

# Washington Coalition for Open Government

washingtoncog.org

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## Annual Report for 2011

Washington Coalition for Open Government, the leading protector of open government in Washington, had another very impressive year in 2011:

- We fought hard in the courts to preserve access to public records, and filed amicus briefs in a dozen cases in Washington's appellate courts (see pages 6, 7, and 8 for these and other **important legal actions**);
- We tracked over 80 bills in the state legislature (including 42 high priority bills) and **won significant legislative victories** in the face of misguided efforts to limit the access to government and the people's right to know (see pages 4 and 5);
- We **expanded public outreach** with our second annual Washington State Open Government Conference; six new Open Government Forums throughout Washington; many speaking engagements at events throughout the state; (see pages 2 and 3); and,
- We added **impressive new talent** to our efforts to protect and enhance open government efforts in Washington, and created two **new committees** and updated our committee structure (see below).

Dues-paying membership in the Coalition increased from 200 at the end of 2010 to 212 at the end of 2011, and the number of individuals and organizations making significant contributions in the higher sponsorship levels grew as well. The number of individuals signed up for the free "Citizen's Network" email list increased from 488 to 572, and the number of individuals who became "fans" of our Facebook page grew to over 400. The number of individuals and government officials seeking advice from the Coalition on open government issues continued to increase, and we expanded our direct intervention to influence the behavior of government agencies by sending more letters and making personal visits. The Coalition's respect and influence continued to grow, evidenced by the mobilization of organizations representing government agencies to attempt to counter our efforts and make it more difficult for the public to know what the government is doing.

We appreciate the service of board members **Christopher Leman** of the Seattle Community Council Federation, **Anna Jancewicz** of Teamsters Local Union No. 117, and **Catherine Moore** a member of the Board of Governors of the Washington State Bar Association, who left the board this past year. We welcomed to the board certified public accountant **D. Edson Clark** of Clark, Raymond & Company, PLLC; attorney **Steven J. Dixon** of Witherspoon Kelley; **Cynthia Mitchell**, associate professor of journalism at Central Washington University; **Teresita Torres** of Teamsters Local Union No. 117, and **Walter Neary**, PR Director at Comcast and former Lakewood City Councilmember.

This year also saw changes in our committees. In March, WCOG created a new **Awards Committee**, chaired by **Mike Fancher**, which is responsible for

considering those nominated for awards, performing background checks as needed and making recommendations to the board for approval; as well as an **Events Committee**, chaired by **Patience Rogge**, that is responsible for planning and organizing WCOG events. Additionally, the Revenue Strategy Committee was replaced by the **Revenue Committee**, the Outreach & Membership Committee was eliminated, and the Media Committee was replaced by the **Communications Committee**. In addition to its strategic planning function, The Revenue Committee now has responsibility for building membership, raising funds, and obtaining grants. The Communications Committee will expand the efforts of the old Media Committee in radio, video, online journalism, and social media.

We thank those who are serving as officers and committee chairs of the Coalition: **Toby Nixon**, president and chair of the Government Committee; **Mike Fancher**, vice president and chair of the Awards Committee; **Gerry Pollet**, secretary; **Sam Pace**, treasurer; **Patience Rogge**, chair of the Events Committee; **Bill Will** and **Peggy Watt**, co-chairs of the Communications Committee; **Scott Johnson**, chair of the Legal Committee, **Barbara Levette** and **D. Edson Clark**, co-chairs of the Revenue Committee; and **George Erb** and **David Seago**, co-chairs of the Board Development Committee. We also appreciate the hard work of our executive director **Elly Snow**, along with **Emily Phillips** and the staff at Seattle Operating Support LLC, and **Stokes Lawrence** law firm for hosting our monthly board meetings. The Coalition would not function without the service of these individuals and the many volunteers and activists who contribute their time and energy to the cause.

The Coalition is grateful for the generous support of all of our contributors who make it possible for us to continue our work, including **James Madison Supporters** Allied Law Group, Davis Wright Tremaine; Clark, Raymond & Company, PLLC; On The Record Reporters; Patience Rogge; The Seattle Times; Toby Nixon; Uninformed Consent; William John Crittenden; and Witherspoon Kelley; **Thomas Jefferson Supporters** Stokes Lawrence and Seattle Operating Support LLC; **Platinum Supporters** Patrick D. Brown J.D. Ph.D., Everett Daily Herald, Pioneer Newspaper Service, Lucille G. Walls, and Topics Entertainment; **Gold Supporters** American Civil Liberties Union, , Krist Novoselic, The Freedom Foundation, Mike Fancher, Peter Horvitz, The Spokesman-Review, Association of Washington Public Hospital Districts, D. Edson Clark CPA, Beionka Moore, State Auditor Brian Sonntag, Washington Newspaper Publishers Association, Washington Policy Center, Steve McConnell, Microsoft Matching Gifts Program, Chevron Humankind, The News Tribune, and Yakima Herald Republic; and **Silver Supporters** Jim Andersen, Alan Thompson, Frank W. Garred, Donald Williams, Mike Reitz, Scott Johnson, Steve Dixson, Sam Pace, Walter Neary, Stuart L. Neiman, Timothy Myers, and Robert Shirley.

As you will see in the following summary of the activities of the Coalition, a lot of hard and important work was done during 2011. We accomplished a great deal – but there is always more than we have time, people, or energy to do! We actively seek the participation of others who share our passion for open government and willingness to serve, and hope that all you who read this report will join us in this important work.

## Summary of Activities for 2011

### Public Education and Outreach

**Second Annual Statewide Open Government Conference:** On January 15, the Coalition presented the Washington State Open Government Conference at the Mercer Island Community Center. 100 people attended. Keynote remarks were presented by **Ken Bunting**, Executive Director of the National Freedom of Information Coalition and former WCOG President; and **Tim Ford**, Assistant Attorney General for Government Accountability. Conference sessions were presented by **Ramsey Ramerman**, **Amy Cleveland**, **Kelli Williams**, **Sandy Paul-Lyle** and **Kathi Anderson** (Public Records Officers); **Greg Overstreet**, **Tim Ford**, **Joe D’Amico** and **Scott Johnson** (Dispute Resolution); **George Erb**, **Scott North** and **Ken Bunting** (Public Records Investigations); **William John Crittenden** (Litigation Under the Public Records Act); **Tim Ford**, **Ramsey Ramerman**, and **Frank Garred** (Sunshine Committee); **Chris Leman**, **Russell Wood**, **Mike Fancher**, and **Sarah Schacht** (Government 2.0); **Frank Garred**, **Meredith Mechling**, **Ed Clark**, **Eric Rachner** and **Jessica Olson** (Key Award Winners); **Gerry Pollet** (Freedom of Information Act); and **Michele Earl-Hubbard** (Open Public Meeting Act). The



conference was approved for two hours of Continuing Legal Education credit, which was claimed by 20 of the attendees. We appreciate the hard work of all those involved in making the conference a success, especially WCOG Events Committee Chair **Patience Rogge**, who led the planning, and did much of the organizational work.

**Open Government Forums:** Six Open Government Forums were held all around Washington during 2011, including **Bainbridge Island** (April), **Stevenson** (May), **Colville** (June), **Omak** (July), **Longview** (September) and **Pullman** (October). These forums drew a combined attendance of 186 government officials, private citizens, and members of the media. The importance of media support was demonstrated at these forums, as attendance was largely dependent upon the coverage provided by local media, including carrying display ads, press releases, and op-ed pieces. The Stevenson forum was recorded, and the video can be watched online through the Coalition web site. Many prominent officials appeared on panels this year, including media attorney and Bainbridge Island resident **Eric Stahl**; **Bill Will**, executive director of the Washington Newspaper Publishers Association; Assistant State Attorney **Tim Ford**; State Archivist **Jerry Handfield**; former Stevenson School Board member **Gloria Howell**, winner of the 2011 American Society of News Editors Local Heroes award; attorney **Greg Overstreet** of Allied Law Group (now with Overstreet Law), former Open Government Ombudsman in the State Attorney General's Office; **Toby Nixon**, president of WCOG and Kirkland City Councilmember; Attorney **Steven Dixon** of the Spokane law firm Witherspoon Kelley; **D. Edson Clark** of the accounting firm Clark, Raymond & Company, PLLC; **Russell Wood**, State Records Officer; State Auditor **Brian Sonntag**; Palouse city Councilmember **Connie Newman**; attorney and part-time municipal Judge for the City of Stevenson, **Bradley Andersen**, and State Representative **Joel Kretz**. We appreciate our forum moderators, including **David Nelson**, editor of the Kitsap Sun; **David Seago**, former editorial page editor of the Tacoma News Tribune; activist and musician **Krist Novoselic**; **Roger Harnack**, publisher of the Omak-Okanogan Chronicle; **Anna King** of Northwest News Network; and **Sam Pace**, contracted Housing Specialist for the Seattle-King County Association of REALTORS®. We greatly appreciate the organizations that co-sponsored the forums, including **Schwabe, Williamson & Wyatt** and the **League of Women Voters of Pullman**, and **The Kitsap Sun**. We appreciate the hard work of Coalition board member **Patience Rogge** in organizing these forums, and her husband **David** for helping out with them in many ways.

**Sunshine Week Public Forum:** The Coalition presented, in conjunction with The Seattle Times, a public discussion on March 15, hosted at the studios of The Seattle Times auditorium. The panel discussion, titled "Your Government: Tried, true and new ways to keep it open and accountable," included **Mike Fancher**, Vice President of WCOG and retired executive editor at The Seattle Times; **Matt Rosenberg** of Public Eye Northwest, an independent non-profit dedicated to best practices in voluntary government transparency; Monroe community activist and WCOG Key Award Winner **Meredith Mechling**; and **Jeff Neff**, The Seattle Times Investigations Editor. The panel was moderated by King 5 News reporter **Owen Lei**. There were 50 people in attendance and the event generated 18 additions to the Citizens Network listserv. The Seattle Times carried an article about the event in their March 15 issue and the event was filmed by The Seattle Channel. The film can be viewed through the Coalition's web site. Coalition Vice President **Mike Fancher** was instrumental in making this event a success.



**Speakers Bureau and Presence at Other Events:** The Coalition's Speakers Bureau, formed in 2009, continued to gain visibility and speaking requests. The Coalition provided speakers or had a presence at a number of events this year, including the Sunshine Week event sponsored by the League of Women Voters of Tacoma-Pierce County, the Washington Newspaper Publishers Association's annual convention, and a forum on local policing issues sponsored by Islanders for Collaborative Policing on in Bainbridge Island. We hosted a panel discussion for 11 visiting international professionals and guests of the U.S. Department of State from Pakistan (organized by The International Visitor Leadership Program), and met with a delegation of 25 professionals from 25 countries around the world, as part of a program hosted by the World Affairs Council. At the conclusion of the meeting, the group commented that it was the most informative meeting they had during their visit to the United States.

**Online Help Line:** The WCOG online Help Line (and telephone help service) continued to answer many inquiries from citizens needing assistance dealing with agencies on open government issues, including questions regarding disclosure of full names and contact information of Public Utility District contest winners, the definition and legality of serial meetings, to the Public Records Act, access to court case files, prompt disclosure of records relevant to upcoming elections, attorney-client privileged communications, whether the Open Public Meetings Act applies to people who have been elected as councilmembers but who have not yet been sworn in, steps to take when an agency is ignoring a public records request, the legality of the commissioners meeting to discuss a decision they will be

making prior to the actual hearing, whether public funds can be used to pay for food at special purpose district meetings, applicability of the Public Records Act to state school districts, whether county government agencies are required to keep any index of their records, assistance in drafting public records requests, timelines for responses under the federal Freedom of Information Act, access to agency phone records, where to find an index of various policy manuals for Washington State government agencies, identifying any legal precedent regarding the authority (or lack thereof) of arbitrators to order the destruction of public records, whether the Open Public Meetings Act addresses the question of notice requirements for meetings that are cancelled, the legality of announcing a city hall meeting as special/regular, whether public meetings that require asking a receptionist for access and are held behind locked security doors are legal under the Open Public Meetings Act, whether the Open Public Meetings Act allows children to be excluded from meetings simply because they are young, whether union newsletters are public records when produced by a public employee using public agency equipment, circumstances under which a subcommittee is not required to



follow the Open Public Meetings Act, whether an agency is responsible under the public records act if they don't have a record they should have, whether or not premature destruction of records is actionable under the PRA, a government officials obligation under the Public Records Act to disclose email communications, the legality of any governing body of a public agency at any meeting voting by secret ballot, and many more!

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**Electronic Newsletter:** In addition to the periodic news releases and “Call to Action” emails that the Coalition sends out to members and subscribers to the Citizens Network email list, the board continued to send out electronic newsletters on a quarterly basis in 2011. The four newsletters were sent out using an attractive HTML format, contained brief articles highlighting the activities of the Coalition, promoted upcoming Coalition events, and always included a reminder about joining the Coalition and supporting its work financially.

**Facebook:** The Coalition increased its presence on Facebook page at <http://www.facebook.com/washingtoncog>. We now have over 400 “fans,” and posted over 100 news articles regarding open government in 2011, in addition to news releases about Coalition activities and events. There is often quite vibrant discussion of issues in the comment threads on these postings.



## **Government and Policy Initiatives**

**Legislation Tracking:** During the legislative session, WCOG published frequent updates of its Bill Status Report, analyzing and tracking the progress of all bills identified as having an impact on the Public Records Act (RCW 42.56), Open Public Meetings Act (RCW 42.30), the Public Disclosure Act (RCW 42.17), the Records Preservation Act (RCW 40.14), state and local ethics in government acts (RCW 42.52, RCW 42.23), and other open government laws, and recommending positions and possible amendments. We examined all **2, 165** bills, memorials, and resolutions introduced during the 2011 session, and tracked and reported to our members the progress of **83** bills that had potential impact, positive or negative, on the public’s right to know, particularly regarding access to public records and public meetings.

**Legislative Effectiveness:** Of the **83** bills tracked by WCOG, **30** were considered “priority” bills to which the Coalition paid particular attention, including testimony during hearings and repeated contact with legislators. These included bills that would eliminate the minimum daily penalty for violations of Public Records Act, allowing courts to award no penalty at all (**SHB 1899, SB 5685**); prohibit inmates from receiving penalties if they win a public records lawsuit (**SSB 5025, HB 1034**); exempt from disclosure all personal information of all children, adolescents, and students participating in all public programs (**ESSB 5098**); automatically seal criminal and court records of juveniles without any court hearing or order of sealing, and limit how criminal history records can be used after they are obtained (**SHB 1793**); allow a particular public agency to hold its “open to the public” board meetings anywhere in the world, or only by telephone with no requirement to accommodate the public (**ESB 5764**); allow agencies to charge for searching for records if search time exceeds five hours in a calendar month, and demand advance deposits of estimated charges (**HB 1300, SB 5088**); define the word “copy” so that agencies would no longer be required to provide electronic copies of electronic records, and so that metadata would not be considered part of the





record (**SB 5693**); require requesters to give agencies notice or hold a conference before a lawsuit is filed, so they can make the lawsuit moot by producing the records, thereby providing an incentive to wait for the warning before producing *any* records (**HB 1139, SB 5062**); allow an agency to “run out the clock” on the statute of limitations to file a public records lawsuit by repeatedly saying it needs more time to find records (**HB 1033, SSB 5022**); make certain agencies and their board members completely immune from lawsuits under the Public Records Act (**SB 5677**); allow certain agencies to not permit drop-in inspection of public records and require requesters to make appointments (**HB 1389, SB 5294**); require all agencies to produce a summary of the cost of handling every public records request, and produce an annual report to the public of the total cost (**HB 1675**); exempt from disclosure signatures of individuals (except public employees acting in their official capacity) wherever they appear in all public records (**HB 1989**); exempt from disclosure records of vacated convictions, records of arrests where probable cause was not found, charges resolved by bail forfeiture, and charges dismissed pursuant to a stipulated order of continuance (**HB 1235, SB 5019, HB 1299, HB 5089**); seal court records and exempt from disclosure all records related to deferred prosecutions that have been successfully completed (**SB 5591**); exempt from disclosure the voter registration information of employees of criminal justice agencies (**SB 5007**); exempt death certificates from disclosure (**HB 1241**); exempt higher education institutions from paying their share of the cost of operating the State Archives (**HB 1962**); create an administrative appeals process for public records disputes (**HB 1044, SB 5237**); increase transparency of the health professions disciplinary process (**SHB 1493, SB 5775**); enhance campaign finance disclosure, such as prohibiting layering of PACs to conceal the actual contributors to campaigns (**ESSB 5021**); implement the recommendations of the Sunshine Committee (**SB 5049**); eliminate the disclosure exemption for jail booking photos (**SHB 1689, SB 5721**); prevent the sealing of court records pertaining to hazards to the public (**SB 5054**); require agencies to post notices of special meetings on their web sites, and require certain agencies to allow individuals to subscribe to receive such notices by email (**SB 5355**); require the Legislature to make the language of certain fiscal bills available to the public at least 24 hours before any hearing or vote on them (**SB 5419**); require agencies to make public records available online (**SB 5512**); require agencies to post online all meeting agendas and minutes, and a list of board members (**SSB 5553**); and require telephone campaign advertising to identify the sponsor (**HB 1038**). **Of these priority bills, seven passed.** Two of them enhanced open government. **SHB 1493** significantly increases the ability of people who file complaints against license health care professionals to track their complaints through the process. **ESSB 5021** extends disclosure requirements for political action committees and creates new limits on contributions between PACs to reduce the creation of multiple “layers” of PACs to try to conceal who is funding them. Unfortunately, these gains are greatly offset by the losses. **The other five priority bills that passed are all negative, with potentially serious consequences for open government.** **SHB 1899** eliminates the \$5 minimum daily penalty award to requesters who win PRA lawsuits; it remains to be seen whether courts use this only to let agencies off the hook for technical violations, or if they use it to take retribution against unsympathetic requesters. **SSB 5025** immediately goes after the most unsympathetic requesters, by barring courts from awarding inmates any penalties at all. **ESSB 5098** creates an extremely broad new PRA exemption for *all* personal information of *all* children, adolescents and students in *all* public and non-profit programs, likely interfering with the ability to hold such programs accountable. **SHB 1793** sets a horrible precedent of infringing on how information in public records may be used after being lawfully obtained, by telling credit reporting agencies that they cannot include criminal history record information in credit reports except under certain conditions; it also creates a task force to study limiting access to juvenile records, but the task force includes *only* government agencies, and, despite repeated requests, does not include *any* organizations advocating for open government on the task force. **ESB 5764** creates a new state agency to manage technology transfer from research universities to private entities; although it requires meetings of the board of directors to be open to the public, it allows the board to hold its meetings anywhere in the world, and also allows meetings to be held only by telephone without any requirement that the public be allowed to dial in to the meetings (and telephone meetings are no substitute for face-to-face meetings when it comes to observing what is *really* going on). **ESB 5764** also sets a dangerous precedent that, if it becomes more widespread, could seriously erode the Open Public Meetings Act. **This was a difficult legislative session for supporters of open government. It could have been much worse, as can be seen from the list of priority bills that didn’t pass.** It continues to be very difficult to achieve positive change to expand access or undo previous negative changes by the legislature or the courts, due in large part to fierce opposition by organizations that represent government agencies – but at least their most onerous proposals were once again defeated.

**Legislative Priorities:** The Coalition once again prepared a legislative agenda and priorities for the legislative session, to inform legislators and the public of open government issues of greatest importance. The priorities this year focused on ten issues: establishing **model rules** or safe-harbor provisions for the level of agency resources to be allocated to handling public records requests, creating **low-cost alternatives for resolution** of Public Records Act (PRA) and Open Public Meetings Act (OPMA) disputes that would not require the expense of hiring a lawyer or going

to court, exempting **recordings and minutes of executive sessions** from disclosure under the PRA and from subpoena under other legal actions, **requiring training** for every elected or appointed official and government employee on basic open government principles, **expanding access** to legislative and court administrative records, restoring the original intent of the **attorney-client communications exemption**, improving preservation and access to **electronic records**, requiring agencies to **scan paper records** into electronic form if requested, preventing arbitrators or judges from ordering destruction of public records, and preserving the **sunshine committee**. The legislative priorities were provided to all coalition members and subscribers to our citizen network email list, all legislators and statewide elected officials, and media outlets statewide.

**Candidate Questionnaire:** WCOG prepared the second annual candidate questionnaire asking for the positions of candidates for public office on many of the priority issues on the WCOG legislative agenda. Thanks to Allied Daily Newspaper for generously donating \$400 to WCOG for postcards to be mailed to the 764 candidates without email addresses, the questionnaire was sent via email or mail to **4,490** candidates. **249** responses were received, tabulated, and posted on the WCOG web site, and a news release sent out encouraging editorial boards and citizens to question candidates about their responses or lack thereof. As a 501(c)(3) charitable organization, WCOG cannot endorse or support any candidates, and thus the information we provided did not indicate which answers were “right” or “wrong” and we did not rate candidates in any way. Nevertheless, candidate responses to the questionnaire did become an issue in some races during the 2011 campaign. The questionnaire generated one new WCOG membership, and resulted in several phone calls to the WCOG office from the media and candidates.

**Government Consultation and Advocacy:** WCOG increased our presence and strengthened our voice intervening in government issues during 2011, and many officials reached out to WCOG for our advice as an important stakeholder and expert on open government issues. The Coalition wrote to the Honorable Bob Bauer asking that he **act in accordance** with President Obama’s promise that there would be a **presumption of openness** and that FOIA exemptions would be interpreted narrowly. The Coalition wrote to Representative Steve Tharinger **expressing concerns** that sponsoring a bill proposing that agencies be able to get an injunction against any requester deemed to be harassing would open the door to expansion, allowing an agency to get an injunction against anybody they did not like. WCOG signed on to a Project On Government Oversight letter **opposing the proposals in a draft bill** by Representative Michael Grimm (R-NY) to amend the whistleblower award programs at the Securities and Exchange Commission and Commodity Futures Trading Commission. **Toby Nixon** met with the mayor of Gold Bar to discuss a resolution the City of Gold Bar passed, limiting the number of hours per month they will spend on processing public record requests. Nixon also participated in a conference call with the lobbyists of organizations representing local government agencies to discuss **common ground with WCOG and our legislative agenda**, and to see where we could cooperate to get bills through the legislature this year. We signed on to several letters promulgated by organizations such as OpenTheGovernment.org to the White House, Congress, and Attorney General other agencies regarding various issues including promoting free, **online public access** to Congressional Research Service (CRS) reports, supporting H.R. 1144, “The Transparency and Openness in Government Act,” and the “Access to Congressionally Mandated Reports Act” (HR 6026), establishing a **presidential advisory committee on open government**, asking the U.S. to take a position with regard to **access to environmental and public health information**, asking that **cameras be allowed in U.S. Supreme Courtroom** to televise the argument over the national health care law, and promoting **no-cost access** to the full, relevant rulemaking records and to all standards and criteria incorporated in the final adopted rules. The Coalition **met with King County Councilmember Kathy Lambert** to talk about a variety of open government issues, including email addresses of people who opt-in to receiving certain notices by email instead of postal, participation by telephone in open public meetings, voicemails and the PRA, retention of Facebook postings, and disclosure of Outlook contacts. Toby Nixon spoke at the District meeting for the 43rd District Republicans in Seattle. Assistant Attorney General Tim Ford requested that WCOG **develop a draft of model rules for the Open Public Meetings Act** under the authority the Attorney General has to “provide information, technical assistance, and training” in RCW 42.30.210. The Port Townsend Leader **published an op-ed piece Nixon drafted** outlining several bills that the coalition has taken a stance against and how they would undermine the Public Records Act. WCOG board members **Lucille Walls** and **Rita Hibbard** met with Eisenhower Fellow Shen Bing in Seattle. Eisenhower Fellowships is a Philadelphia-based nonprofit international leadership development organization which sponsors mid-career emerging leaders from around the world to visit the U.S. on two month fellowships to meet people with similar professional interests. Coalition board members continued to serve on the **Sunshine Committee** and testified on most every issue considered, advocating for expansion of open government. We posted most of this correspondence on our web site so that WCOG members are aware of our activities.

## Legal Activities

**Doe v. Reed case:** The most prominent public records case in Washington state again in 2011 was *Doe v. Reed*, in which the proponents of Referendum 71 – a referendum to overturn the state’s new “everything but marriage” domestic partnership law – sought to block the disclosure of the names, address, and signatures on the referendum petition forms, claiming that to do so would constitute an infringement of an alleged 1st Amendment right of individuals to anonymously petition the government, and that release of the names would enable harassment of the signers and squelch participation in future initiative and referendum petitions. In 2010, the Court announced its 8-1 decision affirming the lower court ruling that disclosure of the identity of persons who sign petitions for ballot referenda does not normally violate the First Amendment, thereby upholding the constitutionality of the



Washington state Public Records Act as applied to petitions. The Coalition was represented in the case by **Witherspoon Kelley**, and WCOG board member **Steve Dixson** and former board member **Duane Swinton**. However, the Court left open the question of whether the First Amendment might prohibit disclosure if it can be shown that disclosure could expose those who signed a petition to serious harm and remanded the case to the district court to determine whether any of the signers had suffered any intimidation or harassment as the result of signing the petition to put R-71 on the ballot. If the Plaintiffs could establish this, then the petitions would have remained confidential; if the Plaintiffs could not meet their burden, then the petitions would be made available to the public. **Judge Benjamin H. Settle of the District Court issued a ruling on October 17 to release the names of the people who signed Referendum 71 petitions.** A conservative religious group filed an emergency motion with the court, and on October 24 the U.S. 9th Circuit Court of Appeals issued a temporary injunction barring further release of petitions. Details of the case, including links to all of the briefs, can be found at <http://www.scotusblog.com/case-files/cases/doe-v-reed>. The Coalition is deeply grateful for a \$5,000 grant from **National Freedom of Information Coalition** which helped to defray the costs associated with the case, as well as to the many others who contributed to the Coalition’s IMPACT Fund to help defray litigation expenses.

**Amicus Briefs:** The Coalition, either separately or in conjunction with other organizations supporting open government, submitted amicus briefs in support of open government principles to the appellate courts regarding a number of cases, including Supreme Court Case No. 81687-5, *In re the Detention of D.F.F* (concerning whether Superior Court Mental Proceedings Rules (MPR) 1.3, which provides involuntary commitment proceedings “shall not be open to the public, unless the person who is the subject of proceedings or his attorney filed with the court a written request that the proceedings be public,” violates the right to open administration of justice under article I, section 10 of the Washington Constitution), *Koenig v. Thurston County* (regarding whether victim impact statements and special sex offender sentencing alternative evaluations are exempt from disclosure under RCW 42.56.240(1) as essential to effective law enforcement), *Freedom Foundation v. WSDOT* (regarding whether drug and alcohol test results of ferry workers are exempt from disclosure under federal regulations incorporated into the other statute exemption of RCW 42.56.070(1)), *King County Superior Court v. Ignacio* (concerning how to deal with motions to remove defendants’ names from SCOMIS and JIS for the purpose of preventing the public from finding their cases), *City of Lakewood v. Koenig* (regarding whether an agency can initiate a declaratory judgment action against a records requester and seek discovery from the requester), *DeLong v. Parmelee* (both regarding whether the injunction power in RCW 42.56.540 can be used independently to block release of records or can only be used procedurally to enforce an otherwise existing exemption), *Franklin Cty. v. Parmalee* (regarding constitutionality of RCW 42.56.565 which limits prisoners’ use of the PRA and the factors used in third party injunction requests under RCW 42.56.540), *King County Adult Detention. v. Parmalee* and *King County Sheriff v. Parmalee* (both of which are regarding whether RCW 42.56.565 applies retroactively), *Clark v. Smith Bunday* (regarding whether records file with a court should be open to the public whether or not the court considered them in its decision), *Resident Action Council v. SHA* (regarding whether SHA had wrongfully withheld records through excessive redactions), and *West v. DNR* (concerning whether destruction of records prior to a public records request is a violation of the PRA).



**WCOG v. Attorney General and Department of Corrections case:** WCOG requested documents from the AGO that would show if the AGO aided DOC employees in filing an injunction action against DOC, in which the AGO represented DOC, to prevent documents from being produced to inmate Alan Parmalee. WCOG board member **Bill Crittenden** represents WCOG against the AGO. The Supreme Court ruled in the underlying case, *Burt v. DOC* that the requester,

Mr. Parmalee, is a necessary party to these types of injunction actions. The AGO has asserted attorney client privilege for many of the documents requested. The initial privilege log that was produced was inadequate and recently the AGO produced a revised log. Bill is working with another lawyer to help him review the log. The issue will be over the extent to which the AGO can claim privilege for documents that show it colluded with state employees to bring a sham action against DOC. Another issue that needs to be addressed is the AGOs failure to produce any electronic records as requested. Crittenden and **Toby Nixon** will be mediating the case in February 2012.

**Continuing Legal Education Seminars:** The Coalition presented two day-long continuing legal education seminars in 2011 titled "Open Government in Washington State," with the dual purpose of providing quality education on public records and open public meeting laws as well as raising revenue for Coalition projects. The April seminar included sessions on the basics of the Public Records Act and key exemptions, the Open Public Meetings Act, the Freedom of Information Act, handling PRA requests from an agency perspective, an update on current open access issues, and PRA litigation procedures and issues. Presenters included Coalition board members **Steve Dixson, Gerry Pollet, and Eric Stahl**; state Open Government Ombudsman **Tim Ford**, and Assistant City Attorney for the City of Spokane **Rocky Treppiedi**. The event was held at the Hilton Garden Inn in Spokane and had 20 attendees (including presenters), all of whom received 6.25 hours of CLE credit. The second CLE event was held at the Washington State Convention Center in conjunction with the Coalition's annual Madison-Andersen Award event. Session topics for this seminar included an overview of open government laws in Washington State, the basics of making a Public Records Request, PRA exemptions, litigating PRA issues from both sides, an update on the state's Open Public Meetings Act, redefining open courts, and current legislation affecting open government. Presenters included WCOG board members **Toby Nixon, Bill Will, and Kathy George**; former board member **Michele Earl-Hubbard**; Coalition Advisory Council member **Greg Overstreet**; and attorneys **Ramsey Ramerman** of the City of Everett, **Rose Spidell** of the ACLU of Washington, and **Shelley Hall** of Stokes Lawrence. There were 36 people in attendance (including the presenters), who each received 5.75 hours of CLE credit.

### **Awards and Recognitions**

**Seventh Annual James Madison Award:** The James Madison Award, the Coalition's highest honor, is presented each year to an individual or organization whose commitment to the cause of open government has been demonstrated through exemplary words or deeds. This year, the award was presented to **Secretary of State Sam Reed**. Secretary Reed has demonstrated his appreciation for and dedication to the cause of open government since taking office in 2000. He showed this appreciation by hiring Jerry Handfield to serve as state archivist and launching the nation's first state government digital archives to rescue disappearing electronic records. Working with Coalition board member and State Auditor Brian Sonntag, Sam Reed has supported the establishment of the task force that recommended establishing a process by which citizens could find quicker, less costly ways to resolve public records disputes. He fought and won the battle to save the Washington State Library, the State's oldest cultural institution. On the eve of major surgery, he participated in a WCOG program for Sunshine Week. His support for transparency has been shown in his role in the R71 case. For



*Coalition President Toby Nixon, 2011 James Madison Award Recipient Sam Reed, and 2010 Madison Award Recipient Frank Blethen.*

these and other exemplary words and deeds in his career as Secretary of State, Sam Reed was awarded the 2011 James Madison Award.

**Fifth Annual James Andersen Award:** The James Andersen Award is given annually to an individual or organization that has done something extraordinary to advance the efforts of the Washington Coalition for Open Government. The award this year was presented to Coalition board member and Events Committee chair **Patience Rogge**. Rogge has served on the Board of Directors since 2005 and has done more than any other individual to raise the public profile of the Washington Coalition for Open Government and make information about open government available to the people of Washington. She has almost single-handedly arranged WCOG public forums all over the state, enabling hundreds of individuals to participate in person and



*2009 James Andersen Award Recipient Brian Sonntag, 2011 James Andersen Award Recipient Patience Rogge, and Coalition President Toby Nixon.*



potentially hundreds of thousands via TVW. Patience led the effort to compile and publish the four-page full-color “Shining the Light on Your Government” insert in the Seattle Times and Seattle Post-Intelligencer, which was delivered to over 300,000 homes and tens of thousands of high school students and that brought nationwide recognition to the Coalition’s work. She has put great effort into further outreach efforts including educational opportunities for government officials and making the Coalition’s materials available in languages other than English. She was a courageous and outspoken member of the Washington state Public Records Exemption Accountability Committee (“Sunshine Committee”), consistently advocating for increased openness in government. She has had a major part in organizing the Coalition’s award events, including driving the nomination and selection process, arranging for speakers and sponsors, and attending to the details.

**Key Awards:** The Key Award can be awarded by the Coalition Board of Directors at any time to an individual or organization in honor of a good deed in advancement of open government. The name of the award recognizes the “key contributions” of the award recipients, and the symbolism of the “key” to unlocking of public records and government information. The award includes a special “Key Award” lapel pin and certificate, a free year of membership in the



Coalition, and recognition on the Coalition web site and in a news release. Honorees this year included **Puyallup City Councilmember John Knutsen** for refusing to take part in serial meetings of councilmembers with the City Manager and calling the other members’ attention to the fact that they are in violation of the OPMA; **State Senator Jim Honeyford**, who stood in opposition of excluding the public from participating meaningfully in the legislative process by walking out of a hearing rather than participating when a bill was brought up that was not on the agenda; **Elizabeth Campbell**, **Walter Jorgensen** and **Robert Shirley** for using state ethics laws to hold the Washington State Dept.

of Transportation accountable for its politically motivated delay of a records disclosure requested by Ms. Campbell; and **State Senator Pam Roach** for demonstrating her dedication to the cause of open government by being the prime sponsor of SB 5512, Increasing Public Access to Public Records and SB 5553, Requiring public agencies, special purpose districts, and municipalities to post certain information on their websites; and being a secondary sponsor of SB 5049, Implementing the recommendations of the Sunshine Committee.