



## Baumgartner vs. State Supreme Court

Angered by the McCleary ruling, Spokane Sen. Mike Baumgartner introduces three bills to curb the court. One would shrink the number of justices from nine to seven.

**By John Stang**

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**The new bill reads like a tit-for-tat measure.**

The Washington Senate Majority Coalition Caucus, an alliance of 24 Republicans and two Democrats, has argued for weeks that the State Supreme Court overstepped its bounds by dictating how much money the Legislature should spend on improving K-3 education.

Late Friday, a leading Republican senator introduced a bill accusing the Supreme Court of not handling enough cases, and requiring that the court pick up the pace. This is the third bill by Sen. Mike Baumgartner, R-Spokane, to take a defiant swipe at the Supreme Court. He has already introduced a measure to shrink the court from nine to seven justices.

Baumgartner's latest bill claims that the court ruled on 132 fewer cases in 2012 than it did in 2008. "The need for immediate action could not be more apparent," reads the bill. "... To some, it may seem counterproductive to seek quantity over quality and that this is a blunt instrument to deal with a fairly complex, nuanced, and debatable problem. Others may also view it as an obscene violation of the doctrine of separation and unthinkable intrusion into a matter clearly within the purview of the Supreme Court, however the legislature shall not stand idly by while the Supreme Court makes unfulfilled promises.

"The legislature has no wish to be forced into issuing specific directives to the Supreme Court to decide specific cases in order to process them more speedily or to hold the Supreme Court members in contempt of the legislature. However, it is incumbent upon the Supreme Court to demonstrate through real and immediate action that it is making real and measurable progress, not simply promises. The legislature hereby orders the court to increase the number of cases it decides by 50 percent by the 2017-2018 court calendar. The legislature also demands that the Supreme Court draw upon its purported budgetary expertise and provide a report by April 30, 2014, as to how it plans to fully implement this order and provide a timetable for funding its plan."

**The April 30 deadline is the same one the Supreme Court imposed** on the Legislature to present its education improvement plan. The Senate and House have fallen behind on complying with the McCleary ruling, the 2012 Supreme Court decision which found the state remiss in its constitutional duties to provide a "basic education" for Washington's kids. The court zeroed in a 2009 law — passed then mostly by Democrats and opposed then mostly by Republicans — which established a ratio of one teacher per 17 students in grades K-3. The current staffing ratio is one teacher per 25.3 students.

The court called for hiring a significant number of extra K-3 teachers and building numerous extra classrooms to handle the increase in the number of smaller classes.





2014 call for a catch-up plan.

Meanwhile, the thread of logic in Baumgartner's bill follows the rationale in a January Supreme Court declaration that the Legislature is falling behind on McCleary fix-it work. That declaration angered House Republicans and majority coalition leaders, who countered that the Supreme Court is overstepping its constitutional boundaries.

Prior to introducing the third bill, Baumgartner (left) said his first two bills were "a punch-back to the Supreme Court overreaching its constitutional role on writing the budget. ... If they say 'jump' and we say 'how high,' that institutionally weakens the Legislature."

Baumgartner also acknowledged that his bills would probably die in the Democratic-controlled House, which agrees with the Supreme Court's 2012 ruling and with its

A few weeks ago, Baumgartner introduced a bill that would not replace retiring Supreme Court justices until the total number is reduced from nine to seven. His rationale is that only five states, including Washington, seat nine Supreme Court justices. "On a purely fiscal aspect, we don't need nine," says Baumgartner. Washington has had nine justices since 1909. The bill is currently awaiting a floor vote of the full Senate.

**The second Baumgartner bill seeks to change the definition of "basic education"** in Washington. In broad strokes, his bill would de-emphasize improving teacher-student ratios in grades 2 and 3 and place emphasis instead on supporting students in pre-school and in college.

Baumgartner would redirect the money saved by abandoning teacher-student ratios towards pre-school programs, which would serve roughly 6,800 more 3-and 4-year-olds. Some of the cash would be available to pay "top teachers" \$100,000 a year. He said rerouting second- and third-grade teacher-student ratio money would free up \$600 million for the other measures. His bill would keep the student-teacher-ratio targets intact for kindergarten and first grade. Baumgartner contended that research shows improved ratios are effective in kindergarten and first grade, but have diminishing returns in grades 2-3.

In 2012, a bipartisan task force with non-legislative education experts studied what would be needed to meet the McCleary requirements. Members calculated that it would take \$4-\$4.5 billion additional dollars from 2013 to 2019 to complete the McCleary tasks. The panel's Republicans dissented from that cost estimate.

Since then, Senate and House Republicans have pushed for funding the improvements at a rate below the roughly \$1.3-\$1.5 billion per budget bienniums mapped out by the task force (2013-2015, 2025-2017 and 2017-2019). Consequently, the Legislature compromised at \$982 million for 2013-2015. In January, the Supreme Court said that was not enough and set the April 30 deadline for a catch-up plan.

**While the Senate Majority Coalition has agreed to work** on the catch-up plan, it wants to take a totally different approach from the Supreme Court. Its philosophy, dubbed "reform before revenue," is that throwing sheer dollars at a problem won't fix it. Democrats disagree, siding with the Supremest.

Republicans balk at the Supreme Court's approach because there are two ways to raise the extra \$1.5-\$1.75 billion needed in both 2015-2017 and 2017-2019. One is to raise taxes or close tax loopholes, which Republicans oppose on philosophical grounds. The other is to take money from non-educational programs such as social and health services, which Democrats oppose on philosophical grounds — and have the clout to stop.

So what happens with this impasse between the court and the majority coalition? The court can't fine or jail legislators. But at some point it can order the state treasurer to effectively garner the budget by forcing treasury to pay all the McCleary obligations before spending any money on other legislative appropriations.

That's an option Republicans support — and Democrats oppose.

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