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Elect future governors that pledge transparency

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The dome of the Legislative Building at the Capitol in Olympia.

AP PHOTO/TED S. WARREN

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Noting that Washington's constitution delegates supreme executive power to the governor, the state Supreme Court has found the right to withhold information among those executive privileges. It's a technically sound decision that nevertheless undermines the intent of the Public Records Act.

Passed as a citizen's initiative with a 72 percent yes vote in 1972, Washington's Public Records Act set a national precedent for other states.

It says, "The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, 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."

The court's decision upheld a Thurston County Superior Court ruling that former Gov. Christine Gregoire could claim executive privilege as the basis for refusing to comply with nearly 500 public records requests. The initial lawsuit filed by the Freedom Foundation argued that neither the state constitution nor the Public Records Act make an explicit exemption for the governor's office.

The lawsuit fails because while the Public Records Act does not include a gubernatorial exemption, it does not specifically include the governor's office. In any case, such an inclusion would have put the law in conflict with the constitution.

The court's majority wrote that a constitutional amendment is the only remedy available to open government advocates to "override this constitutional delegation of power."

As appealing as that sounds, constitutional amendments must originate in the Legislature and pass by a two-thirds majority. That's a difficult, if not improbable, bar to clear. Then the proposed amendment would go on a general election ballot, and need only a simple majority for approval.

A better plan is for voters to elect governors who believe in open access to public records and pledge to use executive privilege only under the most rare and extreme circumstances. We can't imagine such a scenario — akin to national security on a national level — but it may exist in the future.

Gov. Jay Inslee has so far lived up to his promise not to invoke the privilege. He has already handed over a half-dozen set of documents previously sought by the Freedom Foundation.

That's laudable, but of course those were Gregoire documents. We expect he'll be as transparent and forthcoming when asked for records of his own administration.

If he is not, then this Supreme Court ruling will validate the dissent by Justice Jim Johnson, who wrote, "Concerned citizens will have to bring difficult and expensive lawsuits in order to get a closer look at their governor. The majority has 'slammed the door on open government as it pertains to the governor.'"

That leaves it up to citizens to ensure that this governor, and future ones, respect the people's right to know.

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