

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 GRANTING
DEFENDANTS/COUNTERCLAIMANTS
JULIE WISE AND KING COUNTY'S
MOTION FOR SUMMARY JUDGMENT

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.

ORDER GRANTING
DEFENDANTS/COUNTERCLAIMANTS JULIE
WISE AND KING COUNTY'S MOTION FOR
SUMMARY JUDGMENT - 1

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

5 THIS MATTER came before this Court through Defendants/Counterclaimant Julie Wise
6 and King County's Motion for Summary Judgment pursuant to CR 56. Having considered:

- 7 1. Defendants/Counterclaimants Julie Wise and King County's Motion for Summary
8 Judgment;
- 9 2. Declaration of Ann Summers, with exhibits;
- 10 3. Declaration of Devon Lang, with exhibits;
- 11 4. Plaintiff WEICU's Opposition to Defendants/Counterclaimants Julie Wise and King
12 County's Motion for Summary Judgment;
- 13 5. Declaration of Virginia Shogren in Support of Plaintiff WEICU's Opposition to
14 Defendants/Counterclaimants Julie Wise and King County's Motion for Summary
15 Judgment, with exhibits (excluding portions struck herein);
- 16 6. Reply in Support of Defendants/Counterclaimants Julie Wise and King County's
17 Motion for Summary Judgment;
- 18 7. Second Declaration of Ann Summers in Support of Defendants' Motion for Summary
19 Judgment, with exhibits;
- 20 8. Third Declaration of Ann Summers in Support of Defendants' Motion for Summary
21 Judgment; and

22 The argument of counsel for Plaintiff, Defendants, and Intervenor-Defendant on June 2,
23 2023.

ORDER GRANTING
DEFENDANTS/COUNTERCLAIMANTS JULIE
WISE AND KING COUNTY'S MOTION FOR
SUMMARY JUDGMENT - 2

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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 Defendants Julie Wise and King County request summary judgment pursuant to CR 56 in
10 favor of defendants as to all of the causes of action presented in the verified complaint. Pursuant
11 to CR 56(c) summary judgment may be granted if there are no genuine issues of material fact and
12 the moving party is entitled to a judgment as a matter of law.

13 As to the causes of action brought by Plaintiffs Basler and Samoilenko, the Court notes
14 that no responsive pleadings or evidence was presented by these plaintiffs in response to
15 Defendants' Motion for Summary Judgment. CR 56(e), provides, in relevant part, "When a
16 motion for summary judgment is made and supported as provided in this rule, an adverse party
17 may not upon the mere allegations or denials of a pleading, but a response, by affidavits or as
18 otherwise provide in this rule, must set forth specific facts showing that there is genuine issue for
19 trial." The Court finds that on this basis alone, summary judgment for Defendants on the causes
20 of action brought by Plaintiffs Basler and Samoilenko is warranted.

21 In addition, the Court finds that the election-related causes of action brought by Plaintiffs
22 Basler and Samoilenko are procedurally barred by RCW 29A.68.013. Those causes of action
23 constitute election contests and are governed by RCW 29A.68.013. They are not supported by

ORDER GRANTING
DEFENDANTS/COUNTERCLAIMANTS JULIE
WISE AND KING COUNTY'S MOTION FOR
SUMMARY JUDGMENT - 3

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1 affidavits nor were they filed within 10 days of certification of the election, as required by that
2 statute.

3 As to Plaintiff WEICU's sole Public Records Act cause of action, it is undisputed that on
4 August 30, 2021, WEICU requested that King County Elections disclose "any and all documents
5 of any format in your possession, custody or control comprising: original ballots, ballot images,
6 spoiled ballots, adjudication records, ballot envelopes and returned ballots for the November 3,
7 2020 General Election." It is undisputed that King County Elections provided the requested
8 adjudication records, and offered to provide redacted copies of ballot envelopes or an opportunity
9 for WEICU to physically inspect the ballot envelopes. In response to Defendants' Motion for
10 Summary Judgment, Plaintiff WEICU argues only that the Public Records Act was violated by
11 Defendants' refusal to disclose ballots and ballot images.

12 In regard to ballots and ballot images, it is undisputed that they fall within the definition of
13 public records pursuant to RCW 42.56.010(3) and (4). RCW 42.56.070(1) provides that public
14 inspection and copying must be allowed "unless the record falls within the specific exemptions of
15 section (8) of this section, this chapter, or other statutes which exempts or prohibits disclosure of
16 specific information or records."

17 RCW 29A.60.110 requires that all ballots at a ballot-counting center must be sealed in
18 containers immediately after tabulation and be retained for at least 60 days or according to federal
19 law, whichever is longer. The sealed containers may only be opened by the canvassing board "as
20 part of the canvass, to conduct recounts, to conduct a random check under RCW 29A.60.170, to
21 conduct an audit under RCW 29A.60.185, or by order of the superior court in a contest or election
22 dispute." RCW 29A.60.110(2). This Court finds that none of the contingencies outlined by the
23 legislature in that statute for opening the sealed containers of ballots ^{is} ~~are~~ present in this case. In

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DEFENDANTS/COUNTERCLAIMANTS JULIE
WISE AND KING COUNTY'S MOTION FOR
SUMMARY JUDGMENT - 4

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1 addition, the provision^{Lin} of WAC 434-25-110 amplifies^{Lin} the processes set forth in RCW 29A.60.110
2 mandating secure storage of ballots. Similarly, RCW 29A.60.125 mandates the secure storage “at
3 all times” of original and duplicate damaged ballots.

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

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

ORDER GRANTING
DEFENDANTS/COUNTERCLAIMANTS JULIE
WISE AND KING COUNTY’S MOTION FOR
SUMMARY JUDGMENT - 5

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1 Washington State Constitution. As such, Defendants are entitled to judgment as a matter of law ^{and not} ~~that~~
2 the ballots and ballots images are exempt from public disclosure and inspection and King County
3 Defendants have not violated the Public Records Act.

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

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

11 In support of its opposition to summary judgment, Plaintiff WEICU has offered an
12 anonymous, unsigned declaration: Exhibit D to Declaration of Virginia Shogren in Support of
13 Plaintiff WEICU's Opposition to Defendants/Counterclaimants Julie Wise and King County's
14 Motion for Summary Judgment. The declaration fails to demonstrate that the declarant is
15 competent to testify to matters within their personal knowledge that are relevant to a genuine issue
16 of material fact. The Court grants Defendants' motion to strike Exhibit D.

17 In regard to Defendants' Counterclaims seeking declaratory and injunctive relief, the Court
18 finds that the question of whether ballots are subject to public disclosure presents a justiciable
19 controversy that is actual, present, and existing, between parties having genuine and opposing
20 interests that are direct and substantial, and a judicial determination will be final and conclusive as
21 required by the Uniform Declaratory Judgments Act. The Court finds as a matter of law ballots
22 are exempt from public disclosure. The Court finds that injunctive relief is unnecessary.

23
ORDER GRANTING
DEFENDANTS/COUNTERCLAIMANTS JULIE
WISE AND KING COUNTY'S MOTION FOR
SUMMARY JUDGMENT - 6

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1 It is hereby ORDERED that Defendants' Motion for Summary Judgment is GRANTED in
2 its entirety. All of the causes of action in the verified complaint are hereby DISMISSED.

3 It is hereby ORDERED that Defendants' motion to strike the PRA cause of action in the
4 verified complaint pursuant to CR 11 is GRANTED.

5 It is hereby ORDERED that Defendants' request for declaratory relief pursuant to RCW
6 7.24.010 and .020 is GRANTED. This Court DECLARES that Director Wise and King County
7 cannot as a matter of law disclose original, spoiled or returned ballots or images of those ballots
8 to the public and cannot provide voter signatures on ballot envelopes for copying.

9 DATED this 15th day of June, 2023.

10
11 
12 The Honorable Leroy McCullough

13 Presented by:

14 LEESA MANION (she/her)
15 King County Prosecuting Attorney

16 By: s/Ann M. Summers
17 ANN M. SUMMERS, WSBA #21509
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ORDER GRANTING
DEFENDANTS/COUNTERCLAIMANTS JULIE
WISE AND KING COUNTY'S MOTION FOR
SUMMARY JUDGMENT - 7

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