

Callaghan: McCleary court is right both constitutionally and politically

By PETER CALLAGHAN

The News Tribune
May 8, 2014

It follows the issuance of the Legislature's education funding reports to the state Supreme Court just as naturally as May showers follow April showers.

State legislators and their enablers complain about the court overstepping its constitutional bounds, disrespecting the separation of powers and trying to become a mini-Legislature.

That's because the court broke with precedent by retaining jurisdiction of the case known as McCleary until 2018. The court did this because it wants to make sure the Legislature follows through on meeting its constitutional duty to fully fund basic education.

It seems like a good idea given the history of school funding in Washington state. But that hasn't stopped the complaints, illustrated so well by a state senator tweeting a photo of a hammer and a bag of sand on his desk, suggesting what the court can do with its order.

But the complaints and the constitutional debate haven't resonated with voters who view this as an education issue, not a constitutional issue. Talk about separation of powers and legislative prerogatives might just sound like a way to oppose adequate funding for public schools.

I can't tell if the court understands the political high ground it stands on. But standing for public education funding is both constitutionally correct and politically smart. That explains why the latest progress report tones down the whining, if not the condescension.

The report, written by a special House-Senate committee, first notes that the case has "sparked significant debate over the separation of powers and the role of the judiciary in budgeting policy."

But it then says that the members of the committee (apparently as opposed to those who post pictures on Twitter) "recognize the court's legitimate mandate to ensure that the paramount duty is fulfilled in a constitutionally adequate manner."

It also asserts that the committee members, at least, want to meet the constitutional requirements without triggering a constitutional conflict and asks the court to do the same.

Which is good, because we don't need to guess what would have happened had the court not retained jurisdiction. We would only need to look back at what happened the last time. After a similar ruling in *Seattle School District v. Washington* in the late 1970s, legislators and

governors made attempts to end the overreliance on local levies and increase funding from the state where it should come from.

With each recession, with each competing demand for state revenue, the state slipped back into the same trap — using levies to compensate for slipping state funding. But levies produce different amounts depending on the wealth of a district and the willingness of local voters to take on more of the state's burden through local property taxes.

The court said it wouldn't let that happen again. Meanwhile, it has repeatedly deferred to the Legislature to find the means of meeting lawmakers' duty. In January when the court laid out what a funding plan would look like — drawing criticism from many insiders — it simply quoted from the Legislature's own bills, studies and timelines. It did so only to show the Legislature what the timeline that the court had been requesting for two years might look like.

Without the court holding the Legislature's feet to the constitutional fire, the Democrats and Republicans would likely have let their philosophical disagreements keep them from acting. The more-revenue vs. redistribution-of-existing-revenue impasse would not have been broken and would be used primarily as a campaign issue.

Yes, the Legislature is the more practical body. It lives in the world of the possible and is sensitive to the demands of voters and constituency groups.

Yes, the court is more intellectual. It lives in a world where right is right, regardless of whether there are enough votes supporting it.

Both profiles have a place. With each branch applying what it does well, the resolution of the perennial school funding issue has a chance of being both adequate and longstanding. That would not have been possible had the court made its ruling in McCleary and then walked away, hoping for the best.

Peter Callaghan: 253-597-8657 peter.callaghan @thenewstribune.com @CallaghanPeter

Read more here: <http://www.thenewstribune.com/2014/05/08/3185267/mccleary-court-is-right-both-constitutionally.html?sp=/99/296/#storylink=cpy>