

Editorial: McCleary case may be constitutional lesson for Legislature, state Supreme Court

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The McCleary case will be about far more than education funding when the 2015 Legislature convenes. Depending on how much the Washington Supreme Court decides is ample funding for education, the sums involved could force legislators to revisit the budgeting process, and possibly even the state's tax structure.

Estimates of the money that will be needed have ranged to upward of \$4 billion, toward which the 2013 Legislature could muster less than \$1 billion. That did not satisfy the court. Twice since, the justices have ordered the state to map a path to compliance with its January 2012 order in McCleary, which reached the obvious conclusion that Washington does not spend enough on education to satisfy the state constitutional requirement that funding education be the state's "paramount duty."

While failing to meet its obligations, the Legislature imposed more of the load on districts, many of which do not have the means to properly fund their schools.

The Legislature in 2009 adopted a plan for meeting its responsibility to fund transportation, supplies, smaller classrooms and universal pre-kindergarten, but it has never appropriated enough money to make it happen. It was evident at last week's hearing, in some of the briefs filed and from comments by Gov. Jay Inslee and other officials, that there are plenty of ideas how to do that.

Although the court has been warned from all sides not to intrude on legislative and executive prerogatives, even the attorney representing the state suggested the justices could veto, wholly or in part, whatever budget the lawmakers pass if it still does not meet what they define as ample education funding.

Justice Charles Johnson asked if doing away with all state tax breaks – potentially yielding another \$30 billion in revenue – might not solve the problem.

State Superintendent of Schools Randy Dorn, in his brief, took another tack: Give the McCleary side the right to ask the court to block spending on anything that subtracts from

the money needed to fund education. That dovetails with longstanding proposals from some legislators that they fund education first, then allot the remaining revenues to other programs.

Inslee, who has called for the repeal of selected tax incentives since he took office, has taken heart from Johnson's comments, but those he has targeted would not generate anything like the money it might take to satisfy the court. The big bucks are in concessions made to Boeing Co., for example, and nobody will go after those.

The court, which took the unprecedented step of retaining jurisdiction in McCleary after its ruling, has several options. But the justices are treading very close to usurping the Legislature's duties and should defer a contempt of court ruling against a co-equal branch of government until lawmakers finish the 2015-2016 budget.

For their part, the legislators should discard business-as-usual thinking if they and the state are to avoid a possible constitutional showdown.

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