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News

Foster Garvey's Pro Bono Efforts in a Landmark Washington Supreme Court Case

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Foster Garvey attorneys Andrea Bradford (Principal, Seattle), Bob Sterbank (Counsel, Seattle) and Adrian Urquhart Winder (Principal, Seattle), along with Jonathan Collins and Bianca Chamusco, authored an amicus brief on behalf of the Washington State Association of Municipal Attorneys (WSAMA) for the Washington Supreme Court in a case involving the actions of Seattle Police Department (SPD) officers who attended the January 6 event in Washington, D.C.

The case involved public records requests submitted by members of the public seeking information about officers who attended the January 6 event. A subset group of the officers sought to block the release of their identities from Seattle Police Department internal investigation records, arguing that disclosure of their identities would violate what they asserted were statutory and constitutional rights to anonymous political association and would subject them to harassment. The opinion of the Court of Appeals concluded that the officers had a constitutional right to keep their identities private under Washington's Public Records Act and that public agencies had an obligation to assert a constitutionally based privacy exemption under the Public Records Act on behalf of the officers and any other individuals named in records responsive to a public records request.

After mixed rulings in lower courts, the case made its way to the Washington Supreme Court, highlighting an important question: do public employees have a right to anonymity when their actions at a public event become the subject of public records?

The Washington Supreme Court overturned the Court of Appeals' decision and, in a comprehensive opinion largely aligned with the arguments made in WSAMA's brief**,** clarified that individuals who attend a large, well-publicized gathering do not have a statutory or constitutional privacy right to anonymity, and that local governments do not have an obligation to assert constitutional objections to disclosure on behalf of private individuals.

Key takeaways from the Court's ruling:

l. The Court reversed the Court of Appeals' holding that cities are obligated to raise First Amendment exemptions to disclosure on behalf of individuals named in the record. This aspect of the Court of Appeals' holding had the greatest potential to adversely affect WSAMA member cities. Reversal on that ground will likely come as a relief to many public records officers, as agencies are frequently not in a position to assert an exemption on behalf of a third party.

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2. The Court reaffirmed its prior holding (and reversed the Court of Appeals' holding) that the *Lyft* two-part injunction standard governs PRA cases. This standard requires a plaintiff seeking an injunction to demonstrate first that the records are exempt and, second, that disclosure would clearly not be in the public interest *and* would substantially and irreparably damage a person or governmental function. This aspect of the Opinion may reduce the frequency of future third-party temporary restraining order (TRO) actions seeking to block records disclosures.
3. The Opinion clarifies that the application of statutory PRA exemptions comes before analysis of constitutional issues. The plaintiff must first show a statutory privacy interest *and* that disclosure would invade that interest. The Opinion also determines that the officers had no statutory right of privacy that would shield the officers' identities from disclosure.
4. The Court reversed the holding that the officers had a protected First Amendment privacy right to justify nondisclosure of their identities. Attendance at a highly publicized, public event did not implicate a constitutional privacy interest.
5. The Court reversed the holding allowing the officers to proceed pseudonymously. Because the officers did not show the existence of a statutory or constitutional privacy interest that could be invaded by disclosure of their identities, they failed to establish the first *Ishikawa* factor necessary to litigate anonymously.

The Court's ruling in this case therefore clarifies the obligations of public agencies under the Public Records Act and provides guidance regarding constitutional privacy rights as a potential exemption to public disclosure.

The WSAMA briefing prepared by Foster Garvey in this matter is one example of the firm's commitment to its municipal clients, its deep knowledge of issues affecting those clients, and its unwavering commitment to pro bono work. Learn more about the team here.

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