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No. 97249-4

SUPREME COURT
OF THE STATE OF WASHINGTON

LINCOLN BEAUREGARD,

Respondent,

v.

WASHINGTON STATE BAR ASSOCIATION,

Petitioner.

REPLY BRIEF OF PETITIONER

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I. INTRODUCTION

Mr. Beauregard's response brief is long on hyperbolic invective and short on analysis. Mr. Beauregard continues to litigate the merits of the personnel decision that the trial court refused to address, yet utterly fails to address the fundamental separation of powers issue the trial court's order unnecessarily raised, doubling down on arguments that this Court has previously rejected and ignoring established precedents that this Court has the sole authority to govern the judicial branch's functions, including the Washington State Bar Association (WSBA).

Requiring the WSBA to comply with the Open Public Meetings Act (OPMA), rather than the public access requirements this Court and the WSBA's own Bylaws already impose, would impair the judicial branch's authority to self-govern and recklessly expose the WSBA and the courts to an un contemplated number of other statutory schemes governing public agencies that, unlike the WSBA, are controlled by public officials and funded with public money. OPMA compliance is contrary to the WSBA's history as a judicial entity, this Court's decisions protecting its inherent judicial authority, and both the Court's and the legislature's policy goals. The

Court should vacate the trial court's order and dismiss Mr. Beauregard's complaint.

II. REPLY ARGUMENT

A. Mr. Beauregard relies on the same superficial analysis this Court rejected in *Graham*, uncritically claiming that OPMA applies simply because the Bar Act describes the WSBA as an “agency of the state.”

Like the trial court, Mr. Beauregard summarily concludes that the 1971 OPMA applies to the WSBA as a “public agency” because the 1933 Bar Act describes the WSBA as an “agency of the state.” RCW 2.48.010 (defining the WSBA as an “agency of the state”); RCW 42.30.020(1)(a) (defining a “public agency” subject to the OPMA as “[a]ny state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than the courts and the legislature.”).

As the WSBA explained in its opening brief (App. Br. 30-33), this Court expressly rejected this purblind view in *Graham v. Wash. State Bar Ass'n*, 86 Wn.2d 624, 548 P.2d 310 (1976). This Court held in *Graham* that “the reference to the bar association as ‘an agency of the state’ in the State Bar Act of 1933 does not control the applicability of [other] statutes to that organization.”). *Graham*, 86 Wn.2d at 626. Rather than uncritically adopt the simplistic approach

Mr. Beauregard advocates, the Court emphasized that “the meaning of the term ‘agency’ depends on its context,” and recognized that the legislature included the term in the 1933 Bar Act “for limited purposes”—specifically, to avoid the constitutional prohibition against the creation of private corporations by special act. *Graham*, 86 Wn.2d at 626-27; Wash. Const. art. 12, § 1; art. 2, § 28; see 1975 Att’y Gen. Letter Op. No. 20 at *2 (noting that constitutional prohibition against the creation of private corporations “was expressly brought to the attention of our own state bar . . . and undoubtedly played a part in the drafting of the Washington state bar act for presentation to our own legislature in 1933.”).

Mr. Beauregard’s misguided argument relies only on the obsolete letter opinion from the Attorney General (Resp. Br. 17-18, citing 1971 Att’y Gen. Letter Op. No. 103) that advocated the same superficial analysis expressly rejected by this Court five years later in *Graham*. Not only did this Court reject the analysis of this informal letter opinion in *Graham*, the letter opinion itself heavily relies on the opinion of then-State Auditor Robert Graham—*the losing party in that case*. It is absurd to suggest that this informal letter opinion put the “WSBA . . . on notice [in] 1971” (Resp. Br. 18) that the OPMA applies when this Court, just a few years later, in the same dispute

generating both the Attorney General’s letter opinion and the Court’s precedential decision, expressly refused to conflate the terms “agency of the state” in one statute with “public agency” in another, unrelated statute enacted decades later.

B. Rather than meaningfully address the separation of powers issue, Mr. Beauregard demands this Court ignore its own clear precedent that the legislature may not invade its authority to govern its own affairs, including with regard to the WSBA.

The “ultimate power to regulate court-related functions, including the administration of the [WSBA], belongs exclusively to this Court.” *Wash. State Bar Ass’n [WSBA] v. State*, 125 Wn.2d 901, 909, 890 P.2d 1047 (1995). The WSBA “is responsible to the Supreme Court, not the legislature[;]” it is “the Board of Governors, elected by the bar association members, not the legislature, that determines what activities [the WSBA] will engage in.” *Graham*, 86 Wn.2d at 628. “[T]he bar act did not arise out of a vacuum; this court and its agents were performing many of these functions . . . ‘[o]ne of the basic functions of the judicial branch of government is the regulation of the practice of law.’” *State v. Yishmael*, ___ Wn.2d __, ¶

37, 456 P.3d 1172, 1181 (2020), quoting *WSBA*, 125 Wn.2d at 907.¹ Mr. Beauregard’s claim that this Court’s precedent is distinguishable is unconvincing.

First, Mr. Beauregard asserts that *Graham* does not apply here because it involved a different statute.² (Resp. Br. 19) But he fails to explain how this difference requires the Court to ignore its own analysis in that case—particularly the Court’s rejection of the same simplistic statutory reading of the 1933 Bar Act that Mr. Beauregard and the trial court relied upon here. *Graham*, 86 Wn.2d at 626 (“[T]he reference to the bar association as ‘an agency of the

¹ This Court described these functions in *Yishmael*: “to regulate the practice of law, to acknowledge and formalize the existence of the state bar, to organize admission to practice, and generally to create a framework for the practice of law in Washington State.” 456 P.3d at 1181, ¶ 37.

² Mr. Beauregard ignores that the 1971 informal letter opinion he so heavily relies on (and that the trial court relied on exclusively), involves the same “different statute,” RCW 43.09.290, which defines the entities subject to audit as “elective officers and offices, and every other office, officer, department, board, council, committee, commission, or authority of the state government now existing or hereafter created, supported, wholly or in part, by appropriations from the state treasury or funds under its control, or by the levy, assessment, collection, or receipt of fines, penalties, fees, licenses, sales of commodities, service charges, rentals, grants-in-aid, or other income provided by law, and all state educational, penal, reformatory, charitable, eleemosynary, or other institutions, supported, wholly or in part, by appropriations from the state treasury or funds under its control”—a definition far more inclusive than the generic “public agency” and “agency of the state” descriptors relied upon to compel WSBA compliance with the OPMA here.

state' in the State Bar Act of 1933 does not control the applicability" of general legislative pronouncements). (*See also* App. Br. 30-36) Although *Graham* involved the state auditing statute, the Court's analysis focuses equally on the 1933 Bar Act, and applies with at least the same force here. *Graham*, 86 Wn.2d at 632 ("The legislature's characterization of the bar as an 'agency of the state' does not deprive this court of its right of control of the bar and it functions as a separate, independent branch of government.").

Second, Mr. Beauregard contends that *WSBA* is inapplicable because the Court in that case "ruled that a collective bargaining law did not apply to the *WSBA*." (Resp. Br. 18) He then quotes a passage from the opinion in which the Court acknowledges that "it is sometimes possible to have an overlap of responsibility in governing the administrative aspects of court-related functions." *WSBA*, 125 Wn.2d at 908-09. But in that same quoted passage, the Court emphasized that "a legislative enactment may not impair this court's functioning or encroach upon the power of the judiciary to administer its own affairs . . . including the administration of the [*WSBA*]." *WSBA*, 125 Wn.2d at 908-09 (quoted at Resp. Br. 19). Indeed, the *WSBA* Court held the public bargaining statute did not apply because it impermissibly "nullif[ied]" this Court's rules

governing the WSBA., 125 Wn.2d at 909. The trial court order here does the same thing—by forcing the WSBA Board of Governors to comply with the OPMA, it nullifies WSBA Bylaws and, by extension, the Court’s authority to govern the WSBA.

Mr. Beauregard attempts to assure the Court that complying with the OPMA is not an onerous burden because it “is purely ‘administrative’ in character and simply mandates transparency.” (Resp. Br. 20) But that is not true. As a result of the trial court’s ruling that the OPMA applies to the WSBA, for instance, the Bar’s Judicial Recommendation Committee is no longer meeting, because it would have to conduct judicial candidate interviews in public.³

Client Protection Board payment recommendations to the Board of Governors are also compromised. This Court’s rules require the Board to review and approve some payments, but provide all of the materials, including the names of the applicants, are to be kept confidential. Admission and Practice Rules (APR) 15P, Regulation 13. WSBA Bylaws take this into account and provide that these payments can be discussed in executive session. (CP 97; Bylaws, §

³ <https://www.wsba.org/connect-serve/committees-boards-other-groups/JRC> (last accessed April 1, 2020).

VII.B.7.a.2) But while operating under the OPMA the confidentiality mandated by the APR has become impossible, because discussion of these payments is not on the OPMA list of permissible reasons for executive session. *See* RCW 42.30.110(1).

This Court's rules and the WSBA Bylaws protect the public's interest in transparency while allowing the privacy necessary to effectuate certain, limited, judicial and Bar-related issues; they are not "purely administrative." In any event, the claimed "administrative" nature of the OPMA does not minimize the substantive invasion of this Court's inherent judicial authority to supervise the legal profession if OPMA compliance is required. Indeed, this Court made clear in *WSBA* that its "control over [WSBA] functions is not limited to admission and discipline of lawyers [but] extends to *ancillary administrative* functions as well." 125 Wn.2d at 907-08 (emphasis added).

This Court—and, by extension, the Board of Governors, which is subject to this Court's supervision and control—has the authority to determine in its discretion the level of transparency necessary to administer the WSBA's duties. Like the statute at issue in *WSBA*, requiring compliance with the WSBA in this case would "nullif[y]" that authority. 125 Wn.2d at 909. Moreover, a decision that the

WSBA is necessarily a “public agency” for purposes of the OPMA because it was defined as an “agency of the state” in the 1933 Bar Act would inevitably lead to claimed liability under a host of other statutes governing public agencies, however defined, effectively “nullifying” other WSBA Bylaws and, potentially, this Court’s own rules.

Mr. Beauregard also argues that because WSBA Bylaws in large part “mirror” the OPMA, subjecting the WSBA to liability under the OPMA’s separate and distinct remedies would not violate separation of powers principles. (Resp. Br. 19-20) His argument not only fundamentally misapprehends this Court’s concerns in *WSBA* and *Graham*, but demonstrates why this Court should not rule that the WSBA is subject to the OPMA. Because the WSBA is part of the judicial branch and subject to the Court’s control and supervision, compliance with the OPMA erases the authority that necessarily flows from the Court’s inherent judicial power to “administer its own affairs.” *WSBA*, 125 Wn.2d at 908. Thus, the existence of either a Court rule or WSBA Bylaw that mirrors a statute does not mean the WSBA is automatically subject to the remedies available under the statute.

In an analogous exercise of its judicial authority, this Court has adopted GR 12.4, which governs public access to WSBA records. While GR 12.4 bears some resemblance to the Public Records Act (PRA), RCW ch. 42.56, it contains exceptions not present in the PRA, and does not make available the same remedies available to a requestor under the PRA.⁴ The only logical conclusion under Mr. Beauregard’s argument is that GR 12.4 would simply cease to exist—be a “nullity”—because the Court adopted a rule similar to the PRA, and thus it would not violate the separation of powers to apply the PRA in its entirety, including enforcing its remedies.

Mr. Beauregard’s argument is not only inconsistent with the separation of powers doctrine, but entirely antithetical to it. By exercising its authority to adopt rules of self-governance, the judicial branch—be it this Court or, under its supervision, the WSBA—does not automatically abdicate its constitutional powers and accede to analogous legislative remedies it has not expressly adopted. *See*

⁴ *See* GR 12.4(d)(2) (listing exemptions that are “in addition to” PRA exemptions, including “[r]ecords of the personnel committee,” “internal policies, guidelines, procedures or techniques, the disclosure of which would reasonable be expected to compromise the conduct of disciplinary or regulatory functions,” “the work of the Judicial Recommendation Committee and the Hearing Officer selection panel,” and “applications for licensure by the Bar and annual licensing forms and related records”).

WSBA, 125 Wn.2d at 908-09; *Graham*, 86 Wn.2d at 632-33. A rule to the contrary would by definition “cede power [and] authority” (Resp. Br. 21) to the legislature insofar as it would expose the judicial branch to statutory liability that this Court did not intend and to which it has not consented.

C. Mr. Beauregard is entitled to only those remedies required by law, not remedies that he would prefer.

Mr. Beauregard complains that the WSBA Bylaws relating to open meetings do not provide the same remedies available under the OPMA. (Resp. Br. 22-25) But simply because Mr. Beauregard prefers the remedies that might be available under the OPMA, that does not mean those remedies are available to him here. This is, in fact, the point of the separation of powers doctrine—if it means anything, at a minimum it must mean that the judicial branch is not subject to statutory remedies that are contrary to the discretionary exercise of its inherent constitutional authority. Mr. Beauregard may quibble over whether the Court’s choice of remedies are as strong as the Legislature’s, but precedent unambiguously establishes that the ultimate authority on that question rests with this Court, not Mr. Beauregard.

Thus, Mr. Beauregard's resort to policy considerations of transparency can not compel application of remedies that the judicial branch has not mandated. For example, Mr. Beauregard notes that the OPMA permits any member of the public to enforce OPMA provisions, and that the OPMA authorizes civil penalties that the WSBA Bylaws do not. (Resp. Br. 22-23) But applying these remedies to the WSBA is inconsistent with the legislature's own goals, given that the WSBA differs substantially from public agencies subject to the OPMA.

For example, the legislature specified that the OPMA's transparency requirement is intended for public entities the people have appointed to govern: "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." RCW 42.30.010 (emphasis added). But the people never "delegated" any "authority" to create the WSBA. WSBA Officers and its Board of Governors are elected by WSBA members, not by the general public; nor are they appointed by state or municipal officials. Although they perform a public service, they are not the "public servants" the legislature envisioned when drafting the OPMA. RCW 42.30.010.

Further, the “OPMA’s purpose is to permit the public to observe the steps employed to reach a government decision,” and specifically “to ensure government accountability to the public by demonstrating that *publicly funded* agencies are functioning as intended.” *West v. State, Wash. Ass’n of Cnty. Officials*, 162 Wn. App. 120, 131, 134, ¶¶ 15, 20, 252 P.3d 406 (2011) (when “public officials perform . . . activities financed by public money with an express legislative mandate . . . such activities are subject to the OPMA.”); 1991 Att’y Gen. Op. No. 5 at *4-6 (the OPMA generally does not apply to entities that are not publicly funded).⁵ The WSBA is funded by license, application, and administrative fees, not by the public fisc.⁶ *See Graham*, 86 Wn.2d at 629-30 (holding that the WSBA is not a “state agency” under the state auditing statutes in part because “[t]he funds needed for operation of the bar association are

⁵ Washington courts rarely conclude that an entity is subject to the Public Records Act (PRA), an analogous government transparency requirement, absent substantial government funding. *See, e.g., Fortgang v. Woodland Park Zoo*, 187 Wn.2d 509, 529, 387 P.3d 690 (2017) (“[N]o Washington case concludes that an entity’s funding supports PRA coverage in the absence of *majority* public funding.”) (emphasis in original).

⁶ Washington State Bar Association, *Consolidated Financial Statements For the Years Ended September 30, 2019 and 2018*, page 6, available at: https://www.wsba.org/docs/default-source/about-wsba/finance/2019audit.pdf?sfvrsn=415coef1_0 (last accessed April 1, 2020).

not provided by legislative appropriation” but instead by membership license fees “collected under the authority of this court,” “bar examination and investigation fees, costs in disciplinary actions, or voluntary payments by association members for bar sponsored programs.”).⁷

⁷ The legislative history of the OPMA confirms that the bill’s sponsors recognized that the WSBA would not be subject to the OPMA because it is not supported by public funds:

[Sen. Holman]: My question relates to—I am not sure whether it is a public agency or not but it is established by statute—and that is the Washington State Bar Association. Would the Board of Governors of the Washington State Bar Association which is an integrated bar association be covered by this in your opinion?

[Sen. Washington]: I do not believe they are paid for by public funds and I think that is the distinction.

[Sen. Holman]: I am asking you the question because I want it in the record as to whether meetings of the board of governors can be attended by anybody.

[Sen. Washington]: It was my impression and my feeling that they would not be covered and it was not the intention of the sponsors of the bill that an agency of that kind be covered.

Senate Journal, 42nd Leg., Reg. Sess., at 798 (Wash. 1971). *See also* “Government,” 11 Gonz. L. Rev. 306, 310 (1975) (“A brief excerpt from the Washington Senate Journal suggests that it was the sponsors’ intention that the Act cover all agencies supported by public funds. The excerpt, by State Senator Nat W. Washington, a co-sponsor of the Act, is from his response to a question regarding the Act’s applicability to the Washington State Bar Association. Senator Washington indicated that he did not think such an organization was supported by public funds, and it would therefore be immune from the Act.”). As these sources are not readily available online, they have been posted in pdf format at: <https://www.dropbox.com/sh/g70lsb1tewo9e3p/AABQjuQyx2oWS5CKc5gJlnP5a?dl=0> (last accessed April 1, 2020).

Finally, the history of the WSBA (App. Br. 1-8) demonstrates that its primary functions are judicial in nature. The legislature could not have intended to (and cannot) treat the WSBA in the same manner as public agencies. Indeed, contrary to Mr. Beauregard's contention, the WSBA was not "created by or pursuant to statute" for OPMA purposes. RCW 42.30.020(1)(a). As this Court recently recognized in *Yishmael*, "the bar act did not arise out of a vacuum; this court and its agents were already performing many of [the WSBA's] functions . . . We [the Court] did not need the state bar act . . ." 456 P.3d at 1181, ¶ 37.

Most importantly, even if the Court agrees with Mr. Beauregard that the OPMA remedies would provide a stronger incentive for the WSBA, it need not abide a separation of powers violation to enforce them. The WSBA is fully subject to this Court's authority and supervision. GR 12.2. The Court can and has enacted its own rules governing WSBA transparency, consistent with the judiciary's inherent power. *See, e.g.*, GR 12.4. Forcing OPMA compliance would strip this Court of its authority and lead to other unforeseen consequences by exposing the WSBA to other statutes governing public agencies.

D. Mr. Beauregard has no response to the WSBA's argument that the remedy he requested is not available to him.

Mr. Beauregard does not respond in any way to the WSBA's argument that the injunction exceeded the scope of the remedy he requested. (App. Br. 16-21) Specifically, the trial court's order was different from and did not address the relief Mr. Beauregard requested in his motion, which was a "demand" that former WSBA Executive Director Paula Littlewood be immediately reinstated. *See Kitsap Cnty. v. Kev. Inc.*, 106 Wn.2d 135, 143, 720 P.2d 818 (1986) ("Injunctions must be tailored to remedy the specific harms shown rather than to enjoin all possible breaches of the law."); RCW 7.40.020 (the complaint governs the scope of a preliminary injunction).

Nor does Mr. Beauregard explain how, even if the OPMA applies, it compels the disclosure of "correspondence among BOG members about the firing of Ms. Littlewood" (CP 482) that the trial court (having recognized it had no authority to reinstate Ms. Littlewood) ordered here. (*See* App. Br. 19-26) For one thing, production of correspondence is not an available remedy under the OPMA. RCW 42.30.130 (providing standing to any person to seek only an injunction or mandamus).

Further, there is no evidence of any correspondence that would be subject to disclosure under the OPMA. The trial court's order provided that if "private correspondence exists which, *under the OPMA*, should have been public (i.e., email votes, notes or minutes or private meetings, video of private meetings, etc.) with regard to Ms. Littlewood's firing [it] should be made public now." (CP 465) (emphasis added) For a "meeting" to be subject to the OPMA, there must be a quorum. *Eugster v. City of Spokane*, 128 Wn. App. 1, 8, ¶ 22, 114 P.3d 1200 (2005) ("No meeting takes place, and the OPMA does not apply, if the public agency lacks a quorum."), *rev. denied*, 156 Wn.2d 1014 (2006). There is no evidence that a quorum of the Board of Governors met privately, through correspondence or otherwise, resulting in materials that would be subject to disclosure under the trial court's order.

Even if a quorum of the Board of Governors had conducted a meeting regarding Ms. Littlewood's performance as executive director, any correspondence would not be subject to disclosure. If the OPMA applied to the WSBA, the Board could, in an executive session, "review the performance of a public employee," so long as "discussion by a governing body of salaries, wages and other conditions of employment" and any "final action hiring, setting the

salary of an individual employee . . . or discharging or disciplining an employee” was in a meeting open to the public. RCW 42.30.110(1)(g); *see also Port Townsend Pub. Co., Inc. v. Brown*, 18 Wn. App. 80, 84, 567 P.2d 664 (1977). In other words, taking a final action in an executive session—such as terminating an employee—violates the OPMA, but *discussing* an employee’s performance in executive session would not.

The Board of Governors does not deny that it initially attempted to terminate Ms. Littlewood in an executive session, consistent with its own bylaws. (App. Br. 11) But, as Mr. Beauregard is well aware, there is no evidence that an impermissible vote occurred on any correspondence. Indeed, Mr. Beauregard does not allege that such a vote occurred, claiming to provide a link to video of the “impermissible” vote during the BOG executive session on January 17, 2019. (Resp. Br. 6 n.15)⁸ The Board of Governors

⁸ The link in the Respondent’s Brief was inoperable. There is no video of the executive session, but there is video of the public session for that meeting, and of the March 7, 2019 meeting when the Board of Governors voted a second time in public session to terminate Ms. Littlewood’s employment. <https://link.videoplatfrom.limelight.com/media/?channelListId=34d9718a114a453fa4067f9dad13df94&width=960&height=360&playerForm=462822d76d424a72bf3942af914a1ad4&embedMode=html&htmlPlayerFilename=limelightjs-player.js> (navigate to meeting date using “channel” button; last accessed April 1, 2020).

affirmed Ms. Littlewood’s termination during a meeting that complied with WSBA bylaws *and* the OPMA. (App. Br. 11-12) *See Organization to Preserve Agr. Lands [OPAL] v. Adams County*, 128 Wn.2d 869, 883, 913 P.2d 793 (1996) (Any action violating the OPMA does not “require that subsequent actions taken in compliance with the Act are also invalidated.”).

Mr. Beauregard does not respond at all to this Court’s holding in *OPAL*, and instead continues to claim, without factual support or legal authority, that there was “apparently” a Board of Governors cabal to terminate Ms. Littlewood, an at-will employee indisputably subject to termination without cause by the Board. Even then, his “evidence” and allegations are not that a vote occurred—he relies upon the allegations of certain Governors who did not agree with the decision that there were “private discussions with . . . select members of the BOG” over e-mail about the termination. (Resp. Br. 6)

Because there is no evidence that a private vote occurred via correspondence, any discussion regarding Ms. Littlewood’s performance occurred in an executive session and is not subject to disclosure. *See* 2017 Att’y Gen. Op. No. 5, at 2 (“[P]articipants in an executive session have a duty under the OPMA to hold in confidence information that they obtain in the course of a properly convened

executive session.”). There is no evidence either that (1) *a quorum* of the Board of Governors held discussions over e-mail or other correspondence, or (2) that such discussions extended beyond permissible executive session subject matter under RCW 42.30.110(1)(g). In short, because the trial court’s order requires the WSBA to disclose only those materials that “should have been public” under the OPMA, there is simply nothing to disclose, as Mr. Beauregard is well aware.

In any event, as he readily admits, Mr. Beauregard “is less concerned with obtaining the ‘correspondence’ at issue.” (Resp. Br. 28-29) Instead, he pursues a senseless constitutional crisis that benefits no one and that needlessly jeopardizes this Court’s historic, exclusive “ultimate power to regulate court-related functions, including the administration of the Bar.” *WSBA*, 125 Wn.2d at 909.

E. As Mr. Beauregard did not challenge in the trial court WSBA’s certification that it was complying with the trial court’s injunction, his request to enforce the order in this Court is without merit.

Mr. Beauregard’s contention that the WSBA is “in active contempt of court” (Resp. Br. 27) for failing to adhere to the trial court’s injunction order is particularly without merit. The trial court’s preliminary injunction ordered the WSBA to “comply with

the OPMA on all BOG decisions moving forward,” including “efforts to hire a new [Executive Director],” and to “comply with the OPMA as it relates to any correspondence among BOG members about the firing of Ms. Littlewood.” (CP 482) The WSBA complied with both directives.

First, Mr. Beauregard does not refute the WBA’s compliance with the OPMA “going forward.” It is undisputed that WSBA agreed to comply with the OPMA’s procedural requirements pending further court order and that the Board of Governors underwent open meetings training with the Attorney General’s Office. (CP 358; May 16-17, 2019 WSBA Board Meeting Minutes⁹)

Second, rather than “ignoring the trial court’s order,” (Resp. Br. 28), the WSBA’s General Counsel certified by sworn declaration on July 3, 2019 that the WSBA had performed a search of its server for any e-mails or other documents relating to Ms. Littlewood’s termination that would constitute communications among a quorum of the Board of Governors that would comprise a “meeting” under the OPMA. (Supp. CP 483-84; Shankland Dec. ¶ 2) Additionally, no

⁹https://www.wsba.org/docs/default-source/about-wsba/governance/bog-meeting-minutes-2018-2019/board-of-governors-meeting-minutes-may-16-17-2019.pdf?sfvrsn=3a4a0df1_8 (last accessed April 1, 2020).

individual Governor identified a single e-mail or other communication with a quorum of the Board relating to Ms. Littlewood's termination. (Supp. CP 485; Dec. ¶ 5) As noted in the declaration, review has continued, and no communications comprising a meeting have been found.

Counsel for WSBA delivered this sworn certification to Mr. Beauregard and his counsel on July 3, 2019; Mr. Beauregard has had the WSBA's certification of compliance for the better part of a year. He now makes the demonstrably false claim that the WSBA is "openly flouting" the trial court's order (Resp. Br. 25, 29), but has done nothing to challenge that certification or otherwise sought to enforce or follow up on the order in the trial court.

As Mr. Beauregard recognizes (Resp. Br. 27-28), the trial court, and not this Court, is the proper forum for enforcing the trial court's order under RAP 7.2(c), subject to this Court's authority to stay enforcement under RAP 8.3. Mr. Beauregard's spurious allegations of contempt, like his reliance on snippets of e-mails from individual Governors, WSBA staff or members, and professional and personal acquaintances unhappy with the Board of Governors' decision to terminate Ms. Littlewood, are designed to prejudice the Court and the public, making the merits of the Board's personnel

decision (with which this Court, over a year ago, stated it would not interfere) the focus, rather than the unprecedented constitutional and legal consequences of applying the OPMA to an organization that is under the direct supervision of this Court.

III. CONCLUSION

The Court should vacate the preliminary injunction and dismiss Mr. Beauregard's complaint.

Dated this 1st day of April, 2020.

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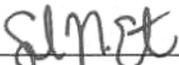
DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on April 1, 2020 I arranged for service of the foregoing Reply Brief of Petitioner, to the court and to the parties to this action as follows:

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DATED at Seattle, Washington this 1st day of April, 2020.



Sarah N. Eaton

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