

FILED
SUPREME COURT
STATE OF WASHINGTON
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NO. 95441-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE ASSOCIATED PRESS, NORTHWEST NEWS NETWORK,
KING-TV (“KING 5”), KIRO 7, ALLIED DAILY NEWSPAPERS OF
WASHINGTON, THE SPOKESMAN-REVIEW, WASHINGTON
NEWSPAPER PUBLISHERS ASSOCIATION, SOUND PUBLISHING,
INC., TACOMA NEWS, INC. (“THE NEWS TRIBUNE,”) and THE
SEATTLE TIMES,

Plaintiffs/Respondents

v.

THE WASHINGTON STATE LEGISLATURE; THE WASHINGTON
STATE SENATE, THE WASHINGTON STATE HOUSE OF
REPRESENTATIVES, Washington state agencies; and SENATE
MAJORITY LEADER MARK SCHOESLER, HOUSE SPEAKER
FRANK CHOPP, SENATE MINORITY LEADER SHARON NELSON,
and HOUSE MINORITY LEADER DAN KRISTIENSEN each in their
official capacity,

Defendants/Appellants

**MEDIA RESPONDENTS’ ANSWER TO DEFENDANTS’ MOTION
FOR DISCRETIONARY REVIEW**

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I. IDENTITY OF RESPONDENTS/CROSS-PETITIONER

This Answer/Cross-Motion for Discretionary Review is filed by Plaintiffs below, and Respondents/Cross-Petitioners here on appeal The Associated Press, Northwest News Network, King-TV (“King 5”), KIRO 7, Allied Daily Newspapers of Washington, The Spokesman-Review, Washington Newspaper Publishers Association, Sound Publishing, Inc., Tacoma News, Inc. (“The News Tribune,”) and The Seattle Times (hereinafter “Plaintiffs” or “the Media Respondents”).

II. DECISION BELOW

The Plaintiffs ask that the Court accept discretionary review of issues addressed in the same Order for which the Defendants have sought discretionary review: the Order on Cross-Motions for Summary Judgment entered by the Thurston County Superior Court in **Associated Press, et al., v. The Washington State Legislature, et al.**, No. 17-2-04986-4, dated January 19, 2018 (See Defendants’ App. to their Motion for Discretionary Review App. (hereinafter “Defs’ App.”) at 133-160.

III. ISSUES PRESENTED FOR REVIEW

Plaintiffs agree with the issues presented for review as described by the Defendants and as certified as questions of law for this Court by the Order entered March 9, 2018, Order by the trial court.

IV. COUNTER STATEMENT OF RELEVANT FACTUAL BACKGROUND

The Plaintiffs disagree with the characterization of the “facts” of this matter, Defendants’ inclusion of only portions of the relevant pleadings and declarations, and Defendants’ attempts to present argument masquerading as “facts”.

Plaintiffs submitted as Appendices to their February 20, 2018 Answer to Statement of Grounds for Direct Review several of the relevant documents left off by Defendants. Plaintiffs incorporate those by reference here. These materials are the relevant portions of the record Defendants’ left off – namely most of the material filed by the Plaintiffs.

- Attached as **Appendix A** to the 2/20/18 Answer to the Statement of Grounds was the complete declaration of Michele Earl-Hubbard filed 11/13/17, with Exhibits A-G included, labelled Media Plaintiffs/Respondents' Appendix 1-176.
- Attached as **Appendix B** to the 2/20/18 Answer to the Statement of Grounds was the Declaration of Rowland Thompson filed 12/1/17, labelled Media Plaintiffs/Respondents' Appendix 177-188.
- Attached as **Appendix C** to the 2/20/18 Answer to the Statement of Grounds was the declaration of Michele Earl-Hubbard filed

12/1/17, with Exhibits 1-10, labelled Media Plaintiffs/Respondents' Appendix 189-456.

- Attached as **Appendix D** to the 2/20/18 Answer to the Statement of Grounds was Plaintiffs' Cross-Summary Judgment Motions Response filed 12/1/17, labelled Media Plaintiffs/Respondents' Appendix 457-477.

- Attached as **Appendix E** to the 2/20/18 Answer to the Statement of Grounds was the Plaintiffs' Response to the Amicus Curiae Brief of the Attorney General filed 1/17/18, labelled Media Plaintiffs/Respondents' Appendix 478-489.

- Attached as **Appendix F** to the 2/20/18 Answer to the Statement of Grounds was the declaration of Michele Earl-Hubbard filed 1/18/18, with Exhibits A-E, labelled Media Plaintiffs/Respondents' Appendix 490-519.

The definitions section for the 1995 amendment was the same section that defined “public records” and “state agency.” That section defined “state agency” to include “state office,” and “state office” was defined to include “legislative office.” The 2005 Amendment did not alter those definitions and referenced back to the original 1995 combined definitional section housed at RCW 42.17.020 by then for 10 years. The 2007 Amendment moved only umbrella definitions – public records,

agency, and writing — and did not define their included terms or in any way indicate an intent to exempt from the Public Record Act (“PRA”) or the definition of “state agency” the included definition of “legislative office” that had by then been a part of the definition, at RCW 42.17.020, for 12 years. Defendants have been unable to point to any record showing the State Legislature intended to exempt the State Legislative Offices of the Legislators from the definition of “agency” or understood that was what any of their amendments were accomplishing, or advised the public that was what they claimed to be doing.

V. ARGUMENT

The Plaintiffs agree with the Defendants that this case merits discretionary review based on RAP 2.3(b)(4):

The superior court has certified, or that all parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.

The parties have stipulated, and the trial court has certified, that the Order involves a controlling question of law and to which there is substantial ground for a difference of opinion. Plaintiffs also agree with Defendants that immediate review of the order may materially advance the ultimate termination of the litigation. Having this Court determine whether the Defendants are “agencies” and thus the requested records “public records”

will pave the way for a speedy determination of the lawsuit. Absent such discretionary review, this case is destined for years of protracted litigation, all at public expense on the side of the defense, and should the Plaintiffs prevail with Plaintiffs' fees and costs also to be paid ultimately paid by taxpayers as well. More importantly absent such discretionary review now, the public will face years of denials of what Plaintiffs contend under the Public Record Act ("PRA") are non-exempt public records. Guidance now by this Court on the central issues will save years of litigation and uncertainty for the public, government, and the individual parties.

As Plaintiffs explained in their Statement of Grounds for Direct Review, this case deals with involves an "urgent issue of broad public import that requires prompt and ultimate determination" by the State Supreme Court. RAP 4.2(a)(4). This case concerns whether or not State Legislators must comply with PRA requests and reveal their official calendars and their text messages and emails related to their official, non-personal, role. It deals with whether or not complaints of sexual harassment at the State Legislature and records or actions taken in response, if any, can be obtained by the public or will be kept in an impermeable Black Hole. The Defendants continue to refuse to appropriately answer any PRA requests or to produce such public records arguing they are not "agencies" and are exempt from the Act. The

Defendants claim they will continue to refuse to respond to such request and provide records until this Court rules on this appeal. Thus, while the Plaintiffs disagree that the trial court Order on the issues being appealed by the Defendants contradicts any ruling by this Court, or any other, Plaintiffs agree this Court should accept discretionary review – and direct review -- to address the obligations of these Defendants to the people of this State once and for all. This matter surely will reach the appellate court eventually, but absent discretionary review now, the people of the state of Washington, including the Media, will be deprived of essential public records by these Defendants for years longer in the interim, and the government and these Defendants will operate with uncertainty for years to come.

VI. CONCLUSION

For the foregoing reasons, the Court should grant discretionary review of this case, both for the issues being appealed by Defendants, as well as the issue being cross-appealed by Plaintiffs.

Respectfully submitted this 16th day of April, 2018.

By: 
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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that today I e-filed and delivered a copy of the foregoing **Answer to Motion for Discretionary Review** by email pursuant to an electronic service agreement among the parties to the following:

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Dated this 16th day of April, 2018.



Michele Earl-Hubbard

ALLIED LAW GROUP LLC

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The following documents have been uploaded:

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