HONORABLE JEAN A. RIETSCHEL

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

LEAGUE OF WOMEN VOTERS OF WASHINGTON, a Washington non-profit corporation; EL CENTRO DE LA RAZA, a Washington non-profit corporation; WASHINGTON ASSOCIATION OF SCHOOL ADMINISTRATORS, a Washington non-profit corporation; WASHINGTON EDUCATION ASSOCIATION, a Washington non-profit corporation; 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.	No. 13-2-24977-4 SEA ORDER GRANTING IN PART PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND GRANTING IN PART THE STATE AND INTERVENORS'CROSS MOTION FOR SUMMARY JUDGMENT.

JUDGE JEAN RIETSCHEL
516 3rd AVENUE
SEATTLE, WASHINGTON 98104
TELEPHONE: (206) 477-1543
RIETSCHEL.COURT@KINGCOUNTY.GOV

ORDER

THIS MATTER came before the Court on all parties' cross motions for summary judgment in the above-captioned matter. The Court has reviewed the following materials submitted by the parties:

1. Plaintiffs' Complaint for Declaratory Judgment and Injunctive Relief and all exhibits thereto;

2. The State of Washington's ("State's") Answer to Complaint for Declaratory Judgment and Injunctive Relief;

3. Intervenors'[1] Answer in Intervention to Complaint for Declaratory Judgment and Injunctive Relief;

4. Plaintiffs' Motion for Summary Judgment and the accompanying Declaration of Paul J. Lawrence and all exhibits thereto;

5. The State's Cross Motion for Summary Judgment and Response to Plaintiffs' Motion for Summary Judgment and the accompanying Declaration of Aileen Miller and all exhibits thereto;

6. Intervenors' Opposition to Plaintiffs' Motion for Summary Judgment and Cross Motion for Summary Judgment ("Intervenors' Response") and the accompanying Declaration of Lisa Summers and all exhibits thereto;

7. Plaintiffs' Reply in Support of Motion for Summary Judgment and Opposition to the State's and Intervenors' Cross Motions for Summary Judgment and the accompanying Declarations of Wayne Au, Ph.D. and Estela Ortega and all exhibits thereto;

[1] The Intervenors consist of the Washington State Charter Schools Association, the League of Education Voters, the Ducere Group, Cesar Chavez Charter School, Initiative 1240 Sponsor Tania de Sa Campos, and Matt Elisara.

JUDGE JEAN RIETSCHEL
516 3RD AVENUE
SEATTLE, WASHINGTON 98104
TELEPHONE: (206) 477-1543
RIETSCHEL.COURT@KINGCOUNTY.GOV

8. The State's Reply in Support of Cross Motion for Summary Judgment and the accompanying Declarations of Aileen Miller and Paula Moore and exhibits thereto;

9. Intervenors' Reply in Support of Cross Motion for Summary Judgment and accompanying declarations and exhibits thereto;

10. Plaintiffs' Motion to Strike Portions of Intervenors' Opposition to Plaintiffs' Motion for Summary Judgment and Cross Motion for Summary Judgment;

11. Intervenors' Opposition to Plaintiffs' Motion to Strike Portions of Intervenors' Response and accompanying Declaration of Joseph P. Hoag and exhibits thereto;

12. Plaintiffs' Reply in Support of Motion to Strike Portions of Intervenors' Opposition to Plaintiffs' Motion for Summary Judgment and Cross Motion for Summary Judgment;

13. *Amicus Curiae* Brief of Stand for Children-Washington, Washington Roundtable, Technology Alliance, and Teachers United;

14. Plaintiffs' Response to *Amicus Curiae* Brief of Stand for Children-Washington, Washington Roundtable, Technology Alliance, and Teachers United and Motion to Strike Portions Thereof and accompanying Supplemental Declaration of Wayne Au, Ph.D. and exhibits thereto;

15. The other pleadings and papers on file in this matter;

16. The arguments of counsel; and

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED that:

JUDGE JEAN RIETSCHEL
516 3RD AVENUE
SEATTLE, WASHINGTON 98104
TELEPHONE: (206) 477-1543
RIETSCHEL.COURT@KINGCOUNTY.GOV

1. Plaintiffs' Motion for Summary Judgment is GRANTED in part. The Charter School Act[2] violates multiple sections of the Constitution, specifically:

a. the restriction on the State's use of common school funds under Article IX, sections 2 and 3;

2. The State's Cross Motion for Summary Judgment is GRANTED in part;

3. Intervenors' Cross Motion for Summary Judgment is GRANTED in part.

4. It is further ORDERED:

MEMORANDUM DECISION

Both parties have moved for summary judgment. Summary judgment is appropriate if a party demonstrates that there is no material fact at issue and that they are entitled to judgment as a matter of law.

Plaintiffs' challenge the Charter School Initiative, now codified at RCW 28A.710. A statute is presumed to be constitutional. The party challenging a statute has the heavy burden of demonstrating that it is unconstitutional beyond a reasonable doubt. The Plaintiffs' challenge is a facial challenge. Therefore, they must show that there is no set of circumstances in which the statute can be constitutionally applied.

The Plaintiffs' bring a number of serious challenges to the statute. These challenges concern the Washington State constitutional provisions regarding education, Article IX § 1 and 2:

> It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction, or preference on account of race, color, caste or sex.

[2] Chapter 28A.710 RCW, together with the sections of Titles 28A and 41 RCW added or amended by I-1240 (collectively, "Charter School Act").

JUDGE JEAN RIETSCHEL
516 3RD AVENUE
SEATTLE, WASHINGTON 98104
TELEPHONE: (206) 477-1543
RIETSCHEL.COURT@KINGCOUNTY.GOV

> The legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, and technical schools as may hereafter be established. But the entire revenue derived from the common school fund and the state tax for the common schools shall be exclusively applied to the support of the common schools.

The Charter School Act, RCW 28A.710 defines charter schools as common schools. The statute allows for up to 40 schools to be established within five years. The schools are free and open to all students. The schools will receive state and local levy funding. The charter schools will be operated by non-profit organizations. They are subject to some state standards, RCW 28A.150.210, goals and essential learning requirements (EALRs) and student assessments, while exempt from others, RCW 28A.150.220, instructional components of basic education and compulsory coursework, and discipline standards. They must hire certified teachers. They are supervised by a state Charter Commission. The State Superintendent retains final supervisory authority unless otherwise provided by the act.

ARE CHARTER SCHOOLS COMMON SCHOOLS? CAN CHARTER SCHOOLS BE PART OF A GENERAL AND UNIFORM SYSTEM OF EDUCATION?

The first questions the court must consider are whether the legislature can define a charter school as a common school and whether a charter school can be part of a uniform system of education. In interpreting our state's constitutional provisions, the court looks at the previous decisions of the Washington Supreme Court. The Plaintiffs' rely on the case of School Dist. No. 20 v. Bryan, 51 Wash 498, 502, 99 P. 28 (1909). The Court held in this case that a normal

JUDGE JEAN RIETSCHEL
516 3RD AVENUE
SEATTLE, WASHINGTON 98104
TELEPHONE: (206) 477-1543
RIETSCHEL.COURT@KINGCOUNTY.GOV

school, i.e. a school established to educate teachers was not a common school. The court reasoned,

> The system must be uniform in that every child shall have the same advantages and be subject to the same discipline as every other child. .... To summarize, a common school, within the meaning of the Constitution, is one that is common to all children of proper age and capacity, free, and subject to, and under the control of the qualified voters of the school district. The complete control of the schools is the most important feature, for it carries with it the right of the voters, through their chosen agents to select qualified teachers, with power to discharge if they are incompetent.

Later cases have held that every child has the fundamental right to be provided with an amply funded education. Seattle School District v. State 90 Wn 2d 476, 585 P2d 71 (1978). It is not required, however, that the education offered be identical. Tunstall v. Bergeson 141 Wn 2d 201 5 P 3d 691 (2000). A general and uniform system has been defined as one in which a child has access to a certain minimum standardized education with enough uniformity which enables a student to transfer from one district to another without loss of credit. Fed. Way Sch. Dist. No. 210 v. State 167 Wn 2d 514, 219 P2d 941 (2009).

The most recent education case, McCleary v. State, 173 wn 2d 477, 299 P 3d 227 (2012) while it primarily dealt with school funding, also contains the principles that are relevant to this case namely, that the provision of education remains the paramount duty of the state, that the substantive content of the education is currently based on educational concepts, learning goals and the EALR's, and that the program of basic education is not etched in constitutional stone.

JUDGE JEAN RIETSCHEL
516 3RD AVENUE
SEATTLE, WASHINGTON 98104
TELEPHONE: (206) 477-1543
RIETSCHEL.COURT@KINGCOUNTY.GOV

The Court holds that the Bryan case is controlling. Under Bryan, the legislature cannot "by any designation or definition" establish a common school that does not meet the minimum constitutional criteria. Bryan has not been overruled. It has been cited in many of the more recent education cases. A charter school cannot be defined as a common school because it is not under the control of the voters of the school district. The statute places control under a private non-profit organization, a local charter board and/or the Charter Commission.

The legislature may provide for a minimally standardized education. The charter schools do not have to comply with requirements for discipline or the instructional components. Considering the requirements the charter schools must comply with, namely educational goals, student assessments, and EALR's, the court holds that the charter school act meets the definition of a general and uniform school system. The Plaintiffs' have not made a sufficient showing for facial invalidity on this ground.

WAS THERE AN UNLAWFUL DELEGATION OF THE LEGISLATURE'S DUTY?

Plaintiff also challenges the act as an unlawful delegation of the legislature's duty to define basic education. Plaintiffs' cite Seattle Sch. Dist. and McCleary for the proposition that it is the legislature's duty to define the components of a basic education. Plaintiffs argue that this paramount affirmative duty cannot be delegated to a private organization.

Plaintiffs further argue that if the Legislature may delegate, the act must provide standards and procedural safeguards. The state concurs in this analysis and argues that sufficient standards are set forth for a basic education. The state argues that the procedural safeguards are met in the statues provisions for a charter contract, a charter board, and a requirement of a petition by a majority of parents or teachers in support of the charter school for conversion, the

JUDGE JEAN RIETSCHEL
516 3RD AVENUE
SEATTLE, WASHINGTON 98104
TELEPHONE: (206) 477-1543
RIETSCHEL.COURT@KINGCOUNTY.GOV

option for enrollment in another school for those who don't wish to attend. There are standards and procedures for renewal and revocation of contracts for charter schools.

The Court has not found any authority for the proposition that the legislature may not delegate their paramount duty regarding education. There may be a higher burden when analyzing delegation of a paramount duty. That higher burden could be a requirement for stricter standards or a higher standard of proof. But examining the delegation under either of these burdens, there are sufficient standards and procedural safeguards provided in the act to survive a facial challenge. The statute sets out with particularity standards and a process to apply, to renew and to revoke a charter school, as well as the educational standards previously discussed.

DOES THE ACT REMOVE THE SUPERINTENDENT'S SUPERVISORY AUTHORITY?

The Plaintiffs' also challenge the act as a violation of Article III § 22,

> 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.

There is a dearth of authority interpreting this provision of our State Constitution, however, a few general principles can be applied. The legislature can prescribe the specific duties of the Superintendent but cannot make the Superintendent subordinate to another in matters of education. Supervision means generally the ability to oversee and direct.

The statute provides that charter schools are subject to the supervision of the Superintendent except as otherwise provided. The statute sets up an independent Commission which is responsible for the management, supervision and enforcement of the charter school contracts. The Commission is not supervised by the Superintendent. The Superintendent retains

JUDGE JEAN RIETSCHEL
516 3RD AVENUE
SEATTLE, WASHINGTON 98104
TELEPHONE: (206) 477-1543
RIETSCHEL.COURT@KINGCOUNTY.GOV

the duties and powers enumerated under RCW 28A.300.040, except possibly as to physical education requirements. The Superintendent retains the duties as to teacher certification, the school funding system and review of student assessments.

Plaintiffs' argue that without the power to correct or directly control the charter school the supervision provided is an empty promise, undermined by the independence of the Commission. The argument may have validity to the statute as applied but fails as a facial challenge.

ARE THERE CONSTITUTIONAL VIOLATIONS CONCERNING THE FUNDING PROVISIONS?

Plaintiffs' next challenge the act regarding funding issues. First as to state matching funds for construction, these funds are restricted to common schools. Given that the court has held that charter schools are not common schools, the court grants the motion on this ground.

Plaintiffs' argue that charter schools will impede the state's ability to satisfy it's duty to make ample provision for basic education. Plaintiffs' argue that the state has not adequately funded education and that charter schools will further shift needed funds from public schools. This argument is not one that can be considered as part of a facial challenge.

The final funding issue concerns the provisions regarding school levies. RCW 28A.710.220 provides that charter schools are eligible for local levy moneys that are approved by the voters before the school's start date and that school districts must allocate levy moneys to the school. Generally, a levy cannot be used for a purpose for which it was not approved. The statute says, however, that the schools are merely eligible. The court holds that Plaintiffs' claim under this section is not justiciable. The levy provision has not been implemented. There has been no actual injury.

JUDGE JEAN RIETSCHEL
516 3RD AVENUE
SEATTLE, WASHINGTON 98104
TELEPHONE: (206) 477-1543
RIETSCHEL.COURT@KINGCOUNTY.GOV

DOES THE ACT AMEND THE COLLECTIVE BARGAINING ACT?

The last issue raised is that the act concealed changes to the collective bargaining rights of teachers by providing that the bargaining units at charter schools are limited to employees working at those schools and must be separate from other bargaining units in school districts. While certainly a significant change to bargaining rights, the scope of the act is sufficiently complete that the rights can be determined without referring to any other statute. Nor have Plaintiffs' demonstrated that any other statute is rendered erroneous by the adoption of the Initiative.

Finally, the court finds that the provisions it has held unconstitutional, namely the common school designation and the common school funds are severable.

IT IS SO ORDERED this 12 day of Dec, 2013.

Honorable Jean A. Rietschel

JUDGE JEAN RIETSCHEL
516 3RD AVENUE
SEATTLE, WASHINGTON 98104
TELEPHONE: (206) 477-1543
RIETSCHEL.COURT@KINGCOUNTY.GOV