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THE COURT OF APPEALS OF THE STATE OF
WASHINGTON, DIVISION ONE

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WASH. ELECTION INTEGRITY COALITION UNITED,

Plaintiff/Counterclaim Defendant/Appellant,

DOUG BASLER AND TIMOFEY SAMOYLENKO,
*Pro Se* Plaintiffs/Appellants,

v.

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

Defendants/Counterclaimants/Respondents.

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# BRIEF OF RESPONDENTS

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## I. INTRODUCTION

This lawsuit and appeal appear to be part of a nationwide effort to undermine trust in future elections. Plaintiffs freely admit that the overriding intent of their lawsuit was (and presumably continues to be) to conduct a belated, undefined, unauthorized and unregulated "audit" of the 1.2 million King County ballots from the November 2020 general election in the same manner as the widely derided "audit" that occurred in Maricopa County, Arizona, in 2021. The November 2020 general election was, according to experts, the most secure, verified, and transparent election in American history. Yet, Appellants and their fellow collaborators continue to attack the results with attempts to obtain election records to conduct bogus "audits" and spurious claims of wrongdoing by election officials. The coordinated effort to overburden election officials with public records requests, and flood the courts with lawsuits against election officials has constituted an unprecedented

assault on American democracy.[1] WEICU's appeal is frivolous because WEICU's request for ballots and ballot images from the November 2020 general election is foreclosed by settled law, as numerous other courts have held. Basler and Samoylenko have appeared pro se throughout the litigation. Their appeal is patently frivolous because they filed no responsive pleading in the trial court, and have not filed a brief in this Court. The trial court's order should be affirmed, and sanctions imposed.

## II. ISSUES PRESENTED

1. Did the trial court properly dismiss the Public Records Act claim brought by WEICU, a nonprofit corporation, because the operative complaint was not signed by an attorney? Yes.

2. Did the trial court properly dismiss WEICU's Public Records Act claim because ballots, ballot images and voter signatures are not subject to public disclosure? Yes.

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[1] See "Trump backers flood election offices with requests as 2022 vote near," *Washington Post,* Sept. 11, 2022 https://www.washingtonpost.com/nation/2022/09/11/trump-election-deniers-voting/

3. Did the trial court properly dismiss WEICU's Public Records Act claim because King County Elections fully complied with the requirements of the Public Records Act as to non-exempt records? Yes.

4. Did the trial court properly grant King County and Director Wise's request for declaratory relief? Yes.

5. Did the trial court properly deny WEICU's request for declaratory relief and motion to show cause? Yes.

## III. STATEMENT OF THE CASE

### A. This Frivolous Lawsuit Was Filed to Sow Distrust in Elections for Profit and Political Gain.

The individual pro se Plaintiffs in this case, Doug Basler and Timofey Samoylenko,[2] alleged that they are King County voters who participated in the November 2020 general election. CP 1-2. More than ten months after the election results were properly certified pursuant to state law, they filed this lawsuit alleging, without any factual support, various misconduct and constitutional violations by King County Election Director Julie

[2] This case originally included nine pro se individuals. Seven of those pro se Plaintiffs dismissed their claims against King County. CP 318. Only Basler and Samoylenko remained as pro se Plaintiffs.

Wise. CP 1-27. The pro se Plaintiffs asserted 15 claims. They averred that they were not seeking to "de-certify" the election, but to have the superior court declare that Director Wise committed misconduct that tainted the results of the November 2020 election. CP 17-18. They also sought declaratory and injunctive relief presumably regarding future elections, as well as damages. CP 18-19.

In contrast, Washington Election Integrity Coalition United (hereinafter "WEICU") asserted only one claim in the lawsuit: violation of Washington's Public Records Act, Chapter 42.56 RCW. CP 11-13. WEICU alleged that King County violated the Public Records Act by declining to provide WEICU with provide "original ballots, ballot images, spoiled ballots, adjudication records, ballot envelopes and returned ballots" from the November 2020 general election. CP 11. King County asserted that ballots and signatures were exempt from public disclosure. CP 11, 530. Although WEICU is a

corporation the complaint was not signed by an attorney, but only by the director of WEICU. CP 19.

Appellants have always been straightforward about their objective: "to conduct a full forensic audit of the requested public records in coordination with Jovan Hutton Pulitzer, inventor of kinematic artifact detection and Maricopa [C]ounty Arizona ballot auditor of 2020 General Election 2.1 million ballots." CP 13. Since they lack any factual basis for questioning the accuracy of the November 2020 election results and failed to do so in a timely manner pursuant to state law, the only purpose of such an "audit" would be to fundraise and spread misinformation about the November 2020 election. It appears that the individual pro se plaintiffs were recruited to take part in this lawsuit, and others like them, through WEICU's website. CP 461-65. WEICU raised tens of thousands of dollars from donors in connection with this and similar lawsuits. CP 466-70.

This lawsuit was filed in King County Superior Court and removed to federal court. CP 28-29. In answering, King County and Director Wise filed counterclaims seeking declaratory relief that ballots, ballot images and voter signatures on ballot envelopes are exempt from public disclosure under the Public Records Act. CP 108-15. Defendants also sought a permanent injunction precluding WEICU from obtaining ballots, ballot images and voter signatures on ballot envelopes. CP 114.

The federal court granted WEICU's motion to remand the case to state court. CP 67-90. The federal court concluded that the pro se plaintiffs lacked Article III standing to pursue their federal claims, and that the court had no supplemental jurisdiction over the remaining state law PRA claim. CP 86. The federal court remanded the matter to the King County Superior Court solely because the counterclaims had merit. CP 87-89. The federal court and other courts had found largely identical lawsuits related to the November 2020 general

election brought against other counties by WEICU to be frivolous and without merit. CP 340-460.[3]

After remand, the Washington State Democratic Central Committee moved to intervene. CP 124-139. The trial court granted the motion to intervene. CP 1024-25.

King County and Director Wise sought summary judgment as to all claims and counterclaims. CP 310-35. WEICU sought declaratory judgment "on the meaning and application of RCW 29A.08.161 to the instant action." CP 298-302. WEICU also filed a "Motion to Show Cause Re Public Records Request." CP 304-08. Basler and Samoylenko did not

[3] The Franklin County Superior Court dismissed WEICU's action against Franklin County under CR 12(b)(6) and CR 11(a). CP 345-46. The Lincoln County Superior Court dismissed WEICU's action against Lincoln County as frivolous, and imposed sanctions, including attorney fees. CP 349-50, 356-57. The federal court dismissed WEICU's actions against Thurston County, Pierce County, Snohomish County, Clark County and Whatcom County concluding that remand was deemed futile because dismissal was foreordained. CP 361-460.

file any responsive pleadings to King County and Wise's motion for summary judgment, nor did they file any motions.[4]

The Honorable Leroy McCullough granted King County and Director Wise's motion for summary judgment, dismissing all the causes of action in the complaint. CP 1088-94. In granting summary judgment the court made a number of rulings. First, as to the pro se election claims, the court concluded that Basler and Samoylenko's claims should be dismissed pursuant to CR 56(e) because they provided no

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[4] They attempted to "join" in WEICU's response, but since WEICU brought no claims in common with Basler and Samoylenko, such joinder makes no sense. CP 903-04. The trial court noted that Basler and Samoylenko filed no responsive pleadings and submitted no evidence and found that summary judgment was appropriate on their claims on that basis alone. CP 1030. Throughout this litigation, and again on appeal, Ms. Shogren improperly attempts to submit arguments on behalf of Basler and Samoylenko although she does not represent them. See e.g. CP 666-75; Brief of Appellant, at 4-5 (Assignments of Error 6, 7, 9 and 10), at 40-45. King County Defendants move to strike the portions of WEICU's brief that pertain to the election misfeasance claims brought only by Basler and Samoylenko, specifically: Assignments of Error 6, 7, 9 and 10; Issues 7, 8, 11 and 12; part E of the Statement of the Case; and parts A.5., B and E of the Argument.

responsive pleadings or evidence in response to the motion for summary judgment. CP 1030. In addition, the court found that the election claims were procedurally barred by RCW 29A.68.013. CP 1030-31. As to WEICU's PRA claim, the Court concluded that ballots and ballot images and voter signatures are exempt from public disclosure. CP 1032-33. In the alternative, the court granted the motion to strike WEICU's PRA cause of action pursuant to CR 11. CP 1094. The court granted King County and Director Wise's request for declaratory relief and declared 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." CP 1094. The court denied WEICU's motion for declaratory judgment and motion to show cause. CP 1096-1108. The court also denied WEICU's motion for reconsideration. CP 1142-44. WEICU appealed, as did Basler and Samoylenko. CP 1019-1108.

On appeal, Basler and Samoylenko have not submitted a brief.

### B. The November 2020 General Election in King County.

In King County, the Department of Elections is managed by the Director of Elections, who is responsible for conducting all special and general elections held in the county. King County Code § 2.16.135.[5] For election-related matters, the Director of Elections serves as the county auditor for King County. RCW 29A.04.025.

In the November 2020 general election, there were 1,420,898 active registered voters in King County. CP 316. Of those active registered voters, 1,231,063 ballots were returned, resulting in a historic 86.64% rate of return. CP 316.

The King County results were certified on November 24, 2020. CP 316.

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[5] The King County Code is published at https://kingcounty.gov/en/legacy/council/legislation/kc_code

### C. WEICU's Public Disclosure Requests.

In August of 2021, WEICU sent an email to King Elections requesting disclosure of "original ballots, ballot images, spoiled ballots, adjudication records, ballot envelopes and returned ballots for the November 3, 2020 General Election." CP 513. King County Elections timely advised WEICU that ballot and ballot images are exempt from public disclosure, provided a link to the adjudication logs, and offered to schedule a time for WEICU to inspect ballot envelopes. CP 530. King County Elections also offered to scan the ballot envelopes, which numbered 1.2 million, and provide scanned and redacted copies at the cost authorized by King County Code 2.12.280.A.2. CP 532-33, 551-52. King County Elections requested a deposit for the work. CP 532-33, 551-52. WEICU responded by stating that they would not be ordering any scanned copies of the ballot envelopes. CP 561.

WEICU also stated it would contact King County Elections if it chose to arrange viewing the envelopes but had

not yet decided whether to proceed with that option. CP 561. King County Elections requested that WEICU notify them if they wished to inspect the envelopes in person. CP 568. WEICU requested clarification as to the logistics of viewing the 1.2 million ballot envelopes. CP 575. King County Elections provided information as to the place and time for such inspection, and specified that pursuant to WAC 434-250-380, copying or photographing voter signatures would be prohibited during inspection. CP 584. WEICU did not respond further or make arrangement for viewing the ballot envelopes. CP 510.

## IV. ARGUMENT

### A. The Trial Court Properly Dismissed WEICU's PRA Claim Because It Was Not Signed by an Attorney.

Although an individual has a right to self-representation, this right does not extend to corporations. *Dutch Village Mall*, 162 Wn. App. 531, 535, 256 P.3d 1251 (2011) (citing RCW 2.48.170)); *Lloyd Enterprises, Inc. v. Longview Plumbing &*

*Heat. Co.*, 91 Wn. App. 2d 697, 701, 958 P.2d 1035 (1998), *review denied*, 137 Wn. 2d 1020 (1999). A corporation appearing in a court proceeding must be represented by an attorney. *Id.* All pleadings and motions must be signed by the attorney representing a corporate party, and the failure to do so is a proper basis for the court to strike a pleading or motion. CR 11(a). *Dutch Village Mall*, 162 Wn. App. at 539 ("When a corporate entity presents a pleading not signed by an attorney, CR 11 is a proper basis for striking the pleading.") (citing *Biomed Comm, Inc. v. Dep't of Health, Bd. of Pharm.*, 146 Wn. App. 929, 938, 193 P.3d 1093 (2008)).

In this case, no attorney signed the complaint on behalf of WEICU, a nonprofit corporation. CP 19-21. Instead, Tamborine Borrelli, who is neither an attorney nor a party, signed on behalf of WEICU. CP 19. Although Ms. Shogren, WEICU's present attorney, filed a subsequent notice of appearance with the court for WEICU only, no amended complaint was ever filed. CP 92-93.

Notably, in December of 2021, the Franklin County Superior Court dismissed a nearly identical lawsuit by WEICU against the Franklin County Auditor pursuant to CR 11 because the complaint was "invalid on behalf of plaintiff Washington Election Integrity Coalition United for lack of a proper attorney signature." CP 345-46. Ms. Shogren represented WEICU in that case. CP 1121-24.

Likewise, in *WEICU v. Inslee,* the Washington Supreme Court imposed sanctions on WEICU and Ms. Shogren pursuant to RAP 18.9 for a similar failure to comply with the rules requiring a corporation to file pleadings signed by a licensed attorney. CP 635-42. The motion for sanctions in that case was based in part on the fact that WEICU's petition to the Washington Supreme Court was filed by an unrepresented corporation. CP 650-51. As in this case, Ms. Shogren entered a notice of appearance for WEICU after the petition was filed, but never cured the violation of the court rules and common law by filing an amended petition signed by counsel. CP 651. Thus,

this case appears to be part of a pattern of cases where WEICU is represented by Ms. Shogren, but Ms. Shogren declines to sign key pleadings.

It was undisputed below that no attorney signed the operative complaint on behalf of WEICU. In the 21 months between when the complaint was filed and when the trial court granted summary judgment, Ms. Shogren made no attempt to file an amended complaint that complies with CR 11.

In the motion for reconsideration, WEICU argued that CR 11 does not require a complaint filed by a corporate body to be signed by an attorney. As the trial court concluded, this is simply incorrect. CR 11 requires that "every pleading" "shall be dated and signed by at least one attorney of record." CR 11(a). While "[a] party who is not represented by an attorney shall sign and date the party's pleading" pursuant to CR 11(a), a corporation may not proceed pro se and must be represented by a licensed attorney. *Cottringer v. State, Dep't of Employment Sec.*, 162 Wn. App. 782, 787, 257 P.3d 667 (2011) (quoting

*Dutch Village Mall v. Pelletti,* 162 Wn. App. at 535). "The rules permitting pro se representation do not apply to corporations." *Lloyd Enterprises*, 91 Wn. App. at 699. The common law in Washington is not unique in this regard. "It has been the law for the better part of two centuries, for example, that a corporation may appear in the federal courts only through licensed counsel." *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 201–02 (1993).

*Lloyd Enterprises*, *supra,* 91 Wn. App. at 699, illustrates this principle. That case arose from a contract dispute between two corporations. *Id.* The attorney for the plaintiff corporation, Berry, Inc. withdrew. *Id.* The defendant corporation, Lloyd Enterprises, Inc., filed a second action, and the president of the Berry answered pro se. *Id.* The actions were consolidated, and Lloyd Enterprises moved to strike all pleadings that had been submitted by Berry pro se. *Id.* The court dismissed the claims brought by Berry with prejudice and entered a default judgment for Lloyd Enterprises. The Court of Appeals affirmed,

explaining that "[b]ecause Berry, Inc., was required to be represented by an attorney, the trial court acted appropriately under Superior Court Civil Rule 11 when it struck those documents submitted by Berry on behalf of Berry, Inc.." *Id.* at 701. *See also Biomed Comm, Inc., supra,* 146 Wn. App. at 938 (stating cases "make clear that CR 11 is a proper basis for striking the pleading of a corporation that is not signed by an attorney"); *Island County v. Cosmic Light Creations*, 1 Wn. App. 2d 1016, 2017 WL 5291493, at *2 (2017) (unpublished) (explaining that a request to strike pleadings filed by a non-attorney on behalf of a corporation "would have been well-founded under CR 11 because a pleading signed by a party not authorized to do so is, in effect, unsigned").[6]

WEICU's attempt to distinguish *Dutch Village Mall v. Pelletti, supra,* is unavailing. In *Dutch Village*, 162 Wn. App. at 534, the LLC in question had a sole owner, member and officer,

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[6] This unpublished case is cited pursuant to GR 14.1 as non-binding authority, to be accorded such persuasive value as this Court deems appropriate.

who was not an attorney, but attempted to represent the corporation in court. The superior court ordered the pleadings filed by Dutch Village to be stricken, unless within 30 days the corporation "obtained the signature of an attorney *on the pleadings." Id.* at 535 (emphasis added). The superior court did not simply require Dutch Village to obtain an attorney, but to refile the pleadings *with the signature of an attorney*. This Court affirmed, explaining, "[t]he trial court correctly granted the motion to strike the pleadings of Dutch Village Mall unless, within 30 days, they were either withdrawn or *signed by an attorney*." *Id.* at 539 (emphasis added). Thus, WEICU's argument—that an improperly filed pleading can be remedied by a subsequent notice of appearance—is refuted by the facts of that case and this Court's holding.

The verified complaint in this case was not signed by an attorney. Despite being on notice of this defect, WEICU never attempted to file an amended complaint signed by Ms. Shogren. The operative complaint violated CR 11. The trial court

properly struck WEICU's PRA claim and denied its motions because the PRA claim violated CR 11 was not properly before the court. For this reason alone, the trial court orders should be affirmed.

### B. In the Alternative, the Trial Court Properly Dismissed WEICU's PRA Claim Because Washington Law Precludes Disclosure of Ballots, Ballot Images and Voter Signatures.

According to the Complaint, WEICU sought "a Court order compelling release of the public records, including a Court order unsealing ballots under RCW 29A.60.110, for a full forensic audit conducted by Jovan Hutton Pulitzer, inventor of the kinematic artifact detection and Maricopa County Arizona ballot auditor of approximately 2.1 million ballots." CP 2. WEICU submitted a public records request to Director Wise for "original ballots, ballot images, spoiled ballots, adjudication records, ballot envelopes and returned ballots for the Election." CP 11. The public records request was denied by Director Wise because ballots and ballot images are exempt under Washington

law. CP 11. The trial court properly concluded that WEICU's PRA claim failed as a matter of law because controlling state law establishes that ballots, ballot images and voter signatures on ballot envelopes are exempt from public disclosure.

The PRA is codified in chapter 42.56 RCW. Its primary purpose is to foster governmental transparency and accountability by making public records available to citizens. *Doe ex rel. Roe v. Washington State Patrol*, 185 Wn.2d 363, 371, 374 P.3d 63 (2016). However, despite a presumption of openness and transparency the legislature has made some records exempt from production. *Id.* Some exemptions are contained in the PRA itself and have been found in other statutes that prohibit release of records. *Id.* Exemptions can likewise be found in regulations authorized by statute. *Ameriquest Mortgage Co. v. Washington State Office of Atty. Gen.*, 170 Wn.2d 418, 440, 241 P.3d 1245 (2010).

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." In addition, state and federal laws require ballot security. After tabulation, RCW 29A.60.100 requires all ballots to be sealed in containers and retained according to federal law. The containers may only be opened by the canvassing board under limited circumstances: as part of the canvass, to conduct recounts, to conduct a random check as authorized by statute, to conduct an audit authorized by statute, or by order of the superior court in an election dispute. *Id.* The Civil Rights Act of 1960, now codified at 52 U.S.C. §§ 20701-20706, governs "[f]ederal election records," and applies to the materials at issue in this case because the November 2020 general election included federal offices. Section 301 of the Act requires state and local election officials to "retain and preserve" all records relating to any "act requisite to voting" for twenty-two months after the conduct of "any general, special, or primary election" at which citizens vote for "President, Vice

President, presidential elector, Member of the Senate, [or] Member of the House of Representatives," 52 U.S.C. § 20701. The materials covered by Section 301 extend beyond "papers" to include other "records." *Id.* Jurisdictions must therefore also retain and preserve records created in digital or electronic form.

In a series of cases, Washington courts have held that the legislature intended for ballots to be exempt from public disclosure in light of the broad constitutional guarantee of ballot secrecy and the statutes and regulations that govern the handling of ballots. In *White v. Clark County*, 188 Wn. App. 622, 627, 354 P.3d 38 (2015), *review denied*, 185 Wn.2d 1009 (2016) (*White I),* Division Two held that pre-tabulated ballots are exempt from public disclosure. In that case, the plaintiff made a public records request for "scanned images of pretabulated ballots" from Clark County prior to certification of the election. The provisions of chapter 29A RCW required that ballots be kept secure prior to processing and after tabulation. *Id.* at 634. These statutes, however, resulted in a gap which the ballots that White requested

fell within—ballot images generated during processing that had not yet been tabulated. *Id.* The court found that the legislature had expressly delegated to the secretary of state the authority to "fill in the statutory gaps regarding the secrecy and security of ballots." *Id.* Indeed, the legislature *required* the secretary to make such rules. *Id.* at 635. The court held that the secretary's regulations, enacted in keeping with the constitution and the legislature's grant of authority, constituted an "other statute" requiring exemption. *Id.* at 636. The court concluded that such ballots are exempt under the PRA, explaining:

> Article VI, section 6 of the Washington Constitution, various sections of Title 29A RCW, and secretary of state regulations adopted under express legislative authority make it clear that election ballots must be kept completely secure from the time of receipt through processing and tabulation. We hold that these provisions together constitute an "other statute" exemption to the PRA under RCW 42.56.070(1) and that the County did not violate the PRA by failing to disclose the pre-tabulated ballot images.

*Id.* at 627.

In *White v. Skagit County*, 188 Wn. App. 886, 890, 355 P.3d 1178 (2015), *review denied*, 185 Wn.2d 1009 (2016) (*White II),* the same plaintiff filed suit against Skagit and Island Counties after they denied his request for electronic or digital image files of ballots received, cast, voted, or otherwise used in the 2013 general election. This Court held that ballots were exempt from public disclosure. *Id.* at 900. This Court noted that "the legislature has gone into great detail to ensure that the process of collecting, counting, storing, and ultimately destroying ballots achieves the constitutional mandate for a secret ballot." *Id.* at 894. This Court explained:

> White's argument that even greater transparency would promote public confidence in elections is a matter of policy for the legislature to consider. It is not supported by the statutes as they are currently written. Allowing observers at various stages of ballot processing is fundamentally different from allowing every member of the public to inspect images of every ballot cast. Ballot boxes are not to be opened nor votes recounted "on mere suspicion and on mere demand." *Quigley v. Phelps,* 74 Wn. 73, 81, 132 P. 738 (1913). The statutes that regulate the handling of ballots do not manifest a legislative intent to facilitate public inspection of voted ballots. They manifest a legislative intent to protect ballot secrecy by

> maintaining the integrity of ballot processing and tabulation.

*Id.* at 897. This Court held that all ballots, including copies, are exempt from disclosure and that exemption is necessary to protect a vital governmental function. *Id.* at 898.

A few years later, in *White v. Clark County*, 199 Wn. App. 929, 931, 401 P.3d 375 (2017), *review denied*, 189 Wn.2d 1031 (2018) (*White III),* White tried again, requesting tabulated ballots from Clark County more than 60 days after they were tabulated. Division Two found that the exemption recognized in *White I* applied to tabulated ballots as well as pre-tabulated ballots. *Id.* at 932. The Court found that the interplay of RCW 29A.60.110 (requiring ballot containers to be sealed and only accessed under limited circumstances) and WAC 434-261-045 (prescribing storage of ballots and "ballot images") created an "other statute" exemption to the PRA. *Id.* at 938. The Court reasoned that, viewing chapter 29A as a whole, there is a presumption against disclosure of election records unless otherwise stated:

> [A]s Division One noted in *White II*, the legislature has also "specified that certain *nonballot* election records may be disclosed to the public." The court noted that it would be superfluous for the legislature to single out specific types of elections records as subject to disclosure unless they were viewed as exceptions to the general rule of nondisclosure. *Id.* Further, because under RCW 29A.60.110 it is clear that tabulated ballots must remain sealed, there was no reason for the legislature to include an explicit exemption.

*Id.* at 936 (emphasis in original) (citations omitted). The Court concluded that "tabulated ballots are exempt in their entirety from disclosure under the PRA," and affirmed dismissal of White's PRA complaint. *Id.* at 939.

Most recently, Division Three agreed with the *White* decisions that ballots and ballot images are exempt from public disclosure. *Washington Election Integrity Coalition United v. Schumacher,* __ Wn. App. 2d __, __ P.3d __, 2023 WL 7143130 (Sept. 12, 2023) (ordered published Oct. 24, 2023). Noting that the *White* decisions were authoritative precedent, Division Three held:

> None of WEiCU's arguments persuade us that the *White* decisions are unsound, or that they do not support

> the superior courts' conclusions that article VI, section 6 of the Washington Constitution, provisions of Title 29A RCW, and administrative regulations adopted by the secretary of state, provide an "other statute" exemption under which records requested by WEiCU were properly withheld by Lincoln and Franklin counties.

*Id.* at *11.

Most importantly, in 2023 the Legislature made its agreement with the courts' interpretation of the PRA explicit by enacting Senate Bill 5459, which now provides that "Voted ballots, voted ballot images, copies of voted ballots, photographs of voted ballots, facsimile images of voted ballots, or case vote records of voted ballots, starting at the time of ballot return, during storage per RCW 29A.60.110, and through destruction following any retention period or litigation" are "exempt from disclosure" under 42.56 RCW. RCW 42.56.425(1)(e); Laws of 2023, Ch. 404, § 4 (effective July 23, 2023). Washington courts have long "presume[d] that the legislature is aware of judicial interpretations of its enactments and takes its failure to amend a statute following a judicial decision interpreting that statute to

indicate legislative acquiescence in that decision." *State v. Otton*, 185 Wn.2d 673, 685–86, 374 P.3d 1108 (2016) (quoting *City of Federal Way v. Koenig*, 167 Wn.2d 341, 348, 217 P.3d 1172 (2009)). In this case, the legislature took no action in light of the *White* decisions until 2023, when it explicitly *adopted* their interpretation exempting ballots and ballot images from public disclosure. There can be no clearer evidence of legislative acquiescence.

In regard to voters' signatures on ballot envelopes, which WEICU also requested, RCW 42.56.420 was amended in 2022, to provide that voter signatures on ballot return envelopes are also not subject to public disclosure. Enacted as RCW 42.56.420(7)(a)(iii), the statute read:

> The following information relating to security is exempt from disclosure under this chapter:
> . . .
> (7)(a) In addition to the information in subsection (4) of this section, the following related to election security:
> . . .
> (iii)
> Voter signatures on ballot return envelopes, ballot

> declarations, and signature correction forms, including the original documents, copies, and electronic images; and a voter's phone number and email address contained on ballot return envelopes, ballot declarations, or signature correction forms. The secretary of state, by rule, may authorize in-person inspection of unredacted ballot return envelopes, ballot declaratio ns, and signature correction forms in accordance with RCW 29A.04.260.

*See* Laws of 2022, ch. 140, sec. 1. The session law that enacted that provision also provided "The exemptions in sections 1 and 2 of this act apply to any public records request made prior to the effective date of this section for which disclosure of records has not already been completed." Laws of 2022, ch. 140, sec. 3. In 2023, the exemption for voters' signatures on ballot return envelopes was moved to newly enacted RCW 42.56.425. Laws of 2023, ch. 404, §§ 3-4. RCW 42.56.425(1)(c) now provides that "voter signatures on ballot return envelopes, ballot declarations and signature correction forms, including the original documents, copies, and electronic images" are exempt from disclosure.

Thus, based on the consensus of all three divisions of the Court of Appeals and newly enacted statutes adopting that consensus, all ballots, ballot images and voter signatures are exempt from public disclosure. The trial court correctly found that as a matter of law, the ballots, ballot images and voter signatures requested by WEICU are exempt from public disclosure and King County and Direct Wise did not violate the PRA by withholding them pursuant to authoritative precedent. The trial court properly dismissed WEICU's PRA claim and denied WEICU's motion to show cause.

### C. In the Alternative, the Trial Court Properly Dismissed WEICU'S PRA Claim Because King County Elections Fully Complied with the PRA.

To the extent that WEICU's PRA request went beyond ballots, ballot images and voter signatures, King County fully complied with the PRA. Pursuant to RCW 42.56.550(1):

> [u]pon the motion of any person *having been denied an opportunity to inspect or copy a public record* by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or

> copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

(emphasis added).

Under the PRA, a requestor may only initiate a lawsuit for the refusal to allow inspection or copying of a public record under RCW 42.56.550(1) after an agency has engaged in some final action denying access to a record. *Hobbs v. State*, 183 Wn. App. 925, 935-36, 335 P.3d 1004 (2014); RCW 42.56.550(1). A denial of a public record happens when it "reasonably appears that an agency will not or will no longer provide responsive records." *Hobbs*, 183 Wn. App. at 935-36. The plain language of the PRA requires that "being denied a requested record is a prerequisite for filing an action for judicial review of an agency decision under the PRA." *Id*. at 936.

Under RCW 42.56.120(4), "If an installment of a records request is not claimed or reviewed, the agency is not obligated

to fulfill the balance of the request." WEICU elected not to receive scanned copies of the ballot envelopes (with the signatures redacted) and made no arrangements for the inspection of the envelopes once it was advised that no copying or photographing of voter signatures would be allowed. CP 532, 556, 561, 568, 575, 584. WEICU's failure to inspect the records relieved King County of its obligation to further respond to this request. The trial court properly concluded that King County Elections did not fail to comply with the PRA in regard to non-exempt records, and properly granted summary judgment for King County and Director Wise and denied WEICU's motion to show cause.

### D. The Trial Court Properly Granted King County and Director Wise's Request for Declaratory Relief.

In a counterclaim, King County and Director Wise requested declaratory relief. Declaratory relief is available pursuant to the UDJA, RCW 7.24.010 and 7.24.020. RCW 7.24.020 provides as follows:

> A person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

Declaratory relief is appropriate under UDJA when the "construction or validity" of a statute is at issue. *Bainbridge Citizens United v. Washington State Dep't of Nat. Res.*, 147 Wn. App. 365, 375, 198 P.3d 1033 (2008). For a court to render a declaratory judgment under the UDJA, there must be a justiciable controversy. *Wash. State Republican Party v. Wash. State Pub. Disclosure Comm'n*, 141 Wn.2d 245, 284, 4 P.3d 808 (2000). A justiciable controversy is:

> (1) ... an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive.

*Id.* Each of these four elements must be met. *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137 (1973). An agency seeking adjudication that it is in compliance with the PRA can seek a declaratory judgment. *Cantu v. Yakima School District No. 7,* 23 Wn. App. 2d 57, 80, 514 P.3d 661 (2022).

For all the reasons outlined above, the trial court properly granted King County and Director Wise's request for declaratory relief. WEICU's PRA request and subsequent lawsuit presented an actual, present and existing dispute. WEICU and King County/Director Wise had genuine and opposing interests in that dispute that were direct and substantial. The court's judicial determination was final and conclusive. The court properly declared 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." CP 1094.

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### E. The Trial Court Did Not Grant an Injunction, and Thus Whether the Requirements for Injunctive Relief Pursuant to RCW 42.56.540 Were Met Is Not Before This Court.

WEICU focuses much of its briefing on RCW 42.56.540. That statute provides "[t]he examination of any specific public record may be *enjoined*" by establishing "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). An injunction can be sought by an agency, or a person named in the record sought or to whom the record specifically pertains. *Id.*

In *Lyft, Inc. v. City of Seattle*, 190 Wn.2d 769, 418 P.3d 102 (2018), Lyft sought to enjoin Seattle from disclosing information that Lyft considered trade secrets. The question addressed in *Lyft* was what standard applied to an injunction sought under RCW 42.56.540.

WEICU ignores the fact that this PRA action was brought by it, not a party seeking to enjoin disclosure. While King County sought an injunction, the trial court did *not* grant the request for injunctive relief. CP 1093 ("The Court finds that injunctive relief is unnecessary"). The trial court did not err in concluding that an injunction was not necessary because the records were exempt as a matter of law. *Lyft* and RCW 42.56.540 thus have no application because the court did not grant an injunction. *See WEICU v. Schumacher*, *supra,* 2023 WL 7143130, *11 (holding *Lyft* is inapposite where no injunction issued).

### F. The Trial Court Properly Denied WEICU's Request for Declaratory Judgment Because Declaratory Relief Was Not Pled by WEICU, WEICU Lacked Standing, and the Meaning of RCW 29A.08.161 Was Not a Justiciable Controversy.

A party may bring an action for declaratory relief if their rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise. RCW 7.24.020. In

such an action, the court may determine any question of construction or validity if the action presents a justiciable controversy. *Id.*; *Nelson v. Appleway Chevrolet, Inc.*, 160 Wn.2d 173, 185, 157 P.3d 847 (2007).

CR 57 provides that "the procedure for obtaining a declaratory judgment pursuant to the Uniform Declaratory Judgments Act, RCW 7.24, shall be in accordance with these rules." CR 8 governs claims for relief and provides that a pleading that sets forth a claim for relief *shall* contain "(1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which the pleader deems the pleader is entitled." A pleading is insufficient if it does not give fair notice of what the claim is and the ground upon which it rests. *Kirby v. City of Tacoma*, 124 Wn. App. 454, 470, 98 P.3d 827 (2004). "A party who does not plead a cause of action or theory of recovery cannot finesse the issue by later inserting the theory into trial briefs and contending it was in the case all along." *Dewey v. Tacoma*

*School Dist. No. 10,* 95 Wn. App. 18, 23, 974 P.2d 847 (1999) (quoting *Lewis v. Bell*, 45 Wn. App. 192, 197, 724 P.2d 425 (1986)).

Assuming arguendo that WEICU's PRA claim was properly before the court despite the lack of compliance with CR 11, as argued above, WEICU did not comply with CR 8 by giving notice of a request for declaratory relief based on RCW 29A.08.161. WEICU pled a single cause of action, a "public records action." CP 11-13. Although the paragraphs that set forth the public records action cite several Washington statutes, they did not cite RCW 29A.08.161. The complaint only sought the following relief in regard to the public records action:

> That Director and/or Defendant County be compelled and ordered to comply with WEICU's PRR, including a Court order unsealing ballots under RCW 29A.60.110, for the purpose, *inter alia*, of a full forensic audit conducted by Jovan Hutton Pulitzer, inventor of the kinematic artifact detection and Maricopa county Arizona ballot auditor of 2020 General Election 2.1 million ballots.

CP 18.

WEICU's public records claim could not be fairly construed as seeking declaratory relief as to the meaning and application of RCW 29A.08.161. WEICU was not entitled to a declaratory judgment because such declaratory relief was not pled in the complaint.

In addition, WEICU lacked standing to seek the requested declaratory judgment. In order for a party to have personal standing to seek declaratory judgment as to the meaning of statute, the party must (1) be within the zone of interest protected by a statute, and (2) have suffered an injury in fact, economic or otherwise. *Grant County Fire Protection Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 802, 83 P.3d 419 (2004). WEICU failed to establish these elements of standing. RCW 29A.08.161 provides that "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, except the declarations made under RCW 29A.56.050(2)." The clear intent

of the statute is to protect the secrecy of voters' ballots. Because WEICU is a nonprofit corporation, and not a voter, WEICU is not within the zone of interest protected by RCW 29A.08.161. Nor did RCW 29A.08.161 cause WEICU to suffer any injury in fact, economic or otherwise.[7]

*Grant County v. Moses Lake* is instructive. In that case, the plaintiffs challenged the method of annexation of properties to the city of Moses Lake. 150 Wn.2d at 798. The plaintiffs included several property owners plus Grant County Fire Protection District No. 5. *Id.* at 798. The plaintiffs sought declaratory judgment in regard to the constitutionality of the statute under which annexation was accomplished. *Id.* The supreme court concluded that while the property owners had

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[7] WEICU never argued that representational standing was appropriate. *See* CP 911-12. Washington courts have sometimes granted representative standing when a controversy is "of substantial public importance, immediately affects significant segments of the population, and has a direct bearing on commerce, finance, labor, industry, or agriculture." *Grant County,* 150 Wn.2d at 803. That standard is not met in this case, and applies only in cases where the plaintiff whose standing is being challenged is the only plaintiff in the case. *Id.*

standing to seek declaratory judgment, the fire district did not. *Id.* at 801. The statutes at issue were not designed to protect the interest of fire districts, and thus they failed the zone of interest test required for personal standing. Likewise, WEICU fails the zone of interest test, and had no standing to seek declaratory relief on the meaning of RCW 29A.08.161.

Finally, even if WEICU had standing, the trial court properly concluded there was no justiciable controversy between the parties as to meaning of RCW 29A.08.161. CP 1047. *See Wash. State Republican Party v. Wash. State Pub. Disclosure Comm'n*, *supra,* 141 Wn.2d at 284 ("To invoke the Uniform Declaratory Judgments Act, RCW 7.24.120, there must be a justiciable controversy, unless there is an issue of major public importance.") The meaning of RCW 29A.08.161 simply had no bearing on WEICU's public records action. Ballots are exempt from public disclosure regardless of whether the voter can be identified. The applicable statutes and regulations protect not just ballot secrecy but also ballot

security. The trial court properly denied WEICU's request for a declaratory judgment as to the meaning of RCW 29A.08.161.

### G. The Trial Court Properly Granted Summary Judgment to King County and Director Wise on the Election Claims.

WEICU did not join in Basler and Samoylenko's claims of election misfeasance. Ms. Shogren does not represent Basler or Samoylenko. Neither Basler or Samoylenko have filed a brief with this Court. Thus, King County and Director Wise move to strike the portions of WEICU's brief that pertain to Basler and Samoylenko's claims. *See* fn. 3. Nonetheless, those claims will be addressed here.

The trial court dismissed the election claims because Basler and Samoylenko filed no responsive pleadings and submitted no evidence. CP 1030.[8] This ruling was correct. CR

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[8]The trial court properly struck an unsigned, anonymous declaration submitted by WEICU as an exhibit to Shogren's declaration. CP 1033. The declarant was not identified and did not meet the qualifications to be an expert witness as to election administration, either in general or in Washington, pursuant to ER 702. CP 740-776. Nor did the declarant appear to have

56(e) provides, in relevant part, as follows:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of a pleading, but a response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Basler and Samoylenko made no argument and presented no evidence in response to King County and Director Wise's motion for summary judgment. Pursuant to CR 56(e), plaintiffs cannot rest upon allegations in a pleading, but must present evidence to support relevant factual allegations. For this reason alone, summary judgment on the election claims was properly granted.

The trial court alternatively dismissed the election claims because they were procedurally barred by RCW 29A.68.013. CP 1030-1031. This was also correct.

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personal knowledge of the matters within the declaration as required by ER 602 and CR 56(e). To the extent it is coherent at all, the declaration presents nothing but unhinged election conspiracy theories completely unrelated to Washington state.

Washington has a comprehensive legislative scheme governing elections that provides safeguards for accuracy and requires the prompt resolution of election contests. Prior to certification of the results, the county auditor is required to conduct an audit of the election results. RCW 29A.60.185. Audits must be conducted using an independent electronic audit system approved by the secretary of state. *Id.* The secretary of state establishes rules for the audit that facilitate public observation and reporting requirements. *Id.*

Twenty-one days after a general election the county canvassing board completes the canvass and certifies the results. RCW 29A.60.190. Meetings of the canvassing board are public meetings. RCW 29A.60.140(5). An abstract of all the votes cast is transmitted to the secretary of state. RCW 29A.60.230. The county auditor also prepares a reconciliation report that is publicly available. RCW 29A.60.235.

Elections results must be challenged in an expeditious manner. Any group of five or more registered voters may file an

application for a recount. RCW 29A.64.011. Such a request, however, must be brought within 2 days after the official results have been declared. *Id.* The persons requesting a recount must also deposit a sum equal to 25 cents for each ballot as security for the cost of conducting the recount. RCW 29A.64.030. The proceedings of the canvassing board during a recount are public, and the requestors receive notice of the date, time and place of the recount. *Id.* The requestors may attend, witness the recount and be accompanied by counsel. *Id.* All interested persons may also attend. *Id.* Notably, however, observers may not make a record of the names, addresses, or other information on the ballots, declarations, or lists of voters unless authorized by the superior court. RCW 29A.64.041(3). During the recount, ballots shall be handled only by members of the canvassing board or their duly authorized representatives. RCW 29A.64.041. "The canvassing board shall not permit the tabulation of votes for any nomination, election, or issue other

than the ones for which a recount was applied for or required." RCW 29A.64.041.

In addition to recounts, Washington law allows any elector to seek corrective action related to the conduct of an election. RCW 29A.68.011, .013, .020. These statutes impose strict timelines. A challenge to the official certification pursuant to RCW 29A.68.013 must be initiated "no later than ten days" following the official certification of the election or, in the case of a recount, ten days after the official certification of the amended abstract. RCW 29A.68.013 only authorizes the court in such an action to order an election official to desist from a wrongful act, perform a duty or correct an error. The grounds that may be asserted by a voter for challenging a candidate's right to assume office or certification of a measure are laid out in RCW 29A.68.020, but "[a]ll election contests must proceed under RCW 29A.68.011 or 29A.68.013," incorporating the time limits of those statutes. If such an action is dismissed or the

election confirmed, judgment is rendered against the party contesting the election for costs. RCW 29A.68.060.

According to the complaint, Basler and Samoylenko's election claims were based on RCW 29A.68.013. CP 4, 6, 8-9. As noted above, this statute requires an elector initiating a proceeding to timely file an affidavit:

> Any justice of the supreme court, judge of the court of appeals, or judge of the superior court in the proper county shall, by order, require any person charged with error, wrongful act, or neglect to forthwith *correct the error, desist from the wrongful act, or perform the duty and to do as the court orders or to show cause forthwith why the error should not be corrected, the wrongful act desisted from, or the duty or order not performed*, whenever it is made to appear to such justice or judge *by affidavit of an elector* that:
>
> (1) A wrongful act other than as provided for in RCW 29A.68.011 has been performed or is about to be performed by any election officer; or
>
> (2) Any neglect of duty on the part of an election officer other than as provided for in RCW 29A.68.011 has occurred or is about to occur; or
>
> (3) An error or omission has occurred or is about to occur in the official certification of any primary or election, including a challenge to the certification of any measure.
>
> *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* as provided in RCW 29A.60.190, 29A.60.240, or 29A.60.250 or, in the case of a recount, ten days after the official certification of the amended abstract as provided in RCW 29A.64.061.

RCW 29A.68.013. (emphasis added).

In this case, the trial court correctly concluded that Basler and Samoylenko failed to comply with the statutory requirements of RCW 29A.68.013. CP 1030-1031. No affidavit was submitted to support the spurious claims of an "uncertified voting system," "vote flipping," identifying ballots by party preference, or inadequate chain of custody. The requirements for an affidavit are set forth in RCW 29A.68.030. That statute provides:

> An affidavit of an elector filed pursuant to RCW 29A.68.013(3) must set forth specifically:
>
> (1) The name of the contestant and that he or she is a registered voter in the county, district or precinct, as the case may be, in which the office or measure is to be exercised;
> (2) The name of the person whose right is being contested or the name of the measure being contested;
> (3) The office;
> (4) The particular causes of the contest.

> No statement of contest may be dismissed for want of form if the particular causes of contest are alleged with sufficient certainty. The person charged with the error or omission must be given the opportunity to call any witness, including the candidate.

RCW 29A.68.030. The statute requires the affidavit to identify the candidate or measure being contested as well as the particular cause of the contest set forth with "sufficient certainty." Basler and Samoylenko failed to meet this requirement.

In addition, any affidavit filed under this statute was required to be filed within 10 days of certification of the 2020 election, which was accomplished on November 24, 2020, or within such time as the court would be able to prevent a wrongful act or correct an error. Because the complaint was not filed until September 22, 2021, it was well beyond the 10-day period for asserting an error in certification and well past any time in which a wrongful act could be prevented or error corrected. *See In re Feb. 14, 2017, Special Election on Moses*

*Lake Sch. Dist. #161 Proposition 1,* 2 Wn. App. 2d 689, 695, 413 P.3d 577 (2018) (stating RCW 29A.68.013 “demands that an election contest be filed within ten days of the election's certification.”). Division Three recently agreed holding that the plaintiffs’ claims of wrongful acts, errors and neglect of duty by election officials were untimely under RCW 29A.68.013 because they were not filed within 10 days of certification. *WEICU v. Schumacher, supra,* 2023 WL 7143130, *12-13. In this case, the trial court also correctly found that the election claims were procedurally barred under RCW 29A.68.013.

### H. Sanctions Against All Appellants Are Warranted.

RAP 18.1(a) permits the appellate court to award a party attorney fees if authorized by applicable law. *Subcontracting Concepts CT, Inc. v. Manzi,* 26 Wn. App. 2d 707, 720, 529 P.3d 440 (2023). In addition, RAP 18.9(a) allows the court to impose sanctions, terms and/or compensatory damages, including attorney fees, when the opposing party files a frivolous appellate action. *Reid v. Dalton*, 124 Wn. App. 113, 128, 100

P.3d 349 (2004) (awarding attorney fees and costs for frivolous appeal of election contest); *Pugel v. Monheimer*, 83 Wn. App. 688, 693, 922 P.2d 1377 (1996). An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ, and that the appeal is so devoid of merit that there is no possibility of reversal. *Advocates for Responsible Dev. v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 170 Wn.2d 577, 580, 245 P.3d 764 (2010).

Appellant WEICU should be sanctioned pursuant to RAP 18.9 because its appeal of the trial court's PRA ruling is frivolous in light of binding Court of Appeals precedent and legislation that ballots and ballot images are not subject to public disclosure. This is settled law and WEICU's appeal is devoid of any merit. Moreover, sanctions should be imposed due to the improper purpose of this litigation: to sow distrust in elections and fundraise. Both the Washington Supreme Court and the lower courts have sanctioned WEICU for comparable

improper and frivolous litigation. CP 637, 350. Recently, Division Three declined to sanction WEICU pursuant to RAP 18.9(a) because it determined that it was not frivolous for WEICU to attempt to persuade Division Three that the holdings of Division One and Two in *White* cases were incorrect. *Washington Election Integrity Coalition United v. Schumacher*, *supra,* 2023 WL 7143130, *14-15 (Sept. 12, 2023) (ordered published Oct. 24, 2023). However, Division Three issued its opinion on September 12, 2023, agreeing with the other divisions. Moreover, the Division Three case was briefed and argued before Senate Bill 5459, enacting RCW 42.56.425, became effective, demonstrating the legislature's agreement with the *White* decisions' interpretation of the PRA.[9] In light of the consensus of the appellate courts plus clear legislative acquiescence, WEICU's appeal in this case is frivolous and also

[9] That case was argued before Division Three on June 6, 2023, before RCW 42.56.425 became effective on July 23, 2023. *See* Laws of 2023, Ch. 404.

brought for an improper purpose: to continue to fundraise from gullible supporters. *See* www.WEICU.org; Appendix at 6-8.

Appellants Basler and Samoylenko should also be sanctioned pursuant to both RAP 18.1 and 18.9. RCW 29A.68.060 authorizes the award of costs when an action brought under the auspices of 29A.68 RCW is dismissed for insufficiency. That statute reads, in relevant part:

> If the proceedings are dismissed for insufficiency, want of prosecution, or the election is by the court confirmed, judgment shall be rendered against the party contesting such election for costs, in favor of the party charged with error or omission.

RCW 29A.68.060.

From the beginning of this lawsuit, their claims of election misfeasance against King County officials have been completely fabricated. Appellant Basler, who recently lost an election for King County Director of Elections, has essentially admitted that he had no basis to believe his complaint was well grounded in fact. In recent statements to the Seattle Times, Basler stated "I don't think we have major problems with King

County elections." *See* Appendix at 3. Confronted with the allegations made in this lawsuit, he disavowed them, stating "I didn't write that part," "That's not necessarily where I'm at." *Id.* Tellingly, Basler and Samoylenko did not file any responsive pleadings or present evidence to the trial court. Nonetheless, they insisted on continuing their charade by seeking appellate review, a waste of judicial resources.

Respondents Wise and King County respectfully request that this Court impose sanctions, including attorney fees and compensatory damages,[10] on all appellants pursuant to RAP 18.1 and 18.9.

## V. CONCLUSION

The trial court's order granting summary judgment and declaratory relief to Director Wise and King County should be affirmed. The trial court's order denying declaratory relief to

[10] For example, King County elections has incurred significant costs storing the 1.2 million ballots that are at issue in this appeal, which could have otherwise been destroyed in compliance with federal and state law.

WEICU and denying WEICU's motion to show cause should also be affirmed. Sanctions should be imposed.

*I certify that this document contains 9,398, excluding the parts of the document exempted from the word count by RAP 18.17.*

DATED this 17th day of November, 2023.

LEESA MANION (she/her)
PROSECUTING ATTORNEY

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# APPENDIX

The Seattle Times

# King County elections director race highlights veteran vs. denier

Oct. 26, 2023 at 6:00 am

**1 of 2** | Incumbent Julie Wise, left, and Doug Basler, a perennial candidate, are vying for the position of King County elections director. (Courtesy of the campaigns)

By David Gutman

*Seattle Times staff reporter*

The race for King County elections director features a nonpartisan 23-year veteran of the department who is nationally certified in elections administration against a Republican who biennially runs for office and filed a failed, conspiracy-laden lawsuit claiming votes in the 2020 election were flipped, added and deleted.

Incumbent Elections Director Julie Wise is seeking a third term overseeing the 75-person office that is tasked with conducting at least four elections a year in the state's largest county and the largest county in the nation to conduct elections entirely by mail.

During elections, the office can swell to as many as 800 employees, with temporary workers hired to process and count ballots.

Her challenger is Doug Basler, who runs a digital marketing company and runs for Congress, like clockwork, every two years. Basler has run for U.S. House as a Republican in Washington's 9th District in every congressional election since 2014, never coming close to defeating the Democratic incumbent, Rep. Adam Smith.

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In a time when state and national Republicans have led false and conspiracy-filled vendettas against the trustworthiness of elections, the simplest way to differentiate between the two candidates may be with one straightforward question: Was the 2020 election free, fair and legitimate?

Wise: "Yes it was."

Basler: "Well, I hope so. But if there are questions, why aren't we dealing with it? As a country, as a people, it's our right to know, and I think that it's arrogant of these people to continue to obfuscate and call us conspiracy people or whatever."

Basler continued, “I don’t think we have major problems with King County elections. I think the elections are pretty tight. I think it’s run pretty well.’

It is a strikingly different characterization than the one he has made in court.

Basler, 64, was one of the plaintiffs in a 2021 lawsuit that accused elections officials across the state, including Wise, of flipping 6,000 votes, adding 400,000 votes and deleting thousands of other votes during the 2020 election.

That lawsuit was thrown out this year, with a King County judge writing that “no responsive pleadings or evidence was presented.”

Asked to reconcile his statements — that county elections are pretty well run but that they’re also rife with fraud — Basler said he only joined the lawsuit to seek more transparency from elections officials.

“I didn’t write that part,” he said of the allegations of fraud in the lawsuit. “That’s not necessarily where I’m at.”

That is not what he said in the lawsuit.

The lawsuit includes a signed declaration from Basler saying “I have read the foregoing VERIFIED COMPLAINT ... and know the contents thereof. I am informed and believe that the matters stated therein are true and correct.”

“I would like to be director so that we can help the public be confident that the votes that they cast are being counted exactly as they intended,” Basler said. He added he is “not a fan” of vote by mail and would prefer in-person voting with voter ID requirements.

Wise, 43, has spent her entire career at the county elections office, beginning as a temp answering phones and has worked nearly every job in the office. She touts that she’s overseen more than 30 elections since winning the top job eight years ago and has never affiliated herself with either political party.

Wise says she has long maintained good relationships with county leadership of both political parties, although county Republicans faulted her this year for running a test on a new server without inviting the parties to witness the test.

Wise stresses a dual mandate: increasing access for voters, while ensuring elections remain secure.

Under her watch, the number of ballot drop boxes in the county has increased from 10 to 79. She has also brought in federal teams from the Department of Homeland Security and the Cybersecurity and Infrastructure Security Agency to audit the county's elections building and IT systems and help increase security.

Among her priorities going forward, Wise said, are keeping her staff safe and continuing operations as normal amid rising threats to election workers. She said she is also focused on implementing ranked choice voting for primary elections in Seattle in 2027, a change city voters authorized last year.

"It is under my leadership that we have had the highest voter turnout in King County's history," Wise said.

Voters must get their ballots postmarked by Nov. 7 or place them in a county drop box before 8 p.m. on that date.

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For more information about voting, ballot drop boxes, accessible voting and online ballots, contact your county elections office. General election ballots are due by 8 p.m. on Nov. 7.

- King County: 206-296-8683 or st.news/vote-kingcounty
- Snohomish County: 425-388-3444 or st.news/vote-snocounty
- Kitsap County: 360-337-7128 or st.news/vote-kitsapcounty
- Pierce County: 253-798-8683 or st.news/vote-piercecounty

For more information on your ballot, in any county, go to: myvote.wa.gov

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***David Gutman:*** *206-464-2926 or dgutman@seattletimes.com; on Twitter: @davidlgutman.*

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***Preview of CONCLUSION***

*The Public Records Act 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*

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*"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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## KING COUNTY PROSECUTING ATTORNEYS OFFICE CIVIL DIVISION

### November 17, 2023 - 11:36 AM

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