

Washington Coalition for Open Government

washingtoncog.org

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Annual Report for 2008

The year 2008 was another busy year for the Coalition. We celebrated our sixth anniversary. Dues-paying membership in the Coalition grew from 121 to 149 members, and the number of individuals signed up for the "Citizen's Network" email list grew from 315 to 512.

We appreciate the service of board member **Jonathan Bechtle** of Evergreen Freedom Foundation, who assumed greater responsibilities at EFF and left the board at the end of the year; the new representative on the board from EFF is **Trent England**. We welcomed several other new members to the board, including House Majority Leader **Lynn Kessler**, attorney **William Crittenden** (who handles many public records lawsuits), **Richard Davis** of the Association of Washington Business, **Sam Pace** of the Association of REALTORS®, **David Seago** of the News Tribune, and KPLU law and justice reporter **Paula Wissel**. We appreciate the strength, insights, and added diversity they've brought. 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; **Gerry Pollet**, secretary and chair of the Revenue Strategy Committee; **Jason Mercier**, treasurer; **Patience Rogge**, chair of the Outreach and Membership Committee; **Bill Will**, chair of the Media Committee; **Duane Swinton**, chair of the Legal Committee; and **Chris Leman**, chair of the Board Development Committee. The Coalition would not function without the service of these individuals and the dozens of other volunteers 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, Toby Nixon, Seattle Post-Intelligencer, and Seattle Times; **Thomas Jefferson Supporter**: KCTS-9; **Platinum Supporters**: Kitsap Sun, Jason Mercier, Pioneer Newspaper Service, Spokesman-Review, Stokes Lawrence, and Yakima Herald Republic; **Gold Supporters**: American Civil Liberties Union, D. Edson Clark CPA PS, William Crittenden, Everett Herald, Evergreen Freedom Foundation, Peter Horvitz, Krist Novoselic, Sam Pace, Patience Rogge, Skagit Valley Publishing, Brian Sonntag, Sound Publishing, and Washington Policy Center; and **Silver Supporters**: Jim Andersen, Frank Garred, Jerry Handfield, Martha Martin Ph.D., Miller Building Enterprises Inc., Olympic View Publishing, Wenatchee World, Donald Williams, and Val Wood. We are grateful for all of the contributions and volunteer efforts of our many other members and supporters, and especially grateful to the **National Freedom of Information Coalition**, **Norcliffe Foundation**, and **Best of the West** for their grants to help the WCOG with special projects.

As you will see in the following summary of the activities of the Coalition, a lot of hard and important work was done during 2008. 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 2008

Public Education and Outreach

Newspapers in Education Project: WCOG was lead sponsor of a four-page full-color insert on open government entitled “**Shining the Light on Your Government**”, which appeared in the full run of the Seattle Times and Seattle Post-Intelligencer (over 300,000 total circulation) on March 13, during Sunshine Week. Other sponsors recruited by WCOG included **Davis Wright Tremaine, Allied Law Group, Allied Daily Newspapers of Washington, Society of Professional Journalists, Washington News Council, Washington Policy Center,** and **Secretary of State Sam Reed**. In addition, **State Auditor Brian Sonntag** purchased advertising in the insert for his government accountability hotline. WCOG board member **Patience Rogge** and Seattle Times staffer **Elizabeth Duffel** developed the content for the insert, which included eye-popping graphics and informative articles such as “What is Open Government?”, “The People Are in Charge”, “Access Your Government”, “Is Open Government Important?”, “Know What to Know”, “Why Continue to Cultivate Open Government in the United States?”, “How Do I Obtain Public Records?”, and “Freedom of the Press and Open Government”. It also included a number of suggested activities for students and classes, summaries of state and federal open government laws, sample public records requests, information on WCOG’s Sunshine Week town hall, and web links for further information. The insert was used in the newspapers’ “Newspapers in Education” project and provided to tens of thousands of high school students throughout the region. WCOG purchased 5,000 copies of the insert, which were handed out at a number of events throughout the year.

Open Government Forums: A total of seven Open Government Forums were held all around Washington during 2008, including Monroe (January), Seattle (March), Bremerton (May), Hoquiam (June), Oak Harbor (July), Spokane (October), and Port Angeles (November). Most were very well attended by both the general public and government officials; for example, more than 80 people were present in Hoquiam, and more than 70 in Port Angeles. Four of the events were taped by TVW (the statewide public affairs cable channel) and rebroadcast several times; the other forums were taped by local public access or government access channels and shown locally. The Seattle event included viewing of a live nationwide broadcast from Washington DC on government secrecy. Many prominent officials appeared on panels this year, including **Attorney General Rob McKenna, State Auditor Brian Sonntag, Secretary of State Sam Reed, Seattle City Attorney Tom Carr, Rep. Lynn Kessler, Rep. Barbara Bailey,** and **State Archivist Jerry Handfield**.

State Political Party Conventions: For the first time in 2008, WCOG staffed informational booths at both major political party state conventions – the Republican convention in Spokane in May, and the Democratic convention in Spokane in June. Materials on open government, WCOG bags, the Newspapers in Education inserts, WCOG legislative agendas and annual reports, membership application forms, and lots of candy were handed out to hundreds of convention delegates, media, and visitors during the two-day conventions.

John Seigenthaler Event: WCOG joined with **Washington News Council, Davis Wright Tremaine, The Seattle Times,** and the **American Civil Liberties Union of Washington** to sponsor a special presentation by **John Seigenthaler** of the First Amendment Center entitled “The First Amendment: Our Rights at Risk?” at the Seattle Public Library in April.

21st Century Right to Know Project: WCOG joined with OMB Watch to host a session of this project in April at the Seattle Public Library. This two year project has a goal of assembling recommendations for the next President and Congress on changes that can be made to open government policy through executive order, regulation, legislation, and oversight and the application of technology to improve access to government information. **Jason Mercier** of the WCOG board participated in the project on behalf of WCOG.

Other Conferences: Representatives of WCOG spoke on open government at several other conferences, including the Associated Press Forum luncheon in Olympia in January, the Allied Daily Newspapers and Washington Newspaper Publishers Association annual legislative day in Olympia in February, the “Proud to Be an American” conference in Bellevue, a “Conservative Enthusiasts” meeting in Mercer Island, the annual

meeting of the Pacific Northwest Association of Journalism Educators, and the annual meeting of the Bench-Bar-Press Committee. We staffed an informational booth at the Washington Library Association conference in Vancouver in April.

Open Government Leadership Institute: WCOG continued to make progress on preparations for the first Open Government Leadership Institute coming up in May, 2009, including securing grant funding to cover most of the cost, selecting a site, getting commitments from presenters and mentors, and advertising for applications for attendees.

Outreach in Other Languages: WCOG continued its efforts to make materials on open government available to Washington residents whose first language is not English. The entire Newspapers in Education insert, all of the Citizen's Resources, and State Auditor Brian Sonntag's keynote address from the 2007 Madison-Andersen Award breakfast are now available on the WCOG web site in Spanish, and basic materials are posted in Chinese, Russian, and Tagalog.

Media Presence: A WCOG op-ed, written by **Toby Nixon** and **Jonathan Bechtle**, on the unfavorable *Soter v. Cowles* decision of the state Supreme Court, was printed in several newspapers across the state including Aberdeen Daily World, Skagit Valley Herald, and Port Townsend Leader. Toby Nixon was quoted many times in the news on behalf of WCOG, commenting on various matters including proposed legislation, court decisions, violations of open government laws by agencies, and other matters.

Spreading Open Government Abroad: Representatives of WCOG met with several groups of visitors from other countries who were seeking to learn about open government in Washington, including delegations from Russia in April and China in October.

Other Outreach Activities: WCOG created a Member lapel pin and Membership card that are available to all dues-paying members. A high-quality color poster soliciting membership in WCOG and suitable for use in newsrooms and other venues was produced and distributed. A WCOG group on the LinkedIn social networking service was established.

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, Open Public Meetings Act, the Records Preservation Act (RCW 40.14), and other open government laws, and recommending WCOG positions and possible amendments. We examined all 4,347 bills introduced during the biennium, and tracked and reported to our members the progress of 115 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 115 bills tracked by WCOG, 10 were considered "priority" bills to which the Coalition paid particular attention, including testimony during hearings and repeated contact with legislators. These included bills on recording of executive sessions (HB 3292), attorney-client privilege (HB 3231), penalties for violation of the Public Records Act (HB 3219) and the Open Public Meetings Act (HB 2567), the ability for agencies to initiate court action against requestors of public records (HB 2839), and exemption from disclosure of records regarding commissioned peace officers (HB 2490), detailed pipeline map data (HB 1478), and birthdates of public employees (HB 1942). We were disappointed that none of the "good" bills for which we advocated passed the legislature – but **none of the "bad" bills passed**, either. **Rep. Lynn Kessler**, a WCOG board member, did an outstanding job sponsoring HB 3292 in the face of overwhelming opposition from associations representing cities, counties, ports, and other agencies.

Legislative Agenda: The Coalition once again prepared a legislative agenda for the upcoming 2009 legislative session, to inform legislators and the public of open government issues of greatest importance. The agenda this year was kept to one page and focused on only six issues: restoring the original intent of the

attorney-client communications exemption, require recording of executive sessions, creating an independent open government ombudsman, requiring open government training for government employees and elected officials, improving preservation and access to electronic records, and stopping agency abuse of third-party injunctions. The Agenda was provided to all coalition members and subscribers to our citizen network email list, all legislators, and media outlets statewide.

Candidate Questionnaire: This year, rather than simply sending out an “open government pledge” for candidates to sign and return, WCOG prepared a questionnaire asking for the positions of candidates for public office on many of the priority issues on the WCOG legislative agenda. The questionnaire was sent to 584 candidates, most of them running for state legislature or statewide office. 82 responses were received, tabulated, and posted on the WCOG web site, and a news release sent out encouraging editorial boards to question candidates about their responses or lack thereof. As a 501(c)(3) education foundation, WCOG could not 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 2008 campaign.

Sunshine Committee: One of the bills WCOG strongly supported in 2007 was to create the Public Records Exemptions Accountability Committee, also known as the Sunshine Committee, which is charged with reviewing all identifiable exemptions to the Public Records Act and recommending to the legislature whether they should be repealed, retained, or amended. Several WCOG members, including two board members, serve on the committee. WCOG has been represented by many of its members at every meeting of the committee and testified on nearly every issue so far considered, advocating for expansion of open government. Through our efforts, several favorable recommendations were adopted by the committee, and unfavorable recommendations prevented or forwarded only as “minority reports”.

Legal Activities

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 *Mechling v. City of Monroe* (many issues surrounding city council member use of personal email accounts for official business), *Koenig v. Thurston County* (portions of documents should be redacted rather than withheld in their entirety), *Burt v. Department of Corrections* (necessity of agency joining requester to third-party injunction suit, neutrality of agency in third-party injunction suits), *Parmelee v. Department of Corrections* (necessity of agency joining requester to third-party injunction suit), *Northwest Gas Association v. Washington Utilities and Transportation Commission* (withholding of detailed digital mapping data of pipelines), *Rental Housing Association v. City of Des Moines* (tolling of the statute of limitations when parties continue to debate withholding of documents), *Morgan v. City of Federal Way* (access to investigative reports of harassment by a sitting judge), *Washington v. Waldon* (improperly sealed court file), and *O’Neill v. City of Shoreline* (city council member email on personal computer and access to email metadata).

Direct Litigation: In 2006, the Coalition submitted a request to obtain records from the Seattle Monorail Authority that had been originally denied in the *Hangartner* case. As expected, the Authority denied the request. In 2007, the Coalition filed a lawsuit challenging the denial, which was dismissed by the court because of expiration of the statute of limitations. Although the Coalition disputed the decision, we decided not to appeal the decision, so that the Authority could be dissolved and the records turned over to the state archives. This year, we requested access to the records at the archives in Olympia. The archivist examined the records and determined that there was no reason for any of them to continue to be privileged now that the agency has been shut down. In November, several WCOG board members visited the archives on multiple occasions, examined thousands of pages of records and scanned or copied many, focusing on records for which attorney-client privilege was previously claimed. The intent is to identify records for which the original claim of privilege was clearly unwarranted, and use these to educate the public and legislators on how the

attorney-client privilege exemption is abused and the importance of access to records, particularly on matters that are before the public for a vote.

Awards and Recognitions

Fourth 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 **Jolene Unsoeld**, a former member of the Washington State Legislature and United States House of Representatives. As an independent lobbyist in Olympia from 1971 to 1984 and then as a state legislator from 1985 to 1988, Unsoeld was Washington state's major advocate for open government where she protected and strengthened the Public Records Act, the Open Public Meetings Act, and the Public Disclosure Commission and the laws that it enforces. Unsoeld collected petition signatures in 1972 to put Initiative 276, the Open Government Act (now often referred to as the Public Disclosure Act) on the ballot, and was part of the campaign that enacted the initiative that year through overwhelming voter support. As a member of Congress from 1989 to 1995, she worked on behalf of the federal Freedom of Information Act and campaign spending reform.

Second 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 **Kris Passey**, a founding member of WCOG organization. Kris retired in 2007 from publishing the Marysville Globe and Arlington Times. During his career as a journalist and publisher, Kris was an outstanding advocate for open government and the Coalition. He advanced the work of WCOG by providing the printing of the coalition's brochures and producing a series of eye-catching posters, as well as providing public service announcements and producing a video explaining the mission of WCOG.

Key Awards: The Key Award can be awarded by the 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 State Rep. **Brendan Williams**, State Rep. **Bruce Chandler**, Pierce County Councilmember **Shawn Bunney**, Grant PUD Commissioner **Greg Hansen**, Monroe School Board member **Debra Kolrud**, Seattle Times Investigative Reporter **James Neff**, **Charlie Burrow**, **Christy Diemond**, **David Koenig**, **Donna McKereghan**, **Concerned Citizens in Action**, and **Allied Law Group**. Several of the awards were presented to the recipients at meetings in their local communities, including Rep. Williams (at the capitol in Olympia), Bunney (before a Pierce County Council meeting), and Kolrud (during a Monroe school board meeting), thereby increasing awareness of WCOG and the impact of the award for the recipients.

Annual Awards Event: The Coalition's annual awards event was held at the Washington Athletic Club in Seattle on September 19, during Constitution Week. It included presentation of the James Madison Award, the James Andersen Award, and six Key Awards. The keynote address was presented by political cartoonist **David Horsey** of the Seattle Post-Intelligencer, and the emcee was **Enrique Cerna** of KCTS-9 television. Nearly 90 people attended the event. Significant financial support of the event was provided by ten sponsors, and over \$17,000 in in-kind advertising contributed to its success. Portions of the event were taped, including the keynote address, and broadcast several times statewide on TVW.

Frank Garrad Receives SPJ Lifetime Achievement Award: Frank Garrad, one of WCOG's founding board members, its first executive director, and recipient of the WCOG James Andersen Award in 2007, received the June Almquist Lifetime Achievement Award from the Society of Professional Journalists in May. WCOG inserted an advertisement in the award event program to congratulate Frank.