No. 100181-9
Court of Appeals No. 81814-7-I

SUPREME COURT OF THE STATE OF WASHINGTON

John Does 2-4,
Appellants/Cross-Respondents,
v.

King County,
Respondent,
&
The Seattle Times,
Respondent / Cross-Appellant

AMICUS CURIAE MEMORANDUM OF WASHINGTON COALITION FOR OPEN GOVERNMENT

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TABLE OF CONTENTS

IDENTITY AND INTEREST OF *AMICI* 1
STATEMENT OF THE CASE 2
ISSUES ADDRESSED 5
ARGUMENT 5
CONCLUSION 11

TABLE OF AUTHORITIES

Cases

Cornu-Labat v. Hosp. Dist. No. 2 Grant County,
177 Wn.2d 221, 229, 298 P.3d 741 (2013) 8

Does 1-11 v. Bellevue School District,
164 Wn.2d 199, 189 P.3d 139 (2008) 10, 11

Doe G v. Dep't of Corr.,
190 Wn.2d 185, 410 P.3d 1156, 1160 (2018) 6

Hearst Corp. v. Hoppe,
90 Wn.2d 123, 127, 580 P.2d 246 (1978) 8

Predisik v. Spokane Sch. Dist. No. 81,
182 Wn.2d 896, 346 P.3d 737, 740 (2015) 6, 7

Progressive Animal Welfare Soc. v. Univ. of Washington,
125 Wn.2d 243, 884 P.2d 592 (1994) 6, 7

Lyft, Inc. v. City of Seattle,
190 Wn.2d 769, 418 P.3d 102, 106–07 (2018) 6, 8, 9

Tyler Pipe Industries, Inc. v. Department of Revenue,
96 Wash.2d 785, 792, 638 P.2d 1213 (1982) 9, 10

Resident Action Council v. Seattle Hous. Auth.,
177 Wn.2d 417, 431, 327 P.3d 600 (2013) 6

SEIU Healthcare 775NW v.
State, Dep't of Soc. & Health Servs.,
193 Wn. App. 377, 390, 377 P.3d 214, 220 (2016) 5

Statutes & Court Rules

Court Rule 65 9
RCW 42.56.030 8
RCW 42.56.070 8
RCW 42.56.240 11
RCW 42.56.540 ..... 1, 9

IDENTITY AND INTEREST OF *AMICI*

Washington Coalition for Open Government ("WCOG") is a nonprofit, nonpartisan organization dedicated to promoting and defending the public's right to know about the conduct of government and matters of public interest. WCOG's mission is to help foster the cornerstone of democracy: open government supervised by an informed citizenry.

WCOG's interest in this case stems from its work and advocacy related to fostering and maintaining a transparent and open government. WCOG anticipates, should the Supreme Court accept review, filing a full, substantive amicus brief, which may address the following issues depending on the scope of review granted: (1) whether the Public Records Act ("PRA") prohibits withholding an adult criminal investigation record based solely on the presence of a minor person's redacted identity in the records; and (2) whether the public's interest in disclosure precludes an injunction under RCW 42.56.540 given that (i) there have been numerous requests for the records at issue, (ii)

the records relate to a criminal investigation that has drawn widespread attention and concern, (iii) that names of the witnesses, suspects and victim are redacted, (iv) disclosure will allow public scrutiny of a lengthy multi-agency investigation and no-charge decision?

However, the present amicus brief in opposition to review based on a single issue: appellate procedure should not be used to delay as long as possible the disclosure of information that the public has a right to see, especially when the underlying judicial decisions are based on well-settled and broadly accepted precedent.

STATEMENT OF THE CASE

WCOG adopts The Seattle Times' "RESTATEMENT OF THE CASE," Section II, in its Answer to Petition for Review ("The Times Statement") in its entirety. WCOG, however, offers the further procedural history that highlights its interest in opposing direct review.

The Petitioners applied for a permanent injunction at the trial court alleging, among other things, that the adult criminal investigation records of suspects should be *treated* like a juvenile criminal investigation file simply because a juvenile suspect was also present at the alleged criminal activity. The Seattle Times argued in the trial court that the Petitioners had not met their burden to proceed pseudonymously, and the trial court erred in allowing them to do so. The trial court denied Petitioners' request for an injunction and allowed the Petitioners to proceed using pseudonyms.

Both parties appealed these respective decisions. The Petitioners appealed the denial of injunctive relief to the Court of Appeals for Division I. The Seattle Times believed the issues to be of sufficient public importance and of a time sensitive nature to warrant direct review by the Supreme Court.

The Petitioners, however, strongly opposed direct review. They argued that appeal to Court of Appeals for Division I was appropriate. Notably, Petitioners made the following arguments

in their Appellants' Answer to The Seattle Times's Statement of Ground for Direct Review:

> "[T]ese issues are not of such urgency that they require direct review by this Court." P. 1
>
> "While these issues are important to the public as well as to the plaintiffs, whose futures are threatened by production, they are not so urgent as to warrant immediate direct review by this Court under RAP 4.2." P. 8.
>
> "[W]hile the PRA issues are important and novel, they are not so urgent as to require this Court's immediate intervention. Instead, they should be decided in the ordinary course by the Court of Appeals." P. 9.
>
> "Because the Times has failed to establish a basis for direct review, the appeal and cross-appeal should instead proceed in the normal course through the Court of Appeals." P. 11.

Appellants' Answer to The Seattle Times's Statement of Ground for Direct Review, May 14, 2020 (Cause No. 98448-4). That brief was submitted to this court on May 14, 2020, approximately 19 months ago.

Now, after the Court of Appeals affirmed the trial court's ruling denying injunctive relief, Petitioners now seek review by

this court. It is not difficult to surmise the Petitioners' reasoning for opposing direct review initially and seeking to now: it is Petitioners' goal to use appellate procedure to delay disclosure as long as possible. The court should not reward such attempts by allowing further delay.

ISSUES ADDRESSED

> Should the Court deny review under RAP 13.4 where the documents sought are of public importance and ongoing delay harms the public's interest in and ability to hold its government accountable, and where the underlying appellate decision is not in conflict with other appellate court holdings, does not pose a significant question of law, and the public interest is better served by quick final judgment?

ARGUMENT

I. Washington's Public Records Act (PRA) is a strongly worded mandate for broad public disclosure. Public records are presumed to be subject to disclosure.

"The PRA mandates the broad disclosure of public records." *SEIU Healthcare 775NW v. State, Dep't of Soc. & Health Servs.*, 193 Wn. App. 377, 390, 377 P.3d 214, 220 (2016)

(citing *Resident Action Council v. Seattle Hous. Auth.*, 177 Wn.2d 417, 431, 327 P.3d 600 (2013)). "The PRA ensures the sovereignty of the people and the accountability of the governmental agencies that serve them by providing full access to information concerning the conduct of government." *Predisik v. Spokane Sch. Dist. No. 81*, 182 Wn.2d 896, 903, 346 P.3d 737, 740 (2015). "To effectuate that policy, we start with the presumption that all public records are subject to disclosure. Agencies can withhold a record only if it falls within one of the PRA's specific, limited exemptions." *Id.* "The strongly worded mandate is limited only by the precise, specific, and limited exemptions which [it] provides." *Lyft, Inc. v. City of Seattle*, 190 Wn.2d 769, 418 P.3d 102, 106–07 (2018) (quoting *Progressive Animal Welfare Soc.*, 125 Wn.2d at 258. "[T]he PRA's disclosure provisions must be construed liberally and exemptions narrowly" *Doe G v. Dep't of Corr.*, 190 Wn.2d 185, 191–92, 410 P.3d 1156, 1160 (2018). "The PRA ensures the sovereignty of the people and the accountability of the governmental agencies that serve

them by providing full access to information concerning the conduct of government." *Predisik*, 182 Wn.2d at 903, 346 P.3d at 740. "To effectuate that policy, we start with the presumption that all public records are subject to disclosure. Agencies can withhold a record only if it falls within one of the PRA's specific, limited exemptions." *Id.* "The PRA is meant to engender the people's trust in their government." *Id.* at 907.

To that end, "the Public Records Act is a strongly worded mandate for broad disclosure of public records." *Progressive Animal Welfare Soc.*, 125 Wn.2d at 251, 884 P.2d at 597 (internal quotations omitted). "The Act's disclosure provisions must be liberally construed, and its exemptions narrowly construed." *Id.*

In this case, the court of appeals properly applied these well-settled principles in affirming the trial court.

1. The Court of Appeals started with the presumption that records must be disclosed unless an exemption applies and that exemptions are to be narrowly construed.

The Court of Appeals began its analysis articulating the following principles:

> "The PRA is a 'strongly worded mandate for broad disclosure of public records.'" Cornu-Labat v. Hosp. Dist. No. 2 Grant County, 177 Wn.2d 221, 229, 298 P.3d 741 (2013) (quoting Hearst Corp. v. Hoppe, 90 Wn.2d 123, 127, 580 P.2d 246 (1978)). The act compels state and local agencies to disclose public records responsive to requests unless a specific exemption applies. RCW 42.56.070(1); Cornu-Labat, 177 Wn.2d at 229. In keeping with its mandate, the PRA's disclosure provisions must be "'liberally construed and its exemptions narrowly construed.'" Cornu-Labat, 177 Wn.2d at 229 (quoting RCW 42.56.030).

Court of Appeals Decision, p. 5 (emphasis and citations in original). This is a proper articulation of the law, which has been well-settled for decades. *See Lyft, Inc. v. City of Seattle,* 190 Wn.2d 769, 779, 418 P.3d 102, 107 (2018) ("liberally construed and its exemptions narrowly construed"). This statutory policy was made to "keep Washington residents informed and in control over the instruments they have created and to assure that the public interest will be fully protected." *Id.* (internal quotations and alterations omitted).

2. The Court of Appeals correctly applied the PRA injunctive standard as stated in *Lyft v. City of Seattle*, 190 Wn.2d 769, 789-90, 418 P.3d 102 (2018).

The Court then articulated the appropriate injunction standard:

> In considering whether to enjoin disclosure of records, a trial court must conduct two separate inquiries. *Lyft, Inc. v. City of Seattle*, 190 Wn.2d 769, 789- 90, 418 P.3d 102 (2018). First, the court must determine if the records at issue are exempt under a provision of the PRA. *Lyft*, 190 Wn.2d at 790. If a PRA exemption applies, the court then looks to whether disclosure is against public interest and would cause substantial and irreparable damage. *Lyft*, 190 Wn.2d at 791 (citing RCW 42.56.540). The trial court must find both inquiries are satisfied before issuing an injunction. Lyft, 190 Wn.2d at 791.

Again, this is the appropriate standard. In the seminal 2018 decision, this Court clarified that when faced with an injunction action seeking to preclude disclosure of documents under the PRA, the PRA injunction standard articulated in RCW 42.56.540 applies and it is error to apply the more generalized injunction standard under CR 65. *Lyft*, 190 Wn.2d 769, 773, 418 P.3d 102, 104 (2018) ("The superior court erred by applying the general injunction standard of Civil Rule (CR) 65 articulated in *Tyler Pipe Industries, Inc. v. Department of Revenue*, 96 Wash.2d 785,

792, 638 P.2d 1213 (1982), and by not adequately considering the PRA's more stringent standard.")

3. The Court of Appeals correctly held that redaction of records is the proper procedure as opposed to denial of disclosure.

The Court of Appeals then properly articulated and applied the juvenile records statutes, the investigative records exemption and the definition of invasion of privacy. *Court of Appeals Decision*, p. 6 – 8. The Court of Appeals then properly applied the standards and directions of *Does 1-11 v. Bellevue School District*, 164 Wn.2d 199, 189 P.3d 139 (2008). In *Bellevue School District*, this Court articulated in the principle that where the records related to unsubstantiated allegations of sexual misconduct, the appropriate balance is to redact the names but release the records. The Court of Appeals in this matter explained:

> But unlike the teachers in Does 1-11, the records here do not identify the Does by name. Instead, their identities are redacted. Release of the redacted records protects the Does' privacy, and also serves the legitimate public concern of overseeing the police investigation of sexual assault allegations

> and the KCPAO's decision not to file charges. See *Does 1-11*, 164 Wn.2d at 221. As a result, John Doe 5's records are not exempt from disclosure under RCW 42.56.240(1).

Court of Appeals Decision, p. 9 – 10. This is a well-settled precedent from the Supreme Court of the State of Washington.

CONCLUSION

The Court of Appeals' opinion of which Petitioners seek review does not articulate new principles, does not create new law, and does not disagree with any established precedents. The opinion is based on established, well-settled principles of PRA jurisprudence. Granting review does nothing but allow for further delay. This Court should not allow unwarranted review of sound appellate decisions, applying well established principles (like the narrow construction rule), which undermines the PRA by allowing a motivated objector to delay disclosure for intolerable lengths of time.

19 months ago, WCOG supported direct review. It stated:

> The broad public import is rooted in the need for a *timely* and *final* resolution on this matter. Regardless of what the records show, the public's

> interest is in obtaining the records and *delay is clearly not in the public's interest*. If a valid sexual assault allegation was not pursued for an improper reason, the community has a right to know. If the allegations are unsupported and the outcry is based on racial tensions, the community has a right to know. An expedient and final conclusion, therefore, is of broad public import.

Amicus Curiae Brief in Support of Direct Review, Cause No. 98448-4 (emphasis added). WCOG's position was that issues this important have a half-life. Unnecessary and undue delay in disclosure harms the public's ability to hold their government accountable. *Years* of delay allow government officials to leave their post, allow potential wrongdoers to continue in their conduct without repercussions, and allow all seeking to hide their conduct to "run out the clock" on the public's interest in the issue. This matter should have been accepted on direct review for an expedient and final result. Petitioners opposed such a review. Given that the Court of Appeal's decision was based on sound, well-settle legal principles, review should be denied as it only serves as further delay of disclosure and an ongoing denial of the public's right to inspect public records. For the reasons set forth

above, *Amici* respectfully request the Court deny review of this matter.

RAP 18.17 Certification

Counsel for WCOG certifies that this memorandum contains 2144 words excluding those portions identified in RAP 18.17(c).

Respectfully submitted this 15th day of December, 2021.

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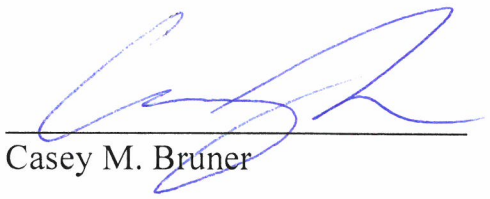
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the state of Washington that on December 15, 2021, the foregoing Memorandum of Amicus Curiae was filed with the Washington State Supreme Court using the Court's e-filing system, which will automatically provide notice to all required parties.

Executed this 15th day of December, 2021 in Spokane, WA.



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