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NO. 97249-4

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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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LINCOLN BEAUREGARD,

Respondent,

v.

WASHINGTON STATE BAR ASSOCIATION

Petitioner.

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**RESPONDENT LINCOLN BEAUREGARD'S RESPONSE TO  
OPENING BRIEF**

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***“A lack of transparency results in distrust and a deep sense of insecurity.”***

**- Dalai Lama**

## **I. INTRODUCTION**

The Respondent, Lincoln C. Beauregard, submits this memorandum in response to the WSBA’s opening brief. From the outset it should be clear *why* Mr. Beauregard filed this lawsuit: to insist upon the WSBA’s adherence to our State’s transparency laws codified as the Open Public Meetings Act.<sup>1</sup> The trial court was correct that Mr. Beauregard has no vested interest in *who* exactly is performing the role of Executive Director over the WSBA.<sup>2</sup> Issues concerning Ms. Littlewood’s actual tenure have been resolved.<sup>3</sup> Moreover, the WSBA is correct that Mr. Beauregard did not specifically seek injunctive relief from the trial court in the form of obtaining “correspondence” between members of the BOG.<sup>4</sup> In the interests of transparency, the trial court granted that relief *sua sponte*.<sup>5</sup> That valid Order has yet to be followed.

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<sup>1</sup> CP 1-12

<sup>2</sup> *Id.*

<sup>3</sup> CP 449

<sup>4</sup> CP 15-23

<sup>5</sup> *Id.*

The WSBA’s opening brief neglected to highlight the importance of a lawyer’s role in our community. As stated by the trial court, the WSBA:

*...offers a myriad of services to the public...make its members available for public speaking engagements...provides legal education to other lawyers...help the public in ‘decoding the law’...run a program to assist those with moderate means...helps members of the public if they need to find a lost will...provides information on how to attain a limited license, and also how to join the profession by going to law school.<sup>6</sup>*

Without a lawyer, a criminal defendant is not likely to receive a fair trial. Without a lawyer, an indigent litigant is most likely to lose based upon procedural obstacles alone. Without the intervention of lawyers, Rosa Parks’ grandchildren might still be sitting in the back of the bus. The critical role that lawyers play in providing “access to justice” and equality lends to only one conclusion as to the issue currently before this Court: we must govern ourselves transparently and in accord with the law. The public has every right, and a need, to know the manner in which we regulate ourselves.

This lawsuit was prompted by the public outcry in direct reaction to the BOG’s behind the scenes termination of the former WSBA Executive Director, Paula Littlewood. The BOG took this action without adherence to proper process — including public notice and participation. Premised

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<sup>6</sup> CP 47

upon the public consternation associated with Ms. Littlewood's termination, Mr. Beauregard, along with his esteemed co-counsel Steve Fogg of Corr Cronin, agreed to carry the torch on this issue to this respective Court. In accord with the trial court's existing ruling, and injunction, the law is very clear: the WSBA is a "public agency" to which the Open Public Meetings Act does (and should) apply.

## II. STATEMENT OF FACTS

During the months preceding Ms. Littlewood's termination, internal communications between members of the BOG reflect an ongoing disagreement about the applicability of the Open Public Meetings Act.<sup>7</sup> Specifically, former WSBA President Bill Pickett argued to the other members of the BOG that, "*The Public Meetings Act is a very good law that encourages transparency and honest dealing. Meetings, secret or otherwise, between just part of the Board have been a concern to me for quite some time. Even more troubling is a concern regarding the perception that votes have been actually counted and/or traded in advance of our public meetings...*"<sup>8</sup>

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<sup>7</sup> CP 33

<sup>8</sup> *Id.*

In response, another board member and then Treasurer, Dan'L Bridges, asserted the following: "*We are the Board of Directors of the State Bar Association...When we ask for something, it is not a request to be accommodated. It is a directive, while hopefully always respectfully and politely made with please and thank you, to be fulfilled.*"<sup>9</sup> In relation to the Open Public Meetings Act, Mr. Bridges believes that "*given our **status** [we] are not subject to it.*"<sup>10</sup>

Over the relevant period of time, Treasurer Bridges was embroiled in what can fairly be described as an ongoing sexual harassment investigation involving a WSBA staff member.<sup>11</sup> A letter authored by WSBA staff members summarized many concerns:

From our perspective, a colleague disclosed an allegation of harassment by a board member and the board's response to that disclosure resulted in a process that lacked proper oversight, transparency, and consideration of our colleague's safety and well-being. Our colleague's accusation was subject to an independent investigation. The third-party investigator found our colleague's account of events to be credible. Even after receiving this report, the board chose not to remove or even censure the accused board member. Not only did this board fail to remove or censure the accused, the board promoted him to the position of treasurer, effectively rewarding the accused with an even more powerful position with more direct access to staff members.

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<sup>9</sup> CP 32

<sup>10</sup> CP 34

<sup>11</sup> CP 143-9

This board has failed to exhibit courageous leadership. Promoting a board member accused of such behavior to a more prestigious position without an appropriate process, sends a stark message to staff that we are not valued or respected. This behavior demonstrates to staff that the board is not interested in holding itself accountable and not concerned with the many conflicts of interest. This board's actions have a chilling effect on staff's willingness to report problematic issues in the future. Employee morale is low and many of us are struggling to manage the reminders of our past experiences and the experience of living through this current situation. We should not be subject to such traumatization and retraumatization at work, particularly from the very body entrusted to champion justice and uphold the ethical practice of law.

Your processes are inadequate for managing these situations and the board refuses to hold itself accountable and fails to recognize its own conflicts of interest. The current attempt to shift litigation oversight from the general counsel to the board gives the impression of self-dealing, protectionism, and an enormous conflict of interest. This board's lack of transparency just further evidences the lack of accountability and responsibility.

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In relation to this ongoing strife, internal emails revealed that Treasurer Bridges was participating in private discussions with other select members of the BOG about how to settle the claims that had been leveled against him: "...*Paula's deal needs to be finalized. If we don't get that done and she proceeds to litigation, having done the deal with you, containing admissions, it creates problems and difficulty.*"<sup>13</sup>

In the months preceding Ms. Littlewood's termination, Chief Justice Mary Fairhurst reminded that BOG, in writing, that "*It is critical to the integrity of all Bar Discipline matters be protected at all times and that Executive Director be allowed to oversee these functions without interference. In light of these communications and concerns, we felt that it was important to communicate to you that the Court by a majority vote*

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<sup>12</sup> CP 39

<sup>13</sup> CP 143

*supports the Executive Director as the principal administrative officer of the Bar...Finally, and the most important, it is imperative that everyone, each Governor, each volunteer, each employee, including the Executive Director, be treated with respect. The ongoing interactions among the Governors and the Governors' interaction with staff are of concern to us.*"<sup>14</sup>

The relevant BOG meetings are all captured on video and the evidence is undisputed.<sup>15</sup> During the January 18, 2019 meeting, the BOG took an illegal vote during executive session to terminate Ms. Littlewood in direct violation of the OPMA.<sup>16</sup> See e.g. *Miller v. City of Tacoma*, 138 Wash. 2d 318, 979 P.2d 429 (1999); RCW 42.30.110(1)(h).<sup>17</sup> Two existing Diversity At-Large Governors, Athan Papailliou and Alec Stephens, later publicly reported being silenced in relation to the decision-making process noting: "*All governors were prohibited from reporting the action, which had apparently been planned and orchestrated for some time.*"<sup>18</sup> The BOG

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<sup>14</sup> CP 37-38

<sup>15</sup> <http://link.videoplatform.limelight.com/media/?channelListId=34d9718a114a453fa4067f9dad13df94&width=960&height=360&playerForm=WideScreenTabbedPlayer>

<sup>16</sup> *Id.*

<sup>17</sup> "(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;"

<sup>18</sup> CP 120-22

had to later take a public “re-vote” at the next full meeting in March to ensure compliance with open governance principles.<sup>19</sup>

The public outcry was substantial.<sup>20</sup> Ms. Littlewood’s termination came as a shock to many members of the community.<sup>21</sup> In a widely circulated petition, members of the WSBA summarized the most focal concerns:

*Without input from WSBA staff, WSBA members, or the Washington State Supreme Court, the WSBA BOG, suggesting only that it wished to "go in a new direction," with such "new direction" still not yet disclosed, took action to terminate Ms. Littlewood in Executive Session on or about January 17, 2019. In a public session held on March 7, 2019, the WSBA BOG then affirmed this vote of termination, but again without any clarification of the basis of removal and without disclosure of this "new direction."*

*While not drawing any conclusions as to the underlying merit of any ultimate termination decision, this referendum is put forward to reverse the termination of the Executive Director because it is believed to be in the best interest of the WSBA, its members, and the members of the public based upon consideration of the following: A termination of the Executive Director should be done with transparency and model best practices; and a termination of the Executive Director should not be at a time when there are significant legislative and legal*

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<sup>19</sup><http://link.videoplatform.limelight.com/media/?channelListId=34d9718a114a453fa4067f9dad13df94&width=960&height=360&playerForm=WideScreenTabbedPlayer>

<sup>20</sup> CP 150-328 (correspondence to Paula Littlewood)

<sup>21</sup> *Id.*

*matters pending that will require Ms. Littlewood's institutional knowledge and adept leadership.*<sup>22</sup>

In the same timeframe that Ms. Littlewood was terminated, there were ongoing and potentially interconnected concerns with ongoing sexual harassment issues within the BOG and its staff.<sup>23</sup> An open letter from much of the staff summarizes some of the concerns:

Washington Supreme Court  
Sent Via Email

January 23, 2019

Dear Justices,

We, the undersigned staff of the Washington State Bar Association, are writing to follow up with you about our recent statements presented to the Board of Governors on January 18, 2019, regarding the mishandling of a sexual harassment claim. Our concerns and disapproval of the Board's handling of the situation are elaborated upon in the attached letter that we shared with the Board at their meeting. You can view the full conversation, including other thoughtful comments given by our colleagues and WSBA members, in the recording of that [meeting here](#).

We are reaching out to you today as fellow advocates of justice. Your leadership and support of Court commissions and boards help to create a more equitable justice system, center marginalized voices, and support ways that we can increase the public trust and confidence in our state's justice system. It is in the spirit of being partners in promoting equity and justice that we write to ask for your help.

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<sup>22</sup> CP 27; 290

<sup>23</sup> CP 143

It has become apparent to us that the Board of Governors is not structured properly to self-regulate harassment claims brought against one of its own members. We have witnessed what appears to be self-dealing and conflicts of interest at the expense of upholding integrity in dealing with a harassment claim that was given credibility by a third party investigator. Knowing that the Board of Governors is incapable of taking harassment claims seriously leaves the staff feeling unprotected and disrespected. This is not acceptable. With the blatant lack of appropriate anti-harassment policies in place, the safety and protection of WSBA staff now falls to the WA Supreme Court.

It is essential that this Court intervene to ensure the integrity of the legal profession and maintain a sense of confidence by the general public. A governor that has been entrusted to uphold the values of fairness and justice cannot be privy to the financial dealings of the very entity that he seeks to sue. The simple appearance of impropriety and conflicts of interest will detrimentally impact the public perception of this profession. It is essential, especially given the current state of affairs, that attorneys are viewed as advocates for justice and not as self-interested parties.

We ask that you intervene with the Board of Governors to ensure that a proper, objective and thorough anti-harassment policy is created and vetted for integrity. The policy should include provisions for when harassment claims must be resolved under the leadership of a third, objective party and include clear processes for when removal of a governor or volunteer is appropriate. The policy should have clear expectations of behavior and how to proceed when complaints are raised, including the expected recusal of parties with a conflict of interest. Please provide leadership to ensure that the Board of Governors revisit the current situation with the proper policy in place and continue to enforce the policy for any future similar situations. The Board of Governors have broken their trust with the staff of WSBA and we ask that you intervene to provide the checks and balances that we need to rebuild that trust.

Sincerely,

Bonnie Sterken  
Dana Barnett

Paige Hardy  
Robin Nussbaum

Laura Sanford  
Paris Eriksen

Kalina Spasovska  
Gabe Moore  
Russell Johnson  
Kris McCord  
Colin Rigley  
Dianne Plummer-Cranston  
Noel Brady  
Jim Hanneman

Michael Paugh  
Jennifer Olegario  
Pam Inglesby  
Tyler Washington  
Joy Williams  
Patrick Mead  
Margaret Shane  
Sherry Lindner

Ana LaNasa-Selvidge  
Barbara Ochota  
Joanne Russell  
Emily Cioc  
Connor Smith  
Diana Singleton

Enclosure: Open Letter to the Board of Governors

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Shortly thereafter, a collection of past presidents of the WSBA highlighted the transparency concerns and similarly asked this Court to take action:

February 5, 2019

Washington State Supreme Court  
Temple of Justice  
P.O. Box 40929  
Olympia WA 98504

Re: Recent actions by the WSBA Board of Governors

Dear Chief Justice Fairhurst and Justices of the Supreme Court

As Past Presidents of the Washington State Bar Association, we write to express our concern over recent developments at the WSBA, and to ask that the Court exercise its powers of oversight in what has become a situation fraught with the risk of serious harm to individuals, to the WSBA, and, by extension, to the public.

A recent article in the Seattle Times disclosed that a WSBA staff member has filed a sexual harassment claim with the WSBA regarding a BOG member's alleged conduct toward her. Independent issues of subsequent retaliation against her are also raised. The BOG member involved was then elected as the Treasurer of the WSBA and that same BOG member has now filed a \$1 million claim of his own against the WSBA which includes claims of retaliation.

During the BOG's public session on Friday, January 18, 2019, multiple WSBA staff members read a letter to the BOG signed by thirty-four of their colleagues. They criticized the BOG's handling of this very serious matter. They and other staff members spoke of the disrespect and trauma they feel at how the BOG has addressed these events. We are aware that they have since written to the Court.

During the BOG's discussion following the staff's presentation, the Board was very divided in how to proceed. Ultimately, a motion to suspend the WSBA BOG member from the Treasurer position was debated and passed by a majority vote. The BOG member openly objected to the action and he continues to serve on the Board despite being required to temporarily step aside from serving as the WSBA Treasurer. He retains all other rights and his position as a BOG member, including service upon the WSBA Executive Committee.

We make no judgment upon the merits of either the staff member's claim or the BOG member's claim. However, we ask that the Court exercise its plenary supervisory authority over the WSBA to ensure that the processes followed by the BOG, to review and act upon the staff member's sexual harassment claim and the \$1 million claim of the BOG member, represent the best practices of our profession while protecting the legal rights of those

involved. In this instance, WSBA members are powerless to effectively require appropriate action by the BOG; members only have the rights of referendum and BOG member removal by recall, neither of which is realistic here. The Executive Director is equally powerless to require or compel the BOG to take action. It is the BOG's responsibility to take appropriate action with respect to each claim, but to date their efforts appear inadequate.

We are particularly concerned about the grievances of the staff. The work of the WSBA is dependent upon the work of the WSBA staff. Each staff member is entitled to a safe workplace and respect. When staff members feel threatened, the respect, integrity, and credibility of the justice system and the legal profession are harmed. Further damage to the WSBA's relationship with its professional staff will occur if these issues are not adequately addressed.

Likewise, we ask the Court to determine whether and if a sitting BOG member, who is being investigated for an allegation of sexual harassment and who himself has a pending claim against the WSBA for monetary damages, has a conflict of interest requiring that person's recusal from any or all of the actions of the BOG pending the outcome of the claims.

We urge the Supreme Court to review these matters and assure that appropriate steps are being taken by the BOG to protect the rights, and enforce the obligations of those involved in these claims.

Very truly yours,

Stanley A. Bastian  
(2007-2008)

M. Wayne Blair  
(1998-1999)

Stephen R. Crossland  
(2011-2012)

Stephen E. DeForest  
(1992-1993)

Ellen Conedera Dial  
(2006-2007)

Richard C. Eymann  
(1999-2000)

Anthony David Gipe  
(2014-2015)

William D. Hyslop  
(2015-2016)

J. Richard Manning  
(2002-2003)

Salvador A. Mungia  
(2009-2010)

Jan Eric Peterson  
(2000-2001)

Michele G. Radosevich  
(2012-2013)

David W. Savage  
(2003-2004)

Paul L. Stritmatter  
(1993-1994)

S. Brooke Taylor  
(2005-2006)

Steven G. Toole  
(2010-2011)

Ronald R. Ward  
(2004-2005)

Bradford E. Furlong  
(2017-2018)

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In a letter dated March 13, 2019, Justices Madden, Johnson and Wiggins collectively co-signed a letter admonishing the actions of the BOG, noting, “*In the past, when the BOG has believed a course change was necessary, it has formed a task force or work group. Such mechanism has allowed for broad participation by knowledgeable, invested members of the profession and the public.*”<sup>26</sup> “*If this board wishes to go in a new direction, it should be so with guidance and open, transparent process that includes members of the professions, members of the public, and a knowledgeable executive director.*”<sup>27</sup>

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<sup>25</sup> CP 42-43

<sup>26</sup> CP 29-30

<sup>27</sup> *Id.*

On March 19, 2019, the then President of the Washington State Bar Foundation, and an impeccable appellate lawyer, Ken Masters, recently resigned premised upon indignation: *“This decision is simply wrong. There likely is no one in this country who knows more about the current challenges facing our profession than Paula Littlewood. She has led our WSBA for many years with strength and foresight. She was predicting the Janus decision, and other major changes at the federal level, years before I was on the BOG (2012-2015). In part as a result of her foresight and leadership, the Supreme Court has established a ‘Structures’ group to examine whether and how to best restructure the bar to deal with these changes. Paula is invaluable to that process. And her many years of outstanding service to our bar deserve far more than a curt, ‘there’s the door.’ ...In protest of the BOG’s unprincipled decision, I am resigning as President of the Washington State Bar Foundation... We deserve real leadership, not secret meetings and unexplained dismissals.”*<sup>28</sup>

This lawsuit was filed on March 21, 2019.<sup>29</sup> In direct and unlawful retaliation, an elected BOG member, Paul Swegle, sent an email to his District-7 constituents.<sup>30</sup> In the email correspondence to thousands of

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<sup>28</sup> CP 44-47

<sup>29</sup> CP 1-12

<sup>30</sup> CP 334-6

WSBA members, Mr. Swegle likened the efforts of Mr. Beauregard (a proud African American attorney) to the “*antics of so many flying monkeys.*”<sup>31</sup> Notably, Mr. Beauregard is Mr. Swegle’s District-7 constituent. In relation to Mr. Beauregard’s esteemed legal counsel, Steve Fogg of Corr Cronin, Mr. Swegle also advocated that “*WSBA Members should think twice before ever sending a referral to the Corr Cronin firm given its role in this costly and counterproductive nonsense, which is now wasting the Members’ hard earned dues. As a former friend of the firm, I am extremely disappointed.*”<sup>32</sup> During that same timeframe, Mr. Swegle was also advocating for the elimination of the “Diversity At-Large” designated position of the BOG.<sup>33</sup>

The parties came before the trial court on interrelated cross-motions.<sup>34</sup> On April 11, 2019, the trial court ruled that the Open Public Meetings Act applies to the WSBA: “*The Court will enjoin the WSBA BOG to comply with the OPMA moving forward.*”<sup>35</sup> The trial court also, *sua sponte*, instructed the WSBA produce the “correspondence” at issue: “*If private correspondence exists which, under the OPMA, should have been*

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> CP 337-8

<sup>34</sup> CP 466-82

<sup>35</sup> *Id.*

*public (i.e. email votes, notes or minutes of private meetings, video of private meetings, etc.) with regard to Ms. Littlewood's firing.*"<sup>36</sup> Upon hearing the WSBA's motion for reconsideration and request for a stay, the trial court denied the request for relief, and expressly ordered that the correspondence at issue "*should be made public now.*"<sup>37</sup> The WSBA has never produced *any* of the information as ordered by the trial court. Nothing. Mr. Beauregard recognized that further efforts at obtaining compliance from the BOG with the trial court's Order were futile.<sup>38</sup> Months later, this Court accepted the WSBA's unopposed motion for immediate discretionary review.<sup>39</sup>

### **III. THE WSBA IS SUBJECT TO THE OPEN PUBLIC MEETINGS ACT**

As a matter of public policy, "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

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<sup>36</sup> CP 464

<sup>37</sup> *Id.*

<sup>38</sup> Mr. Beauregard wanted to spare the WSBA from being subject to the embarrassing headlines that would have been associated with moving to hold the BOG in contempt of court. *See* RCW Chapter 7.21. But the truth is, the BOG is actively defying the trial court's Order. *Id.*

<sup>39</sup> Commissioner's Order dated August 27, 2019

deliberations be conducted openly.” RCW 42.30.010. “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.”

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. RCW 42.30.030. The Open Public Meetings Act defines “public agency” as “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.” RCW 42.30.020(1)(a). For purposes of this lawsuit, to be a “public agency,” the WSBA must (1) be created by statute; (2) be a state board, commission, committee, department, educational institution or other state agency; and (3) not be the court or legislature.

**A. The WSBA is a “state agency” that was created by statute:**

It is not disputed that the WSBA was created by statute: “There is hereby created as an agency of the state, for purpose and with powers

hereinafter set forth, an association to be known as the Washington State Bar Association.” RCW 2.48.010. If a statute’s meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent. *State Department of Ecology v. Campbell & Gwinn, LLC*, 146 Wash.2d 1, 9-10, 43 P.3d 4 (2002), citing, *State v. J.M.*, 144 Wash.2d at 480, 28 P.3d 720 (2001). While the Supreme Court has subsequently passed rules related to the WSBA, nothing in those rules change the basic composition or purpose of the WSBA. *See* GR 12. The rules make it clear that the Supreme Court has plenary authority over the WSBA, but does not change the make-up, purpose, or position of the WSBA. *Id.*

The Attorney General’s Office came to the same conclusion 47 years ago. AGLO 1971 No. 103 (not official) at 2. While some of the actions of the WSBA, particularly in the areas of admission and disbarment must be in accordance with rules adopted by the State Supreme Court (see RCW 2.48.060), that relationship does not make the WSBA part of the courts. *Id.* at 3. The opinion further states:

The state bar act provides that the bar association shall be governed by the board of governors, which is charged with the executive function of the association and the enforcement of provisions of RCW 2.48.010-2.48.180. (RCW 2.48.040.). The board of governors itself consists of one member from each Congressional district and a

president who is an ex officio member (RCW 2.48.030). The board of governors of the Washington State Bar Association, consisting of eight members, including the president, is thus clearly a “governing body” as defined in the open meetings act...It is therefore clear that the new public meetings act applies to the board of governors of the Washington State Bar Association.

In the words of the trial court, “[t]he WSBA has been on notice since 1971 – since the creation of the OPMA – that its meetings and decisions are likely subject to the Act. The AGO also made a distinction between the application of the statute to the work of the BOG, and the application of the statute to matters such as disciplinary investigations. This distinction is pragmatic and consistent with the purposes of the OPMA.” The law is clear, and it must be followed.

**B. Applying the Open Public Meetings Act to the WSBA does not infringe upon separation of powers principles:**

The WSBA’s only substantive argument is that, according to case law underpinned by separation of powers principles, the BOG is purportedly exempt from the Open Public Meetings Act. *See The Washington State Bar Association v. State*, 125 Wn. 2d 901, 890 P.2d 1047 (1995) and *Graham v. State Bar Association*, 86 Wn.2d 624, 548 P.2d 310 (1976). Neither case is applicable in this instance. In the first cited case, the Supreme Court ruled that a collective bargaining law did not apply to the WSBA because it infringed upon the Court’s power to self-regulate:

We have recognized that it is sometimes possible to have an overlap of responsibility in governing the administrative aspects of court-related functions. However, a legislative enactment may not impair this court's functioning or encroach upon the power of the judiciary to administer its own affairs. The ultimate power to regulate court-related functions, including the administration of the Bar Association, belongs exclusively to this court.

In the present case, the Legislature has attempted to nullify a general rule adopted by this court by enacting legislation which directly and unavoidably conflicts with that rule. The rule, GR 12(b)(16), grants the Bar Association's Board of Governors discretion to determine whether to collectively bargain with its employees. The legislation, RCW 41.56.020, takes that discretion away.

125 Wn. at 908-9. In *Graham*, this Court interpreted the meaning of "public agency" under a different statutory scheme, RCW Chapter 43.88: "We believe the legislature did not extend its audit functions to the Washington State Bar Association and that the auditor has mistaken his legislative mandate." 86 Wn. 2d at 633.

This situation is very different from either of the cases cited by the WSBA. The BOG has already incorporated essentially the exact same transparency mandates into the existing Bylaws.<sup>40</sup> The fact that the BOG already adopted the same language of the Open Public Meetings Act into the Bylaws proves, in and of itself that the provisions do not compromise separation of powers principles reflected in the other cases such as

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<sup>40</sup> CP 43-7

*Graham*.<sup>41</sup> The BOG already conducts its business (or at least it is supposed to) in accord with the express terms of the Open Public Meetings Act.<sup>42</sup>

The Open Public Meetings Act is purely “administrative” in character and simply mandates transparency:

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 42.30.010.

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. Secret meetings and voting about hiring and firing have been declared unlawful as a matter of law. *See e.g. Miller v. City of Tacoma*, 138 Wash. 2d 318, 979 P.2d 429 (1999). Even a series of emails discussions can give rise to an illegal meeting. *Wood v. Battle Ground School District*, 107 Wash. App. 550, 27 P.3d 1208 (2001) (email chain voting prohibited).

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

According to the Legislature, the Open Public Meetings Act mandates are “remedial and shall be liberally construed.” RCW 42.30.910. The Open Public Meetings Act contains an express statement of legislative intent that our Supreme Court has characterized as “some of the strongest language used in any legislation.” *Equitable Shipyards, Inc. v. State*, 93 Wash.2d 465, 482, 611 P.2d 396 (1980); *see also* RCW 42.30.010 (“It is the intent of this chapter that ... actions [of public agencies] be taken openly and that their deliberations be conducted openly.”) As stated by the trial court:

*The deliberative and solitary nature of a court’s decisionmaking process is inconsistent with the OPMA, and thus the courts are excluded by the statute. Conversely, the executive-like, collaborative decisionmaking of the elected members of the BOG are precisely the type of decisions that should be subject to the OPMA. The WSBA BOG is not a court, it is a public agency, and is thus subject to the OPMA.*<sup>43</sup>

Because the Open Public Meetings Act does not cause the Supreme Court to cede power or authority to another branch of government (it only mandates administrative transparency) the BOG’s arguments and case law are not analogous or applicable.<sup>44</sup>

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<sup>43</sup> CP 478

<sup>44</sup> *Id.*

**IV. THE ONLY CONSEQUENCE OF APPLYING THE OPEN  
PUBLIC MEETINGS ACT TO THE WSBA IS AN  
ENFORCEMENT MECHANISM FOR FAILING TO FOLLOW  
THE LAW**

The WSBA adopted Bylaws that mirror the Open Public Meetings Act.<sup>45</sup> However, there is one critical distinction as between the distinct sources of authority: the Bylaws provide no real remedy for violations.<sup>46</sup> Specifically, the sole remedy under the Bylaws for a transparency violation provides for an internal petition process: “*Any member may timely petition the BOG to declare any final action voidable for failing to comply with the provisions of these Bylaws...*”<sup>47</sup> Those same Bylaws do not even describe the process by which such a “petition” is even initiated.<sup>48</sup> Moreover, the Bylaws do not provide an avenue for redress by members of the general public.<sup>49</sup> And the Bylaws provide not deterrent penalty against elected members who fail to follow the rules.<sup>50</sup>

By contrast, the Open Public Meetings Act outlines a process, and penalties, for failing to take actions that do not adhere to the law:

(1) Each member of the governing body who attends a meeting of such governing body where action is taken in

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<sup>45</sup> CP 43-7

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

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 five hundred dollars for the first violation.

(2) Each member of the governing body who attends a meeting of a 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, and who was previously assessed a penalty under subsection (1) of this section in a final court judgment, shall be subject to personal liability in the form of a civil penalty in the amount of one thousand dollars for any subsequent violation.

(3) 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.

(4) 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 which 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 42.30.120. Any member of the public can file an Open Public Meetings Act lawsuit. RCW 42.30.130; *West v. Pierce County Council*, 197 Wash. App. 895, 391 P.3d 592 (2017) (Any person has standing to bring an action for sanctions or an injunction against members of a governing

body under provisions of Open Public Meetings Act (OPMA) regarding violations.) A law with no consequences is not really a law at all:

*In general, the rule of law implies that the creation of laws, their enforcement, and the relationships among legal rules are themselves legally regulated, so that no one—including the most highly placed official—is above the law. The legal constraint on rulers means that the government is subject to existing laws as much as its citizens are. Thus, a closely related notion is the idea of equality before the law, which holds that no “legal” person shall enjoy privileges that are not extended to all and that no person shall be immune from legal sanctions. In addition, the application and adjudication of legal rules by various governing officials are to be impartial and consistent across equivalent cases, made blindly without taking into consideration the class, status, or relative power among disputants. In order for those ideas to have any real purchase, moreover, there should be in place some legal apparatus for compelling officials to submit to the law.<sup>51</sup>*

The only practical consequence of this Court ruling in Mr. Beaugard’s favor will be that the members of BOG are subject to higher scrutiny for failing to adhere to the already adopted transparency principles contained within the existing Bylaws. *Id.*

History has now proven that members of the WSBA, and the general public, care about the business dealings and actions of the BOG.<sup>52</sup> The public uproar in reaction to the most recent Executive Director demonstrates

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<sup>51</sup> <https://www.britannica.com/topic/rule-of-law>

<sup>52</sup> CP 27, 29-30, 42-3, 44-7, 150-328,

that the existing transparency principles are not being followed.<sup>53</sup> Employees of the WSBA are speaking out premised upon fears and related to basic sexual harassment, dignity, principles and policies within the workplace.<sup>54</sup> Past-Presidents of the WSBA have joined together to ask this Court for help.<sup>55</sup> Esteemed members of our legal community are disassociating from the BOG.<sup>56</sup>

By contrast, members of the BOG are openly flouting the transparency rules. To date, the trial court's Order about the production of correspondence was simply ignored. At least one member of the BOG has publicly ridiculed Mr. Beauregard, and his legal counsel, for even filing this lawsuit.<sup>57</sup> That same BOG member utilized his elected position to openly retaliate against Mr. Beauregard's legal counsel.<sup>58</sup> Open pleas for civility from members of this very Court (the BOG's supervisors) have fallen on deaf ears. If there was ever a circumstance wherein the Open Public Meetings Act was appropriately applicable, as a matter of both law and policy, this is it.

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<sup>53</sup> *Id.*

<sup>54</sup> CP 30

<sup>55</sup> CP 42-43

<sup>56</sup> CP 44-47

<sup>57</sup> CP 334-36

<sup>58</sup> *Id.*

**V. WITHOUT ANY LEGAL AUTHORITY, THE WSBA HAS  
OPTED NOT TO FOLLOW THE EXPRESS ORDER OF THE  
TRIAL COURT**

According to RCW 42.30.110(1)(g), “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...” *Id.* Publicly disseminated reports by dissenting members of the BOG, Athan Papailliou and Alec Stephens, prove that Ms. Littlewood’s termination was preceded by a secret deliberation and vote tally: “*All governors were prohibited from reporting the action, which had apparently been planned and orchestrated for some time.*”<sup>59</sup> Prior to January 18, 2019, the BOG conducted some kind of secret meeting and decided to terminate Ms. Littlewood. *Id.*

The trial court instructed the WSBA produce the following documentation: “*If private correspondence exists which, under the OPMA, should have been public (i.e. email votes, notes or minutes of private meetings, video of private meetings, etc.) with regard to Ms. Littlewood’s firing.*”<sup>60</sup> On May 7, 2019, the trial court denied the WSBA’s motion for reconsideration, and expressly ordered that the correspondence at issue

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<sup>59</sup> CP 120-22

<sup>60</sup> CP 464

“*should be made public now.*”<sup>61</sup> According to RAP 7.2(c), the trial court’s Order remains in full effect:

**(c) Enforcement of Trial Court Decision in Civil Cases.** In a civil case, except to the extent enforcement of a judgment or decision has been stayed as provided in rules 8.1 or 8.3, the trial court has authority to enforce any decision of the trial court and a party may execute on any judgment of the trial court. Any person may take action premised on the validity of a trial court judgment or decision until enforcement of the judgment or decision is stayed as provided in rules 8.1 or 8.3.

The trial court expressly denied the BOG’s request for a stay.<sup>62</sup> And this Court never granted the BOG a stay.<sup>63</sup> The BOG has since failed to produce a single document and is openly ignoring the trial court’s authority. When asked, the BOG could not even be bothered to produce a privilege log.<sup>64</sup> In this regard, the BOG is in active contempt of Court. *See* RCW Chapter 7.21.

The BOG does not seem to feel bound by the will of our trial courts. On the merits, the trial court had the discretion to enter a preliminary restraining order. *Turner v. Walla Walla*, 10 Wash. App. 401, 517 P.2d 985 (1974). A trial court’s order on a preliminary injunction can be challenged

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<sup>61</sup> *Id.*

<sup>62</sup> CP 464 (Trial Court Order Denying Motion for a Stay)

<sup>63</sup> Commissioner’s Order dated August 27, 2019

<sup>64</sup> CP 418

only for an abuse of discretion. *Id.* Mr. Beauregard defers to the reasoning set forth in the trial court’s Order on the merits of the injunctive relief.<sup>65</sup> The trial court noted that the “*harm Plaintiff suffered is the harm that comes with an inability to know why the person running the organization was fired, and the fear that comes with a likely future vote in violation of the OPMA to install a new ED.*”<sup>66</sup> In relation to being the disciplinary regulator over the profession, “[*t*]he WSBA is not some internal private industry overseer, and the vast majority of people who did the hard work to become a lawyer would chafe at such a definition of the Bar they worked so hard to join.”<sup>67</sup> Mr. Beauregard agrees with the trial court: this principle is absolutely correct. In response to the trial court’s order of production, the WSBA failed to articulate how or why the trial court abused its own discretion in making the Order of production at issue.

What is worse is that the WSBA offers no explanation for simply ignoring the trial court’s Order that the information at issue “*should be made public now.*”<sup>68</sup> See RAP 7.2(c) (trial court’s order remains effective pending appeal). Mr. Beauregard is less concerned with obtaining the

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<sup>65</sup> *Id.*

<sup>66</sup> CP 481

<sup>67</sup> CP 477

<sup>68</sup> *Id.*

“correspondence” at issue, and far more alarmed that the organization that manages his license does not feel bound by the law. The WSBA’s open flouting of the trial court’s Order is further evidence of the need to apply the Open Public Meetings Act to this particular organization. Transparency in governance of our legal system should not be optional. The WSBA should be setting an example in this respect. At present, the WSBA is failing to do so.

## **VI. CONCLUSION**

The BOG’s existing Bylaws already mandate the same general transparency principles that are codified under the Open Public Meetings Act. However, the existing Bylaws provide (1) no persuasive penalty for non-compliance, (2) no clear process for seeking relief, and (3) no access to justice or enforcement for members of the general public. By contrast, the Open Public Meetings Act adds little more to the existing Bylaws other than add an actual enforcement mechanism for an aggrieved party acting in the name of transparency. Given the importance of the role that the WSBA plays not just to admitted members but also citizens of our community, the ability to obtain such relief should not be limited to a sub-class of privileged law degree holding people. Every member of the broader public has an interest in the actions taken by the BOG in governance of the WSBA. Access to justice is at stake. This lawsuit really is not about Paula

Littlewood, or any specific employee of the WSBA. This lawsuit is about maintaining integrity by way of transparency as mandated by the will of the people via our elected legislators. The evidence of record proves that the BOG needs greater oversight. Members of the BOG feel free to ignore a trial court order and to also openly retaliate against the undersigned transparency advocates – and otherwise proud members of the WSBA. Oversight should not be limited to the supervisory powers of this Court. Our democratic ideals provide that any concerned citizen should be able to seek relief. For these reasons, this Court should rule that which is legally clear: the WSBA is subject to the Open Public Meetings Act. Any contrary ruling sends a message to the BOG that they are not truly bound by the transparency principles that we otherwise celebrate.

Respectfully submitted this 28th day of February, 2020.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on February 28, 2020, I arranged for service of the foregoing Respondent Lincoln Beauregard's Response to Opening Brief to the Court and to the parties to this action as follows:

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