

In Our View: Patience Wears Thin

State Supreme Court ramps up pressure on lawmakers to adequately fund schools

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The decision amounts to a sharp rap on the knuckles with a ruler, but the state Supreme Court demonstrated some judicial temperance last week. Justices ruled that lawmakers have been in contempt for a lack of progress on public school funding, but they held off on punishment until after the 2015 legislative session.



All of this flows in the wake of the 2012 court decision in *McCleary v. Washington*, which determined that the Legislature has not lived up to its "paramount duty" of fully funding K-12 education. That phrase comes directly from the state Constitution, and the high court ordered lawmakers to provide somewhere between \$3 billion and \$4 billion in funding by 2018. In addition, the court ordered legislative leaders to devise a plan for coming up with the money, and to run it past the justices for approval. Sort of like turning in the first draft of a research paper.

That is where things get sticky. Some lawmakers have griped that the court is overstepping its bounds, and that budget decisions should be left to the Legislature. The problem, however, is that lawmakers have not presented anything stronger than, "Trust us, we'll get to it" in convincing the court that the mandate will be met. That is what led to Thursday's contempt citation. "The court has no doubt that it already has the Legislature's attention," Chief Justice Barbara Madsen wrote. "But that is not the purpose of a contempt order. Rather, contempt is the means by which a court enforces compliance with its lawful orders when they are not followed."

In this case, the court was correct to not impose further sanctions. Pressing the issue would force lawmakers into a corner and could push the state toward a constitutional showdown over the separation of powers. But, like a teacher in the classroom, the justices clearly are frustrated with repeatedly having to say, "Stop passing notes and get to work." The Legislature has held two regular sessions since the *McCleary* decision with only middling progress toward meeting the mandate — a mandate that, again, was created by the state Constitution, not the predilections of the justices.

Along the way, through numerous court showdowns and rulings, the Legislature has chosen to ignore one of the seminal facts of the 2012 *McCleary* ruling: The decision simply used budget numbers the Legislature had previously called for in bills it had passed and in reports from its own councils and task forces. The numbers were not made up out of whole cloth by the justices.

As for taxpayers, who are facing a bill for billions of dollars should the Legislature ever meet the *McCleary* mandate, the theory is that increasing state funding will allow local districts to stop relying upon levies to fund schools. That, after all, is what is called for in the state Constitution.

All of which places the pressure back on the Legislature. If lawmakers again fail to make adequate progress toward funding public K-12 education in their next biennial budget, sanctions could include: Having the court remake that budget; declaring all tax exemptions unconstitutional; or selling state assets for the purpose of funding schools. Or, as State Superintendent of Schools Randy Dorn suggested, the court could give schools the power to block any state spending that subtracts from money that could fund education first. That could appease lawmakers who embrace the "fund education first" mantra without offering any specifics.

For now, the Supreme Court was unanimous in providing the Legislature with another opportunity to fulfill its duty. But

its patience is wearing thin.

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