NO. 859838

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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON DIVISION I

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

Appellants,

v.

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

Respondents,

WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE,

Respondent.

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ON APPEAL FROM THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

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# BRIEF OF RESPONDENT WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE

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## I. Introduction

The Washington Election Integrity Coalition United ("WEiCU") and pro se plaintiffs Doug Basler and Timofey Samoylenko ("Pro Se Appellants") appeal the King County Superior Court's dismissal of their untimely election contest and attempt to inspect sealed ballots from the 2020 election. This appeal should be summarily dismissed and the Superior Court's decision below swiftly affirmed.

WEiCU and several individual pro se voters filed this election contest nearly a year after the November 2020 election. Their lawsuit—one of several cut-and-paste complaints filed across the state—was part of a larger effort to delegitimize the integrity of our State elections in the wake of the 2020 Presidential Election. Federal and state court judges roundly rejected similar lawsuits filed across the country, just as the Superior Court properly did here. The Washington State Democratic Central Committee ("WSDCC") intervened on its own behalf and on behalf of Democratic voters throughout the

State to protect the legitimacy of its candidates' electoral victories and protect the rights of Democratic voters who lawfully cast their ballot during Washington's 2020 election.

On appeal, WEiCU and the Pro Se Appellants challenge the Superior Court's dismissal of its Public Records Act claim and "election process" claims. Their appeal, like their claims below, lacks merit and should be dismissed.

## II. Statement of the Case

More than four million Washington voters participated in the November 2020 General Election. CP 172. The election was audited pursuant to Washington law and certified by county election officials. *Id.* The Secretary of State certified the election results on December 3, 2020. *Id. (citing Elections and Voting,* SECRETARY OF STATE KIM WYMAN*, https://results.vote.wa.gov/results/20201103/president-vice-president.html* (last visited Nov. 2, 2023)).

Nine full months later, on September 22, 2021, WEiCU and several pro se plaintiffs filed this election contest, alleging

that during the November 2020 General Election "approximately 6,000 votes were flipped, over 400,000 votes were added, and/or thousands of votes were removed in one or more state-wide races before, during, and/or after the Election." CP at 1–27. WEiCU and the pro se plaintiffs also alleged that the Director of King County Elections engaged in or facilitated "electronic manipulation of the voting results from the Election." CP at 6.

The pro se plaintiffs asserted causes of action under Washington's election contest statutes and alleged the County had violated the Washington Constitution, while WEICU asserted a sole cause of action under the Public Records Act ("PRA"). CP at 1–27. Plaintiffs sought three remedies: (1) an order declaring that the County broke the law and barring the County from doing so moving forward; (2) a license to "audit" the County's election department; and (3) an order allowing them to inspect ballots from the 2020 election. *Id.*

Despite the bold allegations of statewide election fraud, the Complaint did not identify a single member of WEiCU who

was unable to vote, whose ballot was not kept secret or secure, whose vote was not counted, whose vote was "flipped," or who suffered any other kind of identifiable harm. *See id.* Indeed, neither WEICU nor the pro se plaintiffs provided any kind of legitimate evidentiary support for their allegations at all. *See id.*

Nor did WEiCU limit its allegations of election fraud to King County. In a series of nearly identical lawsuits—all of which have been soundly rejected—WEiCU accused election officials of wrongdoing in Clark, Snohomish, Lincoln, Franklin, Whatcom, Thurston, and Pierce counties.[1] CP at 129. WEiCU's lawsuits are just a small part of a long line of lawsuits promoting

[1] *Washington Election Integrity Coalition United et al. v. Anderson*, No. 21-2-07551-9 (Sept. 21, 2021); *Washington Election Integrity Coalition United et al. v. Hall*, No. 21-2-01641-34 (Sept. 21, 2021); *Washington Election Integrity Coalition United et al. v. Kimsey*, No. 21-2-01775-06 (Sept. 16, 2021); *Washington Election Integrity Coalition United et al. v. Fell*, No. 21-2-04302-31 (Sept. 16, 2021); *Washington Election Integrity Coalition United et al. v. Bradrick*, No. 21-2-00949-37 (Sept. 10, 2021); *Washington Election Integrity Coalition United et al. v. Beaton*, No. 21-2-50572-11 (Oct. 5, 2021); *Washington Election Integrity Coalition United et al. v. Schumacher*, No. 21-2-00042-22 (Oct. 4, 2021).

conspiracy theories of election and voter fraud in the aftermath of the 2020 election throughout the United States, all of which were thoroughly debunked and promptly dismissed.[2] CP at 170. WEiCU has been sanctioned twice for its frivolous election claims related to the 2020 election—including for an identical case filed in Lincoln County and in a case filed before the Washington State Supreme Court. *See* CP 205–06 (Lincoln

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[2] William Cummings et al., *By the numbers: President Donald Trump's failed efforts to overturn the election*, USA NEWS TODAY (Jan. 6, 2021, 7:50 PM), https://www.usatoday.com/indepth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-electionnumbers/4130307001/; Chandelis Duster, *Georgia reaffirms Biden's victory for 3rd time after recount, dealing major blow to Trump's attempt to overturn the results*, CNN (Dec. 7, 2020, 5:23 PM), https://www.cnn.com/2020/12/07/politics/georgia-recount-recertification-biden/index.html; Jack Healy et al., *Republican Review of Arizona Vote Fails to Show Stolen Election*, N.Y. TIMES (Sept. 30, 2020), https://www.nytimes.com/2021/09/24/us/arizona-election-review-trumpbiden.html; Jemima McEvoy, *Biden Wins More Votes Than Any Other Presidential Candidate In U.S. History*, FORBES (Nov. 4, 2020, 1:18 PM), https://www.forbes.com/sites/jemimamcevoy/2020/11/04/biden-wins-more-votes-than-any-otherpresidential-candidate-in-us-history/?sh=131798867c3a.

County Superior Court ordering plaintiff WEiCU to pay Lincoln County's defense costs of $22,586.31); *see also* CP 240–43 (Order of the Washington State Supreme Court in *Washington Election Integrity Coalition United v. Inslee*, No. 100303-0, requiring WEiCU and its counsel Virginia Shogren to pay $28,384.70 for frivolous election claims).

The WSDCC sought and was granted permission to intervene in the King County Superior Court case, to defend the victories of its candidates and protect its members' right to have their lawfully cast votes protected.

Respondents Julie Wise and King County filed a motion for summary judgment seeking dismissal of all claims and declaratory and injunctive relief. CP 310–336. WEiCU filed a "Motion for Declaratory Judgment on the Meaning and Application of RCW 29A.08.161 to the Instant Action" asking the Court to declare that "tabulated Washington State ballots are anonymous public records under RCW 29A.08.161" and a "Motion to Show Cause Re Public Records Request." CP 298–

302, 304–308. The motions were noted simultaneously.

In a detailed written ruling on June 15, 2023, after hearing arguments from WEiCU, King County, and the WSDCC, the Honorable LeRoy McCullough granted King County's motion for summary judgment in part, dismissing all claims and issuing declaratory relief that "Director Wise and King County cannot as a matter of law disclose original, spoiled or returned ballots or images of those ballots to the public and cannot provide voter signatures on ballot envelopes for copying." CP 1029–1034. The court denied King County's request for injunctive relief. CP 1033. The court also denied WEiCU's motions on multiple alternative legal bases. CP 1029–1034. The court issued a separate order denying WEiCU's Motion for Declaratory Judgment, finding that the 2020 ballots WEiCU sought were not subject to disclosure under the PRA. CP 1037–1040.

WEiCU, and pro se Plaintiffs Doug Basler and Timofey Samoylenko, directly appealed to the Supreme Court. On November 8, 2023, the Supreme Court declined direct review

and transferred this matter to this Court.

## III. Argument

### A. Standard of Review

This Court reviews a superior court's ruling on a motion for summary judgment *de novo*. *Trimble v. Wash. State Univ.*, 140 Wn.2d 88, 92–93, 993 P.2d 259 (2000). Granting a motion for summary judgment is appropriate if, on the basis of the facts submitted, reasonable minds could reach but one conclusion. *Id.* at 93. Bare assertions that a genuine material issue exists will not defeat a summary judgment motion in the absence of actual evidence. *See Trimble*, 140 Wn.2d at 93, 993 P.2d 259; *see SentinelC3, Inc. v. Hunt*, 181 Wn. 2d 127, 140, 331 P.3d 40 (2014).

This standard, applied to this appeal, requires a swift dismissal of the appeal and affirmance of the well-reasoned decision below. While Appellants raise a number of inconsequential procedural points and other immaterial issues, the heart of their argument on appeal can be distilled into two

components: (1) Appellants challenge the Superior Court's dismissal of WEiCU's request to inspect ballots from Washington's 2020 election; and (2) Appellants challenge dismissal of the Pro Se Appellants' election claims as untimely. Neither of these bases for appeal has merit.

### B. The Superior Court Correctly Dismissed WEiCU's PRA Claim

The Superior Court, relying on well-established and uncontradicted law, correctly determined that the ballots that WEiCU sought were exempt from disclosure under the PRA. CP 1029–1040. Appellants claim that the Superior Court's dismissal of their PRA claim is based on a "crazy quilt of case opinion" and is "lacking in basic logic." Appellant Br. at 26, 55. Hardly. Appellants have brought at least eight lawsuits across Washington containing virtually identical claims. Appellants have lost in *every single one of them*.[3] Indeed, every court that

[3] *Washington Election Integrity Coalition United et al. v. Anderson*, No. 21-2-07551-9 (Sept. 21, 2021); *Washington*

has considered Appellants' claims have rejected them.

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

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*Election Integrity Coalition United et al. v. Hall*, No. 21-2-01641-34 (Sept. 21, 2021); *Washington Election Integrity Coalition United et al. v. Kimsey*, No. 21-2-01775-06 (Sept. 16, 2021); *Washington Election Integrity Coalition United et al. v. Fell*, No. 21-2-04302-31 (Sept. 16, 2021); *Washington Election Integrity Coalition United et al. v. Bradrick*, No. 21-2-00949-37 (Sept. 10, 2021); *Washington Election Integrity Coalition United et al. v. Beaton*, No. 21-2-50572-11 (Oct. 5, 2021); *Washington Election Integrity Coalition United et al. v. Schumacher*, No.21-2-00042-22 (Oct. 4, 2021).

*Found. v. Gregoir*e, 178 Wn.2d 686, 695, 310 P.3d 1252 (2013)). It is the second exemption to the PRA that applies here: exemptions based on an "other statute" that prohibits disclosure. Appellants argue that the Superior Court created or relied on an "implied exception" to the PRA. Appellant Br. at 23–26. Not so.

Instead, the Superior Court properly determined that RCW 29A.60.110 and Article Six, Section Six of the Washington Constitution both exempts and prohibits the ballots sought from disclosure. CP 1032, 1039. RCW 29A.60.110 is the "other statute" under the second exemption to disclosure under the PRA. And, of course, Article 6, Section 6 of the Washington State Constitution provides the constitutional grounds authorized to exempt disclosure under the third exemption under the PRA. WSDCC addresses these in turn.

RCW 29A.60.110(1) requires county officials to seal all ballots in containers "immediately after tabulation." RCW 29A.60.110 only provides four narrow circumstances in which those ballots may be unsealed: (1) to conduct recounts; (2) to

conduct a random check forty-eight hours after election day; (3) for the County Auditor to conduct a pre-certification audit; or (4) by order of a Superior Court in a contest or election dispute. RCW 29A.60.110(2); *see White*, 188 Wn. App. at 627 (holding RCW 29A.60.110 constituted "other statutes" exempting ballots from disclosure); *White v. Clark Cnty*, 199 Wn. App. 929, 937, 401 P.3d 375 (2017) (same).

All ballots from the 2020 election have been tabulated, thus, the time for a recount has passed, and the results have been certified, so RCW 29A.60.110 squarely and unambiguously applies to the ballots at issue. For the same reasons, the first, second, and third narrow exceptions to sealing the ballots pursuant to RCW 29A.60.110 do not apply. Only the fourth scenario contemplated by the statute is relevant here. And, as the Superior Court found, the time for an election contest has long passed. CP 1030–1031. The Superior Court properly dismissed WEiCU's PRA claim based on the unambiguous language of RCW 29A.60.110.

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

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

As the Superior Court correctly noted:

> In those cases, the appellate courts unanimously found that the statutory scheme and accompanying regulations for controlling and securing both pre-tabulated and tabulated ballots and

> safeguarding ballot secrecy taken as a whole, and in particular RCW 29A.60.110 requiring secure storage of ballots, exempts all election ballots from disclosure as public records and thus qualifies as an 'other statute' exception under the PRA.

CP 1032.

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

*County II*, 199 Wn. App. at 937.

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

WEiCU also argues that the ballots requested do not identify voters and are therefore not exempt from disclosure, and challenges the superior court's denial of their motion to declare that "tabulated Washington ballots are anonymous public records." Appellant Br. at 21–23, 49–55. WEiCU's argument has been rejected by this Court and the Division II Court in the *White* cases. *White I*, 188 Wn. App. at 633; *White v. Skagit County*, 188 Wn. App. at 895.

This Court and Division II disposed of the argument that ballots should be subject to public disclosure because voters'

identities are not discernable from ballots and ballot images. In *White v. Clark County I*, Division II determined that while "the County provided no evidence that production of the ballot images White requested would compromise voter secrecy" the legislature had not only enacted laws to "ensure that every person's vote—i.e., how the person voted—remains secret," but also "regarding the secrecy and security of the *ballots themselves*." *White v. Clark County I*, 188 Wn. App. at 633 (emphasis added).

This Court, too, considered this argument and also rejected it, but on a different ground in *White v. Skagit County*. This Court noted that "where there is low turnout in a small precinct, even a ballot devoid of identifying marks can be tied back to a voter by comparing it with voters credited with returning ballots on particular dates." *White v. Skagit County*, 188 Wn. App. at 895. Thus, "[r]eleasing copies or images presents the same risk of identification of voters as disclosure of the paper ballot." *Id*. This Court should similarly reject WEiCU's claim that the ballots

sought are "de-identified" and less deserving of protection from disclosure.

In short, the Superior Court properly concluded that ballots are exempt from disclosure under the PRA—as Washington appellate courts have previously held. *See White v. Clark County II*, 199 Wn. App. at 934 (A PRA requestor "is not entitled to disclosure of the requested [ballots] because … both RCW 29A.60.110 and WAC 434-261-045 create an 'other statute' exemption that applies to election ballots even after the minimum 60-day retention period after tabulation."); *White v. Skagit County*, 188 Wn. App. at 898 (denying PRA disclosure for electronic or digital image files of ballots used in the general election); *White v. Clark County I*, 188 Wn. App. at 627 (holding pre-tabulated ballots are exempt from PRA disclosure). WEiCU is not entitled to access the ballots it seeks.

WEiCU also seeks fees and costs it expended filing this appeal, which are available pursuant to the PRA if a record seeker *prevails* against an agency in an action seeking public

records. Appellant Br. at 56 (citing RCW 42.56.550(4), RAP 18.1). WEiCU has in no sense prevailed and is plainly *not* entitled to fees.

### C. The Superior Court Correctly Dismissed The Pro Se Appellants' Election Claims

The Superior Court determined that the Pro Se Appellants' election related causes of action were untimely. This conclusion is fully supported by controlling Washington law and facts as they appear in the record before this Court. Moreover, the Pro Se Appellants have not filed a statement of grounds for review, nor have they filed an appellate brief.

#### 1. Ms. Shogren Does Not Represent The Pro Se Appellants – Her Arguments Related To Their Claims Should Be Disregarded

WEiCU's counsel, Virginia Shogren, does not represent the Pro Se Appellants. The appellate brief before this Court was filed by Ms. Shogren, and notes that she is counsel for WEiCU only. Appellant Br. at 58. The Pro Se Appellants did not file a

statement of grounds for direct review before the Washington State Supreme Court, nor did they file an appellant brief. The arguments made in WEiCU's Appellate Brief pertaining to the frivolous claims of election misfeasance brought only by the Pro Se Appellants are improper and should be disregarded by this Court.

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

**2. The Superior Court Correctly Determined That The Pro Se Appellants' Election Claims Are Untimely**

Regardless, the Superior Court properly determined that the "election-related causes of action brought by the Pro Se Appellants are procedurally barred by RCW 29A.68.013." CP 1030–1031. First, the court correctly determined the Pro Se Appellants claims are subject to a 10-day limitation period. And, second, the court correctly found that the 10-day limitation

period has long passed.

**a.** ***The Superior Court Correct Applied A 10-Day Limitation Period To The Pro Se Appellants' Election Claims***

First, and most fundamentally, the Pro Se Appellants' claims are nothing more than an untimely election contest. Washington law permits an elector to contest an election only if an affidavit of an elector is filed within ten days of certification of an election. RCW 29A.68.013. The Pro Se Appellants seek to sidestep the 10-day limitations period to file election contests by characterizing their claims as "election process claims" and arguing that they did not seek decertification of any race or measure. Appellant Br. at 43–44. But the Complaint says otherwise. It accused the County of "electronic manipulation of the voting results," engaging in "party preference", "flipping" or "adding" some unspecified number of hundreds of thousands of votes across the State, and specifically challenged the Auditor's "*certification*" of the election. CP at 1–27. This is the very

definition of an election contest. Indeed, nearly all of the Pro Se Appellants' claims were brought under *that very statute:* RCW 29A.68.013, which is Washington's election contest statute. *See* CP at 1–27; *see also* RCW 29A.68.020 ("All election contests must proceed under RCW 29A.68.011 or 29A.68.013."). Recharacterizing the allegations of an election contest as "election process claims" does not change the nature of this action.

The Washington State Supreme Court rebuffed a similar attempt to avoid the ten-day deadline under a previous version of the election contest statute. *See Becker v. Cty. of Pierce*, 126 Wn.2d 11, 20, 890 P.2d 1055 (1995). In *Becker,* the Court dismissed the action as an untimely election contest despite plaintiff's argument that "her action [wa]s not an election contest" because, although plaintiff only sought declaratory relief, that relief would result in "the same as would result from a successful election contest: the setting aside of the election." *Id.* The same is true here. This Court should reject Appellants

similar not-so-transparent attempt to avoid the 10-day deadline. Pro Se Appellants claims cannot be characterized as anything other than an election contest and are therefore subject to Washington's 10-day deadline. *See* RCW 29A.68.013.

**b. *The Superior Court Correctly Determined The Pro Se Appellants' Claims Are Untimely***

The superior court correctly determined that the time to file an election contest has long expired. *See* CP 1030–1031. (dismissing Plaintiffs' election contest as "untimely"). Washington law plainly permits an elector to contest an election only if an affidavit of an elector is filed within ten days of certification. RCW 29A.68.013 ("An affidavit of an elector under this subsection shall be filed with the appropriate court no later than *ten days* following the official certification of the primary or election …") (emphasis added). If the ten-day deadline is ignored, the contest must be dismissed as untimely. *See Becker*, 126 Wn.2d at 21 (dismissing an election contest as

untimely where plaintiff "filed her complaint more than a year after the date [of] the general election . . .").

Here, the Secretary of State certified the election results on December 3, 2020. CP 172. The Pro Se Appellants' deadline to file an affidavit from an elector was therefore ten days after December 3—December 13, 2020. The Pro Se Appellants never did.

On appeal, WEiCU incorrectly asserts that the deadline only applies to RCW 29A.68.013(3), and does not apply to their claims brought under RCW 29A.68.013(1) and (2), but the argument is simply contrary to the their actual claims (not to mention well-settled Washington law). Appellants Br. at 44. Because the Pro Se Appellants' Complaint challenges the certification of the election, pro se Appellants' claims necessarily fall under RCW 29A.68.013(3), regardless of whether they cited the statute in their Complaint or not. RCW 29A.68.013(3) applies to actions alleging that "an error or omission has occurred . . . in the official *certification* of any primary or election." (emphasis

added). Here, the Pro Se Appellants' specifically challenged the Auditor's "*certification*" of the election. CP at 1–27. Thus, even according to the Pro Se Appellants' *own claims*, this action is flatly time barred under RCW 29A.68.013(3).

Moreover, on the face of RCW 29.68.013, the 10-day deadline applies to *all* of its subsections— (1), (2), and (3) — as demonstrated by the way the statute is laid out:

**RCW 29A.68.013**

**Prevention and correction of frauds and errors—Primary, election, challenge to certification of measure.**

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**.

Fig. 1 (WASH. STATE LEG., https://app.leg.wa.gov/rcw/default.aspx?cite=29A.68.013). The opening paragraph of RCW 29A.68.013 requires an elector to file an affidavit to initiate an action regardless of the subsection the contest is brought under. *Id.* (stating that a court can issue a remedy based on wrongdoing "when it is made to appear to such

justice or judge *by affidavit of an elector* that: . . .” *Id.* (emphasis added)). The concluding paragraph references that same affidavit again, specifying it must be filed within 10 days of certification. *Id.* The affidavit and the 10-day deadline accordingly apply to *all of the* subsections of RCW 29A.68.013. As the superior court correctly held, the Pro Se Appellants missed this deadline and, indeed, failed to file an affidavit from an elector altogether.

Reading the 10-day deadline to apply to all of RCW 29A.68.013 is also consistent with the overall Chapter, which is titled “contesting an election” and makes clear that the Legislature’s goal is to resolve election contests quickly. *See* RCW 29A.68.040 (listing shortened hearing timeframe for election contest); RCW 29A.68.120 (narrowing appeal time to 10-days in an election contest); *see also State v. Barnes*, 189 Wn.2d 492, 498, 403 P.3d 72 (2017) (where the “primary concern” of the Legislature is clear from the statute courts will construe the statute “to further that specific purpose”). Otherwise, the nonsensical result is that an election result could

be challenged years later under subsections (1) and (2) when the Legislature clearly intended results to be promptly challenged.

The superior court's dismissal of the Pro Se Appellants' election claims should be affirmed.

### D. WSDCC Requests Fees on Appeal

WEiCU has repeatedly invoked our state and federal courts jurisdiction to promote its conspiracy theories, without any remotely plausible factual or legal foundation. It has been sanctioned twice for its frivolous filings, yet persists in consuming court time and the parties' resources. *See* CP 205–06 (Lincoln County Superior Court ordering plaintiff WEiCU to pay the County's defense costs of $22,586.31); *see also* CP 240–43 (Order of the Washington State Supreme Court *in Washington Election Integrity Coalition United v. Inslee*, No. 100303-0 requiring WEiCU and its counsel Virginia Shogren to pay $28,384.70 for frivolous election claims). Under RAP 18.9, RAP 18.7, and CR 11 this Court may order a party who files a frivolous appeal to pay attorneys' fees as a sanction. *Advocates*

*for Responsible Dev. v. W. Wash. Growth Mgmt. Hearings Bd.*, 170 Wn.2d 577, 580, 245 P.3d 764 (2010); *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 223, 829 P.2d 1099 (1992) ("Pursuant to RAP 18.7, CR 11's certification requirement therefore applies to proceedings in the appellate courts, as well as in the superior courts."). An appeal is frivolous when the appeal presents "no debatable issues on which reasonable minds could differ" and is "so devoid of merit that there is no possibility of reversal." *Advocates for Responsible Dev*, 170 Wn.2d at 580; *see also State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 905, 969 P.2d 64 (1998) (awarding fees as a sanction against a losing candidate for an election who challenged the victor because he "had no standing" and his action was "premature," nonetheless, he had continued his "meritless claim through appeal"). Here, WEiCU presents no debatable issue on which reasonable minds could differ.

WEiCU has characterized Washington courts as "intent on discouraging any case that will shine a bright light on one of the

ways our election system is blatantly manipulated." *See* WEiCU, https://weicu.org/ (last accessed Nov. 2, 2022). WEiCU's election contest is nothing more than a political organizing tool designed to undermine public confidence in our State elections. Indeed, WEiCU Director Tamborine Borrelli ran for Washington Secretary of State after filing these contests.[4] But the court system is not WEiCU's marketing department. This Court should not condone WEiCU's exploitation of the judiciary's resources. *See King v. Whitmer*, 556 F. Supp. 3d 680, 732 (E.D. Mich. 2021) ("Sanctions are required to deter the filing of future frivolous lawsuits designed primarily to spread the narrative that our election processes are rigged and our democratic institutions cannot be trusted.").

WSDCC respectfully urges this Court to require WEiCU

[4] *See* Bob Christie, *Across the country, Republican primaries feature candidates who deny outcome of 2020 election*, PBS (Aug. 1, 2022), available at https://www.pbs.org/newshour/politics/across-the-country-republican-primaries-feature-candidates-who-deny-outcome-of-2020-election.

to pay WSDCC's (and the defendant Lincoln County's) attorneys' fees expended responding to this appeal as a sanction for WEiCU's frivolous appeal.

## IV. Conclusion

For the reasons set forth above, Respondent Washington State Democratic Central Committee respectfully requests that the Court dismiss this appeal and award appropriate attorneys' fees as sanctions for pursuing this patently frivolous appeal.

Per RAP 18.17(b), I hereby certify the number of words contained in Respondent's Brief is 5,215 (12,000 word limit).

RESPECTFULLY SUBMITTED this 17th day of November, 2023.

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## CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, on November 17, 2023, a true and correct copy of the Washington State Democratic Central Committee's Response Brief was sent to the following parties of record via method indicated:

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DATED this 17th day of November, 2023.

*/s Reina A. Almon-Griffin*
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## PERKINS COIE LLP

## November 17, 2023 - 2:49 PM

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