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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,
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 KRISTIANSEN each in their official capacity
Petitioners.

**REPLY IN SUPPORT OF MOTION FOR
DISCRETIONARY REVIEW**

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I. INTRODUCTION

The Washington State Legislature and the Media Respondents each seek discretionary review of the trial court’s January 19, 2018, certified Order on Cross-Motions for Summary Judgment (Order). The parties agree that review is warranted pursuant to RAP 2.3(b)(4), as the trial court’s determinations on summary judgment regarding the scope of the definition of “agency” under the Public Records Act¹ are controlling and dispositive questions of law for which there is substantial ground for a difference of opinion. Additionally, review by the Court will materially advance the ultimate termination of this litigation. The State Legislature, Media, and trial court all agree that review by this Court is necessary to resolve these legal issues and confirm the records disclosure obligations of the Legislative branch of government. Accordingly, the Legislature defendants respectfully ask this Court to grant discretionary review of the trial court’s certified Order pursuant to RAP 2.3(b)(4).

II. ARGUMENT

Discretionary review by this Court is justified pursuant to RAP 2.3(b)(4) because the trial court has certified and the parties have stipulated that the trial court’s Order involves controlling questions of law as to which there is substantial ground for a difference of opinion and that

¹ RCW 42.56.

immediate review of the order may materially advance the ultimate termination of the litigation. First, the trial court's determinations regarding which legislative entities constitute "agencies" under the PRA are controlling questions of law. These are purely legal questions regarding the proper statutory interpretation of the PRA and therefore appropriate for discretionary review by this Court. And while the Media apparently disagrees with the Legislature's characterization of the facts in its Motion for Discretionary review (*see* Answer to Motion for Discretionary Review at 2-4)², there are no disputed issues of fact that the Court must weigh in order to address the essential legal questions.

Second, the trial court's certified Order makes clear that a substantial ground for differences of opinion exists on these controlling questions of law. The Parties' extensive and diverging briefings to the trial court on these unique questions of statutory interpretation establish strong differences of opinion. The Supreme Court Commissioner agreed, recognizing that the question of whether the Legislature and its individual members are "agencies" under the PRA is a "reasonably debatable issue of first impression of statewide significance." Ruling Granting Stay at 3.

Review will also materially advance the termination of the litigation, no matter how the Court ultimately rules. If the Court agrees

² The Legislature similarly disagrees with several characterizations of the facts and legislative history set forth in the Media's Answer and prior briefings.

with the Legislature's interpretation of the PRA, the Media's lawsuit would effectively end. If the Court determines that individual legislators and their offices are "agencies" under the act, all that would remain for the trial court to resolve are limited factual issues regarding the appropriate remedy. Under this prong of RAP 2.3(b)(4), discretionary review will allow for the timely conclusion of this litigation.

Lastly, this Court should accept review given the broad importance of this case and the need for clarity for the both the public and the Legislature. Both parties agree that the ultimate resolution of this case will have a significant impact on public policy and the public's access to legislative records. Discretionary review is therefore critical.

III. CONCLUSION

This appeal involves controlling issues of law which, if addressed by this Court, will materially advance the ultimate resolution of this litigation and address vital issues of public significance. Discretionary review pursuant to RAP 2.3(b)(4) is therefore appropriate.

RESPECTFULLY SUBMITTED this 7th day of May, 2018.

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