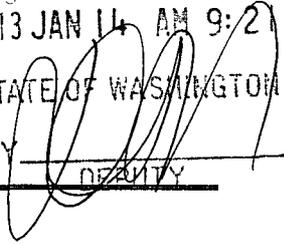


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DIVISION II

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STATE OF WASHINGTON

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

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION,

Appellant,

v.

MARGARITA MENDOZA DE SUGIYAMA,

Respondent.

BRIEF OF APPELLANT

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I. INTRODUCTION

In a case of first impression, this Court is asked to interpret the litigation exemption of the Public Records Act (PRA) and harmonize it with discovery rules lawfully established by the courts.

Under the PRA's litigation exemption "records that are relevant to a controversy to which an agency is a party, but which . . . would not be available . . . under the rules of pretrial discovery . . . are exempt from disclosure." RCW 42.56.290. Thus, the PRA explicitly incorporates and requires application of discovery rules; rules promulgated and enforced by courts.

Here, the lower court erred when it failed to exempt records from disclosure, after a superior court had, by pre-trial discovery order, made the records undiscoverable by the requestor. In reaching its decision, the lower court did not apply the plain language of the litigation exemption statute, unnecessarily reading in unrelated PRA language, thereby failing to harmonize the PRA and court rules. The court's interpretation also violates separation of powers.

Because the Public Records Act should not be allowed to deprive superior courts of their ability to enforce discovery orders or deprive state agencies from the benefit of discovery rules afforded other parties, this Court should overturn the lower court's Order on reconsideration. Thus,

reinstating the lower court's original order granting the Washington State Department of Transportation's (WSDOT) request to apply the litigation exemption to records a superior court had protected from discovery. Reinstating the lower court's decision granting exemption preserves a superior court's authority to establish discovery rules, as well as harmonizes the PRA and civil discovery rules. The litigation exemption is narrowly tailored, protects court and government interests by preserving the effect of civil discovery orders, and protects the public interest in the efficient administration of justice.

II. ASSIGNMENTS OF ERROR

The lower court erred when it failed to grant WSDOT's request to enjoin disclosure of public records under the RCW 42.56.290 litigation exemption to the PRA when those records had been protected from discovery by a pre-trial discovery order issued by a superior court in a still-pending civil case.

III. STATEMENT OF THE ISSUES

1. Did the lower court err when it failed to apply the plain language of RCW 42.56.290 when that language has been ruled unambiguous by the Supreme Court?
2. Did the lower court erroneously refuse to apply the exemption in RCW 42.56.290 to records a superior court had protected from discovery under Civil Rule 26(b)(1)(C)?

3. Did the lower court erroneously interpret an amendment to RCW 42.56.080 to have modified the plain language of RCW 42.56.290, where neither the test nor the legislative history evidences any legislative intent to modify RCW 42.56.290?

IV. STATEMENT OF THE CASE

A. Factual History

1. Employment civil litigation leading to issuance of the discovery order

Ms. Mendoza de Sugiyama is suing WSDOT for purported employment discrimination. Clerk's Papers (CP) at 26. During the discovery period, Ms. Mendoza de Sugiyama, as a plaintiff, made a lengthy discovery request to WSDOT. CP at 32–81. Due to the breadth of information sought and the definition of “electronically stored information” Plaintiff provided, WSDOT's counsel conferred with Plaintiff's counsel. CP at 27, 36.

WSDOT and Ms. Mendoza de Sugiyama agreed to initially limit the number of e-mail accounts to be searched to 12 individuals, including 10 WSDOT employees and 2 non-WSDOT employees. CP at 27. Still concerned with the breadth, cost, and volume of the discovery sought, WSDOT's attorney again proposed an electronic discovery plan. *Id.* When Ms. Mendoza de Sugiyama asked for the volume of e-mails exchanged between the 12 identified individuals, WSDOT identified over

174,000 potentially responsive e-mails, totaling more than 36 gigabytes of data. CP at 28, 82–87.

As it would have to review each of the 174,000 records before release, WSDOT again attempted to work with Ms. Mendoza de Sugiyama to develop a discovery plan. CP at 28–29. Ms. Mendoza de Sugiyama refused to reduce the scope of her discovery request. *Id.* WSDOT then filed a Motion for a CR 26(C) Protective Order. CP at 88–98. Ms. Mendoza de Sugiyama filed a motion to compel WSDOT to turn over all 174,000 e-mails collected. CP at 99–113.

On April 27, 2012, Thurston County Superior Court Judge Thomas McPhee (hereinafter “employment court”) heard the competing discovery motions. CP at 115–153. At that hearing, Judge McPhee ruled:

[T]he act of simply turning over all [174,000] emails and letting the party seeking discovery do the filtering is not something that a public agency can or should agree to, and it is not something that a court should countenance. In this type of situation, there needs to be an opportunity for the responding party, the public agency, to filter the very broad request, all e-mails, to identify any e-mail that would be relevant to the case and then produce it.

Now, there are two ways to do that, either a collaborative approach or by much more narrowly defined requests for production. The ball is in your court in that regard, and you can approach it as you choose. But at this time your motion to compel is denied.

CP at 149 l. 23–150 l. 13. While the employment court did not specifically rule on WSDOT’s motion, the court’s denial of the motion to compel protected the documents from discovery, thereby constructively resulting in a protective order. *See* CP at 115–153.

On May 29, 2012, Ms. Mendoza de Sugiyama filed a Motion for Reconsideration, asking the employment court to overturn the April 27, 2012 ruling. CP at 159–175. On June 15, 2012, the employment court denied the Motion for Reconsideration, continuing to protect the e-mails from discovery. CP at 185 ll. 12–14.

2. Public records request

On April 28, 2012, the day after the employment court issued its order protecting WSDOT’s e-mail records from discovery, Ms. Mendoza de Sugiyama filed a public records request for the very same e-mails. CP at 194-195. Rather than narrowing her discovery request or working with WSDOT to identify search terms as ordered, Ms. Mendoza de Sugiyama attempted to circumvent the employment court’s order by filing a public records request. CP at 195. In her public records request she sought:

[A]ll documents assembled by Joanna Jones, Senior Information Technology Specialist, that resulted from the e-discovery request for assistance from Assistant Attorney General Kate Battuello in connection to my lawsuit. Specifically I am requesting the approximate[ly] 174,754

emails Joanna Jones testified she has stored from searches she conducted from email files

Id.

WSDOT responded to the public records request (PDR-12-0707) by notifying Ms. Mendoza de Sugiyama that it would take approximately 45 days for WSDOT to produce the first phase of records. CP at 196-198. While weighing its options, to ensure compliance with the PRA, WSDOT made the first installment of records available to Ms. Mendoza de Sugiyama on June 18, 2012. CP at 313, ll. 2-4.

B. Procedural History

To protect its ability to have the employment case pre-trial discovery order enforced WSDOT filed a complaint for injunctive and declaratory relief.¹ CP at 3-7. In its complaint, WSDOT asked the court to determine that the litigation exemption contained in RCW 42.56.290 applied to the records sought by Ms. Mendoza de Sugiyama, and therefore the records were exempt from disclosure. CP at 3-7, 199-203. On July 25, 2012, WSDOT filed a Motion for Declaratory and Injunctive Relief. CP at 8-9. WSDOT argued that the protective order issued in the

¹ Such a complaint was approved by the Supreme Court in *Soter v. Cowles Pub. Co.*, 162 Wn.2d 716, 752-55, 174 P.3d 60 (2007), and by this Court in *City of Lakewood v. Koenig*, 160 Wn. App. 883, 886 n.2, 250 P.3d 113 (2011). The Supreme Court has recognized the importance of allowing an agency to quickly seek a judicial determination whether requested records are subject to disclosure. *Franklin County Sheriff's Office v. Parmelee*, 175 Wn.2d 476, 480, 285 P.3d 67 (2012).

pending employment case made the records unavailable to Ms. Mendoza de Sugiyama under pre-trial discovery rules and therefore the records were exempt from disclosure under the litigation exemption contained in RCW 42.56.290. CP at 10–198. WSDOT’s complaint happened to be assigned to the judge presiding over the employment case, but the cases were not consolidated. Verbatim Report of Proceedings (VRP) (June 29, 2012) at 3 ll. 7–16.

The lower court heard arguments on WSDOT’s motion on June 29, 2012. VRP (June 29, 2012) at 1–18. The lower court granted both injunctive and declaratory relief, finding that the exemption provided in RCW 42.56.290 applied to records that were found to be undiscoverable under a discovery protective order. *Id.* Specifically, the lower court ruled:

Records not available to a party under the rules of pretrial discovery for causes pending in the superior courts are exempt from disclosure under the PRA. That was and remains the law both before and after *O’Connor*. . . .^[2]

In her pretrial request Mendoza de Sugiyama is admittedly seeking e-mails that are not available to her under the rules of pretrial discovery. An order directing the department to produce those records pursuant to the Public Records Act would nullify my order in the employment litigation. Here, DOT seeks an injunction under section 540, and they clearly have that path available to them. . . .

I conclude that’s a vital government function, and where this process where a court has ordered that the records

² *O’Connor v. Wash. State. Dep’t of Social and Health Services*, 143 Wn.2d 895, 25 P.3d 426, 432 (2001).

sought under the Public Records Act are not available under the rules of pre-trial discovery, it seems to me that Section 290 does apply and Section 540 standards have been satisfied, and therefore I'm going to grant the department's request for an injunction.

VRP (June 29, 2012) at 15 l. 14–18 l. 6.

Ms. Mendoza de Sugiyama sought reconsideration of the June 29, 2012 oral ruling and order. CP at 292–298. She argued that the ruling ran contrary to the PRA and resulted in unanticipated and extraordinary results. *Id.*

After a hearing on the motion for reconsideration, the court overturned its June 29 ruling, ultimately denying WSDOT's request for injunctive and declaratory relief. VRP (August 3, 2012) at 1–3. The court stated:

My protective order in the employment case was based upon my conclusion that the request for production was unduly burdensome and expensive if DOT was put to the task and expense, in excess of a million dollars, of examining each e-mail and attachment, when the cooperation of Mendoza de Sugiyama could significantly ease that burden, as addressed by the *Sedona* protocols.

The second unique factor in this case is that the PRA request does not merely mirror the discovery request that is the subject of my protective order in the employment case, it incorporates it. . . . So the issue is squarely presented. May a litigant in a public agency lawsuit circumvent a court order protecting records from discovery by requesting the same documents in a PRA request? . . .

To decide this issue, I rely in part on a part of the law not cited or discussed by either party. CR 26 protective orders may be based upon undue burden and expense. The PRA does not specifically mention either concept. The PRA deals with overbroad requests. CR 26 does not mention this concept. . . .

In 2005, the legislature amended the PRA, RCW 42.56.080, to provide that “agencies shall not deny a request for identifiable public records solely on the basis that the request is overbroad.” So that concept has been removed from the Public Records Act. Thus the protection under CR 26 from undue burden and expense is, in my opinion, not available under the Public Records Act. . . .

In the light of the clear direction of the legislature in the 2005 amendment to RCW 42.56.080, I conclude that the interest of the courts and the citizens of the state in maintaining control of litigation discovery in the employment case, and other cases like it, does not trump the mandate of the PRA.

VRP (August 3, 2012) at 12 l. 6–15 l. 20.

WSDOT timely appealed the lower court’s order on reconsideration. CP at 335–355. Recognizing that this is an area of emerging law and that WSDOT would expend a large amount of public funds responding to the public records request, the lower court agreed to stay application of the Order on Reconsideration and maintain the injunction pending appeal. VRP (August 3, 2012) at 16 l. 21–17 l. 12.

V. ARGUMENT

A. Standards of Review

Judicial review under the PRA is de novo, including review of a decision whether to grant an injunction under the PRA. *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 398, 407, 259 P.3d 190 (2011); *Yakima v. Yakima Herald-Republic*, 170 Wn.2d 775, 791, 246 P.3d 768 (2011); RCW 42.56.550(3); *King County Dep't of Adult & Juvenile Det. v. Parmelee*, 162 Wn. App. 337, 351, 254 P.3d 927 (2011), review denied, 175 Wn.2d 1006 (2012), citing *Dragonslayer, Inc. v. Wash. State Gambling Comm'n*, 139 Wn. App. 433, 441, 161 P.3d 428 (2007).

This Court also reviews de novo the extent to which an exemption applies to any or all of the requested documents. *Soter v. Cowles Pub. Co.*, 162 Wn.2d 716, 731, 174 P.3d 60 (2007); RCW 42.56.550(3). The burden is on the agency to establish that a particular exemption applies. *Id.* at 731; RCW 42.56.550(1).

B. The Plain Language of RCW 42.56.290 Exempts From Public Disclosure Records That are Protected From Pretrial Discovery in a Pending Superior Court Civil Case

The PRA authorizes a court to enjoin disclosure of protected information. RCW 42.56.540. The statute authorizes a state agency to obtain a superior court judgment that a particular record is or is not subject to disclosure under the PRA. *Soter*, 162 Wn.2d at 723. To obtain an

injunction under RCW 42.56.540, WSDOT needed to demonstrate that (a) a specific exemption applied to the records, and (b) disclosure would not be in the public interest and would substantially and irreparably damage vital government functions. *Yakima*, 170 Wn.2d at 808, citing *Soter*, 162 Wn.2d at 757; RCW 42.56.540. Only the applicability of the litigation exemption is at issue on appeal.

WSDOT claimed that the exemption in RCW 42.56.290, often called the “litigation exemption,” applied to records ruled undiscoverable in a pending pre-trial civil discovery order. RCW 42.56.290 states:

Records that are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts are exempt from disclosure under this chapter.

Proper application of RCW 42.56.290 required the lower court to determine the scope of the exemption by reference to CR 26. *O'Connor v. Wash. State. Dep't Social and Health Services*, 143 Wn.2d 895, 907, 25 P.3d 426, 432 (2001).³ The lower court initially determined correctly that “where a court has ordered that the records sought under the Public Records Act are not available under the rules of pretrial discovery” the litigation exemption applies and the records are exempt from disclosure.

³ *O'Connor* addresses former RCW 42.17.310(1)(j), which was recodified in 2005, without substantive change, as RCW 42.56.290. Laws of 1995, ch. 274, §§ 401, 409.

VRP (June 29, 2012) at 18 ll. 1–6. The lower court erred when, upon reconsideration, it determined that because RCW 42.56.080 states that an agency “shall not deny a request for identifiable public records solely on the basis that the request is overbroad” . . . the protection under CR 26[(b)(1)(c)] from undue burden and expense is in my opinion, not available” under RCW 42.56.290. VRP (Aug. 3, 2012) at 14 l. 24–15 l. 5.

The language in RCW 42.56.290 is unambiguous — records not discoverable under discovery rules in pending civil litigation adjudicated in superior court are exempt from PRA disclosure. *O’Connor*, 143 Wn.2d at 906, 912 (although the exception is “awkwardly worded,” it is not ambiguous); *Kleven v. King County Prosecutor*, 112 Wn. App. 18, 24, 53 P.3d 516 (2002).⁴ The discovery rules referred to in RCW 42.56.290 are those set forth in the civil rules for superior court, CR 26. *O’Connor*, 143 Wn.2d at 907; *Kleven*, 112 Wn. App. at 24. Under this plain reading, “records relevant to a controversy to which an agency is a party are exempt from public inspection and copying under the Public Records Act if those records would not be available to another party under superior court rules of pretrial discovery.” *O’Connor*, 143 Wn.2d at 912.

⁴ If a statute is unambiguous its meaning is derived from the plain language of the statute. *West v. Thurston County*, 168 Wn. App. 162, 183, 275 P.3d 1200, 1212 (2012). A statute is not ambiguous simply because “different interpretations are conceivable.” *Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 Wn.2d 224, 239–40, 59 P.3d 655 (2002).

Accordingly, where, as here, a superior court issues a proper protective order under the civil discovery rules (CR 26), the records subject to that order are “not available to another party under the superior court rules of pretrial discovery,” and therefore are exempt from a public records request while the civil discovery order is in effect.

C. The Lower Court Erred When it Denied WSDOT’s Request to Enjoin Disclosure of Public Records That had Been Protected From Pretrial Discovery in a Pending Superior Court Civil Case, Thereby Failing to Give Court Rules Their Full Force and Effect

In Ms. Mendoza de Sugiyama’s civil employment case, the employment court determined that her discovery request for a specific set of documents was overly broad and too burdensome. CP at 147–150. The employment court therefore denied Plaintiff Mendoza de Sugiyama’s Motion to Compel, exercising its authority specifically granted under CR 26(b)(1)(C). *Id.* CR 26(b)(1)(C) grants a trial court broad discretion to issue a protective order to limit discovery to protect a party or person from unduly burdensome or expensive discovery requests. *Kramer v. J.I. Case Mfg. Co.*, 62 Wn. App. 544, 556, 815 P.2d 798 (1991), citing *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36, 104 S. Ct. 2199, 81 L. Ed. 2d 17 (1984) (“The unique character of the discovery process requires that the trial court have substantial latitude to fashion protective orders.”). *Accord*

A.G. v. Corp. of Catholic Archbishop of Seattle, 162 Wn. App. 16, 21, 271 P.3d 249 (2011).

The propriety of the protective order is not at issue in this appeal. The employment court properly exercised its discretion in granting the discovery order, and the discovery order made the records “not . . . available to another party under the rules of pretrial discovery” as set out in RCW 42.56.290. Therefore, the plain language of RCW 42.56.290 applies to the discovery order entered in Ms. Mendoza de Sugiyama’s employment case, making the records requested exempt under the PRA. First, the records sought are “relevant to a controversy to which” WSDOT “is a party,” as they were collected in response to a discovery request made in an active employment discrimination case against WSDOT. RCW 42.56.290; CP at 26–86, 115–153. Second, the records were not available as “pretrial discovery for causes pending in the superior courts” because of the protective order. RCW 42.56.290; CP at 155–158. Specifically, the employment court, in its April 27, 2012 oral ruling determined that under CR 26 the records were not discoverable by Plaintiff Mendoza de Sugiyama. CP at 148, 161.

The court in *O’Connor* was explicit: a plain reading of RCW 42.56.290 provides that records unavailable for discovery in civil litigation are exempt from disclosure under the Public Records Act.

O'Connor, 143 Wn.2d at 907. Honoring the plain reading of RCW 42.56.290 recognized in *O'Connor* and *Kleven*—that records unavailable for discovery in civil litigation are exempt from disclosure under the Public Records Act—also avoids a conflict between the Civil Rules and the PRA. As explained above, courts have broad discretion to “manage the discovery process so as to implement full disclosure of relevant information while protecting against harmful side effects.” *Penberthy Electromelt Int'l, Inc. v. U.S. Gypsum Co.*, 38 Wn. App. 514, 521, 686 P.2d 1138 (1984), citing *Rhinehart v. The Seattle Times Co.*, 98 Wn.2d 226, 654 P.2d 673 (1982), *aff'd sub nom. Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36, 104 S. Ct. 2199, 81 L. Ed. 2d 17 (1984). Protective orders under the Civil Rules are “meant to protect the health and integrity of the discovery process, as much as protect the parties who participate in it.” *O'Connor*, 143 Wn.2d at 905. Where, as here, a party to litigation responds to a protective order by filing a public records request for records held undiscoverable by the protective order, the integrity of the discovery process is jeopardized, the authority and ability of all superior courts to control discovery matters is superseded at the whim of any party litigating against a public agency, and the ability of the courts to control their own proceedings generally under the Civil Rules is compromised.

The Supreme Court adopted the Civil Rules pursuant to the judicial power vested in the courts by article IV of the Washington Constitution, and confirmed by RCW 2.04.190. *City of Fircrest v. Jensen*, 158 Wn.2d 384, 394, 143 P.3d 776 (2006). The judicial power includes the power to govern court procedures and to adopt rules of procedure. *Id.* When a court rule and a statute conflict, the court will attempt to harmonize them, giving effect to both. *Id.* But when there is an irreconcilable conflict between a court rule and a statute concerning a matter related to the court's inherent power, the court rule will prevail. *Id.*, citing *Washington State Council of County & City Employees v. Hahn*, 151 Wn.2d 163, 168-69, 86 P.3d 774 (2004). *Accord Putman v. Wenatchee Valley Medical Center, P.S.*, 166 Wn.2d 974, 980, 216 P.3d (2009).

Reading RCW 42.56.290 in a way that allows an end run around a valid protective order raises exactly that kind of conflict, by displacing the protective order.⁵ As explained above, however, reading the statute in this manner, as the lower court erroneously did here, does not comport with the plain language of the statute.

⁵ Constitutionally, this conflict is a violation of separation of powers, which occurs when one branch of government "threatens the independence or integrity or invades the prerogatives" of another branch. *Accord Putman v. Wenatchee Valley Medical Center, P.S.*, 166 Wn.2d 974 (980) 216 P.3d (2009).

D. The Trial Court Erred by Reading a 2005 Amendment to Former RCW 42.17.270 (Now RCW 42.56.080) as Having Limited the Plain Language of RCW 42.56.290

The trial court erroneously relied on a 2005 amendment to former RCW 42.17.270 (recodified as RCW 42.56.080) to reject the plain reading of RCW 42.56.290 articulated in *O'Connor* and *Kleven*. The 2005 amendment added a sentence to former RCW 42.17.270 providing that agencies “shall not deny a request for identifiable public records solely on the basis that the request is overbroad.” Laws of 2005, ch. 483, § 1. The amendment was a legislative response to a holding in *Hangartner v. City of Seattle*, 151 Wn.2d 439, 448, 90 P.3d 26 (2004), that an agency need not comply with an overbroad public records request. See Final Bill Report on 2SHB 1758, 59th Leg., Reg. Sess. (Wash. 2005) (available at <http://apps.leg.wa.gov/documents/billdocs/2005-06/Pdf/Bill%20Reports/House/1758-S2.FBR.pdf>).

In *Hangartner*, an individual (Mr. Hangartner) and a citizens group each filed public records requests regarding Seattle’s proposed light rail system. Hangartner sought specific documents, but the citizens group asked to inspect “all books, records, documents of every kind and the physical properties of the Elevated Transportation Company.” *Hangartner*, 151 Wn.2d at 445 (emphasis in original). Before examining any specific exemption claimed by the City in response to the requests, the

court determined that the citizens group's request was invalid because it was overbroad. *Id.* at 448. While the court went on to discuss the litigation exemption, this discussion was entirely independent of its discussion regarding the treatment of overly broad requests. *Id.* at 448-450. In its analysis of the "litigation exemption" now codified in RCW 42.56.290, the court examined whether specific documents requested by Mr. Hangartner fell within the litigation exemption. *Id.* at 449-453. The court held that the litigation "exemption exempts documents that are 'relevant to a controversy' and unobtainable through pretrial discovery, which will include some documents also covered by the attorney-client privilege and some documents that are not covered by the attorney-client privilege." *Id.* at 452.

The *Hangartner* court did not apply its holding regarding overly broad requests to the "litigation exemption," and in responding to that decision, the 2005 Legislature did not purport to amend or address the "litigation exemption" when it amended former RCW 42.17.270. There is no cross reference to the "litigation exemption" in the 2005 amendment, and there is no underlying interaction with the "litigation exemption" in *Hangartner* that would suggest an implied cross reference. There is no indication at all that the 2005 amendment sought to change the scope or application of the "litigation exemption" in any way.

Accordingly, the superior court's ruling that the "litigation exemption" in RCW 42.56.290 is limited by RCW 42.56.080 has no foundation in either the language or the legislative history of RCW 42.56.080. The exemption now codified in RCW 42.56.290 was not altered by the 2005 amendment of former RCW 42.17.270.

There is no language in RCW 42.56.290 limiting application of the litigation exemption in the manner adopted by the lower court. Applying RCW 42.56.290, the Supreme Court held broadly and definitively that "[a]ny materials that would not be discoverable in the context of a controversy under the civil rules of pretrial discovery are also exempt from public disclosure. The exemption from public disclosure 'relies on the rules of pretrial discovery to define the parameters'" *Soter*, 162 Wn.2d at 731. As the lower court itself noted in this case, "the power of a superior court to declare records 'not available' is broader than determining" records are privileged. VRP (June 29, 2012) at 15 ll. 21-24.

Ruling as it did, the lower court in effect judicially amended RCW 42.56.290 to write in a limit on the scope of the litigation exemption that the Legislature did not enact and did not intend. Only the Legislature, and not the courts, can amend or expand its definition of a public record. *West v. Thurston County*, 168 Wn. App. 162, 184-185, 275 P.3d 1200 (2012). The lower court erred when it ignored the Legislature's plain

language in RCW 42.56.290 and denied WSDOT's injunction by concluding that the public policy of the PRA trumps the Legislature's explicit incorporation of the civil discovery rules into RCW 42.56.290; violating the "well-settled rule that 'so long as the language used [in the exemption] is unambiguous, a departure from its natural meaning is not justified by any consideration of its consequences, or public policy.'" *DeLong v. Parmelee*, 157 Wn. App. 119, 146, 236 P.3d 936 (2010).

VI. CONCLUSION

This Court should reverse the lower court's ruling that RCW 42.56.080 trumps the civil discovery rules in applying the litigation exemption in RCW 42.56.290, hold that records deemed undiscoverable in a valid protective order in a pending superior court civil case are exempt from public disclosure under the RCW 42.56.290, and vacate the lower court's order on reconsideration.

RESPECTFULLY SUBMITTED this 11th day of January, 2013.

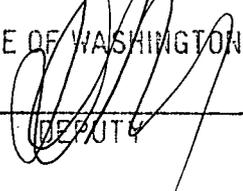

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STATE OF WASHINGTON

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

WASHINGTON STATE
DEPARTMENT OF
TRANSPORTATION,

Appellant,

v.

MARGARITA MENDOZA DE
SUGIYAMA,

Respondent.

CERTIFICATE OF
SERVICE

I, MAUDELLE PADILLA, an employee of the Transportation & Public Construction Division of the Office of the Attorney General of Washington, certify that on the date indicated below, true and correct copies of the Brief of Appellant and this Certificate of Service were served on the following parties via electronic mail pursuant to an E-Service Agreement between the parties:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 11TH day of January, 2013, at Tumwater, Washington.


MAUELLE PADILLA
Legal Assistant