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No. ~~87861-7~~

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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ANNE K. BLOCK and NOEL FREDERICK,

Appellants,

v.

CITY OF GOLD BAR and CITY OF GOLD BAR CITY COUNCIL,

Respondents.

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**BRIEF OF APPELLANT**

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**ALLIED**  
LAW GROUP

 ORIGINAL

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**I. ASSIGNMENT OF ERROR & ISSUES PERTAINING TO  
ASSIGNMENT OF ERROR**

The issues presented for direct review are as follows:

1. Whether rulings on recall petitions to place an issue on the ballot, which by statute and case law do not decide the “truthfulness” of the underlying allegations in the petitions, are collateral estoppel or a res judicata bar to an OPMA case about the underlying allegations?
2. Whether an OPMA plaintiff should be entitled to discovery in the face of a summary judgment motion and contradictory declarations of council members who attended a challenged executive session?
3. Whether an agency may avoid OPMA liability by alleging it has abdicated to a staff member its power to make certain decisions it is accused of having made in a meeting that did violated the OPMA?

The errors pertaining to the assignments of error are as follows:

Whether the trial court erred in

- (1) denying the CR 56(f) Motion and denying Appellant the right to engage in discovery;
- (2) granting summary judgment to Defendants;
- (3) finding there were no genuine issue of material fact in the case;
- (4) finding that the 5/25/12 recall decision ruled upon the claims in the instant OPMA complaint and that the OPMA case was barred by the doctrines of res judicata and collateral estoppel;
- (5) holding the Mayor “had sole decision-making authority regarding the conduct of the City litigation being discussed in executive session”;
- (6) (a) holding that the 10/26/10 Executive Session did not constitute an OPMA violation, (b) that the City Council did not take a vote, (c) that the City Council was not authorized by law to take a vote on any issue being discussed in the 10/26/10 Executive Session and any vote that may have been taken by the City Council would have been ultra vires, void, and would have had no force or law, and (d) that the Mayor had the sole decision-making authority and

sole discretion over the conduct of the lawsuit including whether to engage in mediation?

## II. STATEMENT OF THE CASE

Goldbar resident Susan Forbes filed a Public Record Act (“PRA”) case against the City of Goldbar related to their handling of requests she had made for records after allegations of impropriety by Goldbar officials. On October 7, 2010, Ms. Forbes wrote to outside counsel for the City Margaret King asking to mediate the dispute. CP 200. On October 22, 2010, at 12:26 p.m., when she had heard nothing in response she wrote to Ms. King and was told by Ms. King in an email on October 22, 2010, at 8:03 p.m. “The City is Attempting to schedule an executive session for either next Monday or Tuesday.” CP 219. At 9:41 p.m. Ms. King emailed back that “The Council will be discussing your offer in an executive session on Tuesday evening.” CP 218.

On October 26, 2010, the five Councilmembers of the Goldbar City Council and its mayor met in an Executive Session at the Planning Director’s office for the announced purpose of “executive session regarding current litigation with possible action to follow.” CP 202, see also CP 148. (“Executive Session—Current Litigation.”) According to the meeting minutes Attorney Margaret King was not present at the Executive Session but connected via telephone. CP 149. In declarations drafted with

the assistance of counsel Councilmembers Wright and Prueher and Mayor Beavers all swore under oath that during the Executive Session as was “normal” for that entity, there was “spirited discussion” but no “vote.” CP 56, 60, 62. Mayor Beavers admitted in a second declaration that “City Councilmembers certainly expressed their opinions regarding the pending litigation....” CP 140. Councilmember Martin omitted the admission regarding spirited discussion. CP 58. Councilmember Lie submitted a declaration he drafted himself and under penalty of perjury admitted that he understood the council was being called together to make a decision whether or not to engage in mediation in a Public Records Act case filed by resident Susan Forbes, that Councilmember Wright called for a vote and cast his vote as no, that Lie cast his vote as yes, and that at the end of the meeting a consensus had been reached not to engage in mediation. CP 387. No declaration was apparently ever submitted for the fifth Councilmember Broyles.

No discussion of mediation or the litigation occurred in the public meeting on October 26, 2010.

On October 27, 2010, at 4:09 p.m. Ms. King wrote to Ms. Forbes that she had “shared your mediation offer with the City Council,” and was writing to let her know “the City” was declining her offer to mediate as “it” does not believe it would be constructive. CP 151.

On January 17, 2012, Appellants Anne K. Block and Noel Frederick (hereinafter “Block”) filed a lawsuit against the City of Gold Bar and the Gold Bar City Council alleging violations of the Open Public Meetings Act (“OPMA”) stemming from the October 26, 2010 meeting. CP 393-399. On March 9, 2012, Block filed a Declaration from then Councilman Charles Lie attesting to events occurring at the Executive Session on October 26, 2010. CP 386-387.

Defendants issued discovery requests to Block to which she fully responded. See e.g., CP 187-199.

In March 2012, while this OPMA suit was underway, Block and others filed recall petitions against Martin and Wright individually alleging in part they “voted in executive session” on October 26, 2010. CP 300-301, 304-305. They did not allege the councilmembers knowingly violated the OPMA, a requirement for a recall petition. They also filed a recall petition against the Mayor, who is not a member of the governing body of the City, in part for “failing to reconvene an executive session” on October 26, 2010. CP 296-297. At a recall sufficiency hearing in April 2012, the trial court indicated in short written orders only that the recall charges were “insufficient” to allow the recall petition to go forward. CP 298-299, 302-303, 306-307.

On April 25, 2012, Ms. Forbes and then-former councilman Lie filed a second recall petition against just the Mayor alleging the Mayor “violated the OPMA “by failing to reconvene to an open public meeting from an executive session to vote/take action on the record in an open public meeting” and that the vote/take action was taken in executive session in violation of the OPMA. CP 308-309. On May 25, 2012, following a sufficiency hearing the trial court held that the recall petition allegations were insufficient because the OPMA does not apply to the Mayor who is not a member of the governing body of the City Council, that there was no showing the Mayor **intended** to violate the OPMA, that an agency does not need to reconvene to an open session after an executive session (an incorrect statement of the law), and that the petition was barred by res judicata as a similar allegation was asserted in the first recall petition against the Mayor. CP 254-256.

On the heels of the decisions on the recall petitions, Defendants in this case alleged that Block’s OPMA suit, which had been filed before the recall petitions and dealt with OPMA violations of the entities, not whether or not individuals knew their actions were illegal, was collaterally estopped or barred by the doctrine of res judicata stemming from the April and May rulings finding the recall allegations insufficient.

On May 11, 2012, Block issued subpoenas duces tecum to those who had attended the October 26, 2010, executive session. CP 90-91. On May 18, 2012, the City moved for a protective order staying the depositions for 45 days, which was granted. CP 291-293. On June 15, 2012, the City filed a motion for summary judgment and Block filed a CR 56(f) Motion for a continuance asking to take the depositions before consideration of a summary judgment motion in order to respond to that motion. On August 10, 2012, the trial court denied the CR 56(f) Motion (CP 41-42) and granted the summary judgment motion finding res judicata barred the OPMA claim, that the October 25, 2010, event was not an OPMA violation, and that the City Council did not have authority to vote on the issue involved in the October 26, 2010, executive session so any vote they had taken during that session would have been ultra vires and void. CP 12-16.

### **III. LEGAL AUTHORITY AND ARGUMENT**

#### **A. Summary of Argument**

Plaintiffs were wrongfully denied any discovery prior to responding to Defendants' summary judgment motion, and the Court wrongfully denied Plaintiff's CR 56(f) Motion. Plaintiff raised questions of fact that precluded the grant of summary judgment to Defendants. The evidence presented, including the declarations from Defendants and their

agents, established an OPMA violation. Defendants have not proven the City of Goldbar and its residents abdicated all decision-making to their Mayor related to litigation, and even if it had, this would not change the fact that an OPMA violation had occurred as action occurred at the Executive Session in question beyond the scope of the Executive Session exception.

**B. Block Has Shown an OPMA Violation**

Defendants here seek to water down the meaning and reach of the OPMA to avoid a minor award of fees and costs to two resident watchdogs. The holdings the Defendants press would eviscerate the OPMA and its value to the public to keep the governors accountable to the governed. This Court cannot forget that far more is at stake in this case than whether or not Appellants win this OPMA case. This Court's decision will markedly shape the interpreted meaning of the OPMA for the future.

James Madison once wrote:

A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance; and a people who mean to be their own governors, must arm themselves with the power which knowledge gives.

Letter to W.T. Barry, Aug. 4, 1822, 9, The Writings of James Madison 103 (Gaillard Hunt ed., 1910). The United States Supreme Court, in more moderate terms, stated:

“People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.”

**Richmond Newspapers, Inc. v. Virginia**, 448 U.S. 555, 572 (1980); **see also NLRB v. Robbins Tire & Rubber Co.**, 437 U.S. 214, 242 (1978) (access to information essential “to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.”). And in RCW 42.30.010, in what the Washington State Supreme Court has described as “some of the strongest language we have ever seen in any legislation” (**Cathcart v. Andersen**, 85 Wn.2d 102, 107, 530 P.2d 313 (1975)), the OPMA policy and mandate states as follows.

The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people’s business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.

The people of this state do not yield their sovereignty to the agencies which 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 people insist on remaining

informed so that they retain control over the instruments they have created.

Washington's first open meetings act was adopted in 1953, requiring just that final decisions be made in public. A broader act, the Open Public Meetings Act ("OPMA"), was enacted in 1971, requiring that "[a]ll meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter." RCW 42.30.030. The purpose of the OPMA is to permit the public to observe all steps in the making of governmental decisions, as shown in the explicit policy statement of RCW 42.30.010. **Cathcart**, 85 Wn.2d at 107; **see also Equitable Shipyards, Inc. v. State**, 93 Wn.2d 465, 482, 611 P.2d 396 (1980) (citing **Cathcart**). The State Supreme Court in **Cathcart** explained, stating:

The right of the public to be present and to be heard during all phases of enactments by boards and commissions is a source of strength in our country.... One purpose of [open meetings acts] was to maintain the faith of the public in governmental agencies. Regardless of their good intentions, these specified boards and commissions, through devious ways, should not be allowed to deprive the public of this inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made.

85 Wn.2d at 108 (discussing analogous law of another state).

The OPMA applies to the “governing body” of any public agency or subagency at the state, local, county, municipal or local level. RCW 42.30.020(1). A “public agency” includes any state board, commission, committee, department, educational institution or other state agency created by or pursuant to statute other than courts and the legislature; any county, city, school district, special purpose district (*e.g.*, fire or weed control), or other municipal corporation or political subdivision of the state; any subagency of a public agency that is created by or pursuant to statute, ordinance or other legislative act, including, but not limited to, planning commissions, library or park boards, commissions and agencies; and any policy group whose membership includes representatives of publicly-owned utilities formed by or pursuant to state law. RCW 42.30.020(1); *see also* PUBLIC RECORDS ACT DESKBOOK: WASHINGTON’S PUBLIC DISCLOSURE ACT AND OPEN PUBLIC MEETINGS ACT (Wash. State Bar Assoc. 2006) (“DESKBOOK”), § 21.2.

A “governing body” is any multimember<sup>1</sup> board, commission, committee, council or other policy or rulemaking body of a public agency or any committee of any governing body whenever it acts on behalf of the governing body, conducts hearings or takes testimony or public comment. RCW 42.30.020(2); **see also** DESKBOOK, § 21.2(3), at 21-4. An advisory

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<sup>1</sup> Agencies governed by a single individual do not fall within the “governing body” definition. **Salmon for All v. Dept. of Fisheries**, 118 Wn.2d 270, 821 P.2d 1211 (1992).

board or committee that is created by or pursuant to statute, ordinance or other legislative act or that sets policy for an agency is treated like a governing body under the OPMA. RCW 42.30.020(1). The governing body is the body that makes a decision or the policy and rules of an agency, notwithstanding the capability of a higher or other agency or individual to overrule such decisions. **See Cathcart**, 85 Wn.2d at 107. For example, the following have been ruled to be governing bodies requiring that their meetings be open to the public: faculty meetings at a public college or university, **id.**; meetings of a student board of a recognized student association at a public college or university, RCW 42.30.200; meetings of services and activities fees committees at state higher educational institutions, Op. Atty. Gen. 1983, No.1; and school boards, Op. Atty. Gen. 1971, No. 33 at 7. In comparison, in **Washington Public Trust Advocates v. City of Spokane**, 120 Wn. App. 892, 902, 86 P.3d 835 (2004), a meeting between just the mayor and special counsel regarding pending litigation was found not to come within the definition of “public agency” or “governing body” under the OPMA.

Except for specific statutory exemptions, all meetings of the “governing body” must be open to the public. RCW 42.30.030. To constitute a “meeting,” the event need not take place in a formal setting. A “meeting” is any occasion at which “action” is taken. RCW

42.30.020(4). “Action” is defined as the “transaction of official business” and includes discussion, consideration, public testimony, review, evaluation and other deliberation, as well as “final action.” RCW 42.30.020(3). “Action” is thus defined broadly and is not limited to “final action.” **Eugster v. City of Spokane**, 110 Wn. App. 212, 225, 39 P.3d 380 (2002); **see also** Attorney General Open Government Manual (“Att’y Gen. Open Gov’t Manual”), Chapter 3, § 3.4(B); **see also Organization to Preserve Agr. Lands v. Adams County**, 128 Wn.2d 869, 883, n.2, 913 P.2d 793 (1996) (“The plain language of the statute does not support [the] distinction between action and discussions short of action, as the definition of ‘action’ includes ‘discussion.’”). The OPMA specifically states in its definition of “action,” that what constitutes “action” is not limited to the examples in the statute. **See** RCW 42.30.020(3). Instead, the relevant inquiry in finding “action” is whether the activity relates to “the transaction of the official business of a public agency by a governing body.” **See** Att’y Gen. Op. 1971, No. 33 at 11-12; **see also** DESKBOOK, § 21.3(1), at 21-5).

Final action is a collective positive or negative decision, by formal motion or informal proposal, or vote by the majority of members of the governing body. RCW 42.30.020(3); **Miller v. City of Tacoma**, 138 Wn.2d 318, 331, 979 P.2d 429 (1999); **see generally** DESKBOOK, §

21.3(1), at 21-5-21-6 (citing cases); **see also** Att’y Gen. Open Gov’t Manual, Chapter 3, § 3.4(B). “Reaching a consensus on a position to be voted on at a **later** meeting qualifies as a collective decision and, consequently, as ‘final action.’” DESKBOOK, § 21.3(1), at 21-5-21-6 (citing **Miller**, 138 Wn.2d at 327; **Eugster**, 110 Wn. App. at 225) (emphasis added).

A “meeting” occurs whenever members of a governing body discuss agency business—even if no decisions are made. Courts in Washington, like in other jurisdictions, have repeatedly recognized a broad interpretation of “meeting” in open public meeting laws. **See Wood v. Battle Ground Sch. Dist.**, 107 Wn. App. 550, 562-63, 27 P.3d 1208 (2001) (“[C]ourts have generally adopted a broad definition of ‘meeting’ to effectuate open meetings laws that state legislatures enacted for the public benefit.”) (citation omitted). For example, the state auditor held that the Algona Economic Development Corporation Public Development Authority had violated the OPMA when it held dinner meetings on the Spirit of Washington Dinner Train and on cruises in the Puget Sound. Washington State Auditor Audit Report re Algona Economic Development Corporation Public Development Authority. In 1999, the auditor held that some members of the Monroe City Council violated the OPMA when they met at a local restaurant after public meetings.

Washington State Auditor Audit Report No. 59950 (Feb. 19, 1999). In both cases the members of the governing body discussed business in addition to socializing. The business discussions constituted “action,” and thus the gatherings were “meetings” held in violation of the OPMA.

Therefore, a meeting need not be a formal meeting, but rather can include briefing sessions and informal discussions or gatherings—as long as “action,” such as “discussion” of official business, takes place. *Op. Att’y Gen. 1971, No. 33 at 11.* This interpretation of the OPMA has also been accepted by an association made up of local governments. *See MUNICIPAL RESEARCH AND SERVICES CENTER, The Open Public Meetings Act: How it Applies to Washington Cities, Counties, and Special Purposes Districts (“MRSC Report”), Report Number 60 (May 2008), at 6.* Indeed, unintentional meetings may occur whenever a quorum of the members of a governing body gathers in an informal setting. *See Op. Att’y Gen. 1971, No. 33 at 19* (concluding that social function involving governing body members can be a “meeting” if it is scheduled or designed to discuss official business).

The OPMA does not require that meetings be conducted in person. Exchanging email can constitute a meeting. *Wood*, 107 Wn. App. at 564 While the “mere use or passive receipt of e-mail” may not constitute a meeting, the “active exchange of information and opinions” via email

would be a meeting. See id. at 564, 566. Other exchanges of information also have been found to constitute a “meeting.” In 1996, the state auditor held that two members of a three-member board violated the OPMA when one board member called another to discuss agency business. Washington State Auditor Audit Report (released in 1996). The calls lasted from one minute to up to one hour. Id. The Attorney General’s Office in a 1991 letter opinion advised that if one member of a three-member commission called another member to discuss an issue of importance to the commission, this call would constitute a meeting and would violate the OPMA. Letter to Mike Heavey, State Representative, January 17, 1991. The Division Three Court of Appeals found that a meeting might have taken place when a city council member spoke with individual council members in an attempt to reach a consensus. Eugster, 110 Wn. App. at 224. In 1996, the state auditor found that the board that operates a public ambulance service in Skamania County violated the OPMA when two members of the three-member board used a third party to exchange information between the members that ultimately became part of an agreement signed by the board. Washington State Auditor Audit Report. (released in 1996). Thus, the OPMA has long been interpreted to bar, as the definition of action clearly intends, the active exchange of opinions

and information between governing body members outside of the public view whether or not a final “vote” is actually taken.

The OPMA is a remedial legislation, and its provisions are to be liberally construed. RCW 42.30.910. Accordingly, any exception to the Act must be narrowly confined. Miller, 138 Wn.2d at 324. Since all “action” (which includes discussions and not just voting) must occur in an open public meeting a specific statutory exception is required for any discussion to occur outside of an open meeting. The OPMA has just two types of exceptions: one, a select types of events, not at issue here, to which the OPMA has been explicitly stated in the statute to apply; and two, Executives Sessions for one of a handful of specifically enumerated exchanges. The exception at issue in this case involves the practice of Executive Sessions, specifically that authorized by RCW 42.30.110(1)(i). Governing bodies are allowed during a regular or special meeting to go into an Executive Session if the matter to be discussed falls within one of the statutorily enumerated bases in the OPMA. Because the public can be excluded, Executive Sessions are allowed only under these limited circumstances and for the narrow set of specifically-authorized purposes and activities. See DESKBOOK, § 21.5, at 21-11–21-12 (describing executive sessions); see also Port Townsend Pub. Co., Inc. v. Brown, 18 Wn. App. 80, 82 n.3, 567 P.2d 664 (1977) (same); see also Att’y Gen.

Open Gov't Manual, Chapter 4, § 4.1. To lawfully meet in Executive Session, the topic of the governing body's meeting and its actions during the Session must fit within one of specifically enumerated grounds. **See** RCW 42.30.110(1); **see also Miller**, 138 Wn.2d at 327 (action not specifically enumerated in Executive Session exception "must take place in public"). Before going into Executive Session, the presiding officer of the governing body must publicly announce to those in attendance that it is going into Executive Session and the purpose for excluding the public from the meeting place. RCW 42.30.110(2). It is required that the governing body will meet first in public before closing a meeting. **Id.**; **see also** DESKBOOK, § 21.5(1), at 21-11–21-12; Att'y Gen. Open Gov't Manual, § 4.2; MRSC Report at 15 ("A governing body may hold an executive session only for specified purposes... and only during a regular or special meeting."). The public announcement should specifically identify the exemption of the Act that is involved and the general subject matter of the closed session. **See** MRSC Report. Further, the announced purpose of the executive session "must contain enough detail to identify the purpose as falling within one of those identified in RCW 42.30.110(1)." DESKBOOK, §21.5(1), at 21-11; **see also** Att'y Gen. Open Gov't Manual, §4.2. Therefore, for example, "it would not be sufficient for a presiding officer to declare simply that the governing body will now

meet in executive session to discuss ‘personnel matters.’” **Miller**, 138 Wn.2d at 327; **see also** Att’y Gen. Open Gov’t Manual, §4.2 (“Discussion of personnel matters, in general, is not an authorized purpose for holding an executive session; only specific issues [authorized by RCW 42.30.110(1)] relating to personnel may be addressed in executive session.”); MRSC Report at 23 (“[P]ersonnel matters’ is too broad a purpose and could include purposes not authorized by statute.”). **See also Feature Realty v. City of Spokane**, 331 F.3d 1082, 1089 (9th Cir. 2003) (“Unless the action is “explicitly specified,” it is “beyond the scope of the exception” and violates the Act.”) (citation omitted).

Since all “action” (not simply “final action”) must ordinarily be performed in an open meeting, any action performed in an Executive Session violates the OPMA unless it falls within the specific parameters of an Executive Session exception. **Miller**, 138 Wn.2d at 326-27. It is illegal to engage in any action in an Executive Session, including initial discussions, on a subject or for a purpose beyond that specifically identified by an Executive Session exception. **Id.** Thus, if an exception allows a governing body to “evaluate” or “consider” a subject, the governing body may not attempt to or actually reach a collective decision on the subject in executive session. **Id.** at 326. For example, in **Feature Realty v. City of Spokane**, , the Ninth Circuit held that although an

exception to the OPMA applied to the distribution of a confidential memorandum detailing settlement provisions by the city council's attorney during a closed-door city council Executive Session under RCW 42.30.110(1)(i) (discussed below and the same Executive Session exception alleged in this case), the council's approval of that settlement by way of a "collective positive decision" done by informal consensus during the closed session violated the OPMA because that action was beyond the scope of the exception. 331 F.3d at 1090-91. The court in **Feature Realty** further emphasized that, "[t]he statutory procedures at issue here are essential to protect the interests of the public." **Id.** at 1091.

The Defendants in this case went into Executive Session based on the same exception in **Feature Realty**, RCW 42.30.110(1)(i). That exception limits the Executive Session to the following:

(i) To discuss **with legal counsel** representing the agency matters relating to agency enforcement actions, or to discuss **with legal counsel** representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, **when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.**

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a) concerning:

(i) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;

(ii) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or

(iii) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency;

RCW 42.30.110(1)(i) (emphasis added). As the Ninth Circuit recognized, the participants cannot make a decision in the Executive Session such as approving a settlement agreement. As this Court should recognize, the discussion is limited to discussion “with legal counsel”—not discussions among council members and the Mayor. It also does not apply to discussion between Councilmembers and counsel geared toward reaching a consensus and making a decision.

As the OPMA requires, there is a lengthy history of this strict construction of Executive Session behavior and limitations. For example, in **Miller v. City of Tacoma**, the Washington Supreme Court held that informal balloting during an executive session regarding city council members’ preferences among candidates for an unpaid position was beyond the evaluation of the candidates’ qualifications and thus action

performed in an executive session was in violation of the OPMA. 138 Wn.2d at 326-28. In her concurrence, Justice Madsen also found the action outside of the exemption because the candidate was unpaid and thus not a candidate for “public employment.” Id. at 332 (Madsen, J. concurring/dissenting). The state auditor held that the City of Monroe violated the OPMA in 1999 when it entered into a contract for legal services with one of its council members outside of an open meeting finding the contract approval beyond the Executive Session exception. The decision, in addition to violating the OPMA, led to the council member holding incompatible offices. Washington State Auditor Audit Report No. 61046 at 4 (Feb. 4, 2000). The state auditor also held that the Benton County Board of Commissioners and Franklin County Board of Commissioners violated the OPMA in 1998 when they held a joint executive session to discuss turning over the management of the Benton-Franklin County fairgrounds to a private firm. The auditor held that the discussion did not fall within RCW 42.30.110(1)(c) (related to leasing of property not management) as argued by the Franklin County Board and did not meet the criteria of any other executive session exception. Washington State Auditor Audit Report Nos. 60805 (Dec. 3, 1999), 60585 at 5 (Sept. 30, 1999). See also, Op. Atty. Gen. 1992, No. 21 (purchase of life insurance for public utility district’s commissioners and managers is

compensation and so must be discussed in open meeting and voted on in open meeting. “Reviewing an employees’ performance does not include fixing his or her compensation; however, that must be done in public.”).

In this case, even without the discovery that should have been allowed, Block has shown an OPMA violation. Even if the City had shown an absence of a genuine issue of material fact (which it did not), Block was only obligated to make out a prima facie case in response to the City’s motion for summary judgment. **Weathersbee v. Gustafson**, 64 Wn. App. 128, 131, 822 P.2d 1257 (1992). Block did so.

Block showed the three elements of an OPMA case that are relevant here. She proved (1) members of the governing body, (2) held a meeting, (3) where the governing body took action in violation of the OPMA. She need not prove the members took “final action” – only that they engaged in “action” (which includes discussions) that was beyond the scope of or not covered by RCW 42.30.110(i)(i) – the sole Executive Session exemption the Defendants have argued as the basis for the admittedly closed meeting Defendants held. (No other exception could have applied to that meeting.) Block need not show the governing body had knowledge that the meeting violated the statute as she is not seeking individual fines against the members for intentional illegal acts only a finding that the OPMA was violated. She need not, as will be explained

below, show “final action” was taken during the Executive Session to have established a violation (although the evidence presented shows such action).

Block submitted a sworn declaration of one of the attendees of the Executive Session, Councilmember Charles Lie. CP 387. Lie testified as follows:

...On or about October 26, 2010, as part of my responsibilities and duties of being a city council member, I attended a special meeting at City Hall. An executive session was held in the offices of the Public Works Director [Mr. Light]. The topic of the executive session was a lawsuit filed by Susan Forbes against the city regarding public records. The option of mediation as an alternative to litigation was discussed. I understood this to require a yes or no decision by the city. There was discussion of the options. At one point, Councilperson Christopher Wright called for a vote and stated that his vote was for litigation. I pointed out that he was out of order calling for a vote in executive session and that we could only vote in public. There was no response from counsel or Mayor Beavers on the question of voting in executive session.

By the close of the meeting, a general verbal agreement had been formed by a majority [sic] the council to proceed with litigation and not enter into mediation. I had made my input for mediation as the preferred option. I left the meeting with the understanding that mediation was not going to be pursued.

The council left Mr. Light’s office and as we were walking back to council chambers Mayor Beavers turned to me and reported that all of the executive meetings had been like that.

When the council returned to chambers, no action was taken on the record.

CP 387.

Defendants then submitted declarations from Councilmembers Charles Wright, Jay Prueher and Florence Martin and Mayor Joe Beavers, all of whom attended the Executive Session in question. (The only participants whose declaration were not submitted was that of the attorney and Councilmember Broyles.) Wright and Prueher both admitted, with identical language, the following

5. On October 26, 2010, I attended a Gold Bar City Council special meeting which included an executive session for the purpose of updating council on litigation, including litigation with Susan Forbes, one of the petitioners [in one of the recall cases.]

6. As was normal for an executive session, there was a spirited discussion, but no vote was taken.

7. The executive session was adjourned, and the council reconvened the special meeting. No action was taken, and the special meeting was adjourned.

CP 56, 60. Beavers admitted the same facts with identical language (only adding a sentence about the meeting agenda which was to be attached, but apparently was not as it did not become part of the Court's Clerk's Papers). CP 62. In a second declaration he admitted "City Councilmembers certainly expressed their opinions regarding the pending litigation...." CP 140. Martin submitted a declaration omitting the language from paragraphs 5 and 6 of the Wright and Prueher Declarations, stating only: "5. The executive session was adjourned, and the council

reconvened the special meeting. No action was taken, and the special meeting was adjourned.” CP 58.

It is clear from the admissions by Wright, Prueher and Beavers that “as was normal for an executive session, there was **spirited discussion**, but no vote was taken” that “action” as defined by the OPMA was taken during the Executive Session. Either the three Councilmembers and Mayor misconstrued “action” as just voting or “final action” since all four alleged “no action was taken” but three admit to “a spirited discussion” or there is a clear internal inconsistency in the declarations of Wright, Prueher, and Beavers, and an apparent omission in the declaration of Martin who fails to acknowledge the “spirited discussion” admitted by her colleagues.

It is equally clear from the declarations of all four councilmembers and the Mayor that the “spirited discussion” was with each other and not just with their lawyer. In fact, no one mentions any discussion with the attorney at all, and instead admits to arguing with and lobbying each other. CP 387, 56, 58, 60, 62, 140.

Lie’s declaration admits that he as a Councilmember understood the purpose of the meeting was to reach a decision regarding whether or not to agree to mediation, that there was a discussion between the Councilmembers, and that Wright “called for a vote and stated that his

vote was for litigation.” CP 387. He also admits to making his own vote known in support of mediation. CP 387. King’s emails to Forbes reveal King was presenting the offer of mediation to “the City Council” (not the Mayor), that the City Council was convening an Executive Session to consider the offer, and ultimately that the City rejected the offer—not the Mayor. CP 151, 200, 218-219. The belated theory that the Mayor held all the power and only the Mayor could and would decide on mediation is belied by the other evidence in the record, including the communications between counsel for the City and Ms. Forbes and the Councilmembers’ own sworn declarations.

Thus, even without the depositions of the City Council members that Block was wrongly denied, Block has shown an OPMA violation. Block has shown, through the declarations of Lie, Wright, Prueher and Beavers that the City Council took “action” by the “spirited discussion” and expressing of their opinions with one another regarding agency business. It is clear the spirited discussion expressed opinions was with each other, and not with the attorney, so the “action” fell outside of the sole argued exception—RCW 42.30.110(1)(i) for “discussions with legal counsel”. It is also clear that the Council worked toward reaching a consensus and in fact did reach a consensus, with Lie voting to engage in mediation, Wright voting not to, and the others after “spirited discussion”

deciding not to mediate. CP 387 (“By the close of the meeting, a general verbal agreement had been formed by a majority [sic] the council to proceed with litigation and not enter into mediation.”). On summary judgment, all facts and reasonable inferences should have been construed in favor of Block during the summary judgment proceeding. Executive sessions are closed to the public. Decisions of a city council must be made in an open meeting so the public can see what the decision is and how it was decided. See Cathcart, 85 Wn.2d at 107 (“the purpose of the Act is to allow the public to view the decision-making process at all stages.”). Therefore, a decision made in a closed-to-the-public executive session violates the OPMA. See RCW 42.30.060; Miller, 138 Wn.2d at 331 (city violated OPMA by coming to “collective positive or negative decision” in an executive session). Limited **discussions** of some topics—and in the case of Section 110(1)(i) discussions limited to those with an attorney—can occur in Executive Session; **decisions**, however, must be made in an open meeting. See Miller, 138 Wn.2d at 331. And for Section 110(1)(i) “spirited discussions” among councilmembers about whether or not to mediate fall outside of the exception as it solely for discussions “with counsel” and excludes decision-making or lobbying one another toward a collective position.

It is undisputed that a decision was made here (the decision was to reject mediation and litigate a public records case involving Susan Forbes). It is also undisputed that this decision was not made in the October 26, 2010, regular City Council meeting which was open to the public. Councilman Lie in a sworn declaration admits the decision was made in the October 26, 2010, Executive Session. Ms. King's email exchanges with Ms. Forbes show it was the City Council to whom the issue was presented and that the Council rejected the offer. After big sued for violating the OPMA, the City took the novel position that contrary to its apparent representation to its council members, the council was not convening to executive session to make such a decision but only to hear a report as the council allegedly did not have authority to make that decision and instead had secretly given that power to its Mayor. Councilman Lie's declaration challenges this claim. Councilman Lie stated under oath to his understanding of the purpose of the meeting. In fact if the City had actually given all power to the Mayor related to litigation as it now alleges, there was no justification for convening an Executive Session at all with the Councilmembers, as was done, to discuss the litigation at all. If the Council had no say in the litigation, there was no right to hold the secret meeting for the Mayor "to update" them as the Mayor claims he did. Only discussions with an attorney are allowed, and implicit in this is the

understanding that the governing body members have the power to make decisions necessitating these discussions with counsel.

As this was a summary judgment motion, the trial court was to view the Lie declaration and all other evidence in the record in a light most favorable to Block. **Viking Properties, Inc. v. Holm**, 155 Wn.2d 112, 119, 118 P.3d 332 (2005) (“In reviewing the evidence, the trial court must consider the evidence and the reasonable inferences therefrom in a light most favorable to the nonmoving party.”). The novel and belated claim that the Council unknowingly had abdicated all decision-making for litigation to its Mayor was not supported in the record and in fact contradicted evidence in the record discussed above. Without legal support, the trial court on summary judgment further held that an OPMA violation could not have occurred if the agency was taking a secret vote in an executive session if the agency did not have the authority to make the decision upon which they were voting.

The OPMA requires that “All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter.” RCW 42.30.030. Under the OPMA, a “meeting” means all occasions at which “action” is taken. RCW 42.30.020(4). In turn, “action” is defined as “the transaction of the official

business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. ....” RCW 42.30.020(3). A decision to mediate a case against the City—or not mediate it—is an “action” because it is a “deliberation[],” “discussion[],” “consideration[],” “review[],” and “evaluation[]” of “the transaction of the official business” of the City. RCW 42.30.020(3) provides that “action” includes “final action.” “‘Final action’ means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.” **Id.** “‘Final action’ as defined in RCW 42.30.020(3) does not require a *formal* motion; it can simply be an informal proposal resulting in a positive or negative decision, or an actual vote.” **Miller**, 138 Wn.2d at 331 (emphasis in original).

Even if an agency, after being sued, tries to claim it secretly gave away its right to make crucial decisions for it, this does not preclude a finding that the taking of action and making of decisions on such matters in closed meetings is an OPMA violation. The ramifications of the argument made below should be clear. Whenever an agency has been caught secretly voting in closed sessions, it could belatedly claim to have given away its power to make that choice, thereby avoiding liability for its

actions. The public's right to open and accountable government and compliance with the OPMA, and its right to its day in court to challenge OPMA violations when they are discovered must be protected and preserved. This case calls out for this Court's guidance to clearly interpret the law and precedents statewide. This case is about more than whether the citizens of Gold Bar will have the ability hold their City and City Council accountable under the OPMA. It presents the opportunity to correct misapplication of Supreme Court precedent and misunderstanding or confusion regarding the role of recall proceedings and OPMA claims and this novel theory of abdicated authority to avoid liability

Based on the evidence presented through declarations, there was a clear violation of the OPMA and an Executive Session that fell outside of or at least went beyond the grounds allowed by Section .110(1)(i). The Council members and Mayor admit to talking to one another—not just with their lawyers—and councilman Lie clearly states that by the end of the meeting a consensus had been reached. Even if, as Defendants now argue, only the Mayor could make the decision to approve or reject mediation, and that the meeting was not to make a decision about whether or not to mediate but just to discuss their views about mediation to help the Mayor make a decision, or even just to hear the Mayor's report and provide no input, such a meeting would not fall within Section .110(1)(i)

and would constitute an illegal meeting. “Action” was taken at the Executive Session. The declarants declarations acknowledge spirited discussion about agency business. The trial court erred in granting summary judgment to Defendants in light of these facts.

**C. The CR 56(f) Motion Should Have Been Granted**

The declarations filed by the Defendants posed clear questions that should have been allowed to be asked. Appellants should have been allowed to question Martin about her omission of the copycat paragraph 5 regarding a “spirited discussion” and all declarants should have been questioned about the discrepancy in claiming there was “no action” where all but one also admitted to “discussion.” They all should be deposed to explore their respective versions of events. In a case where the summary judgment addressed whether or not a “vote” or collective position was reached on a subject it is reversible error for the trial court to have denied the Rule 56(f) Motion and denied Plaintiff all rights to discovery.

The substance at issue was not what a lawyer said to them or what they said to a lawyer but rather what they said to each other as governing body members of a City Council subject to the OPMA. The trial court further should have allowed discovery as to the issue of abdicated authority, an issue on which Defendants provided only bald conclusions and no factual support. The trial court should not have decided the issues

it did without allowing the Plaintiff to engage in discovery. Denial of the 56(f) Motion is fatal to the summary judgment decision and requires reversal and a remand.

**D. Questions of Fact Precluded Summary Judgment to Defendants.**

The evidence presented should have been construed in the light most favorable to the non-movant Block. Questions of fact should have precluded the grant of summary judgment just as it did in Eugster. Where attendees at the same meeting present differing versions of what occurs, and there are internal inconsistencies in the attendees' own declarations, the trial court should have denied summary judgment due to the questions of fact.

**E. Collateral Estoppel and Res Judicata Do Not Bar Block's OPMA Claim Because Recall Petitions Do Not Determine OPMA Violations.**

Block filed this OPMA lawsuit against the City and City Council as entities on January 17, 2012. CP 393-399. Lie filed his declaration on March 9, 2012. CP 386-387.

In March 2012, while this OPMA suit was underway, Block and others filed recall petitions against Martin and Wright individually alleging in part they "voted in executive session" on October 26, 2010. CP 300-301, 304-305. They did not allege the councilmembers knowingly violated the OPMA, a requirement for a recall petition. They also filed a

recall petition against the Mayor, who is not a member of the City Council and thus not a member of the governing body of the City, in part for “failing to reconvene an executive session” on October 26, 2010. CP 296-297. At a recall sufficiency hearing in April 2012, the trial court indicated in short written orders only that the recall charges were “insufficient” to allow the recall petition to go forward. CP 298-299, 302-303, 306-307

On April 25, 2012, Gold Bar resident Susan Forbes and former councilman Lie filed a second recall petition against just the Mayor alleging the Mayor “violated the OPMA “by failing to reconvene to an open public meeting from an executive session to vote/.take action on the record in an open public meeting” and that the vote/take action was taken in executive session in violation of the OPMA. CP 308-309. On May 25, 2012, following a sufficiency hearing the trial court held that the recall petition allegations were insufficient because the OPMA does not apply to the Mayor who is not a member of the governing body of the City Council, that there was no showing the Mayor **intended** to violate the OPMA, that an agency does not need to reconvene to an open session after an executive session (an incorrect statement of the law), and that the petition was barred by res judicata as a similar allegation was asserted in the first recall petition against the Mayor. CP 254-256.

On the heels of the decisions on the recall petitions, Defendants in this case alleged that Block's OPMA suit, which had been filed before the recall petitions and dealt with OPMA violations of the entities, not whether or not individuals knew their actions were illegal, was collaterally estopped or barred by the doctrine of res judicata stemming from the April and May rulings finding the recall allegations insufficient. Defendants succeeded in obtaining a protective order depriving Block of the right to conduct discovery to probe what happened at the executive session or the alleged discrepancies between the declarations of Councilman Lie and the other council members about the October 26, 2010 event (CP 291-293), and the trial court denied Block's timely filed CR 56(f) Motion for Continuance for discovery. CP 41-42. On August 10, 2012, the trial court granted summary judgment to the Defendants finding res judicata barred the OPMA claim, that the October 25, 2010, event was not an OPMA violation, and that the City Council did not have authority to vote on the issue involved in the October 26, 2010, executive session so any vote they had taken during that session would have been ultra vires and void. CP 12-16.

A decision in a recall petition that allegations are not sufficient for a recall from office does not automatically determine whether or not an OPMA violation has occurred by the entities of which the official was a

member. A recall petition is not an adjudication on the merits. All a court does in a recall petition is determine “(1) whether or not the acts stated in the charge satisfy the criteria for which a recall petition may be filed, and (2) the adequacy of the ballot synopsis.” RCW 29A.56.140. “Courts play a highly limited role in the recall process. We are merely gatekeepers, limited to protecting the process of ensuring that only legally and factually sufficient charges are referred to the voters.” **In re: Carkeek**, 156 Wn.2d 469, 473, 128 P.3d 1231 (2006).

A court does not determine whether the charges in a recall petition are true. **See** RCW 29A.56.140 (“The court shall not consider the truth of the charges, but only their sufficiency.”); **see also In re: Davis**, 164 Wn.2d 361, 367, 193 P.3d 98 (2008) (“A reviewing court does not look to the truthfulness of the charges but instead considers whether, accepting the allegations as true, the charges on their face support the conclusion that the officer abused his or her position.”).

When a recall petition charges an official with violating the OPMA, the petition must state facts indicating an intent by the official to violate the Act. **In re Petition for Recall of Anderson**, 131 Wn.2d 92, 95, 929 P.2d 410 (1997). If the petitioner fails to allege the official intended to violate the OPMA, that alone is grounds for finding the recall petition insufficient. **Anderson**, 131 Wn.2d at 95.

Therefore, a court ruling not to allow a recall petition on an OPMA-related charge to go forward to the signature-gathering phase and then the ballot is **not** a ruling that the OPMA was not violated, only that the citizen has not sufficiently alleged an intention to violate the Act—something not at issue here in this OPMA suit as Block is not alleging intentional violations on the part of individual council members or seeking to have them individually fined.

In order for collateral estoppel to bar Block’s claim here, the following elements must be present: (1) the issue decided in the prior adjudication is identical to the one presented in the subsequent action; (2) there was a final judgment on the merits in the prior adjudication; (3) the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication; and (4) application of the doctrine will not work an injustice on the party against whom the doctrine is to be applied. **Rains v. State**, 100 Wn.2d 660, 665, 674 P.2d 165 (1983). The City did not and cannot satisfy elements (1), (2), or (4).

**1. The issues in a recall petition and OPMA case are not “identical.”**

A recall petition does not determine the truthfulness of the underlying allegations, such as whether an OPMA violation occurred. The only issue in a recall petition is whether the petitioner has shown

“malfeasance, misfeasance, or violation of oath of office” and therefore should go onto the ballot. RCW 29A.56.110. An OPMA violation occurs whether or not any individual is shown to have intentionally and knowingly violated the Act. Entities can unintentionally and unknowingly break the law, precluding individual fines against them, but not precluding a finding the OPMA was violated and the voiding of the act taken in the illegal meeting.

The Orders on the first three recall petitions do not provide any findings or explanation of the basis for the holding, except that the allegation was “insufficient” to go forward. The Order on the second recall petition of the Mayor held that the Mayor was not subject to the OPMA as he was not a member of the governing body and thus allegations of technical OPMA violations wrongdoing could not form a basis for recall and further held that the agency did not need to reconvene from an executive session into a public open meeting, which is an erroneous statement of the law. See RCW 42.30.110. Here, the issue is whether the City Council, which is subject to the OPMA, committed an OPMA violation regardless of the intent of individual council members or agents. The claims and legal tests in the recall and OPMA actions are not identical and what can constitute an OPMA violation will not succeed as a recall action.

**2. Imposing collateral estoppel here would work an injustice.**

No court has decided the truth of the allegations in this case, and certainly not based on a developed record; the truth of the facts of the OPMA violation has not been decided in the recall petitions. See RCW 29A.56.140 (“The court **shall not** consider the truth of the charges, but only their sufficiency.”(emphasis added)); see also Davis, 164 Wn.2d at 367 (“A reviewing court does not look to the truthfulness of the charges but instead considers whether, accepting the allegations as true, the charges on their face support the conclusion that the officer abused his or her position.”). Council member Lie in a sworn declaration stated facts showing the agency made a decision behind closed doors in an executive decision. Other council members in declarations admitted to spirited discussions with one another, and King’s emails to Forbes show the city Council was the one to whom the offer of mediation was to be presented and decided. Block was never allowed to conduct discovery or to depose these declarants and witnesses and probe what they meant by their statements and writings. The recall petitions were dismissed for inadequate allegations about individual intent to violate the Act, an erroneous statement of the law about agencies being required to reconvene in open session following an executive session, and in the case of the

Mayor, that he was not governed by the OPMA as he is not a member of the governing body. There was no discovery allowed in the recall petitions either. The recall petitions were brought after this OPMA case was filed and while this case was ongoing and disposed of before Block was allowed to conduct discovery in this case. Block was deprived of discovery in this case on the basis of the res judicata arguments and precluded from gathering any additional ammunition about what occurred. As explained above, Block has shown a clear OPMA violation, and discovery would have allowed her to probe the alleged discrepancies of the council member declarants about their versions of the event. It would be unjust to prevent a case from going forward when the truthfulness of the allegations has never been determined by a court and when it is clear the recall dismissals were deciding different issues—namely intent and whether individuals were covered by the Act—rather than whether the events as described had occurred. For these reasons, collateral estoppel and res judicata could not have applied and the trial court should not have granted the City’s motion for summary judgment on that basis.

The trial court’s treatment of a recall decision as deciding the issue in an OPMA case ignores the case law from this Court as to the narrow determination performed in a recall petition sufficiency hearing.

**F. The City's Abdicated Authority Arguments Do Not Save It.**

Gold Bar argues that at some point in the past it secretly abdicated tremendous power to its Mayor who is not a member of the City Council. It alleges that it gave him unlimited and sole power to decide all issues relating to litigation. No evidence has been presented as to when it made this decision and whether this decision was made openly in compliance with the OPMA or the knowledge of its constituents. It is a disturbing claim for this City to make given that it alleges its legal costs are bankrupting it and forcing its potential unincorporation. Yet, even if this abdication of authority argument were true, which the record does not currently establish, it would not prevent their being a violation of the OPMA by the facts in this case. Further, the statutes do not support the City's right to have abdicated the broad power it alleges to its Mayor.

RCW 35A.12.100 allows a City that has chosen a Mayor-Council form of government to create an office of Mayor and assign that person certain specifically delegated powers.

... [The Mayor] shall see that all contracts and agreements made with the city or for its use and benefit are faithfully kept and performed, and to this end **he or she may cause any legal proceedings to be instituted and prosecuted in the name of the city, subject to approval by majority vote of all members of the council.** ... He or she shall report to the council concerning the affairs of the city and its financial and other needs, and **shall make recommendations for council consideration and action...**

RCW 35A.12.100. While the Mayor can cause legal proceedings to be instituted, the statute requires Council approval, and nothing in the Statute affords the Mayor sole power to make decisions in the litigation without the Council. Rather, he is only to make “recommendations” to the Council concerning the affairs of the City “for council consideration and action...” **Id.** RCW 35A.12.190 states:

The council of any code city organized under the mayor-council plan of government provided in this chapter shall have the powers and authority granted to the legislative bodies of cities governed by this title, as more particularly described in chapter 35A.11 RCW.

RCW 35A.11 makes clear the extremely broad powers left to the Council whether in a RCW 35A.12 type government or one under RCW 35A.11.

The general grant of municipal power conferred by this chapter and this title on legislative bodies of noncharter code cities and charter code cities is intended to confer the greatest power of local self-government consistent with the Constitution of this state and shall be construed liberally in favor of such cities....

RCW 35A.11.050.

The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law. ...

In addition and not in limitation, the legislative body of each code city shall have any authority ever given to any class of municipality or to all municipalities of this state before or after the enactment of this title, such authority to be exercised in the manner provided, if any, by the granting statute, when not in conflict with this title. ...

RCW 35A.11.020.

Further, the OPMA provides that “If any provision of this chapter conflicts with the provisions of any other statute, the provisions of this chapter shall control. RCW 42.30.140. Thus, if anything in RCW 35A.11 or 35.12 conflict with the provisions of the OPMA as Defendants delegated authority argument surely would, then the OPMA governs. Chapter 35A.11 shows that the powers reserved for councils are broad and unlimited. RCW 35A.12.100 shows the limited power the Mayor actually holds, and that the Defendants’ argument that he could make all litigation decisions cannot prevail. Even if he had such powers, it does not change the fact that “action” occurred in an Executive Session that cannot fit within the limited exception of RCW 42.30.110(1)(i). Committing an impermissible act in an illegal meeting does not preclude the finding of an OPMA violation and no authority has been cited for such a premise.

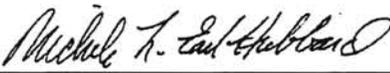
**G. Block Should be Awarded Attorney’s Fees and Costs.**

Block should be awarded fees and costs pursuant to RAP 18.1 and RCW 42.30.120(2). She has shown a violation of the OPMA. Her OPMA case was wrongfully dismissed and she was denied discovery prior to the summary judgment hearing. This Court should declare her the prevailing party and order Defendants to pay her reasonable attorney’s fees and costs.

#### IV. CONCLUSION

The Court should reverse the trial court and find a violation of the OPMA, or, at a minimum, grant the Rule 56(f) Motion and allow discovery and overturn the grant of summary judgment to the Defendants.

Respectfully submitted this 24th day of January, 2013.

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**APPENDIX: Relevant Statutes**

**RCW 29A.56.110. Initiating proceedings--Statement--Contents--  
Verification--Definitions**

Whenever any legal voter of the state or of any political subdivision thereof, either individually or on behalf of an organization, desires to demand the recall and discharge of any elective public officer of the state or of such political subdivision, as the case may be, under the provisions of sections 33 and 34 of Article 1 of the Constitution, the voter shall prepare a typewritten charge, reciting that such officer, naming him or her and giving the title of the office, has committed an act or acts of malfeasance, or an act or acts of misfeasance while in office, or has violated the oath of office, or has been guilty of any two or more of the acts specified in the Constitution as grounds for recall. The charge shall state the act or acts complained of in concise language, give a detailed description including the approximate date, location, and nature of each act complained of, be signed by the person or persons making the charge, give their respective post office addresses, and be verified under oath that the person or persons believe the charge or charges to be true and have knowledge of the alleged facts upon which the stated grounds for recall are based.

For the purposes of this chapter:

- (1) "Misfeasance" or "malfeasance" in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty;
  - (a) Additionally, "misfeasance" in office means the performance of a duty in an improper manner; and
  - (b) Additionally, "malfeasance" in office means the commission of an unlawful act;
- (2) "Violation of the oath of office" means the neglect or knowing failure by an elective public officer to perform faithfully a duty imposed by law.

**RCW 29A.56.130. Ballot synopsis:**

(1) Within fifteen days after receiving a charge, the officer specified below shall formulate a ballot synopsis of the charge of not more than two hundred words.

(a) Except as provided in (b) of this subsection, if the recall is demanded of an elected public officer whose political jurisdiction encompasses an area in more than one county, the attorney general shall be the preparer, except if the recall is demanded of the attorney general, the chief justice of the supreme court shall be the preparer.

(b) If the recall is demanded of an elected public officer whose political jurisdiction lies wholly in one county, or if the recall is demanded of an elected public officer of a district whose jurisdiction encompasses more than one county but whose declaration of candidacy is filed with a county auditor in one of the counties, the prosecuting attorney of that county shall be the preparer, except that if the prosecuting attorney is the officer whose recall is demanded, the attorney general shall be the preparer.

(2) The synopsis shall set forth the name of the person charged, the title of the office, and a concise statement of the elements of the charge. Upon completion of the ballot synopsis, the preparer shall certify and transmit the exact language of the ballot synopsis to the persons filing the charge and the officer subject to recall. The preparer shall additionally certify and transmit the charges and the ballot synopsis to the superior court of the county in which the officer subject to recall resides and shall petition the superior court to approve the synopsis and to determine the sufficiency of the charges.

**RCW 29A.56.140. Determination by superior court--Correction of ballot synopsis:**

Within fifteen days after receiving the petition, the superior court shall have conducted a hearing on and shall have determined, without cost to any party, (1) whether or not the acts stated in the charge satisfy the criteria for which a recall petition may be filed, and (2) the adequacy of the ballot synopsis. The clerk of the superior court shall notify the person subject to recall and the person demanding recall of the hearing date. Both persons may appear with counsel. The court may hear arguments as to the sufficiency of the charges and the adequacy of the ballot synopsis. The

court shall not consider the truth of the charges, but only their sufficiency. An appeal of a sufficiency decision shall be filed in the supreme court as specified by RCW 29A.56.270. The superior court shall correct any ballot synopsis it deems inadequate. Any decision regarding the ballot synopsis by the superior court is final. The court shall certify and transmit the ballot synopsis to the officer subject to recall, the person demanding the recall, and either the secretary of state or the county auditor, as appropriate.

**RCW 35A.11.020. Powers vested in legislative bodies of noncharter and charter code cities:**

The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title and its charter, if any; and to define the functions, powers, and duties of its officers and employees; within the limitations imposed by vested rights, to fix the compensation and working conditions of such officers and employees and establish and maintain civil service, or merit systems, retirement and pension systems not in conflict with the provisions of this title or of existing charter provisions until changed by the people: PROVIDED, That nothing in this section or in this title shall permit any city, whether a code city or otherwise, to enact any provisions establishing or respecting a merit system or system of civil service for firefighters and police officers which does not substantially accomplish the same purpose as provided by general law in chapter 41.08 RCW for firefighters and chapter 41.12 RCW for police officers now or as hereafter amended, or enact any provision establishing or respecting a pension or retirement system for firefighters or police officers which provides different pensions or retirement benefits than are provided by general law for such classes.

Such body may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the city, and may impose penalties of fine not exceeding five thousand dollars or imprisonment for any term not exceeding one year, or both, for the violation of such ordinances, constituting a misdemeanor or gross misdemeanor as provided therein. However, the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Such a body alternatively may provide that violation of such ordinances constitutes a civil violation subject to monetary penalty, but no act which is a state crime may be made a civil violation.

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The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law. By way of illustration and not in limitation, such powers may be exercised in regard to the acquisition, sale, ownership, improvement, maintenance, protection, restoration, regulation, use, leasing, disposition, vacation, abandonment or beautification of public ways, real property of all kinds, waterways, structures, or any other improvement or use of real or personal property, in regard to all aspects of collective bargaining as provided for and subject to the provisions of chapter 41.56 RCW, as now or hereafter amended, and in the rendering of local social, cultural, recreational, educational, governmental, or corporate services, including operating and supplying of utilities and municipal services commonly or conveniently rendered by cities or towns.

In addition and not in limitation, the legislative body of each code city shall have any authority ever given to any class of municipality or to all municipalities of this state before or after the enactment of this title, such authority to be exercised in the manner provided, if any, by the granting statute, when not in conflict with this title. Within constitutional limitations, legislative bodies of code cities shall have within their territorial limits all powers of taxation for local purposes except those which are expressly preempted by the state as provided in RCW 66.08.120, 82.36.440, 48.14.020, and 48.14.080.

**RCW 35A.11.040. Intergovernmental cooperation and action:**

The legislative body of a code city may exercise any of its powers or perform any of its functions including purchasing, and participate in the financing thereof, jointly or in cooperation, as provided for in chapter 39.34 RCW. The legislative body of a code city shall have power to accept any gift or grant for any public purpose and may carry out any conditions of such gift or grant when not in conflict with state or federal law.

**RCW 35A.11.050. Statement of purpose and policy:**

The general grant of municipal power conferred by this chapter and this title on legislative bodies of noncharter code cities and charter code cities is intended to confer the greatest power of local self-government consistent with the Constitution of this state and shall be construed liberally in favor of such cities. Specific mention of a particular municipal power or authority contained in this title or in the general law shall be

construed as in addition and supplementary to, or explanatory of the powers conferred in general terms by this chapter.

**RCW 35A.12.100. Duties and authority of the mayor--Veto--Tie-breaking vote:**

The mayor shall be the chief executive and administrative officer of the city, in charge of all departments and employees, with authority to designate assistants and department heads. The mayor may appoint and remove a chief administrative officer or assistant administrative officer, if so provided by ordinance or charter. He or she shall see that all laws and ordinances are faithfully enforced and that law and order is maintained in the city, and shall have general supervision of the administration of city government and all city interests. All official bonds and bonds of contractors with the city shall be submitted to the mayor or such person as he or she may designate for approval or disapproval. He or she shall see that all contracts and agreements made with the city or for its use and benefit are faithfully kept and performed, and to this end he or she may cause any legal proceedings to be instituted and prosecuted in the name of the city, subject to approval by majority vote of all members of the council. The mayor shall preside over all meetings of the city council, when present, but shall have a vote only in the case of a tie in the votes of the councilmembers with respect to matters other than the passage of any ordinance, grant, or revocation of franchise or license, or any resolution for the payment of money. He or she shall report to the council concerning the affairs of the city and its financial and other needs, and shall make recommendations for council consideration and action. He or she shall prepare and submit to the council a proposed budget, as required by chapter 35A.33 RCW. The mayor shall have the power to veto ordinances passed by the council and submitted to him or her as provided in RCW 35A.12.130 but such veto may be overridden by the vote of a majority of all councilmembers plus one more vote. The mayor shall be the official and ceremonial head of the city and shall represent the city on ceremonial occasions, except that when illness or other duties prevent the mayor's attendance at an official function and no mayor pro tempore has been appointed by the council, a member of the council or some other suitable person may be designated by the mayor to represent the city on such occasion.

**RCW 35A.12.110. Council meetings:**

The city council and mayor shall meet regularly, at least once a month, at a place and at such times as may be designated by the city council. All final actions on resolutions and ordinances must take place within the corporate limits of the city. Special meetings may be called by the mayor or any three members of the council by written notice delivered to each member of the council at least twenty-four hours before the time specified for the proposed meeting. All actions that have heretofore been taken at special council meetings held pursuant to this section, but for which the number of hours of notice given has been at variance with requirements of RCW 42.30.080, are hereby validated. All council meetings shall be open to the public except as permitted by chapter 42.30 RCW. No ordinance or resolution shall be passed, or contract let or entered into, or bill for the payment of money allowed at any meeting not open to the public, nor at any public meeting the date of which is not fixed by ordinance, resolution, or rule, unless public notice of such meeting has been given by such notice to each local newspaper of general circulation and to each local radio or television station, as provided in RCW 42.30.080 as now or hereafter amended. Meetings of the council shall be presided over by the mayor, if present, or otherwise by the mayor pro tempore, or deputy mayor if one has been appointed, or by a member of the council selected by a majority of the councilmembers at such meeting. Appointment of a councilmember to preside over the meeting shall not in any way abridge his or her right to vote on matters coming before the council at such meeting. In the absence of the clerk, a deputy clerk or other qualified person appointed by the clerk, the mayor, or the council, may perform the duties of clerk at such meeting. A journal of all proceedings shall be kept, which shall be a public record.

**RCW 35A.12.120. Council--Quorum--Rules—Voting:**

At all meetings of the council a majority of the councilmembers shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The council shall determine its own rules and order of business, and may establish rules for the conduct of council meetings and the maintenance of order. At the desire of any member, any question shall be voted upon by roll call and the ayes and nays shall be recorded in the journal.

The passage of any ordinance, grant or revocation of franchise or license, and any resolution for the payment of money shall require the affirmative vote of at least a majority of the whole membership of the council.

**RCW 35A.12.130. Ordinances--Style--Requisites—Veto:**

The enacting clause of all ordinances shall be as follows: "The city council of the city of ..... do ordain as follows:" No ordinance shall contain more than one subject and that must be clearly expressed in its title.

No ordinance or any section or subsection thereof shall be revised or amended unless the new ordinance sets forth the revised ordinance or the amended section or subsection at full length.

No ordinance shall take effect until five days after the date of its publication unless otherwise provided by statute or charter, except that an ordinance passed by a majority plus one of the whole membership of the council, designated therein as a public emergency ordinance necessary for the protection of public health, public safety, public property or the public peace, may be made effective upon adoption, but such ordinance may not levy taxes, grant, renew, or extend a franchise, or authorize the borrowing of money.

Every ordinance which passes the council in order to become valid must be presented to the mayor; if he or she approves it, he or she shall sign it, but if not, he or she shall return it with his or her written objections to the council and the council shall cause his or her objections to be entered at large upon the journal and proceed to a reconsideration thereof. If upon reconsideration a majority plus one of the whole membership, voting upon a call of ayes and nays, favor its passage, the ordinance shall become valid notwithstanding the mayor's veto. If the mayor fails for ten days to either approve or veto an ordinance, it shall become valid without his or her approval. Ordinances shall be signed by the mayor and attested by the clerk.

**RCW 35A.12.190 Powers of Council:**

The council of any code city organized under the mayor-council plan of government provided in this chapter shall have the powers and authority granted to the legislative bodies of cities governed by this title, as more particularly described in chapter 35A.11 RCW.

**RCW 42. 30.010. Legislative declaration:**

The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.

The people of this state do not yield their sovereignty to the agencies which 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 people insist on remaining informed so that they may retain control over the instruments they have created.

**RCW 42. 30.020. Definitions:**

As used in this chapter unless the context indicates otherwise:

(1) "Public agency" means:

- (a) Any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the legislature;
- (b) Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state of Washington;
- (c) Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies;
- (d) Any policy group whose membership includes representatives of

publicly owned utilities formed by or pursuant to the laws of this state when meeting together as or on behalf of participants who have contracted for the output of generating plants being planned or built by an operating agency.

(2) "Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.

(3) "Action" means the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. "Final action" means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.

(4) "Meeting" means meetings at which action is taken.

**RCW 42. 30.030. Meetings declared open and public:**

All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter.

**RCW 42. 30.040. Conditions to attendance not to be required:**

A member of the public shall not be required, as a condition to attendance at a meeting of a governing body, to register his or her name and other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

**RCW 42. 30.060. Ordinances, rules, resolutions, regulations, etc.,  
adopted at public meetings--Notice--Secret voting prohibited:**

(1) No governing body of a public agency shall adopt any ordinance, resolution, rule, regulation, order, or directive, except in a meeting open to the public and then only at a meeting, the date of which is fixed by law or rule, or at a meeting of which notice has been given according to the provisions of this chapter. Any action taken at meetings failing to comply with the provisions of this subsection shall be null and void.

(2) No governing body of a public agency at any meeting required to be open to the public shall vote by secret ballot. Any vote taken in violation of this subsection shall be null and void, and shall be considered an "action" under this chapter.

**RCW 42. 30.070. Times and places for meetings--Emergencies—  
Exception:**

The governing body of a public agency shall provide the time for holding regular meetings by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body. Unless otherwise provided for in the act under which the public agency was formed, meetings of the governing body need not be held within the boundaries of the territory over which the public agency exercises jurisdiction. If at any time any regular meeting falls on a holiday, such regular meeting shall be held on the next business day. If, by reason of fire, flood, earthquake, or other emergency, there is a need for expedited action by a governing body to meet the emergency, the presiding officer of the governing body may provide for a meeting site other than the regular meeting site and the notice requirements of this chapter shall be suspended during such emergency. It shall not be a violation of the requirements of this chapter for a majority of the members of a governing body to travel together or gather for purposes other than a regular meeting or a special meeting as these terms are used in this chapter: PROVIDED, That they take no action as defined in this chapter.

**RCW 42. 30.075. Schedule of regular meetings--Publication in state register--Notice of change--“Regular” meetings defined**

State agencies which hold regular meetings shall file with the code reviser a schedule of the time and place of such meetings on or before January of each year for publication in the Washington state register. Notice of any change from such meeting schedule shall be published in the state register for distribution at least twenty days prior to the rescheduled meeting date.

For the purposes of this section “regular” meetings shall mean recurring meetings held in accordance with a periodic schedule declared by statute or rule.

**RCW 42. 30.080. Special meetings:**

(1) A special meeting may be called at any time by the presiding officer of the governing body of a public agency or by a majority of the members of the governing body by delivering written notice personally, by mail, by fax, or by electronic mail to each member of the governing body. Written notice shall be deemed waived in the following circumstances:

(a) A member submits a written waiver of notice with the clerk or secretary of the governing body at or prior to the time the meeting convenes. A written waiver may be given by telegram, fax, or electronic mail; or

(b) A member is actually present at the time the meeting convenes.

(2) Notice of a special meeting called under subsection (1) of this section shall be:

(a) Delivered to each local newspaper of general circulation and local radio or television station that has on file with the governing body a written request to be notified of such special meeting or of all special meetings;

(b) Posted on the agency's web site. An agency is not required to post a special meeting notice on its web site if it (i) does not have a web site; (ii) employs fewer than ten full-time equivalent employees; or (iii) does not employ personnel whose duty, as defined by a job description or existing contract, is to maintain or update the web site; and

(c) Prominently displayed at the main entrance of the agency's principal location and the meeting site if it is not held at the agency's principal location.

Such notice must be delivered or posted, as applicable, at least twenty-four hours before the time of such meeting as specified in the notice.

(3) The call and notices required under subsections (1) and (2) of this section shall specify the time and place of the special meeting and the business to be transacted. Final disposition shall not be taken on any other matter at such meetings by the governing body.

(4) The notices provided in this section may be dispensed with in the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage.

**RCW 42. 30.090. Adjournments:**

The governing body of a public agency may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the governing body may declare the meeting adjourned to a stated time and place. He or she shall cause a written notice of the adjournment to be given in the same manner as provided in RCW 42. 30.080 for special meetings, unless such notice is waived as provided for special meetings. Whenever any meeting is adjourned a copy of the order or notice of adjournment shall be conspicuously posted immediately after the time of the adjournment on or near the door of the place where the regular, adjourned regular, special, or adjourned special meeting was held. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.

**RCW 42. 30.100. Continuances:**

Any hearing being held, noticed, or ordered to be held by a governing body at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the governing body in the same manner and to the same extent set forth in RCW 42. 30.090 for the adjournment of meetings.

**RCW 42. 30.110. Executive sessions:**

(1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting:

(a) To consider matters affecting national security;

(b) To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;

(c) To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;

(d) To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs;

(e) To consider, in the case of an export trading company, financial and commercial information supplied by private persons to the export trading company;

(f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;

(g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42. 30.140(4), discussion by a governing body of salaries, wages,

and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public;

(h) To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;

(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a) concerning:

(i) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;

(ii) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or

(iii) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency;

(j) To consider, in the case of the state library commission or its advisory bodies, western library network prices, products, equipment, and services, when such discussion would be likely to adversely affect the network's ability to conduct business in a competitive economic climate. However,

final action on these matters shall be taken in a meeting open to the public;

(k) To consider, in the case of the state investment board, financial and commercial information when the information relates to the investment of public trust or retirement funds and when public knowledge regarding the discussion would result in loss to such funds or in private loss to the providers of this information;

(l) To consider proprietary or confidential nonpublished information related to the development, acquisition, or implementation of state purchased health care services as provided in RCW 41.05.026;

(m) To consider in the case of the life sciences discovery fund authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information;

(n) To consider in the case of a health sciences and services authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information;

(o) To consider in the case of innovate Washington, the substance of grant or loan applications and grant or loan awards if public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information.

(2) Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer.

**RCW 42. 30.120. Violations--Personal liability--Civil penalty--  
Attorneys' fees and costs:**

(1) Each member of the governing body who attends a meeting of such governing body where action is taken in violation of any provision of this chapter applicable to him or her, with knowledge of the fact that the meeting is in violation thereof, shall be subject to personal liability in the form of a civil penalty in the amount of one hundred dollars. The civil penalty shall be assessed by a judge of the superior court and an action to enforce this penalty may be brought by any person. A violation of this chapter does not constitute a crime and assessment of the civil penalty by a judge shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

(2) Any person who prevails against a public agency in any action in the courts for a violation of this chapter shall be awarded all costs, including reasonable attorneys' fees, incurred in connection with such legal action. Pursuant to RCW 4.84.185, any public agency who prevails in any action in the courts for a violation of this chapter may be awarded reasonable expenses and attorney fees upon final judgment and written findings by the trial judge that the action was frivolous and advanced without reasonable cause.

**RCW 42. 30.130. Violations--Mandamus or injunction:**

Any person may commence an action either by mandamus or injunction for the purpose of stopping violations or preventing threatened violations of this chapter by members of a governing body.

**RCW 42. 30.140. Chapter controlling—Application:**

If any provision of this chapter conflicts with the provisions of any other statute, the provisions of this chapter shall control: PROVIDED, That this chapter shall not apply to:

(1) The proceedings concerned with the formal issuance of an order granting, suspending, revoking, or denying any license, permit, or certificate to engage in any business, occupation, or profession or to any disciplinary proceedings involving a member of such business, occupation, or profession, or to receive a license for a sports activity or to operate any mechanical device or motor vehicle where a license or

registration is necessary; or

(2) That portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter between named parties as distinguished from a matter having general effect on the public or on a class or group; or

(3) Matters governed by chapter 34.05 RCW, the Administrative Procedure Act; or

(4)(a) Collective bargaining sessions with employee organizations, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement; or (b) that portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by the governing body during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress.

**RCW 42. 30.200. Governing body of recognized student association at college or university--Chapter applicability to:**

The multimember student board which is the governing body of the recognized student association at a given campus of a public institution of higher education is hereby declared to be subject to the provisions of the open public meetings act as contained in this chapter, as now or hereafter amended. For the purposes of this section, "recognized student association" shall mean any body at any of the state's colleges and universities which selects officers through a process approved by the student body and which represents the interests of students. Any such body so selected shall be recognized by and registered with the respective boards of trustees and regents of the state's colleges and universities: PROVIDED, That there be no more than one such association representing undergraduate students, no more than one such association representing graduate students, and no more than one such association representing each group of professional students so recognized and registered at any of the state's colleges or universities

**RCW 42. 30.210. Assistance by attorney general:**

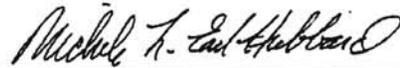
The attorney general's office may provide information, technical assistance, and training on the provisions of this chapter.

**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on January 24, 2013, I delivered a copy of the foregoing Brief of Appellant and Appendix by email pursuant to an electronic service agreement among the parties with back up by U.S. Mail and of the Reports of Proceedings for July 13, 2012, and May 29, 2012, by email to the following:

Attorneys for City of Gold Bar and Gold Bar City Council  
Michael R. Kenyon and  
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Dated this 24th day of January, 2013.



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Michele Earl-Hubbard

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To: Michele Earl-Hubbard  
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Subject: RE: Block v. Gold Bar, Supreme Court No. 87861-7

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From: Michele Earl-Hubbard [<mailto:michele@alliedlawgroup.com>]  
Sent: Thursday, January 24, 2013 4:25 PM  
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Subject: RE: Block v. Gold Bar, Supreme Court No. 87861-7

Attached for filing is a the Brief of Appellant, Appendix, and Certificate of Service in the above case.

The attorney filing this motion is Michele Earl-Hubbard, WSBA 26454, Attorney for Appellant.

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Michele Earl-Hubbard

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