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No. 45508-1-II

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

**ARTHUR WEST,
appellant,**

Vs.

**ESSB 5034 WORK GROUP, et al
respondents**

APPELLANT WEST'S OPENING BRIEF

**On appeal from the rulings of
The Honorable Erik Price**

**Arthur West
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Olympia, Washington, 98501**

Table of Contents.....1

Table of Authorities.....2-4

Summary5-6

Assignments of Error.....7

Statement of the case.....8-12

Argument13-29

ASSIGNMENTS OF ERROR

I The Court erred in failing to find that the ESSB 5034 Work Group was a “public agency” created pursuant to statute (ESSB 5034) directly subject to the broad remedial intent of the Open Public Meetings Act...

II The Court erred in failing to find that the ESSB 5034 Work Group was a sub-agency, or a committee acting on behalf of a governing body of a public agency, or otherwise subject to the broad remedial intent of the Open Public Meetings Act

III The Court erred in failing to rule that the secret actions of the ESSB 5034 Work Group violated the OPMA and undermined the legitimacy of the Workgroup’s recommendations and the rules adopted pursuant to the Workgroup’s recommendations.

CONCLUSION-.....29-30

OPAL v. Adams County,
128 Wn.2d 869, 913 P.2d 793, (1996).....25

Parrilla v. King County 138 Wn. App. 427, (2007)..... 12

Raton Public Service Co. v. Hobbes,
76 N.M. 535, 417 P.2d 32 (1966).....15

Refai v. Central Washington University,
742 P.2d 137 (Wash. Ct. App. 1987).....21

Salmon for All v. Department of Fisheries,
118 Wn. 2d 270, 821 P.2d 1211 (1991).....28

State v. McCormack,
117 Wn.2d 141, 143, 812 P.2d 483 (1991)..... 12

Town of Palm Beach v. Gradison, 296 So. 2d 473, (1974).....15

United States v. Oregon, 699 F.Supp. 1456 (D. Or. 1988).....28

Young v. Key Pharmaceuticals, Inc.,
112 Wn.2d 216, 225-26, 770 P.2d 182 (1989).....26

STATUTES

RCW 42.30.010.....18, 19

RCW 42.30.020 (1)(a).....19

RCW 42.30.020 (1)(c).....19

RCW 42.30.020 (2))... ..20

RCW 42.30.060(1).....25

TABLE OF AUTHORITIES

Anaya v. Graham, 89 Wn. App. 588, 592, 950 P.2d 16 (1998).....	15
Board of Public Instruction v. Doran, 224 So.2d 693 (1969).....	23
Bogert v. Allentown Housing Authority, 426 Pa. 151, 231 A.2d 147 (1967).....	16
Cathcart v. Anderson, 85 Wn.2d 102, 107 (1975).....	19, 23
Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 106 5. Ct. 2548 (1986).....	26
Clark v. City of Lakewood, 259 F.3d 996 (9th Cir. 2001).....	15, 21, 28
Equitable Shipyards, Inc. v. State, 93 Wn.2d 465, 482, 611 P.2d 396 (1980).....	17
Eugster v. City of Spokane, 110 Wn. App. 212 , 39 P.3d 380 (2002).....	17
Glick v. Trustees of Free Public Library 2 N.J. 579, 67 A.2d 463 (1949).....	16
Mason County. v. PERC, 54 Wn. App. 36, 771 P.2d 1185, (1989).....	19
Mead Sch. Dist. No. 354 v. Mead Educ. Ass'n, 85 Wn.2d 140, 145, 530 P.2d 302 (1975).....	18
Miller v. City of Tacoma, 138 Wn.2d 318, at 324, (1999).....	18

RCW 42.30.120.....20
RCW 42.30.910.....17, 18
Laws of 1983, ch. 155, § 1.....20

CONSTITUTIONAL PROVISIONS

Article III Section 21 of the
Constitution of the State of Washington.....22

ARTICLES

1971 Op. Atty. Gen. No. 33, at 2.....14

I. SUMMARY OF ARGUMENT

This is an action to compel compliance with the Open Public Meetings Act (OPMA) on the part of a work group (or committee) undeniably created by the Liquor Control Board “pursuant” to the mandatory language of ESSB 5034, section 141(2)a, which compelled the Washington State Liquor Control Board (LCB) to work with the Department of Health and the Department of Revenue to develop recommendations regarding the interaction of I-502 with the existing Medical Marijuana laws.

In light of the of the strong language, broad remedial intent and the all-encompassing terms of the definitions of the OPMA contained in RCW 42.30.020, and the undisputed facts of this case, it is apparent that the entity created by the Liquor Control Board in response to the mandate of ESSB 5034 section 141(2)a was a public agency subject to the Open Public Meetings Act.

Since the ESSB 5034 workgroup was created by the Board as a direct result of the mandatory terms of statute, ESSB 5034, and since it is either a public agency or, alternatively, a committee or sub-agency charged with the conduct of the public’s business, its deliberations

were required to be conducted openly, publicly, and in conformity with the Sunshine laws of the State of Washington.

While the defendants attempt to deny the obvious, (that the workgroup was created pursuant to the statute requiring the creation of the workgroup) and have zealously attempted to argue that the activities of the workgroup should be excluded from the definition of a public entity subject to the Open Public Meetings Act, the clear letter of the law defining “public agency”, “sub agency” and “committee” and the broad remedial intent of the Open Public Meetings Act unambiguously sweeps the ESSB 5034 work group within its ambit.

It is crucial that policy making groups like the ESSB 5034 work group operate in the light of the sunshine laws so that the people may have confidence that the laws that their representatives enact have not been tainted by improper political machinations or improper federal commandeering behind closed doors.

II. ASSIGNMENT OF ERROR

ASSIGNMENT OF ERROR I

I. The Court erred in failing to find that the ESSB 5034 Work Group was a “public agency” created pursuant to law (ESSB 5034 141(2)a) directly subject to the broad remedial intent of the Open Public Meetings Act.

ISSUE PERTAINING TO ASSIGNMENT OF ERROR I

1. Did the Court err in failing to find that the ESSB Workgroup was...any state board, commission, committee, department...or other state agency... created by or pursuant to statute? Yes

ASSIGNMENT OF ERROR II

II. The Court erred in failing to find that the ESSB 5034 Work Group was a sub-agency, or a committee acting on behalf of a governing body of a public agency, or otherwise subject to the broad remedial intent of the Open Public Meetings Act.

ISSUES PERTAINING TO ASSIGNMENT OF ERROR II

1. Did the Court err in failing to find that the ESSB Workgroup was...a sub-agency of a public agency... created by or pursuant to statute? Yes
2. Did the Court err in failing to find that the ESSB Workgroup was a committee acting on behalf of a governing body of a public agency? Yes

ASSIGNMENT OF ERROR III

III. The Court erred in failing to rule that the secret actions of the ESSB 5034 Work Group violated the Open Public Meetings Act and undermined the legitimacy of the Workgroup’s recommendations and the rules adopted pursuant to the Workgroup’s recommendations.

ISSUES PERTAINING TO ASSIGNMENT OF ERROR III

1. Did the Court err in failing to find that the secret meetings of the Work group violated the OPMA? Yes
2. Did the Court err in failing to rule in accord with Clark v. City of Lakewood that the Work Group’s violations of the OPMA undermined the legitimacy of both the Workgroup’s recommendations and the rules adopted pursuant to the Workgroup’s recommendations? Yes

III. STATEMENT OF THE CASE

1. In the waning days of the 2012 legislative session the Legislature precipitously and surreptitiously enacted ESSB 5034 section 141(2)a as a “rider” or budget proviso to the general budget. (CP 11-12)

2. Pursuant to this express statutory direction, the ESSB 5034 work group was formed (transcript of January 3, Page 16, line 15-25, CP 11-12)

3. On September 10, 2013 the work group presented a progress report to the House Government Accountability & Oversight Committee, and distributed an update, which appears at (CP 8-14)

4. This update included a list of the ESSB 5034 141(2) a work group members, (CP 10) a copy of the text of the budget proviso (CP 11-12), and a timeline with meetings scheduled July 15, August 26, September 9, September 23, October 7, October 14, October 21, November 11, November 21-22, and an unspecified date or dates in December. (CP 13-14)

5. At the Sundial after the September 10 hearing, plaintiff learned from Jordan Shraeder of the TNT that the work group had denied the media access to its meetings. (CP 5-6)

6. On September 17, 2013, plaintiff filed a complaint for declaratory relief under the Open Public Meetings Act concerning the activities of the workgroup. (CP 3-7)

7. On September 27, 2013, plaintiff filed a Motion for an Order and Injunction compelling compliance with the Open Public Meetings Act. (CP 15-20)

8. This Motion included a March 28, 2013 Email exchange between Liquor Control Board member Chris Marr, LCB Director Rick Garza and the LCB Board members Kurose and Foster, as well as LCB “counsel” and workgroup member Ingrid Mungia. (CP 18-20)

9. This March 28 Email proposed that the LCB induce Senator Rivers to request that they prepare a list of policy issues to be addressed in medical marijuana legislation so the LCB could appear to be acting in response to the request “at the pleasure of the legislature”.

10. Then, Marr proposed...“I would vet this with the Gov.s office with the understanding that the Gov. would be

willing to section veto any conflicting legislation. This would prove “sideboards” to potential legislation that would provide policy staff some direction.” (CP 19)

11. On October 4, 2013, (CP 43) a hearing was held on plaintiff's Motion for an injunction. The Court denied the motion and entered the Order of October 4, 2013, appearing at (CP 44-45)

12. On October 11, after reviewing records that the LCB had previously withheld, plaintiff filed a motion to vacate. (CP 46-63)

13. The Motion to vacate was based in large part upon a press release issued by the work group. (CP 49-50)

14. On November 1, 2013, the Court denied a motion to vacate or reconsider the October 4 ruling. (CP 150)

15. On November 21, 2013, plaintiff moved for summary judgment. (CP 75-118) The Motion was supported by 38 pages of exhibits (CP 81-118) including a “Governor’s Alert-Confidential” of October 21, 2013. (CP 82-83)

16. The “Governor’s Alert-Confidential” of October 21, 2013 (CP 82-83) states under the heading of Background... The state-

mandated medical marijuana workgroup will be issuing draft recommendations for public comment this afternoon.”

17. The “Governor’s Alert-Confidential” under “issues” at point 3 also mentions the letter that the workgroup members solicited from the Seattle City Council behind closed doors that is discussed in the transcript of the hearing of January 3, 2014, at page 5 line 11 through page 6, line 24. (CP 82)

18. Under talking points, (CP 83) and in related communications (CP 84) indications of improper federal commandeering pressure on state policy are evident.

19. On January 3, 2014, a hearing was held before the honorable Judge Erik Price on Plaintiff’s Motion for Summary Judgment and Defendants’ Motion to Dismiss. (Transcript of January 3, 2014)

20. On January 30, 2014, the Court filed a Memorandum Opinion.

21. On February 20, 2014, the Court signed an Order prepared by the defendants’ counsel, which failed to specifically designate the records considered by the court. (CP 155-156)

22. On February 28, 2014, plaintiff filed a second, timely notice of appeal. (CP 157-159)

23. On June 27, 2014, a hearing was held on plaintiff's motion to amend the final order to comply with CR 56. Counsel claimed the proposed Order was incorrect and the Court directed the parties to agree on an Order for ex parte presentation. Despite plaintiff having repeatedly contacted counsel, they have refused to comply with the Court's direction to agree on a final order in compliance with CR 56 in time for plaintiff to meet the July 3 deadline set by this Court.

24. On July 3, Plaintiff filed a second proposed Order and a nunc pro tunc Notice of Appeal. (CP 161-164)

IV. ORDERS ON APPEAL

Appellant appeals from and assigns error to the following Orders.

1. The Order of February 20, 2014 Denying the Plaintiff's Motion for Summary Judgment and dismissing the case. (CP 155-156),
2. The Order of July __, 2014 amending the February 20, 2014 Order to include the information required in CR 56(h) (CP 161-164).

V. STANDARD OF REVIEW

The Standard of review of a Summary Judgment is de novo. *Parrilla v. King County* 138 Wn. App. 427, (2007). Factual issues are reviewed under the substantial evidence standard and issues of law are reviewed de novo. *State v. McCormack*, 117 Wn.2d 141, 143, 812 P.2d 483 (1991). Appellant contends the Court's rulings were marred by errors of fact and law and were not based upon substantial evidence or any reasonable inference therefrom.

VI. RELIEF SOUGHT

Appellant seeks an Order vacating the dismissal of the Trial Court and an Order of Remand with instructions for the Superior Court to issue an Order finding the defendants in violation of the Open Public Meetings Act, and awarding any appropriate penalties, fees, and costs.

VII. ARGUMENT

ASSIGNMENT OF ERROR I

The Court erred in failing to find that the ESSB 5034 Work Group was a “public agency” created pursuant to law (ESSB 5034) directly subject to the broad remedial intent of the Open Public Meetings Act

The Court erred in the Orders of February 20 and July __ 2014 by failing to construe the OPMA in accord with its remedial intent to allow the citizens to observe all of the steps in the government decision making process in regard to the public agency or committee created pursuant to the mandate of ESSB 5034 section 141(2)a.

This case involves a public agency created pursuant to the express mandate of a state Statute, ESSB 5034 141(2)a, one that is clearly a “public agency”, “committee” or “sub agency” within the definition of a “Governing body” in the Open Public Meetings Act.

In response to the plaintiff’s claims the defendant alleged, and the Court apparently concluded, that the work group formed by the Liquor Control Board pursuant to the express statutory mandate of ESSB 5034 141(2) is not, in fact, the work group formed pursuant to

the express statutory mandate of ESSB 5034(2). This determination was not based upon competent evidence or any reasonable inference therefrom, and is contrary to all competent evidence and common sense.

The law is clear in this circuit concerning the requirements that both public agencies and their subordinate committees are subject to the Open Public Meetings Act. (See *Clark v. City of Lakewood*, 259 F.3d 996 (9th Cir. 2001)). In addition, the precedent of other states with similar laws is unequivocal on the requirement that committees like the ESSB 5034 work group are subject to the requirement of open public meetings.

The OPMA was modeled on California's and Florida's open meetings laws. 1971 Op. Atty. Gen. No. 33, at 2. Thus, decisions from those jurisdictions provide guidance in interpreting Washington law. See *Anaya v. Graham*, 89 Wn. App. 588, 592, 950 P.2d 16 (1998) (analogous federal laws provide guidance for statutory interpretation issues).

As the Supreme Court of Florida held in *Town of Palm Beach v. Gradison*, 296 So. 2d 473, (1974)..

...a subordinate group or committee selected by the governmental authorities should not feel free to meet in private. The preponderant interest of allowing the public to participate in the conception of a proposed zoning ordinance is sufficient to justify the inclusion of this selected subordinate group, within the provisions of the government in the sunshine law.

Cases from other jurisdictions dealing with the scope of similar statutes compel the conclusion that bodies such as the Palm Beach Planning Committee selected by the Town Council are governed by Fla. Stat. § 286.011, F.S.A.

In *Raton Public Service Co. v. Hobbes*, 76 N.M. 535, 417 P.2d 32 (1966), the Board of Directors of a city-owned electric utility were held to be within the scope of a statute governing "all other governmental boards and commissions."

In *Glick v. Trustees of Free Public Library*, 2 N.J. 579, 67 A.2d 463 (1949), trustees of the Library were held to be within the purview of a statute requiring the "governing body" to advertise for bids.

The Florida Court continued, citing to a Pennsylvania case:

In the case of *Bogert v. Allentown Housing Authority*, 426 Pa. 151, 231 A.2d 147 (1967), the Pennsylvania Supreme Court, interpreting that State's "right to know" statute, stated:

"Within the past several decades we have witnessed the creation of these public bodies called 'authorities' which have been granted the power to, and do, perform important governmental functions which vitally affect the public. Unlike other public bodies, the members of the 'authorities' are appointed and not elected and are not *directly* responsible for their

actions to the electorate. If the elected members of public bodies are to be subjected to public disclosure of their actions, how much more important that the appointed members of public bodies be required to make such disclosure." (p. 151)

The ESSB 5034 work group is clearly a public agency, sub-agency, or subordinate "committee" like those discussed above. It is undeniably subject to the OPMA. To allow such "authorities" to evade the broad public policy of the OPMA that the public be able to observe the government decision making process at all levels would seriously erode the remedial intent of the open public Meetings Act, that 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 a

group like the ESSB 5034 work group from the scope of the Act, and allow it to evade the requirement that the public be informed of the actions of its government.

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 decision making 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)

The Court erred in not interpreting the OPMA broadly in accord with its remedial intent to find the ESSB 5034 work group to be a public agency or governing body and to require that the public be able to see the government decision making process at every level.

ASSIGNMENT OF ERROR II

The Court erred in dismissing plaintiff's claims because even if the work group was not itself a "public agency" directly subject to the OPMA under RCW 42.30.020 (1)(a), the ESSB Workgroup was clearly at least...a sub-agency of a public agency... created by or pursuant to statute,... (See RCW 42.30.020 (1)(c), or... a committee acting on behalf of a governing body of a public agency, (see RCW 42.30.020 (2)).

As such the work group undoubtedly qualified as a "governing body" of an agency, or that of a sub-agency or committee for the purposes of enforcement under RCW 42.30.120.

The defendants arguments in this case are 30 years out of date as they ignore the effect of the 1983 amendments to the OPMA which greatly expanded the definition of "governing body" to include any committee (such as the ESSB 5034 workgroup) that "acts on behalf of" the governing body regardless of whether it takes testimony or has final policy making or rule making authority.

As the appended legislative history from 1983 demonstrates, in 1983 the legislature amended the definition of "governing body" to include committees thereof by adding "or any committee thereof when

the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.” Laws of 1983, ch. 155, § 1.

A committee is a body of persons delegated to consider, investigate or take action up and usually to report concerning some matter of business. The purpose of this amendment was to extend the sunshine of the OPMA to committees, subcommittees and other groups like the workgroup created under the authority of ESSB 5034. As the 9th Circuit explained in Clark...

Lakewood disputes that the Task Force is a governing body, citing to Refai v. Central Washington University, 742 P.2d 137 (Wash. Ct. App. 1987). In Refai, the Washington Court of Appeals held that the faculty senate executive committee was not a governing body of Central Washington University. The Refai court, however, applied an older, narrower definition of governing bodies which limited governing bodies to those groups that make policy or rules. *Id.* at 144. Refai itself states that the faculty senate executive committee would probably have been considered a governing body under the then recently enacted new definition of governing bodies. See *id.* at 145 n.5. That new definition is the definition we apply today to conclude that Lakewood’s Task Force is a governing body of a public agency. *Clark v. City of Lakewood*, 259 F.3d 996 (9th Cir. 2001)

Just so, the defendants in this case disputed that the ESSB 5034

work group is a “governing body”, for the very same reasons cited by the City of Lakewood in Clark. Just so, this disputation was not well taken and this Court should rule in accord with Clark, that under both the old definition and the (30 year old) “new” definitions in the law, the ESSB 5034 work group is an entity subject to the requirements of the Open Public Meetings Act.

This conclusion is reinforced by the expressed intent of the work group to engage in stakeholder input on the proposed policy determinations, actions which place it squarely and undeniably within the center of the zone of interests that the OPMA protects.

The lack of adherence to the law by the LCB is underscored by the appearance of a “Staff Attorney” who is apparently employed in direct violation of Article III Section 21 of the Constitution of the State of Washington¹, which requires that the Attorney General be the exclusive adviser of all State agencies and officials.

The undeniable evidence of the September 30 press release is the best evidence of what the 3 agencies did, irrespective of defendants’

¹ **SECTION 21 ATTORNEY GENERAL, DUTIES AND SALARY.** The attorney general shall be the legal adviser of the state officers, and shall perform such other duties as may be prescribed by law...

conflicting declarations. Beyond any reasonable dispute, the workgroup as early as September 30, 4 days prior to the October 4 Hearing, was taking public comment on the work group's activities.

This circumstance is also undeniable because the same style of press release was used on both September 30 and October 21. (see the October 21 press release announcing the work group's draft recommendations) In any event, the Workgroup exercised authority and produced draft recommendations, which were released for public comment. These are the activities of a governing body.

The Court's Orders of February 28 July ___ were based upon errors of fact and law, because OPMA prohibits secret policy groups, because the defendants failed to accurately inform the court of the September 30 press release, and because Refai is no longer current precedent.

In *Cathcart v. Anderson*, 85 Wn.2d 102, 107 (1975), the Supreme Court cited to a Florida case that held that ...

The right of the public to be present and to be heard during all phases of enactments by boards and commissions is a source of strength in our country. During past years tendencies toward secrecy in public affairs have been the

subject of extensive criticism. Terms such as managed news, secret meetings, closed records, executive sessions, and study sessions have become synonymous with "hanky panky" in the minds of public-spirited citizens. One purpose of the Sunshine Law was to maintain the faith of the public in governmental agencies. Regardless of their good intentions, these specified boards and commissions, through devious ways, should not be allowed to deprive the public of this inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made. Board of Public Instruction v. Doran, 224 So.2d 693 (1969).

This Court should not allow the Liquor Control Board, through its devious ways, to deprive the public of their rights to be present at the meetings of the ESSB 5034 Workgroup, especially since it has been taking public comment since September 30, by its own undeniable press releases.

ASSIGNMENT OF ERROR III

The Court err in failing to rule in accord with Clark v. City of Lakewood that the Work Group's violations of the OPMA undermined the legitimacy of both the Workgroup's recommendations and the rules adopted pursuant to the Workgroup's recommendations.

The principle that the actions of entities like the ESSB 5034 work group that are taken in violation of the OPMA or tainted by secret proceedings may properly be voided is also clearly established.

The Act provides that any action taken at meeting failing to comply with the open meeting requirements will be null and void. RCW 42.30.060(1). OPAL v. Adams County, 128 Wn.2d 869, 913 P.2d 793, (1996). In this case, the actions of the workgroup were deliberately designed to undercut the evidentiary foundation for the groups actions, as described in Clark.

Here, whereas the majority of the Task Force's meetings leading up the Ordinance's passage were conducted behind closed doors, the City Council's actual passage of the Ordinance occurred at a public meeting on May 18, 1998. Therefore, the Ordinance is not null and void under the OPMA. Id. **We conclude, however, that any actions taken at the Task Force's meetings that were closed to the public are null and void, thereby potentially undercutting the evidentiary foundation for the Ordinance,** as we discuss in the next section below. Id. at 883, 913 P.2d 793. Clark, supra, Citing OPAL, (emphasis added)

In a summary judgment motion, the moving party has the initial burden of showing the absence of an issue of material fact. This burden can be met by showing that there is an absence of evidence supporting

the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 106 5. Ct. 2548 (1986); *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225-26, 770 P.2d 182 (1989). In this situation, the moving party is not required to support the motion by affidavits or other materials negating the opponent's claim. *Celotex*, 477 U.S. at 322-23; *Young*, 112 Wn.2d at 225-26.

Although no evidence should even be necessary to demonstrate the profoundly tautological phenomenon that the ESSB 5034 Work Group that was formed pursuant to the express mandate of ESSB 5034(2) is indeed the ESSB 5034 workgroup formed pursuant to the express mandate of ESSB 5034(2), plaintiff attached to his pleadings and declarations true and correct copies of public records released by the Liquor Control Board from the working files of the ESSB Work Group. (See CP 8-14, 41-50, and 81-118)

These records demonstrate beyond any possible dispute that the ESSB 5034 Work Group was formed pursuant to the express mandate of ESSB 5034 141(2)(a), and is indeed the ESSB 5034 workgroup formed pursuant to the express mandate of ESSB 5034 141(2)(a).

In addition, it is apparent that the completely secret nature of the many meetings of this group tainted and undercut the evidentiary foundation for the group's draft recommendations, and any further proceedings upon them, rendering the entire process void and illegitimate even if the LCB, in a belated expression of post-litigation sunshine conducted an ex post facto hearing once the work group had finished its work.

The true and correct copies of public records, including those released from the office of the Governor, appearing at CP 8-14, 41-50 and 81-118, demonstrate that the ESSB 5034 Work Group was, indeed, the ESSB 5034 Work Group and that it acted as a public agency to conduct the public's business in a manner incompatible with the secret procedures it employed.

The continuing secret proceedings of this group, even after this case was filed, demonstrates the requisite knowledge to impose civil penalties upon the work group members.

Under these circumstances the undeniable facts are that the ESSB 5034 work Group was, in fact, the ESSB 5034 work group and that its actions were deliberately designed to evade public process and

provide a biased set of recommendations. Under these circumstances it was contrary to the law and evidence and reversible error for the Court to fail to conclude that the ESSB 5034 work group was not subject to and in violation of the OPMA.

The one case the defendants can cite to in an attempt to support of their position, *Salmon for All v. Department of Fisheries*, 118 Wn. 2d 270, 821 P.2d 1211 (1991), is completely irrelevant as it involved a single member directed agency (the department of fisheries) and interstate negotiations under a federal interstate compact (the Columbia River Compact) expressly ruled by the federal court to be beyond the reach of State OPMA laws, due to it being a federally created entity. (see *United States v. Oregon*, 699 F.Supp. 1456 (D. Or. 1988).

In the *Salmon* case, the Court held that since the department of fisheries was governed by a single agency director (unlike the Liquor Control Board) and since the “agency” was a federally created interstate compact, (unlike the ESSB 5034 work group, which is a creation of State law) there was no governing body or creation of the

people of the State for the OPMA to apply to under those circumstances.

A far more appropriate precedent to apply the facts of this matter is the previously cited *Clark v. City of Lakewood*, 259 F.3d 996 (9th Cir. 2001), where the 9th Circuit held that the Lakewood Adult Entertainment Task Force, a creation of the Lakewood planning advisory board which held several closed meetings to analyze adult entertainment within the city and prepare a report, was indeed subject to the OPMA despite a lack of any explicit statutory mandate or any rule or policy making authority.

VIII. CONCLUSION

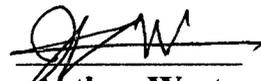
As an agency, sub-agency, or committee created by the express terms of law, acting on behalf of the LCB, the ESSB 5034 Workgroup was, beyond any reasonable argument, subject to the requirements of the Open Public Meetings Act.

It is important to realize that if the Court does uphold the intent of the Open Public Meetings Act in this case the sky will not fall on anyone's head, and no onerous inconvenience or expense will be

imposed upon the government, for it will simply have to allow the public to attend and observe the deliberations of the very few committees established to fulfill the mandate of specific statutes like ESSB 5034 Section 141(2)a.

This is not too much to ask of the public servants of the people of the State of Washington, especially since gerrymandered budget provisos such as the specific statutory authorization that mandated the creation of a state agency and apparently allowed for federal commandeering to take place behind closed doors are, thankfully, few and far between.

Respectfully submitted ~~July 3~~, 2014.
August 11


Arthur West

APPENDIX

As described by the State's counsel at the January 3 hearing, the primary function of the workgroup was to respond to commandeering^[1] directives of the federal government.

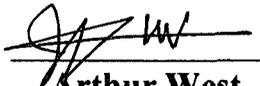
..."(T)he work that the work group did was groundwork and not a top secret conspiracy to undermine the medical marijuana laws. Again, ... they're just recommendations representing the concerns of Liquor Control Board and DOR and DOH pursuant to some issues that the federal government pinpointed and said we need you – **the federal government said, "We need you to address these issues, Legislature."** So the legislature had to go to somebody, so they went to these agencies, and now, again, it's up to the legislature to make the final determinations of what to do with respect to these issues that the federal government has pointed out." Transcript of January 3, 2014, at page 24, line 22-page 25 line 8 (Defendants' counsel Lagerberg speaking)

[1] *New York* and *Printz* stand for the proposition that the Federal Government 'may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program.'" *Printz*, 521 U.S. at 935, 117 S.Ct. 2365. C. J. Kosinski, concurring, in *Conant v. Walters*, 309 F. 3d 629 , at 645, 9th Cir. (2002)

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CERTIFICATE OF SERVICE

I certify under penalty of law that I served counsel for the defendants in this case, Elizabeth Lagerberg-Thompson and Robert Ferguson by email and by delivering a paper copy to their address of record on ~~July 3~~, 2014.
August 11


Arthur West