

May 11, 2012

John & Stephanie Venrick
41250 250th Ave SE
Enumclaw, WA 98022

Dear Jack & Stephanie,

Does the governor stand above the law?

We don't think so.

That's why we're taking her to the Washington State Supreme Court!

Washington's Supreme Court recently agreed to hear the Freedom Foundation's challenge to the governor's executive privilege—a presumed “right” that Governor Christine Gregoire asserted nearly 500 times in a four-year period to stymie dozens of public records requests.

On some of the most important and contentious issues in recent memory, **the governor has proclaimed a blackout on open government.**

- When the Sonics packed their bags for Oklahoma City, Governor Gregoire asserted “executive privilege” to shield a document pertaining to a meeting held in late 2007 about the sale of the Sonics and a Key Arena lease agreement.
- When Governor Gregoire struck a revenue-sharing agreement with 27 tribes that brings no revenue to the state, she claimed executive privilege and refused to turn over documents pertaining to the negotiations.
- When Governor Gregoire announced in 2009 that she had reached an agreement with local leaders to replace the Alaskan Way Viaduct with a 2-mile, \$4.25 billion underground tunnel, she refused a citizen's request to turn over documents pertaining to replacement discussions.
- When Governor Gregoire pardoned Gerald Hankerson, a man convicted of stabbing another man to death, she refused to turn over a memo written by her advisors, claiming executive privilege and attorney client privilege.

Nearly 500 times in four years, the governor has asserted executive privilege, a right that does not appear in the Washington Constitution! What is she hiding?

As part of its core commitment to accountable government, the Freedom Foundation stood up against this unconstitutional power grab. But I need your help today as we hold Governor Gregoire and future governors accountable to the people of Washington State and its Constitution.

Pursuing a major constitutional case at this level is costly and the need is urgent. To be fully prepared for the challenge, we need to raise \$40,000 over the next two months. Jack & Stephanie, will you please consider making a special gift today to protect open government in Washington State?

This case is not a theoretical exercise in constitutional government. We are aggressively pursuing this lawsuit because Governor Gregoire's claim of executive privilege is fundamentally wrong. It is not spelled out in state law. In fact, it's not even in the Washington State Constitution. We believe she's violating the Public Records Act by invoking this phantom exemption.

State law requires government agencies to provide records whenever a person asks for them. The government is only allowed to withhold records if a specific reason is spelled out in law that exempts the record from disclosure.

Most exemptions are sensible—national security records, personal Social Security numbers, private health information, and so on. But the exemption must be spelled out in law—agencies are not allowed to make up reasons to hide records.

Our law is written this way for a reason. Government agencies with an incentive to hide embarrassing or scandalous information must be held accountable.

While government officials can certainly expect confidentiality when deliberating over a policy, eventually the public gets to see not only the decision that was made, but the process of how government officials got there. The problem with Gregoire's claim is that executive privilege turns such information into state secrets—those records are hidden away forever.

And when we learn that Indian tribes in Washington State have made contributions of \$650,000 to the state Democratic party and \$49,000 to Gov. Gregoire, one has to ask the question:

What is Governor Gregoire hiding when she claimed executive privilege and withheld negotiating documents related to the casino revenue agreement with the tribes that left the state empty handed?

As James Madison, the Father of the Constitution, once wrote,

“A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.”

That sentiment is echoed in the Washington Public Records Act, which says:

“The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created.”

So we sued Governor Gregoire in April 2011.

One of the top lawyers from the Attorney General's Office was assigned to the case—a signal that the Governor saw this as an important case.

Our argument has been simple from the very beginning.

We believe the Governor must comply with the law just like every other public servant and should not claim privileges that are not found in the law. The Governor is not all-powerful, but only enjoys powers that are specifically listed in the constitution. In more than 120 years of statehood, not a single appeals court has ever recognized that the Governor of Washington State enjoys executive privilege.

Unfortunately, a Thurston County judge sided with the Governor. The judge ruled that executive privilege is inherent in the Washington State Constitution, based on the separation of powers doctrine.

The judge also adopted a deferential test for determining when executive privilege applies to records in the Governor's office. The ruling gives the Governor the right to automatically seal records and makes it incredibly difficult for a concerned citizen to get access.

We made a decision before we even left the courthouse. This ruling had to be appealed.

We decided to go straight to the Washington State Supreme Court. In rare circumstances, where significant constitutional issues are at stake, the Supreme Court will take direct appeals, allowing the parties to skip the Court of Appeals.

Major issues are at stake in this case.

The powers wielded by Gov. Gregoire and all future governors should be limited. Allowing a state official to claim executive privilege would be the most significant expansion of secrecy in years.

On April 24, 2012, the Supreme Court agreed to review the case, signaling its recognition that the case involves important constitutional issues. Arguments will be scheduled later this year.

The case has attracted significant attention. Dozens of news stories have been written about it and numerous editorials—from *The Olympian* to the *Spokesman-Review*—have applauded our efforts. A broad coalition of organizations is watching this case closely, including the Washington Coalition for Open Government and the ACLU. Government accountability is the ultimate bi-partisan issue.

Because of our commitment to accountable government, the Freedom Foundation has stepped up and taken a leadership role on this major constitutional issue that will have profound consequences on the future of open government in Washington State.

Jack & Stephanie, I am asking you, as one of the Freedom Foundation's most loyal and important supporters, to make a special—and personally significant—gift to help us prosecute this landmark case in the Washington State Supreme Court. I don't ask this lightly. You've been a great friend to the Freedom Foundation, giving to our mission in the past. But I thought you might appreciate the opportunity to help us obtain a rare victory for citizens in the fight for government accountability. Would you consider making a special gift today of \$1,000, \$500 or \$100 to help us reach our \$40,000 goal?

It is wrong for our governor to declare a blackout on open government. She, like all public officials, is accountable to *We the People* and she stands before, *not above*, the law.

Before you set this letter aside, please use the reply device below to help us protect our state constitution. We are tremendously grateful for your loyal support of our work and I appreciate your careful consideration of this special and urgent request.

Fighting for Your Freedom,

Jonathan Bechtle
Chief Executive Officer

P.S. I have included with this letter a copy of an *actual* document that we received from the governor's office. In 2009, the Freedom Foundation filed a public records request about the governor's process for appointing judges. The request asked for all documents related to Governor Gregoire's selection and appointment of judges and justices to the Washington State Court of Appeals and the Washington State Supreme Court.

Gov. Gregoire's office responded to the request and claimed "executive privilege" to hide several of the documents, including this blacked-out 7-page memorandum regarding review of an application for a judicial position. *If we lose this case, this is what open government is going to look like in Washington State.*

Yes, I'll help you prosecute Governor Gregoire:	<u>Supporter Information</u>	JUOD
Single Gift (Every dollar helps!)	John & Stephanie Venrick 41250 250th Ave SE Enumclaw, WA 98022	
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