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NO. 101093-1

SUPREME COURT OF THE STATE OF WASHINGTON

FREEDOM FOUNDATION,

Petitioner,

v.

WASHINGTON FEDERATION OF STATE EMPLOYEES, et al.,
and STATE OF WASHINGTON, et al.,

Respondents.

**STATE RESPONDENTS' ANSWER TO
PETITION FOR REVIEW**

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I. INTRODUCTION

State Respondents are committed to honoring the Public Records Act's broad mandate favoring disclosure while also protecting the rights of public employees. This case presents an intersection of, on the one hand, the public interest in disclosure of public records and, on the other hand, the scope of the constitutional rights of state employees and the public policy of protecting survivors from domestic violence. The Court of Appeals articulated a framework to balance these competing interests.

While this case undeniably involves questions of constitutional law and issues of public interest, State Respondents take no position as to whether the specific issues in this case are sufficiently "significant" or "substantial" to satisfy RAP 13.4(b), and, if so, whether this Court should exercise its discretion to grant review. However this Court proceeds, State Respondents remain prepared to release the requested records if the injunction is lifted or if otherwise directed to do so by this Court.

II. ISSUES PRESENTED FOR REVIEW

A. Whether public employees who are survivors, or whose immediate family members are survivors, of domestic violence, sexual assault, stalking, or harassment, have a substantive due process right to personal security and bodily integrity pursuant to article I, section 3 of the Washington Constitution and the Fourteenth Amendment to the United States Constitution.

B. Whether survivors' substantive due process right to personal security and bodily integrity precludes the State from disclosing certain employee information in response to a public record request, when such disclosure presents a substantial likelihood that the employee's physical safety or the safety of that employee's family member would be in danger.

III. STATEMENT OF THE CASE

In November 2019, the Freedom Foundation (the Foundation) sent public record requests to various state and local public entities, including the Office of Financial Management (OFM), the Department of Retirement Systems (DRS), and other state agencies (collectively, State Respondents). *Washington Fed. of State Emp., Council, 28 (WFSE) v. State*, 511 P.3d 119, 125-26 (2022); CP 13, 16. The Foundation requested several pieces of information about public employees, including full name, full birthdate, job title, work e-mail address, employer, and

duty station location/address. *Id.* OFM, DRS, and other State Respondents that received similar requests for information provided notice to affected employees of the intention to release the requested records unless enjoined. CP 1-23, 143. Thereafter, several labor organizations (the Unions) filed a Complaint for Declaratory and Injunctive Relief, asserting that the release of the requested information would violate the constitutional rights of survivors of domestic violence, stalking, and sexual assault, making the requested information exempt under RCW 42.56.070(1). *WFSE*, 511 P.3d at 126; CP 1-23.

The Unions obtained an initial temporary restraining order and then a preliminary injunction. *WFSE*, 511 P.3d at 126. The preliminary injunction included a finding that the Unions, State Respondents, and local public entities needed time to identify public employees who were entitled to protection from the release of their information, referred to as “protected employees.” CP 528-29.

Over the next several months, the Foundation sent public record requests seeking the same information covered by the preliminary injunction to hundreds more public entities not yet parties to the litigation. *WFSE*, 511 P.3d at 126. The Unions filed amended complaints adding more unions as plaintiffs and additional named defendants, and the trial court extended the preliminary injunction to cover them. *Id.*

As the litigation progressed, the Unions and public entities worked to identify “protected employees” through the process put in place by the trial court in its Order Granting Preliminary Injunction (Order). *See* CP 525-31. The Order listed specific documentation¹, such as police reports, court orders, and written statements that would identify survivors as “protected employees.” CP 529-30. State Respondents provided status reports to the trial court listing the number of “protected

¹ The trial court’s Order reflects language found in the Domestic Violence Leave Act, specifically RCW 49.76.040(4).

employees” identified in each state agency. CP 1869-91, 4788-812, 4908-29, 5474-94, 5512-32.

Once the process of identifying “protected employees” was complete, the Unions moved for summary judgment and a permanent injunction, both of which the trial court granted. *WFSE*, 511 P.3d at 127; CP 5580-614, 6395-401, 6504-511. The trial court concluded that the disclosure of names, birthdates, bargaining unit indicator, duty station/location and work e-mail of survivors would violate their constitutional rights and RCW 42.56.070(1), and permanently enjoined disclosure of this information for survivors. *WFSE*, 511 P.3d at 127.

The Foundation appealed the preliminary injunction, the orders extending the preliminary injunction, the order granting summary judgment, and the permanent injunction. *Id.*

The Court of Appeals rejected the Foundation’s contention that no public employee has a constitutional right to prevent the State from disclosing the requested information under the Public Records Act (PRA), holding that “public employees who are

survivors, or whose immediate family members are survivors, of domestic violence, sexual assault, stalking, or harassment have a substantive due process right to personal security and bodily integrity.” *Id.* at 125.

Noting that the PRA yields to constitutional mandates, the Court of Appeals found that survivors’ constitutional right to personal security and bodily integrity under article I, section 3 of the Washington Constitution precluded the State from disclosing information about their employment and location “when doing so presents a substantial likelihood that that the employee’s physical safety or the safety of that employee’s family member would be in danger.” *Id.* at 125, 128-30.

The Court of Appeals explained that a “right to privacy arising under article I, section 7 of the Washington Constitution,” was not at issue because the Unions were seeking “to protect the lives or physical safety of their members, not their right to keep information private.” *Id.* at 129.

The Court of Appeals reversed the trial court’s summary judgment and permanent injunction, remanding for proceedings consistent with its opinion. *Id.* at 134. The Court of Appeals also ordered the trial court’s preliminary injunction remain in effect until “the trial court resolves any outstanding factual or legal issues, or rules otherwise.” *Id.*

The Foundation’s Petition for Review followed.

IV. ARGUMENT

This case undeniably involves a constitutional question related to the scope and applicability of substantive due process guarantees. This case also implicates the strong public policy in favor of disclosure of public records, *see* RCW 42.56.030, and Washington’s “clear public policy of protecting domestic violence survivors and their children.” *Danny v. Laidlaw Transit Servs., Inc.*, 165 Wn.2d 200, 221, 193 P.3d 128 (2008).

State Respondents find no conflict between the decision below and a decision of this Court or a published decision of the Court of Appeals, but take no position as to whether review is

warranted under RAP 13.4(b). Should this Court accept review, State Respondents may exercise their option under RAP 13.7 to file a supplemental brief on the merits. However this Court proceeds, State Respondents remain prepared to release the requested records if the injunction is lifted or if otherwise directed to do so by this Court.

V. CONCLUSION

State Respondents do not take a position as to whether this Court should accept review of the Court of Appeals' decision. Should this Court accept review, State Respondents may exercise their option to file a supplemental brief on the merits. State Respondents remain prepared to produce the requested records if the injunction is lifted or if otherwise directed to do so by this Court.

VI. CERTIFICATE OF COMPLIANCE

This document contains 1202 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 26th day of
August, 2022.

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