

# Latest McCleary order may be repeating the failures of the 1970s Doran decision

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In January, the state Supreme Court handed down a new order in the 2012 McCleary case that reads almost like a line-by-line budget, as I wrote here. This 2014 order represents a significant shift in approach compared with the court's original McCleary decision, which held that the Legislature had not fully funded education.

First, the odd timing of the new order raised eyebrows among lawmakers and beyond. The 2014 order was issued just days before the start of the legislative session. The pronouncement ordered the legislature to fund the justices' selected education programs, then report back by April 30th on how well elected lawmakers had implemented the justices' policy choices. Issuing orders that read almost like budget bills and requiring their enactment into law is unusual for the judicial branch, to say the least. Former Supreme Court justice, Phil Talmadge, has examined the court's reach in McCleary, noting it takes the state into "unchartered waters."

Second, the 2014 order drops key language that was included in the original McCleary decision. The 2012 decision said it is the elected legislature's paramount duty under the constitution to define and fund the state's program of public education. The justices said lawmakers must fully fund education, but they said they would "defer to the legislature's chosen means of discharging its Article IX, Section 1 duty." In contrast, in 2014 the justices seem to have taken on the work of writing the education budget themselves, showing little deference to the elected legislature's role under our three-branch democratic system.

Third, the 2014 order describes a detailed set of education programs that closely parallels the lobbying agenda of the state's powerful teachers union, the Washington Education Association. The strong link between the 2014 order and the political agenda of union executives raises troubling questions about the neutrality of the court. The risk is the justices might be viewed as furthering the financial and political interests of a particular special interest that happens to maintain an influential presence in Olympia.

Increases in education spending, especially on teacher salaries, tends to increase the mandatory dues collections in a way that profits the union. Each month school district officials across the state use payroll deductions to transfer millions of dollars in public education funds into private union bank accounts.

Funding our public schools is important, but it is equally important that the state supreme court be seen as fair and impartial, providing equal justice for all. Issuing new directives on the eve of a

legislative session, using a court order to introduce a line-by-line policy budget, and advancing policy choices that tend to financially benefit a powerful special interest point to troubling trends in the direction of the court.

The McCleary decision is the supreme court's greatest foray into education policy since the Doran decision of 1978. In the 1970s, supreme court justices failed to achieve lasting improvements in public education for children, despite ordering the policy changes they favored. With their 2014 order, today's justices appear to be trying the same approach, using the judiciary to set major education policy, incurring the same political risks, and likely leading to the same frustrations in failing to improve learning for children.

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