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SUPERIOR COURT OF THE STATE OF WASHINGTON  
KING COUNTY

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

Plaintiff,

v.

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

Defendants.

No. 16-2-17134-6 SEA

COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF

Superintendent of Public Instruction Randy Dorn alleges as follows:

**I. INTRODUCTION**

In January 2012, the Washington Supreme Court decided *McCleary v. State*, 173Wn.2d 477, holding that “[t]he state has not complied with its article IX, section 1 duty to make ample provision for the education of all children in Washington.” The Court further held that “[a]mple funding for basic education must be accomplished by means of dependable and regular tax sources” and that local levies were not dependable and regular tax sources:

1 Our insistence on “regular and dependable tax sources” in *Seattle*  
2 *School District* focused appropriately on state-provided funding.  
3 Contrary to the State’s view, we rejected special excess levies as  
4 “dependable and regular” not only because they are subject to the  
5 whim of the electorate, but also because they are too variable  
6 insofar as levies depend on the assessed valuation of taxable real  
7 property at the local level. . . . All local-level funding, whether  
8 by levy or otherwise, suffers from this same infirmity. In short,  
9 the State’s reliance on local dollars to support the basic education  
10 program fails to provide the “ample” funding article IX, section 1  
11 requires.

12 Despite the Court’s holding, the State and local school districts continue to rely on local  
13 levies to fund basic education, including supplemental pay for teachers. They are able to do so  
14 because local school districts were not defendants in *McCleary* and are not constrained by its  
15 holding. Local school districts, of which the named defendants are examples, are using their  
16 local levies to increase salaries through the use of supplemental contracts for time,  
17 responsibility, or incentives (“TRI”) which can add as much as 46 percent to the salary of a  
18 classroom teacher. These supplementary salaries, while likely consistent with the quality and  
19 quantity of work performed and the local labor market, are illegal under Washington law. The  
20 action of local districts in raising levies to fund these supplemental contracts enables the  
21 Legislature to evade its duty to amply fund education, and these concerted state and local  
22 actions violate Article IX of the state constitution.

23 **II. PARTIES**

24 2.1 Plaintiff Randy Dorn is the elected Superintendent of Public Instruction  
25 having “supervision over all matters pertaining to public schools.”  
26 Wash. Const. Art. II, Sec. 22; RCW 28A.300.040(1). Superintendent  
27 Dorn has a duty to ensure that schools are funded and operated in  
compliance with the law.

2.2 Defendant State of Washington is the entity charged by Article IX of the  
State Constitution with the “paramount duty . . . to make ample provision

1 for the education of all children residing within its borders, without  
2 distinction or preference on account of race, color, caste, or sex. The  
3 Washington Legislature has responsibility for appropriating sufficient  
4 funds to carry out this duty.

5 2.3 Defendant Seattle School District #1 is a public school district in King  
6 County, Washington, serving over 52,000 students.

7 2.4 Defendant Everett School District #2 is a public school district in  
8 Snohomish County, Washington, serving over 19,000 students.

9 2.5 Defendant Bellevue School District #405 is a public school district in  
10 King County, Washington serving over 19,000 students.

11 2.6 Defendant Spokane School District #81 is a public school district in  
12 Spokane County, Washington, serving over 30,000 students.

13 2.7 Defendant Tacoma School District #10 is a public school district in  
14 Pierce County Washington, serving over 28,000 students.

15 2.8 Defendant Evergreen School District #114 is a public school district in  
16 Clark County, Washington, serving over 26,000 students.

17 2.9 Defendant Puyallup School District #3 is a public school district in  
18 Pierce County, Washington, serving over 22,000 students.

19 **III. JURISDICTION AND VENUE**

20 3.1 This court has jurisdiction over this matter under chapter 7.24 RCW.

21 3.2 This court also has jurisdiction under RCW 2.08.010 and RCW 7.40.010.

22 3.3 Venue is properly placed in King County, Washington, pursuant to RCW  
23 4.92.010.

24 **IV. RELEVANT FACTS**

25 4.1 Everett School District

26 a. The Everett School District has an excess levy of 26.51 percent.  
27

- 1 b. The collective bargaining agreement (“CBA”) between the Everett  
2 School District and the Everett Education Association provides a  
3 supplemental contract to every teacher that ostensibly is for extra  
4 time and responsibility. CBA sec. 8.01.C.2.
- 5 c. The “extra” responsibilities include “communicating with students or  
6 parents, supporting school/student activities, providing individual  
7 help to students, evaluating student work” and other activities that  
8 are generally expected of teachers in exchange for the state-paid base  
9 salary. CBA sec. 8.01.C.3.
- 10 d. During the current school year, these supplement contracts add  
11 \$12,643 or 38 percent to the \$33,483 salary of a beginning teacher  
12 for a total of \$46,126. These contracts add \$30,730 or nearly 47  
13 percent to the salary of a teacher at the \$65,778 top of the salary  
14 schedule, for a total of \$96,508. CBA Appendix 3C and D.
- 15 e. The total compensation provided under these contracts exceeds the  
16 State’s allocation for basic education salaries. The contracts are paid  
17 in large part from the local excess levy.

18 4.2 Seattle School District

- 19 a. The Seattle School District’s excess levy is 36.97 percent.
- 20 b. The collective bargaining agreement between the Seattle School  
21 District and Seattle Education Association provides that every  
22 teacher with a regular contract is eligible for a supplemental contract  
23 for time, responsibility and incentives. CBA sec. IV.4.c.
- 24 c. In exchange for the TRI contract, teachers are required to  
25 communicate with students or parents, support school/student  
26 activities, provide individual help to students, evaluate student work  
27

1 and perform other activities that are generally expected of teachers in  
2 exchange for the state-paid base salary. CBA sec. IV.5.

- 3 d. During the last school year, these TRI contracts added \$11,643 or 32  
4 percent to the \$35,305 salary of a beginning teacher for a total of  
5 \$46,948. These contracts added \$22,889 or 33 percent to the salary  
6 of a teacher at the \$68,410 top of the salary schedule, for a total of  
7 \$91,299. CBA Appendix A.
- 8 e. The total compensation provided under these contracts exceeds the  
9 State's allocation for basic education salaries. The contracts are paid  
10 in large part from the local excess levy.

11 4.3 Bellevue School District

- 12 a. The Bellevue School District's excess levy is 34.66 percent.
- 13 b. The collective bargaining agreement between the Bellevue School  
14 district and the Bellevue Education Association provides two  
15 supplemental contracts for each teacher, one for "time and  
16 responsibility" and the other for an "incentive." CBA, Art. 22,  
17 secs. 4, 8.
- 18 c. In exchange for these contracts, teachers are required to meet with  
19 parents formally and informally, plan curriculum, participate in  
20 professional development activities, and perform other activities that  
21 are generally expected of teachers in exchange for the state-paid base  
22 salary. CBA, Appendix 1.5.
- 23 d. During the last school year, these supplemental contracts added  
24 \$10,355, or 29 percent, to the \$35,721 salary for a beginning teacher  
25 for a total of \$46,077. These contracts added \$21,111, or 31 percent,  
26 to the \$67,152 base salary for a teacher at the top of the salary  
27

1 schedule, for a total of \$88,263. CBA, Appendix 3.1 as updated at  
2 www.bsd405.org/wp-content/pdf/cba/teacher-salary-schedule.pdf.

- 3 e. The total compensation provided under these contracts exceeds the  
4 State's allocation for basic education salaries. The contracts are paid  
5 in large part from the local excess levy.

6 4.4 Spokane School District

- 7 a. The Spokane School District's excess levy is 26.39 percent.  
8 b. The collective bargaining agreement between the Spokane School  
9 District and the Spokane Education Association provides  
10 supplemental contracts to each teacher as a "Professional  
11 Responsibility Stipend." CBA, Art. VI, sec. 11.  
12 c. In exchange for payment of the Professional Responsibility Stipend,  
13 teachers are required to grade assignments, plan classes, collaborate  
14 with colleagues, and perform other activities that are generally  
15 expected of teachers in exchange for the state-paid base salary.  
16 CBA, Art. VI, sec. 11(C).  
17 d. During the current school year, these supplemental contracts added  
18 12.49 percent to the salary of teachers with 23 years of experience or  
19 less and 14.69 percent to the salary of teachers with 24 years of  
20 experience or more. CBA, Art. VI, sec. 11(B).  
21 e. The total compensation provided under these contracts exceeds the  
22 State's allocation for basic education salaries. The contracts are paid  
23 in large part from the local excess levy.

24 4.5 Tacoma School District

- 25 a. The Tacoma School District's excess levy is 31.10 percent.  
26 b. The collective bargaining agreement between the Tacoma School  
27 District and the Tacoma Education Association provides

1 supplemental contracts to each teacher as a “Professional  
2 Responsibility Stipend.” CBA, Art. III, Sec. 21(B).

- 3 c. In exchange for payment of the Professional Responsibility Stipend,  
4 teachers are required to evaluate student work, plan classes and  
5 curriculum, and perform other activities that are generally expected  
6 of teachers in exchange for the state-paid base salary. CBA, Art. III,  
7 Sec. 21(C).
- 8 d. During the 2014-15 school year these contracts added \$6,057 or 17.8  
9 percent to the \$34,048 base salary of a beginning teacher and  
10 \$16,073 or 25 percent to the \$64,075 salary for a teacher at the top of  
11 the salary schedule, for a total of \$80,148. CBA, Appendix III.
- 12 e. The total compensation provided under these contracts exceeds the  
13 State’s allocation for basic education salaries. The contracts are paid  
14 in large part from the local excess levy.

15 4.6 Evergreen School District

- 16 a. Evergreen School District’s excess levy is 23.89 percent.
- 17 b. The collective bargaining agreement between the Evergreen School  
18 District and Evergreen Education Association provides that every  
19 teacher with a regular contract is eligible for a supplemental contract  
20 for time, responsibility and incentives. CBA Art. VI, sec. C.
- 21 c. In exchange for the TRI contract, teachers are required to conference  
22 with parents, plan curriculum, grade students, and perform other  
23 activities that are generally expected of teachers in exchange for the  
24 state-paid base salary. CBA, Art. VI, Sec. C.
- 25 d. During the 2015-16 school year, these contracts added 15.25 percent  
26 to the state-paid salary for each teacher. CBA, Art. VI, Sec. C.
- 27

1 e. The total compensation provided under these contracts exceeds the  
2 State's allocation for basic education salaries. The contracts are paid  
3 in large part from the local excess levy.

4 4.7 Puyallup School District

- 5 a. Puyallup School District's excess levy is 28.67 percent.
- 6 b. The collective bargaining agreement between Puyallup School  
7 District and Puyallup Education Association provides that every  
8 teacher with a regular contract is eligible for a supplemental  
9 "responsibility contract." CBA, Sec. 18.2.
- 10 c. In exchange for this contract, teachers are required to communicate  
11 with students and parents, evaluate student work, provide individual  
12 help to students, and perform other activities that are generally  
13 expected of teachers in exchange for the state-paid base salary.  
14 CBA, Sec. 18.2.C.
- 15 d. During the 2015-16 school year, these contracts added \$5,382, or  
16 15.8 percent, to the \$34,073 base salary of a beginning teacher for a  
17 total of \$39,455. These contracts added \$14,049, or 21.8 percent, to  
18 the \$64,222 base salary of a teacher at the top of the salary schedule  
19 for a total of \$78,271. CBA, Appendix A.
- 20 e. The total compensation provided under these contracts exceeds the  
21 State's allocation for basic education salaries. The contracts are paid  
22 in large part from the local excess levy.

23 4.8 State of Washington

- 24 a. The average excess levy for all school districts in Washington is  
25 21.75 percent.
- 26  
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- 1 b. The statewide average state-funded teacher salary in 2014-15 was  
2 \$52,944, but the average actual salary was \$66,605, with local levies  
3 adding \$13,661 or 26 percent.
- 4 c. The statewide average state-funded salary for school administrators  
5 in 2014-15 was \$59,954, but the average actual salary was \$115,090,  
6 with local levies adding \$55,136 or 92 percent.
- 7 d. The statewide average state-funded salary for classified staff in 2014-  
8 15 was \$32,334, but the average actual salary was \$46,425, with  
9 local levies adding \$14,091 or 44 percent.

10 **V. CLAIM—DECLARATORY JUDGMENT AGAINST SCHOOL**  
11 **DISTRICT DEFENDANTS**

12 5.1 RCW 28A.400.200 authorizes supplemental contracts for teachers for  
13 extra time, responsibility, and incentives, but it places limits on their use.  
14 RCW 28.A.400.200(3)(a) provides, in relevant part: “The actual average  
15 salary paid to certificated instructional staff shall not exceed the district's  
16 average certificated instructional staff salary used for the state basic  
17 education allocations.” The next subsection provides: “No district may  
18 enter into a supplemental contract under this subsection for the provision  
19 of services which are a part of the basic education program required by  
20 Article IX, section 3 of the state Constitution.

21 5.2 Pursuant to RCW 28A.400.200, defendant schools districts have entered  
22 into supplemental contracts that provide every teacher in the district with  
23 compensation ranging from 12 to 46 percent of their base salaries. This  
24 supplement is the equivalent of adding 22 to 83 days to the 180 day  
25 contract. Funds for the base salaries come from the state as part of the  
26 district’s basic education allocation. Funds for the salary supplements  
27 come largely from local excess levies.

1 5.3 In exchange for the supplemental salaries, the collective bargaining  
2 agreements require that teachers talk to students and families, grade  
3 papers, plan lessons, and engage in other activities that were already  
4 required of teachers under the base contract and are part of any basic  
5 education program.

6 5.4 School district superintendents widely agree that the salary supplements  
7 are necessary to attract and retain qualified teachers. Without the  
8 supplements, the base salaries are considerably below market in most, if  
9 not all, areas of the state.

10 5.5 School district superintendents widely agree that the state should be  
11 responsible for paying teachers' salaries as part of basic education.

12 5.6 Plaintiff seeks a declaratory judgment that the supplemental TRI  
13 contracts entered into by defendant school districts pay for basic  
14 education services and thus violate RCW 28A.400.200.

15 **VI. CLAIM—DECLARATORY JUDGMENT AGAINST ALL DEFENDANTS**

16 6.1 Article IX, sec. 1 of the Washington Constitution requires that the state  
17 provide ample funding for public education.

18 6.2 The Supreme Court has held that “ample funding” requires that the State  
19 pay 100 percent of the cost of basic education because local excess levies  
20 are variable—not “regular and dependable.”

21 6.3 The State Legislature enacted SHB 455 in 1987 (codified at RCW  
22 28A.400.200), authorizing districts to supplement teachers' salaries with  
23 TRI contracts for truly extra work while prohibiting them from using  
24 these contracts to pay for basic education services.

25 6.4 Over time, the Legislature has allowed these contracts to become a  
26 substantial part of teacher pay, allowing the Legislature to avoid paying  
27 for increases in the cost of living or market rate adjustments. In so

1 doing, the State has fallen farther and farther behind in amply funding  
2 basic education.

3 6.5 School districts have been complicit in this abdication of responsibility  
4 in agreeing to larger and larger TRI contract packages in exchange for  
5 fewer and fewer services that are beyond the scope of basic education.

6 6.6 Plaintiff asks for a declaratory judgment that RCW 28A.400.200 is  
7 unconstitutional as it is currently being applied by defendant school  
8 districts to relieve the State of its duties under Art. IX, sec. 1 of the State  
9 Constitution.

10 **VII. CLAIM—DECLARATORY JUDGMENT AGAINST ALL DEFENDANTS**

11 7.1 Article IX, sec. 1 of the Washington Constitution requires that the state  
12 provide ample funding for public education.

13 7.2 The Supreme Court has held that “ample funding” requires that the state  
14 pay 100 percent of the cost of basic education because local excess levies  
15 are variable—not “regular and dependable.”

16 7.3 In 1987, the Legislature enacted SHB 455, establishing an intention to  
17 limit school district excess levies at 20 percent, but grandfathering  
18 districts above that percentage and requiring a phase-down.

19 7.4 The Legislature subsequently failed to provide the funds necessary to  
20 phase down the local levies, and in fact increased both the allowable  
21 percentage and the base upon which the percentage is computed in order  
22 to permit *more* local levy dollars to fund schools. Today RCW  
23 84.52.0531 allows districts levies of 28 percent, and some districts are  
24 still grandfathered above that level. The Legislature’s action in  
25 increasing the permitted level of local levies has allowed it to avoid its  
26 obligation to amply fund education.  
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1           7.5    School districts have been complicit in this abdication of responsibility  
2                    by lobbying the Legislature to maintain the high level of local funding,  
3                    sending larger local levies to the ballot, and utilizing levy proceeds for  
4                    TRI contracts and otherwise subsidizing basic education.

5           7.6    Plaintiff asks for a declaratory judgment that levies in excess of 20  
6                    percent as currently levied by the defendant school districts are  
7                    unconstitutional under Art. IX, Sec. 1 of the State Constitution because  
8                    their primary purpose is to avoid that constitutional mandate.

9           **VIII. RELIEF REQUESTED**

10           Plaintiff requests the following relief from this Court:

- 11           1. The declaratory judgments requested in paragraphs 5.6, 6.8, and 7.6 of this  
12                    Complaint.
- 13           2. An injunction prohibiting the use of local levies to fund supplemental TRI  
14                    contracts under RCW 28A.400.200.
- 15           3. Such other relief as this Court deems just and equitable.

16           DATED this 19th day of July, 2016.

17                                   Davis Wright Tremaine LLP  
18                                   Attorneys for Superintendent of Public Instruction

19                                   By /s/ Michele Radosevich  
20                                   Michele Radosevich, WSBA #24282  
21                                   Harry Korrell, WSBA #23173