WSAMA AMICUS REPORTED CASES
Updated November 16, 2021

	CASE	WSAMA AUTHOR	HOLDING
1.	*Burba v. City of Vancouver*, 113 Wn.2d 800, 783 P.2d 1056 (1989)	Sandra Driscoll Elmer E. Johnston, Jr. Bruce E. Jones Carolyn Lake	Nonresident customers of city utility brought class action alleging that city gross receipts tax levied against utility revenues received for water and sewer services from resident and nonresident retail customers was illegal and unconstitutional. The Superior Court (Clark County) entered judgment for city, and nonresidents appealed. The Supreme Court held that: (1) inclusion of city tax in rates charged nonresident customers was not unconstitutional, and (2) utility validly included expense of tax in rates charged nonresident customers. Affirmed.
2.	*Boeing Co. v. Aetna Cas. and Sur. Co.,* 113 Wn.2d 869, 784 P.2d 507 (1990)	William J. Barker Terrence J. Cullen Robert F. Hauth Douglas N. Jewett G. Stephen Karavitis Carol A. Wardell	Insureds held liable for response costs under CERCLA for contamination of groundwater and real property with hazardous waste brought suit against insurers for indemnification. The United States District Court for the Western District of Washington certified question of state law. The Supreme Court held that environmental response costs to be paid by insureds under CERCLA for clean up of hazardous waste sites were "damages" covered by comprehensive general liability policies issued by insurers.
3.	*Rozner v. City of Bellevue*, 116 Wash.2d 342, 804 P.2d 24 (1991)	Cheryl F. Carlson	The city moved for forfeiture of a vehicle allegedly used to facilitate the sale of illegal controlled substances. The hearing examiner's order of forfeiture was affirmed by the Superior Court (King County) and appeal was taken. The Court of Appeals held that (1) the forfeiture statute placed the burden on governmental agencies to establish by a preponderance of the evidence that the property sought to be forfeited was used or intended to be used to facilitate drug sale, and (2) the undisputed facts were insufficient to establish that the vehicle was subject to forfeiture. The city petitioned for review. The Supreme Court held that (1) the claimant had the burden of proving by a preponderance of evidence at the forfeiture hearing that the vehicle was not used in an illegal drug activity or was used without the consent or knowledge of the owner, and (2) the claimant failed to establish that the probable cause standard for seizure of the vehicle was unconstitutional under the due process clauses of either the State or Federal Constitutions. Court of Appeals reversed.

4.	*Brown v. City of Yakima*, 116 Wn.2d 556, 562, 807 P.2d 353 (1991).	Larry Winner	An action was brought to challenge the constitutionality of a city ordinance that was more restrictive than state statute as to dates and times that fireworks could be sold or used. The Superior Court (Yakima County) upheld the ordinance. Appeal was taken. The Supreme Court held that the ordinance was not preempted and did not conflict with the less restrictive statute. Affirmed.
5.	*Roy v. City of Everett*, 118 Wn.2d 352, 823 P.2d 1084 (1992)	Richard L. Andrews David E. Kahn Lori M. Riordan	A domestic violence victim brought a suit against the city, the chief of police, and police officers for alleged failure to protect the victim and for violation of duties under the Domestic Violence Act. The Superior Court (Snohomish County) denied the defendants' motion for summary judgment under a claim of immunity. The defendants appealed. The Supreme Court held that the defendants were not immune from suit based on an alleged failure to enforce the Act or to protect the victim. Affirmed.
6.	*Robinson v. City of Seattle*, 119 Wn.2d 34, 830 P.2d 318, *cert. denied*, 506 U.S. 1028, 113 S.Ct. 676, 121 L.Ed.2d 598 (1992)	Richard L. Andrews Richard Gidley	Landowners brought a class action lawsuit against the city and city officials, alleging civil rights violations under 42 USC § 1983 and seeking refunds for payments made pursuant to what they alleged was an invalid ordinance requiring landowners to pay fee or replace rental units before removing or demolishing them and imposing tenant relocation assistance obligations. The Superior Court (King County) dismissed civil rights action against city and officials, and applied a three-year limitations period to refund claims. Landowners appealed and city cross-appealed. The Supreme Court, Guy, J., held that: (1) ordinance violated landowners' substantive due process rights; (2) genuine issues of material fact existed as to whether city acted arbitrarily and capriciously in repeatedly continuing enforcement of ordinance after it had been found invalid by trial courts; (3) city officials were not entitled to qualified immunity from § 1983 liability in connection with their enforcement of ordinance provisions after such provisions had been declared facially invalid and injunctions against continued enforcement had been entered; and (4) Supreme Court decisions invalidating ordinance were retroactively applicable, as decisions were applied to parties in those cases. Remanded.

7.	*Dawson v. Daly*, 120 Wn.2d 782, 845 P.2d 995 (1993)	Elizabeth M. Rene Mark Sidran	The county prosecutor sought an injunction against the disclosure of documents he had withheld upon public disclosure act request. The Superior Court (Snohomish County) denied the injunction as to all but one document. On direct review, the Supreme Court held that (1) the term "controversy" in the act's discovery rules exemption encompasses either anticipated litigation or actual past or present litigation; (2) the documents regarding a child sex abuse expert witness were not within the act's intelligence and investigative records exemption; and (3) the performance evaluations of deputy prosecutor were within act employee privacy exemption. Remanded.
8.	*Guimont v. Clarke*, 121 Wn.2d 586, 854 P.2d 1, (1993)	Robin Jenkinson Martin F. Muench Mark H. Sidran Hugh R. Tobin	An association of mobile home park owners brought suit against the state, claiming that the statute requiring landowners to provide monetary assistance for tenant relocation costs was unconstitutional. The Superior Court (Thurston County) granted summary judgment in favor of the owners and struck down the statute as unconstitutional. Appeal was taken. The Court of Appeals partially stayed Superior Court's injunction. Appeal was transferred. The Supreme Court held that (1) the statute did not constitute a taking without just compensation, and (2) the statute violated the substantive due process rights of landowners, as it placed an oppressive burden upon them. Trial court affirmed.
9.	*Collier v. City of Tacoma*, 121 Wn.2d 737, 854 P.2d 1046 (1993)	Lori M. Riordan	A candidate for a political party's nomination for a congressional seat brought an action for declaratory judgment that a municipal ordinance prohibiting political signs 60 days before an election was unconstitutional. The Superior Court (Pierce County) entered judgment for the candidate, but denied his request for attorney fees. The city appealed and the candidate cross-appealed. Accepting certification from the Court of Appeals, the Supreme Court held that (1) the regulation in terms of subject matter was a content-based restriction; (2) the city's regulatory interests in aesthetics and traffic safety were not sufficiently compelling to justify the restrictions on a candidate's right to political speech; (3) the city's interest in aesthetics and traffic safety were sufficient to justify reasonable, content-neutral regulation of noncommunicative aspects of political signs; and (4) the special circumstances of trial publicity and representation by a public service firm

			did not preclude award of attorney fees. Affirmed in part and reversed and remanded in part.
10.	*Yakima County (West Valley) Fire Protection Dist. No. 12 v. City of Yakima*, 122 Wn.2d 371, 858 P.2d 245 (1993)	William L. Cameron	Landowners who lived outside the city limits but received sewer service from the city brought a declaratory judgment action seeking a determination that outside utility agreements required by city, in which landowners agreed to sign any future annexation petition, were invalid. The Superior Court (Yakima County) dismissed the fire district as a plaintiff and entered summary judgment in favor of the city. The landowners sought direct review. The Supreme Court held that (1) the fire district did not have standing; (2) the city had no duty to provide sewer services outside its borders; (3) the city had authority to enter into outside utility agreements; (4) the requirement that landowners sign annexation petitions in the future was valid; (5) mutual assent existed for the utility agreement; (6) outside utility agreements were not unconscionable or void as against public policies; and (7) the requirement that landowners actively promote annexation was unenforceable. Affirmed.
11.	*Pierce v. Northeast Lake Washington Sewer and Water Dist.*, 69 Wn. App. 76, 847 P.2d 932 (1993)	Nicholas J. Manring	Homeowners brought an inverse condemnation action against a water district seeking compensation for lost property value due to the building of a water storage tank adjacent to their residence. The Superior Court (King County) entered judgment in the district's favor, and the homeowners appealed. The Court of Appeals held that the homeowners failed to demonstrate compensable damage to their property and, therefore, were not entitled to compensation on an inverse condemnation theory. Affirmed.
12.	*State v. Bostrom*, 127 Wn.2d 580, 902 P.2d 157, Wash., Sep 14, 1995	William L. Cameron Greg A. Rubstello	In separate prosecutions for driving while intoxicated, the District Court (Thurston County) suppressed results from breath alcohol tests of drivers who consented to tests and suppressed evidence of refusal by drivers who did not consent to tests on grounds that the warnings given to drivers regarding tests were inadequate to permit drivers to make knowing and intelligent decisions whether to submit to tests. Appeals for discretionary review were taken. The Supreme Court held that (1) warnings did not deprive drivers of the opportunity to make knowing and intelligent decisions whether to take test, and (2) the warnings were not so fundamentally unfair as to deprive drivers of their right to due process. Reversed and remanded.

13.	*DiBlasi v. City of Seattle*, 136 Wn.2d 865, 872, 969 P.2d 10 (1998)	William L. Cameron Craig Ritchie	Adjacent landowner sued city, seeking recovery for water damage allegedly caused by runoff from street. The Superior Court (King County) granted landowner summary judgment, and city appealed. The Court of Appeals (85 Wn. App. 514) reversed and remanded. Review was granted. The Supreme Court held that: (1) the municipality may be liable for water damages to an adjoining landowner's property caused by streets which act to collect, channel and thrust water in a manner different from a natural flow; (2) there was a factual question as to whether the street had a necessary channeling effect; and (3) the duty of a municipality to use reasonable care to keep its streets in repair, owed to traveling public, did not extend to adjacent landowners. Reversed and remanded.
14.	*Phillips v. King County*, 136 Wash.2d 946, 968 P.2d 871, Wash., Dec 24, 1998	Karen A. Willie	Landowners brought an inverse condemnation action against the county and a developer, seeking recovery for damages caused by surface water runoff onto their property from a neighboring residential development. The Superior Court (King County) entered judgment for the county and the developer, and the landowners appealed. The Court of Appeals (87 Wn. App. 468) affirmed in part and reversed in part, and the county appealed. The Supreme Court held that: (1) approval by a county of a private development did not give rise to liability in inverse condemnation for damages caused by design defects in the developer's drainage system; (2) county's acceptance of the drainage system for maintenance did not give rise to liability based on the developer's obsolete design; and (3) a genuine issue of material fact existed as to whether the county's actions in allowing the developer to construct a drainage system on county right-of-way caused damage to the landowners' adjoining property. Affirmed on other grounds.
15.	*Bunko v. City of Puyallup Civil Service Com'n*, 95 Wn. App. 495, 975 P.2d 1055 (1999)	Daniel B. Heid William L. Cameron	A discharged police department employee appealed to the city's public service commission. The commission affirmed termination, and the employee sought review. The Superior Court reversed, on the basis that the commission had violated the appearance of fairness doctrine. The city appealed, and the Court of Appeals held that: (1) the employee was properly allowed to amend the notice of appeal to add the city as party; and (2) the amendment related back for limitations purposes; but (3) conversations between the commissioner and the police chief during break in proceedings, which did not relate to matters at issue, did not violate appearance of fairness doctrine. The Superior Court was reversed, and the termination affirmed.

16.	*Enterprise Leasing, Inc. v. City of Tacoma*, 139 Wn.2d 546, 988 P.2d 961 (1999)	Steven L. Gross Daniel B. Heid	A taxpayer which operated an automobile rental business sought judicial review of the city's assessment of city business and occupancy (B & O) taxes on the taxpayer under the city's "service" classification, rather than under "retail sale" classification which was taxed at lower rate. The Superior Court (Pierce County) granted summary judgment for the taxpayer. The city appealed, and the Court of Appeals reversed (93 Wn. App. 663). The taxpayer petitioned for review, and the Supreme Court held that (1) the statute authorizing imposition of taxes did not require the city to define automobile rental activities as "retail sales," as was done under the statute governing state excise taxes, and (2) the exception clause to the statute which otherwise imposed a limit on the tax which could be imposed by a city on business activities authorized a tax on the service classification which exceeded statutory limit.
17.	*New Castle Investments v. City of LaCenter*, 98 Wn. App. 224, 989 P.2d 569 (1999)	Bart J. Freedman Roger D. Wynne	After a developer filed application for preliminary plat approval, the city hearing examiner issued order granting approval of the plat, and finding that city's the transportation impact fee (TIF), which was imposed pursuant to an ordinance adopted two days after filing of application, did not apply to proposed development. The city appealed, and the city council affirmed approval, but found that TIF was applicable. The developer appealed, and the Superior Court (Clark County) reversed and reinstated the order of the hearing examiner, which found that TIF did not apply. The city appealed. The Court of Appeals held that a TIF imposed by a city is not a "land use control ordinance," and thus is not subject to the vesting statute for such ordinances, under which a proposed division of land is considered under ordinances in effect at time application for plat approval is submitted. Reversed.
18.	*Harbour Village Apartments v. City of Mukilteo*, 139 Wn.2d 604, 989 P.2d 542 (1999)	William L. Cameron	Apartment owners brought a suit for declaratory and injunctive relief against a city to challenge the validity of a residential dwelling unit (RDU) fee of $80.60 which the city, as part of its business licensing scheme, imposed on every dwelling unit rented, leased, or offered for rent or lease by a business within city limits. The Superior Court (Snohomish County) granted summary judgment to the city, and the apartment owners obtained direct review. The Supreme Court held that the fee was an unconstitutional property tax. Reversed and remanded.

19.	*City of Spokane v. State, Dept. of Labor and Industries*, 100 Wn. App. 805, 998 P.2d 913 (2000)	Daniel B. Heid G. Stephen Karavitis	The city and government contractor which operated the city's waste-to-energy facility appealed from a determination of the director of the Department of Labor and Industries that the contractor had to pay prevailing wages for the work performed during the annual maintenance shutdown. The Superior Court (Thurston County) certified the director's decision for direct review. After granting review, The Court of Appeals held that work performed by a contractor's employees during an annual maintenance shutdown was "public work" subject to the requirements of the prevailing wage law. The DOL decision was affirmed.
20.	*Lybbert v. Grant County, State of Wash.,* 141 Wn.2d 29, 1 P.3d 1124 (2000)	Graham Black Michael R. Kenyon	A motorist and a passenger who were injured in an automobile accident allegedly caused by a hole in the county road sued the county. The Superior Court (Adams County) granted summary judgment to the county based on insufficient service of process. The plaintiffs appealed, and the Court of Appeals (93 Wn. App. 627) reversed. Granting the county's petition for review, the Supreme Court held that: (1) the county was not equitably estopped from asserting insufficient service of process as affirmative defense; (2) the affirmative defense of insufficient service of process may be waived; and (3) the county waived the defense by failing to raise it in its answer or responsive pleading, by engaging in discovery over the course of several months, and by asserting the defense [only] after the statute of limitations had apparently extinguished the plaintiffs' claim. Judgment of Court of Appeals affirmed.
21.	*City of Seattle v. McCoy*, 101 Wn. App. 815, 4 P.3d 159 (2000)	Jeanie J. Mohler	The city brought proceedings to abate the operation of a restaurant and lounge under the drug nuisance statute. The Superior Court (King County) entered an order requiring that the premises not be used for any purpose for one year and placing the property in the custody of the court. The Owners appealed. The Court of Appeals vacated that order. On reconsideration, the Court of Appeals held in a case of first impression that: (1) the drug nuisance statute was an unconstitutional taking of property as applied to the owners; (2) the common-law nuisance exception did not apply to the otherwise compensable taking; and (3) the drug abatement statute violated due process as applied. Vacated.

22.	*Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347, 13 P.3d 183 (2000)	Wayne D. Tanaka	The owners of mobile home parks brought an action for a declaration that a statutory first-refusal right of mobile home park tenants to buy the park where they live was a facially unconstitutional taking. The Superior Court (Thurston County) dismissed the action. The park owners appealed. The Court of Appeals (90 Wn. App. 257) affirmed. On review, the Supreme Court held that the challenged statute violated the State Constitution's eminent domain provision. Reversed.
23.	*City of Lakewood v. Pierce County*, 106 Wn. App. 63, 23 P.3d 1 (2001)	Wayne D. Tanaka	The city brought a declaratory judgment action seeking authority to charge county franchise fee for use of city's streets to operate county sewerage system. The Superior Court (Thurston County) ruled that city could not require county to obtain franchise but that it could charge fee not in excess of its administrative costs. City appealed. The Court of Appeals held that: (1) a city could not require county to enter into franchise agreement for operation of sewer lines and facilities under city's streets; (2) the city's proposed franchise fee on the county's sewer system under city streets was fee and not tax; and (3) if a franchise agreement is reached allowing county to operate sewer lines under city's streets, the city has implied right to collect franchise fee from county for use and occupation of streets. Affirmed (?)
24.	*Heinsma v. City of Vancouver*, 144 Wn.2d 556, 566, 29 P.3d 709, 26 Employee Benefits Cas. 2142 (2001)	William L. Cameron Jerry F. King	A taxpayer brought an action against the city for a declaratory judgment that its decision to extend health insurance benefits to city employees' domestic partners and their children was unconstitutional. The trial court upheld the program. The taxpayer appealed, and review was accepted by way of certification from the Court of Appeals. The Supreme Court held that the city could define employees' "dependents" to include domestic partners and their children and, thus, could extend health insurance benefits to them. Affirmed.
25.	*Guillen v. Pierce County,* 144 Wn.2d 696, 31 P.3d 628, 181 A.L.R. Fed. 741 (2001) *Pierce County, Wash. v. Guillen*, 537 U.S. 129, 123 S.Ct. 720, 154 L.Ed.2d 610, 71 USLW 4035, 60 Fed. R. Evid. Serv. 516, 03 Cal. Daily Op. Serv. 360, 2003 Daily Journal D.A.R. 421,	William L. Cameron	A widower filed complaint under Public Disclosure Act (PDA), seeking access to historical accident reports and other materials and data held by county agencies, relating to the traffic intersection at which his wife was killed. The widower also filed a tort action against the county, for negligent failure to install proper traffic controls at the intersection. In a separate action, family of motorist and passenger filed tort action against city and county for negligent operation of intersection. The Superior Court (Pierce County) granted the PDA requests in part and granted motions to compel

	16 Fla. L. Weekly Fed. S 31 (2003)		the county's answers to interrogatories in the tort actions. The county appealed, and the appeals were consolidated. The Court of Appeals affirmed, in part. Review was granted. The Supreme Court held that: (1) the PDA provision generally prohibiting accident reports prepared by people involved in accidents from being used as evidence in any civil or criminal trial does not preclude pretrial discovery of such reports; (2) Congress violated the Tenth Amendment federalism principles by barring state and local courts from allowing discovery of, or admitting into evidence, collections of state and local traffic and accident materials and data originally created and collected for state or local purposes and essential to the proper adjudication of claims brought under state or local law, simply because such materials and raw facts were also collected and used pursuant to a federal mandate to identify especially hazardous traffic sites in connection with the federal highway hazard elimination grant program. [Vacated and remanded.] Certiorari was granted. The United States Supreme Court held that: (1) scope of the evidentiary and discovery privilege provided by federal statute protecting from discovery or admission into evidence any reports, surveys, schedules, lists or data compiled or collected by state public works department or other agency to identify potential accident sites or hazardous roadway conditions, in order to participate in federally funded highway safety improvement project, was not limited merely to documents created by state public works department or other agency for purpose of participating in program, but included accident reports and other documents originally prepared by other entities, to extent that such documents had been collected for purpose of participating in program; and (2) statute was not in excess of authority granted to Congress under the Commerce Clause. Reversed and remanded.
26.	*Isla Verde Intern. Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 49 P.3d 867 (2002)	Bob C. Sterbank	The developer brought an action under the Land Use Petition Act (LUPA) challenging the legality of conditions imposed by the city for approval of a preliminary plat for a residential subdivision. The Superior Court (Clark County) ruled on constitutional and statutory grounds that conditions were unlawful. The Court of Appeals (99 Wn. App. 127) affirmed that open space condition constituted an unconstitutional taking, but reversed and upheld secondary access road conditions. The city sought discretionary review. The Supreme Court held that: (1) the condition which the city placed on approval of the preliminary plat for the subdivision, that 30 percent of land to be developed be set aside as open space, was an in kind indirect

			tax, fee, or charge; (2) the open space condition did not fall within the exception in the statute prohibiting taxes, fees or charges on development or subdivision of land; (3) the police power statute did not authorize the city's imposition of the open space condition; (4) zoning statute did not authorize city's imposition of open space condition; (5) the city's imposition of the condition that the developer construct secondary access road for emergency vehicle use did not violate substantive due process; (6) the secondary road condition did not constitute a taking; and (7) developer's challenges to the city's imposition of any parks and open space impact fees was not ripe for judicial review. Court of Appeals decision affirmed, and remanded.
27.	*Benchmark Land Co. v. City of Battle Ground*, 146 Wn.2d 685, 49 P.3d 860 (2002)	Bob C. Sterbank	The City required a developer to make improvements to a street adjoining its development as a condition to the issuance of a development permit. The developer brought an action under the Land Use Petition Act (LUPA) and sought damages. The Superior Court (Clark County) did not resolve the damages claims, but entered a judgment for the developer on the LUPA claim. On remand, the Court of Appeals (94 Wn. App. 537) affirmed. The Supreme Court granted the city's petition for review and remanded. The Court of Appeals (103 Wn. App. 721) adhered to its original decision. The city filed a second petition for review. The Supreme Court accepted review and held that the evidence was insufficient to support the city's decision requiring the developer to make improvements to the street. Affirmed on other grounds. The Court noted that the street did not meet city roadway standards even before the development was proposed, and traffic studies found that the subdivision would have had little to no impact on safety and operations on the section of roadway developer was required to improve.
28.	*Grant County Fire Protection Dist. No. 5 v. City of Moses*, 150 Wn.2d 791, 83 P.3d 419 (2004)	Daniel B. Heid Joseph Z. Lell Greg A. Rubstello	Property owners and two fire districts sought declaratory relief against two cities, alleging that the petition method of annexation was unconstitutional. The Superior Court (Yakima County and Grant County) granted summary judgments for cities. The property owners and the fire districts appealed. The Supreme Court (145 Wn.2d 702) initially reversed, holding that the petition method of annexation violated the privileges and immunities clause of state constitution. The cities filed motions for reconsideration. The Supreme Court granted rehearing and consolidated a related decision of Superior Court (King County) denying summary judgment to city.

			The Supreme Court, en banc, held that (1) the privileges and immunities clause of state constitution required independent analysis from the equal protection clause of United States Constitution, and (2) the petition method of annexation did not violate privileges and immunities clause of state constitution. Vacated in part.
29.	*Castro v. Stanwood School Dist. No. 401*, 151 Wn.2d 221, 86 P.3d 1166 (2004)	Daniel B. Heid Milton G. Rowland	An individual who was injured when a fight broke out during high school soccer game served a damages claims against two school districts, then sued them both for negligence. The Superior Court (Snohomish County) denied the districts' motion for summary judgment dismissal, which was based on the ground that action was time barred, notwithstanding 60-day tolling provision of government claims statute. On direct review, the Supreme Court held that the 60-day tolling provision of claims statute simply added 60 days to applicable three-year limitations period, and thus the action was timely. Affirmed.
30.	*Arborwood Idaho, L.L.C. v. City of Kennewick*, 151 Wn.2d 359, 89 P.3d 217 (2004)	Charles D. Zimmerman	An apartment complex owner petitioned for judicial review of a city ordinance imposing flat monthly ambulance service charges on each household, business, and industry within city. The Superior Court (Benton County) granted summary judgment in favor of the city, finding that the charge was a valid regulatory fee. The owner appealed. The Court of Appeals (113 Wn. App. 875) affirmed. On review, the Supreme Court held that: (1) the ambulance charge was not a valid excise tax; (2) the ambulance charge was not a valid regulatory fee; and (3) the statute authorizing the city to operate an ambulance service as public utility did not impliedly authorize imposition of the disputed charge. The Judgment of Court of Appeals was reversed.
31.	*Hangartner v. City of Seattle*, 151 Wn.2d 439, 90 P.3d 26 (2004)	Brent D. Boger Theodore H. Gathe Judith M. Zeider	An individual filed action against the city seeking documents under the public disclosure act (PDA) relating to a monorail project, and a citizens' group filed separate action under PDA against monorail authority. The Superior Court (King County) entered orders in favor of the plaintiffs. The city and the authority appealed. The Court of Appeals certified the appeals to the Supreme Court. The Supreme Court held that (1) a request for "all" records was overbroad; (2) documents were not exempt under the “records relevant to a controversy” exemption, but (3) the attorney-client privilege applied to the PDA. Affirmed in part, reversed in part, and remanded.

32.	*Yousoufian v. Office of Ron Sims*, 152 Wn.2d 421, 98 P.3d 463 (2004)	Edwin K. Inkley	The petitioner filed action against King County for violation of the public disclosure act (PDA) in connection with his request for records. The Superior Court (King County) found the county in violation and awarded the petitioner penalties, though less than requested. The petitioner appealed. The Court of Appeals (114 Wn. App. 836) affirmed in part and remanded. Review was granted. The Supreme Court held that: (1) the trial courts must assess a per day penalty for each day a record is wrongfully withheld, but (2) penalties need not be assessed per [each] record. Affirmed in part, reversed in part, and remanded. The Court also reiterated that appellate courts review the trial court's determination of the proper per day penalty for violation of the public disclosure act (PDA) for abuse of discretion, not de novo.
33.	*State v. Costich*, 152 Wn.2d 463, 98 P.3d 795 (2004)	Daniel B. Heid Milton G. Rowland	The State filed action to condemn certain property, and it refused to identify what part of its "all-inclusive" written settlement offer represented fair market value. The Superior Court (Spokane County) invalidated he "all-inclusive" offer and, on jury trial to fix amount of just compensation, entered judgment for condemnee, including the amount for compensation for fair market value, attorney fees, expert fees, costs, and prejudgment interest. The State appealed. The Court of Appeals (117 Wn. App. 491). The Supreme Court held that (1) the settlement offer, not "just compensation," is what the trial court compares to the jury award to determine a condemnee's entitlement to fees and costs; (2) the condemnor need not itemize its settlement offer; and (3) a settlement offer is not required to stay open for a full 30-day period prior to trial. Reversed and remanded.
34.	*Owen v. Burlington Northern and Santa Fe R.R. Co.*, 153 Wn.2d 780, 108 P.3d 1220 (2005)	Daniel B. Heid Charles C. Parker Thomas Sean Sheehan	The decedents' daughter brought wrongful death action against the railroad, city, and state after the decedents were killed in a car-train collision at a railroad grade crossing. After the railroad reached a settlement with daughter, the city and state moved for summary judgment, and the Superior Court (King County) dismissed the action. On appeal, the Court of Appeals (114 Wn. App. 227) affirmed the dismissal as to the state but reversed as to the city. The Supreme Court held that genuine issues of material fact as to whether the city failed to maintain the roadway in a reasonably safe condition, or whether the roadway was inherently dangerous or (signage) misleading, precluded summary judgment. Affirmed and remanded.

35.	*City of Redmond v. Bagby*, 155 Wn.2d 59, 117 P.3d 1126 (2005)	Daniel B. Heid	Motorists filed motions to dismiss charges of driving while license suspended, arguing that original suspensions violated due process. The District Court (King County) granted the motions, and the Superior Court (King County) affirmed. On direct review, the Supreme Court held that the mandatory suspension of a driver's license as part of a sentences for reckless driving and other offenses, without separate pre- or post-suspension DOL hearings, did not deprive motorists of due process. Reversed and remanded.
36.	*Joyce v. State, Dept. of Corrections*, 155 Wn.2d 306, 119 P.3d 825 (2005)	Daniel B. Heid	The estate of a motorist killed in an automobile accident sued Washington State Department of Corrections (DOC) for negligent supervision of an offender under community supervision who was driving stolen vehicle. The Superior Court (Pierce County) entered a judgment on a jury verdict for estate, and DOC appealed. The Court of Appeals (116 Wn. App. 569) affirmed and DOC petitioned for review. The Supreme Court held that (1) the State had a duty to take reasonable precautions to protect against reasonably foreseeable dangers posed by dangerous propensities of offender; (2) whether the State's negligence was a legal cause of motorist's death was an issue for jury; (3) evidence was not insufficient, as a matter of law, to support jury's finding of cause in fact; but (4) jury instructions were erroneous, affirming in part, reversing in part, and remanding.
37.	*Chevron U.S.A., Inc. v. Puget Sound Growth Management Hearings Bd.*, 156 Wn.2d 131, 124 P.3d 640 (2005)	Daniel B. Heid	In an annexation challenge to the notice requirements regarding designations of parcel of unincorporated land as potential annexation areas (PAAs) where notice was posted in a local newspaper, the Superior Court (King County) and the Court of Appeals (123 Wn. App. 161) held that the notice was sufficient. The Supreme held that posted notice in local newspaper was sufficient, and due process did not require individualized notice to landowners.

38.	*Osborn v. Mason County*, 157 Wn.2d 18, 134 P.3d 197 (2006)	Daniel B. Heid	The Parents of a girl who was raped and murdered by convicted sex offender filed an action against the county for failure to warn them of the offender's presence. The Superior Court denied the county's motion for summary judgment, and the County appealed. The Court of Appeals, 122 Wn. App. 823, 95 P.3d 1257, *affirmed*. Review was granted. The Supreme Court held that: (1) because the girl was not a foreseeable victim of the offender, the county had no duty to warn under the "special relationship doctrine," (2) because parents did not rely on county's assurances, county had no duty to warn under "rescue doctrine"; and (3) because the county owed no duty of care to parents individually, "public duty doctrine" did not apply.
39.	*City of Sequim v. Malkasian*, 157 Wn.2d 251, 138 P.3d 943 (2006)	Sandra L. Cohen	The City sought a declaratory judgment that a proposed initiative was beyond the scope of the initiative power of residents of the city. The trial court granted the initiative's sponsor summary judgment and ordered the initiative to be placed on ballot. The City appealed. The Court of Appeals, declined to stay judgment, and after the election occurred, determined that this was a "post-election" challenge and remanded. On remand, the Superior Court dismissed the action. The City again appealed, and the Court of Appeals, 119 Wn. App. 654, 79 P.3d 24, did not decide the validity of the initiative and affirmed. The Supreme Court granted review. The Supreme Court held that: (1) election did not render moot the issue of whether the initiative was beyond the scope of initiative power; (2) the proposed initiative was beyond initiative power; (3) the sponsor of the initiative was a proper named defendant in the city's action; and (4) the sponsor was not entitled to attorney fees.

40.	*Koenig v. City of Des Moines*, 158 Wn.2d 173, 142 P.3d 162 (2006)	Robert G. Beaumier, Jr Rocco Ni. Treppiedi	Pursuant to the public disclosure act, the father of child victim of sexual assault sued the city to obtain all records from the city and its police department related to victim's case. The Superior Court ordered disclosure of redacted information, awarded attorney fees to the father, and denied the father's request for statutory penalties. In a linked case, the trial court denied father's CR 60 motion and his motion to recuse. City appealed and father cross-appealed. The Court of Appeals, 123 Wn. App. 285, 95 P.3d 777, affirmed disclosure order, ordered further information redacted, and reversed order denying penalties. The Supreme Court granted review The Supreme Court held that: (1) the city was not barred from disclosing records; (2) sexually explicit information was not to be redacted; and (3) the trial court had no discretion to reduce number of penalty days.
41.	*City of Spokane v. County of Spokane*, 158 Wn.2d 661, 146 P.3d 893 (2006).	Daniel B. Heid	Relying on GR29, the Superior Court ruled that the Transfer Agreement for creation of a municipal court entered into between the City and the County was invalid. The Superior Court concluded all pending cases filed by the City in the Municipal Department of the Spokane County District Court must remain with the District Court after termination of the Municipal Department. Further, the court held that GR29 and RCW 3.46.150 would be in conflict unless the Presiding Judge signed any future agreement. The City has appealed, seeking direct review by the Washington State Supreme Court. The Supreme Court held that: (1) The City would required to agree to pay costs of criminal cases that would be filed in district court as result of termination of municipal department, rather than all costs of termination; (2) The agreement between the City and the County satisfied statute regarding costs; (3) The District Court was not necessary party to agreement; and (4) Open cases in the Municipal Department would be required to be transferred to the newly created municipal court.

42.	*City of Medina v. Primm*, 160 Wn.2d 268, 157 P.3d 379 (2007)	Daniel B. Heid	Three defendants, who were convicted in the Kirkland Municipal Court of violating the municipal codes of their respective cities and town (other than Kirkland), which cities and town operated their municipal courts in the neighboring city of Kirkland pursuant to an interlocal agreement, challenged the convictions, alleging that there was a lack of subject matter jurisdiction. The Superior Court rejected the challenge. Defendants appealed, and the appeals were transferred to the Supreme Court at its request. The Supreme Court affirmed, holding that the municipal courts of the two cities and a town had jurisdiction to hear cases in the neighboring city's court facilities.
43.	*Kitsap County Deputy Sheriff's Guild v. Kitsap County*, 140 Wn. App. 516, 165 P.3d 1266 (2007)	Daniel B. Heid	A county sheriff's deputy and his union brought an action in Pierce County against the county and the county sheriff, asserting claims for breach of contract and violations of federal Fair Labor Standards Act and state wage laws, and seeking to enforce an arbitration award, which action was based on allegations that the defendants were not acting to implement the award of an arbitrator, in an arbitration under a collective bargaining agreement, that termination of employment was not a proper disciplinary sanction for a deputy's untruthfulness and that the deputy could return to full duty if he passed physical and psychological examinations. The deputy was found to have engaged in a number of instances of dishonesty – including while under oath. The defendants moved for summary judgment and filed a petition in Kitsap County for writ of certiorari regarding arbitration award. The Superior Court granted summary judgment to the defendants and the plaintiffs appealed. The defendants argues that the arbitrator exceeded his jurisdiction and authority under the collective bargaining agreement by requiring reinstatement of the deputy's employment after concluding that he was guilty of untruthfulness. In part, the County contended that the arbitrator offended public policy by reinstating the deputy's employment after finding that he was guilty of untruthfulness. The Court of Appeals agreed, holding that reinstatement of employment offended public policy. Review is pending before the State Supreme Court.

44.	*City of Pasco v. Shaw*, 161 Wn.2d 450, 166 P.3d 1157 (2007).	Daniel B. Heid	The city brought an action for injunction to prevent residential landlords from engaging in the rental business without a valid business license. The Landlords answered, claiming that the ordinance which required the inspection certificate showing compliance with health and safety standards was unconstitutional. The Superior Court granted summary judgment to the city on the constitutional issue, and thereafter entered stipulated judgment. The Landlords (and intervening tenants) appealed. The Court of Appeals, 127 Wn. App. 417, 110 P.3d 1200 (2005), affirmed. Review was granted. The State Supreme Court affirmed, holding that: (1) the ordinance did not involve state action, and (2) the ordinance was not unconstitutionally vague. Certiorari was sought, but Denied by *Shaw v. City of Pasco*, 128 S.Ct. 1651, 170 L.Ed.2d 385, 76 USLW 3324, 76 USLW 3494, 76 USLW 3498 (2008).
45.	*Tukwila School Dist. No. 406 v. City of Tukwila*, 140 Wn. App. 735, 167 P.3d 1167 (2007).	Thomas A. Carr Carlton W.M. Seu Kent C. Meyer	The Tukwila School District filed a complaint against the City of Tukwila for a declaratory judgment and tax refund, challenging the City's Storm and Surface Water Utility Charge on the ground that it is an unlawful tax. The School District challenged the order dismissing its complaint on summary judgment on the ground that the trial court should have found the charge was a tax under the test set forth in *Covell v. City of Seattle*, 127 Wn.2d 874, 905 P.2d 324 (1995). The Supreme Court held that the charge is not a tax under the *Covell* factors because its purpose was limited to protecting property owners and local water sources from harm caused by storm and surface water runoff, the City had segregated the funds and uses them only for this purpose, and the fee was roughly proportional to the amount of impervious surface on the property being taxed.

46.	*Abbey Road Group, LLC v. City of Bonney Lake*, 141 Wn. App. 184, 167 P.3d 1213 (2007).	Milton G. Rowland	After the Abbey Road Group filed an application for site plan review for a 575 unit condominium project, but before it filed a building permit application, the City of Bonney Lake rezoned the area from commercial, which would have allowed the project, to residential/conservation, which did not. The Hearing Examiner ruled that Abbey Road's development was not vested in the commercial zoning. Abbey Road filed a Petition under the Land Use Petition Act (LUPA), RCW 36.70C, seeking reversal of this decision. The Pierce County Superior Court granted the Petition, finding that the project was vested. The city appealed. The Court of Appeals reversed and remanded, holding that: (1) rights to develop condominium project did not vest due to developer's failure to submit building permit application, and (2) expansion of vested rights doctrine to include the submission of a site development plan review application, absent a building permit application, was not necessary to protect developer's due process rights.
47.	*Biggers v. City of Bainbridge Island*, 162 Wn.2d 683, 169 P.3d 14 (2007).	Daniel B. Heid	Business owners and private citizens sued the city, seeking a declaratory judgment that its ordinance imposing a moratorium on certain shoreline development was invalid. The Superior Court granted summary judgment in favor of the plaintiffs. The city appealed. The Court of Appeals, 124 Wn. App. 858, 103 P.3d 244 (2004), affirmed, but denied the plaintiffs' request for attorney fees. The city petitioned for review, and the plaintiffs also sought review of the denial of attorney fees. In a somewhat confusing, split decision, the State Supreme Court struck down the city's shoreline moratorium. Bainbridge Island adopted its Shoreline Master Plan in 1996 in conjunction with its comprehensive plan under the Growth Management Act. In August 2001 city staff asked the city council to adopt a moratorium on shoreline development pending revision of the Shoreline Master Plan because staff lacked scientific information needed to assess possible environmental effects of shoreline development on salmon habitat. On August 22, 2001, the City initially adopted a 1-year moratorium on filing "new applications for shoreline substantial development permits, shoreline substantial development exemptions and shoreline conditional use permits." The moratorium was extended and further refined. The moratorium did not apply to applications solely for the purpose of maintenance, repair and emergency repair of existing structures. The ordinance referenced moratoria authority set forth in RCW 35A.63.220 and RCW 36.70A.390. The moratorium ultimately lasted several years. The Biggers filed a

		complaint seeking a declaratory judgment that the original moratorium was illegal and void, arguing that it violated Article 11, Sec. 11 of the State Constitution, exceeded the scope of the City's statutory authority, was for impermissible purposes, and invalidly amended the city's Shoreline Master Plan. They subsequently amended the complaint, adding allegations relating to the extension moratorium. The trial court granted summary judgment to the Biggers, concluding that while the moratorium was not a de facto amendment of the City's Shoreline Master Plan, the city did not have authority to adopt a moratorium under the Shoreline Management Act. The city appealed, and the Court of Appeals affirmed. The city petitioned the Supreme Court for review arguing that the Court of Appeals erred in ruling that the city lacks inherent constitutional and/or statutory authority to adopt moratoria. The confusion about the decision stems from the fact that four justices, in an opinion authored by Justice James Johnson, struck down the moratorium, concluding that local governments do not have express or implicit constitutional or statutory authority to adopt moratoria on shoreline permits or impacting shoreline regulations. Four other justices, led by Justice Fairhurst, disagreed, finding that the City did not misuse its broad police powers to enact moratoria, that the City and other governments have authority to impose a moratorium on shoreline permits and development, and that the City acted lawfully in enacting and continuing the moratorium. In a concurring (?) opinion Justice Tom Chambers agreed with the Fairhurst position that the city had authority to adopt "a reasonable" moratorium on shoreline permits; however, he found that the city's "rolling" moratorium was not reasonable under the circumstances. His opinion was joined with the four-member lead opinion (Johnson), local governments do not possess any inherent constitutional police power authority over shoreline use in what is apparently deemed an affirmation of the court of Appeals, except that the lead/majority collection (?) ruled that the attorney fee provisions of LUPA apply, notwithstanding the fact that no permit application had ever been applied for. Hmmm? As a partial solution to this decision, the Legislature recently passed ESHB 1379, which would allow/authorize moratoria for shoreline development, subject to some limitations and conditions.

48.	*Washington Citizens Action of Washington v. State*, 162 Wn.2d 142, 171 P.3d 486 (2007) WSAMA Brief	Kathleen J. Haggard Daniel B. Heid	In July 2001, Initiative 747 was submitted to the Secretary of State with enough signatures to qualify for placement on the ballot. The measure, if approved, would require state and local governments to limit property tax levy increases to 1% per year, unless an increase greater than this limit is approved by the voters at an election. The measure would establish new "limit factors" for taxing districts in setting their property tax levies each year. For each local government taxing district, the limit factor would be a 1% increase over the highest of the district's three previous annual property tax levies. For the state, the limit factor would be the lower of 1% or the rate of inflation. Taxing districts could levy higher than the limit factor with voter approval. The initiative was approved by the voters of this state. A citizen's groups brought action against the State and the Director of the Department of Revenue challenging the constitutionality of the initiative that attempted to amend property tax statutes to limit state and local property tax levy increases to one percent per year. The challenge was based on the fat that the text of the initiative did not set forth the statutory language sought to be changed (instead merely referencing it), and based on the fact that the text it did include was not consistent with the actual language in effect when the measure was voted on. The Superior Court found that the initiative violated Washington Constitution. The State appealed. The Supreme Court held that the initiative violated the constitutional provision prohibiting amendment of an act by mere reference to its title and by failing to accurately set forth the law the initiative sought to amend.
49.	*Locke v. City of Seattle*, 162 Wn.2d 474, 172 P.3d 705 (2007) WSAMA Brief (Supp. Disc. Rvw) WSAMA Brief (Merits)	Daniel B. Heid Milton G. Rowland	A 39-year-old recruit/trainee fell off a ladder during firefighter recruit school. He received $138,980 in workers' compensation benefits and then sued his employer, the City of Seattle. A jury found the City 90% at fault and the plaintiff 10% at fault. The trial judge entered judgment against the City for more than $1.5 million. The LEOFF statute (the Law Enforcement Officers' and Firefighters' Act, RCW 41.26.281) provides that LEOFF members "shall have the privilege to benefit under this chapter and also have cause of action against the governmental employer as otherwise provided by law, for any excess of damages over the amount received or receivable under this chapter." The city argued that a statutory system that requires cities to fund a workers' compensation system and also be subject to suit violates

			sovereign immunity and is unconstitutional. Numerous cases recognize the unconstitutionality of such a system in the private sector. Without the quid pro quo of protection from suit, workers' compensation systems would be unconstitutional. Related principles apply to the public sector. Cities have no protection from suit under the LEOFF statute. If an employee's damages do not exceed the benefits received or receivable, the city pays for those damages, whether or not the city was negligent. If an employee's damages do exceed the benefits received or receivable (and negligence of the city can be proven), the city pays for those benefits plus any damages in "excess." There is no quid pro quo. All cities and towns in Washington that employ police officers or firefighters are affected by this statute. The firefighter recruit here received substantial worker's compensation benefits under Title 51. And yet, the trial court, applying RCW 41.26.281, allowed him to pursue a negligence lawsuit against his employer.
50.	*American Safety Cas. Ins. Co. v. City of Olympia*, 162 Wn.2d 762, 174 P.3d 54 (2007) WSAMA Brief	Daniel B. Heid	In 2000, the city awarded contractor Katspan, Inc. a contract to construct a segment of the Lacey, Olympia, Tumwater and Thurston County Wastewater Management Partnership (LOTT) southern connection pipeline project. Under the terms of the contract, the contractor was required to follow the contractual procedures if it wished to file a protest, formal claim, or lawsuit. Katspan agreed that protests to any change orders or compensation issues were to be brought to the attention of the project engineer immediately. If Katspan disagreed with the project engineer's resolution of the protest, it could file an administrative claim. Any cause of action under the contract was to be brought within 180 days of the final acceptance and closeout of the project. Pursuant to the contract, failing to follow the procedures constituted a waiver of the claims. The Contractor (Contractor's Surety) had a claim but failed to comply with the contractual requirements, to bring suit within the 180-day time period, and thus per the contract was a complete bar to any such claims or causes of action. Then, later, the Surety on the Contractor's performance and payment bond, as assignee of rights of general contractor under public works construction contract, sued the city to recover money allegedly owing on contract. The Superior Court entered summary judgment in city's favor. Surety appealed. The Court of Appeals reversed and remanded. Review was granted. The Supreme Court reversed, holding, held that city's equivocal

			conduct by agreeing to enter negotiations with surety could not impliedly waive contractual right to demand compliance with time requirements for filing administrative claim.
51.	*Soter v. Cowles Pub. Co.*, 162 Wn.2d 716, 174 P.3d 60, 228 Ed. Law Rep. 528, 36 Media L. Rep. 1425 (2007) WSAMA COA Brief WSAMA WSC Brief	Daniel B. Heid Milton G. Rowland	After the school district and the surviving relatives of a student who died of anaphylactic shock after he ate snack provided by district containing known allergen entered into settlement of wrongful death suit, a local newspaper sought records of the district's investigation of the incident under the public disclosure act. The Superior Court granted summary judgment for the district, and the newspaper appealed. The Court of Appeals affirmed, holding that: (1) the requested documents were protected attorney work product; (2) the documents were also protected by the attorney-client privilege; (3) public policy underlying the public disclosure act did not outweigh the counterbalancing interest in exempting pretrial confidential attorney communications from public inspection; and (4) the district's limited public disclosures did not constitute waiver of doctrine or privilege. The School District's Argument: RCW 42.17.310(1)(j) is clear and unambiguous. It provides that certain records are exempt from the disclosure requirements of the PDA: "Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts" (hereinafter this will be called "Exemption (j)"). The position of Cowles herein would render this section meaningless, notwithstanding several decisions of the Supreme Court holding that it is, indeed, to be followed and has meaning. In addition, decisions of federal courts construing the federal Freedom of Information Act, which decisions are entitled to persuasive but not controlling weight in this Court, have given the same meaning to this exemption as Respondents posit here. The Supreme Court affirmed, holding that: (1) the potential wrongful death claim was a "controversy" for purposes of controversy exemption under Public Records Act; (2) the controversy exemption still applied after settlement of claim; (3) the notes by school district's attorneys and attorneys' investigator, reflecting thoughts on client and witness interviews, were protected "opinion work product" that was exempt from disclosure under Public Records Act; (4) the other requested notes were protected by attorney-client privilege; (5) the pictures and hand-sketched map of farm where student ingested cookie were "ordinary work product" and were not

			subject to disclosure absent a required showing by newspaper; (6) the an agency from which records have been requested under Public Records Act can initiate court action for an injunction based on an exemption under PRA, but to prevail, agency must show that one of Public Records Act 's exemptions applies; and (7) the trial court may not reduce the per-diem penalty period for an agency's denial of requester's rights under Public Records Act, even if the requester could have filed suit against the agency sooner than it did.
52.	*City of Spokane Valley v. Spokane County*, 145 Wn. App. 825, 187 P.3d 340 (2008), *review denied*, 165 Wn.2d 1024, 203 P.3d 380 (2009)	Daniel B. Heid	The city brought an action to quiet title to the unimproved portion of right-of-way after the improved portions of right-of-way reverted to city following incorporation. The Superior Court granted summary judgment for county, and city appealed. The city argued that the unimproved right-of-way was deed to the county public works department as "right-of-way" and the decision of the lower court rewrites RCW 36.75.010(11), contravenes a long line of established Supreme Court holdings regarding statutory construction, and offers an interpretation of this statute that is inconsistent with the Appellate Court and Supreme Court decisions discussing this issue. The city also argued that the decision ignores the clear intent of the statute, i.e. to ensure that a new jurisdiction has control over the right-of-ways within its boundaries. Instead, it creates a scenario where a county could accept funds for the construction of a dedicated right-of-way and even begin the process of planning and/or constructing that right of way; yet, upon annexation or incorporation, assert that the property was not a "county road," and refuse to transfer it to a newly incorporated city. This is the very circumstance currently facing the City of Spokane Valley, i.e., being left with the right, funding, and obligation to construct a roadway but having no ownership interest in the same. The Court of Appeals held that:(1) The right-of-way was not open as a matter of right to vehicular travel and thus was not a county road or highway and did not revert to city and (2) The statute providing for vacation of an un-open county road did not apply.* The City sought discretionary review by the Supreme Court, but that request was denied. * This decision was confusing in light of the non-user statute - RCW 36.87.090 - whereby a road is vacated if it is not opened for public use within five years of the order establishing the road or authority granted for opening it. Also, as the decision seems to acknowledge that the

			"unopened" right-of-way is right-of-way, it is also confusing why this right-of-way does not inure to the incorporating city pursuant to RCW 35.02.180; "[t]he ownership of all county roads located within the boundaries of a newly incorporated city or town shall revert to the city or town and become streets as of the official date of incorporation." It would seem that the road is either the city's under the incorporation statute, or it is vacated by the non-user statute – either way, not the county's.
53.	*Group Health Co-op. v. City of Seattle*, 146 Wn. App. 80, 189 P.3d 216 (2008)	Daniel B. Heid	Group Health, a health maintenance organization (HMO) sued the city, alleging that the city wrongly assessed business and occupation taxes against health care premium payments made by its customers and the federal government. The Superior Court entered summary judgment for the HMO, ruling that the city wrongfully assessed the taxes. Both parties appealed. The city Argued as follows: The city's assessment is presumed correct and Group Health has the burden of proving the correct amount of the tax. Group Health's business of delivering health care with its employees in Seattle is subject to Seattle's B&O tax. Group Health's business of delivering health care with its employees in Seattle is not exempt from the city's B&O tax under RCW 48.14.0201(7), the statute that exempts HMOs from taxes based on premiums. The city's authority to tax group health's employee-provided health care is not limited under RCW 48.14.0201(7) to fee-for-service or co-pay health care delivered in Seattle. Group Health's interpretation of the authority to tax granted by RCW 48.14.0201(7) conflicts with the plain language of the statute by impairing the ability of a city to impose a B&O tax on all health care services delivered by employees. Group Health's interpretation of RCW 48.14.0201(7) would give Group Health an unfair tax advantage because other health care providers are required to pay city B&O taxes on all health delivered by their employees. The city properly calculated the tax based on Group Health's gross income from health care services delivered by Group Health's employees. Group Health fails to meet its burden on summary judgment and under city codes - SMC 5.55.140b of overcoming the presumption that the assessment is correct and of establishing the correct tax due. The city properly included in gross income a portion of revenues that Group Health received from the federal employees' health benefit program as compensation for providing medical services. The Court of Appeals affirmed, holding that: (1) in a matter of first impression, city was precluded from assessing business and occupation tax

			on enrollee premiums used to pay for medical services provided directly to enrollees by an HMO; (2) the Federal Employee Health Benefits Act (FEHBA) prohibited the city from assessing business and occupation tax on premiums paid on behalf of federal employees used to pay for medical services provided directly by HMO; (3) the savings clause of FEHBA allowing tax on net income from a broad range of business activities did not apply to the city's tax assessment; and (4) a proper remedy for the city's failure to comply with the state statute governing interest on tax overpayments was to reimburse the improperly withheld interest and amend the ordinance.
54.	*Brutsche v. City of Kent*, 164 Wn.2d 664, 193 P.3d 110 (2008) WSAMA Brief	Daniel B. Heid Sofia D. Mabee	In executing a search warrant for a suspected methamphetamine lab on premises owned by Brutsche, law enforcement officers using a battering ram to gain entry caused physical damage to doors and door jambs. Brutsche brought suit against the city of Kent, arguing that the officers had a duty to conduct the search so as to avoid unnecessary damage and do the least damage to the property consistent with a thorough investigation, that they breached this duty, and that the City is liable for the damage. The trial court granted summary judgment in favor of the City and the Court of Appeals affirmed the decision. The Supreme Court held that although a trespass claim may be asserted against a city alleging that law enforcement officers exceed the scope of their lawful authority to enter property to execute a search warrant, summary judgment in this case was proper because as a matter of law the officers did not commit trespass as Brutsche contended. The Court also held that summary judgment was properly granted with respect to Brutsche's claim that the damage to his property constituted a taking of private property for which the City must pay just compensation and decline to overrule Eggleston v. Pierce County, 148 Wash.2d 760, 64 P.3d 618 (2003).

55.	*McClung v. City of Sumner*, 548 F.3d 1219 (9th Cir. 2008) [*Tapps Brewing Inc. v. City of Sumner*, 482 F.Supp.2d 1218 (W.D.Wash. Feb 16, 2007) (NO. C06-5006RBL), as amended (May 03, 2007)]	Bob C. Sterbank	Landowners filed a state court action alleging that city's request that they install 24-inch pipe in exchange for approval of their permit application for developing property and waiver of permit and facilities fees effected uncompensated taking of their property in violation of Fifth Amendment. The Washington State Court of Appeals ruled in favor of city. Following removal, the United States District Court for the Western District of Washington, Ronald B. Leighton, J., 482 F.Supp.2d 1218, granted city summary judgment. Landowners appealed. The 9th Circuit Court of Appeals affirmed, holding that: (1) a legislative, generally applicable development condition that did not require relinquishment of property rights warranted application of Penn Central standards, and (2) a Landowner's installation of 24-inch pipe did not constitute uncompensated taking, but rather, was voluntary implied contract. The Landowners' request for certiorari to the U.S. Supreme court was denied. 556 U.S. 1282 (2009).
56.	*City of Union Gap v. Washington State Dept. of Ecology*, 148 Wn. App. 519, 195 P.3d 580 (2008) *reconsideration denied* (2009)	Kathy Gerla	By statute, the owner of a water right relinquishes the right to the state if the water right is not used beneficially for five years. But the owner does not relinquish that right, despite nonuse, if it is claimed for some "determined future development" or for "municipal water supply purposes." Here, a developer bought water rights intending to sell them to a city. We conclude that the sale did not take place within the required five-year period before the developer relinquished the water rights. Nor did the developer satisfy the requirements of either the "determined future development" or the "municipal water supply purposes" exceptions to the general rule of relinquishment after five years of nonuse of the water rights. We, then, affirm the summary judgment in favor of the Department of Ecology. In 1999, Ahtanum Ridge Business Park, LLC purchased property from Washington Beef, Inc. The property is *524 situated in Union Gap, Washington. The purchase included Washington Beef's water rights. The water rights were last used on May 27, 1995, when Washington Beef closed its slaughterhouse. Ahtanum intended to sell the water rights to Union Gap. City officials met privately with Ahtanum's representatives in the fall of 1999 and agreed orally to buy the water rights before Ahtanum purchased them. The agreement was conceptual and did not include a purchase price, payment method, or the quantity of water rights to be transferred. Union Gap, nonetheless, spent about $1 million preparing and applying to transfer the rights. It submitted applications to the Yakima County Water Conservancy Board (Conservancy Board) in July 2001 to change the water

			rights' purpose from industrial to municipal. Ahtanum platted its property and tested the wells. On March 26, 2001, Union Gap agreed to buy and Ahtanum agreed to sell the water rights, this time in writing. But the parties could not agree on the purchase price, terms of payment, or the quantity of water supply and continued to negotiate through 2005. The Owner of water rights and the city to which rights would be transferred sought judicial review of state Pollution Control Hearing Board's decision that confirmed decision of state Department of Ecology denying application for transfer of water rights. The Superior Court affirmed the Hearing Board's decision. The Owner and city appealed. The Court of Appeals, Sweeney, J., held that: (1) owner's potential sale of water rights to city was not a "determined future development," for purposes of determined-future-development exception, and (2) "municipal water supply purposes" exception did not apply. The Court of Appeals declined the request to reconsider its decision.
57.	*Rental Housing Ass'n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 199 P.3d 393 (2009) WSAMA Brief	Milton G. Rowland Kathleen J. Haggard	The Association of Rental Housing Owners brought an action under the Public Records Act against city for providing inadequate response to its request for records of crime free rental housing program. The Superior Court, King County Superior Court granted the city's motion to dismiss, and the association appealed. The Supreme Court held that the city's reply letter to the Public Records Act request was not a proper claim of exemption and thus did not trigger the running of statute of limitations. Specifically, the Court concluded that the City did not state a proper claim of exemption to trigger RCW 42.56.550(6), the one-year statute of limitations on Public Records Act suits, until April 14, 2006, when it provided a privilege log. The Supreme Court also concluded that the City's August 17, 2005 letter was insufficient to state a claim of exemption under RCW 42.56.210(3), *Progressive Animal Welfare Soc'y v. Univ. of Wash*. (PAWS II), 125 Wash.2d 243, 884 P.2d 592 (1994), and WAC 44-14-04004(4)(b)(ii). See PAWS II, 125 Wash.2d at 271 & n. 18, 884 P.2d 592. Accordingly, the Rental Housing Assn's suit filed against the City on January 16, 2007, was timely.

58.	*Rosengren v. City of Seattle*, 149 Wn. App. 565, 205 P.3d 909 (2009).	Daniel B. Heid	Years after property owners planted three birch trees on their property adjacent to the sidewalk, a passerby walking on the adjacent sidewalk tripped over a slightly raised section of sidewalk in front of the property owners' home, suffering a fracture of her right wrist. The passerby filed a tort action for damages relating to her fall, naming the property owners and the City of Seattle as defendants. The property owners filed a motion for summary judgment, arguing that they owed no duty to the passerby. The City opposed their motion, arguing that three white birch trees, planted approximately three feet from the sidewalk, causing the sidewalk offset. The trial court granted the property owners' motion for summary judgment and dismissed the claims against them. The passerby and the City filed motions for discretionary review to the Court of Appeals. The Court of Appeals ruled that trees planted by a property owner are an artificial rather than a natural condition of the land. A property owner owes a duty to exercise reasonable care that no part of any trees planted by the owner poses an unreasonable risk of harm to the pedestrian using the abutting sidewalk. The Court of Appeals thus reversed the trial court's grant of summary judgment.
59.	*McAllister v. City of Bellevue Firemen's Pension Bd.,* 166 Wn.2d 623, 210 P.3d 1002 (2009). WSAMA Brief	Daniel G. Lloyd	The City Firemen's Pension Board ruled against the former fire chief and his brother (McAllisters), a former deputy chief, on the City's decision to prospectively reduce the amount of the city pension paid under 41.18 RCW. The McAllisters appealed the Board's decision to the Hearings Examiner, which affirmed. The brothers filed a writ of review to King County Superior Court, which the court denied. The Court of Appeals, Division I, affirmed by way of an unpublished opinion, on November 19, 2007. The court granted the City's motion to publish on December 17, 2007. The brothers petitioned for Supreme Court review on January 16, 2008. The Court granted review on August 5, 2008. The issues are that Firefighter pensions were governed by the 1955 Firemen's Pension Act, ch. 41.18 RCW prior to the legislature enacting LEOFF (ch. 41.26 RCW). Because of case law, LEOFF requires cities with pensions under the 1955 Act to calculate pensions as if membership never transferred. The Department of Retirement Systems manages LEOFF and pays primary retirement benefits, but if the City pension benefit under the 1955 Act exceeds the monthly LEOFF payment, the city is required to make up the difference. Retirement benefits under the 1955 Act are 50% of the retiree's "basic salary," i.e., the salary attached to the rank held at time of

			retirement. However, the “basic salary” under the 1955 Act is capped at the rank of battalion chief. The Supreme Court affirmed the lower court ruling, holding that the retirees' excess payments were required to be calculated based on the statutory definitions of the prior pension statute.
60.	*City of Spokane v. Rothwell*, 166 Wn.2d 872, 215 P.3d 162 (2009) WSAMA Brief	Tim Donaldson	The City of Spokane charged Henry Smith with driving under the influence, and Lawrence Rothwell with physical control of a motor vehicle under the influence under the Spokane Municipal Code in April 2005. Both cases were assigned to Judge Patti Walker. Judge Walker is a district court judge; her department is department No. 4. She was elected in 2002 in a county-wide, not city-wide, election. Mr. Rothwell and Mr. Smith moved pretrial to dismiss for lack of jurisdiction. They argued that the Spokane municipal department was created in violation of state statute and was therefore an invalid entity. And Judge Walker had not been properly elected to the position of Spokane municipal court judge. Judge Walker denied both motions and concluded the court had jurisdiction in both cases. Mr. Rothwell and Mr. Smith were convicted as charged. Both Mr. Rothwell and Mr. Smith appealed to superior court and again challenged the district court's authority to preside over city cases. The superior court concluded that the statutory scheme (and particularly RCW 3.46.070(fn1)) was not violated as long as a majority of city voters voted for a particular district court candidate. Judge Baker also concluded that the statute has been complied with but for the fact that there was no designation of municipal positions on the ballot. Judge Baker stated that there is nothing of "real consequence" that is implicated by such an omission. The Court of Appeals reversed on the ground that Spokane Municipal Court judges are elected in a manner contrary to state law: Spokane county voters elect district court judges. But those judges also preside over Spokane city municipal cases, with the judges sitting as "municipal court judges" by designation. This is despite the fact that state statute mandates that only city voters may select municipal judges. And all of the Spokane County district court judges are designated as part-time municipal judges despite another state statute that requires designation of municipal departments. We conclude, therefore, that the way in which the Spokane municipal judges are elected is contrary to state law. We therefore reverse these convictions. The Supreme Court reversed the lower court ruling, holding that the

			district court judge elected by voters in the county and subsequently appointed by the mayor to act as the municipal court judge on a part-time basis had jurisdiction to preside over criminal trials for violations of city ordinances.
61.	*Kitsap County Deputy Sheriff's Guild v. Kitsap County*, 167 Wn.2d 428, 219 P.3d 675 (2009), reconsideration denied – Order dated 4-20-10. WSAMA Brief	Daniel B. Heid	A county sheriff's deputy and his union brought an action in Pierce County against the county and the county sheriff, asserting claims for breach of contract and violations of federal Fair Labor Standards Act and state wage laws, and seeking to enforce an arbitration award, which action was based on allegations that the defendants were not acting to implement the award of an arbitrator, in an arbitration under a collective bargaining agreement, that termination of employment was not a proper disciplinary sanction for a deputy's untruthfulness and that the deputy could return to full duty if he passed physical and psychological examinations. The deputy was found to have engaged in a number of instances of dishonesty – including while under oath. The defendants moved for summary judgment and filed a petition in Kitsap County for writ of certiorari regarding arbitration award. The Superior Court granted summary judgment to the defendants and the plaintiffs appealed. The defendants argues that the arbitrator exceeded his jurisdiction and authority under the collective bargaining agreement by requiring reinstatement of the deputy's employment after concluding that he was guilty of untruthfulness. In part, the County contended that the arbitrator offended public policy by reinstating the deputy's employment after finding that he was guilty of untruthfulness. The Supreme Court held that: (1) reinstatement of the deputy did not violate public policy in a manner necessary to overturn the decision on judicial review, and (but) (2) the arbitration award clearly denied deputy back pay upon reinstatement.
62.	*Port of Shelton v. City of Shelton, WWGMHB Case No. 10-2-0013. (Reconsideration denied)* **Note: Following remand the City of Shelton ultimately prevailed in its position.**	Daniel B. Heid	The Port of Shelton (Petitioner or the Port) filed a Petition for Review (PFR) on April 30, 2010 challenging the City of Shelton's (Respondent or City) adoption of Ordinance No. 1764-0310 which amended the City's Comprehensive Plan and Land Use Map. Shelton Hills Investors, LLC (Intervenor) subsequently sought and was granted the right to intervene in support of the City. The Board finds the Petitioner has sustained its burden of proof to establish the City of Shelton's actions were clearly erroneous in regards to RCW 36.70A.070 (Preamble) [Issue 4], RCW 36.70A.510 [Issue 2] and RCW 36.70A.200(5) [Issue 3], and were not guided by RCW 36.70A.020(3) [Issue 1]. The Board remands Ordinance No. 1764-0310 to the City and finds the Ordinance invalid in its entirety.

			BACKGROUND The Port of Shelton filed a Petition for Review with the Western Washington GMHB on April 30, 2010, seeking invalidation of a Comprehensive Plan Amendment passed by the Shelton City Commission on April 19, 2010. The Amendment re-designated 160 acres of property from Commercial/Industrial to Neighborhood Residential. The subject property is owned by Hall Equities Properties, Inc., a California development group that owns 800 acres in Shelton. Hall Equities is planning a large-scale mixed-use development for this acreage. The 160 acre portion is intended for residential development at two units per gross acre. (The low density is due to the presence of large-scale critical areas on the site, including steep slopes and wetlands, which the developer plans to use for passive recreation and views.) The Port of Shelton, WSDOT Aviation, the FAA, and various pilots groups have opposed the Amendment because the 160 acres is within a one-half mile radius of Sanderson Field, a small general aviation airport owned by the Port. The Port believes that residential development adjacent to the airport will lead to noise and safety complaints, causing eventual pressure on the airport to close. Note: Amicus briefs in Growth Management Hearings Board cases are authorized by WAC 242.02.280.
63.	*Magnolia Neighborhood Planning Council v. City of Seattle*, 155 Wn. App. 305, 230 P.3d 190 (2010).	Daniel B. Heid	The State Environmental Policy Act ("SEPA") authorizes the Department of Ecology to develop SEPA rules, to which courts must accord "substantial deference." RCW 43.21C.095, 110. Those rules – along with SEPA and the case law interpreting it – foster the reliable, orderly, and cost-effective administration of SEPA, which this Court deems a matter of continuing and substantial public interest. *See Dioxin/Organochlorine Center v. Pollution Control Hearings Board*, 131 Wn.2d 345, 348, 932 P.2d 158 (1997). Critical to SEPA's proper administration is an understanding of the types of agency activities subject to SEPA's procedural requirements. Those requirements apply only to: (1) an agency "action" as defined by the rules; that (2) is not categorically exempt by the rules. WAC 197-11-310(1). Both parts of that test are further informed by clear provisions of SEPA, municipal law, and case law. The Court of Appeals' opinion in this case effectively erases those clear rules. It leaves agencies, as well as those who seek agency approvals, uncertain about the law and exposed to needlessly inefficient duplication of efforts. While WSAMA endorsed all of the grounds for review raised in the City of Seattle's Petition for Review, WSAMA focused on three specific ways in which the Court of Appeals undermines the clarity of SEPA, and the

			substantial public interest that will be served by the Court accepting review and reversing the Court of Appeals. A proposal is not an "action" under SEPA. Also, a city cannot take an "action" by resolution when doing so would violate the law. SEPA's categorical exemptions apply to "actions." Another rule effectively erased by the Court of Appeals is that an "action" that fits within a SEPA categorical exemption is exempt from SEPA review and challenge. This Court has clearly held that "actions which are categorically exempt from review under [SEPA] are in fact exempt." *Dioxin*, 131 Wn.2d at 347. See generally *id*. at 352-65. "The entire purpose of the system of categorical exemptions is to avoid the high transaction costs and delays that would result from case by case review of categorically exempt actions that do not have a probable significant adverse environmental impact." *Id*. at 363. *Accord id.* at 364 (the purpose of categorical exemptions is to foster efficiency and cost-effectiveness). Discretionary review by the Supreme Court was sought, but unfortunately denied (243 P.3d 551(2010)).
64.	*Kitsap County Prosecuting Attorney's Guild, et al. v. Kitsap County*, 156 Wn. App. 110, 231 P.3d 219 (2010)	Ramsey Ramerman, Matthew S. Kaser, Peter M. Ruffatto,	Following a public records request from the Kitsap Sun (Sun) to Kitsap County (County), several employee guilds sought to enjoin disclosure of County employees' towns of residence under the Public Records Act (PRA) (ch. 42.56 RCW). The Kitsap County Superior Court, however, never entered a preliminary injunction against disclosure. Eventually, the trial court granted the Sun's motion for summary judgment and denied the Guilds' motion for summary judgment. It ordered the County to disclose its employees' towns of residence. After additional briefing, the trial court found that the County was liable for attorney fees, costs, and penalties under the PRA. The court held that the trial court did not abuse its discretion when it ordered the County to pay attorney fees, costs, and penalties under the PRA.

65.	*Segaline v. State, Dept. of Labor and Industries*, 169 Wn.2d 467, 238 P.3d 1107 (2010) WSAMA Brief	Daniel G. Lloyd	An electrical contractor frequently threatened employees of the State Department of Labor & Industries, which caused many employees to believe that the contractor would physically assault someone. Ultimately following one acrimonious meeting, a State employee called 911 after the contractor refused to leave the premises. On advice from the police, the State issued a no trespass notice to the contractor. After several instances in which the contractor disregarded the notice, the police were contacted and ultimately arrested the individual for trespassing. The City of Wenatchee filed criminal charges, but later withdrew. The contractor filed suit alleging several tort theories, including negligence and malicious prosecution. The State invoked Washington's anti-SLAPP (Strategic Lawsuits Against Public Participation) statute, RCW 4.24.510, arguing it was immune because the contractor's claims were based on the State's communications to the police. The superior court granted summary judgment and awarded the State $10,000 plus fees based on the statute. The Court of Appeals affirmed on April 29, 2008 in a published opinion, and the Supreme Court granted review, holding The Supreme Court, Sanders, J., held that: (1) a government agency that reports information to another government agency is not a "person" under the immunity provisions of anti-SLAPP (strategic lawsuit against public participation) statute; (2) accrual date for limitations purposes of § 1983 claim against L&I employee who drafted "no trespassing" notice was the date on which contractor was served the notice when he came into L&I building; and (3) contractor failed to establish excusable neglect, as necessary for an amended complaint adding L&I employee as a party on § 1983 claim to relate back for limitations purposes to date of original pleading. (Affirmed in part and reversed in part.)
66.	*G-P Gypsum Corp. v. State, Dept. of Revenue*, 169 Wn.2d 304, 237 P.3d 256 (2010) WSAMA Brief	Judith Zeider	G-P Gypsum, a manufacturer based in Tacoma, consumed natural gas in the process of manufacturing wall board. Gypsum purchased the natural gas outside of the City of Tacoma and arranged for its transportation via pipeline to its Tacoma facility. Gypsum sued the Department of Revenue which collects both state and local brokered natural gas use tax under Wash. Rev. Code § 82.14.230 in Thurston County Superior Court (Washington) arguing that under RCW 82.12.010(5)(a), it did not take "possession, dominion, or control" of the gas in Tacoma and therefore was not subject to local use taxes. The Department of Revenue argued that the definition of "use" in RCW

			82.12.010(5) did not apply to local use taxes and that "use" should be defined as the place of consumption in accordance with the plain meaning of the applicable statute and legislative intent. The trial court ruled in favor of the Department of Revenue (and Tacoma) but the Court of Appeals, Division II reversed holding that phrase "insofar as applicable" in Wash. Rev. Code § 82.14.020(9) extended the definition of "use" from Wash. Rev. Code § 82.12.010(5)(a) to local use taxes and that the taxpayer first exercised "possession, dominion and control" at the location outside the City of Tacoma. The Department of Revenue sought review of the Court of Appeals decision. The Supreme Court accepted review and that the taxpayer's consumption of natural gas within city limits was a use of gas subjecting it to the local gas use tax, reversing the Court of Appeals.
67.	*O'Neill v. City of Shoreline*, 170 Wn.2d 138, 240 P.3d 1149 (2010) WSAMA Brief (Supp. PRV) WSAMA Brief (Merits)	Gary Smith Suzanne M. Skinner	Citizens brought a Public Records Act (PRA) action against the city for disclosure of e-mail sent to city's deputy mayor alleging improprieties in city zoning decisions, metadata associated with the e-mail, and other records. After a show cause hearing, the Superior Court dismissed the action. The Citizens appealed. The Court of Appeals held that: (1) the city was not required to produce the electronic version of e-mail, along with e-mail's associated metadata in response to citizen's initial oral request, but (2) the city failed to comply with citizen's later request for metadata. The Court of Appeals decision creates some confusion about whether an agency may rely on the State Retention Guidelines and Retention Schedule for lawful disposition of its public records. The court declared that a "conflict" exists between the Public Records Act and the Retention Guidelines, and that, even though the City followed the Retention Guidelines allowing for deletion of an e-mail, such deletion may nevertheless have violated the PRA. Despite the Retention Guidelines' stated purpose of providing blanket authority for disposition of public records, the court's finding of a "conflict" with the PRA will result in agencies second-guessing whether they can rely on the Retention Guidelines for records disposition. Also, the decision will significantly increase public records costs to local agencies. The Court of Appeals held that all copies of metadata associated with the same email distributed to multiple parties are considered separate public records. If each copy of metadata is considered a public record, then multiple recipients of an e-mail must

			retain their electronic version of the e-mail. Cities and towns will have to increase electronic storage capacity in order to retain all copies of e-mails for their assigned retention period. Finally, the decision appears to impose a new duty on local agencies to search hard drives for deleted documents. Agencies will have to take extraordinary & expensive measures to recover deleted electronic records, buy software capable of performing hard drive searches and train their Information Services departments to conduct such searches, again driving up costs. The Supreme Court affirmed in part, reversed in part, and remanded, ruling that: (1) as an issue of first impression, hidden metadata associated with the e-mail was a public record subject to disclosure under the Public Records Act (PRA); (2) the requesting citizen was entitled to disclosure of metadata associated with original e-mail sent to city's deputy mayor; (3) State Records Management Guidelines did not justify city's deletion of the e-mail; (4) the citizen's oral request at city council meeting to see the e-mail did not constitute a request to receive a copy of hidden metadata attached to the e-mail until citizen specifically asked for it; and (5) the citizen was not entitled to award of attorney fees.
68.	*City of Federal Way v. Town & Country Real Estate, LLC*, 161 Wn. App. 17, 252 P.3d 382 (2011).	Grant David Wiens	A neighboring city filed a petition under the Land Use Petition Act, seeking review of hearing officer's decision on developer's application for approval of residential development, including hearing officer's decision to strike traffic impact mitigation payment which city had imposed on developer as condition of subdivision plat approval. The Pierce County Superior Court reversed in part, and the developer appealed. The Court of Appeals affirmed in part, ruling that: (1) traffic effects on horizon year level-of-service failures (LOSFs) were encompassed within meaning of “direct impact” and “direct result” of statute affirming city's authority to impose mitigation payments; (2) city could consider cumulative impacts when considering proposed subdivision's “direct impact”; (3) city could impose payments on developer even if neighboring city intended to construct traffic improvement plans (TIPs) regardless of whether developer built subdivision; (4) evidence was insufficient to support hearing examiner's determination that trips generated by proposed subdivision development was “insignificant” under State Environmental Policy Act (SEPA); (5) mitigation payment was related to specific adverse environmental impacts clearly identified in an environmental document on the proposal as required by SEPA; (6) payment was “reasonable and capable of being accomplished” under SEPA rules; and (7) Growth Management Act did not apply.

69.	*Hardee v. State, Dept. of Social and Health Services*, 172 Wn.2d 1, 256 P.3d 339 (2011).	Kathy Gerla	The Department of Early Learning revoked Ms. Hardee's home child care facility license based on findings that she violated specific restrictions designed to keep her mentally ill son away from the child-care children. Her son lived at the house and had a tragic history of violent behavior and mental health problems. Contrary to specific restrictions in her license, Hardee allowed her son to assist at the facility and allowed unsupervised contact with children, including diapering. These violations were discovered after the son was arrested for molestation of a child he was babysitting. (That victim was not a customer of the facility.) Ms. Hardee contested the license revocation in an administrative hearing before the DSHS. Although an administrative law judge recommended a decision reversing the revocation, the final agency order affirmed revocation based on findings and conclusions that Hardee had violated the specific restrictions regarding her son, and because she did not meet required characteristics for providing child care due to her desire to place her needs above the interests of children in care. The superior court and court of appeals affirmed. Ms. Hardee petitioned for Supreme Court review. Her primary argument is that the adjudicative proceeding applied a "preponderance of the evidence" standard required by statute. She contends that the statute is unconstitutional, relying on Nguyen v Dept of Health, 144 Wn.2d 516 (2001). While that case dealt with revocation of a medical license, she argues that the constitution precludes the legislature from authorizing the preponderance of evidence standard for any licensing sanction that would affect a profession, business, or calling. The Department responds that the statute is demonstrably constitutional, because there are no fundamental rights at stake, and the standard of proof meets Matthews v. Eldridge considerations for due process. Nguyen and the single case following it, *Ongom v Dept of Health*, 159 Wn.2d 132, should be overruled because they are wrong and harmful precedent. Those cases reflect the only cases in the United States where a state supreme court has concluded that the due process clause precludes use of the normal preponderance of evidence standard when licensing professionals. The Supreme Court granted a petition for review and held that statutory requirement that Department justify its revocation of home child care license by a preponderance of the evidence satisfied constitutional due process, overruling *Ongom v. Department of Health*, 159 Wn.2d 132, 134, 148 P.3d 1029.

70.	*Zink v. City of Mesa*, 162 Wn. App. 688, 256 P.3d 384 (2011)	Steven L. Gross, Daniel B. Heid	The case involves a PRA judgment based on 29 violations of the PRA for $245,000 against a tiny city with only 440 residents and annual general fund tax revenue of $120,000. WSAMA's argument is that the Court should remand this matter to the trial court for a recalculation of penalties and attorneys' fees with the trial court properly taking into consideration the mitigating factors of delay that were not the fault of the City, and the reasonableness of the City's explanation for noncompliance. WSAMA also asked this Court to provide guidance to the trial court by holding that: 1) it would not further the purpose of the PRA to impose penalties for those days when the matter of release is being litigated and therefore, daily penalties should be tolled (or reduced) for those days when records were withheld in good faith pending the outcome of litigation and should not be imposed for any days after which the records were provided, regardless of the duration of litigation; and, 2) the trial court, in applying the mitigating factors in *Yousoufian* 2010, infra, may properly consider the ability of the City to pay as it relates to the deterrent effect of such penalties. The Court of Appeals affirmed in part, reversed in part, and remanded, holdings that: (1) remand was warranted for the trial court to set penalties; (2) evidence supported the trial court's finding that the city's silent withholding of neighbors' complaints regarding the landowners' property was a violation of the PRA; (3) the trial court properly exercised its discretion in grouping as one landowners' requests for audio tape, minutes, rules, and regulations; (4) substantial evidence supported the trial court's finding that a 30-day-delay was reasonable for release of 21 code violation letters; (5) the trial court properly exercised its discretion in grouping some requests based on their subject matter and in refusing to group others; (6) the trial court properly assessed fees, costs, and sanctions against the city; and (7) post-judgment interest was required to run from the date of the new judgment.
71.	*Phoenix Development, Inc. v. City of Woodinville,* 171 Wn.2d 820, 256 P.3d 1150 (2011) WSAMA Brief (Supp. PRV) WSAMA Brief (Merits)	Daniel B. Heid	The Phoenix case involves a developer's attempt to rezone (from R-1 to R-4 density levels) and subdivide two parcels located in a low-density residential neighborhood of Woodinville. The Woodinville City Council denied the rezone requests, and the King County Superior Court upheld the Council's decision in a subsequent LUPA appeal. Division One of the Court of Appeals reversed the City Council's decision and effectively ordered the City to rezone the subject property. The Court of Appeals reached its holding primarily by focusing upon an obscure purpose statement contained in the City's zoning code. The statement, which purports to prohibit developments with densities less than four dwelling units per acre unless adequate

			services cannot be provided, apparently resulted (indirectly) from a 1997 Growth Management Hearings Board ruling involving Woodinville's comprehensive plan. It reflected the so-called "bright line rule" for residential density (four dwelling units per acre) previously enforced by the Growth Board until its invalidation by the Washington Supreme Court in *Viking Properties, Inc. v. Holm*. Relying heavily upon GMA principles, the Court of Appeals construed this code provision as entitling developers of R-1 property to obtain an automatic upzone to R-4 levels upon request. However, it is a basic and longstanding principle of Washington municipal law that a local legislative body may not be judicially compelled to rezone property. Courts reviewing a city council's refusal to grant a rezone have consistently acknowledged that judges simply lack the power to amend zoning ordinances, and courts have refused to intrude upon the inherent discretion of local legislative bodies in this context. Neither the developer nor the Court of Appeals in the Phoenix matter were able to cite any reported Washington case under which a city council was forced to rezone property against its will. The Court of Appeals also departed from a well-established body of precedent by injecting GMA considerations into a site-specific zoning decision. The effect of this approach is to blur the important divide between community planning efforts and individual project review. The City of Woodinville sought discretionary review of the Court of Appeals' decision by the Supreme Court which was granted. The Supreme Court reversed the Court of Appeals and affirmed the trial court, holding that (1) substantial evidence supported the city's decision; (2) the city did not engage in unlawful procedure; and (3) the city's decision was not based on an erroneous interpretation of law.
72.	*Dolan v King County*, 172 Wn.2d 299, 258 P.3d 20 (2011). *Decided Aug. 18, 2011.* *As Corrected Jan. 5, 2012.* *Reconsideration Denied Jan. 10, 2012.*	Mark O. Erickson, Daniel B. Heid	Kevin Dolan filed a class action lawsuit seeking a determination that the employees of four private, non-profit criminal public defender corporations were public employees, eligible for membership in the Public Employee Retirement System, per RCW 41.40. Also sought was the requirement that King County pay the required retirement contributions on the employee's behalf. The trial court concluded that the employees should be considered public employees. The Supreme granted direct review. The Supreme Court, affirmed the trial court, holding that (1) the substantial evidence standard of review was appropriate; (2) the county exerted such a right of control over defender organizations as to make them agencies of the county, and thus employees of defender organizations were county employees entitled to be enrolled in PERS; (3) collateral estoppel did not bar the claim that employees of defender organizations were entitled to

			enroll in PERS; and (4) employees of defender organizations were not equitably estopped from claiming PERS benefits.
73.	*Wilbur v. City of Mount Vernon*, ___ Fed Supp. ___, Slip Copy, 2012 WL 600727 W.D.Wash.,2012, --- F.Supp.2d ----, 2013 WL 6275319 W.D.Wash.,2013. December 04, 2013	Daniel B. Heid	The case was originally filed in Skagit County Superior Court, later removed to federal Court. It alleges that the Cities of Mount Vernon and Burlington are liable for a violation of Section 1983. It claims that by use of a bid-contract public defense system, the Cities have chronically underfunded indigent defense services. As a result the plaintiffs claim there have been systemic violations of the 6th Amendment right to effective assistance of counsel. The plaintiffs seek class certification and declaratory and injunctive relief. The case was filed in June, and removed to federal court. After removal to federal court the ACLU and Perkins Coie associated with the original lawyers for the plaintiffs The Cities filed Motions for Summary Judgment which were denied. The three named plaintiffs sought to go forward with this litigation as representatives of a class, described as follows: All indigent persons who have been or will be charged with one or more crimes in the municipal courts of either Mount Vernon or Burlington, who have been or will be appointed a public defender, and who continue to have or will have a public defender appearing in their cases. The Cities argued that indigent criminal defendants cannot form a "coherent class" because the individuals are too diverse and not all of them have suffered injury. With regards to the specific requirements of Fed. R. Civ. P. 23, defendants apparently agree that the proposed class is numerous, but challenge plaintiffs' assertions regarding commonality, typicality, and adequacy of representation. Nevertheless, Federal District Judge Lasnik granted their request for certification of the class, holding that a class that satisfies the requirements of Rule 23(a) may be certified if defendants have "acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). The Court also noted that the Plaintiffs allege that Mount Vernon and Burlington affirmatively created and continued a system of public defense that, by its very nature, deprives indigent criminal defendants of their constitutional right to counsel, and that the Plaintiffs sought a court order requiring the municipalities to establish a public defense system that satisfies the basic elements of the right to counsel. The Court concluded that because the relief sought is systemic, rather than individual,

			class-wide injunctive or declaratory relief may be appropriate, and thus certification under Rule 23(b)(2) was appropriate. The court ruled in favor of the plaintiffs, holding that: (1) the cities' public defense system deprived indigent criminal defendants of their Sixth Amendment right to counsel; (2) deprivation was caused by deliberate choices of city officials in charge of public defense system; and (3) the cities were required to re-evaluate public defender contracts and hire public defense supervisor.
74.	*Stafne v. Snohomish County,* 174 Wn.2d 24, 34, 271 P.3d 868 (2012) WSAMA Brief	Tim Donaldson	A property owner sought review of a county council's decision to reject his proposed amendment to the comprehensive plan that would re-designate portions of his property from commercial forest land (CFL) and forest transition area (FTA) to low density rural residential (LDRR). The Skagit County Superior Court dismissed action. The owner appealed. The Court of Appeals affirmed (156 Wn. App. 667, 234 P.3d 225), and the Supreme Court granted review. The Supreme Court affirmed the Court of Appeals, holding that (1) a party challenging a decision related to the amendment of a comprehensive plan must first seek review before the growth board under the Growth Management Act (GMA) and cannot seek relief in the superior court under Land Use Petition Act (LUPA); (2) the futility exception to the requirement of exhaustion of administrative remedies did not apply to allow the property owner to bypass review before the board under the GMA; (3) the superior court could not grant a constitutional writ of certiorari to review the county's decision not to adopt a proposed amendment to its comprehensive plan; and (4) declaratory relief was unavailable to the owner with respect to legal consequences of a boundary line adjustment that incorporated land that the owner acquired from the Department of Natural Resources (DNR) into a parcel that he already owned.

75.	*Robb v. City of Seattle*, 176 Wn.2d 427, 295 P.3d 212 (2013) WSAMA Brief	Milton G. Rowland and Daniel B. Heid	The personal representative of motorist's estate filed suit for wrongful death against the City of Seattle and a couple if its police officers after a motorist was shot and killed following the shooter returning to the location where he had been previously subjected to a Terry stop. The shooter then purportedly retrieved shotgun shells from ground. The Superior Court, for King County denied the defendants' motion for summary judgment, and the defendants appealed. The Court of Appeals, 159 Wash.App. 133, 245 P.3d 242, affirmed. Review was granted. The Supreme Court held that officers' failure to retrieve shotgun shells from ground at the location where they had subjected the shooter to a Terry stop was an act of nonfeasance that did not impose duty on officers to protect motorist from acts of shooter. Therefore, the Judgment of the Court of Appeals was reversed and the case was remanded to the Superior Court with instructions to dismiss.
76.	*Lakey v. Puget Sound Energy, Inc. and City of Kirkland,* 176 Wn.2d 909, 296 P.3d 860 (2013) WSAMA Brief	Daniel B. Heid	Some homeowners brought action against the City of Kirkland and Puget Sound Energy, alleging that the electromagnetic fields (EMFs) emanating from the power company's substation trespassed on their property and constituted both a public and private nuisance and that the city's grant of a variance for the substation amounted to inverse condemnation. The Superior Court for King County granted the defendants summary judgment. The homeowners appealed. The Supreme Court held that: (1) the expert's testimony regarding effects of EMFs did not implicate Frye; (2) the expert failed to follow proper methodology, rendering his conclusions on the effects of EMFs unreliable and therefore inadmissible; (3) EMFs emanating from the power company's substation did not constitute a nuisance; (4) the Land Use Petition Act (LUPA) did not apply to the homeowners' action against the city claiming inverse condemnation; and (5) the city was not liable for inverse condemnation when it granted the power company a variance.

77.	*Michael Henne v. City of Yakima* Court of Appeals Div. III, No. 309029 Henne v. City of Yakima, 177 Wn. App. 583, 313 P.3d 1188 (2013) *Henne v. City of Yakima*, 179 Wn.2d 1022, 320 P.3d 718 (Wash. Mar 05, 2014) (Table, NO. 89674-7) WSAMA Brief (COA) WSAMA Brief (Supp PRV)	Milton G. Rowland	Plaintiff Officer's Complaint was filed November 4, 2011, asserting a claim against the City of Yakima. In part the complaint alleges retaliation against the plaintiff in the form of reports of misconduct (and resulting internal investigations) made by other police officers against the plaintiff. The City of Yakima filed a special motion to strike pursuant to RCW 4.24.525 arguing that the reports of misconduct and resulting internal investigations constituted "actions involving public participation and petition" within the meaning of the statute, that the claims should be stricken as without merit, and the City awarded its costs and attorney's fees, and a $10,000 statutory penalty. The trial court denied the motion on May 18, 2012, on the basis that 4.24.525 did not seem to apply to the plaintiff. See transcript of ruling attached. A timely appeal was taken on May 25, 2012. On June 5, 2012, the Court of Appeals issued a notice requesting briefing on whether the appeal from the order was appealable as of right. After submissions of the parties, on July 12, 2012, the Commissioner of the Court of Appeals ruled that the appeal from the order was appealable as of right. The holdings by the Court of Appeals, dismissing the City's appeal, was that: (1) the amendment of complaint to remove claims warranted appeal from denial of motion to strike pursuant to anti-SLAPP statute moot, and (2)The city was a legal entity within meaning of anti-SLAPP statute. Review by the Supreme Court granted, pending argument and decision
78.	*Resident Action Council v Seattle Housing Authority*, 177 Wn.2d 417, 300 P.3d 376 (2013)	Ramsey Ramerman and Sara J. Di Vittorio, (Joint filing with the Association of Prosecuting Attorneys and the Washington Association of Public Records Officers)	WSAMA and APA joined with the Seattle Housing Authority to ask for reconsideration by the state Supreme Court of the decision in this case [177 Wn.2d 417, 300 P.3d 376 (2013)]. There were two primary issues that were important to cities. First, the extensive dicta in the lead opinion, with its attempt to classify all exemptions has the potential to result in new claims and wasted litigation. Moreover, 8 justices agree that the trial court should be affirmed for the same reasons, so that should be the holding and the dicta should be relegated to a concurring opinion at most. This would be the primary goal of the amicus brief. It would be achieved by point out concerns with the dicta. 1. The proposed flow-chart analysis is at most a best practice and I do not think it even is a best practice. But if an agency does not "follow" it, this may result in liability or increased penalties. 2. The distinction between categorical and conditional and between information and entire records is a helpful concept but it is not that

			easy. Although the lead opinion says its efforts to catalog the exemptions may be wrong, agencies will now have to fight against it if it is wrong. It is better to have exemptions classified with there is an actual controversy Second, the basis for the injunction is unclear and problematic. To be clear, the court should expressly state that if the lack of rules had not contributed to the violation, the court would not enter the injunction. In other words, make it clear that is no new PRA claim for inadequate rules. At most, this should be a mandamus action, if anything. The order was also problematic because it is not clear what the order actually covers. First, SHA has PRA rules, so it is not simply an injunction to adopt rules. But other than general guidance that an agency should have rules covering certain topics, the PRA does not give much guidance. Is this injunction just for the minimal standards, or are trial courts now allowed to impose their ideas of best practices with injunctions? In essence, the reconsideration was requesting that these issues be clarified so the public agencies know how to respond. Unfortunately, reconsideration was denied and the court upheld its earlier ruling, ruling in favor of the resident action Council.
79.	*Cost Management Services v. Lakewood*, 178 Wn.2d 635, 310 P.3d 804 (2013) WSAMA Brief	Mark D. Orthmann	A natural gas purchasing agent brought action against city, seeking refund of taxes allegedly paid in error. The Superior Court, Pierce County, Elizabeth P. Martin, J., entered partial summary judgment for purchasing agent and for city, granted mandamus relief requiring city to take action on refund claim, and, following a bench trial, entered judgment for purchasing agent. City appealed. The Court of Appeals affirmed, 170 Wn. App. 260, 284 P.3d 785. City petition for review was accepted. The Supreme Court held that: 1 the exhaustion requirement was vitiated by the city's inaction, but 2 the statute of limitations for tax refund also applied to taxpayer's mandamus petition. Affirmed in part, reversed in part, and remanded.

80.	*Jones v. Seattle*, 179 Wn.2d 322, 314 P.3d 380 (2013) WSAMA Brief	Milton G. Rowland,	A City firefighter brought action against city to recover for injuries sustained when he fell down fire station pole hole. The Superior Court for King County entered judgment on a jury verdict, awarding the firefighter $12.75 million in damages. The City appealed. The Court of Appeals, 166 Wn. App. 1027, 2012 WL 540540, affirmed. City petitioned for review. The Supreme Court affirmed, holding that: 1 the city's reserving the right to call any witness appearing on the plaintiff's list did not constitute a proper disclosure of a witness under local rules; 2 the trial court failed to conduct adequate Burnet inquiry before excluding testimony of the city's late-disclosed witnesses as a discovery sanction; 3 the improper exclusion of city's late-disclosed witnesses was harmless error; and 4 the newly discovered post-trial surveillance video did not support a grant of the city's motion to vacate judgment. Affirmed.
81.	*Camicia v. Howard S. Wright Construction* 179 Wn.2d 684, 317 P.3d 987 (2014) WSAMA Brief	Milton G. Rowland, Daniel B. Heid	On June 2, 2009, the Honorable Laura Inveen granted the City of Mercer Island's motion for summary judgment. Plaintiff Camicia sought, and received, permission to pursue an interlocutory appeal. On November 8th, 2010, in *Camicia v. City of Mercer Island*, No. 63787-8-I, the trial court's summary judgment order was reversed. The City sought reconsideration, which was denied on December 27, 2010. The City filed a Petition for Review with the Supreme Court. WSAMA's arguments were that it has been held that deed covenants cannot be enforced by a nonparty who has no personal stake in enforcing the covenant. *Lakewood Racquet Club v. Jensen*, 156 Wn. App. 215, 232 P.3d 1147 (2010); *see also Timberland Homeowners Ass'n, Inc. v. Brame*, 79 Wn. App. 303, 901 P.2d 1074 (1995). In *Donald v. City of Vancouver*, 43 Wn. App. 880, 719 P.2d 966 (1986), the court held that taxpayers do not have standing to enforce deed conditions subsequent that land be used as a public park, when the city attempted to convey a portion of the park to a hotel. While it may be possible that a citizen has standing to assert that he or she can use dedicated property, *see Donald v. City of Vancouver*, 43 Wn. App. at 885, and *Sweeten v. Kauzlarich*, 38 Wn. App. 163, 166, 684 P.2d 789 (1984), it seems doubtful that any person would have standing to argue in court that she did not have any rights to recreational use of property.

		Additionally, Division I did a great disservice to the public, landowners, and the legislature by injecting non-statutory criteria into the analysis. No case suggests that chain of title, source of funds, or third party opinions carry weight—indeed, precedent is to the contrary. *See, e.g., Gaeta v. Seattle City Light*, 54 Wn. App. 603, 608, 774 P.2d 1255 (1989) ("We find the proper approach in deciding whether or not the recreational use act applies is to view it from the standpoint of the landowner or occupier."). This grey area between immunity and endless liability is a strong disincentive to any property owner considering opening land to the public. Moreover, Division I's analysis is novel. The cases cited by Camicia are readily distinguishable. *Tennyson v. Plum Creek Timber Co., L.P.*, 73 Wn. App. 550, 872 P.2d 524 (1994), for example, involved a contractor—who was simply doing work on a property—and obviously had no authority to open and close it to the public. *See id* at 557 ("The 'possession and control' requirement clearly indicates a broader, more permanent interest in the land than was present here. As in Labree, the agreements between Plum Creek and the contractors were for purposes of excavation." Additional citations omitted. Here, in contrast, Mercer Island undisputedly owned the property and the evidence one-sidedly proves that it could open and close it as it deemed fit (and the usual incidents of ownership were present). And in *Cultee v. City of Tacoma*, 95 Wn.App. 505, 977 P.2d 15 (1999), there was a dispute about whether recreational users were allowed on the property in the first place. There was testimony that the land was not actually "open to the public." There is no similar evidence in this case; the I-90 trail is open and available to the public—a gratuitous benefit reaped by perhaps thousands of people every day, much like Spokane, Washington's Centennial Trail. Also, RCW 4.24.200 states the intention of the legislature in creating recreational immunity: The purpose of RCW 4.24.200 and 4.24.210 is to encourage owners or others in lawful possession and control of land and water areas or channels to make them available to the public for recreational purposes by limiting their liability toward persons entering thereon and toward persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon. Finally, making immunity a "question of fact" is tantamount to no immunity at all. The purposes of immunity are not served by forcing the immune party to undertake expensive discovery and trial in order to claim it. See, e.g., *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). The point here is that immunity does not count for very much if the immune person is not immune from harassing and time-consuming discovery and trial, as well as from judgments. In this case, Ms. Camicia was making use of land made available for her free use for bicycling. Bicycling is a statutorily enumerated

		recreational use. How Mercer Island came into title to the property, and whether the WSDOT could have prevented Mercer Island from using the property for recreational purposes (or that WSDOT even intended to do so) are not relevant to statutory immunity. Unfortunately, the Supreme Court rules that there were genuine issues of material fact, affirming the Court of Appeals and denying the city the summary judgment it received in Superior Court. The court stated that the evidence, viewed in the light most favorable to Camicia, gives rise to a material question of fact about the City's authority to close the trail to public transportation. WSDOT conveyed the land under a deed that limits its use to "road/street purposes only" absent "prior written approval of the grantor." The court based its ruling on the concept that immunity applies only when a landowner allows the public to use the land " for the purposes of outdoor recreation." RCW 4.24.210 (emphasis added). This reading is in accordance with the statute's plain language and the legislature's stated purpose to "encourage" land possessors to make their land "available to the public for recreational purposes by limiting their liability." RCW 4.24.200. Where land is open to the public for some other public purpose—for example as part of a public transportation corridor—the inducement of recreational use immunity is unnecessary. It would make little sense to provide immunity on the basis of recreational use when the land would be held open to the public even in the absence of that use. Of concern, this would seem to exclude trail systems (that can be used for [bicycle] transportation from the protections of the recreational immunity statute. The Supreme Court also rejected the City's view that recreational immunity follows from the mere presence of incidental recreational use of land that is open to the public. Another point of curiosity in this case is that it was actually argued before the state Supreme Court on November 15, 2011 but not decided until January 30, 2014, over two years waiting for a decision.

82.	*Cannabis Action Coalition v. City of Kent*, 180 Wn. App. 455, 322 P.3d 1246 (2014) *Aff'd* 183 Wn.2d 219, 351 P.3d 151 (2015) WSAMA Amicus (COA)	Tim Donaldson, Kathleen J. Haggard J Preston Frederickson Timothy J. Reynolds	On June 5, 2012, the Kent City Council passed an ordinance prohibiting medical MJ collective gardens and dispensaries. The City was served with a lawsuit that day. The City prevailed on summary judgment before Judge Jay White on October 5, 2012. Plaintiffs appealed, seeking direct review in the state Supreme Court (Case No. 88079-4). In December of 2012, the Supreme Court granted a stay of an injunction pending the outcome of the appeal. In June 2013, the Supreme Court denied direct review, and transferred the case to Division I of the Court of Appeals (Court of Appeals Case No. 70396-0-I) The Court of Appeals affirmed the lower court, holding that: (1) amendments to Medical Use of Cannabis Act (MUCA) did not legalize medical marijuana or collective gardens; (2) the governor's veto message was the sole source of relevant legislative history to be considered in interpreting amendments that were enacted following sectional veto; (3) cities were authorized to enact zoning requirements to regulate or exclude collective gardens; and (4) Kent's ordinance did not conflict with state law.

83.	*City of Vancouver v. State Public Employment Relations Comm'n*, 180 Wn. App. 333, 325 P.3d 213 (2014) WSAMA Brief	Tim Donaldson	The Public Employment Relations Commission found that the city of Vancouver committed an unfair labor practice by discriminating against THE Vancouver Police Officers' Guild (Guild) president Ryan Martin out of animus over his union activities. The City appeaed, contending that the Commission (1) improperly applied judicial precedent to the Guild's discrimination complaint; (2) violated the Administrative Procedure Act (APA), chapter 34.05 RCW, by engaging in improper rulemaking; and (3) based its decision on factual findings unsupported by the record. The Court affirmed, holding that: 1 The Commission was authorized by statute to impose liability on individuals for unfair labor practices; 2 The Commission did not impose individual liability on the police chief for unfair labor practices; 3 The Commission's error in applying an improper burden of proof in determining the city's liability was harmless; 4 The fact that police chief did not have notice of the assistant police chief's antiunion animus in making recommendations for officers for motorcycle unit did not preclude a finding of unfair labor practices; 5 The officer's loss of benefits that would be conferred by selection to the motorcycle unit constituted an adverse employment action for the purposes of the claim of unfair labor practices; 6 The Commission did not engage in rule-making with its order finding city liable for unfair labor practice; 7 Substantial evidence supported the examiner's finding that the assistant police chief's statement that he wanted someone for motorcycle unit position who shared police chief's "vision" betrayed his animus towards Guild police officers; and 8 Substantial evidence supported the examiner's finding that the police chief relied on a tainted recommendation from the assistant police chief.

84.	*Fisher Broadcasting v. Seattle*, 180 Wn.2d 515, 326 P.3d 688 (2014) WSAMA Brief	Daniel B. Heid	Fisher Broadcasting-Seattle TV L.L.C., dba KOMO 4, ("KOMO") filed this case in King County Superior Court on September 19, 2011, claiming that Seattle Police Department ("SPD") wrongfully denied Public Records Act requests submitted on August 4, August 11, and September 1, 2010 by TV reporter Tracy Vedder. Her first request was for a copy of officer's log sheets that correspond to in-car videos tagged for retention for the prior five years. Her second request was for a list of all SPD in-car videos that had been tagged for retention during a five-year period along with the officer's name, badge, number, date, time and location and other unidentified information for each video. Her third request was for the actual in-car videos tagged for retention by anyone from January 2007 to September 2010. KOMO moved for summary judgment, and the City filed a cross-motion for summary judgment. Judge Jim Rogers heard the parties' cross-motions for summary judgment on March 23, 2012, and issued an Order on Cross-Motions for Summary Judgment on April 6, 2012. Judge Rogers found that the City did not violate the PRA in responding to the August 4, 2010, request for log sheets because log sheets referred to a particular record which had been located at the precinct level but were no longer in existence at the time requested. The Judge also found that the City had properly denied the September 1, 2010 request for the actual videos. The Washington Privacy Act (Chapter 9.73 RCW) provides guidelines for police in-car video recordings and states that "No sound or video recording made under this subsection (1)(c) may be duplicated and made available to the public by a law enforcement agency subject to this section until final disposition of any criminal or civil litigation which arises from the event or events which were recorded." RCW 9.73.090(1)(c). The City interprets this statute to mean that a law enforcement agency must determine whether final disposition of all criminal or civil litigation which arises from the event or events which were recorded has occurred before disclosing a video. While SPD can look to its own records to determine whether criminal litigation related to a video has been resolved, all civil litigation which arises from an event that has been recorded may not even be filed for at least three years from the date of the event. Because of this uncertainty, SPD has adopted three years from the date of the recorded event as the earliest date that it may release a particular in-car video to the public. Judge Rogers found that RCW 9.73.090 is an "other statute" within the meaning of RCW 42.56.070(1), which exempts or prohibits disclosure of

		specific information or records because "the Legislature deliberately decided to delay the release of in-car videos to citizens making such requests 'until final disposition of any criminal or civil litigation which arises from the event or events which were recorded.'" As a result, the City had no legal responsibility to turn over in-car videos before three years from the recorded events had elapsed. Judge Rogers further found that the City did not violate the PRA when it initially denied KOMO's second request, but then found the City liable for violating the PRA because almost a year later the City was able to produce a database for another requester containing some, but not all of the information requested by KOMO. The trial court found that "later, when the City gained an understanding that it possessed a record [that] was partially responsive during this period, even if employees did not grasp that fact initially, it had a duty to respond." Judge Rogers awarded $25 per day penalties from the date the City first provided the database information to the other requester until it gave Ms. Vedder the same database (June 20, 2011 – September 20, 2011). KOMO has filed a Motion for Attorney's Fees, Costs and Penalties asking Judge Rogers to assess penalties from the date of the second request (August 11, 2010) based on the State Supreme Court holding that whether a party has prevailed for purposes of penalties and attorney's fees relates to the legal question of whether the records should have been disclosed at the time of the request. Spokane Research & Defense Fund v. City of Spokane, 155 Wash.2d 89, 103-104, 117 P.3d 1117 (2005). The City's Response to the Motion for Attorney's Fees, Costs and Penalties asks Judge Rogers to clarify his findings for a determination that either the City complied with the PRA at the time of KOMO's requests; in which case, KOMO did not prevail on any of its claims or a finding that KOMO made a refresher request at some point when the City knew it had records that were at least responsive to her request. Judge Rogers also included language in his Order regarding the City's written policy stating that tagged videos are deleted from the COBAN recording system at the end of three years. He included this language despite evidence that SPD actually retains the tagged videos longer than three years. The City has asked the court to clarify this language in light of the evidence and the fact that there is no private right of action under the records retention statute, Chapter 40.14 RCW. KOMO also filed a Motion for Direct Review under RAP 4.2(a)(3) and RAP 4.2(a)(4)of the trial court's decision on the parties' cross-motions for summary judgment. KOMO filed its Statement of Grounds for Direct

			Review on April 27, 2012. The City filed its Answer to Statement of Grounds for Direct Review on May 11, 2012. Amici Curiae Allied Daily Newspapers of Washington, Evening Telegram Co., d/b/a Morgan Murphy Media, King Broadcasting Co., KIRO-TV, Inc., The McClatchy Co., Seattle Times Co., Seattle Weekly, L.L.C., Washington Newspaper Publishers Association, Washington State Association of Broadcasters, and Washington Coalition for Open Government ("News Media Entities and WCOG") filed a Motion to File Statement in Support of Direct Review on May 16, 2012. On June 12, 2014, the Supreme Court reversed and remanded, holding that: 1 the PRA request for log sheets which had been destroyed was properly denied; 2 the PRA request for police car dashboard camera videos should have been granted at least in part; and 3 the privacy act exemption for police car dashboard camera videos applies only where litigation is pending. The Supreme Court reversed, holding that: 1 the legislation repealing the adjustments did not substantially impair the contractual relationship, and 2 substantial impairment is measured by the implied consent and comparable new advantages analysis.
85.	*Washington Education Association v State of Washington and Dept of Retirement Systems*, 181 Wn. 2d 233, 332 P.3d 439 (2014) (UCOLA); WSAMA Brief *Wash. Educ. Ass'n v. Dep't of Ret. Sys.*, 181 Wn.2d 212, 332 P.3d 428 (2014) (companion case) (gain-sharing) WSAMA Brief	Daniel G. Lloyd	The Washington State Attorney General's office sought amicus support in connection with its argument that the Legislature's plain language of the statutes when they enacted both gain-sharing and UCOLA did not create a contractual right or promise of benefits in perpetuity. The WEA and state employees union argued that the state has created a contractual right to the benefits under the contract impairment clause of the State Constitution and holdings of *Bakenhus v City of Seattle*, 48 Wn. 2d 695 (1956) and that the benefits could not be repealed for current members of the system at the time of its repeal. Both statutes included substantially the same language: The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this postretirement adjustment no granted prior to that time. (RCW 41. 32.489(6); RCW 41.40.197(5); and former 41.31.030 (2006); 41.31A.020(4); .030(5); .040(5) (2006) The state is arguing that reliance on *Bakenhus* is inappropriate in this case since the plain language of the statutes did not create a contractual

			right to the benefits. The Supreme Court reversed, holding that: 1 The unions' and public employees' contract rights were not impaired by the Legislature's 1998 enactment of the gain-sharing program; 2 The Department of Retirement Systems' (DRS) communications did not estop Legislature from repealing gain-sharing; and 3 DRS communications did not create a unilateral contract.
86.	*City of Lakewood v. David Koenig,* 182 Wn.2d 87, 343 P.3d 335 (2014) WSAMA Brief	Kathleen Haggard, Daniel B. Heid, Steven Gross	This case dates to 2008 and involves two Court of Appeals opinions - *City of Lakewood v. David Koenig*, Wash. Ct. of Appeals Case No. 42972-1-II. The case is now published and reported at 176 Wn. App. 397, 309 P.3d 610 (2013), and an earlier reported decision, *City of Lakewood v. Koenig*, 160 Wn. App. 883, 250 P.3d 113 (2011). From these two cases, the following history is provided. In 2007, Mr. Koenig submitted three requests for public records from the City of Lakewood. The responsive records included police reports. The City provided the responsive records, but redacted driver's license numbers from the reports. Prior to filing suit, the City sought to verify with the requester that the City's productions were satisfactory. No meaningful response was forthcoming. Therefore, in 2008, the City brought suit asserting a cause of action for declaratory relief. In his Answer, the requester complained of the City's "redact[ion of] driver's license numbers from requested records based on the erroneous assertion that such information is exempt," on various grounds. He affirmatively stated that he did "not care to litigate other possible violations so the matter is moot and/or nonjusticiable." No counterclaim was asserted. In the course of litigating this case, a discovery dispute arose and was the focus of a 2011 decision of the Court of Appeals regarding the scope of discovery in a PRA case. Following remand by the Court of Appeals, both parties brought motions for summary judgment. The City prevailed. Mr. Koenig appealed to the Court of Appeals, which reversed. Division II held that because the City failed to provide an explanation of how its claimed exemptions applied to the driver's license numbers, the City violated the "brief explanation" requirement of RCW 42.56.210(3). As such, the failure to provide an explanation for withholding the driver's license numbers entitled Mr. Koenig to attorney fees pursuant to RCW 42.56.550(4). However, in an extended footnote, the Court of Appeals went on to observe, that although it "do[es] not resolve the question of whether the City properly redacted driver's license numbers in the disclosed records … " it nevertheless voiced its

			"concern over the legislature's failure to expressly provide adequate protection for personal identifying information in the PRA statute." On review by the Supreme Court, it affirmed, holding that: 1 the city violated the requirement of the PRA that the city provide a brief explanation of how the disclosure exemptions applied to the redacted information, and 2 the determination that the city violated the brief explanation requirement of the PRA was a vindication of the requester's right to receive a response, and as such, the requester would be entitled to attorney fees.
87.	*Michael Henne v. City of Yakima*, 182 Wn.2d 447, 341 P.3d 284 (2015) WSAMA Brief (COA) WSAMA Brief (Memo Supp PRV)	Milton G. Rowland	Plaintiff Officer's Complaint was filed November 4, 2011, asserting a claim against the City of Yakima. In part the complaint alleges retaliation against the plaintiff in the form of reports of misconduct (and resulting internal investigations) made by other police officers against the plaintiff. The City of Yakima filed a special motion to strike pursuant to RCW 4.24.525 arguing that the reports of misconduct and resulting internal investigations constituted "actions involving public participation and petition" within the meaning of the statute, that the claims should be stricken as without merit, and the City awarded its costs and attorney's fees, and a $10,000 statutory penalty. The trial court denied the motion on May 18, 2012, on the basis that 4.24.525 did not seem to apply to the plaintiff. See transcript of ruling attached. A timely appeal was taken on May 25, 2012. On June 5, 2012, the Court of Appeals issued a notice requesting briefing on whether the appeal from the order was appealable as of right. After submissions of the parties, on July 12, 2012, the Commissioner of the Court of Appeals ruled that the appeal from the order was appealable as of right. The holdings by the Court of Appeals, dismissing the City's appeal, was that: (1) the amendment of complaint to remove claims warranted appeal from denial of motion to strike pursuant to anti-SLAPP statute moot, and (2)The city was a legal entity within meaning of anti-SLAPP statute. Review was sought and the Supreme Court granted review. The Supreme Court held that the city could not seek protection under the anti-SLAPP statute arising out of conduct that did not involve communications by the city. Judgment of Court of Appeals reversed; judgment of Superior Court reinstated.

88.	*Kirkland v. Potala Village*, 183 Wn. App. 191, 334 P.3d 1143 (2014)	Roger Wynne	Plaintiff Potala Village ("PV") filed a Complaint for Declaratory Judgment and Mandamus against the City, asking the court to find that PV had vested in the land use laws and regulations in effect on the date it filed an application for a shoreline substantial development permit. The City Answered by stating that vested rights only accrue upon the filing of a building permit application. (Subdivision permit applications also can obtain vested rights, but are not at issue in this matter.) Both PV and the City moved for summary judgment on the vested rights issue. The trial court (Judge Monica Benton) ruled in PV's favor. The City filed an appeal with the Court of Appeals, Division I. The City has filed its opening brief. Currently, the vested rights doctrine is unclear. In Washington, "vesting" stands for the proposition that a developer may freeze in time the law that will govern a decision on his or her land use permit application. When described loosely, the rule is that a developer may freeze the law by filing a complete permit application. The problems mount when dealing with the reality of projects requiring multiple permits. If a developer files separate applications over three months for grading, use, and building permits, and if the law is amended during that period, which version of the law will govern the decisions on each of the three applications? Will the law in effect on the date of the grading permit application govern all three applications? Will each application freeze the law for purposes of the decision only on that application? Will no law be frozen until the building permit application is filed? Here, in reliance on RCW 19.27.095(1) and the Supreme Court's decision in Abbey Road, the City of Kirkland changed the general zoning code between the time PV filed an application for a shoreline permit and the time it filed a complete application for a building permit, and then advised PV that it had not vested in the City's general zoning regulations by virtue of its shoreline permit application. The trial court reversed. If this decision is upheld on appeal, the City will be subject to possible delay damages, in addition to the fact that it must allow a project to proceed contrary to its zoning preferences. The Court of Appeals held that Washington's vested rights doctrine originated at common law but is now statutory. Under RCW 19.27.095(1), vesting occurs on the filing of a "valid and fully complete building permit application." In such an event, the "zoning or other land use control ordinances in effect on the date of the application" shall control.

89.	*Crystal Ridge Homeowners Association v. City of Bothell*, 182 Wn.2d 665, 343 P.3d 746 (2015) WSAMA Brief (COA) WSAMA Brief (Memo Supp PRV) WSAMA Brief (WSC)	Daniel B. Heid	This lawsuit arises out of flooding in a residential neighborhood of Bothell called Crystal Ridge, which was approved by Snohomish County in 1987 and incorporated – annexed into the City of Bothell in 1992. The County's approval documents indicate the property's history of flooding problems. The primary problem with the site was a substantial subsurface (groundwater) flow coming from adjacent upland property. The developer's geotechnical engineer addressed the groundwater flows in several geotech reports issued during the approval process, emphasizing the need for two specialized drainage improvements to de-water (dry-out) the site and make it suitable for residential construction: First, a deeply buried perforated pipe (the "interceptor drain"); and second, a drainage swale on the surface to intercept surface water flows from the adjacent upland property. The geotech specifically recommended that the surface water swale drain be installed upslope of the interceptor trench: "The swale drain should be located immediately upslope of the interceptor drain and should be designed to intercept surface runoff from the upslope properties." Unfortunately, the surface water swale drain no longer exists, as the Plaintiff property owners have used the easement area where it was originally located for their own purposes, such as to install fences, landscaping, and the like. It is important to note that as part of the development, another separate municipal corporation, the Alderwood Water District ("AWD" – now named the Alderwood Water and Sanitary Sewer District), installed its sanitary sewer main in the exact same trench as the interceptor pipe. In fact, installation of the interceptor trench was required to protect AWD's sanitary sewer main. This case involved questions of the scope of a dedication of storm drainage easement (to a prior agency) and the (argued) effect of a common law dedication. The Supreme Court affirmed, holding that the pipe was within the scope of the dedicated drainage easement, and therefore, the city had accepted responsibility for maintaining the pipe. The Court stated that the only reasonable interpretation of the Crystal Ridge plat is that Snohomish County—and therefore the City—assumed responsibility for maintaining the drainage pipe. The Court therefore affirmed the trial court's grant of summary judgment in favor of the respondents. The City has requested reconsideration, pending.

90.	*City and County of San Francisco v. Sheehan*, 135 S.Ct. 1765 (2015) WSAMA Brief (Petition) WSAMA Brief (Merits)	Daniel G. Lloyd	The U.S. Supreme Court held that qualified immunity protected law enforcement officers from liability for using force to subdue a woman who suffered from mental illness rather than attempting to accommodate her disability, because any failure to accommodate her mental illness did not violate clearly established law.
91.	*City of Burlington v. WSLCB*, 187 Wn. App. 853, 351 P.3d 875 (2015)	Daniel G. Lloyd	The Washington Court of Appeals held that a city possesses standing to appeal issuance of a liquor license by the WSLCB over the city's objection under the APA.
92.	*Kitsap County Sheriffs' Guild v. Kitsap County*, 183 Wn.2d 358, 353 P.3d 188 (2015) WSAMA Brief	Tim Donaldson	The Washington Supreme Court held that a PECBA arbitration award retroactively increasing employee health care premiums did not constitute an unconstitutional taking, did not violate Washington's wage rebate act, and was not arbitrary and capricious. (Note, that the majority opinion is dependent upon a concurrence that upheld the retroactive increase only because it was offset by a corresponding wage increase).
93.	*Jewels v. City of Bellingham*, 183 Wn.2d 388, 353 P.3d 204 (2015) WSAMA Brief	Daniel G. Lloyd Daniel B. Heid	The Washington Supreme Court held that the four adjectives (known, dangerous, artificial, and latent) in the "known dangerous artificial latent condition" exception in the recreational immunity statute, RCW 4.24.210, each modify the noun "condition." The Court also concluded that an unpainted water diverter berm did not constitute a latent condition, because it was objectively obvious.
94.	*Cedar Grove Composting v. City of Marysville*, 188 Wn. App. 695, 354 P.3d 249 (2015) WSAMA Brief	Kathleen Haggard Andrea Bradford	The Washington Court of Appeals held that a public relations firm hired by the City of Marysville acted as a functional equivalent of a city employee and that its records created in the performance of its functions as such were subject to disclosure under the PRA. The Court of Appeals additionally held that the records are subject to the PRA if they are used by a city even though not possessed by the city.
95.	*Alliance Investment Group v. City of Ellensburg*, 189 Wn. App. 763, 358 P.3d 1227 (2015)	Roger D. Wynne	The Washington Court of Appeals held that development rights do not vest upon the filing of a short plat application for land division and instead vest when a building permit application is filed.
96.	*Nissen v. Pierce County*, 183 Wn.2d 863, 357 P.3d 45 (2015) WSAMA Brief (WSC); WSAMA Brief (COA)	Ramsey E. Ramerman	The Washington Supreme Court held that the PRA applies when a public employee uses a personal cellular phone to conduct government business and that text messages sent on an employee's personal cellular phone were therefore records subject to PRA disclosure.
97.	*Citizens Alliance v. San Juan County*, 184 Wn.2d 428, 359 P.3d 753 (2015) WSAMA Brief	Daniel B. Heid	The Washington Supreme Court held that the OPMA did not apply to meetings of an informal group assembled to consider how to implement amendments to a critical areas ordinance, because the group did not consist of a majority of the County Council, did not act on its behalf, and was not a committee of the Council.

98.	*Wuthrich v. King County*, 185 Wn.2d 19, 366 P.3d 926 (2016) WSAMA Brief	Andrew G. Cooley Derek C. Chen	The Washington Supreme Court held that a city's responsibility to maintain its roadways in a reasonably safe condition extends to roadside vegetation that obstructs motorist visibility.
99.	*Spokane Entrepreneurial v. Spokane Moves to Amend the Constitution*, 185 Wn.2d 97, 369 P.3d 140 (2016) WSAMA Brief	Andrea Bradford	The Washington Supreme Court held that an initiative that attempted to limit zoning changes involving large developments, determine rights regarding the Spokane River, enact an employee bill of rights, and strip corporations of legal rights exceeded the scope of local initiative power and could not be put on the ballot.
100.	*City of Puyallup v. Spenser,* 192 Wn. App. 728, 366 P.3d 954 (2016)	Daniel G. Lloyd (Motion to Publish)	The Washington Court of Appeals held that a prosecutor may refer to the results of a breath alcohol test in opening statement provided there is a good faith belief the results will be admitted into evidence. WSAMA filed a motion to publish the opinion, which was granted.
101.	*New Cingular Wireless PCS, LLC v. City of Clyde Hill*, 185 Wn.2d 594, 374 P.3d 151 (2016) Memo Supp. PRV WSAMA Brief	Daniel B. Heid	The Washington Supreme Court held that a cellular service provider was able to challenge a city fine through a declaratory judgment action, meaning that judicial review did not have to be sought by a statutory writ of review under RCW 7.16.040. Additionally, the provider's complaint did not fall into the category of land use, administrative, or development decisions.
102.	*Belinski v. Jefferson County*, 186 Wn.2d 452, 378 P.3d 176 (2016) WSAMA Brief	Daniel B. Heid	The Washington Supreme Court held that the one year statute of limitations in chapter 42.56 RCW applies to claims under the PRA and that the period usually begins to run on an agency's final, definitive response to a records request, though equitable tolling can apply in limited circumstances.
103.	*Binschus v. Skagit County,* 186 Wn.2d 573, 380 P.3d 468 (2016) Memo Supp. PRV	Daniel B. Heid Rebecca Boatright	The Washington Supreme Court held that jails do not owe a duty to control the actions of a former inmate after he/she has been lawfully released from incarceration, and thereby upholding summary judgment in favor of Skagit County after a released inmate killed six people during a psychotic episode three months after release
104.	*Newman v. Highland School District No. 203*, 186 Wn.2d 769, 381 P.3d 1188 (2016) WSAMA Brief	Daniel G. Lloyd Milt Rowland	The Washington Supreme Court held that the attorney-client privilege does not extend to communications between a corporation's counsel and former employees after they have left employment. As such, communications between a city's counsel and a non-represented former employee of a city will not be protected.
105.	*State v. Murray*, 187 Wn.2d 115, 384 P.3d 1150 (2016) WSAMA Brief	Daniel B. Heid	The Washington Supreme Court reverses the Court of Appeals and reinstates the convictions of drivers who were operating a motor vehicle under the influence of cannabis. The Court held that an officer need not read an irrelevant portion of the breath test warning to a driver suspected of a DUI, which was the case here.
106.	*City of Snoqualmie v. King County Exec. Constantine*, 187 Wn.2d 289, 386 P.3d 279 (2016) WSAMA Brief	Pat Anderson Daniel B. Heid	The Washington Supreme Court held that a tribe's payment in lieu of tax (PILT) established under ESHB 1287 was not a property tax, and therefore not subject to constitutional requirements. The Court agreed that Snoqualmie had standing, but sided against the city on the merits.

107.	*Pope Resources v. Dept. of Natural Resources*, 197 Wn. App. 409, 389 P.3d 699 (2016), *review granted* (5/2/17) WSAMA Brief	Adam Rosenberg	The Washington Court of Appeals held that the Department of Natural Resources was an "owner or operator" under the Model Toxic Control Act (MTCA), agreeing with the position advanced by WSAMA.
108.	*Wash. Trucking Ass'ns v. Employment Sec. Dep't*, 188 Wn.2d 198, 393 P.3d 761 (2017) WSAMA Brief Suppl. WSAMA Brief	Milt Rowland	The Washington Supreme Court held that trucking companies assessed with unemployment taxes could not obtain relief from those assessments under 42 U.S.C. § 1983 because under the principle of comity, there were adequate state law remedies under the Employment Security Act and Administrative Procedure Act.
109.	*King County v. Vinci Constr. Grands Projets.*, 188 Wn.2d 618, 398 P.3d 1093 (2017) WSAMA Brief	Daniel G. Lloyd Sara Baynard-Cooke	The Washington Supreme Court held that the *Olympic Steamship* rule of shifting attorneys' fees to an insured who successfully sues its insurer for coverage applies to not only performance bonds but also disputes between public agencies and sureties who guarantee performance on a general contractor's public work.
110.	*Univ. of Wash, v. City of Seattle*, 188 Wn.2d 823, 399 P.3d 519 (2017) WSAMA Brief (Exhibits)	Bob Sterbank	The Washington Supreme Court held that UW's property could be subject to Seattle's landmark preservation ordinance because state law requires state agencies to comply with local development regulations.
111.	*Watson v. City of Seattle*, 189 Wn.2d 149, 401 P.3d 1 (2017) WSAMA Brief	Steve Gross	The Washington Supreme Court held that the City of Seattle's ordinance imposing a tax on each firearm and round of ammunition sold within city limits was a valid tax and not a regulation preempted by RCW 9.41.290. The Court agreed with WSAMA's arguments that RCW 35.22.280 grants broad taxing authority to municipalities.
112.	*State v. Smith*, 189 Wn.2d 655, 405 P.3d 997 (2017) WSAMA Brief	Dan Heid Adam Rosenberg Jessica Leiser	The Washington Supreme Court held that a voicemail recorded inadvertently by the criminal defendant was not a violation of the State's privacy act, RCW 9.73.020, and reinstated the defendant's attempted murder conviction.
113.	*City of Spokane v. Horton*, 189 Wn.2d 696, 406 P.3d 638 (2017) WSAMA Brief	Dan Heid	The Washington Supreme Court held that the City of Spokane could not, consistent with Article VII, § 9 of the state constitution, enact a local property tax exemption for senior citizens and disabled veterans.
114.	*West v. City of Puyallup*, 2 Wn. App. 2d 586, 410 P.3d 1197 (2018)	Matt Segal Jessica Leiser Steve Gross	The Washington Court of Appeals held that a public official's posts on a personal Facebook page con constitute an agency's public records subject to disclosure under the PRA if the posts relate to the conduct of government and are prepared within an official's scope of employment or official capacity. But in this case, the particular Facebook posts were not prepared within the scope of her official capacity as a councilmember, meaning summary judgment for the City of Puyallup was affirmed.

115.	*Lockner v. Pierce County,* 190 Wn.2d 526, 415 P.3d 246 (2018) Memo Supp. PRV WSAMA Brief	Adam Rosenberg Steve Gross Duncan Greene Milt Rowland	Agreeing with the position advanced by WSAMA, the Washington Supreme Court held that sole recreational use is not required before conferring immunity to landowners under RCW 4.24.210, though more than incidental recreational use may be required. Additionally, the Court held that recreational immunity bars all claims arising out of unintentional injuries, not just causes of action sounding in premises liability
116.	*Schnitzer West LLC v. City of Puyallup*, 190 Wn.2d 568, 416 P.3d 1172 (2018) WSAMA Brief	Daniel G. Lloyd Dan Heid Adam Rosenberg	The Supreme Court held that a city's restrictive zoning decision, passed by ordinance and affecting a single parcel of land was a "site-specific rezone" reviewable by LUPA. The Court disagreed with the arguments advanced by WSAMA, namely that because the ordinance was not passed in response to an application, it was not a land use decision.
117.	*Pope Resources LP v. Dep't of Nat. Res.*, 190 Wn.2d 744, 418 P.3d 90 (2018) WSAMA Brief	Adam Rosenberg	The Supreme Court held that the State DNR was not an "owner or operator" of the Port Gamble Bay facility, holding further that retained control is not enough to support liability for environmental contamination. However, the Court acknowledged WSAMA's position and agreed that under certain circumstances, the State could face liability under MTCA.
118.	*Lyft, Inc. v. City of Seattle*, 190 Wn.2d 769, 418 P.3d 102 (2018) WSAMA Brief	Steve Gross	The Supreme Court agreed with the position advanced by WSAMA that the more restrictive provision of RCW 42.56.540 applies to injunctions sought under the PRA. The Court further held that records containing trade secrets are not categorically exempt from public disclosure.
119.	*Maytown Sand & Gravel v. Thurston County*, 191 Wn.2d 392, 423 P.3d 223 (2018) Memo Supp. PRV WSAMA Brief	Dan Heid Darcey Eilers Daniel G. Lloyd (PRV stage only)	The Supreme Court held that tort actions brought by a developer for tortious interference with business expectancy were not subject to LUPA's administrative remedy exhaustion requirement because "determination" as used in RCW 36.70C.020(2) "does not include tortious acts"; that the developer could bring a substantive due process claim; but that the plaintiff could not recover attorney fees incurred in prelitigation administrative proceedings.
120.	*NOVA Contracting v. City of Olympia,* 191 Wn.2d 854, 426 P.3d 685 (2018) Memo Supp. PRV WSAMA Brief	Daniel G. Lloyd	Reversing the Court of Appeals, the Supreme Court held that the *Mike M. Johnson* and *American Safety* rule of strict compliance with contractual claim preconditions from the WSDOT Standard Specifications applies to claims for expectancy and consequential damages.
121.	*Community Treasures v. San Juan County,* 192 Wn.2d 47, 427 P.3d 647 (2018) WSAMA Brief	Dan Heid	Affirming the Court of Appeals, the Supreme Court held that a group of landowners' failure to exhaust administrative remedies and/or seek LUPA relief within 21 days was fatal to their complaints about building permit application fees imposed under RCW 82.02.020.

122.	*End Prison Indus. Complex v. King County,* 192 Wn.2d 560, 431 P.3d 998 (2018) Memo Supp. PRV WSAMA Brief	Erik Lamb Dan Heid	Reversing the Court of Appeals and reinstating the judgment of the trial court, the Supreme Court held that the objections raised by EPIC to the ballot title of King County's proposed tax increase were untimely because ballot title objections must be raised within 10 days of the public filing of that ballot title
123.	*Thurston County v. City of Olympia,* 193 Wn.2d 102, 440 P.3d 988 (2019) WSAMA Brief	Daniel G. Lloyd Darcey Eilers	Affirming the trial court on direct review, the Supreme Court unanimously held that in the absence of an interlocal agreement providing to the contrary, counties (not cities) are responsible for medical care of inmates charged with felonies, even if the arrest is by a city officer
124.	*Kittitas County v. WSLCB*, 8 Wn. App. 2d 585, 438 P.3d 1199 (2019) WSAMA Brief	Milt Rowland Kate Hambley	Reversing the trial court, the Court of Appeals holds that the LCB is not required by the Growth Management Act to defer to local zoning laws when making licensing decisions. (PRV filed 5/10/19)
125.	*Beltran-Serrano v. City of Tacoma*, 193 Wn.2d 537, 442 P.3d 608 (2019) WSAMA Brief	Daniel G. Lloyd Jonathan Collins	Reversing the trial court on direct review, the Supreme Court held that a mentally ill homeless man could pursue both an intentional tort claim and negligence cause of action on the premise that a police officer failed to use ordinary care to avoid unreasonably escalating the encounter to the use of deadly force
126.	*Gipson v. Snohomish County,* 194 Wn.2d 365, 449 P.3d 1055 (2019) WSAMA Brief	Charlotte Archer	Affirming the Court of Appeals, the Washington Supreme Court held "the receiving agency determines any applicable exemptions *at the time* the request is received." (Emphasis added). The Court reaffirmed that the PRA does not allow for "standing requests"
127.	*City of Everett v. PERC* 11 Wn. App. 2d 1, 451 P.3d 347 (2019) WSAMA Brief	Bob Sterbank	Affirming PERC, the Court of Appeals holds that shift staffing can be a mandatory subject of bargaining under the facts there presented.
128.	*Yim v. City of Seattle,* 194 Wn.2d 651, 451 P.3d 675 (2019) WSAMA Brief	Jonathan Collins	Reversing the trial court, the Washington Supreme Court unanimously upholds the City of Seattle's "first-in-time" rule that requires landlords to offer tenancy to the first qualified applicant subject to exceptions. The Court further clarified that rational basis is the standard for evaluating substantive due process claims under article I, § 3 of the Washington Constitution, which is consistent with federal case law.
129.	*Wrigley v. DSHS,* 195 Wn.2d 65, 455 P.3d 1138 (2020) WSAMA Brief	Daniel G. Lloyd	Reversing the Court of Appeals and reinstating a summary judgment dismissal, the Washington Supreme Court holds a plaintiff may not premise a RCW 26.44.050 negligent investigation claim on the failure to investigate abuse that has never occurred but might occur in the future.

130.	*Conway Construction v. City of Puyallup,* 13 Wn. App. 2d 112, 462 P.3d 885 (2020), *rev'd*, 197 Wn.2d 825, 490 P.3d 221 (2021) WSAMA Brief	Daniel G. Lloyd	Reversing the trial court in part, the Court of Appeals agrees with the position advanced by WSAMA and holds that a plaintiff in a public works contract cannot recover attorneys' fees without first submitting an offer of settlement as required by RCW 4.84.250-.290. **(NOTE: The Supreme Court granted review and WSAMA was not requested to file a brief following the Court of Appeals decision. The Supreme Court reversed the Court of Appeals' decision on the attorneys' fees issue.)**
131.	*Lakehaven Water & Sewer Dist. v. City of Federal Way,* 195 Wn.2d 742, 466 P.3d 213 (2020) WSAMA Brief	Erik J. Lamb	Affirming the trial court, the Supreme Court agrees with the position advanced by WSAMA and upholds the City of Federal Way's excise tax on water and sewer utilities operated by municipal corporations.
132.	*Teamsters Local #839 v. Benton County*, 15 Wn. App. 2d 335, 475 P.3d 984 (2020) WSAMA Brief	Charlotte Archer (co-author with WSAC)	The Court of Appeals holds that the procedures in wage overpayment statutes, RCW 49.48.200 & .210(10), are mandatory subjects of bargaining, and a public employer must bargain with a union about how overpaid wages are to be repaid.
133.	*Mancini v. City of Tacoma*, 196 Wn.2d 864, 479 P.3d 656 (2021) WSAMA Brief	Daniel G. Lloyd (co-author with WSAC & WASPC)	The Supreme Court reinstates a jury verdict in a case arising out of the police executing a warrant at the wrong apartment. The Court declined to address whether a negligent investigation cause of action was cognizable outside the context of child abuse, but nonetheless held the police owed a duty of reasonable care in connection with executing the warrant. The Court further held the public duty doctrine is not applicable in cases alleging affirmative misfeasance.
134.	*City of Seattle v. Long,* 198 Wn.2d 136, 493 P.3d 94 (2021) WSAMA Brief (COA) WSAMA Brief (WSC)	Duncan Greene, Dan Lloyd, Sophia Amberson	The Supreme Court holds that RCW 6.13.040 automatically protects personal property occupied as a personal residence, but that the Homestead Act did not apply to the truck towed by the City of Seattle, and in which the individual lived, because the City had not attempted to collect on the debt. The Court further held the impoundment was partially punitive and therefore subject to the Excessive Fines clause, and that the fine was excessive under the facts presented.
135.	*Lake Hills v. AP Rushforth Constr. Co.,* 198 Wn.2d 209, 494 P.3d 410 (2021) WSAMA Brief	Geoff Palachuk Bob Sterbank	The Supreme Court held in a construction defect case that a contractor's affirmative defense of deficient design is a complete defense only if the damage is due solely to the design. However, the Court held the jury instruction was harmless and reinstated the verdict.

136.	*LA Alliance for Human Rights, et al v. County of Los Angeles,* 14 F.4th 947 (9th Cir. 2021) WSAMA Brief	Joint brief by IMLA, Cal. Ass'n of Counties, League of Or. Cities, AWC, Ass'n of Idaho Cities; drafted by Maynard Cooper Gale LLP from LA, reviewed by Dan Lloyd	The Ninth Circuit holds the District Court abused its discretion by entering a preliminary injunction requiring roughly $1 billion be placed into escrow to address homelessness in Los Angeles.
137.	*Michel v. City of Seattle,* *available at* 2021 Wash. App. LEXIS 2610 & 2021 WL 5176658 (Wash. Ct. App. 11/8/2021) WSAMA Brief	Megan Clark Duncan Greene Bob Sterbank	Court of Appeals holds that RCW 7.28.090 prohibits adverse possession against lands held for any public purpose, not just in a governmental capacity, thus property held for the purpose of electricity distribution constitutes a public purpose for which adverse possession is statutorily prohibited.