

State AG's refresher on separation of powers welcome

By [Editorial Board](#)

- As of Friday, August 29, 2014

Washington Attorney General Bob Ferguson gave the state Supreme Court justices a needed reminder of basic civics last week.

Ferguson pointed out to the justices that state government (like the federal government) has three branches of government — legislative, executive and judicial. Each branch is entrusted with specific authority and duties and it is not allowed to encroach on the powers entrusted to the other two branches. It's known as separation of powers.

Ferguson, with the help of senior lawyers in his office, offered a written argument to the court as it prepares to hear oral arguments regarding the justices' order to the Legislature to boost school funding to meet the constitutional requirement to fully fund education. The court is considering holding lawmakers in contempt of court because they have failed to meet the funding mandate quickly enough.

"It is not appropriate for the court to hold the state in contempt because the Legislature did not pass a bill or resolution," the state attorneys argued. "Holding the state in contempt for failing to legislate is a slippery slope."

It is up to the Legislature to set the state budget and determine what taxes and fees will be imposed to fund government.

If courts could simply "order" lawmakers or governors (who head the executive branch) to follow their strict instructions in making decisions then the judicial branch would be superior to all the other branches. If a legislature tried to rein in the court, the justices could simply rule that action unconstitutional.

It was in 2012 when the high court, in the McCleary decision, demanded lawmakers meet their constitutional duty to fully fund basic education. The justices established a timeline with thresholds through the 2017-2018 school year, which is when full funding must be in place.

Lawmakers have been making progress, albeit slowly, toward putting more money into basic education.

It's just not fast enough for the justices.

The court has the right to be irked and frustrated the process is moving slowly, but it does not have the authority to punish lawmakers for doing their jobs differently than the court wanted.

Yes, the Legislature must ultimately meet its constitutional duty to fully fund education, but it cannot ignore its responsibility to fund the rest of government — from public health to public safety.

The Legislature has a finite amount of money to spend, and it's not enough to fund education to the level the court demands.

The justices need to be realistic and patient, and let lawmakers exercise their legislative powers.