

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

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 DL 751; WASHINGTON STATE LABOR COUNCIL, AFL-CIO; UNITED FOOD AND COMMERCIAL WORKERS UNION; WASHINGTON FEDERATION OF STATE EMPLOYEES; AMERICAN FEDERATION OF TEACHERS WASHINGTON; TEAMSTERS JOINT COUNCIL No. 28; WAYNE AU, PH.D., on his own behalf; PAT BRAMAN, on her own behalf; DONNA BOYER, on her own behalf and on behalf of her minor children; and SARAH LUCAS, on her own behalf and on behalf of her minor children,

Plaintiffs,

v.

STATE OF WASHINGTON,

Defendant.

ROLAND D. BRADLEY, on his own behalf and on behalf of his minor child; GUSTAVO

Case No. 16-2-18527-4 SEA

MOTION OF JOHN S. ARCHER,
KRISTINA L. MAYER, Ed.D., AND
JEFFREY VINCENT FOR LEAVE TO
FILE *AMICI CURIAE* BRIEF

1 ALEJANDRO CUEVA on his own behalf and on
2 behalf of his minor child; GENEVIEVE
3 FIORINO, on her own behalf and on behalf of her
4 minor children; NATALIE HESTER;
5 DELANAS D. JOHNSON, on his own behalf and
6 on behalf of his minor child; GAHYUN
7 “SUNNY” LEE, on her own behalf and on behalf
8 of her minor children; JENNIFER DIANE LEE,
9 on her own behalf and on behalf of her minor
10 child; HEIDI A.R. MITCHELL and SCOTT D.
11 MITCHELL, on their own behalf and on behalf of
12 their minor child; EDUARDO PACHECO, on his
13 own behalf and on behalf of his minor child;
14 DARCELINA JEAN SOLORIA, on her own
15 behalf and on behalf of her minor child,
16 CRYSTAL SWAFFER, on her own behalf and on
17 behalf of her minor children, SHIRLINE
18 SHIRRELL WILSON, on her own behalf and on
19 behalf of her minor child; INNOVATION
20 SCHOOLS d/b/a WILLOW PUBLIC SCHOOL;
21 SPOKANE INTERNATIONAL ACADEMY;
22 EXCEL PUBLIC CHARTER SCHOOLS; SOAR
23 ACADEMY; PRIDE PREP PUBLIC CHARTER
24 SCHOOL; RAINIER PREP.; GREEN DOT
25 PUBLIC SCHOOLS WASHINGTON;
26 WASHINGTON STATE CHARTER SCHOOLS
27 ASSOCIATION;

Intervenor-Defendants.

1 **I. RELIEF REQUESTED**

2 John S. Archer, Kristina L. Mayer, Ed. D., and Jeffrey Vincent through this motion seek
3 leave to file an amici curiae brief to assist the Court in its adjudication of the above-captioned
4 suit challenging the constitutionality of the Charter Public Schools Act (“Act”), RCW
5 Ch. 28A.710.

6 **II. IDENTITY OF AMICI**

7 The amici curiae are Jack S. Archer, Kristina L. Mayer, Ed. D., and Jeffrey Vincent.

8 Jack S. Archer was the Director of Basic Education Oversight for the Washington State
9 Board of Education (“SBE”) prior to his retirement in 2016. In this capacity, Mr. Archer was
10 deeply involved in fulfilling the SBE’s responsibilities under the Act RCW Ch. 28A.710. A
11 school district board of directors may authorize a charter public school but only after receiving
12 approval from the SBE. Mr. Archer, in consultation with counsel, was responsible for drafting
13 regulations governing the approval process. Mr. Archer also drafted regulations establishing a
14 statewide formula for an authorizer oversight fee. The SBE granted the Spokane School
15 District’s application to authorize charter schools. Mr. Archer developed the application used by
16 the District and led the five-person team that evaluated the District’s application. After the
17 District’s application was granted, Mr. Archer conducted oversight of the performance.
18 Mr. Archer also served as a member of the Washington State Charter School Commission as the
19 designee of the SBE chair.

20 Kristina L. Mayer, Ed. D., was a teacher and administrator in Washington public schools
21 for nearly 20 years. In 2006, Dr. Mayer was appointed to the SBE where she served for nine
22 years. She served as SBE chair in 2014. During this time, the SBE considered and adopted
23 regulations governing charter schools. After Dr. Mayer completed her term on the SBE, she
24 served on the Washington State Transitional Bilingual Instructional Program task force to make
25 recommendations to the Legislature for service improvements for bilingual learners. She is a co-
26 founder of the Washington Initiative for National Board Certified Teachers and the Center for
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1 Strengthening the Teaching Profession (CSTP), a non-profit organization focused solely on
2 developing teacher leadership and the capacity of the professional overall.

3 Jeffrey Vincent was a member of the SBE from 2006 to 2013. The last three and one half
4 years, he served as SBE chair. Mr. Vincent is currently a member of the Washington Roundtable
5 where he serves as Chair of the Roundtable's Education Committee and as Chair of Partnership
6 for Learning. The Washington Roundtable is a non-profit public policy organization whose
7 members include senior executives from many of the state's largest private sector employers.
8 The Roundtable focuses on three core subjects of critical and common importance across the
9 business community and the state at large: education, economic climate, and infrastructure.

10 The amici have deep experience in Washington's public education system, including its
11 funding and administration. Two of the amici were members and, later, chairs of the SBE. The
12 other was a senior staff member of the SBE with responsibility for charter schools. All support
13 the Act and favor public charter schools as a way to reach underserved students. Also, as former
14 members and senior staff of the SBE, the amici have a particular interest in governance of the
15 public schools system. The SBE works with the Superintendent of Public Instruction
16 ("Superintendent"), but each state agency has different responsibilities. Thus, amici have a
17 special interest in the interaction of the SBE and the Superintendent with charter schools.
18 Plaintiffs' claims call the relationship into question. The amici have a strong interest in ensuring
19 that the governance issues are correctly resolved.

20 **III. EVIDENCE RELIED UPON**

21 In this motion, amici rely upon the papers and declarations filed herewith, the pleadings,
22 motion papers, briefs, and exhibits filed in this action to date, as well as the case law, statutory
23 authorities, and secondary sources cited within the brief.

24 **IV. ISSUE**

25 Will the amici curiae brief submitted by John S. Archer, Kristina L. Mayer, Ed.D., and
26 Jeffrey Vincent assist the Court in its adjudication of the above-captioned action?
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1 **V. ARGUMENT**

2 **A. A Trial Court May Properly Receive Amicus Curiae Briefs**

3 “No specific rule permits amicus participation in the trial court, but neither is there any
4 rule prohibiting it.” *Parsons v. State, Dept. of Social and Health Services*, 129 Wn.App. 293,
5 302 (2005). In *Parsons*, the Court of Appeals held that the “trial court did not abuse its
6 discretion when it allowed [an amicus curiae] to participate.” *Id.* The Court was “confident the
7 trial courts are...able to sort out what materials are proper for the Court’s consideration.” *Id.*
8 Washington trial courts accepted amicus briefs well before the Court of Appeals expressly
9 blessed the practice. *See, e.g., Wash. Fed’n of State Emps. v. Office of Fin. Mgmt.*, 121 Wn.2d
10 152, 156 (1993) (noting that the trial court permitted an amicus organization to participate in
11 support of plaintiffs). This Court properly may, and should, grant Amici’s motion to file their
12 brief.

13 **B. Issues to be Addressed by Amici Curiae Brief**

14 The amici curiae brief will address two issues that go to question of the constitutionality
15 of the governance of charter schools.

16 1. The Charter Public Schools Act (“CPSA” or “Act”), RCW Ch. 28A.710,
17 authorizes the Washington State Charter School Commission (“Commission”) and school
18 districts approved by the SBE to approve applications from non-profit organizations to operate
19 charter public schools and, after application approval, to contract with the applicant to execute a
20 charter contract. These authorizers are also responsible for monitoring a school’s compliance
21 with the Act and the school’s charter public school contract. Does operation of public charter
22 schools by non-profit organizations constitute an improper delegation of state authority in
23 violation of Article IX, Sections 1 and 2, of the Washington Constitution?

24 2. Article III, Section 22 of the Washington Constitution provides that the
25 Superintendent of Public Instruction shall have supervision over all matters pertaining to public
26 schools and shall perform such specific duties as prescribed by law. Does the Act’s grant of
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1 authority to the Commission and school districts, approved by the SBE, to authorize and monitor
2 charter schools violate Article III, Section 22?

3 **C. Reason Additional Argument is Required**

4 Plaintiffs raise six constitutional issues in their motion for summary judgment. Mot'n at
5 13-14. This is a complex case and an amici brief focused solely on the two governance issues
6 will be of assistance to the Court because the brief will treat those issues in greater depth than the
7 briefs of the parties, which necessarily address all six constitutional issues. This case will
8 certainly be appealed to the Washington Supreme Court. Cf. *League of Women Voters of*
9 *Washington v. State*, 184 Wn.2d 393 (2015) (holding that Initiative 1240, which established
10 charter schools in Washington, violated Article IX, Section 1 of the Washington Constitution).
11 The Court should avail itself of the most complete briefing before reaching a decision.

12 **VI. CONCLUSION**

13 For all of these reasons, amici request leave to file the attached amici curiae brief for the
14 Court's consideration.

15 Word Count Certification

16 I certify that this memorandum contains 1,147 words, in compliance with Local Civil
17 Rules.

18 Dated: December 20, 2016

19 *s/William B. Collins*

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EXHIBIT A

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Intervenor-Defendants.

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3 **I. INTEREST OF AMICI CURIAE**

4 The amici curiae are John S. Archer, Kristina L. Mayer, Ed. D., and Jeffrey Vincent. As
5 explained in their motion for leave to submit this amici brief, the amici are former members or
6 senior staff of the Washington State Board of Education (“SBE”). All favor public charter
7 schools as a way to reach underserved students. Amici also have a particular interest in
8 governance of the public schools system. The SBE works with the Superintendent of Public
9 Instruction (“Superintendent”), but each state agency has different responsibilities. Thus, amici
10 have a special interest in the interaction of the SBE and the Superintendent with charter schools.
11 Plaintiffs’ claims call the relationship into question. The amici have a strong interest in ensuring
12 that the governance issues are correctly resolved.

13 **II. ISSUES**

14 1. The Charter Public Schools Act (“CPSA” or “Act”), RCW Ch. 28A.710,
15 authorizes the Washington State Charter School Commission (“Commission”) and school
16 districts approved by the SBE to approve applications from non-profit organizations to operate
17 charter public schools and, after application approval, to contract with the applicant to execute a
18 charter contract. These authorizers are also responsible for monitoring a school’s compliance
19 with the Act and the school’s charter public school contract. Does operation of public charter
20 schools by non-profit organizations constitute an improper delegation of state authority in
21 violation of Article IX, Sections 1 and 2, of the Washington Constitution?

22 2. Article III, Section 22 of the Washington Constitution provides that the
23 Superintendent shall have supervision over all matters pertaining to public schools and shall
24 perform such specific duties as prescribed by law. Does the Act’s grant of authority to the
25 Commission and school districts, approved by the SBE, to authorize and monitor charter schools
26 violate Article III, Section 22?
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III. ARGUMENT

A. **The Operation of Public Charter Schools by Non-profit Organizations Does Not Constitute an Unconstitutional Delegation of State Authority Because the Non-profit Organizations Do Not Define Basic Education and They Meet the Standards for a Valid Delegation**

Plaintiffs claim that the Act violates Article IX, Sections 1 and 2, because it improperly delegates the State’s duty to define basic education to private organizations that operate charter public schools. This argument fails for two reasons. First, basic education is defined by statute, and the Act delegates state power to determine whether charter schools are providing basic education to the public entities that authorize charter schools—the Commission and school districts approved to authorize charter schools by the SBE—not to non-profit organizations operating charter public schools. Second, and in the alternative, even if the Act delegates some state power to non-profit organizations operating charter public schools, they are public entities under the Act *upon execution* of a charter contract, and any delegation to them also meets the standards for proper delegation.

1. **Basic education is defined by statute and the Act delegates state power to determine whether charter schools are providing basic education to the public entities that authorize charter schools—the Commission and school districts approved to authorize charter schools by the State Board of Education**

Plaintiffs argue that the Act “unconstitutionally delegates the State’s paramount duty to define a basic education program that meets the requirements of Article IX to private organizations.” Mot’n at 31. Plaintiffs also claim the Act “provides no guidelines as to what a charter school should substitute as a basic education program” and that under RCW 28A.710.040 and RCW 28A.710.130 “charter schools define their own basic education programs[.]” Mot’n at 32.

1 These claims are not well-founded. The delegation is to the charter school authorizer, not
2 to the organization operating the charter school. RCW 28A.710.070(1) establishes the
3 Commission as “an independent state agency whose mission is to authorize high quality charter
4 public schools throughout the state, especially schools that are designed to expand opportunities
5 for at-risk students, and to ensure the highest standards of accountability and oversight for these
6 schools.” RCW 28A.710.070(2) charges the Commission with the “management, supervision,
7 and *enforcement of the charter contracts* and pursuant to applicable law, administer the charter
8 schools it *authorizes in the same manner as a school district board of directors administers other*
9 *schools.*” (Emphasis added.) As an authorizer of charter schools, RCW 28A.710.180(4)
10 provides that the Commission “may take appropriate corrective actions or exercise sanctions
11 short of revocation in response to apparent deficiencies in charter school performance or legal
12 compliance.” RCW 28A.710.200(1)(a) provides that the Commission, as an authorizer, “may
13 revoke a charter contract at any time, or may refuse to renew it, if the authorizer determines that
14 the charter school [c]ommitted a material and substantial violation of any of the terms,
15 conditions, standards, or procedures required under [the Act] or the charter contract[.]”
16 Authorizers must develop revocation and non-renewal processes for charter contracts.
17 RCW 28A.710.200(3). A school district board of directors also has the authority to authorize
18 charter schools, if the district has received approval from the SBE. RCW 28A.710.080(2).

19 The Act does not delegate the authority to define basic education to private organizations.
20 Plaintiffs cite RCW 28A.710.040 and RCW 28A.710.130 to support this claim. Mot’n at 32.
21 They do not. RCW 28A.710.040(2)(b) requires that a “charter school *must...[p]rovide a*
22 *program of basic education*, that meets the goals in RCW 28A.150.210, including instruction in
23 the essential academic learning requirements, and participate in the statewide student assessment
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1 system as developed under RCW 28A.655.070[.]” (Emphasis added.) The Plaintiffs argue that
2 RCW 28A.710.040(2)(b) only “provides that charter schools must ‘*provide a basic education,*’
3 according to the four goals set forth in RCW28A.150.2010, and only requires instruction in the
4 EALRs and participation in the statewide student assessment system. RCW 28A.710.040(2)(b)”
5 Mot’n at 18. (Emphasis added.)
6

7 Plaintiffs mistakenly quote the prior version of RCW 28A.710.040(2)(b) before it was
8 amended in 2016 by ESSSB 6194. Under the amendment: “~~((All))~~ A charter school~~((s))~~
9 must:… Provide a program of basic education, ~~((as provided))~~ that meets the goals in
10 RCW 28A.150.210, including instruction in the essential academic learning requirements, and
11 participate in the statewide student assessment system as developed under RCW 28A.655.070[.]”
12 Laws of 2016, ch. 241, § 104(2)(b).
13

14 After the 2016 amendment, RCW 28A.710.040(2)(b) requires that charter schools must
15 provide “a program of basic education.” This is a significant change. The Court “construes an
16 act as a whole, giving effect to all the language used, with related statutory provisions interpreted
17 in relation to one another…a term in a regulation should not be read in isolation but rather within
18 the context of the regulatory and statutory scheme as a whole; statutory provisions must be read
19 in their entirety and construed together, not . . . piecemeal[.] *State Dept. of Ecology v. Campbell*
20 *& Gwinn, L.L.C.*, 146 Wn.2d 1, 11 (2002) (internal citations and punctuation marks omitted).
21 The phrase “program of basic education” is a defined term.
22

23 RCW 28A.710.200 states that: “The program of basic education established under this
24 chapter is deemed by the legislature to comply with the requirements of Article IX, section 1 of
25 the state Constitution[.]” RCW 28A.150.200(2)(a) states: “The legislature defines the program
26 of basic education under this chapter [to include the] instructional program of basic education the
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1 minimum components of which are described in RCW 28A.150.220[.]” RCW 28A.150.203(8)
2 provides that: “Instructional program of basic education” means the minimum program required
3 to be provided by school districts and includes instructional hour requirements and other
4 components under RCW 28A.150.220[.]” RCW 28A.150.220 sets out the minimum
5 instructional requirements for a program of basic education. By amending RCW
6 28A.710.040(2)(b) to require a “program of basic education,” the legislature requires charter
7 schools to offer the minimum instructional requirements described in RCW 28A.150.220. Thus,
8 basic education is defined by statute, not the private organizations operating charter schools.
9

10 The SBE appears to endorse this interpretation. RCW 28A.710.080(2) permits a school
11 district board of directors to authorize a charter public school if the district receives approval
12 from the SBE. RCW 28A.710.090(1) requires the SBE to adopt rules to govern the approval
13 process. A proposed amendment to WAC 180-19-030(4)(e) provides:
14

15 Include in any charter contract it may execute with the ~~((governing))~~ charter
16 school board of an approved charter school, in accordance with RCW ~~((28A.710.160(2),~~
17 ~~educational services))~~ 28A-710-040(2)(b), that the charter school must provide a program
18 of basic education that at a minimum meets ~~((the basic education standards set forth in~~
19 RCW 28A.150.220)) the requirements of RCW 28A.150.200 and 28A.150.220, and
meets the goals in RCW 28A.150.210, including instruction in the essential learning
requirements and participation in the statewide student assessment system as developed
under RCW 28A.655.070.

20 WSR 16-24-081 at 55. The SBE is holding a public hearing on this proposed rule on January 12,
21 2017. WSR 16-24-081 at 1.

22 It is true that for “the purpose of allowing flexibility to innovate in areas such as
23 scheduling, personnel, funding, and educational programs to improve student outcomes and
24 academic achievement, charter schools are not subject to, and are exempt from, all other state
25 statutes and rules applicable to school districts[.]” RCW 28A.710.040(3). But this flexibility
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1 does not apply to “the specific state statutes and rules identified in [RCW 28A.710.040(2)].”
2 This includes the requirement that charter schools provide a program of basic education.

3 Plaintiffs also rely on RCW 28A.710.130. But RCW 28A.710.130 simply authorizes
4 non-profit organizations to submit an application to an authorizer, either the Commission or an
5 approved school district, seeking permission to operate a charter public school. There is no
6 approved program of basic education unless the authorizer grants the application and enters into
7 a contract with the non-profit organization to operate the school. The authority to approve the
8 program lies with the authorizer. If the applicant does not describe a program of basic education,
9 the application will be denied. Under the Act, non-profit applicants are not free to simply do
10 anything they want.
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13 The Court should reject Plaintiffs’ claim that the Act delegates power to define a basic
14 education program to the private organizations that operate charter schools.

15
16 **2. The ability of non-profit organizations to operate charter schools, after their**
17 **applications have been approved by an authorizer, is not an improper**
18 **delegation of authority**

19 Plaintiffs’ delegation argument fails because the Act does not delegate the authority to
20 define basic education to private organizations. Even if the Court characterizes the Act’s
21 authorization of non-profit organizations to operate charter schools as a delegation of some
22 authority, however, the Act satisfies the standards for a proper delegation. A proper delegation
23 “requires only (1) that the Legislature must generally define what is to be done and who is to do
24 it and (2) that procedural safeguards must exist to control administrative abuse.” *City of*
25 *Auburn v. King County*, 114 Wn.2d 447, 452 (1990).

26 Although charter schools are not common schools, they are public schools.
27 RCW 28A.150.010 states that: “Public schools means the common schools as referred to in

1 Article IX of the state Constitution, charter schools established under chapter 28A.710 RCW,
2 and those schools and institutions of learning having a curriculum below the college or university
3 level as now or may be established by law and maintained at public expense.”

4 RCW 28A.150.010.

5
6 Applying the delegation standards, the “who” is the non-profit organization. The “what”
7 is the ability to submit an application to operate a charter school and concomitant *requirement*
8 that the application meet several statutory requirements, and to operate that school if the
9 application is granted and a charter contract is later successfully negotiated and executed. And,
10 the Act sets out substantial procedural protections, even if it could be said that there is some
11 delegation of authority to the charter school operator.
12

13 RCW 28A.710.130(2) provides that a “charter school application must provide or
14 describe thoroughly all of the following elements of the proposed school plan[.]” There are 32
15 required elements including, among others:

- 16 ➤ “The grades to be served each year for the full term of the charter contract,”
17 RCW 28A.710.130(2)(d);
- 18 ➤ “Evidence of need and parent and community support for the proposed charter
19 school,” RCW 28A.710.130(2)(f);
- 20 ➤ “A description of the academic program aligned with state standards,”
21 RCW 28A.710.130(2)(i);
- 22 ➤ “A description of the school’s proposed instructional design, including the type of
23 learning environment, class size and structure, curriculum overview, and teaching
24 methods,” RCW 28A.710.130(2)(m);
- 25 ➤ “The school’s student discipline policies, including for special education
26 students,” RCW 28A.710.130(2)(p); and
- 27 ➤ “Plans for providing transportation, food service, and all other significant
28 operational or ancillary services,” RCW 28A.710.130(2)(y).

1 The Act sets out a detailed process governing the submission and review of the
2 application. In making the decision to approve or deny an application, RCW 28A.710.140(2)
3 requires that the “application review process must include thorough evaluation of each
4 application, an in-person interview with the applicant group, and an opportunity to learn about
5 and provide input on each application in a public forum including, without limitation, parents,
6 community members, local residents, and school district board members and staff.” With regard
7 to the charter school contracts, RCW 28A.710.170(1) states that the “performance provisions
8 within a charter contract must be based on a performance framework that clearly sets forth the
9 academic and operational performance indicators, measures, and metrics that will guide an
10 authorizer's evaluations of a charter school[.]” RCW 28A.710.170(2) sets out eight indicators,
11 measures, and metrics that must be included.
12

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14 The non-profit organization must operate the charter school under the terms of the
15 contract. RCW 28A.710.040(3). Authorizers are required to monitor the charter school’s
16 performance under the contract. RCW 28A.710.100(e). Authorizers “may also take appropriate
17 corrective actions or exercise sanctions short of revocation in response to apparent deficiencies
18 in charter school performance or legal compliance.” RCW 28A.710.180(4). After “taking action
19 to renew or not renew, or revoke a charter contract, an authorizer must submit a report of the
20 action to the charter school and the state board of education.” RCW 28A.710.200(5). This
21 “report must include a copy of the authorizer’s resolution setting forth the action taken, the
22 reasons for the decision, and assurances of compliance with the procedural requirements
23 established by the authorizer under this section.” *Id.* In addition, charter schools must “[c]omply
24 with the open public meetings act in chapter 42.30 RCW and public records requirements in
25 chapter 42.56 RCW[.]” RCW 28A.710.040(2)(i).
26
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1 Plaintiffs argue that any delegation to a private organization is especially problematic,
2 relying solely on *United Chiropractors of Washington, Inc. v. State*, 90 Wn.2d 1 (1978) to
3 support that point. Mot'n at 32. In *United Chiropractors*, a statute granted private organizations
4 "the authority to submit five names to the governor from which the governor must appoint the
5 three member State Board of Chiropractic Examiners." *United Chiropractors*, 90 Wn.2d at 2-3.
6 Another statute provided that the "that the seven-member Washington State Disciplinary Board
7 for Chiropractors is to be composed of three members appointed by [one private organization],
8 three by [another private organization], and one member who shall be the Director of the
9 Department of Motor Vehicles[.]" *Id.* at 3. The Court held that these laws were improper
10 delegations of authority.
11

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13 Plaintiffs read this case too broadly. The Court did not adopt a rule that delegation to a
14 private organization is *per se* unconstitutional. Instead, the Court concluded that a "basic test
15 which this court has adopted with respect to delegation in general can be applied to private
16 delegation[.]" *United Chiropractors*, 90 Wn.2d at 6. In *United Chiropractors*, the Court struck
17 the statutes down because the "procedural safeguards which exist in this scheme are inadequate
18 to control arbitrary administrative action and abuse of discretion[.]" *Id.* In this case, the
19 procedural safeguards are adequate to prevent arbitrary administrative action and abuse of
20 discretion by the non-profit organizations with regard to the approval and operation of charter
21 schools.
22

23
24 **B. The Commission Does Not Violate Article III, Section 22, Because the Act Respects**
25 **the Superintendent's Supervisory Role, and the Legislature Has Broad Authority to**
26 **Shape the Public State's Education System**

27 Plaintiffs claim that the Charter Schools Act violates Article III, Section 22 of the
28 Washington Constitution which provides: "The superintendent of public instruction shall have

1 supervision over all matters pertaining to public schools, and shall perform such specific duties
2 as may be prescribed by law. He shall receive an annual salary of twenty-five hundred dollars,
3 which may be increased by law[.]”

4
5 There is little case law on this constitutional provision, but it has been the subject of
6 several Attorney General’s Opinions. “Attorney General Opinions, while not controlling, are
7 entitled to considerable weight.” *Kaiser Aluminum & Chemical Corp. v. Department of Labor &*
8 *Industries*, 121 Wn.2d 776, 785 (1993). AGO 1998 No. 6 explained that, “Article III, Section 22
9 should be read primarily not as a conferral of powers on the Superintendent of Public Instruction
10 but as a limit on the powers of the Legislature to define the Superintendent’s duties.” AGO 1998
11 No. 6 at *. The Opinion pointed out “the rest of the sentence in which the ‘supervision’ clause
12 appears: ‘The superintendent of public instruction shall have supervision over all matters
13 pertaining to public *schools, and shall perform such specific duties as may be prescribed by*
14 *law.*” (Emphasis in original.)

15
16 The fundamental flaw in Plaintiffs’ argument is that they only quote Article III,
17 Section 22 as far as the word “supervision.” They ignore the rest of the language in Section 22.
18 Mot’n at 35. This is significant. “The ‘supervision’ language appears in the context of a
19 recognition that, insofar as it respects the ‘supervision’ role, the Legislature is quite free to shape
20 the state’s education system as it may choose, and to define the Superintendent’s role within that
21 system.” AGO 1998 No. 6 at *. If a “proposal subordinates the Superintendent to some other
22 officer or body...or shifts so many responsibilities to other officers or agencies that the
23 Superintendent no longer ‘supervises’ the public school system, the proposal is probably
24 unconstitutional. Otherwise, the Legislature is free to assign specific roles as it thinks best.”
25
26 *Id.* at *.

1 The Charter Schools Act does not subject the Superintendent to the supervision of any
2 other agency, and RCW 28A.710.040 provides: “Charter schools are subject to the supervision
3 of the superintendent of public instruction and the state board of education, including
4 accountability measures, to the same extent as other public schools, except as otherwise provided
5 in this chapter.”

6 The Superintendent has substantial authority with regard to charter schools.
7
8 RCW 28A.710.040(2)(a) requires charter schools to comply with “chapter 28A.642 RCW
9 (discrimination prohibition) and chapter 28A.640 RCW (sexual equality)[.]” RCW 28A.642.010
10 prohibits “[d]iscrimination in Washington public schools on the basis of race, creed, religion,
11 color, national origin, honorably discharged veteran or military status, sexual orientation
12 including gender expression or identity, the presence of any sensory, mental, or physical
13 disability[.]” The Superintendent is charged with “develop[ing] rules and guidelines to eliminate
14 discrimination[.]” RCW 28A.642.020. The Superintendent is also responsible for “enforcement
15 of [chapter 28A.642].” RCW 28A.642.030. RCW 28A.640.010 prohibits “discrimination on the
16 basis of sex for any student in grades K-12 of the Washington public schools[.]” The
17 Superintendent is responsible for “develop[ing] regulations and guidelines to eliminate sex
18 discrimination[.]” RCW 28A.640.020(1). The Superintendent is also “required to monitor the
19 compliance by local school districts with...chapter [28A.640].”

20
21 RCW 28A.710.040(2)(b) requires charter schools to “participate in the statewide student
22 assessment system as developed under RCW 28A.655.070[.]” This assessment system is the
23 responsibility of the Superintendent. RCW 28A.655.070(3)(a) provides that the Superintendent
24 “shall maintain and continue to develop and revise a statewide academic assessment system in
25 the content areas of reading, writing, mathematics, and science for use in the elementary, middle,
26
27

1 and high school years designed to determine if each student has mastered the essential academic
2 learning requirements[.]”

3 With some limited exceptions, RCW 28A.710.040(2)(c) requires charter schools to
4 “[e]mploy certificated instructional staff as required in RCW 28A.410.025.”
5 RCW 28.410.010(1)(a) provides that the “Washington professional educator standards board
6 shall establish, publish, and enforce rules determining eligibility for and certification of
7 personnel employed in the common schools of this state[.] RCW 28A.410.010(2) states that the
8 Superintendent “shall act as the administrator of any such rules and have the power to issue any
9 certificates or permits and revoke the same in accordance with board rules.” The Superintendent
10 is also responsible for “distribut[ing] state funding to charter schools according to the schedule
11 established in RCW 28A.510.250.” And in 2015 the Superintendent amended existing
12 apportionment and finance rules to include public charter schools. WSR15-18-078.
13
14

15 Given the authority the Superintendent has with regard to charter public schools, and the
16 legislature’s power to shape the public school system under Article III, Section 22, the Act does
17 not violate that constitutional provision.
18

19 **IV. CONCLUSION**

20 The Court should rule that Act does not involve an improper delegation in violation of
21 Article IX, Sections 1 and 2, and the Act does not violate Article III, Section 22.

22 Dated: December 20, 2016

23 *s/William B. Collins*

24

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