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DIVISION II

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STATE OF WASHINGTON

No. 39366-2-II *Cm*

BY _____
DEPUTY

**IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON, DIVISION II**

ARTHUR WEST

Vs.

**WASHINGTON STATE
ASSOCIATION OF COUNTIES, et al**

**Appeal from the rulings of
the honorable Judge McPhee**

APPELLANT'S OPENING BRIEF

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INTRODUCTION-SUMMARY OF ARGUMENT

This case concerns the same basic issue determined by this Court in Telford, whether the Washington Association of County Officials and Washington Association of Counties should be considered the functional equivalent of public agencies, in this case for the purposes of the Open Public Meetings and Public Records Acts.

A secondary issue concerns and whether the Court's subjective bias that plaintiff was akin to Adolph Hitler and Joe McCarthy justified the imposition of sanctions for plaintiff asserting, like the State Auditor, and the WACO itself, that the the Washington Association of County Officials was created by statute in 1959, prior to its incorporation in 1961, as well as the striking of the pleading setting forth these arguments and facts.

ASSIGNMENTS OF ERROR

1. The Court erred in orders of March 27 and May 8, 2009¹, granting WACO an order of dismissal based upon representations that it was not a public agency when the express terms of the Laws of The State of Washington 1970 ex. s. Chapter 69 @ 1-3 expressly recognize it as a public entity and when it is required by law to merge with WSAC.
2. The Court erred in failing to uphold the ruling of Division II of the Court of Appeals that the WACO was the functional equivalent of a public agency
3. The Court erred. in failing to construe the OPMA broadly to require that agencies meeting the functional equivalency test conduct the public's business openly.

¹CP 118-119, 166- 176, 177-178

4. The Court erred. in orders of March 27 and May 8, 2009, in ruling based upon a creation myth that misstated the facts and the law of corporations and in sanctioning plaintiff in an unconstitutional manner based upon findings unsupported in the record that constituted an impermissible restriction on the right to petition for redress.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the Court err in its orders of March 27 and May 8, 2009, granting WACO an order of dismissal based upon representations that it was not a public agency when the express terms of the Laws of The State of Washington 1970 ex. s. Chapter 69 @ 1-3 expressly recognize it as a public entity and when it is required by law to merge with WSAC?

2. Did the Court err in failing to uphold the ruling of Division II of the Court of Appeals that the WACO was the functional equivalent of a public agency?

3. Did he Court err. in failing to construe the OPMA broadly to require that agencies meeting the functional equivalency test to conduct the public's business openly?.

4. Did the Court err in its orders of march 27 and may 8, 2009 in ruling based upon a creation myth that misstated the facts and the law of

corporations and acting in an unconstitutional manner based upon findings unsupported in the records that constituted an impermissible restriction on the right to petition for redress?

STATEMENT OF THE CASE

1. On November 10, 2008, plaintiff filed a complaint for declaratory relief and relief in regard to PRA and OPMA. The Complaint also asserted that pursuant to RCW, WACO and WSAC were required to be consolidated into one agency. (CP 50-54)

2. On October 10, 2008, West was attacked and assaulted by a Senior Partner of the firm representing WACO in this matter. He continues to receive medical treatment for the injuries inflicted under the State Crime Victim's Compensation program. (CP 150)

3. On March 27, 2009 a hearing was held on plaintiff's Motion for Summary Judgment and Defendants Motions to Dismiss before Judge McPhee. (Transcript of March 27)

4. At the hearing West argued that the WSAC and WACO were the functional equivalent of agencies under the PRA and the OPMA, and that the Telford test should apply to both statutes. West also argued that the

two agencies were required to be consolidated under RCW 36.47.070. The Court denied the Motion and granted an order of dismissal to WACO. (CP 18-19)

3. On May 8, 2009, the Court granted sanctions and entered an award and judgment to WACO based upon a motion that is not preserved in the record. (CP 166-176, 177-178)

4. On June 2, 2009, the Plaintiffs timely appealed from the Court's orders. (CP 142-9)

ARGUMENT

ISSUE 1

The Court erred in granting WACO an order of dismissal based upon representations that it was not a public agency when the express terms of the Laws of The State of Washington 1970 ex. s. Chapter 69 @ 1-3 expressly recognize it as a public entity required to merge with WSAC.

The Court erred in the Orders and Judgment of March 27 and May 8, and in entering the findings 1- 8 in finding WACO to be a private entity (and in failing to find WSAC subject to the OPMA) when the clear

language of State law recognizes both WACO and WSAC as public agencies, required by RCW 36.47.070 to merge their operations. In 1970, the Legislature adopted, in the Laws of 1970 ex.s. c 69 § 1, the following...

Purpose -- 1970 ex.s. c 69: "It is the purpose of this act to assist the legislature in obtaining adequate information as to the needs of its municipal corporations and other public agencies and their recommendations for improvements." [1970 ex.s. c 69 §1]

Intent -- Construction -- 1970 ex.s. c 69: "The intent of this act is to clarify and implement the powers of the public agencies to which it relates and nothing herein shall be construed to impair or limit the existing powers of any municipal corporation or association." [1970 ex.s. c 69 § 3.]

1970 ex.s. c 69 § 2., as amended in 199 and 2007, provides...

It shall be the duty of each association of municipal corporations or municipal officers, which is recognized by law and utilized as an official agency for the coordination of the policies and/or administrative programs of municipal corporations, to submit biennially, or oftener as necessary, to the governor and to the legislature the joint recommendations of such participating municipalities regarding changes which would affect the efficiency of such municipal corporations. Such associations shall include but shall not be limited to the Washington state association of fire commissioners and the Washington state school directors' association. [2007 c 31 § 7; 1999 c 153 § 59; 1970 ex.s. c 69 § 2.]

As demonstrated by foregoing provisions of State law, the express admission by the Thurston County Commissioners, and WACO, and the original memorandum of Paul Telford, under the clear terms of RCW 36.47.020-30², the WACO and the WSAC are “association(s) of... municipal corporations or municipal officers” which are “recognized by law and utilized as (the) official agency(s) for the coordination of... administrative programs of municipal corporations”

Under the express terms of State law WACO and WSAC are therefore “public agencies” and the Court failed to recognize and give effect to the express wording of statutes when it concluded that WACO was not an agency subject to the OPMA..

ISSUE 2

² RCW 36.47.020 It shall be the duty of the assessor, auditor, clerk, coroner, sheriff, superintendent of schools, treasurer, and prosecuting attorney of each county in the state, including appointive officials in charter counties heading like departments, to take such action as they jointly deem necessary to effect the coordination of the administrative programs of each county. [1998 c 245 § 28; 1969 ex.s. c 5 § 1; 1963 c 4 § 36.47.020. Prior: 1959 c 130 § 2.]

RCW 36.47.030 The county officials enumerated in RCW 36.47.020 are empowered to designate the Washington state association of county officials as a coordinating agency through which the duties imposed by RCW 36.47.020 may be performed, harmonized, or correlated. [1969 ex.s. c 5 § 2; 1963 c 4 § 36.47.030. Prior: 1959 c 130 § 3.]

The Court erred in failing to uphold the ruling of Division II of the Court of Appeals that the WACO was the functional equivalent of a public agency

This case involves the legal issue of whether the Washington Association of County Officials, (WACO) is subject to the Open Public Meetings Act. While Counsel for defendants asserted a number of creative arguments to the Trial Court to justify these agencies evasion of the Sunshine laws, compliance with the OPMA and PRA is necessary for public oversight of both the WACO and WSAC. As This Court and the honorable Judge Hicks have previously ruled in Telford, these agencies are supported by tax dollars, and perform undeniably governmental functions under the supervision and control of Governmental officials. Under these circumstances, the trial Court erred in ruling that WACO was not an “agency” subject to the OPMA when the legal issue was collaterally foreclosed by the rulings of both the Honorable Judge Hicks and Division II of the Washington State Court of Appeals in the Telford case.

As this Court held in Telford...

The PDA is to be construed broadly to promote disclosure and accountability. The WSAC/WACO statutes are intended to restrict public funding of the associations to statutorily

mandated services. Allowing WSAC/WACO to use their public funds to support private political agendas would contravene both policies. Therefore, the trial court correctly ruled that, for purposes of the PDA, WSAC and WACO are "agencies." *Telford v. Thurston County Board of County Commissioners* 95 Wn. App. 149, at 166, 974 P.2d 886 (1999)

The doctrine of collateral estoppel promotes the policies of finality and repose. The purpose of a summary judgment is to avoid a useless trial when no genuine issue of material fact remains to be decided. Summary Judgment is especially applicable when issues are foreclosed by an express ruling in a former proceeding.

Under the doctrine of collateral estoppel, or issue preclusion, a party who has had a full and fair opportunity to litigate an issue in one proceeding generally may not relitigate the issue in a later proceeding. If an issue, whether of fact or law, is actually litigated and determined in a proceeding that results in a valid and final judgment, and determination of the issue is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.

Simply put, the determination of this Court of Appeals in Telford that “for purposes of the PDA, WSAC and WACO are “agencies” is conclusive in this case on the issue of whether WSAC and WACO are “agencies” for purposes of the PDA, and by implication, the OPMA as well since the statutes are both remedial statutes with the same remedial intent and the statutory language of the OPMA is if anything, even stronger than that of the PRA.. This Court should make an additional finding of manifest bad faith for the refusal of the WACO to comply with the clear language of the holding in Telford.

COLLATERAL ESTOPPEL SERVES TO BAR A LOSING LITIGANT LIKE WACO FROM UNFAIRLY REHASHING AN ISSUE FOLLOWING A DEFEAT FAIRLY SUFFERED IN ADVERSARIAL ROCEEDINGS

As the Washington State Supreme Court has ruled, in *Christensen v. Grant County Hosp. Dist. No. 1*...

The collateral estoppel doctrine promotes judicial economy and serves to prevent inconvenience or harassment of parties. *Reninger v. Dep't of Corr .*, 134 Wn.2d 437, 449, 951 P.2d 782 (1998). Also implicated are principles of repose and concerns about the resources entailed in repetitive litigation. *TEGLAND, CIVIL PROCEDURE § 35.21*, at 446. Collateral

estoppel provides for finality in adjudications. Trautman, *Claim and Issue Preclusion* , 60 WASH. L. REV . at 806...

For collateral estoppel to apply, the party seeking application of the doctrine must establish that (1) the issue decided in the earlier proceeding was identical to the issue presented in the later proceeding; (2) the earlier proceeding ended in a judgment on the merits; (3) the party against whom collateral estoppel is asserted was a party to, or in privity with a party to, the earlier proceeding; and (4) application of collateral estoppel does not work an injustice on the party against whom it is applied. *Reninger* , 134 Wn.2d at 449 ; *State v. Williams* , 132 Wn.2d 248 , 254, 937 P.2d 1052 (1997); Trautman, *Claim and Issue Preclusion* , 60 WASH. L. REV . at 831.

Such repose is justified on the sound and obvious principle of judicial policy that a losing litigant deserves no rematch after a defeat fairly suffered, in adversarial proceedings, on an issue identical in substance to the one he subsequently seeks to raise. To hold otherwise would, as a general matter, impose unjustifiably upon those who have already shouldered their burdens, and drain the resources of an adjudicatory system

with disputes resisting resolution. *Astoria Fed. Sav. & Loan Ass'n v. Solimino* , 501 U.S. 104, 107-08, 111 S. Ct. 2166, 115 L. Ed. 2d 96 (1991)
308 Christensen v. Grant County Hosp. Dist. No. 1, 152 Wn.2d 299 (2004)

WACO AND WSAC FAIRLY SUFFERED TWO DEFEATS IN ADVERSARIAL PROCEEDINGS BEFORE BOTH THE HONORABLE JUDGE HICKS AND THIS COURT IN THE TELFORD CASE

In *Telford v. Thurston County Board of County Commissioners* 95 Wn. App. 149, at 166, 974 P.2d 886 (1999), both the WACO and WSAC, (represented by Elisabeth Petrich, and Wm. Dale Kamerrer of Law – Lyman, etc.) fairly suffered defeats in their attempts to claim that their organizations were not subject to the Washington Public Disclosure Act. Significantly, both the Honorable Judge Hicks and, later the Court of Appeals held that...

Although WSAC and WACO retain some characteristics of private entities, their essential functions and attributes are those of a public agency. They serve a public purpose, are publicly funded, are run by government officials, and were created by government officials. Analyzing these factors in the context of the intent of the PDA and the other relevant statutes reinforces the conclusion that the associations are public. *Telford v. Thurston County Board of County*

Commissioners 95 Wn. App. 149, at 166, 974 P.2d 886
(1999)

These determinations are conclusive on the issue of whether the WACO and WSAC are “agencies” subject to the Sunshine laws.

THE TELFORD FUNCTIONAL EQUIVALENCY TEST HAS BEEN ADOPTED AS THE PROPER TEST TO APPLY IN THE CONTEXT OF THE PUBLIC RECORDS ACT AND IT SHOULD BE THE TEST EMPLOYED UNDER THE OPMA AS WELL

In two recent Cases, Spokane Research and Clarke, the Telford test has been adopted as the proper test to determine if an agency is subject to the public records section of the public disclosure Act. First, in Spokane Research, the Court ruled that the Telford functional equivalence test was applicable in both contexts...

The Association and the City argue *Telford* applies solely to the PDA public funding section, not the public documents section. But the *Telford* court relied on persuasive case law in both situations. *Telford*, 95 Wn. App. at 161 -63; see, e.g., *Public Citizen Health Research Group v. Dep't of Health, Educ. & Welfare*, 668 F.2d 537, 543-44 (1981) (functional equivalent test used in Freedom of Information Act (FOIA), 5 U.S.C. § 552, context); *Bd. of Trustees v. Freedom of Info. Comm'n*, 181 Conn. 544, 436 A.2d 266, 270 (1980) (Connecticut Supreme Court adopted federal four-factor test for agency document disclosure requests); *Marks v. McKenzie High Sch. Fact-Finding Team*, 319 Or. 451, 878 P.2d 417, 424-25 (1994) (Oregon Supreme Court adopted six-

part functional equivalent test for public inspection request). **We conclude the functional equivalent test is applicable in both contexts.** *Spokane Research & Def. Fund. v. W. Cent. Cmty. Dev. Ass'n*, 133 Wn. App. 602, at 607, (2006)

More recently, in *Clarke v. Tri Cities Animal Control*, the Court held that the Telford test was the appropriate analysis to employ to determine the status of an agency for the purposes of public disclosure...

We first address the question of whether TCAC is a public agency as defined by the PDA, chapter 42.17 RCW, and thus obligated to follow the requirements of the PDA. The trial court found that TCAC is not a public agency under the PDA. Because statutory interpretation is a question of law, we review the trial court's legal conclusion de novo. *Am. Legion Post No. 32 v. City of Walla Walla*, 116 Wn.2d 1, 5, 802 P.2d 784 (1991).

The PDA requires a state or local "agency" to make available for public inspection and copying all public records, unless the record falls within a statutory exception. *Spokane Research & Def. Fund v. W. Cent. Cmty. Dev. Ass'n*, 133 Wn. App. 602, 606, 137 P.3d 120 (2006), (citing RCW 42.17.260(1)), review denied, 160 Wn.2d 1006 (2007). "The PDA is interpreted broadly, requiring agencies to give "the fullest assistance to inquirers and the most timely possible

action on requests for information.”” Id. (quoting RCW 42.17.290).

RCW 42.17.020(1) defines agency as follows:

“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.

To be considered an “agency,” TCAC must qualify as an “other local public agency.” This term is not defined in the PDA. *Telford*, 95 Wn. App. at 158. In *Telford*, Division Two of this court was asked to determine if two organizations, the “Washington State Association of Counties” and the “Washington State Association of County Officials” were public entities. *Id.* at 152-56. The court in *Telford* adopted a four-factor “functional equivalent?” balancing test to determine if an entity is to be regarded as a public agency for purposes of the PDA: (1) whether the entity performs a governmental function; (2) the level of government funding; (3) the extent of government involvement or regulation; and (4) whether the entity was

created by the government. *Id.* at 162. Under Telford, each of these criteria need not be equally satisfied, but rather the criteria on balance should suggest that the entity in question is the functional equivalent of a state or local agency. *Id.*...

Thus, we engage in a Telford analysis to determine whether TCAC is an “other local agency” subject to the PDA. Under Telford, we conclude that TCAC is the functional equivalent of a public agency. *Clarke v. Tri-Cities Animal Care & Control Shelter*, 144 Wn. App. 185 (2008).

Since the Telford functional equivalence test has been found to be the appropriate analysis to employ to determine if an agency is required to disclose public records, and since both the WACO and WSAC have been found to be functional equivalents of public agencies under that test, no legitimate dispute about their status as agencies remains for the purposes of either the PRA or the OPMA. In light of these facts, the Court erred in denying plaintiff's motion for summary judgment in regard to the functional equivalence of the WACO and WSAC for the purposes of public disclosure and the OPMA and in rendering judgment for WACO.

SINCE THE REMEDIAL INTENT OF BOTH THE PRA AND OPMA ARE IDENTICAL, IT IS NECESSARY THAT ONE CLEARLY ESTABLISHED BRIGHT LINE TEST DETERMINE WHETHER AN ENTITY IS SUBJECT TO BOTH OF THE SUNSHINE LAWS

Under the express terms of the ruling of the Honorable Judge Hicks, upheld by the Washington State Court of Appeals, both WACO and WSAC are undeniably subject to the Public Records Section of the Public Disclosure Act, now codified under RCW 42.56. Since the defendants had a full and fair opportunity to litigate, and fairly suffered a defeat, there can be no reasonable assertion that the WACO and WSAC are not subject to the PRA.

Since the statutory language and remedial intent of the OPMA is, if anything, even broader than that of the PRA, it is unreasonable to create a specious legal distinction between the OPMA and the PRA. Common sense and all rules of construction require that entities found to be the functional equivalent of public agencies be subject to both of the sunshine laws under one “bright line” and easily understandable test, the functional equivalency test upheld by this Court in Telford.

ISSUE 3

The Court erred in failing to construe the OPMA broadly to require that agencies meeting the functional equivalency test conduct the public's business openly and in accord with RCW 36.47.070.

The Court erred in the orders of March 27 and may 8 and in entering finding of facts 1-8 by failing to construe the OPMA broadly when the OPMA employs some of the strongest language in any legislation to ensure that the public's business be conducted openly. As the Court recognized in Eugster...

The OPMA contains a powerful public policy statement. "The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly." RCW 42.30.010; see *Equitable Shipyards, Inc. v. State*, 93 Wn.2d 465, 482, 611 P.2d 396 (1980) (the

statement of purpose in the OPMA "employs some of the strongest language used in any legislation"). The purpose of the OPMA is to permit the public to observe all steps in the making of governmental decisions. *Cathcart v. Andersen*, 85 Wn.2d 102, 530 P.2d 313 (1975). We must give the OPMA a liberal construction to further its policies and purpose. RCW 42.30.910. *Eugster v. City of Spokane*, 110 Wn. App. 212 , 39 P.3d 380 (2002)

The intent section of the OPMA makes it clear that the remedial purpose of the act is to ensure public bodies make decisions openly:

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

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. RCW 42.30.010. *Miller v. City of Tacoma*, 138 Wn.2d 318, at 324, (1999)

It is also clearly established that the OPMA must be liberally construed and that its exceptions be narrowly confined, this applies with greatest force when the exception to be employed would exclude an entire agency from the scope of the Act, and allow it to evade Title 36 RCW.

The act (OPMA) also mandates a liberal construction. RCW 42.30.910 ("[t]he purposes of this chapter are hereby declared remedial and shall be liberally construed"). Liberal construction of a statute "implies a concomitant intent that its exceptions be narrowly confined." *Mead Sch. Dist. No. 354 v.*

Mead Educ. Ass'n, 85 Wn.2d 140, 145, 530 P.2d 302 (1975).

Miller v. City of Tacoma, 138 Wn.2d 318, at 324, (1999)

Our conclusion is supported by the Supreme Court's observation that "the purpose of the Act is to allow the public to view the decisionmaking process at all stages." Cathcart v. Andersen, 85 Wn.2d 102, 107, 503 P.2d 313 (1975). Part of the Legislature's declaration of purpose states that the actions of public entities "be taken openly and that their deliberations be conducted openly." RCW 42.30.010. Mason County. v. PERC, 54 Wn. App. 36, 771 P.2d 1185, (1989)

ISSUE 4

The Court erred in ruling based upon a creation myth that misstated the facts and the law of corporations and acting in an unconstitutional manner that constituted an impermissible restriction on the right to petition for redress.

As demonstrated by Thurston County itself on August 2, 1993, plaintiff's previously filed exhibit, and attachment 1 to the stricken motion, which is a true and correct original document published by WACO, and the WAECO-WACO Articles of Incorporation, also attached, as part of plaintiff's exhibits in support, and as set forth in the supplemental

memorandum, counsel's representations to the court as to the origin of WAECO-WACO constituted a deliberately falsified "creation myth" designed to evade the requirements of public accountability. While many cultures' creation myths are merely fanciful and innocuous (such as the Old Man Coyote tails of the plains Indians or the nightfall preceding 23 October 4004 BC ³ tale of Archbishop Ussher), the WACO creation myth perpetrated by counsel was a doctrine with serious negative effects on public accountability.

Just as the world was not created on October 22, 4004 B.C., even more certainly, WAECO⁴ in its corporate form, was not created, (by WACO's own admission, and the express evidence of filing in the Secretary of State's office), until authorized by Statute in 1961. As the Supreme Court has repeatedly recognized a corporate entity does not exist prior to the filing of articles of incorporation...

³ Annales veteris testamenti, a prima mundi origine deducti, James Ussher, 1650, Gutenberg Press.

⁴ In actuality the corporate "Washington Association of County Officials" under that name was created in 1971, since prior to that time it was the "Washington Association of Elected County Officials", a different organization (see attached exhibits, supplemental memorandum). Regardless, no articles were filed even for the WAECO until 1961, well after the legislature, by statute, granted the franchise, and thus both WACO and WAECO were "Created" pursuant to statute.

The articles of incorporation were not filed until January 7, 1963. Thus, the corporation did not become a legal entity until then. See *Mootz v. Spokane Racing & Fair Ass'n*, 189 Wash. 225, 64 P.2d 516 (1937); RCW 23.01.050. *John Davis v. Cedar Glen No. 4*, 75 Wn.2d 214, 450 P.2d 166

The Court also erred in failing to interpret the term “created” in accord with its common meaning and the black letter law regarding the creation of corporations.

Webster’s Third International Dictionary, as maintained in the Washington State temple of Justice, defines “creation” (at 2 (a)) as “to invest with new form, office , or rank: constitute by act of law or sovereignty”. Clearly, this is the commonly accepted legal definition of “creation” as it applies to the corporations constituted and undeniably “created” pursuant to statute under the Articles appended as exhibits to this motion.

The Court’s ruling as to WACO is also in error as it is based upon a complete misapprehension of the nature of corporations, which cannot be

created nor exist except pursuant to statute, and are different from “associations”.

As CJS, Corporations, P. 349 & 43 states...

Corporations cannot be created nor exist, nor corporate powers be assumed, by mere agreement of the parties, and they instead require authorization from the sovereign power, express or implied. **A corporation acquires its existence and authority to act from the state. Only the state can incorporate an association.**

Thus, under basic Hornbook law, all corporate entities are created by or pursuant to statute, and the terms of RCW 42.30.020 must be read as encompassing all corporate entities which exercise governmental powers. As even the most naïve legal mind must be aware...

Voluntary associations...have no well defined legal status.

They are not corporations...” Engvall v. Buchie, 73 Wash.

534, 132 Pac. 231, (1913)

In strict legal theory a corporate body is entirely different from an unincorporated association...It is the difference between an independent legal entity deriving its existence from statutory authority versus an

aggregate of individuals which distinguishes a corporation an unincorporated association...A corporation can be created and exists only by virtue of statutory authority, and by that authority alone. Order of Elks Local 291 v. Mooney, 666 NE 2d 970, at 973 (Ind. App. 1996, cited in CJS)

The claim that WACO was not created pursuant to law is obviously spurious in light of the circumstance that...The State alone can incorporate such an association... Order of Elks at 973, 36 Am Jur 2d Fraternal Orders and Benefit Societies 7, at 814. and in light of the fact that ...Legislation confers corporate power through general or special statutes (see Thomas v. Railroad Co. 101 U.S. 71, 82, 25 L.Ed 950 (1879), Oregon Ry. And Navigation Co. v. Oregonian Ry. Co. 130 U. S. 1, 20-21, (S.Ct. 409, 32 L.Ed. 837 (1889), 3 Sutherland, Statutes and statutory Construction, @ 64.5 at 336-7 (singer Ed. 6Th 2001)

In light of the foregoing authority, the Court erred in finding that WACO was not “created” by statute, especially when this fact is a matter of public knowledge subject to ready verification by sources of unimpeachable veracity (See ER 402, Auditor's report)

In addition, the Court erred in sanctioning plaintiff and in purging the record of his motion for reconsideration when, due to its toleration and encouragement of the “Adolph Hitler” and “Joe McCarthy” remarks of counsel and the tenor of its ruling, its impartiality might have been reasonably doubted by a disinterested party. Such evident bias and the failure of the Court to failure to recuse itself constituted a threat to the plaintiff's Constitutional right to due process under the 14th Amendment as recognized by Justice Kennedy in *Caperton v. A.T. Massey Coal Co.*, 556 U.S. ____, (2009).

The use of sanctions to penalize litigants and economically deter them from pursuing claims (especially when combined with orders purging the record of pleadings necessary for a fair hearing on the merits) is also objectionable in that historically, the right of petition is the primary right, the right peaceably to assemble a subordinate and instrumental right, as if the First Amendment read: "the right of the people peaceably to assemble" in order to "petition the government." United States v. Cruikshank, 92 U.S. 542, 552 (1876), Today, however, the right of peaceable assembly is, in the language of the Court, "cognate to those of free speech and free press and is

equally fundamental. . . . [It] is one that cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions--principles which the Fourteenth Amendment embodies in the general terms of its due process clause. . . . Furthermore, the right of petition has expanded. It is no longer confined to demands for "a redress of grievances," in any accurate meaning of these words, but comprehends demands for an exercise by the Government of its powers in furtherance of the interest and prosperity of the petitioners and of their views on politically contentious matters. See Eastern R.R. Presidents Conf. v. Noerr Motor Freight, 365 U.S. 127 (1961).

The right extends to the "approach of citizens or groups of them to administrative agencies (which are both creatures of the legislature, and arms of the executive) and to courts, the third branch of Government.

Certainly the right to petition extends to all departments of the Government. The right of access to the courts is indeed but one aspect of the right of petition." California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 510 (1972). See also NAACP v. Claiborne

Hardware Co., 458 U.S. 886, 913 -15 (1982); Missouri v. NOW, 620 F.2d 1301 (8th Cir.), cert. denied, 449 U.S. 842 (1980)

The sweep of the first amendment to the Federal constitution precludes the state from enacting any law (or enforcing a Court Rule) abridging the freedom of speech or press. In Bridges v. California, 314 U. S. 252, 263, 86 L. Ed. 192, 62 S. Ct. 190, 159 A. L. R. 1346, the United States Supreme Court declared: "For the First Amendment does not speak equivocally. It prohibits any law `abridging the freedom of speech, or of the press.' It must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving society, will allow." Consequently, there is no presumption of constitutionality of statutes abridging those rights. Near v. Minnesota, 283 U. S. 697, 75 L. Ed. 1357, 51 S. Ct. 625. "Freedoms of speech, press, and religion are entitled to a preferred constitutional position because they are `of the very essence of a scheme of ordered liberty.' They are essential not only to the persons or groups directly concerned but to the entire community. Our whole political and social system depends upon them. Any interference with them is not only an abuse but an obstacle to the correction of other abuses. Because

they are essential, the guarantees of free speech, press, and religion in the First Amendment, though not all constitutional guarantees, are within the 'liberty' which is protected by the due process clause of the Fourteenth Amendment. 764 Adams v. Hinkle. 51 Wn. (2d) 322 P. (2d) 844. See 127 A. L. R. 962. 11 Am. Jur. 1110.

Unreasonable use of the Court's sanctioning powers based upon prejudice and bias which rise to the level of economic deterrence, especially when employed to discourage or punish the assertion of valid factual claims or constitutional arguments, reasonably asserted or not, are the most objectionable and abusive forms of abridgement and chilling⁵ of first amendment liberties and also have the potential to contaminate the judicial process at every level. See *Lamont v. Postmaster General*, 381 U. S. 301 (1965), 18 USC 241⁶.

In this case the prejudice and bias of the trial court in its orders of May 8, and its targeting of West as an aggressor when he had been the

⁵the Act, as construed and applied, is unconstitutional, since it imposes on the addressee an affirmative obligation which amounts to an unconstitutional limitation of his rights under the First Amendment

⁶If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State,...in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same;...They shall be fined under this title or imprisoned not more than ten years, or both;

victim of a criminal assault and battery by the Law firm representing WACO violates the neutrality and due process requirements set forth in Marshal v. Jerico, 446 US 238 (1980) and and Mathews v. Eldridge, 424 US 319 (1976).

Appellant West formally objects to all of the findings of fact and conclusions of law entered by the Court on March 27 and May 8 (CP 118-119, 166- 176, 177-178), and the orders and judgments issued on these dates.

The findings and conclusions objected to are as follows:

1. Plaintiff's Declaration re Continuing Fraud by WACO Counsel, dated March 30, 2009 and the Motion for Reconsideration and CR 11 Sanctions in subjoined declaration of Arthur West filed on April 3, 2009 are groundless and baseless. They are not supported by fact or law, nor any reasonable inquiry thereto.

2. Plaintiff's allegations of fraud by opposing counsel are false and constitute serious and inappropriate conduct. They were made for the purpose of harassing opposing counsel and were unwarranted.

3. Plaintiff's history reveals a series of findings by the Olympia Hearing Examiner, and Supreme Court as to his abusive litigation tactics. When decisions or positions are taken contrary to Mr. West's views, Mr. West has engaged in a pattern of accusing adversaries, particularly Mr. Myers, with misconduct. He has also demonstrated a pattern of suing judges who render adverse decisions against him and making unfounded, groundless accusations against the integrity of judicial officers. West has persisted in making such groundless allegations despite warnings from this Court and previous imposition of \$500 sanctions by the Supreme Court in another matter.

4. Plaintiff's accusations in this matter are not well grounded in fact or supported by any evidence. The accusation that Mr. Myers committed fraud or deliberately misrepresented the history of WACO is not well grounded in fact. West has failed to point out any discrepancy between the history of WACO as related in WACO's briefs or oral argument and his own recitation of WACO's history.

5. Defendant WACO, upon receipt of West's Declaration re Continuing Fraud and Motion for Reconsideration, immediately provided notice to plaintiff by letter dated April 3, 2009 that his declaration violated CR 11 and gave West an opportunity to support his contentions or withdraw the same. West failed to respond to WACO's letter and did not withdraw its allegations. WACO had no other recourse except to seek relief from the Court by moving to strike West's allegations and Declaration.

6. Plaintiff's Motion for Reconsideration and Declaration re Continuing Fraud have forced Defendant WACO to incur substantial expense to rebut the baseless allegations made therein. Because Mr. West persists in abusive litigation tactics, a

severe sanction under CR 11 is necessary to curb such tactics in the future. Sanctions of \$2,000 plus an award of WACO's attorney's fees incurred in response to these filings are appropriate and necessary to deter future violations of CR 11 by Mr. West. Lesser sanctions have proven to be ineffective and ~~have emboldened Mr. West in his pattern of misconduct.~~ ^{the}

7. WACO reasonably incurred \$ 2029⁰⁰ in attorney's fees to respond to the plaintiff's Declaration re Continuing Fraud and Motion for Reconsideration. Plaintiff could have avoided such expense by withdrawing his allegations as requested in counsel's letter of April 3, 2008.

8. The Court's findings were further set forth in its oral decision in this matter on April 24, 2009. A copy of the transcript of the Court's ruling is attached hereto and is incorporated herein by this reference as though fully set forth.

8. The court's decision to deny the motion for Reconsideration and Motion to Amend and to grant WACO's Motion to Strike and for CR 11 Sanctions is a final disposition of all matters concerning plaintiff's claims against WACO. WACO may be prejudiced by delay in its ability to collect sanctions as ordered by the Court. Moreover, the issues raised concerning the scope of the Open Public Meetings Act are purely legal in nature and are ripe for appellate review if desired by the plaintiff. There is no just reason for delay of entry of judgment on these claims and the court directs entry of a final judgment as to plaintiff's claims concerning Defendant WACO pursuant to CR 54(b).

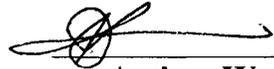
Plaintiff objects to each and every one of the findings and asserts they are unsupported in fact or law and demonstrate extreme prejudice.

The standard of review is de novo for issues of law, substantial evidence for factual matters, and de novo and consistency with precedent and law in regard to mixed issues, and it is evident that the findings were not consistent with the evidence, the rulings were not based upon substantial evidence or consistent with existing law, and the Court's determinations do not meet the standard of review in this case.

CONCLUSION

For the foregoing reasons, the Court's ruling that WACO is not the functional equivalent of an agency subject to the OPMA and that it is not required to merge with WSAC should be reversed, and the sanctions ordered by the Court based upon its biased view that plaintiff was similar or identical to Adolph Hitler and Joe McCarthy, and based upon a record that it had purged of arguments contrary to its determination that the Association was a private entity immune from the Sunshine laws should be vacated., and all other rulings in regard to WACO should be annulled.

I certify under penalty of law that I served the defendants by mailing
a copy to their address of record on May 7, 2010.



Arthur West

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