

THE McCLEARY DECISION
& THE JOINT SELECT COMMITTEE ON
ARTICLE IX LITIGATION

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EARLY LEARNING AND K-12 EDUCATION

July
31,
2013

TIMELINE OF EVENTS

- 2007 January: *McCleary* case initially filed
- 2009 April: ESSB 2261 passed by Legislature
- 2010 February: Trial Court rules in favor of plaintiffs.
- 2010 March: SHB 2776 passed by Legislature
- 2010 March: State appeals & Supreme Court accepts review
- 2012 January: Supreme Court issues decision
- 2012 February: HCR 4410 passed by Legislature
- 2012 July: Court order issued regarding continuing jurisdiction
- 2012 September: Legislature files first report with the Court
- 2012 December: Court order responds to the legislative report
- 2013 January-June: Legislative session

MCCLEARY V. STATE (173 WN.2D 477)(PAGES 1 & 40)

At issue:

- The ***adequacy of state funding*** for K-12 education under article IX, section 1 of the Washington State Constitution.

Article IX, section 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, color, caste, or sex.

MCCLEARY V. STATE (173 WN.2D 477)(PAGES 41-44)

Duty of Judiciary under Article IX

- **Give meaning** to the terms in the Constitution
 - Court has adopted guidelines for the terms: "paramount", "ample", "education" and "all"
- **Determine compliance** with the Constitution

Duty of Legislature under Article IX

- **Define the program** of basic education (*within the guidelines of the Court*)
- **Provide ample funding** using dependable resources
- **Obligation to review & revise**

The McCleary Court reaffirmed previous cases

McCleary v. State (173 Wn.2d 477) (PAGE 77-78)

BRIEF SUMMARY OF DECISION:

- The State has **failed** to meet its paramount Constitutional duty by **consistently** providing school districts with a **level of resources that falls short** of that necessary to provide all students with an **opportunity** to access a basic education program.
- The legislature recently enacted promising reforms in ESHB 2261, which if fully funded, will remedy deficiencies in the K-12 funding system
- The Court deferred to the Legislature's chosen **means** of discharging its constitutional duty but retained jurisdiction to help facilitate progress in the State's plan to fully implement the reforms by 2018

MCCLEARY V. STATE (173 WN.2D 477)

What does the McCleary decision mean?

- The Court wants the Basic Education Program that is defined by the Legislature to be fully funded.
- At the time of the decision the Basic Education Program had just been redefined by the Legislature in ESHB 2261.
- ESHB 2261, as amended by SHB 2776, and other subsequent legislation, still provides the definition of the Basic Education Program.

MCCLEARY V. STATE (173 WN.2D 477)(PAGES 3, 53-54, & 69)

Can changes be made to the Basic Ed Program/Funding?

- The Court reaffirmed that, “The Legislature has an **obligation to review** the Basic Education Program as the needs of students and the demands of society evolve.”
- The Court provided **guidance** regarding changes that result in a **reduction** of the Basic Education Program:
 - “any reduction of programs or offerings from the Basic Education Program must be accompanied by an **education policy rationale**.” Reductions must not be made due to a “fiscal crisis or mere expediency.”
 - “Must show that a program it once considered central to providing basic education no longer serves the same educational purpose or should be replaced with a superior program or offering.”

MCCLEARY V. STATE (173 WN.2D 477)(PAGES 44-46)

Continuing Jurisdiction/Court Considerations:

- Constitutional right of children to receive an education creates a “**positive right**”.
- Other constitutional rights (*i.e., freedom of religion & speech*) provide for **noninterference** by the State.
- **A positive right requires State action.**
- A positive right requires the Court to take a **more active stance** in ensuring that the State complies with its affirmative constitutional duty.
- Court has the responsibility to ensure the enacted reforms are not “unfilled promises for reform” and retained jurisdiction to monitor implementation.

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JOINT SELECT COMMITTEE ON ARTICLE IX LITIGATION

HOUSE CONCURRENT RESOLUTION 4410 (2012)

Membership: 8 legislators

“Although the WA State Legislature, as one of the three coequal branches of state government, does not believe that the judicial oversight of its legislative prerogatives is necessary, it recognizes . . .the unique circumstances presented by the Article IX duty.”

Purpose:

- **Facilitate communication** with the WA Supreme Court on school funding litigation & other legislative actions related to the duty under Article IX.
- **Advise attorneys** representing the Legislature in the McCleary case.
- **Apprise legislators** and the Legislature regarding communication with the Court regarding the McCleary case.

McCLeary v. State (173 WN.2D 477)

After a briefing by both parties the Court issued an order in July 2012.

Court Order (addressing the *State*)

- Between 2012 and 2018, through the Article IX Litigation Committee OR through legal counsel, must file a **report** with the Court. The report must be:
 - Filed **60 days** after the final biennial or supplemental operating budget is signed by the governor (and, at such other times as the court may order
 - A **summary of legislative actions** taken towards implementing the reforms and achieving compliance with Article IX, Section 1
 - Served on the attorney for the McCleary **respondents**
 - A public document and **may** be published on the Legislature's web page.

MCCLEARY V. STATE (173 WN.2D 477)

Court Order (addressing the *Respondents*)

- Within 30 days after receiving a copy of the report, the McCleary respondents **may** file and serve written comments **addressing the adequacy** of the State's implementation of reforms and its **progress** toward compliance with article IX, section 1.

MCCLEARY V. STATE (173 WN.2D 477)

Court Order:

- After reviewing the parties' submissions, the Court will determine whether to request **additional information, direct further fact-finding or take any other steps.**
- In deference to ESHB 2261 and its implementation schedule, the Court's review will **focus** on whether the actions taken by the legislature show **real and measurable progress** toward achieving full compliance by 2018.
- While it is not realistic to measure the steps taken in each legislative session between 2012 and 2018 against full constitutional compliance, the State must demonstrate **steady progress** according to the schedule anticipated by the enactment of the 2261 reforms.

RECAP

- The *McCleary* Court found that the **State** was not meeting its paramount constitutional **duty** because **ample** funding was not being provided to cover the **costs** of providing the Program of Basic Education.
- The Program of Basic Education as redefined in ESHB 2261, and amended by SHB 2776, and other subsequent legislation is the **current BE definition**.
- The Legislature **may change** the Program of Basic Education based on an **educational policy** reason but not because of a fiscal crisis.
- The Court requires **reporting** by the Article IX Committee on **progress** to achieve **compliance** with Article IX.

THANK YOU!