

Honorable Ronald Castleberry
KING COUNTY
SUPERIOR COURT CLERK
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SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

MARTIN RINGHOFER,)	No. 10-2-41119-4 SEA
)	
Petitioner,)	
)	
v.)	PETITIONER’S REPLY IN
)	SUPPORT OF PETITIONER’S
LINDA K. RIDGE, in her official capacity as)	MOTION FOR SUMMARY
Deputy Chief Administrative Officer of the King)	JUDGMENT DISMISSAL
County Superior Court,)	
)	
Respondent.)	
_____)	

INTRODUCTION

Petitioner seeks access to this Court’s disqualified juror records in the interest of ensuring government and judicial transparency, as well as the integrity of the juror selection and voter registration processes. Respondent has blocked Petitioner’s efforts to access the requested court records and has argued in error that the Legislature and the Supreme Court did

1 not intend for the disqualified juror information to be used to determine a person's
2 qualification to vote. This is far from the truth.

3 In this reply in support of his motion, Petitioner argues (1) the legislature intended to
4 allow the use of disqualified juror information to be used to cross-check the state voter
5 database, (2) the court records at issue should be disclosed because of the common law
6 presumption in favor of access to court records and State and Federal constitutional
7 requirements, (3) restrictive application of GR 18(d) and RCW 2.36.072(4) is
8 unconstitutional, (4) GR 31(k) allows Petitioner an avenue to request the court records, and
9 (5) that he has met the standard for summary judgment.

10 Petitioner respectfully requests that the Court deny Respondent's motion for summary
11 judgment and grant summary judgment in his favor, for the reasons addressed below.

12 **STATEMENT OF FACTS**

13 In May of 2005, the Legislature established its intent for preliminary juror
14 qualification information to serve as a vehicle for determining a person's qualifications to
15 vote by enacting Senate Bill 5743 ("SB 5743"), establishing that the Secretary of State could
16 screen data from state agency databases, the federal court system, and the bureau of
17 citizenship and immigration; and instituting measures to ensure that non-U.S. citizens were
18 put on notice that they were ineligible to vote and that if they made a false declaration about
19 their qualifications for voter registration they could be charged with a class C felony that is
20 punishable by imprisonment for up to five years, a fine of up to ten thousand dollars, or both.

21 In May of 2009, the Legislature clarified its legislative intent to allow the Secretary of
22 State to coordinate with the courts to screen out non-U.S. citizens from voting in Senate Bill
23 5270 ("SB 5720"), codified as RCW 29A.08.125. RCW 29A.08.125 established that the

1 Secretary of State must coordinate with the administrative office of the courts and county
2 auditors to ensure that the voter database reflects only those who are eligible to vote. RCW
3 29A.08.125(5). The statute also gave the Secretary of State the ability to “screen against any
4 available databases maintained by election officials in other states and databases maintained
5 by federal agencies including, but not limited to. . . the federal court system. . . and the bureau
6 of citizenship and immigration services.” RCW 29A.08.125(10) (emphasis added).

7 **ARGUMENT**

8 **I**
9 **THE LEGISLATURE INTENDED TO ALLOW THE USE OF**
10 **DISQUALIFIED JUROR INFORMATION TO BE USED TO CROSS-**
11 **CHECK THE STATE VOTER DATABASE**

12 Respondent argues in error, “Had the Legislature or Supreme Court wanted the
13 preliminary juror qualification information to serve as a vehicle for determining a [sic] each
14 person’s qualifications to vote, they could have easily done so. Instead, they adopted a
15 different policy.” Resp’t Br. In Opp.1-2. As pointed out above in reference to SB 5743 and
16 RCW 29A.08.125, the Legislature did intend for disqualified juror information to be used to
17 determine a person’s qualification to vote.

18 The Legislature’s motivation for requiring coordination between the Secretary of
19 State, the administrative office of the courts, and county auditors; namely to prevent non-U.S.
20 citizens from voting, is even clearer when one examines RCW 29A.08.125 together with the
21 following statutes:

- 22 (1) RCW 29A.08.010 (A check or indication in the box confirming the individual is a
23 United States citizen is required in order to place a voter registration applicant on
the voter registration rolls),

- 1 (2) RCW 29A.08.110 (an application is only complete if it contains a mark in the
2 check-off box confirming United States citizenship, among other basic
information),
- 3 (3) RCW 29A.08.210 (voter registration application must contain clear and
4 conspicuous language, designed to draw the applicant's attention, stating that the
applicant must be a United States citizen in order to register to vote and a check
5 box and declaration confirming that the applicant is a citizen of the United States),
- 6 (4) RCW 29A.08.330 (If the applicant chooses to register or transfer a registration, the
agent must ask them if they are a U.S. citizen and if they are 18 years of age or
7 will be before the next election),
- 8 (5) RCW 29A. 40.091(the declaration must clearly inform the voter that it is illegal to
vote if he or she is not a United States citizen),
- 9 (6) RCW 29A.84.140 (A person who knows that he or she does not possess the legal
10 qualifications of a voter and who registers to vote is guilty of a class C felony), and
- 11 (7) RCW 46.20.155 (If the applicant chooses to register or transfer a registration, the
agent shall ask if they are a U.S. citizen and if they are or will be eighteen years of age
12 on or before the next election. If the applicant answers in the negative to either
question, the agent shall not provide the applicant with a voter registration form).

13 The fact that RCW 29A.08.125 explicitly gives the Secretary of State the ability to
14 screen the State voter database against any available databases maintained by election
15 officials in other states and databases maintained by the bureau of citizenship and immigration
16 services shows that the Legislature intended for disqualified juror information to be used to
17 identify voters who are ineligible to vote due to lack of citizenship. RCW 29A.08.125(10).

18 Petitioner reported to Secretary Reed's office that seven individuals who declined jury
19 service in Douglas County due to citizenship status, were listed on the state voter database as
20 registered to vote. Pet. Mot. Summ. J. 11-12. In a March 15, 2011 e-mail, Shane Hamlin,
21 Co-Director of Elections for the Office of the Secretary of State, sent Petitioner an email
22 stating that Secretary Reed did not have the authority or obligation to cross check voter
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1 registrations against disqualified juror data. Ringhofer Decl. Ex. G. He also confirmed that
2 the seven individuals in question were, in fact, registered to vote in Douglas County. *Id.*

3 The email record between Petitioner and Hamlin shows that despite RCW 29A.08.125
4 empowering him to investigate non-citizen voter registration, Secretary Reed is not going to
5 cross check voter registrations against disqualified juror data on his own accord. The fact that
6 Secretary Reed's office responds to inquiries from constituents regarding non-jurors' voter
7 registrations, shows the important function that Petitioner has in identifying and bringing to
8 the Secretary Reed's attention, non-jurors who might be unlawfully influencing the elections
9 in King County and Washington State.

10 The Legislature's intent for disqualified juror information to be used to cross-check
11 the state voter database supports Petitioner's request for the disqualified juror information,
12 and ultimately his motion for summary judgment. Accordingly, Petitioner requests that the
13 Court grant his motion for summary judgment.

14 **II**
15 **THE COURT RECORDS AT ISSUE SHOULD BE DISCLOSED**
16 **BECAUSE OF THE COMMON LAW PRESUMPTION IN FAVOR OF**
17 **ACCESS TO COURT RECORDS AND STATE AND FEDERAL**
18 **CONSTITUTIONAL REQUIREMENTS**

17 **A. Common Law**

18 Respondent concedes that there is a strong presumption in favor of access to court
19 records, but instead of rebutting the presumption, she instead argues that the records in
20 question are not court records. Resp't Br. In Opp. 2. This argument contradicts what she
21 argued in her denial letter. Notably, she states, "Please note that the Public Records Act . . .
22 does not apply to the judicial branch. . . Access to information relating to the master jury
23 source list is governed by court rule. General Rule 31(k) states . . ." Ringhofer Decl., Ex. D.

1 Based on GR 31(k), GR 18(d), and RCW 2.36.072, she refused to provide the requested court
2 records to Petitioner.

3 Respondent also fails to take into consideration that the definition of court records
4 provided in GR 31(c)(4) is expressly “not limited to” the list of documents mentioned in the
5 definition. The Court is tasked with collecting and reviewing non-jurors’ written declarations
6 executed pursuant to RCW 2.36.072(4), so the information at issue is a record maintained by
7 the court.

8 Since court records are presumed to be open to the public, as conceded by
9 Respondent, and the requested records were in fact court records.¹ Respondent wrongfully
10 withheld the information.

11 **B. State and Federal Constitutional Law**

12 The United States Supreme Court recognizes the importance of a citizen’s desire to
13 keep a watchful eye on the workings of public agencies and a publisher's intention to publish
14 information concerning the operation of government. *In re McClatchy Newspapers, Inc.*, 288
15 F.3d 369, 371 (9th Cir. Cal. 2002) (citing *Nixon v. Warner Communications, Inc.*, 435 U.S.
16 589, 598 (1978)). These interests are sufficient to compel disclosure of judicial records. *Id.*
17 Respondent concedes that the First Amendment to the United States Constitution gives the
18 public and the press a presumptive right of access to criminal jury trials, yet argues that
19 Petitioner’s request for the court records does not implicate Federal or State constitutional
20 rights to access judicial proceedings and court records. Resp’t Br. In Opp. 4.

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23 ¹ Petitioner requested limited information contained on the non-jurors’ written declarations executed pursuant to RCW 2.36.072(4), i.e. the individual names and addresses of non-jurors, the reason(s) for their disqualification, and the dates of their disqualification. *See* Ringhofer Decl., Ex. C.

1 The law requires that a party seeking to overcome the presumption in favor of access
2 to court records must articulate compelling reasons supported by specific factual findings that
3 outweigh the general history of access and the public policies favoring disclosure. *Foltz v.*
4 *State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)(citing *Hagestand v.*
5 *Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995) (the district court should consider all the
6 relevant factors such as public interest in disclosure and whether disclosure would result in
7 improper use of the material for scandalous or libelous purposes or infringement upon trade
8 secrets; court should not rely on hypothesis or conjecture); *see also Pintos v. Pacific Creditors*
9 *Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010).

10 Examples of compelling reasons for not allowing disclosure of judicial records may
11 include instances when the court records or documents might become a vehicle for improper
12 purposes, such as gratifying private spite or promoting public scandal through the publication
13 of the painful and disgusting details of a divorce case, or to serve as reservoirs of libelous
14 statements for press consumption, or as sources of business information that might harm a
15 litigant’s competitive standing. *See Nixon v. Warner Communications, Inc.*, 435 U.S. 589,
16 598; *Nast v. Michaels*, 107 Wn.2d 300, 303, 730 P.2d 54 (1986) (noting that “[c]ourt case
17 files are generally available except where specific reasons exist for not disclosing a case file,
18 e.g. adoption files, juvenile files.”); *see also Foltz*, 331 F.3d at 1135.

19 Petitioner’s purpose in requesting the individual names and addresses of non-jurors,
20 the reason(s) for their disqualification, and the dates of their disqualification is lawful and
21 proper. Petitioner desires to keep a watchful eye on the workings of public agencies. He
22 plans to use the information in the public interest to identify and quantify the incidence of
23 unauthorized voter registration and voting in King County. Nothing suggests that Petitioner

1 intends to use the records for an improper purpose. In this circumstance, the Ninth Circuit has
2 held that a right of access is presumed. *Phoenix Newspapers v. U.S. District Court*, 156 F.3d
3 940, 946 (9th Cir. 1998).

4 The requested information does not concern “painful and disgusting” details of a
5 confidential or personal matter nor does it disclose business information that could harm a
6 litigant’s competitive standing. The disclosure of the requested information would also not
7 prejudice or harm any person in trial proceedings because the non-jurors have no stake in the
8 outcome of the trial for which they were summoned because they did not participate as a juror
9 in a trial. *See* RCW 2.36.070.

10 Respondent also argues that “written jury questionnaires are the functional equivalent
11 of oral questioning that occurs during voir dire examination, a part of the criminal trial that is
12 presumptively open to the public.” Resp’t Br. In Opp. 5. Since voir dire information is
13 presumptively open to the public, as Respondent concedes, then the information Petitioner
14 seeks should be presumptively disclosed since it is far less “personal” than the information
15 elicited during voir dire.

16 Respondent has not petitioned the court for a protective order or even given
17 justification of good cause for withholding the records requested despite constitutional
18 provisions allowing access. In light of these considerations and United States and
19 Washington Supreme Court precedent recognizing a common law right to inspect and copy
20 judicial records, the Court should grant Petitioner’s motion for summary judgment.

1 **III**
2 **RESTRICTIVE APPLICATION OF GR 18(D) AND**
3 **RCW 2.36.072(4) IS UNCONSTITUTIONAL**

4 At the heart of this case is the constitutionality and proper interpretation of GR 18(d),
5 RCW 2.36.072(4). Petitioner has explained at length why GR 18(d) and RCW 2.36.072(4) are
6 unconstitutional. Statutes that are in derogation of the common law are to be construed
7 narrowly. *Estate of Haselwood v. Bremerton Ice Arena, Inc.*, 166 Wn.2d 489, 498, 210 P.3d
8 308 (2009). To the extent that RCW 2.36.072(4) prohibits disclosure of the information
9 sought by Petitioner, in violation of common law, it must be narrowly construed. Pet'r Mot.
10 Summ. J. 17-18; Pet'r Opp. Resp't Mot. Summ. J. 12-13. Court rules cannot be interpreted to
11 circumvent or supersede constitutional mandates or deprive one of constitutional rights. *State*
12 *v. Coleman*, 151 Wn. App. 614, 622, 214 P.3d 158, 161 (2009) (citing *State ex rel. Beacon*
13 *Journal Publ'g Co. v. Bond*, 781 N.E.2d 180, 190 (Ohio 2002) (holding that the First
14 Amendment qualified right to open proceedings extends to prospective juror questionnaires)
15 (footnote omitted); *see also* Pet'r Mot. Summ. J. 17-18; Pet'r Opp. Resp't Mot. Summ. J. 12-
16 13.

16 **IV**
17 **GR 31(K) ALLOWS PETITIONER AN AVENUE**
18 **TO REQUEST THE COURT RECORDS**

19 Respondent argues that GR 31(k) does not permit Petitioner access to the disqualified
20 juror information. Resp't Br. In Opp. 7. She states, "GR 31(k) applies '[a]fter conclusion of
21 a jury trial' and therefore, on its face, applies only to jurors who were called to serve for that
22 trial." *Id.* Notably, there is no citation after this statement of law, but it appears to come from
23 GR 31(j). Unlike GR 31(j), GR 31(k) makes no mention of records only being available at
the conclusion of a jury trial; instead, it broadly states that a court may grant a petitioner

1 access to relevant information from the master jury source list upon a showing of good cause.
2 Petitioner has shown good cause in his motion for summary judgment. Pet'r Mot. Summ. J.
3 9-12. As such, Respondent should release the records to Petitioner.

4 **V**
5 **PETITIONER IS ENTITLED TO**
6 **SUMMARY JUDGMENT AS A MATTER OF LAW**

7 In his motion for summary judgment and his opposition to Respondent's motion for
8 summary judgment, Petitioner Ringhofer established that there is no genuine issue as to any
9 material fact and that he is entitled to judgment as a matter of law. Pet'r Mot. Summ. J. 4;
10 Pet'r Opp. Resp't Mot Summ. J. Respondent argues that Petitioner is not entitled to
11 declaratory or mandamus relief. Resp't Br. In Opp. 7. She states that the statute and court
12 rule's plain language do not entitle Petitioner to a declaration directing access to disqualified
13 juror information. For the reasons mentioned above, GR 18(d) and RCW 2.36.072(4) do not
14 operate to prevent Petitioner's access to the court records in contravention of common law
15 and State and Federal constitutional provisions.

16 Respondent also states that Petitioner has not shown that Respondent failed to perform
17 a duty required by law. Resp't Br. In Opp. 7. Respondent neglects to consider the other
18 grounds of relief that Petitioner is pursuing. In addition to the writ of mandamus under RCW
19 7.16.150, *et seq*, Petitioner seeks the requested court records by a petition under the common
20 law, petition based on the Federal and State Constitutions, a Petition for Judicial Review
21 under GR 31, and a Complaint for Declaratory Relief. *See* Pet'r Opp. Resp't Mot. Summ. J.
22 9; Pet'r Mot. Summ. J. 5; *see also* Pet. & Compl.

1 **CONCLUSION**

2 For the reasons set forth above, the Petitioner respectfully requests the Court to enter
3 Summary Judgment in his favor, declaring that he has a right to access non-juror records and
4 to issue a writ compelling Respondent to immediately release the requested non-juror records.

5 DATED this 25th day of April, 2011.

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