

# Former AG McKenna favors constitutional amendment to bar govt-records 'privilege'

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By Brad Shannon — Olympian

Former Washington attorney general **Rob McKenna** says he [favors a constitutional amendment as a way to counter last week's state Supreme Court ruling that upheld a governor's claim of executive privilege](#). Former governors **Chris Gregoire** and **Gary Locke** had invoked such a privilege claim in refusing to release certain sensitive public records, and Olympia-based Evergreen Freedom Foundation (now The Freedom Foundation) sued to strike down that claim.

Our post on the court's 8-to-1 ruling is [here](#).

Current Gov. **Jay Inslee**, a Democrat, and McKenna, a Republican, both said last year during their campaign for governor that they would not exercise the privilege if elected. McKenna went further on Tuesday, [explaining on his Smarter Government Washington web site why he thinks a constitutional amendment is needed](#). He called the court ruling, which had just one dissenting justice, **Jim Johnson**, "deeply damaging to the ideal that state government should be open and transparent."

McKenna went on:

*Even if the court is right that there is an implied separation-of-powers argument for an exemption, the court ruling as it stands now allows a "qualified privilege" that isn't very qualified at all. The practical effect will be that, instead of it being incumbent upon the governor's office to prove why a document can be withheld under a specific exemption from the Public Records Act, the requestor of the documents will have to take the expensive route of going to court to prove a need for the documents. That's backwards, and it's damaging to the public's right to know. The Public Records Act, which was passed by the voters, says that the people "do not give their public servants the right to decide what is good for the people to know and what is not good for them to know." Yet the court has ruled that the separation of powers implied in the state constitution trumps the Public Records Act and the clear intent voters gave state government about government transparency. As Peter Callaghan notes, if the exemption includes lobbying by outside groups for certain decisions by a governor, "it is hard to come up with documents that wouldn't fall under this exemption, a result that would end our ability to see who is influencing the governor." Regardless of the legalities, the practical path forward is clear: we need a state constitutional amendment to fix this ruling and make clear once again that the people have not given up the right to know about how government decisions are made. State constitutional amendments must originate in the state legislature, which means we need leaders from both parties to step up and protect the people's right to know. After that, the matter would go to the voters – and it's obvious the people would overwhelmingly approve this change.*

In her majority opinion, Justice **Mary Fairhurst** argued that a constitutional amendment was the proper venue for those who want to bind a governor's hand on this. She wrote:

*The people delegated supreme executive power to the governor when they ratified the constitution. The gubernatorial communications privilege, delegated along with supreme executive power and vested in the governorship, cabins the right to demand information through open government laws. Republican Party, 283 P.3d at 856. The PRA cannot override this constitutional delegation of power; any such attempt must come through constitutional amendment.*

The Washington Policy Center's **Jason Mercier**, who has served on the board of the Washington Coalition for Open Government, was among the first calling for a constitutional amendment last week.

State Sen. **Pam Roach**, R-Auburn, said last week she will introduce a constitutional amendment for consideration by the 2014 legislative session.

Read more here: <http://www.theolympian.com/2013/10/22/2788325/former-ag-mckenna-favors-constitutional.html#storylink=cpy>