Court of Appeals No. 85983-8-I

SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON ELECTION INTEGRITY COALITION UNITED, a Washington State Nonprofit,

Plaintiff/Counterclaim Defendant/Appellant,

DOUG BASLER, TIMOFEY SAMOYLENKO,
Pro se Plaintiffs/Appellants
v.

JULIE WISE, Director of King County Elections, KING COUNTY,

Defendants/Counterclaimants/Respondents,

WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE,

Intervenor-Defendant/Respondent.

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Appellant Washington Election Integrity Coalition United, a Washington State Nonprofit corporation ("WEICU"), seeks review of the Division I Court of Appeals decision terminating review designated in Part II.

II. CITATION TO COURT OF APPEALS DECISION

WEICU seeks review of the unpublished opinion in *Washington Election Integrity Coalition United, et al., v. Julie Wise, Director of King County Elections, King County, et al.*, Case No. 85983-8-I ("Decision").

A true and correct copy of the Decision is in the appendix hereto, at pp. A-1 through A-10.

III. ISSUE PRESENTED FOR REVIEW

Did the Court of Appeals err when it affirmed the trial court order that struck a signed and verified Public Records Act complaint for lack of an attorney signature?

IV. STATEMENT OF THE CASE

A. Summary of the Trial Court Proceedings

In September 2021, WEICU requested inspection of King County's original ballots, ballot images, spoiled ballots, adjudication records, ballot envelopes and returned ballots for the November 3, 2020 General Election. Clerk's Papers ("CP") 11, ¶ 51.

Following King County's denial of examination of original ballots, ballot images, spoiled ballots and returned ballots, WEICU filed a PRA action in Superior Court to compel disclosure under the Public Records Act. CP 11-13. The verified complaint was signed by WEICU Director Tamborine Borrelli. CP 19, 22.

On October 13, 2021, King County removed the action to federal district court, Western District of Washington. CP 28-66. WEICU moved for remand. After a lengthy sojourn in federal court, remand was granted. The matter was returned to state court as of October 24, 2022. CP 67-91.

Counsel for WEICU filed two Notices of Appearance. One in federal court on October 17, 2021. CP 68, 73 (Docket 7). The other in state court on October 26, 2022 following remand. CP 92-94.

On January 6, 2023, King County answered the complaint in state court and also counterclaimed against WEICU under the PRA for permanent injunctive relief. CP 95-118. King County raised no objections to WEICU's Director Borrelli's signature on the complaint.

King County subsequently filed a global motion for summary judgment. CP 310-339. As part of its motion, King County sought injunctive relief under RCW 42.56.540 to permanently prevent WEICU from inspecting the ballot related records. CP 114; RCW 42.56.540.

The trial court found each of the four categories of public records impliedly exempt under a combination of: RCW 29A.60.110, WAC 434-25-110, Article VI, §6 of the State Constitution, *White v. Clark County*, 188 Wn.App. 622, 354

P.3d 38 (2015), *review denied*, 185 Wn.2d 1009 (2016), *White v. Skagit County*, 188 Wn.App. 886, 355 P.3d 1178 (2015), *review denied*, 185 Wn.2d 1009 (2016), *White v. Clark County*, 199 Wn.App. 929, 401 P.3d 375 (2017), *review denied*, 189 Wn.2d 1031 (2018) (collectively "*White* Opinions"), and Senate Bill 5459. CP 1032, l. 17 to 1033, l. 6.

The trial court determined that based on the implied exemption, King County's injunctive relief claim was "**unnecessary**." CP 1033, l. 22 (emphasis added). The trial court's orders are void of the requisite findings under RCW 42.45.540 that ballot inspection would: 1) clearly not be in the public interest; and, 2) would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions.

In the alternative, the trial court struck WEICU's PRA claim under Civil Rule 11 on grounds that "[a] complaint filed by a corporate body must bear the signature of a licensed attorney." CP 1033, ll. 7-10; CP 1034, ll. 3-4.

B. The Court of Appeals Affirmed the Striking of a Verified Complaint and Determined That the Action and Appeal Are "Frivolous"

The complaint herein was both signed and verified by WEICU director Tamborine Borrelli. CP 19, 22.

On appeal, Division I determined that "[b]ecause WEICU's complaint was not signed by an attorney and the omission was not remedied within a reasonable time from when King County moved for summary judgment, the trial court properly struck WEICU's PRA claim under CR 11." A-6 to A-7 (emphasis added). As a result, the Court "[did] not address WEICU's remaining arguments related to its PRA claim.[fn]" A-7.

The Court of Appeals criticized WEICU's counsel for not seeking "[l]eave to amend the complaint. . . ". A-9. The Court further criticized WEICU for pursing an appeal of a verified PRA claim "despite the **fatal omission** under CR 11." *Id.* (emphasis added).

The Court of Appeals concluded that WEICU's PRA

action and appeal were "frivolous" and ordered sanctions against WEICU and its counsel under Civil Rule 11, RAP 18.1 and RAP 18.9. A-9 to A-10. Reconsideration was denied via an order entered July 25, 2024.

V. ARGUMENT

This is a case of first impression that has led to a startling absurd result.

The Court of Appeals affirmed the belated striking of a signed and verified complaint for a purported *lack* of attorney signature. CP 1034, ll. 1-4. The Court of Appeals opined that the purported lack of signature on a signed and verified complaint constituted a "fatal omission." A-9. Based thereon, the Court declined to address any additional errors on appeal, rendering the majority of the Decision to be mere *dicta*.[1] A-6 to

[1] The Court of Appeals altogether ignored Assignments of Error Nos. 1, 2, 3, 4, 5, 11, 12, 14, 15, 16, 17. There is no indication in the Decision that any of these errors was not properly preserved under RAP 2.5(a). The Court also struck portions of WEICU's opening brief and related trial court evidence

A-7.

The Court of Appeals further determined that newly appearing counsel, upon the filing of a notice of appearance, has a *sua sponte* affirmative duty to sign and re-file earlier filed pleadings for the action. A-6. The Court of Appeals treated a notice of appearance in this matter as requiring more than becoming an attorney of record, despite a complete lack of tradition which could support such a notion.

The Court's affirmations and findings have no support in state court Civil Rule 11, Rule 11 of the Federal Rules of Civil Procedure, or in standard practice. The Court's rulings also cannot be harmonized with Civil Rule 9(a) or Civil Rule 12.

Moreover, any striking of a verified complaint under any civil rule or statute should have been done without prejudice and with leave to correct the perceived defect. Instead, the trial

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seemingly to avoid addressing Assignments of Error Nos. 6, 7 and 9.

court and Court of Appeals treated a party's signature on a complaint as a jurisdictional lack of standing over the person which rendered the complaint inoperative.

This absurd result must be corrected.

A. The Decision Directly Conflicts with the Civil Rules

Civil Rule 9(a) provides in pertinent part: "When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment which shall include such supporting particulars as are peculiarly within the pleader's knowledge." CR 9(a). This cannot be more clear – a specific statement describing the defect is required.

"A defense of lack of jurisdiction over the person. . . is waived. . . if it is neither made by motion under this rule [Civil Rule 12] nor included in a responsive pleading or an amendment thereof permitted by rule 15(a) to be made as a matter of course." CR 12(h).

The text of Civil Rule 11 does not address corporate parties or in any way bar a complaint filed by an authorized corporate representative.

In answering WEICU's PRA claim, and in asserting its own counter-claims against WEICU, King County submitted itself to state court jurisdiction. CP 95-118. It was then obligated to follow and be bound by the civil rules, including Civil Rule 12. However, King County failed to assert any negative averment, affirmative defense, or Civil Rule 12 motion with regard to WEICU's signature of its verified complaint. By failing to do so, King County waived any argument that the court lacked personal jurisdiction over WEICU or that WEICU was not properly before the court.[2] CR 9(a); CR 12.

The Court of Appeals failed to properly analyze these

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[2] King County also registered no complaints with the signature on the verified complaint at the time when WEICU's counsel filed a notice of appearance both at the federal and state levels. CP 73 (Docket No. 7); CP 92-94. Any such complaints were waived.

procedural bars to King County obtaining relief.

B. The Decision Conflicts with Appellate Decisions Providing Leave to Correct any Perceived Signature Defects

None of the cases cited in the Decision involve PRA claims or any set of facts in which a court struck verified claims of a represented corporation with no leave given to correct a perceived signature defect. RAP 13.4(b)(2); A-5 to A-6 (citing *Dutch Village Mall v. Pelletti,* 162 Wn.App. 531, 256 P.3d 1251 (2011) (trial court granted 30 days leave to a *pro se* LLC party to either withdraw or submit pleadings signed by an attorney); *Rowland v. California Men's Colony, Unit II Men's Advisory Council,* 506 U.S. 194 (1993) (holding only a natural person may qualify for treatment *in forma pauperis* under 28 U.S.C. §1915(a) and noting that corporations may appear in federal courts only through licensed counsel); *Biomed Comm, Inc. v. Dep't of Health, Bd of Pharm.,* 146 Wn.App. 929, 193 P.3d 1093 (2008) (a court may strike a pleading of a corporation that is not signed by an attorney, provided the court

gives the corporation a reasonable time to correct the error); *Lloyd Enterprises, supra,* 91 Wn.App. at 700 (*pro se* corporate litigant given 20 days' leave to obtain counsel to file an answer)).

None of the cases cited in the Decision permit a defendant to engage in pending litigation, including discovery, for many months (in this case over 19 months) before suddenly claiming all proceedings must be stopped for lack of an attorney's signature on the original complaint. The Civil Rules prohibit late-stage technical defenses that would otherwise upend the course of litigation for a reason.

Nothing in Civil Rule 11 or other civil rules requires an appearing attorney to go back to fix something. Nothing in Civil Rule 11 bars a *pro se* corporation from filing suit. Nothing in Civil Rule 11 bars an authorized corporate representative from acting as an attorney in fact for the corporation. Nothing in Civil Rule 11 bars a corporate representative from filing a PRA enforcement action. Nothing in Civil Rule 11 requires an

attorney to sign and re-file an amended complaint while a summary judgment motion is in progress.

Even assuming a trial court were to disagree, the traditional remedy is to allow the corporation to obtain counsel. The remedy is not to sandbag the corporation by striking a verified complaint 19 months into litigation and 18 months after it has retained counsel for the action. CP 1034, ll. 1-4; CP 73 (Docket No. 7 Notice of Appearance filed 10/17/2021).

C. The Decision Conflicts with the Appellate Jurisdiction Over WEICU

"Since jurisdiction involves the essential power of the court, it has been consistently held that an appellate court must sua sponte examine its jurisdiction and the jurisdiction of the trial court and if either is defective, the reviewing court must dismiss." Allan D. Vestal, *Sua Sponte Consideration in Appellate Review*, 27 Fordham L. Rev. 477, 499 (1958) (citing, *inter alia*, *American Fire & Cas. Co. v. Finn*, 341 U.S. 6, 17 (1951) (superseded by statute on other grounds).)

WEICU filed its Notice of Appeal on July 11, 2023. CP 1019-1048. The Court of Appeals accepted WEICU's Notice of Appeal and took jurisdiction over the appellate matter with no notice that it lacked personal jurisdiction over WEICU. WEICU is undeniably an indispensable party to its own PRA claim. RCW 42.56.550(1); CR 19.

If the Court of Appeals lacked personal jurisdiction over WEICU because of an inoperative complaint, it would not have reason or jurisdictional grounds to issue any decision, let alone a ten page Decision.[3]

The Court of Appeals arguably allowed the appeal of an inoperative complaint, when in fact, the role of the Court of Appeals is to correct prejudicial errors that affect the outcome of the case. WEICU cannot be sanctioned for the Court of

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[3] Likewise, if the trial court had lacked personal jurisdiction over WEICU, it would have lacked jurisdiction over the PRA claim *ab initio* and could not have presided over the case or issued any orders. CP 1024-1048.

Appeals' decision to take up its appeal and assert jurisdiction over the person of WEICU.

D. No Appellate Decision Bars *pro se* PRA Complaints

Corporations are "persons" under the PRA entitled to both bring PRA claims in superior court and to be awarded PRA attorney's fees. RCW 42.56.550(1); *Neighborhood Alliance v. County of Spokane*, 153 Wash.App. 241, 224 P.3d 775 (2009); *Cowles Publishing Co. v. City of Spokane*, 69 Wn.App. 678, 686, 849 P.2d 1271, *rev. denied*, 122 Wn.2d 1013 (1993) (ruling that a corporation could be awarded attorney fees (citing former RCW 42.17.020(22) defining "person" to include corporations)).

Contrary to the Decision, no authority (including Civil Rule 11) bars *pro se* PRA complaints, including complaints signed and verified by corporate requestors. Nor is there any authority requiring a newly-appearing attorney to amend or sign a previously signed and verified PRA action.

E. The Decision Conflicts with PRA Case Opinion Involving Debatable Issues

A PRA requestor may not be sanctioned for taking a "frivolous" position where a case raises reasonably debatable issues. RAP 13.4(b)(2); *Vance v. Offices of Thurston County Commissioners,* 117 Wn.App. 660, 672, 71 P.3d 680 (2003) (rejecting agency claim that requestor's appeal was frivolous, when requester presented "reasonably debatable issues"), *review denied*, 151 Wn.2d 1013 (2004).

"Raising at least one debatable issue precludes finding that [an] appeal as a whole is frivolous." *Advocates for Responsible Dev. v. Western Wash. Growth Mgmt. Hearings Bd.*, 170 Wash.2d 577, 580, 245 P.3d 764 (2010) (citing *Green River Cmty. Coll. Dist. No. 10 v. Higher Educ. Pers. Bd.*, 107 Wash.2d 427, 443, 730 P.2d 653 (1986).)

Awarding sanctions based on contested issues of first impression is an abuse of discretion:

> Because of a lack of Washington authority, a lack of uniformity in the cases elsewhere, the ABA's

> comment to Model Rule 1.13, and disagreement among experts in Washington, we hold that the trial court abused its discretion in finding that Hicks's opposition to Edwards's motions was "baseless" in the sense of not being supported by a good faith argument for an extension of existing law.

Hicks v. Edwards, 75 Wn.App. 156, 166, 876 P.2d 953 (Wash. App. 1994). The court in *Hicks* reversed a sanctions award, noting that the purpose behind Civil Rule 11 is to deter baseless filings and to curb abuses of the judicial system and not to chill an attorney's enthusiasm or creativity in pursuing factual or legal theories. *Id.,* at. 162-163 (quoting *Bryant v. Joseph Tree, Inc.*, 119 Wash.2d 210, 217, 829 P.2d 1099 (1992)). Complaints which are grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law are not baseless claims, and are therefore not the proper subject of sanctions. *Id.*

The instant complaint was grounded in fact as shown by King County's claim of exemptions to disclosure and was warranted by existing law – RCW 42.56.540.

F. No Appellate Decision Awards Attorney Fees for the Successful Defense of a PRA Claim

"There do not appear to be any reported case[s] in which an agency sought attorney fees when it was successful in its defense of the lawsuit by the requesting party." Washington's Public Disclosure and Open Public Meetings Laws (WSBA) (2d. ed. 2014, 2020 Supplement), Chapter & Section 18.4, p. 15 ("*Public Disclosure Deskbook*").

"The express language of the [PRA] statute would seem to prevent such an award because it only applies to a party that successfully obtains access to records as a result of the lawsuit." *Id.,* referring to the Supreme Court's interpretation of *Yakima Newspapers, Inc. v. City of Yakima*, 77 Wn.App. 319, 890 P.2d 544 (1995) in *Confederated Tribes v. Johnson*, 135 Wn.2d 734, 757 (1998).

Similarly, PRA attorney's fees may not be awarded to an agency or a third party seeking an injunction under RCW

42.56.540 if it is successful. *Public Disclosure Deskbook*, *supra*, Chapter 18.4 at p. 16.

The Court of Appeals has cited to no authority for the proposition that it is entitled to award attorney's fees on appeal for the successful defense of a PRA claim. It is worth noting that no fees were awarded to King County by either the federal court or the trial court.

Yet the Court of Appeals has determined, *without addressing a motion, making the requisite findings under RCW 4.84.185*[4]*, or requesting supplemental briefing,* that both WEICU's PRA claim and its appeal are "frivolous." A-9.

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[4] RCW 4.84.185 requires the court enter a written finding that the action "was frivolous and advanced without reasonable cause". The Decision is void of such finding. In addition, the determination of "frivolous" is required to be made "upon motion by the prevailing party after a . . . final order terminating the action as to the prevailing party." To date, King County has filed no such motion – either at the trial court level or on appeal.

G. Division I Must Adhere to Its Own Prior PRA Decisions

"A petition for review will be accepted. . . [i]f the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals . . . . " RAP 13.4(b)(2).

Division I is subject to the basic principles of *stare decisis* and must adhere to its own prior decisions, absent compelling reasons to overrule itself. *State v. Stalker*, 152 Wn. App. 805, 811, 219 P.3d 722 (Wash. App. 2009) ("The doctrine of stare decisis provides this necessary clarity and stability in the law, gives litigants clear standards for determining their rights, and "prevent[s] the law from becoming `subject to incautious action or the whims of current holders of judicial office.'" [quoting *Lunsford v. Saberhagen Holdings, Inc.*, 208 P.3d 1092, 166 Wn.2d 264, 278 (2009)].)

In 2023, Division I issued a published decision in *Doe v. Seattle Police Dep't*. finding that a PRA exemption does not prevent the disclosure of records:

> In addition to setting forth exemptions to the mandate for disclosure of public records, the PRA includes an injunction provision stating that disclosure may be enjoined only when "examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions." RCW 42.56.540. Based on this statutory provision, our Supreme Court has held that "finding an exemption applies under the PRA does not ipso facto support issuing an injunction." *Lyft*, 190 Wn.2d at 786. Rather, for the disclosure of records to be precluded due to a statutory exemption, the court has held that the PRA's standard for injunctive relief **must also be met**. *Morgan v. City of Federal Way*, 166 Wn.2d 747, 756-57, 213 P.3d 596 (2009); *see also Soter v. Cowles Publ'g Co.,* 162 Wn.2d 716, 757, 174 P.3d 60 (2007) (plurality opinion) ("[T]o impose the injunction contemplated by RCW 42.56.540, the trial court must find that a specific exemption applies and that disclosure would not be in the public interest and would substantially and irreparably damage a person or a vital government interest.").

Doe v. Seattle Police Dep't., Case No. 83700-1-I slip opinion (Wash. App. 2023), at pp. 10-11 (emphasis added).

Division I side-stepped its own recent published decision in *Doe v. Seattle Police Dep't*. by declaring a signed and verified PRA complaint was not a signed pleading under Civil

Rule 11. It turned a blind eye to the egregious errors surrounding King County's PRA injunctive relief claim. If it had addressed those errors, it would have had to follow its own published decision and remand the matter for findings consistent with RCW 42.56.540. An appellate division is not entitled to ignore its own internal precedent.

This Court must enforce precedent by accepting review.

H. The Decision Side-Steps Significant Constitutional Questions of Law Relating to Whether Elector Secrecy Attaches to Anonymous Ballot Records

"A petition for review will be accepted. . . [i]f a significant question of law under the Constitution of the State of Washington . . . is involved . . . . " RAP 13.4(b)(3).

This case pits Article I, §19 against Article VI, §6 of the state constitution. Article I, §19 protects the freedom to free and equal elections. Article VI, §6 directs the Legislature to provide for a method of voting that secures elector secrecy in ballot preparation and deposit.

WEICU contends that election related anonymous public

records are subject to inspection in order to protect free and equal elections (Article I, §19). WEICU further contends that based on the plain language of Article VI, §6, the secrecy requirements apply to a legislative directive to maintain the secrecy of elector identity in relation to a cast ballot. The Legislature has enacted that constitutional requirement, and Washington courts have already found that the 'secrecy' provision in Article VI applies to elector identity, and not to their ballots. RCW 29A.08.161; *White v. Clark*, *supra*, 188 Wash.App. at 632.

King County seeks to muzzle Article I, §19. It contends that Article VI, §6 should be interpreted as a requirement to keep cast ballot records **permanently secret** from public inspection. CP 329, 333-34. King County believes the constitution dictates *secret elections* subject to zero public scrutiny of actual votes cast or actual vote totals.

The trial court provided its own creative interpretation of Article VI, §6 of the state constitution, repeatedly stating in its

orders that "the constitutional mandate for secrecy does not stop once the voters deposit their ballots, and must be maintained after deposit."[5] CP 1032, ll. 6-7; CP 1039, ll. 10-11; CP 1046, ll. 5-6.

Division I in its Decision made *no* citations, references, or statements whatsoever with regard to *either* constitutional provision. A-1 to A-10. The Decision is silent as to Assignments of Error Nos. 3, 12 and 15.

The Court of Appeals erred in rendering a verified complaint inoperative seemingly in an effort to ignore the significant constitutional issues on this appeal.

I. This Case Raises Controversial Issues of Universal Public Interest

"A petition for review will be accepted. . . [i]f the

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[5] Contrary to the trial court's opinion, nothing in Article VI, §6 suggests that ballots are 'secret' after deposit. If that were the case, no one within King County could view cast ballots for tabulation.

petition involves an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b)(4).

This petition raises contested issues of the highest public import in which there is an inconsistency between and among the Civil Rules, the PRA, Supreme Court precedent, appellate precedent, and competing provisions of the State Constitution. Civil Rule 11; Civil Rule 9(a); Civil Rule 12; RCW 42.56; *Lyft, Inc. v. City of Seattle*, 418 P.3d 102, 190 Wash.2d 769, 777-80, 418 P.3d 102 (2018); *White* Opinions; WA State Const. Article I, §19, Article VI, §6.

The fact that the Court of Appeals has sanctioned WEICU and its counsel for litigating a verified PRA complaint only increases the urgency and importance of this matter for review.

VI. CONCLUSION

Certiorari is highly warranted to correct the absurd result reached by the Court of Appeals. The trial courts and appellate courts need clear guidance to prevent any further abuses of

Civil Rule 11. Particular attention is needed by this Court with regard to the standards for *pro se* PRA claims and what constitutes a "frivolous" claim under the Public Records Act, Chapter 42.56 RCW.

Submitted this 23rd day of August, 2024.

Per RAP 18.17(b), I hereby certify the number of words contained in this Petition for Review is as follows: 3,977.

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CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that the foregoing was electronically filed in the Court of Appeals of the State of Washington, Division I, and electronically served on the following parties, according to the Court's protocols for electronic filing and service:

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Dated this 23rd day of August, 2024, at Sequim, Washington.

s/*Virginia P. Shogren*

APPENDIX

FILED
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Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

WASHINGTON ELECTION INTEGRITY COALITION UNITED, a Washington State Nonprofit Corporation; DOUG BASLER; HOWARD FERGUSON; DIANA BASS; TIMOFEY SAMOYLENKO; AMY BEHOPE; MARY HALLOWELL; SAMANTHA BUCARI; RONALD STEWART; LYDIA ZIBIN; CATHERINE DODSON, Appellants, v. JULIE WISE, Director of King County Elections; KING COUNTY, DOES 1-30, inclusive, and WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE, Respondents.	No. 85983-8-I DIVISION ONE UNPUBLISHED OPINION

MANN, J. — Washington Election Integrity Coalition United (WEICU) appeals dismissal of its claims against King County for failing to disclose ballot information from the 2020 election under the Public Records Act (PRA), ch. 42.56 RCW. Pro se plaintiffs Doug Basler and Timofey Samoylenko appeal dismissal of their claims against King

County based on allegations of election misconduct.[1] Because WEICU's complaint was not signed by an attorney in violation of CR 11, and because Basler and Samoylenko abandoned their claims, we affirm.

I

In September 2021, WEICU, Basler, and Samoylenko sued King County and King County Elections Director Julie Wise. Basler and Samoylenko asserted that misconduct by Director Wise tainted the 2020 election results. They asserted several claims under RCW 29A.68.013 including use of an uncertified voting system, vote flipping, allowing party preference, ballot security issues, and sought injunctive and declaratory relief. Basler and Samoylenko claimed civil rights violations under 42 U.S.C. § 1983 and 1988, and violations of their state and federal constitutional rights. WEICU asserted one claim—a violation of the PRA. WEICU sought disclosure of original ballots, ballot images, spoiled ballots, adjudication records, ballot envelopes, and returned ballots for the 2020 election. The complaint was signed and verified by Basler, Samoylenko, and the director of WEICU, but it was not signed by an attorney for WEICU.

King County removed the case to federal district court. After King County filed its answer and counterclaims seeking declaratory relief and injunctive relief, the federal district court determined it lacked subject matter jurisdiction because the individual plaintiffs lacked Article III standing. The court also determined it lacked supplemental jurisdiction over the state law claims. The court remanded the case to King County

[1] The complaint originally included pro se plaintiffs Doug Basler, Howard Ferguson, Diana Bass, Timofey Samoylenko, Amy Behope, Mary Hallowell, Samantha Bucari, Ronald Steward, Lydia Zibin, and Catherine Dodson. Only Basler and Samoylenko appealed to this court.

Superior Court. Virginia Shogren appeared as attorney of record for WEICU after the case was remanded.

King County amended its answer and asserted counterclaims seeking declaratory judgment that ballots, ballot images, and voter signatures on ballot envelopes were exempt from public disclosure under the PRA. King County also sought injunctive relief under the PRA preventing WEICU from obtaining the requested records.

Washington State Democratic Central Committee (WSDCC) successfully moved to intervene under CR 24 as an organization dedicated to representing the interests of Washington's democratic voters and with an interest in ensuring the official certified results of Washington's 2020 election remain undisturbed and credible.

WEICU moved for declaratory judgment seeking a court finding that tabulated Washington State ballots were anonymous public records under RCW 29A.08.161.[2] WEICU also moved for a show cause order on its PRA claim asking the trial court to compel King County to permit inspection of original ballots, ballot images, spoiled ballots, and returned ballots. King County moved for summary judgment on all claims and argued that WEICU's PRA claim: (1) failed under CR 11 because the complaint was not signed by an attorney, (2) failed as a matter of law because the requested records were not subject to public disclosure, and (3) failed because King County fully complied with the requirements of the PRA. King County sought declaratory and injunctive relief that the requested records were not subject to public disclosure.

[2] RCW 29A.08.161 provides that "[n]o record may be created or maintained by a state or local governmental agency or a political organization that identifies a voter with the information marked on the voter's ballot, except the declarations made under RCW 29A.56.050(2)."

The trial court granted summary judgment and dismissed all of WEICU's claims. The court also granted King County's motion to strike the PRA cause of action pursuant to CR 11 and declared that "King County cannot as a matter of law disclose original, spoiled or returned ballots or images of those ballots to the public and cannot provide voter signatures on ballot envelopes for copying." The trial court granted summary judgment against Basler and Samoylenko because they failed to respond or present evidence. The court determined their election-related claims were barred by RCW 29A.68.013 because they were not supported by timely affidavits.

The trial court denied WEICU's motion to show cause because King County met its burden under the PRA by "showing that their refusal to permit public inspection of these ballots is in accordance with a statute that exempts or prohibits disclosure." The trial court also denied WEICU's motion for declaratory judgment because such a judgment "as to the meaning and application of RCW 29A.08.161 would not terminate the uncertainty of controversy giving rise to this proceeding."

After unsuccessfully seeking reconsideration, WEICU sought direct review by the Washington Supreme Court of the order granting WSDCC's motion to intervene, the order granting summary judgment, the order denying its motion to show cause, and the order denying declaratory judgment. Basler and Samoylenko also sought direct review by the Supreme Court. The Supreme Court transferred this matter to this court for review.

II

WEICU argues the trial court erred by striking its PRA claim for failure to comply with CR 11. We disagree.

CR 11(a) requires that all pleadings, motions, and legal memoranda of a party represented by an attorney be signed and dated by at least one attorney of record. By signing, the attorney certifies that to the best of their knowledge and belief the pleading, motion, or legal memoranda is "well grounded in fact," "warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law," and "it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." CR 11(a). "The purpose behind CR 11 is to deter baseless filings and to curb abuses of the judicial system." Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 219, 829 P.2d 1099 (1992).

"Washington, like all federal courts, follows the common law rule that corporations appearing in court proceedings must be represented by an attorney." Dutch Vill. Mall v. Pelletti, 162 Wn. App. 531, 535-36, 256 P.3d 1251 (2011); see also Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194, 201-02, 113 S. Ct. 716, 721, 121 L. Ed. 2d 656 (1993) ("It has been the law for the better part of two centuries, for example, that a corporation may appear in the federal courts only through licensed counsel."). "When a corporate entity presents a pleading not signed by an attorney, CR 11 is a proper basis for striking the pleading." Dutch Vill. Mall, 162 Wn. App. at 539. But courts should permit a corporation a reasonable amount of time to cure the defect once the corporation is aware of it. Biomed Comm, Inc., v. Dep't of

Health Bd. of Pharm., 146 Wn. App. 929, 935, 193 P3d 1093 (2008); see also Lloyd Enters., Inc., v. Longview Plumbing & Heating Co., Inc., 91 Wn. App. 697, 699, 958 P.2d 1035 (1998) (affirming the trial court's striking of pleadings under CR 11 when party was given 20 days to cure the defect and failed to do so).

In Dutch Village Mall, the sole owner of an LLC filed a complaint and, following the filing of an answer and a motion for default, the defendant moved to strike the pleadings because they were not signed by an attorney. 162 Wn. App. at 534-35. The owner, admittedly not an attorney, argued that he should be able to represent his single member LLC as if he were representing himself. Dutch Vill. Mall, 162 Wn. App. at 535. The trial court granted the motion to strike. This court agreed with the trial court and held that a corporation—including single member LLCs—must present its legal claims in court through a licensed attorney. Dutch Vill. Mall, 162 Wn. App. at 539.

WEICU is a corporation and Shogren did not sign the complaint. WEICU learned of its omission by at least May 5, 2023, when King County argued the violation of CR 11 in its motion for summary judgment. At the time of the hearing on the motions on June 2, 2023, WEICU's complaint remained unsigned by an attorney. At oral argument, Shogren admitted she did not seek leave to amend the complaint once she learned about the omission even though more than 30 days passed before the trial court signed the order on summary judgment. Under CR 11, it was proper to strike WEICU's PRA claim and the trial court did not err in doing so. Dutch Vill. Mall, 162 Wn. App. at 539.

Because WEICU's complaint was not signed by an attorney and the omission was not remedied within a reasonable time from when King County moved for summary

judgment, the trial court properly struck WEICU's PRA claim under CR 11. As a result, we do not address WEICU's remaining arguments related to its PRA claim.[3]

III

Basler and Samoylenko appeal the summary judgment order dismissing their election claims. We agree with the trial court.

Summary judgment requires that opposing affidavits be made on personal knowledge, set forth facts that would be admissible in evidence and that show there is a genuine issue for trial. CR 56(e). While Basler and Samoylenko participated in the proceedings below, including participating in the deposition of Director Wise, they failed to file responsive pleadings in the trial court. The trial court properly dismissed the election claims. West v. Gregoire, 184 Wn. App. 164, 171, 336 P.3d 110 (2014) ("a plaintiff abandons a claim asserted in a complaint by failing to address the claim in opposition pleadings, present evidence to support the claim, or argue the claim in response to a summary judgment motion"). Further, any election contest claim brought under chapter 29A.68 RCW must be done within 10 days of certification. RCW 29A.68.013. As a result, Basler and Samoylenko's claims were also untimely.

Basler and Samoylenko also did not submit briefs to this court or provide any argument for us to consider. They have abandoned their claims and the matter is not

[3] WEICU also contends that a notice of appearance under CR 70.1 is enough to overcome the failure to comply with CR 11 and that King County, by proceeding in federal court, was precluded from raising a CR 11 violation in superior court at summary judgment. WEICU fails to provide supporting authority for either argument. The issues are inadequately briefed and we do not address them. RAP 10.3(a)(6); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (argument unsupported by reference to the record or citation to authority will not be considered).

properly before us.[4] RAP 9.12; see also Green v. Normandy Park Riviera Section Cmty. Club, 137 Wn. App. 665, 687, 151 P.3d 1038 (2007) (contention that was pleaded, but not raised in opposition to summary judgment, cannot be considered for the first time on appeal).

IV

WEICU seeks attorney fees on appeal under the PRA and RAP 18.1. RAP 18.1(a) provides that a party to an appeal may request recovery of "reasonable attorney fees or expenses" if the applicable law grants the party the right to recover. WEICU points to RCW 42.56.550(4), which provides for an award to a person who prevails against an agency in a PRA action, as the basis for its request. WEICU did not prevail against King County, so there is no basis for awarding it attorney fees and costs on appeal. King County, as the prevailing party, may seek to recover its costs. RAP 14.2; 14.3.

King County requests that this court impose sanctions, including attorney fees and compensatory damages on all appellants. First, King County asks this court to sanction WEICU under RAP 18.9 because the appeal is frivolous. Similarly, WSDCC asks this court to require WEICU to pay WSDCC's attorney fees on appeal.

This court may, "on its own initiative or on motion of a party," order a party who violates the rules or files a frivolous appellate action "to pay terms or compensatory damages to any other party who has been harmed by the delay or failure to comply." RAP 18.9(a). "Appropriate sanctions may include, as compensatory damages, an

[4] In its brief, WEICU makes several arguments related to the election claims brought only by the pro se plaintiffs. King County moved to strike all arguments WEICU made that are unrelated to the PRA claim. King County's motion is granted.

award of attorney fees and costs to the opposing party." Kinney v. Cook, 150 Wn. App. 187, 195, 208 P.3d 1 (2009) (quoting Yurtis v. Phipps, 143 Wn. App. 680, 696, 181 P.3d 849 (2008)). An intervenor may seek and is entitled to sanctions. See Spokane Rsch. & Def. Fund v. City of Spokane, 155 Wn.2d 89, 98-99, 117 P.3d 1117 (2005) ("if [intervenor] prevails . . . he is entitled to attorney fees, costs, and sanctions").

In determining whether an appeal is frivolous, the court examines the entire record for whether debatable issues on which reasonable minds might differ exist and whether the argument is so devoid of merit that there is no chance of reversal. Advocs. for Responsible Dev. v. W. Wash. Growth Mgmt. Hr'gs Bd., 170 Wn.2d 577, 580, 245 P.3d 764 (2010). Any doubts on whether an appeal is frivolous should be resolved in favor of the appellant. Advocs. for Responsible Dev., 170 Wn.2d at 580.

WEICU filed a complaint that was not signed by an attorney in violation of CR 11. WEICU pursued its lawsuit and conducted discovery, still without curing its omission. Despite having reasonable time to seek leave to amend the complaint, Shogren never did so. WEICU then pursued this appeal despite the fatal omission under CR 11. WEICU also pursued its appeal despite recent legislation and controlling case law holding that ballots and ballot images are exempt from public disclosure.[5] We conclude WEICU's PRA and appeal was frivolous. Sanctions against WEICU and its counsel, Shogren, are appropriate.

[5] RCW 42.56.420(7)(a)(iii); RCW 42.56.425(1)(e); White v. Clark County, 188 Wn. App. 622, 354 P.3d 38 (2015); White v. Skagit County, 188 Wn. App. 886, 898, 355 P.3d 1178 (2015); White v. Clark County, 199 Wn. App. 929, 401 P.3d 375 (2017); Wash. Election Integrity Coal. United v. Schumacher, 28 Wn. App. 2d 176, 537 P.3d 1058, review denied, 2 Wn.3d 1025 (2023).

King County contends that Basler and Samoylenko should be sanctioned under both RAP 18.1 and RCW 29A.68.060. RCW 29A.68.060 authorizes a judgment for costs where an action is dismissed for insufficiency. Costs are defined to include statutory attorney fees. RCW 4.84.010. Because RCW 29A.68.060 refers only to costs, reasonable attorney fees are not recoverable in election contests—only statutory attorney fees. Dumas v. Gagner, 137 Wn.2d 268, 294, 971 P.2d 17 (1999).

Basler and Samoylenko filed a complaint alleging untimely claims, conducted discovery, and then failed to present argument or evidence to the trial court. Because Basler and Samoylenko's claims were properly dismissed on summary judgment for insufficiency, judgment for costs under RCW 29A.68.060 is appropriate.

As a result, subject to compliance with RAP 18.1, we award King County and the WSDCC their costs and statutory attorney fees, against Basler and Samoylenko, jointly and severally, under RCW 29A.68.060 and RAP 18.1. We award King County and WSDCC their costs, including reasonable attorney fees, against WEICU and its counsel, Shogren, jointly and severally, under CR 11, RAP 18.1, and RAP 18.9.

Affirmed.

Mann, J.

WE CONCUR:

Birk, J.

Smith, C.J.

VIRGINIA P. SHOGREN, P.C.

August 23, 2024 - 10:15 AM

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