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Washington State's Justices and Lawmakers Feud Over School Funding

By [Josh Eidelson](#) September 11, 2014

A school funding fight in Washington State has morphed into a constitutional showdown that has the state's highest court threatening to hold the legislature in contempt. "There's a deep concern about a constitutional crisis, in the fact that this would be the first time that the Supreme Court will have intervened in this manner in this state," says Washington House Majority Leader Pat Sullivan, a Democrat.

The conflict stems from a lawsuit filed in 2007 by school districts, teacher unions, and public school parents who argued that Washington State was violating its constitution by failing to adequately fund public education. Plaintiff Stephanie McCleary claimed her daughter had attended classes without textbooks; plaintiff Patty Venema said the main building at her kids' middle school housed 700 to 800 students but only five girls' bathroom stalls. The plaintiffs were armed with a clause from the constitution: "It is the paramount duty of the state to make ample provision for the education of all children" in Washington.

"I think it would be very, very difficult for us to meet this obligation without pressure from the court."—*Ross Hunter, Chair of the Washington State House Appropriations Committee*

In a 2012 ruling, the Washington Supreme Court sided with the plaintiffs, finding that the state was violating its constitutional duty. The problem could be fixed, the court said, if the legislature followed through on a plan authorized by a 2009 law and scheduled to take effect in 2018 that would require at least another \$3.5 billion in education spending. To make sure the politicians came up with the billions by the deadline, the court ordered the legislature to demonstrate progress along the way.

The ruling had limited effect on the legislature. In 2013, the lawmakers passed a two-year budget providing less than \$1 billion to move toward the 2018 target. The state supreme court then demanded that legislators produce a plan by April 30, 2014, to come up with the remaining billions by 2018.

The legislature finished its 2014 session without the requested blueprint, and instead sent the court a letter promising to make more progress in 2015. Legislators argue that the constitution prevents them from dictating how much money future legislatures will spend, and the brevity of the 2014 session limited what they could accomplish.

The justices are contemplating more aggressive actions, including getting more directly involved in the budget process. A letter summoning the state to appear in court on Sept. 3 threatened to hold the legislature in contempt (Deputy Solicitor General Alan Copsy showed up to represent the

lawmakers). The letter listed seven possible remedies, including freeing up money by blocking some other spending or by forcing the state to sell some of its property; or prohibiting all education funding because the system is unfair. The last would effectively close Washington's public schools until the legislature follows through on the constitutional promise.

State legislators from both parties warned the justices to stay in their lane and at least hold off until they take another crack at solving the problem in 2015. But at the Sept. 3 hearing, Chief Justice Barbara Madsen asked why the same partisan disagreements blamed for the lack of progress wouldn't be repeated next year. When Copsy said he couldn't predict the future, Madsen countered, "I kind of feel like maybe we can, because we've heard them a couple of times." Copsy suggested the court "speak as harshly to the legislature as you think is necessary to let them know that you're serious," but wait until 2015 before taking more dramatic action.

"No one wants to see a precedent set that might lead to further usurpation of our responsibility, legislative responsibilities," says Majority Leader Sullivan. In a rare move, the state's five living ex-governors filed a brief urging the justices to exercise restraint. Current Democratic Governor Jay Inslee told reporters that moves by the court to micromanage the budget would be "fraught with enormous peril."

"There are ways in which all three branches can really delegitimize each other and make life truly miserable," says Indiana University law professor Charles Geyh. Crises are averted, he says, not just through constitutional structures, but through long-standing norms and each side's fear of losing legitimacy in the eyes of the public.

"I think it would be very, very difficult for us to meet this obligation without pressure from the court," says Ross Hunter, the Democrat who chairs the state House Appropriations Committee. The plaintiffs say the court can't afford to be a "potted plant," and should do something strong enough to spur a special session this year. Education activists say the showdown is necessary. "Normal legislative politics," says Michael Rebell, a professor of law and education who heads the Campaign for Educational Equity at Columbia University's Teachers College, "usually does not lead to fair funding."

Update, 9/11/14: *The Washington Supreme Court issued an order on Sept. 11 finding the state in contempt, but holding potential remedies in abeyance until the end of the 2015 legislative session. "These orders are not advisory or designed only to get the legislature's 'attention'; the court expects them to be obeyed even though they are directed to a coordinate branch of government," the court said.*

The bottom line: *Washington State's judiciary and its legislature are locked in a fight that threatens school funding.*

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