

Officers

Toby Nixon, President

Former State Representative, 45th District
Microsoft Corporation

Mike Fancher, Vice President

Private Citizen

Gerry Pollet, Secretary

Executive Director, Heart of America NW

Sam Pace, Treasurer

Association of REALTORS®

Board of Directors

D. Edson Clark, CPA

Clark, Raymond & Company

William Crittenden

Attorney at Law

George Erb

Editor, Puget Sound Business Journal

Kathy George

Harrison Benis & Spence LLP

Rita Hibbard

Investigate West

Anna Jancewicz

Teamsters Union Local No. 117

Scott Johnson

Attorney, ACLU of Washington

Lynn Kessler

Former State Representative, 24th District

Chris Leman

Seattle Community Council Federation

Barbara Levette

League of Women Voters of Washington

Jason Mercier

Director, Washington Policy Center

Catherine L. Moore

Washington State Bar Association

David Norman

Lee Smart PS, Inc.

Mike Reitz

The Freedom Foundation

Patience Rogge

Private Citizen

David Seago

Retired, The News Tribune

Brian Sonntag

Washington State Auditor

Eric Stahl

Davis Wright Tremaine, LLP

Lucille Walls

Alliance of People with Disabilities

Peggy Watt

Western Washington University

Bill Will

WA Newspaper Publishers Association

Board Emeritus

James A. Andersen, Retired

Supreme Court Chief Justice

Alan Thompson, Retired

Legislator, Chief Clerk of the House

info@washingtoncog.org

6351 Seaview Ave NW

Seattle, WA 98107-2664

Phone: 206.782.0393 FAX: 206.623.4474

Washington Coalition for Open Government

washingtoncog.org

Annual Report for 2010

Washington Coalition for Open Government, the leading protector of open government in Washington, had another very impressive year in 2010:

- We fought hard in the courts to preserve access to public records, including winning a landmark 8-1 decision in the U.S. Supreme Court preserving open government and the peoples' right to know, and filed amicus briefs in nearly a dozen cases in Washington's appellate courts (see page 6 and 7 for these and other **important legal actions**);
- We tracked over 75 bills in the state legislature (including 30 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 first annual Washington State Open Government Conference, six new Open Government Forums throughout Washington, many speaking engagements at events throughout the state, and a completely redesigned and easy-to-use web site (see pages 2 and 3); and,
- We added a new award program for Legislator of the Year to encourage Washington's senators and representatives to work toward expanding access and transparency (see page 9).

The impact of our expanded outreach efforts was seen in significantly increased membership and sponsorship – dues-paying membership in the Coalition increased from 132 at the end of 2009 to 200 at the end of 2010, 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 dropped from 575 to 488 (many of which became members), but the number of individuals who "Like" our Facebook page grew to well over 300. 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.

This year, like every year, saw changes on the Coalition Board of Directors. We appreciate the service of board members **Richard Davis**, **Ken Bunting** of the Seattle Post-Intelligencer, **Richard Kielbowicz** of the University of Washington Department of Communication, **Duane Swinton** of Witherspoon Kelley Davenport and Toole, and **Ruth Gordon**, Jefferson County Clerk, who left the board this past year. **Ken Bunting** was the last remaining founding board member of the Coalition, having served continuously since our founding in 2002, although he's still in close contact with us – he left to become executive director of

the National Freedom of Information Coalition, based at the University of Missouri in Columbia, Missouri. We also deeply thank **Duane Swinton** for his long service as chair of the Coalition's Legal Committee. We welcomed to the board attorneys **David Norman** of Allied Law Group (now with Lee Smart PS), **Kathy George** of Harrison Benis & Spence LLP, and **Eric Stahl** of Davis Wright Tremaine; **Catherine Moore**, a member of the Board of Governors of the Washington State Bar Association and former City Clerk of Seattle; **Barbara Levette** of the League of Women Voters of Washington; **Rita Hibbard**, executive director and editor of InvestigateWest, an independent non-profit investigative journalism organization; and **Peggy Watt**, professor of journalism at Western Washington University.

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; **Sam Pace**, 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 **Scott Johnson**, who became new chair of the Legal Committee after Duane's retirement; and **Chris Leman**, chair 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, 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, William John Crittenden, Davis Wright Tremaine, Toby Nixon, On The Record Reporters, The Seattle Times, Uninformed Consent, and Witherspoon Kelley Davenport & Toole; **Thomas Jefferson Supporters** Stokes Lawrence and Seattle Operating Support; **Platinum Supporters** Patrick D. Brown J.D. Ph.D., Everett Daily Herald, Pioneer Newspaper Service, Lucille G. Walls, and the Department of Communication of the University of Washington; **Gold Supporters** American Civil Liberties Union, Association of Washington Public Hospital Districts, D. Edson Clark CPA, Mike Fancher, The Freedom Foundation, Peter Horvitz, Beionka Moore, Krist Novoselic, Patience Rogge, State Auditor Brian Sonntag, The Spokesman Review, Teamsters Union Local No. 117, Washington Newspaper Publishers Association, Washington Policy Center, and Yakima Herald Republic; and **Silver Supporters** Jim Andersen, Steve Gacke, Frank Garred, Scott Johnson, Stuart Neiman, Olympic View Publishing, Sam Pace, Stephen Sultemeier, Alan Thompson, and Donald Williams.

As you will see in the following summary of the activities of the Coalition, a lot of hard and important work was done during 2010. 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 2010

Public Education and Outreach

First Annual Statewide Open Government Conference: On January 16, the Coalition presented the Washington State Open Government Conference jointly with the UW Department of Communication and the Society of



Professional Journalists, at Kane Hall and Parrington Hall on the University of Washington campus. Over 120 people attended. Keynote remarks were presented by Washington state Attorney General **Rob McKenna** and by **Heather Brooke**, a former University of Washington journalism student and intern in Olympia for the Spokesman-Review whose persistent use of the United Kingdom's new freedom of information act disclosed a scandal that led to the resignation of the Speaker of the House of Commons (see www.heatherbrooke.org). Conference sessions were presented by **William Crittenden** (State and Local Public Records), **Michele Earl-Hubbard** (State and Local Public Meetings), **Gerry Pollet** (Federal Public Records, Open Public Meetings, and Whistleblower Protection), and **Eric Nalder** (Money in Politics: How Lobby and Campaign Finance Disclosure Function Today). Each session was presented twice. Coalition Key Awards

were presented at the conference to Pierce County Executive **Pat McCarthy**, Monroe community activist **Meredith Mechling**, Mercer Island community activist **Ira Appelman**, and Redmond accountant **Ed Clark**. The conference was preceded by a reception the night before at the Women's University Club in downtown Seattle, providing an

opportunity for sponsors and donors to meet the keynote speaker in a more intimate setting. The conference was approved for two hours of Continuing Legal Education credit, which was claimed by 16 of the attendees. The conference was very highly rated by attendees, with the average rating 8.8 on a scale of 10. The conference would not have been possible without generous and early contributions from **National Freedom of Information Coalition** and **The Norcliffe Foundation**; we are also grateful for additional conference sponsorship by **Washington Policy Center**, **Washbucket.Net**, **Skagit IMS**, and assistance from **University of Washington Center for West European Studies**. We appreciate the hard work of all those involved in making the conference a success, especially Coalition board member **Chris Leman** who envisioned the conference, led the planning, and did much of the organizational work.

Open Government Forums: Six Open Government Forums were held all around Washington during 2010, including **Kirkland** (February), **Everett** (April), **Edmonds** (June), **Mercer Island** (August), **Kennewick** (October), and **Olympia** (November). Most were very well attended by both the general public and government officials; for example, more than 70 people were present in Kirkland and Olympia. Several of the forums were recorded, and the video can be watched online through the Coalition web site. Many prominent officials appeared on panels this year, including Attorney General **Rob McKenna**, State Auditor **Brian Sonntag**, House Majority Leader **Lynn Kessler**, State Representative **Susan Fagan**, State Archivist **Jerry Handfield**, state records manager **Russell Wood**, Assistant Attorney General and state Open Government Ombudsman **Tim Ford**, former Open Government Ombudsman **Greg Overstreet**, and Everett Assistant City Attorney **Ramsey Ramerman**, as well as Coalition president and former state representative **Toby Nixon**. We appreciate our forum moderators, including Kirkland Reporter editor **Carrie Wood**, Puget Sound Regional Council executive director **Bob Drewel**, Everett Herald editor **Neil Pattison**, former state senator **Jim Horn**, former state representative **Tom Moak**, and The News Tribune publisher **David Zeeck**. We greatly appreciate the organizations that co-sponsored the forums, including **Microsoft**, **City of Everett**, **League of Women Voters of Snohomish County**, **League of Women Voters of Greater Seattle**, **League of Women Voters of Benton and Franklin Counties**, and **League of Women Voters of Thurston County**, and also the local newspapers that cosponsored the forums – **Kirkland Reporter**, **Everett Daily Herald**, **The Seattle Times**, **Tri-City Herald**, and **the Olympian**. 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 Town Hall Meeting: The Coalition sponsored a town hall meeting on March 19, hosted at the studios of KCTS, the public television station serving the Seattle area. The meeting was preceded by a showing of the national Sunshine Week webcast “Building Transparency” from the Center for American Progress in Washington DC. This was followed by a local panel that included **Secretary of State Sam Reed**, **State Auditor Brian Sonntag**, **Assistant Attorney General Brian Moran**, Monroe community activist and WCOG Key Award Winner **Meredith Mechling**, and Redmond CPA and Key Award Winner **Ed Clark**. The panel was moderated by KCTS executive director of production **Enrique Cerna**, who also serves on the Coalition’s Advisory Council. The meeting was well-attended, and was also recorded and 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 last year, continued to gain visibility and speaking requests. The Coalition provided speakers or had a presence at a number of events this year, including the *Journalism That Matters* conference at the University of Washington, the Sunshine Week event sponsored by the League of Women Voters of Tacoma-Pierce County, the Society of Professional Journalists Western Washington Pro Chapter Regional Conference (including a panel discussion staffed by Coalition experts), public records training in Sequim sponsored by the State Archives, the *Access to Justice* conference in Wenatchee sponsored by the Washington State Bar Association, and a Coffee Party meeting in Redmond. We hosted a panel discussion for visiting journalists from Armenia (organized by the Foundation for Russian-American Economic Cooperation), and met with government officials from Pakistan, Italy, and the People’s Republic of China. We co-sponsored, along with SPJ, a stop on the “Access Across America Tour” by University of Arizona journalism professor David Cullier. We had informational booths for delegates at the Washington State Democratic Convention and the Washington State Republican Convention, both held in Vancouver on separate weekends in June (and greatly appreciate the help of **Concerned Citizens in Action** with staffing the booths!). At the Republican convention, we also organized a panel discussion on using public records in political activism, which was moderated by Coalition president **Toby Nixon** and included panelists **Bill Bryant**, president of the Port of Seattle Commission, **Scott St. Clair**, investigative journalist with the Evergreen Freedom Foundation, **Brandon Houskeeper** of Washington Policy Center, who is director of WashingtonVotes.org, and **Stefan Sharkansky**, founder of SoundPolitics.com and recipient of a large settlement from King County for violation of the Public Records Act.

Web Site Redesigned: Thanks to a generous grant from **Best of the West**, the Coalition was able to hire a professional web site designer to completely revamp the Coalition web site. The redesign, launched on March 1, included an entire new graphical design and color scheme, new menu structure that significantly improves the ability to find information on the site, and a large amount of additional information to assist citizens in understanding and using Washington state and federal open government laws. We added an archive of video and other materials from Coalition events, significantly more information about the Coalition’s legislative and legal activities, and details about previous recipients of Coalition awards and recognitions along with information on how to make nominations. The new site has made much more prominent the online mechanisms for joining and contributing to the Coalition, obtaining help from Coalition experts, and finding our Facebook page, which undoubtedly accounts in part for the increased numbers in all of those areas for the year. This investment in the Coalition web site – which was accomplished at a very reasonable cost – has greatly improved our online presence and visibility, and helped our members and citizens.



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 requirements for agendas for public meetings, access to court case files, prompt disclosure of records relevant to upcoming elections, attorney-client privileged communications, legality of requirements to sign commitments regarding commercial use of lists of names of individuals, transparency rules for homeowner associations, assistance in drafting public records requests, whether non-disclosure agreements override public records laws, whether certain discussion topics are allowed in executive sessions, records pertaining to enforcement of building and zoning



regulations, access to police reports, timelines for responses under the federal Freedom of Information Act, applicability of the state Open Public Meetings Act to private non-profit organizations, access to the list of subscribers to a city email list, whether lunch discussions with commission members violates the Open Public Meetings Act, disclosability of salaries of public school district administrative employees, redaction of information on applications to serve on volunteer city boards and commissions, access to state employee disciplinary records, abuse of emergency meeting provisions to violate notice requirements, financial conflicts of interest by council members, accuracy and completeness of city council meeting minutes, use of “quasi-judicial deliberations” as a reason to close city council meetings, whether private citizens can get access to old yearbooks in high school libraries, access to jail procedures and policies that are not related to security, unreasonably long estimates of time needed to produce public records, insufficient time to review large documents before public hearings on them, requirements for disclosure of conflicts of interest by county commissioners, whether a requester can bring their own photocopier or scanner into an agency rather than buying copies of records from the agency, whether voting for officers of a city council must be conducted openly, and many others!

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 this year continued to send out electronic newsletters on a regular basis. The newsletters, sent roughly quarterly using an attractive HTML format, contain brief articles highlighting the activities of the Coalition, promote upcoming Coalition events, and always include a reminder about joining the Coalition and supporting its work financially.

Facebook: The Coalition continued its presence on Facebook at <http://www.facebook.com/washingtoncog>. We now have over 300 “fans”, have posted over 400 links to news articles regarding open government, and posted dozens of notes and 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 **1,590** bills, memorials, and resolutions introduced during the 2010 session, and tracked and reported to our members the progress of **76** 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 **76** 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 exempting disclosure of employee photographs and month and year of birth of criminal justice employees, except to news media (**HB 1317**) and prohibiting all disclosure of all public employee photographs (**HB 2447**); exempting from disclosure personal information of people who file complaints with agencies (**HB 2610, SB 6428**), regulatory enforcement actions affecting financial institutions (**HB 2830, HB 2831, SB 6369, SB 6370**), and video recordings from public transportation vehicles and facilities (**SB 6431**); clarifying that initiative and referendum petitions are public records (**HB 2418, SB 6754**) and exempting petition signatures from disclosure (**HB 2612, HB 2714**); implementing recommendations of the Sunshine Committee (**SB 5295**); eliminating the Sunshine Committee (**HB 2617, SB 6426**); creating a non-judicial review process for public records disputes (**HB 2736, SB 6383**); making awards of attorney fees optional in PRA actions and requiring penalties to be paid to the state instead of to the requester (**HB 2910, SB 6408**); requiring conferences with agencies prior to filing Public Records Act lawsuits (**HB 2583, SB 6368**); limiting the number of hours of search time for records requests and allowing agencies to charge for excess search time (**HB 3031**); allowing certain agencies to charge fees for accessing databases (**HB 3122, HB 3156, HB 3159, SB 6747**); exempting high-performing schools from many government accountability laws (**SB 6620**); eliminating direct notifications to news media of special meetings under the OPMA and replacing them with web site postings (**SB 6741**); and, exempting organizations representing government agencies from the PRA and OPMA (**SB 6835**). **Of these priority bills, five passed, but only one of them - HB 1317 - passed with its onerous PRA impacts intact.** **HB 1317** exempts from disclosure the photographs and month and year of birth of employees of criminal justice agencies, but was significantly narrowed from the form in which it was originally introduced. However, **HB 1317** allows access to these photographs and birthdates to members of the news media, as news media was defined in the reporter shield law that passed a couple of years ago. This special privilege to the news media is inconsistent with a basic principle of the Public Records Act that "agencies shall not distinguish among persons requesting records", and sets an undesirable precedent of preferential access to certain classes of requesters that will undoubtedly be expanded in the future. **SB 5295** enacted the first set of recommendations of the Sunshine Committee. **HB 2617** passed, eliminating several boards and commissions, but the section eliminating the Sunshine Committee was removed from the bill. **HB 2830** and **HB 2831** passed, but the sections exempting regulatory enforcement actions from disclosure were removed. **Vigorous action by members and officers of WCOG and other open government advocates once again prevented many onerous bills from passing or resulted in the onerous provisions being removed.** Unfortunately, as is often the case, many good bills also failed.

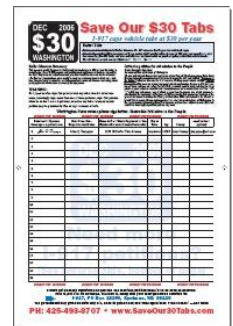


Legislative Priorities: The Coalition once again prepared a legislative agenda and priorities for the legislative session, to inform legislators and the public of open government issues of greatest importance. The priorities this year focused on nine issues: restoring the original intent of the **attorney-client communications** exemption, expanding access to **legislative and court records**, exempting **recordings of executive sessions** from disclosure, creating a **non-judicial process** for review of PRA and OPMA disputes, requiring **open government training** for government employees and elected officials, 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** contrary to law, 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. The Sunshine Committee was preserved, but none of the other priorities were enacted into law.

Candidate Questionnaire: WCOG prepared a questionnaire asking for the positions of candidates for public office on many of the priority issues on the WCOG legislative agenda. This year was a legislative election year, so the questionnaire focused on state issues. The questionnaire was sent to **735** candidates. **82** 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 2010 campaign.

Government Consultation and Advocacy: WCOG increased our presence and strengthened our voice intervening in government issues during 2010, 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 Pierce County Boundary Review Board **objecting to a planned closed meeting**, resulting in the meeting being rescheduled and opened to the public. The Coalition wrote to Governor Gregoire **complaining about delays in filling vacancies on the Sunshine Committee**, and the vacancies were quickly filled. The Coalition submitted on brief to the state Sunshine Committee **advocating repeal of HB 1317**. Coalition board members consulted with City of Lakewood officials regarding a persistent records requester that they consider to be “harassing” and ways to respond that do not require changes to state law that would weaken access to citizens throughout the state. The Coalition **advised school board members** in Everett and Monroe on Open Public Meetings Act issues, and sent a letter to the Monroe School Board offering a position on their executive session practices (which was not particularly well received). We issued a news release commenting negatively on the Attorney General’s position on whether records which have not been properly indexed can be referenced in court action in violation of RCW 42.56.060(7). We signed on to several letters promulgated by organizations such as OpenTheGovernment.org to the White House, Congress, and other federal agencies regarding various issues including a proposed exemption in the Freedom of Information Act for investigations by the National Transportation Safety Board, preservation of electronic mail by federal agencies, and whether Supreme Court oral arguments should be televised. The Coalition **sought release of petition signatures** for initiatives previously filed by Tim Eyman, resulting in all of the petition images being made available to the public for review on DVD and microfilm at the State Archives in Olympia. We also **sought release of images of I-1098 (income tax) initiative pages** which were alleged to contain forged signatures, and made those available to the public through the Coalition’s web site and by request. Coalition president **Toby Nixon** continued to serve as a **member of the Washington State Historical Records Advisory Board**, was invited to testify at the meeting of the House Committee on State Government & Tribal Affairs concerning efforts to limit agency costs in handling public records requests, and also participated in a stakeholder group considering proposed legislation on “enhanced intelligence gathering”, advocating that the proposed bill should not permit destruction of intelligence data gathered illegally but required it to be preserved so that illegal surveillance can be uncovered. Coalition board members continued to serve on the **Sunshine Committee** and testified on most every issue considered, advocating for expansion of open government. Several Coalition board members participated in the annual meeting of the Bench-Bar-Press Committee, and the president delivered a summary of the Coalition’s activities and positions on key issues. And Coalition board members continued to participate in the **Public Records Act Workgroup convened by the Board of Judicial Administration** to consider how the PRA or its principles should be applied to court administrative records (the workgroup ultimately proposed a new court rule concerning these records, which is being considered by the Supreme Court’s rules committee). 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 2010 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. The Coalition’s position is that signers of initiatives and referenda are acting in the capacity of legislators, that proposing to make, change, or repeal laws should not be done anonymously, and that the people have a compelling interest in knowing who is making such propositions and in confirming the accuracy of the Secretary of State’s signature verification process. The Coalition was represented in the case by **Witherspoon Kelley Davenport & Toole** (the law firm of WCOG Legal Committee chair **Duane Swinton**). As of the beginning of the year, briefs were being prepared for submission to the U.S. Supreme Court; these were submitted in March, and oral argument was held before the court on April 28. Five briefs on the merits and 28 amicus briefs were filed. On June 24, **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 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. The “as applied” case, looking into the specific circumstances of R-71’s signers, continues in federal court in Tacoma. Details of the case, including links to all of the briefs, can be found at <http://www.scotusblog.com/case-files/cases/does-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 including printing of the bound briefing booklets required by the Court, 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 **Kitsap Sun v. Kitsap County** (regarding whether the county could escape penalties for delay in disclosing records by claiming it was “neutral” while waiting to find out if the employees would object to the release of the records), **O’Neill v. City of Shoreline** (regarding whether metadata associated with an email message is part of the public record, and whether a verbal demand for disclosure of the record required the record to not be destroyed), **Mechling v. City of Monroe** (regarding whether scanning a record creates a new record or just a copy in the same way as a photocopy), **Ameriquist Mortgage v. Washington Attorney General** (regarding whether a federal statute can be an “other statute” under the PRA and create exemptions to disclosure rather than pre-empting the PRA entirely), **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), **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), **Bainbridge Island Police Guild v. City of Puyallup** (regarding whether the Criminal Records Privacy Act, RCW 10.97, creates an exemption for investigatory records under the Public Records Act), and **Phillips v. Valley Communications** and **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). The Coalition deeply appreciates the many hours of legal work contributed by attorneys on our legal committee and friends of the Coalition on these projects.



WCOG v. Attorney General and Department of Corrections case: While working on the **Burt v. DOC** case in 2008 and 2009, WCOG noticed that the legal filings submitted by the plaintiffs – who were corrections officers suing the Department of Corrections to block release of records that had been requested by an inmate – appeared to have been created using the exact same document template used by the Attorney General’s office. Since the AGO represented the *defendant* in **Burt v. DOC**, they should not have been also assisting the *plaintiffs*. WCOG made a public records request for all records and communication between the AGO, DOC, and the **Burt** plaintiffs, requesting the records in native electronic form so that we could examine the metadata and see if our suspicions would be confirmed. As expected, the AGO produced only scanned documents rather than documents in native electronic form (despite previous court decisions in **O’Neill** and **Mechling** requiring production in native electronic form) and made broad claims of attorney-client privilege (despite the fact that they were the attorney for the defendant and therefore communications with the plaintiff could not be privileged, and the **Mechling** decision holding that privileged documents cannot be withheld in their entirety but must be disclosed with privileged portions redacted). The privilege log provided was also very incomplete, not meeting the standards required by previous court decisions. The Coalition filed a PRA lawsuit against the Attorney General and Department of Corrections over these issues in March 2010. The case was put on hold for several months awaiting the Supreme Court decision in **O’Neill** (which was favorable to WCOG’s position that metadata is a public record), and is now continuing to move forward.

Continuing Legal Education Seminar: The Coalition presented a day-long continuing legal education seminar, “Open Government in Washington – from A to Z”, in Seattle in September, with the dual purpose of providing quality education on public records and open public meeting laws as well as raising revenue for Coalition projects. Sessions at the seminar included basics of the Public Records Act and the Open Public Meetings Act, an update on the Sunshine Committee and open government legislation, handling PRA requests from an agency perspective, access to electronic records, and PRA litigation procedures and issues. Presenters included Coalition board members **Duane Swinton**, **Scott Johnson**, **Toby Nixon**, and **William Crittenden**, former board members **Michele Earl-Hubbard** and State Archivist **Jerry Handfield**, state Open Government Ombudsman **Tim Ford**, Seattle City Attorney **Pete Holmes**, and **Steve Dixson** of Witherspoon Kelley Davenport & Toole. The event was held at the Washington State Convention

Center in conjunction with the Coalition's annual Madison-Andersen Award event. Over 30 people attended the seminar (in addition to the presenters), who each received 5.5 hours of CLE credit.

Awards and Recognitions

Sixth 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 **Frank Blethen** and **The Seattle Times Company**. Blethen, publisher and CEO of The Seattle Times for 25 years, was recognized for his leadership in fighting for open government on many fronts – the paper's aggressive use of public records in reporting, the paper's willingness to challenge government secrecy through litigation; and the paper's pioneering application of computers for the analysis of government data that has produced special reports about the inner workings of agencies. The Seattle Times has won eight Pulitzer Prizes, including the 2010 Pulitzer Prize for Breaking News Reporting. Currently in its 113th year of Blethen



Coalition President Toby Nixon, James Madison Award Recipient Frank Blethen, and Coalition Vice President Mike Fancher



family stewardship, The Times is one of America's last independent and locally owned newspapers. Frank Blethen is one of nine members of the family's fourth and fifth generations active in The Seattle Times' management and governance. He is a strong advocate for

independent journalism, family-owned businesses, and a long-time active participant in the national grass-roots movement opposing the consolidation of newspaper and media ownership. The family also owns the Yakima Herald-Republic, the Walla Walla Union-Bulletin, and several Seattle-area weeklies, including the Issaquah Press. The Times has been a consistent strongly supporter of the Coalition, including being a James Madison level contributor for many years, and sponsor of many events and special projects.

Fourth 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 **Duane Swinton** and the law firm **Witherspoon Kelley Davenport & Toole**, based in Spokane,



Washington. Swinton has served for several years as chair of the Coalition's legal committee, including spearheading our pursuit of the *Doe v. Reed* case and coordinating the preparation of many amicus briefs each year. Witherspoon Kelley has been one of the state's most active law firms in the open



government arena, presenting Cowles Publishing Company, publishers of the Spokane Spokesman-Review, and has been involved in many landmark legal decisions. Witherspoon Kelley has also been a generous supporter of the Coalition's efforts.

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 **The News**

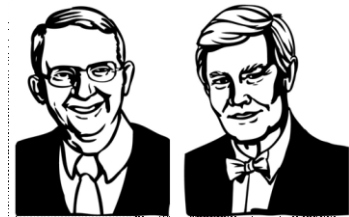


Tribune of Tacoma, for its successful effort to force the Tacoma City Council to comply with the Washington Open Public Meetings Act during the process to fill two vacancies in the council's ranks; Everett School District director **Jessica Olson**, for her efforts to promote greater transparency by the school district, including proposing that school board meetings be broadcast via the internet or television; **Gloria Howell** and **Brad Andersen**, for their use of the state's open government laws to discover and expose shocking misdeeds in the Skamania County Auditor's Office, including what the county characterized as the "squandering" of \$87,380 in public funds; **Citizens for a Better Everett**,

for encouraging the Everett City Council to establish more open and transparent processes and to increase opportunities for citizen involvement, including convincing the council to reverse a decision to hold all its meetings during the day when citizens couldn't attend, and presenting an 11-page package of transparency suggestions to the council; **Eric Rachner**, for his investigation into how the Seattle Police Department uses video recordings of street

arrests, that revealed a troubling pattern that the department uses the recordings to exonerate officers involved in internal investigations while denying access to suspects and others; Valley Hospital District commissioner **Anthony Hemstad**, for his efforts to bring transparency reforms to the governing body of Valley Medical Center, including videotaping its meetings and posting its meeting agendas and minutes on the internet; and **Yakima Herald-Republic**, for its expensive legal battle to force Yakima County to turn over legal billing records documenting the county's spending of over \$2 million to defend two suspects charged in a high profile murder case.

Ballard-Thompson Award Established: The Coalition held a reception at the Washington state capitol building in Olympia in December to announce the establishment of a new award program, the **Ballard-Thompson Award**. This award will be presented annually, beginning in 2011, to a legislator or legislators "who has demonstrated outstanding dedication to the cause of open government."



It will, effectively, be the Coalition's "Legislator of the Year Award". We are hopeful that at least one legislator each year is actually deserving of it! The award is named in honor of **Clyde Ballard**, who retired from the Washington Legislature in 2002 after a 20-year career representing the 12th District in north-central Washington that saw the Republican lawmaker rise to the post of House Speaker, and **Alan Thompson**, a retired newspaper publisher and Democratic legislator who served the 18th District of southwest Washington for 21 years in both the House and Senate from 1965 to



1986, and then the ensuing seven years as Chief Clerk of the Washington House of Representatives. Both Ballard and Thompson were founding members of the board of directors of Washington Coalition for Open Government. Alan Thompson addressed the reception in person, recounting his involvement in the passage of Washington state's Open Public Meetings Act in 1971; Ballard made recorded remarks by video that included his work to improve legislative transparency. The Coalition will accept nominations for the award after the close of each year's legislative session, and conduct an award presentation in Olympia.