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Editorial: Governors offer good advice on McCleary

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The Washington Supreme Court should listen to its friends.

Last week, five former governors of Washington jointly filed an amici curiae – friends of the court – brief urging the justices to delay a September hearing that could result in a contempt of court finding against the Legislature, and a constitutional crisis testing judicial versus legislative power.

Since an initial January 2012 ruling in what has now become known as the McCleary case, the court has leaned hard on lawmakers they found were failing in their “paramount duty” under the state constitution to adequately fund K-12 education. That outcome was almost a foregone conclusion.

Although the Legislature in 2013 responded with nearly \$1 billion in additional school funding, the court justices are unimpressed. They demanded a plan in January that would further increase spending, possibly by \$2 billion or more, and when the short 2014 session ended without much further progress, the justices wanted an explanation.

They warned of a potential contempt finding if the Legislature could not make a better case for its efforts at a Sept. 3 hearing.

The governors – Dan Evans, John Spellman, Mike Lowry, Gary Locke and Chris Gregoire – suggest the court give the lawmakers more time to do their work. Coming from a group that surely endured more than its share of frustration with the pace of legislative deliberations, this is advice well-taken.

Their brief, co-authored by 2012 Republican candidate for governor Rob McKenna, makes its most important point in its first paragraph: Finding the Legislature in contempt would be a distraction from the focus of the dispute – education funding.

They express perhaps undue optimism a newly elected Legislature will get things right during a long 2015 session, but note the court has been extraordinarily patient in past education and redistricting cases that were resolved over multiple legislative sessions.

They also point out that when revenues are fixed, a dollar dedicated to schools is a dollar potentially taken from another state program equally important to the best interests of Washington children and students, including those in the state's universities. An additional \$2 billion, even as Washington's economy recovers, will be a load.

Greater pension needs and a lower court ruling against the warehousing of the mentally ill will create additional demands for those new dollars.

The deference shown the court by the governors is the very model for court oversight of the Legislature. The constitution is on their side, but retaining jurisdiction of the McCleary case sets up a potential test of the balance of powers between court and Legislature.

The executives are the ideal referees.

Everyone's goal is full funding of education by 2018. The Legislature is making real progress. Next May, not next month, will be a better time for the court to assess the lawmakers' efforts.

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