

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, )

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,

v.

No. 21-2-12603-7 KNT

ORDER DENYING PLAINTIFF  
WEICU'S MOTION FOR  
DECLARATORY JUDGMENT ON THE  
MEANING AND APPLICATION OF  
RCW 29A.08.161

ORDER DENYING PLAINTIFF WEICU'S  
MOTION FOR DECLARATORY JUDGMENT ON THE  
MEANING AND APPLICATION OF RCW 29A.08.161 - 1

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

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6 THIS MATTER came before this Court through Plaintiff WEICU’s Motion for Declaratory  
7 Judgment on the Meaning and Application of RCW 29A.08.161. Having considered:

- 8 1. Plaintiff WEICU’s Motion for Declaratory Judgment on the Meaning and Application  
9 of RCW 29A.08.161;
- 10 2. Defendants’ Response to Plaintiff WEICU’s Motion for Declaratory Judgment on the  
11 Meaning and Application of RCW 29A.08.161;
- 12 3. Declaration of Ann Summers in Support of Defendants’ Motion for Summary  
13 Judgment, and exhibits;
- 14 4. Declaration of Devon Lang in Support of Defendants’ Motion for Summary Judgment,  
15 and exhibits;
- 16 5. Second Declaration of Ann Summers in Support of Defendants’ Motion for Summary  
17 Judgment, and exhibits;
- 18 6. Plaintiff WEICU’s Reply Brief in Support Motion for Declaratory Judgment on the  
19 Meaning and Application of RCW 29A.08.161 to the Instant Action;
- 20 7. Reply Declaration of Virginia P. Shogren in Support Motion for Declaratory Judgment  
21 on the Meaning and Application of RCW 29A.08.161 to the Instant Action, and  
22 exhibits; and the previous filings in this matter; and
- 23 8. The argument of counsel for Plaintiff, Defendants, and Intervenor-Defendant on June  
2, 2023.

1  
2 THIS COURT FINDS as follows:

3 Plaintiff WEICU requests declaratory judgment pursuant to RCW 7.24.010 and .020.  
4 Plaintiff WEICU requests that this Court declare that “tabulated Washington State ballots are  
5 anonymous public records under RCW 29A.08.161.” RCW 29A.08.161 provides that “No record  
6 may be created or maintained by a state or local governmental agency or a political organization  
7 that identifies a voter with the information marked on the voter's ballot, except the declarations  
8 made under RCW 29A.56.050(2).”

9 RCW 7.24.060 provides that “The court may refuse to render and enter a declaratory  
10 judgment or decree where such judgment or decree, if rendered or entered, would not terminate  
11 the uncertainty of controversy giving rise to the proceedings.”

12 The controversy giving rise to this proceeding is Plaintiff WEICU’s claim that Defendants  
13 violated the Public Records Act by refusing inspection and copying of ballots from the November  
14 3, 2020, general election. This Court finds that RCW 29A.60.110 requires that all ballots at a  
15 ballot-counting center must be sealed in containers immediately after tabulation and be retained  
16 for at least 60 days or according to federal law, whichever is longer. The sealed containers may  
17 only be opened by the canvassing board “as part of the canvass, to conduct recounts, to conduct a  
18 random check under RCW 29A.60.170, to conduct an audit under RCW 29A.60.185, or by order  
19 of the superior court in a contest or election dispute.” RCW 29A.60.110(2). This Court finds that  
20 none of the contingencies outlined by the legislature in that statute for opening the sealed  
21 containers of ballots ~~are~~<sup>is</sup> present in this case. In addition, the provisions<sup>LA</sup> of WAC 434-25-110  
22 amplify the processes set forth in RCW 29A.60.110 mandating secure storage of ballots.  
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ORDER DENYING PLAINTIFF WEICU’S  
MOTION FOR DECLARATORY JUDGMENT ON THE  
MEANING AND APPLICATION OF RCW 29A.08.161 - 3

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1 Similarly, RCW 29A.60.125 mandates the secure storage “at all times” of original and duplicate  
2 damaged ballots.

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

7 The issue of whether ballots are exempted from public disclosure was addressed by the  
8 Courts of Appeal in *White v. Clark County*, 188 Wn. App. 622, 627, 354 P.3d 38 (2015), *review*  
9 *denied*, 185 Wn.2d 1009 (2016) (*White I*), *White v. Skagit County*, 188 Wn. App. 886, 890, 355  
10 P.3d 1178 (2015), *review denied*, 185 Wn.2d 1009 (2016) (*White II*); *White v. Clark County*, 199  
11 Wn. App. 929, 931, 401 P.3d 375, 378 (2017), *review denied*, 189 Wn.2d 1031 (2018). In those  
12 cases, the appellate courts unanimously found that the statutory scheme and accompanying  
13 regulations for controlling and securing both pre-tabulated and tabulated ballots and safeguarding  
14 ballot secrecy taken as a whole, and in particular RCW 29A.60.110 requiring secure storage of  
15 ballots, exempts all election ballots from disclosure as public records and thus qualifies as an “other  
16 statute” exemption under the PRA. Based on the foregoing, this Court finds that the “original  
17 ballots, ballot images, spoiled ballots and returned as undeliverable ballots” at issue in this motion  
18 are exempt from public disclosure pursuant to *White v. Clark County*, 188 Wn. App. 622, 627, 354  
19 P.3d 38 (2015), *review denied*, 185 Wn.2d 1009 (2016) (*White I*), *White v. Skagit County*, 188 Wn.  
20 App. 886, 890, 355 P.3d 1178 (2015), *review denied*, 185 Wn.2d 1009 (2016) (*White II*); *White v.*  
21 *Clark County*, 199 Wn. App. 929, 931, 401 P.3d 375, 378 (2017), *review denied*, 189 Wn.2d 1031  
22 (2018), state election laws and regulations taken as a whole, and the Washington State  
23 Constitution.

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

4 Based on the above findings, the Court finds that pursuant to RCW 7.24.060 a declaratory  
5 judgment as to the meaning and application of RCW 29A.08.161 would not terminate the  
6 uncertainty of controversy giving rise to this proceeding. The Court therefore exercises its  
7 discretion to deny the request for declaratory judgment.

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

12 It is hereby ORDERED that Plaintiff WEICU's Motion for Declaratory Judgment on the  
13 Meaning and Application of RCW 29A.08.161 to the Instant Action IS DENIED. It is also hereby  
14 ORDERED that Defendants' motion to strike the PRA cause of action in the verified complaint  
15 pursuant to CR 11 is GRANTED.

16 DATED this 15<sup>th</sup> day of June, 2023.

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19 The Honorable Leroy McCullough

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1 Presented by:

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