No. 102174-7

SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON ELECTION INTEGRITY COALITION UNITED, a Washington State Nonprofit,

Plaintiff/Counterclaim Defendant/Appellant,

DOUG BASLER, TIMOFEY SAMOYLENKO,
Pro se Plaintiffs/Appellants.,
v.

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

Defendants/Counterclaimants/Respondents,

WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE,

Intervenor-Defendant/Respondent.

BRIEF OF APPELLANT

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I. INTRODUCTION

The trial court relied on an implied 'other statute' exemption, an idea that has been repeatedly ruled to be invalid by the Supreme Court. In so doing, the trial court dismissed a PRA action and completely prohibited the release of four categories of election-related records from King County's 2020 General Election. Initially, the trial court recognized the fundamental importance of the case,[1] but it then inexplicably abandoned its recognition and proceeded to prohibit any examination of the records. This directly contradicts the PRA standards.

The prohibition -- with zero findings that could support an injunction under any proper standard -- prevents the public from examining records that are essential to ensuring that elections are free and equal as guaranteed by our State

[1] VRP Vol. 3, p. 112, l. 16 – p. 113, l. 17.

Constitution in Article I, §19.

The trial court's foggy view of an 'other statute' exemption in order to dismiss the PRA action and thus bar examination of the requested records was clear error. It is directly contrary to very detailed decisions of the Supreme Court instructing the lower courts in the proper manner of processing PRA suits. The Supreme Court has held that RCW 42.56.540, the injunction provision in the PRA, applies to all requests to enjoin the release of public records. The trial court's failure to give any consideration to the public interest in transparent government operations degrades the goal of government accountability codified in the PRA.

The trial court's rulings should be reversed.

II. ASSIGNMENTS OF ERROR

A. Errors

Order Granting Motion for Summary Judgment

1. Did the trial court err by finding that original, spoiled or returned ballots and images of those ballots cannot

be examined as a matter of law? CP 1034, ll. 5-8.

2. Did the trial court err in summarily adjudicating a Public Records Act claim using a novel theory that a statutory scheme (and regulations) for secure storage of pre-tabulated and tabulated ballots "taken as a whole" justified denying access? CP 1031, ll. 17-23; CP 1032, l. 8- 1033, l. 3.

3. Did the trial court err in finding that the requirements of Article VI, §6 of the Washington State Constitution to secure absolute secrecy in preparing and depositing ballots continues past the depositing of the ballots by the voters? CP 1032, ll. 4-7.

4. Did the trial court err by granting summary judgment to King County on WEICU's PRA cause of action while simultaneously failing to apply the PRA's injunction provisions to defendants' counter-claim for injunctive relief? CP 1033, ll. 17-22.

5. Did the trial court err by finding defendants' counterclaim for injunctive relief moot in light of its finding

that any and all ballots are exempt from public disclosure as a matter of law? CP 1033, ll. 17-22.

6. Did the trial court err in finding that no responsive pleadings or evidence was presented in opposition to summary judgment from co-plaintiffs even though they both filed a joinder to the pleadings filed by WEICU? CP 1030, ll. 13-20.

7. Did the trial court err in striking the Declaration of Terpsehore Maras filed in opposition to summary judgment on grounds that the declarant was not competent to testify to matters within her personal knowledge that are relevant to genuine issues of material fact for Plaintiffs' claims IV through IX in the instant matter? CP 1033, ll. 11-16; CP 4-8.

8. Did the trial court err in striking a Public Records Act claim under Civil Rule 11 on grounds that the original complaint filed by a corporate body must bear the signature of a licensed attorney? CP 1033, ll. 7-10; CP 1034, ll. 3-4.

9. Did the trial court err by summarily adjudicating causes of action as constituting "election contests" subject to a

10 day limitations period despite that being a disputed fact? CP 1030, l. 21 – 1031, l. 2.

10. Did the trial court err in summarily adjudicating claims under RCW 29A.68.013(1) and/or (2) for being brought by way of a verified complaint? CP 1030, l. 21 – 1031, l. 1.

Order Denying Motion to Show Cause

11. Did the trial court err in denying show cause of a Public Records Act claim based on a statutory scheme and accompanying regulations for controlling and securing pre-tabulated and tabulated ballots and safeguarding ballot secrecy "taken as a whole"? CP 1038, l. 21 – 1039, l. 7; CP 1039, l. 12-1040, l. 6.

12. Did the trial court err in finding that the requirements of Article VI, §6 of the Washington State Constitution to secure absolute secrecy in preparing and depositing ballots does not stop once the voters deposit their ballots? CP 1039, ll. 8-11.

13. Did the trial court err in striking under Civil Rule

11 a Public Records Act claim on grounds that PRA suits can only be filed by licensed attorneys when the original request was made by a corporate entity? CP 1040, ll.10-13; ll. 15-16.

Order Denying Motion for Declaratory Judgment

14. Did the trial court err in denying Declaratory Judgment on the Meaning and Application of RCW 29A.08.161 to the Instant Action under RCW 29A.60.110? CP 1045, ll. 14 – 21.

15. Did the trial court err in denying Declaratory Judgment on the Meaning and Application of RCW 29A.08.161 to the Instant Action under Article VI, §6 of the Washington State Constitution? CP 1046, ll. 3-6.

16. Did the trial court err in denying Declaratory Judgment on the Meaning and Application of RCW 29A.08.161 to the Instant Action based on a statutory scheme and accompanying regulations for controlling and securing pre-tabulated and tabulated ballots and safeguarding ballot secrecy "taken as a whole"? CP 1046, ll. 7-23.

17. Did the trial court err in denying Declaratory Judgment on the Meaning and Application of RCW 29A.08.161 to the Instant Action on grounds that the motion would not terminate the uncertainty or controversy giving rise to this proceeding? CP 1047, ll. 4-7.

18. Did the trial court err in denying Declaratory Judgment on the Meaning and Application of RCW 29A.08.161 to the Instant Action by striking a Public Records Act claim under Civil Rule 11 on grounds that a complaint filed by a corporate body must bear the signature of a licensed attorney? CP 1047, ll. 8-11; ll. 13-15.

Order Denying Motion for Reconsideration

19. Did the trial court abuse its discretion by not reconsidering its order to strike a Public Records Act cause of action for a corporate party requestor represented by counsel for all purposes under Civil Rule 70.1? CP 1142-1144.

B. Issues Pertaining to Errors

1. Are public records in the form of statutorily anonymous original ballots, spoiled or returned ballots and images of those ballots subject to examination under the Public Records Act? Assignment of Error 1.

2. Can statutorily anonymous public records be held from disclosure by an agency asserting an implied exemption under the Public Records Act? Assignments of Error 2, 11, 16.

3. Does the Public Records Act permit any judicially-created exemptions? Assignments of Error 2, 11, 16.

4. Is an exemption under the Public Records Act equivalent in form and function to an injunctive prohibition under the Public Records Act? Assignments of Error 4, 5.

5. Is an agency seeking prohibition of examination under RCW 42.56.540 required to present evidence in support of its request? Assignments of Error 4, 5.

6. May a trial court ignore a statute rendering certain public records anonymous in order to create an inference on

summary judgment of a Public Records Act claim when that inference favors the moving party? Assignment of Error 1.

7. May a trial court ignore a joinder to create an inference on summary judgment in favor of the moving party? Assignment of Error 6.

8. May a trial court strike evidence in opposition to a motion for summary judgment in order to create an inference in favor of the moving party without specifying how the proferred evidence is either immaterial or inadmissible? Assignment of Error 7.

9. May a trial court render a defendant's counter-claim moot on a motion for summary judgment in order to create an inference in favor of the moving party? Assignments of Error 4, 5.

10. May a trial court strike a Public Records Act cause of action filed by a PRA requestor on grounds that the PRA

requestor subsequently retained counsel? Assignments of Error 8, 13, 18, 19.

11. Are causes of action that do not seek de-certification of any race or measure on a ballot subject to a 10 day limitations period? Assignment of Error 9.

12. Are verified election process claims brought under RCW 29A.68.013(1), and/or (2) procedurally barred by virtue of being asserted within a verified complaint? Assignment of Error 10.

13. Is it clear error to interpret Article VI, § 6 of the State Constitution when said provision is unambiguous? Assignments of Error 3, 12, 15.

14. Would declaring that ballots and ballot images are statutorily anonymous public records that are subject to examination under the Public Records Act terminate the uncertainty or controversy giving rise to this action? Assignment of Errors 14, 17.

III. STATEMENT OF THE CASE

A. WEICU Sued for Examination of Election Records

In September 2021, WEICU requested from King County and Director of Elections Julie Wise (collectively "King County") "any and all documents of any format in your possession, custody or control comprising: original ballots, ballot images, spoiled ballots, adjudication records, ballot envelopes and returned ballots for the November 3, 2020 General Election." CP 11, ¶ 51.

That same month, following King County's denial of examination of original ballots, ballot images, spoiled ballots and returned ballots, WEICU filed a PRA action in Superior Court to compel disclosure under, *inter alia*, RCW 42.56.030 and RCW 42.56.550. CP 11-13.

The complaint includes additional causes of action alleging election process claims brought under RCW 29A.68.013(1),(2), requests for declaratory and injunctive relief, and alleging civil rights and equal protection violations

under the Federal and Washington State Constitutions. CP 1-27.

B. King County Sued to Prohibit Disclosure of the Election Records

In January 2023, following remand after an extended sojourn in federal court, King County answered the complaint and also counterclaimed against WEICU under the PRA. CP 95-118. King County sought injunctive relief under RCW 42.56.540 (Counterclaim V) and requested a permanent injunction under RCW 42.56.540 precluding WEICU from ever obtaining ballots or ballot images. CP 114, ll. 1-14; ll. 21-22; CP 115, l. 3.

C. The Court Implied a PRA Exemption

The parties brought multiple motions. WEICU filed a Motion to Show Cause on its PRA claim and a Motion for Declaratory Judgment on the Meaning and Application of RCW 29A.08.161 to the Instant Action. CP 304-309; CP 298-303. King County moved for summary judgment as to all causes of action in the complaint and King County's counterclaims. CP

310-592.

Following a split hearing on the cross-motions that concluded on June 5, 2023, the trial court found each of the four categories of public records impliedly exempt (exempt when "taken as a whole") under RCW 29A.60.110, WAC 434-25-110, Article VI, §6 of the State Constitution, *White v. Clark County*, 188 Wn.App. 622, 354 P.3d 38 (2015), *review denied*, 185 Wn.2d 1009 (2016), *White v. Skagit County*, 188 Wn.App. 886, 355 P.3d 1178 (2015), *review denied*, 185 Wn.2d 1009 (2016), *White v. Clark County*, 199 Wn.App. 929, 401 P.3d 375 (2017), *review denied*, 189 Wn.2d 1031 (2018) (collectively "*White* Opinions"), and Senate Bill 5459. CP 1031, l. 17 – 1033, l. 6; CP 1038, l. 21 – 1040, l. 9; CP 1045, l. 12- 1047, l. 7.

D. The Court Equated the Exemption with Prohibition

The trial court granted summary judgment to King County on WEICU's PRA cause of action, King County's counterclaims, and each of the remaining causes of action in the

verified complaint. CP 1028-1034; VRP Vol. 3.

In its written order, the trial court initially recognized that the case presented issues that are historical and "fundamental to American democracy":

> THIS COURT FINDS as follows: [¶]
>
> The issues presented in this matter are of fundamental importance. The Nineteenth Amendment was enacted on June 4, 1919, legally guaranteeing women the right to vote after decades of struggle to secure that right. The Fifteenth Amendment was enacted on February 3, 1870, legally guaranteeing the right to vote regardless of race, color or previous condition of servitude, also after years of bitter struggle to secure that rights. The concept that each qualified person should have their right to vote protected and their votes properly considered is fundamental to American democracy.

CP 1030, ll. 1-8.

The trial court ruled that even though ballots are anonymous by law under RCW 29A.08.161 as noted during the first half of the split hearing (VRP Vol. 3, p. 19, ll. 3-5), "[a]s a matter of law ballots are exempt from public disclosure." CP 1033, ll. 21-22.

The trial court further determined that in light of the exemption, King County's requested injunctive relief was "**unnecessary**." CP 1033, l. 22 (emphasis added).

The trial court treated an 'other statute' PRA exemption as equivalent to a *prohibition,* thus rendering moot King County's request for injunctive relief under the PRA. CP 1032, ll. 17 to 1033, l. 3; CP 1033, ll. 21-22; CP 1034, ll. 6-8.

The trial court ordered King County to withhold the records but it made no findings that could support prohibiting an examination under RCW 42.56.540, namely statutorily required findings that such an examination would: 1) clearly not be in the public interest; and, 2) would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions.

E. The Court Struck Evidence and Seemingly Overlooked a Joinder

In opposition to summary judgment, WEICU argued that genuine issues of material fact exist regarding, *inter alia*,

whether examination of the requested records is being denied in bad faith under the statutory element of PRA penalties. CP 664, ll. 16-24.

Also in opposition to summary judgment, WEICU filed the authenticated declaration of whistleblower Terpsehore Maras dated November 29, 2020. The Maras declaration was originally filed in federal court in *Feehan v. Wisconsin Elections Commission*, Case No. 2:20-cv-01771-PP. CP 678, ¶ 7; CP 739-776. Ms. Maras' name and signature were redacted by the federal court as part of the electronic filing, presumably because Ms. Maras is a former member of the intelligence community. VRP Vol. 2, p. 99, l. 25- 100, l. 9.

In her capacity as a former contractor for intelligence agencies tasked with election operations, Ms. Maras describes in her declaration the methods used to manipulate election outcomes both domestically and overseas. The evidence described in her declaration goes to the disputed issues, *inter alia*, of bad faith and PRA penalties, as it would explain *why*

King County is refusing to provide access to the requested records. CP 739-776.

The Maras Declaration was duly accepted by the federal court as part of the public file for the *Feehan* matter. Ms. Maras' identity was authenticated via counsel's declaration. CP 678, ¶ 7. The trial court was further advised by WEICU's counsel during the hearing that Ms. Maras' attorney had granted express permission to use the declaration for all purposes in this litigation. VRP Vol. 2, p. 99, l. 25- 100, l. 9.

King County did not raise any competency issues with regard to questions based on the Maras Declaration at the Deposition of King County defendant Julie Wise. CP 890, l. 21 – 896, l. 9. The Maras Declaration filed with the trial court is a marked-up version of Exhibit 3 to the Deposition of Julie Wise taken on May 18, 2023. CP 739-776.

In opposition to summary judgment, WEICU also submitted the entirety of Julie Wise's deposition transcript. At her deposition, Ms. Wise disputed the truth of statements read

from the Maras Declaration. CP 799-902. As one example, Ms. Wise was asked whether she agreed with Ms. Maras that constant updates to electronic voting systems pose a vulnerability to those systems, in response to which Ms. Wise said "No." CP 891, ll. 7-10. There was no challenge made by defendants' counsel at either the deposition or the motions hearing that Ms. Wise lacked the qualifications to opine on that subject.

As part of its order granting summary judgment, the trial court *struck* the entirety of Ms. Maras' 37-page declaration. The trial court's apparent reason for striking the declaration was the federal court's redaction of Ms. Maras' name and signature in the federal file which, in the trial court's view, rendered Ms. Maras incompetent: "[t]he declarant is [not] competent to testify to matters within their [sic] personal knowledge that are relevant to a genuine issue of material fact." CP 1033, ll. 14-16.

The trial court also seemed to give no weight to the joinder of the two co-plaintiffs filed in opposition to the motion

for summary judgment. CP 903-904; CP 1029 (no mention of joinder). Contrary to the joinder, the trial court ruled that summary judgment was warranted due to a lack of responsive pleadings or evidence filed by the joining co-plaintiffs. CP 1030, ll. 13-20.

IV. STANDARDS OF REVIEW

A. Motion for Summary Judgment

All trial court rulings, including evidentiary rulings, made in conjunction with a motion for summary judgment are subject to *de novo* review. *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.3d 301 (1998) ("An appellate court would not be properly accomplishing its charge if the appellate court did not examine all the evidence presented to the trial court, including evidence that had been redacted."); *Warner v. Regent Assisted Living*, 132 Wn.App. 126, 135, 130 P.3d 865 (2006); *Boyd v. Sunflower Props. LLC*, 197 Wn.App. 137, 142, 389 P.3d 626 (2016).

The Court engages in the same inquiry as the trial court.

Haley v. Amazon.com Servs., No. 83010-4-I (Div. I) (Wash. App. 2022) published in part, at p. 7 (*citing Green v. Normandy Park Riviera Section Cmty. Club, Inc.,* 137 Wn.App. 665, 681, 151 P.3d 1038 (2007)).

B. Motion to Show Cause

"Judicial review of all agency actions taken or challenged under RCW 42.56.030 through 42.56.520 shall be de novo." RCW 42.56.550(3). "Courts shall take into account the policy that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others." *Id.*

C. Motion for Declaratory Judgment

The proper construction of a statute and whether a statute applies to a particular set of undisputed facts are questions of law reviewed *de novo*. *Welch v. Southland Corp*., 134 Wn.2d 629, 632, 952 P.2d 162 (1998). Where a court decides a request for declaratory judgment on its merits, an appellate court may

review the propriety of the lower court's decision to grant or deny declaratory relief. *Wash. Fed. of State Employees v. State of Washington,* WA Sup. Court No. 101093-1, August 24, 2023, pp. 17-18.

D. Motion for Reconsideration

Rulings on motions for reconsideration are reviewed for abuse of discretion. *Lund v. Benham*, 109 Wn.App. 263, 266, 34 P.3d 902 (2001), *review denied*, 146 Wn.2d 1018 (2002).

V. ARGUMENT

A. The Trial Court Erred in Summarily Adjudicating WEICU's Public Records Act Claim

1. Statutorily Anonymous Public Records Are Subject to Examination under the Public Records Act (Issues 1, 2)

Tabulated Washington State ballots are *anonymous* public records under the election code, which provides in relevant part:

> No record may be created or maintained by a state or local governmental agency or a political organization that identifies a voter with the information marked on the voter's ballot . . . .

RCW 29A.08.161.

It should be obvious that the information marked on a voter's ballot is the choices the voter made in the various electoral races and measures on the ballot. There is no other marking that is authorized to be on the ballot, and in fact, stray marks on a ballot subject the ballot to special handling.

"Th[e] prohibition [under RCW 29A.08.161] against linkage between a voter and his or her ballot addresses the same concerns for secrecy found in article VI, section 6 of the Washington Constitution. The identity of the voter must remain secret." *White v. Wyman*, No. 77156-6-I (Wash.App. 2018), at p. 10 (unpublished opinion). "'[N]othing in article VI, section 6 expressly provides that the ballot *itself* must remain 'secret' as long as the voter who cast that ballot cannot be identified,"' *Id.*, at p. 8 (emphasis added), quoting *White v. Clark County*, 188 Wn.App. 622, 632, 354 P.3d 38 (2015).

The trial court record is VOID of *any* evidence that even a single voter's identity could be tied to *any* cast ballot public

record. CP 1-1144. King County, while professing its extreme concern for the anonymity of voters, failed to present the trial court with even a hypothetical example in order to show how secrecy might be breached.

Since Washington State ballots are anonymous by law, there can be no conceivable voter privacy concerns with regard to examination of cast ballots under the Public Records Act. The trial court erred in overlooking RCW 29A.08.161 in order to prohibit examination of anonymous public records. RCW 29A.08.161; RCW 42.56.

2. Courts May Not Create Implied Exemptions (Issue 3)

Implied exemptions are not allowed under the Public Records Act. This is made clear and unequivocal by *Doe v. Wash. State Patrol*, 185 Wash.2d 363, 372, 388, 374 P.3d 63 (2016) ("The "other statute" exemption "applies only to those exemptions explicitly identified in other statutes; its language does not allow a court 'to imply exemptions but only allows

specific exemptions to stand.'", *citing Progressive Animal Welfare Soc'y v. Univ. of Wash.,* 125 Wash.2d 243, 262, 884 P.2d 592 (1994), *quoting Brouillet v. Cowles Publ'g Co.*, 114 Wash.2d 788, 800, 791 P.2d 526 (1990).)

Courts may not create exemptions where there are none. *Wash. State Patrol*, *supra*, at 372, citing *In re Rosier*, 105 Wash.2d 606, 717 P.2d 1353 (1986). This is as close to being set in stone as possible.

Any reliance on <u>implied</u> exemptions as they relate to examination of public election records conflicts with multiple decisions by the Supreme Court and should be approached with "extreme caution." Washington State Bar Association's Public Records Act Deskbook (*White II* [of the *White* Opinions] "conflicts with the Washington Supreme Court's later decision in *Washington State Patrol,* which said that 'other statute' exemptions must be "<u>explicit</u>" rather than implied. . . . Although *White II* has not been expressly overruled. . . any reliance on *White II*'s suggestion that "other statutes" may be

implied should be approached with **extreme caution**." (emphasis added)). Washington's Public Disclosure and Open Public Meetings Laws (WSBA) (2d. ed. 2014, 2020 Supplement), Chapter & Section 15.2, p. 3.

King County never argued to the trial court that *Wash. State Patrol* could be distinguished as controlling precedent for this action. ***King County never identified a specific exemption to any of the four categories of records at issue.***

Instead, King County argued in favor of an *implied* exemption under a gestalt of "controlling state law" comprising a mishmash of various appellate opinions, statutes, regulations, Article VI Section 6 of the Constitution and Senate Bill 5459 (2023)[2]. CP 328-332.

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[2] The trial court found that Senate Bill 5459 (2023), which does not prohibit examination of ballot records, is not retroactive to WEICU's public records request issued in 2021. CP 1033, ll. 4-6; CP 1040, ll. 7-9; CP 1047, ll. 1-3. While not relevant to WEICU's records request, ironically, the introduction and passage of SB 5459 (publicly supported by King County) serve

The trial court agreed with King County. In so doing, the trial court erred in summarily adjudicating a PRA cause of action based on an *implied exemption* stitched together like a crazy quilt of case opinion, state election laws, regulations and the Washington State Constitution "taken as a whole". CP 1032, l. 23, l. 15. (emphasis added).

3. Courts May Not Equate PRA Exemptions with Prohibitions (Issue 4)

Exemptions at the administrative level -- permitting an agency to withhold requested public records pending a government request for preliminary injunction to prohibit their release -- do not equate to prohibition of release of public records at the judicial level. RCW 42.56.550(1) (PRA requestor actions to review agency level claimed exemptions); RCW 42.56.540 (PRA agency actions to prohibit examination); *Franklin Cnty. Sheriff's Office v. Parmelee*, 175 Wn.2d 476,

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to further establish that no exemption for any of the records at issue in this matter existed as of 2021.

480, 285 P.3d 67 (2012), *cert denied*, 133 S. Ct. 2037 (2013) ("[b]ecause agencies are penalized on a per-day basis for improperly denying a records request [a]n agency's option to quickly seek a judicial determination [under RCW 42.56.540] that the requested records are not subject to disclosure is an important one.").

If a requestor is forced to file suit to compel production of an otherwise exempt public record, it is incumbent upon third parties or, in this case, the agency itself to seek prompt court protection from examination:

> **RCW 42.56.540**
>
> **Court protection of public records.**
>
> The examination of any specific public record may be enjoined if, upon motion and affidavit by an agency or its representative or a person who is named in the record or to whom the record specifically pertains, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions.

RCW 42.56.540 (emphasis added); *Lyft v. City of Seattle,* 190 Wash.2d 769, 777-778, 784-786, 418 P.3d 102 (2018).

As recently noted by Division I, a finding that an exemption applies under the PRA does not *ipso facto* support *prohibiting* the disclosure of records:

> In addition to setting forth exemptions to the mandate for disclosure of public records, the PRA includes an injunction provision stating that disclosure may be enjoined only when "examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions." RCW 42.56.540. Based on this statutory provision, our Supreme Court has held that "finding an exemption applies under the PRA does not ipso facto support issuing an injunction." *Lyft*, 190 Wn.2d at 786. Rather, for the disclosure of records to be precluded due to a statutory exemption, the court has held that the PRA's standard for injunctive relief **must also be met**. *Morgan v. City of Federal Way*, 166 Wn.2d 747, 756-57, 213 P.3d 596 (2009); *see also Soter v. Cowles Publ'g Co.,* 162 Wn.2d 716, 757, 174 P.3d 60 (2007) (plurality opinion) ("[T]o impose the injunction contemplated by RCW 42.56.540, the trial court must find that a specific exemption applies and that disclosure would not be in the public interest

> and would substantially and irreparably damage a person or a vital government interest.").

Doe v. Seattle Police Dep't., Case No. 83700-1-I slip opinion (Wash. App. 2023), at pp. 10-11 (emphasis added).

King County brought a counterclaim against WEICU under RCW 42.56.540 seeking a permanent injunction against release of ballot records. CP 114, ll. 1-14; ll. 21-22. As part of the CR 56 motion, King County moved for injunctive relief under King County's counterclaims to prohibit access to ballots and ballot images. CP 333, l. 10 - 334, l. 17 (**VI. RELIEF SOUGHT** . . . 2. For a permanent injunction under RCW 42.56.540 precluding WEICU from obtaining ballots, ballot images. . . .").

In opposition to summary judgment, WEICU argued the mandatory application of RCW 42.56.540 as held by the Supreme Court in the *Lyft* decision. CP 665, l. 1 to 666, l. 4; *Lyft, supra*, 190 Wash.2d 769, 777-780. WEICU argued that the trial court was required to analyze the *Lyft* factors of RCW

42.56.540 accordingly. VRP Vol. 2, p. 59, l. 3 – p. 61, l. 5; p. 66, l. 24 – p. 67, l. 21; p. 71, ll. 16-25; p. 78, l. 19 – p. 79, l. 2; p. 90, l. 17- p. 91, l. 9; CP 665, l. 1 to 666, l. 4.

However, in both its oral findings from the bench and written order, the trial court entirely failed to acknowledge RCW 42.56.540, the *Lyft* case, or the *Lyft* factors under RCW 42.56.540. CP 1028-1034; VRP Vol. 3 (no mention of the *Lyft* case or RCW 42.56.540).

Instead of addressing the PRA required standards, the trial court side-stepped the PRA and *Lyft* decision by declaring the injunctive relief requested was "not necessary" and applied ZERO injunctive standards in its seven-page written order. VRP Vol. 3, p. 130, ll. 13-16; CP 1033, l. 22 ("The Court finds that injunctive relief is unnecessary.")

As a result, there are *no findings* in the record as to any of the four categories of public records at issue that examination would: 1) clearly not be in the public interest; and, 2) would substantially and irreparably damage any person, or would

substantially and irreparably damage vital governmental functions. RCW 42.56.540; CP 1028-1034; VRP Vol. 3.

The trial court's ruling elevating an *implied exemption* to the level of an *injunction* circumvents and contradicts the PRA as well as Supreme Court binding authority. *Lyft, supra*, 190 Wn.2d at pp. 773, 777-80 (RCW 42.56.540's injunction standard applies to PRA cases). There is no judicially-created loop-hole *prohibiting* review of otherwise exempt public records, let alone making such a prohibition permanent. Reversal and remand are appropriate and warranted on this basis alone.

4. King County Provided No Evidence to Prohibit Examination of Anonymous Public Records (Issue 5)

Sufficient admissible evidence of harm is required to prohibit examination of public records under the PRA. *Wash. Fed. of State Employees, supra,* WA Sup. Court No. 101093-1, August 24, 2023, at p. 15 ("We agree with the Court of Appeals that the plain language of RCW 42.56.540 requires admissible

evidence of individualized harm to warrant permanent injunctive relief.").

Even assuming, for purposes of argument only, that the trial court *had* examined the *Lyft* factors of RCW 42.56.540 on King County's counterclaim brought under that statute (CP 114), the trial court record is VOID of evidence that could support prohibiting examination.

King County's record in support of injunctive relief is limited to a non-verified cause of action (CP 114), King County's self-serving and conclusory argument in favor of a permanent injunction with no supporting evidence (CP 333, l. 10 – 334, l. 14; CP 993, l. 10 – 994, l. 5), and counsel's oral argument re-iterating the self-serving statements (VRP Vol. 2, p. 83, l. 19 – p. 84, l. 13).[3]

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[3] King County filed multiple declarations ostensibly in support of summary judgment on its counterclaims, primarily aimed at disparaging WEICU and its counsel, and glaringly lacking in any evidence to address the elements of RCW 42.56.540. CP 340-507, 508-590, 591-592, 634-656, 657-662, 1001-1002.

The trial court erred in finding King County's counterclaim for injunctive relief "unnecessary" when, in reality, the request was not supported by a shred of evidence and must be denied. CP 1033, l. 22.

5. Courts May Not Create Inferences in Order to Bar Examination of Anonymous Public Records (Issues 6, 7, 8 and 9)

On summary judgment, the trial court must construe all relevant admissible evidence and the reasonable inferences therefrom in favor of the nonmoving party (here, plaintiffs). A recent opinion from Division I has added to the long string of cases upholding this standard: *Haley, supra,* No. 83010-4-I, at p. 8 ("When reviewing the affidavits and other evidentiary material, the trial court must construe all evidence and the reasonable inferences therefrom in favor of the nonmoving party.")

Here, the trial court struck down 16 causes of action and ignored all evidence provided, in order to deprive plaintiffs a trial on arguably some of the most disputed issues of our time –

namely, the election processes used in the 2020 General Election for Washington State's largest county, comprising over *2.4 million* requested and denied public records. CP 786-789.

In order to avoid genuine issues of material fact that would otherwise bar summary judgment, the trial court *struck* the Declaration of Terpsehore Maras. CP 1033, ll. 11-16. The Maras Declaration establishes with extreme particularity exactly *how* election processes are manipulated, and the relevancy of the records sought by WEICU to establishing same. CP 739-776.

The stricken Maras Declaration contains factual statements directly disputed by defendant Julie Wise at her deposition. CP 672, l. 19 – CP 673, l. 6; CP 740-742, CP 747-749; CP 810, l. 12 – CP 811, l. 3 (*e.g.,* genuine issue of material fact as to whether federal certification is required for tabulation systems used by King County). By abrogating evidence that would otherwise create genuine issues of material fact, the trial

created an inference in favor of summary judgment.

The trial court also seemingly gave no value to a joinder in opposition filed by co-plaintiffs. CP 903-904. The trial court's order makes no mention of the executed and filed joinder, despite the fact that the joinder had been specifically called to the trial court's attention during the hearing. *Id*.; RAP 9.12 ("The order granting or denying the motion for summary judgment shall designate the documents and other evidence called to the attention of the trial court before the order on summary judgment was entered."); CP 1029, ll. 6-21 (no mention of the joinder of co-plaintiffs Doug Basler and Timofey Samoylenko filed May 22, 2023, CP 903-904); VRP Vol. 2, p. 86, ll. 1-6 ("[I]'m sure the Court has noted that the coplaintiffs filed a joinder to join in the summary judgment motion opposition, which I will now proceed to provide.").

Instead of acknowledging the joinder, the trial court found that the co-plaintiffs had failed to respond to the summary judgment motion, and that "on this basis alone",

summary judgment was "warranted." CP 1030, ll. 13-20. Implied in this ruling was that King County's CR 56 motion bore no initial burden to show an absence of material disputed facts.[4]

The trial court used extraordinary means to create an inference *in favor of the moving parties* in direct contravention of the requirement to construe all evidence and reasonable inferences therefrom in favor of the **nonmoving** party. *Haley, supra*, No. 83010-4-I, at p. 8.

6. Courts May Not Strike PRA Claims Brought by Corporate Entities (Issue 10)

Corporate requestors are "persons" under the PRA entitled to bring PRA claims in superior court. RCW

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[4] Even assuming, *arguendo*, that no joinder had been filed, CR 56 places no burden on the non-moving party until and unless the moving party first makes a showing of an absence of issues of material fact.

42.56.550(1); *see, e.g.*, *Neighborhood Alliance v. County of Spokane*, 153 Wash.App. 241, 224 P.3d 775 (2009).

Contrary to long established practice under the PRA, King County sought to have WEICU's PRA claim dismissed on grounds that it was commenced by a corporate requestor. CP 327, l. 11 – 328, l. 7. The same defense was raised in response to WEICU's Motion to Show Cause and Motion for Declaratory Judgment. CP 601, l. 21- 603, l. 2; CP 620, l. 19 – 622, l. 2.

Relying on *Dutch Village Mall v. Pelletti*, 162 Wn.App. 531, 535, 256 P.3d 1251 (2011), King County asserted that when counsel appeared for WEICU in the action, counsel was required to *re-sign* and *re-file* the original verified complaint, and that absent those retroactive acts, the PRA claim was subject to dismissal.[5] CP 328, ll. 5-7; CP 602, ll. 20-21; CP 621, ll. 20-21.

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[5] When a notice of appearance is filed in an action, the attorney/law firm steps into the action in its current stance.

The trial court agreed that the PRA claim failed to comply with CR 11 as an alternate ground for dismissal on summary adjudication, denial of show cause under the PRA, and denial of declaratory judgment. CP 1033, ll. 7-10; CP 1040, ll. 10-13; CP 1047, ll. 8-11.

The trial court overlooked the simple facts that: 1) WEICU is the requestor of the records at issue and, as such, is the proper party to file suit under the PRA; 2) *Dutch Village* was not a PRA case; 3) unlike the *Dutch Village* case, WEICU was fully represented at both the federal and state levels via notices of appearances filed by counsel of record (CP 1012-1014; CP 1016-1018); 4) King County had no objection to WEICU signing the complaint when King County removed the

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There is no requirement in the Civil Rules to re-sign or re-file previous pleadings. Moreover, courts typically allow a specified period of time for non-represented parties to obtain counsel, whether the lack of representation is at the outset or due to attorney withdrawal.

action to a federal court of limited jurisdiction in October 2021 (CP 28-66); 5) King County answered WEICU's complaint (CP 95-118); 6) King County asserted no CR 11 or signature objections as an affirmative defense to WEICU's complaint (CP 108) (the lack of an attorney signature has never been ruled to be jurisdictional); 7) King County filed counterclaims against WEICU on its PRA complaint (CP 108-115); 8) King County never filed a CR 12 motion or otherwise asserted that the Court lacked jurisdiction over WEICU (CR 12(h)(1)(B)).

On reconsideration, the trial court further overlooked Civil Rule 70.1 (notice of appearance) and the indisputable fact that the corporate requestor (WEICU) had obtained counsel in the action at both the federal and state levels and – as such - was fully represented for all purposes. CP 1003-1007. The trial court accepted jurisdiction over the case after remand, with no technical defects raised until it dismissed all claims as part of its

grant of all motions in King County's favor. *c.f.,* RCW 4.32.250.[6]

The trial court committed clear error in alternatively dismissing a PRA action, denying show cause, and denying declaratory judgment to a represented corporate PRA requestor under CR 11. Critically important is that alternative legal theories are a function of advocacy, not adjudication.

B. Courts May Not Create, and Then Dismiss, Non-Existent Claims Seeking Non-Existent Remedies (Issues 11, 12)

To bolster the PRA dismissal, the trial court relied on an internally inconsistent question of fact that the complaint raised "election contests" that had to be filed "within 10 days of certification of the election". The trial court also deemed a

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[6] Given the notices of appearance filed in this action which override any CR 11 concerns, RCW 4.32.250 was not cited to the trial court on reconsideration, but the statute provides courts with guidance on the proper way for a court to deal with a defective pleading in lieu of a dismissal on technical grounds.

verified complaint as not equivalent to an affidavit. CP 1030, l. 21 – 1031, l. 2.

The trial court overlooked the facts that: 1) plaintiffs filed a *verified* complaint in order to commence the action, meeting the evidentiary standards of admissible evidence equivalent to the use of a declaration or affidavit -- which cannot be used alone to commence an action (CP 1-27); 2) plaintiffs' verified complaint does not assert a cause of action to de-certify any race or measure from the November 2020 General Election (CP 3, ¶ 8); 3) plaintiffs' verified complaint seeks no relief to de-certify any race or measure in any election (CP 54-56); 4) no remedy for a global 'election contest' to an entire ballot exists under Washington law (RCW 29A) since ballots are not the same across all districts or precincts; 5) plaintiffs brought election *process* claims under RCW 29A.68.013(1) and/or (2) for use of an uncertified voting system, vote flipping, additions and deletions, party preference tracking, and lack of ballot security/chain of custody (CP 4, 6, 8, 9); 6) plaintiffs brought

additional declaratory relief, injunctive relief and Constitutional violation claims separate from the election code; and, 7) the PRA records sought are relevant to the election process claims in the complaint.[7]

The trial court erred in dismissing claims brought under RCW 29A.68.013(1) and/or (2), as well as other claims for declaratory relief, injunctive relief, public records, and constitutional violations, as part of a judicially contrived *generalized certification challenge contesting each race and measure on the 2020 General Election ballot*. CP 1030, l. 21 – 1031, l. 2.

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[7] Examination of the ballot related records is sought "[i]n order to further prove (or disprove) Plaintiffs' allegations herein. . . ." CP 48, ¶ 50. "[A]ccess to ballots or ballot images via court order is entirely appropriate to prove or disprove election irregularities . . . ." CP 49, ¶ 54. "Defendants must be compelled to comply with the PRR not only because the documents requested are public records, but also to prove (or disprove) the allegations herein." CP 50, ¶ 56 (emphasis added).

The law does not recognize a generalized election contest to a ballot. RCW 29A. No such action or remedy exists. *Id., c.f.,* RCW 29A.68.020 (causes which may be asserted by a registered voter to challenge the right to assume office of a candidate declared elected to that office, to challenge the right of a candidate to appear on the general election ballot after a primary, or to challenge certification of the result of an election on any measure).

The trial court created a non-existent remedy then dismissed a non-existent 'election contest' applying a 10 day limitations period for actions under RCW 29A.68.013(3).[8]

There is no 10 day limitations period for election process claims which could arise at any time, as is the case here with,

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[8] RCW 29A.68.013 contains the phrase "this subsection" when applying a 10 day limitations period *only to decertification actions brought under "this subsection " (subsection 3) of that statute*. RCW 29A.68.013(3). No claims in plaintiffs' complaint are brought under subsection 3, RCW 29A.68.013(3).

for example, the on-going periodic tracking of elector party preference data by King County Elections which is transmitted to the Secretary of State. CP 8-9; CP 873, l. 8 - 876, l. 17; RCW 29A.08.166; RCW 29A.68.013(1), (2). There is no evidence in the record that in enacting RCW 29A.68.013 the Legislature intended to bar judicial review of election processes outside of a 10 day window.

Nor are the other causes of action in the complaint -- for declaratory relief, equitable relief, or constitutional violations and damages -- subject to a 10 day limitations period. CP 5-17 (Causes of Action V, VI, VIII, IX, XI, XII, XIV, XV, XVII, XVIII, XIX).

The trial court's strained result is further evidenced by the lack of harmonization in its statutory construction of RCW 29A.68.013. As to limitations periods, RCW 29A.68.011 uses the phrase "this section" to apply limitations periods to the entirety of that statute, whereas RCW 29A.68.013, invoked by plaintiffs, uses the phrase "this subsection" when applying a 10

day limitations period only to decertification actions brought under subsection 3 of that statute.

The trial court created an absurd result in: 1) affirming a 10 day limitations period to a judicially-created group certification challenge to each race and measure on an entire ballot – an action that was not pleaded and does not lawfully exist; 2) summarily adjudicating *election process claims* brought under RCW 29A.68.013(1) and/or (2) as 'election contests' (a bar that could not possibly have been intended by the Legislature); and, 3) presumably summarily adjudicating additional causes of action NOT brought under RCW 29A.68.013 as also barred by a 10 day limitations period.

Plaintiffs cannot be held to a limitations period for claims they did not bring, for relief they did not seek, and for an 'election contest' to all races and measures on a ballot that is nowhere recognized in the law.

C. The Washington State Constitution Does Not Bar Examination of Anonymous Public Records (Issue 13)

Article VI, § 6 of the State Constitution is plain and unambiguous and is not subject to interpretation contrary to its plain meaning. *Sutherland Statutory Construction*, Volume 2A, sec. 46.01 (5th ed. 1992) (“The Plain Meaning Rule”, *citing, e.g., Remedial Educ. and Diagnostic Services, Inc. v. Essex County Educational Services Com'n*, 468 A.2d 253, 191 N.J. Super. 524, 528 (N.J. Super. App. Div. 1983) ("We are not free to read unwarranted meanings into an unambiguous statute 'even to subserve a supposedly desirable policy not effectuated by the act as written.'..."); *Swarts v. Siegel* 117 F. 13, 18-19 (8th Cir. 1902) (“Attempted judicial construction of the unequivocal language of a statute. . . serves only to create doubt and to confuse the judgment. There is no safer or better settled canon of interpretation than that when language is clear and unambiguous it must be held to mean what it plainly expresses, and no room is left for construction.”).

Article VI, § 6 requires that the Legislature "shall provide for such method of voting as will secure to every elector absolute secrecy in ***preparing*** and ***depositing*** his ballot." (emphasis added).

Washington's ballot de-identification statute, RCW 29A.08.161, is consistent with Article VI, §6. Washington State ballots are de-identified by law, as required by our state constitution, thereby guaranteeing secrecy of the vote. RCW 29A.08.161; *White v. Clark County*, 188 Wn.App. 622, 632, 354 P.3d 38 (2015), *review denied*, 185 Wn.2d 1009, 366 P.3d 1245 (2016).

"[N]othing in article VI, section 6 expressly provides that the ballot itself must remain "secret" as long as the voter who cast that ballot cannot be identified. The provision expressly guarantees secrecy for every voter, not for the voters' ballots themselves." *White,* 188 Wn.App. at 632 (emphasis added).

Contrary to *White, supra*, the trial court erred in making an interpretation that "the constitutional mandate for secrecy

[under Article VI, § 6] does not stop once the voters deposit their ballots, and must be maintained after deposit." (emphasis added) CP 1032, ll. 6-7; CP 1039, ll. 10-11; CP 1046, ll. 5-6.

Examination of cast ballots would not impact the 'secrecy' requirement in ***preparing*** and ***depositing*** a ballot in any way. This is the most logical explanation for King County's failure to provide even a hypothetical example of the mechanism whereby secrecy could be impacted by WEICU inspecting tabulated ballots.

Under the plain language of Article VI, §6, there is no 'secrecy' requirement past the "deposit" of the ballot. Article VI, §6; *White, supra,* 188 Wn.App. at 632. This is because public elections require public examination of cast ballots to tally the votes for a final result.

The trial court erred in interpreting Article VI, § 6 as a constitutional bar to examination of statutorily anonymous cast ballots.

D. Declaring that Ballots Are Statutorily Anonymous Public Records Would Terminate the Uncertainty or Controversy of WEICU's PRA Claim (Issue 14)

The election code requires that cast ballot records, and any record related to them, remain anonymous:

> No record may be created or maintained by a state or local governmental agency or a political organization that identifies a voter with the information marked on the voter's ballot . . . .

RCW 29A.08.161.[9]

Since there can be no voter privacy concerns to exempt or prohibit examination of anonymous public records, WEICU moved for declaratory judgment on the meaning and application of RCW 29A.08.161 to the instant action. CP 298-303. King

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[9] Washington's ballot de-identification statute is consistent with Washington appellate decisions requiring that ballots be anonymous. *White, supra*, No. 77156-6-I, pp. 7-9, *citing White v. Clark County*, 188 Wn.App. 622, 632, 354 P.3d 38 (2015) ("We agree that [ballot/voter] secrecy is only compromised when individual voters can be linked to their votes." "The central concern of ballot secrecy, therefore, is whether the individual voter can be identified." "[T]he form of the ballot is unimportant as long as the voter's identity remains secret").

County caused the need for declaratory judgment by making a bald assertion that secrecy was jeopardized by examination of the ballots. If the trial court followed state law, the anonymous records would clearly be subject to disclosure under the PRA, thereby terminating any uncertainty or controversy as to WEICU's PRA claim. *Id.*

The trial court issued an oral tentative ruling *granting* WEICU's motion for declaratory judgment on grounds that ballots are anonymous public records, subject to consideration of the *White* Opinions:

> THE COURT: Unless there's anything further on that, I am not going to resolve the White vs. Skagit County or the White vs. Clark County issue until later in the proceeding. But with the exception of that, the Court's ruling on the declaratory judgment is that the state ballots are anonymous pursuant to 29A.08.161 and related statutes.
>
> * * *
>
> So at this point, the motion for the declaratory judgment is tentatively granted, but subject to the Court's later ruling as it pertains to the applicability to the White cases.

VRP Vol. 2, p. 54, ll. 8-14; p. 55, ll. 3-6.

Following a weekend break, on June 5, 2023, the trial court reversed its tentative ruling and denied the declaratory relief on grounds that a ruling would not be dispositive because of the trial court's adoption of an implied exemption to examination:

> [T]the petitioner's requested declaration that the tabulated Washington State ballots are anonymous public records pursuant to RCW 29A.08.161 would not, quote, terminate the uncertainty or controversy giving rise to the proceeding because the issue is whether or not the ballot records are, in fact, exempt.
>
> * * *
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> Accordingly, although the Court would agree that the ballots are anonymous -- and we made that determination preliminarily -- the Court exercises its option under RCW 7.24.060 to decline to enter the requested declaratory judgment.

VRP Vol. 3, p. 122, ll. 13-19; p. 123, ll. 3-7.

The trial court erred in denying Declaratory Judgment on the Meaning and Application of RCW 29A.08.161 to the Instant Action by applying an *implied PRA exemption* to

abrogate statutory law.[10]

The trial court correctly found the records to be statutorily anonymous, but then prohibited examination of the anonymous records under an implied exemption supposedly grounded in protecting voter privacy and secrecy.

The trial court seemingly went out of its way to compound its errors. The trial court seemed to understand that cast ballot records are statutorily required to be (and remain) anonymous public records.[11] The trial court then failed to make the logical and lawful conclusion that anonymous public records cannot, therefore, be impliedly exempt to protect voter

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[10] The error is compounded by the fact that the trial court simultaneously cited to *White v. Clark County* as part of its judicially-created implied exemption, a case that specifically states that ballots themselves are not 'secret' because they do not identify the voter. CP 1032, ll. 17-20; *c.f., White v. Clark County*, 188 Wn.2d at 632. The trial court's ruling is internally and irrevocably conflicted.

[11] Once records are anonymous, that status is permanent; they cannot suddenly revert to being 'un-anonymous.'

identity.

Moreover, even assuming the trial court's implied exemption was lawful, the trial court made no effort to meet the required standards under RCW 42.56.540 to prohibit anonymous ballots from examination – preferring instead to *sua-sponte* declare those required PRA standards "unnecessary."

E. The Orders Reflect Conflicting Legal Conclusions Rendering No Coherent Theory of the Case

As shown herein, the trial court orders are deeply conflicted. As one additional example, on summary judgment, the trial court found that the claims brought under the election code "**constitute election contests**":

> In addition, the Court finds that the election-related causes of action brought by Plaintiffs Basler and Samoylenko are procedurally barred by RCW 29A.68.013. Those causes of action **constitute election contests**. . . .

CP 1030, ll. 21-23 (emphasis added).[12]

However, within the same order (and in two other issued orders), the trial court then engaged in a somersault back flip to simultaneously legally conclude that *no* claims in the action amount to an election contest:

> [S]ealed [ballot] containers may only be opened . . . ["]by order of the superior court in a **contest or election dispute**." RCW 29A.60.110(2). This Court finds that **none of the contingencies . . . for opening the sealed containers of ballots [such as in an election contest] is present in this case.**

CP 1031, ll. 19-23; *see also*, identical language in order denying show cause and order denying declaratory judgment: CP 1038, l. 23-1039, l. 4; CP 1045, l. 16-21.

The trial court's internally conflicting determinations of election contest/no election contest barrel into a head-on

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[12] Earlier in the proceeding, the trial court allowed the intervention of a political party defendant because its candidates' interests in the 2020 election outcome were purportedly at stake, akin to an election contest. VRP Vol. 1, p. 31, l.16 – p. 32, l. 14; p. 33, ll. 1-6; p. 34, ll. 14-23.

collision with the trio of *White* cases heavily relied on by King County to unconstitutionally deny Washington State citizens access to ballot records. *White v. Clark County*, 188 Wn.App. 622, 354 P.3d 38 (2015), *review denied*, 185 Wn.2d 1009 (2016), *White v. Skagit County*, 188 Wn.App. 886, 355 P.3d 1178 (2015), *review denied*, 185 Wn.2d 1009 (2016), *White v. Clark County*, 199 Wn.App. 929, 401 P.3d 375 (2017), *review denied*, 189 Wn.2d 1031 (2018).

The trial court's orders finding the action to be an **election contest** conflict with the *White* cases which raised only PRA claims. None of the *White* cases involved an **election contest**.

When a trial court's findings repeatedly step on each other, the undeniable conclusion is that the legal theory of the case is not well grounded, is not well thought-out, and is lacking in basic logic. It hints of backfilling to justify a desired result.

F. Appellant is Entitled to PRA Fees and Costs on Appeal

The Public Records Act provides that any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record shall be awarded all costs, including reasonable attorney fees. RCW 42.56.550(4); RAP 18.1. PRA awards to requestors extends to fees and costs incurred on appeal. *Progressive Animal Welfare Soc'y*, *supra*, at 271.

No statute exempts or prohibits inspection of original ballots, ballot images, spoiled ballots or returned ballots, and election law renders ballots anonymous records. Without such exemptions and/or prohibitions, no legitimate basis exists to justify King County's arrogant refusal to comply with the PRA request for documents.

The trial court's orders of summary adjudication, denial of show cause and denial of declaratory judgment in contravention of the PRA should be reversed, with costs and

fees on appeal awarded to Appellant, and the matter remanded for further proceedings.

VI. CONCLUSION

The PRA is not a game to be defeated. It is a set of laws to be followed in the name of government accountability essential to maintaining Constitutional rights. Courts may not create implied exemptions, declare PRA statutory standards "unnecessary," ignore law rendering ballots anonymous, or render painfully strained interpretations of Constitutional provisions to keep anonymous public records hidden from public view.

Reversal and remand with specific instructions consistent with the law as detailed herein are warranted.

Respectfully submitted this 18th day of October, 2023.

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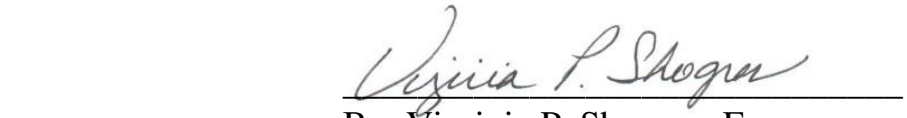
Per RAP 18.17(b), I hereby certify the number of words contained in this Brief of Appellant is as follows: 9,128.

VIRGINIA P. SHOGREN, P.C.



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CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that the foregoing was electronically filed in the Supreme Court of the State of Washington and electronically served on the following parties, according to the Court's protocols for electronic filing and service:

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Dated this 18th day of October, 2023, at Sequim, Washington.

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