72028-7 72028-7

No. 72028-7-I

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

TIMOTHY WHITE,

Appellant,

v.

SKAGIT COUNTY and ISLAND COUNTY,

Respondents.

SKAGIT COUNTY'S RESPONSE

RICHARD A. WEYRICH
Skagit County Prosecuting Attorney

A. O. DENNY, WSBA #14021
MELINDA MILLER, WSBA #30143
Deputy Prosecuting Attorney
Office Identification #91059

Skagit County Prosecuting Attorney
605 South Third Street
Mount Vernon, WA 98273
(360) 336-9460

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I. INTRODUCTION

Under the Public Records Act (PRA) Timothy White requested "all images [of ballots] created, received or used *before tabulation*[.]" His "intent [was] to request copies of the image files of ballots in the Nov 5 General Elections, *before their votes are tabulated*." CP 255.

Skagit County denied his request because ballot secrecy is mandated by the Washington Constitution and state laws and regulations enforce this secrecy with strict security measures. The constitutional mandate and laws establish a comprehensive means of preserving the sanctity and security of the ballot, which may only be breached by court order. Because White did not obtain a court order allowing disclosure of the ballots, Skagit County was required by state law to deny his PRA request.

White would have the court find that he sought mere ballot images. However, if the requested images of ballots were to be disclosed, White or some other person could gather readily available information about who voted and when the ballots were returned and match ballots to individual voters. The result would be a violation of ballot secrecy and criminal liability for elections staff.

The court should find that the constitutional mandate and implementing statutes exempt ballots from disclosure under the PRA and affirm the trial court's order.

II. ISSUES PRESENTED FOR REVIEW

1. Do the several laws that require ballot security and secrecy constitute "other statutes" that exempt ballots from disclosure under the Public Records Act?

2. If so, did Skagit County properly deny White's request for ballots?

3. Did Skagit County's explanation that specific statutes required ballots to be held in secure storage meet the requirement for a brief explanation of the reasons for denial of White's request?

III. STATEMENT OF THE CASE

A. Ballot Tabulation, Security, and Secrecy.

Preserving voter secrecy and preventing premature release of election results while ensuring accurate, accessible, and transparent elections is of utmost importance to elections officials across the State. CP 92. "State law allows public oversight of the election process in specific ways that do not risk the integrity of the election." CP 94.

Skagit County voting devices[1] include computers running Hart Intercivic's "Boss," "Ballot Now," and "Tally" programs, which are used to create and tabulate ballots.[2] These devices are maintained in a secure area in the counting center, are standalone devices, and are not connected to the internet or to the county's computer system. The public does not have access to these voting devices. CP 182; RCW 29A.60.170(2).

Voted ballots retrieved from secure drop boxes or received through the mail or at the voting center are immediately secured and are accessible only by election staff for the purposes of processing the ballots. CP 182. Processing begins with verification of signatures and postmarks on the outer envelope; separation of ballots from envelopes; and inspection for damage, write-in votes, and incorrect or incomplete marks. If necessary, damaged and write-in ballots are duplicated. Ballots are then scanned and digitally communicated to a computer running the "Ballot Now" program. CP 182. These electronic records are still ballots because Washington's

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[1] A "voting system" means "[t]he total combination of mechanical, electromechanical, or electronic equipment including, but not limited to, the software, firmware, and documentation to program, control, and support the equipment that is used: (a) To define ballots; (b) to cast and count votes; (c) to report or display election results from the voting system; (d) To maintain and produce any audit trail information[.]" RCW 29A.12.005(1).

[2] Island County also uses the Hart Intercivic, Inc. programs "Boss," "Ballot Now," and "Tally" and processes ballots in a substantially similar manner as Skagit County. CP 149-161.

definition of "ballot" includes an electronic record of a voter's choices in a primary, general, or special election. RCW 29A.04.005(1).

If necessary, the ballot images can be "resolved" in the "Ballot Now" program to ensure that each vote is counted as the voter intended under rules and guidance provided by the Secretary of State. Resolution is required, for example, if a voter circles the check box or candidate's name rather than filling in the box; or if a voter fills in two boxes for one position, but crosses one off. Resolution allows the vote for the "circled" or "uncrossed" candidate to be counted. CP 182. Resolution does not change the image of the ballot. It simply determines whether and how the Ballot Now program will identify a particular vote. Beginning at 8 p.m. on Election Day, 1s and 0s data, not ballot images, from the "Ballot Now" program is transferred to a second computer. This second computer runs the "Tally" program, which tabulates the votes. CP 182.

For the November 2013, general election, scanning and tabulation occurred as necessary until the election was certified on November 26, 2013. CP 182.

Except when needed to allow processing of damaged ballots and for the scanning of ballots into the voting devices, ballots are not copied. CP 182. Election staff does not distinguish between images of ballots and paper ballots or between ballots that have been counted and those that

have not been counted. All ballots – originals, duplicates, and images – are maintained in a secure area or storage from the moment they are deposited or received until they are no longer needed. When the ballots, including electronic images of ballots, are no longer needed, they are destroyed by shredding. CP 64, 68, 182-83. Ballots are not made public outside of the methods allowed by statute and regulation. CP 68.

The counting center and canvassing board meetings are open to the public. CP 183, chapter 42.30 RCW. However, election observers must have received training and follow rules applicable to observers before they will be allowed into the counting center. CP 183. Among other things, the rules address where observers may go and limit their contact with staff. For example, "[o]bservers may not touch any ballot or ballot container, or operate any aspect of the computer vote tallying system or voter registration system." CP 183. Further, observers are not allowed into any secure area such as where ballots are stored or where the scanners and computers used to process ballots are stationed. CP 183.

B. White's Public Records Act Request.

On November 6, 2013, White requested "copies of electronic or digital image files of all *pre-tabulated* ballots received, cast, voted, or otherwise used in the County's current Nov. 5, 2013 General Election," CP 183, 220 (emphasis in original); sought the metadata associated with

those images, CP 220; and requested delivery by various means: posting on the county website or the Public Access Television server, via media for a home computer. CP 256.

White explicitly requested that the counties disclose ballots before they were tabulated:

> Pursuant to the state Public Records Act, I request copies of electronic or digital image files of all *pre-tabulated* ballots received, cast, voted, or otherwise used in the County's current Nov. 5, 2013 General Election.
>
> . . .
>
> This request intends to include the original metadata and Properties of the electronic or digital files requested.

CP 220 (emphasis in original). White further stated that the window to challenge some ballots "is but two weeks," advised "the value of these requested records is time-sensitive," and asked for prompt disclosure. CP 256. The trial court found that White's "request was clear that he did not want copies made post-tabulation." CP 23.

White's request for "images of only pre-tabulated elections ballots" would, as the trial court found, cause election staff to cease "all counting or tabulation of ballots [ ] in the middle of the elections until copies of thousands of ballots can be made." CP 21-22.

Releasing copies of ballots, especially copies of ballots before they are tabulated, "creates a risk of violating the ballot secrecy required by

article 6, section 6 of the Washington Constitution." CP 93. This risk is heightened if ballots were disclosed before they were tabulated because the images of pre-tabulated ballots could be more easily linked to voters when compared to "the publically available list of ballots returned each day." CP 93. Further "[m]arks placed on ballots by voters would further jeopardize voter identities. Marks "such as comments, explanations of voter intent, or writing themselves in as a candidate" or signatures by corrections are common. CP 93

The Hart Intercivic programs are proprietary software. Election staff cannot obtain metadata from the program; however, the software allows for logs of information about images to be obtained. CP 184. Because the county was unclear whether the logs included the information White sought or whether White was seeking proprietary data, which would have required the county to notify the vendor before releasing any records, the county sought clarification of White's request for metadata. CP 230. The trial court held that the county's request was appropriate finding that "[t]he Counties cannot know how far this metadata request goes or what it means, nor make objections intelligently to the metadata request, without more clarification. CP 31. White did not respond to the county's request for clarification. CP 184.

The Hart Intercivic programs do not allow images that have been scanned to be collated into a separate digital document consisting of ballot images. The data cards that are used to transfer data from the computer running the Ballot Now program to the computer running the Tally program, where the tabulation takes place, do not store ballot images. That data consists of 1s and 0s used for tabulation, CP 184, that "instructs the Tally System how to convert the marks into vote counts." CP 64. Thus, to create disclosable digital images of the 35,000 ballots would have required county election staff to create a new record by "screen printing" each ballot, twice, once for each side of the ballot, to a Word document. The average time to do this was 25 seconds per image. This would have been impossible to accomplish before the date the election was required to be certified. CP 184. Fulfilling White's PRA request would have delayed certification by more than 12 weeks – not including breaks – just to copy the images of 35,000 ballots to a Word document.[3] The trial court concluded that White was "asking that all counting or tabulation of ballots cease in the middle of the election until copies of thousands of ballots can be made." CP 22. Thus, even if Washington law allowed the release of ballots, it was impossible to fulfill White's request and still meet the

[3] (35,000 ballots x 2 images/ballot x 25 seconds/image) ÷ 3600 seconds/hour ÷ 40 hours/week = 12.15 weeks.

certification deadline. *See* RCW 29A.60.190 (elections must be certified "twenty-one days after a general election." Finding that White's request demanding copies of images of only pre-tabulated ballots would have effectively prevented timely tabulation of ballots and certification of the election, the trial court held that White's request prevented the county from using the ballots for their normal and intended governmental purpose. CP 22-23.

Skagit County denied White's request for disclosure on December 6, 2013. CP 230, 232. The county's exemption log listed each of more than 35,000 ballots. In a cover letter and for each exemption the county cited RCW 29A.60.125, RCW 29A.60.110, and WAC 434-261-045 as "other laws preventing disclosure pursuant to RCW 42.56.070(1)" and which "require ballots to remain in secure storage unless opened by a court or canvassing [board] for a specific authorized purpose." CP 183-84, 230, 232.

The trial court held that chapter 29A RCW "controls precisely and completely every single movement and action that can be taken with ballots from the moment they are mailed or cast until their destruction" and specifically observed that "RCW 29A.40.110 expressly prohibits ballots from going anywhere else [secure storage] or being handled by anyone else [elections staff and canvassing board] and thus prohibits them

from being taken somewhere to be duplicated before tabulation. *Id*. It provides that are only to go back to their secure container. *Id*." CP 24.[4]

The trial court concluded that RCW 29A.60.125, which requires original and duplicate ballots to be sealed in secure storage at all times except for enumerated uses, means that "duplicates statutorily cannot be released to the public." CP 24. The trial court held that RCW 29A.60.110 (requiring sealed storage after tabulation), .125 (requiring sealed storage of ballots and ballot duplicates at all times), and .170 (prohibiting anyone but election staff from touching ballots) were express legislative statements that ballots are not permitted to be released under the PRA. CP 24-25. The trial court also held that, the audit trail required for duplicated ballots, "including numerical matching markings on the original ballot and duplicate, a log, and initialing by the two persons duplicating" made it "inconceivable that the legislature would set up this kind of careful control for the duplication of damaged ballots, yet allow wholesale duplication of ballots as public records without mentioning or setting up any similar protections or controls." CP 26.

Regarding the several types of election records the legislature allows to be released, the trial court concluded, "[i]t could be superfluous

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[4] RCW 29A.60.140(1) ("Members of the county canvassing board are the county auditor, who is the chair, the county prosecuting attorney, and the chair of the county legislative body.)

to single out these specific forms of information and say they are publically discloseable unless the rest of the statutory scheme made everything else non-disclosable. The sections indicating only certain items can be disclosed as public records indicates the legislature was carving out a few exceptions in a statutory scheme that otherwise does not permit public disclosure." CP 28.

IV. ANALYSIS

"[T]aken as a whole, RCW Chapter 29A expressly exempts election ballots from disclosure as public records." CP 27.

A. Standard of Review.

"Judicial review of all agency actions taken or challenged under RCW 42.56.030 through 42.17.520 shall be de novo." RCW 42.56.550. The burden of proof is on the party seeking to prevent disclosure to show that an exemption applies. *Ameriquest Mortg. Co. v. Office of Attorney Gen.,* 177 Wn.2d 467, 486, 300 P.3d 799 (2013); RCW 42.56.540, .550(1).

B. Washington's constitution and election laws regarding the handling of ballots mandate absolute secrecy and security of each ballot, including electronic images of ballots.

To "guard against intimidation and secure freedom in the exercise of the elective franchise" Article VI, section 6 of the Washington

Constitution[5] admonishes the legislature to "secure to every elector **absolute secrecy** in preparing and depositing his ballot."[6] *State ex rel. Empire Voting Mach. Co. v. Carroll*, 78 Wash. 83, 85, 138 P. 306 (1914) (emphasis added).

Our supreme court has interpreted "[t]he sanctity of the ballot box" as extending to the canvassing process, which "is not to be invaded simply because a vote is close, and it is hoped that a re-check of the work performed by the precinct officers may possibly show a change or an error." *State ex rel. Doyle v. Superior Court*, 138 Wash. 488, 492, 244 P. 702 (1926). In compliance with the constitutional mandate and judicial precedent, the legislature has enacted a comprehensive body of law with measures for strict ballot security at all times in order to maintain voter secrecy and the integrity of elections. These laws, including direction to the Secretary of State to adopt **"[s]tandards and procedures to guarantee the secrecy of ballots"** emphasize "[t]he right of absolute secrecy of the vote," and the need "to protect the integrity of the electoral

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[5] Relevant sections of the several state constitutions are provided in Appendix A.

[6] "Secrecy" means "1**:** the condition of being hidden or concealed; 2 **:** the habit or practice of keeping secrets or maintaining privacy or concealment." *See* http://www.merriam-webster.com/dictionary/secrecy. "Absolute" is defined as "having no restriction, exception, or qualification." http://www.merriam-webster.com/dictionary/absolute?show=0&t=1408739608.

process by providing equal access to the process while guarding against discrimination and fraud." RCW 29A.04.206(2); .611(11), (34) (emphasis added); .205.

The mandate for secrecy and security applies to all ballots, including "a physical or electronic record of the choices of an individual voter in an election." RCW 29A.04.008(1)(c).

The legislature then imposed specific duties on the handling of ballots that effectively expanded the concept of the ballot box to protect ballot secrecy from the moment a voter places his or her ballot in the ballot drop box (or it is received at the elections office) until the ballot and all electronic versions are destroyed. These laws severely limit who can touch or have access to any ballot and for what purpose:

> (1) Prohibiting any "person except those employed and authorized by the county auditor [to] touch any ballot or ballot container." RCW 29A.60.170.
>
> (2) Securing ballots at voting centers or ballot drop locations. RCW 29A.84.540 ("Any person who, without lawful authority, removes a ballot from a voting center or ballot drop location is

guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor[.]")[7]

(3) Securing ballots during transport from drop boxes to the counting center. RCW 29A.40.160(13) ("Ballots from drop boxes must be returned to the counting center in secured transport containers.")

(4) Securing all received return envelopes from receipt, to opening, to processing. RCW 29A.40.110(2):

> All received return envelopes must be placed in secure locations from the time of delivery to the county auditor until their subsequent opening. After opening the return envelopes, the county canvassing board shall place all of the ballots in secure storage until processing. Ballots may be taken from the inner envelopes and all the normal steps may be performed to prepare these ballots for tabulation.

(5) Preventing unauthorized examination of ballots to identify the name of a voter and how the voter voted; to determine how a known voter voted; or to identify the name of the voter who voted in a known manner. RCW 29A.84.420.

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[7] Similarly, "[a]nyone who, without authorization, removes from a voting center a paper record produced by a direct recording electronic voting device is guilty of a class C felony[.]" RCW 29A.85.545.

(6) Sealing "[o]riginal and duplicate ballots" in secure storage . . . at all times, except during duplication, inspection by canvassing board, or tabulation." RCW 29A.60.125.

(7) Requiring an audit trail for duplicate ballots. RCW 29A.60.125.

(8) Sealing ballots after tabulation. RCW 29A.60.110 (Sealed ballot containers may only be opened by the canvassing board (1) as part of the canvass, (2) to conduct recounts, (3) to conduct a random check under RCW 29A.60.170, or (4) by order of the superior court in an election contest or dispute.)

Additionally, the legislature provided for the destruction of ballots – as opposed to their continued storage in secure containers then being tossed in the trash – "60 days after date of certification" for non-federal elections, CP 66, by authorizing the "destruction of official public records [ ] pursuant to a schedule approved [by the records committee established] under RCW 40.14.050." RCW 40.14.060(1). *Also see Bldg. Indus. Ass'n of Wash. v. McCarthy*, 152 Wn. App. 720, 737, 218 P.3d 196 (2009) ("destruction of public records authorized when pursuant to state approved schedule.") *citing* RCW 40.14.060-.070; RCW 40.14.030(1) (The requirement to transfer public records to the state archives once they are no longer required "has no application to public records approved for destruction under [chapter 40.14 RCW].") Thus, the State Archivist

directed that ballots be destroyed 60 days after a non-federal election. CP 66.[8]

Balancing ballot secrecy and security with public scrutiny, the legislature allows authorized persons to observe the canvassing of ballots, but does not allow them to touch a ballot. RCW 29A.60.170(2) ("no persons except those employed and authorized by the county auditor may touch any ballot or ballot container or operate a vote tallying system.") If someone wants to obtain a ballot, a court order is needed. RCW 29A.60.110 ("The containers may only be opened by the canvassing board as part of the canvass, to conduct recounts, to conduct a random check under RCW 29A.60.170, or **by order of the superior court in a contest or election dispute**.")[9] (Emphasis added).

The court's decision in *Quigley v. Phelps*, 74 Wash. 73, 77, 132 P. 738 (1913), in which the plaintiff sought to have ballots unsealed and

[8] White implicitly concedes that the State Achivist has the authority to adopt a schedule for destruction of public records, including ballots, at page 24 of his Opening Brief where he states, "The state archivist shall "**insure the maintenance and security of *all* state public records** and to establish safeguards against unauthorized removal or destruction." (Emphasis in original).

[9] White's argument that denial cannot be based upon an excuse that records are available from another source, Opening Brief at 34, fails to recognize that the court is not another source. It is simply the authority, upon proper petition, for obtaining ballots from the county auditor..

admitted as evidence at trial, is instructive in that the court affirmed the need for an election contest or dispute before ballots could be disclosed:

> . . . before these ballot boxes are opened and ordered to be counted, to submit some proof to satisfy the court in a reasonable way that there is a just ground to believe that the election officials have failed to perform their duty."

Quigley v. Phelps, 74 Wash. at 77. "The argument that a contestant, though strongly suspecting malconduct, would have no means of proving it outside of the ballots themselves [did] not impress [the court]." *Quigley v. Phelps*, 74 Wash. at 85.

The court extended "[t]he sanctity of the ballot box" to the canvassing process and emphasized that it "is not to be invaded simply because a vote is close, and it is hoped that a re-check of the work performed by the precinct officers may possibly show a change or an error." *State ex rel. Doyle v. Superior Court*, 138 Wash. 488, 492, 244 P. 702 (1926).[10]

Finally, the legislature enforced the mandate for ballot secrecy and security with significant penalties. Failure to perform any duty relating to elections or knowingly or fraudulently violating any provisions of law

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[10] Washington courts continue to consider the ballot inviolable. *See Democratic Party of Wash. v. Spellman*, 101 Wn.2d 94, 95, 675 P.2d 1222 (1984) Dore, dissent ("If our democratic system, as we know it, is to survive, our court should not hesitate to act on constitutional issues [guaranteeing a partisan primary] to ensure the sanctity of the ballot box.")

relating to such duty is classed as a felony and leads to forfeiture of the person's office. RCW 29A.84.720.[11] *Also see* RCW 29A.84.030 ("A person who willfully violates any provision of this title regarding the conduct of mail ballot primaries or elections is guilty of a class C felony[.]"); RCW 29A.84.680(2) ("Except as provided in this chapter [29A.84 RCW], a person who willfully violates any other provision of chapter 29A.40 RCW is guilty of a misdemeanor.")

Election staff would have violated the constitutional mandate and several statutes and been subject to criminal charges and dismissal from office if they had provided White with images of voted ballots.

C. The body of election laws that provide for ballot secrecy and security is an "other statute" that exempts ballots from disclosure under the PRA.

"RCW 42.56.070(1) makes an exception for records that fall within . . . an 'other statute which exempts or prohibits disclosure of

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[11] RCW 29A.84.720 ("Every person charged with the performance of any duty under the provisions of any law of this state relating to elections, including primaries, or the provisions of any charter or ordinance of any city or town of this state relating to elections who willfully neglects or refuses to perform such duty, or who, in the performance of such duty, or in his or her official capacity, knowingly or fraudulently violates any of the provisions of law relating to such duty, is guilty of a class C felony punishable under RCW 9A.20.021 and shall forfeit his or her office.") *Also see State ex rel. Hanson v. Wilson*, 113 Wash. 49, 53, 192 P. 913 (1920) ("The performance by the election officers of the duties imposed upon them can be reasonably well secured by providing a penalty for failure so to do.")

specific information or records.'" *In re Dependency of K.B.*, 150 Wn. App. 912, 919, 210 P.3d 330 (2009).[12]

In *Progressive Animal Welfare Society v. Univ. of Wash.*, 125 Wn.2d 243, 884 P.2d 592 (1994) (*PAWS II*), the court set out the analysis to determine whether an "other statute" establishes an exemption from disclosure:

> . . . Thus, if another statute (1) does not conflict with the Act, and (2) either exempts or prohibits disclosure of specific public records in their entirety, then (3) the information may be withheld in its entirety notwithstanding the redaction requirement. . . .

PAWS II, 125 Wn.2d at 261-262 (footnotes and citations omitted). Redaction and then release is not required when an "other statute" exempts a record from disclosure under the PRA. *PAWS II*, 125 Wn.2d at 261; *Fisher Broad.– Seattle TV LLC v. City of Seattle*, 180 Wn.2d 515, 528 n.5, 326 P.3d 688 (2014). (The PAWS II test determines whether a statute "exempts a record in its entirety.")

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[12] RCW 42.56.070(1) ("Each agency . . . shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of [an] other statute which exempts or prohibits disclosure of specific information or records.")

1. The election laws that address the handling and processing of ballots are an "other statute."

The body of election laws that conform to the constitutional mandate for ballot secrecy qualifies as an "other statute" that exempts records from disclosure under the PRA.

The election laws identified above provide for cradle to grave security for ballots, including electronic records of voter choices. They limit the uses of ballots to specific purposes, allow public observation but restrict handling of ballots to election staff, require destruction after the election has been certified and a holding period has expired, require a court order – rather than a request for records – before anyone other than election staff may obtain a copy, and impose criminal penalties for unauthorized disclosure. In other words, ballots cannot be diverted for copying or viewing – other than the fleeting observation allowed under the statutes – through a request for records.

The court of appeals has already recognized that an entire statutory scheme can qualify as an "other statute" that prevents disclosure under the PRA. In *Deer v. DSHS*, 122 Wn. App. 84, 93 P.3d 195 (2004) the court held that chapter 13.50 RCW was a comprehensive body of laws and regulations that balanced access to sensitive records and exempted juvenile dependency records from disclosure under the PRA. *Deer* is instructive because chapter 13.50 RCW does not mention or reference the

PRA and the PRA does not specifically exempt juvenile dependency records.

In finding that chapter 13.50 RCW, which governs the release of dependency records, is an "other statute" within the meaning of the PRA, the *Deer* court held:

> This interpretation of chapter 13.50 RCW [that it governs the release of dependency records] is consistent with the PDA's purpose of exempting from its purview only those "public records most capable of causing substantial damage to the privacy rights of citizens." Chapter 13.50 RCW resolves the potential conflict between the disclosure of juvenile records and concerns for the privacy of the juvenile and of his or her family by strictly limiting the types of juvenile records that an agency may release and the parties to whom it may release them, thereby preserving "anonymity and confidentiality."

Deer v. DSHS, 122 Wn. App. at 91-92 (citations omitted).

The *Deer* court then held that chapter 13.50 RCW did not conflict with the PRA because "chapter 13.50 RCW contains an alternative means of requesting and seeking juvenile dependency records that balances and protects the privacy needs of the juvenile and his or her family[.]"*Deer v. DSHS*, 122 Wn. App. at 91.

Ballots, like juvenile dependency records, are accorded anonymity and confidentiality. This follows from Washington's constitutional mandate for their absolute secrecy. *Also see Buckley v Valeo*, 424 U.S. 1,

237; 96 S Ct 612; 46 L Ed 2d 659 (1976) (Burger, C.J., concurring in part and dissenting in part) ("secrecy and privacy as to political preferences and convictions are fundamental in a free society. For example, one of the great political reforms was the advent of the secret ballot as a universal practice.") *Also see* 29 C.J.S. Elections § 322 (2012) (entitled "Secrecy in Voting") ("Privacy casting one's ballot is a sacred rule of law."); 26 Am. Jur. 2d Elections § 307 (2012) (entitled "Necessity for Secrecy") (A secret written ballot is used "to prevent recrimination against people who vote for losing candidates."); 26 Am. Jur.2d Elections § 307 (2012) ("Secrecy after casting a ballot is as essential as secrecy in the act of voting and should also be protected as vigorously.")[13]

Like the laws in chapter 13.50 RCW, the election laws provide for secrecy of a specific type of record – ballots – and, when allowed, a means for disclosing those records. This balances the constitutional mandate for absolute secrecy and security with the need to contest elections. Thus, the

[13] White's argument, at page 30 of his Opening Brief, that the superior court erred because "there is no evidence in the record showing production would undermine ballot secrecy" ignores the constitutional mandate for "absolute secrecy of the vote" and the statutory cradle to grave security imposed to protect ballot secrecy. It also ignores the uncontradicted fact that the "[r]elease of voted ballots [especially when there is a low turnout or for a vote on a localized issue] creates a risk of violating the ballot secrecy required by article 6, section 6 of the Washington Constitution." *See* CP 93.

election laws are an "other statute" and exempt ballots from disclosure under the PRA.

2. An electronic ballot image is a ballot.

White ignores "context" when he argues that a ballot image is not a ballot.

> (1) "Ballot" means, **as the context implies**, either:
> . . .
> (b) A facsimile of the contents of a particular ballot whether printed on a paper ballot or ballot card or as part of a voting machine or voting device;
> (c) A physical or electronic record of the choices of an individual voter in a particular primary, general election, or special election; or
> (d) The physical document on which the voter's choices are to be recorded;

RCW 29A.04.008(1) (emphasis added)..

In arguing "or," as used above, is exclusive – either a ballot is paper or electronic, but can't be both – and that production of ballot images would not expose ballots to tampering or fraud, Opening Brief at 22, White ignores the overriding context of ballot secrecy and security.

In the context of ballot secrecy where an image of a ballot could just as certainly lead to identification of a voter as the original ballot, "or" is used as an inclusive disjunctive, meaning "one or more of the unlike things can be true." *See Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 528, 243 P.3d 1283 (2010) ("The dictionary describes 'or' as

a 'function word' indicating 'an *alternative* between different or unlike things.' In this sense, 'or' is used to indicate an *inclusive* disjunctive—one or more of the unlike things can be true.") (Citation omitted, emphasis in original).

By asking the court to find that only one of the definitions of a ballot can be true, White asks the court to ignore the "context" of ballot secrecy and security. Thus, his argument that the creation of a ballot image for tabulation must be unlawful is confusing. Opening Brief at 32. The legislature avoided this absurd interpretation by including electronic images within the definition of a ballot. Therefore, it is the release of a ballot image without a court order that is unlawful, not the creation of one required to tabulate votes.

Finding that an image of a ballot stored in a computer that is maintained in a secure room may be disclosed upon request would defeat the mandate for absolute secrecy of ballots.

3. The election laws do not conflict with the PRA.

The PRA specifically provides that "other statute[s]" can prohibit disclosure of public records. RCW 42.56.070(1).

In comparison with chapter 13.50 RCW, which exempts all juvenile dependency records, no matter how innocuous and without a redaction requirement, the ballot secrecy laws are more narrowly drawn.

They exempt just one specific type of record: ballots. Being drawn more narrowly than chapter 13.50 RCW and serving to fulfill a specific constitutional mandate, election laws that provide for ballot security laws do not conflict with the PRA.

Further, application of the "other statute" exception allows the court to avoid a conflict between the PRA and constitutional mandate for ballot secrecy and the election laws that implement that mandate. *See City of Seattle v. Grundy*, 86 Wn.2d 49, 50, 541 P.2d 994 (1975) ("A statute or ordinance which is void as being in conflict with a prohibition contained in the constitution is of no force and effect."); *Dep't of Transp. v. Mendoza de Sugiyama*, Slip Op. No. 43859-3-II at 13, filed July 29, 2014 ("we endeavor to interpret the PRA specifically to avoid absurd results"), *citing Hangartner v. City of Seattle*, 151 Wn.2d 439, 448, 90 P.3d 26 (2004) ("We will also avoid absurd results.")

D. The county's denial of White's request for ballot images should be affirmed.

When the county determined that it could not produce the records White requested, it promptly informed him of the denial on December 6, 2013, exactly thirty days after his request was received. Decl. White, ex. 5. The denial letter provided:

> . . . Washington State Laws, specifically RCW 29A.60.110, RCW 29A.60.125, and WAC 4345-

> 261-045, which are other laws preventing disclosure pursuant to RCW 42.56.070(1), bar us from providing you the requested records. These Washington Statutes and Administrative Code detail that ballots must remain in secure storage at all times, and may only be opened or accessed for specific authorized purposes. . .

Decl. White, ex. 6. The county's citation to the applicable statutes and regulations, including a 2,111-page exemption log, meets the requirement to provide a requestor with specific reasons for the denial. See RCW 42.56.520 ("Denials of requests must be accompanied by a written statement of the specific reasons therefor.")

1. The county's denial letter met the requirements of the PRA.

White chides Skagit County for not identifying individual ballots by those tabulated, rejected, received by mail, fax, or electronically, voted by voting machine, or duplicated. Opening Brief at 43. However, White did not request such information. His requested several subsets of ballots in an effort to get copies of all ballots, but he did not ask for separate records about these subsets or that such subsets of ballots be produced as separate requests. *See* CP 220. More to the point, White simply asked for images of ballots from the Ballot Now tabulating program, which would not have recorded the source of any ballot. To provide such information, elections staff would have had to have created a record. Nothing in the public records act requires a public records responder to sort or

subcategorize withheld records, so long as an appropriate exemption for withholding is cited.

White also challenges the county's explanation for the exemption.

Where a single reference to more than 35,000 "ballots" and single a citation to applicable statutes supporting the exemption accompanied by a short summary of the statute's effect, should have sufficed, Skagit County listed approximately all of the ballots by serial number in a 2,111-page exemption log, each with its own reference to the applicable statutes and summary. (See above).

The county's response may be compared to the index provided by the state in *Sanders v. State*, 169 Wn.2d 827, 837, 240 P.3d 120 (2010). IN *Sanders*, the document index specified the Attorney General's claimed exemptions for 144 documents redacted or withheld, but did not explain how its claimed exemptions applied to each document withheld. "[I]it failed to contain a brief explanation of how the claimed exemptions applied to **each** record withheld." *Sanders v. State*, 169 Wn.2d at 839-40 (emphasis added).

In contrast to the facts in *Sanders*, Skagit County cited two statutes and a regulation, explained that they required "that ballots must remain in secure storage at all times, and may only be opened or accessed for specific authorized purposes." CP 230. These citations and explanation

applied to each and every one of the 35,000+ ballots. Reasonably, this met the requirement for a brief explanation for fungible records. *See* RCW 42.56.520 ("Denials of requests must be accompanied by a written statement of the specific reasons therefor.")

Skagit County did not have to provide White with a dissertation on the constitution, judicial precedent, the several statutes governing ballot secrecy, and applicable regulations regarding the handling and destruction of ballots that he appears to now demand.

2. The county properly denied White's request for metadata.

Because the Ballot Now program does not allow for the extraction of metadata, but does allow elections staff to print out logs, the county sought clarification from White about his request for metadata. White did not respond, relieving the county of the duty to respond to his request. *See* RCW 42.56.520 ("If the requestor fails to clarify the request, the agency . . . need not respond to it.)

Further, the county's request was reasonable. As the trial court found after considering White's trial briefs and oral argument, "[i]t really is still not clear what Petitioner is seeking in terms of metadata and properties relating to pre-tabulate election ballots. Just saying metadata is "data about data" is not illuminating. CP 31. Further, because metadata about time scanned, etc. could be used to link a ballot with a particular

voter, White needed to follow RCW 29A.60.110 and obtain a court order for release of metadata any associated with any ballot. *See O'Neill v. City of Shoreline*, 170 Wn.2d 138, 147, 240 P.3d 1149 (2010) ("Metadata in an electronic document is part of the underlying document [and] does not stand on its own.")

It follows from *O'Neill* and the laws mandating ballot secrecy that metadata associated with a ballot image cannot be released. That White declined to clarify what data he sought, he relieved the county from having to guess.

E. White fails to show that the county does not meet it burden of demonstrating that denial of his request for images of pretabulated ballots was improperly denied.[14]

White references to non-Washington authorities and his resultant misapplication of them raised the logical error addressed in *State v. Dixon*, 78 Wn.2d 796, 479 P.2d 931 (1971):

> Surround most any straightforward proposition with enough sophistry and it will vanish -- or become unintelligible. The law, like other intellectual disciplines, has tried to cope with the sophistry brought to bear upon it by applying common sense. This has, on occasion, proved to be the only mechanism available by which to dissipate the fog of rhetoric generated around some legal propositions. . .

[14] Throughout his Opening Brief, White erroneously refers to the county's burden as a "heavy burden" This phrase does not appear in any PRA statute or judicial decision.

State v. Dixon, 78 Wn.2d at 797-798.

1. The court should decline White's invitation to follow precedent and practices from other states.

Because no Washington authority supports White's analysis, he asks the court to follow judicial decisions from Vermont and Colorado. However, the election laws in those states are significantly different from Washington's and are inapplicable to the issue presented here.

a. Colorado's elections laws and decisions are not persuasive.

Marks v. Koch, 284 P.3d 118, 122 (2011) is not authority for the production of electronic ballot images under Washington law.

First, Colorado's constitution requires "secrecy in voting," but not absolute secrecy of ballots. *See* Appendix A. Second, Colorado law does not include electronic images created from a paper ballot in the definition of a ballot. *See* CRS 1-1-104(1.7) (" 'Ballot' means the list of all candidates, ballot issues, and ballot questions upon which an eligible elector is entitled to vote at an election.") This definition allowed the Marks court to find that electronic images are not ballots under Colorado law. Third, Colorado's election officials routinely display the electronic "TIFF files [ ] wholly or partially [ ] to the public through multiple media." *Marks v. Koch*, 284 P.3d at 123.

In contrast, Washington's constitution requires "absolute secrecy" of the ballot and the legislature defines "ballots" to include electronic images. See RCW 29A.04.008(1)(c) ("Ballot means" . . . "a physical or electronic record of the choices of an individual voter in an election.") Further, unlike the practice in Colorado, Washington election staff does not display any sort or ballots, whether paper or electronic. Release of any type of ballot – original paper or electronic image – including display of any ballot requires a court order. Additionally, ballots that are scanned using the "Ballot Now" software are immediately converted into a proprietary format and are not "TIFF files" like those electronic files displayed in Colorado. CP 64.

b. Vermont's elections laws and decisions are not persuasive.

Price v. Town of Fairlee, 190 Vt. 66, 26 A.3d 26 (2011) is not authority for production of ballot images under Washington law either.

First, Vermont's constitution does not mandate any level of ballot secrecy. *See* Appendix A. Second, while Vermont laws require that ballots must be "securely sealed" in containers and that the town clerk "shall safely store them, and shall not permit them to be removed from his or her custody or tampered with in any way," 17 V.S.A. § 2590(a), (c), the period of secure storage for Vermont ballots is limited to a "period of 90

days from the date of the election, after which time they **may** be destroyed[.]" 17 VSA § 2590(d) (emphasis added).

The *Price* court held that because the Vermont legislature did not mandate that ballots be maintained under seal beyond 90 days and did not thereafter require destruction, Vermont ballots were amenable to release:

> . . . In the absence of a clear statutory provision or purpose requiring that these election materials remain under seal if not destroyed, we are constrained to construe the provision narrowly to permit the disclosure promoted by the PRA. . . .

Price v. Town of Fairlee, 190 Vt. at 74 (2011).

In contrast, in contrast to Vermont's laws, Washington election officials are required to maintain ballots under seal until destroyed. *See* CP 74 (Directing destruction of "[a]ll voted ballots of any kind" sixty days after a non-federal election is certified.)[15] Also, absent a court order, Washington ballots can be taken from secure storage only under four specific circumstances: (1) as part of the canvass, (2) for recounts, (3) for a random check under RCW 29A.60.170, or (4) by order of the superior court in an election contest or dispute. RCW 29A.60.110. These differences invalidate the use of the *Price* decision.

If the court looks beyond the differences, to the extent that Vermont's and Washington's election laws both mandate secure storage

[15] The November 2013 election was a non-federal general election.

for ballots, Price supports denial of White's request in that it held that requests for ballots submitted during the mandatory 90-days of sealed storage should be denied.

> Therefore, had plaintiff or any other interested citizen filed a public-records request seeking access to ballots during the statutory ninety-day preservation period for an election challenge, we would have no difficulty finding the records to be confidential "by law" under the PRA, and so exempt from disclosure during that period.

Price v. Town of Fairlee, 190 Vt. at 73-74.

White filed his request on November 6, 2013, the day after election day and well within any calculation of the time Washington requires secure storage for ballots. Therefore, if *Price* were persuasive, it would require denial of White's request for pretabulated ballots.[16]

c. White's footnote references to opinion and practices from other states are not persuasive.

In a footnote at page 13 of his Opening Brief, White cites to irrelevant opinions and practices from other states. They should be disregarded.

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[16] As in Vermont, Washington's "Public Records Act does not provide for 'continuing' or 'standing' requests.'" *See Sargent v. Seattle Police Dep't*, 167 Wn. App. 1, 11, 260 P.3d 1006 (2011) *reversed on other grounds* 179 Wn.2d 376, 381, 314 P.3d 1093 (2013) *citing* the Washington State Bar Association's *Public Records Act Deskbook*.

(1) The Michigan Attorney General opinion is not relevant.

The opinion of the Michigan Attorney General, CP 107-14, cited by White was not an interpretation of Washington law. The differences are telling.

First, the Michigan constitution does not require "absolute secrecy" of ballots. *See* Appendix A. Second, the Michigan Secretary of State is empowered to "authorize the release of all ballots." MCL 168.847.

White erroneously implies, twice, that RCW 29A.04.230[17] requires the Washington Secretary of State to release ballots "to the public upon request." See Opening Brief at 20, 25. However, Washington's Secretary of State does not maintain ballots or the requested ballot images, which are held in secure storage by county election officers with no provision for release to the Secretary of State. Thus, "such records" in RCW 29A.04.230 refers to the Secretary of State's canvassing records. *See* RCW 29A.60.250 ("the secretary of state shall canvass and certify the returns of the general election as to candidates for statewide offices, the United States senate, congress, and all legislative and judicial candidates

[17] RCW 29A.04.230 ("The secretary of state through the election division shall be the chief election officer for all federal, state, county, city, town, and district elections that are subject to this title. The secretary of state shall keep records of elections held for which he or she is required by law to canvass the results, make such records available to the public upon request, and coordinate those state election activities required by federal law.")

whose districts extend beyond the limits of a single county"); WAC 434-262-100[18]; *In re Recall of Reed*, 156 Wn.2d 53, 60-61, 124 P.3d 279 (2005) ("By contrast, the secretary of state's statutory duties are limited to compiling county election returns on a statewide basis.")

Because our Secretary of State cannot disclose what he does not possess or control and no statute similar to Michigan's applies to ballots held by Washington's county auditors, the Michigan opinion is useless.

(2) California and Minnesota practices are not admissible or persuasive.

The practices of election officials from California and Minnesota[19] are neither persuasive nor amenable to consideration.

White is obligated to provide the court with pertinent authority and meaningful analysis. *See* RAP 10.3; *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). In the absence of any

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[18] WAC 434-262-105. Upon receipt of a complete copy of the county canvass report from a county auditor, the secretary of state shall proceed to include the results from that abstract in the official canvass of the primary, special, or general election. This shall be accomplished by adding the certified returns from each county abstract of votes in order to determine the final results for those offices and issues he or she is required by law to certify. The secretary of state shall accept the official abstract of votes from each county as being full, true, and correct in all respects. The secretary of state may include in the official canvass, a narrative which details or describes any apparent discrepancies discovered during the canvassing procedure, and may notify the county or counties involved of such discrepancies.

[19] Neither state's constitution mandates "absolute secrecy" of the ballot. Minnesota's constitution does not even require secrecy. See Appendix A.

meaningful analysis that explains how the underlying California and Minnesota laws are applicable, such practices do not qualify as pertinent authority and are useless here.

2. The 2005 amendments to the election laws did not abrogate ballot secrecy or security.

White argues that the change to mail-in voting removed layers of the citizen oversight that existed under the laws of 2005, and that "[p]roducing digital copies of the records is simply the electronic age equivalent of fulfilling the traditional public observation." Opening Brief at 10-11.

This argument ignores the reality of past election practices.

Precinct election officers, if used, were appointed by the county auditor, took an oath, and were paid to canvass ballots. Former RCW 29A.44.410, .490, .530 (2005). Thus, when precinct officers counted ballots, they were not fulfilling a public oversight role. They were performing official duties assigned by the county auditor. *See State ex rel. Doyle v. Superior Court*, 138 Wash. at 492 ("work performed by the precinct officers" is subject to requirement for a court order). Further, before 2011, precinct officers were drawn from lists provided by political parties, former RCW 29A.44.410, and the public did not have the right to precinct officers when they handled ballots.

In contrast, current law relegates political parties to the appointment of observers and the public may view the canvassing of ballots. *See* RCW 29A.60.110 (major party observers may be present for consolidation of ballots into one sealed container); RCW 29A.60.170 (allowing for political, campaign, organization, and public observers and random checks of the ballot counting equipment). The legislature's move to centralized counting and more restrictive access to ballots balanced with the opportunity for public observation reduces, rather than increases, opportunities for fraud and error. Thus, the 2011 amendments to the voting laws advance the mandate for ballot secrecy while providing more public oversight than existed before 2011.

3. The counties did not deny White's request because he wanted to contest the election, but his intent places him squarely under the requirement for a court order.

White erroneously asserts, without citation to the record, that "[e]lections now run for weeks or months to count tens of thousands of ballots on one vendor's voting system as the ballots trickle in by mail, with few or no public observers actually watching." Opening Brief at 12.

To the contrary, elections must be certified "[f]ourteen days after a primary or special election and twenty-one days after a general election[.]" RCW 29A.60.190. Honoring White's PRA request for pretabulated ballots would have fulfilled his false belief in delayed election certification. It

would have delayed certification by more than two months beyond the twenty-one days allowed for a general election. Just the copying task added more than 12 weeks – not including breaks – to the certification. Under these circumstances, it would have been impossible for county election officials to certify the election within the required 21 days.

By requesting "a digital copy of each electronic or digital ballot image file created or held by the county, and *before the ballot is tabulated*," CP 220 (emphasis in original), White wanted a delay so that he could conduct a simultaneous ballot count and contest particular ballots before certification. *See* CP 221 ("The value of these requested records is time-sensitive. In the case of requested overseas and military voter registration received electronically up to and including Election day, the window to research and document a challenge is but two weeks, I believe.") White's current argument that the re-imaging of ballots could have taken place after certification ignores the explicit intent of his request for images of pre-tabulated ballots ignores the explicit language of his request, which necessarily required the county to copy and disclose images before they were tabulated.

While the county did not deny White's request because of his explicit intent to contest the election – an intent he addresses but does not deny in his Opening Brief at 33-34 – that intent places him squarely under

the law requiring a court order to obtain ballots for an election contest. *See* RCW 29A.60.110 ("The containers may only be opened . . . by order of the superior court in a contest or election dispute.")

4. Observation of canvassing is materially different from possession of ballots.

The legislature has finely balanced public oversight of the voting process with ballot secrecy and security. CP 94.

While the proceedings in the elections center are open to the public, RCW 29A.60.170(2), as untrained observers the public would not be allowed to be close enough to ballots to, should there be any marks or write-in votes that might identify the voter,[20] discern any information from them. Similarly, while observers who have met the training requirements may observe ballot, the view would be fleeting.[21] Absent an impossibly perfect photographic memory capable of recalling dozens of similar ballots, ballot secrecy would not be compromised.

In contrast, the ability to obtain voters' names and the date their ballot was returned and processed, *see* RCW 29A.40.130, coupled with actual possession of ballots would have allowed White to study the ballots, identify precincts and election issues, and compare the publically available list of voters and dates of ballot with the metadata on when a ballot was

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[20] Election staff would have covered such marks when ballots could be observed by non-staff.
[21] Observers may not take photographs. *See* CP 154.

scanned. In Skagit and Island counties ballots are scanned whenever 500 ballots have accumulated. CP 64, CP161. Given a countywide election with multiple ballots formats accommodating local issues, identification of a voter would not be an insurmountable problem. For example, in small precincts or for those involving special use districts or other localized issues, it would be possible to link a ballot to a voter.

> This is illustrated by Washington State's least populated county. Garfield County has 1,567 registered voters. In a low 20% turnout election, only 313 votes would be cast in the entire county. Release of subtotaled votes cast by precinct, city and district boundaries could jeopardize the voter's identity.

See CP 93.[22]

White also stretches the import of the rules for the observation of recounts when he alleges that RCW 29A.64.041 holds that the "public is 'permitted to observe the ballots.'" Opening Brief at 19. For recounts, only persons representing the candidates affected by the recount or the persons representing both sides of an issue that is being recounted . . . shall be permitted to observe the ballots[.]" RCW 29A.64.041. Again, while the

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[22] Lori Augino, the Director of Elections for the Secretary of State, qualifies as an expert based on her years of experience and was allowed to present opinion testimony that would assist the trial court. See ER 702. White's objection that Augino made inapplicable hypothetical assertions, Opening Brief at 18, ignores the fact that the use of ballots to identify a voter was a key issue for the court's consideration.

process is open to the public, members of the public, who cannot touch ballots, would not be able to observe closely enough to identify ballots.

5. Because of the constitutional mandate, the legislature did not need to specifically exempt ballots from disclosure under the PRA.

White points out that the legislature expressly made some election records not available for "public inspection or copying," but did not use these words for ballots. See Opening Brief at 21-22 (original voter registration documents containing the signature, but not personal information from the registration form that has been placed into a database, RCW 29A.08.710-.720; location of motor voter registration site, RCW 29A.08.720; arguments and statements for the voter's pamphlet until the submittals are complete, RCW 29A.32.100; and nominating petitions, RCW 29A.56.670.

By asserting that these documents are exempt from production under the PRA, Opening Brief at 21, White concedes the applicability of the test set out in *PAWS II*, which the county has demonstrated applies to ballots. However, his use of these examples to show that the legislature lacked intent to exempt ballots from disclosure under the PRA is mistaken.

"Not available for inspection or copying" is not talismanic language. Nor is the only way to exempt records from disclosure.

Unlike ballots, records of voter registration, voter's pamphlet arguments, and nominating petitions are not addressed by the state constitution, no body of law requires that they be held in secure containers, and the legislature did not provide a means for disclosure – a court order for an election contest or dispute. That fact that ballots must be kept in sealed containers, are only available for use by canvassing staff, and are not to be touched by other persons unless released by a court order necessarily excludes ballots from disclosure upon request. The difference is that the legislature has balanced ballot secrecy and security with limited observation in a body of statutes that require impose cradle to grave security for ballots. This effectively precludes inspection and copying by the public absent a court order.

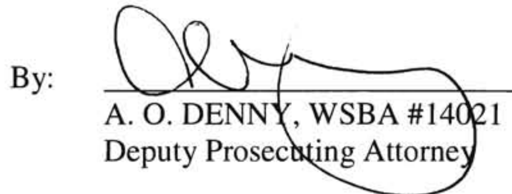
Given the constitutional mandate for ballot secrecy and the judicial and legislative precedent extending that secrecy from vote to destruction, with the exception of a court order, the legislature did not need to state that ballots are not available for public inspection and copying.

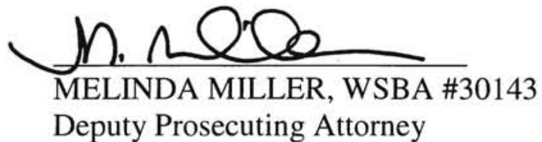
V. CONCLUSION

For the reasons addressed above, the court should deny White's appeal.[23]

RESPECTFULLY SUBMITTED this 12th day of September, 2014.

RICHARD A. WEYRICH
Skagit County Prosecuting Attorney

By: 
A. O. DENNY, WSBA #14021
Deputy Prosecuting Attorney


MELINDA MILLER, WSBA #30143
Deputy Prosecuting Attorney

[23] White asks the court to award penalties. If necessary, that is a task for the superior court.

Appendix A.

Washington Constitution, Article VI, section 6:

> BALLOT. 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.

Minnesota Constitution, Article VII, sec. 5:

> All elections shall be by ballot except for such town officers as may be directed by law to be otherwise chosen.

California Constitution, Article 2, section 7:

> Voting shall be secret.

Colorado Constitution, Art. VII, sec. 8.

> Elections by ballot or voting machine. All elections by the people shall be by ballot, and in case paper ballots are required to be used, no ballots shall be marked in any way whereby the ballot can be identified as the ballot of the person casting it. The election officers shall be sworn or affirmed not to inquire or disclose how any elector shall have voted. In all cases of contested election in which paper ballots are required to be used, the ballots cast may be counted and compared with the list of voters, and examined under such safeguards and regulations as may be provided by law. Nothing in this section, however, shall be construed to prevent the use of any machine or mechanical contrivance for the purpose of receiving and registering the votes cast at any election, provided that secrecy in voting is preserved.

Vermont Constitution, Article 8th

> Elections to be free and pure; rights of voters therein. That all elections ought to be free and without corruption, and that all voters, having a sufficient, evident, common interest with, and

attachment to the community, have a right to elect officers, and be elected into office, agreeably to the regulations made in this constitution.

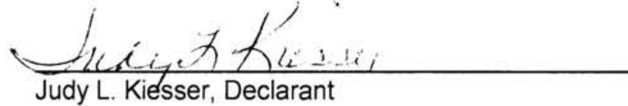
Michigan Constitution, Article II, section 4:

> The legislature shall enact laws to regulate the time, place and manner of all nominations and elections, except as otherwise provided in this constitution or in the constitution and laws of the United States. The legislature shall enact laws to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting. No law shall be enacted which permits a candidate in any partisan primary or partisan election to have a ballot designation except when required for identification of candidates for the same office who have the same or similar surnames.

DECLARATION OF DELIVERY

I, Judy L. Kiesser, declare as follows:

I sent for delivery by; [X]United States Postal Service; [ ]ABC Legal Messenger Service, a true and correct copy of the document to which this declaration is attached, to: Marc Zemel, Smith & Lowney, PLLC, 2317 E. John Street, Seattle, WA 98112. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Mount Vernon, Washington this 12th day of September 2014.



Judy L. Kiesser, Declarant