McCleary*, 173 Wn.2d at 517  
25 (quotation omitted).  
26

1           Second, even if the State’s duty to define a basic education program could be delegated  
2 (which it cannot), the delegation under the Act still violates the Constitution because it fails to  
3 provide sufficient procedural safeguards to control arbitrary action and abuse of discretionary  
4 power. To properly delegate, the Legislature must provide standards to indicate what is to be  
5 done, designate the entity to accomplish it, and procedural safeguards to control arbitrary action  
6 and abuse of discretionary power. *United Chiropractors of Wash.*, 90 Wn.2d at 4; *see also Barry*  
7 *& Barry, Inc. v. State Dep’t of Motor Vehicles*, 81 Wn. 2d 155, 159, 500 P.2d 540 (1972) (even  
8 delegation to state agency requires standards and procedural safeguards).  
9

10           As discussed above, the Charter School Act fails to identify what is to be done, the entity  
11 to accomplish it, or procedural safeguards for the development of a basic education program by  
12 charter schools. The Act provides that charter schools may develop their own “program of basic  
13 education,” which only must meet the “goals” identified in RCW 28A.150.210, “including  
14 instruction in the essential academic learning requirements[.]” RCW 28A.710.040. By contrast,  
15 the Basic Education Act approved by the Washington Supreme Court in *McCleary* defines a  
16 basic education program as including certain minimum components set out in RCW  
17 28A.150.220, most of which charter schools are not required to provide. *See* RCW  
18 28A.710.040(3) (charter schools are exempt from all state laws except as specifically provided in  
19 the Act). The Act fails to put any safeguards in place to ensure a charter school provides a  
20 constitutionally sufficient basic education program or properly manages public resources. *See*  
21 RCW 28A.710.160(2) (“The contract must establish the terms by which the charter school agrees  
22 to provide educational services that, at a minimum, meet basic education standards, in return for  
23 a distribution of public funds that will be used for the purposes established in the contract and in  
24 this and other applicable statutes.”).  
25  
26  
27

1 Similarly, once a charter school’s education program is in place, authorizers have limited  
2 tools to compel charter schools to comply with the few standards that do exist:

- 3 • The Act does not allow authorizers to intervene in the day-to-day management of a  
4 charter school, to limit enrollment, to control resource allocation, or to revoke the  
5 Act’s general waiver of the laws applicable to common schools. The Act specifies  
6 that oversight cannot “unduly inhibit the autonomy granted to charter schools,” RCW  
7 28A.710.180(2), and must be consistent with the standards developed by the National  
8 Association of Charter School Authorizers, RCW 28A.710.100(3). An elected school  
9 district board, by contrast, manages the public schools in the district and controls  
10 enrollment, the allocation of resources, and other school policies. *See* RCW  
11 28A.150.230.
- 12 • Authorizers are only allowed to revoke or decline to renew charter contracts under  
13 certain specified circumstances and, even then, only after a lengthy administrative  
14 process. RCW 28A.710.200. Conversely, a school district board has broad discretion  
15 to close public schools after 90 days’ notice. RCW 28A.335.020.
- 16 • Authorizers cannot withhold funding from a charter school. *See* RCW 28A.710.220.  
17 By contrast, “[i]f a school district’s basic education program fails to meet the basic  
18 education requirements enumerated in RCW 28A.150.260 and 28A.150.220, the state  
19 board of education shall require the superintendent of public instruction to withhold  
20 state funds in whole or in part for the basic education allocation until program  
21 compliance is assured.” RCW 28A.150.250(3).

22 Given the magnitude of the constitutional duty at stake, the Act’s delegation of that duty without  
23 sufficient standards and safeguards is particularly troubling. *Cf. In re Powell*, 92 Wn.2d 882,  
24 892, 602 P.2d 711 (1979) (imposing the “procedural safeguard” requirement with regard to the  
25 execution of *statutory* duties).

26 These concerns are not merely academic. Washington’s first charter school opened under  
27 I-1240, First Place Scholars, demonstrates how a lack of public oversight and sufficient  
procedures and safeguards leads to the misuse of public resources and a failure to ensure the  
provision of a constitutionally adequate education. As described in Section IV.C.2., *supra*,  
SAO’s accountability audit of the school made multiple findings regarding misuse of public  
resources. Lawrence Decl., Ex. E at 5. Although the focus of the SAO’s audit was largely

1 financial, the SAO noted that the charter school’s lack of financial procedures led to reduced  
2 services for students. *Id.* at 13 (“Declining cash balances required the charter school to reduce  
3 staff and services to students.”). The SAO also concluded that the lack of procedures increased  
4 the risk that public resource would be misused without detection. *Id.* at 14 (“The internal control  
5 deficiencies described above creates the potential for charter school resources to be  
6 misappropriated without being detected by management. Because documentation was lacking,  
7 we were unable to determine whether the expenditures were used for purposes allowable under  
8 state law.”).

9  
10 The Charter Commission was aware of many of the problems at First Place Scholars but  
11 failed to take immediate and concrete action. For example, as early as November 4, 2014, the  
12 Commission issued a “Notice of Concern,” and in a December 1, 2014, letter identified multiple  
13 failures by the school to provide an adequate basic education. *Id.*, Ex. F. Yet more than six  
14 months later, in June 2016, the Commission voted not to revoke First Place Scholars’ charter,  
15 despite the fact that the Commission determined that the school continued to fail to comply with  
16 multiple conditions imposed by the Commission by the identified June 15, 2015, deadline. *Id.*,  
17 Ex. G. The same lack of procedures, safeguards, and oversight that allowed for the continued  
18 operation of First Place Scholars under I-1240 persists under the Charter School Act.

19  
20 **F. The Superintendent Does Not Have Supervisory Authority Over Commission-**  
21 **Authorized Charter Schools as Required by Article III, Section 22.**

22 Article III, Section 22 provides that the Superintendent “shall have supervision over all  
23 matters pertaining to public schools[.]” Placing centralized supervision of the State’s general  
24 and uniform public school system with the Superintendent safeguards against inconsistency in  
25 the education offered to students residing in different school districts. The Charter School Act  
26

27 violates Article III, Section 22 by usurping the Superintendent’s supervisory authority and

1 placing all meaningful supervisory authority over charter schools with the Charter School  
2 Commission. *See, e.g.*, RCW 28A.710.070(1), (2).

3 Comprised of nine appointed pro-charter members, the Charter Commission is an  
4 “independent state agency” authorized to grant charters anywhere in the State. RCW  
5 28A.710.070; RCW 28A.710.080(1). The Commission “administer[s] the charter schools it  
6 supervises” through its “management, supervision, and enforcement of the charter contracts[.]”  
7 RCW 28A.710.070(1). The Charter School Act purports to subject charter schools – but not the  
8 Commission – to the supervision of the Superintendent, and then only to the extent “not  
9 otherwise provided” by the Act. RCW 28A.710.040(5). Put another way, under the Act, the  
10 Superintendent retains only those supervisory powers that are not delegated to the Commission.  
11 *See id.*

12  
13  
14 The Act thus contravenes Article III, Section 22 because it provides that the independent  
15 Charter Commission—rather than the Superintendent—administers, manages, and supervises the  
16 charter schools it authorizes, RCW 28A.710.070(1), (2). The Act attempts to remedy I-1240’s  
17 failure to place charter schools under the supervision of the Superintendent by adding the  
18 Superintendent as member of the Commission. *See* RCW 28A.710.070(3)(ii). But simply  
19 allocating the Superintendent one vote on the nine-member, pro-charter school Commission<sup>10</sup>  
20 does not resolve the Act’s constitutional failure to confer the Superintendent supervisory  
21 authority over charter schools. *See State v. Preston*, 84 Wash. 79, 86-87, 146 P. 175 (1915)  
22 (“[G]eneral supervision means something more than the power merely to confer with and advise,  
23 or to receive reports, or file papers; in other words, ...the power of supervision is not granted to  
24  
25

26 <sup>10</sup> The Charter School Act requires that “[a]ll appointed members [of the Commission] shall  
27 have demonstrated an understanding of and commitment to charter schooling as a strategy for  
strengthening public education.” RCW 28A.710.070(4).

1 an officer as a mere formality.”), *aff’d sub nom., State ex rel. Seattle Sch. Dist. No. 1 v. Preston*,  
2 84 Wash. 79, 149 P. 352 (1915).

3           Moreover, conferring certain limited powers and duties to the Superintendent is wholly  
4 insufficient. The Superintendent’s supervisory authority under Article III, Section 22 is self-  
5 executing and cannot be taken away through legislation. Const. art. III, § 22 (Superintendent  
6 “shall” have supervision). The Washington Supreme Court and the Attorney General have  
7 explained that “supervision” includes, at a minimum, “the power to review all the acts of the  
8 local officers, and to correct, or direct a correction of, any errors committed by them. Any less  
9 power than this would make the supervision an idle act—a mere overlooking without power of  
10 correction or suggestion.” Op. Wash. Att’y Gen. 1975 No. 1 (quoting *Great Northern Ry. Co. v.*  
11 *Snohomish Cnty.*, 48 Wash. 478, 484-85, 93 P. 924 (1908) (citations omitted)); *see also* Op.  
12 Wash. Att’y Gen. 2009, No. 8 (no legislative authority to vest supervision over basic education  
13 program “in any other officer not under the Superintendent[’s] supervision.”); Op. Wash. Att’y  
14 Gen. 1998, No. 6.

17           Although the Legislature has broad discretion in assigning the specific powers and duties  
18 of the Superintendent, legislation must preserve the Superintendent’s supervisory role. *See* Op.  
19 Wash. Att’y Gen. 1998, No. 6. By creating a separate system of charter schools under the  
20 supervision of the separate Charter School Commission, the Charter School Act strips the  
21 Superintendent of the constitutional supervisory authority “over all matters pertaining to public  
22 schools,” in violation of Art. III, § 22.

1 **G. The Charter School Act Violates Article II, Section 37.**

2 Article II, Section 37 of the Constitution requires that proposed laws set forth in full  
3 changes to existing law.<sup>11</sup> The Charter Schools Act violates Article II, Section 37 by failing to  
4 disclose significant changes to existing state collective bargaining laws and to the education  
5 program in the Basic Education Act. That is, reading the Charter School Act alone, the  
6 Legislature could not understand the reduction of the scope of collective bargaining rights of  
7 charter school employees or the permitted deviation by charter schools from the State’s basic  
8 education requirements. As the Washington Supreme Court has explained, Article II, Section 37  
9 was designed to avoid the “mischief” caused by new enactments that require examination and  
10 comparison to be understood. *Yelle v. Bishop*, 55 Wn.2d 286, 299, 347 P.2d 1081 (1959).

11  
12 Here, the Charter School Act revised the state collective bargaining laws with respect to  
13 charter employees without setting forth any of the laws’ provisions. Under the Washington  
14 Public Employees’ Collective Bargaining Act, chapter 41.56 RCW, and the Educational  
15 Employment Relations Act, chapter 41.59 RCW (together, “state collective bargaining laws”),  
16 public employees have the right to organize and designate representatives of their own choosing.  
17 *See* RCW 41.56.040, 59.060. The Charter School Act extends coverage of these rights to charter  
18 employees. RCW 41.56.0251, .59.031. But unlike other public school employees, bargaining  
19 units at charter schools are limited to employees working in each charter school and must be  
20 separate from other bargaining units in school districts. *Id.* Similarly, each charter school is a  
21 separate employer for purposes of collective bargaining. *Id.* These restrictions on bargaining  
22 units cannot be understood, however, without reference to existing state collective bargaining  
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27 <sup>11</sup> Article II, Section 37 provides: “No act shall ever be revised or amended by mere  
reference to its title, but the act revised or the section amended shall be set forth at full length.”



1 laws, particularly RCW 41.56.060 (determination of bargaining units) and RCW 41.59.080  
2 (same).

3         The Supreme Court encountered a similar problem in *Washington Education Association*,  
4 93 Wn.2d 37, 41, 604 P.2d 950 (1980), where the Court invalidated a law establishing statewide  
5 limitations on public school salaries under Article II, Section 37. There, a new law capped  
6 school district salary increases but failed to specify that, under prior law, “districts ha[d] the  
7 power to spend funds, from whatever source, as they choose on teacher salaries.” *Id.* at 41.  
8 Accordingly, because the new enactment failed to set forth the provision it purported to amend,  
9 the enactment was unconstitutional and of no effect. *Id.* Similarly, here, the Charter School Act  
10 greatly restricts public employees’ collective bargaining rights without setting forth those rights  
11 under existing law as required by Article II, Section 37.  
12

13         The Act also amends the Basic Education Act in violation of Article II, Section 37. The  
14 Act waives school students’ right to a constitutionally adequate basic education and explicitly  
15 exempts charter schools from a vast array of laws otherwise applicable to public school districts.  
16 RCW 28A.710.040(3). The Act, however, fails to set forth the rights and responsibilities  
17 eliminated by the catch-all exemption. *See id.* By failing to set forth its amendments to the  
18 Basic Education Act, the Act contravenes Article II, Section 37.  
19

20         Given the paramount importance of basic education, it is no surprise that the Legislature  
21 has meticulously followed Article II, Section 37 when revising the minimum instructional  
22 requirements in the past. *See, e.g.,* S.S.H.B. 1723, Laws of 2013, ch. 323, § 2 (amending RCW  
23 28A.150.220 to allow Kindergarten programs to use three of the minimum instructional school  
24 days for family conferences); *see also Naccarato v. Sullivan*, 46 Wn.2d 67, 76, 278 P.2d 641  
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1 (1955) (relying on the fact that the Legislature previously complied with Article II, Section 37  
2 when amending the same provisions as basis to require compliance for new amendments).

3 The Charter School Act seeks to obscure its true impact on existing collective bargaining  
4 rights of public employees and the existing requirements for providing a basic education  
5 program. Accordingly, it violates Article II, Section 37 and should be invalidated.  
6

7 **V. CONCLUSION**

8 Charter school proponents pushed an initiative through in 2014 that created a charter  
9 school system that the Washington Supreme Court found unconstitutional. The Charter School  
10 proponents then pushed through the Charter School Act, a purported quick fix to the  
11 constitutional problems of the initiative. The fixes, however, do not work. The Act eviscerates  
12 constitutional protections by establishing a separate system of schools that are publicly funded,  
13 but under the control of private organizations and appointed boards. Accordingly, the Act  
14 violates the general and uniform, common school funding, ample provision, and paramount duty  
15 provisions in Article IX, Sections 1 and 2 of the Constitution, as well as the Superintendent  
16 provision in Article III, Section 22. Additionally, the Act fails to set forth revisions to collective  
17 bargaining rights and the components of a basic education under existing law as required by  
18 Article II, Section 37 of the Constitution. This Court should hold, as a matter of law, that the  
19 Charter School Act is unconstitutional and prevent further implementation of the Act.  
20  
21

22 **WORD COUNT CERTIFICATION**

23 I certify that this memorandum contains 12,220 words in compliance with Judge John H.  
24 Chun's Order Setting Briefing Schedule on Motion for Summary Judgment dated October 4,  
25 2016.  
26  
27

1 DATED this 1<sup>st</sup> day of December, 2016.

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**CERTIFICATE OF SERVICE**

I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years, competent to be a witness in the above action, and not a party thereto; that on the 1st day of December, 2016 I caused to be served a true copy of the foregoing document upon:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct

DATED this 1st day of December, 2016.



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