

# Court considers whether to hold lawmakers in contempt over education funding

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Lawyers on opposing sides of a landmark education funding case agree that state lawmakers have failed to comply with at least one order from the state Supreme Court.

What was up for debate Wednesday was what the consequences of that failure should be.

The state's highest court heard arguments Wednesday about whether it should punish lawmakers for their slow progress toward meeting a 2018 deadline to fully fund public education.

On one side were lawyers for the Legislature, who asked the court to give lawmakers another year to come up with a plan for funding schools.

Arguing the opposite was a group of parents, teachers, school districts and public school advocates who have sued the state over inadequate funding of education. Speaking on their behalf, lawyer Thomas Ahearne said lawmakers should be held in contempt of court if they don't reconvene this year to come up with a detailed education funding plan, something the court had ordered the Legislature to produce by April 30.

At Wednesday's hearing, several justices were clearly frustrated by the Legislature's inaction. Justice Charles Wiggins said that the court has asked the Legislature twice before to come up with a plan to fund education, and lawmakers haven't done it. Now the state is asking for even more time, he said.

"It's been said that insanity is defined as doing the same thing over and over and expecting a different result," Wiggins said. "Why should we think that you're going to do something different?"

But some justices expressed concern that steps such as invalidating parts of the state budget or dictating amounts to be spent on education could exceed the court's authority, veering into the realm of legislating from the bench.

"It all sounds like the court writing a budget, frankly," Justice Debra Stephens said Wednesday.

Alan Copsey, state deputy solicitor general, argued Wednesday that holding lawmakers in contempt of court or temporarily shutting down the state's underfunded school system would be "counterproductive."

He said such actions could impede the political process and hurt the Legislature's ability to agree on new education funding measures when it writes a new two-year budget next year.

"The preferred option from my perspective is you can speak as harshly to the Legislature as you think is necessary to let them know that you're serious," Copsey said Wednesday. "But wait until the Legislature takes action in 2015 and see whether that action is making progress."

Ahearne, meanwhile, said court justices should impose sanctions on the Legislature sooner if they want their judicial orders to carry weight in the future.

"Plaintiffs submit that no one is above the law, that Washington lawmakers should actually obey the law," Ahearne said Wednesday.

Wednesday's hearing was the latest development in *McCleary vs. State of Washington*, in which the state Supreme Court ruled that the Legislature wasn't meeting its constitutional duty to adequately fund the state's public school system. In its 2012 ruling, the court ordered lawmakers to amply fund K-12 education by 2018.

In January, the court said that lawmakers hadn't made significant progress toward the 2018 funding deadline, and ordered them to come up with a detailed long-term funding plan for schools.

But lawmakers didn't deliver such a plan in the report they gave to the court April 30. As a result, the Supreme Court ordered the state to appear Wednesday and explain why the Legislature shouldn't be held in contempt of court.

The court made no decision Wednesday, but questioned lawyers on both sides about whether it should hold the Legislature in contempt, and if so, what sanctions should accompany that determination.

Possible remedies justices mentioned from the bench included invalidating hundreds of tax breaks approved by the Legislature.

Justice Mary Yu also discussed the idea of continuing Wednesday's hearing for another year, leaving open the possibility that the court could come back and sanction lawmakers after the 2015 legislative session if it still deems their progress unsatisfactory.

But Yu didn't seem thrilled with that option.

"Short of doing nothing (or) entering an order of contempt, what other options does this court have?" Yu asked Copsey, the attorney for the state. "You're asking for a political accommodation, that's what you're asking for."

In past court filings, Ahearne has suggested that the court could bar the Legislature from making new expenditures until it comes up with a plan to fund education, or potentially strike down education funding cuts made in the state budget.

But Wednesday, Ahearne said that even a simple ruling that the Legislature is in contempt of court — without any additional penalties — would go a long way toward pushing lawmakers to comply with the court's orders.

“I think lawmakers don't want to be known as lawbreakers,” Ahearne said. “That would be a motivator for them.”

While legislators put an additional \$1 billion toward education in the state's 2013-15 budget, legislative staff estimated in April that at least \$3.5 billion more is needed by 2018 to meet the demands of the McCleary ruling.

Lawmakers have disagreed on how to come up with the money, however. Democrats and Gov. Jay Inslee have supported plans to increase taxes and end certain tax breaks, but many Republicans have argued that no new revenue is needed.

Democratic state Sen. David Frockt, who co-chairs the committee tasked with responding to the Supreme Court's ruling, said Wednesday that he thinks court sanctions are necessary to push the Legislature to take action on education funding.

He wouldn't speculate as to what type of court action would be the most effective, however.

“My opinion is that pressure is required,” Frockt said. “What that would entail, I don't know.”

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