

# COMMENTARY

## McCleary plaintiffs urge Supreme Court into increasingly worrisome uncharted waters

By Liv Finne

The McCleary plaintiffs, a group of unions, school districts, and parents, are urging the Supreme Court into increasingly worrisome uncharted waters. Their lawyer recently called on the Supreme Court to hold the Legislature in contempt, and impose fines if legislators do not convene a special session this year to increase funding for schools. The Court is also being urged to consider ordering the Legislature to: Prohibit spending on other parts of the budget, fund specific dollar amounts, sell State property, invalidate education cuts, and prohibit any funding of education (i.e. shut down the school system).

The Supreme Court has never taken steps like these against the Legislature before.

A little review is necessary. The McCleary plaintiffs persuaded the Supreme Court, in the January 2012 McCleary decision, to rule the state had failed to fully fund the schools. In that decision, the Court deferred to the Legislature's chosen means for funding education, but also required reports on progress towards full funding.

The Legislature responded by increasing funding for schools by \$1.6 billion to \$15.2 billion in the current 2013-15 budget, and by indicating it will increase funding for schools in the future.

Unfortunately, in early January, days before the start of the 2014 legislative session, the McCleary Court issued a contradictory order directing the Legislature to fund specific education budgets, revealing the Court's misunderstanding of the state budget.

In the 2014 supplemental budget the Legislature provided schools the largest share of operating budget increases, in the amount of \$58 million.

After the session, in late April, the Legislature informed the Court that the Legislature would choose the timing and means for increasing funding to the schools, as the Constitution provides.

The McCleary plaintiffs were not pleased with the Legislature's April report to the Court, and are now asking the Court to take these harsh steps in response.

But what does holding the Legislature in contempt look like? Which legislators would be covered? The people have elected three separate legislatures since the start of the McCleary case in 2007. Should every legislator in office during the 2009-11, 2011-13, and 2013-15 sessions be held in contempt for not fully funding the schools?

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Or perhaps the Court should hold only current legislators in contempt? Is it fair to punish current legislators, when they voted in 2013 to provide schools with funding increases of \$1,000 per student, bringing average total public spending to \$11,300 per student, the highest level ever?

What about new legislators chosen this fall? Will the Court hold newly-elected legislators in contempt unless they vote for the Court's future education budgets?

What about fines? How big should they be, \$50, \$500, \$5,000, or higher?

How will the justices justify fining honest legislators going about their work, faithfully representing the wishes of their constituents?

What about the voters? They elected the legislature, which acts on their behalf. Should the Court find the voters in contempt too?

What about the suggestion that the Court prohibit spending on other parts of the budget? Forty-five percent of the state budget is now spent on K-12 schools. The rest is spent on Health and Human Services, Higher Education, Transportation, Government Operations, and Natural Resources. Holding hostage these programs would hurt many people, including thousands of poor and disabled citizens, foster children, and other vulnerable citizens.

The McCleary plaintiffs, who include the state teachers union, also ask the Court to consider shutting down the schools in order to get more money, which sounds like a strike against all of Washington's 2,300 schools.

In McCleary, the Supreme Court has already sailed into uncharted waters. These extremist demands reveal how threatening these waters have become.