

# Records fight before Washington state Supreme Court

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FILE - In this April 26, 2017 photo, the Washington State Capitol, also known as the Legislative Building, is seen in Olympia, Wash. A push by media groups to gain access to records created by Washington lawmakers is before the state's highest court. The Washington Supreme Court is set to hear oral arguments Tuesday, June 11, 2019, in a case that will determine whether state lawmakers are subject to the same disclosure rules that apply to other elected officials under the voter-approved Public Records Act. ELAINE THOMPSON, FILE AP PHOTO

*OLYMPIA, WASH.*

A push by media groups to gain access to the records of state lawmakers is before Washington's highest court.

The Supreme Court is set to hear arguments Tuesday in a case that will determine whether legislators are subject to the same disclosure rules that apply to other elected officials under the voter-approved Public Records Act.

The hearing is the culmination of a case that began with a September 2017 lawsuit filed by a media coalition, led by The Associated Press, which said lawmakers were violating the law by not releasing emails, daily schedules and reports of sexual harassment.

A Thurston County superior court judge ruled in January 2018 that while the Legislature was not subject to the Public Records Act, the statute was clear that the offices of individual lawmakers were covered.

Lawmakers moved quickly to try and circumvent the ruling, passing a bill within 48 hours that retroactively exempted them. The measure would have allowed for more limited legislative disclosure for things like daily calendars and correspondence with lobbyists. After a large public outcry, Democratic Gov. Jay Inslee vetoed the measure.

Another bill was introduced earlier this year that made lawmakers subject to the Public Records Act, with several exceptions, including permanently exempting records ranging from staff analyses to drafts of bills and amendments or records of negotiations among lawmakers. That measure stalled after newspaper executives and media lobbyists blasted it during a public hearing.

The Public Records Act was passed by voter initiative in 1972. The Legislature has made a series of changes in the decades since, and lawyers for the House and Senate have regularly cited a 1995 revision in their denials to reporters seeking records. The House and Senate release limited records, including travel, and payroll records and reports.

Attorneys for the Legislature have argued that changes in 2005 and 2007 — when the Act's language and definitions were incorporated into a statute separate from the campaign-finance portions of the original initiative — definitively removed lawmakers from disclosure requirements.

“The trial court erred in failing to give significance to the amendments to the PRA, which created a standalone definition of ‘agency’ that does not include legislators, and which

created a specific set of disclosure requirements for the legislative branch,” the Legislature’s attorneys wrote in a court brief.

Michele Earl-Hubbard, an attorney representing a coalition of media groups led by The Associated Press, wrote in a court brief that there is no legislative history, language in the amendments themselves, or even any public mention that the amendments were meant to remove lawmakers from the Public Records Act.

“And it is reasonable that IF such action was the intent, that there would have been some hint of that fact, some discussion of it, before, during, and after it was passed,” she wrote. “But there is none. This is because the Amendments were never intended to change the scope of the PRA or the reach of the law to individual legislators or the many departments, offices, and subparts of the Legislature.”

The Legislature, which normally would be represented by the attorney general’s office, chose instead to use two private law firms to represent it. The Legislature has spent about \$300,000 fighting the case.

The attorney general’s office filed a brief before the high court similar to one filed before the superior court, stating that each lawmaker is fully subject to the public disclosure law, but that the House and Senate are subject in a more limited manner, with the law specifically defining which records must be made available for release by the House and Senate through the offices of the chief clerk and the secretary of the Senate.

“The PRA is explicit: the Act covers every state office, department, division, bureau, board, commission, or other state agency,” the attorney general’s office wrote, noting that individual state employees are also covered under the law as representatives of the agencies they work for. “Individual legislators and their offices plainly fall within this broad coverage.”

Twenty news and open government groups signed on to briefs in support of the media coalition, including the Washington Coalition for Open Government, Reporters Committee for Freedom of the Press, Reporters Without Borders and the Society of Professional Journalists.

Besides AP, the groups involved in the lawsuit are: public radio’s Northwest News Network, KING-TV, KIRO 7, Allied Daily Newspapers of Washington, The Spokesman-

Review, the Washington Newspaper Publishers Association, Sound Publishing, Tacoma News Inc. and The Seattle Times.



FILE - In this Jan. 15, 2019, file photo, House and Senate members and guests stand for the national anthem during a joint session of the Legislature for the State of the State address by Gov. Jay Inslee in Olympia, Wash. A push by media groups to gain access to records created by Washington lawmakers is before the state's highest court. The Washington Supreme Court is set to hear oral arguments Tuesday, June 11, 2019, in a case that will determine whether state lawmakers are subject to the same disclosure rules that apply to other elected officials under the voter-approved Public Records Act. ELAINE THOMPSON, FILE AP PHOTO