

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.

APPELLANT'S OPENING BRIEF - AMENDED

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INTRODUCTION

This appeal involves a question of first impression. Can RCW 2.36.072(4) and GR 18(d) bar a citizen's rights to access information used in the jury selection process and trump the federal and state constitutional rights for public access to official court records? As addressed below, the answer to this question is "no."

ASSIGNMENT OF ERROR

1. The trial court erred when it granted the Court Administrator's¹ motion for summary judgment and denied Appellant's motion for summary judgment, resulting in a denial of public access to court records.

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. Whether juror information that is routinely collected and reviewed by the court as part of the jury summons responses is a court record pursuant to GR 31(c)(4).

2. Whether pre-trial determination of the eligibility of jurors is protected by the constitutional and open court provisions.

3. Whether Appellant was deprived of his constitutional rights when the trial court failed to require the Court Administrator to rebut the

¹ Respondent is Deputy Chief Administrative Officer of the King County Courts, Linda K. Ridge. Hereinafter she is referred to as "Court Administrator."

presumptions favoring the public's access to pre-trial court records with specific factual support.

STATEMENT OF CASE

A. Factual Background.

Appellant Martin Ringhofer (Ringhofer) is a concerned citizen and registered voter who seeks to quantify the occurrence of persons who are disqualified from jury duty for reasons that would make them ineligible to vote, but are nevertheless registered to vote. Ringhofer requested access to King County court records² concerning persons who were called for jury duty, but who were disqualified for statutory reasons that would also disqualify them from registering to vote.

Ringhofer's request for access to these records encourages judicial transparency and the open administration of justice. Monitoring the juror qualification data directly relates to the purpose of the open court provisions contained in the First and Sixth Amendments to the U.S. Constitution, Article I, Section 10 of the Washington Constitution, and the common law.

Ringhofer also desires to use the juror qualification information to evaluate the state voter registration list. If his request were granted, he

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 1, 2008 to December 31, 2009. Clerk's Papers (CP) CP 85-86.

would be able to determine whether and to what extent persons ineligible to vote are nonetheless voting in King County. He could report this information to the Secretary of State and election officers in King County. Additionally, he could also determine the number of persons who are in fact eligible to serve on jury duty, but represent to the court that they are ineligible to serve.

His concerns about people being registered to vote who are not in fact eligible to vote are not speculative. Based on juror disqualification information that Ringhofer received from the superior courts from other counties, he was able to cross-check the data with the state voter database. CP 87. It appeared that some people were disqualified from jury service based on reasons that would also make them ineligible to vote. That information was provided the Secretary of State's office, which after investigating confirmed that the individuals in question were nevertheless registered to vote. CP 88.

B. Procedural History.

On October 16, 2010, Ringhofer made an official request for public records under the Public Records Act (PRA) to the King County Court Administrator for access to pre-trial information submitted by disqualified jurors in responding to the Superior Court of King County's Juror Qualification Form, which is part of the Jury Summons. CP 96.

On October 25, 2010, Ringhofer received an e-mail from the Court Administrator stating that she would not provide the information he requested based on RCW 2.36.072(4) and GR 18(d), which state that juror information can only be used for the term the juror is summoned and cannot be used for any other purpose. CP 99. She also asserted that the PRA does not apply to the judicial branch. *Id.*

Having received a final decision from the Court Administrator, on November 22, 2010, Ringhofer filed a Complaint with the Superior Court of King County³ 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.⁴

On March 31, 2011, Ringhofer and the Court Administrator filed cross-motions for summary judgment. On May 10, 2011, the Superior Court denied Ringhofer's motion and granted the Court Administrator's motion for summary judgment.

This appeal raises an issue of first impression: Whether a state statute and court rule can deprive a member of the public of his

³ Apparently because this case involved King County Superior Court personnel, the case was assigned to Snohomish County Superior Court Judge Ronald Castleberry.

⁴ Ringhofer acknowledges that these remedies are likely to overlap. However, in light of the constitutional and public policy significance of his claims, he used several methods to ensure that the Court would reach the merits of this dispute.

constitutional right to access court records without first requiring that the challenger rebut the constitutional presumptions of openness of court records by presenting facts that would justify denial of access. This appeal involves the interpretation of how RCW 2.36.072(4) and GR 18(d) interact with the constitutional presumptions.

Ringhofer seeks enforcement of his right to open access of court records pursuant to Article I, Section 10 of the Washington Constitution and the First and Sixth Amendments of the U.S. Constitution. Ringhofer 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 Court Administrator to submit facts to rebut the constitutionally-based presumptions favoring the public's access to pre-trial court records.

ARGUMENT

I.

THE TRIAL COURT ERRED WHEN IT GRANTED THE COURT ADMINISTRATOR'S MOTION FOR SUMMARY JUDGMENT BECAUSE THE RECORDS SOUGHT ARE COURT RECORDS PRESUMED TO BE AVAILABLE TO THE PUBLIC

A. Documents Regarding Prospective Jurors that are routinely Collected, Reviewed and Maintained by the Court as part of the Jury Selection Process are Court Records.

The jury summons is just one link in the necessary chain of procedures needed to impanel a fair and impartial jury. The jury summons

process creates the prospective jury pool. RCW 2.36.095. A part of the King County Superior Court jury summons is the Juror Qualification Form, where the potential juror must circle a reason for disqualification pursuant to RCW 2.36.072(4) if one or more applies and must also make note of his or her new address if it is different from the address to which the summons was mailed. The superior court is solely responsible for processing the jury summons, maintaining juror information, and processing the responses executed (or lack thereof) from jurors, so the records with juror qualification information at issue are court records.

The return of the Juror Qualification Form allows the superior court to screen potential jurors. The pool of jurors directly influences the trials that follow. *See Duren v. Missouri*, 439 U.S. 357 (1979). This information is necessarily subject to the constitutional and open court provisions contained in the First and Sixth Amendments to the U.S. Constitution, Article I, Section 10 of the Washington Constitution, and the common law, which is described, *infra* at 12-16.

B. GR 31 (c)(4) does not exclude information collected as part of a jury summons.

The trial court apparently accepted the Court Administrator's argument that the records requested were not court records because they did not pertain to specific, pending litigation. Such reasoning is erroneous because the definition of "court record" provided in GR 31(c)(4) is

expressly **not limited to** the list of documents listed in the definition. GR

31(c)(4) states:

“Court record” **includes, but is not limited to:** (i) Any document, information, exhibit, or other thing that is maintained by a court in connection with a judicial proceeding, and (ii) Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created or prepared by the court that is related to a judicial proceeding. **Court record does not include** data maintained by or for a judge pertaining to a particular case or party, such as personal notes and communications, memoranda, drafts, or other working papers; or information gathered, maintained, or stored by a government agency or other entity to which the court has access but which is not entered into the record.

GR 31(c)(4) (emphasis added).

Under the broad definition of the Court Rule, “court record” includes anything maintained by the court in connection with a judicial proceeding or any information in a case management system related to a judicial proceeding. Both the phrases, “in connection with” and “related to” are broad and encompass documents maintained by the Court, such as a jury questionnaire, that are specifically used to select juries for judicial proceedings.

On the other hand, there are two narrow categories of documents that are expressly excluded from the GR 31(c)(4) definition: (1) the working notes and papers of a judge and (2) documents that are not actually maintained by the court, although the court has access to them.

The juror qualification information does not fit under either of these narrow categories.

This broad reading of “court record” in GR 31 is supported by *State v. Mendez*, 157 Wn. App. 565, 580-82, 238 P.3d 517 (2010), *petition for review granted and remanded*, 257 P.3d 1113 (2011). *Mendez* involved a newspaper’s request for access to the billing records of a criminal defense attorney. In *Mendez*, the Court of Appeals refused to apply the narrow interpretation that “unless a document is submitted to a trial judge for consideration in a dispositive motion, it is not subject to the commands of article I, section 10.” *Id.* at 580. Documents are “court records” because they are maintained by the judiciary and relate to judicial proceedings regardless of how they may be used. *Id.* at 581-582 (stating that the billing records of attorneys who were appointed to represent a criminal defendant, were to be considered court records subject to public disclosure).

In *Yakima County v. Yakima Herald-Republic*, 170 Wn.2d 775, 776, 246 P.3d 768 (2011), the Court reinforced this construction of “court records” when considering whether records were subject to the PRA “It is without question that the court has inherent authority to control its own documents.” *Id.* at 777 (citations omitted) (emphasizing that documents

that are part of judicial activity are documents governed by court rules regarding disclosure).

Even billing records that are clerical in nature and do not pertain to the outcome of the trial are still considered court documents because they qualify as “information in a case management system created or prepared by the court that is related to a judicial proceeding.” *Mendez*, 157 Wn. App. at 581 (quoting GR 31(c)(4)). Similarly, information collected from the Juror Qualification Form at issue in the present case is inserted into a case management system used by the court. The insertion of this information into the system is a critical step in the jury selection process for all judicial proceedings involving juries. Records maintained by the court and used by the court to create a pool of potential jurors is a court record.

C. The Court Administrator’s Production of the Requested Information in Summary Fashion Demonstrates the Information is an Official Court Record Maintained by the Court.

Before Ringhofer brought suit against the Court Administrator, he requested access to the juror qualification information under the PRA. CP 91.⁵ On October 25, 2010, the Court Administrator denied his request stating that the PRA did not apply to the judicial branch and that access to

⁵ His original request was directed to the Court Clerk (CP 91), who then directed him to contact the Court Administrator. CP 94. He then filed his request directly with her. CP 96.

such information is governed by GR 31(k), GR 18(d), and RCW 2.36.072(4). CP 99. Instead of providing the information Ringhofer requested, the Court Administrator provided him with the total numbers of persons from January 1, 2008 to December 31, 2009, who sought disqualification due to the five statutory grounds provided by RCW 2.36.070. CP 99. The fact that the Court Administrator was able to provide the summary juror qualification information shows that the information is a court record.

The Court Administrator recognizes there is a strong presumption in favor of access to court records, but argued that the records in question were not court records and thus were not subject to the right of access to court records. CP 134. This argument contradicts the Court Administrator's statement in her October 25, 2010 denial letter, as well as her present arguments that RCW 2.36.072(4) and GR 18(d) disallow disclosure. If, as the Court Administrator claims, the records are *not* court records, then RCW 2.36.072(4) and GR 18(d) do not come into play.

The Court Administrator cannot have it both ways. The requested disqualified juror information is contained in court records subject to the open court provisions of the First and Sixth Amendments to the U.S. Constitution, Article I, Section 10 of the Washington Constitution, and the

common law regardless of whether it is a “court record” under certain court rules.

This Court is the final arbiter of the meaning of provisions of the state constitution and state statutes and court rules. Appellant urges that this Court resolve this important and basic issue. Juror qualification information collected, analyzed and maintained by the court is contained in court records and the right to access them is protected by the constitution.⁶

II.

THE PRESUMPTION OF OPEN ACCESS TO COURT RECORDS CANNOT BE OVERCOME IN THE ABSENCE OF A FACTUAL BASIS FOR DENYING ACCESS

A. Applying RCW 2.36.072(4) and GR 18(d) to Deny Access Contravenes the First and Sixth Amendments to the U.S. Constitution and Article I, Section 10 of the Washington Constitution.

The trial court erred in denying Ringhofer access to the juror qualification information on the basis of the Court Administrator’s arguments: (1) that the information was not a court record, as addressed above, and (2) because RCW 2.36.072(4) and GR 18(d) prevented the release of the records sought by Ringhofer.

⁶ The Court has recognized that judicial documents are not governed by the PRA by the definition of “agency,” unless they have been shared with other agencies. *Yakima Herald-Republic*, 170 Wn.2d at 805.

RCW 2.36.072(4) states that 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, “Information 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 limitations in the statute and court rule cannot operate to deprive the public of constitutional rights. The Court Administrator must first meet her burden to overcome the constitutional rebuttable presumptions favoring the public right of access to court records, described below:

1. First Amendment Presumption

“Jury questionnaires are presumptively open under the First Amendment.” *State v. Coleman*, 151 Wn.App. 614, 619 n.6, 214 P.3d 158 (2009), *appeal after remand*, 160 Wn. App. 1047 (2011). Moreover, the **entire** jury selection process is presumptively open to the public. *Id.* at 620. This presumption is also supported by federal Supreme Court precedent. *Press-Enterprise Co. v. Superior Court of Cal., Riverside Cty.*,

464 U.S. 501 (1984) (the *voir dire* of prospective jurors must be open to the public under the First Amendment).

The Court in *Coleman* recognized that some courts qualify this First Amendment right of access to juror names, addresses, and questionnaires. *Coleman*, 151 Wn. App. at 619 n.6 (citing *State ex rel. Beacon Journal Publ'g Co. v. Bond*, 98 Ohio St. 3d 146, 151, 159, 781 N.E.2d 180 (2002) (citing *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 510 (1984) (holding that the jury list was subject to public disclosure because there were no findings rebutting the presumption of openness)).

The court in *Beacon Journal* held that the presumption of disclosure may be overcome only by an overriding interest based on findings that denial of public access is both essential to preserve higher values and is narrowly tailored to serve that interest. Hence, the *Beacon Journal* court held that questions on a jury questionnaire that elicit Social Security number, telephone number, and driver's license number should be redacted from the questionnaires prior to disclosure. *Beacon Journal*, 98 Ohio St. 3d at 154. However, Washington courts have not limited the First Amendment in this fashion.

In this case, the Court Administrator did not meet any burden of proof for rebutting the presumption in favor of openness. She failed to

provide any factual basis for an overriding interest that would support a conclusion that closure is both essential to preserve higher values and is narrowly tailored to serve that interest.

Moreover, Ringhofer is not seeking information such as social security numbers, telephone numbers, or driver's license numbers.

Ringhofer merely seeks 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 1, 2008 to December 31, 2009. CP 96. Therefore, it is not necessary for the Court in this case to decide whether the First Amendment right can be overridden in some circumstances as held by the Ohio Court.

The five statutory grounds for juror 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. None of these categories concern information that would lead to public embarrassment or harm if the potential juror's qualification information was disclosed, unlike personal information that could be used for scandalous or libelous purposes or trade secrets that could harm a litigant's competitive standing. The information Ringhofer requests is

also limited in scope and is less intrusive than that which is typically elicited during *voir dire*. As discussed below, disclosure of information gained during *voir dire* is subject to public scrutiny.

2. Sixth Amendment Presumption

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

The Court of Appeals applied *Presley* when it recognized the public's presumptive right to an open proceeding. *State v. Paumier*, 155 Wn. App. 673, 685, 230 P.3d 212 (2010), *review granted*, 169 Wn. 2d 1017, 236 P.3d 206 (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 (public's right to an open proceeding applied to *voir dire*).

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

**3. Article I, Section 10 of the State Constitution
Presumption**

The State 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, 184 P.3d 677 (2008).

Nevertheless, 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 (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).

Notably, neither the Court Administrator, nor the trial court, established facts that would support reasons the juror qualification records should be withheld to protect other interests.

4. Common Law Presumption

A standard principle of statutory construction calls for statutes that are in derogation of the common law to be construed narrowly. *Estate of Haselwood v. Bremerton Ice Arena, Inc.*, 166 Wn.2d 489, 498, 210 P.3d 308 (2009). RCW 2.36.072(4) and GR 18(d) are both in derogation of the common law.

Both the United States Supreme Court and this Court recognize 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); *see also United States v. James*, 663 F. Supp. 2d 1018, 1020 (W.D. Wash. 2009) (recognizing a strong presumption in favor of the common law right of the public to inspect and copy judicial records); *Nast v. Michels*, 107 Wn.2d

300, 303-304, 730 P.2d 54 (1986) (stating that the public has a common law right of access to court case files);⁷ *In re Application of National Broadcasting Co.*, 653 F.2d 609, 612 (D.C. Cir. 1981) (recognizing that the existence of the common law right of the public to access court records serves the important function of ensuring the integrity of judicial proceedings).

Under this constitutionally based common law, a party seeking to overcome the presumption in favor of access to court records must provide specific facts to support findings justifying compelling reasons 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 intimate details of a divorce case, or to serve as reservoirs of libelous statements for press

⁷ 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. *Nast*, 107 Wn.2d at 303-304. Prior cases recognized the dual 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).

consumption, or as sources of business information that might harm a litigant's competitive standing. *Nixon*, 435 U.S. at 598.

Whether GR 18(d) or RCW 2.36.072(4) are unconstitutional on their face or unconstitutional in every factual scenario is beyond the scope of this case. To the extent RCW 2.36.072(4) and GR 18(d) are interpreted to prohibit disclosure of the information sought by Ringhofer, such interpretation would conflict with the court's interpretation of Article I, Section 10 as protecting and ensuring the right of public access to court records and court proceedings. *Coleman*, 151 Wn.App. at 620.

In this case, the Court Administrator failed to meet her duty to articulate compelling reasons supported by specific facts that outweigh the general history of access and the public policies favoring disclosure. The trial court erred in allowing the Court Administrator to avoid engaging in the thorough legal analysis required by the First Amendment and Sixth Amendment of the U.S. Constitution; Article I, Section 10 of the Washington Constitution; and the common law.

Ringhofer urges this Court to affirm that the First Amendment and Sixth Amendment of the U.S. Constitution; Article I, Section 10 of the Washington Constitution; and the common law, operate to allow him access to the pre-trial juror qualification records where the records show

that no attempt was made by the Court Administrator to support factual findings that disclosure should not be allowed.

B. Ringhofer's Request for Disclosure Promotes Improvement of the Judicial System or Jury Selection Process.

The trial court indicated that Ringhofer did not seek the disclosure of the records for a reason involving the monitoring or improvement of the judicial system or jury selection process. This conclusion ignores the record in this case. Appellant has argued in his Petition, Motion for Summary Judgment, and Brief in Opposition to Respondent's Motion for Summary Judgment--that the release of the requested juror qualification information will encourage judicial transparency and the integrity of the juror selection process. CP 2; CP 64; CP 111.

By its very nature, monitoring juror qualification responses by comparing them with the state voter database would yield information that might prove valuable to the court if people are falsely disqualifying themselves to get out of jury service. Only through the effective screening of potential jurors are fair and impartial juries impaneled.

III.

THE LEGISLATURE EXPANDED DISCLOSURE OF PRELIMINARY JUROR QUALIFICATION INFORMATION

A. The Legislature Intended for Juror Qualification Information to be Used to Screen an Individual's Eligibility to Vote.

The Legislature expanded the restrictions on the use of juror qualification information, by enacting Senate Bill 5270, codified as RCW 29A.08.125. The legislation clarifies the Legislature's intent to allow the Secretary of State to coordinate with the courts to screen out non-U.S. citizens from voting.

RCW 29A.08.125 provides that the **Secretary of State must coordinate with the administrative office of the courts** and county auditors to ensure that the voter database reflects only those who are eligible to vote. RCW 29A.08.125(5). The statute also gives the Secretary of State the ability to "[s]creen against any available databases . . . to identify voters who are ineligible to vote due to . . . lack of citizenship . . ." RCW 29A.08.125(9)(d). The Secretary of State can also "screen against any available databases maintained by election officials in other states and databases maintained by federal agencies including, but not limited to. . . the federal court system. . . and the bureau of citizenship and immigration services." RCW 29A.08.125 (10).