

1 **I. SUMMARY ADJUDICATION OF THE PUBLIC RECORDS ACT CLAIM AND**
2 **DEFENDANTS’ COUNTERCLAIMS IS LEGALLY UNTENABLE**

3 Summary adjudication of the Public Records Act (“PRA”) claim Cause of Action XVI is le-
4 gally untenable on the bases that: 1) no statute prohibits the inspection of original ballots, ballot im-
5 ages, spoiled ballots or returned (as undeliverable) ballots¹; 2) no statutory exemption exists as to
6 spoiled ballots or returned (as undeliverable) ballots; 3) King County has not filed a motion to prohib-
7 it review of any of the records under RCW 42.56.540, instead it attempts an end-run around the PRA
8 via a Civil Rule 56 motion; 4) two highly factual determinations are required by the PRA before ex-
9 empted records may be prohibited from disclosure, namely: whether examination would clearly not
10 be in the public interest and would substantially and irreparably damage vital governmental functions;
11 5) Senate Bill 5459 (2023), cited by King County, is not retroactive to a 2021 records request and
12 does not affect the PRA’s requirements for prohibiting public records from disclosure; 6) the records
13 are relevant under CR 26(b) to the remaining factually disputed causes of action involving election
14 process irregularities, incorporated by reference into the PRA claim; and, 7) genuine issues of materi-
15 al fact exist regarding whether examination of the requested records has been denied in bad faith and
16 whether statutory penalties are to be awarded to WEICU accordingly and in what amount. RCW
17 42.56.550(4); RCW 42.56.540; *Lyft v. City of Seattle*, 190 Wash.2d 769, 418 P.3d 102 (2018),
18 *Neighborhood Alliance of Spokane County v. County of Spokane*, 172 Wash.2d 702, 716-17, 261
19 P.3d 119 (2011) (“[t]he decision not to disclose records and the reasons behind that decision “are pre-
20 cisely the subject matter of a suit brought under the Public Records Act.””); Shogren Decl., ¶¶ 2-13,
21 Exhs. A-H; Summers Decl., Exh. 11.

1 A prohibition against the people’s right to examine anonymous cast ballot records would con-
2 travene the Washington State Constitution. WA State Const., Article I, §§ 1, 19, 29.

3 Enjoining the public from reviewing *their own records* demands serious analysis and specific
4 findings. The Supreme Court in *Lyft v. City of Seattle*, 190 Wash.2d 769, 418 P.3d 102 (2018) ex-
5 plained that the legislature has adopted *statutory standards* for prohibiting access to public records.
6 Courts may not circumvent the PRA by applying civil rules – aimed at *judicial economy* - to pre-
7 emptively dismiss Public Records Actions.
8

9 Where the PRA is invoked, superior courts must apply the PRA’s standards (and not the civil
10 rules) to enjoin examination. *Lyft*, 190 Wash.2d at 773 (“The superior court erred in applying the . . .
11 standard of Civil Rule (CR) 65 [to determine whether records are protected from disclosure]. . . and
12 not by adequately considering the PRA’s more stringent standard [under RCW 42.56.540].”). Dismiss-
13 sal per a CR 56 motion, as is being tried here, is even more of a plain error than misusing the wrong
14 legal standard to enjoin as happened in *Lyft*.
15

16 Where an agency seeks to prevent examination, the superior court must follow a two-step pro-
17 cess, namely: 1) determine whether the records are specifically exempted; and, if so, 2) make a judi-
18 cial inquiry into whether examination would clearly not be in the public interest AND would substan-
19 tially and irreparably damage any person, or would substantially and irreparably damage vital gov-
20 ernmental functions. *Lyft*, 190 Wash.2d at 779-780; RCW 42.56.540.
21

22 On the instant motion filed under Civil Rule 56, King County seeks a permanent injunction
23 ***prohibiting*** WEICU from ever accessing the requested records (for any election), but has not asked
24 the Court to find that examination would clearly not be in the public interest and would substantially
25

26 ¹ In the interest of brevity, WEICU incorporates by reference the pleadings, legal authorities and all
27 bases for its Motion to Show Cause under the Public Records Act to be heard contemporaneously

1 and irreparably damage a person or vital governmental interests. RCW 42.56.540; Shogren Decl.,
2 Exh. B, p. 20, ¶ 2; Exh. C, ¶ 9. CR 56 adjudication of the Public Records Act claim, thereby enjoin-
3 ing WEICU from examining the requested records, without the required findings, would violate the
4 PRA. RCW 42.56.540; *Lyft*, 190 Wash.2d 773, 779-780.

5 **II. SUMMARY ADJUDICATION OF THE ELECTION PROCESS CLAIMS IS**
6 **LEGALLY UNTENABLE**
7

8 Summary adjudication of the election process claims (Causes of Action IV, VII, X and XIII) is
9 legally untenable, as they comprise highly factually determinative statutory causes of action brought
10 under RCW 29A.68.013 subsections (1) and (2).²

11 Based on King County’s amended answer, alone, multiple genuine issues of material fact exist
12 as to whether the Director of Elections used a certified voting system for the 2020 General Election,
13 whether the King County systems used by the Director of Elections allowed for vote swapping, addi-
14 tions and deletions, whether the Director permitted party preference tracking, and whether the Direc-
15 tor allowed the use of loose zip ties on ballot containers (permitting easy access to remove/add ballots
16 at will). Verified Complaint, ¶¶ 10-48; Shogren Decl., Exhs. A-I and ¶ 12, incorporated by this refer-
17 ence.
18

19 King County found the instant complaint very worthy of review by federal courts of limited
20 jurisdiction by removing the case to Federal Court in October 2021. More than a year and half later,
21 King County now wants to quibble with the *process* followed by the plaintiffs in bringing their evi-
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23
24 with this Motion for Summary Judgment. King County Issues 7 and 8.

25 ² The election process claims were brought under subsections (1) and (2), and not subsection (3) re-
26 lating to de-certification actions, and thus, are not subject to the 10 day limitations period for actions
27 seeking de-certification of elections. King County Issue 2. Likewise, King County has cited to no au-
28 thority for the equitable defense of laches as a bar to statutory claims under RCW 29A.68.013 (1)
and/or (2) filed within 12 months of an election, where election records are required to be maintained

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1 dence to the Court’s attention.³ It is indisputable that the plaintiffs filed their Verified Complaint well
2 within one year of the Public Records Act request and the 2020 General Election -- the shortest limi-
3 tations period in RCW Chapter 4.16 (“Limitations of Actions”).⁴ Shogren Decl., ¶¶ 2, 4, Exh. A.
4 Any undue delay has been the result of King County’s removal of the action to Federal Court where it
5 sat seemingly dormant for 11 months prior to the Federal Court’s remand. Shogren Decl., ¶¶ 2-3.

6 **III. SUMMARY ADJUDICATION OF THE DECLARATORY AND EQUITABLE**
7 **RELIEF CLAIMS IS LEGALLY UNTENABLE**

8 Causes of Action V, VI, VIII, IX, XI, XII, XIV, and XV seek declaratory and equitable relief
9 per the statutory causes of action under RCW 29A.68.013 (1) and/or (2).⁵ Under the election statute
10 invoked by plaintiffs, the superior court is asked to issue orders as requested in Causes of Action V,
11 VI, VIII, IX, XI, XII, XIV, and XV.
12

13 The legislature has granted this Court the power (if not the *obligation*) for needed oversight of
14 election procedural irregularities. RCW 29A.68.013 (1), (2). King County has not sought to have the
15 statute declared unconstitutional and thus is not in a position to question the Court’s inherent legisla-
16 tively-granted power to provide such oversight.⁶
17

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19
20 for a minimum of 22 months. King County Issue 5; 52 U.S.C. §20701.

21 ³ Similarly, King County is fully aware that WEICU retained counsel at both the federal and state
22 levels, yet argues, without authority, that somehow a PRA claim may not be filed by the PRA requestor.
23 King County Issue 6.

24 ⁴ King County also has created new legal questions of first impression relating to *when* the ‘mis-
25 conduct’ should be brought to the court’s attention – whether before certification, after certification,
26 or at a time when the court can address the misconduct, *see discussion, infra*.

27 ⁵ There is no requirement under any subsection of RCW 29A.68.013 that a plaintiff suffer a “particularized injury-in-fact.” King County Issue 1.

28 ⁶ King County asserts that statutory claims somehow fail to constitute “judiciable controversies.” To the contrary, the legislature expressly granted the judicial branch oversight and the power to issue necessary orders. RCW 29A.68.013. King County Issue 3.

1 The same genuine issues of material fact surround the requests for declaratory and equitable
2 relief as the previous claims in the complaint, namely, whether the Director of Elections engaged in
3 highly factually determinative election process irregularities under RCW 29A.69.013 subsections (1)
4 and/or (2). The relief claims are aimed at providing a mechanism for the Court to order remedies.

5 **IV. SUMMARY ADJUDICATION OF THE CONSTITUTIONAL VIOLATIONS IS**
6 **LEGALLY UNTENABLE**
7

8 Causes of Action XVII, XVIII, and XIX seek relief related to violations of the Washington
9 State Constitution, Constitutional rights as they relate to election processes, and damages for civil
10 rights violations. Verified Complaint, ¶¶ 57-71. Summary judgment is not tenable where the same
11 genuine issues of material fact surround the Constitutional claims as the previous claims in the com-
12 plaint, namely, whether, and to what extent, Director Wise engaged in or permitted the documented
13 election process irregularities. RCW 29A.69.013 (1), (2).⁷

14 **V. KING COUNTY IS ESTOPPED FROM SUMMARY RELIEF FOR CREATING**
15 **GENUINE ISSUES OF MATERIAL FACT WITHIN ITS OWN MOTION**
16

17 Summary adjudication is only permitted where there are no genuine issues of material fact af-
18 fecting the outcome under the governing law. *Eriks v. Denver*, 118 Wn.2d 451, 456, 824 P.2d 1207
19 (1992). Consequently, a moving party must be estopped from summary relief where it *creates genu-*
20 *ine issues of material fact* within its own pleadings.
21

22 King County has created genuine issues of material fact as to *why* the complaint was filed.
23 The disputed facts relate to the elements of multiple causes of action in the Verified Complaint, *inter*
24
25
26

1 *alia*: 1) the nature and extent of misconduct by the Director of Elections under RCW 29A.68.013(1),
 2 (2) (Causes of Action IV –XV); 2) whether records are being withheld by King County in bad faith
 3 (Cause of Action XVI); and, 3) whether Constitutional rights have been violated (Causes of Action
 4 XVII-XIX).

5 As such, King County’s Motion verges uncomfortably close to a violation of CR 11. King
 6 County knows full well that it bears the burden of establishing an absence of genuine issues of mate-
 7 rial fact justifying summary judgment. Against this simple *mantra*, King County asserts external
 8 ‘facts’ *not subject to judicial notice*, to wit:
 9

Disputed Fact	Evidence to Support
Plaintiffs’ lawsuit “appears to be part of a nationwide effort to un- dermine trust in future elections.” Motion, p. 2, l. 2.	None cited. Contradicting evidence: Verified Com- plaint, ¶¶ 10-56.
“Plaintiffs freely admit that the overriding intent of their lawsuit is to conduct a belated undefined, unauthorized and unregulated “audit” of the 1.2 million King County ballots. . . .” Motion, p. 2, ll. 3-4.	None cited. Contradicting evidence: Verified Com- plaint, ¶¶ 58-61.
“The November 2020 general election was, according to experts, the most secure, verified and transparent election in American history.” Motion, p. 2, ll. 6-7.	Unverified testimony of David Becker. Contradict- ing evidence: Verified Complaint, ¶¶10-56.

25
 26 ⁷ King County’s “full” Motion for Summary Judgment does not appear to directly address the Consti-
 27 tutional Causes of Action XVII, XVIII, and XIX; summary adjudication of those claims would be in-
 28 appropriate on that ground, as well.

1 2 3 4 5	“The coordinated effort to flood the courts throughout the nation with these frivolous claims against election officials has constituted an unprecedented assault on American democracy.” Motion, p. 2, ll. 9-10.	None cited. Contradicting evidence: Verified Complaint, ¶¶ 58-61.
6 7 8	“This Frivolous Lawsuit Is Intended to Sow Distrust in Elections for Profit and Political Gain.” Motion, p. 9, ll. 4-5	None cited. Contradicting evidence: Verified Complaint, ¶¶ 58-61.
9 10 11 12	“[T]he only purpose of [Plaintiffs’] “audit” would be to fundraise and spread misinformation about the November 2020 election.” Motion, p. 10, ll. 6-7.	None cited. Contradicting evidence: Verified Complaint, ¶¶ 49-61.

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14 **VI. KING COUNTY IS ESTOPPED FROM SUMMARY RELIEF FOR**
15 **CREATING LEGAL ISSUES OF FIRST IMPRESSION**

16 To add to the confusion created by King County’s Motion, King County takes internally in-
17 consistent positions that create *legal issues* of first impression, to wit:

18 King County Position A	19 King County Position B
20 “[P]laintiffs are not seeking to change the 21 election results. . . .” Motion, p. 10, l. 4	22 “State Law Requires Challenges to Election Re- 23 sults to Be Made Expeditiously.” Motion, p. 6, l. 1.
24 “Pro se Plaintiffs aver that they are not seek- 25 ing to “de-certify” the election. . . .” Motion, 26 p. 9, ll. 14-15.	27 “Substantial harm to the fabric of our democracy 28 would occur if [the] litigants were allowed to call into doubt the accuracy of elections” Motion,

1		p. 18, ll. 4-5.
2	“Washington law allows any elector to seek	“The Pro Se Plaintiffs Must Be Dismissed for
3	corrective action related to the conduct of an	Lack of Standing.” Motion, p. 12, l. 1.
4	election. RCW 29A.68.011, .013, .020.” Mo-	
5	tion, p. 6, ll. 16-17	
6		
7	“Plaintiffs claim reliance on the first and sec-	“[R]CW 29A.68.013 “demands that an election
8	ond ground of the [RCW 29A.68.013] stat-	contest be filed within ten days of the election’s
9	ute.” Motion, p. 13, ll. 10-11.	certification.” Motion, p. 14, ll. 9-10 (citation
10		omitted).
11		
12	“[A]ny affidavit under [RCW 29A.68.103]	“[A]ny affidavit under [RCW 29A.68.103] was
13	was required to be filed within 10 days of cer-	required to be filed . . . within such time as the
14	tification of the 2020 election. . . .” Motion, p.	court would be able to . . . correct an error.” Mo-
15	14, ll. 3-4	tion, p. 14, ll. 3-5.
16		
17	“The [2020 General Election] election process	“[Plaintiffs] admit to filing this action. . . which
18	was open to public scrutiny. . . .” Motion, p.	they can only “confirm or deny” based on review
19	17, l. 20.	of the requested ballots.” Motion, p. 16, ll. 1-2.

20

21 The new legal issues that preclude summary adjudication include: 1) whether plaintiffs pursu-

22 ing claims under RCW 29A.68.013(1) and/or (2) and the Public Records Act for election-related rec-

23 ords have brought an “election challenge” even where they aver they do not seek to de-certify an elec-

24 tion and seek no relief of de-certification; 2) whether Washington state electors may seek corrective

25 action related to the conduct of an election under RCW 29A.68.013 (1) and/or (2) only within such

26

1 time as the court would be able to correct an error; and, 3) whether cast ballots may be examined as
2 part of an action brought under RCW 29A.68.013(1) and/or (2).

3 **VII. KING COUNTY IS ESTOPPED FROM SUMMARY RELIEF FOR**
4 **PREVENTING DISCOVERY AND ACCESS TO EVIDENCE**

5 Summary adjudication is not warranted where the moving party blocks access to relevant evi-
6 dence. CR 37(a)(3) (“[a]n evasive or incomplete answer is to be treated as a failure to answer.”); CR
7 37(d) (“The failure [to adequately respond to discovery] may not be excused on the ground that the
8 discovery sought is objectionable unless the party failing to act has applied for a protective order as
9 provided by rule 26(c.)”); *Magana v. Hyundai Motor America*, 167 Wn.2d 570, 220 P.3d 191, 197
10 (2009) (“If a party objects to an interrogatory or a request for production, then the party must seek a
11 protective order under CR 26(c.)”).
12

13
14 Since September 2021, King County has diligently erected a stone wall around more than 2.4 mil-
15 lion public records relevant to this action. Verified Complaint, ¶¶ 49-56; Shogren Decl., Exh. G.
16 Perhaps not surprisingly, King County also is not cooperating in discovery. King County provided
17 only evasive and meaningless written discovery responses. Shogren Decl., Exh. H. Concurrently,
18 King County accuses plaintiffs of making “conclusory allegations” in their Verified Complaint.⁸
19

20 **VIII. JULIE WISE’S TESTIMONY CONFIRMS GENUINE ISSUES OF**
21 **MATERIAL FACT**

22 Director Julie Wise’s deposition was conducted on May 18, 2023. Below are examples of genu-
23 ine issues of material fact her testimony confirmed:
24

25 ⁸ King County has cited to no authority barring allegations based on information and belief, particu-
26 larly where King County has sole custody and control over the vast majority of the relevant evidence
27 that directly contravenes publicly-available evidence and has steadfastly barred access to it. King
28 County Issue 4.

Genuine Issues of Material Fact	Disputed Evidence
<p>Causes of Action IV-VI: Did Director Wise use a certified voting system for the 2020 General Election?</p>	<p>Federal voting system test laboratory ProV&V’s accreditation (required for federal certification of electronic voting systems) expired on February 24, 2017. Shogren Decl., Exh. D: Maras Decl., ¶¶ 8-12, 18-24.</p> <p>Versus:</p> <p>Certification of King County’s election systems is required by the state, only, and is completed by the Secretary of State’s office. Shogren Decl., Exh. I: Wise Depo., p. 11, ll. 12 – p. 12, l. 3.</p>
<p>Causes of Action VII-IX: Did Director Wise allow or facilitate electronic manipulation of the voting results for the 2020 General Election?</p>	<p>National Election Pool real time results for the 2020 General Election showed vote-flipping events transferring over 37,000 votes between candidates, including subtractions to vote totals; King 5 News feed showed 474,384 more ballots cast than registered voters in the Governor’s race, then showed the total ballots cast falling by 2,059,288 to 3,302,632. Shogren Decl., Exh. E: Borrelli Decl., ¶¶ 7-10.</p> <p>Versus:</p> <p>Electronic tallies recorded and electronically reported in real time did not show thousands of votes being flipped or moved around between candidates before, during or</p>

	<p>after November 3, 2020. Shogren Decl., Exh. I: Wise Depo, p. 98, ll. 3-8.</p>
<p>Causes of Action X-XII: Did Director Wise maintain a record of County elector party preference in violation of RCW 29A.08.166?</p>	<p>King County Elections maintains a record of elector party preference for a period of time. Shogren Decl., Exh. I: Wise Depo., p. 74, ll. 8-10; Shogren Decl., Exh. F (sample tracking from Benton County).</p> <p>For presidential primaries, King County tracks party preference as the ballots are coming in. Shogren Decl., Exh. I: Wise Depo., p. 75, ll. 6 – 25.</p> <p>Versus:</p> <p>Defendant Wise denies paragraph 36 of the Verified Complaint. Shogren Decl., Exh. A, p. 8 ¶ 36; Exh. B, p. 7, ¶ 36.</p>
<p>Causes of Action XIII-XV: Did Director Wise allow and/or facilitate loosely connected zip ties on ballot collection and/or storage boxes?</p>	<p>Video evidence exists of King County elections personnel exhibiting loose zip ties on plastic ballot transfer containers sufficient for removal or addition of ballots. Shogren Decl., ¶12.</p> <p>Versus:</p> <p>Director Wise was not privy to the loose zip ties until alerted by an election integrity group; there has to be a certain amount of looseness. Shogren Decl., Exh. I, p. 49, l. 18 – p. 52, l. 4.</p>

1 **IX. CONCLUSION**

2 This Court has an obligation to step in to assist the public in ensuring their election officials
3 are conducting free and equal elections as guaranteed by the Washington State Constitution. WA
4 Const. Art. I, §19; RCW 29A.68.013(1), (2). The Court should decline the invitation by King County
5 to avoid making what are obviously difficult decisions that have collateral political impact.

6 Genuine issues of material fact prevent granting King County’s motion. The legal arguments for
7 dismissal contradict the plain language of the relevant statutes, the Verified Complaint, and the testi-
8 mony of Director Wise.
9

10 I certify that this pleading contains 3,146 words in compliance with LCR 7(b)(5)(B)(vi).

11 Respectfully submitted,

12
13 VIRGINIA P. SHOGREN, P.C.

14 

15 Dated: May 22, 2023

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24
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26
27

CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2023, I electronically filed the following documents 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:

PLAINTIFF WASHINGTON ELECTION INTEGRITY COALITION UNITED’S OPPOSITION TO DEFENDANTS/COUNTERCLAIMANTS JULIE WISE AND KING COUNTY’S MOTION FOR SUMMARY JUDGMENT

DECLARATION OF VIRGINIA P. SHOGREN IN SUPPORT OF PLAINTIFF WASHINGTON ELECTION COALITION UNITED’S OPPOSITION TO DEFENDANTS/COUNTERCLAIMANTS JULIE WISE AND KING COUNTY’S MOTION FOR SUMMARY JUDGMENT

JOINDER IN PLAINTIFF WASHINGTON ELECTION INTEGRITY COALITION UNITED’S OPPOSITION TO DEFENDANTS/ COUNTERCLAIMANTS JULIE WISE AND KING COUNTY’S MOTION FOR SUMMARY JUDGMENT

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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 22, 2023

s/ Virginia P. Shogren

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