

No. 84362-7

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SUPREME COURT OF THE STATE OF WASHINGTON

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MATTHEW and STEPHANIE MCLEARY, et al.,

Respondents,

v.

STATE OF WASHINGTON,

Appellant.

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**MOTION OF COLUMBIA LEGAL SERVICES, THE CHILDREN'S  
ALLIANCE, AND THE WASHINGTON LOW INCOME HOUSING  
ALLIANCE FOR LEAVE TO FILE *AMICUS CURIAE BRIEF***

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*COLUMBIA LEGAL SERVICES*

*THE CHILDREN'S ALLIANCE AND  
THE WASHINGTON LOW INCOME  
HOUSING ALLIANCE*

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## **I. RELIEF REQUESTED**

Columbia Legal Services (CLS), the Children's Alliance (CA), and the Washington Low Income Housing Alliance (WLIHA), through the undersigned attorneys, request permission to file an *amicus curiae* brief under RAP 10.6.

## **II. IDENTITIES AND INTERESTS OF AMICI CURIAE**

Columbia Legal Services (CLS) advocates for people facing injustice and poverty. CLS seeks to achieve social and economic justice for all using policy reform, litigation, and innovative partnerships to reveal and end actions that harm the communities we serve. CLS has extensive expertise advocating for the rights of foster children, for homeless families and children including students who are homeless, and for funding and other issues regarding Temporary Assistance to Needy Families (TANF) and other programs that provide supports to families with children. CLS has also brought cases on these issues to this Court, such as *Washington State Coalition for the Homeless v. DSHS*, 133 Wn. 2d 894, 949 P.2d 1291 (1997) (Also known as the "Homeless Children's Lawsuit", DSHS ordered to develop plan for providing services to homeless children) and *Braam v. State of Washington*, 150 Wn. 2d 689; 81 P.3d 851 (2003) (establishing constitutional rights of foster children, leading to comprehensive settlement addressing services to foster children, including school related services). CLS has also worked

extensively on housing issues, including issues regarding families with children. In sum, CLS has deep institutional knowledge about the close connections between social service programs, housing, and educational opportunity.

The Children's Alliance (CA) mission is to improve the well-being of children by effecting positive changes in public policies, priorities, and programs. For over 30 years, CA has advocated for the children of Washington State, with a particular focus on children in low-income families and children of color. CA is a membership-based organization with 8,000 individual members and 68 organizational members. CA has expertise in several arenas of child and family policy, including health, education, child welfare, and food policy. CA is recognized as a convener of public and private agencies involved with children and families issues. CA has expertise in child and family data and serves as the lead grantee for the national KIDS COUNT project. CA has contributed to many aspects of state policy regarding education, including the re-definition of, and funding of, basic education enacted by ESHB 2261 and SHB 2776. CA's long history of advocacy for kids includes amicus roles in *Braam* and *Washington State Coalition for the Homeless*.

The Washington Low Income Housing Alliance's mission is to ensure that everyone in Washington has the opportunity to live in a safe,

healthy, affordable home. Since 1988, the Housing Alliance has worked to improve public policy and public investments in affordable homes and services to achieve that mission. In 2011, the Housing Alliance merged with the Washington State Coalition for the Homeless, which filed the Homeless Children's lawsuit in 1991. The Housing Alliance has 140 organizational members, including nonprofit housing providers, social service providers, and homeless services providers. The Housing Alliance has a network of over 8,000 individual members.

### **III. AMICI'S FAMILIARITY WITH THE ISSUES**

The amici have deep knowledge about the issues affecting students who are at-risk, homeless, or in foster care. The amici have extensive practical experience with affordable housing issues for families, the importance of the social safety net for low-income families, issues affecting homeless and foster students, and educational equity issues among students of color. Through their brief, amici lend important insight into the disastrous impact that cutting or freezing funding to social service programs will have on the educational opportunity of low-income students—educational opportunity that is guaranteed by Art. IX, § 1 of the State Constitution.

### **IV. ISSUES ADDRESSED BY AMICI**

This *amicus curiae* brief will augment the parties' briefing by addressing the Court's inquiry in its June 12 Order to Show Cause that

directed the State to address whether certain forms of relief should be granted. These options included “prohibiting [the legislature’s] expenditures on certain other matters until the Court’s constitutional ruling is complied with.” Order to Show Cause at 4. In its opening brief, the State objected to this approach, but did not provide significant explanation as to the actual effect on education that such an approach would have. Amici contend this option will severely limit low-income students’ constitutional right to “the opportunity to obtain the knowledge and skills described in *Seattle School District*, ESHB 1209, and the EALRs.” *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012). In their brief, amici explain how low-income students face barriers to an adequate educational opportunity, not only because of substandard academics, but because of factors that exist outside of the classroom. These factors also add to the educational opportunity gap that exists between white students and students of color. Amici then explain how, even with the existing level of funding for social programs, low-income students often cannot obtain adequate educational opportunity. Thus, Amici argue, cuts to, or freezes on, nonacademic supports linked to academic achievement for low-income students will continue to deny educational opportunity by exacerbating the barriers to education faced by low-income students and students of color.

## V. NEED FOR ADDITIONAL ARGUMENT

Amici believe that their experience, perspective, and additional arguments will assist the Court in determining whether it should grant certain forms of relief or accept certain plans to fund education offered by the State. As noted above, the State, in its opening brief, does not address the link between nonacademic supports to the State's 482,000 low-income students and educational opportunity.<sup>1</sup> Amici are organizations with national and state experience about the connections between housing, social service programs and education, brief addresses issues that the parties could not brief in full. Amici's analysis, based on data and supported by their experience, will provide greater context for the argument that prohibiting funding for other programs that affect education will diminish, not enhance, the educational opportunity our Constitution guarantees for the most vulnerable students.

## VI. CONCLUSION

For these reasons, Amici respectfully request that the Court grant this motion to file an *amicus* brief and to accept the accompanying brief for consideration.

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<sup>1</sup> 482,000 students applied for free and reduced lunch in 2012-13. *Washington State Report Card*, WA. ST. SUPERINTENDENT OF PUBLIC INSTRUCTION (available at: <http://reportcard.ospi.k12.wa.us/summary.aspx?year=2012-13> (Last visited Aug. 1, 2014)).

Respectfully submitted this 4th day of August, 2014.

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**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury under the laws of the State of Washington that on this date I caused a true and correct copy of this **Motion for Leave To File *Amicus Curiae Brief*** to be served on the following parties, in the manner indicated:

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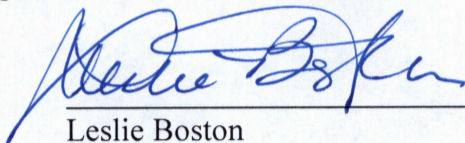
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\_\_\_\_\_  
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No. 84362-7

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SUPREME COURT OF THE STATE OF WASHINGTON

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McCLEARY v. STATE

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***AMICI CURIAE* BRIEF OF COLUMBIA LEGAL SERVICES,  
THE CHILDREN'S ALLIANCE,  
AND THE WASHINGTON LOW INCOME HOUSING ALLIANCE**

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RCW 28A.165.005.....	11

### **OTHER AUTHORITIES**

<i>2011 Safety Net Report: Impacts of TANF &amp; Disability Lifeline Reductions</i> , STATEWIDE POVERTY ACTION NETWORK 3 (Oct. 2011), <a href="https://www.povertyaction.org/subdirectspan/wp-content/uploads/2012/09/Poverty-Action_Budget-Cuts-2011.pdf">https://www.povertyaction.org/subdirectspan/wp-content/uploads/2012/09/Poverty-Action_Budget-Cuts-2011.pdf</a> . ....	16
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Beverly J. Bradley & Amy C. Greene, <i>Do Health and Education Agencies in the United States Share Responsibility for Academic Achievement and Health? A review of 25 Years of Evidence About the Relationship of Adolescents’ Academic Achievement and Health Behaviors</i> , 52 J. OF ADOLESCENT HEALTH 523, 527 (Apr. 9, 2013) (available at: <a href="http://www.sciencedirect.com/science/article/pii/S1054139X13000505">http://www.sciencedirect.com/science/article/pii/S1054139X13000505</a> )...	17, 18

## **TABLE OF AUTHORITIES (Continued)**

<i>Fight Childhood Hunger: Restore State Food Assistance</i> , CHILDREN’S ALLIANCE (Jan. 2014), <a href="http://www.childrensalliance.org/resource-center/fight-childhood-hunger-restore-state-food-assistance">http://www.childrensalliance.org/resource-center/fight-childhood-hunger-restore-state-food-assistance</a> . ....	17
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KEN EMMIL, WA. ST. SUPERINTENDENT OF PUBLIC INSTRUCTION, REPORT TO THE LEG. 13-0025, CHILDREN IN FOSTER CARE: CROSS-SYSTEM COLLABORATION FOR STABILITY AND IMPROVED EDUCATION OUTCOMES 2012, at 1 (June 2013) (available at: <a href="http://www.k12.wa.us/legisgov/2013documents/ChildrenFosterCareLegRptMay2013.pdf">http://www.k12.wa.us/legisgov/2013documents/ChildrenFosterCareLegRptMay2013.pdf</a> ). ....	6
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Press Release, Wa. St. Dep’t of Social and Health Services, Food Assistance Bonus to End November 1 (Sept. 19, 2013) (available at: <a href="http://www.dshs.wa.gov/mediareleases/2013/pr13033.shtml">http://www.dshs.wa.gov/mediareleases/2013/pr13033.shtml</a> ). ....	17

## **TABLE OF AUTHORITIES (Continued)**

Press Release, Wa. St. Dep't of Social and Health Services, Department of Social and Health Services Statement on Braam Ruling (July 23, 2014) (available at: <a href="http://www.dshs.wa.gov/mediareleases/2014/pr14017.shtml">http://www.dshs.wa.gov/mediareleases/2014/pr14017.shtml</a> ). .....	14,15
<i>Recent News about Children's Administration Budget Cuts</i> , COLUMBIA LEGAL SERVICES, (available at: <a href="http://columbialegal.org/advocacy/children-and-youth-project">http://columbialegal.org/advocacy/children-and-youth-project</a> ).....	14,15
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SHARON L. ESTEE, BARBARA LUCENKO, QINGHUA LIU, BARBARA FELVER, LIZ COKER, WA. ST. DEP'T OF SOCIAL AND HEALTH SERVICES, RDA REPORT 11.209, SCHOOL MOVES: SCHOOL CHANGES RELATED TO SOCIAL SERVICE USE, RISK FACTORS, AND ACADEMIC PERFORMANCE (June 2014).....	12
<i>State Budget Update: More Big Challenges Ahead</i> , OFFICE OF FINANCIAL MANAGEMENT (July 2014), (available at: <a href="http://ofm.wa.gov/budget/documents/State_budget_prelim_outlook_pres_2014.pdf">http://ofm.wa.gov/budget/documents/State_budget_prelim_outlook_pres_2014.pdf</a> ) .....	12
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<i>Washington State Report Card: Statewide Assessment Trend</i> , OSPI, (available at: <a href="http://reportcard.ospi.k12.wa.us/waslTrend.aspx?year=2012-13&amp;gradeLevelId=10&amp;waslCategory=1&amp;chartType=1">http://reportcard.ospi.k12.wa.us/waslTrend.aspx?year=2012-13&amp;gradeLevelId=10&amp;waslCategory=1&amp;chartType=1</a> ).....	8

## I. INTRODUCTION

In its June 12 Order to Show Cause, the Court directed the State to address whether certain forms of relief should be granted. The possible relief included “prohibiting [the legislature’s] expenditures on certain other matters until the Court’s constitutional ruling is complied with.” Order to Show Cause at 4. In its opening brief, the State expressed concern about the effects of ordering increased spending on specific programs at the expense of others. State of Washington’s Opening Brief Addressing Order to Show Cause at 23. While we unequivocally applaud the Court’s enforcement of students’ rights “to an amply funded education” under Art. IX, § 1 of the Washington Constitution, Amici are concerned about the catastrophic effect that withdrawing certain *nonacademic supports* for low-income students would have on their already diminished educational opportunities.<sup>1</sup> *McCleary v. State*, 173 Wn.2d 477, 484, 269 P.3d 227 (2012). Nonacademic support for low-income students is as essential to educational opportunity as academic support. Both are critical if students are to realize their constitutional right to an amply funded education. Therefore, Amici ask the Court to neither order nor accept a plan that reduces funding of programs

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<sup>1</sup> For the purposes of this brief, the term “nonacademic supports” refers to state-funded services, including housing and other supports that benefit low-income students, not contained within the Legislature’s current definition of basic education.



for low-income families with school-aged children. To do otherwise would diminish, not enhance, the educational opportunity our Constitution guarantees.

## **II. INTEREST OF PARTIES**

Columbia Legal Services (CLS) advocates for people facing injustice and poverty. CLS seeks to achieve social and economic justice for all using policy reform, litigation, and innovative partnerships to reveal and end actions that harm the communities we serve. CLS has extensive expertise advocating for the rights of homeless families and children (including students who are homeless) and foster children. CLS also advocates for funding for programs that provide supports to families with children, such as Temporary Assistance to Needy Families (TANF). CLS has also litigated cases on these issues before this Court. *See, e.g.: Washington State Coalition for the Homeless v. DSHS*, 133 Wn. 2d 894, 949 P.2d 1291 (1997) (DSHS required to develop plan for providing services to homeless children); *Braam v. State of Washington*, 150 Wn. 2d 689, 81 P.3d 851 (2003) (establishing constitutional rights of foster children, leading to comprehensive settlement addressing services to foster children, including school related services). CLS has also worked extensively on housing issues, including issues regarding families with children. In sum, CLS has deep institutional knowledge about the close connections between social service programs, housing, and educational opportunity.



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The Washington Low Income Housing Alliance's mission is to ensure that everyone in Washington has the opportunity to live in a safe, healthy, affordable home. Since 1988, the Housing Alliance has worked to improve public policy and public investments in affordable homes and services to achieve that mission. In 2011, the Housing Alliance merged with the Washington State Coalition for the Homeless, the plaintiff in *Washington State Coalition for the Homeless*. The

Housing Alliance has 140 organizational members, including nonprofit housing providers, social service providers, and homeless services providers. The Housing Alliance has a network of more than 8,000 individual members.

### **III. ARGUMENT**

#### **A. Even With Existing Social Programs, Low-income Students Face Significant Barriers to Educational Opportunity.**

Students in low-income families are academically vulnerable. Poverty and its attendant causes and results—lack of affordable housing, economic and food insecurity, health issues, and limited family assets—force a less stable existence on those struggling to make ends meet. With this instability come changes in schools, often multiple times within a year. Each time a student moves, he or she falls four to six months behind peers academically and, thus, is more likely to have lower test scores and suffer academically.<sup>2</sup> The Constitutional promise of this case can never be met if students living on the brink are allowed—or worse, compelled—to fall further behind.

In Washington, two groups of children—those experiencing homelessness and those in foster care—are most affected by high instability and mobility. Focusing on these two groups as an example, along with students of color and

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<sup>2</sup> LISA M. COLEMAN, BARBARA J. DUFFIELD, LAURENE M. HEYBACH & PATRICIA F. JULIANELLE, EDUCATING CHILDREN WITHOUT HOUSING 28 (Amy E. Horton-Newell & Casey Trupin eds., 4th ed. 2014).

low-income students generally, this brief offers insight into how freezing funding levels or cutting services for vulnerable children and their families would destroy the promise of educational opportunity for hundreds of thousands of students.

*1. 30,000 Homeless Students Are Struggling in Washington's Schools*

Today, over 30,000 homeless students—one in every 34 students—attend Washington's public schools.<sup>3</sup> Homeless students tend to struggle academically and are more likely to fall below proficiency in math, reading, and science than their housed peers.<sup>4</sup> In the 2011-12 school year, only 36.6% of homeless students were proficient in math, compared to 63.4% of all students. Similarly, only 48.6% of homeless students were proficient in reading, compared to 71.9% of all students.<sup>5</sup>

The graduation rate for homeless students is also significantly lower than for their peers with stable housing. For Washington's class of 2013, the four-year graduation rate for homeless students was just 45.1% compared to 78% among students with stable housing. Over 2,200 homeless students in the class of 2013

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<sup>3</sup> Federal law considers students homeless if they lack a fixed, regular, adequate, nighttime residence. This definition includes children living in shelters, on the streets, or temporarily living with others due to lack of alternative accommodations. 42 U.S.C. § 11434a(2)(A) (2002); 42 U.S.C. § 11434a(2)(B) (2002).

<sup>4</sup> U.S. DEP'T OF EDUCATION, OMB NO. 1810-0614, CONSOLIDATED STATE PERFORMANCE REPORT: PARTS I AND II, at 64-5 (Apr. 5, 2013).

<sup>5</sup> These areas represent three of the critical content areas for the EALRs. *McCleary v. State*, 173 Wn.2d 477, 494.

failed to meet the requirements allowing them to graduate high school with their peers.

## *2. 5,000 Foster Care Students Are Far Behind Their Peers Academically*

There are 5,000 school-aged children in foster care.<sup>6</sup> These students face many of the same challenges as their homeless peers due to the often-temporary nature of foster care placements.<sup>7</sup> Foster youth have the lowest graduation rate and highest dropout rate of any student group in Washington.<sup>8</sup> In the class of 2013, the four-year graduation rate for foster youth was 36.6% compared to 76.0% for all students and the four-year dropout rate was 41.6% compared to 13% for all students. The average child placed in foster care is likely to switch placements at least three times.<sup>9</sup> With each move, a foster child's educational opportunity is placed at significant risk. These students fall behind in credits, lose important school connections, and lose the crucial stability that continuity at a single school can provide.

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<sup>6</sup> KEN EMMIL, WA. ST. SUPERINTENDENT OF PUBLIC INSTRUCTION, REPORT TO THE LEG. 13-0025, CHILDREN IN FOSTER CARE: CROSS-SYSTEM COLLABORATION FOR STABILITY AND IMPROVED EDUCATION OUTCOMES 2012, at 1 (June 2013) (available at <http://www.k12.wa.us/legisgov/2013documents/ChildrenFosterCareLegRptMay2013.pdf>).

<sup>7</sup> See COLEMAN, *supra* note 2, at 63.

<sup>8</sup> See ROBIN G. MUNSON, DEB CAME, LISA IRELAND, WA. ST. SUPERINTENDENT OF PUBLIC INSTRUCTION, GRADUATION AND DROPOUT STATISTICS REPORT 2012-2013 (2014).

<sup>9</sup> Foster Care by the Numbers, CASEY FAMILY PROGRAMS (Sept. 2011), [http://www.casey.org/media/MediaKit\\_FosterCareByTheNumbers.pdf](http://www.casey.org/media/MediaKit_FosterCareByTheNumbers.pdf).

It is not solely the adverse childhood experiences of a foster child that limit his or her academic opportunities, but it is also the malfunctioning of the foster care system—including multiple placement changes and inconsistency of services—that prevents foster children from keeping pace academically with their peers. The majority of these students will not have a meaningful academic opportunity without a well-supported foster care system. And without that opportunity, their door to successful independence and adulthood will be slammed shut.

### *3. Students of Color Face Additional Barriers to Educational Opportunity*

Forty percent of Washington State’s children live in families with incomes below 200 percent of the federal poverty line.<sup>10</sup> Children of color represent a disproportionate number of low-income children: for example, African American and Latino children are more than twice as likely to be low-income than their white peers.<sup>11</sup> African American, Latino, American Indian/Alaska Native, and Pacific Islander students also perform less well than their white peers in select

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<sup>10</sup> *Children Below 200 Percent Poverty*, KIDS COUNT DATA CENTER (Sept. 2013), <http://datacenter.kidscount.org/data#WA/2/0> (follow “Children Below 200 Percent Poverty” hyperlink).

<sup>11</sup> *Children Below 200 Percent Poverty by Race*, KIDS COUNT DATA CENTER (Dec. 2013), <http://datacenter.kidscount.org/data#WA/2/0> (follow “Children Below 200 Percent Poverty by Race” hyperlink).

achievement indicators such as kindergarten preparedness, third grade reading and eighth grade math standards, and four-year high school graduation rates.<sup>12</sup>

While educational disproportionality is partly related to inequitable funding of schools, it is also directly connected to instability, mobility, and poverty. Children of color are more likely than their white peers to be low-income or experience homelessness.<sup>13</sup> For example, in the 2011-12 academic year, the Seattle School District identified one in ten (1:10) black students as homeless, with similarly concerning ratios for other students of color: American Indian (1:9); Pacific Islander (1:12); and Latino (1:15). Among white students, in

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<sup>12</sup> While this brief focuses on nonacademic supports to students, we note that supports to children prior to entering the K-12 system have at least as much to do with academic achievement. For example, the state-funded Early Childhood Education and Assistance Program (ECEAP) provides comprehensive “early learning” preschool programs that provide free services to low-income families and their children. Data bears out ECEAP’s potential to increase educational outcomes for those it serves. A recent report from the Department of Early Learning shows significant language, math and cognitive gains among ECEAP students. After one year of enrollment, nearly all ECEAP students were at or above age-level in the following indicators: language (90%); cognitive development (94%); literacy development (94%); and math skills (81%). Despite the proven effectiveness of early learning programs, ECEAP is not a constitutionally protected program. Should the Court prohibit non-basic education expenditures, this and other similar programs may be rationed, cut, or eliminated entirely. See: *ECEAP Outcomes 2012-13*, EARLY CHILDHOOD EDUCATION AND ASSISTANCE PROGRAM, [http://del.wa.gov/publications/eceap/docs/ECEAP\\_outcomes\\_2012-13.pdf](http://del.wa.gov/publications/eceap/docs/ECEAP_outcomes_2012-13.pdf) (last visited Aug. 1, 2014); *Washington State Report Card: Washington Kindergarten Inventory of Developing Skills*, WA. ST. SUPERINTENDENT OF PUBLIC INSTRUCTION, <http://reportcard.ospi.k12.wa.us/WaKidsDetailPage.aspx?year=2012-13> (Last visited Aug. 1, 2014); *Washington State Report Card: Statewide Assessment Trend*, WA. ST. SUPERINTENDENT OF PUBLIC INSTRUCTION, <http://reportcard.ospi.k12.wa.us/wasITrend.aspx?year=2012-13&gradeLevelId=10&waslCategory=1&chartType=1> (Last visited Aug. 1, 2014).

<sup>13</sup> See *Children Below 200 Percent Poverty by Race*, *supra* note 11.



contrast, the homelessness ratio was 1:71.<sup>14</sup> Racial disproportionality is similarly prevalent among students in foster care, who are disproportionately American Indian, African American, or Multiracial.<sup>15</sup>

**B. Without Adequate Supports from Social Programs, Low-income Students and Students of Color Are Deprived of Educational Opportunity.**

Amici's collective experience advocating on behalf of countless students and their families reinforces what the evidence shows: education is a critical pathway out of poverty. Amici agree with this Court that a child's right to education under Art. IX, § 1 requires provision of considerably more than "adequate" support. *McCleary v. State*, 173 Wn.2d 477, 484. But what may be more than adequate for stably-housed students from middle- and upper-income families may be wholly inadequate for students living in poverty. For low-income students, because of the barriers presented by poverty, what happens outside school is just as important to their education as what happens inside the classroom. If the sole result of this case is to increase financial support for public education while nonacademic supports for low-income students remain stable or

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<sup>14</sup> *A Snapshot of Racial Disproportionality of Student Homelessness*, WA. ALLIANCE FOR STUDENTS EXPERIENCING HOMELESSNESS, <http://www.waseh.org/learn/analysis/a-snapshot-of-racial-disproportionality-of-student-homelessness/> (last visited Aug. 1, 2014).

<sup>15</sup> DEB CAME & DAVID ANDERSON, WA. ST. SUPERINTENDENT OF PUBLIC INSTRUCTION, REPORT TO THE LEG. 12-0004, STUDENTS IN FOSTER CARE ANNUAL REPORT 2010-11, AT 9 (Jan. 2012).



decrease, low-income students will not experience the educational opportunities that this Court surely intended.

The State funds a number of programs and services that offer low-income students some of the stability they need to overcome the challenges posed outside the classroom. If the Court accepts a plan that essentially funds only academic supports, critical services relied upon by low-income students will be rationed and may ultimately be eliminated or reduced to the point of ineffectiveness. Funding a system in a manner that disregards the needs of low-income children would be disastrous and would cause more damage to these students' education than even current inadequate funding levels.

**C. The Court's Order Should Not Result in Freezing Funding Levels or Further Cuts to Supports for Low-Income Students**

Art. IX, § 1 guarantees to all students, including Washington's 482,000 low-income school-aged children, the *opportunity* to gain skills and receive a meaningful education.<sup>16</sup> However, in defining basic education, the Legislature has not explicitly included nonacademic supports commonly relied upon by low-income students.

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<sup>16</sup> 482,000 students applied for free and reduced lunch in 2012-13. *Washington State Report Card*, WA. ST. SUPERINTENDENT OF PUBLIC INSTRUCTION, <http://reportcard.ospi.k12.wa.us/summary.aspx?year=2012-13> (Last visited Aug. 1, 2014).

Investments made to basic education do provide some supplemental resources through the Learning Assistance Program.<sup>17</sup> However, these resources specifically address academic shortcomings, not the barriers to opportunity commonly faced by low-income students. For example, the Learning Assistance Program fails to address housing instability for homeless students or placement instability for foster youth.<sup>18</sup> Students who require nonacademic supports rely upon state services, including housing supports, foster care supports, and other safety-net programs, to give them a fair shot at attaining educational opportunity.

The Court's approach to enforcement of Art. IX, § 1, if it comes at the expense of needed supports for people who are poor, will put the ability to increase, or at least maintain, educational opportunity at risk. Any order that effectively compels the Legislature to fund education through further cuts to social programs and services that support children's learning will harm, not improve, the fundamental education rights of hundreds of thousands of students. The options for significant budget cuts are limited due to constitutional and federal requirements. Much of the funding for non-academic supports is included in the one-third of the budget (about \$11 billion) that is unprotected and subject to

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<sup>17</sup> RCW 28A.150.220(1)(d).

<sup>18</sup> RCW 28A.165.005 (stating that the purpose of the Learning Assistance Program is to improve literacy).

cuts.<sup>19</sup> In fact, recent history has shown that these supports are far from sacrosanct in the face of budget crises and continue to be the subject of budget cuts.

*1. Housing Supports Are at Risk*

In July 2014, the Washington State Department of Social and Health Services (DSHS) published “School Moves,” a report illustrating the challenges associated with school mobility.<sup>20</sup> The School Moves report established a direct link between housing status and the increased need for social services such as basic food, cash, medical assistance, child welfare services, foster care involvement, and lower academic outcomes. Highly mobile students are also more likely to be at risk of mental health issues, low standardized test performance, and involvement with the juvenile justice system.

State support for housing is primarily funded by document recording fees and through other capital and operating budget investments, including the Housing Trust Fund and the Washington Families Fund.<sup>21</sup> These programs support a multitude of homeless grant projects including domestic violence

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<sup>19</sup> *State Budget Update: More Big Challenges Ahead*, OFFICE OF FINANCIAL MANAGEMENT (July 2014), [http://ofm.wa.gov/budget/documents/State\\_budget\\_prelim\\_outlook\\_pres\\_2014.pdf](http://ofm.wa.gov/budget/documents/State_budget_prelim_outlook_pres_2014.pdf).

<sup>20</sup> See SHARON L. ESTEE, BARBARA LUCENKO, QINGHUA LIU, BARBARA FELVER, LIZ COKER, WA. ST. DEP’T OF SOCIAL AND HEALTH SERVICES, RDA REPORT 11.209, SCHOOL MOVES: SCHOOL CHANGES RELATED TO SOCIAL SERVICE USE, RISK FACTORS, AND ACADEMIC PERFORMANCE (June 2014).

<sup>21</sup> See generally, WA. DEP’T OF COMMERCE, REPORT TO THE LEG., HOMELESSNESS IN WASHINGTON STATE: ANNUAL REPORT ON THE HOMELESS GRANT PROGRAMS (Dec. 2013).

shelters, emergency shelters, rapid rehousing, and other forms of rental assistance that keep families stably housed. According to the annual point in-time count of homelessness, together these programs helped reduce the overall incidence of homelessness by 29 percent between 2006 and 2013.<sup>22</sup> Despite their effect on attainment of educational opportunity, these programs are vulnerable to underfunding or complete defunding in an effort to meet the State's constitutional obligation. As noted above, homeless students and those in foster care already lag behind their peers in terms of educational opportunity. Further cuts or reductions to housing programs would more than cancel any gains from additional educational investments for this population of students.

## *2. The Foster Care System is Underfunded*

Students in the foster care system also require numerous state services to overcome the barriers posed by their unique needs. These services are guaranteed by the State's due process clause. In *Braam v. Washington*, this Court held that foster children have a constitutional right to be free from unreasonable risks of harm and a right to reasonable safety. 150 Wn. 2d 689, at 700 (2003). This Court further determined that to meet its constitutional duty to provide reasonable safety, the state must provide adequate services that meet children's basic needs.

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<sup>22</sup> *Id.* at 1.

*Id.* Critical services for foster care students include health and mental health care, transportation to and from schools upon placement changes, as well as support from a caseworker who can adequately attend to all their needs, including education. Each of these services work together to increase the possibility of a foster child attaining an acceptable level of educational opportunity.

Foster care services have experienced substantial cuts over the last several years.<sup>23</sup> Even now, important services are being cut to backfill a budget shortfall within the Children's Administration.<sup>24</sup> In FY 2015, the Administration predicts an \$18 million budget shortfall due to an increase in Children Protective Services investigations and the unexpected expenses associated with providing services to kids in care.<sup>25</sup> Consequently, the Children's Administration plans to budget less than the estimated need for many of their services, including scrutinizing transportation needs and cutting positions that promote cross-system collaboration. These programmatic cuts make it difficult for foster children to remain in their school of origin and fully engage in school activities. The

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<sup>23</sup> Press Release, Wa. St. Dep't of Social and Health Services, Department of Social and Health Services Statement on Braam Ruling (July 23, 2014) (available at: <http://www.dshs.wa.gov/mediareleases/2014/pr14017.shtml>).

<sup>24</sup> *Recent News about Children's Administration Budget Cuts*, COLUMBIA LEGAL SERVICES, <http://columbialegal.org/advocacy/children-and-youth-project> (last visited Aug. 1, 2014).

<sup>25</sup> *Id.*

Administration's Assistant Secretary has acknowledged that "additional funding" is needed to meet the outcomes required by *Braam*.<sup>26</sup>

Reducing or prohibiting expenditures on these services would undoubtedly have a negative effect upon an already vulnerable population. Foster care students are already the most challenged in terms of academic outcomes and success in a public school environment. Additionally, reducing supports to vulnerable families could result in more children entering an already overtaxed foster care system. Reduction or spending prohibitions to these services would thus have a mitigating effect upon additional educational investment for this population of students.

### *3. Temporary Assistance to Needy Families and the Social Safety Net*

Temporary Assistance for Needy Families (TANF) is a critical safety net for low-income families with school-aged children. The maximum monthly TANF grant for a family of three is \$478. This modest cash grant assists families by helping them meet their most basic needs, such as rent, utilities, and groceries.

Unfortunately, recent TANF cuts have affected thousands of low-income students and their families. In 2011, the TANF program sustained cuts totaling \$380 million.<sup>27</sup> These cuts included decreasing the monthly TANF benefit level,

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<sup>26</sup> See Press Release, *supra* note 24.

<sup>27</sup> 2011 Safety Net Report: Impacts of TANF & Disability Lifeline Reductions, STATEWIDE POVERTY ACTION NETWORK 3 (Oct. 2011), [https://www.povertyaction.org/subdirectspan/wp-content/uploads/2012/09/Poverty-Action\\_Budget-Cuts-2011.pdf](https://www.povertyaction.org/subdirectspan/wp-content/uploads/2012/09/Poverty-Action_Budget-Cuts-2011.pdf).

which consequently “reduced the income threshold families must fall under in order [to] qualify for TANF.”<sup>28</sup> When low-income students’ basic needs are not being met outside of the school day, they have no equal opportunity to achieve their full potential in the classroom. Children need the opportunity to focus on learning when they go to school to succeed. Constant worry over where they will sleep at night or where their next meal will come from inhibits their ability to focus in the classroom. The support provided by TANF helps ensure that low-income children can focus on being students and concentrate on the important things, like learning their multiplication tables and how to read.

#### *4. State Food Assistance*

The Food Assistance Program (FAP) was created by the state Legislature in 1997 in response to federal changes that rendered some documented immigrant families ineligible for the Supplemental Nutrition Assistance Program (also known as SNAP or “food stamps”). Households receiving FAP receive 75% of what they would receive if they were eligible for SNAP.<sup>29</sup> Funding for State Food

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<sup>28</sup> See *supra* note 28, at 4.

<sup>29</sup> Press Release, Wa. St. Dep’t of Social and Health Services, Food Assistance Bonus to end November 1 (Sept. 19, 2013) (available at: <http://www.dshs.wa.gov/mediareleases/2013/pr13033.shtml>).



Assistance was substantially reduced in 2012, putting nearly 14,000 children in immigrant families at greater risk of hunger.<sup>30</sup>

Studies have shown an “inverse relationship between inadequate nutrition and academic achievement.”<sup>31</sup> For example, in five studies examining nutrition-related risk behaviors and academic achievement, “inadequate dietary intake was associated with at least one or more of the following: lower grades, lower standardized test scores, or increased likelihood of grade level retention.”<sup>32</sup> Diminished nutritional support through State Food Assistance affects the educational opportunity of children of color, who are disproportionately harmed by childhood poverty, inequitable school funding and other, related forms of inequity.

#### IV. CONCLUSION

Students living in low-income households and students of color already suffer disproportionately poor academic outcomes because of economic and food insecurity, lack of affordable housing, health issues, limited family assets, and

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<sup>30</sup> *Fight Childhood Hunger: Restore State Food Assistance*, CHILDREN’S ALLIANCE (Jan. 2014), <http://www.childrealliance.org/resource-center/fight-childhood-hunger-restore-state-food-assistance>

<sup>31</sup> Beverly J. Bradley & Amy C. Greene, *Do Health and Education Agencies in the United States Share Responsibility for Academic Achievement and Health? A review of 25 Years of Evidence About the Relationship of Adolescents’ Academic Achievement and Health Behaviors*, 52 J. OF ADOLESCENT HEALTH 523, 527, (Apr. 9, 2013) (available at: <http://www.sciencedirect.com/science/article/pii/S1054139X13000505>).

<sup>32</sup> *Id.*

many other barriers. Freezing funding for these programs, or eliminating them entirely would have a devastating effect upon the already-fragile educational opportunity of this population, harm that would not be undone by increasing education funding. Because the Court asked for reasons not to order “prohibiting expenditures on certain other matters until the Court’s constitutional ruling is complied with,” Amici submit this brief to illustrate that cuts to programs that support families with school-aged children could destroy—not ensure—their constitutionally-mandated opportunity to receive a full education.

Respectfully submitted this 4th day of August, 2014.

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I hereby certify under penalty of perjury under the laws of the State of Washington that on this date I caused a true and correct copy of this *Amici Curiae* Brief of Columbia Legal Services, The Children's Alliance, and the Washington Low Income Housing Alliance to be served on the following parties, in the manner indicated:

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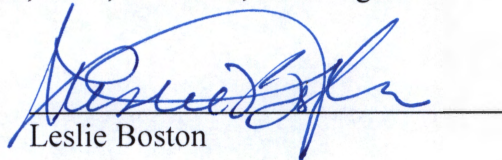
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Dated this 4th day of August, 2014, at Seattle, Washington.

  
\_\_\_\_\_  
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SUPREME COURT OF THE STATE OF WASHINGTON

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McCLEARY v. STATE

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***AMICI CURIAE* BRIEF OF COLUMBIA LEGAL SERVICES,  
THE CHILDREN'S ALLIANCE,  
AND THE WASHINGTON LOW INCOME HOUSING ALLIANCE**

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### **CASES**

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RCW 28A.165.005.....	11

### **OTHER AUTHORITIES**

<i>2011 Safety Net Report: Impacts of TANF &amp; Disability Lifeline Reductions</i> , STATEWIDE POVERTY ACTION NETWORK 3 (Oct. 2011), <a href="https://www.povertyaction.org/subdirectspan/wp-content/uploads/2012/09/Poverty-Action_Budget-Cuts-2011.pdf">https://www.povertyaction.org/subdirectspan/wp-content/uploads/2012/09/Poverty-Action_Budget-Cuts-2011.pdf</a> . ....	16
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## **TABLE OF AUTHORITIES (Continued)**

<i>Fight Childhood Hunger: Restore State Food Assistance</i> , CHILDREN’S ALLIANCE (Jan. 2014), <a href="http://www.childrensalliance.org/resource-center/fight-childhood-hunger-restore-state-food-assistance">http://www.childrensalliance.org/resource-center/fight-childhood-hunger-restore-state-food-assistance</a> . ....	17
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KEN EMMIL, WA. ST. SUPERINTENDENT OF PUBLIC INSTRUCTION, REPORT TO THE LEG. 13-0025, CHILDREN IN FOSTER CARE: CROSS-SYSTEM COLLABORATION FOR STABILITY AND IMPROVED EDUCATION OUTCOMES 2012, at 1 (June 2013) (available at: <a href="http://www.k12.wa.us/legisgov/2013documents/ChildrenFosterCareLegRptMay2013.pdf">http://www.k12.wa.us/legisgov/2013documents/ChildrenFosterCareLegRptMay2013.pdf</a> ). ....	6
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## **TABLE OF AUTHORITIES (Continued)**

Press Release, Wa. St. Dep't of Social and Health Services, Department of Social and Health Services Statement on Braam Ruling (July 23, 2014) (available at: <a href="http://www.dshs.wa.gov/mediareleases/2014/pr14017.shtml">http://www.dshs.wa.gov/mediareleases/2014/pr14017.shtml</a> ). .....	14,15
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## I. INTRODUCTION

In its June 12 Order to Show Cause, the Court directed the State to address whether certain forms of relief should be granted. The possible relief included “prohibiting [the legislature’s] expenditures on certain other matters until the Court’s constitutional ruling is complied with.” Order to Show Cause at 4. In its opening brief, the State expressed concern about the effects of ordering increased spending on specific programs at the expense of others. State of Washington’s Opening Brief Addressing Order to Show Cause at 23. While we unequivocally applaud the Court’s enforcement of students’ rights “to an amply funded education” under Art. IX, § 1 of the Washington Constitution, Amici are concerned about the catastrophic effect that withdrawing certain *nonacademic supports* for low-income students would have on their already diminished educational opportunities.<sup>1</sup> *McCleary v. State*, 173 Wn.2d 477, 484, 269 P.3d 227 (2012). Nonacademic support for low-income students is as essential to educational opportunity as academic support. Both are critical if students are to realize their constitutional right to an amply funded education. Therefore, Amici ask the Court to neither order nor accept a plan that reduces funding of programs

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<sup>1</sup> For the purposes of this brief, the term “nonacademic supports” refers to state-funded services, including housing and other supports that benefit low-income students, not contained within the Legislature’s current definition of basic education.

for low-income families with school-aged children. To do otherwise would diminish, not enhance, the educational opportunity our Constitution guarantees.

## **II. INTEREST OF PARTIES**

Columbia Legal Services (CLS) advocates for people facing injustice and poverty. CLS seeks to achieve social and economic justice for all using policy reform, litigation, and innovative partnerships to reveal and end actions that harm the communities we serve. CLS has extensive expertise advocating for the rights of homeless families and children (including students who are homeless) and foster children. CLS also advocates for funding for programs that provide supports to families with children, such as Temporary Assistance to Needy Families (TANF). CLS has also litigated cases on these issues before this Court. *See, e.g.: Washington State Coalition for the Homeless v. DSHS*, 133 Wn. 2d 894, 949 P.2d 1291 (1997) (DSHS required to develop plan for providing services to homeless children); *Braam v. State of Washington*, 150 Wn. 2d 689, 81 P.3d 851 (2003) (establishing constitutional rights of foster children, leading to comprehensive settlement addressing services to foster children, including school related services). CLS has also worked extensively on housing issues, including issues regarding families with children. In sum, CLS has deep institutional knowledge about the close connections between social service programs, housing, and educational opportunity.

The Children's Alliance (CA) mission is to improve the well-being of children by effecting positive changes in public policies, priorities, and programs. For over 30 years, CA has advocated for the children of Washington State, with a particular focus on children in low-income families and children of color. CA is a membership-based organization with 8,000 individual members and 68 organizational members. CA has expertise in several arenas of child and family policy, including health, education, child welfare, and food policy. CA is recognized as a convener of public and private agencies involved with children and families issues. CA has expertise in child and family data and serves as the lead grantee for the national KIDS COUNT project. CA has contributed to many aspects of state policy regarding education, including the re-definition of, and funding of, basic education enacted by ESHB 2261 and SHB 2776. CA's long history of advocacy for kids includes amicus roles in *Braam* and *Washington State Coalition for the Homeless*.

The Washington Low Income Housing Alliance's mission is to ensure that everyone in Washington has the opportunity to live in a safe, healthy, affordable home. Since 1988, the Housing Alliance has worked to improve public policy and public investments in affordable homes and services to achieve that mission. In 2011, the Housing Alliance merged with the Washington State Coalition for the Homeless, the plaintiff in *Washington State Coalition for the Homeless*. The

Housing Alliance has 140 organizational members, including nonprofit housing providers, social service providers, and homeless services providers. The Housing Alliance has a network of more than 8,000 individual members.

### **III. ARGUMENT**

#### **A. Even With Existing Social Programs, Low-income Students Face Significant Barriers to Educational Opportunity.**

Students in low-income families are academically vulnerable. Poverty and its attendant causes and results—lack of affordable housing, economic and food insecurity, health issues, and limited family assets—force a less stable existence on those struggling to make ends meet. With this instability come changes in schools, often multiple times within a year. Each time a student moves, he or she falls four to six months behind peers academically and, thus, is more likely to have lower test scores and suffer academically.<sup>2</sup> The Constitutional promise of this case can never be met if students living on the brink are allowed—or worse, compelled—to fall further behind.

In Washington, two groups of children—those experiencing homelessness and those in foster care—are most affected by high instability and mobility. Focusing on these two groups as an example, along with students of color and

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<sup>2</sup> LISA M. COLEMAN, BARBARA J. DUFFIELD, LAURENE M. HEYBACH & PATRICIA F. JULIANELLE, EDUCATING CHILDREN WITHOUT HOUSING 28 (Amy E. Horton-Newell & Casey Trupin eds., 4th ed. 2014).

low-income students generally, this brief offers insight into how freezing funding levels or cutting services for vulnerable children and their families would destroy the promise of educational opportunity for hundreds of thousands of students.

*1. 30,000 Homeless Students Are Struggling in Washington's Schools*

Today, over 30,000 homeless students—one in every 34 students—attend Washington's public schools.<sup>3</sup> Homeless students tend to struggle academically and are more likely to fall below proficiency in math, reading, and science than their housed peers.<sup>4</sup> In the 2011-12 school year, only 36.6% of homeless students were proficient in math, compared to 63.4% of all students. Similarly, only 48.6% of homeless students were proficient in reading, compared to 71.9% of all students.<sup>5</sup>

The graduation rate for homeless students is also significantly lower than for their peers with stable housing. For Washington's class of 2013, the four-year graduation rate for homeless students was just 45.1% compared to 78% among students with stable housing. Over 2,200 homeless students in the class of 2013

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<sup>3</sup> Federal law considers students homeless if they lack a fixed, regular, adequate, nighttime residence. This definition includes children living in shelters, on the streets, or temporarily living with others due to lack of alternative accommodations. 42 U.S.C. § 11434a(2)(A) (2002); 42 U.S.C. § 11434a(2)(B) (2002).

<sup>4</sup> U.S. DEP'T OF EDUCATION, OMB NO. 1810-0614, CONSOLIDATED STATE PERFORMANCE REPORT: PARTS I AND II, at 64-5 (Apr. 5, 2013).

<sup>5</sup> These areas represent three of the critical content areas for the EALRs. *McCleary v. State*, 173 Wn.2d 477, 494.



failed to meet the requirements allowing them to graduate high school with their peers.

## *2. 5,000 Foster Care Students Are Far Behind Their Peers Academically*

There are 5,000 school-aged children in foster care.<sup>6</sup> These students face many of the same challenges as their homeless peers due to the often-temporary nature of foster care placements.<sup>7</sup> Foster youth have the lowest graduation rate and highest dropout rate of any student group in Washington.<sup>8</sup> In the class of 2013, the four-year graduation rate for foster youth was 36.6% compared to 76.0% for all students and the four-year dropout rate was 41.6% compared to 13% for all students. The average child placed in foster care is likely to switch placements at least three times.<sup>9</sup> With each move, a foster child's educational opportunity is placed at significant risk. These students fall behind in credits, lose important school connections, and lose the crucial stability that continuity at a single school can provide.

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<sup>6</sup> KEN EMMIL, WA. ST. SUPERINTENDENT OF PUBLIC INSTRUCTION, REPORT TO THE LEG. 13-0025, CHILDREN IN FOSTER CARE: CROSS-SYSTEM COLLABORATION FOR STABILITY AND IMPROVED EDUCATION OUTCOMES 2012, at 1 (June 2013) (available at <http://www.k12.wa.us/legisgov/2013documents/ChildrenFosterCareLegRptMay2013.pdf>).

<sup>7</sup> See COLEMAN, *supra* note 2, at 63.

<sup>8</sup> See ROBIN G. MUNSON, DEB CAME, LISA IRELAND, WA. ST. SUPERINTENDENT OF PUBLIC INSTRUCTION, GRADUATION AND DROPOUT STATISTICS REPORT 2012-2013 (2014).

<sup>9</sup> Foster Care by the Numbers, CASEY FAMILY PROGRAMS (Sept. 2011), [http://www.casey.org/media/MediaKit\\_FosterCareByTheNumbers.pdf](http://www.casey.org/media/MediaKit_FosterCareByTheNumbers.pdf).



It is not solely the adverse childhood experiences of a foster child that limit his or her academic opportunities, but it is also the malfunctioning of the foster care system—including multiple placement changes and inconsistency of services—that prevents foster children from keeping pace academically with their peers. The majority of these students will not have a meaningful academic opportunity without a well-supported foster care system. And without that opportunity, their door to successful independence and adulthood will be slammed shut.

### *3. Students of Color Face Additional Barriers to Educational Opportunity*

Forty percent of Washington State’s children live in families with incomes below 200 percent of the federal poverty line.<sup>10</sup> Children of color represent a disproportionate number of low-income children: for example, African American and Latino children are more than twice as likely to be low-income than their white peers.<sup>11</sup> African American, Latino, American Indian/Alaska Native, and Pacific Islander students also perform less well than their white peers in select

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<sup>10</sup> *Children Below 200 Percent Poverty*, KIDS COUNT DATA CENTER (Sept. 2013), <http://datacenter.kidscount.org/data#WA/2/0> (follow “Children Below 200 Percent Poverty” hyperlink).

<sup>11</sup> *Children Below 200 Percent Poverty by Race*, KIDS COUNT DATA CENTER (Dec. 2013), <http://datacenter.kidscount.org/data#WA/2/0> (follow “Children Below 200 Percent Poverty by Race” hyperlink).

achievement indicators such as kindergarten preparedness, third grade reading and eighth grade math standards, and four-year high school graduation rates.<sup>12</sup>

While educational disproportionality is partly related to inequitable funding of schools, it is also directly connected to instability, mobility, and poverty. Children of color are more likely than their white peers to be low-income or experience homelessness.<sup>13</sup> For example, in the 2011-12 academic year, the Seattle School District identified one in ten (1:10) black students as homeless, with similarly concerning ratios for other students of color: American Indian (1:9); Pacific Islander (1:12); and Latino (1:15). Among white students, in

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<sup>12</sup> While this brief focuses on nonacademic supports to students, we note that supports to children prior to entering the K-12 system have at least as much to do with academic achievement. For example, the state-funded Early Childhood Education and Assistance Program (ECEAP) provides comprehensive “early learning” preschool programs that provide free services to low-income families and their children. Data bears out ECEAP’s potential to increase educational outcomes for those it serves. A recent report from the Department of Early Learning shows significant language, math and cognitive gains among ECEAP students. After one year of enrollment, nearly all ECEAP students were at or above age-level in the following indicators: language (90%); cognitive development (94%); literacy development (94%); and math skills (81%). Despite the proven effectiveness of early learning programs, ECEAP is not a constitutionally protected program. Should the Court prohibit non-basic education expenditures, this and other similar programs may be rationed, cut, or eliminated entirely. See: *ECEAP Outcomes 2012-13*, EARLY CHILDHOOD EDUCATION AND ASSISTANCE PROGRAM, [http://del.wa.gov/publications/eceap/docs/ECEAP\\_outcomes\\_2012-13.pdf](http://del.wa.gov/publications/eceap/docs/ECEAP_outcomes_2012-13.pdf) (last visited Aug. 1, 2014); *Washington State Report Card: Washington Kindergarten Inventory of Developing Skills*, WA. ST. SUPERINTENDENT OF PUBLIC INSTRUCTION, <http://reportcard.ospi.k12.wa.us/WaKidsDetailPage.aspx?year=2012-13> (Last visited Aug. 1, 2014); *Washington State Report Card: Statewide Assessment Trend*, WA. ST. SUPERINTENDENT OF PUBLIC INSTRUCTION, <http://reportcard.ospi.k12.wa.us/wasITrend.aspx?year=2012-13&gradeLevelId=10&waslCategory=1&chartType=1> (Last visited Aug. 1, 2014).

<sup>13</sup> See *Children Below 200 Percent Poverty by Race*, *supra* note 11.

contrast, the homelessness ratio was 1:71.<sup>14</sup> Racial disproportionality is similarly prevalent among students in foster care, who are disproportionately American Indian, African American, or Multiracial.<sup>15</sup>

**B. Without Adequate Supports from Social Programs, Low-income Students and Students of Color Are Deprived of Educational Opportunity.**

Amici's collective experience advocating on behalf of countless students and their families reinforces what the evidence shows: education is a critical pathway out of poverty. Amici agree with this Court that a child's right to education under Art. IX, § 1 requires provision of considerably more than "adequate" support. *McCleary v. State*, 173 Wn.2d 477, 484. But what may be more than adequate for stably-housed students from middle- and upper-income families may be wholly inadequate for students living in poverty. For low-income students, because of the barriers presented by poverty, what happens outside school is just as important to their education as what happens inside the classroom. If the sole result of this case is to increase financial support for public education while nonacademic supports for low-income students remain stable or

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<sup>14</sup> *A Snapshot of Racial Disproportionality of Student Homelessness*, WA. ALLIANCE FOR STUDENTS EXPERIENCING HOMELESSNESS, <http://www.waseh.org/learn/analysis/a-snapshot-of-racial-disproportionality-of-student-homelessness/> (last visited Aug. 1, 2014).

<sup>15</sup> DEB CAME & DAVID ANDERSON, WA. ST. SUPERINTENDENT OF PUBLIC INSTRUCTION, REPORT TO THE LEG. 12-0004, STUDENTS IN FOSTER CARE ANNUAL REPORT 2010-11, AT 9 (Jan. 2012).

decrease, low-income students will not experience the educational opportunities that this Court surely intended.

The State funds a number of programs and services that offer low-income students some of the stability they need to overcome the challenges posed outside the classroom. If the Court accepts a plan that essentially funds only academic supports, critical services relied upon by low-income students will be rationed and may ultimately be eliminated or reduced to the point of ineffectiveness. Funding a system in a manner that disregards the needs of low-income children would be disastrous and would cause more damage to these students' education than even current inadequate funding levels.

**C. The Court's Order Should Not Result in Freezing Funding Levels or Further Cuts to Supports for Low-Income Students**

Art. IX, § 1 guarantees to all students, including Washington's 482,000 low-income school-aged children, the *opportunity* to gain skills and receive a meaningful education.<sup>16</sup> However, in defining basic education, the Legislature has not explicitly included nonacademic supports commonly relied upon by low-income students.

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<sup>16</sup> 482,000 students applied for free and reduced lunch in 2012-13. *Washington State Report Card*, WA. ST. SUPERINTENDENT OF PUBLIC INSTRUCTION, <http://reportcard.ospi.k12.wa.us/summary.aspx?year=2012-13> (Last visited Aug. 1, 2014).

Investments made to basic education do provide some supplemental resources through the Learning Assistance Program.<sup>17</sup> However, these resources specifically address academic shortcomings, not the barriers to opportunity commonly faced by low-income students. For example, the Learning Assistance Program fails to address housing instability for homeless students or placement instability for foster youth.<sup>18</sup> Students who require nonacademic supports rely upon state services, including housing supports, foster care supports, and other safety-net programs, to give them a fair shot at attaining educational opportunity.

The Court's approach to enforcement of Art. IX, § 1, if it comes at the expense of needed supports for people who are poor, will put the ability to increase, or at least maintain, educational opportunity at risk. Any order that effectively compels the Legislature to fund education through further cuts to social programs and services that support children's learning will harm, not improve, the fundamental education rights of hundreds of thousands of students. The options for significant budget cuts are limited due to constitutional and federal requirements. Much of the funding for non-academic supports is included in the one-third of the budget (about \$11 billion) that is unprotected and subject to

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<sup>17</sup> RCW 28A.150.220(1)(d).

<sup>18</sup> RCW 28A.165.005 (stating that the purpose of the Learning Assistance Program is to improve literacy).

cuts.<sup>19</sup> In fact, recent history has shown that these supports are far from sacrosanct in the face of budget crises and continue to be the subject of budget cuts.

*1. Housing Supports Are at Risk*

In July 2014, the Washington State Department of Social and Health Services (DSHS) published “School Moves,” a report illustrating the challenges associated with school mobility.<sup>20</sup> The School Moves report established a direct link between housing status and the increased need for social services such as basic food, cash, medical assistance, child welfare services, foster care involvement, and lower academic outcomes. Highly mobile students are also more likely to be at risk of mental health issues, low standardized test performance, and involvement with the juvenile justice system.

State support for housing is primarily funded by document recording fees and through other capital and operating budget investments, including the Housing Trust Fund and the Washington Families Fund.<sup>21</sup> These programs support a multitude of homeless grant projects including domestic violence

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<sup>19</sup> *State Budget Update: More Big Challenges Ahead*, OFFICE OF FINANCIAL MANAGEMENT (July 2014), [http://ofm.wa.gov/budget/documents/State\\_budget\\_prelim\\_outlook\\_pres\\_2014.pdf](http://ofm.wa.gov/budget/documents/State_budget_prelim_outlook_pres_2014.pdf).

<sup>20</sup> See SHARON L. ESTEE, BARBARA LUCENKO, QINGHUA LIU, BARBARA FELVER, LIZ COKER, WA. ST. DEP’T OF SOCIAL AND HEALTH SERVICES, RDA REPORT 11.209, SCHOOL MOVES: SCHOOL CHANGES RELATED TO SOCIAL SERVICE USE, RISK FACTORS, AND ACADEMIC PERFORMANCE (June 2014).

<sup>21</sup> See generally, WA. DEP’T OF COMMERCE, REPORT TO THE LEG., HOMELESSNESS IN WASHINGTON STATE: ANNUAL REPORT ON THE HOMELESS GRANT PROGRAMS (Dec. 2013).



shelters, emergency shelters, rapid rehousing, and other forms of rental assistance that keep families stably housed. According to the annual point in-time count of homelessness, together these programs helped reduce the overall incidence of homelessness by 29 percent between 2006 and 2013.<sup>22</sup> Despite their effect on attainment of educational opportunity, these programs are vulnerable to underfunding or complete defunding in an effort to meet the State's constitutional obligation. As noted above, homeless students and those in foster care already lag behind their peers in terms of educational opportunity. Further cuts or reductions to housing programs would more than cancel any gains from additional educational investments for this population of students.

## *2. The Foster Care System is Underfunded*

Students in the foster care system also require numerous state services to overcome the barriers posed by their unique needs. These services are guaranteed by the State's due process clause. In *Braam v. Washington*, this Court held that foster children have a constitutional right to be free from unreasonable risks of harm and a right to reasonable safety. 150 Wn. 2d 689, at 700 (2003). This Court further determined that to meet its constitutional duty to provide reasonable safety, the state must provide adequate services that meet children's basic needs.

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<sup>22</sup> *Id.* at 1.



*Id.* Critical services for foster care students include health and mental health care, transportation to and from schools upon placement changes, as well as support from a caseworker who can adequately attend to all their needs, including education. Each of these services work together to increase the possibility of a foster child attaining an acceptable level of educational opportunity.

Foster care services have experienced substantial cuts over the last several years.<sup>23</sup> Even now, important services are being cut to backfill a budget shortfall within the Children's Administration.<sup>24</sup> In FY 2015, the Administration predicts an \$18 million budget shortfall due to an increase in Children Protective Services investigations and the unexpected expenses associated with providing services to kids in care.<sup>25</sup> Consequently, the Children's Administration plans to budget less than the estimated need for many of their services, including scrutinizing transportation needs and cutting positions that promote cross-system collaboration. These programmatic cuts make it difficult for foster children to remain in their school of origin and fully engage in school activities. The

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<sup>23</sup> Press Release, Wa. St. Dep't of Social and Health Services, Department of Social and Health Services Statement on Braam Ruling (July 23, 2014) (available at: <http://www.dshs.wa.gov/mediareleases/2014/pr14017.shtml>).

<sup>24</sup> *Recent News about Children's Administration Budget Cuts*, COLUMBIA LEGAL SERVICES, <http://columbialegal.org/advocacy/children-and-youth-project> (last visited Aug. 1, 2014).

<sup>25</sup> *Id.*

Administration's Assistant Secretary has acknowledged that "additional funding" is needed to meet the outcomes required by *Braam*.<sup>26</sup>

Reducing or prohibiting expenditures on these services would undoubtedly have a negative effect upon an already vulnerable population. Foster care students are already the most challenged in terms of academic outcomes and success in a public school environment. Additionally, reducing supports to vulnerable families could result in more children entering an already overtaxed foster care system. Reduction or spending prohibitions to these services would thus have a mitigating effect upon additional educational investment for this population of students.

### *3. Temporary Assistance to Needy Families and the Social Safety Net*

Temporary Assistance for Needy Families (TANF) is a critical safety net for low-income families with school-aged children. The maximum monthly TANF grant for a family of three is \$478. This modest cash grant assists families by helping them meet their most basic needs, such as rent, utilities, and groceries.

Unfortunately, recent TANF cuts have affected thousands of low-income students and their families. In 2011, the TANF program sustained cuts totaling \$380 million.<sup>27</sup> These cuts included decreasing the monthly TANF benefit level,

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<sup>26</sup> See Press Release, *supra* note 24.

<sup>27</sup> 2011 Safety Net Report: Impacts of TANF & Disability Lifeline Reductions, STATEWIDE POVERTY ACTION NETWORK 3 (Oct. 2011), [https://www.povertyaction.org/subdirectspan/wp-content/uploads/2012/09/Poverty-Action\\_Budget-Cuts-2011.pdf](https://www.povertyaction.org/subdirectspan/wp-content/uploads/2012/09/Poverty-Action_Budget-Cuts-2011.pdf).

which consequently “reduced the income threshold families must fall under in order [to] qualify for TANF.”<sup>28</sup> When low-income students’ basic needs are not being met outside of the school day, they have no equal opportunity to achieve their full potential in the classroom. Children need the opportunity to focus on learning when they go to school to succeed. Constant worry over where they will sleep at night or where their next meal will come from inhibits their ability to focus in the classroom. The support provided by TANF helps ensure that low-income children can focus on being students and concentrate on the important things, like learning their multiplication tables and how to read.

#### *4. State Food Assistance*

The Food Assistance Program (FAP) was created by the state Legislature in 1997 in response to federal changes that rendered some documented immigrant families ineligible for the Supplemental Nutrition Assistance Program (also known as SNAP or “food stamps”). Households receiving FAP receive 75% of what they would receive if they were eligible for SNAP.<sup>29</sup> Funding for State Food

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<sup>28</sup> See *supra* note 28, at 4.

<sup>29</sup> Press Release, Wa. St. Dep’t of Social and Health Services, Food Assistance Bonus to end November 1 (Sept. 19, 2013) (available at: <http://www.dshs.wa.gov/mediareleases/2013/pr13033.shtml>).

Assistance was substantially reduced in 2012, putting nearly 14,000 children in immigrant families at greater risk of hunger.<sup>30</sup>

Studies have shown an “inverse relationship between inadequate nutrition and academic achievement.”<sup>31</sup> For example, in five studies examining nutrition-related risk behaviors and academic achievement, “inadequate dietary intake was associated with at least one or more of the following: lower grades, lower standardized test scores, or increased likelihood of grade level retention.”<sup>32</sup> Diminished nutritional support through State Food Assistance affects the educational opportunity of children of color, who are disproportionately harmed by childhood poverty, inequitable school funding and other, related forms of inequity.

#### IV. CONCLUSION

Students living in low-income households and students of color already suffer disproportionately poor academic outcomes because of economic and food insecurity, lack of affordable housing, health issues, limited family assets, and

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<sup>30</sup> *Fight Childhood Hunger: Restore State Food Assistance*, CHILDREN’S ALLIANCE (Jan. 2014), <http://www.childrealliance.org/resource-center/fight-childhood-hunger-restore-state-food-assistance>

<sup>31</sup> Beverly J. Bradley & Amy C. Greene, *Do Health and Education Agencies in the United States Share Responsibility for Academic Achievement and Health? A review of 25 Years of Evidence About the Relationship of Adolescents’ Academic Achievement and Health Behaviors*, 52 J. OF ADOLESCENT HEALTH 523, 527, (Apr. 9, 2013) (available at: <http://www.sciencedirect.com/science/article/pii/S1054139X13000505>).

<sup>32</sup> *Id.*

many other barriers. Freezing funding for these programs, or eliminating them entirely would have a devastating effect upon the already-fragile educational opportunity of this population, harm that would not be undone by increasing education funding. Because the Court asked for reasons not to order “prohibiting expenditures on certain other matters until the Court’s constitutional ruling is complied with,” Amici submit this brief to illustrate that cuts to programs that support families with school-aged children could destroy—not ensure—their constitutionally-mandated opportunity to receive a full education.

Respectfully submitted this 4th day of August, 2014.

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*THE CHILDREN’S ALLIANCE AND  
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### CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on this date I caused a true and correct copy of this *Amici Curiae* Brief of Columbia Legal Services, The Children's Alliance, and the Washington Low Income Housing Alliance to be served on the following parties, in the manner indicated:

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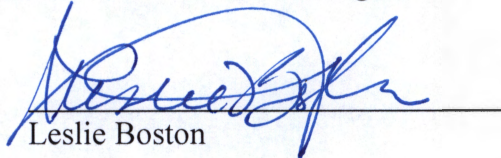
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*For Mathew and Stephanie  
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Dated this 4th day of August, 2014, at Seattle, Washington.

  
\_\_\_\_\_  
Leslie Boston