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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

WASHINGTON ELECTION INTEGRITY)
COALITION UNITED, a Washington State)
Nonprofit Corporation; DOUG BASLER;)
HOWARD FERGUSON; DIANA BASS;)
TIMOFEY SAMOYLENKO; MARY)
HALLOWELL; SAMANTHA BUCARI;)
RONALD STEWART; LYDIA ZIBIN;)
CATHERIN DODSON,)

No. 21-2-12603-7 KNT

ORDER DENYING PLAINTIFF
WEICU'S MOTION TO SHOW CAUSE
RE PUBLIC RECORDS REQUEST

Plaintiffs,

v.

JULIE WISE, Directory of King County)
Elections; KING COUNTY, and DOES)
1-30, inclusive,)

Defendants,

and

WASHINGTON STATE DEMOCRATIC)
CENTRAL COMMITTEE,)

Intervenor-Defendant.

and

JULIE WISE, Directory of King County)
Elections; KING COUNTY,)

Counterclaimants,

1 v.)
2)
3 WASHINGTON ELECTION INTEGRITY)
COALITION UNITED, a Washington State)
Nonprofit Corporation,)
4 Counterclaim Defendant.)
5)

6 THIS MATTER came before this Court through Plaintiff WEICU's Motion To Show
7 Cause Re Public Records Request. Having considered:

- 8 1. Plaintiff WEICU's Motion To Show Cause Re Public Records Request;
- 9 2. Defendants' Response to Plaintiff WEICU's Motion To Show Cause Re Public
10 Records Request;
- 11 3. Declaration of Ann Summers in Support of Defendants' Motion for Summary
12 Judgment, and exhibits;
- 13 4. Declaration of Devon Lang in Support of Defendants' Motion for Summary Judgment,
14 and exhibits;
- 15 5. Second Declaration of Ann Summers in Support of Defendants' Motion for Summary
16 Judgment;
- 17 6. Plaintiff WEICU's Reply in Support of Motion to Show Cause Re Public Records
18 Request;
- 19 7. Reply Declaration of Virginia P. Shogren In Support of Motion to Show Cause Re
20 Public Records Request, and exhibits; and the previous filings in this matter; and
21 8. The argument of counsel for Plaintiff, Defendants, and Intervenor-Defendant on June
22 2, 2023.

1 THIS COURT FINDS as follows:

2 The issues presented in this matter are of fundamental importance. The Nineteenth
3 Amendment was enacted on June 4, 1919, legally guaranteeing women the right to vote after
4 decades of struggle to secure that right. The Fifteenth Amendment was enacted on February 3,
5 1870, legally guaranteeing the right to vote regardless of race, color or previous condition of
6 servitude, also after years of bitter struggle to secure that right. The concept that each qualified
7 person should have their right to vote protected and their votes properly considered is fundamental
8 to American democracy.

9 Plaintiff WEICU requests relief pursuant to RCW 42.56.550(1), which provides for judicial
10 review of agency actions denying inspection of public records. Plaintiff WEICU requests an order
11 requiring Defendants to “permit the inspection, copying, testing and/or photography of certain
12 categories of public records requested by WEICU, namely original ballots, ballot images, spoiled
13 ballots, and those ballots returned as undeliverable concerning the November 3, 2020 general
14 election.”

15 It is undisputed that the records requested fall within the definition of public records
16 pursuant to RCW 42.56.010(3) and (4). The burden is on the agency to establish that its refusal to
17 permit public inspection of these public records is in accordance with a statute that exempts or
18 prohibits disclosure. RCW 42.56.070(1) provides that public inspection and copying must be
19 allowed “unless the record falls within the specific exemptions of section (8) of this section, this
20 chapter, or other statutes which exempts or prohibits disclosure of specific information or records.”

21 RCW 29A.60.110 requires that all ballots at a ballot-counting center must be sealed in
22 containers immediately after tabulation and be retained for at least 60 days or according to federal
23 law, whichever is longer. The sealed containers may only be opened by the canvassing board “as

1 part of the canvass, to conduct recounts, to conduct a random check under RCW 29A.60.170, to
2 conduct an audit under RCW 29A.60.185, or by order of the superior court in a contest or election
3 dispute.” RCW 29A.60.110(2). This Court finds that none of the contingencies outlined by the
4 legislature in that statute for opening the sealed containers of ballots are present in this case. In
5 addition, the provision of WAC 434-25-110 amplify the processes set forth in RCW 29A.60.110
6 mandating secure storage of ballots. Similarly, RCW 29A.60.125 mandates the secure storage “at
7 all times” of original and duplicate damaged ballots.

8 Article 6, § 6 of the Washington State Constitution requires the legislature to “provide for
9 such method of voting as will secure to every elector absolute secrecy in preparing and depositing
10 his ballot.” In this Court’s opinion, the constitutional mandate for secrecy does not stop once the
11 voters deposit their ballots, and must be maintained after deposit.

12 The issue of whether ballots are exempted from public disclosure was addressed by the
13 Courts of Appeal in *White v. Clark County*, 188 Wn. App. 622, 627, 354 P.3d 38 (2015), *review*
14 *denied*, 185 Wn.2d 1009 (2016) (*White I*), *White v. Skagit County*, 188 Wn. App. 886, 890, 355 P.3d
15 1178 (2015), *review denied*, 185 Wn.2d 1009 (2016) (*White II*); *White v. Clark County*, 159 Wn. App.
16 929, 931, 401 P.3d 375, 378 (2017), *review denied*, 189 Wn.2d 1031 (2018). In those cases, the
17 appellate courts unanimously found that the statutory scheme and accompanying regulations for
18 controlling and securing both pre-tabulated and tabulated ballots and safeguarding ballot secrecy
19 taken as a whole, and in particular RCW 29A.60.110 requiring secure storage of ballots, exempts all
20 election ballots from disclosure as public records and thus qualifies as an “other statute” exemption
21 under the PRA. Based on the foregoing, this Court finds that the “original ballots, ballot images,
22 spoiled ballots and returned as undeliverable ballots” at issue in this motion are exempt from public
23 disclosure pursuant to *White v. Clark County*, 188 Wn. App. 622, 627, 354 P.3d 38 (2015), *review*

1 denied, 185 Wn.2d 1009 (2016) (*White I*), *White v. Skagit County*, 188 Wn. App. 886, 890, 355 P.3d
2 1178 (2015), review denied, 185 Wn.2d 1009 (2016) (*White II*); *White v. Clark County*, 199 Wn. App.
3 929, 931, 401 P.3d 375, 378 (2017), review denied, 189 Wn.2d 1031 (2018), state election laws and
4 regulations taken as a whole, and the Washington State Constitution. As such, Defendants have met
5 their burden pursuant to RCW 42.56.550(1) of showing that their refusal to permit public inspection
6 of these ballots is in accordance with a statute that exempts or prohibits disclosure.

7 The Court also notes that recently enacted SB 5459 inferentially supports the prior
8 legislative intent that ballots be exempt from public disclosure, although the Court does not find
9 that the new statute applies retroactively.

10 In the alternative, the Court finds that the PRA cause of action set forth in the verified
11 complaint filed in this case failed to comply with CR 11. A complaint filed by a corporate body
12 must bear the signature of a licensed attorney. In this matter, the verified complaint was not signed
13 by an attorney.

14 It is hereby ORDERED that Plaintiff WEICU's Motion to Show Cause re Public Records
15 Request IS DENIED. It is also hereby ORDERED that Defendants' motion to strike the PRA
16 cause of action in the verified complaint pursuant to CR 11 is GRANTED.

17 DATED this 15th day of June, 2023.

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The Honorable Leroy McCullough

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ORDER DENYING PLAINTIFF WEICU'S
MOTION TO SHOW CAUSE RE PUBLIC
RECORDS REQUEST - 5

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