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Supreme Court No. 02182-8
Court of Appeals No. 83700-1-I

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

JANE and JOHN DOES 1-6,

Petitioners,

vs.

THE CITY OF SEATTLE, et al.,

Respondents.

CITY OF SEATTLE'S ANSWER TO PLAINTIFFS' "PETITION FOR REVIEW"

ANN DAVISON
Seattle City Attorney

JESSICA LEISER, WSBA #49349
Assistant City Attorney

Attorneys for Respondent
City of Seattle

Seattle City Attorney's Office
701 Fifth Avenue, Suite 2050
Seattle, WA 98104
Phone: (206) 684-8200

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I. INTRODUCTION

On January 12, 2020, Petitioner, Sam Sueoka, made a public records request for an internal investigation by the Office of Police Accountability (OPA), including the identities of the investigated Seattle Police Department (SPD) officers. The City of Seattle (City) issued a third-party notice to those officers and Petitioners sought to enjoin release of the requested records.

The procedural history thereafter is protracted. The trial court denied the officers' motion for a preliminary injunction but issued a temporary restraining order to preclude disclosure of the requested records while the officers sought discretionary review. This case then went before the Court of Appeals and this Court before returning to the Superior Court where the officers' motion for preliminary injunction was again denied. The officers appealed again. On June 26, 2023, the Court of Appeals issued a published opinion finding, as a matter of first impression, that the requested records were exempt from disclosure because their release would have a chilling effect

prohibited by the First Amendment to the United States Constitution. It is from this decision that Petitioner now seeks review by this Court.

The City agrees that review by this Court is warranted in this case, but not for the same reasons articulated in the Petition for Review. Although the City does not agree with the Court of Appeals' opinion regarding the scope and application of the First Amendment in the context of Washington's Public Records Act (PRA), the more troubling aspect of the Court of Appeals' opinion is the holding that agencies have an affirmative obligation to assert an exemption for protected speech *on behalf of* the speaker. This is both inconsistent with applicable First Amendment case law and unworkable under the PRA. This Court should grant review, vacate the decision of the Court of Appeals, and remand this matter to the Superior Court for a final determination as to permanent injunction on a fully developed record.

II. IDENTITY OF RESPONDENT

The City of Seattle, a defendant in the initial lawsuit below.

III. COURT OF APPEALS DECISION

The Petitioner seeks, and the City supports, review of the Court of Appeals' June 26th decision in *Doe 1 v. Seattle Police Dept.*, No. – Wn. App. 2d --, 531 P.3d 821 (2023).

IV. ISSUES PRESENTED FOR REVIEW

1. Whether this Court should accept review because the Court of Appeals has committed an obvious error which renders further proceedings useless by holding that disclosure of the disputed records must be enjoined under the First Amendment?

2. Whether this Court should accept review because the Court of Appeals has committed probable error and substantially alters the status quo by holding that the City is required to assert the free speech rights of third parties?

V. STATEMENT OF THE CASE

Shortly after the events at the U.S. Capitol on January 6, 2021, Petitioner made a public records request to the City for

records related to an ongoing OPA investigation of the officers for potential misconduct related to their attendance at former President Trump's "Stop the Steal" rally on January 6, 2021, in Washington D.C.[1] The City issued a third-party notice informing the officers that records would be released absent an injunction. The officers obtained an initial Temporary Restraining Order (TRO) prohibiting the release of the OPA investigation file(s), and a number of other records that would reveal the identities of the officers. The trial court then denied the officers motion for preliminary injunction but left the TRO in place while the officers sought discretionary review.

That initial TRO has since been extended pending resolution of this appeal. The briefing in this case has been extensive but no discovery has occurred, and no *in camera*

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[1] Misconduct includes violation of the SPD Manual by an SPD officer. *See also* https://www.seattle.gov/opa. That violations of SPD policy are considered officer misconduct by OPA can be judicially noticed. *Wash. State Human Rights Com'n v. Housing Auth. of City of Seattle*, 21 Wn. App. 2d 978, 984, ¶ 14 (2022).

review of the records in question has taken place. In February 2022, the Superior Court once again denied the officers' motion for preliminary injunction. The Court of Appeals then reviewed and reversed the decision of the Superior Court and held (1) that the officers were entitled to privacy in their protected speech under the First Amendment, (2) that the application of the First Amendment precluded any further analysis under the PRA, and (3) that the City has an affirmative obligation to assert the First Amendment rights of the officers to withhold the requested records. It is this decision from which Petitioner now seeks review.

VI. ARGUMENT IN RESPONSE TO PETITIONER'S ISSUES

The City takes no position as to the lower courts' approval of proceeding in pseudonym. The City agrees with Petitioner that the Court of Appeals applied an incorrect standard under the First Amendment, and that, in so doing, the Court of Appeals incorrectly jettisoned well-established PRA practices. Although the City agrees with Petitioner that the

Court of Appeals' decision was legal error, the City's bases for reaching this conclusion differ from those of Petitioner. The City's position is described in detail in section VII below.

VII. ARGUMENT IN SUPPORT OF ISSUES RAISED BY THE CITY

The intersection between constitutional rights and the PRA is not novel. For example, in *Service Employees International Union Local 925 v. University of Washington*, this Court reversed a preliminary injunction exempting records addressing union organizing activities by public employees. 193 Wn.2d 860, 862, ¶ 1, (2019). Addressing the "advantages and disadvantages of unions and joining them is protected not only as part of free speech, but as part of assembly."[2] *Thomas v.*

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[2] This is especially true where, for public agencies such as the City, the discussion of working conditions in government employment, including effective supervision by superiors who are elected officials is also, "core political speech for which First Amendment protection is at its zenith." *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 183 (1999) (quotation and citation omitted).

Collins, 323 U.S. 516, 532 (1945) (citation omitted).[3] Despite the potential protections of both the free speech and assembly clauses of the First Amendment, the *SEIU* Court reversed the Court of Appeals' decision upholding the Trial Court's preliminary injunction. *SEIU*, 193 Wn.2d at 876, ¶ 25.

The *SEIU* case is both substantively and procedurally informative.[4] In both *SEIU* and this case, third-party notice is

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[3] Union organizing is not only protected under the Free Speech and Assembly Clauses of the First Amendment to the U.S. Constitution, but also by various statutes. *See*, 29 U.S.C. §§ 151, 157 and RCW 25B.52.

[4] Although the arguments raised in *SEIU* and the instant case are substantially similar, it is possible to distinguish *SEIU* where the protected speech in question was generated by the speaker without involvement of, or compulsion from, the government employer as asserted by the officers here. The Court of Appeals, however, made no effort to either harmonize or distinguish the instant case from *SEIU*. Instead, the Court of Appeals simply stated that it "disagree[d]" with the City's position that *SEIU* vacated a preliminary injunction protecting records where the speaker asserted a chilling effect on First Amendment rights. *Doe I*, 531 P.3d at 848, n. 33. The Court of Appeals committed error by ignoring the explicit statement in *SEIU* that the plaintiffs claimed that "release would chill union organizing efforts, restrain speech, and violate individuals' privacy rights." *SEIU*, 193 Wn.2d at 865, ¶ 4.

procedurally appropriate because the public agency is not the speaker whose potential speech rights are at issue and the City is not well positioned to make a fact-intensive determination as to the presence of a third-party's constitutional rights or the subjective preferences of the third-party.

Despite clear guidance regarding the use of the procedures in RCW 42.56.540, in deciding this case, the Court of Appeals held that "the PRA injunction standard cannot serve as a bar to the City's obligation under the Fourteenth Amendment to safeguard the First Amendment rights of Washington citizens in its application of state law." *Doe I*, 531 P.3d at 855, ¶ 118. The Court of Appeals' departure from past cases, including *SEIU*, is reversible error.

This decision also turns RCW 42.56.540 on its head. Instead of giving "an agency… the option of notifying persons named in the record to whom a record *specifically* pertains, that

release of a record has been requested,"[5] the Court of Appeals held that where a third party's "constitutional right implicated by the disclosure of particular requested records is clear, the City must refuse to disclose the records." *Doe I*, 531 P.3d at 855, n. 43, ¶1 and ¶ 3. Thus, it is the City, and not the person whose rights are affected, that must then "defend against any challenge to the action by the records requester" absent the consent of the speaker *Id*. This requires public records officers to make legal determinations on behalf of third parties and is fundamentally inconsistent with standing requirements to assert a First Amendment right.

In this regard alone, the Court of Appeals' decision was obvious error that rendered further proceedings in this case, and RCW 42.56.540 itself, useless. This Court should accept review to correct the Court of Appeals' premature termination of this case.

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[5] RCW 42.56.540 (emphasis added).

Although the Court of Appeals' decision is reversible solely because its incorrect First Amendment analysis renders further proceedings useless, it is also reversible because it substantially alters the status quo for all local agencies, including the City, and Washingtonians state-wide. This Court should also accept review to correct the Court of Appeals' substantial deviation from the status quo.

1. This Court should accept review because the Court of Appeals has committed an obvious error which renders further proceedings useless by holding that disclosure of the disputed records must be enjoined under the First Amendment.

Review by this Court is appropriate where "the Court of Appeals has committed an obvious error which… render[s] further proceedings useless." RAP 13.5(b)(1). Here, the Court of Appeals' decision is obvious error insofar as the Court of Appeals held that where a third party's "constitutional right implicated by the disclosure of particular requested records is clear, the City must refuse to disclose the records." *Doe I*, 531 P.3d at 855, n. 43, ¶ 3. The Court of Appeals' conclusion is

erroneous and renders further proceedings useless. RAP 13.5(b)(1) clearly applies.

A. The Court of Appeals' decision that the City "must" assert the free speech rights of third parties is obvious error.

The Court of Appeals' determination that the City "must" assert a third party's speech rights is inconsistent with both First Amendment doctrine and the PRA. First, the City is not a proper party to assert the speech rights of third parties. Settled First Amendment caselaw dictates that speech rights belong to the speaker. Second, the PRA provides for a third-party to assert their own speech rights, through the notice and injunction provisions in RCW 42.56.540. This Court should accept review to correct the Court of Appeals' obvious error.

1. The City lacks standing under settled First Amendment caselaw to assert the speech rights of third parties.

"As a general rule, a litigant has standing only to vindicate his own constitutional rights." *S.O.C., Inc. v. County of Clark*, 152 F.3d 1136, 1142 (9th Cir. 1998) (citing *Members*

of City County of City of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789, 797-98 (1984); *Ludwig v. Wash. State Dept. of Ret. Sys.*, 131 Wn. App. 379, 385, ¶ 12 (2006). Consistent with this "general rule," it is the speaker, not the City, who is entitled to assert a free speech interest in public records containing the speaker's message. There is no legal basis for the Court of Appeals to conclude that the City is obligated to assert the free speech rights of third parties in contravention of the general rule.

Beyond the general rule, the Supreme Court has "recognized an exception… for laws that are written so broadly that they may inhibit the constitutionally protected speech of third parties." *Id*. at 799. Critically, the "exception is narrowly construed to limit the "risk that the doctrine itself might sweep so broadly that the exception to ordinary standing requirements would swallow the general rule." *Id*. (quotation omitted). To avail oneself of the exception to the standing requirement and assert the free speech rights of third parties, the claimant must

prove the risk of overbreadth is "not only real, but substantial as well, judged in relationship to the statute's plainly legitimate sweep." *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973). Thus, for the City to assert this exception and independently refuse to produce requested records containing the protected speech of a third party, the City must first conclude that the PRA is facially overbroad. This is patently absurd: case law dictates that statutes are to be construed to "*avoid* constitutional difficulties,"[6] not seek them out. Furthermore, it is the role of the *courts*, not the City, to determine the constitutionality of the PRA. This Court should accept review because it was obvious error to task the City with evaluating and asserting free speech rights of third parties.

2. The PRA, and related caselaw, provide for third party notice and judicial review instead of burdening the City with fact-intensive and legally nuanced decision-making.

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[6] *State v. Blake*, 197 Wn. 2d 170, 189, ¶ 37 (2021) (quoting *In re Pers. Restraint of Williams*, 121 Wn. 2d 655 (1993)) (emphasis added).

The role of the courts in determining the intersection between the free speech clause and the PRA is evident from PRA itself and from prior court decisions evaluating the role of third parties in PRA determinations. Whenever a speech right is implicated, the first determination is whether the speech in question is subject to the protections of the First Amendment, known as "protected speech." Types of speech not protected by the First Amendment include fighting words,[7] perjury,[8] obscenity,[9] and true threats.[10] Oftentimes, the distinction

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[7] The "exclusion of 'fighting words' from the scope of the First Amendment simply means that, for purposes of that Amendment, the unprotected features of the words are, despite their verbal character, essentially a "nonspeech" element of communication." *R.A.V. v. City of St. Paul, MN,* 505 U.S. 377, 386 (1992).

[8] "Of course, demonstrable falsehoods are not protected by the First Amendment in the same manner as truthful statements." *Brown v. Hartlage,* 456 U.S. 45, 60 (1982).

[9] "This much has been categorically settled by the Court, that obscene material is unprotected by the First Amendment." *Miller v. California,* 413 U.S. 15, 23 (1973).

[10] The "First Amendment… permits a State to ban a 'true threat.'" *Virginia v. Black*, 538 U.S. 343, 359 (2003) (citations omitted).

between unprotected speech, such as true threats, and core political speech is subtle, nuanced, and difficult to determine.[11] The City is not well positioned to make this fact-intensive and legally nuanced determination. It is for this exact reason that RCW 42.56.540 exists. Issuing a third-party notice to the speaker allows the person whose interest is at stake and is familiar with the facts, and their own intent, to evaluate and assert a potential exemption to the PRA. Issuing third-party notice also facilitates a judicial determination as to any exemption, constitutional or otherwise, to the PRA.

This Court has already recognized that it is the courts, and not agencies such as the City, that should be making this determination because the City should not "be placed in the position of making a fact-specific inquiry with uncertain guidelines" such as "the knowledge of third parties" or "how

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[11] Core political speech is "interactive communication concerning political change." *Meyer v. Grant*, 486 U.S. 414, 422 (1988).

much media coverage is required" before a privacy right is lost. *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 398, 413-14, ¶ 24-25 (2011). Similarly, this Court has held that third parties whose interests are implicated in disclosure of public records are necessary parties. See *Burt v. Wash. State Dept. of Corrections*, 168 Wn.2d 828, 836, ¶ 23 (2010); *DeLong v. Parmlee*, 157 Wn. App. 119, 168, ¶ 103 (2010). This Court should accept review because it was obvious error for the Court of Appeals to vitiate the third-party notice and judicial review process provided for by RCW 42.56.540.

B. The Court of Appeals' decision that the City "must" assert the free speech rights of third parties renders further proceedings in this case useless.

The need for review is heightened because the Court of Appeals' decision renders any further proceedings in this case useless. "At a preliminary injunction hearing, the plaintiff need not prove and the trial court does not reach or resolve the merits of the issues… [r]ather the trial court considers only the *likelihood* that the plaintiff will ultimately prevail." *Northwest*

Gas Ass'n v. Wash. Utilities and Transp. Com'n, 141 Wn. App. 98, 116, ¶ 40 (2007) (emphasis in original) (citation omitted). Even though this case was appealed from the trial court's determination of a preliminary injunction, the Court of Appeals adjudicated the merits, holding the records were exempt, as a matter of law, instead of considering the likelihood of success.

This error is fundamental to the purpose of RAP 13.5(b)(1). Where "a court does not expressly state that it is consolidating the injunction hearing with a trial on the merits, it may not render a final determination on the merits." *League of Women Voters v. King County Records & Licensing Election Servs. Div.*, 133 Wn. App. 374, 382 (2006). This rule exists to "give the parties notice and time to prepare so that they will have a *full* opportunity to present their cases at the permanent injunction hearing." *Northwest Gas*, 141 Wn. App. at 114, ¶ 34 (emphasis added). In this case, the Court of Appeals' decision deprives the parties of any opportunity to conduct discovery, or for the court to conduct *in camera* review of the disputed

records. Consequently, this Court should accept review because the Court of Appeals has improperly rendered further proceeding in this case useless.

2. This Court should accept review because the Court of Appeals has committed probable error that substantially alters the status quo by holding that agencies subject to the PRA are required to assert the constitutional rights of third parties.

Review is appropriate not only because of the consequences for the parties, but also because the decision of the Court of Appeals substantially alters standard PRA practices for agencies throughout the State. This Court reviews cases where "the Court of Appeals has committed probable error… [that] substantially alters the status quo." RAP 13.5(b)(2). Here, the Court of Appeals' decision substantially alters the status quo by bypassing the third-party notice provided by RCW 42.56.540 and instead requiring agencies to affirmatively exempt public records from disclosure that may affect the constitutional rights of third parties. Not only does the Court of Appeals' holding burden agencies with making fact-

intensive determinations as to the rights of third parties without their involvement, it also enables agencies to overuse that analysis in favor of exemption in contravention of the transparency purpose of the PRA. This Court should accept review to correct both substantial deviations from the status quo.

A. Requiring agencies to assert the constitutional rights of others substantially deviates from the existing process provided by RCW 42.56.540.

As described in section VII(1)(A) above, the PRA has a long-standing approach to evaluating a third party's interest in public records: issuing notice to the third-party and facilitating judicial review thereof. Use of the process provided by RCW 42.56.540 has included judicial assessment of constitutional rights in other cases. *See*, e.g. *SEIU*, 193 Wn.2d at 876, ¶ 25; *Wash. Fed. of State Employees, Council, 28 v. State*, 22 Wn. App. 2d 392 (2022). Despite this, the Court of Appeals held that agencies "cannot condition the exercise of this federal

constitutional right" on RCW 42.56.540. *Doe I*, 531 P.3d at 855, ¶ 118.

Based on this assertion, the Court of Appeals explicitly rejected the contention that "the third-party notice provision set forth in the PRA is the proper means" to address third-party rights. *Id* at n. 43, ¶ 1. There is no basis for such substantial deviation from the status quo. Instead, the Court of Appeals' decision now requires agencies to forego third-party notice and independently assert a third party's interest where "the constitutional right implicated is clear." *Doe I*, 531 P.3d at 855, n. 43, ¶ 3.

Agencies now have an affirmative duty to assert an exemption on behalf of a third-party. Yet the Court of Appeals provided no guidance as to what constitutional rights are subject to duty, nor what constitutes a "clear" demonstration thereof. For example, a public record request submitted to the City in 2020 sought "all communications… containing threats against council members… related to recent discussions about

police violence, defunding the Seattle Police Department, protests… or any related matters."[12] In response to this request, the City produced emails from several named individuals, including an email from Mr. Rake Steel to Seattle Councilmember Kshama Sawant with a subject line of "Rooting for you" and an email body stating "[t]o be shot and killed," along with multiple profanities.

It is anything but "clear" whether Mr. Rake's email is core political speech, or a true threat or obscenity not entitled to any First Amendment protection. Nevertheless, the Court of Appeals' decision now requires the City to determine whether producing this email infringes on Mr. Rake's core political speech rights. "'True threats' encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Virginia v. Black*,

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[12] Records such as these can be judicially noticed. *Wash. State Human Rights Com'n*, 21 Wn. App. 2d at 984, ¶ 14.

538 U.S. at 359; *Counterman v. Colorado*, 143 S. Ct. 2106, 2116 (2023). Yet, "political hyperbole" is not a true threat. *Watts v. U.S.*, 394 U.S. 705, 708 (1969); *Counterman* 143 S. Ct. at 2116. The differentiation between a true threat and political hyperbole is fundamentally personal. Concluding that speech is a true threat is contingent on the subjective intent of the speaker. *Counterman*, 143 S. Ct. at 2113. Essentially, the Court of Appeals has "require[d] public agencies to be mind readers," notwithstanding explicit case law to the contrary. *Bonamy v. City of Seattle*, 92 Wn. App. 403, 451 (1998). This Court should accept review to correct the Court of Appeals' decision to delegate determination of "clear" constitutional rights to agencies.

The severity of the Court of Appeals' deviation from the status quo is not limited to the example above. As a hypothetical example, agency employees routinely send email communications about absences from work. Under the Court of Appeals' decision, agencies must now decide if exempting an

email stating an employee is out of office for a colonoscopy[13] while producing a different email stating another employee is out of office for a religious holiday infringes on the other employee's free exercise rights under *Kennedy v. Bremerton School Dist.*, 142 S. Ct. 2407, 2422 (2022).

Once again, this is a determination that should be made by the court, on motion of the right-holder, not unilaterally by an agency. Forcing agencies to make these determinations, effectively, forces agencies to choose between infringing on third-party rights, risking liability under 42 U.S.C. § 1983, or risk liability under the PRA.[14] This Court should accept review because tasking agencies, instead of courts, with the determination of constitutional rights is a substantial deviation from the status quo.

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[13] *See*, e.g., *Prison Legal News, Inc. v. Dept. of Corrections*, 154 Wn. 2d 628 (2005); RCW 42.56.360(2); and RCW 70.02.020.

[14] RCW 42.56.550(4).

B. Authorizing agencies to assert the rights of others substantially deviates from the existing PRA directive that public servants do not have the right to decide what is good for the people to know.

As an additional matter, the Court of Appeals' decision substantially alters the status quo because it vests the determination and assertion of the rights of third parties to preclude production of public records to the public. Following the Court of Appeals' statement that agencies "must" assert rights of third parties, agencies are now empowered to "decide what is good for the people to know and what is not good for them to know." RCW 42.56.030; *Progressive Animal Welfare Soc. v. Univ. of Wash.*, 125 Wn. 2d 243, 260 (1994). For example, where records alleging "misappropriation of public funds, and employment discrimination based on sex and ethnicity"[15] were unflattering to an agency, the agency could simply assert that disclosure of the record would infringe the speaker's free speech right to core political speech.

Empowering this kind of unfettered discretion to withhold records is in direct conflict with the holding in *City of Fife v. Hicks*, 186 Wn. App. 122, 133 ¶ 22 (2015), and is anathema to the transparency purpose of the PRA. *Doe ex rel. Roe v. Wash. State Patrol*, 185 Wn. 2d 363 371, ¶ 7 (2016). This Court should grant review to correct the Court of Appeals' decision that agencies can use their own judgment to assert the rights of third parties.

Moreover, the Court of Appeals' emphasis on the Supremacy Clause of the U.S. Constitution easily extends the analysis beyond constitutional rights. The Court of Appeals correctly states that "the Supremacy Clause… mandates that courts shall regard the Constitution and *all laws* made in furtherance thereof as the supreme Law of the Land." *Doe I*, 531 P.3d at 854, ¶ 116 (quotation omitted) (emphasis added). By the very operation of the Supremacy Clause, the Court of

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[15] *City of Fife v. Hicks*, 186 Wn. App. 122, 133, ¶ 22 (2015).

Appeals' opinion empowers agencies to assert any other federally created right of a third-party on its own.

For example, many agencies in the State share records containing third-party information with the Department of Housing and Urban Development as part of their Community Development Block Grant participation. The Court of Appeals' emphasis on the Supremacy Clause as the basis for tasking agencies with asserting rights of third parties would also empower an agency to assert the Federal Privacy Act, 5 U.S.C. § 552a(b). This is a substantial deviation from the status quo, where the PRA's narrow construction of exemptions precludes state entities from claiming federal agency authority in the United States Code.

Whether it is the Free Speech, Free Exercise, or the Federal Privacy Act, the Court of Appeals' opinion empowers agencies to construe exemptions as broadly as they deem appropriate and then withhold records on the unverified belief that doing so protects some third party's rights. This reverse

presumption in favor of exemption instead of a presumption in favor of disclosure is explicitly stated by the Court of Appeals. *Doe I*, 531 P.3d at 855, n. 43, ¶ 3. This holding is inconsistent with the requirement that "we start with the presumption that all public records are subject to disclosure." *Predisik v. Spokane School Dist. No. 81*, 182 Wn. 2d 896, 903, ¶ 8 (2015).

The holding of the Court of Appeals is similarly in conflict with the power of the legislature. The Washington Legislature can delegate decision-making power over PRA exemptions to agencies. And when the legislature does vest agencies with the authority to determine exemptions, it provides specific guidelines thereto. For example, Engrossed Substitute House Bill 1533 went into effect May 15, 2023.[16] Under this new legislation, agencies are authorized to assert a third party's substantive due process rights, provided certain criteria are met. RCW 42.56.250(1)(i)(i).

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[16]https://lawfilesext.leg.wa.gov/biennium/202324/Pdf/Bills/Session%20Laws/House/1533-S.SL.pdf?q=20230808201817

The decision of the Court of Appeals in this case infringes on the province of the Legislature to delegate the determination of exemptions to agencies; and did so without providing the kind of specific guidance included in legislation such as ESHB 1533. This Court should accept review because the Court of Appeals' opinion authorizing agencies to significantly expand PRA exemptions, instead of the court or the legislature, is a substantial deviation from the status quo.

VIII. CONCLUSION

The decision of the Court of Appeals includes numerous errors with state-wide impact. It is exactly this kind of case which should be accepted for review. This Court should accept review to Correct the Court of Appeals' errors and reaffirm agency reliance on the process of third-party notice provided by RCW 42.56.540.

This document contains 4,717 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 11h day of August, 2023.

Respectfully submitted,

ANN DAVISON
Seattle City Attorney

By:
/s/ Jessica Leiser
JESSICA LEISER, WSBA #49349
Assistant City Attorney

Attorneys for Respondent,
City of Seattle

SEATTLE CITY ATTORNEY'S OFFICE - GOVERNMENT AFFAIRS

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