

Guest: Lawmakers should not undercut judiciary in funding lawsuit

The Legislature should not remove the requirement that the state attorney general represent state officials. At issue is a lawsuit by Grays Harbor County judges over lack of state funding.

By Richard F. McDermott
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As the state Legislature returns for its special session, judges urge legislators not to pass a bill that would remove the obligation of the attorney general to represent a court in any lawsuit related to funding the judicial branch. In some cases, the only alternative would be to shut the courthouse doors.

We believe that courts are the ultimate check and balance on the legislative and executive branches of government and that the judiciary is the linchpin that holds democracy together, ultimately protecting the rights of all of our citizens.

If House Bill 2024 is passed, the ability to obtain adequate funding for our justice system will be severely challenged. The bill removes the requirement that the state attorney general represent state officers, including superior-court judges, in any case where funding is an issue at the county or state level.

This bill is in response to a lawsuit by the three Grays Harbor Superior Court judges against the county after county commissioners cut the court's budget to the bone. The cuts last year were so severe that court funding would have run out in November.

The judges were faced with shutting the courthouse doors, not allowed by the Washington Constitution, or trying to get funding restored through a lawsuit.

For years, the judges had waited patiently for courthouse security to protect the public. Just four months after the suit was filed, the worst happened. A deputy county sheriff was shot and stabbed and the judge who rushed to her aid was also stabbed. Fortunately no lives were lost.

Twenty years ago, a third judge was approved for Grays Harbor County, but the county has stalled on its promise to provide a courtroom.

Only when circumstances became so dire that the courthouse doors literally would close did the judges finally sue. While they were at it, they included courthouse security and the third courtroom in this rare lawsuit.

The Legislature holds what is called the "power of the purse." But that power is not exclusive. When the executive and legislative branches fail to provide "reasonable and necessary" funding for the courts, the law provides that the judicial branch can use its "inherent power" to require funding. Otherwise, the two branches writing the budget could cripple the judicial branch.

The delicate balance between branches of government has worked so well that the only case prior to the Grays Harbor lawsuit was 127 years ago when the judge needed candles for the courtroom and fodder for his horse. There is no urgency to pass this bill.

The Grays Harbor lawsuit costs are high because the attorney general hired private lawyers to represent the judges, rather than handling the case “in house.” The bill supporters want to cut off funding for this lawsuit. But taking sides through legislation in a pending case will likely lead to further costly litigation.

Legislators should ask just how many suits involve the Attorney General’s Office hiring outside firms and at what expense? One way to cut costs is to use more frequently a “conflict wall” within its own office. The Rules of Professional Conduct, which govern how attorneys act, provide for it. This avoids hiring expensive private lawyers, saving significant resources.

Lawmakers say that this bill does not preclude judges from bringing a lawsuit — it just prevents taxpayers from covering the cost. But it puts our judges to a Hobson’s choice: Shut down the courthouse when funding runs out, or personally hire attorneys to keep the doors open.

Legislators say judges should just ask attorneys to represent them for free. But that violates Washington’s Code of Judicial Conduct and ignores the statute that says no government employee can solicit, directly or indirectly, gifts or favors that reasonably would be expected to influence the person.

Nobody would want to come into court knowing that the opposing attorney had done the judges a favor by giving them free legal services.

A far better approach would be for legislators, the Attorney General’s Office and superior-court judges to report back to the Legislature later this year on creative cost-containment solutions. Before upsetting the delicate balance of power in Washington’s government, we should pause and seek a safer alternative.

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