

EVERETT, WASHINGTON, FRIDAY, APRIL 29, 2011

AFTERNOON SESSION

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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

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

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

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

(Proceedings held following a brief recess.)

COLLOQUY

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THE COURT: Sorry for the interruption. Counsel.

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

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

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

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

COLLOQUY

1 that jury questionnaires are presumptively open under the 2 First Amendment in the <u>State v. Coleman</u> case from 2009. 3 THE COURT: Wasn't the Coleman case involving the questionnaires that had actually been filled out by 4 5 prospective jurors after the assignment of a particular trial? 6 7 MS. MILES: There were two sets of questionnaires. 0ne 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

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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, <u>Coleman</u> 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

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

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argument?

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MS. MILES: So, Your Honor, the <u>State v. Coleman</u> case relied on a Supreme Court case in Ohio that considered the

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

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

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

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

MS. MILES: No.

THE COURT: All right. Okay, proceed.

1 First Amendment qualified right to open proceedings extending to prospective juror questionnaires, and that's 2 3 the exact language that they used. And there's a presumption if somebody wants to seal records that they 4 5 first must show, they must overcome the presumption by showing an overriding interest based on findings that 6 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.

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

of access to these records.

MS. MILES: Yes, Your Honor.

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

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

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

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

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

COLLOQUY

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, other public officials, for the electoral process. 4 5 That's your purpose. MS. MILES: That's one of the purposes. 6 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?

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

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

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

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

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

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

THE COURT: Okay.

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MS. MILES: I'm trying to find that -- (Pause.) Okay.

Do you

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Did you have any other questions?

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think that if a prospective individual who is filling out

THE COURT: Well, I have one other question.

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that information in a response, do you see any chilling

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effect? If all of a sudden people want to come in and say

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we want the master list, we want every name, address, et

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cetera, of anybody who is on this master list, do you see

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any chilling effect? I mean, there's already complaints,

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I just heard it on the radio the other day coming to work,

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I think it was a judge out of King County that was being

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interviewed, not in relation to this case but just

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generally, saying only 20 percent of the people who were

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MS. MILES:

summoned to jury duty ever even show up.

Um-hm.

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THE COURT: Do you think there would be an even greater

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chilling effect if when the people got the summons for $% \left(1\right) =\left(1\right) \left(1\right) +\left(1\right) \left(1\right) \left(1\right) +\left(1\right) \left(1\right) \left($

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jury duty, and they fill out that questionnaire, everybody

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says, hey, we have access to it, we can put that out on

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the web, and do you think that a prospective juror may say, wait a minute, I don't want my name and address out

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on the web, especially if I get in some high profile

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murder case where maybe I'm going to be apprehensive about

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the defendant or defendants being able to retaliate,

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

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

THE COURT: Jury list, yes.

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

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

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

THE COURT: They don't have addresses.

MS. MILES: It has addresses, but the juror 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. MS. MILES: 4 Okay. 5 THE COURT: A Bone Club analysis is not possible in this particular case, is it? 6 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 But respondent hasn't petitioned for a records. 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.

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THE COURT:

you don't have access to these records.

COLLOQUY 13

They're saying under RCW 2.36 and GR 18(d),

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

THE COURT: Okay. Thank you.

MS. MILES: So, thank you.

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

MR. KUFFEL: GR 31(k).

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

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

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

THE COURT: All right. Okay. Proceed.

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

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

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

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

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

So when we received this request, we --

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Okay. Why not?

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Okay.

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

rebuttal.

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

MS. MILES: Your Honor, I would just like to make clear for the record, it doesn't matter what the purpose is.

We're requesting that you would look at the situation from why there's the First Amendment, why there's the Sixth Amendment to the U.S. Constitution. People have various reasons, the media has various reasons for requesting documents from the court. And in the cases that I've cited in my briefs I've pointed out, essentially, that there has to be a reason for the person trying to seal the records. They have to articulate that to the court alleging facts and showing why the information should not be released based on fact, not law.

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

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

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

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

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

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

And I would also like to mention that the legislative

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intent -- the respondent argued, he says that it's not 2 But, in fact, if you look at Section 29A.08.125, 3 it gives the Secretary of State the authority to use this information, not just the County Auditor. And keeping the 4 5 databases current, the Secretary of State is supposed to coordinate with the federal courts -- not federal, the 6 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 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.

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

THE COURT: Okay. Thank you.

MS. MILES: Thank you.

THE COURT: All right.

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

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

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

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

there.

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

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

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

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

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

THE COURT: No, I don't.

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

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

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

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

MR. STEPHENS: That's worse for me, Your Honor. I have 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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