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EVERETT, WASHINGTON, FRIDAY, APRIL 29, 2011

AFTERNOON SESSION

--oo0oo--

THE COURT: Good morning. This is the matter of Martin, is it Ringhofer? Is that how you pronounce the plaintiff's name?

MR. RINGHOFER: Ringhofer, sir. Thank you.

THE COURT: v. Linda K. Ridge. It's cause No. 10-2-41119-4. It comes on for motions on summary judgments both by the petitioner and by the respondent.

Let's have the counsel identify themselves for the record.

MR. STEPHENS: Richard Stephens for the petitioner.

MS. MILES: Monique Miles for the petitioner.

MR. KUFFEL: Good afternoon, Your Honor. Tom Kuffel for the respondent.

THE COURT: All right. What I intend to do, I do have to be on another calendar at 2:00 o'clock, so what I would like to do is have the initial arguments about 15 minutes in duration, and then each side can have about a five-minute rebuttal.

I'll hear first from the petitioner, then I'll hear from the respondent. Obviously the rebuttal in the same

1 order. You can come up here if you want to, or you can
2 remain at counsel table if that's more convenient.

3 MS. MILES: Okay. Good afternoon, Your Honor. I'm
4 Mr. Ringhofer's counsel, and this case is about the
5 constitutional and the common law right of the public to
6 access court records. And Mr. Ringhofer has requested the
7 individual names and addresses of non-jurors. He's also
8 requested the dates of their disqualification. He also
9 requested the reasons for their disqualification from the
10 period ranging from January 2008 to December 2009. And
11 essentially this information is something that's sent out
12 to prospective jurors in a jury summons and they have to
13 fill out a declaration and send it back to the court and
14 the court processes it.

15 Respondent Ridge wrongfully denied my client of the
16 ability to access these records, and she cited GR, General
17 Rule 18(d), in addition to the Revised Code of Washington,
18 2.36.072(4). Martin Ringhofer and the respondent filed
19 cross motions for summary judgment on March 31st and
20 that's why we're here. There are five main pinpoints that
21 I want to touch on of why he's entitled to the court
22 records.

23
24 (Proceedings held following a brief recess.)
25

1 THE COURT: Sorry for the interruption. Counsel.

2 MS. MILES: Your Honor, to continue, my client's motion
3 focuses on the five reasons why he's entitled to the court
4 records sought.

5 The first reason is the constitutional presumption in
6 favor of the public's right to access court records as
7 described in the First and Sixth Amendments of the U.S.
8 Constitution, and the Washington constitution's right to
9 public trial under Article I, Section 10. The second
10 reason is the presumption in favor of the common law right
11 of the public to inspect and copy judicial records. The
12 third reason is the petition under General Rule 31(k).
13 The fourth is the petition for declaratory judgment. And
14 the fifth is the petition for writ of mandate.

15 Mr. Ringhofer's motion also highlights how contrary to
16 what respondent argues, GR 18(d) and the State statute at
17 issue, RCW 2.36.072(4), which I'll refer to as the State's
18 statute issue, for brevity, cannot operate to restrict his
19 access or use the records without respondent first meeting
20 his burden of proof to rebut the constitutional and common
21 law presumptions favoring the public's right to access
22 court documents.

23 Starting out with the first claim, the first
24 constitutional claim that Mr. Ringhofer raises concerns
25 the First Amendment, the Washington Court Of Appeals held

1 that jury questionnaires are presumptively open under the
2 First Amendment in the State v. Coleman case from 2009.

3 THE COURT: Wasn't the Coleman case involving the
4 questionnaires that had actually been filled out by
5 prospective jurors after the assignment of a particular
6 trial?

7 MS. MILES: There were two sets of questionnaires. One
8 set was not filled out, the second set was filled out.

9 THE COURT: But it involved an actual case that had
10 already been assigned out for trial; correct?

11 MS. MILES: Yes, it did, it did.

12 THE COURT: Do you see any distinction or difference in
13 this situation where you're talking about the master list
14 that is comprised well before assignment to any particular
15 courtroom or any particular trial?

16 MS. MILES: I see the distinction as very minimal, in
17 the sense that you're talking about the jury selections
18 process as a whole, which under the Sixth Amendment you
19 have the right to a public trial, it's not just --

20 THE COURT: You think the Sixth Amendment is applicable
21 in this case?

22 MS. MILES: The right to a public and open trial?

23 THE COURT: Do you think the Sixth Amendment is
24 applicable to the master jury list?

25 MS. MILES: I'm not talking about Article I, Section

1 10.

2 THE COURT: You're using the term Sixth Amendment.

3 MS. MILES: Of the U.S. Constitution.

4 THE COURT: I understand.

5 MS. MILES: Yeah.

6 THE COURT: And you're saying that you believe that
7 that's applicable in this case?

8 MS. MILES: I believe it's applicable to the portion
9 that I was going to get to later concerning the public's
10 right to be involved in the jury selections process. And
11 it's not just for a defendant's right to ensure a public
12 right to trial, it's also the media's interest in the
13 First Amendment and as well as the public's right to be a
14 participant in that jury selections process.

15 THE COURT: Weren't the cases, Coleman and the other
16 cases weren't in terms of the public's right to know.
17 Weren't they dealing more with Article I, Section 10?

18 MS. MILES: They dealt with Article I, Section 10, but
19 they also dealt with the Sixth Amendment right to a public
20 trial.

21 THE COURT: Again, those are cases where there's an
22 actual trial being held.

23 MS. MILES: Okay. I understand that this is a novel
24 issue, and --

25 THE COURT: You don't see any difference per your

1 argument?

2 MS. MILES: No. I mean, I see the distinction in the
3 sense of, yes, there is a trial in one case, the Coleman
4 case, versus our case. We're trying to get information
5 that still serves the purpose of a right to public trial
6 in the sense of transparency and making sure that judicial
7 proceedings have the transparency and accountability.

8 THE COURT: I noticed that in terms of your five
9 grounds you don't list and you don't even allude to the
10 Public Disclosure Act. You're not making any assertion
11 that these records are subject to the Public Disclosure
12 Act?

13 MS. MILES: We're focusing on the common law right,
14 because, as you're probably aware, in the Nast decision
15 they argued that because of the common law right, which
16 presumptively grants access to public records, they didn't
17 see the need to include judicial records under the Nast
18 case.

19 THE COURT: I understand that. But the question is
20 you're not asserting any right to these records based upon
21 the Public Disclosure Act?

22 MS. MILES: No.

23 THE COURT: All right. Okay, proceed.

24 MS. MILES: So, Your Honor, the State v. Coleman case
25 relied on a Supreme Court case in Ohio that considered the

1 First Amendment qualified right to open proceedings
2 extending to prospective juror questionnaires, and that's
3 the exact language that they used. And there's a
4 presumption if somebody wants to seal records that they
5 first must show, they must overcome the presumption by
6 showing an overriding interest based on findings that
7 closure is essential to preserve higher values and is
8 narrowly tailored to serve that interest. And in the
9 present case, the respondent has not argued the overriding
10 interest based on findings that closure is essential to
11 preserve a higher value. Essentially, the respondent even
12 concedes, in their first response brief on page 4, the
13 First Amendment gives the public and press a presumptive
14 right of access to criminal jury trials. And also
15 concedes on page 5 of that brief that written jury
16 questionnaires are a part of the criminal trial that's
17 presumptively open to the public. Yet they argue that
18 petitioner's request for the court records does not
19 implicate state or federal access to judicial proceedings.
20 That is not enough. That's insufficient. That's not a
21 sufficient rebuttal to rebut the presumption as stated in
22 the State, ex rel, Beacon, a case from 1984.

23 THE COURT: You would admit, and I think in your reply
24 brief, at pages 4 and 9 of your reply brief, that RCW
25 2.36.072 and GR 18(d) conflict with your position in terms

1 of access to these records.

2 MS. MILES: Yes, Your Honor.

3 THE COURT: Do you believe the statute is
4 unconstitutional in that regard?

5 MS. MILES: We're not making a blanket statement that
6 the constitution is prima facia, like on its face
7 unconstitutional. We're saying as applied to petitioner
8 with the respondent not being able to show, not being able
9 to meet these rebuttable presumptions, that as applied to
10 him it's circumventing and depriving him of constitutional
11 rights, that they have not met their burden.

12 THE COURT: Is this an unfettered right? In other
13 words, what if somebody wanted to come and get the name
14 addresses, et cetera, on the jury source list, and their
15 purpose was to be able to, oh, use any number of purposes.
16 It was for their own personal gain, maybe it was to stalk
17 somebody, maybe it was to try to intimidate or whatever.
18 Do you think the court exercises some discretion?

19 MS. MILES: They do. There's actually a qualified
20 right. That's why they call it a qualified right. For
21 example, the Foltz case, which was a Ninth Circuit case,
22 held that there must be compelling reasons supported by
23 specific factual findings that outweigh the general
24 history of access in the public policies.

25 THE COURT: That being the case, does the court look

1 and say -- and you admit that the purpose behind this is
2 not for purposes of improving the judicial system, but
3 rather so that you can go to the Secretary of State,
4 other public officials, for the electoral process.
5 That's your purpose.

6 MS. MILES: That's one of the purposes.

7 THE COURT: What's the other purpose?

8 MS. MILES: The concern is, also, oversight of the
9 judicial system, making sure that these non-disqualified
10 jurors --

11 THE COURT: Where is that anywhere in your pleadings?
12 I don't see that anywhere in the letters that were
13 addressed to Ms. Ridge or in your pleadings. In your
14 pleadings it seems to be we want this information so that
15 we could then go to Sam Reed, the other individuals, and
16 convince them that the electoral process needs to be
17 changed.

18 MS. MILES: That is one of the -- that is one of our
19 reasons, I admit.

20 THE COURT: Right.

21 MS. MILES: But, essentially, another reason is to
22 ensure that there is oversight in the judicial process,
23 and that that is --

24 THE COURT: Where is that?

25 MS. MILES: I need to -- (Pause.)

1 Okay. On the petitioner's motion for summary judgment,
2 it starts at the bottom of page 1, it says, Petitioner
3 seeks access to this Court's records in the interest of
4 ensuring government and judicial transparency, as well as
5 the integrity of the juror selections and the voter
6 registration processes. Then, later, I think we actually
7 --

8 THE COURT: You would agree that that's a pretty vague
9 statement, wouldn't you?

10 MS. MILES: Depends on who's reading it.

11 THE COURT: Specifically, what are you looking at in
12 terms of other than saying we want a transparent
13 judiciary, what particular issue is it that you're trying
14 to advance in terms of the judiciary with the
15 identification of the name, address, et cetera,
16 disqualifications of these individuals? I mean, you're
17 not making any claim that Ms. Ridge or the other
18 individuals aren't doing their job properly other than the
19 fact that they're not giving you this information.

20 MS. MILES: Well, I'm arguing that because of the
21 constitutional presumptions and the common law
22 presumptions that they have not yet rebutted that there is
23 that strong presumption that the courts have recognized in
24 precedent decisions that they have to meet their burden of
25 proof in order to deny the records.

1 THE COURT: Okay.

2 MS. MILES: I'm trying to find that -- (Pause.) Okay.
3 Did you have any other questions?

4 THE COURT: Well, I have one other question. Do you
5 think that if a prospective individual who is filling out
6 that information in a response, do you see any chilling
7 effect? If all of a sudden people want to come in and say
8 we want the master list, we want every name, address, et
9 cetera, of anybody who is on this master list, do you see
10 any chilling effect? I mean, there's already complaints,
11 I just heard it on the radio the other day coming to work,
12 I think it was a judge out of King County that was being
13 interviewed, not in relation to this case but just
14 generally, saying only 20 percent of the people who were
15 summoned to jury duty ever even show up.

16 MS. MILES: Um-hm.

17 THE COURT: Do you think there would be an even greater
18 chilling effect if when the people got the summons for
19 jury duty, and they fill out that questionnaire, everybody
20 says, hey, we have access to it, we can put that out on
21 the web, and do you think that a prospective juror may
22 say, wait a minute, I don't want my name and address out
23 on the web, especially if I get in some high profile
24 murder case where maybe I'm going to be apprehensive about
25 the defendant or defendants being able to retaliate,

1 they'll have my name, they'll have my address. Do you see
2 any problem with that?

3 MS. MILES: The name and the address are already
4 provided on a different forum in the HAVA registration
5 list for the voter rolls. But you're speaking
6 specifically to the disqualification?

7 THE COURT: Jury list, yes.

8 MS. MILES: As far as qualification, because they are
9 disqualified because they were ex-felons or non-citizens.

10 THE COURT: In order to know who's disqualified you're
11 getting access to the master list, and so now, granted,
12 you're saying only give us those names, addresses, et
13 cetera, but isn't it logical that if this is granted
14 someone else is going to be able to come in and say, well,
15 despite what the statute says, despite what GR 18(d) says,
16 we have access to the source list that has the names and
17 addresses on it.

18 MS. MILES: I would go back to the fact that even the
19 Supreme Court has recognized this openness of the juror
20 proceedings, and the jury questionnaires often have more
21 intimate details, but those are presumptively open to the
22 public.

23 THE COURT: They don't have addresses.

24 MS. MILES: It has addresses, but the juror
25 questionnaires could also have responses if they were

1 asked other questions. And this is actually --

2 THE COURT: Then you can go through a Bone Club
3 analysis.

4 MS. MILES: Okay.

5 THE COURT: A Bone Club analysis is not possible in
6 this particular case, is it?

7 MS. MILES: There's an analysis, not for Bone Club, but
8 there's the presumption where they can show that this
9 would cause embarrassment or some type of -- there would
10 be some improper use that they can try and petition the
11 court to block this -- to block the release of those
12 records. But respondent hasn't petitioned for a
13 protective order. All that's being argued is that that's
14 not their duty under GR 18(d) or under RCW 2.36.072(4),
15 and that does not meet their burden. That's my -- that's
16 essentially what we're trying to request of the court, is
17 just to see that they have not fulfilled their duty to go
18 through all the --

19 THE COURT: They're basically taking a position you
20 don't have a right to this and we don't have to give a
21 reason, right?

22 MS. MILES: Because they're saying it's not court
23 records.

24 THE COURT: They're saying under RCW 2.36 and GR 18(d),
25 you don't have access to these records.

1 MS. MILES: But we're saying that if, in regards to the
2 statutory interpretation, when you have a statute that is
3 in derogation of the common law it's to be construed
4 narrowly, and you're supposed to consider the least
5 restrictive means in the alternatives. And they haven't
6 gone through the process in their briefs of showing that
7 they could redact information or try and give us some type
8 of information. They've just stated, no, you can't have
9 the information based on GR 18(d) or RCW statute at issue.

10 THE COURT: Okay. Thank you.

11 MS. MILES: So, thank you.

12 THE COURT: Counsel, let me ask you a question before
13 you get started. It seems to me in your briefing you've
14 indicated that the statute that we've been talking about
15 and the court rule, I think, it's 22(K), is it, or --

16 MR. KUFFEL: GR 31(k).

17 THE COURT: 31(k). I'm sorry, 31(k). Both indicate
18 that these shall only be kept for a limited period of time
19 and only be used for limited purposes. And then you also
20 submit the retention, I guess, policy, or whatever, that's
21 been developed by the Clerk's Office in terms of the
22 Washington State Clerk's Association. The question I have
23 for you is do these records even exist now?

24 MR. KUFFEL: I have checked with my client. They can
25 be gathered in a very cumbersome way, so they're not at

1 hand, but given the time period that we're going back to,
2 2008, it is possible, but not easy.

3 THE COURT: All right. Okay. Proceed.

4 MR. KUFFEL: Your Honor, we have a fundamental
5 difference with the petitioners. I think I would
6 characterize our argument as this way. The statute and
7 the court rule proscribe what this information is to be
8 used for. What petitioners then say is they sort of have
9 the cart before the horse. They say we have a presumption
10 that we have to overcome, so whatever the statute says
11 doesn't really matter because you have to overcome the
12 presumption. And our position is there may be a
13 presumption out there, but it's not triggered in this
14 case. And our position is the statute says that this
15 information is not available, and the various
16 constitutional provisions, court rules and other legal
17 resources that they cite simply aren't triggered.
18 They're not triggered for a variety of reasons, which I'll
19 get into.

20 I guess what I would like to do is get started with the
21 statute and the court rule, and it seems to me there are
22 two parts about the statute. I mean, clearly, it says
23 that the information may only be used -- when I say
24 information, I'm referring to the disqualification
25 information that is submitted by people who receive a

1 summons. The information is only to be used for the term
2 in which the person has been summoned and may not be used
3 for any other purpose. That's point one. The legislature
4 is saying this is what you can use it for and this is what
5 you can't do with it, you can't do anything else with it.

6 The second point that I think the legislature makes is
7 -- it's interesting to see both then what they do say
8 after that and what they don't say. What they do say is
9 there's an exception to that rule, and the lone exception
10 to that rule is that if there is an incorrect address or
11 the summons comes back undelivered, the court may, not
12 must, pass that information on to the County Auditor, and
13 for use in the voter registration records or whatever
14 they're going to use that for to update their records.
15 The legislature -- the County Auditor is the chief
16 elections officer of the county. If the legislature -- if
17 the purpose of this statute was to tie this information in
18 to the voter registration system in the way the petitioner
19 says it has to be tied into, the legislature would have
20 said that. But, rather, when they thought about what else
21 could be done with this information and then specifically
22 talked about the County Auditor, what they said is this is
23 the only thing that you can do. And it's only if there's
24 a discrepancy in the address that can be sent to the
25 County Auditor's office for them to update their records.

1 The other thing that I think is important is to look at
2 is what the legislature didn't say. So while they were
3 thinking about what the County Auditor, what role the
4 County Auditor might do, in the discretion of the court,
5 if they send that information to the County Auditor, they
6 then have had several opportunities over the last few
7 years to change that intent, to update the statute.
8 There have been several bills introduced over the last
9 several years which would have specifically required
10 additional obligations for the court to undertake with
11 this disqualification information. They would have had to
12 notify the County Auditor, they would have had to notify
13 the Secretary of State, they would have had to list the
14 reasons why the person checked the box and passed that
15 information on. And it's clear that what the legislature
16 considered and decided not to adopt was a mechanism by
17 which this process could be plugged into the voter
18 registration system. They haven't done that. So what we
19 have is a statute that on the one hand says you can only
20 use the information for this purpose. Secondly, it says
21 you can't use it for any other purpose. And thirdly, they
22 said the lone exception for that is for this very
23 restricted piece of information that can be passed on to
24 the County Auditor, and that's it.

25 So when we received this request, we --

1 THE COURT: Doesn't it also -- not the statute but the
2 court rule, GR 31(k), doesn't that say upon a showing of
3 good cause the court may permit a petitioner to have
4 access to relevant information from the list?

5 MR. KUFFEL: That's correct, that's what the court rule
6 says. But our response to that is the information they
7 want isn't on the master jury source list, it's not on the
8 jury source list. If you look at the definition in the
9 statute, those are defined as name, date of birth, gender
10 and address. And what the court rule says is they
11 automatically get name and address, they don't get date of
12 birth, they didn't get gender unless they can make a
13 showing of good cause to the judge, that that's -- you
14 know, there's a basis in this particular instance to allow
15 access to that information. So our position is that that
16 rule doesn't apply.

17 Similarly our position is the one that immediately
18 precedes it, GR 31(j), access to jury information doesn't
19 apply because our position there is that that rule only
20 applies to a jury in an actual case. It's the people that
21 got the questionnaires, it's the people that are sitting
22 in the box to my right. We are nowhere near that
23 situation in this case at the point in time which this
24 preliminary disqualification information is submitted. So
25 that's our position on the statute.

1 Then the argument that comes back is it has to be --
2 we're not under the Public Records Act, so that doesn't
3 apply. The statute says what we argued it says. So there
4 has to be some other basis to get around the statute, and
5 they've listed about four or five different bases. We
6 have talked about two of them, General Rule 31.

7 There are a couple of others. There is the common law
8 right of access to court records. I guess I've got two
9 points I would make on that. First of all, my take on it
10 is that the common law right of access to court records
11 essentially has been codified now in GR 31. So, for
12 example, if you look at the definition of court record,
13 and it says a judge's notes aren't subject, aren't a court
14 record within the meaning of this. I read that as a
15 codification of the holding in the Buehler v. Small case,
16 which preceded adoption of it.

17 I think then what you have to do is you have to look at
18 the definition of court records in the rule, and I think
19 it's pretty clear that while it's a nonexclusive list of
20 items that could be a court record, there is a key that
21 connects it, and that is they have to be in connection
22 with or related to a judicial proceeding. And our
23 position in this case is that the records they seek aren't
24 court records. They're not court records under the
25 definition of the rule even if you stepped outside the

1 rule and said there is some sort of lingering definition
2 of court records beyond that.

3 When you look at the cases that they cite, clearly,
4 these documents aren't anything like the records that are
5 issued in the cases they cite. The cases they cite are,
6 you know, jury questionnaires of the type that are given
7 to jurors when they're in the courtroom, motions, exhibits
8 attached to motions, things that are filed in the court
9 file, court records, and case files. And what we have
10 here is we've got information that is used to
11 preliminarily determine whether someone is qualified.
12 Judge -- the statute doesn't even require a judge to even
13 look at that information. The purpose of the statute is
14 not to tie in to the voter registration process. Seems to
15 me the purpose of the statute is purely administrative, to
16 have just sort of an initial cut so that you don't have
17 people showing up to the courthouse that aren't qualified
18 and then being told to go home. And, secondly, they
19 provide the court with perhaps a more efficient running of
20 the administration of the jury system.

21 THE COURT: Let me ask you the same question I asked
22 opposing counsel. Let's assume someone came in and said
23 the reason I want this master list is I don't think
24 they're doing their job right, you know, we have other
25 information over here showing felony convictions, or that

1 they're not U.S. citizens or whatever, and that,
2 therefore, we want access to this master list to be able
3 to demonstrate that the court administrative process is
4 not working properly and, therefore, that's,
5 quote/unquote, good cause. I mean, would you concede that
6 under that set of circumstances they could get to this
7 data?

8 MR. KUFFEL: No, Your Honor, I wouldn't.

9 THE COURT: Okay. Why not?

10 MR. KUFFEL: I think there's sort of three models out
11 there. I'll touch upon each them. One doesn't directly
12 apply. For example, if the Public Records Act did apply
13 the rule there is, clearly, it doesn't matter what
14 someone's purpose is in getting the information. We're
15 not in that realm.

16 I think the next place you have to look at it is if
17 they were under GR 31(j)and (k), arguably, it matters if
18 they want something more than address and name because the
19 rule requires good cause, so, presumably, they're going to
20 have to come up with some reason that's going to convince
21 a judge that that's sufficient in order to give the
22 information that one could get, which I argue that this
23 isn't under those rules.

24 Seems to me the argument is that it matters slightly as
25 sort of a rebuttal to their argument that this is all for

1 the open administration of the courts. That's why -- you
2 know, that's what Article I, Section 10 is about, and
3 that's what we're trying to do.

4 And the fact of the matter is there may be a sentence
5 in their brief that Your Honor caught that I'm not even
6 sure I even caught about transparency and the
7 administration of justice, but, fundamentally, this case
8 is about getting information so the petitioner can pursue
9 his sort of private investigation into the accuracy of the
10 voter rolls. That's exactly what this case is about.
11 That's, you know, the entire crux of what they're trying
12 to do here.

13 And so it seems to me that it matters, really, just
14 sort of as a counter argument to their position that this
15 is a First Amendment issue, that this is an Article I,
16 Section 10 because, really, this doesn't have anything to
17 do with any particular case, it doesn't have anything to
18 do with any process in the middle of a case. It's
19 completely subsidiary.

20 THE COURT: And so your position is, and I don't want
21 to overstate it, but it seems to me that your position is,
22 in reality it doesn't matter why they're asking for the
23 information, they're just simply not entitled to the
24 information.

25 MR. KUFFEL: I think that's right, because I think in

1 the absense of those other legal sources what you have to
2 fall back on is the statute and the court rule.

3 THE COURT: Well, then, obviously, you come square to
4 the issue in terms of Article I, Section 10, and does that
5 supersede, trump, conflict, whatever verb you want to use,
6 either the statute or the court rule?

7 MR. KUFFEL: If it was implicated, maybe, because then,
8 maybe then you start getting into the balancing analysis.
9 You've got your five-factor test under Bone Club and
10 Ishikawa. But our position is it's not even implicated in
11 this situation. This is not about the open administration
12 of justice, this is not about access to court records that
13 are submitted in a case, it's not about an access to trial
14 proceedings. This is a preliminary determination process,
15 it's primarily administrative, and those constitutional
16 provisions, whether it's the First Amendment or Article I,
17 Section 10 simply aren't triggered in this case. There
18 is no -- from our standpoint there is no presumption to
19 rebut because the presumption is never triggered in the
20 first place, and I think that's -- you know, the absence
21 of talking about the presumption in our brief I think
22 indicates that we don't think it applies in the first
23 place.

24 THE COURT: Okay.

25 MR. KUFFEL: I'll save whatever time I have left for

1 rebuttal.

2 THE COURT: Thank you. All right. I have to be out of
3 here at 2:00, so you have let's say seven minutes each.

4 MS. MILES: Your Honor, I would just like to make clear
5 for the record, it doesn't matter what the purpose is.
6 We're requesting that you would look at the situation from
7 why there's the First Amendment, why there's the Sixth
8 Amendment to the U.S. Constitution. People have various
9 reasons, the media has various reasons for requesting
10 documents from the court. And in the cases that I've
11 cited in my briefs I've pointed out, essentially, that
12 there has to be a reason for the person trying to seal the
13 records. They have to articulate that to the court
14 alleging facts and showing why the information should not
15 be released based on fact, not law.

16 Respondent has tried to articulate why the information
17 shouldn't be released based on law, and I would just like
18 to bring your attention to one of the things he mentioned
19 in GR 31, the General Rule 31, and he talks about it being
20 -- essentially, limiting the purposes of use in the
21 records retention. But I think that the board who put
22 this rule together saw the distinction (j) and (k),
23 because (j) is clearly more limiting than (k). (K) shows
24 it's broader because it makes no mention of the timing for
25 asking for this information. This information, it doesn't

1 matter what purpose. It could be used to help the
2 function of identifying ineligible voters, it could be
3 used to try and get the media to put forth a story that's
4 been tried.

5 Then the other thing that he mentions is that the case,
6 I just want to reiterate, this case is about the person
7 moving to seal the records having to overcome the
8 presumption, because you can't deprive someone of the
9 constitutional rights guaranteed to the open public trial
10 without first meeting some basic burden of proof, and
11 essentially what respondent has argued is that we've tried
12 to put the cart before the horse, when we're saying, no,
13 it's the other way around. If you're going to try and
14 deny someone access to judicial records, at least first
15 say what it is about the records, why they need to be
16 denied from a factual standpoint, not the legal analysis
17 that is required under these two presumptions under the
18 common law and the constitutional law.

19 And, furthermore, the court record defined under GR
20 31(c)(4) uses the limitation language "not limited to."
21 But if you go a few sentences down, where it talks about
22 what is not a court record, it does not use that limiting
23 language. For example, it says judges' notes are not a
24 court record, but nowhere in there do you see any
25 implication of anything that would be found on the juror

1 declaration being listed in that definition. So, as such,
2 the fact that it's in the jury summons process, yes,
3 you're correct, it does not go -- you know, it's not kept
4 for the case, for the particular matter, but it's all a
5 part of the process of jury selections and jury summons,
6 and as such that's why the implication -- why the
7 constitutional laws are implicated, because the U.S.
8 Supreme Court addressed the issue, and they said, you
9 know, there's situations when you can deprive people of
10 constitutional rights to get access. For example, if
11 you're trying to publish information dealing with sexual
12 assaults, responses that people have written on juror
13 questionnaires, you can't publish that because of the
14 sensitivity of it. This case is different. We're just
15 asking for the disqualifications.

16 Before, you asked me about whether it would have a
17 chilling effect on people filling these forms out, and I
18 would say that it wouldn't, because, if somebody's
19 checking a box and saying I'm 18 or younger, how is -- I
20 don't see how that would effect anyone, even if you're an
21 ex-felon, I don't see how that could affect anyone. They
22 have got a list online of sex offenders that people could
23 search. So I would say that's not a strong enough
24 argument to withhold the information in this case.

25 And I would also like to mention that the legislative

1 intent -- the respondent argued, he says that it's not
2 there. But, in fact, if you look at Section 29A.08.125,
3 it gives the Secretary of State the authority to use this
4 information, not just the County Auditor. And keeping the
5 databases current, the Secretary of State is supposed to
6 coordinate with the federal courts -- not federal, the
7 administrative office of the courts to make sure that the
8 database is kept up-to-date, and it also allows him,
9 allows the Secretary of State to screen the database
10 against the Bureau of Citizenship and against the data
11 services. So it shows some communication beyond the
12 County Auditor between the the Secretary of Courts and the
13 state and the courts and the county auditors.

14 So I would just urge Your Honor to consider that there
15 are clearly presumptions here before you can deprive
16 citizens of their constitutional right to be involved in
17 the juror selections process, and without more -- without
18 them not meeting those burdens of presumption, then the
19 case stands that my client should get the access to the
20 records.

21 THE COURT: Okay. Thank you.

22 MS. MILES: Thank you.

23 THE COURT: All right.

24 MR. KUFFEL: Just a couple of follow-up comments, Your
25 Honor.

1 The only facts that are relevant here is that there's a
2 statute that says this information not be used for any
3 other purpose. That's the law. I don't care what facts
4 one can come up with. If the law is saying X, you have to
5 follow the law, and that was the intent in the response
6 that was provided to the petitioner in this case.

7 With respect to the elections rules and statutes that
8 were cited, yeah, looks like there was quite a bit of
9 legislative intent about voter registration. There is no
10 legislative intent to contradict the clear legislative
11 intent with RCW 2.36.172 and the Court's intent with GR
12 31(d), and this Court's juror disqualification interests
13 and disqualification information.

14 The only other point I would make, Your Honor, is
15 obviously, you know, like I said, we have a fundamental
16 disagreement with the petitioners on this. You know, we
17 think the position that we have advocated is supported
18 both by the plain language of the statute and the court
19 rule, and we think that the cases that are cited, both
20 under the First Amendment, the Article I, Section 10, and
21 the common law, simply don't apply in this instance
22 because we are way before the situation where you actually
23 have a court hearing going on or that you have court
24 records within the context of a judicial proceeding being
25 filed with the court. So our position is we're simply not

1 there.

2 I think fundamentally the real issue in this case is
3 that the policy objective that petitioner wishes to pursue
4 simply is not mandated in the law. The statute doesn't
5 say it, the cases don't require it, and so we think that
6 summary judgment is proper for the respondent in this
7 case. We respectfully ask that the Court deny the
8 petitioner's motion for summary judgment.

9 And lastly, I would just point out that there are --
10 you know, this issue takes place in a couple of different
11 contexts. There is the request for mandamus relief.
12 There is the standard that applies to mandamus, and that
13 standard requires that my client would have a clear legal
14 duty to act. She did not have a clear legal duty to act.
15 If you look at Mr. Ringhofer's declaration, he says he
16 sent out requests for 39 counties for this information.
17 It appears that 36 of them didn't provide it back, so 36
18 out of those 39 counties don't appear to accept the
19 position that's being articulated by Mr. Ringhofer in this
20 case.

21 Secondly, the Secretary of State doesn't seem to adopt
22 this position either, because if you look at Mr. Hamlin's
23 response to Mr. Ringhofer, he clearly cites to this
24 statute and says, unfortunately, the statute says that
25 this information is not available for the purpose that you

1 would like it to be because they're not obligated to send
2 it to the County Auditor. And there have been a lot of
3 attempts to change that, but, fortunately, the
4 legislature, in its wisdom, has not sought to change the
5 statute or the law as it is.

6 So, for these reasons and the reasons in our briefing,
7 we respectfully ask that the Court grant our motion for
8 summary judgment, and deny the petitioner's, and I
9 appreciate your time. If there are no further questions,
10 I'm done.

11 THE COURT: No, I don't.

12 All right. As I indicated, I do have a 2:00 calendar
13 which I have to get to, and I am not going to be able to
14 render an oral decision today. The first available time
15 that I would have to render an oral decision would be in
16 all reality either the 9th or the 10th of May, and that
17 would be in the afternoon.

18 What's respective calendar availability of counsel
19 either on the 9th or the 10th?

20 MR. KUFFEL: Excuse me, Your Honor. What days are
21 those?

22 THE COURT: It's a Monday or a Tuesday. I could, if
23 you wanted to, put it off until Friday, the 13th.

24 MR. STEPHENS: That's worse for me, Your Honor. I have
25 another hearing on the 13th, but the 9th and 10th are

1 fine.

2 MR. KUFFEL: Same here, Your Honor. Either one of
3 those dates would be fine.

4 THE COURT: All right. Let's do it at 2:00 on the
5 10th. And it would be my intent to render an oral
6 decision at that time. I may enter the written order, as
7 well, but I think I'm going to do an oral decision, as
8 well.

9 Thank you both, counsel, for their argument and their
10 briefing. It's certainly been interesting.

11 Court will be in recess.

12 (The proceedings were concluded.)

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