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

NO. 90500-2-I

CITIZENS ALLIANCE FOR PROPERTY RIGHTS LEGAL FUND, a
Washington non-profit corporation,

Appellant,

v.

SAN JUAN COUNTY, et al,

Respondents.

SAN JUAN COUNTY'S ANSWER TO AMICUS CURIAE
MEMORANDUM OF ALLIED DAILY NEWSPAPERS OF
WASHINGTON and WASHINGTON COALITION FOR OPEN
GOVERNMENT, AND AMICUS CURIAE BRIEFS OF BUILDING
ASSOCIATION OF WASHINGTON, AND PACIFIC LEGAL
FOUNDATION

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I. INTRODUCTION

The issue before this Court involves statutory interpretation and legislative intent. Amici Allied Daily Newspapers of Washington, Washington Coalition for Open Government, Building Industry Association of Washington and Pacific Legal Foundation, however, would like this Court to engage in policy making. In so advocating, Amici distorts both the plain language of the Open Public Meetings Act (OPMA) and its intent. The mandate for liberal construction contained in RCW 42.30.910 does not mean the Court should ignore the plain language of the Act or the intent of the Legislature.

II. ARGUMENT

A. The Legislature is the Appropriate Body to Make Policy.

All three Amici put forward passionate policy based arguments for this Court to overturn the decision of the Court of Appeals. None of those arguments present valid legal reasoning based on the record in this case.

The state constitution grants legislative authority in Washington to the Legislature. Wash. Const. art. II, § 1. This Court's role is to interpret the statute as enacted by the Legislature. *Skagit Surveyors & Engineers, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 567, 958 P.2d 962 (1998). This Court should make its decision based upon the Washington OPMA, which guides the actions of every government official in the state.

Following the basic principle of statutory interpretation, if the Legislature had intended for all committees of a governing body to be subject to the OPMA, the Legislature could have said so, and it did not. Instead, the Legislature amended the definition of governing body and added the qualification that committees must be “acting on behalf of” the governing body in order to be subject to the Act. Even the most liberal construction does not render these words superfluous. “To be reasonable, an interpretation must, at a minimum, account for all the words in a statute.” *State v. Johnson*, 179 Wn.2d 534, 544, 315 P.3d 1090 (2014) (citing *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 312, 268 P.3d 892 (2011)).

B. Under the Court of Appeals Decision Committees Continue to be Subject to the OPMA When “Acting on Behalf of” a Governing Body.

Amicus Allied Daily Newspapers of Washington and Washington Coalition for Open Government argue that the Court of Appeals decision equates “acts on behalf of” with “acts instead of” thus rendering all committees acting with such authorities “governing bodies” in their own right.¹ This argument is nonsensical and is nothing more than rhetorical efforts to fashion a rationale that was not made by the Court of Appeals.

¹ Memorandum of Allied Daily Newspapers of Washington, Washington Coalition for Open Government, pg. 4-5.

The best authoritative analysis of this statute is found in the 1986 formal Attorney General Opinion which concludes that a committee is “acting on behalf of” a governing body when it exercises “actual or de facto decision making authority.” 1986 AGO No. 16. The Attorney General interpretation accurately reflects the Legislature’s intent as is demonstrated by the fact that almost three decades have passed and the Legislature has not further amended the definition of “governing body.”

Amicus goes on to advocate for open committees, yet that is exactly what the Legislature has provided for: committees that act on behalf of a governing body are subject to the OPMA. The only evidence in this case is that the CAO Team was not acting on behalf of the San Juan County Council and thus was not subject to the OPMA. Amici have not presented anything in the record which suggests otherwise.

C. Unsupported and Inflammatory Statements by Amici Should be Disregarded.

Amicus Pacific Legal Foundation in particular mischaracterizes both the record and the Court of Appeals Opinion². Additionally, its brief contains “facts” that are not in the record before the Court³. Similarly, arguments related to the Growth Management Act and its requirements

² See Brief of Pacific Legal Foundation in Support of Petitioner, pg. 3, (stating Court of Appeals limited application of the OPMA to voting majorities).

³ See Brief of Pacific Legal Foundation, pgs. 2-3.

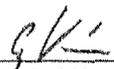
were dismissed by the trial court and not appealed; these arguments are therefore not before this Court.

III. CONCLUSION

For the reasons stated above, the Court should affirm the decision of the Court of Appeals.

Respectfully submitted this 11th day of February 2015.

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Respondents.

NO. 90500-2-I

CERTIFICATE OF
SERVICE

Elizabeth W. Halsey declares and states:

That I am now, and at all times hereinafter mentioned was, a citizen of the United States and a resident of San Juan County, state of Washington, over the age of 18 years, competent to be a witness in the above-entitled proceeding and not a party thereto; that on February 11, 2015, I caused to be delivered in the manner indicated below a true and correct copy of SAN JUAN COUNTY'S ANSWER TO AMICUS CURIAE MEMORANDUM OF ALLIED DAILY NEWSPAPERS OF WASHINGTON and WASHINGTON COALITION FOR OPEN GOVERNMENT, AND AMICUS CURIAE BRIEFS OF BUILDING

ASSOCIATION OF WASHINGTON, AND PACIFIC LEGAL

FOUNDATION in the above-entitled cause to:

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I make the foregoing statement under penalty of perjury of the laws of the state of Washington.

Dated this 11th day of February, 2015, at Friday Harbor, Washington.



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Dear Clerk,

Please accept our electronic filing of SAN JUAN COUNTY'S ANSWER TO AMICUS CURIAE MEMORANDUM OF ALLIED DAILY NEWSPAPERS OF WASHINGTON and WASHINGTON COALITION FOR OPEN GOVERNMENT, AND AMICUS CURIAE BRIEFS OF BUILDING ASSOCIATION OF WASHINGTON, AND PACIFIC LEGAL FOUNDATION and our Certificate of Service in *Citizen's Alliance for Property Rights Legal Fund v. San Juan County*; Case No. 90500-2 for Amy S. Vira, WSBA #34197, amyv@sanjuanco.com.

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