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NO. 102174-7

SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON ELECTION INTEGRITY COALITION
UNITED, DOUG BASLER AND TIMOFEY SAMOYLENKO,

Appellants,

v.

JULIE WISE, King County Director of Elections, AND KING
COUNTY,

Respondents,

WASHINGTON STATE DEMOCRATIC CENTRAL
COMMITTEE,

Respondent.

**RESPONDENT WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE'S ANSWER
TO STATEMENT OF GROUNDS FOR
DIRECT REVIEW**

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A. IDENTITY OF RESPONDING PARTY.

Respondent Washington State Democratic Central Committee (“WSDCC”) intervened in the case on May 12, 2023, and seeks the relief designated in part B.

B. STATEMENT OF RELIEF SOUGHT.

WSDCC respectfully requests that this Court find that there are no grounds for direct review under RAP 4.2(a).¹

C. NATURE OF THE CASE AND DECISION

“Unless an election is clearly invalid, when the people have spoken, their verdict should not be disturbed by the courts.” *Dumas v. Gagner*, 137 Wn. 2d 268, 283, 971 P.2d 17 (1999) (citations omitted). The people of Washington have spoken. Four million Washingtonians voted in the November 2020 General Election. That election has been audited pursuant to state law, certified by county election officials, and certified by Washington’s Secretary of State. Certificates of Election have been issued to all of the prevailing candidates, all of whom have been sworn in and have held office since January 8, 2021.

Nearly a year after the election, the Washington Election Integrity Coalition United (“WEiCU”) and several individual pro se voters filed this election contest raising fantastical allegations,

¹ In its Notice of Appeal, Appellants seek direct review of the May 12, 2023, Order Granting WSDCC’s Renewed Motion to Intervene. Appellants do not even mention this Order in its Statement of Grounds. The Court should deny direct review of this Order on that basis alone.

seeking to call into question the legitimacy of Washington’s November 2020 Election and question the integrity of the King County (“the County”) Director of Elections, Julie Wise, and the County’s election officials. Appellants asked the Superior Court to declare that the Respondents broke Washington law and violated the Washington and U.S. Constitution and to bar the Respondents from doing so moving forward. Appellants also sought an extra-legal license to “audit” the County’s election department and assert that they should be permitted to inspect sealed ballots from the 2020 election. But the Superior Court properly found that their claims failed as a matter of law and their extraordinary and sweeping relief was not justified.

At the outset, while Appellants claimed they did not wish to de-certify any election and even failed to challenge the election of a particular candidate, Appellants’ challenge was, at the bottom, an election contest (although a vague and patently insufficient one). Appellants’ election-related claims were dismissed on this basis alone because Appellants were far beyond the narrow ten-day statute of limitations applicable to such claims. A 3-4; *see* RCW 29A.68.011; RCW 29A.68.013.

This election contest was one in a long line of lawsuits promoting conspiracy theories of election and voter fraud that have been thoroughly debunked. Not one of those election contests was successful, ultimately resulting in at least 60

courtroom losses for the Trump campaign and other groups seeking his reelection or otherwise to challenge the outcome of the 2020 General Election.² Despite those 60 lawsuits, three ballot counts in Georgia,³ and a Republican-led audit in Arizona,⁴ the results of the November 2020 General Election never changed. President Joseph Biden was inaugurated on January 20, 2021, having received more than 81 million votes (more than any president in American history).⁵ This lawsuit was entirely unfounded and appeared to be little more than a coordinated political attack on the integrity of Washington elections.⁶

² William Cummings et al., *By the numbers: President Donald Trump's failed efforts to overturn the election*, USA NEWS TODAY (Jan. 6, 2021, 7:50 PM), <https://www.usatoday.com/indepth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-electionnumbers/4130307001/>.

³ Chandelis Duster, *Georgia reaffirms Biden's victory for 3rd time after recount, dealing major blow to Trump's attempt to overturn the results*, CNN (Dec. 7, 2020, 5:23 PM), <https://www.cnn.com/2020/12/07/politics/georgia-recount-recertification-biden/index.html>.

⁴ Jack Healy et al., *Republican Review of Arizona Vote Fails to Show Stolen Election*, N.Y. TIMES (Sept. 30, 2020), <https://www.nytimes.com/2021/09/24/us/arizona-election-review-trumpbiden.html>.

⁵ Jemima McEvoy, *Biden Wins More Votes Than Any Other Presidential Candidate In U.S. History*, FORBES (Nov. 4, 2020, 1:18 PM), <https://www.forbes.com/sites/jemimamcevoy/2020/11/04/biden-wins-more-votes-than-any-other-presidential-candidate-in-us-history/?sh=131798867c3a>.

⁶ This lawsuit is one of several virtually identical lawsuits filed across Washington State. Each lawsuit was filed by the “Washington Election Integrity Coalition United” and a county-

The Superior Court properly rejected Appellants' claims in their entirety. A 3-7. While Appellants are of course entitled to review of that decision, they plainly cannot meet the standard under RAP 4.2 for direct review to the Washington Supreme Court. WSDCC respectfully requests that the Court deny Appellants' bid for direct review.

D. FACTS RELEVANT TO STATEMENT OF GROUNDS FOR DIRECT REVIEW.

1. Appellants Challenge The 2020 Election.

Over four million Washingtonians cast their ballots in Washington's November 2020 General Election.⁷ That election was audited pursuant to state law and certified by county election officials. *See* RCW 29A.60.185. The Secretary of State certified the election results on December 3, 2020, declaring victory for numerous WSDCC candidates across the state. Certificates of Election have been issued to all of the prevailing

specific collection of pro se voters, apparently recruited for this purpose. *See* Associated Press, *Lawsuits claiming 2020 ballots were manipulated come to WA*, SEATTLE TIMES (Sept. 21, 2021, 10:36 AM), <https://www.seattletimes.com/seattle-news/politics/lawsuits-claiming-2020-ballots-were-manipulated-come-to-washington/>; Shari Phiel, *Lawsuits Filed in Three Washington Counties Claim Votes Were 'Flipped'*, THE CHRONICLE, <https://www.chronline.com/stories/lawsuits-filed-in-three-washington-counties-claim-votes-wereflipped,273108>.

⁷ *Elections and Voting*, SECRETARY OF STATE: KIM WYMAN, <https://results.vote.wa.gov/results/20201103/president-vice-president.html> (last visited Oct. 3, 2021).

candidates, *see* RCW 29A.52.370, all of whom have been sworn in and have held office since January 8, 2021.⁸

Nearly a *year* after the election, Appellants filed this election contest, asserting that widespread election fraud occurred during Washington’s November 2020 General Election.

Together, without explaining the factual basis for their claims, Appellants asserted that Respondents engaged in widespread “election fraud” by flipping, deleting, and adding votes; participating in “party preference”; identifying who voted some ballots, and creating a “record of the voters’ party preferences”; and leaving ballots unsecured.

Appellants further alleged that they attempted to serve Respondents with a public records request under Washington’s Public Record Act (“PRA”) so that they could inspect ballots from the 2020 election, but Respondents denied their request. A 41. Appellants challenged the Respondents’ actions under Washington’s election contest statutes, contended that Respondents violated the PRA, and alleged an assortment of federal and state constitutional claims. A 37.

⁸ Jasmyne Keimig, *The 2021 Legislative Session Kicks Off With Virtual Swearing-In Ceremonies*, THE STRANGER (Jan. 8, 2020), <https://www.thestranger.com/slog/2021/01/08/54577174/the-2021-legislative-session-kicks-off-with-virtual-swearing-in-ceremony>.

Despite their long-winded and unsupported accusations, Appellants sought three remedies. First, Appellants asked the Court to issue an order declaring that the County broke state law and violated the Washington and U.S. Constitutions and requested that the Court permanently enjoin the County from doing so moving forward. *Id.* Second, Appellants sought license to conduct a “full forensic audit” of the County’s election department “in coordination with Jovan Hutton Pulitzer.” *Id.* Third, Appellants requested that the Court order the County to unseal an unspecified number of ballots from the County so that they may “prove (or disprove)” their allegations. A 48. Appellants also asked that the Court award its costs. A 52. None of this was remotely supported by Washington (or federal law); indeed, it is—uniformly—barred by Washington (and federal) law. The Superior Court agreed.

2. The Superior Court Granted Respondents’ Motion For Summary Judgment As To All Claims.

Respondents filed a motion for summary judgment seeking dismissal of all claims and declaratory and injunctive relief. Resp. Supp A 28. WEiCU filed a “Motion for Declaratory Judgment on the Meaning and Application of RCW 29A.08.161 to the Instant Action” and a “Motion to Show Cause Re Public Records Request.” The motions were noted simultaneously.

In a detailed written ruling on June 15, 2023, after hearing arguments from Appellants, Respondents, and the WSDCC, the Honorable LeRoy McCullough granted Respondent’s motion for summary judgment in part, dismissing all claims and issuing declaratory relief that “Director Wise and King County cannot as a matter of law disclose original, spoiled or returned ballots or images of those ballots to the public and cannot provide voter signatures on ballot envelopes for copying.” A 7. The court denied King County’s request for injunctive relief. A 6. The court also denied WEiCU’s motions on multiple alternative legal bases. Resp. Supp A 153-65.

E. ARGUMENT

Appellants cannot meet the criteria set forth in RAP 4.2(a) for direct review of a Superior Court decision by this Court.

Appellants raise three grounds for direct review: 1) whether the Superior Court properly found the requested ballots exempt from disclosure under the PRA; 2) whether the Superior Court properly denied Respondents’ request for injunctive relief; and 3) whether the Superior Court properly dismissed Appellants’ election-related claims on summary judgment. There is no basis for direct review of any of these three grounds.⁹ The Court should deny Appellants’ request for direct review.

⁹ Indeed, with respect to Appellants’ second ground for dismissal, the Superior Court *denied* Respondents’ request for

1. Appellants’ PRA Claim Does Not Raise A Fundamental And Urgent Issue Of Broad Public Import That Requires Prompt Determination By This Court.

At the outset, Appellants’ inexcusable year-long delay in filing their lawsuit demonstrates that even in their own minds, neither their suit nor their appeal is an “urgent issue ... that requires prompt determination by This Court.” *See* RAP 4.2. Appellants’ action was based on events that occurred during and immediately after the November 2020 election. Appellants could have and should have raised their fantastical claims at that time. Indeed, state law mandates that these claims should have been raised within ten days of certification. RCW 29A.68.013. Appellants failed to raise them in time.

Appellants claim that the law regarding “examination of election records is murky.” Stmt. Of Grounds at 12. That could not be further from the truth. Appellants have brought at least *eight lawsuits* across Washington containing virtually identical claims. Appellants have lost *every single time*.¹⁰

injunctive relief, a ruling in Appellants’ favor. That ground for review is therefore easily dispensed with.

¹⁰ *Washington Election Integrity Coalition United et al. v. Anderson*, No. 21-2-07551-9 (Sept. 21, 2021); *Washington Election Integrity Coalition United et al. v. Hall*, No. 21-2-01641-34 (Sept. 21, 2021); *Washington Election Integrity Coalition United et al. v. Kimsey*, No. 21-2-01775-06 (Sept. 16, 2021); *Washington Election Integrity Coalition United et al. v. Fell*, No. 21-2-04302-31 (Sept. 16, 2021); *Washington Election Integrity Coalition United et al. v. Bradrick*, No. 21-2-00949-37 (Sept. 10, 2021); *Washington Election Integrity Coalition United et al. v. Beaton*, No. 21-2-50572-11 (Oct. 5, 2021);

Here, the Superior Court, relying on well-established and uncontradicted law, correctly determined that the ballots that Appellants sought were exempt from disclosure under the PRA.

A county may lawfully withhold production of records pursuant to the PRA if a specific exemption applies. *Sanders v. State*, 169 Wn.2d 827, 836, 240 P.3d 120 (2010). There are three sources of PRA exemptions. *White v. Clark County*, 188 Wn. App. 622, 630, 354 P.3d 38 (2015). First, the PRA itself contains enumerated exemptions. *Id.* (citing RCW 42.56.070(6), .210–.480). Second, the PRA states that public records can be withheld from production if they fall within any “other statute which exempts or prohibits disclosure of specific information or records.” *Id.* (citing RCW 42.56.070(1)). Third, the Washington Constitution may exempt certain records. *Id.* (citing *Freedom Found. v. Gregoire*, 178 Wn.2d 686, 695, 310 P.3d 1252 (2013)).

Appellants appear to argue that the Superior Court created or relied on an “implied exception” to the PRA. Not so.

Instead, the Superior Court properly determined that RCW 29A.60.110 and Article Six, Section Six of the Washington Constitution both exempts and prohibits the ballots sought from disclosure. A 5. RCW 29A.60.110 is the “other statute” under the second exemption to disclosure under the PRA. And, of

Washington Election Integrity Coalition United et al. v. Schumacher, No.21-2-00042-22 (Oct. 4, 2021).

course, Article 6, Section 6 of the Washington State Constitution provides the constitutional grounds authorized to exempt disclosure under the third exemption under the PRA. WSDCC addresses these in turn.

RCW 29A.60.110(1) requires county officials to seal all ballots in containers “immediately after tabulation.”

RCW 29A.60.110 only provides four narrow circumstances in which those ballots may be unsealed: (1) to conduct recounts; (2) to conduct a random check 48 hours after election day; (3) for the County Auditor to conduct a pre-certification audit; or (4) by order of a superior court in a contest or election dispute. RCW 29A.60.110(2); *see White*, 188 Wn. App. at 627 (holding RCW 29A.60.110 constituted “other statutes” exempting ballots from disclosure); *White v. Clark Cnty*, 199 Wn. App. 929, 937, 401 P.3d 375 (2017) (same).

All ballots from the 2020 election have been tabulated, the time for a recount has passed, and the results have been certified, so RCW 29A.60.110 squarely and unambiguously applies to the ballots at issue. For the same reasons, the first, second, and third narrow exceptions to sealing the ballots pursuant to RCW 29A.60.110 do not apply. Only the fourth scenario contemplated by the statute is relevant here. And, as the Superior Court found, the time for an election contest *has long passed*. *See* A 3-4.

The Superior Court properly dismissed Appellants' PRA claim based on the unambiguous language of RCW 29A.60.110.

The Superior Court *also properly held* that Article Six Section Six of the Washington Constitution provides an exemption for the ballots Appellants sought from public disclosure. The Washington Constitution includes a broad guarantee of ballot secrecy. Wash. Const. art. VI, § 6, states, "All elections shall be by ballot. The legislature shall provide for such method of voting as will secure to every elector absolute secrecy in preparing and depositing his ballot."

The Superior Court's conclusion aligns with the *White* cases. *White v. Clark County*, 188 Wn. App. 622, 630, 354 P.3d 38 (2015) ("*White v. Clark County I*"); *White v. Clark County*, 199 Wn. App. 929, 931, 401 P.3d 375 (2017) ("*White v. Clark County II*"); *White v. Skagit County*, 188 Wn. App. 886, 898, 355 P.3d 1178 (2015) ("*White v. Skagit County*").

As the Superior Court correctly noted:

In those cases, the appellate courts unanimously found that the statutory scheme and accompanying regulations for controlling and securing both pre-tabulated and tabulated ballots and safeguarding ballot secrecy taken as a whole, and in particular RCW 29A.60.110 requiring secure storage of ballots, exempts all election ballots from disclosure as public records and

thus qualifies as an ‘other statute’
exception under the PRA.

A 5.

In *White v. Clark County I* and *White v. Clark County II*, Division II held that RCW 29A.60.110, RCW 29A.40.110, and several Secretary of State regulations enacted pursuant to the statutory direction and authority of the legislature constituted “other statutes” exempting ballots from disclosure. *White v. Clark County I*, 188 Wn. App. at 627 (holding that pre-tabulated ballots are exempt from public disclosure); *White v. Clark County II*, 199 Wn. App. at 937 (holding that tabulated ballots are also exempt from public disclosure). Specifically, in *White v. Clark County II*, Division II held that “RCW 29A.60.110 includes “unambiguous language stating that the sealed containers may only be opened in four specific situations,” which was meant to prevent the disclosure of ballots. *See id.*

Division I reached the same conclusion in *White v. Skagit County*. In *White v. Skagit County*, Division I held that “Title 29A RCW” as a whole was an “other statute” exempting ballots from disclosure under the PRA. *White v. Skagit County*, 188 Wn. App. at 898 (holding that electronic or digital image files of ballots received, cast, voted, or otherwise used in the 2013 general election were exempt from public disclosure).

In short, the Superior Court properly concluded that ballots are exempt from disclosure under the PRA—as two sister divisions of this Court have previously held. *See White v. Clark County II*, 199 Wn. App. at 934 (A PRA requestor “is not entitled to disclosure of the requested [ballots] because ... both RCW 29A.60.110 and WAC 434-261-045 create an ‘other statute’ exemption that applies to election ballots even after the minimum 60-day retention period after tabulation.”); *White v. Skagit County*, 188 Wn. App. at 898 (denying PRA disclosure for electronic or digital image files of ballots used in the general election); *White v. Clark County I*, 188 Wn. App. at 627 (2015) (holding pre-tabulated ballots are exempt from PRA disclosure). Indeed, Appellants identify *no court* which has reached the opposite conclusion as the *White* cases, any circuit split, or any other reason why this Court should accept direct review.

The Superior Court properly rejected Appellants’ claim under the PRA, and there is no fundamental or urgent issue of broad public import for the Court to address. *See* RAP. 4.2(a).

2. Ms. Shogren Does Not Represent The Pro Se Appellants And Any Arguments Made Related To Their Claims Should Be Disregarded.

Ms. Shogren does not represent pro se Appellants Basler and Samoylenko. Basler and Samoylenko have not filed a statement of grounds for direct review. The arguments made in WEiCU’s statement pertaining to the frivolous claims of election

misfeasance brought only by Basler and Samoylenko are improper and should be disregarded by this Court.

Moreover, Appellants Basley and Samoylenko's attempt to "join" Appellant WEiCU's grounds is an attempt to skirt the Rules of Appellate Procedure and should be denied outright.

3. The Frivolous Claims Brought By The Pro Se Appellants, Unsupported By Any Competent Evidence, Do Not Raise Fundamental And Urgent Issues Of Broad Public Import That Require Prompt Determination By This Court.

In any event, the Superior Court properly determined "that the election-related causes of action brought by Appellants Basler and Samoylenko are procedurally barred by RCW 29A.68.013." Appellants' attacks on whether the Superior Court used the proper standard and procedure for a Motion for Summary Judgment are entirely irrelevant.

The time to file an election contest has long expired. Washington law permits a registered voter to contest an election only if an affidavit of an elector is filed *within ten days of certification*. RCW 29A.68.013 ("An affidavit of an elector under this subsection shall be filed with the appropriate court no later than *ten days* following the official certification of the primary or election ...") (emphasis added). If the ten-day deadline is ignored, the contest must be dismissed for untimeliness. *See Becker v. Cnty. of Pierce*, 126 Wn.2d 11, 21, 890 P.2d 1055 (1995) (dismissing an election contest as untimely

where plaintiff “filed her complaint more than a year after the date that the general election . . .”)

The Secretary of State certified the election results on December 3, 2020.¹¹ Appellants’ deadline to file an affidavit from an elector was, therefore, ten days after December 3—December 13, 2020. Appellants were 297 days too late. Appellants had an affirmative obligation to air their concerns before or immediately after the election to avoid precisely these belated could-have-should-have complaints.

The Superior Court’s ruling here renders Appellants’ third ground for review, that the Superior Court “struck” evidence, as irrelevant. Appellants also claim that the Court improperly granted summary judgment when, as Appellants claim, there was at least one dispute of material fact. Not so. The only material fact that mattered for the Court’s determination was that Appellants’ election-related claims are time-barred. That fact is not in dispute, and no other “facts” are relevant.

F. CONCLUSION.

Appellants’ request for direct review should be denied.

¹¹ *Elections and Voting*. The Court may take judicial notice of “public documents if the authenticity of those documents cannot be reasonably disputed.” *Jackson v. Quality Loan Serv. Corp.*, 186 Wn. App. 838, 844, 347 P.3d 487 (2015) (citing *Berge v. Gorton*, 88 Wn.2d 756, 763, 567 P.2d 187 (1977)). The cited website is the Secretary of State’s public website and is “not subject to reasonable dispute,” thus, the Court may take judicial notice of the December 3 certification date.

I certify that this document contains 2,798 words (4000 limit), excluding the parts of the document exempted from the word count by RAP 18.17.

//

DATED this 7th day of August, 2023.

RESPECTFULLY submitted,

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on August 7, 2023, I electronically filed the foregoing document with the Clerk of the Court using the Washington State Appellate Court's electronic filing system, which will send the same via email to the following parties:

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

DATED this 7th day of August, 2023, at Seattle, Washington.


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August 07, 2023 - 4:01 PM

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