

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/
Cross-Petitioners,

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/
Cross-Respondents.

No. 95441-1

RULING GRANTING DIRECT
DISCRETIONARY REVIEW

Petitioners Washington State Legislature, Washington State Senate, Washington State House of Representatives, Senate Majority Leader Mark Schoesler, House Speaker Frank Chopp, Senate Minority Leader Sharon Nelson, and House Minority Leader Dan Kristiansen seek direct discretionary review of a Thurston County Superior Court order on partial summary judgment ruling that some of the petitioners are government agencies subject to the Public Records Act, chapter 42.56 RCW, and that as such they violated the act. Respondent plaintiffs in the underlying public records action, a coalition of news gathering organizations led by respondent The Associated Press, have filed a cross-motion for direct discretionary review of the superior court's ruling rejecting some of respondents' claims.

Meanwhile, the parties jointly moved in the superior court for certification that expeditious appellate review of the controlling legal questions is justified. RAP 2.3(b)(4); *see also* RAP 2.2(d) (court may enter findings that there is "no just reason for delay" of appeal of final judgment not disposing of all claims); CR 54(b) (analogous superior court rule). On March 9, 2018, the superior court granted the motion and certified the following questions for immediate appellate review: (1) whether the Legislature, House of Representatives, and Senate are not "agencies" as defined by the Public Records Act, and are only subject to the act in a limited capacity; and (2) whether each individual state legislator and his or her office is an "agency" as defined by the act and thus broadly subject to the act.

To briefly recap, respondents submitted a number of public records requests to petitioners. Petitioners provided some records deemed to fall under RCW 42.56.010(3) but declined to provide other records, asserting that petitioners were not agencies subject to the Public Records Act. Respondents filed the above-referenced public records action. On January 19, 2018, the superior court ruled on cross-motions for summary judgment that the offices of individual legislators are "agencies" as defined

under RCW 42.56.010(1), but that the Washington State Legislature, the Washington State Senate, and the Washington State House of Representatives as entities are not. Additional issues, such as whether certain records are exempt from production, per diem penalties, and reasonable attorney fees have yet to be litigated.

Petitioners filed a notice of appeal directly in this court along with a statement of grounds for direct review. Respondents filed a cross-notice of appeal or cross-notice of discretionary review. The clerk of this court designated the matter as a notice for discretionary review. I subsequently granted petitioners' motion to stay enforcement of the superior court order pursuant to RAP 8.1(b)(3).

As stated in my earlier ruling granting a stay, whether petitioners are "agencies" as defined under the Public Records Act is a reasonably debatable issue of first impression of statewide significance. *See* RCW 42.56.010(1). A prompt review of these legal issues will likely save judicial resources in the long run. Accordingly, it was proper for the parties to jointly seek RAP 2.3(b)(4) certification in the superior court and for that court to grant the motion.

Furthermore, it is reasonably likely that any decision by the Court of Appeals on these important issues of first impression will be reviewed by this court. RAP 13.5(b). And whether the Public Records Act applies to the legislative branch, including individual legislators, is arguably "a fundamental and urgent issue of broad public import which requires prompt and ultimate determination" in this court. RAP 4.2(a)(4).

In light of the foregoing considerations, direct review in this court is warranted. The motion for direct discretionary review and cross-motion for direct discretionary review are therefore granted. The clerk's office will contact the parties concerning further procedures in this matter.¹

¹ The previously entered stay of enforcement of the superior court's summary judgment decision remains in effect pending further order of this court.

Michael E. Johnson
COMMISSIONER

May 29, 2018