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No. 90912-1

IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON, DIVISION I

ARTHUR WEST,
Appellants,
v.

SEATTLE PORT
COMMISSION, et al
Respondents

On appeal from the ruling of King County
Superior Court Judge Julia Garratt

APPELLANT WEST'S
OPENING BRIEF

Arthur West
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COURT OF APPEALS
STATE OF WASHINGTON
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I. SUMMARY OF ARGUMENT

This is an action under the Washington State Open Public Meetings Act concerning a series of “confidential” meetings attended by all of the Commissioners of both the Port of Seattle and the Port of Tacoma, purportedly under color of authority of an agreement for discussions under the federal Shipping Act of 1984.

Defendants, after an unsuccessful and abortive attempt at evading the jurisdiction of the State Court under color of a federal removal, by means of a dubious theory of super-preemption, subsequently obtained an Order of dismissal on two similarly “unpersuasive and implausible” grounds: that citizens lack standing to maintain actions under the OPMA and that (somehow) an exemption from disclosure under the federal Freedom of Information Act in the Shipping Act of 1984 completely preempts, by implication, the content neutral open government requirements of the Washington State Open Public Meetings Act, RCW 42.30.

Neither of these arguments are substantiated by any accepted any actual provision of statute, or any reasonable theory of preemption, and they demonstrate an apparent intent to supplant State interests in accountability and open government “deeply rooted in local feeling and responsibility” with “judicially manufactured

policies” cobbled together from “freewheeling, extratextual, and broad evaluations of the (illusory) ‘purposes and objectives’ embodied within federal law”

While many complicated arguments can be made about a subject as broad and complicated as federal preemption, the fundamental issues in this case can best be resolved by a reference to a recent ruling of the 9th Circuit Court of Appeals, where the Court, in rejecting a claim of preemption, noted that...

Thus, this suit is not, fundamentally, a labor case in the guise of an action in trespass; it is a trespass case complaining only incidentally, at most, about union conduct. *Retail Property Trust v. United Brotherhood of Carpenters*, No. 12-56427 (9th Cir. September 23, 2014), page 39

Similarly, in the instant matter, this suit is not, fundamentally, a case raising maritime issues in the guise of an action under the Open Public Meetings Act, it is a State Open Public Meetings Act case without any colorable substantive maritime component.

To indulge in the presumption that federal maritime law pertaining to common carrier agreements supersedes a local State law of general application designed to protect a substantial State interest in accountability and responsible government by means of content neutral time, place, and manner restrictions violates both

common sense and the general principles underlying the reasoned analysis of a broad line of clearly established federal preemption precedent.

Similarly, the proposition that the term “any person” in the OPMA does not mean “any person” is simply unreasonable and in conflict with the both the clear letter and manifest intent of the OPMA as it was adopted by the Legislature of the State of Washington when it enacted the provisions of House Bill 526 into law.

ASSIGNMENTS OF ERROR

I The Court erred in finding that the federal shipping Act of 1974 preempted the Washington State Open Public Meetings Act when none of the required elements for express, conflict, obstacle or field preemption were present.

II The Court erred in failing to interpret the OPMA liberally to effectuate the intent of the legislature that the public have access to all stages of the decision-making processes of our elected officials.

III The Court erred in finding that the express language of RCW 42.30.130 stating that “any person may maintain an action” did not provide that any person may maintain an action.

IV The Court erred in denying a continuance under CR5(f).

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

I Did the Court err in finding that the federal shipping Act of 1974 preempted the Washington State Open Public Meetings Act when none of the required elements for express, conflict, obstacle or field preemption were present? Yes.

II Did the Court err in failing to interpret the OPMA liberally to effectuate the intent of the legislature that the public have access to all stages of the decision-making processes of our elected officials? Yes.

III Did the Court err in finding that the express language of RCW 42.30.130 stating that “any person may maintain an action” did not provide that any person may maintain an action? Yes.

IV Did the Court err in denying a continuance under CR5(f)? Yes.

STATEMENT OF THE CASE

This case involves joint secret meetings of a quorum of the ports of Seattle and Tacoma and the question of whether the Open Public Meetings Act applies to these meetings. (CP 15-19)

A secondary issue concerns whether the clear language of RCW 42.30.130 stating that “any person may maintain an action” means that any person may maintain an action.(CP 278-280)

On September 10, 2014, West became aware of a scheduled joint “confidential meeting” of both Port Commissions. (CP 12-13)

West sent an email, inquiring as to the closure, as he was intending to attend the meeting. (CP 12-13)

The Ports responded by an email stating that the OPMA was superseded by the federal shipping Act. (CP 12-13)

West was not able to attend the “confidential” meeting.
(CP 280-281)

On September 26, 2014, the instant action was filed. (CP 1-6)

On September 30, Plaintiff paid a presentation fee and applied for an Order to Show Cause (CP 14)

This was denied on the basis of a lack of jurisdiction based upon a notice of removal that had not yet been filed with the court.
(CP 14)

Later that day, the defendants filed a notice of removal to the Tacoma District Court. (CP 20-44)

On December 10, the case was remanded back to the Superior Court by Order of the honorable Judge Robart (CP 131-150)

After filing a notice of unavailability on December 15, the defendants moved for Summary Judgment on December 16. (CP 153, 182, 156)

On January 16, 2015, a hearing was scheduled on defendant's motion for summary judgment. (Transcript of January 16, 2015)

On January 16, 2015 27, 2014 the Court held a hearing and issued an Order granting defendant's motion for summary judgment of dismissal. (CP 273-4, 275-6). (See also the Transcript of the January 16, 2015 hearing)

On January 26, 2015, plaintiff filed a motion for reconsideration. (CP 278-369)

On February 18, 2015 the Court entered an order denying reconsideration. (CP 370)

On January 16, 2015, a timely notice of appeal was filed. (CP 277)

ORDERS ON APPEAL

Appellant seeks review of the Order of Dismissal with Prejudice of January 16, 2015 (CP 273-4, 275-6), and the Order Denying Reconsideration of February 18 2015. (CP 370)

STANDARD OF REVIEW

De Novo

ARGUMENT

I The Court erred in finding that the federal Shipping Act of 1974 preempted the Washington State Open Public Meetings Act when none of the required elements for express, conflict, obstacle or field preemption were present.

This is an action under the Washington State Open Public Meetings Act concerning a series of “confidential” meetings attended by the entirety of the Commissioners of both the Port of Seattle and the Port of Tacoma, purportedly under color of authority of a discussion agreement under the federal Shipping Act of 1984.

The ports of Seattle and Tacoma obtained the Order of dismissal of January 16, 2015 on two “unpersuasive and implausible” (See *Medtronic, Inc. v. Lohr* 518 U.S. 470 (1996),

(Opinion by Stevens, J.P.) grounds: that citizens lack standing to maintain actions under the OPMA and that (somehow) an exemption from disclosure under the federal Freedom of Information Act in the Shipping Act of 1984 completely preempts, by implication, the content neutral open government requirements of the Washington State Open Public Meetings Act, RCW 42.30.

Neither of these arguments are substantiated by any accepted doctrine of preemption, or any actual provision of statute, and demonstrate the defendants' intent to supplant State interests in accountability and open government “deeply rooted in local feeling and responsibility” with “judicially manufactured policies” cobbled together from “freewheeling¹, extratextual, and broad evaluations of the ‘purposes and objectives’ embodied within federal law” (See *Wyeth v. Levine*, 129 S. Ct. 1187, 1211 (2009) (Thomas, J., concurring in judgment))

While many arcane and pedantic arguments can be made about a subject as broad and complicated as federal preemption, the fundamental issues in this case can best be resolved by a reference to a recent ruling of the 9th Circuit Court of Appeals, where the Court, in rejecting a claim of preemption, noted that...

¹ See also *Against Freewheeling, Extratextual Object Preemption*: Catherine Sharkey, NYU Journal of Law & Liberty, Vol. 5, No. 1, 2010

Thus, this suit is not, fundamentally, a labor case in the guise of an action in trespass; it is a trespass case complaining only incidentally, at most, about union conduct. Retail Property Trust v. United Brotherhood of Carpenters, No. 12-56427 (9th Cir. September 23, 2014), page 39

Similarly, in the instant matter, this suit is not, fundamentally, a maritime case in the guise of an action under the Open Public Meetings Act, (OPMA) it is an Open Public Meetings Act case without even a shadow or vestige of an incidental substantive maritime component.

To indulge in the presumption that federal maritime law pertaining to common carrier agreements supersedes a local State law of general application designed to protect a substantial State interest in accountability and responsible government by means of content neutral time, place, and manner restrictions violates both common sense and the general principles underlying the reasoned analysis of a broad line of clearly established preemption precedent.

Respondents rely upon exemptions from disclosure under the federal FOIA contained in 46 USC and 46 CFR 535.608 to justify secrecy under the Washington State Sunshine laws, and subsequently

proceed to make broad, freewheeling and poorly cobbled assertions as to the extratextual intent and scope of the 1984 Shipping Act.

However, nothing in any provision of federal maritime law requires that the State Open Public Meetings Act be violated, and whatever the federal Act may provide as to FOIA disclosure of documents in the possession of a federal agency such as the FMC, the federal FOIA, and any exemptions thereto, are simply not applicable to the records or particularly the meetings of State agencies. *Kerr v. United States Dist. Ct. For N. Dist.*, 511 F.2d 192 (9th Cir.1975), *aff'd*, 426 U.S. 394, 96 S.Ct. 2119, 48 L.Ed.2d 725 (1976). See also, *Wallace v. Guzman*, 687 So. 2d 1351 (Fla. 3d DCA 1997); Exemptions from disclosure in Federal Freedom of Information Act apply to documents in the custody of federal agencies; the Act is not applicable to state agencies).

Further, the very provision that the defendants claim has preemptive effect (46 USC 40306) expressly allows for records to be produced in response to any administrative or judicial proceeding, making any claim of conflict or objet preemption specious even in regard to records disclosure issues, to say nothing of open meetings issues, which are incontestably beyond the legitimate scope of the federal law.

It should also be recognized that the FMC agreement in this case was an agreement signed, not by the Port Commissioners, but by the ports' two executive directors, which expressly delegates to the signatories the administrative authority to establish sub-groups to carry out the purposes of the agreement.

Yet no administrative action under this delegation took place on the part of the signatories; instead, the entire compliment of the two port commissions, in deliberate violation of the provisions of the Open Public Meetings Act, proceeded to hold a series of improper and unlawful "confidential" meetings.

What took place at those meetings and whether determinations for major infrastructure related actions with a reasonable potential for adverse impact to the environment and for particularized impacts to appellant West have already been made in violation of SEPA and/or NEPA is impossible to determine without further discovery. (See Plaintiff's CR 56(f) Motion at CP 241-57,)

Had the Commissioners of the two Port in good faith sought to actually comply with the law, they might easily have obtained an Attorney General Opinion on whether the Maritime Shipping Act of 1984 supersedes State laws on Open Public Meetings, but this they refused to do.

Instead, the ports decided to play fast and loose with the people's trust, to act behind closed doors, and to invoke a series of technical and specious arguments when brought to court.

Especially telling in this dispute is the fact that both the Maritime Act and the Ports agreement itself provide for the appointment of agents by the ports to conduct the contemplated negotiations. Absolutely nothing in 46 USC requires the ports to employ the entirety of their governing bodies to conduct the negotiations, and the agreement itself at Article VII. A. under the heading of **Administration and Delegation of Authority**, provides that...

The **signatories** will administer this agreement through their duly authorized representatives. The **signatories** may carry out the activities authorized in this agreement through meetings, telephone communications, video conferences, electronic mail or other communication means as the signatories choose.

Under section section VII. B. of this agreement, **signed not by the Port Commissioners, but by the Port CEO's**, these signatories, Mr. Yoshitani and Wolfe, have the administrative responsibility and delegation of authority to establish “sub-groups”, committees and subcommittees as they deem desirable to carry out

the purposes of the agreement. (See FMC Agreement No. 20122 at page No. 4) Yet they failed to follow the terms of their agreement to establish such sub-groups expressly designated in the very agreement they seek to employ to justify meetings of the entire port commissions - meetings of a character not contemplated in the agreement to begin with.

Nothing in the **federal Shipping Act of 1984** could possibly, expressly or by implication, be reasonably determined to preempt the **State Open Public Meetings Act**. The two laws concern two wholly disparate and discreet subjects.

The OPMA is not concerned with substantive restrictions on international tanker traffic, as was the case of the statute in the Dixie case whistled² up by counsel in a belated attempt to legitimize the miscegenated progeny of their fanciful freewheeling extra-textual cobbling, but instead merely imposes content neutral time place and manner restrictions on all public boards and commissions in the State of Washington to foster a compelling State interest.

Significantly, the Washington State Open Public Meetings Act contains the following legislative declaration of intent...

² (Dixie Lee) Ray v. Atlantic Richfield Co. 435 U.S. 151, 177, (1998)

The legislature finds and declares that all public commissions, boards, councils, committees, sub-committees, 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 §§ 42.30.010.

In contrast, the 1984 Shipping Act has no possible express or implied congressional intent or scope to supersede local State interests in open government and accountability as deeply rooted in local feeling and responsibility as the Washington State open Public Meetings Act so evidently is.

The purposes of the 1984 shipping Act are set forth as follows:

The purposes of this part are to— (1) establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory

costs;(2) provide an efficient and economic transportation system in the ocean commerce of the United States that is, insofar as possible, in harmony with, and responsive to, international shipping practices;(3) encourage the development of an economically sound and efficient liner fleet of vessels of the United States capable of meeting national security needs; and (4) promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace.

Further, and even more problematic for the respondents' preemption arguments is the fact that nowhere in the federal Shipping Act is there anything approaching the type of explicit language required to properly invoke field preemption. (See, in contrast, *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S. Ct. 1146, 91 L. Ed. 1447 (1947) where the federal statute expressly provided that "the power, jurisdiction, and authority" of the Secretary conferred under the Act "shall be exclusive with respect to all persons" licensed under the Act.)

Thus, while the federal Shipping Act of 1984 expresses no clear or implied intent to establish field preemption, and has absolutely no "obstacle" type provisions even arguably directed at

whether a quorum or lesser number of State officials make determinations as to the common carriage of goods by water in the foreign commerce of the United States, the State Open Public Meetings Act is the quintessential example of a statute expressing compelling State interests (in public accountability and open government) deeply rooted in local feeling and responsibility.

Federal preemption has uniformly not been extended to this category of State laws, even in the case of such overly inspired and fanciful freewheeling extra-textual Dormant Commerce Act challenges as are apparent in the present matter.

There is simply no express or implied field preemption or any direct correlation or irreconcilable conflict between the discreet purposes of the 1984 Shipping Act and the Washington State Open Public Meetings Act.

Requiring public boards in the State of Washington to abide by reasonable time, place and manner restrictions when they meet as a quorum of a governing body implicates no interests legitimately within the purview of the Federal Maritime Commission, or the Shipping Act, and the compelling open and accountable government interests protected by this State's Open Public Meetings Statute cannot reasonably be seen to frustrate the discreet and exclusively

maritime goals of 46 USC 40101, which can easily be effectuated, as the original agreement was, without any secret meetings of quorums of public bodies.

A good example of discrete interests of State and federal law exists in the context of federal labor law where the Supreme Court recognized...

The interests of the Board and the NLRA, on the one hand, and the interest of the State in providing a remedy to its citizens for breach of contract, on the other, are "discrete" concerns, cf. *Farmer v. Carpenters*, 430 U.S., at 304 . We see no basis for holding that permitting the contract cause of action will conflict with the rights of either the strikers or the employer or would frustrate any policy of the federal labor laws. *Belknap, Inc. v. Hale*, 463 U.S. 491 (1983)

Just so, the maritime interests of the FMC on one hand, and the interest of the State in content neutral, time, place, and manner restrictions on substantive action by governing boards of public agencies are "discrete" concerns. There is no rational basis for a holding that permitting an OPMA cause of action will conflict with any legitimate or substantive FMC concern or the maritime purposes of 46 USC 40101.

Most recently, and in a similar vein, the 9th Circuit Court of Appeals, in rejecting a similar federal preemption claim, held...

As the Sears Court held in the related context of Garmon preemption, we hold that Machinists preemption does not “sweep away state-court jurisdiction over conduct traditionally subject to state regulation.” Sears, 436 U.S. at 188. Where, as here, a plaintiff’s claims...fall “within the longstanding exception for conduct which touche[s] interests so deeply rooted in local feeling and responsibility that pre-emption could not be inferred in the absence of clear evidence of congressional intent,” id. at 183, and concern only the application of time, place, and manner restrictions..., federal preemption does not bar the plaintiff’s claims from going forward, because the conduct at issue is, at most, “a merely peripheral concern” of federal labor law. Machinists, 427 U.S. at 137. To conclude otherwise would be to expand Machinists preemption beyond its proper scope. Retail Property Trust v. United Brotherhood of Carpenters, No. 12-56427 (9th Cir. September 23, 2014)

Neither field, conflict, or obstacle preemption is present in this present case, which does not challenge or impede the substantive actions the ports seek to take, but merely attempts to secure compliance with time, place and manner provisions deeply rooted local feeling and responsibility which express and protect a

compelling and non-discriminatory State interest, not in specific substantive maritime matters; but rather in general procedural requirements of open and accountable local government traditionally and properly subject to local State regulation.

The conduct at issue in this case, that of the full commissions of both ports attending secret meetings in violation of State law, is, at most, “a merely peripheral concern” to any legitimate issue of federal maritime law, or of the Federal Maritime Commission, especially when the FMC agreement discussions could just as easily be conducted by the executive directors of the ports or other subgroups appointed pursuant to the agreement in a manner that did not directly contravene State law.

The specious nature of the defendants' preemption claims may best be demonstrated by a full and accurate citation to the very 9th Circuit case they attempted to employ (at Page 7, line 14 of their motion to dismiss), to support their preemption claims; *Pacific Merchant Shipping Ass'n v. Goldstene*, 639 F. 3d 1154, (2011)

In *Aubry*, we observed that “[o]ur review of relevant case authority leads us to conclude that **the general rule on preemption in admiralty is that states may supplement federal admiralty**

law as applied to matters of local concern, so long as state law does not *actually conflict* with federal law or *interfere* with the *uniform working* of the maritime legal system." *Aubry*, 918 F.2d at 1422 (footnote omitted). To determine whether there is any interference, we must yet again apply a balancing test, weighing the state and federal interests on a case-by-case basis. *See, e.g., In re Exxon Valdez*, 484 F.3d 1098, 1101 (9th Cir.2007). (Emphasis added)

In the present case, the Washington State Open Public Meetings Act that requires meetings of a quorum of public agency to be public in no way presents an actual conflict with federal law or interferes with the uniform working of the maritime legal system, especially as there was (and could not have been) absolutely no showing that the discussion agreement required meetings of a quorum of both ports.

Significantly, as the defendants also completely failed to inform the Superior Court, the 9th Circuit in the Pacific Merchant case held, in accord with the overwhelming weight of case law, that...

Based on the record before us, the exceptionally powerful state interest at issue here far outweighs any countervailing federal interests.

*Therefore, we must reject PMSA's dormant Commerce Clause and general maritime law theories at this juncture. **Our result is consistent with the overwhelming weight of the case law.** Pacific Merchant Shipping Association v. Goldstene, 639 F.3d 1154, at 1181 (9th Cir. 2011)(emphasis added)*

Thus, in light of the overwhelming weight of the case law acknowledged in the very cases the defendants attempted to use to make their arguments, it is apparent that the freewheeling legal theories of extra-textual preemption underlying Court's Order of January 16, 2015, (CP at 275-276) while innovative, lack any actual express or reasonably implied basis in law, and this Court should vacate and reverse the Order of the Superior Court in all respects.

II The Court erred in failing to interpret the OPMA liberally to effectuate the intent of the legislature that the public have access to all stages of the decision-making processes of our elected officials.

Significantly, the Supreme Court of the State of Washington has repeatedly emphasized that the provisions of the OPMA employ some of the strongest language of any legislation See *Equitable Shipyards, Inc. v. State of Washington*, 93 Wn. 2d 465, 611 P.2d 396 (1980). *Miller vs. City of Tacoma*, 138 Wn.2d 318, 979 P.2d 429

(1999) In order to effectuate the Act's purpose, courts applying its provisions are required to construe it liberally. See RCW 42.30.910 "The purposes of this chapter are hereby declared remedial and shall be liberally construed."; See Miller, 979 P.2d at 434.

The OPMA has some of the strongest language and most expansive remedial intent of any existing law. It contains an express statement that it must be interpreted liberally to effectuate its remedial intent. The purpose of the OPMA is to ensure that public bodies make decisions openly. See RCW 42.30.010; Miller v. City of Tacoma, 979 P.2d 429, 432 (Wash. 1999) (en banc).

Some of the purposes of the OPMA as articulated by the courts are: To guarantee public access to and participate in activities of their representative agencies. Mead School Dist. No. 354 v. Mead Education Assn., 85 Wn. 2d 140, 530 P.2d 302 (1975), To allow the public to view the decision making process at all stages. Cathcart v. Andersen, 85 Wn. 2d 102, 530 P.2d 313 (1978), To prevent public officials from avoiding public scrutiny and accountability, Eugster v. City of Spokane, 128 Wn.App. 1, 114 P.3d 1200 (Div. 3 2005), and; To give the public ready access to first hand knowledge of the deliberations and decisions of public agencies where the executive

session does not apply. *Snohomish County Improvement Alliance v. Snohomish County*, 61 Wn. App. 64, 808 P.2d 781 (Div. 1 1991)

In the Order of January 16, the Court ordered that “Mr West Lacks standing under either the Open public meeting (sic) act or the declaratory judgement Act, as required by law.”

A judicially promulgated standing limitation in OPMA cases such as the one created by the Superior Court in this case would eviscerate and render the OPMA toothless and lead to absurd results, as no citizen could possibly know whether they had such particularized standing to contest the unknown secret deliberations of their government, due to the closed nature of such meetings.

It is in accord with common sense, clear legislative intent and the purpose of the sunshine laws that standing under the OPMA be determined just as standing is under the PRA, which does not require a citizen to show a personal interest in records to seek their disclosure, but only that they have been denied the opportunity to inspect them. Being denied the opportunity to attend a meeting is a particularized harm, and one that West demonstrated in this case.

III The Court erred in finding that the express language of RCW 42.30.130 stating that “any person may

maintain an action” did not provide that any person may maintain an action.

Significantly, the clear text of RCW 42.30.130 provides...

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.
(emphasis added)

The term "any person" in the statute is not ambiguous and obviously demonstrates an intent to include "any person" within the ambit of the statute. Significantly, the original Senate version of the 1971 Bill (485) which was not adopted into law included a restrictive requirement just like that argued by counsel Lake to exist in the presently enacted law.

The version of the House Bill (526) that was actually chosen by the legislature to become law had no limiting requirement, demonstrating the manifest intent of the Legislature to afford every citizen a cause of action in regard to illegal secret meetings of his government. (See CP 281-369)

The ordinary meaning rule of statutory construction requires, “an undefined term should be given its plain and ordinary meaning unless a contrary legislative intent is indicated.” *Ravenscroft v.*

Washington Water Power Co., 136 Wash.2d 911, 920, 969 P.2d 75, 80 (1998). The plain meaning of the words “person,” “himself,” and “herself” indicate no lawyer is required to bring a citizen’s action under the citizen’s action provision of the PDA.

If a statute is plain and unambiguous, its meaning must be primarily derived from the language itself. *Dep’t of Transp. v. State Employees Ins. Bd.*, 97 Wn.2d 454, 458, 645 P.2d 1076 (1982).

The primary goal of statutory construction is to carry out legislative intent. *Rozner v. City of Bellevue*, 116 Wn.2d 342, 347, 804 P.2d 24 (1991). The primary intent of the OPMA is to allow citizens to observe every stage of the decision making process and it would be completely subverted if the OPMA became unenforceable due to unreasonable and virtually unattainable standing requirements.

“If a statute’s meaning is plain on its face, then we must give effect to that plain meaning as an expression of legislative intent.” *Dept. of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002).

To require a plaintiff in an OPMA case to discern, by clairvoyance what transpired in a secret meeting and then show a personal interest in the subject matter of the secret meeting would

lead to absurd results, such as precluding the very same type of action the statute allows and promotes in order to protect each citizen's right to an open government. "We will construe statutes to avoid strained or absurd results." *State v. Akin*, 77 Wn. App. 575, 580, 892 P.2d 774 (1995). Such a construction would also allow the defendants to violate the law with impunity in direct contravention of the law's statutory intent.

In addition, "A court must not create exceptions in addition to those specified by the Legislature." *Washington State Republican Party v. Washington State Pub. Disclosure Comm'n*, 141 Wash. 2d at 280-81, 4 P.2d at 827-28 (2000).

Significantly, the Washington State Public Records Act allows for individuals to bring citizen's actions regarding public records. The legislature's settled interpretation of who could bring suit under the Public Records Act is that any citizen may bring an action, regardless of a personal interest in the subject matter of the records, since the denial of inspection is a particularized harm. Similarly, under the OPMA, the denial of the ability to attend a public meeting creates standing irrespective of the particular subject matter of the meeting.

Clearly, the doctrine of *in pari materia* applies here, since similar statutes, such as the OPMA and Public Record Acts, must be interpreted similarly. *State v. Tili*, 139 Wash. 2d 107, 985 P.2d 365 (1999). The Washington Supreme Court has called this “a cardinal rule.” “In ascertaining legislative purpose, statutes which stand *in pari materia* are to be read together as constituting a unified whole, to the end that a harmonious, total statutory scheme evolves which maintains the integrity of the respective statutes.” *State v. Fairbanks*, 25 Wash.2d 686, 690, 171 P.2d 845, 848 (1946).

In addition,

“Where statutes are part of a general system relating to the same class of subjects and rest upon the same reasons, they should be so construed, if possible, to be uniform in their application and the results which they accomplish.” *State v. Savidge*, 75 Wash. 116, 120, 134 P. 680, 682 (1913).

As their common denomination as the Sunshine Laws demonstrates, the OPMA and Public Records Act are derived from the same intent to preserve an open, accountable government controlled by the citizens. The interpretation of the OPMA must be construed to accomplish the same results as the Public Records Act, which is to grant citizens broader control over their government,

ands litigation by private citizens enforcing the OPMA is essential to this end.

In order to achieve a uniform application of both statutes, the OPMA must be interpreted to invite citizen's suits brought forth by any citizen who has been denied the opportunity to observe the deliberations and decision making process of a public body, regardless of an additional personal interest in the subject matter of the meetings they were excluded from.

Plaintiff West asserts the Court erred in finding that a plaintiff asserting a cause of action under the OPMA is required to show particularized injury despite the explicit provisions of RCW 42.30.130 to the contrary.

Alternatively West assigns error to the Court's failing to find that he had shown particularized injury despite the acknowledged circumstance that he had been excluded from joint meetings of the ports' Commission meetings, and his showing of discrete impacts upon his interests reasonably resulting from the Maritime Alliance.

West is particularly and adversely impacted by the determination of the Ports to conduct joint meetings in that he was barred from attending the confidential meetings of the Ports, including those on September 10 and September 30, 2014. (See CP

278-280) The exclusion for these public meetings was not a harm that all citizens of this State were even aware of prior to the media coverage of the confidential nature of the meetings.

At the first joint meeting of the ports that was open to the public, West testified as to some of the interests he had in the formation and operation of the alliance. West is a taxpayer and landowner in Thurston and Mason Counties and faces the prospect of paying a larger port assessment if the new alliance adversely impacts the Port of Olympia. (CP 278-280)

As a property owner and investor, West also directly and adversely impacted by the broad impacts upon trade, the environment, and the economy caused by such an Alliance by the two largest ports in this State. West lives within a block of Budd Inlet, and is particularly impacted by environmental and other issues stemming from oceangoing trade, which has long been recognized to have widespread impacts³.

West is also still in litigation with the Port of Tacoma and their reactionary, litigious counsel over records concerning the port

³ I freely assert, that the cosmopolite philosopher cannot, for his life, point out one single peaceful influence, which within the last sixty years has operated more potentially upon the whole broad world, taken in one aggregate, than the high and mighty business of whaling. *Herman Melville, Moby Dick, 1851, Chapter 24, The Advocate*

of Tacoma's previous maritime alliance with the Port of Olympia, even after seven years and 2 Orders of Remand from the Appellate Courts.

IV The Court erred in denying a continuance under CR5(f).

The Court erred in failing to grant a continuance under CR 56(f) for further discovery when the ports had not yet disclosed material evidence necessary to show the scope and content of their meetings.

This refusal of the Ports to disclose records of their meetings requested under the Public Records Act made it impossible to properly respond to the factual claims made in the defendants' motions, and a continuance under CR 56(f) is appropriate.

The Supreme Court has been emphatic on the requirement that access to justice includes the ability to seek reasonable discovery.

It is common legal knowledge that extensive discovery is necessary to effectively pursue either a plaintiff's claim or a defendant's defense. Thus, the right of access as previously discussed is a general principle, implicated whenever a party seeks discovery... Plaintiff, as the party seeking discovery, therefore has a significant interest in receiving it. *John Doe v. Blood Center*, 117 Wn.2d 772, P.2d 370, (1991)

Where the ports were conducting secret meetings and concealing the very records necessary for West to demonstrate an interest in the secret negotiations, the refusal of the Superior Court to allow for reasonable discovery was prejudicial and constituted reversible error.

CONCLUSION AND RELIEF SOUGHT

Washington State's Open Public Meetings Act is a content neutral, broadly applicable State law essential to the People of the State of Washington's fundamental rights to knowledge of, and control over, the instruments they have created, including the Ports of Tacoma and Seattle.

In contrast, the Shipping Act of 1984 concerns maritime issues having no direct bearing on whether a quorum of a governing body meets secretly to conduct the people's business.

Washington State's Open Public Meetings Act is is the quintessential example of a State statute concerning interests “deeply rooted in local feeling and responsibility” of the type that the courts have consistently refused to allow discrete federal statutes like the Shipping Act of 1984 to preempt.

There is simply no reasonable or legal basis for any principled finding of express, implied, super, extratextual freewheeling, or dormant commerce clause preemption, and, as their reliance on off point cases like *Ray v. Atlantic Richfield Co.* 435 U.S. 151, 177, (1998) demonstrates, the respondents are simply “Whistling Dixie” when they attempt to suggest otherwise for the purpose of seditiously undermining the transparency and accountability that forms the foundation of the sound governance of a free society in the State of Washington and the federal Republic of the United States of America.

Similarly, the Court's ruling, establishing by judicial fiat a freewheeling extra-textual particularized standing requirement not found in the text of the OPMA was based, not upon any actual published precedent or statutory language, but a tainted swampy morass of duplicitous miss-citation of fact and law, as the standing arguments of counsel that the Superior Court mistakenly accepted materially and expressly contravened both the black letter of RCW 42.30.130 and the clearly established Division II OPMA precedent of *West v. WACO*, 62 Wn. App. 120, (2011).

The Court erred in ruling that the OPMA was preempted when the required prerequisites for federal preemption were not

present, and in establishing and unreasonable unprecedented standing requirements not founded upon any statutory language or published precedent.

The Order of January 16, 2015 should be vacated and reversed, and this case remanded back to the Superior Court with instructions to grant the relief sought in the Amended Complaint.

Respectfully submitted this 10th day of September, 2015.

By: 
~~s/ Arthur West~~
ARTHUR WEST

CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing Brief of Respondent, by **Email** with backup by **regular U.S. Mail** on the 10th day of September, 2015, to counsel of record:

This document was electronically served upon the following counsel on September 10, 2015

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