

NO. 87350-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

LOUIS CHAO CHEN,

Petitioner.

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
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**STATE'S ANSWER TO BRIEFS OF AMICI CURIAE
AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON,
WASHINGTON DEFENDER ASSOCIATION,
DISABILITY RIGHTS WASHINGTON,
AND WASHINGTON ASSOCIATION OF
CRIMINAL DEFENSE ATTORNEYS**

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A. INTRODUCTION

In this case, Chen argues that RCW 10.77.210 mandates the sealing of all competency evaluations submitted to trial courts for determination of whether a criminal defendant is competent to stand trial. The State argues that a fair reading of the statute does not require that result, and that if it did, the statute would violate article I, section 10 of the Washington State Constitution.

Amici American Civil Liberties Union of Washington, Washington Defender Association, Disability Rights Washington, and Washington Association of Criminal Defense Attorneys argue that this Court should adopt Chen's construction of the statute, and deem that construction constitutional because competency evaluations implicate defendants' "right of privacy." In so arguing, however, they offer no definition of "privacy" and ignore the definition that has been utilized by this Court in related contexts. A matter that is of legitimate concern to the public is by definition not private. The basis upon which a trial court decides whether a criminal defendant will stand trial for charges based on his mental status is a matter of legitimate concern to the public, particularly in an aggravated murder case. There is no right to privacy that preempts the public's right to have justice administered openly such

that the entire competency report in all cases must be sealed from public view.

B. ARGUMENT IN RESPONSE TO AMICI'S ARGUMENTS

COMPETENCY EVALUATIONS CONTAIN INFORMATION OF LEGITIMATE CONCERN TO THE PUBLIC AND THUS ARE NOT PRIVATE.

This Court has recognized a common law tort of invasion of privacy based on the public disclosure of private facts. Reid v. Pierce County, 136 Wn.2d 195, 205, 961 P.2d 333 (1998). In defining this tort, this Court adopted the definition of private facts contained in the Restatement (Second) of Torts, § 652d (1977). Id. Under that definition, a fact is private if it is of a kind that “(a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public.” Id.

Pursuant to the Public Records Act (PRA), all public records must be disclosed upon request unless there is a statutory exemption. RCW 42.56.070. The policy of the PRA is to ensure full access to information concerning the conduct of government. Bellevue John Does 1-11 v. Bellevue School District #405, 164 Wn.2d 199, 209, 189 P.3d 139 (2008). This purpose is directly analogous to the purpose of article I, section 10: to ensure public

access to information concerning the conduct of our courts. The PRA provides an exemption for personal information about employees, appointees or elected officials “to the extent that disclosure would violate their right to privacy.” RCW 42.56.230(2). In this context, the right to privacy is defined by the common law tort of invasion of privacy by public disclosure of private facts. Bellevue John Does, 164 Wn.2d at 212. See also Cowles Pub’g Co. v. State Patrol, 109 Wn.2d 712, 720-21, 748 P.2d 597 (1988). In order to be a private matter exempt from disclosure, the matter must be “of a kind that (a) would be highly offensive to a reasonable person and (b) is not of legitimate concern to the public.” Bellevue John Does, 164 Wn.2d at 212. Applying this standard, this Court has held that information about sexual misconduct by a public employee that is substantiated is not private because such information is of legitimate public interest. Id. at 214 (citing Brouillet v. Cowles Publishing Co., 114 Wn.2d 788, 797-98, 791 P.2d 526 (1990)). In contrast, this Court has held that unsubstantiated or false accusations of sexual misconduct are private because they are highly offensive and are not of legitimate concern to the public. Bellevue John Does, 164 Wn.2d at 216-19.

Similarly, GR 22(a), which governs access to family law and guardianship court records, utilizes this same definition for determining whether public access to such records presents “an unreasonable invasion of personal privacy.” The rule explicitly defines “personal privacy” as being unreasonably invaded by disclosure of information if the information “(a) would be highly offensive to a reasonable person and (b) is not of legitimate concern to the public.” GR 22(b)(4).

In arguing that all competency evaluations in all criminal cases should be filed under seal to protect defendants’ privacy interests, amici and Chen provide no definition of “privacy.” As this Court might imagine, almost any aspect of a criminal trial, including the fact that one has been charged with a crime at all, might be considered private by some. Court records may not be sealed simply because the proponent of sealing advances a subjective notion of privacy. Privacy must be judged based on a reasonable and objective standard.

The standard that should be used in judging whether a proponent of sealing has a right to privacy that justifies shielding a court record from public view is the standard that is used in the common law tort of invasion of privacy by public disclosure of

private facts, the privacy exemption to the PRA and GR 22.

Privacy may be a compelling interest that justifies sealing or redacting a court record if the court record contains information of a kind that "(a) would be highly offensive to a reasonable person and (b) is not of legitimate concern to the public."

Chen cannot meet this standard. As Amicus Allied Daily Newspapers of Washington argues, competency evaluations are important to public safety. These evaluations provide the basis for trial court decisions that determine whether suspects will face trial on criminal allegations or not. Particularly where the crime in question is a violent one, the public interest in these competency determinations is extremely strong. As this Court has explained in the past, the public's right to open administration of justice is not merely concerned with public access to a court's ruling. Rufer v. Abbot Laboratories, 154 Wn.2d 530, 549, 114 P.3d 1182 (2005). The public has a constitutional right to access the documents in the court file that the court considered in making that ruling. Id. Competency evaluations are a vital piece of information that trial courts rely on in making competency determinations. These competency determinations and the evidence supporting them are a matter of legitimate concern to the public. Competency

evaluations do not meet the definition of privacy used by this Court in analogous contexts.

Because competency evaluations are a matter of legitimate concern to the public, they cannot be considered private. Privacy is thus not a compelling interest that can justify shielding all competency evaluations in all criminal cases from public view. Amici's claim that RCW 10.77.210 should be interpreted as requiring that all competency evaluations in all criminal cases be filed under seal, and should be deemed constitutional, should be rejected.

DATED this 2nd day of May, 2013.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Todd Maybrown, the attorney for the appellant, at 600 University Street, Suite 3020, Seattle, WA 98101, containing a copy of the State's Answer to Brief of Amici, in STATE V. CHEN, Cause No. 87350-0, in the Supreme Court, for the State of Washington.

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

W Brame
Name
Done in Seattle, Washington

5/2/13
Date

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Barry Flegenheimer and Raymond McFarland, the attorneys for the appellant, at 119 First Avenue S, Suite 500, Seattle, WA 98104, containing a copy of the State's Answer to Brief of Amici, in STATE V. CHEN, Cause No. 87350-0, in the Supreme Court, for the State of Washington.

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

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Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Kathryn George, the attorney for amicus curiae Allied Daily Newspapers, at Harrison-Benis LLP, 2101 Fourth Ave., Suite 1900, Seattle, WA 98121, containing a copy of the State's Answer to Brief of Amici, in STATE V. CHEN, Cause No. 87350-0, in the Supreme Court, for the State of Washington.

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Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Sarah Dunne, Nancy Talner, and Douglas Klunder, the attorneys for amicus curiae ACLU, at 901 Fifth Avenue, Suite 630, Seattle, WA 98164, containing a copy of the State's Answer to Brief of Amici, in STATE V. CHEN, Cause No. 87350-0, in the Supreme Court, for the State of Washington.

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Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Cindy Arends and Travis Stearns, the attorneys for amicus curiae Washington Defender Association, at 110 Prefontaine Place S., Suite 610, Seattle, WA 98104, containing a copy of the State's Answer to Brief of Amici, in STATE V. CHEN, Cause No. 87350-0, in the Supreme Court, for the State of Washington.

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

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Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Suzanne Lee Elliott, the attorney for amicus curiae Washington Association of Criminal Defense Lawyers, at 705 2nd Ave., Suite 1300, Seattle, WA 98104-1797, containing a copy of the State's Answer to Brief of Amici, in STATE V. CHEN, Cause No. 87350-0, in the Supreme Court, for the State of Washington.

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U Brame
Name
Done in Seattle, Washington

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Date

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Heather McKimmie, the attorney for amicus curiae Disability Rights Washington, at 315 5th Avenue S., Suite 850, Seattle, WA 98104, containing a copy of the State's Answer to Brief of Amici, in STATE V. CHEN, Cause No. 87350-0, in the Supreme Court, for the State of Washington.

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

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