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WASHINGTON STATE
SUPREME COURT

Case No. 103,370-2

**SUPREME COURT OF THE STATE OF
WASHINGTON**

CITIZEN ACTION DEFENSE FUND, a Washington
nonprofit,

Plaintiff-Appellant,

v.

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

Defendant-Respondent.

**RESPONSE OF PLAINTIFF-APPELLANT TO
BRIEFS AMICUS CURIAE**

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I. INTRODUCTION

Under *Progressive Animal Welfare Society v. University of Washington*, 125 Wn.2d 243, 884 P.2d 592 (1994) (“PAWS”), this Court held that the primary purpose for the Public Records Act (“PRA” or “Act”) is to empower the people to hold their elected officials and civil servants accountable. Timely disclosure is essential to preserving this purpose, and the narrow “predecisional” exception to delayed disclosure does not apply, as here, where the “policies or recommendations” requested have already been “implemented.” This is the central question on appeal, but as in any scenario other issues emerge—*viz.*, whether a holding that is too narrow or too broad might unduly inhibit public disclosure on the one hand or overly restrict official policymaking on the other. Essentially, a fight over potential “chilling effects” in *both* directions.

On this and other extra-purely-*legal* questions the Washington Policy Center et al.’s (“WPC”) and Washington Coalition for Open Government’s (“WACOG”) (together, “*Amici*”) provide crucial additional insights, beyond those

outlined in Plaintiff-Appellant's Petition for Review. Plaintiff-Appellant submits this Response to the Briefs of *Amicus Curiae* in order to further assist this Court in integrating *amici*'s arguments into a full, coherent picture that covers all the legal and policy bases for granting review and reversing Division II of the Court of Appeals' opinion of July 16, 2024 ("Opinion").

II. RESPONSE TO BRIEFS OF *AMICUS CURIAE*

A. WPC et al. Are Correct That Statewide—At All Levels—Washington Disclosure Practices Under *PAWS* Already Overwhelmingly Ensure Against Chilling Proper Official Action

WPC cites a number of cases in other areas of public policy that amply demonstrate the sufficiency of existing practices as state courts interpret them. *See, e.g., Cowles Pub. Co. v. Spokane Police Dept.*, 139 Wn.2d 472, 478 (1999) (holding disclosure of the conclusions of police investigations are permissible once "the risk of inadvertently disclosing sensitive information that might impede apprehension of the perpetrator no longer exists"); *West v. Port of Olympia*, 146 Wn. App. 1081 (2008) (a public-private lease agreement is

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disclosable once executed by its parties). Anecdotal evidence provides further support. By all appearances, existing disclosure practices places Washington above most other states in term of governmental openness.

We urge the Court to incorporate WPC's insights into its analysis of Plaintiff-Appellant's legal arguments as firm support for the notion that reversing the Order below, in line with *PAWS*, will not over-chill official policymaking processes.

B. Similarly, WACOG is Correct that OFM Lacks the Support Necessary to Prove Up Its Argument That Disclosure in This Case Would More Broadly Inhibit the Flow of Official Recommendations, Observations, and Opinions.

Defendant-Appellee bears the duty of proving up its argument that disclosure in this case would more broadly inhibit the flow of official recommendations, observations, and opinions concerning policy reforms. As WACOG expertly argues, Defendant-Appellee has dispositively failed to do so. In particular, that Defendant-Appellee has failed, *inter alia*, to prove "that disclosure would be injurious to the deliberative or consultative function of the process [and] that

disclosure would inhibit the flow of recommendations, observations, and opinions.” *PAWS*, 125 Wn.2d at 256. Defendant-Appellee’s failure to prove up that it had the proper basis for waiving a disclosure requirement is doubly troublesome in view of its contemporaneous failure to defend itself from initial disclosure by explicit reference to a waiver. The issues in this case are of too great a public import to permit Defendant-Appellee to sidetrack Plaintiff-Appellant’s appeal with a sudden realization that the former was ostensibly entitled to a waiver.

C. *Amici* Are Correct That the Order Below Substantively Conflicts with Existing Precedent.

Amici point, correctly, to the depth and breadth of precedential conflicts the opinion below creates or exacerbates. AS WACOG adroitly notes, Division II’s Opinion does not conform—nor is it required to—with what is obviously Division I’s inapposite rulings in *American Civil Liberties Union v. City of Seattle*, 121 Wn. App. 544, 89 P.3d 295 (2004) and *West*. This alone warrants review.

III. CONCLUSION

In view of the foregoing and the *Amici* Briefs of WPC et al. and WACOG, respectively, Plaintiff-Appellant respectfully asks this Court, again, to grant certiorari of the latter's Petition for Review.

DATED: November 5, 2024.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief contains 691 words, exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, signature blocks, and pictorial images, as calculated using Microsoft Word, the word processing software used to prepare this response

RESPECTFULLY SUBMITTED this 5th day of
November, 2024.

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CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on November 5, 2024, I electronically filed with the Court the foregoing document and this declaration of service and served the same by email upon the following:

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Dated this November 5, 2024, at Olympia, WA.

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