

In Our View: Leniency vs. Clemency

Former governors file brief with court on Legislature's funding of schools

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As two branches of Washington's government uncomfortably lurch toward a constitutional showdown, the state's five living former governors are advocating caution.



Dan Evans, John Spellman, Mike Lowry, Gary Locke and Chris Gregoire have filed a brief with the state Supreme Court recommending leniency for state legislators as the court ponders the next move in the McCleary v. Washington case. And while the issue has been contentious, the governors' call for statesmanship deserves attention.

Some quick background:

- In 2012, the state Supreme Court ruled that the Legislature had not been living up to what the state Constitution defines as its "paramount" duty — fully funding public K-12 education. Using financial parameters that had been passed by lawmakers, the justices gave the state until 2018 to add roughly \$3 billion to education funding.
- Two legislative sessions have passed since then, with lawmakers adding roughly \$1 billion to education. At the same time, they have failed to devise a plan or a timetable for meeting their obligation.
- In June, justices ordered state officials to appear Sept. 3 at the Temple of Justice in Olympia and explain why they should not be held in contempt for failing to meet the court's order. The result has been assertions from some circles that the court fails to understand the principle of separation of powers.

The genesis for the staredown can be found in decades past. Some 36 years ago, the state Supreme Court ruled that forcing school districts to rely upon local levies for funding violated Washington's Constitution, and lawmakers spent the next three-plus decades giving nothing more than a nod-and-a-wink to that ruling. "The reason this court in McCleary retained jurisdiction is because of what happened in the wake of the 1978 decision," Justice Debra Stephens, who wrote the unanimous McCleary decision, told The Columbian's Editorial Board in May.

Which brings us to next month's opportunity for lawmakers to provide a mea culpa before the court. While forcing lawmakers to spend a night in jail for contempt might be tempting for the justices, we urge them to acquiesce to the statesmanship requested by the former governors. As The Seattle Times wrote editorially, "That would make for high drama in a law-school course, but the ex-governors rightly hope to avoid it for the sake of coherent governance."

The ultimate goal for all involved must be improvement in Washington schools, and in the end that will fall to the Legislature — whether or not the Supreme Court presses the issue next month. Forcing lawmakers to metaphorically beg for the court's mercy will not alter the issues the Legislature will face during the 2015 session.

To this point, lawmakers have fallen short of their duty — which, again, is mandated by the state Constitution and has been defined by dollar amounts set by the Legislature. To be sure, it is a difficult task, as the Legislature must balance school funding with finding ways to increase revenue and/or making cuts to other programs, but state law and the court leave no wiggle room. Many a lawmaker has repeated the empty mantra of "fund education first" without specifying areas in which cuts can be made, and many a lawmaker has recommended that money can be found by essentially looking under the couch cushions.

Those ideas are long on rhetoric and short on effectiveness. But, for now, the ex-governors are right to call for leniency on behalf of lawmakers — so long as leniency is not confused with clemency.

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