

In Our View: 'This Could Become Nasty'

Supreme Court's education funding decree could spur legal fight with lawmakers

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Apparently weary of being pushed around by the state Supreme Court, some Washington legislators are trying to push back, and that could lead to an interesting constitutional shoving match for the state.

"They are way out of their lane," state Sen. Michael Baumgartner, R-Spokane, said. "Everyone has to see how this could be abused." It is unclear whether this came before or after Baumgartner posted a photo of a hammer and a bag of sand, which might or might not have been his way of telling the justices to go pound sand. But Baumgartner's sentiments are shared by some other members of the Legislature, who raise valid legal questions about the role of the court and the separation of powers.

Two years ago, the state Supreme Court ruled in *McCleary v. State of Washington* that the Legislature was not living up to its constitutionally mandated obligation to fully fund public K-12 education.

So far, so good. But the justices also maintained jurisdiction over lawmakers' performance, with Justice Debra Stephens writing in the majority opinion that "the judiciary will retain jurisdiction over the case to help ensure progress in the state's plan to fully implement education reform by 2018."

That's where things get sticky. After adding \$1 billion to K-12 funding in the 2013-15 budget, lawmakers handed in their report to the Supreme Court. The court patted lawmakers on the head and told them to go clean their rooms, and that's when legislators got all pouty. Metaphorically, speaking, of course.

"It is incumbent upon the State to demonstrate, through immediate, concrete action, that it is making real and measurable progress, not simply promises," Chief Justice Barbara Madsen wrote in assessing the Legislature's performance. The court also gave lawmakers until April 30 to provide "a complete plan for fully implementing its program of basic education for each school year between now and the 2017-18 school year," and it spelled out specific dollar amounts necessary for categories such as transportation and class-size reduction.

This "road map" to full compliance used dollar totals devised by the Legislature itself, and it came after lawmakers twice ignored the court's 2012 order to show a detailed plan for addressing the shortfall. But that hasn't made the situation any less tense. Justice James Johnson, the only dissenting voice in the court's latest message to lawmakers, wrote, "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."

In other words, the state Supreme Court wasn't designed to micromanage legislative spending, which eventually could lead to some other court deciding on Supreme Court v. Legislature. In writing the original 2012 decision, Stephens addressed issues under the paramount duty clause of the state constitution: "If nothing else, they test the limits of judicial restraint and discretion by requiring the court to take a more active stance in ensuring the state complies with its affirmative constitutional duty."

For lawmakers, the situation prevents them from giving nothing more than lip service to school funding. It's easy to say you support education, but it's just as easy to claim the money simply isn't available if an enforcement arm is not in place. For the court, however, the question becomes where does its power end? Justices, it would seem, are overstepping their bounds in adding legislative duties to their powers, and those powers must remain in check.

"This could become nasty," Phil Talmadge, a former legislator and Supreme Court justice, told the Associated Press. "This is really uncharted waters."