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SUPREME COURT OF THE STATE OF WASHINGTON

JOHN DOE A, et al,

Respondents,

v.

WASHINGTON STATE PATROL, et al,

Appellants.

BRIEF OF APPELLANT WASHINGTON STATE PATROL

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I. INTRODUCTION

At issue is whether the Washington State Patrol's (State Patrol) Sex and Kidnapping Offender Registry Database (database) is exempt from public disclosure under the Community Protection Act's community notification regime, RCW 4.24.550. The State Patrol maintains this database for purposes separate from RCW 4.24.550's authorization to local law enforcement agencies to disseminate community notification when a convicted sex offender moves into a neighborhood.

Under the Community Protection Act, the State Patrol's role is limited to being the repository for sex offender registration forms. The county sheriffs submit these forms to the State Patrol for retention. The State Patrol then enters the registration data into the database.

The key issue is whether RCW 4.24.550's community notification provisions require the State Patrol to consider each level I sex offender's risk level, the sex offender's location, and requestor's need to protect personal safety before releasing the database in response to a public records request. Neither the Legislature nor this Court has ever construed RCW 4.24.550 as placing such an onus on the State Patrol to fulfill its duties under the Public Records Act (PRA), chapter 42.56 RCW. Rather, this Court has recognized that sex offender registration is essentially conviction information, readily available to public view.

Given these considerations, the trial court erred on two grounds. First, by construing the Community Protection Act's notification provisions as an "other statute" that regulates the State Patrol's release of the database, the trial court implied an exemption that was not enacted by the Legislature. Second, by imposing a broad permanent injunction that applies not only to the records of persons not parties to this suit, but also other public records requestors, the trial court exceeded its authority under RCW 42.56.540. For these reasons, the State Patrol respectfully requests this Court to reverse the trial court.

II. ASSIGNMENTS OF ERROR

1. The trial court erred by improperly treating the Community Protection Act's notification provision, RCW 4.24.550, as an "other statute" that provides the exclusive means to obtain level I sex offender registration records and requiring the State Patrol to process public records requests using RCW 4.24.550.

2. The trial court erred by issuing a permanent injunction that exceeds the permissible scope under RCW 42.56.540 because it purports to apply to records other than those that name or pertain to the persons seeking to enjoin disclosure and because it purports to prohibit the production of public records to future requestors.

III. ISSUES PRESENTED FOR REVIEW

1. Whether the trial court erred by improperly treating the Community Protection Act's notification provision, RCW 4.24.550, as an "other statute" that provides the exclusive means to obtain level I sex offender registration records.

2. Whether the trial court erred by issuing a permanent injunction that exceeds the permissible scope under RCW 42.56.540 both as to records covered by the injunction and as to requestors subject to the injunction.

IV. STATEMENT OF THE CASE

A. The Community Protection Act Of 1990.

"[A] brutal sexual assault upon a young child and the murder of a young woman in Seattle" prompted the Governor to form a Task Force on Community Protection. CP at 61. The Task Force developed recommendations to comprehensively address the risks posed by sex offenders, including the civil commitment of sexually violent predators, criminal sentencing, and community notification. CP at 61-63. In response, the Legislature passed the Community Protection Act of 1990 (Community Protection Act). Laws of 1990, ch. 3. The Community Protection Act authorizes the affirmative release of certain information to the public to provide community notification of recently released sex

offenders, establishes immunity for any such release done in good faith, mandates sex offender registration, and designates the State Patrol as the repository for certain sex offender registration records. *Id.* at §§ 117, 402, 403.

B. Sex Offender Registration And State Patrol's Central Registry.

Every person convicted of a sex offense must register with the county sheriff. RCW 9A.44.130(1)(a).¹ The State Patrol maintains the central sex offender registry comprising information submitted from the county sheriffs. RCW 43.43.540.² Consistent with RCW 43.43.540, the State Patrol depends on the county sheriffs and other law enforcement agencies to timely submit accurate information regarding registered sex and kidnapping offenders. CP at 34. Records submitted from the county sheriffs and local law enforcement agencies include the registration fingerprint cards, the offenders' photographs, change of address forms, correction notices, failed to verify address forms, and relieved of duty to register forms. CP at 34. These records are source documents that provide the data for the State Patrol's database. CP at 34. Source documents should include the registered sex or kidnapping offender's current risk level classification. CP at 34.

¹ Although amended many times, RCW 9A.44.130(1)(a) originally was enacted as section 402 of the Community Protection Act.

² RCW 43.43.540 originally was enacted as section 403 of the Community Protection Act.

C. Community Notification By County Sheriffs.

The Washington Association of Sheriffs and Police Chiefs (WASPC) has developed a model policy on community notification pursuant to RCW 4.24.550. CP at 66-103. The model policy illustrates the common methods of community notification: media releases, community education forums, fliers identifying a recently released sex offender, and public websites. CP at 87. Fliers usually have the sex offender's photograph and approximate address. CP at 88, 101. Depending on the offender's risk level, the places frequented by the offender, and the specific community's safety needs, local law enforcement may distribute fliers to schools, public libraries, neighbors, and other law enforcement agencies. CP at 89-92. The model policy recommends that law enforcement agencies use more than one method to provide community notification. CP at 87. The State Patrol does not provide community notifications for registered sex or kidnapping offenders. CP at 36-37.

D. State Patrol's Database.

The Community Protection Act limited the State Patrol to the role of central registry for sex offender registrations. Laws of 1990, ch. 3, § 403. Consistent with this statutory mandate, the State Patrol maintains the statewide sex and kidnapping offender registry. CP at 34.

The State Patrol's database includes the following information for currently registered sex offenders: (1) name; (2) residential address; (3) date of birth; (4) crime for which he or she was convicted; (5) date of conviction; and (6) county of registry. CP at 123.

E. Public Records Request For The State Patrol's Database.

The State Patrol routinely has released downloads of the database in response to public records requests. CP at 124. The State Patrol has produced copies of the database to the Kitsap Sun, KIRO Television, KING Television, The News Tribune, and the Seattle Post-Intelligencer. CP at 124-125. The State Patrol has also produced monthly extracts from the database to public records requestors. CP at 124. The Department of Social and Health Services Office of Foster Care Licensing, the YMCA, Call Eleanor Screening Services, Orca Information, and Mid-Columbia Housing Authority are among the entities that have regularly requested this extract. CP at 124.

On November 1, 2013, the State Patrol received a public records request from Ms. Zink asking for electronic copies of sex offender registration forms. CP at 122. Ms. Zink later modified her request to a copy of the State Patrol's database. CP at 124.³

³ The responsive records to another request submitted by Ms. Zink included sex offender registration records. CP at 111-12. The State Patrol's counsel provided notice of this subsequent request to respondents' counsel during this litigation. CP at 234-36.

F. Procedural History And Permanent Injunction.

The respondents, level I sex offenders, filed this lawsuit in the King County Superior Court seeking class certification and to permanently enjoin disclosure of the database to Ms. Zink. CP at 1-12, 144-169.

The trial court granted class certification and defined the class as:

All individuals who are named in the December 6, 2013 extract from the Washington State Patrol's Sex and Kidnapping Offender Registry Database, classified at risk level I, and not designated in the status of "fail to verify address" or "fail to register upon release."

CP at 527.

After hearing cross-motions for summary judgment, the trial court granted the respondents' requests for a declaratory judgment and entered a permanent injunction. CP at 561-69. The permanent injunction order provides:

The [State Patrol] and WASPC may disclose "relevant and necessary" level I sex offender records in response to a request under RCW 4.24.550 by a member of the general public, after considering in good faith the offender's risk classification, the places where the offender resides or is expected to be found, and the need of the requestor to protect individual and community safety.

CP at 568-69.

The State Patrol then requested the Court to clarify, *inter alia*, that the permanent injunction order did not apply to public records requests by

other requestors or to non-class member sex offender registrations. CP at 571-82. The trial court denied those requests. CP at 628.

This appeal followed.

V. ARGUMENT

A. Standard Of Review.

Under RCW 42.56.550(3), appellate review of trial court decisions addressing requests for public records is de novo. This Court “stand[s] in the shoes of the trial court when reviewing declarations, memoranda of law, and other documentary evidence.” *Ameriquest Mortg. Co. v. Office of the Attorney Gen.*, 177 Wn.2d 467, 478, 300 P.3d 799 (2013) (citation omitted).

B. The Community Protection Act Is Not An “Other Statute” That Exempts The State Patrol’s Database From Public Disclosure.

It is axiomatic that the PRA “is a strongly worded mandate for broad disclosure of public records.” *Progressive Animal Welfare Soc’y v. Univ. of Wash. (PAWS II)*, 125 Wn.2d 243, 251, 884 P.2d 592 (1994) (citation omitted) (internal quotation marks omitted). The PRA requires a public agency to produce a public record upon request unless the record is exempted by a specific statute. RCW 42.56.070(1). This Court “start[s] with the proposition that the [PRA] establishes an affirmative duty to disclose public records unless the records fall within specific statutory

exemptions or prohibitions.” *Spokane Police Guild v. Wash. State Liquor Control Bd.*, 112 Wn.2d 30, 36, 769 P.2d 283 (1989) (citations omitted). When an interested party seeks to enjoin disclosure of public records, it bears the burden to show that a specific statute exempts the record from public disclosure. *Ameriquest*, 177 Wn.2d at 487. While an “other statute” may provide legal authority to withhold a record from public disclosure, “[t]he rule applies only to those exemptions explicitly identified in other statutes; its language does not allow a court to imply exemptions but only allows specific exemptions to stand.” *PAWS II*, 125 Wn.2d at 262 (citation omitted) (internal quotation marks omitted).

The Legislature did not enact the Community Protection Act as an “other statute” that exempts level I sex offender registration records retained in the State Patrol’s database from public disclosure. The Community Protection Act’s notification provision, RCW 4.24.550, is simply an immunity statute to encourage local law enforcement agencies to proactively disclose sex offender information through fliers, community forums, and the internet. This Court’s consistent interpretation of the statute’s legislative history and plain language supports that conclusion.

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1. The Community Protection Act's plain language does not exempt level I sex offender registration records in the State Patrol's database from public disclosure.

The Community Protection Act's notification provisions do not direct how the State Patrol should respond to a public records request for the database. The hallmarks of "other statutes" are provisions that specify *what* is not subject to inspection by the general public. *See PAWS II*, 125 Wn.2d at 262; *see also, e.g.*, RCW 10.97.080 ("[n]o person shall be allowed to retain or mechanically reproduce any nonconviction data . . ."); RCW 49.17.250(3) ("Information obtained by the [Department of Labor and Industries] as a result of employer-requested consultation and training services shall be deemed confidential and shall not be open to public inspection."); RCW 9.73.090(1)(c) ("No sound or video recording made [by a police vehicle dash camera] may be duplicated and made available to the public by a law enforcement agency . . . until final disposition of any criminal or civil litigation . . ."). As explained more fully below, the Community Protection Act directs local law enforcement agencies on how to proactively disseminate information about sex offenders to schools, neighbors, and the media. No provision in RCW 4.24.550 specifically addresses sex offender registration forms or the State Patrol's database. No provision in RCW 4.24.550 specifies that

any particular information or record is not subject to inspection by the general public.

To the contrary, from the beginning, the Community Protection Act has disavowed any implied confidentiality of records regarding convicted sex offenders. "Nothing in this section implies that information regarding [convicted sex offenders] is confidential except as may otherwise be provided by law." RCW 4.24.550(9). There is no other law that limits disclosure of sex offender registration forms or the State Patrol's database.

In contrast, the Legislature has specifically exempted other State Patrol data repositories from public disclosure. For example, the State Patrol's felony firearms database is not subject to public disclosure. RCW 43.43.822(4). Likewise, the Legislature has prohibited the State Patrol from disclosing the gang database to the general public. RCW 43.43.762(3). The statute authorizing the State Patrol's sex offender registry database, RCW 43.43.540, lacks any language that prevents the agency from releasing the database to the public. Had the Legislature wanted to exempt this database from public disclosure, it knew how to say so and would have said so. It has not said so.

While the Community Protection Act does set standards for local law enforcement agencies when they affirmatively provide notification to

the public, RCW 4.24.550(3), the Act's plain language places no limit on public access to sex offender records *unless* another statute limits such access. RCW 4.24.550(9). Reading RCW 4.24.550 as an "other statute" would require this Court to start with the presumption that level I sex offender registration records are closed to public view. There is no basis in law for any such presumption. The statute has no provision that presumptively renders a sex offender registration form exempt from public disclosure or subject to a multi-factor balancing test before producing the record in response to a public records request. Nor, under the PRA, can an exemption be implied. Accordingly, RCW 4.24.550 is not an "other statute" that exempts the State Patrol's database from public disclosure.

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2. The Community Protection Act's legislative history shows that RCW 4.24.550 is an immunity statute for community notification.

As just shown, the plain language of RCW 4.24.550 does not exempt level I sex offender registration records in the State Patrol's database from public disclosure, and therefore cannot be considered an "other statute" under RCW 42.56.070(1). But even if RCW 4.24.550 were ambiguous in that regard, the legislative history of that statute shows that the Legislature never intended for it to be construed as an exemption of any kind from public disclosure. At its core, RCW 4.24.550 is an immunity statute to encourage local law enforcement agencies to disseminate community notifications regarding recently released sex offenders.

When interpreting a statute, this Court "consider[s] 'all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.'" *Fisher Broad. v. City of Seattle*, 180 Wn.2d 515, 527, 326 P.3d 688 (2014) (quoting *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002)). The Community Protection Act's amendments over the past quarter century show that the Legislature intends for RCW 4.24.550 to address affirmative community notification by local law enforcement agencies, *not*

production of the State Patrol's database in response to public records requests under chapter 42.56 RCW.

In 1990, the Legislature expressed frustration that “[o]verly restrictive confidentiality and *liability laws* governing the release of information about sexual predators have *reduced willingness to release information that could be appropriately released under the public disclosure laws*, and have increased risks to public safety.” Laws of 1990, ch. 3, § 116 (finding attached to RCW 4.24.550; see Code Reviser’s notes) (emphasis added).⁴ To address this problem, the 1990 Community Protection Act’s first subsection authorized public agencies to disseminate community notification:

Public agencies are authorized to release relevant and necessary information regarding sex offenders to the public when the release of the information is necessary for public protection.

Laws of 1990, ch. 3, § 117(1). Subsections (2) and (3) of this law provided immunity to public agencies for the good faith release or failure to release information regarding sex offenders. *Id.* Subsection (4) provided: “[n]othing in this section implies that information regarding

⁴ Admittedly, the Legislature also envisioned community notification occurring in specific situations. “Release of information about sexual predators . . . under limited circumstances, [to] the general public, will further the governmental interests of public safety . . . so long as the information released is rationally related to the furtherance of these goals.” Laws of 1990 c. 3 § 116. But, this limitation is in the context of proactive community notification and *not* as an exemption under the PRA.

[convicted sex offenders] is confidential except as otherwise provided by statute.” *Id.* These provisions were codified as RCW 4.24.550.

In 1997, the Legislature authorized local law enforcement agencies to assign a risk level classification to sex offenders after reviewing the recommended risk level classifications by the Department of Corrections, Department of Social and Health Service, or the Indeterminate Sentence Review Board. Laws of 1997, ch. 364, § 1 (amending RCW 4.24.550). This amendment resulted in local law enforcement agencies classifying sex offenders as risk level I, II, or III. *See* CP at 86-88. Risk classification determines, in part, the level of community notification for the sex offender. Laws of 1997, ch. 364, § 1(3) (“For offenders classified as risk level I, the [local law enforcement] agency . . . may disclose, upon request, relevant, necessary, and accurate information . . . to any individual community member who lives near the residence where the offender resides, expects to reside, or is regularly found[.]”); *see also* CP at 88 (WASPC model policy describing community notification fliers for level II and III sex offenders).

At the same time, the Legislature amended RCW 4.24.550 to outline the scope of relevant and necessary as:

The extent of the public disclosure of relevant and necessary information shall be rationally related to: (a) the level of risk posed by the offender to the community; (b) the locations where the offender resides, expects to reside, or is regularly found; and (c) the needs of the affected community members for information to enhance their individual and collective safety.

Laws of 1997, ch. 364, § 1(2).⁴ To facilitate timely community notification, the Legislature requires local law enforcement agencies to “make a good faith effort to notify the public and residents within a reasonable period of time after the offender registers with the agency.” RCW 4.24.550(6)(c).

The legislative history of this provision of the Community Protection Act shows a consistent purpose: to guide local law enforcement agencies in proactively notifying the community when sex offenders enter a neighborhood. The legislative history and statutory amendments never addressed the records retained by the State Patrol. Simply put, RCW 4.24.550 was never intended to regulate disclosure of the State Patrol’s database in response to public records requests. Rather, the entire statute focuses on the means and methods of proactive community notification through individualized fliers or internet postings

⁴ While the provision uses the term “public disclosure,” it does not reference chapter 42.56 RCW. The same term used in different statutory schemes without definition may carry different meanings depending upon the context in which it is used. *See Graham v. Wash. State Bar Ass’n*, 86 Wn.2d 624, 626, 548 P.2d 310 (1976) (holding that statute calling Bar Association an “agency of the state” did not use “agency” in the same sense as in a separate unrelated statute regarding audits of state agencies.).

by local law enforcement. Accordingly, the State Patrol's database is outside the scope of the Community Protection Act's provisions governing community notification, and the Act does not purport to exempt it from public disclosure under RCW 42.56.

3. This Court has characterized RCW 4.24.550 as a community notification statute.

Consistent with that legislative intent, this Court has viewed RCW 4.24.550 as a community notification statute, not a confidentiality statute. This Court first addressed the Community Protection Act to determine whether the sex offender registration scheme violated the constitution's Ex Post Facto clause. *State v. Ward*, 123 Wn.2d 488, 869 P.2d 1062 (1994). The offenders in *Ward* contended "that because registration carries with it the right of law enforcement agencies to disseminate information to the public, the registration requirement amounts to a badge of infamy." *Id.* at 500 (internal quotation marks omitted). To support their argument, the offenders pointed to "three sexual offender notification bulletins received by a resident of Mill Creek" and "copies of five newspaper articles" *Id.* at 501.

In rejecting the offenders' arguments, this Court characterized law enforcement's affirmative disclosure of information under RCW 4.24.550 as "warnings":

[W]e hold that a public agency must have some evidence of an offender's future dangerousness, likelihood of re-offense, or threat to the community, to justify disclosure to the public in a given case. This statutory limit ensures that disclosure occurs to prevent future harm, not to punish past offenses.

When disclosure is appropriate, the statute also limits what a *public warning* may contain. . . . In addition, the *content of a warning* may vary by proximity: next-door neighbors or nearby schools might receive a *more detailed warning* than those further away from harm.

Id. at 503-04 (emphasis added).⁶

Likewise, the Ninth Circuit addressed RCW 4.24.550's community notification provisions in *Russell v. Gregoire*, 124 F.3d 1070 (9th Cir. 1997). Level III sex offenders filed an action in federal court to prevent local law enforcement from disseminating community notification. *Id.* at 1083. The level III offenders contended that community notification—specifically, the distribution of notification forms with their picture, name, and identifying information to schools, block watch captains, and the local news media—constituted

⁶ *Ward* noted “[b]ecause the Legislature clearly intended public agencies to disseminate warnings to the public ‘under limited circumstances’, in many cases, both the registrant information and the fact of registration remain confidential.” 123 Wn.2d at 502 (emphasis added). However, this statement must be read in context of community notification. This reasoning suggests that unless a law enforcement agency has a reason to disclose sex offender information, such as a community notification or in response to a public records request, the information will simply sit in a government file. Any other reading would result in *Ward* conflicting with the clear precedent that a court cannot imply an exemption to the PRA. See *PAWS II*, 125 Wn.2d at 261 – 262; *Brouillet v. Cowles Publ'g Co.*, 114 Wn.2d 788, 800, 791 P.2d 526 (1990). See also RCW 42.56.030 (“In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.”).

unconstitutional, additional punishment. *Id.* at 1082-84. The Ninth Circuit found this “notification regime” to be regulatory, not punitive, and rejected the offenders’ arguments. *Id.* at 1089-91.

More recently, this Court revisited the Community Protection Act’s community notification provisions when considering whether risk level classification violated due process principles. *In re Meyer*, 142 Wn.2d 608, 16 P.3d 563 (2001). In *Meyer*, sex offenders classified at risk level III filed personal restraint petitions and argued that the classification and notification schemes violated their due process and privacy rights. *Id.* at 613-14. This Court rejected their contentions. In particular, this Court relied on former RCW 4.24.550(7)’s provision (since repealed) that sex offender information is not confidential unless otherwise provided by law, and concluded that community notification discloses information that “is not subject to any specific confidentiality provision.” *Id.* at 620.

While the trial court relied heavily on *Ward* and its progeny to find that RCW 4.24.550 is an “other statute,” such reliance was misplaced. This Court did not address the PRA in *Ward* and did not address the records retained by the State Patrol in its database. To the contrary, *Ward*, *Russell*, and *Meyer* each acknowledged that the raw data populating the registration forms—and by extension the

database—is conviction information freely available for public consumption. *Ward*, 123 Wn.2d at 501; *Russell*, 124 F.3d at 1094 (“The information collected and disseminated by the Washington statute is already fully available to the public . . .”); *Meyer*, 142 Wn.2d at 620. These cases cannot be construed to require the State Patrol to conduct a three-pronged risk analysis for each level I sex offender before disclosing basic conviction information to a public records requestor.

This Court should hold that RCW 4.24.550 is not an “other statute” that limits the production of the State Patrol’s database to requestors.

4. The State Patrol’s production of the database to a requestor is not akin to community notification.

While *Ward* focused on “the right of law enforcement agencies to disseminate information to the public . . .” (123 Wn.2d at 500), this case focuses on the State Patrol’s responsibility to produce a public record upon request. There is a significant difference between a public agency providing records in response to a public records request and a law enforcement agency affirmatively posting a sex offender notification flier in a school, library, or on a neighbor’s front door. An ill-conceived community notification to schools, neighbors, or the local media may very well result in “a hasty or retaliatory response from the community.”

Russell, 124 F.3d at 1090. RCW 4.24.550(3)'s limitations on community notification "is tailored to help the community protect itself from sexual predators under the guidance of law enforcement, not to punish sex offenders." *Russell*, 124 F.3d at 1090.

In contrast, a person must proactively submit a public records request to a public agency and specifically request identifiable public records regarding level I sex offenders. Ms. Zink's public records request for the State Patrol's database mirrors the situation in *Smith v. Doe I*, 538 U.S. 84, 123 S. Ct. 1140, 155 L. Ed. 2d 164 (2003). In *Smith*, convicted sex offenders challenged Alaska's registration and notification scheme on Ex Post Facto grounds. "The Alaska Sex Offender Registration Act requires convicted sex offenders to register with law enforcement authorities, and much of the information is made public." *Id.* at 89. Alaska posted most of the registration information on the internet, including "the sex offender's or child kidnapper's name, aliases, address, photograph, physical description, . . . [and] date of birth[.]" *Id.* at 91.

The Court rejected the offenders' argument that Alaska posting registration information on the internet violated Ex Post Facto principles. The Court reasoned Alaska's "notification system is a passive one: An individual must seek access to the information." *Id.* at 105. The Court further recognized that a person taking the initiative of researching sex

offender registration information is far different from the public shaming of the colonial era:

An individual seeking the information must take the initial step of going to the Department of Public Safety's Web site, proceed to the sex offender registry, and then look up the desired information. The process is more analogous to a visit to an official archive of criminal records than it is to a scheme forcing an offender to appear in public with some visible badge of past criminality. The Internet makes the document search more efficient, cost effective, and convenient for Alaska's citizenry.

Id. at 99.

Likewise, the process of requesting public records requires a person's interest and initiative. Requesting the database is similar to traveling to a courthouse to review criminal case files. The person interested in the information must identify which agency is likely to have the record, contact that agency, and then cull through the responsive records. While producing an electronic database of all currently registered sex offenders is easier to review than thousands of court files across the state, this Court recognizes the "well grounded principle that technology should enhance access to information that is necessary for justice, not create barriers." *Gendler v. Batiste*, 174 Wn.2d 244, 263, 274 P.3d 346 (2012). Accordingly, RCW 4.24.550 does not circumscribe the circumstances for producing the State Patrol's database in response to a public records request.

C. A Permanent Injunction Enjoining Disclosure Of Public Records Must Be Limited To The Parties In The Action.

Consistent with the PRA's purpose, a trial court must narrowly tailor a permanent injunction enjoining production of public records to the parties and records in that specific litigation. The trial court did not follow this tenet. Under RCW 42.56.540, a court must evaluate several factors to determine whether to enjoin the disclosure of public records. An interested party must prove "(1) that the record in question specifically pertains to that party, (2) that an exemption applies, and (3) that the disclosure would not be in the public interest and would substantially and irreparably harm that party or a vital government function." *Ameriquest*, 117 Wn.2d at 487 (citations omitted).

The permanent injunction issued in this case by the trial court not only prohibits the State Patrol from producing the class members' records to Ms. Zink, it also bars production to other requestors in the future and reaches the records of persons not parties to this lawsuit. This result contravenes the PRA.

1. A permanent injunction under RCW 42.56.540 should be limited to the records that specifically name or pertain to the persons seeking to enjoin disclosure.

The permanent injunction should not extend beyond the class members' sex offender registration records. To enjoin disclosure of public

records, RCW 42.56.540 requires that the “person who is named in the record or to whom the record specifically pertains” move the Superior Court for an injunction.⁷ RCW 42.56.540 is clear that the “person who is named in the record or to whom the record specifically pertains” must be the party to initiate the action to enjoin disclosure of public records. Otherwise, the person lacks standing to enjoin the production of a public record. This limitation on standing is consistent with the PRA’s overall schema—to limit the circumstances that prevent public access to public records.

The trial court declined to limit the permanent injunction to the class members’ registration records. CP at 627-28. As a result, the permanent injunction potentially protects the registration records of level III sex offenders once they are reclassified as a level I sex offender. This is an absurd result that restricts disclosure of information already available on the internet. *See* RCW 4.24.550(5)(a) (WASPC’s “web site shall post all level III and level II registered sex offenders . . .”).

Apart from these practicalities, the permanent injunction undermines one of the PRA’s central tenets—that exemptions to public disclosure are to be narrowly construed. RCW 42.56.030. Under RCW 42.56.540, only the agency and “a person who is named in the record or to

⁷ RCW 42.56.540 also authorizes an agency to move for an injunction.

whom the record specifically pertains” may move to enjoin release of the record. Allowing other persons to advocate for nondisclosure on behalf of the party named in the record contravenes RCW 42.56.540’s plain language, and the trial court’s permanent injunction exceeds its authority under RCW 42.56.540.

2. Since requestors are necessary parties to a PRA injunction action, the injunction cannot prohibit disclosure to future requestors.

Assuming a permanent injunction otherwise is properly issued in this case, its applicability should be limited to the parties in this litigation. This Court has held that a requestor is a necessary party to an action to enjoin disclosure of public records under RCW 42.56.540. *Burt v. Dep’t. of Corr.*, 168 Wn.2d 828, 231 P.3d 191 (2010). In analyzing whether the requestor was a necessary party, this Court recognized that the requestor of the records unquestionably had an interest in the injunction action. *Id.* at 834-35. If the necessary parties are not part of the action, a permanent injunction is vulnerable to vacation. *Id.* at 838; *Woodfield Neighborhood Homeowner’s Ass’n v. Graziano*, 154 Wn. App. 1, 3-4, 225 P.3d 246 (2010).

Apart from procedural details, the permanent injunction silences the voices of future requestors. “It was the right of [the requestor] to request these records, and it was the right of [the requestor] to seek to

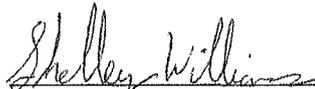
protect his interest and the public's interest in seeking these records.” *Burt*, 168 Wn.2d at 835. The State Patrol regularly receives public records requests for sex offender registration records and database extracts. CP at 124. The trial court’s order forecloses categorical release of the database to these requestors, including media requestors, the Department of Social and Health Services Office of Foster Care Licensing, the YMCA, and others. CP at 124. These requestors—and others who are unknown—likely have different arguments or interests than Ms. Zink. The permanent injunction order impacts their interests without joining them and allowing them to argue their interests. Accordingly, the permanent injunction exceeds the scope of RCW 42.56.540.

VI. CONCLUSION

For these reasons, the State Patrol respectfully requests this Court to reverse the trial court and vacate the permanent injunction.

RESPECTFULLY SUBMITTED this 13th day of November, 2014.

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NO. 90413-8

**SUPREME COURT
OF THE STATE OF WASHINGTON**

JOHN DOE A, et al

v.

WASHINGTON STATE PATROL, et al.

DECLARATION OF
SERVICE

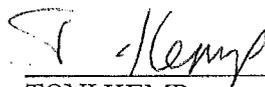
I, Toni Kemp, declare as follows:

On November 13, 2014, I sent via electronic mail, true and correct copies of Shelley A. Williams' Brief of Appellant and Declaration of Service, postage affixed, addressed as follows:

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

DATED this 13th day of November, 2014, at Seattle, Washington.



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Dear Sir or Madam:

Attached for filing, please find the Washington State Patrol's Brief of Appellant and Declaration of Service.

Sincerely,

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