

1 [f] returned (as undeliverable) ballots for the November 3, 2020 General Election.

2 **STATEMENT OF FACTS**

3 In September 2021, WEiCU, via its director Tamborine Borrelli, made a Public Disclosure
4 Request to the King County Director of Elections. Said request was for inspection and/or copying of
5 [a] original ballots, [b] ballot images, [c] spoiled ballots, [d] adjudication records, [e] ballot enve-
6 lopes, and [f] returned [as undeliverable] ballots for the November 3, 2020 General Election. (“PRR”)
7 Verified Complaint, ¶ 51.
8

9 King County denied inspection or copying of categories [a], [b], [c], and [f] as exempt under,
10 *inter alia*, RCW 42.56, RCW 29A.60.110, and/or *White v. Clark County*, 199 Wn.App. 929 (2017).
11 Verified Complaint, ¶ 51.

12 King County did not cite to a statute that “exempts or prohibits disclosure of [the] specific in-
13 formation or records” of categories [a], [b], [c], and/or [f] as required by RCW 42.56.070(1). Verified
14 Complaint, ¶¶ 52-55.
15

16 **STATEMENT OF ISSUE**

17 Question: Should this Court compel King County to comply with the PRR public records cat-
18 egories [a], [b], [c], and [f]? RCW 42.56.550(1). Answer: yes.
19

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 Under the Public Records Act, given the presumption of public access to government records,
22 a motion to show cause is the method specified in statute to have a superior court require the respon-
23 sible agency to establish why it has refused to allow inspection of specific public records:

24 Judicial review of agency actions.

25 (1) Upon the motion of any person having been denied an opportunity to inspect or
26 copy a public record by an agency, the superior court in the county in which a record is
27

1 maintained may require the responsible agency to show cause why it has refused to al-
2 low inspection or copying of a specific public record or class of records. . . .

3 RCW 42.56.550 (1).

4 Public Records Actions provide an essential check by the people over the power of the agen-
5 cies that serve them. RCW 42.56.030.

6 Judicial review of agency actions shall be *de novo*, and shall be granted in the public interest
7 even though the release of records may cause inconvenience or embarrassment:

8 Courts shall take into account the policy of this chapter that free and open examination
9 of public records is in the public interest, even though such examination may cause in-
10 convenience or embarrassment to public officials or others.

11 RCW 42.56.550(3).

12 All public records are subject to inspection “unless the record falls within the specific exemp-
13 tions of subsection (8) of this section, this chapter, or other statute which exempts or prohibits disclo-
14 sure of specific information or records.” RCW 42.56.070(1).

15 Any claimed exemption to the inspection of public records “shall” be “narrowly construed” to
16 “assure that the public interest will be fully protected.” RCW 42.56.030.

17 “No exemption may be construed to permit the nondisclosure of statistical information not de-
18 scriptive of any readily identifiable person or persons.” RCW 42.56.210(1).

19 Exemptions are “inapplicable to the extent that information, the disclosure of which would
20 violate personal privacy or vital governmental interests, can be deleted from the specific records
21 sought.” RCW 42.56.210(1).

22 A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as those
23 terms are used in Chapter 42.56, is invaded or violated only if the disclosure contains “information
24 about the person”. RCW 42.56.050.

25 Ballot public records are anonymous:
26
27

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

4 RCW 29A.08.161 [emphasis added].

5 Consequently, by law, it is impossible for ballots to be tied to any particular voter. RCW
6 29A.08.161.

7 RCW 29A.60.110 (sealing and opening of ballot containers), WAC 434-261-045 (secure stor-
8 age of voted ballots and related electronic data), and WAC 434-250-110 (processing ballots) are anti-
9 tapering law and code and do not exempt cast ballots from inspection. They do not imply an exemp-
10 tion of cast ballots from inspection.

11 The Public Records Act, Chapter 42.56, does not permit a public record to be deemed “ex-
12 empt” from inspection based on the manner in which it is stored. RCW 42.56.210-540.

13 To the extent the election code, RCW 29A, conflicts with any provision of the Public Records
14 Act, RCW 42.56, the provisions of the Public Records Act “shall govern”. RCW 42.56.030.

15 Case law opinions cannot constitute an ‘other statute’ exemption to the inspection of public
16 records, since court opinion is not statutory law. RCW 42.56.070(1). It should be beyond argument
17 that the judiciary is not a legislature.

18 *White v. Clark County*, 199 Wn.App. 929 (2017), *White v. Skagit County*, 188 Wn.App. 886
19 (2015), and *White v. Clark County*, 188 Wn.App. 622 (2015) (“*White Opinions*”) are not statutes.

20 The *White Opinions* are not on point with this instant action because they did not address the
21 anonymous nature of ballots required by law under RCW 29A.08.161.

22 Article VI, § 6 of the State Constitution requires that the legislature “shall provide for such
23 method of voting as will secure to every elector absolute secrecy in *preparing* and *depositing* his bal-
24 lot.” [emphasis added].

25 Article VI, § 6 and RCW 29A.04.206(1)(b) are consistent with RCW 29A.08.161.

26 Washington State ballots are anonymous by law, thereby guaranteeing secrecy of the vote.

1 RCW 29A.08.161. Article VI, § 6 does not exempt inspection of ballots.

2 Inspection of ballots is essential to confirming “free and equal” elections guaranteed under Ar-
3 ticle I §19 of the State Constitution.

4 Maintaining secret enclaves of categories [a], [b], [c], and/or [f] “interfere[s] to prevent the
5 free exercise of the right of suffrage”. State Constitution Article 1, § 19; Article 1, § 1 “[a]ll political
6 power is inherent in the people. . . .”, Article 1, § 29 “[t]he provisions of this Constitution are man-
7 datory, unless by express words they are declared to be otherwise.”].

8 The inspection and copying of categories [a], [b], [c], and/or [f] does not violate the privacy of
9 any individual nor any actual or perceived secrecy requirements.

10 Where an exemption is asserted, an agency seeking to prevent examination of requested rec-
11 ords must file a motion requiring the Court to undergo a judicial analysis of whether examination
12 would clearly not be in the public interest and would substantially and irreparably damage vital gov-
13 ernmental functions. RCW 42.56.540.

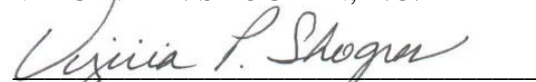
14 **CONCLUSION**

15 In its response to the PRR, King County cited to no statute that exempts the specific catego-
16 ries of [a], [b], [c], and/or [f] from public inspection and has not filed a motion under RCW 42.56.540
17 to prohibit examination.

18 This motion to show cause should be granted, with King County ordered to permit inspection
19 of record categories [a], [b], [c], and [f].

20 I certify that this pleading contains 1,156 words in compliance with LCR 7(b)(5)(B)(vi).

21 Respectfully submitted,
22 VIRGINIA P. SHOGREN, P.C.



By: Virginia P. Shogren, Esq.
WSBA No. 33939
961 W. Oak Court
Sequim, WA 98382, 360-461-5551
vshogren@gmail.com
Attorney for Plaintiff WEiCU

23 Dated: May 2, 2023

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27
28 **MOTION TO SHOW CAUSE
RE PUBLIC RECORDS REQUEST**

Virginia P. Shogren, P.C.
961 Oak Court
Sequim WA 98382
360-461-5551

CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2023, I electronically filed the foregoing document with the Clerk of the Court using the King County Superior Court E-Filing System and caused a copy to be served upon the parties listed below via the method indicated:

NOTICE FOR HEARING

MOTION TO SHOW CAUSE RE PUBLIC RECORDS REQUEST

ORDER GRANTING SHOW CAUSE MOTION AND COMPELLING COMPLIANCE WITH PUBLIC RECORDS REQUEST [PROPOSED]

Counsel for Defendants:

Ann M. Summers

Via email: ann.summers@kingcounty.gov

David J.W. Hackett

Via email: david.hackett@kingcounty.gov

Mari Isaacson

Via email: mari.isaacson@kingcounty.gov

Counsel for Proposed Intervenor:

Kevin Hamilton

Via email: KHamilton@perkinscoie.com

Reina Almon-Griffin

Via email: RAlmon-Griffin@perkinscoie.com

Amanda Beane

Via email: ABeane@perkinscoie.com

The foregoing documents were also served via email provided by the following *pro se* plaintiffs:

Doug Basler

Timofey Samoylenko

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: May 2, 2023

s/ Virginia P. Shogren

Virginia P. Shogren

961 W. Oak Court

Sequim, WA 98382

360-461-5551

MOTION TO SHOW CAUSE
RE PUBLIC RECORDS REQUEST

Virginia P. Shogren, P.C.
961 Oak Court
Sequim WA 98382
360-461-5551