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Case #: 1029764
No. 85909-9-I
Formerly No. 57825-5-II

THE SUPREME COURT OF THE STATE OF WASHINGTON

JOHN DOE P; et al.,

Respondents.

v.

DONNA ZINK,

Appellant.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION I

PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Washington Cases

Federal Cases

Court Rules

Washington Constitutional Provisions

Books and Publications

I. INTRODUCTION

This case sets a dangerous precedent that chills sensitive parties from engaging in meritorious litigation because it will subject them to ostracism and attack during a time where retaliation, public shaming, and threats and intimidation are alarmingly high. Based on the trial court's scrupulous findings of fact after hearing and application of the *Ishikawa* factors and GR 15, the Petitioners ("Does Plaintiffs") were permitted to proceed in pseudonym for the length of their case and through dismissal, only to be reversed—after nearly a decade of proceeding in pseudonym—by an Appeals Court decision that conflicts with the opinions of this Court and the Courts of Appeals.

In Washington, sensitive plaintiffs may bring pseudonymous litigation—so long as they satisfy the *Ishikawa* factors and GR 15. Such litigants may choose not to pursue their claims and risk harm if a reviewing court can later disregard facts carefully weighed by a trial court and force the disclosure of their

names years later even after the case has been dismissed. Late reveal of pseudonymous plaintiffs after a case has been dismissed serves little benefit to the public and results in risk of substantial injury to the sensitive plaintiffs and their families.

This Court should accept review to correct the Court of Appeals' decision pursuant to RAP 13.4(b)(4) because it raises an issue of substantial public interest: Whether sensitive plaintiffs who have established compelling privacy and safety concerns that outweigh the public interest under *Ishikawa* and GR 15 should be permitted to proceed in pseudonym? The decision should separately be reviewed because it conflicts with precedent issued by this Court pursuant to RAP 13.4(b)(1); and because it conflicts with published opinions from the Courts of Appeals pursuant to RAP 13.4(b)(2).

II. IDENTITY OF PETITIONER

The Does Plaintiffs, petitioners here, and respondents below, represent the interests of rehabilitated individuals who have fulfilled the requirements of low-level sex offenses, most of

whom were juveniles at the time of the underlying incident, and some of whom had records disclosed to Ms. Zink in response to her public records requests. Two of the Does do not have records subject to disclosure by requests made by Ms. Zink, one is a parent of a former juvenile offender, and the other is her son, who was relieved of the duty to register since 2014 and his juvenile record has been sealed.

III. COURT OF APPEALS DECISION

The Does ask this Court to accept review of the Court of Appeals' decision reversing the Superior Court and terminating review issued on January 29, 2024[1] ("Order reversing"). The Does sought reconsideration of the Order reversing, which was denied by the Court of Appeals on March 19, 2024. *Id*.

IV. ISSUES PRESENTED FOR REVIEW

1. The Court of Appeals reversed the trial court's findings that the Does established compelling privacy and safety concerns that outweighed the public interest based on the *Ishikawa factors*

[1] Appendix A.

and GR 15 to warrant continued sealing of their names in the litigation in the dismissed case. The Court of Appeals substituted its own judgment for that of the trial court, violating the abuse of discretion standard on review, disregarding the uncontroverted record, and rejecting the extensive findings of fact and *Ishikawa* analysis by a trial court well-steeped for nearly a decade in the facts and issues particular to this case. This Court should accept review because the Court of Appeals' misapplication of the law involves an issue of substantial public interest that should be rectified, for it risks chilling meritorious litigation by sensitive plaintiffs. RAP 13.4(b)(4).

2. This Court should accept review because the Court of Appeal's decision is in conflict with decisions of the Supreme Court. RAP 13.4(b)(1).

3. This Court should accept review because the Court of Appeal's decision conflicts with three published decisions of the Courts of Appeals, one in each of the divisions. RAP 13.4(b)(2).

V. STATEMENT OF THE CASE

A. Several Cases, Including This One, Are Filed by Pseudonymous Plaintiffs to Prevent Disclosure of Records Requested by Ms. Zink.

In 2014, Ms. Zink, using the PRA, made numerous requests across the State to obtain records relating to sex offenders. *See, e.g., Doe G v. Dep't. of Corr.*, ("*Doe G*") 190 Wn.2d 185, 410 P.3d 1156 (2018). Several individuals filed cases in pseudonym in an effort to prevent disclosure of the records. *See, e.g., Doe AA v. King Cnty.*, 15 Wn. App. 2d 710, 712, 476 P.3d 1055 (2020). This was one of those cases. In 2015, the Does Plaintiffs, representing the interests of a class of level one offenders, some of whose records were among those requested, sued the County to prevent the records' release. *Doe P. v. Thurston Cnty.*, No. 48000-0-II, 2018 WL 4760275 (Oct. 2, 2018) (unpublished). At that time, the Does Plaintiffs also requested permission to proceed in pseudonym, a request Ms. Zink did not oppose. *Id*. The Does obtained summary judgment and a permanent injunction barring the release of requested

unredacted level one records. *Doe P. v. Thurston County*, 199 Wn. App. 280, 399 P.3d 1195 (2017), *overruled and remanded* for *Ishikawa analysis*, *Doe P.*, 2018 WL 4760275.

B. Two Supreme Court Cases Determine the Substantive Issues in This and Related Cases.

While these various cases were pending, the Supreme Court held in *Doe ex rel. Roe v. Washington State Patrol* ("*Doe A*"), 185 Wn.2d 363, 385, 374 P.3d 63 (2016), that "level I sex offender registration information is subject to disclosure under a PRA request." And the Supreme Court held in *Doe G*, 190 Wn.2d at 197, "that SSOSA evaluations are not exempt under the PRA." In *Doe G*, the Court also held that "names in captions implicate article I, section 10," and that a trial court must conduct a GR 15 and *Ishikawa* analysis in these cases. *Id*.

After *Doe G*, Ms. Zink appealed the trial court's initial ruling in this case. The Supreme Court granted her petition for review, and because the trial court had not applied *Ishikawa* (*Doe P.*, 2018 WL 4760275), it remanded to the Court of Appeals for a decision that comports with *Doe G*'s requirement to conduct an

Ishikawa analysis. *See, e.g., Doe G*, 190 Wn.2d at 201-202. [2] The Court of Appeals remanded to the trial court for an *Ishikawa* analysis. *Doe P. v. Thurston County*, 199 Wn. App. 280, 399 P.3d 1195 (2017), *overruled and remanded* for *Ishikawa* analysis; *Doe P*., 2018 WL 4760275.

C. The Trial Court Applies the Rule Issued by *Doe G*, and Applies GR 15 and *Ishikawa* to Pseudonyms and Is Affirmed.

In 2019, on remand on the pseudonym status issue, the trial court held a hearing pursuant to GR 15 and *Ishikawa* as instructed, and applied the *Ishikawa* factors and analyzed the initial declarations submitted by the Does (CP 548-625) articulating compelling safety interests necessitating their pseudonymity in the case, including declarations of experts and detailed explanations of the harm that would result from undoing pseudonymity. The Does' declarations disclose additional personal information about them, their families, and their

[2] Until 2018, it was not clear that Washington courts were required to conduct an *Ishikawa* analysis on the record before granting pseudonym status. *Doe G*, 190 Wn.2d at 201.

victims. So, if the Does' names were to be revealed in the court record, the identities of family members and victims could be easily determined by virtue of their relationships with the Does. The Does, and their experts, raised these concerns in their declarations (CP 681-760) and at oral argument. CP 91-137.

The trial court found the record warranted protection of the Does' true names as associated with the case. CP 147-151 (Order); CP 88-138 (Zink Declaration attaching RP December 6, 2019, incorporated in the Order). As required by the trial court, the Does filed a document with their true names under seal (CP 473-75), and the Court held the sealing order would expire a year later. CP 147-151 (Order dated March 10, 2021). As detailed in the procedural history that follows, that record has never been unsealed and their names as plaintiffs in this case have never been publicly available. At least two of the Does' names have not appeared through PRA requests.[3] One, Jane Roe, is a parent

[3] The information is not publicly available, contrary to the Court of Appeal's reasoning: Appendix A: Reversal at 6.

of a former offender who was a juvenile whose registration obligations were relieved in 2014 and whose underlying records are sealed. *See, e.g.,* CP 809; CP 824-29. (Declaration of Jane Roe R "My son was only 13 years old when he committed the offense against family members that led to his conviction…. and he was reli[e]ved of registration around 2014.") CP 825.

In March of 2021, Ms. Zink appealed the trial court's order permitting the Does to remain in pseudonym. CP 761-67.

1. Court of Appeals, Division II Affirms the Trial Court's Order Sealing the Does' Names in the Record to Maintain Pseudonymity Based on Application of GR 15 and *Ishikawa.*

Division II Court of Appeals upheld the trial court's order. *Doe P. v. Thurston Cnty.*, No. 56345-2-II, 2022 WL 2817281 (Jul. 19, 2022) (unpublished). It recognized that the trial court made findings of fact based on *Ishikawa* and GR 15 as required by *Doe G*. *Id*. ("We believe the trial court appropriately weighed the Does' interest against the public's interest, relied only on facts supported by the record, and applied the correct legal standard in reaching its decision."). It held the trial court did not abuse its

discretion when it determined the Does had safety interests in remaining anonymous and faced serious and imminent harm if their identities as the plaintiffs in this case were revealed. *See, e.g., Doe P.*, 2022 WL 2817281. Ms. Zink did not seek review of the Court of Appeals' July 19, 2022 Order, and the case was remanded.

D. The Trial Court Analyzed New Does' Declarations and Conducted a Separate Hearing and Applied GR 15 and *Ishikawa* to Order Dismissal and Continued Sealing.

In 2022, the Does presented additional new declarations to support dismissal and continued pseudonymity through sealing of their names in the case. CP 796-829. Jane Roe R declared: "I don't want my name or my son's coming out to be associated with this lawsuit. It would be terribly unjust to expose my son because of our involvement in this suit when his own records have been sealed." CP 828. "If his name or my name is associated with this lawsuit…it will re-traumatize all of us. That is our biggest fear. How traumatized each of our family members will be." CP 826. "[H]e will forever be branded with the stigma." CP

828. “I am gravely concerned that the release of that information would threaten his life.” *Id*. If our names are released, “he might even take his own life.” CP 829.

The trial court also considered prior evidence supporting Jane Roe R’s fears. CP 97 (referencing reports in oral argument). An expert researcher who interviewed 281 juvenile registrants about the stigma they experienced as sex offenders, found “roughly 85% have experienced negative psychological impacts associated with the stigma, including depression, difficulty maintaining relationships, and suicide ideation. Nearly a fifth of those interviewed (58 people, or 19.6 percent) said they had attempted suicide; three of the registrants interviewed died by suicide. CP 904.

Her son, John Doe R who is autistic, noted that he was relieved of a duty to register in 2014, and that he also had his juvenile record sealed. CP 809. He has since worked hard to build his life and now has a full-time job and good friends. *Id*. He stated “the disclosure of my name or my mom’s name in

association with this lawsuit would destroy my life[.] … I do not think I would want to stay around if it gets out because of the consequences and the hurt it puts on my family." CP 809.

John Doe Q raised concerns about re-traumatizing the victim and his family, and the community he now serves if his name is revealed in association with the lawsuit: "If I had the chance to withdraw myself from the lawsuit without my name coming out, then at least I would be able to protect my family and loved ones from the affect [the] disclosure will have on them. Protecting my name from being revealed [in connection with] an offense that I work to atone for every single day of my life really is a matter of life for me." CP 805.

John Doe P similarly made clear that the release of his name as associated with this case would be devastating to him, and if he at least had a chance to withdraw from the case without his name being disclosed, he would be able to protect himself. CP 818-22. John Doe S, who was 13 at the time of the offense,

fears release of his name in association with this case will re-traumatize his victim who is a family member. ER 812-16.

The compelling concerns that revealing their pseudonyms in this case could result in separate and additional harms to the Does, their families, and their victims were considered and properly weighed by the trial court under the applicable legal standards. CP 158-344; 385-404. On November 18, 2022, the trial court again conducted a lengthy hearing applying GR 15 and *Ishikawa* in accordance with *Doe G*. It provided opportunity multiple times for the public to provide input. RP, November 18, 2022 at 21. The trial court made detailed oral findings applying the *Ishikawa* factors. *Id.* at 30-40. It then directed the parties to work together on an order (*Id.* at 38) and issued a written Order on December 23, 2022. CP 429-34. Ms. Zink moved for reconsideration, and the trial court held another hearing on January 20, 2023. The trial court denied reconsideration on January 26, 2023.

1. Court of Appeals, Division I Reverses, Substituting Its Judgment for the Trial Court's.

Ms. Zink appealed. CP 459-67. Without oral argument, the Court of Appeals, Division I reversed the trial court's careful holding, instructing that the court record sealing the Does' names should be unsealed—and their pseudonymity in the case destroyed. Appendix A (Order reversing dated January 29, 2024). The Does moved for reconsideration, and that Motion was denied on March 19, 2024.[4]

VI. ARGUMENT FOR WHY REVIEW SHOULD BE GRANTED

This Court should grant review because the Court of Appeal's decision deprived the Does of the protections the trial court provided after a careful *Ishikawa* analysis creating a dangerous ruling that serves to chill litigation of sensitive plaintiffs, and it conflicts with the body of law of this Court, and all of the Courts of Appeals.

This Court should accept review because the Court of

[4]Appendix A.

Appeal's misapplication of the law involves an issue of substantial public interest that should be rectified, or it risks chilling meritorious litigation by sensitive plaintiffs. RAP 13.4(b)(4).

A. The Ability to Litigate in Pseudonym Is an Issue of Substantial Public Interest Warranting Review.

Allowing sensitive parties to proceed under pseudonym has a long history in Washington and serves a critical function. *See, e.g.*, *State v. Doe*, 6 Wash. 587, 34 P. 154 (1893). Without the option to proceed, and remain in pseudonym, sensitive plaintiffs will decline to litigate claims, sacrificing justice for mental health and privacy.[5]

> [R]ather than expose themselves to unwanted publicity, individuals may well forgo the pursuit of their just claims. The judicial system will thus have made the utilization of its remedies so onerous that the people will be reluctant or unwilling to use it, resulting in frustration of a right as valuable as that of speech itself.

[5] Jayne S. Ressler, *#Worstplaintiffever: Popular Public Shaming and Pseudonymous Plaintiffs*, 84 Tenn. L. Rev. 779, 810-11 (2017).

Seattle Times v. Rhinehart, 467 U.S. 20, 36, 104 S. Ct, 2199, L. Ed. 2d 17 (1984) (quoting *Rhinehart v. Seattle Times*, 98 Wn.2d 226, 654 P.2d 673 (1982)).

Litigating in pseudonym, where the strict test under Washington law is met, allows plaintiffs to bring and vindicate legal claims involving sensitive and private areas of life without fear of physical harm, retaliation, ostracism, shaming, and embarrassment that might otherwise dissuade them. Plaintiff pseudonymity can "neutralize the dangers of public shaming, while maintaining society's ability to access the judicial process, enable individual rightsholders to obtain justice, and maintain the law's effectiveness in promoting desired social policy." Ressler, *supra* at 787.[6]

Pseudonymous litigation has far-reaching benefits for the

[6] The article suggests one of the "most concerning of all developments" is the use of the internet to publicly shame. Increasing concerns of judges, jurists, and commentators, that potential litigants will fear the adverse aspects of on-line attention that will outweigh the benefits of pursuing litigation. *Id.* 783-86.

public, that might not occur if such parties feared revelation of their names. It serves a critical public function by mitigating harm to vulnerable or sensitive plaintiffs so they will engage in litigation that creates important precedent that benefits the public. *See, e.g., John Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 819 P.2d 370 (1991) (protecting recipient of HIV-infected blood who sought name of donor); *Jane Doe v. Boeing Co.*, 121 Wn.2d 8, 846 P.2d 531 (1993) (protecting employee in an action against former employer for disability discrimination); *John Doe v. Finch*, 133 Wn.2d 96, 942 P.2d 359 (1997) (protecting plaintiff who sued psychologist for outrage over psychologist's romantic relationship with Doe's wife); *Jane Doe v. Dunning,* 87 Wn.2d 50, 549 P.2d 1 (1976) (protecting unwed mother who sued to obtain certified copy of conventional birth certificate for child); *John Doe v. Grp. Health Coop. of Puget Sound, Inc.*, 85 Wn. App. 213, 932 P.2d 178 (1997), *overruled on other grounds by Reid v. Pierce County,* 136 Wn.2d 195, 961 P.2d 333 (1998) (protecting employee who sued employer for an unauthorized

healthcare disclosure).

This case provides a model for the importance of preserving the right to proceed anonymously—where warranted—for unpopular and sensitive parties. The Order reversing will destroy the Does Plaintiffs' anonymity; resulting in the disclosure of their names[7] after the case has been litigated and dismissed. Unsealing the names of the Does in this case, will also reveal the identities of family members and victims discussed in their declarations. That information is distinguished from any names produced on the list of offenders that Ms. Zink has received through her PRA requests. It subjects the Does to the very harm established in the record and frustrates the very reason the trial court allowed them to litigate in pseudonym to begin with. It also deters other pseudonymous litigants from bringing meritorious claims.

If litigants are subjected to pseudonym reversal, the chill will not only disadvantage those particular litigants, but it will

[7] CP 473-75.

re-traumatize family and victims of such litigants, and it will stymie the development of law in areas where litigants are particularly subject to social censure. If parties fear that their pseudonym status is temporary and may expire, they may, understandably, be unwilling to assume the risk of litigating, choosing, instead, not to bring their claims, at the detriment of important development and protection of rights in Washington.

This Court should review the Court of Appeals' decision because of the far-reaching implications of its erroneous decision.

B. Review Is Warranted Because the Court of Appeal's Decision Conflicts with this Court's Caselaw.

Whether pseudonymous litigation, by way of sealing, is warranted is carefully considered in light of our constitutional requirement that "[j]ustice in all cases shall be administered openly." Const. art. I, § 10. This separate, clear and specific provision entitles the public to openly administered justice. *See Seattle Times v. Ishikawa*, 97 Wn.2d 30, 36, 640 P.2d 716 (1982). But, the right to openness is not absolute and can be "limited to

protect other interests[.]" *Ishikawa*, 97 Wn.2d 30 at 36. It may be "outweighed by some competing interest as determined by the trial court on a case-by-case basis according to the *Ishikawa* guidelines." *Dreiling v. Jain*, 151 Wn.2d 900, 915, 93 P.3d 861 (2004) (citing *Allied Daily Newspapers of Wash. v. Eikenberry*, 121 Wn.2d 205, 848 P.2d 1258 (1993)). The court must weigh the competing interests of the [party seeking sealing] and the public. *Federated Publications, Inc. v. Kurtz*, 94 Wn.2d 51, 64, 615 P.2d 440 (1980). This Court arrived at a five-factor test, referred to as the *Ishikawa* factors, to carefully weigh those competing interests to determine whether sealing is warranted. *See, e.g., Ishikawa*, 97 Wn.2d at 36; *Dreiling,* 151 Wn.2d at 913–15; *Doe G*, 190 Wn.2d at 202.

1. An Ishikawa Analysis Is Required to Determine if Sealing Is Warranted Where Pseudonymous Plaintiffs Have been Convicted of Crimes.

Washington's Supreme Court has made clear that where Does Plaintiffs who have been convicted of crimes are seeking to litigate in pseudonymity through sealing or redaction of their

names, article I, section 10 is implicated and a court must conduct analysis under GR 15 and *Ishikawa*. *Doe G*, 190 Wn.2d at 199-202.[8] *Doe G* held that *Ishikawa* requires that the court allow anyone present in the courtroom an opportunity to object and that the *Ishikawa* factors should be articulated in findings and conclusions, which should be as specific as possible. *Doe G*, 190 Wn.2d 185 at 202. The Court of Appeals' failure to apply *Ishikawa* conflicts with *Doe G*'s mandate. The trial court conducted a detailed analysis of all of the requisite factors and articulated its findings that the record supported justification for sealing under GR 15 and *Ishikawa.* CP 429-34. Disregarding those findings, the Court of Appeals substituted its judgment for the trial court's and failed to follow the requirements set forth in *Ishikawa* and its progeny to weigh the compelling safety interests of the Does. It recognized that *Ishikawa* applies, but then refused to apply it. Instead, it held that the trial court erred under GR 15,

[8] In 2018, *Doe G*, made it clear courts were required to conduct an *Ishikawa* analysis on the record before granting pseudonym status. 190 Wn.2d at 201.

so no further analysis was required: "Because we hold that the trial court erred under GR 15, we need not decide whether the … trial court erred in its *Ishikawa* analysis." Appendix A (Order Reversing at 7 n. 10).

Contrary to the Court of Appeal's Order reversing, the five-step *Ishikawa* framework was required because article I, section 10 was implicated. *Doe G*, 190 Wn.2d at 199. The *Ishikawa* factors take into consideration the competing interests of the parties' privacy and the public's interest in open government. *Dreiling*, 151 Wn.2d at 913-15. The Court of Appeal's failure to apply *Ishikawa* conflicts with *Doe G* and deprives the Does of the benefit of a required *Ishikawa* analysis—one that the trial court found justified continued sealing and pseudonymity.

The Court of Appeal's decision also conflicts with *Doe A*, another Zink-related case. *Doe A*, 185 Wn.2d at 384. There, this Court found it "unnecessary to consider whether the trial court abused its discretion by allowing plaintiffs to proceed in

pseudonym." *Id*. It held "the issue was moot" because the PRA requests that Zink made to Washington State Patrol included, among the various items sought and received, "names of the class members in emails, to or from employees of the WSP's Criminal Records Division." *Id.* at 370. The opinion does not support revelation of the pseudonyms—it did not need to determine the issue because "Zink will receive the records—and the names of the parties" anyway. *Id.* at 385.[9] The issue is not moot here.

The Does' names in this case are not included in the documents produced by Thurston County in response to Ms. Zink's requests. CP 34-59. Those documents include several thousands of names of low-level offenders, but they do not include "the names of the parties" in emails, as was the case in

[9] The Court of Appeals incorrectly relies on *Doe A* to reverse. Appendix A (Reversal at 6 (referencing Thurston County's release of the records to Zink and mischaracterizing the Does' Declarations as dating before *Doe A*)).

The trial court held the record establishes the Does compelling safety interests that are implicated by the disclosure of their actual names in the litigation. CP 429-34.

Doe A. The single document that associates the Does' actual names as the parties in this case remains filed under seal at the trial court's instruction in accordance with its ruling on pseudonymity applying *Ishikawa*. CP 473-475. That sealing decision was affirmed by Division II, years after *Does A*, and predates the Does' most recent declarations. The Court of Appeal's Order reversing conflicts with the holding and the analysis in *Does A*, just as it does with the published decisions of the Courts of Appeals in related and analogous cases.

C. Review Is Warranted Because the Court of Appeal's Decision Conflicts with Published Court of Appeals' Decisions Applying *Ishikawa* to Analogously Situated Does.

The Court of Appeal's decision conflicts with three published opinions by Washington Courts of Appeals, which have applied the rule set forth in *Doe G* to analogous facts and similarly situated plaintiffs in Zink related cases.[10] Two Courts

[10] It conflicts with all related unpublished opinions: *See, Doe L v. Zink,* No. 82055-9-I, 2021 WL 960824 (Mar. 15, 2021) (unpublished), *rev. denied, Doe L v. Zink,* 198 Wn.2d 1006, 493 P.3d 736, 737 (2021); *Doe A by and through Roe v. Zink,* No.

of Appeals reversed because the trial court failed to apply *Ishikawa*. In *State v. Doe I*, Division III reversed a trial court's order denying the Doe's request to submit redacted court records to maintain pseudonymity of his identity in the court record. *State v. Doe I*, 192 Wn. App. 612, 614-15, 369 P.3d 166 (2016). Because the record established the Doe had compelling needs under the first *Ishikawa* factor, Division III reversed and remanded for the trial court to consider all of the *Ishikawa* factors: because "[i]t is the trial court's job to give weight to the individual interests and consider the weight against the public interest." *Id.* at 619. *See also, Doe L v. Pierce County*, 7 Wn. App. 2d 157 (2018), *publication ordered* January 23, 2019, amended January 23, 2019, *rev. denied*, *Doe L v. Pierce County*, 193 Wn.2d 1015, 441 P.3d 1191 (2019) (reversing because the trial

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80316-6-I, 2020 WL 7497009 (Dec. 21, 2020) (unpublished), *rev. denied, Doe A v. Zink,* 197 Wn.2d 1011, 487 P.3d 517 (2021).

court did not apply *Ishikawa* before allowing Does to proceed in pseudonym).

Doe AA, a published opinion by the Court of Appeals, Division I, provides similarly situated plaintiffs who established compelling safety interests that justify sealing of their names under *Ishikawa* are entitled to do so through dismissal of the case. *Doe AA*, 15 Wn. App. 2d at 720-21. The plaintiffs in that case filed a lawsuit in pseudonym to prevent disclosure of their sex offense records under the PRA. After *Doe G* and *Doe A* resolved their substantive claims, the Does dismissed their lawsuit and maintained their pseudonymity. *Id*. at 717-21. Just as in this case, Ms. Zink asked the court to force the Does at the end of that case to reveal their pseudonyms. *Id*. Affirming dismissal without disclosure, Division I explained that although openness to the courts is presumed, it is not absolute. The public's right of access may be limited based upon application of GR 15 and *Ishikawa*, which allows a court to seal a court record if there are

"compelling privacy and safety concerns that outweigh the public interest in access to the court record." *Id*. at 719.

The *Doe AA* court confirmed that there are "no instances" it was aware of "where a court forced an anonymous party to reveal their full name after the court denies their motion to proceed anonymously and dismisses the case." *Doe AA*, 15 Wn. App. 2d at 710. This makes good sense because requiring a party to reveal their name would obviate the very relief they seek. *Id.* at 720-21 (citing *State v. McEnroe*, 174 Wn.2d 795, 279 P.3d 861 (2012)) for the proposition that a party should not have to reveal what it initially sought to protect even if a motion to seal is denied). *Doe AA* recognized revealing pseudonyms in this kind of case would chill meritorious claims and the public's interest in the names of a dismissed case was small. *Doe AA*, 15 Wn. App. 2d at 719–21.

This same analysis applies here. Just as the plaintiffs did in *Doe AA*, the Does Plaintiffs filed the case to enjoin release of their information through PRA requests made by Ms. Zink, they

sought to proceed in pseudonym, and *Doe G* resolved the legal issues. *Id*. The trial court found they established compelling justifications that outweighed the public's interest in their names as articulated in their declarations.[11] They will suffer harm, their families will suffer harm, and their victims will be re-traumatized. CP 796-829. The Court of Appeal's Order reversing conflicts with published precedent and compels review because revealing pseudonymity now obviates the very relief they sought when the Does initially filed their case. It "make[s] most efforts to proceed anonymously pointless[,]" and chills sensitive parties from pursuing litigation "for fear that if a court denies their request to proceed pseudonymously, their identities will be revealed. And the public's interest in discovering an anonymous party's real name in a case dismissed with prejudice before any final court decision on the merits is small." *See, e.g., Doe AA*, 15 Wn. App. 2d at 721.

[11] CP 429-34.

VII. CONCLUSION

For the foregoing reasons the Does Plaintiffs request that review be granted pursuant to RAP 13.4(b)(1), (2), and (4).

RAP 18.17 Certification

Undersigned counsel certifies that, pursuant to RAP 18.17(b), this brief contains 4,944 words, including footnotes, but not including those portions exempted from the word count by RAP 18.17(c), as counted by word processing software in compliance with RAP 18.17(c)(10).

DATED this 17th day of April, 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 17th day of April, 2024, I caused a true and correct copy of this document to be served on all parties by e-filing this document through the Washington State Appellate Courts Secure Portal.

Signed this 17th day of April, 2024 at Seattle, WA.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JOHN DOE P; JOHN DOE Q; JOHN DOE R; and JOHN DOE S, as individuals and on behalf of others similarly situated, Respondents, v. THURSTON COUNTY, a municipal organization, and its departments the THURSTON COUNTY PROSECUTING ATTORNEY and THURSTON COUNTY SHERIFF, Respondents, DONNA ZINK, a married woman, Appellant.	No. 85909-9-I DIVISION ONE UNPUBLISHED OPINION

BOWMAN, J. — After the trial court allowed the plaintiffs to litigate in pseudonym, it directed them to file a sealed document containing their actual names (Disclosure Document). In this appeal, Donna Zink challenges a trial court decision directing that the Disclosure Document remain sealed. We hold that the record does not support the trial court's finding that continued sealing was justified by compelling privacy or safety concerns that outweighed the public interest in access to court records. Accordingly, we reverse and remand with instructions to unseal the Disclosure Document. Otherwise, we affirm.

FACTS

In 2014, Zink sent a Public Records Act (PRA)[1] request to Thurston County seeking various sex offender records, including registration records, special sex offender sentencing alternative (SSOSA) evaluations, and special sex offender disposition alternative (SSODA) evaluations. John Doe P, John Doe Q, John Doe R, and John Doe S (collectively Does) sued to enjoin the county from releasing the records. John Does P, Q, and S are level I sex offenders[2] who alleged they complied with registration requirements. John Doe R alleged he was convicted of a sex offense in juvenile court, had completed treatment, and had been relieved of the duty to register. The Does alleged that releasing the records Zink requested would cause irreparable harm because they would reveal the identity of sex offenders, like themselves, who were not statutorily required to be listed on the state's publicly available website.[3]

In January 2015, the trial court entered an order allowing the Does to litigate under pseudonyms. It later determined on summary judgment that the records Zink requested were exempt from disclosure[4] and enjoined Thurston

[1] Chapter 42.56 RCW.

[2] Level I sex offenders are those classified as the least likely to reoffend. *John Doe A v. Wash. State Patrol*, 185 Wn.2d 363, 368, 374 P.3d 63 (2016).

[3] RCW 4.24.550(5)(a) directs the Washington Association of Sheriffs and Police Chiefs to maintain a statewide website that "shall be available to the public" and "shall post all level III and level II registered sex offenders [and] level I registered sex offenders only during the time they are out of compliance with registration requirements . . . or if lacking a fixed residence." The Does also alleged that the Uniform Health Care Information Act, chapter 70.02 RCW, exempts SSOSA and SSODA evaluations from disclosure under the PRA and that releasing SSODA evaluations of juvenile offenders violates the confidentiality requirements of chapter 13.50 RCW.

[4] The trial court determined RCW 4.24.550 mandates "permissive disclosure" of registration records but Zink did not show the records "are relevant and necessary for public safety."

County from releasing them.

Zink appealed the summary judgment order. *See John Doe P v. Thurston County*, 199 Wn. App. 280, 399 P.3d 1195 (2017) (*John Doe P* I). Division Two of our court affirmed exempting SSOSA and SSODA evaluations from disclosure under the PRA. *Id.* at 298. And it determined Zink waived her challenge to the trial court's use of pseudonyms. *Id.* at 304. But based on the Supreme Court decision in *John Doe A v. Washington State Patrol*, 185 Wn.2d 363, 383-85, 374 P.3d 63 (2016), the court concluded that sex offender registration records are not exempt from PRA disclosure. *Id.* at 283.

On remand from the Supreme Court, Division Two reversed *John Doe P* I in part, affirming its holding that sex offender registration records are not exempt from PRA disclosure but holding that SSOSA evaluations are not exempt as well. *John Doe P v. Thurston County*, No. 48000-0-II, slip op. at 2 & n.6 (Wash. Ct. App. Oct. 2, 2018) (unpublished), https://www.courts.wa.gov/opinions/pdf/D2%2048000-0-II%20Unpublished%20Opinion.pdf (*John Doe P* II).[5] Division Two also held that in light of the Supreme Court decision in *John Doe G*, 190 Wn.2d 185, 202, 410 P.3d 1156 (2018), the trial court erred by allowing the Does to litigate under pseudonyms without an *Ishikawa*[6] analysis. *John Doe P* II, slip op. at 12.

On remand from *John Doe P* II, the trial court lifted its earlier injunction except as to the SSODA evaluations. In March 2021, after applying the *Ishikawa*

[5] We cite to unpublished opinions under GR 14.1(c) that are necessary for a reasoned decision.

[6] *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 37-39, 640 P.2d 716 (1982) (setting forth a five-step analysis for restricting access to court hearings or records).

factors, the court entered an order allowing the Does to continue litigating under pseudonyms (2021 Order).[7] The 2021 Order directed the Does to file the Disclosure Document with their real names under seal so they could be recovered at a later date. The Does complied.

Zink appealed the 2021 Order, and Division Two affirmed. *John Doe P v. Thurston County*, No. 56345-2-II (Wash. Ct. App. July 19, 2022) (unpublished), https://www.courts.wa.gov/opinions/pdf/D2%2056345-2-II%20Unpublished%20Opinion.pdf. The court set the 2021 Order to expire on January 8, 2023.[8]

In September 2022, the Does moved to "redact" the Disclosure Document, which the trial court treated as a motion to allow the Disclosure Document to remain sealed. The Does also moved to dismiss the case, arguing that the trial and appellate courts had resolved all the claims and that Zink "already obtained any information she [is] entitled to in this case."

In December 2022, after a hearing, the trial court dismissed the case with prejudice. The court also allowed the Does to remain in pseudonym and ordered that the Disclosure Document remain sealed "unless the Court, after notice to all parties, proof, and hearing, has issued a subsequent order pursuant to GR 15(e)."

Zink appeals.

[7] The court also allowed John Doe R's mother to be identified through the pseudonym Jane Roe R.

[8] The 2021 Order initially expired after a year. The trial court extended the expiration date twice, which the parties do not challenge on appeal.

ANALYSIS

Zink argues that the trial court erred by ordering the continued sealing of the Disclosure Document. We agree.

"In determining whether court records may be sealed from public disclosure, we start with the presumption of openness." *Rufer v. Abbott Labr'ys*, 154 Wn.2d 530, 540, 114 P.3d 1182 (2005). While "[o]penness is presumptive, . . . it is not absolute." *Dreiling v. Jain*, 151 Wn.2d 900, 909, 93 P.3d 861 (2004). GR 15 sets forth generally applicable standards for sealing and redacting court records. *See* GR 15(a). Under GR 15(c)(2), a court can seal or redact a record only if "the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record."

We review a trial court's decision to seal court records for abuse of discretion. *Bennett v. Smith Bunday Berman Britton, PS*, 156 Wn. App. 293, 302, 234 P.3d 236 (2010), ***aff'd***, 176 Wn.2d 303, 291 P.3d 886 (2013). "A trial court abuses its discretion when its decision 'is manifestly unreasonable or based upon untenable grounds or reasons.' " *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 668-69, 230 P.3d 583 (2010) (quoting *State v. Stenson*, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997)). A trial court's decision is based on untenable grounds when it relies on unsupported facts or applies the wrong legal standard. *Id.* at 669.

Here, the trial court's 2021 findings state, in relevant part:

> The [Does] . . . established compelling privacy and safety concerns and a serious imminent threat of numerous forms of harm if their names are revealed, through their motion and . . . declarations . . . , that sufficiently outweigh the public interest and [Zink's] interest[ ] in the disclosure of the [Does]' identities.

But the record reflects that by 2019, after our Supreme Court held in *John Doe A*, 185 Wn.2d at 383-85, that sex offender registration records are not exempt from PRA disclosure, Zink was receiving yearly updates of a Washington State Patrol database identifying all level I sex offenders registered in Thurston County, including juvenile offenders. It is undisputed that Zink made the database available online and shared it with others who requested it. She also filed a part of the database below in response to the Does' 2019 motion to remain under pseudonym. Meanwhile, this court held that most of the records Zink requested from Thurston County had to be disclosed. *John Doe P* I, at 283; *John Doe P* II, slip op. at 2 & n.6. It is also undisputed that after *John Doe P* II, Thurston County began releasing the records that Zink was entitled to, including registration records identifying level I sex offenders.

In short, the information the Does sought to protect by filing their lawsuit—their identities as sex offenders—became publicly available well before their September 2022 motion to keep the Disclosure Document sealed. So, to support a finding that continued sealing of the Disclosure Document was justified by compelling privacy or safety concerns under GR 15(c)(2), the Does needed to identify privacy or safety concerns specific to their identities as the plaintiffs in this lawsuit, which is distinct from their identities as sex offenders. *See* GR 15(c)(2) (requiring findings that sealing or redaction "is justified by *identified*

compelling privacy or safety concerns that outweigh the public interest in access to the court record"[9]); *cf. John Doe AA v. King County*, 15 Wn. App. 2d 710, 720-21, 476 P.3d 1055 (2020) (observing that continued anonymity may be justified where identifying a party would obviate the very relief they seek).

The Does failed to identify such concerns. They filed most of their supporting declarations before our Supreme Court's decision in *John Doe A*, and they describe only anticipated harms associated with revealing their identities as sex offenders. Neither the Does' nor their experts' declarations explain why, given that this information was already publicly available, any compelling privacy or safety concern remained that outweighed the presumption in favor of openness and justified sealing the Disclosure Document.

Still, the Does claim that new declarations they filed in 2022 "articulat[ed] the on-going nature of their compelling safety and privacy concerns if their names were to be released in association with the lawsuit." But those declarations did not identify any separate compelling privacy or safety concerns related to their identities as *plaintiffs*. The evidence does not support the trial court's finding that the Does satisfied the requirements of GR 15(c)(2), so the trial court abused its discretion by ordering that the Disclosure Document remain sealed.[10]

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[9] Emphasis added.

[10] The trial court analyzed the Does' request to seal the Disclosure Document under both GR 15 and *Ishikawa*. *Ishikawa* applies when sealing or redaction implicates article I, section 10 of the Washington Constitution. *See State v. S.J.C.*, 183 Wn.2d 408, 412, 352 P.3d 749 (2015) ("Whether an *Ishikawa* analysis is necessary depends on whether article I, section 10 applies."). Because we hold that the trial court erred under GR 15, we need not decide whether the trial court's decision to seal the Disclosure Document was also subject to the more rigorous *Ishikawa* analysis or whether the trial court erred in its *Ishikawa* analysis.

As a final matter, the parties' briefing in this appeal largely fails to distinguish between the trial court's decision to continue sealing the Disclosure Document and its decision to allow the Does to continue litigating in pseudonym. As much as Zink challenges the latter decision, that challenge is moot. Zink has received or will receive the records she is entitled to, no claims remain to be litigated, and the trial court dismissed the Does' lawsuit with prejudice.[11] Further, the court will now unseal the Disclosure Document. So, we need not address whether it erred by allowing the Does to remain in pseudonym. *See John Doe A*, 185 Wn.2d at 385 (holding Zink's challenge to a pseudonym order moot because she would receive the requested records revealing the true names of the parties).

We reverse the trial court's decision allowing the Disclosure Document to remain sealed and remand to unseal it. Otherwise, we affirm.[12]

Brennan, J.

WE CONCUR:

Díaz, J.

Birk, J.

[11] Zink opposed the Does' motion to dismiss below but she does not assign error to the dismissal on appeal.

[12] Because the pseudonym issue is moot and we reverse the trial court's decision allowing the Disclosure Document to remain sealed, we need not reach the rest of Zink's challenges to those decisions, including her arguments that the trial court improperly relied on hearsay and erred by not allowing her to cross-examine the declarants.