No. 86107-2

(King County Superior Court No. 10-2-41119-4 SEA)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

MARTIN RINGHOFER,

Appellant,

v.

LINDA K. RIDGE,

Respondent.

STATEMENT OF GROUNDS FOR DIRECT REVIEW

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INTRODUCTION

Appellant, Martin Ringhofer, files this Statement of Grounds for Direct Review under RAP 4.2(b) and urges the Court to retain this appeal.[1] This appeal involves important issues of first impression regarding the administration of justice and a citizen's right to access pre-trial disqualified juror records. This appeal involves RCW 2.36.072(4) and GR 18(d)'s conflict between the right of access to court records derived from Article I, Section 10 of the Washington Constitution and the First and Sixth Amendments to the United States Constitution.[2]

NATURE OF CASE AND DECISION

Appellant Ringhofer is a concerned citizen and registered voter in King County. On October 16, 2010, Mr. Ringhofer submitted an official request for public records under the Public Records Act to Respondent Ridge, the Deputy Chief Administrative Officer of the King County Courts, for access to pre-trial information submitted by disqualified jurors in responding to the Superior Court of King County's Juror Qualification Form.

Mr. Ringhofer's purpose of monitoring disqualified jurors directly relates to the purpose of the open court provisions contained in the First and

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[1] In the event the Court decides that direct review is not warranted, the Court should transfer this case to the Court of Appeals because the Superior Court entered a final judgment. RAP 4.2(e)(1).

[2] Appellant requested the individual names and addresses of disqualified jurors, the reason(s) for their disqualification pursuant to RCW 2.36.070, and the dates of their disqualification for the period ranging from January 2008 to December 2009.

Sixth Amendments to the United States Constitution, Article I, Section 10 of the Washington Constitution, and the common law. The disclosure he requested encourages judicial transparency and the administration of justice by monitoring citizens who try to get out of juror service by fraudulently disqualifying themselves on the Juror Qualification Form. Additionally, Mr. Ringhofer desires to use the disqualified juror information to evaluate the state voter registration list. This information can show how many non-citizens are registered to vote in King County and he can report this information to the Secretary of State and public officials in King County.

On October 26, 2010, Mr. Ringhofer received a letter from Respondent stating that she would not provide the information he requested based on RCW 2.36.072(4) and GR 18(d), which states that juror information can only be used for the term the juror is summoned and cannot be used for any other purpose. She also stated that the Public Records Act does not apply to the judicial branch.

On November 22, 2010, Mr. Ringhofer filed a Complaint with the Superior Court of King County seeking a writ of mandate pursuant to RCW 7.16.150, declaratory and injunctive relief pursuant to RCW 7.24.010 and access to the disqualified juror information under a GR 31 petition. On March 31, 2011, Mr. Ringhofer and Respondent filed cross-motions for summary judgment.

On May 10, 2011, the Superior Court for King County denied Mr. Ringhofer's motion and granted Respondent's motion for summary judgment.

This Court should decide whether Appellant was deprived of his constitutional rights when the lower court denied him access to the court records he requested, based on limiting provisions in RCW 2.36.072(4) and GR 18(d), without first requiring the Respondent to submit facts to rebut the constitutional presumptions favoring the public's ability to access pre-trial court records.

ISSUES PRESENTED FOR REVIEW

1. Whether the denial of access to disqualified juror information gathered and maintained by the Superior Court violates rights protected by the First and Sixth Amendments to the United States Constitution and Article I, Section 10 of the Washington Constitution.

2. Whether RCW 2.36.072(4) and GR 18(d) as applied violate the rights to access court records.

GROUNDS FOR DIRECT REVIEW

RAP 4.2 lists several grounds for granting direct review. Two of those grounds are relevant to the present case. RAP 4.2(4) provides for review of a "case involving a fundamental and urgent issue of broad public import which requires prompt and ultimate determination." Subsection (5) refers to injunctive relief against a state officer as appropriate for direct

review. While Respondent is an administrator within the state's judicial system, it is unclear whether she is technically a "state officer." Nevertheless, the policy underlying the rule applies because she is implementing state statutes in regard to a state constitutionally created branch of government—the judiciary. This Court should be the one to determine whether injunctive relief in this case is appropriate.

A. The Conflict of RCW 2.36.072(4) and GR 18(d) between the First and Sixth Amendments to the U.S. Constitution and Article I, Section 10 of the Washington Constitution is a Fundamental Issue of Broad Public Import which Requires Prompt and Ultimate Determination by this Court.

Mr. Ringhofer's action is based upon the First and Sixth Amendments of the U.S. Constitution; Article I, Section 10 of the Washington Constitution; the common law interpreting these provisions, and GR 31(k). This appeal involves fundamental and urgent issues of broad public import, including an issue of first impression as to whether a state statute and court rule can restrict access to records when access is protected by the federal and state constitutions. Additionally, can the court administrator deprive a member of the public of his constitutional right to access court records without first presenting facts showing that closure is necessary and in the public interest?

According to RCW 2.36.072(4), information provided to the court for preliminary determination of statutory qualification for jury duty may only be

used for the term such person is summoned and cannot be used for any other purpose, "except that the court, or designee, may report a change of address or nondelivery of summons of persons summoned for jury duty to the county auditor." RCW 2.36.072(4).

Similarly, GR 18(d) states, "[i]nformation so provided to the court for preliminary determination of qualification for jury duty may only be used for the term such person is summoned and may not be used for any other purpose." GR 18(d).

The trial court's interpretation of GR 18(d) and RCW 2.36.072(4) unconstitutionally restricts Mr. Ringhofer's access and proposed use of the non-juror records. Mr. Ringhofer contends that GR 18(d) and RCW 2.36.072(4) cannot be used to unlawfully prohibit his use of pre-trial disqualified juror records in contravention of federal and state constitutions' open court provisions, and GR 31(k). These are weighty issues of statewide significance and ones which should be determined by this Court.

1. First Amendment

The Court of Appeals recognizes that "jury questionnaires are presumptively open under the First Amendment." *State v. Coleman*, 151 Wn.App. 614, 619, 214 P.3d 158 (2009) and that the entire jury selection process is presumptively open to the public. *Id.* at 620. In *Coleman*, the court

also held that "[t]he guaranty of open criminal proceedings extends to jury selection" and is important to the criminal justice system. *Id.*

The First Amendment qualified right of access to juror names, addresses, and questionnaires may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest. *See, e.g., State ex rel. Beacon Journal Publ'g Co. v. Bond*, 98 Ohio St. 3d 146, 151, 159 (citing *Press-Enterprise Co. v. Superior Court,* 464 U.S. 501, 510, 104 S.Ct. 819, 78 L.Ed.2d 629 (1984) (holding that the jury list was subject to public disclosure because there were no findings rebutting the presumption of openness).

Respondent has failed to rebut the presumption in favor of openness by failing to allege an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest. Mr. Ringhofer is not seeking information such as social security numbers, telephone numbers, and driver's license numbers. He is merely seeking the individual names and addresses of disqualified jurors, the reason(s) for their disqualification pursuant to RCW 2.36.070, and the dates of their disqualification for the period ranging from January 2008 to December 2009.

The five categories of reasons for disqualification are as follows: (1) less than eighteen years of age; (2) not a citizen of the United States; (3) not a

resident of the county in which he or she has been summoned to serve; (4) not able to communicate in the English language; and (5) convicted of a felony and has not had his or her civil rights restored. RCW 2.36.070. These categories are not of the nature that they would lead to public embarrassment or harm if they were disclosed to the public, unlike personal information that could be used for scandalous or libelous purposes or trade secrets that could harm a litigant's competitive standing. This information is also limited in scope and is less intrusive than that which is typically elicited in a juror questionnaire or *voir dire*.

2. Sixth Amendment

The U.S. Supreme Court held that the Sixth Amendment right to a public trial can be invoked by members of the public, *e.g.* the media, under the First Amendment. *Presley v. Georgia*, ... U.S. ..., 130 S.Ct. 721, 175 L.Ed.2d 675, 679 (2010). Voir dire information is presumptively open to the public. *Id.* at 723.

The Court of Appeals applied the U.S. Supreme Court's interpretation of the Sixth Amendment as cited in the *Presley* case when it recognized the public's presumptive right to an open proceeding. *State v. Paumier*, 155 Wn. App. 673, 685 (2010) (finding that the trial court violated the public's right to an open proceeding after it failed to consider alternatives to closure and did not make appropriate findings explaining why closure was necessary before

shutting out the public). The Court of Appeals also recognized that the Sixth Amendment is intended to foster public understanding and trust in the judicial system and to apply the check of public scrutiny on judges. *Coleman,* 151 Wn.App. at 619-620 (finding that the trial court violated the public's right to an open proceeding when it closed a portion of *voir dire*).

In the present case, the trial court did not consider reasonable alternatives to closure or make appropriate findings explaining why closure was necessary before barring Mr. Ringhofer from accessing the requested court records.

3. Article I, Section 10 of the Washington Constitution

The Washington Constitution expressly guarantees that "[j]ustice in all cases shall be administered openly, and without unnecessary delay." Art. I, § 10. This Court has interpreted this section as clearly establishing a right of access to court proceedings. *Seattle Times Co. v. Ishikawa,* 97 Wn.2d 30, 36, 640 P.2d 716 (1982). This Court also held that the public's constitutional right to the open administration of justice extends beyond the taking of a witness's testimony at trial to pretrial proceedings. *State v. Easterling*, 157 Wn.2d 167, 174, 137 P.3d 825 (2006). The Court of Appeals also held that Article I, Section 10 gives the public and the press a right to open and accessible court proceedings. *State v. Vega*, 144 Wn. App. 914, 916-17 (2008).

The public's right of access is not absolute and may be limited to protect other interests. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580-82, 65 L. Ed. 2d 973, 100 S. Ct. 2814 (1980); *see also In re Lewis*, 51 Wn.2d 193, 198-200, 316 P.2d 907 (1957) (juvenile proceedings are not constitutionally required to be open in order to protect the child from notoriety and its ill effects). No reasons were shown for withholding the pre-trial disqualified juror records to protect other interests.

4. Constitutionally Based Common Law

Both the United States Supreme Court and this Court recognized a common law right to inspect court records, based on the importance of a citizen's desire to keep a watchful eye on the workings of public agencies and a publisher's intention to publish information concerning the operation of government. *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978) (finding that these public interests are sufficient to compel disclosure of judicial records under the common law); *Nast v. Michaels,* 107 Wn.2d 300, 303-304 (1986) (stating that the public has a common law right of access to court case files).

The *Nast* decision was in response to an argument that there was both a common law and a constitutional basis for the right to review court records. *Id.* Prior cases recognized the dual multiple underpinnings of these rights.

See Cowles Pub. Co. v. Murphy, 96 Wn.2d 584, 637 P.2d 966 (1981); *Federated Publications, Inc. v. Kurtz*, 94 Wn.2d 51, 615 P.2d 440 (1980).

Under this constitutionally based common law, a party seeking to overcome the presumption in favor of access to court records must articulate compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). The United States Supreme Court lists as examples of compelling reasons for not allowing disclosure of judicial records, instances when the court records or documents might become a vehicle for improper purposes, such as gratifying private spite or promoting public scandal through the publication of the painful and disgusting details of a divorce case, or to serve as reservoirs of libelous statements for press consumption, or as sources of business information that might harm a litigant's competitive standing. *Nixon*, 435 U.S. at 598.

In this case, Respondent failed to articulate compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure.

Mr. Ringhofer urges this Court to decide whether the First Amendment and Sixth Amendment of the U.S. Constitution and Article I, Section 10 of the Washington Constitution, operate to allow him access to the

pre-trial disqualified juror records when no attempt has been made to make or support factual findings that disclosure should not be allowed.

5. GR 31

Mr. Ringhofer originally requested access to the disqualified juror information under the Public Records Act. Respondent denied the request stating that court documents were not subject to the PRA. In the course of the litigation, Respondent argued that the documents were not court documents or records. The trial court apparently agreed and Mr. Ringhofer was denied access to the disqualified juror records.

The Respondent cannot have it both ways. Either the requested disqualified juror information is a court record subject to the open court provisions of the First and Sixth Amendments to the U.S. Constitution and Article I, Section 10 of the Washington Constitution, or it is not a court record and is subject to the PRA. This Court is the final arbiter of the meaning of provisions of the state constitution and state statutes and court rules. As such, this Court should resolve this important and basic issue so that other members of the public are not harmed by the court's ambiguity.

B. This Action Against the Deputy Chief Administrative Officer of the King County Superior Court Seeks Injunctive Relief

The Plaintiff seeks injunctive relief against an official who is part of the state judiciary, namely, the Deputy Chief Administrative Officer of the

King County Superior Court in her official capacity. It may be uncertain whether her status qualifies as a state officer for purposes of RAP 4.2(5)'s authorization for direct appeal to the Supreme Court when injunctive and declaratory relief is sought against a state officer. Nevertheless, the reasoning underlying RAP 4.2(5) is fully applicable. Questions as to whether injunctions should issue against officers implementing state policy should be resolved by the Supreme Court, rather than the Court of Appeals. *See, e.g., Dioxin/Organochlorine Center v. Department of Ecology*, 119 Wn.2d 761, 837 P.2d 1007 (1992).

CONCLUSION

This case is important to the preservation of the public's qualified right of open access to pre-trial court records in this State. These issues should be resolved by the Supreme Court. Restrictive application of GR 18(d) and RCW 2.36.072(4) in light of the unrebutted constitutional and common law presumptions is unlawful. Appellant Ringhofer urges the Court to retain jurisdiction of his appeal.

RESPECTFULLY submitted this 24th day of June, 2011.

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DECLARATION OF SERVICE

I, Linda Hall, declare:

I am not a party in this action.

I reside in the State of Washington and am an employee of Groen Stephens & Klinge LLP of Bellevue, Washington.

On June 24, 2011, A true and correct copy of Statement of Grounds and Declaration of Service was placed in envelopes, which envelopes with postage thereon fully prepaid were then sealed and deposited in a mailbox regularly maintained by the United States Postal Service in Bellevue, Washington, for delivery to the following persons:

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 24th day of June, 2011 at Bellevue, Washington.

Linda Hall