

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF FRANKLIN

WASHINGTON ELECTION INTEGRITY) Case No. 21-2-50572-11
COALITION UNITED, a Washington)
State Nonprofit Corporation; ETHAN)
CARLSON; FRED CARPENTER,)
)
)
Plaintiffs,)
)
v.)
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)
)
MATT BEATON, Franklin County)
Auditor; FRANKLIN COUNTY, and)
DOES 1-30, inclusive,)
)
)
Defendants.)
_____)

OPPOSITION TO MOTION
TO DISMISS FIRST AMENDED
COMPLAINT UNDER CIVIL RULE
12(b)(6) AND MOTION TO STRIKE
PLEADINGS UNDER CIVIL RULE
11(a)

Plaintiff Washington Election Integrity Coalition United (“WEiCU”) respectfully submits
this opposition to Defendants’ Motion to Dismiss First Amended Complaint Under Civil Rule
12(b)(6) and Motion to Strike Pleadings Under Civil Rule 11(a) (“Motion”).

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1 A. Franklin County Seeks To Prevent the Release of Public Records

2 This case is a procedural action brought under existing statutory law to address the
3 conduct of a local election official and seek public records being withheld by a County
4 municipality. Plaintiffs openly state within their complaint that they are NOT seeking de-
5 certification of any election. (Verified Complaint, ¶ 9.)
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7 The crux of the matter appears to be hidden within this motion: Defendants do NOT,
8 under *any circumstances*, want to release certain public records in the form of already cast and
9 counted de-identified ballots for any form of public review.
10

11 It is painfully apparent that if Defendants have nothing to hide, and they want to confirm
12 to Franklin County electors that Franklin County elections are, in fact, “free and equal” as
13 mandated by the Washington State Constitution, this motion would not have been filed.
14 (Washington State Const., Art. 1, § 19.) Instead, Franklin County would have teamed with
15 WEiCU to make the requested records available.
16

17 B. Defendants’ Motion to Strike Signed Pleadings Is Without Basis

18 Civil Rule 11(a) requires every pleading, motion and memorandum “of a party
19 represented by an attorney” to be dated and signed, and unsigned pleadings to be stricken only if
20 not signed promptly after the omission is called to attention. (Motion, p. 4, ll. 11-16.)
21

22 Defendants appear to seek a court order striking pleadings fully signed by three parties as
23 somehow not in accord with CR 11(a). As conceded by Defendants, this action was initiated on
24 October 11, 2021 with a First Amended Verified Complaint and Amended Summons filed on a
25 *pro se* basis with all parties’ signatures. (Motion, p. 5, ll. 5-6.). WEiCU subsequently retained
26 counsel who filed a (signed) notice of appearance on October 18, 2021 in advance of an initial
27 hearing in the action noted for October 25, 2021. (Motion, p. 5, ll. 4-5.) On November 4, 2021,
28

1 Defendants' counsel waived service of process of the First Amended Verified Complaint and
2 Amended Summons, with no reservation of rights or defenses.

3 As such, Civil Rule 11(a) has been followed. All pleadings have been fully signed.
4 WEiCU has proper legal representation in the action. Defendants' counsel accepted service of the
5 First Amended Verified Complaint and Amended Summons without objection or reservation.
6 Defendants' motion to strike is without basis and should be denied.
7

8 C. WEiCU Has Standing to Bring Claims for Election Integrity

9 The Supreme Court has found corporations have standing in Washington State to address
10 controversies of serious public importance:
11

12 Standing is not an insurmountable barrier to . . . corporations challenging the
13 constitutionality of a legislative act. *Seattle Sch. Dist. 1*, at 493, 585 P.2d 71.
14 Where a controversy is of serious public importance the requirements for standing
15 are applied more liberally. *Washington Natural Gas Co. v. Public Util. Dist. 1 of*
Snohomish Cy., 77 Wash.2d 94, 96, 459 P.2d 633 (1969).

16 (*City of Seattle v. State of Washington, et al.* 103 Wn.2d 663, 668, 694 P.2d 641 (1985) [emphasis
17 added; Supreme Court reversed trial court's dismissal for lack of standing of municipal
18 corporation raising constitutional challenges on behalf of general public's rights to vote].)

19 The more liberal test for standing in a public interest action of serious importance is
20 whether the interest sought to be protected by the complainant is within the zone of interests to
21 be protected by the statute:

22 The basic test for standing is "whether the interest sought to be protected by the
23 complainant is arguably within the zone of interests to be protected or regulated
24 by the statute or constitutional guarantee in question". *Seattle Sch. Dist. 1*, 90
25 Wash.2d at 493, 585 P.2d 71 citing *Association of Data Proc. Serv. Org'n v. Camp*,
26 397 U.S. 150, 90 S.Ct. 827, 25 L.Ed.2d 184 (1970).
27
28

1 (*Id.* [Supreme Court granted standing to the corporate municipality finding that the “[p]rotection
2 for the integrity of the political process, as well as individuals’ rights, is within the zone of
3 interests protected by the equal protection clause.”].)

4
5 Here, Defendants are confused about the nature of WEiCU, incorrectly asserting WEiCU
6 is some sort of organization or association with members, and citing case law involving standing
7 for groups with a membership. (Motion, p. 6, ll. 11-14; Motion, p. 5, ll. 19-25 [citing *Wash.*
8 *State Nurses Ass’n v. Cmty. Health Sys. Inc.*, 196 Wn.2d 409 (2020)].) As clearly alleged in the
9 complaint, WEiCU is a Washington State nonprofit corporation. (First Amended Verified
10 Complaint, ¶ 2.) WEiCU is not an organization with membership, and the case law relied on by
11 Defendants is inapposite.
12

13 Contrary to Defendants’ attempt to cast WEiCU as an association with members,
14 WEiCU has standing under well-established Supreme Court case law based on the plain
15 allegations of the verified complaint. (*City of Seattle v. State of Washington, et al.* 103 Wn.2d
16 663, 668, 694 P.2d 641 (1985).) As alleged, WEiCU is “a Washington State nonprofit
17 corporation . . . dedicated to the public interest of transparent, secure and verified elections.”
18 (First Amended Verified Complaint, ¶ 2.) As further discussed herein, the statute at issue, RCW
19 29A.68.013, relates to election integrity and provides a mechanism for examining the conduct of
20 Washington State elected officials.
21

22 The interest in election integrity sought by a corporation dedicated to election integrity is
23 squarely within the zone of interests to be protected by RCW 29A.68.013. As such, WEiCU has
24 standing. Defendants have cited to no authority to support the proposition that WEiCU may not
25 pursue an action under RCW 29A.68.013. Nor have Defendants explained why this case is not of
26 serious public importance. To the contrary, election integrity is arguably the most important civic
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1 promise Franklin County election officials could provide to Franklin County voters. The right to
2 freely elect one's representatives and to influence the political direction of one's government is
3 the republic's indispensable political foundation. Without free elections, there is neither the
4 possibility for citizen voters to express their will nor the opportunity for citizen voters to change
5 their leaders, approve policies for the country, address wrongs, or protest the limitation of their
6 rights afforded to them by the Constitution. (Article 1, §19 Washington State Constitution).

8 The serious public importance of this case cannot be denied. The importance has been
9 further evidenced by the motion to intervene and proposed motion to dismiss filed by the
10 Washington State Democratic Central Committee, represented by multiple attorneys from the
11 global lawfirm of Perkins Coie.

13 WEiCU has standing in its capacity as a corporation dedicated to election integrity
14 pursuing interests within the zone of interests to be protected by RCW 29A.68.013. This motion
15 should be denied.

16
17 D. Plaintiffs Have Pleaded Valid Statutory Claims Relating To Election Integrity

18 Under CR 12(b)(6), a complaint can be dismissed for failure to state a claim upon which
19 relief can be granted “only if it appears beyond doubt that the plaintiff cannot prove any set of
20 facts which would justify recovery.” (*Tenore v. AT&T*, 136 Wn.2d 322, 329-330 (1998).) On a
21 motion to dismiss for failure to state a claim, a plaintiff’s allegations are presumed to be true and
22 a court may consider hypothetical facts not included in the record. (*Id.*) CR 12(b)(6) motions
23 should be granted "sparingly and with care" and "only in the unusual case in which plaintiff
24 includes allegations that show on the face of the complaint that there is some insuperable bar to
25 relief.” (*Id.*)

1 Defendants want this Court to ignore statutory law and dismiss statutory claims on a
2 12(b)(6) basis. Contrary to Defendants’ Motion, the Washington State Legislature has statutorily
3 authorized claims relating to the wrongful acts or neglect of duty by election officials:
4

5 Any justice of the supreme court, judge of the court of appeals, or judge of the
6 superior court in the proper county shall, by order, require any person charged
7 with error, wrongful act, or neglect to forthwith correct the error, desist from the
8 wrongful act, or perform the duty and to do as the court orders or to show cause
9 forthwith why the error should not be corrected, the wrongful act desisted from,
10 or the duty or order not performed, whenever it is made to appear to such justice
11 or judge by affidavit of an elector that:

12 (1) A wrongful act . . . has been performed or is about to be performed by
13 any election officer; or

14 (2) Any neglect of duty on the part of an election officer . . . has occurred
15 or is about to occur. . . .

16 (RCW 29A.68.013(1) and (2); First Amended Verified Complaint, ¶ 7.)

17 The individual plaintiffs have alleged their elector status, and WEiCU has alleged its
18 public interest status, and as such, have standing under RCW 29A.68.013 to bring their claims.
19 (First Amended Verified Complaint, ¶¶ 1, 2.) As discussed below, Defendants may dispute the
20 wrongful acts and neglect of duty as alleged, but such disagreement does not equate to a lack of
21 standing under RCW 29A.68.013.

22 E. Dismissal Is Not Warranted Where Defendants Disagree With Allegations

23 Defendants seek dismissal “as a matter of law” on grounds that the “Complaint contains
24 outrageous and unfounded accusations and legal conclusions that Defendants engaged in
25 “wrongful acts” in violation of Washington election law.” (Motion, p. 7, ll. 10-14 [emphasis
26 added].) Plaintiffs wish to point out that if they prevail in this action, the adjectives of
27 ‘outrageous’ and ‘unfounded’ will be shown to be wrong.
28

1 Defendants have not identified any element of the PRA claim that is lacking from the
2 First Amended Verified Complaint. Instead, they appear to want this Court to rely on *White v.*
3 *Clark County* 188 Wn.App. 622 (2015) to dismiss the PRA as a matter of law. (Motion, p. 11, l.
4 25- p. 12, l. 8.)

5
6 Defendants' reliance on *White* is misplaced. The *White* case was decided on a false
7 premise, namely, that ballots can be tied back to the original voter, and therefore, cannot be
8 produced for "secrecy" reasons. Contrary to the *White* case, RCW 29A.08.161 expressly requires
9 ballots cast in Washington State to be de-identified so as to never tie back to any particular voter:
10

11 No record may be created or maintained by a state or local governmental agency
12 or a political organization that identifies a voter with the information marked on
the voter's ballot

13 (RCW 29A.08.161.) The *White* case did not address RCW 29A.08.161. Under basic rules of
14 statutory construction, statutes pre-empt case law, and as such, there can be no "secret ballot"
15 exemption to production of already de-identified ballot public records. The ballots are de-
16 identified by law and by practice, thereby guaranteeing secrecy of the vote. (RCW 29A.08.161.)
17

18 WEiCU has stated a valid claim for a PRA and is entitled to inspection of the requested
19 documents as allowed by the Washington State Legislature, RCW Chapter 42.56.

20 G. The Legislature Has Spoken

21 The Washington State Legislature has spoken on these issues by passing RCW
22 29A.68.013 and RCW 42.56.550. The Legislature has acknowledged the inherent power of the
23 people to question the wrongful acts and/or neglect of duty by Washington State election officials
24 via sworn evidence submitted to a specific state Court.
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1 If Defendants care about election integrity for Franklin County, Defendants should
2 cooperate with Plaintiffs and provide the requested public records to prove that Franklin County
3 elections are free and equal as guaranteed by the Washington State Constitution.
4

5 In the meantime, Defendants' Motion must be DENIED.

6 Respectfully submitted,

7 VIRGINIA P. SHOGREN, P.C.

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9 Dated: December 9, 2021

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DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on December 9, 2021, a true and correct copy of Plaintiff WEiCU’s Opposition to Motion to Dismiss First Amended Complaint Under Civil Rule 12(b)(6) and Motion to Strike Pleadings Under Civil Rule 11(a), Joinder In Support of Opposition to Motion to Dismiss First Amended Complaint Under Civil Rule 12(b)(6) and Motion to Strike Pleadings Under Civil Rule 11(a), and [Proposed] Order Denying Motion to Dismiss First Amended Complaint Under Civil Rule 12(b)(6) and Motion to Strike Pleadings Under Civil Rule 11(a) was served upon the parties listed below via the method indicated:


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Dated this 9th day of December, 2021, at Sequim, Washington.


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