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Lawmakers balk at state high court's school funding ruling

By **Mike Baker**, Associated Press

OLYMPIA — Washington state's highest court has exercised an unusual amount of power on education funding, and it's prompted some lawmakers to raise constitutional concerns.

Before last year's legislative session, the court ruled that the state wasn't meeting its obligation to amply pay for basic education. In response, the Legislature added about \$1 billion in school-related spending, and lawmakers widely agree they'll add more funding in coming years.

Earlier this month, the court went a step further, analyzing specific funding targets while telling lawmakers to come back with a new plan by the end of April.

Those specific demands have irked budget writers in the Legislature.

"They are way out of their lane," said Republican Sen. Michael Baumgartner.

Baumgartner expects lawmakers will continue adding "substantially new resources" to the state education system, but he said the court's position could erode the proper balance of power in Olympia. Baumgartner hopes lawmakers will ignore the court's latest demands, or he fears justices may exercise more power going forward.

"Everyone has to see how this could be abused," Baumgartner said.

Baumgartner has proposed a bill that would shrink the court from nine justices to five, acknowledging that it was partially an attempt to push back against the decision. But he also said it the change would provide significant budget savings — money that could be redirected to education.

Phil Talmadge, a lawyer who previously served in the Legislature and then the state Supreme Court, said the high court is acting in unprecedented ways on the education issue. And if there's no amicable resolution between the two sides, an escalating battle between lawmakers and justices could lead to politicians being held in contempt or reduced funding for the court.

"This could be downright nasty," Talmadge said.

Democratic Sen. Jim Hargrove, one of the budget writers in the Legislature, said it was the court's jurisdiction to find that the Legislature wasn't meeting its constitutional responsibility on education. But he said he sees separation-of-power problems with the court's approach of describing detailed budget numbers when the court doesn't have staff to handle budget issues.

“They got specific in ways that weren’t even accurate,” Hargrove said.

Chief Justice Barbara Madsen, who wrote the latest McCleary order, declined to comment through a spokeswoman. She had written in the opinion that the court was retaining jurisdiction in the case, in part, because the court has made a promise to schoolchildren that it will not stand idly by while the Legislature makes unfulfilled promises.

Justice James Johnson, the only dissenting justice in the court’s latest message to the Legislature, has agreed that the court is violating the constitution.

“Put simply, the founders did not intend for this court to act in such a role and, more importantly, prohibited exercise of such self-granted power,” Johnson wrote.

Talmadge noted that in decades past, the Supreme Court often had members with past experience in the Legislature or managing state government, providing justices with the perspective of the practical impacts of their decisions. That isn’t the case with the current justices, he said.

Talmadge doesn’t necessarily think the court is overstepping its authority, but he says the justices seem to be getting close.

“This is really uncharted waters,” he said.

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