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### How will state Supreme Court react if lawmakers hold back on school funding?

The state Supreme Court demands the Legislature do more to fund education, and do it soon. That is looking unlikely and raises questions about what the justices will do — and can do — if lawmakers don't meet the court's expectations.

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OLYMPIA — When the state Supreme Court recently threatened to hold lawmakers in contempt for shorting education, GOP Sen. Michael Baumgartner tweeted an image of a hammer and a bag of sand.

His message to the justices: “Go pound sand.”

It's not a universally held position. Gov. Jay Inslee and House Democrats contend quick action is needed to keep the court at bay. But leaders of the GOP-led caucus in the Senate note lawmakers boosted education by \$1 billion last year and say there's no need to hurry.

The disagreement between the two parties suggests there will be no move to put more money into schools this year. It's not even clear if the Legislature will come up with a plan — due April 30 — to fund education in a way that satisfies the court.

All this raises serious questions: What will the justices do if lawmakers don't meet the court's expectations? What can the court

do?

In other states, faced with a similar situation, courts have closed down the school system, or threatened to do so, to pressure lawmakers. But a wide range of other options exist, including fining legislators if they don't comply.

To a certain extent, it comes down to whether lawmakers feel the court is bluffing.

Former state Supreme Court Chief Justice Gerry Alexander advises the Legislature not to find out.

“If I were in the Legislature, I would take it seriously,” said Alexander, who served on the court from 1995 to 2011.

“I think the court laid down the gauntlet, and I think they will have to follow through. Otherwise their decision seems sort of meaningless — ‘We want you to abide by the constitution, but we’re not going to do anything if you don’t,’ ” he said.

## **2012 ruling**

The year’s showdown stems from a 2012 state Supreme Court ruling known as the McCleary case. The court ruled the Legislature was violating the state’s constitution by failing to provide ample funding for public K-12 education.

It gave lawmakers until 2018 to raise education spending by an additional \$3.5 billion to \$7 billion per biennium, depending on whether the total includes more state money for teacher pay. It based the order on the Legislature’s own definition of what it means to provide a basic education for the state’s 1 million students.

Ten days ago the court turned up the pressure by issuing an order that knocks lawmakers for moving too slowly.

While the court credited the Legislature for taking “meaningful steps” in the 2013-15 budget, it also hammered lawmakers for not being on pace to meet the 2018 deadline for full funding.

The justices set an April 30 deadline for the Legislature to come up with a year-by-year plan to meet the court’s requirements.

The court indicated it could intervene more forcefully, writing, “We have no wish to be forced into entering specific funding directives to the state, or, as some state high courts have done, holding the Legislature in contempt of court. But, it is incumbent upon the state to demonstrate ... concrete action.”

The order was signed by eight of nine justices. Justice James Johnson wrote a dissent, arguing the court had gone too far.

Issued just days before the Legislature went into session, the order sparked two very different responses.

Inslee in his state-of-the-state address told lawmakers, “We need to stop downplaying the significance of this court action” and proposed closing tax breaks to plow an additional \$200 million into education this year.

Majority caucus leaders in the Senate disputed the court’s reasoning and argued — though not as pointedly as Baumgartner — that the state is already on pace to meet the McCleary decision.

GOP Sen. Steve Litzow, chairman of the Senate Early Learning and K-12 Education committee, recently sent Inslee a letter with a rosy view.

He asked the governor to set up meetings on education funding, saying the court had issued an order “recognizing the significant progress made last year and requesting that the Legislature provide a plan ... detailing how we will continue this progress.”

Litzow didn’t mention the court told lawmakers to show “through immediate, concrete action that it is making real and measurable progress, not simply promises.”

## **Options exist**

If the court decides the Legislature is not taking it seriously, it has a wide range of options.

“The authority of the court is pretty broad,” said Phil Talmadge, who served on the state Supreme Court from 1995 to 2001. “They could, in effect, put the state education system in receivership and appoint a master to run it, and the master would have the authority to do a variety of things.”

Whether such a master could take money out of the state treasury “would be a really significant constitutional question on the separation of powers,” he said.

The court, as it indicated in its order, could also hold lawmakers in contempt.

“They could basically fine them,” Talmadge said. “They could impose monetary sanctions for each day they fail to do certain things, and each legislator would be obliged to pay it, or the leadership.”

Other options include simply directing lawmakers to appropriate a certain amount of money into education.

Alexander speculated the court “could enter an order precluding (the Legislature) from passing any legislation or a budget until such time as they have dealt appropriately with the constitutional requirement.”

The reality is, no one knows exactly what the court would do.

Precedents exist in other states. In July 1976, the state Supreme Court in New Jersey ordered the schools to be closed until the Legislature appropriated more funding for schools.

New Jersey lawmakers went into session that summer and enacted the state’s first income tax to comply with the court’s demands, said David Sciarra, executive director of the Education Law Center, in Newark, N.J.

In 2005, the state Supreme Court in Kansas indicated in a court order that it could close schools if lawmakers did not provide more money for schools. The Legislature went into special session and approved the funding.

But now the Kansas state Supreme Court and lawmakers are in another battle over school funding that has yet to play out.

### **Better hand**

Sciarra said the state Supreme Court in Washington has the better hand in a confrontation with the Legislature.

“The Washington Constitution is much more specific than many other state constitutions” where courts have ordered lawmakers to put more money into schools, he said. “Your constitutional provision is very powerful and strong and clear.”

The state’s constitution says, “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.”

That said, no one can predict if the Supreme Court would actually take more forceful action.

Talmadge observed that the current makeup is different from past courts. Historically, he said, the court generally had justices who had served in the Legislature or had experience in the executive branch of government. That’s no longer true.

“It might make them a lot more frisky about doing things to the Legislature if they think the Legislature is being disrespectful, in terms of what the court has ordered them to do,” he said.

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