

McCleary v State

(Supreme Court of Washington; 2012)

Case at a glance

Full citation

[McCleary v. State, 269 P.3d 227 \(Wash. 2012\)](#)

Forum

Supreme Court of Washington, United States

Date of decision

5 January 2012

Summary of decision

The Washington Supreme Court ruled that the State failed to comply with its duty to make ample provision for the education of all children in Washington through dependable and regular tax sources. The evidence showed that the State's funding levels fell short in the areas of basic operational costs, student transportation, and staff salaries.

Significance to the right to education

This decision clarifies the minimum right to education of Washington residents. The State Constitution requires, at a minimum, an opportunity for all children to obtain the basic knowledge and skills needed to compete in today's economy and meaningfully participate in Washington's democracy.

Issues & keywords

Education financing; Educational funding; Compliance; Contempt; Sanctions;

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Context

Article 9 of the Washington Constitution requires the legislature to make ample provision for the education of all children residing within its borders. Prior to *McCleary*, the only other time the Washington Supreme Court addressed overall funding adequacy of public K-12 education was in 1975, in *Seattle School District No. 1 v. State*. There, the Court set forth broad guidelines, directing the legislature to define the specific contours of ‘basic education’ required by the Washington Constitution. The Court also held that funding basic education through local taxes was unconstitutional, as such taxes are at the discretion of voters and are available only on a temporary basis.

Facts

In response to the Washington Supreme Court ruling in *Seattle School District No. 1 v. State*, the Basic Education Act of 1977 was passed, which established an education funding system for Washington public schools under a seat-based education system (i.e., tracking whether students were attending class for a certain number of hours a day). Over the next several decades, legislative reforms transitioned the Washington education system from a seat-based system to a performance-based system, which focused on whether students were gaining knowledge and skills for success in the real world. However, despite these structural reforms, little to no reform occurred to the education funding system.

A coalition of community groups, school districts, and education organisations initiated this lawsuit (*McCleary v. State*) on 11 January 2007 alleging that the State of Washington was violating the Washington Constitution by failing to adequately fund the K-12 school system. The trial court found the State to be out of compliance with its constitutional duty.

In 2009, while the *McCleary* litigation was ongoing, the legislature passed an education reform bill creating various working groups, including a working group to develop a new education funding formula. The State legislature created the Quality Education Council (QEC) to oversee the working groups established under the bill.

The QEC made recommendations for enhancing education funding levels, many of which were enacted by the Washington legislature in 2010. However, despite these new measures, overall funding for K-12 public education suffered massive cuts during the 2011-2013 biannual budget.

Issue

The primary questions before the Washington Supreme Court were, in relevant part:

1. Whether the State of Washington is out of compliance with its constitutional duty under Article 9 of the Washington Constitution?

Article 9 of the Washington Constitution

§1: It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, colour, caste, or sex.

Decision

The Washington Supreme Court found that the State did not comply with its constitutional duty to make ample provision for the education of all children in Washington. The Supreme Court reviewed the evidence presented before the trial court, including the report from the QEC, and found that the State's funding formulas for education did not correlate to the actual cost of maintaining its basic education programme. In particular, the Court highlighted three areas of underfunding: basic operational costs, student transportation, and staff salaries. This State funding shortfall forced school districts to rely upon local property taxes to meet actual basic education costs, which the Supreme Court affirmed was unconstitutional. The State is required to fund basic education by means of dependable and regular tax sources, and property taxes are temporary and dependent upon the approval of the electorate.

The Court deferred to the legislature's decision as to the means by which the State meets its constitutional duty. However, to ensure compliance with the constitutional mandate to make ample provision for public education, the Washington Supreme Court retained jurisdiction over the case to monitor the State's reforms.

Impact

The Washington Supreme Court clarified the constitutional duty imposed upon the State by Article 9 of the State Constitution. The Court reiterated that the language 'paramount duty' in Article 9 of the Washington Constitution confers a positive right, which requires a minimum amount of government action, as opposed to a negative restriction, which defines the outer limits of governmental power.

In interpreting the constitutional duty of the State to make ample provision for the education of all children residing within its borders, the Court clarified that this duty encompasses each and every child such that no child is excluded. Further, the Court clarified the minimum requirements conferred by the State Constitution regarding education, thereby further defining the minimum right to education of Washington residents. The Court held that the State Constitution required, at a minimum, an opportunity (as opposed to a guaranteed outcome) to obtain the basic knowledge and skills needed to compete in today's economy and meaningfully participate in Washington's democracy. Also, the Court clarified that the ample provision required by the State Constitution means fully, sufficient, and considerably more than adequate.

Related cases

[Seattle School District No. 1 v. State, 585 P.2d 71 \(1978\).](#)

The Seattle School District decision in 1975 was the only other case in which the Washington Supreme Court addressed the overall adequacy of education funding. In this case the Supreme Court established the constitutional requirement that funding for basic education must be accomplished by means of dependable and regular tax sources.

Commentary

While the Washington Supreme Court's decision in *McCleary* was a victory for proponents of education funding, it has been followed by years of tension between the Court and the legislature. The Court issued an order requiring periodic reports showing the progress made toward achieving full compliance with its judgment. However, the legislature repeatedly failed to comply with the Court's orders to show real and measurable progress, and on 11 September 2014, the Court issued an order holding the state legislature in contempt, but initially withheld sanctions. However, the State failed to address the severe shortfall in funding regarding personnel costs for teachers, administrators, and staff. While the State commissioned reports on funding options, these options were not acted upon. On 13 August 2015, the Court enforced a sanction of \$100,000 per day to be held in a segregated account for the benefit of basic education. However, as of 6 October 2016, the State had not established an account in accordance with the Court's order. This \$100,000 per day sanction remains in place.

The Washington Supreme Court has been careful in urging of the State to comply with its constitutional mandate, adopting a slow escalation of the remedies available to the Court over the past four years. Should further escalation beyond the monetary sanction become necessary, options available to the Court might include: prohibiting spending on other areas of the state budget until compliance is shown, imposing contempt sanctions directly upon elected officials, or shutting down the entire public school system in Washington by prohibiting any funding of an unconstitutional school system.

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