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Court of Appeals No. 38884-1 III
Consolidated with No. 39157-4 III**

SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON ELECTION INTEGRITY
COALITION UNITED, a Washington State Nonprofit,

Petitioner,

vs.

LINCOLN COUNTY and CHANDRA SCHUMACHER,

Respondents.

WASHINGTON ELECTION INTEGRITY
COALITION UNITED, a Washington State Nonprofit,

Petitioner,

vs.

FRANKLIN COUNTY,

Respondent.

**ANSWER TO PETITION FOR REVIEW - LINCOLN
COUNTY AND CHANDRA SCHUMACHER**

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I. INTRODUCTION

This Petition arises from two of the numerous untimely, unattested and improper election contest actions the Washington Election Integrity Coalition United (WEICU) commenced throughout the State of Washington.¹ WEICU contends the Public Records Act compels disclosure of “original ballots, ballot images, spoiled ballots, adjudication records, ballot envelopes, and returned ballots” (Petition, p. 4), but this contention has been rejected by every division of Washington’s

¹ See *Washington Election Integrity Coalition United et al. v. Wise*, No. 21-2-12603-7-KNT (Sept. 22, 2021); *Washington Election Integrity Coalition United et al. v. Anderson*, No. 21-2-07551-9 (Sept. 21, 2021); *Washington Election Integrity Coalition United et al. v. Hall*, No. 21-2-3501641-34 (Sept. 21, 2021); *Washington Election Integrity Coalition United et al. v. Kimsey*, No. 21-2-01775-06 (Sept. 16, 2021); *Washington Election Integrity Coalition United et al. v. Fell*, No. 21-2-04302-31 (Sept. 16, 2021); *Washington Election Integrity Coalition United et al. v. Bradrick*, No. 21-2-00949-37 (Sept. 10, 2021); *Washington Election Integrity Coalition United et al. v. Beaton*, No. 21-2-50572-11 (Oct. 5, 2021); *Washington Election Integrity Coalition United et al. v. Schumacher*, No. 212-00042 22 (Oct. 4, 2021).

court of appeals, in conformity with this Court’s jurisprudence and the dictates of the Washington State Legislature.

The Legislature has ensured that “all ‘ballots’, including copies, are exempt from production under the Public Records Act by Title 29A RCW—an ‘other statute.’” *White v. Skagit County*, 188 Wn. App. 886, 898, 355 P.3d 1178 (2015), *review denied*, 185 Wn.2d 1009 (2016) (*White II*) (citing RCW 42.56.210 (2)); *see also White v. Clark County*, 199 Wn. App. 929, 934, 401 P.3d 375 (2017), *review denied*, 189 Wn.2d 1031 (2018) (*White III*) (PRA requestor “is not entitled to disclosure of the requested [ballots] because ... both RCW 29A.60.110 and WAC 434-261-045 create an ‘other statute’ exemption that applies to election ballots”); *White v. Clark County*, 188 Wn. App. 622, 354 P.3d 38 (2015) (*White I*), *review denied*, 185 Wn.2d 1009, 366 P.3d 1254 (2016) (“‘other statute’ exemption for ballot images ‘derives from a combination of article VI, section 6 of the Washington Constitution, multiple sections of Title 29A RCW, and secretary of state regulations authorized by statute.’”); and *Washington*

Election Integrity Coalition v. Schumacher, 537 P.3d 1058 (2023) (hereafter “*Schumacher*”). WEICU satisfies none of the considerations governing this Court’s acceptance of review. The relief WEICU seeks should be directed to the Legislature, not to this Court. As stated by the Court of Appeals in *Schumacher*:

None of WEICU’s arguments persuade us that the *White* decisions are unsound, or that they do not support the superior courts’ conclusions that article VI, section 6 of the Washington Constitution, provisions of Title 28A RCW, and administrative regulations adopted by the secretary of state, provide an “other statute” exemption under which records requested by WEICU were properly withheld by Lincoln and Franklin counties.

Schumacher, 537 P.3d at 1070-71. The Petition should be denied.

II. COUNTERSTATEMENT OF THE CASE

“It is the policy of the state of Washington to ... protect the integrity of the electoral process by providing equal access to the process while guarding against discrimination and fraud.” RCW 29A.04.205. To further this policy, the Legislature has enacted robust statutory procedures that permit any registered voter to contest election processes by timely invoking those

procedures on attested facts. RCW 29A.68.013. The Legislature has also ensured that all ballots are exempt from production under the PRA, which Washington courts have consistently recognized “must give way to constitutional mandates.” *Schumacher*, 537 P.3d at 1066 (citing *Freedom Found. v. Gregoire*, 178 Wn.2d 686, 695, 310 P.3d 1252 (2013)). “Ballots are exempt in their entirety.” *White II*, 188 Wn. App. 886. “The Washington Constitution does not allow a scheme that provides for only substantial secrecy and that occasionally allows the identity of voters casting ballots to be mistakenly revealed.” *Schumacher*, 537 P.3d at 1069 (citing *White II*, at 898-89). “The Constitution requires *absolute* secrecy.” *Id.* (emphasis original).

Schumacher states nothing more than that which has already been stated by every appellate division in the state of Washington. “Article VI, section 6 of the Washington Constitution, provisions of Title 29A RCW, and administrative regulations adopted by the secretary of state, provide an ‘other statute’ exemption under which records requested by WEICU

were properly withheld by Lincoln and Franklin counties.” *See Schumacher*, 537 P.3d at 1070-71. There is no basis for review.

III. ARGUMENT

A. There is no conflict with Supreme Court precedent.

WEICU argues that *Schumacher* conflicts with *Lyft, Inc. v. City of Seattle*, 190 Wn.2d 769, 418 P.3d 102 (2018) and *Washington Federation of State Employees v. State*, 2 Wn.3d 1, 534 P.3d 320 (2023), both of which address injunctions to the release of public records under RCW 42.56.540. *Lyft* simply holds that if an agency wants to prohibit examination of purportedly exempt public records, the agency cannot rely on the civil rules, but must instead satisfy the PRA’s high level statutory elements under RCW 42.56.540. *See* Petition, pp. 16-17 (citing *Lyft*, at 778). As the *Schumacher* court observed, however, WEICU’s actions against Lincoln County and Franklin County were not brought by an agency or a person associated with the public record being sought, and WEICU did not seek an injunction under RCW 42.56.540 to prevent the respective

counties from disclosing public records. *Schumacher*, 537 P.3d at 1070. *Lyft* has no application to the actions addressed in *Schumacher*. There is no conflict between *Lyft* and *Schumacher*.

B. There is no conflict between the appellate divisions.

In *Schumacher*, division III joined divisions I and II in holding that the “other statute” exemption for election ballots derives from a combination of article VI, section 6 of the Washington Constitution, multiple sections of Title 29A RCW, and secretary of state regulations authorized by statute. *See Schumacher, White I, White II and White III, supra*. Thus, *Schumacher* is entirely consistent with the *White* decisions. WEICU does not show a conflict between appellate divisions.

C. There is no significant Constitutional question.

WEICU proffers no significant Constitutional question from *Schumacher* that warrants review by this Court. WEICU could not credibly do so, because *Schumacher* cites at length to *White II*, where Division I addressed “the Constitutional mandate of *absolute* secrecy” prohibiting release of any potentially

identifying voter information under the PRA. *See Schumacher*, 537 P.3d at 1069-70 (emphasis original). *Schumacher*, *White I*, *White II* and *White III* all hold that “ballots are exempt” from disclosure under the PRA “in their entirety.” *Schumacher*, 537 P.3d at 1069 (citing *White II*, at 900, and RCW 29A.08.161). WEICU also fails to satisfy this consideration for review.

D. All issues of public interest have been resolved.

There is clearly a substantial public interest in safeguarding the integrity of democratic elections and the privacy of voters. As stated, Article VI, section 6 of the Washington Constitution provides: “[T]he Legislature shall provide for such method of voting as will secure to every elector absolute secrecy in preparing and depositing his ballot.” RCW 29A.40.110 and RCW 29A.40.110 (2) provide for physically securing return envelopes and ballots before processing and after tabulation, respectively, with “ballot” broadly defined by RCW 29A.04.008 (1) (c) to include a “physical or electronic record of the choices of an individual voter.” The secretary of state is

required to make rules governing “[s]tandards and procedures to guarantee the secrecy of ballots” (RCW 29A.04.611 (34)), and all divisions of Washington’s court of appeals have uniformly held that the “‘other statute’ exemption for ballot images ‘derives from a combination of article VI, section 6 of the Washington Constitution, multiple sections of Title 29A RCW, and secretary of state regulations authorized by statute.’” *White I*, 188 Wn. App. at 631; *see also Schumacher, White II* and *White III*. So while there is clearly a substantial public interest in the integrity of Washington’s democratic elections, there also is no reason for this Court to review, much less abandon, the sound decisions of *White I, White II, White III* and *Schumacher*. WEICU’s desire to be provided “original ballots, ballot images, spoiled ballots, adjudication records, ballot envelopes, and returned ballots” is a matter for the Legislature, not this Court.

IV. CONCLUSION

WEICU fails to satisfy the considerations for acceptance of review under RAP 13.4 (b). The Petition should be denied.

Pursuant to RAP 18.17 (b) and (c) (10), this Answer contains 1,364 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 8th day of January 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Lindsey Martin certifies and declares: I am over the age of 18 years, am a legal assistant at the law office of Keating, Bucklin & McCormack, Inc. P.S., and on January 8, 2024, a true and correct copy of the Answer to Petition for Review of Respondents Lincoln County and Chandra Schumacher was sent to the following parties of record via method indicated:

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