**NO. 90797-8**

(Court of Appeals Div. One No. 70657-8-I)

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

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BETH and DOUG O'NEILL,

Plaintiffs/Respondents

v.

CITY OF SHORELINE and MAGGIE FIMIA

Defendants/Petitioners

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# ANSWER TO PETITION FOR REVIEW

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## I. ARGUMENT AND AUTHORITY

### A. Petitioners Have Not Cited or Shown Grounds for Review

Petitioners Shoreline and Fimia have not even cited RAP 13.4(b) in their Petition, nor have they shown how any of the grounds for review are established here. None of the grounds noted in RAP 13.4(b)(1)-(4) are present here. The Petition should be denied.

### B. Facts of this Case Show Why Review Should be Denied.

This is a Public Record Act ("PRA") case that has now been litigated for nearly eight years due to continued appeals by these Petitioners after their continued losses. It was remanded to the trial court by this Court in 2010 where, after the Petitioners acknowledged that responsive public records had been destroyed during the course of the litigation, summary judgment was sought an obtained by O'Neills through a motion for summary judgment and for an award of fees, costs and penalties. The Court's 8/2/12 Order granting summary judgment to O'Neills stated:

> The Court HEREBY Orders that pursuant to RCW 42.56.550(4) Plaintiffs shall be awarded reasonable attorney's fees and all costs incurred in this action to date, and statutory penalties, to be determined after subsequent briefing and argument. Plaintiffs shall be entitled to an award of reasonable attorney's fees and all costs incurred in connection with such fee and penalty motions, the amounts of which shall be determined by the Court in conjunction with the fee and penalty motions.

**O'Neill v. Shoreline**, 332 P.3d 1099, 1101-02 (2014) (emphasis added). The trial court set no deadline for the "subsequent briefing" giving the parties time for relevant discovery or to reach an agreement as to amounts. On 9/18/12, Petitioners issued an Offer of Judgment to pay $100,000 in penalties and additionally "costs, including attorneys' fees, incurred to date, which **shall be awarded** in an amount to be determined by the Superior Court after subsequent briefing and argument." **Id.** at 1101-02 (emphasis added). The Offer was accepted and on 9/27/12, Petitioners drafted an Agreed Order they titled "Judgment on Offer and Acceptance" (with no Judgment Summary or other features of a Judgment) but containing identical language for the payment of the penalty amount and additionally "costs, including attorneys' fees, incurred to date, **which shall be awarded** in an amount to be determined by the Superior Court after subsequent briefing and argument." **Id.** at 1102 (emphasis added). Petitioners thus contracted to pay O'Neill's fees and costs "in an amount determined by the Superior Court in an amount to be determined by the Superior Court after subsequent briefing and argument" and the court entered an agreed order to enforce that contractual promise.

Petitioners, the day after submitting the agreed order to the court, issued discovery, for the first time in six years of litigation, asking for records from all three law firms that had represented O'Neills at any time

on this matter (CP 375), and **from all of the more than 400 lawyers at these three law firms**—for the preceding six years—all fee agreements with all clients of the firms, all filings and orders for any fee motion for any client, all fees discounted from any request for any client and the reasons for the discount, and for all communications between O'Neills and their lawyers or between co-counsel, among other subjects. See CP 373-382. Answers were due in 30 days on 10/29/12. CP 374-375; CR 26, 33, and 34. O'Neills and their counsel spent weeks searching for and compiling materials and timely responded agreeing to produce additional records pursuant to a protective order. Petitioners waited three days and then on Thursday, 11/1/12 at 4:43 p.m. wrote to O'Neill's counsel stating Petitioners no longer required answers to discovery and claiming, for the first time, that the fee and cost documentation was to have been filed within 10 days of the agreed order's signing and that the right to fees and costs was "waived." **O'Neill**, 332 P.3d at 1102. Two court days later, on Monday, 11/5/12, O'Neills filed the motion for a determination of the amount of the fee and cost award. **Id.** Petitioners responding citing their 10 day time limit argument. O'Neills filed a Reply arguing why the 10 day time limit did not apply but asking that if it did that they be granted an extension of time for the filing O'Neills had already made, and arguing, and establishing through declarations, "excusable neglect" based on the

sham discovery issued by Petitioners solely to delay the filing. See Corrected Brief of Respondent at 4-12 & CP 195-97,[1] & CP 453-58.[2]

Petitioners filed a Sur Reply fully responding. The hearing of the matter was then set over for nearly 8 months, until 6/28/13, due to a conflict in the judge's schedule and a family leave, affording Petitioners significant time to prepare. A lengthy hearing was then held on 6/28/13 (see RP) where Petitioner again was able to fully present their position.

When the trial court was not swayed by their arguments that no fees or costs could be awarded, Petitioners appealed. Petitioners have not challenged the amount of the award. Instead they argued, and argue now, that even though (a) the trial court awarded fees and costs in the summary judgment order, (b) that they agreed to pay fees and costs in their Offer of Judgment, and (c) that the Agreed Order they drafted required them to pay fees and costs "in an amount determined by the Superior Court after subsequent briefing and argument" that the trial judge lacked the power to enforce those orders and Petitioners' promises if the "subsequent briefing" was filed in 27 days and not the unstated 10 days Petitioners belatedly claimed applied.

[1] Counsel's time entries showing work before and after the discovery requests on the fee documentation filings.
[2] Trial court Reply materials requesting extension and arguing excusable neglect.

The record shows O'Neills requested an extension in their Reply and argued for and established excusable neglect. The Petitioners created the delay by issuing burdensome discovery the day after the Agreed Order was sent to the court, and waited three days after discovery was provided and a protective order was proposed to respond stating it did not require discovery and contended the briefing was past due. Petitioners orchestrated the two week delay they now seek to cite as a basis for avoiding their contractual obligations and court orders requiring them to pay fees and costs. The Petition should be denied, and Petitioners' behavior here should not be rewarded.

### C. Appellate Court Can Affirm Trial Court Based on Any Basis and Thus Should Deny Review.

Petitioners attack the "lack of prejudice" rationale from Division One, which declined to reach a number of other arguments raised by O'Neills since Petitioners conceded they were not prejudiced by the alleged two week delay even if a 10 day limit had applied. But an appellate court can uphold the trial court's ruling on any permissible basis, whether or not it contends the trial court ruled as it did for that reason. **Olson v. Scholes,** 17 Wn. App. 383, 563 P.2d 1275 (1975); **Niven v. E.J. Bartells Co.**, 97 Wn. App. 507, 983 P.2d 1193 (1999). Here, as O'Neill argued to Division One, the trial judge's decision to determine the amount

of fees and costs was permissible for numerous reasons, making acceptance of review by this Court even more clearly unnecessary and inappropriate. This Court's limited resources and time should not be expended on cases where the end result was correct and no prejudice has been shown.

### 1. The Summary Judgment Motion was the "Claim for Fees and Costs" Contemplated by CR 54(d).

As O'Neill argued to Division One, O'Neills' summary judgment motion was the "claim" for fees and costs meaning a separate "motion" was not required within 10 days of Judgment pursuant to CR 54(d). See Corrected Respondent Brief at 32-33, 36. The Division One Court of Appeals, in a decision entered after **O'Neill**, addressed this argument directly in **Bevan v. Meyers**, 334 P.3d 39 (Wn. Ct. App. Div. I, Aug. 25, 2014). In **Bevan** the defendant brought a motion to strike a counter claim alleging it fell within the Anti-SLAPP statute RCW 4.25.525, and the motion requested an award of fees, costs and the $10,000 penalty provided by the statute. The court granted the motion and ordered the other party to pay Bevan's fees and costs in bringing the motion. Two months later, Bevan filed a "Motion for Establishment of Costs and Attorney's Fees on Plaintiff's Special Motion to Strike" identifying the fees and costs incurred in connection with the Anti-SLAPP motion. The opponent objected

arguing the motion was untimely under CR 54(d)(2). The trial court, and Division One, disagreed. Division One clearly understood that the "motion" for fees and costs was brought as part of the motion to strike, and the filing to establish the amount of that award was not a "claim" for fees or costs but "merely a request that the trial court calculate the amount of fees already authorized pursuant to its [earlier] order." 334 P.3d at 45.

Here, O'Neills sought, and were awarded, fees and costs in August 2012, in their summary judgment motion, and the order indicated the court would determine the amounts "after subsequent briefing and argument." The 10/9/12 Agreed Order also confirmed the entitlement to fees and costs the amount of which would be determined by the trial court "after subsequent briefing and argument." The 11/5/12 filing for a determination of the amount of that award was not a claim or motion for fees and costs but, as Division One recognized in **Bevan**, merely a request to the court to calculate the amount of fees and costs already sought in a fee and costs motion and already authorized by here two separate orders.

**2. The Agreed Order is a Contract and Must be Enforced Pursuant to its Clear Terms and Based on the Parties' Intent.**

As O'Neills also argued to Division One (see Corrected Respondents Brief at 17-31), the Agreed Order is like a contract and enforcement of that Order and the parties' clear intentions means the 10 day argument

cannot succeed. Stipulated judgments or other orders entered by stipulation or consent of the parties are contractual in nature. **State v. R.J. Reynolds Tobacco Co.**, 151 Wn. App. 775, 783, 211 P.3d 448 (2009), **review denied**, 168 Wn.2d 1026, 228 P.3d 18 (2010) ("**R.J. Reynolds**"); **Martinez v. Miller Indust., Inc.**, 94 Wn. App. 935, 942, 974 P.2d 1261 (1999); **Balmer v. Norton,** 82 Wn. App. 116, 121, 915 P.2d 544 (1996). When interpreting a contract, the Court's primary objective is to discern the parties' intent. **Tanner Electric Coop. v. Puget Sound Power & Light,** 128 Wn.2d 656, 674, 911 P.2d 1301 (1996); **Martinez**, 94 Wn. App. at 942. When a court order incorporates an agreement between parties, the meaning of the order is the same as the meaning objectively manifested by the parties at the time they formed the agreement. **R.J. Reynolds**, 151 Wn. App. at 783; **Martinez**, 94 Wn. App. at 942, **Interstate Prod. Credit Assoc. v. MacHugh**, 90 Wn. App. 650, 654, 953 P.2d 812 (1998) ("**MacHugh**"); **see also In re Marriage of Boisen**, 87 Wn. App. 912, 920, 943 P.2d 682 (1997).

> [P]arol evidence is admissible to show the situation of the parties and the circumstances under which a written instrument was executed, for the purpose of ascertaining the intention of the parties and properly construing the writing. Such evidence, however, is admitted, not for the purpose of importing into a writing an intention not expressed therein, but with the view of elucidating the meaning of the words employed.... It is the duty of the court to declare the

> meaning of what is written, and not what was intended to be written. If the evidence goes no further than to show the situation of the parties and the circumstances under which the instrument was executed, then it is admissible.

**Berg v. Hudesman,** 115 Wn.2d 657, 669, 801 P.2d 222 (1990).[3] **See also Hearst Commc'ns, Inc. v. Seattle Times Co.,** 154 Wn.2d 493, 503, 115 P.3d 262 (2005); **Martinez**, 94 Wn. App. at 942; **R.J. Reynolds**, 151 Wn. App. at 783.

> The intent of the parties in reducing an agreement to writing may be discovered from the actual language of the agreement, as well as from the contract as a whole, the subject matter and objective of the contract, all the circumstances surrounding the making of the contract, the subsequent acts and conduct of the parties to the contract, and the reasonableness of respective interpretations advocated by the parties.

**Martinez**, 94 Wn. App. at 942; **see also Tanner**, 128 Wn.2d at 674. "Unilateral or subjective purposes and intentions about the meanings of what is written do not constitute evidence of the parties' intentions." **Lynnott v. Nat'l Union Fire Ins. Co.**, 123 Wn.2d 678, 684, 871 P.2d 146 (1994).

Petitioners contend that while the Agreed Order mandated that

[3] The **Berg** court specifically rejected "the theory that ambiguity in the meaning of contract language must exist before evidence of the surrounding circumstances is admissible." 115 Wn.2d at 669. Extrinsic evidence is admissible to "illuminate[ ] what was written, not what was intended to be written." **Nationwide Mut. Fire Ins. Co. v. Watson**, 120 Wn.2d 178, 189, 840 P.2d 851 (1992).

Petitioners would pay O'Neills their "costs, including attorney's fees incurred to date, which shall be awarded in an amount to be determined by the Superior Court after subsequent briefing and argument" that this Agreed Order meant the Petitioners agreed to pay these costs and fees and that the costs and fees "shall" be awarded only if O'Neills filed their briefing within 10 days after the Court signed the Agreed Order. Petitioners seek to import words not stated into the Agreed Order. A fair reading of the Agreed Order—the only permissible reading based on the Order's words—is that Petitioners agreed without qualification to pay O'Neills' fees and costs and that O'Neills would mandatorily be awarded those fees and costs in an amount to be determined by the trial court after further briefing and argument. There was no time limit or definition for when "subsequent" briefing was to occur, nor was there any "out" or right for Petitioners to void their agreed obligation to pay the fees and costs if O'Neills filed their briefing more than 10 days after the Order was signed. O'Neills filed their briefing one week after they timely served their answers to Petitioners' discovery requests and two court days after Petitioners stated they did not want answers to such discovery and contended the briefing was past due. Further, if there was any ambiguity as to the meaning of "subsequent," the extrinsic evidence does not support a finding that it meant 10 days after the Order was signed since Petitioners

issued discovery with a 30 day due date the day after the Order was sent to the court. See Corrected Respondents' Brief at 25-29.

### D. Even if a 10 Day Time Limit Could be Read Into the Agreed Order, the Trial Judge Had Authority to Determine the Amount of Fees and Costs Here.

Petitioners selectively quote from cases, as they did in Division One, to argue if a parties does not bring a written "motion" for an extension with notice Petitioners deem sufficient that a court lacks the power to determine the amount of fees and costs. Petitioners continue to confuse cases where the time limits are jurisdictional, meaning if a time limit is missed a court lacks jurisdiction to decide a matter, with non-jurisdiction matters such as the right to determine the amount of a previously-ordered fee and cost award like here. Petitioners further confuse the issue of whether a trial court can be compelled to accept an untimely filing with cases regarding whether a trial court had authority to decide to accept an untimely filing.

For example, in **Lujan v. National Wildlife Federation**, 497 U.S. 871 (1990), the U.S. Supreme Court addressed whether a trial court was compelled to accept affidavits in support of summary judgment more than two years after the motion was filed and two months after the summary judgment hearing in violation of the court's briefing order. **Id.** at 894-95. There was no "motion" to extend the time limit, and the only reference to

address the untimeliness was a "single sentence at the end of the first paragraph of one of the 18 single-spaced footnotes in a 20-page memorandum of law." **Id.** at 897. Even then the Court did **not** say the trial court lacked the power to accept the materials or extend a deadline. In a key portion of the case Petitioners fail to cite in their briefing, the U.S. Supreme Court clearly stated:

> Perhaps it is true that the District Court could have overcome all the obstacles we have described—apparent lack of a motion, of a showing, and of excusable neglect—to admit the affidavits at issue here. But the proposition that it was *compelled* to receive them—that it was an abuse of discretion to *reject* them— cannot be accepted.

**Id.** at 898 (emphasis in original).

In **Drippe v. Tobelinski**, 604 F.3d 778, 784 (3d Cir. 2010), a case Petitioners cited below as Supplemental Authority but now have abandoned, the Third Circuit addressed whether the trial court properly heard an oral motion for summary judgment on a new theory seven months after the court's scheduling deadline, after jury selection, and on the eve of trial, where the opponent was prevented from filing a brief. The decision cites cases from several other Circuits describing the "great deference" afforded to trial courts to grant or refuse enlargements of time and to consider late submissions, with a primary consideration being be whether or not the procedures resulted in actual and substantial prejudice to the complaining litigant. The Third Circuit found it was an abuse of

discretion in **Drippe** to hear the late oral motion as the opponent could not file a responsive brief, but it merely remanded with specific permission for the party to submit a motion for extension and the summary judgment motion so the complaining litigant could respond to the summary judgment motion. **Id.** at 783, 785-86. **See also In re Fine Antitrust Litig.,** 685 F.3d 810, 817-18 (3d Cir. 1982) ("We will not interfere with a trial court's control of its docket except on the clearest showing that the procedures have resulted in actual and substantial prejudice to the complaining litigant"); **Moldonado-Denis v. Castillo-Rodriguez**, 23 F.3d 576, 583-843 (1st Cir. 1994):

> The district court is afforded great leeway in granting or refusing enlargements and its decisions are reviewable only for abuse of discretion. This deference is grounded in common sense. We deem it self-evidence that appellate courts cannot too readily agree to meddle in such case-management decisions lest the trial court's authority be undermined and the systems sputter.
>
> Courts interpret court rules using the rules of statutory construction.

**Wiley v. Rehak**, 143 Wn.2d 339, 343, 20 P.3d 404 (2001). If the meaning is plain, courts follow that plain meaning. **Dep't of Ecology v. Campbell & Gwinn, LLC**, 146 Wn.2d 1, 9–10, 43 P.3d 4 (2002). If the language has more than one reasonable interpretation, it is ambiguous (**State v. Roggenkamp**, 153 Wn.2d 614, 621, 106 P.3d 196 (2005)) and courts employ various rules of statutory interpretation to discern the drafters'

intent. **Whatcom Cnty. v. Bellingham**, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996). Courts construe a rule so as to effectuate that intent, avoiding a literal reading if it would result in unlikely, absurd, or strained consequences. **Id.**

CR 54(d)(2) states:

> Claims for attorney's fees and expenses, other than costs and disbursements, shall be made by motion unless the substantive law governing the action provides for recovery of such fees and expenses as an element of damages to be proved at trial. Unless otherwise provided by statute or order of the court, the motion must be filed no later than 10 days after entry of judgment

CR 54(d)(2).

As previously explained, O'Neills included their claim for attorney's fees and costs in their motion for partial summary judgment filed in June 2012, and the 8/2/12 Order granted them an award of fees and costs with the amount to be determined after subsequent briefing and argument. This means CR 54(d)(2) and its 10 day time limit did not apply here because the "claim" for fees and costs was already filed and accepted with the August 2012 and October 2012 Orders. But CR 54(d)(2) specifically provides the court with discretion to enlarge the 10 day time frame even if it applied. CR 6(b) addresses the court's discretion to extend such deadlines and provides rules for which the court may not enlarge such deadlines. CR 6(b). CR 54(d) is not one of those rules. CR 6(b). The rules

for which a court may not extend a time period are those jurisdictional level rules which Petitioners cite and confuse with the rules at issue here, focusing, as they have, on cases dealing with deadlines to appeal or move for reconsideration, not cases such as this one or even cases covered by CR 54(d).

Further, the 10 day limit under CR 54(d)(2) is "intended to prevent parties from raising trial-level attorney fee issues very late in the appellate process, sometimes after one or all appellate briefs have been submitted." 4 Karl B. Tegland, Washington Practice: Rules Practice § 54, Supp. 40 (5th ed. 2006 & Supp. 2010) (drafters' comment on 2007 amendment to CR 54(d)(2)). The drafters also note the intent to harmonize the language of the applicable civil rules with each other and with the relevant statutes (particularly RCW 4.84.010, .030, .090). **Id.** When parties enter into a stipulated agreement wherein they agree to pay fee and costs as part of a stipulated judgment, no "motion" is necessary under CR 54(d)(2) as merely enforcement of the agreement is necessary.

Defendants argue a trial court cannot extend a time period without a separate written motion for extension filed and noted in accordance with CR 6(b). **Lujan**, 497 U.S. at 897-98, rejects this idea. As does **Keck v. Collins,** 325 P.3d 306 (Div. 3, 2014), cited by Petitioners. In **Keck**, where

an untimely filing was accepted, there was not motion but only a statement in a lawyer's declaration explaining the delay.

Further in several cases this Court has explained that the motion for continuance is not a jurisdictional requirement, upholding the right of trial court to extend deadlines, without motions, when prejudice is not shown by the complaining party. **See e.g., Goucher v. J.R. Simplot Company**, 104 Wn.2d 662, 665, 709 P.2d 774 (1985), holding that trial court did not err in hearing motion in limine asserted on day of trial and rejecting opponent's objection based on fact motion was untimely stating:

> The first issue is whether the trial court erred in considering Simplot's motion in limine.
>
> The plaintiff asserts that Simplot's motion in limine violated the time requirements of CR 6(d). CR 6(d) requires notice of written motions to be made at least 5 days in advance of the hearing thereon. *Brown v. Safeway Stores, Inc.*, 94 Wash.2d 359, 617 P.2d 704 (1980). It is clear that the rule [CR 6(d)] was violated since Simplot filed the motion on the day of trial. This court has previously held, however, "that CR 6(d) is not jurisdictional, and that reversal for failure to comply requires a showing of prejudice." *Brown*, at 364, 617 P.2d 704; *Loveless v. Yantis*, 82 Wash.2d 754, 759–60, 513 P.2d 1023 (1973).
>
> In the present case, the plaintiff was able to provide countervailing oral argument and to submit case authority in support of his position. The trial was adjourned following a short discussion regarding the defendant's motion thereby allowing the plaintiff additional time to provide authority in opposition to the motion. The court,

> throughout the 2-week trial, offered to reconsider the motion and heard repeated arguments on the issue. Furthermore, the plaintiff never requested a continuance. There was no adequate showing of prejudice. *See, Brown*, at 364, 617 P.2d 704. The trial court did not err in considering the defendant's untimely motion.

**See also** **Brown v Safeway Stores, Inc.** 94 Wn.2d 359, 364, 617 P.2d 704 (1980) (holding that trial court did not err in considering untimely motion to strike jury made on day of trial jury); **Loveless v. Yantis**, 82 Wn.2d 754, 759-60, 513 P.2d 1023 (1973) (holding untimely motion to intervene should have been granted); **Hockley v. Hargitt**, 82 Wn.2d 337, 347, 510 P.2d 1123 (1973) (upholding trial court's right to hear untimely motion for intervention); **Rivard v. Rivard,** 75 Wn.2d 415, 420, 451 P.2d 677 (1969) (rejecting claimed error by trial court of considering late-filed affidavits in support of motion for clarification re: visitation in divorce case).

O'Neills made a request for an extension of time to the extent one was required in their Reply briefing and showed excusable neglect. The trial court had jurisdiction to hear the matter. Petitioners needed to show prejudice, and they have conceded they were not prejudiced in any way by the delay they orchestrated.

Although Petitioners argue against the "prejudice" criteria used by Division One, the prejudice to the opponent is a significant factor in the "excusable neglect" test itself. **See Pioneer Inv. Servs. Co. v. Brunswick**

**Assocs. Ltd. P'ship**, 507 U.S. 380, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993)).

A fees award here was explicitly agreed to by the parties. Petitioners' interpretation of the rule would result in failure of the settlement agreement and the Agreed Order. They seek only to avoid paying fees they agreed to pay, not to return the parties to the status quo before the settlement. CR 54 was not intended to enable such an inequitable result nor does CR 6 deprive trial judges of the power to enforce orders and reject claims such as those made by Petitioners here under cases such as this.

### E. O'Neills are Entitled to an Award of Fees and Costs for this Appeal.

RCW 42.56.550(4) of the PRA provides:

> Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time **shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action** [.]

(Emphasis added). Washington courts recognize that "[s]trict enforcement of this provision discourages improper denial of access to public records." **Spokane Research & Defense Fund v. City of Spokane**, 155 Wn.2d 89, 101, 117 P.3d 1117 (2005) (citation omitted). Moreover, "permitting a liberal recovery of costs" for a requestor in a PRA enforcement action, "is

consistent with the policy behind the act by making it financially feasible for private citizens to enforce the public's right to access public records." **Am. Civil Liberties Union of Washington v. Blaine Sch. Dist. No. 503**, 95 Wn. App. 106, 115, 975 P.2d 536 (1999) **("ACLU")**; see also WAC 44-14-08004(7) ("The purpose of [the PRA's] attorneys' fees, costs and daily penalties provisions is to reimburse the requester for vindicating the public's right to obtain public records, to make it financially feasible for requestors to do so, and to deter agencies from improperly withholding records.") (citing **ACLU**).

Previous case law is clear that a person that prevails on appeal in a PRA case is entitled to attorneys' fees and costs. See **O'Connor v. Washington State Dept. of Social and Health Services**, 143 Wn.2d 895, 911, 25 P.3d 426 (2001); see also **Olsen v. King County**, 106 Wn. App. 616, 625, 24 P.3d 467 (2001).

The PRA does not allow for court discretion in deciding whether to award attorney fees to a prevailing party. **Progressive Animal Welfare Society v. University of Washington**, 114 Wn.2d 677, 687-88; 790 P.2d 604 (1990) **("PAWS")**; **Amren v. City of Kalama**, 131 Wn.2d 25, 35, 929 P.2d 389 (1997) . The only discretion the court has is in determining the amount of reasonable attorney's fees. **Amren**, 131 Wn.2d at 36-37 (discussing how statutory penalties combine with attorney's fees and costs

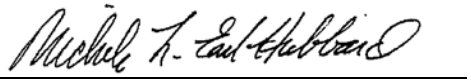
under the PRA to comprise the statute's "punitive provisions") (citation and internal quotation marks omitted).

The O'Neills should be awarded their fees and costs for this appeal pursuant to RAP 18.1, 18.9 and the PRA.

## II. CONCLUSION

For the foregoing reasons, the Court should deny the Petition for Review and award O'Neills their reasonable fees and costs pursuant to RAP 18.1, RAP 18.9, and RCW 42.56.550 for the work on appeal.

Respectfully submitted this 17th day of October, 2014.

By: 

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## CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on October 17, 2014, I delivered a copy of the foregoing Answer to Petition for Review by email pursuant to an electronic service agreement among the parties to the following:

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Dated this 17th day of October, 2014.

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