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Guest: Lawmakers must compromise to ensure future of Washington's education system

The state Supreme Court needs to allow the Legislature the flexibility to fund some but not all education reforms triggered by the McCleary ruling.

By [Jim Kastama](#)

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Starting Jan. 12, the most contentious legislative session in more than 30 years will begin, partly due to the *McCleary v. State of Washington* court decision, which mandates that billions of dollars in new funding be spent on education. Both political parties have dug in: Democrats want new taxes to pay for it, while Republicans believe we need to better prioritize spending.

The linchpin for the court's mandate came in 2009, when ESHB 2261 set out to redefine our state's definition of basic education. The bill was first introduced as a three-page document, but soon ballooned to more than 60 pages, increasingly becoming more prescriptive.

For example, amendments expanded the number of credits necessary to graduate by 20 percent, mandated all-day kindergarten, and increased instructional time from 1,000 to 1,080 hours a year. Even a more prescriptive model for funding schools was adopted.

Despite the \$3 billion to \$4 billion annual price-tag, state Senate staff attorneys repeatedly assured my colleagues and me that the bill was not a mandate, but instead a goal, and would only be implemented if the policy were authorized and funded in future years. To do otherwise would be to obligate future legislative sessions — something I had always understood was prohibited.

In 2012, this changed. The state Supreme Court sided with the McCleary family in a suit against the state and ordered the legislature to implement all the features in ESHB 2261. Some legislators were pleased by the decision; others were not. One angry senator, who later felt blindsided by the court, tweeted the justices a picture in January of a hammer and a bag of sand with the implied message: Go pound sand.

To the casual observer, there appears to be a couple of options moving forward. The Legislature could fund the requirements of ESHB 2261, leading to considerable tax increases. Or they could modify it to fit a more realistic budget scenario, thus avoiding legislative gridlock. What's not so obvious, however, is why no political party has actively pursued the second option.

First, there are legislators, particularly Democrats, who see the court's mandate as an opportunity to fundamentally change our state's tax structure, long seen as one of the most regressive in the nation. Their hope is that the court's decision will provide the necessary political pressure and public will to pass a capital-gains tax — which could lead to passage of an income tax. They see this as the only realistic source of long-term revenue. Any deviation from HB 2261 could thwart this effort.

The Republicans, on the other hand, have benefited greatly from the “fund education first” mantra, especially in suburban legislative districts where K-12 education issues are pivotal. If HB 2261 were significantly altered, it might signal a retreat from a potent political message that has helped them win key legislative races in areas once controlled by Democrats. And despite their insistence that these reforms could be paid for by reprioritizing spending, Republicans know that the Democrats would never allow the severe cuts in other state programs necessary to achieve this.

Once you understand this, you see why most political analysts believe the upcoming legislative session will end badly. It should also become clearer as to why modifying ESHB 2261 should be an option on the table — keeping those parts that are worthy, while jettisoning those that are not worthy or not cost-effective.

It is predictable that the Supreme Court will take a dim view of this approach. The justices will no doubt see it as a reversal on the state's promise to adequately fund education. In doing so, however, I would caution them in their zeal to control the legislative process. In the latter years of my tenure, I became increasingly skeptical of our K-12 system, and I am convinced that it has become calcified, resistant to change and incapable of the innovations necessary to reach levels required by our citizens. This belief was reinforced this year when the state's teachers union successfully lobbied to stop a modest teacher evaluation bill. Expanding class hours or increasing credit requirements as specified in ESHB 2261 will do little to change this system and its outcomes.

Political parties need to back down from their needs to use the court decision for their own narrow purposes, and should instead compromise on a more reasonable, and affordable, vision for our education system. Justices need to allow the Legislature the flexibility to change and to undo what has been done. As one of the key “yes” votes that was responsible for the passage of ESHB 2261 in 2009, I have certainly changed my mind. Justices need to allow legislators the opportunity to do the same.

Democratic state Sen. Jim Kastama served in the Legislature from 1996 to 2012. He is now a business consultant specializing in strategic planning and is a policy analyst at Accelerating Innovation.