No. 100181-9

SUPREME COURT OF THE STATE OF WASHINGTON

JOHN DOE 2, JOHN DOE 3, JOHN DOE 4,

Petitioners,

v.

KING COUNTY and

THE SEATTLE TIMES,

Respondents.

PETITIONERS' ANSWER TO *AMICUS CURIAE* MEMORANDUM OF WASHINGTON COALITION FOR OPEN GOVERNMENT

McNAUL EBEL NAWROT & HELGREN PLLC
Theresa DeMonte,
WSBA No. 43994
Curtis Isacke, WSBA No. 49303
600 University St, Ste. 2700
Seattle, WA 98101-3143
(206) 467-1816

CEDAR LAW PLLC
Lara Hruska,
WSBA No. 46531
Whitney Hill,
WSBA No. 53715
1001 4th Avenue, Suite 4400
Seattle, Washington 98154
(206) 607-8277

Attorneys for Petitioners

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I. INTRODUCTION

Amicus Washington Coalition for Open Government ("WCOG") opposes review of this important case based on its specious contention that review takes time. In fact, the equities tip firmly in favor of granting review given the significant issues of public importance and interest at stake.

More fundamentally, WCOG misapprehends the arguments presented on review. While PRA exemptions are to be construed narrowly, they cannot be construed in such a manner as to undermine clear legislative intent. Here, the Legislature sought to confer confidentiality on juvenile records under chapter 13.50 RCW by making them wholly exempt from disclosure. Such confidentiality cannot be achieved by redaction, as the Court of Appeals erroneously held.

Whether the records at issue are juvenile records is determined by their *nature* and *function*, not by files or folders, as this Court has emphasized. Here, because a single investigation file was created relating to the criminal

investigation of three juveniles, the records *are* juvenile records within the meaning of chapter 13.50 RCW. This conclusion is not altered by the fact that the investigation also related to one 18-year-old suspect. Nor is it altered by the fact that the records were duplicated and placed into a file captioned with that 18-year-old's name (in addition to being placed in files bearing juvenile Does 2–4's names). The presence of an adult does not divest such records of the protection the Legislature intended them to have, and disclosure would frustrate the Legislature's intent.

This issue will impact other juveniles throughout Washington, who are entitled to the protections the Legislature wisely conferred in order to avoid the lifelong stigma and collateral consequences resulting from disclosure of their records, including the denial of housing, employment, and education opportunities. LAWS OF 2014, ch. 175, § 1. Plaintiffs John Does 2–4 respectfully request that the Court reject WCOG's arguments and grant review to consider these

important issues that impact this vulnerable, underrepresented, and marginalized group.

II. ARGUMENT

A. Whether the Records Are Juvenile Records Merits Review

The plaintiffs maintain that whether records appearing in 18-year-old Doe 5's file—which are indisputedly *identical* to records of juvenile Does 2–4—are juvenile records protected by chapter 13.50 RCW is controlled not by files and folders, but by the underlying *nature* of the records themselves. The plaintiffs do *not* argue that the records at issue should merely be "treated like" juvenile records, as WCOG incorrectly contends. WCOG Amicus Mem. at 3. Instead, they assert that these records *are in fact* juvenile records, a determination that is governed by the records' nature and function, as this Court and the Court of Appeals have instructed with respect to other PRA exemptions.

Thus in *Lindeman v. Kelso School District No. 458*, this Court held that a bus surveillance video did not fall under the the "student file" exemption, reasoning that "[m]erely placing

the videotape in a location designated as a student's file does not transform the videotape into a record maintained for students." 162 Wn.2d 196, 203, 172 P.3d 329 (2007). And in *City of Tacoma v. Tacoma News, Inc.*, the Court of Appeals dismissed an argument that letters sent to the police department to support a parent accused of abusing a child should not qualify as law enforcement "investigatory records" exempt from disclosure because the letters "were not physically filed and retained as part of the police department's investigatory file." 65 Wn. App. 140, 144 & n.3, 827 P.2d 1094 (1992). The court reasoned that "[t]he location in which the letters were physically filed or retained is one factor to look at, but is not by itself dispositive." *Id.*

These cases instruct that courts consider the nature or function of a record in assessing whether it falls within an exemption. Here, the fact that the juveniles' investigative records were *also* placed in the file of an 18-year-old is not the controlling factor. The mere placement of juvenile records into

an adult file does not transform the records into something other than what they are: documentation of an investigation that focused on sexual assault allegations against three juvenile boys, allegations that were ultimately found to be unsubstantiated. The Court of Appeals' decision is inconsistent with these authorities, meriting review under RAP 13.4(b)(1) and (2), contrary to WCOG's argument.

Equally important and overlooked by WCOG, disclosure would frustrate the Legislature's intent. While exemptions are "narrowly construe[d]," a court may not "ignore the plain language of [a] specific public disclosure exemption." *Bldg. Indus. Ass'n of Wash. v. Dep't of Labor & Indus.*, 123 Wn. App. 656, 662, 666, 98 P.3d 537 (2004). Where a "narrow reading of [an exemption] would ignore" the Legislature's intent, a court will rightly reject such a reading. *Nw. Gas Ass'n v. Wash. Utils. & Transp. Comm'n*, 141 Wn. App. 98, 119, 168 P.3d 443 (2007).

Under the Court of Appeals' decision in this case, juvenile Does 2–4 effectively have *no* confidential juvenile records, despite having thick investigative files as the targets of a months-long criminal investigation. This conclusion conflicts with precedents establishing that exemptions are construed to effect, not frustrate, the Legislature's intent, an issue that also merits review by this Court. Indeed, the Texas Court of Appeals concluded that a single law enforcement record pertaining to adult and juvenile suspects must be withheld in its entirety under Texas's protections for juveniles, even if the requestor seeks only the record in the adult's file. *See Loving v. City of Houston*, 282 S.W.3d 555, 559 (Tex. App. 2009). The Court of Appeals misunderstood *Loving*'s rationale, which applies fully to this case. This Court should consider these important issues on discretionary review.

B. The Public Interest Is Not Served by Allowing the Court of Appeals' Decision to Stand

Next, WCOG contends that "quick final judgment" without review by this Court is in the public interest. WCOG

Amicus Mem. at 5. But a desire for haste cannot justify denying review when the issues presented are so important to juvenile suspects, whose very futures depend on confidentiality. Moreover, the public interest in this case is defined by the Legislature, which has determined that safeguarding juvenile records from public scrutiny is paramount. It is the Legislature that has decided, by enacting chapter 13.50 RCW, that the public interest in disclosure ends where a criminal investigation of a juvenile begins. In doing so, the Legislature sought to embrace the goals of rehabilitation and reintegration and remove barriers to housing, employment, and education opportunities for juveniles by maintaining confidentiality of such records. *See* LAWS OF 2014, ch. 175, § 1 (statement of intent). The Court should reject WCOG's contrary argument, which elevates a speedy and erroneous resolution over this Court's consideration of issues of substantial public interest. Absent review, these issues will be determined by the Court of Appeals' erroneous decision in this case, which runs counter to

this Court's and its own precedents. *See* Pet. for Rev. at 14–17, 24, 28.

C. Redacting the Records Is Contrary to This Court's Precedents

WCOG incorrectly states that "the appropriate balance" in this case is to "redact the [juveniles'] names but release the records." WCOG Amicus Mem. at 10. To the contrary, the Court of Appeals' conclusion that redacting the juveniles' names suffices to protect their privacy interests is inconsistent with this Court's holding that redaction is appropriate only if redaction "can transform the record into one that is not exempted." *Resident Action Council v. Seattle Housing Auth.*, 177 Wn.2d 417, 437, 327 P.3d 600 (2013). Where an exemption applies to the entire record (as it does for juvenile records under chapter 13.50 RCW), as opposed to a type of information *in a record*, redaction is not appropriate. *See id.* The Court of Appeals' contrary decision warrants review under RAP 13.4(b)(1).

D. Whether a Preliminary Injunction or Declaration Should Have Issued Warrants Review

WCOG next argues that the Court of Appeals correctly applied the standard articulated in *Lyft v. City of Seattle*, 190 Wn.2d 769, 418 P.3d 102 (2018), in affirming the denial of a preliminary injunction. But *Lyft* held only that the standard in RCW 42.56.540 must be definitively met when seeking a permanent injunction under the PRA. *Id.* at 785. Regardless, the plaintiffs have amply met the RCW 42.56.540 standard because disclosure clearly cannot be in the public interest where the Legislature has mandated that juvenile records may not be disclosed under chapter 13.50 RCW. The Legislature sought to prevent exactly the type of scrutiny and stigma that will befall these young men if the records are released, and the Court of Appeals' contrary decision threatens the balance the Legislature established. Whether declaratory or, at a minimum, preliminary injunctive relief was properly denied is an issue of substantial public interest that should be determined by this Court.

E. The Court Should Reject WCOG's Arguments That This Court's Denial of Direct Review Warrants Denying Discretionary Review

At the outset of appellate proceedings, the Times filed a notice of appeal to this Court from the superior court's decision granting the John Does the right to proceed under pseudonym, a ruling that the Court of Appeals ultimately affirmed, and which the Times has not cross-designated for review under RAP 13.4(d). WCOG untenably argues that the plaintiffs' prior opposition to direct review at the outset somehow forfeits discretionary review now. *See* WCOG Amicus Mem. at 4–5.

WCOG's argument ignores the fact that the standard is different on direct review than on discretionary review, and that the plaintiffs' prior opposition hinged only on their contention that the issues were not so urgent as to merit direct review under RAP 4.2(a)(4). Indeed, as WCOG notes, the plaintiffs had contended before this Court that the issues were "important to the public as well as to the plaintiffs, whose futures are threatened by production[.]" WCOG Amicus Mem. at 4

(quoting Ans. to Statement of Grounds for Direct Rev. at 8 (Case No. 98448-4 May 14, 2020)). Thus, the plaintiffs previously *agreed* that the issues were of substantial public interest, and here urge that same conclusion. It is the substantial public interest at stake, as well as the fact that the Court of Appeals' decision conflicts with binding precedent, that forms the basis for the petition seeking review before this Court.

III. CONCLUSION

WCOG's amicus memorandum fails to alter the conclusion that review is warranted here. The plaintiffs' futures—and those of other juveniles across the state—hang in the balance. For the reasons stated above and those articulated in the petition for review, the plaintiffs respectfully request that the Court grant review.

///

I certify that this answer contains 1,755 words, in compliance with RAP 18.17.

RESPECTFULLY SUBMITTED this 21st day of January, 2022.

McNAUL EBEL NAWROT & HELGREN PLLC

By: s/Theresa M. DeMonte
Theresa M. DeMonte, WSBA No. 43994
Curtis C. Isacke, WSBA No. 49303

600 University Street, Suite 2700
Seattle, WA 98101
(206) 467-1816
tdemonte@mcnaul.com
cisacke@mcnaul.com

AND

CEDAR LAW PLLC

Lara Hruska, WSBA No. 46531
Whitney Hill, WSBA No. 53715

1001 4th Avenue, Suite 4400
Seattle, Washington 98154
Telephone: (206) 607-8277
lara@cedarlawpllc.com
whitney@cedarlawpllc.com

Attorneys for Petitioners

DECLARATION OF SERVICE

On January 21, 2022, I caused to be served a true and correct copy of the foregoing document on counsel of record stated below, via the Washington Courts E-Portal:

Katherine Hambley, WSBA No. 51812
Ogden Murphy Wallace
904 5th Avenue, Suite 3500
Telephone: (206) 839-4800
khambley@omwlaw.com
Attorney for Clyde Hill Police Dept.

Katherine A. George, WSBA No. 36288
Johnston George LLP
2101 4th Avenue, Suite 860
Seattle, Washington 98121
Telephone: (206) 832-1820
kathy@johnstongeorge.com
Attorney for The Seattle Times

Eric Stahl, WSBA No. 27619
Caesar Kalinowski, WSBA 52650
Davis Wright Tremaine LLP
920 5th Avenue, Suite 3300
Seattle, Washington 98104
Telephone: (206) 757-1610
ericstahl@dwt.com
caesarkalinowski@dwt.com
Attorneys for Palo Alto Daily Times

John Gerberding, WSBA No. 23157
Mari K. Isaacson, WSBA No. 42945
Office of the Prosecuting Attorney
516 3rd Avenue, Room W400
Seattle, Washington 98104
Telephone: (206) 296-9015
john.gerberding@kingcounty.gov
mari.isaacson@kingcounty.gov
mackenzie.brown@kingcounty.gov
Attorneys for King County

Casey M. Bruner, WSBA No. 50168
Witherspoon Kelley
422 W Riverside, Suite 1100
Spokane, WA 99201
Telephone: (509) 624-5265
cmb@witherspoonkelley.com
Counsel for Washington Coalition for Open Government

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 21st day of January, 2022, at Seattle, Washington.

By: s/Thao Do
Thao Do, *Legal Assistant*

MCNAUL EBEL NAWROT AND HELGREN PLLC

January 21, 2022 - 3:50 PM

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Appellate Court Case Title:	John Does 2-4 v. King County, et al.

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- scot@johnstongeorge.com
- whitney@cedarlawpllc.com

Comments:

Sender Name: Thao Do - Email: tdo@mcnaul.com
Filing on Behalf of: Theresa Demonte - Email: tdemonte@mcnaul.com (Alternate Email: tdo@mcnaul.com)

Address:
600 University Street
Suite 2700
Seattle, WA, 98101
Phone: (206) 467-1816 EXT 362

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