**2017-19 Biennium Budget Request**

**Decision Package**

**Agency: ATTORNEY GENERAL’S OFFICE**

**Decision Package Code/Title: AA/**El Centro de la Raza v. State of Washington (Charter Schools-2)

**Budget Period:** 2017-19 Biennial Budget Request

**Budget Level:** PL

**Agency Recommendation Summary Text:**

El Centro de la Raza and the League of Women Voters (LOWV) have filed a new lawsuit seeking to invalidate, on constitutional grounds, the reenacted Charter School Act passed in ESSB 6194 in the 2016 session (Ch. 241 Laws of 2016). This request is for funding to support the legal defense for the State of this duly enacted legislation. The Attorney General’s Office (AGO) will provide a complete and robust defense to the constitutional challenges that will likely go to the Washington Supreme Court. Either the legislation will be upheld or the AGO will identify constitutional deficiencies that can be addressed by the Legislature.

**Fiscal Summary:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Operating Expenditures** | **FY 2018** | **FY 2019** | **FY 2020** | **FY 2021** |
| Fund 17F | 71,000 | 71,000 | 0 | 0 |
|  |  |  |  |  |
| **Total Cost** | **71,000** | **71,000** | **0** | **0** |
| Staffing | **FY 2018** | **FY 2019** | **FY 2020** | **FY 2021** |
| FTEs | 0 | 0 | 0 | 0 |
| **Revenue** | **FY 2018** | **FY 2019** | **FY 2020** | **FY 2021** |
|  |  |  |  |  |
|  |  |  |  |  |
| **Object of Expenditure** | **FY 2018** | **FY 2019** | **FY 2020** | **FY 2021** |
| Obj. A | 0 | 0 | 0 | 0 |
| Obj. B | 0 | 0 | 0 | 0 |
| Obj. E | 71,000 | 71,000 | 0 | 0 |
| Obj. G | 0 | 0 | 0 | 0 |
| Obj. J | 0 | 0 | 0 | 0 |

**Package Description:**

El Centro de la Raza v. State of Washington challenges a reenactment of the Charter Schools Act. The Charter Schools Act was originally enacted as Initiative 1240 in November 2012. The League of Women Voters (LOWV) challenged the validity of the Act on constitutional grounds. It was initially upheld in Superior Court but in September 2015 the Washington Supreme Court struck down the Act in its entirety based on certain funding provisions. The legislature, in the 2016 session, reenacted the law with changes designed to cure the constitutional defect identified by the court. On May 27, 2016, attorneys for the LOWV sent a letter to the Attorney General outlining a number of theories about why the new Act is unconstitutional and formally asking the Attorney General to take action. The Attorney General declined by letter on June 17, 2016. On August 3, 2016, El Centro de la Raza, the League of Women Voters and number of other parties filed the current lawsuit against the State of Washington.

The AGO has estimated its staffing needs and the time arc to defend this second suit based on its experience with the first lawsuit Because the issues are based on constitutional interpretation and the Supreme Court’s previous decision, this case will undoubtedly continue until finally heard and determined by the state Supreme Court.

**Relationship to the AGO Strategic Plan**:

1. Priority - Serve the State
   1. Goal - Deliver high quality, timely, and efficient legal services.

The AGO contact for this request is Brendan VanderVelde, Budget Director, and he can be reached at (360) 586-2104.

**Base Budget:**

There is no base budget for this lawsuit in particular nor is there any funding authorized for the Charter School Commission within the AGO central service billing model for the Legal Service Revolving Account.

This lawsuit is seeking to invalidate legislation that is against the state as a whole and must be defended. The AGO must have funding available to support staff work on this case.

**Decision Package expenditure, FTE and revenue assumptions, calculations and details:**

**Fiscal Summary:**

In order to provide legal services for the Charter Schools Commission, the AGO estimates a workload impact of 0.33 AAG and 0.16 Legal Assistant (LA) at a cost of $71,000 in FY 2018 and FY2019. The estimate is based on the workload and cost impact seen in FY 2016 in defending the Charter School Commission in the previous lawsuit. Agency administration support FTEs are included in the table above using a Management Analyst 5 as a representative classification.

These costs are considered one time costs and will not be required beyond FY 2019.

**Decision Package Justification and Impacts**

**What specific performance outcomes does the agency expect?**

The desired outcome and result is to provide the state with a legal defense in the courts to a legal challenge seeking to invalidate a state law.

Potential undesired results include a default against the state and the invalidation of RCW 28A.710 (Charter Schools) without a full hearing on all of the issues, and a final determination by the state Supreme Court.

Efficiencies will increase with the approval of this request. Without funding, the AGO will not have the authority to incur the costs associated with defending this case without diverting resources from other intended programs and litigation needs.

Output will increase with the AGO devoting sufficient resources to handle this litigation.

**Relationship to Results Washington:**  
  
**1) Goal 1: World-class Education**

**Sub-topic: K-12**.

This request supports all of the outcome measures of the sub-topic K-12. The State has chosen to make charter schools a part of the landscape delivery educational services to children. Responding to this lawsuit will further the State’s understanding of the scope of constitutionally permissible educational service delivery models.

**2) Goal 5: Effective, Efficient & Accountable Government –**

**Sub-topic: Customer Satisfaction.**

Increase percentage of agency core services where customer satisfaction is measured. This request supports timely and effective response to a lawsuit challenging a significant state education policy as enacted into statute.

**Fully describe and quantify expected impacts on state residents and specific populations served.**

Several public agencies are impacted by the uncertainty brought by this lawsuit. The Charter School Commission, Superintendent of Public Instruction and State Board of Education all have roles in administering the charter school system. The roles of each are put into question by the lawsuit and in the case of the Charter School Commission, its very existence is affected.

Parents and students opting to attend charter schools are thrown into uncertainty by the existence of this lawsuit. They are best served by bringing the suit to closure in the timeliest manner possible.

Local school districts are also thrown into some uncertainty about the charter school options. The Spokane School District operates charter schools and has a greater stake than most in determining whether they may proceed.

**What are other important connections or impacts related to this proposal?**

|  |  |  |
| --- | --- | --- |
| **Impact(s) To:** |  | **Identify / Explanation** |
| **Regional/County impacts?** | **No** |  |
| **Other local gov’t impacts?** | **Yes** | The Spokane School District operates charter schools under the authority of the law being challenged. Other school districts need to know whether their resident students that choose charter schools are doing so legally. |
| **Tribal gov’t impacts?** | **Yes** | Some tribal governments operate tribal compact schools, which mirror the definition of charter schools. Any constitutional infirmities attributable to charter schools may impact tribal compact schools. |
| **Other state agency impacts?** | **Yes** | Charter School Commission, Superintendent of Public Instruction, State Board of Education |
| **Responds to specific task force, report, mandate or exec order?** | **No** |  |
| **Does request contain a compensation change?** | **No** |  |
| **Does request require a change to a collective bargaining agreement?** | **No** |  |
| **Facility/workplace needs or impacts?** | **No** |  |
| **Capital Budget Impacts?** | **No** |  |
| **Is change required to existing statutes, rules or contracts?** | **No** |  |
| **Is the request related to or a result of litigation?** | **Yes** | El Centro de la Raza and the League of Women Voters |
| **Is the request related to Puget Sound recovery?** | **No** |  |
| **Identify other important connections** | **None** |  |

**Please provide a detailed discussion of connections/impacts identified above.**

The Charter School Commission authorizes charter schools state-wide. Based on the 2015-16 school year (prior to the first charter school law being invalidated), the Commission expects to be overseeing the contracts of 6-9 charter schools in the 2016-17 school year, and additional schools in the future, if approved.   
  
The Superintendent of Public Instruction has general supervisory authority over the public school system and sits on the Charter School Commission.   
  
The State Board of Education approves school district authorizers and has a designee on the Charter School Commission.   
  
All three agencies have ongoing duties related to the operation of public charter schools. The Spokane School District operates charter schools under the authority of the law being challenged. Other school districts need to know whether students that choose charter schools are doing so legally.

Some tribal governments operate tribal compact schools that could be put into legal question if the court rules in favor of the plaintiffs.

Depending on how broadly the court rules, other public school programs that are non-traditional in nature could also be called into question.

**What alternatives were explored by the agency and why was this option chosen?**

The AGO can identify no alternative to defending this lawsuit on behalf of the State. Settlement is not an option because the state cannot agree to invalidate an enacted law.

There are no statutory, regulatory or other changes or negotiation possibilities that will reduce the costs of this legal defense. There is no alternative source of funding.

**What are the consequences of not funding this request?**

Failing to adequately fund the legal defense of this lawsuit will result in an inability to prepare and present an adequate defense to the alleged invalidity of the enacted law, and it will generate uncertainty with families seeking this educational option.

**How has or can the agency address the issue or need in its current appropriation level?**

The Charter Schools Commission does not have a legal services appropriation, therefore, the AGO has not been provided Legal Services Revolving Fund billing authority through the Central Service Model.

**Other supporting materials:**

**Information technology:** Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

No [](http://ofm.wa.gov/budget/default.asp)

Yes Continue to IT Addendum below and follow the directions on the bottom of the addendum to meet requirements for OCIO review.) Note: If the answer is yes, AGO Divisions should contact AGO ISD and AGO Budget. AGO ISD will coordinate with the OCIO as necessary.