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McCleary showdown: Two messages from the Washington Supreme Court

Posted by Erik Smith



Washington State Supreme Court
(Seattle Times Photo/Ken Lambert)

As the McCleary case becomes a showdown Wednesday afternoon at the state Temple of Justice, reading the mood of the state Supreme Court isn't easy. There seem to be two messages coming from the court of late.

The first message is the tough-talking one the court has sent to the Legislature and the governor's office, in its formal court orders. The other is unofficial – the kinder, gentler explanation justices have offered as they have met with The Seattle Times editorial board this election season. Washingtonians might hope the latter is true.

The court is overseeing implementation of its decision in *McCleary v. State of Washington*, which held that the state needs to beef up spending on K-12 education by the 2017-18 school year. On Jan. 9, at a point when the state is about a quarter of the way to the goal, the court declared lawmakers hadn't made enough progress,

stepped up the schedule and said lawmakers needed to change their procrastinating ways. The court directed them to come up with the rest of the multi-year, multi-billion-dollar plan to fund the K-12 schools, pronto. Lawmakers balked.

So the court issued an equally high-handed order on June 12, demanding that the other two branches answer for their failure in court Wednesday at 2 p.m. Lawmakers are supposed to explain, among other things, why the court should not impose contempt sanctions, impose big fines, order the passage of specific bills, or shut down the school system entirely. This message seems to trample on the idea that the court is just one of three separate and roughly equal branches of government, each of which deserves a bit of leeway to do its job, and requires the respect of the other two.

Justices presented the argument rather differently as they passed through The Seattle Times offices for endorsement interviews. Four are up for election this year. Three of them say they want to remind lawmakers that time is running out — there are only three sessions left — and if hauling the governor and Legislature into court seems a bit harsh, it is the only way they can do it. “I honestly don’t think anybody really wants to see us create a constitutional crisis where the court oversteps its boundaries,” said Justice Mary Yu, who is running for a seat on the court after being appointed earlier this year.

The justices note that hearings, directives and rulings are the way the court communicates. “This is how a court convenes the parties to address where we are,” said Justice Deborah Stephens, author of the original McCleary order. “We can’t just walk across the street [to the Capitol] and talk one-on-one with the Legislature, or with individual legislators. The way a court can hear from the parties is in the context of a show cause order.”

So what’s with that list of possible punishments? The court was just following standard format, said Justice Mary Fairhurst. It took the list of suggestions from a brief filed by the plaintiffs, authored by attorneys representing the McCleary family and a bevy of education groups. The court said the state needed to “show cause” why those penalties should not be imposed. “It shows the urgency of the issue,” she said. “We’re just going to conversation about it on the third.”

All just a matter of routine?

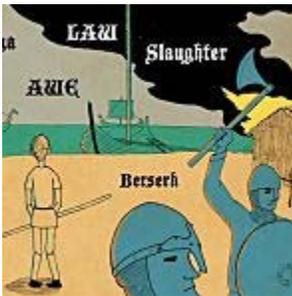
No, not at all. The court might have accepted the arguments written by the attorney general's office on behalf of the governor and the Legislature – that there is still plenty of time for the state to comply, the big debate comes next year when lawmakers will write a biennial budget, and it was unreasonable for the court to expect much from the Legislature in this year's short 60-day session. But the court didn't do that. In its order, it declared the Legislature to be in "violation."

And the fourth justice, Charles Johnson, said he sometimes has thought the court ought to play a more confrontational role with the Legislature. It would be nice to believe the whole thing has been overblown; that the court sees the dangers ahead, it won't do anything silly, and the whole thing has happened because the court can't pick up a telephone and dial the statehouse and say "please don't forget." The Legislature could use a good scare, and an admonishment from a judge might do wonders, but it is a little soon to send the Gang of 147 up the river.

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