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No. 85665-6
IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

MATTHEW H. RICHARDSON,

Respondent,

v.

MIKE SIEGEL,

Intervenor/Appellant.

PETITIONER
REPLY BRIEF OF ~~APPELLANT~~

Michele Earl-Hubbard
Attorneys for Appellant/Intervenor
Mike Siegel

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I. LEGAL AUTHORITY AND ARGUMENT

Respondent State of Washington timely filed its Brief of Respondent. Respondent Matthew Richardson has filed no such brief. Appellant Intervenor Mike Siegel finds little with which to disagree with the Respondent's Brief of the State and will focus his argument on those limited areas of disagreement to avoid repetition of arguments already made.

The State appears to agree with Siegel that intervenor's in closed cases should be allowed to appeal as a matter of right a denial of a motion to unseal court records. The State suggests only discretionary review should be allowed to intervenors in active cases, but does not define what it means by an "active" case. Siegel disagrees with the contention that the public should be denied an appeal as a matter of right of a denial of access to court records or proceedings, in either criminal or civil cases, while a case is ongoing or on appeal. In the recent case of **Yakima County v. Yakima Herald-Republic Herald Republic v. Yakima County** this Court approved the intervention and challenge to a denial of access to court records while a criminal matter was on appeal without need of permission from the appellate court. 170 Wn.2d 775, 801, 246 P.3d 768 (2011). In the same case this Court overruled earlier precedence declaring that the public may intervene into a criminal case to seek access to court

records. 170 Wn.2d at 801. As argued in the Brief of Appellant, courts across the country, including this Court, recognize the importance of the appellate review for the public's right to challenge court access denials. Brief of Appellant at 42-44. Relegating an intervenor's action to oppose closure of court proceedings or records to only an appeal as a matter of discretionary review makes it much less likely review will be granted and if granted that it will be successful. In cases such as here, where the case is over except for the issue of access to records, there will be no appeal as a matter of right by an intervenor, as there will never be a final judgment intervenor may appeal other than his or her ruling related to access. The same is true for intervenors challenging closures and sealings during cases that are still "active" in the trial court or on appeal. Absent a clear statement that intervenors may appeal as a matter of right any denial of access, the matters might never be able to be appealed, and if appealed at the conclusion of a case, access will be years into the future.

As Justice Blackmun recognized in his concurring and dissenting opinion in Gannett Co., Inc. v. DePasquale, one of the early decisions regarding the right of access to court proceedings and records:

The Court suggests that the public's interest will be served adequately by permitting delayed access to the transcript of the closed proceeding once the danger to the accused's fair-trial right has dissipated. A transcript, however, does not always adequately substitute for presence at the proceeding

itself. Also, the inherent delay may defeat the purpose of the public-trial requirement. Later events may crowd news of yesterday's proceeding out of the public view. "As a practical matter . . . the element of time is not unimportant if press coverage is to fulfill its traditional function of bringing news to the public promptly." Nebraska Press Assn. v. Stuart, 427 U.S., at 561, 96 S.Ct., at 2803. Public access is restricted precisely at the time when public interest is at its height. Bridges v. California, 314 U.S. 252, 268, 62 S.Ct. 190, 196, 86 L.Ed. 192 (1941). Moreover, an important event, such as a judicial election or the selection of a prosecuting attorney, may occur when the public is ignorant of the details of judicial and prosecutorial conduct. Finally, although a record is kept for later release, when the proceeding itself is kept secret, it is impossible to know what it would have been like had the pressure of publicity been brought to bear on the parties during the proceeding itself.

443 U.S. 368, 442 n. 17, 99 S.Ct. 2898, 2937 (1979). (Blackmun, J., concurrence/dissent).

In Washington State, we should not leave the public locked out of illegally closed proceedings or denied access to illegally sealed records to wait for eventual appeals when a case concludes or unlikely discretionary interlocutory reviews. We should not force the public to accept the poor substitute of a transcript of a proceeding they were forbidden to observe or to wait years, or as here decades, for access to records. This Court should take this opportunity to state once and for all that intervenors may appeal as a matter of right a denial of access to court records and proceedings and not wait for a case to conclude or gamble on gaining discretionary review.

Respectfully submitted this 11th day July, 2012.



Attorneys for Appellant Mike Siegel.

By *Michele L. Earl-Hubbard*

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on July 11, 2012, I delivered a copy of the foregoing Brief of Appellant to:

Matthew Richardson,
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Sumner, WA 98390
Via U.S. Mail

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Via email per agreement and U.S. Mail

Dated this 11th day of July, 2012, at Seattle, Washington.



Michele Earl-Hubbard

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Attached for filing is the Reply Brief of Appellant dated July 11, 2012 and certificate of service for filing in State v. Richardson, Case # 85665-6. The attorney filing this document is Michele Earl-Hubbard, WSBA # 26454, email Michele@alliedlawgroup.com

Michele Earl-Hubbard of Allied Law Group remains as counsel for Appellant.

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