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SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

Washington Election Integrity Coalition
United, et. al,

Plaintiffs,

v.

Julie Wise, et al.,

Defendants,

and

Washington State Democratic Central
Committee,

Intervenor Defendant;

Julie Wise, King County,

Counter-claimants,

v.

Washington Election Integrity Coalition
United,

Counterclaim Defendant.

Case No. 21-2-12603-7 KNT

**NOTICE OF APPEAL TO THE
WASHINGTON SUPREME COURT**

Pursuant to RAP 4.2(b), Plaintiff Washington Election Integrity Coalition United (“WEiCU”) seeks by this notice direct review by the Washington Supreme Court of the following King County Superior Court decisions, including all findings and rulings contained within the following orders:

- 1 1. Order Granting Washington State Democratic Central Committee’s Renewed Motion to
2 Intervene dated May 12, 2023, Attachment A;
- 3 2. Order Granting Defendants/Counterclaimants Julie Wise and King County’s Motion for
4 Summary Judgment dated June 15, 2023, Attachment B;
- 5 3. Order Denying Plaintiff WEICU’s Motion to Show Cause Re Public Records Request dat-
6 ed June 15, 2023, Attachment C; and,
- 7
8 4. Order Denying Plaintiff WEICU’s Motion for Declaratory Judgment on the Meaning and
9 Application of RCW 29A.08.161 dated June 15, 2023, Attachment D.

10 Copies of the above-referenced Orders are attached to this Notice and incorporated herein by
11 this reference.

12 A Statement of Grounds for Direct Review in support of this Notice of Appeal will be timely
13 filed pursuant to RAP 4.2(b).

14 Counsel for Washington Election Integrity Coalition United:

15
16 Virginia P. Shogren
17 VIRGINIA P. SHOGREN, P.C.
18 961 W. Oak Court
19 Sequim, WA 98382
20 Email: vshogren@gmail.com

21 Counsel for Julie Wise and King County:

22 Ann M. Summers
23 David J.W. Hackett
24 Mari Isaacson
25 Deputy Prosecuting Attorneys
26 KING COUNTY
27 701 5th Avenue, Suite 600
28 Seattle, WA 98104
Email: ann.summers@kingcounty.gov
Email: david.hackett@kingcounty.gov
Email: mari.isaacson@kingcounty.gov

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

Counsel for Washington State Democratic Central Committee:

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Email: HHyatt@perkinscoie.com

Doug Basler, Pro Se Plaintiff
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Kent, WA 98030
Email: doug@eztvspots.com

Timofey Samoylenko, Pro Se Plaintiff
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Auburn, WA 98002
Email: freshtrend13@gmail.com

Respectfully submitted,

VIRGINIA P. SHOGREN, P.C.



By: Virginia P. Shogren
WSBA No. 33939
961 W. Oak Court
Sequim, WA 98382
360-461-5551
vshogren@gmail.com
Attorney for Washington Election Integrity Coa-
lition United

Dated: July 11, 2023

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

1 CERTIFICATE OF SERVICE

2 I hereby certify that on July 11, 2023, I electronically filed the following documents with the
3 Clerk of the Court using the King County Superior Court E-Filing System and caused a copy to be
4 served upon the parties listed below via the method indicated:

5 NOTICE OF APPEAL TO THE WASHINGTON SUPREME COURT

6 Counsel for Defendants/Cross-Complainants Julie Wise, King County:

7 Ann M. Summers

8 Via email: ann.summers@kingcounty.gov

9 David J.W. Hackett

10 Via email: david.hackett@kingcounty.gov

11 Mari Isaacson

12 Via email: mari.isaacson@kingcounty.gov

13 Counsel for Intervenor Defendant Washington State Democratic Central Committee:

14 Kevin Hamilton

15 Via email: KHamilton@perkinscoie.com

16 Reina Almon-Griffin

17 Via email: RAlmon-Griffin@perkinscoie.com

18 Amanda Beane

19 Via email: ABeane@perkinscoie.com

20 Heath Hyatt

21 Via email: HHyatt@perkinscoie.com

22 The foregoing document was also served via email provided by the following *pro se* plaintiffs:

23 Doug Basler

24 Via email: doug@eztvspots.com

25 Timofey Samoylenko

26 Via email: freshtrend13@gmail.com

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

Dated: July 11, 2023

s/ Virginia P. Shogren

Virginia P. Shogren

961 W. Oak Court

Sequim, WA 98382

ATTACHMENT A

THE HONORABLE LEROY MCCULLOUGH

FILED
KING COUNTY, WASHINGTON

MAY 12 2023

SUPERIOR COURT CLERK
BY LaTanya Smith
DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON
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; CATHERINE DODSON,

Plaintiffs,

v.

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

Defendants,

and

WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE,

Proposed Intervenor
Defendant.

No. 21-2-12603-7 KNT

~~PROPOSED~~ ORDER GRANTING
WASHINGTON STATE
DEMOCRATIC CENTRAL
COMMITTEE'S RENEWED
MOTION TO INTERVENE

~~PROPOSED~~ ORDER GRANTING WASHINGTON
STATE DEMOCRATIC CENTRAL COMMITTEE'S
RENEWED MOTION TO INTERVENE - 1

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

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1 Before the Court is Proposed Intervenor Defendant Washington State Democratic
2 Central Committee's ("WSDCC") Renewed Motion to Intervene. Having reviewed the papers
3 filed in support of and in opposition to (if any) this Motion, *having heard oral argument from party participants this date*
4 and being fully advised, the Court
5 finds that WSDCC has satisfied the elements of intervention as of right and the elements of
6 permissive intervention. Accordingly, WSDCC is entitled to intervene in this case, and the
7 Court GRANTS WSDCC's Motion and instructs WSDCC to file a response to the Complaint.
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15 **IT IS SO ORDERED.**

16 Dated: *12 May 2023*
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THE HONORABLE LEROY MCCOLLOUGH

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Prepared by:

s/ Kevin J. Hamilton

Kevin J. Hamilton, WSBA No. 15648
KHamilton@perkinscoie.com
Amanda J. Beane, WSBA No. 33070
ABeane@perkinscoie.com
Reina A. Almon-Griffin, WSBA No. 54651
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Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Telephone 206.359.8000
Facsimile 206.359.9000

Date: March 30, 2023

ATTACHMENT B

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

Leesa Manion (she/her)
Prosecuting Attorney
CIVIL DIVISION, Litigation Section
701 Fifth Avenue, Suite 600
Seattle, WA 98104
(206) 477-1120 / Fax (206) 296-8819

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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Prosecuting Attorney
CIVIL DIVISION, Litigation Section
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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

ORDER GRANTING
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} ~~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

Leesa Manion (she/her)
Prosecuting Attorney
CIVIL DIVISION, Litigation Section
701 Fifth Avenue, Suite 600
Seattle, WA 98104
(206) 477-1120 / Fax (206) 296-8819

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
18 MARI ISAACSON, WSBA #42945
19 Senior Deputy Prosecuting Attorneys

20 DAVID J. HACKETT, WSBA #21236
21 Special Deputy Prosecuting Attorney

22 Attorneys for Defendants
23 701 5th Avenue, Suite 600
Seattle, WA 98101
Phone: (206) 477-1120/Fax: (206) 296-8819

ORDER GRANTING
DEFENDANTS/COUNTERCLAIMANTS JULIE
WISE AND KING COUNTY'S MOTION FOR
SUMMARY JUDGMENT - 7

Leesa Manion (she/her)
Prosecuting Attorney
CIVIL DIVISION, Litigation Section
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ATTACHMENT C

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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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20 
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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ATTACHMENT D

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

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

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

- 7 1. Plaintiff WEICU’s Motion for Declaratory Judgment on the Meaning and Application
8 of RCW 29A.08.161;
- 9 2. Defendants’ Response to Plaintiff WEICU’s Motion for Declaratory Judgment on the
10 Meaning and Application of RCW 29A.08.161;
- 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, and exhibits;
- 17 6. Plaintiff WEICU’s Reply Brief in Support Motion for Declaratory Judgment on the
18 Meaning and Application of RCW 29A.08.161 to the Instant Action;
- 19 7. Reply Declaration of Virginia P. Shogren in Support Motion for Declaratory Judgment
20 on the Meaning and Application of RCW 29A.08.161 to the Instant Action, and
21 exhibits; and the previous filings in this matter; and
- 22 8. The argument of counsel for Plaintiff, Defendants, and Intervenor-Defendant on June
23 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~~^{is} present in this case. In addition, the provisions^{LA} of WAC 434-25-110
22 amplify the processes set forth in RCW 29A.60.110 mandating secure storage of ballots.
23

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 15th day of June, 2023.

17
18 
19 The Honorable Leroy McCullough

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21 //
22 //
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1 Presented by:

2 LEESA MANION (she/her)
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