

OFFICE OF THE
ATTORNEY GENERAL





Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

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October 17, 2012

Stan Marshburn, Director
Office of Financial Management
PO Box 43113
Olympia, WA 98504-3113

Dear Mr. Marshburn:

Enclosed please find the 2013 Supplemental Budget Request from the Attorney General's Office (AGO), addressing only critical agency and complex litigation needs. We are mindful of the continuing challenges of the current and projected economic climate. We will continue to provide the best possible legal services for our clients and the citizens of the state of Washington working within these constraints.

Our focus in this budget request is around significant litigation. Our requests will allow us to mitigate additional risk to the state. The litigation-related requests shown below are for cases currently facing the state of Washington which challenge long-lasting precedents and the integrity of the state's election system. They include:

- *Superior Court for Grays Harbor v. Grays Harbor County* Direct Costs;
- *Washington State Republican Party et al. v. State*;
- Antitrust Direct Costs;
- Redistricting Litigation.

If you have questions about this budget request, please contact my Deputy Chief of Staff, Janelle Guthrie, at (360) 586-0725. Thank you for your assistance and continued cooperation.

Sincerely,

ROB MCKENNA
Attorney General

RMM/jlg
Enclosure

cc: Brian Moran, Chief Deputy Attorney General
Janelle Guthrie, Deputy Chief of Staff
Michelle Underwood, Director of Financial Services

OFFICE OF THE ATTORNEY GENERAL
2013 Supplemental Budget
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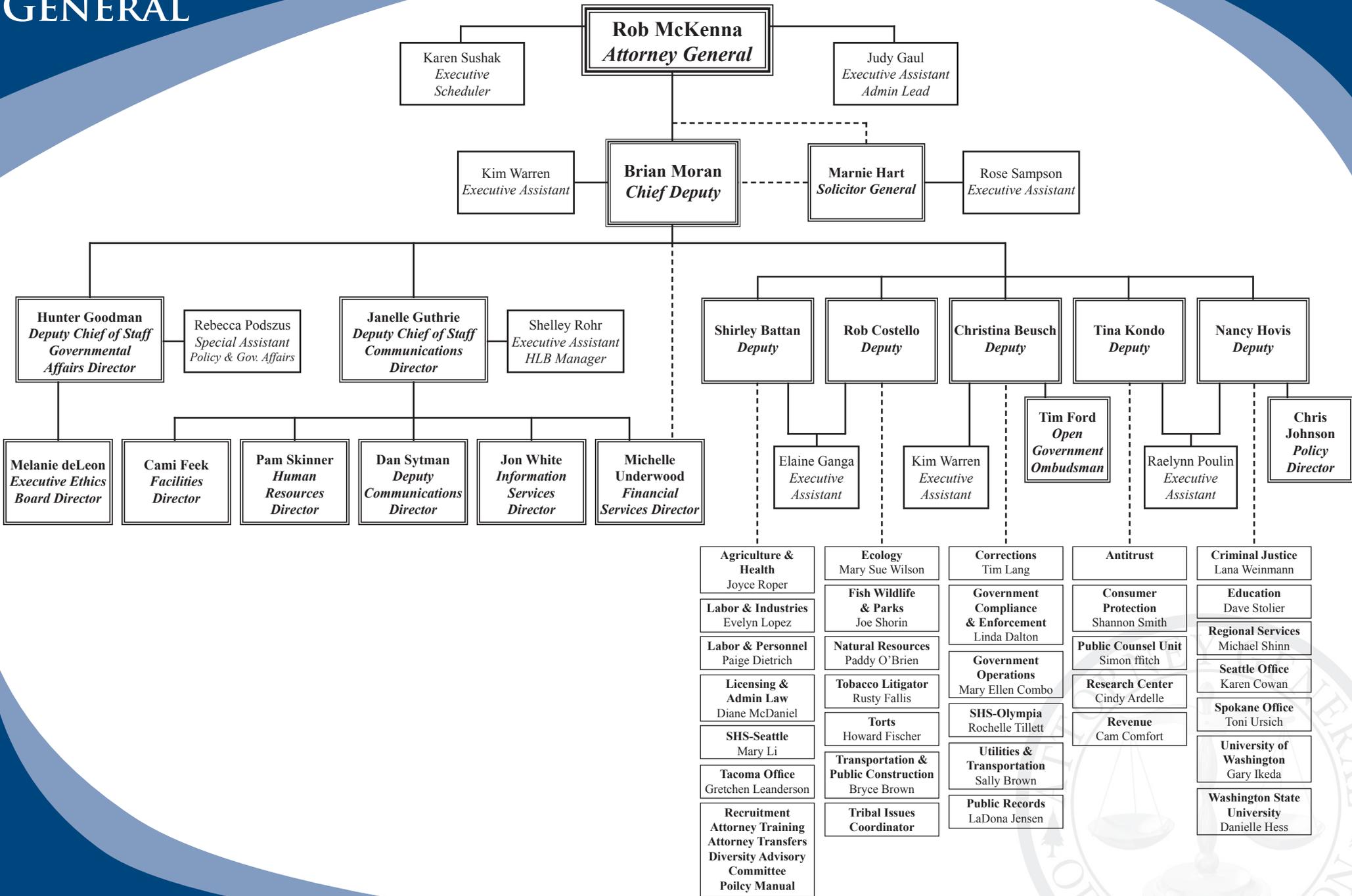
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TAB A

OVERVIEW



OFFICE OF THE ATTORNEY GENERAL



TAB B

RECOMMENDATION
SUMMARY



State of Washington
Recommendation Summary

(By Agency Priority)

Agency: **100 Office of Attorney General**

4:30:32PM

10/16/2012

Dollars in Thousands

	FY2 FTEs	General Fund State	Other Funds	Total Funds
2011-13 Current Biennium Total				
Total Carry Forward Level				
Percent Change from Current Biennium				
M1 AT Anti Trust Direct litigation Costs			400	400
Carry Forward plus Workload Changes			400	400
Percent Change from Current Biennium				
M2 SC Superior Court Litigation			600	600
M2 AR Redistricting Litigation	0.3		93	93
M2 EL Election Litigation Costs	0.1		25	25
Total Maintenance Level	0.4		1,118	1,118
Percent Change from Current Biennium				
Subtotal - Performance Level Changes				
2011-13 Total Proposed Budget	0.4		1,118	1,118
Percent Change from Current Biennium				

M1 AT Anti Trust Direct litigation Costs

The Office of the Attorney General (AGO) requests \$400,000 in Fiscal Year (FY) 2013 to continue litigation by the Antitrust division (ANT) relating to current litigation caseloads. The anticipated recovery to the state of Washington and its consumers in judgment recoveries and fees for these cases is anticipated at several million dollars.

M2 AR Redistricting Litigation

The Office of the Attorney General (AGO) requests \$93,000 and 0.3 FTEs in Fiscal Year (FY) 2013 to provide ongoing legal services for the Administrative division (HQ-ADMIN) and the Washington State Redistricting Commission (WSRC) relating to redistricting litigation. Funding is needed to continue to defend the Legislature's 2012 Redistricting Plan which is currently being challenged in the Washington Supreme Court.

M2 EL Election Litigation Costs

The Office of the Attorney General (AGO) requests \$25,000 and 0.1 FTE in Fiscal Year (FY) 2013 to pay for costs associated with legal services for the Solicitor General (SGO) division and Secretary of State's office (SEC) relating to Washington State Republican Party et al. v. State.

M2 SC Superior Court Litigation

The Office of the Attorney General (AGO) requests \$600,000 in FY2013 to provide ongoing legal services relating to Superior Court for Grays Harbor County v Grays Harbor County and Grays Harbor County Board of Commissioners and the State of Washington (Grays Harbor) lawsuit. Direct litigation costs are required to pay for Special Assistant Attorney General's (SAAG) to represent the Superior Court judges in this case.

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TAB C

DECISION
PACKAGES



Agency: 100 Office of Attorney General
Decision Package Code/Title: SC Superior Court Litigation

Budget Period: 2011-13
Budget Level: M2 - Inflation and Other Rate Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests \$600,000 in FY2013 to provide ongoing legal services relating to Superior Court for Grays Harbor County v Grays Harbor County and Grays Harbor County Board of Commissioners and the State of Washington (Grays Harbor) lawsuit. Direct litigation costs are required to pay for Special Assistant Attorney General's (SAAG) to represent the Superior Court judges in this case.

Fiscal Detail

Operating Expenditures	<u>FY 2012</u>	<u>FY 2013</u>	<u>Total</u>
405-1 Legal Services Revolving Account-State		600,000	600,000
Total Cost		600,000	600,000

Revenue

<u>Fund</u>	<u>Source</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>Total</u>
405 Legal Serv Rev Acct	0420 Charges for Services		600,000	600,000
Total Revenue			600,000	600,000

Package Description:

The AGO requests \$600,000 in FY2013 to provide ongoing legal services relating to the Grays Harbor lawsuit. Direct litigation costs are required to pay for SAAGs to represent the Superior Court judges in this case.

The Grays Harbor County Superior Court judges filed a lawsuit on January 17, 2012 in the Thurston County Superior Court. They allege that the Grays Harbor County Commissioners failed to provide adequate funding to the Superior Court for it to perform its essential judicial functions. The Grays Harbor County Commissioners deny the judges' claims. The Commissioners also filed a third-party complaint against the State of Washington. The Commissioners claim that if the County is found liable to the Superior Court on the Court's claim of inadequate funding, then the State is liable to the County for failing to provide the County sufficient revenues to adequately fund the Superior Court.

The County Prosecutor declined to represent the Superior Court judges in their claim against the County given the Prosecutor's obligation is to represent the County. The Grays Harbor Superior Court judges demanded representation by the AGO based on recent decisions that have required the AGO to represent state officers in litigation upon their demand, and cases recognizing that Superior Court judges have a dual capacity both as state and county officers. Because this litigation also involves a claim against the State of Washington that is being defended by the AGO, the AGO appointed SAAGs to represent the judges.

Agency: 100 Office of Attorney General

Decision Package Code/Title: SC Superior Court Litigation

The case is in the discovery and pretrial motion phase, with preliminary injunction motions scheduled. The County also sought Washington Supreme Court review of certain actions by the judges concerning expenditures and access to court files during the pendency of this action.

The AGO's funding for client representation is through the Legal Services Revolving Account based upon billing to the client for legal services, and client authorization for such services. The AGO is billing the Administrative Office of the Courts (AOC) for the costs of the SAAGs' representation of the Superior Court judges as the case relates to the court system. AOC does not have funds necessary to pay these costs, and the AGO has no independent source of funds to pay them. AOC is not supportive of being billed for these costs.

The AGO contact for this request is Michelle Underwood, Financial Services Director, and she can be reached at (360) 586-0782.

Narrative Justification and Impact Statement

What specific performance outcomes does the agency expect?

This request is for funding to pay attorney fees and related legal costs that have been, and will be incurred by the Superior Court judges in litigation against the County in their claim for additional court funding. The AGO expects the claims to be resolved by the Court or by settlement. However, settlement efforts have not been successful to date.

Performance Measure Detail

Activity: **A010** Legal Services to State Agencies

		Incremental Changes	
		<u>FY 2012</u>	<u>FY 2013</u>
	Outcome Measures		
000030	PM0010 - The number of litigation cases open at the end of each Fiscal Year.	0.00	0.00

Is this decision package essential to implement a strategy identified in the agency's strategic plan?

This budget request implements goal #1 of the AGO Strategic Plan-"Provide efficient and effective representation to our client[s]."

Does this decision package provide essential support to one of the Governor's priorities?

The AGO reported agency essential services to OFM on August 16, 2010. Under effective government, legal services to state agencies is categorized as essential because it is required by constitutional mandate, and it's critically necessary for the implementation of essential activities.

A Priority of Government is that "State government must achieve results through efficient and effective performance." "Legal services to state agencies" supports the sub-priority to "Provide objective data and information for the public and elected decision makers."

Does this decision package make key contributions to statewide results? Would it rate as a high priority in the Priorities of Government process?

Agency: 100 Office of Attorney General

Decision Package Code/Title: SC Superior Court Litigation

Defending state agencies is a key component in directly supporting the Priorities of Government in providing legal services to state agencies.

The current purchase strategies under "Strengthen government's ability to achieve results efficiently and effectively" includes "Legal services to state agencies" as a primary element in "Provide data, information and analysis to support decision-making."

What are the other important connections or impacts related to this proposal?

The request is for ongoing litigation. Given its current stage, a 2014 supplemental budget request cannot be ruled out.

What alternatives were explored by the agency, and why was this alternative chosen?

The AGO communicated with relevant county parties to encourage settlement prior to the litigation, and unsuccessfully explored representation of the Superior Court judges by the County Prosecutor's Office, and the Superior Court's inherent authority to retain counsel. In light of court decisions compelling the AGO to represent state officers in litigation upon their request (including county officials acting on behalf of the State), there was no feasible alternative to appointing SAAGs to represent the Superior Court judges based upon their demand. In addition, because this office elected to represent the State in the third party action filed against it by the Grays Harbor County Commissioners, a conflict existed prohibiting the AGO from also representing the Grays Harbor Superior Court judges.

There are no statutory, regulatory, or other changes that would reduce the costs of this legal defense.

What are the consequences of not funding this package?

The AGO will be required to provide legal services to state officials for which no funding has been provided and which could not have been anticipated. Not funding this request will place the AGO in a situation where it will have to cut spending for required legal services that have been funded. This will result in legal services for other needs not receiving the necessary attention that they require.

What is the relationship, if any, to the state's capital budget?

None.

What changes would be required to existing statutes, rules, or contracts, in order to implement the change?

None.

Expenditure and revenue calculations and assumptions

Direct litigation costs include SAAG fees and expenses.

In Fiscal Months (FM) 06 through FM12 of FY2012, the AGO accrued expenditures totalling \$205,000 for contracted SAAG legal services relating to this case. This expenditure rate is projected to continue in FY2013.

In FY2013, the AGO assumes SAAG costs for 1,700 hours of services at an average rate of \$350 per hour, plus costs, totalling \$600,000.

Which costs and functions are one-time? Which are ongoing? What are the budget impacts in future biennia?

State of Washington
Decision Package

FINAL

Agency: 100 Office of Attorney General

Decision Package Code/Title: SC Superior Court Litigation

This request is considered a one-time requirement although additional funding may be necessary in future biennia.

<u>Object Detail</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>Total</u>
C Personal Service Contracts		600,000	600,000

State of Washington
Decision Package

FINAL

Agency: 100 Office of Attorney General
Decision Package Code/Title: AT Anti Trust Direct litigation Costs
Budget Period: 2011-13
Budget Level: M1 - Mandatory Caseload and Enrollment Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests \$400,000 in Fiscal Year (FY) 2013 to continue litigation by the Antitrust division (ANT) relating to current litigation caseloads. The anticipated recovery to the state of Washington and its consumers in judgment recoveries and fees for these cases is anticipated at several million dollars.

Fiscal Detail

Operating Expenditures	<u>FY 2012</u>	<u>FY 2013</u>	<u>Total</u>
424-6 Anti-Trust Revolving Account-Non-Appropriated		400,000	400,000
Total Cost		400,000	400,000

Package Description:

The AGO requests \$400,000 in FY2013 for direct litigation costs associated with current and upcoming ANT caseloads. ANT has been entirely self-funded from the Antitrust Revolving Fund (ARF) since the 2001-03 biennium. Prior to that time, General Fund dollars were allotted. The ARF has been replenished through costs and fee recoveries. The July 2012 balance was \$3.4 Million.

The strength of Washington's economy depends, in part, on a business environment that is free of unfair competition or collusive acts. ANT brings lawsuits on behalf of state agencies and consumers, for violations of state and federal antitrust laws.

Antitrust cases take several years to litigate and are among the most complex and expensive types of litigation to pursue. In particular, ANT must have adequate funding for its litigation direct costs, which includes costs for experts, depositions and discovery. Assuming ANT prevails at trial or through settlement, the ARF will be replenished fully.

Additional funding is required to pursue two significant price-fixing cases filed in the King County Superior Court:

1. State v. AUO Optronics, et. al (LCDs)
2. State v. LG Electronics, et. al. (CRTs).

Each case seeks millions of dollars in damages and restitution for state agencies and consumers, respectively. The defendants are global companies that engaged in massive price-fixing conspiracies over the course of several years. Private class actions against these defendants have settled for hundreds of millions of dollars. However, Washington was not part of those settlements because our state law provides that private parties can not represent indirect purchasers and therefore we filed our own case on behalf of our

agencies and consumers in our state court.

This litigation is unprecedented as it is the first contested litigation in several years in which the Washington state is not sharing the bulk of its direct litigation expenses with other states. Although other states in situations similar to Washington have also filed in their own state courts and we are trying to work with them to share expenses to the fullest extent possible, substantial Washington-specific expenses remain. This request only addresses the amounts needed above the amounts shared with other states. This litigation is vigorously contested which drives up expenses even further. For example, we had to spend more than a year to address resources in a Ninth Circuit appeal of a procedural matter which was ultimately decided in our favor.

This request is for funding for the following direct litigation costs in FY2013:

1. Experts: In antitrust cases, the state as plaintiff has the burden of proving damages. We anticipate that the CRTs and LCDs cases together will require at least \$1,250,000 through the course of the trials for expert witnesses, with \$309,000 of that needed during FY2013.
2. Deposition costs: We anticipate spending at least \$40,000 during FY2013 for depositions for use at trials. This includes appearance fees for lay witnesses and expert witnesses, court reporter and transcript costs (\$3.85 per page; \$0.40 per exhibit page) and travel costs (to include a trip to Taiwan with translator services).
3. Translation fees: Both of the cases involve firms headquartered mostly in Asia. Many of the relevant documents were written in Korean, Chinese or Japanese. We anticipate translation fees for both cases to be \$30,000 in FY2013.
4. Printed discovery costs: For both cases, we estimate a total requirement of \$20,000 during FY2013. This includes the copying costs for providing copies of state agency records to the defendants as part of the discovery process.
5. Software, hardware and equipment: We project the need for additional equipment and supplies at a cost of \$1,000 during FY2013.

Trial in the LCDs matter is currently scheduled for January 2014, so a cost and fee recovery is anticipated in the 2013-15 biennium unless the matter is appealed. If the matter settles, we expect recoveries during the 2013-15 biennium.

Trial in the CRTs matter is anticipated between May 2014 and August 2015. We would expect any costs and fees to be recovered during either the 2013-15 or 2015-17 biennia, whether by trial or settlement.

The AGO contact for this request is Michelle Underwood, Financial Services Director and she can be reached at (360) 586-0782.

Narrative Justification and Impact Statement

What specific performance outcomes does the agency expect?

If successful at trial, ANT expects to recover millions of dollars for Washington's agencies and consumers. ANT will also recover all of its costs and attorneys' fees and replenish the revolving fund.

The AGO is working to protect client agencies and the taxpaying citizens of the state and to recover damages and restitution for them from defendants who violated the law.

Performance Measure Detail

Activity: **A004** **Enforcement of Anti-Trust Laws**

Output Measures

	Incremental Changes	
	<u>FY 2012</u>	<u>FY 2013</u>

000011	PM0004/ANT - Recoveries. We capture the efforts of AGO Antitrust staff who work to stop anticompetitive behavior and promote compliance with Antitrust laws. The measurement tells us the degree to which we recover monetary restitution for our consumers.	\$0.00	\$0.00
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Activity: **A010** **Legal Services to State Agencies**

	Incremental Changes
	<u>FY 2012</u> <u>FY 2013</u>

Outcome Measures

000030	PM0010 - The number of litigation cases open at the end of each Fiscal Year.	0.00	0.00
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Is this decision package essential to implement a strategy identified in the agency's strategic plan?

This budget request implements goal #4-4 of the AGO Strategic Plan-"Develop New Efforts to Protect Washington Consumers."

Does this decision package provide essential support to one of the Governor's priorities?

The AGO reported agency essential services to OFM on August 16, 2010. Under economic development, enforcement of Anti-Trust Laws is categorized as essential because it is critically necessary for the implementation of essential activities.

A Priority of Government is to "Enhance the economic vitality of businesses and people." "Ensure fairness, security, and efficiency in the economic marketplace" is a sub-priority of this priority.

The AGO reported agency essential services to OFM on August 16, 2010. Under effective government, legal services to state agencies is categorized as essential because it is required by constitutional mandate, and it's critically necessary for the implementation of essential activities.

A Priority of Government is that "State government must achieve results through efficient and effective performance." "Legal services to state agencies" supports the sub-priority to "Provide objective data and information for the public and elected decision makers."

Does this decision package make key contributions to statewide results? Would it rate as a high priority in the Priorities of Government process?

Because a fair and competitive marketplace is important, defending state agencies and consumers with the potential for recoveries is a key resource that directly supports the Priorities of Government in providing legal services to state agencies.

The current Priorities of Government purchase plan under "Improve the Economic Vitality of Business and Individuals" identifies "Enforcement of Anti-Trust Laws" as one of 97 non-prioritized high level purchases categories (top 90%).

What are the other important connections or impacts related to this proposal?

This request is case driven and antitrust enforcement is a priority as defined by the Governor's Priorities of Government.

What alternatives were explored by the agency, and why was this alternative chosen?

Increased funding is requested to adequately prosecute in order for us to achieve good settlements and/or success at trial.

An alternative would be to request an allotment from the General Fund.

What are the consequences of not funding this package?

Without funding at adequate levels, ANT will be unable to continue to discharge its responsibilities and recover money. Due to funding cuts in recent biennia, AGO activity has decreased to the point where only the most egregious harm is addressed. ANT will not be able to protect the economy or recover money for injured state agencies or consumers. Failure to litigate cases will ultimately results in a downward cycle for ANT because we will be unable to recover costs and fees, which is the only source for funding. Consumers and state agencies, as well as businesses competing fairly, will be left without adequate law enforcement protection.

ANT has historically recovered significantly more money for the state and its agencies and consumers than it has expended. In the last ten years, the average recovery per biennium for AGO ANT cases has been \$13,600,000, with another \$1,300,000 (ARF fund recoveries) in costs and fees.

What is the relationship, if any, to the state's capital budget?

None.

What changes would be required to existing statutes, rules, or contracts, in order to implement the change?

None.

Expenditure and revenue calculations and assumptions

Direct costs will enable the Division to:

1. Retain adequate consulting and testifying experts for complex antitrust litigation.
2. Allow for necessary deposition costs including fees, transcripts, and travel.
3. Allow for translation fees as many of the relevant documents were written in Korean, Chinese or Japanese.
4. Allow for printed discovery costs to provide copies of state agency records to the defendants as part of the discovery process.
5. Purchase necessary technology to properly litigate case.

Which costs and functions are one-time? Which are ongoing? What are the budget impacts in future biennia?

The LCD trial is scheduled for early 2014, and although a date has not been set for the CRTs case, it is expected to be in 2014 or early 2015. These are the first antitrust contested cases filed by the ANT division in several years without support from other states and it is difficult to predict whether we will file more cases such as these in the future. We will have to re-evaluate each FY to see if litigation will require an increase in funding for direct costs. If we find ourselves with only multistate cases and shared expenses in the next budget cycle, we will expect our costs to be lower in the future.

<u>Object Detail</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>Total</u>
E Goods And Services		400,000	400,000

Agency: 100 Office of Attorney General
Decision Package Code/Title: AR Redistricting Litigation

Budget Period: 2011-13
Budget Level: M2 - Inflation and Other Rate Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests \$93,000 and 0.3 FTEs in Fiscal Year (FY) 2013 to provide ongoing legal services for the Administrative division (HQ-ADMIN) and the Washington State Redistricting Commission (WSRC) relating to redistricting litigation. Funding is needed to continue to defend the Legislature's 2012 Redistricting Plan which is currently being challenged in the Washington Supreme Court.

Fiscal Detail

Operating Expenditures		<u>FY 2012</u>	<u>FY 2013</u>	<u>Total</u>
405-1 Legal Services Revolving Account-State			93,000	93,000
Total Cost			93,000	93,000
Staffing		<u>FY 2012</u>	<u>FY 2013</u>	<u>FY2 FTEs</u>
FTEs		.0	.3	.3
Revenue				
<u>Fund</u>	<u>Source</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>Total</u>
405 Legal Serv Rev Acct	0420 Charges for Services		93,000	93,000
Total Revenue			93,000	93,000

Package Description:

The AGO requests \$93,000 and 0.2 Assistant Attorney General (AAG) and 0.1 Legal Assistant (LA) in FY2013, which includes \$54,000 for direct litigation costs associated with legal services provided to WSRC relating to redistricting litigation .

This request is to fund the defense of a challenge to the 2012 redistricting plan created by WSRC and approved by the legislature in Engrossed House Concurrent Resolution 4409.

While in the development process, WSRC solicited public input through public hearings and deliberations, 27 public meetings and 18 public forums in cities across the state. The WSRC received thousands of comments and dozens of alternative proposals from citizens of the state.

Two separate cases were filed relating to the Legislature's final redistricting plan which required legal services.

The Yakima Democratic Party (YDP) charged that the city is in a long term violation of Section 2 of the Voting Rights Acts pertaining to banning voting procedures designed to lead to discriminatory outcomes. The argument was that because Hispanic voters are a lower percentage of the population than whites, Hispanics were being discriminated against by Yakima's City Council election system. YDP is asking for the city to be divided into seven equal districts, a design that would allow concentrated populations with a better chance of

Agency: 100 Office of Attorney General

Decision Package Code/Title: AR Redistricting Litigation

electing a member of their own community. YDPs lawsuit hinged on the question of whether there is a systematic deprivation of political representation to a minority population, and the implications are far-reaching.

A second petition was filed with the state Supreme Court on February 8, 2012 asking them to redraw the district lines in order to meet legal requirements of compactness, equal representation and competitiveness. Per the state Constitution, the court had until March 1, 2012 to intervene in redistricting. The plaintiff argues that the Legislature did not draw the lines as outlined by state law and the state Constitution. The new congressional map split nine counties, two more than the previous map, while the legislative map split 17 counties. The plaintiff states that it was only necessary to split three or four for congress and 11 for legislative. While the case remains pending, the Washington Supreme Court authorized the use of the new districts for the 2012 elections.

The AGO contact for this request is Michelle Underwood, Financial Services Director, and she can be reached at (360) 586-0782.

Narrative Justification and Impact Statement

What specific performance outcomes does the agency expect?

This request is for funding that is critical to the continued defense of the Legislature's 2012 Redistricting Plan. Invalidation of the Legislature's plan will result in a new plan being created by the court.

The AGO will perform essential legal services to prevail in this effort.

Performance Measure Detail

Activity: A010 Legal Services to State Agencies

		Incremental Changes	
		<u>FY 2012</u>	<u>FY 2013</u>
Outcome Measures			
000030	PM0010 - The number of litigation cases open at the end of each Fiscal Year.	0.00	0.00

Is this decision package essential to implement a strategy identified in the agency's strategic plan?

This budget request implements goal #1 of the AGO Strategic Plan-"Provide efficient and effective representation to our client agencies." The AGO provides a broad range of legal services to over 230 state agencies to enable them to achieve their missions.

Does this decision package provide essential support to one of the Governor's priorities?

As required, the AGO reported agency essential services to OFM on August 16, 2010. Under effective government, legal services to state agencies is categorized as essential because it is required by constitutional mandate, and it's critically necessary for the implementation of essential activities.

A Priority of Government is that "State government must achieve results through efficient and effective performance". "Legal services to state agencies" supports the sub-priority to "Provide objective data and information for the public and elected decision makers".

Does this decision package make key contributions to statewide results? Would it rate as a high priority in the Priorities of Government process?

Agency: 100 Office of Attorney General

Decision Package Code/Title: AR Redistricting Litigation

Defending state agencies is a key component that directly supports the Priorities of Government in providing legal services to state agencies.

The current purchase strategies under "Strengthen government's ability to achieve results efficiently and effectively" includes "Legal services to state agencies" as a primary element of "Provide data, information and analysis to support decision-making".

What are the other important connections or impacts related to this proposal?

Agency has no option but to defend the state in this action.

Congressional and Legislative redistricting are matters of universal interest to all citizens of Washington.

What alternatives were explored by the agency, and why was this alternative chosen?

There is no reasonable alternative than to vigorously defend the Legislature's plan.

There are no statutory, regulatory, or other changes or negotiation possibilities that would reduce the costs of this legal defense. There is no alternative source of income.

What are the consequences of not funding this package?

Failure to adequately fund a defense may result in the Legislature's plan being invalidated. A court formulated plan would serve for the next ten years until the next redistricting cycle. Not funding this request will place the AGO in a situation where it will have to cut and prioritize legal services which have already been funded.

What is the relationship, if any, to the state's capital budget?

None.

What changes would be required to existing statutes, rules, or contracts, in order to implement the change?

None.

Expenditure and revenue calculations and assumptions

Direct litigation costs are required to pay for outside counsel who played a role in the development of the plan ultimately adopted by the Legislature.

In FY2013, the AGO assumes outside counsel costs based upon 125 hours of services at an average rate of \$430 per hour, plus costs, totalling \$54,000.

Which costs and functions are one-time? Which are ongoing? What are the budget impacts in future biennia?

This request is considered a one-time requirement although additional funding may be necessary in future biennia if the legal challenge(s) remain unresolved.

State of Washington
Decision Package

FINAL

Agency: **100 Office of Attorney General**

Decision Package Code/Title: **AR Redistricting Litigation**

<u>Object Detail</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>Total</u>
A Salaries And Wages		20,979	20,979
B Employee Benefits		6,164	6,164
C Personal Service Contracts		54,000	54,000
E Goods And Services		9,512	9,512
G Travel		670	670
J Capital Outlays		1,675	1,675
Total Objects		93,000	93,000

Agency: 100 Office of Attorney General

Decision Package Code/Title: EL Election Litigation Costs

Budget Period: 2011-13

Budget Level: M2 - Inflation and Other Rate Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests \$25,000 and 0.1 FTE in Fiscal Year (FY) 2013 to pay for costs associated with legal services for the Solicitor General (SGO) division and Secretary of State's office (SEC) relating to Washington State Republican Party et al. v. State.

Fiscal Detail

Operating Expenditures		<u>FY 2012</u>	<u>FY 2013</u>	<u>Total</u>
405-1	Legal Services Revolving Account-State		25,000	25,000
Total Cost			25,000	25,000
Staffing		<u>FY 2012</u>	<u>FY 2013</u>	<u>FY2 FTEs</u>
	FTEs	.0	.1	.1
Revenue				
<u>Fund</u>	<u>Source</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>Total</u>
405	Legal Serv Rev Acct	0420 Charges for Services	25,000	25,000
Total Revenue			25,000	25,000

Package Description:

The AGO requests \$25,000 and 0.1 Assistant Attorney General in FY2013 to pay for costs associated with legal services for the SGO division and SEC relating to Washington State Republican Party et al. v. State.

This is federal court litigation of three political parties' "as applied" challenging the Top Two Primary. It follows the United States Supreme Court 2008 decision which upheld the Top Two Primary against the political parties' fascia challenge that the primary violated their First Amendment freedom to associate for political purposes. On remand from the Supreme Court, both the District Court and the Ninth Circuit Court of Appeals have upheld the Top Two Primary and ruled in favor of the State. The Democratic Party and the Libertarian Party have sought review, for the second time, in the United States Supreme Court. The United States Supreme Court announced on October 1, 2012, that review was not granted. The AGO has incurred costs up to this date and there remains an issue in the United States District Court regarding claims for attorneys' fees by the political parties.

Washington State Republican Party et al. v. State challenged the validity of laws enacted directly by the people relating to the integrity of Washington's election system. The case sought to challenge important, existing public policy choices concerning Washington's election system and access to information relating to that system.

This request will support the opportunity for favorable resolution of this case.

Agency: 100 Office of Attorney General

Decision Package Code/Title: EL Election Litigation Costs

The AGO contact for this request is Michelle Underwood, Financial Services Director, and she can be reached at (360) 586-0782.

Narrative Justification and Impact Statement

What specific performance outcomes does the agency expect?

This request is for funding that is critical to the continued defense of this lawsuit. The remaining issue concerns the state's potential liability for attorneys' fees and related expenses, the defense of which may offer a net savings in state resources.

Performance Measure Detail

Activity: A010 Legal Services to State Agencies

		Incremental Changes	
		<u>FY 2012</u>	<u>FY 2013</u>
	Outcome Measures		
000030	PM0010 - The number of litigation cases open at the end of each Fiscal Year.	0.00	0.00

Is this decision package essential to implement a strategy identified in the agency's strategic plan?

This budget request implements goal #1 of the AGO Strategic Plan-"Provide efficient and effective representation to our client agencies." The AGO provides a broad range of legal services to over 230 state agencies to enable them to achieve their missions.

Does this decision package provide essential support to one of the Governor's priorities?

The AGO reported agency essential services to OFM on August 16, 2010. Under effective government, legal services to state agencies is categorized as essential because it is required by constitutional mandate, and it's critically necessary for the implementation of essential activities.

A Priority of Government is that "State government must achieve results through efficient and effective performance." "Legal services to state agencies" supports the sub-priority to "Provide objective data and information for the public and elected decision makers."

Does this decision package make key contributions to statewide results? Would it rate as a high priority in the Priorities of Government process?

Defending state agencies is a key component in directly supporting the Priorities of Government in providing legal services to state agencies.

The current purchase strategies under "Strengthen government's ability to achieve results efficiently and effectively" includes "Legal services to state agencies" as a primary element in "Provide data, information and analysis to support decision-making."

What are the other important connections or impacts related to this proposal?

The AGO responded to this ongoing litigation, and expected appeals. This case challenges the validity of Washington State law. The defense of duly enacted state laws is not optional. Stakeholders concerned with open government, and stakeholders concerned with participation in elections and the lawmaking process, have expressed interest in this suit and have presented diverse points of view.

Agency: 100 Office of Attorney General

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What alternatives were explored by the agency, and why was this alternative chosen?

Given the potential impact of adverse rulings in this case, there was no reasonable alternative to vigorously defending the validity of state laws.

The laws at issue represent the public policy of Washington on the subjects that they address and will continue to do so unless changed by the legislature or the people. Defending state laws is not optional.

There are no statutory, regulatory, or other changes or negotiation possibilities that would reduce the costs of this legal defense. There is no alternative source of income.

What are the consequences of not funding this package?

Defending state laws is not optional. This case has been a major and extraordinary piece of litigation over many years. The total cost necessary to defend it accordingly are not costs incorporated into legal services allocations for SEC in this biennium. The requested funding is needed to provide the legal services that this case requires.

What is the relationship, if any, to the state's capital budget?

None.

What changes would be required to existing statutes, rules, or contracts, in order to implement the change?

There are no changes to existing statutes, rules, or contracts required with this request.

Expenditure and revenue calculations and assumptions

This request is for \$25,000 in FY2013 for legal services to the SEC to defend against a lawsuit challenging the Top Two primary system.

Which costs and functions are one-time? Which are ongoing? What are the budget impacts in future biennia?

SEC supports this budget request and has a mirror request in their budget submittal. Costs of legal defense are considered one-time requirements. With the recent ruling by the US Supreme Court not to grant review, this lawsuit should be resolved in FY2013.

<u>Object Detail</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>Total</u>
A Salaries And Wages		11,614	11,614
B Employee Benefits		3,252	3,252
E Goods And Services		9,504	9,504
G Travel		280	280
J Capital Outlays		350	350
Total Objects		25,000	25,000

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REVENUES



State of Washington

Summarized Revenue by Account and Source

Budget Period: 2011-13

10/16/2012

Dollars in thousands

4:32PM

100 - Office of Attorney General

Agency Level

S9 - FY13 Supplemental Request

Supporting Text Included

	Maintenance Level		Performance Level		Biennium Totals		Total
	FY2012	FY2013	FY2012	FY2013	FY2012	FY2013	
405 - Legal Serv Rev Acct							
AR - Redistricting Litigation		93					
EL - Election Litigation Costs		25					
SC - Superior Court Litigation		600					
Total - 0420 - Charges for Services - S		718				718	718
405 - Legal Serv Rev Acct - State		718				718	718
Total - 405 - Legal Serv Rev Acct		718				718	718
100 - Office of Attorney General - State		718				718	718
Total - 100 - Office of Attorney General		718				718	718

AR - Redistricting Litigation

The Office of the Attorney General (AGO) requests \$93,000 and 0.3 FTEs in Fiscal Year (FY) 2013 to provide ongoing legal services for the Administrative division (HQ-ADMIN) and the Washington State Redistricting Commission (WSRC) relating to redistricting litigation. Funding is needed to continue to defend the Legislature's 2012 Redistricting Plan which is currently being challenged in the Washington Supreme Court.

EL - Election Litigation Costs

The Office of the Attorney General (AGO) requests \$25,000 and 0.1 FTE in Fiscal Year (FY) 2013 to pay for costs associated with legal services for the Solicitor General (SGO) division and Secretary of State's office (SEC) relating to Washington State Republican Party et al. v. State.

SC - Superior Court Litigation

The Office of the Attorney General (AGO) requests \$600,000 in FY2013 to provide ongoing legal services relating to Superior Court for Grays Harbor County v Grays Harbor County and Grays Harbor County Board of Commissioners and the State of Washington (Grays Harbor) lawsuit. Direct litigation costs are required to pay for Special Assistant Attorney General's (SAAG) to represent the Superior Court judges in this case.

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