No. 94203-0

SUPREME COURT OF THE STATE OF WASHINGTON

JOHN DOE G, JOHN DOE I, and JOHN DOE H,
as individuals and on behalf of others similarly situated,

Respondents,
v.
DEPARTMENT OF CORRECTIONS, STATE OF WASHINGTON

Appellant,
v.
DONNA ZINK, a married woman,

Appellant.

PETITIONER ZINK'S REPLY TO RESPONDENTS OPPOSITION TO PETITIONER ZINK'S MOTION TO STRIKE

DONNA ZINK
Pro Se Appellant
P.O. Box 263
Mesa, WA 99343
(509) 265-4417
dlczink@outlook.com

I. REPLY

Does claim that they only advanced an alternative argument in their answer to support the Court of Appeals ruling concerning whether a SSOSA is a healthcare record and did not affirmatively request review of the issue. They argue that because they did not affirmatively seek review, Zink has no right to file a reply.

In *John Doe v. Dep't of Corr.*, ___ Wn. App. ___, 197 Wn. App. 609 (2017), Division I stated:

> But because the statute defines mental health records as "a type of health care information," RCW 70.02.010(21), **we do not need to decide whether SSOSA evaluations also qualify as mental health records.** If they are health care information, they are exempt under RCW 70.02.020(1); if they are not health care information, then they are not mental health records either.

(*Id.* ¶16)(emphasis added).[1] Division I clearly stated that they would not consider RCW 70.02.230(1) in making their decision. Does argument concerning whether RCW 70.02.230(1) exempts SSOSA as mental health

---

[1] "Information and records related to mental health services" means a type of health care information that relates to all information and records ((, including mental health treatment records,)) compiled, obtained, or maintained in the course of providing services by a mental health service agency((, as defined in this section)) or mental health professional to persons who are receiving or have received services for mental illness. RCW 70.02.010(21).

records does not support the decision of Division I since that decision was never made. Rather, Division I determined that if the records are not healthcare records they are not mental health care records either and refused to address that issue.

Citing to *Blaney v. Int'l Ass'n of Machinists & Aerospace Workers, Dist. No. 160*, 151 Wn.2d 203, 210 *fn.*3, 87 P.3d 757 (2004), Does claim that while they have the right to raise a new issue under RAP 13.4(b), Zink has no right to a reply because they did not affirmatively request review. The Court in *Blaney*, analyzed the language of RAP 13.4(d) and 13.7(b) and determined that "RAP 13.4(d) and 13.7(b) do not require a [party] to "file a cross-petition . . . or . . . affirmatively seek review." The rules merely require that the issue be raised. (*Id.*). Does raised the issue of application of RCW 70.02.230(1) in their response to Zink's petition (Doe Answer to Pets. 11-17). Zink merely replied to the new issue raised by Doe. It is disingenuous for Does to claim they have a right to advance an issue, and to have that issue reviewed whether affirmatively requested or not, while at the same time claiming Zink has no right to provide a reply.

Does argue that Zink raised issues which were never properly raised and thus waived. RCW 42.56.540 is the only statute giving a court the authority to enjoin public records.

> Appellants cite the substantive requirements for an injunction under RCW 7.40.020 as authority to deny the injunction claim. RCW 7.40.020 codifies the court's general powers to grant an injunction. **RCW 42.56.540**

> **specifically governs the court's power to enjoin the production of a record under the PRA**. We have long recognized that where two statutes apply, the specific statute supersedes the more general statute. Gen. Tel. Co. of the Nw., Inc. v. Utils. & Transp. Comm'n, 104 Wn.2d 460, 464, 706 P.2d 625 (1985). **Because RCW 42.56.540 is specific to injunctions against production under the PRA, it is the governing injunction statute** in this case.

Bainbridge Island Police Guild v. City of Puyallup, 172 Wn.2d 398, ¶12, *fn.* 2, 423, 259 P.3d 190 (2011)(emphasis added). The same is true in this case. RCW 42.56.540 is the sole means for a court to enjoin the records at the request of a third party. A deciding court cannot ignore the mandatory requirements of RCW 42.56.540 simply because it was not properly briefed because it is the only authority allowing a court to enjoin the public's records and is essential to the decision-making process.

> This court generally reviews only those issues raised by the parties in their petition and answer. RAP 13.7(b). This rule is subject to numerous exceptions. Maynard Inv. Co. v. McCann, 77 Wn.2d 616, 621, 465 P.2d 657 (1970). One such exception provides that **"[t]his court has the inherent discretionary authority to reach issues not briefed by the parties if those issues are necessary for decision**." City of Seattle v. McCready, 123 Wn.2d 260, 269, 868 P.2d 134 (1994).

Blaney v. Int'l Ass'n of Machinists & Aerospace Workers, Dist. No. 160, 151 Wn.2d 203, 213, 87 P.3d 757 (2004)(footnotes omitted)(emphasis added).

This Court has mandated that the question of whether an issue will be heard for the first time on appeal lies in the determination of:

1. Whether one party has the right to waive compliance with the provisions of a mandatory statute;
2. Whether it affects the present welfare of the people at large and or a substantial portion thereof;
3. Whether a departure from the general rule is warranted; and
4. Whether the court is authorized in its discretion to direct its attention to the general welfare, rather than the interests of the parties to the immediate cause.

Maynard Inv. Co. v. McCann, 77 Wn.2d 616, 622-23, 465 P.2d 657 (1970). A court's decision to enjoin the public's records is of great public concern, affects the public's ability to access public records and therefore affects the welfare of the public at large rather than just the interests of the parties in this cause.

> The exception to the rule is a salutary one. Courts are created to ascertain the facts in a controversy and to determine the rights of the parties according to justice. Courts should not be confined by the issues framed or theories advanced by the parties if the parties ignore the mandate of a statute or an established precedent. **A case brought before this court should be governed by the applicable law even though the attorneys representing the parties are unable or unwilling to argue it.**

Maynard Inv. Co. v. McCann, 77 Wn.2d 616, 623, 465 P.2d 657 (1970)(emphasis added). Accordingly, whether Zink was remiss in not properly briefing the issue of application of RCW 42.56.540 to the

injunction of the SSOSA evaluations, Division I cannot simply refuse to apply the mandatory requirements set out by the legislature required to be used to enjoin the public's records and Zink's request for review is appropriate.

RESPECTFULLY SUBMITTED this 28th day of April, 2017.

By Donna M Zink

Donna Zink
Pro se

II. CERTIFICATE OF MAILING

I, Donna Zink, declare that on April 28, 2017, I did send a true and correct copy of Appellant Zink's request for "*Petitioner Zink's Reply to Respondents Opposition to Petitioner Zink's Motion to Strike*" to the following parties via e-mail to the following e-mail Service Addresses:

- BENJAMIN GOULD
  WSBA #44093
  Keller Rohrback LLP
  1201 Third Avenue, Suite 3200
  Seattle, WA 98101
  Phone: 206-623-1900/Fax: 206-623-3384
  Email: bgould@kellerrohrback.com;

- PRACHI VIPINCHANDRA DAVE, ESQ
  WSBA #
  ACLU of Washington Foundation
  901 5th Ave, Suite 630
  Seattle, WA 98164
  Phone: 206-624-2184/Fax:
  Email: vhernandez@aclu-wa.org; and

- TIMOTHY J. FEULNER
  WSBA #45396
  Washington State Attorney General
  Corrections Division OID #91025
  800 Fifth Avenue, Suite 2000
  PO Box 40116
  Olympia, WA 98504-0116
  Phone: 306-586-1445/Fax:
  Email: TimF1@atg.wa.go.

Dated this 28th day of April, 2017.

By Donna L Zink
Donna Zink
Pro Se