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NO. 86410-1

SUPREME COURT OF WASHINGTON

FRANKLIN COUNTY, et al
Appellants

vs

ALLAN PARMELEE
Respondent

REPLY TO MOTION TO STRIKE AND ANSWER
TO PETITION FOR REVIEW

Allan Parmelee
WSP 793782
Pro Se Petitioner-Respondent
1313 N. 13th Ave
Walla Walla WA 99362

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I - INTRODUCTION:

Allan Parmelee replies to Franklin County's motion to strike and answer to petition for review in this public records act case, and urges this court to deny Franklin County's motion and petition arguments.

II - ISSUES PRESENTED IN REPLY:

1. Handwritten briefs by pro se litigants must be construed liberally to do substantial justice under RAP 1.2 and RAP 18.8

2. Franklin County's retroactivity argument fails to consider RCW 42.56.565 is in itself a new exemption, thus a prior vested right recognized by Dragonslayer and Burt v. DOC

3. Franklin County fails to identify "multiple courts" where any final disposition exists into the constitutionality of RCW 42.56.565.

III - ARGUMENT:

1. Parmelee's pro se handwritten brief should not be stricken, but liberally construed to do substantial justice under RAP 1.2 and RAP 18.8, and Franklin County cannot show prejudice.

Franklin County motions the court in their response

to strike Parmelee's 20-page handwritten petition for review, claiming they are prejudiced. Yet, their own response fails to explain "how" they are prejudiced and they only used 17 of the 20 pages permitted under RAP 13.4(f). Their motion should be denied.

Parmelee's "prison paper" supplied by the Dept of Corrections ("DOC") is as presented here. Typewriters and computers with laser printers are not allowed under the present circumstances necessary to meet both the court's deadlines nor RAP 13.4(e)/RAP 10.4(a)(1)&(2), leaving Franklin County's argument questionable at best. No means exists to type in 12-point font of any style, nor measure spaces or margins. As a result, pro se briefs must be liberally construed to do substantial justice consistent with RAP 1.2 and RAP 18.8(a). Fuller v. Dept of Employment Secy, 52 Wn. App. 603, 605, 762 P.2d 367 (1998) (pro se briefs are to be treated with a relaxed pleading standard under RAP 2.1 where nature of challenge is clear and set forth in brief); Maleng v. Cook, 490 U.S. 488, 493, 109 S.Ct. 1923, 104 L.Ed.2d 540 (1989) (liberal pleading standard applicable to pro se briefs); Erickson v. Pardus, 551 U.S. 89 (2007) (similar).

If Parmelee were to only use every other space on the DOC provided lined paper as Franklin County suggests, when compared to their brief, would equate to about 3½-12-point spacing, which would significantly prejudice Parmelee to forfeit that space because his petition used all 20- allowable pages under RAP 13.4(f). Franklin County's use of only 17-pages

in their response disproves their prejudice claim. Furthermore, even though Parmelee's writing is larger than the prescribed 12-points per RAP 10.4 (a)(2), and not any of the designated type face fonts, the line spacing is as close to the designated double spaced - 12-point scale - as Parmelee can get. Franklin County's motion in this regard should be denied.

2. <u>Because RCW 42.56.565 Is A New Exemption, Not A New Procedure, It Involves Previously Vested Rights And Cannot Be Retroactive.</u>

Franklin County raises the issue that RCW 42.56.565 is only a procedural statute, not a new exemption statute, thus <u>Dragonslayer v. Washington State Gambling Comm'n.</u>, 139 Wn. App. 433, 161 P.3d 428 (2007) does not apply. They also allude that essentially no "rights" exist, State created or otherwise, in the existing or former PRA (Public Records Act, RCW 42.56) statutes, and this courts ruling in <u>Burt v. DOC</u>, 141 Wn. App. 573, 170 P.3d 608 (2007), <u>reversed</u>, 168 Wn.2d 828, 231 P.3d 191 (2010) would mean that an affected party to PRA requests, has no standing to require a legal proceeding and due process before being deprived of public records requested, not statutorily otherwise exempt. This would make both the PRA and due process empty hollow promises.

The new PRA statute, RCW 42.56.565 is all that RCW 42.56.540 is not and cannot do. It is an exemption unto itself, not just a procedural tool requiring

an exemption be identified elsewhere like .540 requires. Therefore, it does affect vested rights.

It also affects vested rights such as its ability in RCW 42.56.565 to rely on such agency claims as a person's journalistic, protected free speech and other lawful rights to deny the records requestor public records. In both DeLong v. Parmelee, 157 Wn. App. 119, 128-131, 236 P.3d 936 (2010) reversed for reconsideration, Wn.2d (2011) and King County Jail v. Parmelee, 162 Wn. App. 337, 254 P.3d 927 (2011) (on review before Supreme Ct. # 86658-9) for example they did just that: Relied on constitutionally protected speech and conduct to form reasoning to deny Parmelee public records. They both even cited to the Language Parmelee was punished for by the DOC for complaining of DOC staff sexually harassing prisoners this court also held was presumably unconstitutional in Parmelee v. O'Neel, 145 Wn. App. 223, 186 P.3d 1094 (2008) reversed in part, 168 Wn.2d 515, 229 P.3d 723 (2010). As a result, the new PRA statute does affect vested rights, requiring significant self-censorship of protected speech and actions to avoid the exposure of an RCW 42.56.565 injunction. Many types of vested rights are now affected by the new PRA statute, illustrating it cannot be presumed retroactive.

3. Franklin County Fails To Identify The "multiple Courts" Where RCW 42.56.565 Was Found Constitutional or Controlling on This Court.

Franklin County has claimed that the constitutionality of

RCW 42.56.565 has been "rejected by 'multiple courts'" against constitutional attacks, yet they fail to identify a single final case. Division Two nor Three have ever addressed the question. Division One has once - in King County v. Parmelee, 162 Wn. App. 337, 254 P.3d 927 (2011), however, that case is not final. (see Supreme Ct. # 86658-9).

Despite the fact that public education, welfare, and even police protection are not constitutional rights in themselves. e.g. Cummins v. Lewis County, 156 Wn.2d 844, 133 P.3d 458 (2006) (Police not negligent for refusing to respond to 911 call resulting in death of spouse). However, once a State creates a right by statute such as in earning good time or social security, due process such as this court held in Burt v. DOC, 168 Wn.2d 828 (2010) reveals that a State created vested right now exists. e.g. see Wolff v. McDonnell, 418 U.S. 539, (1974); Mathews v. Eldridge, U.S. (19). The due process Franklin County claims need not exist, and the overbreadth, vagueness and First Amendment deterrent effect RCW 42.56.565 includes, cannot pass constitutional muster and avoid this court's review.

IV - CONCLUSION:

For these reasons and the record, Mr. Parmelee respectfully asks this court to grant review on the issues presented, or in alternative remand for reconsideration by Division Three.

Respectfully submitted on 11/5/11.

Allen Parmelee, Respondent
WSP - 793782
1313 N 13th Ave
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CERTIFICATE OF SERVICE

I, Allen Parmelee, hereby states under oath, penalty of perjury and the laws of Washington State, that in accordance with RAP 18.5 and DOC practice and policy a copy of this pleading was served on the court and all required parties on or before the date below via U.S. mail.

Signed at Walla Walla, WA on 11/8/11. Allen Parmelee

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