



FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2023 JAN -9 AM 9:15

LINDA MYRE ENLOW
THURSTON COUNTY CLERK

**IN THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR THURSTON COUNTY**

ARTHUR WEST,

plaintiff,

Vs.

THE WASHINGTON STATE LEGISLATURE;
THE WASHINGTON STATE SENATE; THE
WASHINGTON STATE HOUSE OF
REPRESENTATIVES, SENATE MAJORITY
LEADER ANDY BILLIG, SENATE MINORITY
LEADER JOHN BRAUN, and HOUSE
MAJORITY LEADER JOE FITZGIBBON,
HOUSE SPEAKER LAURIE JINKINS, HOUSE
MINORITY LEADER J. T. WILCOX , each in
their official capacities as agencies,
defendants

23-2-00013-34

No.

PLAINTIFF'S
ORIGINAL
COMPLAINT

I. INTRODUCTION

1.1. This is an action for declaratory and injunctive relief in regard to a present case or controversy between adverse parties on an issue of substantial public importance: whether there is an express or implied constitutional legislative exemption to the to the State Public Records Act than can be used to shield legislative records from disclosure.

1.2. Plaintiff is a citizen who is seeking records from legislative agencies subject to the PRA (as set forth in the December 19, 2019 Ruling of the State Supreme Court) that are being withheld under color of a claim of a constitutional legislative privilege.

1 **1.3** Whether there is a constitutional legislative privilege that can be
2 employed to shield otherwise responsive legislative records from disclosure under
3 the Public Records Act is an issue of major public importance and an actual
4 dispute between parties having genuinely opposing and substantial interests which
5 can be resolved judicially, and plaintiff has standing and is entitled to the relief
6 sought below.

6 **II. PARTIES AND JURISDICTION**

7 **2.1.** Plaintiff West is a citizen, a voter, and a landowner residing within the
8 City of Olympia, in Washington State with standing to seek relief.

9 **2.2.** Defendant Washington State Legislature, Washington State Senate and
10 Washington State House of Representatives are agencies subject to the Public
11 Records Act.

12 **2.3.** Defendants Andy Billig, John Braun, Joe Fitzgibbon Laurie Jenkins,
13 and J. T. Wilcox are, in their official capacities, members of the Legislature subject
14 in their official offices to the Public Records Act.

15 **2.4.** The Thurston County Superior Court has personal and subject matter
16 jurisdiction over the parties and subject matter of this claim.

17 **III. ALLEGATIONS**

18 **3.1.** This case concerns the issue of whether there is a legislative exemption
19 to the Public Records Act which may be invoked to stifle disclosure of records that
would otherwise be subject to disclosure under the PRA.

3.2. On January 19, 2018 The Honorable Thurston County Judge Chris
Lanese ruled that the offices of legislators were subject to the PRA.

1 **3.3.** On December 19, 2019 the State Supreme Court, in *Associated Press v.*
2 *Washington State Legislature*, 194 Wash. 2d 915, 454 P.3d 93 (Wash. 2019)
3 upheld the determination of the Superior Court that the individual legislative
4 offices were agencies under the PRA and subject to its disclosure requirements. If
5 the defendants believed they were not subject to the Act under a constitutional
6 provision, the issue could and should have been raised in the context of that
7 proceeding. Under the principles of Stare Decisis, Res Judicata, and Equitable and
8 Collateral Estoppel this previous ruling properly forecloses any present claim of a
9 legislative exemption to the PRA.

10 **3.4.** Despite being silent on the issue before the Supreme Court in 2019, in
11 the last year, House and Senate Public Records Officers, acting on behalf of their
12 member “agencies” have repeatedly invoked what they term the “Legislative
13 Exemption” to disclosure of records under the PRA.

14 **3.5.** The Legislature has recently asserted this alleged privilege: to withhold
15 records concerning a Public Records Act request for House records related to a
16 state representative’s correspondence regarding potentially impeaching Gov. Jay
17 Inslee, to withhold records responsive to a records request for records concerning
18 redistricting, to withhold records responsive to a records request for records related
19 to two bills concerning unionization of legislative staff, and to withhold records
responsive to a request for records showing why the Legislature killed plans for a
Chinese American History Month.

3.6. On January 5, 2023, the Honorable defendants Billings, Braun and
Jinkins attended an annual pre-legislative press conference organized by the
Associated Press. At that time all of these defendants defended the alleged
legislative exemption, with the Honorable Senator Braun stating that: Legislative
Privilege was “a Thing” that had “been around for a 100 years or more.”

1 3.7. This exemption, as shown by the exemption logs issued by the
2 defendants, has been raised under color of Article II, Section 17 of the State
3 Constitution and a vague citation to the ruling of the Supreme Court in *Freedom*
4 *Foundation v. Gregoire*, 178 Wn.2d 686, 310 P.3d 1252, 1256 (2013). However,
5 neither of these authorities fairly support such a legislative privilege.

6 3.8 Article II, Section 17 of the Constitution of the State of Washington
7 provides, under the heading "SECTION 17 FREEDOM OF DEBATE" that "No
8 member of the legislature shall be liable in any civil action or criminal prosecution
9 whatever, for words spoken in debate."

10 3.9 On a plain and simple reading, this clause is clearly not applicable to
11 documents or public disclosure. It's about "words spoken in debate", and it should
12 be narrowly interpreted in accord with its actual language. As noted by one
13 commentator:

14 Forty-three state constitutions contain a provision, analogous to the
15 U.S. Constitution's Speech or Debate Clause (Article I, Section 6,
16 Clause 1), granting state legislators a legal privilege in connection
17 with their legislative work. While some of these states' provisions
18 have never been applied, recent judicial interpretations in other states
19 have departed from settled federal interpretations of the legislative
privilege, failing to apply it broadly to protect the legislative process
and instead... favoring ideals of open government. See *The Neglected
Value of the Legislative Privilege in State Legislatures*, Steven F.
Huefner, William & Mary Law Review, Volume 45, issue 1 Article 4,
(2003)

20 3.10 In *Freedom Foundation v. Gregoire*, a major consideration was the
21 Doctrine of Separation of Powers and the conflict between the legislatively created
22 PRA and the Executive:

23 Our separation of powers jurisprudence guards the balance of powers
24 between branches. ...This recognizes that "the damage caused by a
25 separation of powers violation accrues directly to the branch invaded,"

1 weakening its ability to check the other branches...Consequently, we
2 test for separation of powers violations by asking "whether the
3 activity of one branch threatens the independence or integrity or
4 invades the prerogatives of another." (See *Freedom Foundation*, at
5 1258, emphasis added)

6 In approving an initiative measure, the people exercise the same
7 power of sovereignty as the legislature does when it enacts a
8 statute."...The same constitutional constraints apply to both an
9 initiative and a legislative enactment...Essentially, attempts to force
10 disclosure of information (from the Governor) through the PRA
11 involve a struggle between the legislative and executive powers.
12 This is exactly the type of interbranch conflict the Foundation claims
13 lies at the heart of the separation of powers doctrine. (See *Freedom*
14 *Foundation*, at 1260, emphasis added)

15 **3.11** Obviously, no similar invasion of the prerogatives of the Legislature or
16 interbranch Separation of Powers interests are implicated by the application of a
17 legislatively created statute to the Legislature. If the Legislature seeks to exempt
18 itself from the application of a State Statute, it should do so the old fashioned way,
19 by legislation, not by means of what might be perceived as officious constitutional
20 pettifoggery or legalistic prestidigitation.

21 **3.12** Plaintiff West is a citizen that has formally requested disclosure of
22 records currently being withheld under color of a constitutional claim of legislative
23 privilege, and who has been particularly impacted by the withholding of these
24 records under claim of privilege.

25 **3.13** A present case and controversy of statewide public importance exists
26 between genuinely adverse parties concerning whether a constitutional legislative
27 privilege exists. This controversy is subject to a full and final adjudication under
28 the Uniform Declaratory Judgments Act.

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IV. CAUSES OF ACTION

UNIFORM DECLARATORY JUDGMENTS ACT (RCW 7.24)

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4.1. By their acts and omissions defendants, and each of them, created an uncertainty between genuinely adverse parties as to whether a legislative privilege exists that can be employed to shield otherwise responsive records from disclosure under the PRA, and a cause of action for a Declaratory Judgment in regard to whether such privilege exists expressly or can properly be inferred. Such declaration will conclusively terminate the controversy giving rise to this proceeding.

INJUNCTION

4.2. By their acts and omissions defendants abridged a clearly established right to disclosure of public records, plaintiff has a well grounded fear of invasion of this right, and the balance of equities and the merits of this case support an injunction, for which plaintiff is entitled to the relief sought below.

V. REQUEST FOR RELIEF

Wherefore, plaintiff respectfully requests that the Court grant the following relief:

5.1. That a Declaratory Ruling issue under the Seal of this Court declaring that no express or implied constitutional or common law legislative privilege exists that may be employed to shield records of the Legislature from disclosure that would otherwise be required to be disclosed under the Washington State Public Records Act.

1 **5.2.** That a Declaratory Ruling issue under the Seal of this Court directing
2 defendants to promptly disclose all of the records they are presently withholding
3 from disclosure under color of a legislative exemption to the Public Records Act.

4 **5.3.** That an injunction issue under the Seal of this Court barring defendants
5 from employing a non-existent constitutional or common law legislative privilege
6 to shield records from disclosure that would otherwise be required to be disclosed
7 under the Public Records Act.

8 **5.4.** That plaintiff be awarded costs, and any applicable fees.

9 Done January 9th, 2023, in Olympia, Washington.

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ARTHUR WEST