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McCleary v. State and the Washington State Supreme Court’s Retention of Jurisdiction—A Success Story for Washington Public Schools?

*Jessica R. Burns**

The Washington State Constitution asserts that the State has only one *paramount* duty: “to make ample provision for the education of all children residing within its borders.”¹ In *Seattle School District No. 1 v. State*, the court held that the State’s duty to make ample provision for the education of resident children was not constitutionally satisfied by the authorization of special excess levies.² Prior to *Seattle School District No. 1 v. State*, Washington public schools frequently relied on special levy elections to supplement school funding as the legislature failed to appropriate sufficient revenue to fund basic education.³ This created a precarious financial situation for public schools, as voters are not required to approve levy elections.⁴ Schools where levy elections failed were forced to reduce teaching staff and cut fundamental teaching supplies, such as textbooks.⁵ The court also found evidence that the levy system was prejudicial to children in low socioeconomic communities because special excess levies are based on the assessed property valuations within a particular district.⁶ Therefore, the court held that the legislature must define and fund Washington’s basic education program without the use of special excess levies.⁷

In 2007, parents of schoolchildren in the Seattle School District once again challenged the adequacy of public school funding, asserting that the funding allocated by the legislature did not correlate with the actual cost

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1. WASH. CONST. art. IX, § 1.

2. *Seattle Sch. Dist. No. 1 v. State*, 585 P.2d 71, 99 (Wash. 1978).

3. *Id.* at 77–78.

4. *Id.* at 78.

5. *Id.* at 98.

6. *Id.* at 98–99.

7. *Id.* at 99.

of providing a basic education.⁸ As a result, schools across the state increasingly relied on levies to supplement state funding in violation of *Seattle School District No. 1 v. State*.⁹ The Washington State Supreme Court agreed and ordered the legislature to fund the State's basic education program no later than 2018.¹⁰ In doing so, the court affirmed that the State could not rely on local excess levies or federal funding to meet its constitutional obligation to fund basic education programs.¹¹

In order to ensure that the legislature made meaningful progress towards this mandate, the court, in an unprecedented move, retained jurisdiction over the case and ordered the legislature to report annually to the court.¹² The court asserted that it was permitted to retain jurisdiction because the duty to provide ample education for public school students was imposed upon the State, not merely the legislature; therefore, the Washington constitution expressly contemplated shared powers among the three coordinate branches of government.¹³ Although the court retained jurisdiction over the case, the court deferred the means for implementing the State's constitutional requirements to the legislature.¹⁴

The legislature's progress proved unsatisfactorily slow, and on September 11, 2014, the court held the legislature in contempt for its failure to submit a complete plan for fully implementing its program of basic education for each school year between January 2014 and the 2017–18 school year, as directed in the court's order of January 9, 2014.¹⁵

The court's consideration of contempt sanctions and other remedial measures was held in abeyance until August 13, 2015, at which time the court determined that the legislature had repeatedly failed to provide a plan to fully comply with the State's obligation to fully fund public school education.¹⁶ The court stated:

[T]he State still has offered no plan for achieving full constitutional compliance by the deadline the legislature itself adopted.

8. *McCleary v. State*, 269 P.3d 227, 230, 253–54 (Wash. 2012).

9. *Id.* at 253–54.

10. *See id.* at 261.

11. *Id.* at 257–58, 261.

12. *Id.* at 261; Jessica R. Burns, *Public School Funding and McCleary v. State of Washington—A Violation of the Separation of Powers Doctrine or a Legitimate Exercise of Judicial Autonomy?*, 38 SEATTLE U. L. REV. 1437, 1437 (2015).

13. *McCleary*, 269 P.3d at 246–47; *see also* Burns, *supra* note 12, at 1442–43.

14. *McCleary*, 269 P.3d at 261.

15. Order of Sept. 11, 2014 at 4–5, *McCleary v. State*, 269 P.3d 227 (2012) (No. 84362-7), <https://www.courts.wa.gov/content/PublicUpload/Supreme%20Court%20News/84362-7%20order%20-%209-11-2014.pdf> [<https://perma.cc/2M2W-H7MN>].

16. Order of Aug. 13, 2015 at 1, *McCleary v. State*, 269 P.3d 227 (2012) (No. 84362-7), http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/843627_081315McClearyorder.pdf [<https://perma.cc/G5Z7-L8KA>].

Accordingly, this court must take immediate action to enforce its orders. Effective today, the court imposes a \$100,000 per day penalty on the State for each day it remains in violation of this court's order of January 9, 2014.¹⁷

The court ordered that this daily penalty be held in a segregated account for the benefit of basic education.¹⁸ For the next two and a half years, the legislature attempted, but failed, to set forth a complete plan to fully fund basic education in Washington State, and the \$100,000 daily penalty continued to accrue.¹⁹

In 2017, the legislature approved a statewide property tax increase that also phased in limits on future tax revenue collected through local levies.²⁰ The increase in state-wide property taxes was a concerted effort to provide uniform and equitable school funding and prevent inequalities between individual school districts by removing the advantage local levies provided school districts located in wealthier neighborhoods.²¹ However, despite the significant increase in revenue, the court found that these measures were still insufficient; therefore, in response, the legislature approved an additional \$776 million towards education funding.²²

Finally, on June 7, 2018, the Washington State Supreme Court found that the State's "paramount duty . . . to make ample provision for the education of all children residing within its borders" had finally been met, and the court's retention of jurisdiction was terminated thereby ending the six year battle between the court and legislature over public school funding.²³

Now that the case has finally resolved, is it safe to say that the court's jurisdictional retention resulted in a success story? Only time will tell. However, it appears that the legislature has already attempted to erode the court's effort to provide a uniform and equitable education for students statewide with the implementation of Senate Bill 5313, which was signed into law by Governor Inslee on May 21, 2019.²⁴

17. *Id.* at 1–2.

18. *Id.*

19. See Order of June 7, 2018 at 2–4, *McCleary v. State*, 269 P.3d 227 (2012) (No. 84362-7), <https://www.courts.wa.gov/content/publicUpload/McCleary/843627PublicOrderOther06072018.pdf> [<https://perma.cc/985K-CLRC>].

20. Joseph O'Sullivan, *Washington Supreme Court Ends Long-Running McCleary Education Case Against the State*, SEATTLE TIMES (June 7, 2018), <https://www.seattletimes.com/seattle-news/washington-supreme-court-ends-100000-per-day-sanctions-against-state-in-mccleary-education-case/> (last visited Mar. 15, 2020).

21. *Id.*

22. *Id.*

23. See Order of June 7, 2018, *supra* note 19, at 4.

24. E.S.S.B. 5313, 66th Leg., Reg. Sess. (2019), 2019 Wash. Sess. Law 410.

Senate Bill 5313 increases the levy to the lesser of \$2.50 per \$1,000 of assessed value or \$2,500 per pupil for school districts with fewer than 40,000 students (\$3,000 per pupil with 40,000 or more students), an increase from the previous cap of \$1.50 per \$1,000 in value.²⁵ Opponents of Senate Bill 5313 argued that increasing the levy lid reintroduces inequality into Washington schools: “SB 5313 would turn back the clock and re-introduce inequity in school funding, to the benefit of wealth[ier] school districts, leaving students in property-poor districts with proportionately less money, exactly the unfairness problem the *McCleary* case was supposed to solve.”²⁶

It remains to be seen whether the measures taken by both the court and legislature will result in adequate public school funding long term. However, despite the court’s best efforts, it seems unlikely that the court’s oversight will result in uniform and equitable school funding statewide.

25. Louis Krauss, *Legislators Approve Raised Levy Amount for School Districts*, DAILY WORLD (Apr. 29, 2019), <https://www.thedailyworld.com/news/legislators-approve-raised-levy-amount-for-school-districts/> [<https://perma.cc/H6RF-U7DK>].

26. School Levies and Local Effort Assistance: Hearing on SSB 5313 Before the S. Ways & Means Comm., 2019 Leg., 66th Reg. Sess. (Wash. 2019) (statement of Liz Finne, Director, Center for Education); Liv Finne, Testimony on SB 5313, to Increase Property Taxes and Re-Introduce Inequities in School Funding, WASHINGTON POLICY CENTER (Feb. 26, 2019), <https://www.washingtonpolicy.org/publications/detail/testimony-on-sb-5313-to-increase-property-taxes-and-reintroduce-inequities-in-school-funding> [<https://perma.cc/6SE8-6KXR>].