NO. 103,370-2

SUPREME COURT OF THE STATE OF WASHINGTON

CITIZEN ACTION DEFENSE FUND, a Washington nonprofit,

Appellant,

v.

WASHINGTON STATE OFFICE OF FINANCIAL MANAGMENT in the OFFICE OF THE GOVERNOR, an agency of the State of Washington,

Respondent.

RESPONDENT'S ANSWER

ROBERT W. FERGUSON
Attorney General

SARA L. WILMOT
Assistant Attorney General
WSBA No. 56898
Office of the Attorney General
1116 W. Riverside Avenue, Suite 100
Spokane, WA 99201-1106
(509) 456-3213

TABLE OF CONTENTS

I. INTRODUCTION 1

II. COUNTERSTATEMENT OF THE ISSUES PRESENTED FOR REVIEW 3

III. STATEMENT OF THE CASE 4

A. The State's Collective Bargaining Process is Governed by Statute Which Requires Legislative Approval Before Agreements are Final 4

B. CADF Requests Earlier Bargaining Proposals Prior to the Tentative Agreements Being Approved and Implemented 6

C. CADF Sues Under the Public Records Act 7

IV. REASONS WHY THE COURT SHOULD DENY REVIEW 9

A. The Court of Appeals Correctly Applied the Deliberative Process Exemption Test from *PAWS* to RCW 41.80.010 9

B. Division II's Opinion Does Not Conflict with Division I's Opinions in *West v. Port of Olympia* and *ACLU v. City of Seattle* 16

C. OFM Did Not Waive the Deliberative Process Exemption by Using the Word "offer" to Describe the State's Vaccine Incentive 23

D. The Opinion is Consistent with the Purpose of the Public Records Act 25

V. CONCLUSION 29

TABLE OF AUTHORITIES

Cases

American Civil Liberties Union of Washington v. City of Seattle,
121 Wn. App. 544, 89 P.3d 295 (2004)..... 17, 18, 19, 28

Citizen Action Def. Fund v. Washington State Off. of Fin. Mgmt.,
_Wn. App. 3d _, 552 P.3d 341 (2024)..... passim

Progressive Animal Welfare Soc'y v. Univ. of Wash.,
125 Wn.2d 243, 884 P.2d 592 (1994) (*PAWS*)..... passim

Washington State Council of Cnty. & City Emps. v. City of Spokane,
200 Wn.2d 678, 520 P.3d 991 (2022)..... 28, 29

West v. Port of Olympia,
146 Wn. App. 108, 192 P.3d 926 (2008)..... 17, 18, 19

Zink v. City of Mesa,
140 Wn. App. 328, 166 P.3d 738 (2007)..... 24

Statutes

RCW 41.56..... 14

RCW 41.80..... 4, 14

RCW 41.80.010(3)..... passim

RCW 42.56.030..... 25

RCW 42.56.230..... 25

RCW 42.56.240 25

RCW 42.56.250 25

RCW 42.56.260 25

RCW 42.56.280 ..... 1, 7, 26

RCW 42.56.300 25

RCW 42.56.290 25

RCW 42.56.310 25

RCW 43.88.583 ..... 12, 25, 27

RCW 47.64 14

Rules

RAP 13.4 9

RAP 13.4(b)(1) 16

RAP 13.4(b)(2) 23

RAP 13.4(b)(4) 29

Constitutional Provisions

Wash. Const. art. II, § 1 23

Wash. Const. art. VIII § 4 23

Other Authorities

Patricia Lee, *Labor Relations in the City of Seattle*, Seattle City Council Central Staff (June 23, 2016), https://www.seattle.gov/Documents/Departments/Council/Committees/CentralStaff/TopicPapers/1a.-Labor-Relations-in-the-City-of-Seattle.pdf 21

I. INTRODUCTION

The Court of Appeals correctly held that the State's tentatively agreed upon collective bargaining agreements are not implemented until the Legislature approves the agreements pursuant to RCW 41.80.010(3). Accordingly, in response to a public records request for original bargaining proposals made prior to the conclusion of the collective bargaining process, the Office of Financial Management (OFM) properly invoked the deliberative process exemption in RCW 42.56.280. The Court of Appeals decision is in lockstep with the statutory scheme governing state collective bargaining and this Court's precedent defining the deliberative process exemption to the Public Records Act. There is no basis for further review.

The requestor, Citizen Action Defense Fund (CADF), concedes that disclosure of the bargaining proposals prior to conclusion of the deliberative process would be injurious to the decision-making process. It argues only that the deliberative process ends when a tentative agreement is reached, even

though the agreement has not yet been submitted to the Legislature for approval pursuant to RCW 41.80.010(3). The Court of Appeals properly rejected this argument by applying this Court's decision in *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d 243, 884 P.2d 592 (1994) (plurality) (*PAWS*). As is relevant here, the deliberative process exemption applies until the underlying proposal is implemented. *PAWS*, 125 Wn.2d at 256-57. Here, pursuant to state law, the tentative agreements could not be implemented until funded by the Legislature. RCW 41.80.010(3). Accordingly, the original offers and other pre-decisional bargaining materials were still covered by the deliberative process exemption at the time of the public records request.

CADF attempts to manufacture a conflict between Court of Appeals opinions, but no such conflict exists. Rather, each of the decisions cited consistently recognizes that decision-making materials are exempt until the underlying decision is effectively made and implemented.

Lastly, CADF's new argument that OFM waived the deliberative process exemption by publishing a document outlining the parties' tentative agreements is no basis for this Court to take review. In addition to CADF having waived its own waiver argument by not raising it below, CADF mischaracterizes the document and misapplies the case law.

This Court should decline review.

II. COUNTERSTATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1) Prior to tentative collective bargaining agreements being funded by the Legislature for implementation, are state collective bargaining proposals exempt from public disclosure under the deliberative process exemption?

2) By not raising it below, did CADF waive its new argument that OFM "waived" the ability to invoke the deliberative process exemption by publishing a document that provides general background of the tentative agreements, and, in any event, is the argument without merit?

III. STATEMENT OF THE CASE

A. The State's Collective Bargaining Process is Governed by Statute Which Requires Legislative Approval Before Agreements are Final

State law sets forth a process and schedule for negotiating, approving, and implementing collective bargaining agreements (CBAs) with state employees. *See generally* RCW 41.80. Generally, representatives from OFM negotiate labor agreements as the Governor's designee in collective bargaining. RCW 41.80.010(1); Clerk's Papers (CP) at 213. As is relevant to this case, a negotiated agreement is only tentative and may not be implemented until it is certified as financially feasible by the director of OFM, is submitted to the Governor for inclusion in their budget proposal, and funding and any necessary legislation is approved by the Legislature. RCW 41.80.010(3).

The Legislature may reject or fail to act on a submission, in which case "either party may reopen all or part of the agreement…." RCW 41.80.010(3)(b). Thus, the Legislature can essentially reject the tentative agreement by either not

appropriating the funding necessary to implement the tentative agreements or not passing legislation necessary to implement the CBA. In either instance, the State and union will no longer have tentative agreement on the contract terms and will need to return to the bargaining table to continue negotiations. CP at 100. Because economic and non-economic terms in a collective bargaining agreement are often intertwined, (e.g., a party may offer a concession on an economic term in exchange for a non-economic benefit and vice versa), continued negotiations may not be limited to purely addressing the Legislature's rejection of funding and may involve greater modification of the entire tentative agreement. CP at 213.

In practice, this may be rare, but it is not a hypothetical scenario. The Legislature rejected tentative agreements in 2003, causing the State and union to continue negotiations and modify terms in the context of the Legislature's financial concerns. CP at 100. Tentative agreements were also rejected by OFM's director for lack of financial feasibility in 2008, after the

tentative agreements were signed by the lead negotiators, and the parties continued negotiations. *Id.*

Both RCW 41.80.010 and this bargaining history demonstrates that legislative approval of state collective bargaining agreements is not a mere formality; it is a required step in implementing the tentative agreements.

B. CADF Requests Earlier Bargaining Proposals Prior to the Tentative Agreements Being Approved and Implemented

CADF made public records request to OFM for the original bargaining proposals made by the State and unions for the 2023–2025 collective bargaining cycle. CP at 112. At the time of CADF's request, the Legislature had not yet funded the 2023–2025 CBAs in accordance with RCW 41.80.010(3) nor had the Governor requested the Legislature to fund them. CP at 111, 213–14. Thus, they could not yet be implemented. RCW 41.80.010(3). OFM promptly responded to CADF's October 20, 2022, request, explaining OFM's longstanding interpretation that the original offers, like all negotiation-related

material created during the collective bargaining process, were exempt under RCW 42.56.280, the deliberative process exemption of the Public Records Act (PRA), until the CBAs were finalized. CP at 111.

C. CADF Sues Under the Public Records Act

On December 15, 2022, CADF filed this lawsuit against OFM alleging a violation of the PRA by failing to release the requested offers in October 2022. CP at 4–11. The trial court concluded that the deliberative process exemption could no longer apply to bargaining proposals once the parties had reached a tentative agreement. CP at 130–32. Thus, the court determined that that, although the records at issue otherwise met the criteria for exemption, they were no longer pre-decisional at the time of CADF's October 2022 request. *Id.* Both parties filed for reconsideration. CP at 148–57, 158–61.

Upon reconsideration, the trial court modified its determination of when the deliberative process ends, finding that "once collective bargaining agreements are signed by the

state's negotiation representative and the union, the deliberative process has concluded." CP at 192. The trial court, however, maintained its holding that the records were incorrectly withheld by OFM because the documents were no longer pre-decisional at the time of CADF's request. *Id.*

OFM timely appealed. CP at 198–99. The Court of Appeals held the trial court erred in concluding the requested records were not pre-decisional at the time OFM denied CADF's PRA request. The court wrote,

> While the tentative agreements were signed by state and union representatives prior to CADF's request, they were not yet final for purposes of the deliberative process exemption because the agreements had not been presented to the governor for approval, nor had they been funded by the legislature. Accordingly, we reverse.

Citizen Action Def. Fund v. Washington State Off. of Fin. Mgmt., _Wn. App. 3d _, 552 P.3d 341, 343 (2024).

CADF now seeks discretionary review by this Court.

IV. REASONS WHY THE COURT SHOULD DENY REVIEW

CADF fails to establish any of the criteria for discretionary review under RAP 13.4. The Court of Appeals correctly relied on this Court's long-standing precedent regarding the deliberative process exemption. The Opinion is consistent with other opinions of the Court of Appeals and this Court and properly accounts for the unique role of the Legislature in the State's statutory collective bargaining process. Finally, in response to CADF's new argument, OFM did not waive its ability to assert the deliberative process exemption over its original collective bargaining offers simply by using the word "offer" to summarize and describe the State's response to COVID-19.

A. The Court of Appeals Correctly Applied the Deliberative Process Exemption Test from *PAWS* to RCW 41.80.010

CADF argues that the Court of Appeals did not properly consider *PAWS*. Yet, the Court of Appeals considered and

applied a straightforward reading of *PAWS*, and CADF provides no argument or support for an alternate application.

The four-part test developed in *PAWS* is widely recognized as the controlling law regarding the deliberative process exemption to the PRA. The *PAWS* test holds that in order to invoke the deliberative process exemption, an agency must show:

> [T]hat the records contain predecisional opinions or recommendations of subordinates expressed as part of a deliberative process; that disclosure would be injurious to the deliberative or consultative function of the process; that disclosure would inhibit the flow of recommendations, observations, and opinions; and finally, that the materials covered by the exemption reflect policy [based] recommendations and opinions and not the raw factual data on which a decision is based.

PAWS, 125 Wn.2d at 256. The only factor in dispute here is whether the bargaining proposals were still "pre-decisional" at the time of CADF's request. Petition for Review (Pet.) at 11, 14. CADF does not dispute that any of the other *PAWS* steps are satisfied. *Id.*

In *PAWS*, the relevant records requested were unfunded research grant proposals submitted by the University of Washington and the "pink sheets" used by scientists to evaluate these proposals during the peer review process. *PAWS*, 125 Wn.2d at 248-249. CADF argues that the Court of Appeals failed to properly analyze the distinction between the grant proposals and "pink sheets" discussed in *PAWS* and the distinction between tentative agreements and the original offers at issue here. Pet. at 11. But contrary to CADF's claim, the Opinion *did* acknowledge that *PAWS* dealt with two different kinds of records. *Citizen Action Def. Fund*, 552 P.3d at 346 ("The court held that '[w]hile the unfunded grant proposal itself does not reveal or expose the kind of deliberate or policy-making process contemplated by the exemption, the so-called "pink sheets" do.'") (quoting *PAWS*, 125 Wn.2d at 257).

The *PAWS* Court concluded that "pink sheets" and other aspects of the proposal related to the deliberative process were exempt from disclosure until the proposal was funded, but

allowed the release of portions of the grant proposal that were not deliberative. *PAWS*, 125 Wn.2d at 257, 272. As the *PAWS* Court noted earlier in its opinion, the proposals themselves had already been made available to the public in open public meetings and thus further disclosure could not reveal or expose deliberation. *Id.* at 248, 257. The unfunded grant proposals in *PAWS* are analogous to the tentative agreements, which are presented to the Legislature for funding and are required to be made available to the public prior to approval and implementation. RCW 43.88.583. The State is not arguing that they are subject to the deliberative process exemption. Yet, in both cases, the underlying material used to evaluate and develop those proposals ("pink sheets" and earlier bargaining proposals, respectively) *were* exempt as part of the ongoing deliberative process until the proposals were implemented. *PAWS*, 125 Wn.2d at 257; *Citizen Action Def. Fund*, 552 P.3d at 346.

The *PAWS* Court wrote, "Once the policies or recommendations are implemented, the records cease to be protected under this exemption." *PAWS*, 125 Wn.2d at 257. The Court held, "[o]nce the proposal becomes funded, it clearly becomes 'implemented' for purposes of this exemption." *Id.*

In the present matter, the only disputed part of the *PAWS* test was *when* the original bargaining offers are no longer "pre-decisional" and therefore must be disclosed under the PRA. *Citizen Action Def. Fund*, 552 P.3d at 344; Pet. at 3; CP at 191, 192. In analyzing this question, the Court of Appeals correctly followed this Court's 30-year precedent, relying on the plain language of *PAWS,* which states that the deliberative process ends and records are no longer pre-decisional once funding (and thus implementation) of the proposal occurs. *Citizen Action Def. Fund*, 552 P.3d at 344; *PAWS*, 125 Wn.2d at 257. The Court of Appeals appropriately applied the four-part *PAWS* test to the statutory requirements of RCW 41.80.010, the State's collective bargaining laws.

State collective bargaining is a process governed by a statutory framework. The statutes mandate the steps before a CBA is final, including requirements for the Legislature and the Governor. State employee CBAs are bargained under RCW 41.80, RCW 41.56, and RCW 47.64.[1] The collective bargaining statutes specify that only the Governor and the Legislature acting jointly can bind the state to the provisions of a CBA. RCW 41.80.010 addresses "[n]egotiation and ratification of collective bargaining agreements [and] [f]unding to implement modification of certain collective bargaining agreements."

In applying *PAWS* to this case, the Court of Appeals properly held that the deliberative process exemption had not yet expired at the time of CADF's request because the tentative agreements had not even been submitted by the Governor as contemplated by RCW 41.80.010(3), much less approved and funded by the Legislature. *Citizen Action Def. Fund*, 552 P.3d

[1] The collective bargaining process is essentially the same under these statutes, so for ease of discussion, this brief uses RCW 41.80 as the reference point.

at 345. The court wrote, "Pursuant to *PAWS*, the deliberative process exemption applies until the proposal (in this case, the tentative agreement) is implemented. *PAWS*, 125 Wn.2d at 256-57. Implementation occurs when a proposal is approved by the entity tasked with granting such approval. *Id*. at 257." *Citizen Action Def. Fund*, 552 P.3d at 345. The court added, "Once the proposal becomes funded, it clearly becomes 'implemented' for purposes of this exemption. *Id*. Applying *PAWS* to RCW 41.80.010(3), implementation occurs when the Legislature approves the request to fund the CBA." *Id*.

PAWS provides a clear path for application of the deliberative process exemption to the records at issue here and The Court of Appeals' Opinion falls squarely within that test. The tentative agreements were not yet funded or executed as statutorily required. CADF misstates the role of the Legislature in collective bargaining and mischaracterizes how the requirement of Legislative funding relates to the deliberative process. Pet. at 13. Without Legislative approval of funding, the

tentative agreements cannot be implemented and therefore remain pre-decisional under the *PAWS* test. RCW 41.80.010(3); *PAWS*, 125 Wn.2d at 257; *Citizen Action Def. Fund*, 552 P.3d at 348. Legislative action is not a formality, nor is it an independent, unrelated decision; it is a key part of the statutory state collective bargaining process. The potential for ongoing deliberations still existed and the deliberative process therefore had not yet ended at the time of CADF's request. Under *PAWS* the records were pre-decisional.

The Court of Appeals Opinion is not in conflict with this Court's *PAWS* opinion and discretionary review under RAP 13.4(b)(1) is not appropriate.

B. Division II's Opinion Does Not Conflict with Division I's Opinions in *West v. Port of Olympia* and *ACLU v. City of Seattle*

CADF admits that the Court of Appeals was bound by this Court's test in *PAWS*. Pet. at 15. Yet, CADF argues that conflict exists between the divisions of the Court of Appeals and that the decision below conflicts with *West v. Port of*

Olympia, 146 Wn. App. 108, 192 P.3d 926 (2008) and *American Civil Liberties Union of Washington v. City of Seattle,* 121 Wn. App. 544, 89 P.3d 295 (2004). *Id.* at 10-11. CADF misreads and overstates dicta in those cases.

CADF focuses on an implication in *ACLU* that policy deliberations are over once the policy is presented to relevant legislative body for approval as the main point of conflict. *Id.* Even if that were the rule, such an event had not yet occurred in this case at the time of CADF's request, so it is immaterial if the controlling event is presentation to or decision by the legislative body. Additionally, CADF's argument ignores the context of *West* and *ACLU* and the overriding application of *PAWS* across all cases.

CADF relies heavily on the single line from *ACLU* (discussed in *West*) that reads, "Until the results of this policy-making process are *presented* to the City Council for adoption, politicization and media comments will by definition inhibit the delicate balance —the give and take of the City's positions on

issues concerning the police department." (emphasis added). *ACLU*, 121 Wn. App. at 554. The court in *West* also referenced this line, noting that *ACLU* "impliedly held" that the deliberative process ended when the results of the policy-making process were presented to the city council. *West*, 146 Wn. App. at 118.

As noted, it does not matter to this case whether the determinative event is presentation to the legislative body or approval of the legislative body, because neither event had occurred at the time of CADF's request. Additionally, as the Court below noted, both *West* and CADF appear to take *ACLU's* statement out of context. *Citizen Action Def. Fund*, 552 P.3d at 347. The statement involving "presentment" in those cases was made in the context of the second *PAWS* factor, *i.e.*, whether disclosure would be injurious to the deliberative or consultative function of the process. *ACLU*, 121 Wn. App. at 554. That factor is not at issue in this case. *Citizen Action Def. Fund*, 552 P.3d at 347.

None of the cases discussed used presentment to the legislative body as the determinative factor for when records are no longer pre-decisional for purposes of the deliberative process exemption. In *ACLU*, the court ultimately remanded to the trial court for in camera review of the records to determine if the records were pre-decisional and contained sensitive information. *ACLU*, 121 Wn. App. at 550. In *West*, the question of "presentment" was a moot point since the lease at issue in *West* was long past being presented and had already been executed/implemented. *West*, 146 Wn. App. at 118. The court in *West* also cited *PAWS* for the rule that records are no longer pre-decisional or deliberative once *implemented* and held that the lease materials were disclosable under the implementation standard. *Id*. Similarly, in the present case, the Court of Appeals noted out that even if this earlier end point of "presentment" was applied, it would make no difference because at the time CADF requested the original offers from OFM, neither

presentment nor implementation had occurred. *Citizen Action Def. Fund*, 552 P.3d at 347.

ACLU's single, indirect, non-dispositive reference to presentment in the context of whether premature release of bargaining materials is injurious to the negotiating process (which is not at issue here) can hardly be interpreted as adopting a rule that the deliberative process ends at the presentment stage rather than implementation. The Court of Appeals here was correct to hold that that the discussion of this issue in *West* is largely dictum, and that the *PAWS* test with its focus on implementation continues to be the consistent rule across all appellate decisions.

Despite CADF's suggestion, *West* and *ACLU* should not be read as ignoring the role of the Legislative branch in the contract-making process. *West* and *ACLU* involved fundamentally different processes. In both *West* and *ACLU*, the legislative and executive functions of contract negotiation and execution were performed by the same entity. The Court of

Appeals in this case pointed out that "*West* involved a port commission, an agency that performs both executive and legislative functions." *Citizen Action Def. Fund*, 552 P.3d at 348. Similarly, municipal collective bargaining for the City of Seattle is conducted by both legislative and executive members who approve terms before the tentative agreements are even signed.[2]

In contrast, state collective bargaining is more linear, with specific statutory steps that must be completed by each branch of government before the contracts can be implemented. *See*, *e.g.*, RCW 41.80.010 (negotiation, ratification and funding of state collective bargaining agreements); CP at 213 (Declaration of Gina Comeau, Labor Relations and Compensation Policy

---

[2] Patricia Lee, *Labor Relations in the City of Seattle*, Seattle City Council Central Staff (June 23, 2016) https://www.seattle.gov/Documents/Departments/Council/Committees/CentralStaff/TopicPapers/1a.-Labor-Relations-in-the-City-of-Seattle.pdf

Section Chief for OFM, describing state collective bargaining process).

In the state collective bargaining process, the Legislature may be aware of what terms are being discussed, but actual Legislative approval of legislation and funds necessary to implement the agreements does not occur until the conclusion of the Legislative process.

The common thread, regardless of whether bargaining is conducted by an entity performing legislative and executive functions in tandem or by co-equal branches of government operating in a more linear, sequential fashion, is that both Legislative and Executive approval is needed in some capacity before the deliberative process ends and the agreements can be implemented.

While the state Legislature acts separately from the Governor in the sense that these functions are not contained within a single entity, the Legislature is far from irrelevant to the decision-making process. The Legislature is a co-equal

branch of the same government, which like the Governor, has a specific statutorily and constitutionally mandated role to play in the multi-step deliberative process that is state collective bargaining. *See* RCW 41.80.010; Wash. Const. art. II, § 1, Wash. Const. art. VIII § 4.

The Court of Appeals correctly recognized the importance of both Legislative and Executive action in implementing the tentative agreements under RCW 41.80.010 and analyzed the records at issue in a manner consistent with the statutory requirements in conjunction with the plain language of *PAWS*. Its Opinion is not in conflict with its other decisions and discretionary review under RAP 13.4(b)(2) is not appropriate.

C. OFM Did Not Waive the Deliberative Process Exemption by Using the Word "offer" to Describe the State's Vaccine Incentive

CADF claims for the first time in its Petition that OFM waived the deliberative process exemption through use of the word "offered" in a letter summarizing tentative agreements

that was posted to OFM's website along with the tentative agreements. Pet. at 16; CP at 67 (letter from Michaela Doelman, Chief Human Resources Officer to David Schumacher, Director of OFM). Even if this issue were properly preserved, CADF fails to establish waiver.

CADF relies exclusively on *Zink v. City of Mesa*, 140 Wn. App. 328, 166 P.3d 738 (2007), *as amended on reconsideration* (Oct. 23, 2007). In *Zink*, the City referenced several times "written complaint[s]" as well as the specific content of those complaints as a basis for revoking the Zink's building permit. *Zink*, 140 Wn. App. at 344. The court held this public citation of complaints constituted waiver of the deliberative process exemption as to the complaints. *Id*. at 345.

The present case is nothing like *Zink*. The OFM letter does not cite—let alone detail the contents of—specific original offers or any underlying bargaining material or strategy. Rather, it describes on a high level the priorities and goals of the parties as reflected in the tentative agreements, which are required to

be made public by statute. RCW 43.88.583. The letter uses the word "offered" only once to describe one aspect of the tentative agreements relating to a vaccination incentive: "we prioritized the safety of our workforce by establishing a permanent COVID-19 vaccination as a condition of employment and offered incentives for employees who receive COVID-19 boosters." CP at 67. There is no basis for finding waiver here, even if CADF made and preserved that argument.

D. The Opinion is Consistent with the Purpose of the Public Records Act

The PRA's purpose is to promote disclosure and transparency to protect the public interest. RCW 42.56.030. However, the PRA also contains several specific exemptions.[3] These exemptions demonstrate that even though the PRA is to be liberally construed in favor of disclosure, and exemptions are

[3] See e.g., RCW 42.56.230 (personal information), RCW 42.56.235 (religious affiliation), RCW 42.56.240 (certain information relating to investigations and law enforcement), RCW 42.56.250 (employment and licensing), RCW 42.56.260 (certain real estate materials), RCW 42.56.300 (records and maps of archaeological sites), RCW 42.56.310 (identifying library records), and RCW 42.56.290 (deliberative process).

to be construed narrowly, this disclosure mandate is not absolute, and the goal of transparency exists alongside the goal of protecting sensitive information. The Court of Appeals Opinion struck the proper balance between these goals by upholding the *PAWS* rule that the deliberative process applies until agreements are implemented, but once implementation occurs, materials may be released. In fact, the court's application is narrow when viewed in the context of the duration of the statutory collective bargaining process.

In the present case, the exemption at issue is the deliberative process exemption, which does not prevent information from ever being disclosed, but simply protects the information for a limited time before a decision is made. RCW 42.56.280. Both the trial court and the Court of Appeals agreed that the deliberative process exemption applies to the records at issue here, and that disclosing the records before the conclusion of collective bargaining deliberations could hurt the parties' ability to continue negotiations. CP at 191; *Citizen Action Def.*

Fund, 552 P.3d at 348 (noting that the only *PAWS* factor at issue is whether the records are pre-decisional). The main difference between these opinions is their determination of when the collective bargaining process concludes, and therefore the point when the deliberative process exemption no longer applies.

The Court of Appeals did not hold (nor did OFM argue) that ANY possibility of changing an existing CBA preserves the deliberative process exemption. *See* Pet. at 18-19. Rather, OFM argued, and the Court of Appeals agreed, that in regard to new tentative agreements, the underlying negotiation materials are pre-decisional and protected by the deliberative process exemption until the final step of the bargaining process is complete, and the contract is implemented. *Citizen Action Def. Fund*, 552 P.3d at 347, 348. In the meantime, the public still has access to the full tentative agreements. RCW 43.88.583. This is not the same as holding that any agreement which may, at some point in time be renegotiated, is not yet "final."

This is not a novel interpretation of the law. The Opinion is consistent with the holding in *PAWS* that underlying materials were no longer protected once the related contracts were funded and implemented. *PAWS, 125 Wn.2d* at 257; *Citizen Action Def. Fund*, 552 P.3d at 348. The Opinion is also consistent with the long-recognized policy benefits of allowing the collective bargaining process to remain confidential. The *ACLU* decision recognized the real harms of making bargaining materials public prematurely. *ACLU*, 121 Wn. App. at 553. The policy benefits of private bargaining were also recently reiterated in this Court's decision in *Washington State Council of Cnty. & City Emps. v. City of Spokane*, 200 Wn.2d 678, 693, 520 P.3d 991 (2022). There, in striking down a city ordinance mandating that bargaining be open to the public as unconstitutional, the Court emphasized the importance of allowing bargaining to remain private in order to foster honest and effective negotiation. *Washington State Council of Cnty. & City Emps.*, 200 Wn.2d at 690.

That decision also specifically cited the bargaining-related exemptions under the PRA and Open Public Meetings Act to support the fact that state law protects and values private bargaining and the protection of sensitive bargaining materials. *Id.* at 693. The negotiation and funding of state collective bargaining agreements is a unique process that may not be *exactly* analogous to other cases. However, as the facts here demonstrate, the Court of Appeals' analysis of the deliberative process exemption is in line with the purpose of the exemption, and the broader case law, and properly considers the public interest at issue in our state's collective bargaining laws and the PRA Discretionary review under RAP 13.4(b)(4) is not necessary.

V. CONCLUSION

CADF fails to establish any of the criteria under RAP 13.4. The Court should deny CADF's petition for review.

CERTIFICATE OF COMPLIANCE

This document contains 4713 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 16th day of September, 2024.

ROBERT W. FERGUSON
Attorney General

/s/ Sara L. Wilmot
SARA L. WILMOT, WSBA No. 56898
Assistant Attorney General
sara.wilmot@atg.wa.gov
Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused the foregoing RESPONDENT'S ANSWER to be filed with the Clerk of the Court using the electronic filing system and to be served on the following electronic filing system participants as follows:

Jackson Wilder Maynard, Jr.
Citizen Action Defense Fund

Sam Spiegelman
Citizen Action Defense Fund

I certify under the laws of the state of Washington that the foregoing is true and correct.

DATED this 16th day of September, 2024, at Olympia, Washington.

/s/ Scott Kappes
SCOTT KAPPES
Paralegal
scott.kappes@atg.wa.gov

WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL

September 16, 2024 - 11:51 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	103,370-2
Appellate Court Case Title:	Citizen Action Defense Funds v. Washington State Financial Management
Superior Court Case Number:	22-2-03426-0

The following documents have been uploaded:

- 1033702_Answer_Reply_20240916115007SC055016_9191.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was RespondentsAnswer.pdf

A copy of the uploaded files will be sent to:

- LPDArbitration@atg.wa.gov
- jackson@maynardlawpllc.com
- jwmaynard2003@yahoo.com
- sam.spiegelman1@gmail.com
- scott.kappes@atg.wa.gov
- spiegelegal@gmail.com
- susan.danpullo@wsp.wa.gov

Comments:

Sender Name: Labor & Personnel Division - Email: lpdarbitration@atg.wa.gov
Filing on Behalf of: Sara Lynn Wilmot - Email: sara.wilmot@atg.wa.gov (Alternate Email: lpdarbitration@atg.wa.gov)

Address:
Labor & Personnel Division
PO Box 40145
Olympia, WA, WA, 98501-0145
Phone: (360) 664-4167

Note: The Filing Id is 20240916115007SC055016