

No. 86384-9

IN THE SUPREME COURT OF WASHINGTON

FREEDOM FOUNDATION,

Appellant,

v.

CHRISTINE O. GREGOIRE, in her official capacity as Governor,

Respondent.

MOTION FOR LEAVE TO FILE AMICUS BRIEF BY
ALLIED DAILY NEWSPAPERS OF WASHINGTON,
WASHINGTON NEWSPAPER PUBLISHERS ASSOCIATION,
NATIONAL FREEDOM OF INFORMATION COALITION and
WASHINGTON COALITION FOR OPEN GOVERNMENT

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I. RELIEF REQUESTED

Pursuant to RAP 10.6, Allied Daily Newspapers of Washington (“Allied”), Washington Newspaper Publishers Association (“WNPA”), Washington Coalition for Open Government (“WCOG”) and National Freedom of Information Coalition (“NFOIC”) respectfully move to file a brief as amici curiae supporting reversal of the trial court. The brief is filed with this motion.

II. IDENTITY OF MOVING PARTIES

A. ALLIED DAILY NEWSPAPERS OF WASHINGTON

Allied is a Washington trade association representing 25 daily newspapers across the State of Washington. It is an independent, nonpartisan organization dedicated to promoting access to public records and open government. Allied frequently participates as amicus in Public Records Act cases.

B. WASHINGTON NEWSPAPER PUBLISHERS ASSOCIATION

WNPA is a trade association representing 120 weekly community newspapers throughout Washington. It actively advocates for public access to records and government accountability to Washington citizens, including regularly participating as amicus in open government appeals.

C. WASHINGTON COALITION FOR OPEN GOVERNMENT

WCOG is a Washington nonprofit, nonpartisan organization dedicated to promoting and defending the public's right to know about the conduct of public business and matters of public interest. WCOG's mission is to help foster the cornerstone of democracy: open government, supervised by an informed and engaged citizenry. WCOG has an active legal committee and regularly participates as amicus in appeals raising open government issues.

D. NATIONAL FREEDOM OF INFORMATION COALITION.

NFOIC is a § 501(c)(3) nonprofit organization that works to protect the public's right to oversee its government and to raise public awareness about the importance of transparency. With offices at the University of Missouri School of Journalism, NFOIC awards grants to state and region-based freedom of information organizations for their work to promote and advocate for open, transparent government. NFOIC also administers the Knight FOI Fund, a half-million-dollar perpetual source of financial support for litigants and appellants who advocate for open government in important and meritorious legal cases.¹

¹ The Knight FOI Fund was created in 2009 under a grant from the John S. and James L. Knight Foundation.

III. INTEREST OF AMICI

All four organizations have an interest in maintaining the vitality of the Public Records Act in order to preserve the public's ability to monitor government activities. The organizations' members regularly use sunshine laws to obtain information about matters of public interest. The organizations believe it is essential to government accountability for the public to access records concerning the performance of the governor, whose actions affect a vast array of state programs and services upon which the public relies. The organizations also are concerned that, if an implied executive privilege is recognized for the governor of Washington, many other government executives at the state and local level will invoke the alleged privilege to evade the Act's disclosure requirements.

IV. FAMILIARITY WITH THE ISSUES

Amici are active proponents of public access to government records, including those pertaining to elected officials. Allied, WNPA and WCOG regularly lobby the Washington Legislature on public records and open government issues, and regularly participate as amici in appeals.

Counsel for amici is familiar with the issues raised by this case and with the subject matter of the parties' arguments. The undersigned

counsel has submitted amicus briefs on open government and Public Records Act issues in the past.

V. ISSUES TO BE ADDRESSED IN BRIEF

The brief will explain why the governor's alleged confidentiality needs are sufficiently protected by the RCW 42.56.280 exemption for pre-decisional records reflecting the deliberative process. The brief also will address the importance to the public of the records at issue, and of similar records which might be withheld under an implied executive privilege.

VI. REASONS FOR ADDITIONAL ARGUMENT

The organizations provide a voice for the general public in protecting the right of access to government records. They offer an independent, nonpartisan perspective regarding the possible harm to the public from creating a large loophole in the Public Records Act.

VII. CONCLUSION

For the foregoing reasons, the Court should grant leave for Allied, WNPA, WCOG and NFOIC to file a brief as amici curiae.

Dated this 21st day of August, 2012.

Respectfully submitted,

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