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Court of Appeals No. 43689-2-II
Supreme Court No. 900370

WASHINGTON STATE SUPREME COURT

JOHN WORTHINGTON,
Appellant

V.

WESTNET,
Respondent

**PETITIONER'S AMENDED RESPONSE TO
ATTORNEY GENERAL'S AMICUS CURIAE**

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ORIGINAL

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Comes now the Petitioner John Worthington to respond to the former WestNET affiliate Jurisdiction Washington State and the Attorney General's office, heretofore interested non parties' *Amicus Curiae*, and in response to that *Amicus* brief of the Washington State Attorney General's office, (hereinafter heretofore interested non-party), does state as follows:

I. Argument

A. Right foot yellow left foot blue.

Stated in a footnote in the Appellate briefs is a WestNET argument that the Petitioner Worthington could just go to the affiliate Jurisdictions to facilitate his public records request. The Washington State Court of Appeals then ran with the aforementioned footnote and ruled all Worthington had to do was come forthwith and make the public record request thereto to the aforementioned affiliate jurisdictions, heretofore interested non-party. But Worthington did make a public records request to the affiliate jurisdiction State of Washington, in Pierce County Superior Court case No. 11-2-13236-1 prior to this case, and the State of Washington responded as a

defendant.

The Petitioner Worthington heretofore remains unsure whether the Supreme Court Commissioner just put the order granting the interested non-parties' Motion to file an *Amicus* in the daily mega hopper for the Chief Justice to sign, without noticing that interested non-party now has its right foot on yellow (WestNET) and its left foot on blue (Interested non-party), or whether the Commissioner just wanted to err on the side of caution, not knowing the State of Washington is a WestNET affiliate jurisdiction with multiple Representatives serving on the WestNET Advisory Board.
(CP 000023, CP 000073)

The Amicus written to the court illustrates the hybrid mechanisms of WestNET, and the deceptive practices the WestNET affiliate jurisdiction's engage in when it suits their purposes. The Amicus also gives a perfect visual aide to how the public records shell game can be played to game the system.

B. WestNET and affiliates are judicially estopped from changing legal positions.

The interested non-party, who once was a party to the Worthington's aforementioned Public Records Act (PRA) judicial review of WestNET's actions, comes forth to argue Worthington's public records request was not obstructed. However, they seem to have forgotten the aforementioned Pierce County Superior Court case involving Worthington and the WestNET affiliate jurisdictions, wherein the interested non-party filed a brief on behalf of the thereafter legal illusion WestNET. The AG is judicially estopped from changing positions. "Judicial estoppel precludes a party from asserting one position in a court proceeding and then later, in a different court, seeking an advantage by taking a clearly inconsistent position".. Cunningham v. Reliable Concrete Pumping, Inc., 126 Wn.App. 222, 224-25, 108 P.3d 147 (2005).

Worthington respectfully argues a remand with instructions to make a request to Affiliate Jurisdictions is a waste of time. "The purposes of the doctrine are to preserve respect for judicial

proceedings without the necessity of resort to the perjury statutes and to avoid inconsistency, duplicity, and waste of time. “Cunningham v. Reliable Concrete Pumping, Inc., 126 Wash.App. 222, 225, 108 P.3d 147005) (one alteration in original) (internal quotation marks omitted) (quoting Johnson v. Si-Cor, Inc., 107 Wash.App. 902, 906, 28 3d 832 (2001).

The purpose of collateral estoppel is to “prevent relitigation of already determined causes, curtail multiplicity of actions, prevent harassment in the courts, inconvenience to the litigants, and judicial economy.” State v. Dupard, 93 Wash.2d 268, 272, 609 P.2d 961 (1980). It does this, of course, by prohibiting the relitigation of questions already resolved by final judgment between the same parties. Williams, 132 Wash.2d at 253-54, 937 P.2d 1052.

The question of whether WestNET is a legal entity was answered by the Pierce County Superior Court, who granted relief to a WestNET motion, after WestNET sought relief from the court. WestNET is a legal defendant. The question of whether the State of

Washington was a WestNET affiliate jurisdiction is answered in the same court order. WestNET filed a motion to dismiss WestNET from the case so the court had the option of removing WestNET as a legal entity but the trial court left them in and included them in the order.¹ WestNET did not appeal that order.

C. WestNET and Affiliate Jurisdictions have, and still are obstructing Worthington's records requests

Perhaps the left hand division of the Solicitor General of the interested non-party, did not know what the right hand of the criminal division and WestNET did, when the interested non-party had an opportunity to address Worthington's public records request in the aforementioned Pierce County Superior Court case No. 11-2-13236-1.

Or, perhaps they were unaware the third hand of the civil division of the interested non-party had filed legal briefs in U.S. District Court case No.C10-0118 JLR 2010 and later King County Court Superior case No 12-2-02486-KNT, claiming Worthington's medical marijuana plants had been confiscated by a loaned state

¹ See Supplemental Authority in support of response to AG Amicus Curiae.

employee to the DEA, who was a member of another drug task force Tacoma Narcotics Enforcement Team (Heretofore TNET)², all the while knowing he never did such a thing. That is why they all have been playing the PRA shell game for the last 7 years.

The actual obstruction started in 2008 with Worthington v. Washington State Patrol 08-2-01410-7 (2008), COA No.38697-6-II, (2011) when the interested non-party made claims all the records were held by the DEA and the U.S. Department of Justice, and the obstruction has continued on to this day.

When given the opportunity and having the option to facilitate Worthington's requests after they were brought forth in Worthington v. WSP, and put in the Pierce County Superior court case, the interested non-party joined a plot with the other aforementioned affiliate jurisdictions to play a continuous public records shell game until their misrepresentations could fool the courts and the statute of limitations could expire.

² WestNET has not provided one public record of any communications with TNET. That is obstruction that remains ongoing.

Worthington's records requests were and continue to be obstructed by WestNET, who has taken on whatever form and shade they need to keep hiding the truth.

D. WestNET is a Secret Police.

Hidden somewhere in a secret location in the State of Washington is the headquarters of WestNET. If you pick up a phone book and consult the blue pages representing the government services section, they will not show any government entity called WestNET. If you search WestNET affiliate jurisdiction member agency websites, you will not see any address for WestNET. One affiliate jurisdiction, Kitsap County, has a reference to a 1-800 number people can call, but no address for WestNET is listed.

Tucked away in the WestNET interlocal agreement, a document probably 90 percent of the public has never laid eyes on, is a statement in section 2, titled Purpose, is the following statement:

“In order to accomplish this purpose the task force and advisory board does and must operate confidentially and without public input” (CP 00127)

As shown above, the language of the interlocal agreement itself clearly states the purpose of both the task force and the board is to operate confidentially and without public input.

Perhaps the interested non- party does not grasp the English language enough to understand that when someone wants to operate confidentially they are also trying to operate in secret. Giving the interested non- party the benefit of the doubt, Worthington agrees that WestNET, did not want to create a secret police, they just wanted to create a confidential police.

Considering the recent U.S. Ninth Circuit Court of Appeals Published decision in United States v. Dreyer, Case No. 13-30077 published 9-12-2014, citing U.S. v. Chon, 210 F.3d 990, 994 (9th Cir. 2000), regarding the use of the NCIS² in state police actions, it is apparent that WestNET has not only been operating as a confidential police, it has been operating as a confidential military police as well.

In case the Justices are keeping score that is 14 years of

² CP 00145. Worthington will have the signed copy in court. Further proof that the NCIS is part of WestNET is shown in CP 000023, CP 000073.

violating the PRA, and OPMA, and 14 years of violating the Posse Comitatus Act.

The public and the legislature were unaware of this problem, because the interested non-party, who approved as to form the language in the WestNET Interlocal agreement, kept it a secret for 14 years, while their clients violated civil rights, federal laws and Washington State sunshine laws. Those violations may have been uncovered if the sunshine laws were followed in good faith.

E. WestNET makes final decisions.

In a recent Open Public Meetings case, Citizens Alliance for Property Rights Legal Fund v. San Juan County et al, the Court of Appeals for Division I ruled that a governing body that does not make final decisions is not subject to the Open Public Meetings Act.

Although Worthington has documents that prove WestNET makes final decisions that are not sent back to affiliate Jurisdictions for them to make the determination, those documents are not on the record for the court to review.

However, there is enough on the record to show that WestNET makes final decisions for its affiliate jurisdictions. WestNET policy board meeting documents on the record show the WestNET advisory board does not send policies back to the affiliate jurisdictions for approval. These documents show the board making final decisions as shown below:

The Chief asked Members to consider using Grant monies previously used by Bainbridge P.D. to pay for the second Shelton detective (CP 000023)

As shown above WestNET uses JAG grant money at its own discretion, and a review of CP 000022, CP 000023, CP 000073- CP 000076 will confirm WestNET does not seek guidance or permission from affiliate jurisdictions on its policies.

In addition the WestNET interlocal agreement shows that the Advisory board is the “representative body” for WestNET as shown below:

b. " Advisory Board" means the representative body for the drug task Force and shall consist of the Chiefs of Police of the Cities of Bainbridge Island, Bremerton, Port Orchard, Poulsbo and Shelton, the Sheriffs and Prosecutors of the Counties of Kitsap, Pierce and Mason, and the Chief

**of the Washington State Patrol and Supervisor in charge of
the Naval Criminal Investigative Service.**

Just using common sense, the Justices can see that it is not plausible for the federal government to make decisions for the cities, counties, and the state, and vice versa. The WestNET Advisory Board is the “representative body” and de facto governing body for the JAG grant drug task force that makes final decisions on policy, not the affiliate jurisdictions. WestNET is its own separate sovereignty and is set up to operate independent of the affiliate jurisdictions.

F. The AG, heretofore interested non-party has a conflict of interest.

The interested non-party is the last line of defense for the public, Who should expect better from the state organization that purports to offer a service to assist the public via the Washington State Attorney General’s open government ombudsman, who has stated it offers a service to hold government accountable as shown below:

3. Why the Attorney General Offers This Service³

Our open government laws exist to promote democracy and open up government for all citizens. To hold government accountable, the public must be able to stay informed of their government's activities. Not only do citizens have a right to know how their government is spending their tax dollars and exercising the powers the people gave to them, the public has a need to know.

As shown above the interested non-party purports to assist the public in OPMA and PRA. The interested non-party has even created a full time position to help the public.⁴ Although it may appear the interested non-party supports the PRA, OPMA , in practice they simultaneously represent State agencies, boards, commissions and Etc, and routinely make legal arguments that weaken the Sunshine Laws they purport to protect. This case is no exception.

When given the choice between assisting the public and weakening the state sunshine laws, the interested non-party has no choice but to remove its sunshine cap and put on its liability cap and

³<http://cc.bingj.com/cache.aspx?q=washington+AG+PRA+OMBUDSMAN&d=4982601495871760&mkt=en-US&setlang=en-US&w=o8s7EHHUR7DZ0xPe0vNQMESYC-LWM3Z7>

⁴<http://www.columbian.com/news/2013/sep/17/state-ag-to-have-full-time-open-government-ombudsm/>

weaken the PRA and OPMA for the financial benefit of its clients.

That full time Ombudsman will have the same effect as the part time Ombudsman, because while the public records or open public meetings enquirer writes the equivalent of a letter to Santa to the interested non-party wearing a sunshine cap, the interested nonparty puts on the liability cap, and undermines its job assisting the public to save the state a buck.

The Justices should have no illusions here, the AG, heretofore interested non-party, has not stepped out from WestNET⁵ to assist Worthington or the court, they are here wearing their liability cap to insert another dagger into the PRA and OPMA and twist, then slip the sunshine cap back on to keep up open government appearances.

The Justices and the public should be highly alarmed that the same knife twisting interested non-party , is now pursuant to law required to train to public officials⁶ on how to comply with the PRA

⁵ The State of Washington has employees that sit on the WestNET Advisory board. CP 000022, CP 000023, CP 000073

⁶ <http://www.atg.wa.gov/OpenGovernmentTraining.aspx#.VB3b18J0yos>

and OPMA. The first thing the interested non-party, will more than likely do is put on its liability cap and instruct its open government trainees to form intergovernment associations and interlocal agreements under RCW 39.34, to avoid having to be subject to the sunshine laws in the first place.

In other words, the interested non-party, hereinafter the liability cap, is neither the last line of defense for the public, nor a friend of the court, they are the first line of defense for State agencies, boards, commissions , etc., who wish to conduct Government affairs “confidentially”, and get away with it.

G. A broad ruling upholding the PRA is appropriate.

The hereinafter liability cap is concerned about the Justices making a broad ruling using the current briefing and has used that excuse to expand the arguments before the court. However, the briefing has all the information the Justices will need. All the Justices will need is the following statutory language of the PRA, particularly RCW 42.56.010 (1) shown below:

(1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

And RCW 42.56.030 as shown below:

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.

Along with the following sections of the WestNET interlocal

agreement creating a board and agency as shown below.

Section 1b of the WestNET Interlocal agreement:

b. "Advisory Board" means the representative body for the Drug Task Force and shall consist of the Chiefs of Police of the Cities of Bainbridge Island, Bremerton, Port Orchard, Poulsbo and Shelton, the Sheriffs and Prosecutors of the Counties of Kitsap, Pierce and Mason, and the Chief of the Washington State Patrol and Supervisor in charge of the Naval Criminal Investigative Service (CP 126)

Section 1d of the WestNET Interlocal agreement:

"Drug Task Force" means a drug enforcement agency created by this agreement. (CP 126)

WestNET considers itself an agency as shown below

The Advisory Board shall meet at least quarterly, provide policy and procedural guidance to the Task Force coordinator and supervisors, and supervise the use of the WestNET Fund and Operations Fund. Each member of the Advisory Board shall have an equal voice, as long as the agency has at least one full time investigator assigned to WestNET, in all board matters. (CP 130)

As shown above WestNET created a board and agency and is subject to the PRA even if it conflicts with any other act including the Interlocal Cooperation Act.

If the Justices do not rule that the PRA governs the Interlocal

Cooperation Act in the event of a conflict and allow it to control, their ruling would be inconsistent with previous decisions regarding the cannons of statutory construction.

Laws are laws and rules are rules. This court upholds laws even if they are unpopular. In 1983, after hitting a two run home run against the New York Yankees, Kansas City third baseman George Brett was called out after being caught using too much pine tar. An upset Brett sprinted out of the dugout in protest. However, Brett was ruled out by the umpires, who left it up to the league to change the rule. Here, Worthington respectfully argues the Justices need to do the same thing. Look at the laws, look at the WestNET interlocal agreement and allow the PRA to control the Interlocal Cooperation Act, even if 3,000 George Brett's wearing 3,000 liability caps come running out of the dugout.

H. In the alternative, RCW 39.34 was repealed by implication with the passage of each sunshine law.

In 1971, following the positive vote on the statewide initiative

addressing open public meetings, the legislature adopted the Open Public Meetings Act. The Act, along with the Public Disclosure Act, addressed requirements for state and local governmental units to conduct open public meetings and to provide public access to their records. (RCW 42.30 and RCW 42.56.)

The Interlocal Cooperation Act, RCW 39.34, is the statute WestNET relies on to create its exemption from the PRA and OPMA thru its language in the WestNET interlocal agreement, claiming it is immune from suit. RCW 39.34 was passed by the Washington State legislature in 1967, and has had no legislative alterations since the legislative enactments of both the PRA and OPMA.

Since the sunshine laws were enacted, the legislature has not seen fit to add exemptions to the language of the PRA. “The legislature is presumed to be aware of its own enactments.” *Amalgamated Transit Union Legislative Council of Wash. State v. State*, 145 Wash.2d 544, 552, 40 P.3d 656 (2002)

Repeal by implication can occur in two ways. First, the subject matter of the subsequent legislation must cover the entire

scope of the earlier one. *Id.* (quoting *Abel v. Diking Drainage Improvement Dist. No. 4*, 19 Wash.2d 356, 363, 142 P.2d 1017 (1943)). Or second, the legislative acts can be so inconsistent that they cannot be reconciled to give effect to both. *Id.* (quoting *Abel*, 19 Wash.2d at 363, 142 P.2d 1017).

If the Justices do not interpret the language in RCW 39.34 to be intended for covering immunity from civil rights and tort liability, and not the penalties for violating PRA and OPMA, then the two acts can both be given effect and the court can maintain the integrity of both. “It is the duty of this court to construe two statutes dealing with the same subject matter so that the integrity of both will be maintained” *Gilbert v. Sacred Heart Med. Ctr.*, 127 Wn.2d 370,375, 900 P.2d 552 (1995). If not, the latter more specific language of the PRA, particularly RCW 42.56.030, controls the earlier and more general Interlocal Cooperation Act. This analysis is consistent with cannons of statutory construction adopted by this court. “In cases of statutory inconsistencies, the later and more specific statute controls

over the earlier and more general one.’ Diaz v. State, 175 Wn.2d 457, 470, 285 P.3d 873(2012); MICHAEL SINCLAIR, A GUIDE TO STATUTORY INTERPRETATION 138 (2000).”

Thus, even if one concludes that the plain language of the PRA and RCW 39.34 cannot be squared, the PRA, as the later more specific statute regarding conflicts with other acts ,would control.

II. CONCLUSION

Based on the aforementioned arguments Worthington respectfully Requests a remand back to Kitsap County Superior Court with orders to apply penalties under the PRA for obstructing Worthington’s PRA requests. Worthington respectfully argues that WestNET , after appearing on its own in a previous PRA records lawsuit is collaterally estopped from arguing it is not subject to suit after getting a judgment in their favor..

RESPECTFULLY SUBMITTED, this 27TH day of September, 2014.

BY S/: JOHN WORTHINGTON
John Worthington
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Renton WA.98059

Declaration of Service

I declare that on the date and time indicated below, I caused to be served By Email to WEST NET, WAPA and to the Washington State Attorney General's Office, a copy of the documents and pleadings listed below upon the attorney of record for the respondent and parties herein listed and indicated below.

1. PETITIONER'S AMENDED RESPONSE TO WASHINGTON STATE ATTORNEY GENERAL'S AMICUS CURIAE

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I declare under penalty of perjury under the laws of the United States that the foregoing is True and correct.

Executed on this 27TH day of September, 2014

BY S/: JOHN WORTHINGTON

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Rec'd and replaced document that was filed earlier 9/29/2014

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Please disregard the first filing because pages 5 and 6 were inserted incorrectly. The error has been fixed and refilled a "Petitioner's corrected amended response to AG Amicus. Sorry for the mistake.

Thanks.

John Worthington

From: worthingtonjw2u@hotmail.com
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Date: Sat, 27 Sep 2014 07:48:59 -0700

Please file this with the court on Monday. Thank you