The Honorable John H. Chun
Noted for January 27, 2017
With Oral Argument

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 ALEJANDRO CUEVA on his own behalf and on behalf of his minor child; GENEVIEVE FIORINO, on her own behalf and on behalf of her minor children; NATALIE HESTER; DELANAS D. JOHNSON, on

CASE NO. 16-2-18527-4 SEA

INTERVENOR-DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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his own behalf and on behalf of his minor child; GAHYUN "SUNNY" LEE, on her own behalf and on behalf of her minor children; JENNIFER DIANE LEE, on her own behalf and on behalf of her minor child; HEIDI A.R. MITCHELL and SCOTT D. MITCHELL, on their own behalf and on behalf of their minor child; EDUARDO PACHECO, on his own behalf and on behalf of his minor child; DARCELINA JEAN SOLORIA, on her own behalf and on behalf of her minor child, CRYSTAL SWAFFER, on her own behalf and on behalf of her minor children, SHIRLINE SHIRRELL WILSON, on her own behalf and on behalf of her minor child; INNOVATION SCHOOLS d/b/a WILLOW PUBLIC SCHOOL; SPOKANE INTERNATIONAL ACADEMY; EXCEL PUBLIC CHARTER SCHOOLS; SOAR ACADEMY; PRIDE PREP PUBLIC CHARTER SCHOOL; RAINIER PREP.; GREEN DOT PUBLIC SCHOOLS WASHINGTON; WASHINGTON STATE CHARTER SCHOOLS ASSOCIATION;

Intervenor-Defendants.

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INTRODUCTION

A basic education is crucial for all children; it builds knowledge and skillsets, develops critical thinking and analytical faculties, and provides a foundation for participation in our democratic society. But a one-size-fits-all education model does not work for all children.

Article IX, Section 2 of the Washington constitution grants the legislature the power to provide for options in our state's public education system. The legislature is empowered to create a "public school system [that] shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established." Const. art. IX, § 2. The legislature properly exercised this power by adopting the Charter Public Schools Act ("Act") to establish charter public schools in Washington. The charter public schools now operating under the Act honor the Washington constitution by giving Washington families another option in the public school system to address their child's educational needs.

Individuals, activist groups, and unions, seeking to protect their own self-interests, banded together and filed this suit, raising various constitutional challenges to the Act. "[T]he settled policy of the courts of Washington" establishes a high bar for constitutional challenges:

> [T]he courts will presume that an act regularly passed by the legislative body of the government is a valid law, and will entertain no presumptions against its validity . . . the courts will not declare it void unless its invalidity is so apparent as to leave no reasonable doubt upon the subject . . . .

Lichtman v. Shannon, 90 Wash. 186, 188 (1916). Intervenor-Defendants move for summary judgment, because the Act withstands the five constitutional challenges raised by the Plaintiffs. Neither their complaint nor their summary judgment arguments show, beyond a reasonable doubt, that the Act is unconstitutional in every scenario.

First, the Act provides for funding charter public schools through a single account, which derives its funds from state lottery revenues, and which is separate from restricted common school funds and the state general fund. The Act's operation on state funds goes no farther. This funding mechanism is distinct from the one at issue in *League of Women Voters of Washington v. State*, 184 Wn.2d 393 (2015) ("*LWV*"). Together, these aspects of the new funding mechanism

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for charter public schools ensure that charter public school funding does not involve funds restricted for common schools.

Second, the Act satisfies Article IX, Section 2's requirement that Washington's public school system be "general and uniform." The provision specifies, and the Supreme Court has consistently recognized, that a "general and uniform" public school system may include several education options, as long as they reach a basic standard of administrative uniformity, and children with free access to minimum and reasonably standardized educational instruction and opportunities. Charter public schools fit within, but do not disrupt, the "general and uniform" quality of the public school system. Just as with other public school system programs from territorial times to today, charter public schools have a "general and uniform" quality consistent with the public school administrative structure of which they are a part. In providing students access to public education, the Act's text adopts the constitutional requirements of a "basic education." The Act also adopts important elements to deliver a basic education through a "basic education program." Those are consistent with the charter public schools' structure, the Act's educational guidelines and principles, and the legislature's broad discretion to shape a program that provides a constitutionally prescribed basic education. Plaintiffs' arguments to the contrary are premised on the unsupported assertion that the common schools system is coextensive with the entire public school system.

Third, the Act provides for comprehensive regulation and supervision of charter public schools. The resulting multiple layers of state oversight spread across multiple state agencies preclude charter public schools from operating with unfettered discretion. As an initial matter, no charter public school can exist unless an "authorizer" first approves the school based on an application that is required to provide a comprehensive picture of the proposed school and, following such approval, executes a contract with the charter public school board setting forth specific provisions regarding the school's structure and evaluation metrics. Thereafter, the Act's comprehensive and uniform administrative structure provides for further oversight of charter public schools through specific state administrative bodies, including the Charter School

Commission ("Commission") and the State Board of Education ("SBOE"). If a charter public school fails to meet educational or developmental requirements, the Act provides for corrective action and due process for revoking or declining to renew a school's contract.

Fourth, the Act does not usurp the superintendent of public instruction's supervision of all matters pertaining to Washington's public schools. Charter schools are subject to the supervision of the superintendent and SBOE. Nowhere does the Act specifically diminish the superintendent's general and broad supervisory power over charter public schools as public schools. Further, the superintendent (or a designee) is a member of the Commission. The legislature operated within its discretionary authority in providing for and charging the Commission as the state agency responsible for the day-to-day administration of charter public schools.

Fifth and finally, the Act satisfies Article II, Section 37's requirement that any amendments or changes to existing law be set forth in full. While the Act establishes the basic education requirements for Washington's charter public schools, it does not affect the state's basic education requirements for non-charter public schools. Additionally, the Act creates bargaining rights for new public school employees who work in charter public schools. The creation of these rights are complete in and of themselves and do not require reference to any existing statutes to be understood.

RELIEF REQUESTED

Intervenor-Defendants seek an order granting their cross-motion for summary judgment and denying Plaintiffs' motion for summary judgment because Plaintiffs fail to show, beyond a reasonable doubt, that the Act is unconstitutional in every scenario.

STATEMENT OF FACTS

A. Washington Charter Public Schools Provide Students with Educational Options While Satisfying Constitutional Requirements.

1. The Washington Legislature Adopts the Charter Public Schools Act.

In 2016, the Washington legislature passed SB 6194, the Charter Public Schools Act.

Laws of 2016 ch. 241, §§ 101-302. The Act creates a framework for charter public schools within the Washington public school system. Charter public schools approved and operating under the Act are public schools "[o]pen to all children free of charge." RCW 28A.710.020. Charter public schools "[m]ay offer any program or course of study that any other public school may offer, including one or more of grades kindergarten through twelve." *Id.* Charter public schools must provide "a program of basic education that meets the goals" of the Basic Education Act and include instruction that meets "essential academic learning requirements . . . ." RCW 28A.710.040. Charter public schools must obey local, state, and federal laws that apply to school districts. *Id.*

a. Application and Authorization.

Each charter public school originates through the charter school application process. Applicants must be "public benefit nonprofits," *see* RCW 24.03.490, or nonprofits as defined by RCW 24.03.005 that have also applied for tax-exempt status as in Section 501(c)(3) of the United States Internal Revenue Code. Applicants cannot be sectarian or religious organizations. RCW 28A.710.010(1).

An application must provide extensive information about the proposed charter public school. To illustrate the school's mission and vision, detailed information must be included about (1) the school's academic program, its alignment with state standards, and a proposed instructional method design (curriculum and teaching methods, among other things); (2) evidence that the proposed program is based on proven methods; (3) student assessment plans; (4) student discipline and teaching policies, including performance evaluation; and (5) the population the school will serve, along with the need and community support for the school. RCW 28A.710.130.

Authorizers are the public-entity gatekeepers for charter public school applications and, for approved applications, the resulting charter contract. The Act allows two kinds of authorizers. First, the Commission is an authorizer composed of 11 members, including the superintendent (or a designee); SBOE Chair (or a designee); and nine others, appointed by elected officials.

RCW 28A.710.010(3), .070. The Commission's mission is to "authorize high quality charter public schools throughout the state, especially schools that are designed to expand opportunities for at-risk students, and to ensure the highest standards of accountability and oversight" for charter public schools. RCW 28A.710.070(1). Second, local school districts may apply to SBOE for authorizer status. RCW 28A.710.010(3). SBOE establishes an annual authorizer application process and approves or denies school district applications; if SBOE approves an authorizer application, it executes an authorizer contract with the school district applicant. RCW 28A.710.090, .120.

Authorizers solicit applications (following specific guidelines when doing so); approve applications that "meet identified educational needs and promote diversity of educational choices"; and deny the others. RCW 28A.710.100, .130. If an authorizer approves an application, it negotiates and executes a charter contract with that applicant. RCW 28A.710.160. Each contract must establish: pre-opening requirements; terms by which the charter public school will meet basic education standards; and performance expectations and measures by which the charter school will be evaluated, which at a minimum must include applicable federal and state accountability requirements. RCW 28A.710.160(2); *see also* RCW 28A.710.010(5). The required performance framework must include specific information to guide authorizers' evaluation of charter public schools, such as information about student academic proficiency and growth, attendance, year-to-year reenrollment, graduation rates and postsecondary education readiness, and financial performance and stability. RCW 28A.710.170. The authorizer monitors a charter public school's performance over the charter contract's duration and, before contract expiration, determines whether the contract should be renewed or revoked. RCW 28A.710.010(3), .100(1).

b. Education Standards.

Proven academic performance is critical to a charter school's continued operation. Absent exceptional circumstances, a charter contract may not be renewed if the school's performance falls in the bottom quartile of schools on the Washington achievement index.

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RCW 28A.710.200. Charter public schools must: (1) provide basic education that meets the four goals of learning in RCW 28A.150.210; (2) provide instruction in the essential academic learning requirements, which define what children should know and be able to do at each grade level; (3) participate in the statewide student assessment system under RCW 28A.655.070; (4) employ certificated instructional staff, except in extraordinary cases; and (5) comply with SBOE's performance improvement goals. RCW 28A.710.040(2). Charter public schools may provide more to, and require more of, their students to achieve performance requirements. SBOE may adopt performance improvement goals applicable to charter public schools. RCW 28A.710.040.

Charter public school boards have power to issue diplomas to students who meet the state's high school graduation requirements. RCW 28A.710.030(1)(g). Charter public school students may transfer to other state public schools without substantial school credit loss or standing. RCW 28A.710.060(2).

c. Management and Oversight.

Charter public schools "are subject to the supervision of the superintendent of public instruction and [SBOE], including accountability measures, to the same extent as other public schools," except insofar as the Act specifically provides otherwise. RCW 28A.710.040(5). The superintendent and SBOE have specific oversight responsibilities. The superintendent and SBOE's chair are members of the Commission. RCW 28A.710.070(3)(a)(iii). The superintendent also manages funding allocations to charter public schools. RCW 28A.710.280. SBOE and the Commission must report annually to the governor, the legislature, and the public at large about charter public schools' performance, comparing the performance of charter public school students with comparable student groups at other public schools. RCW 28A.710.250. Their report must further provide "an assessment of the successes, challenges, and areas for improvement . . . including the board's assessment of the sufficiency of funding for charter schools . . . and any suggested changes in state law or policy necessary to strengthen the state's charter schools." *Id.*

Authorizers oversee the charter public schools that they authorize. RCW 28A.710.010(3). The Commission must administer the charter public schools it authorizes similar to a school district board of directors' administration of non-charter public schools. RCW 28A.710.070(2). All authorizers must continually monitor charter public schools' performance and legal compliance including education and academic performance goals and student achievement; determine whether to renew or revoke charter public school contracts; and report annually to SBOE on various aspects of the charter public schools that the authorizer approved; and develop and follow chartering policies and practices. RCW 28A.710.100(1), (3)-(4); 28A.710.180. In its oversight capacity, an authorizer may conduct inquiries and investigations of charter public schools. RCW 28A.710.180. Where a charter public school's performance is unsatisfactory, the authorizer must notify the school and provide the school with an opportunity to remedy the problem. *Id*. Authorizers may require corrective action or issue sanctions, including requiring a school to adopt a corrective action plan. *Id.* Further, an authorizer may revoke a charter school contract at any time if the authorizer determines that the charter public school has violated its charter contract or the Act; failed to meet or make sufficient progress toward the performance expectations set forth in the contract; failed to meet general fiscal management standards; or substantially violated any applicable material provision of law. RCW 28A.710.200. And, to further the goal of added oversight, authorizers must annually report to SBOE: (1) the authorizers' strategic visions and progress towards them; (2) performance data for the charter schools operating under each authorizer's purview; and (3) the operating status of all overseen schools. RCW 28A.710.100.

A charter public school must report performance data annually to its authorizer. RCW 28A.710.040. Specifically, each charter contract must provide a specific performance framework, and each charter public school then provides data outputs associated with that framework. RCW 28A.710.170. This framework construction and data reporting allows for evaluating a school's performance with respect to annual performance targets. *See* RCW 28A.710.180-.190. The state auditor may conduct legal and fiscal compliance audits of a charter

public school. RCW 28A.710.030-.040. Charter public school boards, whose composition is determined by the terms of an approved application, manage and operate individual charter public schools. RCW 28A.710.010(6), .030. Charter public school boards have certain powers, including hiring and firing employees, contracting with third parties for management and operation, and providing for independent performance audits at regular intervals. RCW 28A.710.030.

d. State Funding.

The Washington Opportunity Pathways Account ("OPA") is charter public schools' sole funding source. RCW 28A.710.270. OPA is a distinct account in the state treasury that may only fund specific, educational programs. RCW 28B.76.526. OPA derives funding only from state lottery revenues. RCW 67.70.240.

Funding for charter public schools is to be "distributed equally" with funding for other Washington public schools by the superintendent. RCW 28A.710.280. Two calculations determine the distribution amount for a charter public school: (1) a general apportionment determined in accordance with the formula for providing for the minimum instructional program of basic education, as set forth in RCW 28A.150.260; and (2) funding for various specific programs or services, including supplemental instruction and services for underachieving students, students whose primary language is other than English, students with disabilities, or highly capable students, and student transportation. 28A.710.280(2).

e. Service to At-Risk Populations.

The Act seeks to serve the underserved. The Act requires authorizers to "give preference to applications for charter schools that are designed to enroll and serve at-risk student populations," RCW 28A.710.140(2), with "at-risk student" defined to include, among a host of illustrative criteria, students who have academic or economic disadvantages that require assistance or special services to succeed in educational programs, RCW 28A.710.010(2). The Act further allows charter public schools to give "at-risk students," among others, a "weighted enrollment preference" whenever a charter public school must, due to capacity limits, use a

lottery to determine enrollment. RCW 28A.710.050(3). Under the Act, then, charter public schools are free and open to all children in the state and provide a basic education to any who attend, while allowing for serving the underserved and for specialized training and focus. RCW 28A.710.050.

2. Washington's Voters Previously Approved Charter Public Schools, But the Supreme Court Struck the Initiative.

Washington voters passed Initiative 1240 ("I-1240") in November 2012. I-1240 allowed a limited number of charter public schools to become part of the state's public school system. I-1240 defined charter public schools as "common schools" to be funded from the basic education allowance, which funds common schools, and the common school construction fund. *LWV*, 184 Wn.2d at 400.

Many of the plaintiffs here also challenged I-1240. The Washington Supreme Court ultimately decided that case on the issues of charter public schools' designation as "common schools" and funding provisions. First, charter public schools are not "common schools" under article IX, despite I-1240's having defined charter public schools as such. *LWV*, 184 Wn.2d at 405. Second, because charter public schools are not "common schools," I-1240's funding provisions, providing for funding from the basic education allowance in the general fund, were unconstitutional.[1] *LWV*, 184 Wn.2d at 409-10.

Both of these are factually inapposite here, as the Act is materially different from I-1240 with regard to both issues. First, the Act defines charter public schools as public schools (not common schools). RCW 28A.710.020(b). Second, the Act provides funding for charter public schools from OPA; no funding is provided from the general fund. RCW 28B.76.526.

The Act is materially different from I-1240. Principally, the Act defines charter public schools as public schools "[o]perated separately from the common school system as an alternative to traditional common schools," RCW 28A.710.020(b), and assigns funding for

[1] Aside from the common school designation and funding issues, the *LWV* trial court held in favor of the State and Intervenor-Defendants on all other constitutional challenges made there that Plaintiffs assert here. *LWV*, No. 13-2-24977-4 SEA (King Cty. Super. Ct. Dec. 12, 2013).

charter public schools from OPA. RCW 28A.710.220(2)-(3), .230(1), .270-.280, 28B.76.526.

The Act also enhances charter public schools' accountability and oversight requirements relative to I-1240. For example, charter school boards must contract for independent performance audits, in addition to any performance audit that the state auditor might require. RCW 28A.710.030(2). The Act adds the superintendent and SBOE chair as members of the Commission. RCW 28A.710.070(3)(a). Members of any charter public school board and the Commission must make personal financial disclosures. RCW 28A.710.290.

B. Washington's Public School System and Non-Common Schools.

The state constitution requires the legislature to "provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established." Const. art. IX, § 2. Likewise, the legislature has long recognized that the state's public school system includes both common schools and other schools below the post-secondary level. *See, e.g.*, Laws of 1897 ch. 118 § 1 p. 356 (defining public schools to include several schools and school types, in addition to common schools). The legislature's current understanding is "[p]ublic schools means the common schools as referred to in Article IX of the state Constitution, charter schools established under Chapter 28A.710 RCW, and those schools and institutions of learning having a curriculum below the college or university level as now or may be established by law and maintained at public expense." RCW 28A.150.010. Accordingly, "[a] general and uniform system of public schools *embracing* the common schools shall be maintained throughout the state of Washington in accordance with Article IX of the state Constitution." RCW 28A.150.295 (emphasis added).

The legislature has created several alternative schools, in addition to charter public schools, that do not fall within the common school system. For example, under the State-Tribal Education Compact Authority (RCW Ch. 28A.715), the legislature allows the superintendent to execute tribal-state education compacts. RCW 28A.715.010(1). Tribal-state school compacts, like charter public school applications, follow an application process. RCW 28A.715.010(2).

Tribal-state compact schools too "are exempt from all state statutes and rules applicable to school districts and school district boards of directors, except those statutes and rules" that RCW Ch. 28A.715 and the compact applies. RCW 28A.715.020(2). Currently, four federally-recognized tribes have K-12 schools that operate under tribal-state compacts. *See* Tribal Schools – State-Tribal Compact and Bureau of Indian Education (BIE) Contract, Office of Superintendent of Public Instruction, Office of Native Education, http://www.k12.wa.us/IndianEd/ProgramsSchools.aspx (last accessed December 18, 2016). Nothing prohibits students who attend these compact schools from attending state common schools instead. Nothing prohibits children who are not enrolled as members of a tribe from attending tribal-state compact schools. RCW 28A.715.030(2).

The Washington Military Department operates the Washington Youth Academy through a Cooperative Agreement with the National Guard Bureau, a joint bureau of the Department of the Army and Department of the Air Force,[2] as part of the National Guard Youth Challenge Program. FAQ | Washington State Military Department, http://mil.wa.gov/youth-academy/faq (last accessed December 18, 2016). The Youth Academy provides a partial high school program, creditable up to eight high school credits, in a quasi-military format. *Id.*; *see also* RCW 28A.150.310 (allowing basic and non-basic education funding for the Youth Academy and for its students to earn high school credits). Unlike National Guard high school career training programs, students in the Youth Academy are not considered enrolled in any common school. *See* RCW 28A.300.165(2).

C. Brief History of Washington's Public School System.

Records regarding the state's constitutional convention are scarce and arguably so limited that an originalist constitutional meaning cannot truly be determined. *See* Susan J. Brison & Walter Sinnott-Armstrong, *Introduction,* 72 B.U. L. Rev. 681, 681 (1992). Proceedings from the constitutional convention are not published. Quentin Shipley Smith, *Journal of the Washington State Constitutional Convention 1889 with Analytical Index* (Beverly Paulik Rosenow ed., 1999)

[2] Department of Defense Reorganization Act of 1958, Pub. L. No. 85-599 § 12, 72 Stat. 514, 521.

at vii ("Smith"). Only minutes of the convention's proceedings survive, because un-transcribed, shorthand versions of the full text of speeches and arguments were lost in a fire. *Id.* Moreover, even the state constitution's own framers rejected the idea of applying original intent to determine constitutional content. Lebbeus J. Knapp, *The Origin of the Constitution of the State of Washington*, 4 Wash. Hist. Q. 227, 233 (1913). The framers believed that while "[t]he virtue of a written constitution lies in its permanency," one cannot allow a society's institutional life to "become so settled and determined that it may be circumscribed by a code of permanent laws, fundamental or otherwise. The circle must always expand, and the constitutional as well as other laws must constantly change." *Id.* at 232-33.

Yet, indulging originalism for a moment shows Plaintiffs' historical account is inadequate to understand the early *public* school system. Because "the Washington convention furnished an excellent example of the tendency of American states to follow and copy one another in constitutional practices," Smith at *v*, constitutional models and drafts from other states may be examined. Washington's Article IX, Section 2's description of what the "public school system" includes is very similar to a provision from the California Constitution of 1879. Smith at 686 n.5. That state's convention, and its debate over what a "public school system" includes, centered on how accommodating a public school system should be: Should the state education clause be limited to a single system of basic elementary education (in the 19th century, "common schools" referred to schooling below the high school level), or should the state support more robust public education? *See* John Dinan, *The Meaning Of State Constitutional Education Clauses: Evidence From The Constitutional Convention Debates*, 70 Alb. L. Rev. 927, 951 (2007). While other Pacific Northwest states adopted an education article that provided only for common schools,[3] Washington, like California,[4] adopted one that allowed for a more robust educational system: "The legislature shall provide for a general and uniform system of public

[3] *See, e.g.*, Idaho Const. Art. IX § 1 (1890); Oregon Const. Art. VIII § 3 (1857).
[4] California's 1879 Constitution, Article IX, Section 6 states: "The public school system shall include primary and grammar schools, and such high schools, evening schools, normal schools, and technical schools as may be established by the Legislature . . . ."

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schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established." Const. art. IX, § 2.

Further, both pre- and post-statehood, Washington's founders structured public education such that different, internally coherent systems fit into one, larger public school system. The Washington Territory established, beyond common schools, a trustee-governed agricultural college and a trustee-governed school for children with special needs, showing that the territorial inhabitants desired and valued a public education system more robust than a single common school system. *See* Territorial Law, January 7, 1865; Territorial Law, February 3, 1886. Eight years after Washington became a state and initially established a state common school system, the state "harmoniz[ed] existing inconsistencies and unif[ied] the school laws" in emergency fashion. Laws of 1897, ch. 118 § 258. The 1897 Code of Public Instruction included the structure of common schools alongside the structures of other public school systems, including the state normal school system, *id.* §§ 212-227, a school for deaf, blind, and "feeble minded" youth, *id.* §§ 228-256, and the state "agricultural college, experiment station and school of science." *Id.* §§ 190-211.

STANDARD OF REVIEW

Granting a motion for summary judgment is proper if (1) the record shows that "no genuine issue as to any material fact" exists and (2) "the moving party is entitled to a judgment as a matter of law." CR 56(c).

Courts presume that statutes are constitutional. *Tunstall ex rel. Tunstall v. Bergeson*, 141 Wn.2d 201, 220 (2000). Parties challenging a statute's constitutionality bear the burden of showing, beyond a reasonable doubt, that a statute is unconstitutional. *Id.* While not identical to the standard of proof in criminal cases, the burden is nevertheless heavy; it is a "demanding standard of review." *Id.* Washington courts "will not strike a duly enacted statute unless . . . fully convinced, after a searching legal analysis, that the statute violates the constitution." *Sch. Dists.' All. for Adequate Funding of Special Educ. v. State*, 170 Wn.2d 599, 606 (2010) (internal quotation marks and citation omitted). Washington courts "assume the Legislature considered the

constitutionality of its enactments" and "afford great deference to [the Legislature's policy] judgment." *Tunstall*, 141 Wn.2d at 220.

When plaintiffs challenge a statute's constitutionality, the challenge is either a "facial" challenge or an "as applied" challenge. A facial challenge arises when a complaint generally alleges a statute is unconstitutional, no matter how it is implemented. *McDevitt v. Harborview Med. Ctr.*, 179 Wn.2d 59, 73-74 (2013). An "as-applied" challenge, in contrast, presents facts showing that the state's application of a statute *has* violated—not likely will violate—the constitution. *Tunstall*, 141 Wn.2d at 223.

Courts view the merits of facial challenges with particular skepticism, because they "run contrary to the fundamental principle of judicial restraint that courts should neither anticipate a question of constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." *McDevitt*, 179 Wn.2d at 74 n.9 (internal quotation marks and citation omitted). Facial challenges also "threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution. We must keep in mind that a ruling of unconstitutionality frustrates the intent of the elected representatives of the people." *Id.* (internal quotations and alterations omitted). To strike a statute on its face requires establishing "beyond a reasonable doubt that there is no set of circumstances" under which the statute can be constitutional. *Tunstall*, 141 Wn.2d at 222.

Here, plaintiffs challenge the Act on its face, rather than any specific instance of its implementation. Thus, Plaintiffs' claims require convincing the Court, beyond a reasonable doubt, that no set of circumstances exist under which the Act can be constitutional.

STATEMENT OF ISSUES

Whether it can be established beyond a reasonable doubt that no set of circumstances exist under which the Act does not:

(A) divert common school funds that are protected by Article IX, Sections 2 & 3 to charter public schools;

(B) violate Article IX, Section 2's requirement that Washington's public school system be "general and uniform;"

(C) impermissibly delegate the state's paramount duty to provide education to Washington children in violation of Article IX, Section 1;

(D) preclude the superintendent's general supervisory authority under Article III, Section 22; and

(E) violate the requirements of Article II, Section 37.

EVIDENCE RELIED UPON

This Cross-Motion and Opposition relies upon the Declaration of William W. Holder and the materials attached thereto, the legislative information and materials cited herein, and the papers and pleadings on file in this matter.

ARGUMENT

Plaintiffs seek a declaratory judgment and injunctive relief based on five constitutional theories, set forth in the Statement of Issues. Neither Plaintiffs' complaint, nor their summary judgment arguments, show beyond a reasonable doubt that there is no set of circumstances under which the Act can be constitutional, under any of their five theories.

A. The Act Constitutionally Funds Charter Public Schools.

The Act funds charter public schools through an account that is separate from the common fund and with revenues generated by the state lottery. Given this permissible funding, Plaintiffs make a "shell game" argument. That argument, however, has no sound basis. Plaintiffs' assertions regarding purported legislative intent are irrelevant, given that the funding is in no way ambiguous. Further, Plaintiffs' reliance on *LWV* is misplaced, as that case is factually distinguishable. Plaintiffs' attempt to apply *LWV* in this case would be an extension that would compel absurd results for future legislation of all kinds, essentially foreclosing the state's ability to fund anything but common schools.

1. Charter Schools Receive Funds Solely from the Opportunity Pathways Account.

The Act provides that only OPA may fund charter public schools' operations. RCW 28A.710.270 ("The state legislature shall . . . appropriate from [OPA] for the current use of charter public schools amounts as determined [by the Act's funding provisions], for state support to charter schools"); 28B.76.526. OPA is funded solely through state lottery revenues and does not contain constitutionally protected funds earmarked for common schools. *See* RCW 67.70.240, .340. Based the Act's plain text, Plaintiffs' claim that the Act diverts common school funds to charter public schools fails.

State accounting records confirm the Act's operation. They show that: (1) only state lottery revenues fund OPA, and (2) only OPA funds charter public schools. Declaration of William W. Holder, ¶¶11a-b, 32-40. Formal and generally accepted principles of government accounting support these conclusions. *See generally id.* Thus, an accounting analysis confirms what a plain reading of the Act shows—charter public schools do not receive any constitutionally protected funds earmarked for common schools.

2. Plaintiffs' Complaint Does Not Show Unconstitutional Funding.

Tacitly acknowledging that OPA's direct funding of charter public schools is constitutional, Plaintiffs' complaint asserts that the "substantive effect" of funding charter public schools from OPA is unconstitutional. FAC ¶60. Specifically, Plaintiffs argue the Act provides for indirect funding of charter public schools using restricted common funds, because (1) the Act provides for charter public school funding that is to be "distributed equitably" with funding for other public schools; (2) the Act does not establish new revenues or eliminate expenditures; and (3) the legislative history shows an intent to move funds between the general fund and OPA. *Id.* None of these points sustains Plaintiffs' claim.

First, Plaintiffs suggest that the Act's provision for funding charter public schools equitably with funding for other public schools somehow relates to funding sources. However, language concerning equitable distribution is part of RCW 28A.710.280, directing the

superintendent how to determine the *amount* of money to provide to a charter school based on a mix of formulas and ratios.[5] This provision says nothing about the *source* of funding for charter public schools.[6]

Second, the Act need not establish a new revenue source or eliminate expenditures to be constitutional. In essence, this argument is that, absent a new revenue source or the elimination of an expenditure, funding charter public schools decreases funding for common schools. This is simply not true. For example, in 2016, Washington had an unassigned general fund balance of over $1 billion, providing the potential for funding many types of programs at the legislature's discretion. *See* Holder Decl., ¶¶54-56. It is easy to see why the issue cannot be as simple as Plaintiffs contend. If the failure to create a new revenue source or eliminate expenditures were fatal to new public programs, then the legislature would be unable to enact anything other than common school programs.

Finally, Plaintiffs ignore the Act's text and structure and improperly argue about purported legislative intent. These arguments must be disregarded. A court's statutory analysis "begins with the plain language employed by the legislature." *Cent. Puget Sound Reg'l Transit Auth. v. Airport Inv. Co.*, 186 Wn.2d 336, 346 (2016) ("Our primary goal is to give effect to the legislature's intent, which we derive by construing the language as a whole, giving effect to every provision." (citing *State v. J.P.*, 149 Wash.2d 444, 450 (2003)). "If the language is unambiguous, [courts] give effect to that language and that language alone, because [courts] presume the legislature says what it means and means what it says." *Cent. Puget Sound*, 186 Wn.2d at 346. Here, Plaintiffs have not asserted (and could not in good faith) that the statute is ambiguous regarding the source of funding for charter public schools. On this point, the statute is clear: "The state legislature shall . . . appropriate from [OPA] for the current use of charter public schools . . . ." RCW 28A.710.270. Because the Act's source of funding provision is

[5] Plaintiffs concede this in their motion for summary judgment, where they argue the Act "seeks to fund charter schools on the same basis as common schools, requiring the Superintendent to use the same distribution formulas to disperse funds." Mot'n 21.

[6] RCW 28A.710.270 and 28B.76.526 relate to the source of funding for charter public schools.

unambiguous, Plaintiffs' legislative intent arguments are irrelevant.

The Act's operation does not allow for or require the use of common school monies for non-common school purposes, including funding of charter public schools. The Act's plain language and the state's accounting practices show that charter public schools are funded solely through OPA and state lottery revenues. The Court should grant Intervenor-Defendants' cross-motion for summary judgment on this claim.

3. Plaintiffs' Summary Judgment Arguments Are Not Supported by Fact or Law.

Notwithstanding the Act's straightforward funding structure, Plaintiffs' motion for summary judgment presents several theories for how the Act nevertheless unconstitutionally diverts protected funds from common schools. None of these theories entitles Plaintiffs to judgment as a matter of law.[7]

a. Issues Relating to Funding Levels Are Irrelevant.

Two of Plaintiffs' arguments relate only to the level of charter public school funding, not the source or appropriation of those funds. These arguments are irrelevant, as the issue here is the source of funds.

First, Plaintiffs observe that the Act "seeks to fund charter schools on the same basis as common schools, requiring the superintendent to use the same distribution formulas to disperse funds." Mot. 21. A formula determines funding amounts and distribution, it does not source funding. *See* RCW 28A.150.260. Nothing connects funding formulas with the constitutional protection afforded to common school funds.

Second, Plaintiffs argue that charter public schools "compete with common schools for the same students and, of constitutional significance, the same state funds tied to each student." Mot. 25. Again, this argument boils down to funding levels, not source. Plaintiffs claim that, due

[7] Plaintiffs present no factual evidence in support of this argument in their motion for summary judgment. The only "evidence" cited are impermissible assertions in the declarations of Senator Pederson and Julie Salvi, which impermissibly purport to establish legislative intent. *See* Evidentiary Objections, *infra*. Should the Court allow the assertions regarding legislative intent from these two purported "fact" witnesses into evidence and treat them as facts supporting the actual operation of state funding, Intervenor-Defendants reserve the argument that this creates an issue of material fact precluding summary judgment on this claim.

to students choosing to enroll in charter public schools rather than common schools, the amount of funding common schools receive under state formulas may decrease as the number of students served is an input to those formulas. Taken to its logical conclusion, Plaintiffs' argument means that any non-common school option – such as a tribal-state compact school – is unconstitutional, because a common school might otherwise receive funding for that student. No Washington authority supports the notion that common schools have a constitutionally-protected enrollment level.

b. *LWV* Does Not Control This Case and Should Not Be Extended.

Plaintiffs incorrectly assert that "*LWV* is controlling," because the Supreme Court "addressed the constitutional restraints on public funding for charter schools within the current common school funding scheme." Mot. 22. First, several key factual distinctions exist between *LWV* and this case. There, charter schools were designated as "common schools" and, accordingly, were to be funded through the same sources as common schools, including money from the basic education allocation, housed in the general fund. *LWV*, 184 Wn.2d at 408. Here, the Act designates charter schools as public schools, not common schools, and funds charter public schools through OPA. RCW 28A.710.020(1), .270.

Second, Plaintiffs' "shell game" argument relies solely on alleged legislative intent. *LWV* does not examine legislative intent; it discusses accounting of various funding sources, none of which is at issue here. *LWV*, 184 Wn.2d at 405-11. By conflating *LWV*, which examined no legislative intent, with this case (one that also involves no legitimate recourse to legislative intent), Plaintiffs try to extend *LWV* beyond its holdings. Specifically, Plaintiffs would have this Court conclude that all funds in any account available to balance the state budget are constitutionally protected for common schools. Consequently, then, the legislature could not fund anything but common schools from any state funds. *LWV* does not support the argument that because the general fund is one of several different funds at the legislature's disposal to balance the budget, all funds from any of these accounts are constitutionally off-limits. And this

Court should not extend *LWV* to that untenable conclusion.[8]

c. Plaintiffs' "Shell Game" Argument Is Fundamentally Flawed.

Plaintiffs assert that the Act "has the effect of diverting restricted common school funds, even [though] accomplished by indirect means," because the Act's use of OPA as a funding source "is nothing more than a shell game." Mot. 24. Specifically, Plaintiffs argue that when the legislature adopted the Act, it "intended" nominally to use OPA to fund charter public schools, but then to replenish those funds from the state general fund and, ultimately, deprive the common schools of whatever amount is appropriated from OPA to fund charter public schools. *Id.* For support, Plaintiffs allege that the legislature intended to "launder" funds between OPA and the general fund.

(1) Legislative Intent Is Irrelevant.

Plaintiffs' legislative intent arguments are irrelevant and incorrect. Months of policy debate in the legislature resulted in legislation that lacks the replenishment language that Plaintiffs cite to support their allegation of the legislature's money-laundering intent. Because neither that language nor any language in the Act can fairly be read to operate as a "swapping mechanism" between OPA and the general fund, Plaintiffs' assertion of intent is unsupported. Further, Plaintiffs do not (and cannot) argue that the Act is ambiguous on funding. "If the language is unambiguous, [courts] give effect to that language *and that language alone,* because [courts] presume the legislature says what it means and means what it says." *Cent. Puget Sound,* 186 Wn.2d at 346 (emphasis added). Plaintiffs' invitation to look beyond the plain language of the Act to divine legislative intent must be declined.

(2) The Legislative Intent Arguments Do Not Change the Actual Accounting Structure.

Plaintiffs' legislative intent argument is based on the claim that the legislature considers the general fund and OPA as "one pot of money" when determining what to spend on various

[8] Plaintiffs' related argument that school districts similarly commingle their public funds, so they cannot do anything under the Act without misusing common school funds, fails for the same reasons. *See* Mot. 28.

education programs, especially given the state's balanced budget requirement. Mot. 27. Thus, Plaintiffs urge there should be no meaningful distinction between the two funds and the Court should find that spending on charter schools must be from the general fund and impermissible. However, neither the state's accounting practices nor generally accepted principles of government accounting support Plaintiffs' position. Holder Decl. ¶¶41-48. Put quite simply, Plaintiffs' "one big pot of money" theory does not change the fact that the state funds and maintains the general fund and OPA separately, foreclosing Plaintiffs' argument. *Id.*

(3) <u>Even Accepting All of Plaintiffs' Arguments, There Is Still No Basis for Finding Unconstitutional Funding</u>.

Even assuming Plaintiffs' most extreme assertion regarding the funding of charter public schools is true—funds from the state's general fund are used to fund charter public schools—this still fails to establish that charter public schools receive constitutionally protected funds reserved for common schools.

Accounting principles establish a presumption that where there are funds restricted for a specific purpose, the first source of state spending for that specific purpose are these restricted funds. Holder Decl., ¶¶31, 50-51. Washington has adopted this presumption and with respect to funding of common schools, the state first draws down all constitutionally restricted funds for common schools before it draws on any other source. If the funding amount allocated to common schools is greater than the constitutionally restricted funds, the constitutionally restricted funds are exhausted. Once exhausted, no other state spending from the general fund can be presumed to be from the constitutionally restricted funds. Washington's accounting records for FY2016 show funding for elementary and secondary education, which includes common schools ($10.2 billion), far exceeds the amount of constitutionally restricted funds ($2.1 billion). *Id.* ¶52. This precludes the finding that there was any allocation of constitutionally restricted funds outside of the common schools. *Id.* ¶53.

Plaintiffs' argument also fails to take into account the unassigned general fund balance, which represents amounts that are not restricted committed or assigned. *Id.* ¶55. Washington's

accounting records show an unassigned general fund balance of over $1 billion in FY2016. *Id.* Any general fund funding provided to programs co-funded through OPA could be provided for by these discretionary funds. *Id.* ¶¶54-56. This precludes the finding that constitutionally restricted funds were provided to OPA programs co-funded through the general fund and thus indirectly provided to charter public schools. *Id.*

Plaintiffs' shell game argument, even accepted at its most extreme, fails to establish beyond a reasonable doubt that the Act diverts constitutionally protected common school funds to charter public schools. *Id.* ¶¶11e, 49-56.

B. The Act Satisfies Article IX's "General and Uniform" Requirement.

Article IX, Section 2 requires the Legislature to "provide for a general and uniform system of public schools." It further states that "[t]he public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established." *Id.* Section 2's first sentence requires a "general and uniform system of *public* schools" – "general and uniform" modifies "system of public schools." Section 2's second sentence includes common schools as part of Washington's public school system. *Id.*; *see Parents Involved in Cmty. Sch. v. Seattle Sch. Dist.*, No. 1, 149 Wn.2d 660, 685 (2003) (courts must avoid interpretations that render language superfluous). The Supreme Court has long recognized that common schools are just a part of the public school system. *See Sch. Dist. No. 20, Spokane Cty. v. Bryan*, 51 Wn. 498, 502 (1909) (Article IX provides for a public school system that "differentiates between the common school and the normal school"). As detailed further below, "general and uniform" has been viewed as having two parts: administration and access to educational opportunities. Administratively, a "general and uniform" system is one with a degree of uniformity. Access to educational opportunities requires that a child have free access to minimum and reasonably standardized education instruction and opportunities.

1. Charter Schools Are "Public" Schools.

"Public schools means the common schools as referred to in Article IX of the state Constitution, charter schools established under Chapter 28A.710 RCW, and those schools and

institutions of learning having a curriculum below the college or university level as now or may be established by law and maintained at public expense." RCW 28A.150.010.

Even if charter public schools were not specifically listed in RCW 28A.150.010's current definition of public schools, they would fit within versions of the definition beginning in 1897. At that time, the legislature replaced scattered school laws with a single Code of Public Instruction. Laws of 1897 ch. 118, § 258 p. 448-49. That code established that a "general and uniform system of public schools shall be maintained throughout . . . Washington, and shall consist of common schools (in which all high schools shall be included), normal schools, technical schools, university of Washington, school for defective youth and such other educational institutions as may be established and maintained by public expense." *Id.* § 1, p. 356.

In 1909, the legislature amended that provision:

> A general and uniform system of public schools shall be maintained throughout the State of Washington, and shall embrace common schools (including high and elementary schools, schools for special help and discipline, schools or departments for special instruction), technical schools, the University of Washington, the State College of Washington, state normal schools, state training schools, schools for defective youth, and such other educational institutions as may be established by law and maintained at public expense.

Laws of 1909 ch. 97, § 1.

In 1969, the legislature again reconfigured the composition of the public school system by enacting "Common School" and "Higher Education" codes, RCW Titles 28A and 28B respectively. These provisions maintained public schools and common schools separately, as Washington had done for nearly 75 years. The legislature defined "public schools" as "the common schools as referred to in Article IX of the state Constitution and those schools and institutions of learning having a curriculum below the college or university level as now or may be established by law and maintained at the public expense." Laws of 1969 ch. 223, p. 1670. Common schools were defined as "schools maintained at public expense in each school district and carrying on a program from kindergarten through the twelfth grade or any part thereof including vocational educational courses otherwise permitted by law." *Id.* The 1969 Act directed that "[a] general and uniform system of *public* schools embracing the *common* schools shall be

maintained throughout the state of Washington in accordance with Article IX of the state Constitution." *Id.* at 1671 (emphasis added).

Accordingly, charter public schools provided for in the Act fall squarely within the definition of Washington's public school system as it has existed since at least 1897. Charter public schools are "institutions of learning having a curriculum below the college or university level" and are "established by law and maintained at the public expense." In terms of administrative structure, educational offerings and accountability, and civil rights guarantees, charter schools are, by any standard under Washington law, public schools.

2. Charter Schools Satisfy the "General and Uniform" Requirement of a System of Public Schools.

Washington's system of public schools must be "general and uniform," which is thought of as having an administrative component and an access component. *See* Art. IX § 2; *Northshore Sch. Dist. No. 417 v. Kinnear*, 84 Wn.2d 685, 729 (1974) (overruled on other grounds by *Seattle Sch. Dist. No. 1 of King Cty. v. State*, 90 Wn.2d 476 (1978)). The Supreme Court has long interpreted "general and uniform" as flexible. *See Fed. Way Sch. Dist. No. 210 v. State*, 167 Wn.2d 514, 524 (2009) (interpreting "general and uniform" meaning "at the present time.").

Plaintiffs misconstrue *Bryan* and its progeny as applying to the public school system generally, rather than the common school system at issue in those cases. In doing so, Plaintiffs suggest that "general and uniform" has the same meaning when applied to the *public* school system as it does when applied to the *common* school system. Nothing supports that treatment of "general and uniform." The charter public schools structure provided by the Act satisfies both aspects of Article IX, Section 2's "general and uniform" requirement for the public school system.

a. "General and Uniform" Administration.

Administratively, a "general and uniform" system is one "with that degree of uniformity"

which enables school transfer "without substantial loss of credit or standing"[9] and access to certain aspects of educational opportunity. *Federal Way*, 167 Wn.2d at 524. A few statutes (particularly in their structure), and rough analogy from cases concerning the "general and uniform" quality of the state *common* school system's administrative structure, provide most of the guidance for what "general and uniform" means when applied to the broader public school system. Crucially, however, the Supreme Court has recognized that public education administration in Washington is not limited to the local school district model that characterizes the common school system. *See Tunstall*, 141 Wn.2d at 232-33. Accordingly, cases that relate only on the "general and uniform" aspect of *common* schools' administrative structure, such as *LWV* and *Bryan*, have little relevance here. As Plaintiffs challenge the structure of charter schools, the issue must be examined in terms of whether it violates the "general and uniform" quality of the broader *public* school system.

(1) No Single Administrative System Is Required.

The state's public school system includes more than the state's common school system. Const. art. IX, § 2; RCW 28A.150.010, .295; *Tunstall*, 141 Wn.2d at 222 n.16. Article IV, Section 2 "refers to a 'public school system' which includes the common schools as merely one segment of that general and uniform system . . . ." *Seattle Sch. Dist. No. 1*, 90 Wn.2d at 522. The legislature has treated schools of various kinds as part of the "general and uniform" public school system since at least 1897. However, scant authority discusses other schools' or educational programs' administrative structure, particularly relative to the common school system. What "general and uniform" means as applied to the public school system's overarching structure as opposed to different administrative structures of the subparts is, then, somewhat unclear. At

[9] Plaintiffs argue that the Act "interferes with the ability of students to transfer between public common schools and charter schools," because the Act "provides no guarantee that credit will be awarded to public school students transferring into a charter school." Mot. 19 (citing RCW 28A.710.060(2)) (public schools must accept credits earned by charter public school students). Practically speaking, it makes little sense for charter schools to *decline* to accept credits earned by students at other public schools. And, at any rate, Plaintiffs fail to support this argument with any evidence that it frustrates school transfer ability to the level the Supreme Court requires – i.e., without *substantial* loss of credit or standing – suggesting that not even all non-charter public schools are required to accept credits on a one-to-one basis when a student transfers from one common school to another.

minimum: "The general and uniform system contemplated by the constitution is neither limited to common schools nor is it synonymous therewith." *Id.*

The Supreme Court has rejected the proposition that the local school district-based model of education administration, typical of a common school system, must be used for non-common school public education administration. Specifically, Plaintiffs in *Tunstall* argued that school districts are the only type of entity allowed to provide educational services under Article IX. 141 Wn.2d at 232. The Supreme Court responded: "This argument is clearly without merit because, as seen in many instances, the Legislature has found entities other than school districts qualified to educate our youth." *Id.* Reading *Tunstall* and the cases on which it relies alongside 125 years of the legislature's outlining what constitutes a public school, the only sensible conclusion for what constitutes a "general and uniform" *public* school system's administrative structure is one that is created and provided for by the legislature. *See id.* at 235 ("The framers made clear an elected [Superintendent] and an elected Legislature, not the judiciary, manage Washington's educational system."). Otherwise, public schools and public education programs administered differently than the common school system would violate the "general and uniform" administration requirement.

Specifically, trustee-managed and superintendent-supervised normal schools and the "school for defective youth" would have violated the "general and uniform" requirement, because they were not administered like common schools. *See, e.g.*, Laws of 1897, ch. 118 §§ 212-227, 228-256. And today, many more public schools or public education programs, like programs for highly capable students, tribal-state compact schools, the Youth Academy, educational programs for juveniles in detention centers, adult jails, or juvenile inmates, and others would likewise violate the "general and uniform" requirement, because they are not administered exactly as common schools are administered. *See, e.g.*, RCW Chs. 28A.185, .190, .193, .194, .715; RCW 28A.300.165. There are also educational service districts, to which the superintendent may delegate any program, project, or service authorized by the legislature to be performed by the superintendent. *See* RCW 28A.310.470. These alternatively administered

school systems or programs within the public school system demonstrate that the "general and uniform" *public* school system need not include school systems with administrative structures that mirror common schools.

Here, the Act establishes an internally "general and uniform" governance structure for Washington charter schools as part of the broader public school system. No charter school may be established unless an authorizer contracts with a qualified applicant. Authorizers are limited to the Commission or local school districts if approved by SBOE. Above that, the superintendent supervises the entire charter public school structure that the legislature has provided.[10] From an administrative perspective, Washington's charter public schools fit within Washington's accommodating, general and uniform *public* school system.

(2) Plaintiffs Improperly Rely on Requirements from the Common School System.

Plaintiffs' only argument on the point of "general and uniform" administration is that the Act does not allow locally elected school board districts, subject to the superintendent's supervision, to govern charter public schools. Mot. 17. However, none of Plaintiffs' cited authorities states that the *public* school system needs this administrative feature. That is simply a characteristic of the *common* school system. For example, Plaintiffs claim *Bryan* "emphasized the requirement of one unitary system of governance by elected officials." *Id.* Yet, *Bryan* dealt solely with the "uniformity of *common* school system" and does not include any consideration or provide any guidance on what is required for the uniformity of the *public* school system. 51 Wn. at 504.[11] Contrary to Plaintiffs' suggestion, no Washington case holds that non-common, public school systems (different as they may be administratively from the common school system) violate the "general and uniform" requirement of the *public* school system.

[10] Note, the only entities capable of being authorizers include elected officials.

[11] The Court could stop here, because the Plaintiffs point only to the uniformity of the common school system for what a "general and uniform" *public* school system's administrative structure looks like, despite acknowledging that the public school system and the common school system are not coextensive, *see* FAC ¶54; Mot. 6. The Court should not "address constitutional issues without benefit of citation to appropriate supporting authority." *Tunstall*, 141 Wn.2d at 224 (internal quotation marks and citation omitted).

Plaintiffs cite a single out-of-state authority to support the argument that a "parallel" or alternative system of free public education violated that state's uniformity requirement. *See Duval Cnty. Sch. Bd. v. State*, 998 So.2d 641, 643 (Fla. Dist. Ct. App. 2008). However, that case held no such thing. Rather, *Duval* held that the Florida charter school law violated that state's "local control" provision (nothing similar exists in Washington's constitution), not its uniformity provision. If outside authority is to be considered, the Court should look to *Boulder Valley School District RE-2 v. Colorado State Board of Education*, 217 P.3d 918, 928 (Colo. App. 2009). There, the Colorado Court of Appeals held that "institute charter schools" did not violate that state constitution's uniformity provision: "[T]he State may provide additional educational opportunities open to all students in the state through institute charter schools, provided that these opportunities are available statewide," *id.*, and the court could see no reason why the constitution's uniformity provision "should be read to prohibit the State from creating a school system with different types of schools, some controlled by school districts while others are not." *Id.* "Indeed, Colorado has already done so by creating the Colorado School for the Deaf and the Blind, which is a state-funded and -controlled public school, not under the control or authority of any school district." *Id. Boulder Valley* is more persuasive here, because similar non-common school systems exist in Washington and fit within this state's broader public school system.[12]

From an administrative perspective, the Act meets the "general and uniform" requirement of Article IX, Section 2.

b. "General and Uniform" Access to Educational Opportunities.

Access must be "general and uniform" in that "every child in the state has free access to certain minimum and reasonably standardized educational instructional facilities and opportunities to at least the 12th grade" and every student has access "of whatever grade to acquire those skills and training that are reasonably understood to be fundamental and basic to a

[12] Plaintiffs rely in part on a student note that assumes charter public schools violate the public school system's "general and uniform" requirement because they "disrupt" the uniformity of the common school system. Simply saying that two similar, yet different sets of educational offerings existing in tandem "disrupts" uniformity does not make it so; otherwise, many other K-12 programs would be in grave danger, including tribal compact schools. *See generally* RCW Ch. 28A.715.

sound education." *Federal Way*, 167 Wn.2d at 524. More specifically, access refers primarily to *how* the state must provide an education to "all children residing within its borders . . . ." Const. art. IX, § 1; *Tunstall*, 141 Wn.2d at 221-22 (2000) (noting that the state's duty to provide educational services does not end with creating a "general and uniform" system, but requires providing for the education of all children residing within the state's borders).

(1) Charter Public Schools Satisfy This Flexible Standard.

In terms of educational opportunity and access, "general and uniform" means something different today than the inflexible standards for textbook usage, degree of discipline, and the length of schools days and school years that proxied for opportunity and access in early-Washington's common school system. *See Parents Involved in Cmty. Sch.*, 149 Wn.2d at 673. "An 1889 common school education is different from such an education in [2016]." *Tunstall*, 141 Wn.2d at 236. The State need not "provide an *identical* education to all children within the state regardless of the circumstances in which they are found." *Id.* at 220.

The "general and uniform" requirement:

> [E]mbraces broad educational opportunities needed in the contemporary setting to equip our children for their role as citizens and as potential competitors in today's market as well as in the marketplace of ideas. Education plays a critical role in a free society. It must prepare our children to participate intelligently and effectively in our open political system to ensure that system's survival. It must prepare them to exercise their First Amendment freedoms both as sources and receivers of information; and, it must prepare them to be able to inquire, to study, to evaluate and to gain maturity and understanding.

Seattle Sch. Dist. No. 1, 90 Wn.2d at 517-18 (citation omitted). In the face of a flexible concept of a "general and uniform" system of public schools, length of school days, textbook titles, and teachers' manuals neither determine nor materially affect a broad, public educational program's "general and uniform" quality, even if those specifics must still be considered within a common school system.

The Basic Education Act does not establish any constitutional requirement for a "general and uniform" public school system. The Supreme Court has already rejected that notion in a case where both sides "assume[d] that anything within the Basic Education Act is constitutionally

required within the meaning of the State's 'paramount duty' to provide 'a general and uniform' system of education. But this court has never held, nor do we now hold, that the Basic Education Act defines the scope of the State's paramount constitutional duty to provide education." *Brown v. State*, 155 Wn.2d 254, 261 (2005).

The State can provide something different than what the Basic Education Act requires and still satisfy Article IX's "general and uniform" requirement for the overall public school system. For example, *Tunstall* rejected prison inmates' contention that the Education of Juveniles Incarcerated in Adult Correctional Facilities Act (RCW Ch. 28A.193) created a "separate and inferior system of education for persons who are incarcerated in adult prisons," holding instead that RCW Ch. 28A.193 satisfied article IX's requirements. *Id.* at 220. The majority also observed that "there are numerous examples of how Title 28A RCW is an act flexible enough to meet the educational needs of a highly varied population" and still satisfy Article IX. *Id.* at 222 n.16 (*citing, e.g.*, RCW 28A.150.305 (suspended/expelled students may attend alternative education programs operated by entities other than school districts) and RCW Ch. 28A.165 (remedial education under the "Learning Assistance Program")). At any rate, the Basic Education Act itself recognizes that "[b]asic education by necessity is an evolving program of instruction intended to reflect the changing educational opportunities that are needed to equip students for their role as productive citizens . . . ." RCW 28A.150.200.

Here, the Act satisfies the "general and uniform" requirement in terms of educational access, because the Act provides (1) every child in the state with free access to educational facilities, RCW 28A.710.020(1)(a); (2) such opportunities up through the twelfth grade, RCW 28A.710.020(2); and (3) access at whatever grade level to acquire skills and training that are "fundamental and basic to a sound education."[13] *Federal Way*, 167 Wn.2d at 524; *see* RCW 28A.710.040(2)(b).

[13] Alternatively, Plaintiffs remark upon the unremarkable: Nothing in the Act expressly applies all RCW 28A.150.220 requirements to charter schools. However, the Act (unlike I-1240) requires charter public schools to provide a *program* of basic education consistent with .210's basic education goals. RCW 28A.710.040. The Court can read the Act as a whole and reconcile any conflicts with RCW Ch. 28A.150, because they deal with the same subject matter. *See* 2B Sutherland Statutory Construction § 51:2 (7th ed.).

(2) <u>There Is No Single "Basic Education Program."</u>

Plaintiffs contend, that the Act provides "non-uniform educational opportunities," because it "does not require charter schools to provide necessary elements of *the* 'basic education program[.]'" Mot. 18. The core problem with Plaintiffs' argument here is that it incorrectly presumes a single "basic education program" exists for all public schools. Plaintiffs' *McCleary* cite on this point is to a discussion about the meaning of "basic education," not a "basic education program," a distinction that *McCleary* addresses and Plaintiffs acknowledge. *McCleary v. State*, 173 Wn.2d 477, 521-27 (2012); Mot. 7-8. The salient feature of a "basic education program" is that the legislature "generally enjoys broad discretion in selecting the *means* of discharging its duty" to provide a "basic education," including deciding what programs are necessary, and that the legislature may not eliminate programs or offerings without an accompanying *educational* policy rationale. *McCleary*, 173 Wn.2d at 526-27 (emphasis added).

Plaintiffs do not dispute that the Act provides for a "basic education." Mot. 6; RCW 28A.710.040(2)(b). Rather, Plaintiffs ask the court to curb the legislature's discretion to decide how to deliver a basic education. But as *McCleary* counsels, a basic education *program* is "not etched in constitutional stone as part of the definition of 'education.'" *Id.* at 526. Rather, the legislature *must* periodically revisit how it delivers a "basic education" to children "as the needs of students and the demands of society evolve." *Id.* Here, the legislature added charter public schools as another way to deliver a "basic education." The fact that the legislature exercised its discretion in exempting charter public schools from provisions applicable to common schools does not demonstrate a violation of uniformity.

Plaintiffs seek to ignore the existing public schools that also do not strictly follow the provisions applicable to common schools, namely public schools serving incarcerated youth, blind or deaf students, high achievers, and drop-outs, by asserting that those public schools are somehow outside of the "general and uniform public school system." Mot. 19. However, nothing supports Plaintiffs' assertion that these specialized public schools operate outside the public school system. *See* RCW 28A.150.010. Plaintiffs also assert, under *Tunstall*, an exception is

made to the overarching public and uniform public school requirement where an educational program is offered to meet the needs of a small subset of children. Mot. 19-20. However, *Tunstall* does not stand for the proposition that the program at issue there, one for incarcerated youth, was outside of the state's public school system or exempted from the public school system's "general and uniform" requirement. Plaintiffs' argument that charter schools "cannot be equated with other specialized schools and supplemental education programs" because they "must be open to all students on an equal basis" is a distinction without a difference; no controlling or persuasive authority supports it. Mot. 19.

C. The Act Properly Delegates Power to Public Entities.

The Supreme Court long ago abandoned a strict view of how the legislature may delegate power to an agency. In *Barry & Barry, Inc. v. State Department of Motor Vehicles*, the Supreme Court determined that its previous nondelegation doctrine was "excessively harsh and needlessly difficult to fulfill," in part because it impeded "efficient government and conflict[ed] with the public interest in administrative efficiency in a complex modern society"; "destroys needed flexibility"; and was a meaningless standard in any case. 81 Wn.2d 155, 159-60 (1972). By simplifying and relaxing its nondelegation standard, the Supreme Court emphasized that the purpose of its nondelegation doctrine is to "protect[] against unnecessary and uncontrolled discretionary power," not to prevent the legislature from delegating agency power or even to require meaningful, specific, and strict statutory standards in delegation. *Id.* at 161 (citation omitted). The current requirements are: (1) "standards or guidelines which define in general terms what is to be done and the instrumentality or administrative body which is to accomplish it" and (2) procedural safeguards "to control arbitrary administrative action and any administrative abuse of discretionary power." *Id.*

1. Charter Schools Are Subject to a Comprehensive Regulatory Scheme.

The Act creates a comprehensive regulatory scheme for charter public schools that includes: (1) mandatory standards and guidelines for authorizing and operating charter public schools; (2) instrumentalities and administrative bodies that accomplish the Act's purpose of

delivering a basic education through charter public schools; and (3) procedural safeguards to control arbitrary administrative action and any administrative abuse of discretionary power.

No charter public school may open unless it is authorized. *See* RCW 28A.710.100(1). "Authorizers" (all public entities)[14] are gatekeepers for potential charter public schools (applicants) and may approve or deny charter applications. Authorizers must solicit proposals from charter school applicants in accordance with specific guidelines and based on the annual SBOE statewide timeline. RCW 28A.710.130(1)(b), .140(1). A charter school application must "provide or describe thoroughly" over 30 items; consequently, charter applications are lengthy and detailed. RCW 28A.710.130(2) (describing 32 required elements of a charter school application). Authorizers' application-consideration process must draw evidence-based conclusions and maintain transparent decision-making. Authorizers may even conditionally approve applications. RCW 28A.710.140(2)-(4). Authorizers must submit their proposed acceptances to SBOE for final approval. RCW 28A.710.150.

Next, authorizers are gatekeepers for proposed charter public school contracts. RCW 28A.710.100(1). "An approved charter application does not serve as the school's charter contract." RCW 28A.710.160(1). No charter public school contract takes effect unless executed between an authorizer and the relevant charter school. *See* RCW 28A.710.100(1); 28A.710.160(7). Charter contracts must set (1) terms by which the charter school "agrees to provide educational services that, at a minimum, meet basic education standards" and (2) "academic and operational performance expectations and measures by which the charter school will be evaluated . . . ." RCW 28A.710.160(2).

After approval, authorizers must continually supervise those schools that they have authorized, ranging from pre-operation supervision to investigating operational charter public schools. RCW 28A.710.160, .180. Charter public schools must report to authorizers on the schools' delivery of educational services to students and how well the schools' performance

[14] The SBOE has oversight over authorizers. It may revoke the chartering authority of a school district, subject to due process guarantees. RCW 28A.710.120.

aligns with school contracts. *See* RCW 28A.655.110, 28A.710.040. Authorizers must report to SBOE regarding progress towards achieving their strategic vision, as well as the academic and financial performance of their charter public schools. RCW 28A.710.100.

These oversight and reporting requirements inform authorizers about charter public schools' performance. If charter public schools fail to measure up or face other problems, authorizers must address such issues. RCW 28A.710.180. If problems persist or are serious enough, an authorizer may revoke or refuse to renew a charter contract. RCW 28A.710.200. This due process that precedes revocations or refusals to renew enhances transparency and accountability and allows for more orderly transitions for students. RCW 28A.710.200(3), .210. Similarly, if revocation or refusal to renew occurs, the Act's transparency requirements require an authorizer to "clearly state in a resolution the reasons for the revocation or nonrenewal." RCW 28A.710.200. Ten days later, the authorizer must report the same to SBOE. *Id.*

Numerous guidelines exist for the establishment and operation of charter public schools and authorizers, as well as safeguards against underperforming or rogue charter public schools. And transparency and accountability provisions proactively enhance those safeguards throughout a school contract's duration. These guidelines and safeguards satisfy constitutional requirements regarding delegation of authority. *Barry & Barry*, 81 Wn.2d at 159, 163-64.

2. Plaintiffs' Varied Assertions to the Contrary Are Not Meritorious.

Despite the Act's numerous standards, guidelines, and safeguards, Plaintiffs argue the Act is insufficient. First, Plaintiffs assert that the state's paramount duty to define a basic education program cannot be delegated, citing to *Parents Involved in Community. Schools v. Seattle School District, No. 1*, 149 Wn.2d 660 (2003). *See* Mot. 31. However, *Parents Involved* related to the delegation of the state's duty to provide ample funding for the public school system, not a duty to define a basic education program. Accordingly, Plaintiffs' assertion that the duty to define a basic education program cannot be delegated fails.

Second, while the Act exempts charter public schools from state school law requirements (other than the "basic education" requirements), it still requires charter schools to provide a

program of basic education. RCW 28A.710.040(2)(b). Plaintiffs argue that this is a delegation of the duty to define a basic education program to private organizations. But this ignores the requirements of the Act. Charter public school contracts are not unilateral decrees by private entities. An authorizer cannot legally approve a charter contract unless it provides for a basic education program. *Id.* Accordingly, if the Act delegates anything with regard to defining the "basic education program," it delegates that function to authorizers, i.e., public entities, because the authorizer ultimately decides whether to approve or reject any proposed charter public school's application and subsequent contract. This directly contradicts Plaintiffs' assertion that any delegation is to private organizations. Mot. 31.

Third, Plaintiffs cite several provisions in the Act which do not support their assertion that charter public schools "define their own basic education programs." Mot. 32. First, RCW 28A.710.040 simply outlines the broad contours of a charter public school. Second, RCW 28A.710.130 concerns only what a *potential* charter public school must include in an application to an authorizer to become a charter public school. However, "[a]n approved charter application does not serve as the school's charter contract." RCW 28A.710.160(1). The charter school contract is the controlling document and requires the approval of a state entity. A charter contract *must* establish that the charter public school "agrees to provide educational services that, *at a minimum*, meet basic education standards . . . ." RCW 28A.710.160(2) (emphasis added).

Fourth, even assuming the Act delegates power to private organizations, Plaintiffs' assertion that "[u]nlike governmental agencies, private organizations are not subject to the same public oversight" is false here. Mot. 32. For example, the Act requires that charter public schools comply with public records and open public meeting laws. RCW 28A.710.040(2)(h).

Under Washington law, delegating legislative power to private entities is not *per se* unconstitutional; the single case that Plaintiffs cite regarding delegation of government power to private entities recognizes this. Mot. 33; *see United Chiropractors of Washington, Inc. v. State*, 90 Wn.2d 1, 6 (1978) (rejecting other jurisdictions' *per se* prohibition of delegation to private entities, applying instead the loose test for nondelegation from *Barry & Barry*). It is even more

puzzling, then, that Plaintiffs illustrate their argument by comparing how *few* and how *loosely* standards apply to school district boards, SBOE, and the superintendent. Mot. 24. Ignoring the Act's numerous transparency and accountability provisions that allow a watching public to keep eyes on charter public schools at all times, Plaintiffs tout school district boards' nearly unfettered power over any given common school as an example of sufficient standards and safeguards. This makes no sense.

None of Plaintiffs' arguments and assertions establishes,[15] beyond a reasonable doubt, that the Act unconstitutionally delegates power.

D. The Act Complies with the Superintendent Supervision Provision.

"The superintendent of public instruction shall have supervision over all matters pertaining to public schools, and shall perform such specific duties as may be prescribed by law." Const. art. III, § 22. The Act provides for this: "Charter schools are subject to the supervision of the superintendent of public instruction and the [SBOE], including accountability measures, to the same extent as other public schools, except as otherwise provided in this chapter." RCW 28A.710.040(5). Although the Act exempts public charter schools from certain state laws, it nowhere goes on to exempt charter public schools from the superintendent's general supervisory power. The Act requires charter public schools to comply with numerous provisions and programs under the superintendent's supervision, including statewide student assessment system, teacher certification, discrimination prohibition, sexual equality. RCW 28A.710.040(2). The Act charges the superintendent with specific duties, too, including sitting either in-person or through a designee on the Commission, RCW 28A.710.070, and overseeing charter public schools' funding. RCW 28A.710.110(3), .220(2)-(3), .280(2)-(3).

Plaintiffs nevertheless complain that the superintendent "has no supervisory authority" over the Commission or the charter schools authorized under the Act. FAC ¶104. They complain

[15] Plaintiffs seek to bolster their argument with a discussion of First Place Scholars. Mot. 34-35. First Place Scholars was initially a private school serving a very high-risk student population. It converted to charter public school status under I-1240, but did not perform at the high level demanded of charter public schools. The school was given a chance to correct several problems. First Place Scholars ultimately returned to operating as a private school. This scenario demonstrates that charter public schools are closely monitored and, if they underperform, there is a mechanism for public accountability, including providing requirements for issues are to be corrected.

that the superintendent's supervision is diminished because the Commission is an independent state agency and the superintendent is one of eleven members. *Id.* ¶¶100-102. Plaintiffs complain that charter public schools are "managed and operated by a charter school board, which is comprised of members appointed or selected under the terms of a charter application." *Id.* ¶103. None of these allegations has anything to do with Art. III, Sec. 22, let alone whether the Act violates that provision.

The Constitution only requires that the superintendent have general supervision over the public school system. AGO 1998 No. 6. It does not require that the superintendent directly supervise all details of the public school system. It does not require that the superintendent have direct supervision over each and every school, authority to appoint board members for each and every school, or even authority to appoint members for all state agencies involved in administering the state's public school system. Rather, the superintendent has general supervisory powers, and the legislature may set forth the specific duties associated therewith. Const. art. III, Sec. 22 (superintendent may "perform such specific duties as may be prescribed by law").

The Washington Attorney General has explained that "Article III, Section 22 should be read primarily *not* as a conferral of powers on the Superintendent of Public Instruction but as a limit on the powers of the legislature *to define the superintendent's duties*." AGO 1998 No. 6 (emphasis added); *see also* AGO 1975 No. 1 (power to supervise allowed the superintendent to instruct school boards to adopt standards on a particular subject, but the superintendent "cannot himself establish those standards."). Reading Section 22 as a whole, "[t]he 'supervision' language appears in the context of a recognition that, insofar as it respects the 'supervision' role, the legislature is quite free to shape the state's education system as it may choose and to define the Superintendent's role within that system." AGO 1998 No. 6.

Building upon this rationale, the Attorney General subsequently explained that Section 22 "does not . . . limit the Legislature's authority to design the organizational structure under which the public education system is administered." AGO 2009 No. 8. Rather, for new public schools

and education programs, "the Legislature may create an agency or institutional to administer the program under the Superintendent's supervision." *Id.* The Act does this—it creates the administration of the charter public school program through the Commission and charter public school boards while explicitly reserving the duty of overall supervision to the superintendent.

To argue otherwise, Plaintiffs cherry pick language out of context. *State v. Preston,* 84 Wash. 79 (1915), the single case Plaintiffs cite, does not determine whether the legislature had improperly encroached upon the superintendent's general supervisory power. Instead, when presented with the opposite issue—a challenge to powers conferred to the superintendent—the court concluded that "general supervision means something more than the power merely to confer with and advise, or to receive reports, or file papers; in other words, that the power of supervision is not granted to an officer as a mere formality." *Id.* at 86-87. This quote does not establish that the superintendent must be afforded direct supervision over public schools' administration. Rather, when the legislature tasks the superintendent with specific duties, the superintendent has discretion for discharging them. Plaintiffs' motion for summary judgment conflates general superintendent supervision (constitutionally mandated and protected) with specific administrative tasks (within the legislature's discretion).

E. The Act Does Not Violate the Legislative Amendment Provision.

Plaintiffs' final constitutional claim is that the Act "revised or amended" existing statutes and rights in violation of Article II, Section 37.

Plaintiffs first allege that the Act amends "the scope of rights and duties of common schools, and the rights and duties of public schools to provide a basic education." FAC ¶109. For this claim, Plaintiffs rely on a cross-reference to the goals of the Basic Education Act. *Id.* ¶110; RCW 28A.710.040(2)(b). Plaintiffs indicate that the reference is constitutionally impermissible because the Act does not adopt all components of the Basic Education Act. However, Article II, Section 37 does not forbid cross-references to existing statutes; it does not even apply to such cross-references, unless the legislation is amending or revising an existing law. Merely stating that charter public schools are to "[p]rovide a program of basic education, that meets the goals"

set forth in the Basic Education Act does not amend or revise the Basic Education Act.

Plaintiffs seek to bolster this claim in their motion by citing the Act's inclusion of a general exemption ("charter schools are not subject to, and are exempt from, all other state statutes and rules applicable to school districts and school district boards of directors") FAC ¶40, which Plaintiffs complain does not "set[] forth the rights and responsibilities eliminated by the catch-all exemption." Mot. 39 (citing RCW 28A.710.040(3)). Again, providing an exemption does not amend or revise those statutes. The legislation Plaintiffs cite as demonstrating how amendments have been dealt with in the past is inapposite. That legislation directly amended an existing provision by adding a sentence into an existing provision of law. *See* SSHB 1723, Laws of 2013, ch. 323, § 2.

Next, Plaintiffs allege that the Act "revises or amends the scope of the rights and duties under state collective bargaining laws." FAC ¶113. Plaintiffs' specific allegations about how the Act accomplishes such revisions or amendments is hopelessly vague, as Plaintiffs do not even identify the "existing sections of state collective bargaining laws governing the determination of bargaining units" that allegedly are affected by the restriction of charter school bargaining units to each specific charter school. FAC ¶115. In their motion, Plaintiffs cite to two specific provisions, Sections 137 and 138 of the Act, which simply establish that RCW Chapters regarding Public Employees' Collective Bargaining (CPSA § 137, RCW Ch. 41.56) and Educational Employment Relations Act (CPSA § 138, RCW Ch. 41.59) apply to charter public schools. These provisions do not amend any existing provision of either chapter, but rather set forth the manner in which charter public schools are to operate within these chapters.

Plaintiffs argue that because these two provisions specify limitations to bargaining units, and because each school is a separate employer for purposes of collective bargaining, they cannot be understood without reference to RCW 41.56.060 and RCW 41.59.080, which provide general standards for the approval of bargaining units. However, Sections 137 and 138 do not "revise" those general standards and they can be understood without reference to these general guidelines. Further, the language of Sections 137 and 138 is almost identical to existing

provisions within each chapter that apply to public employees working for educational programs for juvenile inmates. *See* RCW 41.56.025, RCW 41.59.080(8).

The Act complies with the constitutional requirements of Article II, Section 37.

EVIDENTIARY OBJECTIONS

Intervenor-Defendants assert the following objections relating to evidence filed in support of Plaintiffs' Motion for Summary Judgment and Plaintiffs' Motion relying on the same.[16]

The Salvi and Pederson declarations are inadmissible. Salvi lacks personal knowledge of matters in her Declaration, which purports to establish facts regarding recent legislative activities. *Id.* ¶¶ 3-15. Salvi has never been a state legislator and has not worked for the legislature since 2000. *Id.* ¶ 2. Salvi's state agency and lobbying work does not provide personal knowledge of the legislature's actions, especially those in 2016. She also lacks any independent basis for personal knowledge. *See Guntheroth v. Rodaway*, 107 Wn.2d 170, 178 (1986) ("awareness" or "familiarity" is insufficient).

The Salvi and Pedersen Declarations attempt to establish legislative history, but Plaintiffs nowhere argue the Act is ambiguous, so legislative intent is irrelevant. *Robertson v. Washington State Parks & Recreation Commission*, 135 Wn.App. 1, 5 (2005), ER 401, 402.

Even if legislative history were relevant, the Salvi and Pedersen Declarations are inadmissible evidence of it. Senator Pederson's knowledge as an individual legislator's opinion does not show the legislature's intent, *Woodson v. State*, 95 Wn.2d 257, 264 (1980), and his declaration purporting to do so is inadmissible, *see City of Yakima v. Int'l Ass'n of Fire Fighters*, 117 Wn.2d 655, 677 (1991). Whether a government employee or lobbyist, Salvi's statements cannot show legislative intent. *W. Telepage, Inc. v. City of Tacoma*, 140 Wn.2d 599, 611 (2000) (lobbyists); *Eugster v. City of Spokane*, 118 Wn. App. 383, 411 n.6 (2003) (government employees).

[16] Intervenor-Defendants preserve for appeal all objections to all or part of the Declarations. *See* LCR 56(e).

Characterization of I-1240 and the Act is unnecessary and cumulative. The bills and underlying legislative reports speak for themselves. *W. Telepage, Inc. v. City of Tacoma*, 95 Wn.App. 140, 145 (1999). The Salvi and Pedersen Declarations' commentary is superfluous.

If the objection to the entirety of the Salvi and Pederson Declarations is overruled, specific statements from each are inadmissible on various grounds. *See* Appendix A. Paragraphs 6-8 of and corresponding exhibits E-G to the Lawrence Declaration are irrelevant.

CONCLUSION

Intervenor-Defendants' motion for summary judgment should be granted; Plaintiffs' motion should be denied.

Word Count Certification

I certify that this memorandum contains 13,970 words, in compliance with Local Civil Rules and prior court orders in the matter.

Dated: December 20, 2016

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APPENDIX A

Declaration of Julie K. Salvi		
#	**Statement**	**Objections**
S1	¶ 3	Salvi fails to provide basis for personal knowledge of the legislature's activities and, accordingly, lacks foundation for this statement. CR 56(e); ER 602; *Guntheroth v. Rodaway*, 107 Wn.2d 170, 178 (1986). Legislative history speaks for itself.
S2	¶¶ 4-5	These statements are speculative and impermissible legal conclusions. CR 56(e); ER 602; *Chester v. Deep Roods Alderwood, LLC*, 193 Wn.App. 147, 158 (2016); *Rice v. Offshore Sys., Inc.*, 167 Wn.App. 77, 87 (2012). Salvi fails to provide basis for personal knowledge of these legislative activities and, accordingly, they lack foundation. CR 56(e); ER 602; *Guntheroth*, 107 Wn.2d at 178.
S3	¶ 6	Salvi fails to provide basis for personal knowledge of the legislature's activities for 2015-17 or the General Fund and, accordingly, lacks foundation for this statement. CR 56(e); ER 602; *Guntheroth*, 107 Wn.2d at 178. The statement is also speculative. CR 56(e); ER 602.
S4	¶ 7	These statements are speculative and impermissible legal conclusions. CR 56(e); ER 602; *Chester*, 193 Wn.App. at 158; *Rice*, 167 Wn.App. at 87. Salvi fails to provide basis for personal knowledge of these 2010 legislative activities and, accordingly, lacks foundation for these statements. CR 56(e); ER 602; *Guntheroth*, 107 Wn.2d at 178. Further, the documents her statements reference speak for themselves.
S5	¶ 8	These statements are speculative and impermissible legal conclusions. CR 56(e); ER 602; *Chester*, 193 Wn.App. at 158; *Rice*, 167 Wn.App. at 87. Salvi fails to provide basis for personal knowledge of these legislative activities and, accordingly, foundation for these statements. CR 56(e); ER 602; *Guntheroth*, 107 Wn.2d at 178.
S6	¶ 9, Sentence 3	Salvi fails to provide basis for personal knowledge. CR 56(e); ER 602; *Guntheroth*, 107 Wn.2d at 178. Further, I-1240 speaks for itself.
S7	¶ 10, Sentence 1	This statement is an impermissible legal conclusion about which Salvi fails to provide basis for personal knowledge. *Chester*, 193 Wn.App. at 158; CR 56(e); ER 602; *Guntheroth*, 107 Wn.2d at 178.

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S8	¶ 11, Sentence 3	Salvi fails to provide basis for personal knowledge. CR 56(e); ER 602; *Guntheroth*, 107 Wn.2d at 178. Further, ESSB 6194 speaks for itself.
S9	¶¶ 12-14	These statements are speculative and impermissible legal conclusions. CR 56(e); ER 602; *Chester*, 193 Wn.App. at 158; *Rice*, 167 Wn.App. at 87. Salvi fails to provide basis for personal knowledge of these legislative activities. CR 56(e); ER 602; *Guntheroth*, 107 Wn.2d at 178. Documents referenced in these statements speak for themselves.
S10	¶ 15	Salvi lacks personal knowledge, and the statement is speculative. *Rice*, 167 Wn.App. at 87; CR 56(e); ER 602; *Guntheroth*, 107 Wn.2d at 178.

APPENDIX A

Declaration of Jamie Pedersen		
#	**Statement**	**Objections**
P1	¶ 6, Sentences 1-2	In his individual capacity, Pedersen lacks foundation to testify to the legislature's goals. Further, these statements are speculative and are legal conclusions. CR 56(e); ER 602; *Chester*, 193 Wn.App. at 158; *Rice*, 167 Wn.App. at 87.
P2	¶ 7, Sentences 1-2	Pedersen's "understanding" of Initiative 1240's purpose is not personal knowledge; his testimony lacks foundation. CR 56(e); ER 602; *Guntheroth*, 107 Wn.2d at 178.
P3	¶¶ 8-10	Pedersen's statements are impermissible legal conclusions and speculation. CR 56(e); ER 602; *Chester*, 193 Wn.App. at 158; *Rice*, 167 Wn.App. at 87.
P4	¶ 11, Sentences 2-3	Pedersen relies on legislative history, rather than personal knowledge. This statement lacks foundation. CR 56(e); ER 602; *Guntheroth*, 107 Wn.2d at 178. Further, the third-party statements are hearsay. ER 802.
P5	¶ 12, Sentence 3	The substance of statements made to Pedersen and other legislators is hearsay. ER 802.
P6	¶ 13	Pedersen's statements are impermissible legal conclusions. CR 56(e); ER 602; *Chester*, 193 Wn.App. at 158.
P7	¶ 14	The substance of discussions Pedersen heard as part of Legislative deliberations constitutes hearsay. ER 802. This statement is also speculative. CR 56(e); ER 602; *Rice*, 167 Wn.App. at 87.
P8	¶ 15, Sentences 1-2	Senator Parlette's requests to committee staff are hearsay. ER 802. The documents referenced in this statement speak for themselves.
P9	¶ 16	Pedersen's statements are speculative and impermissible legal conclusions. CR 56(e); ER 602; *Chester*, 193 Wn.App. at 158; *Rice*, 167 Wn.App. at 87. Further, his "understanding" of the arguments made by the State in this litigation is not personal knowledge. His testimony lacks foundation. CR 56(e); ER 602; *Guntheroth*, 107 Wn.2d at 178.

APPENDIX A

Declaration of Paul Lawrence		
#	**Statement**	**Objections**
L1	¶¶ 6-8	The documents referenced are irrelevant and inadmissible, because they pre-date the Charter Public Schools Act. ER 401, 402.