

Court treads delicate path on schools

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The Temple of Justice in Olympia is the meeting place of the Washington State Supreme Court. (TONY OVERMAN/Staff Photographer)

Normally we don't quarrel with 8-1 state Supreme Court decisions, but we're getting nervous about its approach to the Legislature and public school funding.

Background: Two years ago, the court held — quite rightly — that state lawmakers had failed to fulfill their constitutional “paramount duty” to amply fund basic public education. In the McCleary decision, it asserted jurisdiction over lawmakers’ performance, ordering them to meet their own standards by 2018.

The 2013 Legislature responded by allocating an additional \$1 billion for the schools — though everyone acknowledged that billions more were needed to get the job done.

All well and good, so far. The court might have been pushing the limits of its constitutional authority by laying down the law for a coequal branch of government, but no one raised a constitutional stink.

The chief reason is nearly all lawmakers pay at least lip service to ample funding. The court put them in a box. Washingtonians want good schools. Complain out loud about McCleary, and it looks like you're not interested in good schools.

But that's a political calculus, not necessarily an acknowledgment of judicial authority over the legislative branch. And a political consensus can be fragile.

Last Thursday, the court ratcheted up the pressure by ordering lawmakers to come up with — by April 30 — “a complete plan for fully implementing its program of basic education for each school year between now and the 2017-18 school year.”

The court also spelled out how the current biennial budget falls short of the Legislature's own goals: It allocates \$131.7 million for transportation instead of \$141.6 million; \$597.1 million for supplies and operational support instead of \$374 million; \$103.6 million for class-size reduction instead of \$219.2 million.

The clear implication is that the Legislature should rewrite the existing budget in very specific ways.

This is starting to look like micromanagement. As most lawmakers will tell you, they have to balance many social needs, and they've been effectively prevented from enacting a general tax increase.

Moving another, say, \$600 million into education this year could squeeze child protection agencies, foster care and other imperatives. Lawmakers have to make complex tradeoffs to write a responsible budget. Courts lack the expertise to do that. Their authority to do it is hard to find in the Washington Constitution.

The justices can reasonably insist on the broad goal of ample funding, but second-guessing line items looks suspiciously like constitutional overreach. Enough of this, and the court runs the risk of forfeiting the consensus that makes McCleary doable.

Should that consensus weaken, the court has no obvious options. On Thursday, it more or less threatened to hold the Legislature in contempt if it didn't obey. How, exactly, would the justices enforce that?

So far, it looks as if the court and the Legislature are on the same team with regards to McCleary and educational funding. The public appears to accept the court's oversight of the Legislature. To keep it that way, both sides will have to exercise some humility. A grand squabble over constitutional powers would not help the cause.

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