

## Options for complying with the *McCleary* decision without raising taxes

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### Introduction

Three years ago, in *McCleary v. State of Washington*, the state supreme court ruled the legislature and the governor had failed to fulfill the state's constitutional paramount duty to fund education. In an unusual move, the justices said they would "retain jurisdiction" over the case and require lawmakers to submit periodic progress reports.

In response, the legislature increased funding for public education by \$1.7 billion in the 2013-15 General Fund budget, bringing state spending to \$15.2 billion, or about \$11,300 per student in total spending, the highest level ever. The increase brought education spending up to 45.2 percent of the General Fund budget, the highest percentage level since 1995.<sup>1</sup> Total inflation-adjusted education spending per student in Washington state has increased by 37 percent since 1990.<sup>2</sup>

In September 2014, the justices ordered lawmakers held in contempt, saying the legislature had not satisfied the court's *McCleary* ruling, and had allowed

local levies to assume too much of the cost of running public schools.

### The threat of court-ordered sanctions

The court has ordered the legislature to provide more increases in education funding by the end of the 2015 legislative session. If the justices feel lawmakers have failed to comply, they have threatened to impose sanctions:

*"Sanctions and other remedial measures are held in abeyance to allow the State the opportunity to comply with the court's order during the 2015 legislative session."*<sup>3</sup>

The court has not indicated what form its threatened sanctions might take, or whether they would impose fines or jail time on current or former state officials.

It is also unclear whether the justices would apply their sanctions to former lawmakers who voted on past budgets, only to current lawmakers who voted on past budgets, to new lawmakers who were not in the legislature during the years schools were underfunded, or to some combination of all three present and former elected officials.

Other sanctions could include the closing of public schools, the court writing

1 "Copy of PreHistory Comparison 1977-79 to 2013-15, Near General Fund and Opportunity Pathways," Legislative Evaluation and Accountability Program Committee, Fall 2014.

2 "Figure 29, Historical Comparison of Statewide School District General Fund—Revenues and Expenditures Per Pupil," Organization and Financing of Washington Public Schools, 1996 Edition, Office of Superintendent of Public Instruction, page 123 at [www.k12.wa.us/safs/PUB/ORG/96/org\\_fin96.pdf](http://www.k12.wa.us/safs/PUB/ORG/96/org_fin96.pdf).

3 Order, "*McCleary v. State of Washington*," The Supreme Court of Washington, September 11, 2014, at [www.courts.wa.gov/content/PublicUpload/Supreme%20Court%20News/84362-7%20order%20-%209-11-2014.pdf](http://www.courts.wa.gov/content/PublicUpload/Supreme%20Court%20News/84362-7%20order%20-%209-11-2014.pdf).

the education budget, the cancellation of state social programs that compete with school funding, or court-ordered increases in the property or other state taxes.

### **Options for complying with the *McCleary* decision**

The rising burden of taxation is of great concern to the people of Washington state. Following are several policy ideas which lawmakers can adopt, singly or in combination, that would allow them to comply with the supreme court's *McCleary* decision without raising taxes.

#### **Option 1 – Use part of the state's \$3 billion in extra revenue to increase education spending**

Revenue estimates show state officials will collect \$3 billion more in 2015-17 than they did in the previous budget cycle, an impressive 8.6 percent increase in just two years. Lawmakers could devote part of this extra revenue, perhaps up to a \$1 billion, to fund the *McCleary* ruling by increasing state K-12 spending. This increase would be on top of the rise in public education spending the legislature enacted in the last budget. The result would be another record level of per-student education spending, to show the court lawmakers are meeting their paramount duty to provide ample provision for the education of all children residing in the state.

#### **Option 2 – Wait for the court's sanctions ruling**

Having increased education spending substantially in the 2013-15 budget and still been ruled in contempt, lawmakers could wait for the court to clarify its *McCleary* ruling by issuing sanctions. The court's sanctions decision would come in April, when the 105-day session is scheduled to end. Once lawmakers receive the court's guidance under a sanctions ruling, they could meet to enact a supplemental

budget, adjusting public school spending as necessary to comply with the court's directions.

#### **Option 3 – Pass the Kid's First Act**

The court's *McCleary* ruling confirms that the legislature's paramount duty, meaning its first and primary responsibility, is the ample provision of public education for every child residing in the state. To meet this first and most important duty lawmakers could pass SB 5063, the Kid's First Act (Senator Hill, R – Redmond). This bill would provide that two-thirds of the future growth in state spending would be devoted to early learning programs, K-12 public education and higher education, with one-third of future spending growth devoted to increasing other programs.

The bill is directed at future spending only. No cuts in current programs would be required, and all areas of state spending would be eligible for increases. The bill provides exceptions in extraordinary circumstances, and lawmakers could adjust the two-thirds/one-third ratio in future budgets as needed. The primary purpose, however, would be to satisfy the court's direction in *McCleary* that public education receive first consideration in future increases in state spending growth.<sup>4</sup>

#### **Option 4 – Modify Basic Education requirements**

The court based its *McCleary* ruling on a finding that state lawmakers had not met their own standard in funding basic education requirements, as defined by a bill passed in 2009. Lawmakers often adjust public programs to respond to changing needs, and after nearly six years

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4 More information is available in "SB 5063, the Kid's First Act Prioritizing Revenue Growth for Education Programs," by Paul Guppy, Legislative Memo, Washington Policy Center, January 13, 2015, at <http://www.washingtonpolicy.org/publications/legislative/sb-5063-kids-first-act-prioritizing-state-revenue-growth-education-programs>.

the statutory meaning of “basic education” should be adjusted. Also, voters have elected three other legislatures since the earlier law was passed, altering the political make-up of the House and the Senate.

Today’s lawmakers should review the policy details of the defined meaning of “basic education” so the standards used in public schools match the increased level of funding the legislature is providing. Aligning the state’s defined education program with rising funding levels would bring the legislature into compliance with the *McCleary* decision, as the court has directed.

### **Option 5 – Direct more public resources to the classroom**

The court made it clear the purpose of state support for public schools is the education of children, not to serve the economic or bureaucratic interests of adults in the system. Currently only 59 cents of every public education dollar reaches the classroom, and the majority of school district employees are not classroom teachers, although many hold teaching certificates.

The growth of central administration and the expansion of work classifications has denied instructional resources to children in the classroom, even though these resources are funded by the state. Lawmakers should direct school districts to assign more of their qualified staff to classroom teaching, to reduce overhead and middle-management positions, and to add instructional hours to the school day.

Even non-certificated school employees can assist children in class as teacher aides, or be available to provide extra help to struggling students. These and other policy changes that focus state-funded services on providing children with classroom instruction would help lawmakers comply with the *McCleary* decision, and would help fulfill their paramount duty to make

ample provision for the education of all children living in Washington.

### **Option 6 – Increase family choice in education**

The court did not rule in *McCleary* that all public schools were failing to meet the learning needs of students. Administrators in many public schools provide a good education, while others trap children in failing schools. Lawmakers should allow parents the voluntary choice of moving their children, along with a portion of their per-student funding, to a better school. Most families would not change schools, but those who did would be helping lawmakers meet their paramount duty to provide for the education of all children living in Washington.

Family choice in public education is not new or rare. Officials in 24 states and the District of Columbia provide parents with publicly-funded education options for children.<sup>5</sup>

### **Option 7 – Allow parents to ask for a better teacher**

Research shows that the quality of the classroom teacher is the most important factor in child learning.<sup>6</sup> Yet in public schools children are assigned to a teacher by administrators. Allowing parents to ask for a better teacher would protect children in gaining access to a quality public education.

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5 “What is School Choice?” The Friedman Foundation for Educational Choice at [www.edchoice.org/School-Choice/What-is-School-Choice](http://www.edchoice.org/School-Choice/What-is-School-Choice), accessed February 10, 2015.

6 “The Long-Term Impacts of Teachers: Teacher Value-Added and Student Outcomes in Adulthood,” by Raj Chetty, John N. Friedman and Jonah E. Rockoff, National Bureau of Economic Research (NBER), December 2011, at [obs.rc.fas.harvard.edu/chetty/value\\_added.pdf](http://obs.rc.fas.harvard.edu/chetty/value_added.pdf), and “Why an effective teacher matters,” by Eric Hanushek, Hoover Institution, Stanford University, February 2011, at [www.studentsfirst.org/blog/entry/why-an-effectiveteacher-matters-a-q-a-with-eric-hanushek/](http://www.studentsfirst.org/blog/entry/why-an-effectiveteacher-matters-a-q-a-with-eric-hanushek/).

The objection is made that this would cause trouble for administrators and disruption and possible job loss for low-performing teachers. Union executives in particular are sensitive about policies that may affect the pay, benefits or work hours of school district employees.

In the *McCleary* case, however, the court ruled it is the state's paramount duty to make ample provision for the education of all children living in Washington, not provide for the economic security of adults employed by school districts.

### **Option 8 – Allow more online courses and distance learning**

Online technology allows students to learn at their own pace and, if they choose, to spend at least part of their learning time away from the classroom. Online learning also helps disabled children and other students who may have difficulty attending a traditional school.

School district administrators sometimes object that they are “losing” students to online education, the same objection that was once directed against families that choose to home school. The *McCleary* case, however, affirmed the state's paramount duty to provide ample access to a high-quality public education for all children, not assign students to fill seats in traditional public schools for the convenience of administrators.

### **Option 9 – Lift the state cap on charter schools**

Charter schools are public schools that operate independently of most central district rules and often free of union control. Attendance is tuition free and open to all students. Charter school choice is voluntary for parents; no student is assigned to one by district administrators. Only 40 charter schools are allowed in Washington (out of 2,200 public schools), and the state Charter School Commission

has been slow to approve the opening of new schools. Lifting the state's arbitrary cap on charter schools would give parents more options in gaining access to a high-quality education for their children, helping satisfy the court's requirement in *McCleary*.

### **Option 10 – Suspend Initiative 1351**

Initiative 1351, a ballot measure to reduce class sizes, passed by a narrow margin in 2014. The proposal contains no funding; money for it would have to be taken from other programs. The legislature often suspends voter-approved initiatives, such as Initiative 728, Initiative 732 and Initiative 960, the voter-approved requirement for a two-thirds vote in the legislature to raise taxes. Suspending Initiative 1351 would make more state money, perhaps as much as \$1 billion a year, available for funding basic education as required by the *McCleary* decision.

To solve the problem of large class sizes in some schools, lawmaker should allow parents whose child has been assigned to an over-crowded classroom to request a different teacher, or to transfer the child, along with his or her entitled state funding, to a school with smaller class sizes.

### **Option 11 – Enact reforms that direct more resources to children**

In recent years the state Senate has enacted a number of reforms to improve the delivery of educational services to school children, but these bills have died in the House or been opposed by past governors or the current Governor. If given fuller consideration, these reforms would improve not only the amount of money spent, but how well it is used to help children.

Reforms that would direct more resources to the classroom include:



- **Ending unfair seniority rules -** Union rules require young teachers to be let go during layoffs, regardless of their abilities or popularity with students or parents, while low-performing older teachers are protected. Ending unfair union seniority rules would help give students access to the best teachers.
- **Ending mandatory union membership -** Current rules require that any public school teacher who does not remain in good standing with the union will be fired. Mandatory teacher dues and fees paid to the union can add up to \$1,000 a year. Making union membership voluntary would respect teachers as highly-qualified professionals and would allow teachers to keep more of what they earn.
- **Reducing the political influence of union executives -** School officials cannot make decisions in many areas of public education without first securing the approval of labor union executives. Reducing the political influence of union executives over the use of public education dollars would allow more money to be directed to funding educational services for children.
- **Expanding teacher qualifications-** Lawmakers should end restrictive certification rules that discriminate against public education and deny students access to otherwise highly-qualified professionals. Former Governor Gary Locke could not be hired to teach a civics class in a public high school; he doesn't have a state teaching certificate. He would, however, be allowed to teach in a public university or in a private school.

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## Conclusion

To the public it may appear mean-spirited for lawmakers to raise taxes when state officials are already collecting \$3 billion in extra revenue. It is difficult for people to understand why the Governor and some lawmakers want to raise taxes to fund the *McCleary* decision when the legislature is already receiving so much additional money under the current tax system.

As the supreme court ruled, it is the paramount constitutional duty of the legislature to fund a basic education program. In response to that decision, the legislature increased K-12 funding in the 2013-15 budget by \$1.7 billion, raising total state education spending to \$15.2 billion. School districts are receiving \$864 in extra funding per student from the state this year, an increase which will continue into the next budget. Further funding increases to K-12 spending are likely in 2015-17, using the extra revenue the state is receiving from taxpayers.

As the court pointed out in the *McCleary* ruling, simply spending more public money is not enough. Reforms are needed to ensure education funds are used in ways that help every child learn, not simply to pay for program budgets that benefit the adults in the system. These recommended reforms and spending increases for *McCleary* provide more than enough money for lawmakers to show they are serious about fulfilling their paramount duty to fund public education, without increasing the tax burden they place on the people of Washington state.