No. **48601-6-I**

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STEVE VERMILLION AND
THE CITY OF PUYALLUP,
appellants,

v.

ARTHUR WEST,
respondent

RESPONDENT'S REPLY BRIEF IN OPPOSITION TO DISCRETIONARY REVIEW

ARTHUR WEST
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I Introduction – Review is not warranted under RAP 13.2

This is an action for disclosure of public records concerning the governance of the City of Puyallup produced by former Puyallup City Council member Steve Vermillion within the scope of his employment as an elected municipal official.

Despite the circumstance that the clear and explicit terms of this Court's ruling in Nissen and the more recent published decision of Division II of the Court of Appeals both addressed 1st Amendment "c*onstitutional privacy interests",* the appellants somehow attempt to assert that...

> "This Court did not address First Amendment rights in *Nissen v. Pierce County*, 183 Wash.2d 863, 357 P.3d 45 (2015)". (See Appellants' Petition at page 3)

The City and Mr. Vermillion further claim that the decisions in both Nissen and Vermillion authorize illegal warrantless "*seizures*" and have a "*significant chilling effect on the First Amendment rights of every public official in the State*". Appellants' claims of conflict with existing precedent are unclear, but appear to be limited to Nissen and Nixon v. Administrator of General Services, 433 U.S. 425 (1977).

Yet it is apparent from the text of the November 8, 2017 Opinion in Vermillion that the Court of Appeals carefully considered Nissen, Nixon and the 1st Amendment, and issued an opinion that was not only well reasoned but consistent with both established precedent as well as the

penumbra of constitutional personal privacy recognized by this Court in Nissen as flowing from the 1st and 4th Amendments and Article 1 section 16 of the Constitution of the State of Washington.

Thus, rather than being well taken, the City's arguments are the product of profound confusion and a series of fundamental misunderstandings. Appellants are confused: as to what Constitutional privacy interests are to begin with, as to what type of speech the 1st Amendment is intended to foster, as to the compelling public interest in the sound governance of a free society, as to what is required to demonstrate a substantial burden in relation to nondiscriminatory post-communication disclosure, as to the narrowly tailored un-intrusive self review process devised by this court, and, apparently, even as to what branch of government is responsible for re-writing the law or legislating under the limitations imposed by the separation of powers doctrine.

Contrary to the City's claims, both the Court of Appeals and this Court addressed penumbral 1st and 4th Amendment rights in their "constitutional privacy interests" analyses, and produced well reasoned decisions in accord with both the Constitution and the Public Records Act.

The 1st Amendment is not, as the appellants claim, primarily directed at fostering secrecy, but is designed, at its core, to ensure that public debate on governmental issues be "uninhibited, robust, and wide open", an intent incompatible with appellants' overblown view of privacy.

Disclosure under the Public Records Act promotes a compelling public interest in a number of fundamental democratic principles, which the intent section of the law declares to be indispensable to "*the sound governance of a free society*". Nondiscriminatory post-communication disclosure requirements, absent extraordinary circumstances, do not suppress or impose any substantial burden on speech to the extent that they overcome this compelling interest.

Most importantly, the self-review and disclosure process devised by this Court was carefully designed and narrowly tailored to be as minimally intrusive as possible to harmonize disclosure of public records with any incidental minimal intrusion upon private interests necessary to effectuate the intent of the people in enacting the Public Records Act.

Finally, the appellant's concluding argument, that the legislature must fix the PRA evinces a partisan legislative agenda that should be argued before the Legislature, not the Judiciary.

The appellants refuse to accept the plain and explicit language of both the Supreme Court in Nissen and Division II of the Court of Appeals in Vermillion that addressed 1st and 4th Amendment "constitutional privacy interests" in the context of post-communication disclosure of officials' public records and approved a scope of employment standard and a self review and examination procedure that, while perhaps not perfect, are reasonable and meet any possible form of rational constitutional muster.

While the City and former Puyallup City Council member Vermillion attempt to assert a number of complicated constitutional claims, these officious and overly technical arguments ignore the basic reality that..

> To begin with, even many of the most fundamental maxims of our First Amendment jurisprudence cannot reasonably be applied to speech by government employees. Waters v. Churchill, 511 U.S. 661 (1994)

Further, as the Supreme Court of the United States has recognized, in Garcetti v. Ceballos, 547 U.S. 410 (2006),

> When a citizen enters government service, the citizen by necessity must accept certain limitations on his or her freedom. See, *e. g., Waters* v. *Churchill,* 511 U. S. 661, 671 (1994)

This Court ruled in accord with these principles when, in Nissen, it similarly refused "to read the PRA as a zero-sum choice between personal liberty and government accountability."

The public interest in disclosure of the peoples' business under the PRA and the open debate on issues of public importance that the 1st Amendment is intended to promote are substantial and compelling interests. Any incidental burden imposed by this interest upon public officials in the context of the self-review and disclosure of a public official's scope of employment public records is so attenuated, de minimus and indirect that there is, absent clear evidence of a potential for threats, harassment or reprisals, no basis for the type of backhanded constitutional

challenge that the appellants, without the required notice to the Attorney General, attempt to assert.

Appellants have not demonstrated any basis for review under RAP 13.2, or any other theory, and their second attempt to secure discretionary review in the Supreme Court should be rejected.

A. Appellants fail or refuse to recognize that the unanimous decision of this Court in Nissen acknowledged and addressed 1st and 4th Amendment rights under the rubric of "constitutional privacy rights"

It is emblematic of defendants arguments that they refuse to recognize that both the Supreme Court and the Court of Appeals expressly addressed the 1st Amendment issues that they claim were ignored.

Contrary to appellants' mistaken belief, this Court in Nissen implicitly recognized 1st Amendment claims in its "constitutional privacy" rights analysis.

> Because an individual has no constitutional privacy interest in a *public* record, Lindquist's challenge is necessarily grounded in the constitutional rights he has in personal information commingled with those public records. Nissen, 183 Wn.2d 863, 357 P.3d 45 (2015)

In accord with this Court's ruling in Nissen, the Court of Appeals in Vermillion carefully considered the penumbral constitutional privacy rights emanating from the 1st Amendment.

> We hold that (1) the language of the *Nissen* holding is not limited to the constitutional principles explicitly expressed by the *Nissen* court, (2) the *Nissen* opinion

> shows the court was mindful of the First Amendment's associational privacy rights, and (3) even if individual constitutional protections could prevent disclosure of public records, the absence of specificity as to the particular records claimed to be protected here would render any opinion as to those records similarly vague and wholly advisory. See West v. Vermillion (2016)

As such, the gravamen of the defendants argument, that significant 1st Amendment issues remain unresolved, is simply incorrect. This false impression on the part of the appellants may stem from a basic misunderstanding of what the "constitutional privacy interests" described by this Court actually encompassed, in light of the basic constitutional principle that Justice Douglas first enunciated over a half century ago...

> (T)he First Amendment has a penumbra where privacy is protected from governmental intrusion. ... specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance. Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. Griswold v. Connecticut, 381 U.S. 479 (1965)

Quite possibly, appellants' belief that "constitutional privacy interests" do not encompass the 1st Amendment, which was, therefore, not properly considered or addressed, is more a result of basic lack of understanding of constitutional law than any defect in this Court's analysis.

Far from ignoring these penumbral privacy interests, the Nissen and Vermilion Courts carefully considered them and embraced a reasonable narrowly tailored mechanism to resolve all of the competing interests in accord with both penumbral constitutional privacy interests

under the 1st Amendment and "the people's mandate to have "full access to information concerning the conduct of government on every level."

As this Court concluded in Nissen...

> ***The PRA allows a trial court to resolve disputes*** about the nature of a record "based solely on affidavits," RCW 42.56.550(3), without an in camera review, without searching for records itself, and ***without infringing on an individual's constitutional privacy interest*** in private information he or she keeps at work. See Nissen, (emphasis added)

The City of Puyallup and and former Puyallup City Council member Vermillion may disagree with these conclusions of the Court of Appeals and this Court, but it is apparent that their claims that the penumbra of constitutional privacy interests emanating from the 1st Amendment were not considered in Nissen and Vermillion are without even a "shadow" of any legitimate basis.

B. Appellants fail or refuse to recognize that any balancing under the 1st Amendment is intended to promote "uninhibited, robust, and wide open" public debate on public issues, not the secret conduct of government officials such as former Puyallup City Council member Vermillion

Appellants, in their briefing, make reference to privacy interests, balancing and the 1st Amendment, apparently attempting to improperly maintain various forms of constitutional challenge to the PRA as a whole. These arguments attempt to elevate a trifling interest in privacy over the compelling public interest in sound and accountable government, and are based upon a profound misunderstanding the role of the 1st Amendment in

a democratic society, as expressed in the black letter precedent of Fritz v. Gorton, New York Times Co. v. Sullivan, and Doe v. Reed.

Over forty years ago, in Fritz v. Gorton, 83 Wn.2d 275, 517 P.2d 911, (1974) this Court expressed a "balanced" view of privacy and the 1st Amendment in the context of the activities of public officials that required disclosure rather than concealment of information concerning their public functions...

> The right of privacy, as with other rights, is not an absolute. There are inherent limitations of a unique and significant nature regarding any claim to the right of privacy on the part of candidates and incumbent public officials. It seems almost too obvious for argument that the candidate who enters the public arena voluntarily presents or thrusts himself forth as a subject of public interest and scrutiny. While there are many intimate details which may be beyond the scope of legitimate public interest, information which clearly and directly bears upon the qualifications and the fitness of those who seek and hold public office is unquestionably in the public domain. Fritz v. Gorton, 83 Wn.2d 275, at 294-5

Ironically, the appellants' "unbalanced" beliefs concerning 1st Amendment balancing are directly in contrast to the holdings of both Supreme Courts that the 1st Amendment interests of the public to information concerning the conduct of government outweigh, by a wide margin, the competing "private" interest of appellant Vermillion or any other individual that such information be concealed...

> First amendment freedom of the press has been dramatically construed to encourage and protect public discourse regarding the conduct of public officials. In New York Times Co. v. Sullivan, 376 U.S. 254, 11 L.

> Ed. 2d 686, 84 S. Ct. 710, 95 A.L.R.2d 1412 (1964),... "**The interest of the public here outweighs the interest of appellant or any other individual**. The protection of the public requires not merely discussion, but information." (Italics ours.) Fritz, supra, citing New York Times Co. v. Sullivan, at 272. (emphasis added)

In New York Times v. Sullivan The Supreme Court observed that "Those who won our independence believed... that public discussion is a political duty, and that this should be a fundamental principle of the American government... " and further recognized...

> ...a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open,..

The appellants in this case profoundly misunderstand the basic and fundamental requirement of democratic society that underlies both the 1st Amendment and the Public Records Act: that for debate on public issues to be "uninhibited, robust, and wide-open", it is necessary for the people to know what their public officials like Mark Lindquist and Steve Vermillion are doing in the exercise of their governmental authority.

C. Appellants fail or refuse to recognize that, absent a potential for retaliatory threats, harassment, or reprisals, nondiscriminatory post-communication disclosure does not burden speech or association in any substantial manner.

Another critical distinction ignored by the appellants in this case is that any incidental "burden" on private speech inadvertently resulting from the ex post facto public disclosure of "scope of employment" records of a public official that might take place pursuant to Nissen is too minimal

to register in any weighing against the compelling public and governmental interest in the sound governance of a free society.

It is correct that "the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights." Davis v. Federal Election Comm'n, 554 U. S. ___, ___. Pp. 5–7, and those resisting disclosure can prevail under the First Amendment if they can show "a reasonable probability that the compelled disclosure [of personal information] will subject them to threats, harassment, or reprisals from either Government officials or private parties." See John No. 1 v. Reed, 561 U.S. 186, 130 S.Ct. 2811 (2010), (citing Buckley and Citizens United)

However, in the instant case there is no substantial compelled disclosure of personal information involved in self examination and judicial review of scope of employment records, and absolutely no hint of a colorable claim of any possible threats, harassment, or reprisals resulting from such disclosure sufficient to justify the "hypothetical" review sought.

Clearly, the compelling government interest in transparency transcends the "private" rights asserted by the appellants in this case, because, as the Doe Court recognized, the disclosure requirements of the PRA do not punish or prohibit speech, or prevent anyone from speaking...

> Also pertinent to our analysis is the fact that the PRA is not a prohibition on speech, but instead a disclosure requirement. "[D]isclosure requirements may burden the ability to speak, but they . . . do not prevent anyone from speaking." Citizens United v. Federal Election Comm'n, 558 U. S. ___, ___ (2010) (slip op., at 51) (internal

> quotation marks omitted).John Doe No. 1 v. Reed, 561 U.S. 186, 130 S.Ct. 2811 (2010)

Absent any real potential for the type of significant threats, harassment, or retaliatory conduct the plaintiffs attempted to establish in Doe, nondiscriminatory post-communication disclosure requirements simpy do not substantially burden speech or create any type of a chilling effect, especially when the individual is the original arbiter of disclosure

Justice Stevens, in his concurrence in Doe, observed...

> As a matter of law, the Court is correct to keep open the possibility that in particular instances in which a policy such as the PRA burdens expression "by the public enmity attending publicity," Brown v. Socialist Workers '74 Campaign Comm. (Ohio), 459 U. S. 87, 98 (1982), speakers may have a winning constitutional claim. "'[F]rom time to time throughout history,'" persecuted groups have been able "'to criticize oppressive practices and laws either anonymously or not at all.'"... In my view, this is unlikely to occur in cases involving the PRA. **Any burden on speech that petitioners posit is speculative as well as indirect. For an as applied challenge to a law such as the PRA to succeed, there would have to be a significant threat of harassment**...that cannot be mitigated by law enforcement measures. Doe v. Reed, Stevens, concurring, (emphasis added)

Similarly, the majority Opinion in Doe concluded...

> Faced with the State's unrebutted arguments that only modest burdens attend the disclosure of a typical petition, we must reject plaintiffs' broad challenge to the PRA. John Doe No. 1 v. Reed, 561 U.S. 186, 130 S.Ct. 2811 (2010)

Niether the City nor Puyallup Council Member Vermillion has asserted that even a modest burden would attend Vermillion's own review and

the subsequent disclosure under the PRA of the public records he produced within the scope of his employment as a public officer.

Council Member Vermillion has not alleged that he was a member of the communist party, engaged in a highly contentious debate over who should enjoy the privileges of connubium or discussions advocating the violent overthrow of the United States, or any other highly objectionable subjects that could be expected to lead to threats, violence or reprisals.

Therefore, absent any showing sufficient to require any serious weighing of a substantial burden on speech or assembly having been made, the appellants' challenge must fail, and the "hypothetical" issues they attempt to develop are simply far too indirect, attenuated and speculative to support any form of serious or adequate review.

Under these circumstances, there is and can be no colorable claim of any substantial burden on speech or assembly or any potential illegal "seizure" or "chilling effect" resulting from the operation of the narrowly tailored mechanism for self review developed by this Court in Nissen.

D. Appellants fail or refuse to recognize that the gravity of the evils that the PRA seeks to prevent more than justify any possible de minimus intrusion into constitutional privacy interests from a narrowly tailored non-intrusive self-review process that, by design, does not authorize unreasonable seizures or invasion of constitutional privacy rights.....

For over forty years, the Public Records Act has been seen as furthering a compelling interest in open and accountable government, an interest recognized as essential to the fundamental necessity of the preservation of democratic institutions and the people's sovereignty.

One purpose of the PDA is to "ensure the sovereignty of the people and the accountability of the governmental agencies that serve them" by providing full access to information concerning the conduct of government." Amren v. City of Kalama, 131 Wash.2d 15, 31, 929 P.2d 389 (1997):

In Nissen, this Court recognized that...

> If the PRA did not capture records individual employees prepare, own, use, or retain in the course of their jobs, the public would be without information about much of the daily operation of government. Such a result would be an affront to the core policy underpinning the PRA — the public's right to a transparent government. That policy, itself embodied in the statutory text, guides our interpretation of the PRA. (Nissen, citations omitted)

Similarly, in Doe v. Reed, the federal Supreme Court, in conformity with these fundamental principles, rejected, by an 8-1 majority, a 1st Amendment challenge to the Washington State Public Records Act, holding that...

> Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot. In light of the foregoing, we reject plaintiffs' argument and conclude that public disclosure of referendum petitions in general is substantially related to the important interest of preserving the integrity of the electoral process. Doe, v. Reed, 561 U.S. 186, 130 S.Ct. 2811 (2010)

It would be irrational to conclude that the public interest in transparency and accountability ceases when a public official is elected. If

anything, these interests are more compelling in regard to an elected official exercising the duties of public office than a candidate for office.

The arguments of the appellants in this case attempt to make a simple matter overly complex, and deny the basic realities of the just exercise of the powers of democratic government and of responsible public service in deference to their profoundly jaundiced view of "privacy".

Appellants also fail to acknowledge that previous, nearly identical constitutional challenges to similar requirements for disclosure under the Public Records Act have been repeatedly upheld for over 40 years.

In 1974, the Supreme Court addressed the first constitutional challenge to the (then entitled) Public Disclosure Act, soundly rejecting many of the same arguments the defendants in this case attempt to assert again, over 40 years later. Significantly, the Fritz Court ruled...

> The constitutional safeguards which shield and protect the communicator, perhaps more importantly also assure the public the right to receive information in an open society. Time, Inc. v. Hill, 385 U.S. 374, 17 L. Ed. 2d 456, 87 S. Ct. 534 (1967). Freedom of speech without the corollary freedom to receive would seriously discount the intendment, purpose and effect of the First Amendment. Fritz v. Gorton, 83 Wn.2d 275 , 517 P.2d 911 (1974)

More specifically, the Court in Fritz concluded that...

> Irrespective of how ill advised we or others may think some portions of section 24 may be, it is within the power of the people to prescribe informational standards or disclosure qualifications relative to public office.

Similarly, the federal Supreme Court, in Doe v. Reed, 561 U.S. 186 (2010), more recently upheld the disclosure of signatures on initiative petitions under the PRA in response to a 1st Amendment challenge, finding that such disclosure requirements, which do not directly obstruct or suppress speech, are subject to intermediate scrutiny, which requires only "a 'substantial relation' between the disclosure requirement and a 'sufficiently important' government interest."

In Doe, the "burden" on 1st Amendment expression was the alleged potential for harassment, threats, and reprisals, stemming from historic retaliatory conduct in California, in the context of the contentious and highly charged atmosphere of the extra-heterosexual marriage furor.

Significantly, the Doe decision and the concurring opinions support a reasonable balancing fatal to the claims of the City in this case

> In circumstances where, as here, "a law significantly implicates competing constitutionally protected interests in complex ways," the Court balances interests. Nixon v. Shrink Missouri Government PAC, 528 U. S. 377, 402 (2000) (BREYER, J., concurring). "And in practice that has meant asking whether the statute burdens any one such interest in a manner out of proportion to the statute's salutary effects upon the others." Ibid. As I read their opinions, this is what both the Court and JUSTICE STEVENS do. See ante, at 7 (opinion of the Court); post, at 2 (STEVENS, J., concurring in part and concurring in judgment). Doe v. Reed, 561 U.S. 186 (2010) Justice Breyer, concurring.

This reasonable balancing, dating back to the determination of Learned Hand in Dennis v. United States, 341 U.S. 494 (1951) is the

anathema to the worldview of the defendants who believe, like the sophists before them, that man (or in this case Vermillion) is the measure of all things, and that the 1st Amendment interests of the entire Polis must bow before one man's improperly commingled public-private interests.

Justice Sotomayor's concurrence also, when impartially evaluated, has little support for Mr. Vermillion's concept of secret government

> ("[T]ransparency enables the electorate to make informed decisions and give proper weight to different speakers and messages")... In a society "in which the citizenry is the final judge of the proper conduct of public business," openness in the democratic process is of "critical importance." Cox Broadcasting Corp. v. Cohn, 420 U. S. 469, 495 (1975); see also post, at 4 (SCALIA, J., concurring in judgment) (noting that "[t]he public nature of federal lawmaking is constitutionally required"). On the other side of the ledger, I view the burden of public disclosure on speech and associational rights as minimal in this context. As this Court has observed with respect to campaign-finance regulations, "disclosure requirements . . . 'do not prevent anyone from speaking.' Doe v. Reed, Justice Sotomayor, concurring

Perhaps Justice Scalia's concurrence best expressed the inherently open nature of our political system..

> Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed. For my part, I do not look forward to a society which, ..., campaigns anonymously...and even exercises the direct democracy of initiative and referendum hidden from public scrutiny and protected from the accountability of criticism. This does not resemble the Home of the Brave. Doe v. Reed, Justice Scalia, concurring

Perhaps the reason appellants failed to address the decision in Doe in their petition is that it is fatal to their fanciful constitutional claims in this case. Their case is even less viable in that, contrary to their claims, both the Supreme Court and Court of Appeals in this State have also rejected these same 1st Amendment claims they now seek to re-adjudicate.

It is beyond reasonable debate that the disclosure provisions of the Public Records Act are "substantially related" to a number of important government interests, including the fundamental interest in the sound governance of a free society, and thus, as the Court of Appeals recognized, the non-intrusive mechanism approved by the Supreme Court in Nissen for disclosure of public records is reasonable and not subject to a constitutional attack as violative of any 1st or 4th Amendment rights.

The appellants also fail to recognize that the self review procedure established by this Court is as narrowly tailored and non intrusive as possible without rendering the PRA ineffectual and meaningless.

> (T)he public's statutory right to public records does not extinguish an individual's constitutional rights in private information. But we do not read the PRA as a zero-sum choice between personal liberty and government accountability. Instead, we turn to well-settled principles of public disclosure law and hold that an employee's good-faith search for public records on his or her personal device can satisfy an agency's obligations under the PRA. Nissen, at 195

In Nissen, This Court defined this good faith search as follows:

> The PRA allows a trial court to resolve disputes about the nature of a record "based solely on affidavits," RCW

> 42.56.550(3), without an in camera review, without searching for records itself, and without infringing on an individual's constitutional privacy interest in private information he or she keeps at work.
> Where an employee withholds personal records from the employer, he or she must submit an affidavit with facts sufficient to show the information is not a "public record" under the PRA... When done in good faith, this procedure allows an agency to fulfill its responsibility to search for and disclose public records without unnecessarily treading on the constitutional rights of its employees. See Nissen, at 197

The procedure developed by this Court is reasonable and narrowly tailored to be as non-intrusive as possible, yet still effectuate the PRA. Such a minimally intrusive procedure satisfies the Nixon standard and does not constitute an unreasonable search or seizure or invasion of any constitutional right that is fairly protected under the 1st or 4th Amendments or Article 1 section 16 of the Constitution of the State of Washington.

Contrary to the appellant's claims, this type of minimal and necessary "intrusion" does not impermissibly burden any penumbral 1st or 4th Amendment constitutional privacy right held by public officials.

F. Appellants fail or refuse to recognize that their legislative "reform" agenda should be pursued through the legislative process, not in the judicial arena

Finally, the appellants' legislative agenda is wholly out of place in a proceeding before the Judiciary, and demonstrates that, far from seeking a judicial interpretation of existing law, they are attempting to employ the Judiciary to indirectly further their legislative agenda of re-writing the Public Records Act in a manner that they alone believe is an improvement.

The City and Mr. Vermillion, to the extent they may have any legitimate legislative agenda to pursue, should be directed to address these concerns to the proper forum, which, of course, is not this Court.

CONCLUSION

The primary rights we should be concerned with in this case are those of the public to open, accountable, and transparent government in a democratic society. Public servants like former Puyallup City Council Member Vermillion and Pierce County Prosecutor Mark Lindquist are not above the law, but, like the rest of us, are subject to reasonable and necessary requirements attendant upon citizenship in a democratic society.

If constituents and political supporters could communicate covertly with their elected representatives to conduct the public's business, political corruption, ward healing, violations of the Appearance of Fairness Doctrine and, more significantly, violations of the Open Public Meetings Act like those actually perpetrated by appellant Vermillion and the Puyallup City Council would go unknown and undetected.

Development projects could be pre-approved for favored political contributors, bribes could be secretly tendered, votes could be gerrymandered, and City resources could be misdirected to the benefit of political supporters instead of the general public, all without any fear of discovery.

Under such circumstances, the corrupt practices of Huey Long in Louisiana and Boss Tweed in Tammany Hall would be the model for elected officials in the State of Washington under the appellant's expansive view of absolute freedom of speech and association, even when such "freedom" is employed by the peoples' public servants for manifestly corrupt and improper purposes. Yet the Constitution is not a "suicide pact" of the type that would, to the detriment of all other concerns, authorize such serious misconduct under the dubious guise of absolute freedom of "private" speech.

As the Supreme Court recognized in John Doe No. 1 v. Reed, 561 U.S. 186, 130 S.Ct. 2811 (2010), in upholding the PRA against a personal privacy and 1st Amendment based challenge, the State has a compelling interest in preventing fraud and in the integrity of elected officials.

Any intrusion into a competing interest of former Puyallup City Council member Vermillion that might result from the review process carefully tailored by this Court to be as non-intrusive as possible while still effectuating the PRA is so attenuated, insubstantial and hypothetical that there is no basis for any further constitutional review by this Court.

The appellants' latest attempt to seek review should be denied and this case returned to the Superior Court for further proceedings.

Respectfully submitted this 23rd day of January, 2017.

s/Arthur West
ARTHUR WEST

CERTIFICATE OF SERVICE

I, Arthur West, hereby certify that I served a copy of the foregoing Brief of Respondent, by Email with backup by regular U.S. Mail on or before January 23, 2017, to the following counsel of record at the following addresses:

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Dated this 23rd day of January, 2017.

s/Arthur West
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