

OPINION MAY 19, 2016 4:12 PM

Time for Washington state lawmakers to face Supreme firepower?

HIGHLIGHTS

The Supreme Court's deadline to fix broken K-12 system is (gulp) 2018

The Legislature makes annual plea to be freed from contempt of court

The nine justices should hold the line on fines, but don't get brutal



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The Washington State Supreme Court, after three years of saber-rattling at legislators for not fully funding public schools, decided last year to draw its sword.

Not that it was a very sharp blade, mind you – the \$100,000 per day contempt penalty for violating the court’s McCleary decision now totals around \$28 million, a mere speck in the state’s general-fund and education budgets. The Legislature didn’t even go through the pretense of protecting it in a budgetary lockbox.

The question that will soon return to the high court is whether to keep holding lawmakers in contempt and, if so, whether to escalate the penalties.

So what measurable progress did legislators make in 2016 that might convince the court to go easier on them in its annual McCleary report card? In a short session, during the off year of a two-year state budget cycle, not much. They hired a consultant, formed another task force and promised to fix the broken K-12 system in 2017. Some wags have mockingly called it the “kick the can plan,” or the “plan before the plan.”

Of course, state officials put a more upbeat spin on it in a brief filed with the court Wednesday.

Professing that they're on track to meet or beat the court's 2018 deadline, they noted how they set clear benchmarks to collect and evaluate statewide teacher compensation data this year, then take firm legislative action next year to end the state's reliance on local tax levies to pay for basic education. They also pledged to tie up any loose ends related to class-size reduction and all-day kindergarten obligations.

The brief, filed by the state Attorney General's office, is prophetic about how critics will respond to the Legislature's penultimate petition. "Plaintiffs and others will disparage (it) as unworkable, too little too late, inconsequential, and worse. They will say it is not a plan and will exhort the court to cast it aside and impose harsh sanctions on the State."

Indeed, they will, and already have. But the court would be wise to maintain sanctions and resist calls for a brute show of force. Really, what other choice does it have?

The daily \$100,000 fine is a phantom, but stopping it would send a message that the justices are easing pressure on lawmakers at absolutely the wrong time. On the other hand, ratcheting up pressure in radical ways – such as by shuttering the school system, as the New Jersey Supreme Court did in 1976 – would go too far. Families should not be made hostages of an internecine war in Olympia. And in a statewide election year, with three Supreme Court seats on the ballot, justices will be extra wary of inflicting collateral damage.

This is not to say the court must return to empty saber-rattling. One step it could take is including a proviso in this year's ruling, an order for legislators to stay in session next year until they solve this hydra-headed problem once and for all. It could lay out harsh penalties effective Jan. 1, 2018, such as the canceling of all state tax exemptions.

Such an order would reduce the chance lawmakers push off the hard work of raising taxes, dealing with collective bargaining and other thorny issues, yet again, until the 2018 session – the equivalent of a parachutist waiting to pull the rip cord until he's 100 feet from the ground.

That lawmakers would try such a stunt seems unlikely. Ultimately, they're on the same side as the nine court justices in wanting to do right by 1.1 million children and ensure equitable funding of schools. To some degree, the people of Washington

must trust elected state officials to abide by the oath they've taken, as noted in Wednesday's attorney general brief: "The Legislature is committed to its constitutional duty, just as is the Court."



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