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Keep the sunshine on state information

By Michael Fancher

When it seems our democracy is becoming a toxic stew of hyper-partisanship, the work of the Washington Coalition for Open Government provides a healthy antidote.

WCOG is an independent, nonpartisan, nonprofit organization that works through the courts and the Legislature to defend and strengthen Washington's open government laws. What makes it refreshing is that it truly is a coalition, with members who are citizen activists, government officials, and representatives of business, labor, media, law and public policy organizations.

The members can, and often do, disagree with each other. But they stand together to fight for openness in government, believing it is the best way to ensure accountability and preserve public trust.

That was the idea in 1972, when a citizen's Coalition for Open Government successfully worked for the passage of Initiative 276, which passed with a whopping 72 percent favorable vote. It was a major steppingstone to laws that provide open meetings, access to public records, and public disclosure of campaign finances, lobbying and financial affairs of elected officials.

Despite that big majority in 1972, ongoing citizen vigilance has been essential to resist the forces that work against openness and transparency.

Often with good intentions, governments tend toward closure and withholding information that legitimately should be public.

For example, the original open records law listed only 10 narrow exceptions to the general rule that all government records must be open to the public. Since then, more than 300 exemptions have been added by the Legislature, with more introduced every legislative session. The Legislature itself has a special limited definition of legislative records, so they are not treated like other government records.

Some court rulings also reflect the tendency toward secrecy, especially in the area of lawyer-client privilege. Notably, in 2004 the state Supreme Court ruled 5-4 to greatly expand the exemption for communication between agencies and their lawyers, so that advice on ordinary matters can be withheld from the public. In 2007, the Supreme Court ruled 5-4 to allow agencies to hire outside lawyers to conduct internal investigations and then keep the results secret.

Last year, the Supreme Court ruled that the judiciary in Washington is exempt from public disclosure requirements. The court said the current law defines "local agency" as a "county, city, town, municipal corporation, quasi-municipal corporation, or any special purpose district, or any

office, department, division, bureau, board, commission or agency thereof, or other public agency” and courts do not fall under that definition.

WCOG’s legislative priorities for 2011 include expanding access to legislative and court records, as well restoring the original intent of the attorney-client communications exemption. Other 2011 WCOG legislative priorities would:

- Create a non-judicial process for review of public records and open meetings disputes.
- Exempt recordings of executive sessions from disclosure, so that bodies that are willing to record the session will do so.
- Require open government training for government employees and elected officials.
- Improve preservation and access to electronic records.
- Require agencies to scan paper records into electronic form if requested.
- Continue the Sunshine Committee, which was created in 2007 to review exemptions to open public records.

The coalition conducts educational forums for citizens, government officials and lawyers. It regularly recognizes and celebrates individuals and groups, including those in government, who stand up for the public’s right to know.

All of these open government efforts provide a positive counterpoint to the rancor that too often marks our political discourse.

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