No. _____

IN THE

Supreme Court of the United States

JOHN DOES 1, 2, 4, AND 5,
Applicants,

v.

SEATTLE POLICE DEPARTMENT AND SAM SUEOKA,
Respondents.

ON APPLICATION FOR A STAY OF MANDATE
TO THE SUPREME COURT OF WASHINGTON

APPLICATION FOR A STAY OF MANDATE ISSUED BY THE WASHINGTON STATE SUPREME COURT

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PARTIES TO THE PROCEEDING

Applicants were respondents below before the Washington State Supreme Court. They are four current and former Seattle police officers who attended President Donald Trump's "Stop the Steal" political rally ("Rally") on January 6, 2021, in Washington, D.C. but were found, following a police department investigation, not to have engaged in unlawful or unprofessional conduct. After being notified of a number of public records requests targeting their attendance at the Rally, Applicants brought suit against the City of Seattle seeking declaratory and injunctive relief prohibiting public disclosure of unredacted investigatory records. These records include, among other records, transcripts of interviews in which the applicants were compelled to participate, under threat of termination, and were required to disclose their political beliefs, affiliations, reasons for attending the Rally, and their mental impressions as to the content of the Rally.

Respondents were petitioners below. They are the Seattle Police Department and Sam Sueoka, a private citizen who submitted records requests pursuant to the Washington State Public Records Act ("PRA"), Chapter 42.56 RCW, seeking disclosure of the investigatory records pertaining to police officers who participated in the events of January 6, 2021, in our nation's capital. During litigation on this issue, Sueoka repeatedly moved to change the case title and bar the use of pseudonyms.

INTRODUCTION

Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, Applicants respectfully apply for a stay of the mandate issued on February 13, 2025, and affirmed by denial of petition for reconsideration on April 9, 2025, by the Washington State Supreme Court, pending the filing and disposition of a petition for a writ of certiorari and any further proceedings in this Court.

Applicants also respectfully request an immediate injunction to preserve the *status quo* and avoid severe harms while the Court considers this application. The mandate is otherwise set to take effect now that the motion for reconsideration has been denied. The result would prevent the Applicants from litigating under pseudonym, thereby requiring the officers to use their actual names in the case caption and undermining their ability to assert the First Amendment privacy right in political beliefs and associations they seek to vindicate.

At its core, this appeal involves whether a government agency can ignore the chilling effect resulting from an employer requiring an employee to disclose their off-duty political activities and attendant impressions or motivations associated therewith, followed by widespread dissemination to those who deliberately seek this information to subject these public servants to vilification without the commission of any misconduct whatsoever.

OPINIONS BELOW

The opinion of the Supreme Court of Washington is reported at *Does 1, 2, 4, & 5 v. Seattle Police Dep't*, 563 P.3d 1037 (Wash. 2025) (hereafter, "*Does 1, 2, 4, & 5*"). That decision reversed the unanimous opinion of the Washington Court of Appeals, Division One, reported at *Doe 1 v. Seattle Police Dep't*, 27 Wn. App. 2d 295, 531 P.3d 821 (2023) (hereafter, "*Doe 1*"). The Washington Supreme Court denied a petition for rehearing on April 9, 2025. Those opinions and orders, together with the order of the trial court, are reproduced in the Appendix.

JURISDICTION

The Supreme Court of Washington issued its opinion on February 13, 2025, and denied reconsideration on April 9, 2025. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions involved in this case are reproduced in the appendix.

STATEMENT OF THE FACTS

1. This case arises from the imminent release of records relating to Seattle's Office of Police Accountability ("OPA") investigations and the identities of officers in response to a number of public records requests.

2. Applicants are four unnamed Seattle Police Officers who attended President Donald Trump's political rally and speech in Washington, D.C. on January 6, 2021. Unfortunately, some of the attendees at the Rally went on to commit crimes at the United States Capitol ("Capital Riot"). However, the Applicants were investigated, and no wrongdoing was found.

3. In the aftermath of January 6th, the Seattle Police Department ("SPD") directed any of its officers who attended the Rally to self-report and required them to submit to an investigation by the OPA to determine if they participated in the Capitol Riot or engaged in other criminal acts or misconduct. The four Applicants self-reported their presence at the January 6, 2021, Rally. Within a few weeks, each of the four Applicants received a complaint from OPA alleging a possible violation of the law and SPD policies by "trespassing on Federal property and/or participating in the planning and/or forced illegal entry of the U.S. Capitol Building that day." As part of the investigation, SPD ordered each Applicant to submit to interviews. At the outset of the interview, each Applicant was informed by the OPA examiner of an SPD directive to answer all questions asked, truthfully and completely, and that failure to do so could result in discipline up to and including termination. Understandably, SPD held significant concerns about any officer's presence at or near the Capitol Building. Despite these legitimate concerns over SPD officer involvement in the Capitol Riot, the investigation focused on more than just the Applicants' whereabouts. OPA investigators explored the Applicants' motivations for attending the Rally, their impressions and reactions to the Rally, as well as their political affiliations. Importantly, in some cases, Applicants were asked, directly, to explain away how their lawful attendance at this Rally, in and of itself, did not amount to unprofessional conduct. Because Applicants were ordered to answer all these personal questions, they did so truthfully and

completely. In addition to the Government disclosing the identities of Applicants, the records themselves demonstrate more than just mere attendance at a political rally.

4. Several members of the public made records requests to the SPD pursuant to the PRA, seeking disclosure of the investigatory records pertaining to police officers who participated in the events of January 6, 2021 Rally. The officers anonymously sued the SPD, OPA, and requestors, seeking a preliminary injunction to prevent the release of their identities within those public records. During litigation on this issue, Respondent Sam Sueoka repeatedly moved to change the case title and bar the use of pseudonyms.

5. The Washington State Court of Appeals, Division I, unanimously reversed the Trial Court's denial of Applicants' preliminary injunction and right to proceed in pseudonym, recognizing the right to exercise First Amendment rights "anonymously while in public." *Doe 1*, 531 P.3d 821, *review granted sub nom. Does 1, 2, 4, 5 v. Sueoka*, 537 P.3d 1031 (Wash. 2023), and *rev'd sub nom. Does 1, 2, 4, & 5 v. Seattle Police Dep't*, 563 P.3d 1037 (Wash. 2025).

6. In holding that the First Amendment prohibited the widespread dissemination of the Respondent Officers' identifying information, Division I of the Washington State Court of Appeals reasoned that, because these requests constituted "compel[ed] disclosure of an individual's political beliefs and associations," disclosure could *only occur* if the government could "demonstrat[e] a compelling state interest with sufficient relation to the information sought to be disclosed." *Doe 1*, 531 P.3d at 846.
7. The Court of Appeals both recognized that the PRA's "other statutes provision" in RCW 42.56.070(1) contemplated a "catch all" exemption based on Constitutional considerations, and that the state injunction standard was satisfied "[g]iven the State's paramount interest in affirming the federal constitutional rights of its citizens, disclosure that would impinge the Doe Officers' First Amendment rights would clearly not be in the public interest and because the Does' constitutional rights would be impinged by disclosure of the unredacted records, such disclosure would of necessity substantially and irreparably damage the Does." *Doe 1*, 531 P.3d at 855 (internal quotations omitted).

8. However, eighteen months later, the Washington State Supreme Court reversed the Court of Appeals' unanimously holding, in spite of well-established United States Supreme Court decisional authority, that there was no such right to remain anonymous in public and that the Applicants' need to proceed *in pseudonym* was unnecessary to vindicate that non-existent right. *Does 1, 2, 4, & 5 v. Seattle Police Dep't*, 563 P.3d 1037 (Wash. 2025).
9. Respectfully, the Washington State Supreme Court overlooked that Applicants were investigated on suspicion of having participated in the Capitol Riot, but were specifically questioned as to their political beliefs, motivations for attending the Rally, and their impressions resulting from same. Here, each Applicant has previously testified that this entire experience has already chilled their willingness to voice unpopular opinions.
10. Applicants filed a motion for reconsideration with the Washington Supreme Court, which it denied on April 9, 2025.

ARGUMENT

Applicants respectfully request that this Court grant a stay of the mandate issued by the Washington State Supreme Court's decision to bar Applicants from proceeding *in pseudonym*, pending further proceedings in this Court.

Relief from this court is needed and justified. In deciding whether to grant a stay of mandate, this court considers where there is: (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a

significant possibility that a majority of the Court will conclude that the decision below was erroneous; and (3) a likelihood that irreparable harm will result if the decision below is not stayed. *Conkright v. Frommert*, 556 U.S. 1401, 1402, 129 S. Ct. 1861, 173 L. Ed. 2d 865 (2009). *See also Curry v. Baker*, 479 U.S. 1301, 1302, 107 S. Ct. 5, 6–7, 93 L. Ed. 2d 1 (1986); *White v. Florida*, 458 U.S. 1301, 1302, 103 S. Ct. 1, 73 L.Ed.2d 1385 (1982). Additionally, "in a close case it may be appropriate to 'balance the equities'—to explore the relative harms to applicant and respondent, as well as the interests of the public at large." *Conkright*, 556 U.S. at 1402. This standard is readily met here, because longstanding authority from this Court unequivocally confirms the Applicants have a First Amendment right to be anonymous in public. In holding as it did, the Washington State Supreme Court reasoned that Applicants simply lacked a constitutional right to remain anonymous in public. *Does 1, 2, 4, & 5*, 563 P.3d at 1053.

Respectfully, the Washington State Supreme Court ignored the long line of cases finding time and time again that the First Amendment affords those who participate in protected political activity to be free from compelled disclosure of their identities. Because the Washington State Supreme Court failed to recognize a privacy interest in lawful political participation, it held it was improper for the Trial Court to allow these Applicants to proceed *in pseudonym* to prevent the injury litigated against from being materialized.

This appeal involves important federal constitutional questions which intersect state freedom of information laws. Although this matter arises out of state enacted public records legislation, numerous Washington State appellate decisions, including those from which review is sought here, recognize that PRA's legislatively created "other statutes" exemption found in RCW 42.56.070(1), allows for the withholding of public records when disclosure would otherwise impair an individual's Constitutional right. *See*, *e.g. Yakima County v. Yakima Herald-Republic*, 170 Wn.2d 775, 808, 246 P.3d 768 (2011) (addressing the argument that provisions of the United States Constitution qualify as "other statutes"); *Freedom Found. v. Gregoire*, 178 Wn.2d 686, 695, 310 P.3d 1252 (2013) (because "the constitution supersedes contrary statutory laws, even those enacted by initiative," "the PRA must give way to constitutional mandates"); *Washington Fed'n of State Employees v. State*, 534 P.3d 320 (2023) (observing "other statutes" exemption incorporates substantive due process rights); *Does 1, 2, 4, & 5*, 563 P.3d at 1053 ("Consistent with our prior decisions, we agree the catchall "other statutes" provision allows a person to object to disclosure of public records based on constitutional principles."). Absent this exemption, the PRA would not pass Constitutional muster. Thus, the application of Washington's PRA statute involves a question of federal law.

1. There Is A Reasonable Probability This Court Will Grant Certiorari Because The Applicants Have A First Amendment Right To Be Anonymous In Public.

This Court has recognized that our government is "built on the premise that every citizen shall have the right to engage in political expression and association," a right enshrined by the First Amendment. *Sweezy v. New Hampshire*, 354 U.S. 234, 266, 77 S. Ct. 1203, 1 L. Ed. 2d 1311 (1957). "[F]reedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the liberty assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." *NAACP v. Alabama*, 357 U.S. 449, 460, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1958). Additionally, there is a right of privacy against government intrusion that is implicit in the First Amendment, which protects the right of individuals to maintain their privacy in their political expression and association. *Sweezy*, 354 U.S. at 266 ("thought and action are presumptively immune from inquisition by political authority."). This right may be impinged only on the basis of a subordinating state interest that is compelling. *Gitlow v. New York*, 268 U.S. 652, 45 S. Ct. 625, 69 L. Ed. 1138 (1925).

The Applicants face the public production of records by a government agency relating to their constitutionally protected political beliefs and associations, thereby risking a violation of their First Amendment right to privacy. The issues presented by this Petition rely on earlier holdings of this Court, establishing that the First

Amendment confers a right of privacy in an individual's political beliefs and associations.

This Court has "repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Buckley v. Valeo*, 424 U.S. 1, 64, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976) (citing *Gibson v. Fla. Legis. Investigation Comm.*, 372 U.S. 539, 83 S. Ct. 889, 9 L. Ed. 2d 929 (1963); *Nat'l Ass'n for Advancement of Colored People v. Button*, 371 U.S. 415, 83 S. Ct. 328, 9 L. Ed. 2d 405 (1963); *Bates v. City of Little Rock*, 361 U.S. 516, 80 S. Ct. 412, 4 L. Ed. 2d 480 (1960); *Shelton v. Tucker*, 364 U.S. 479, 81 S. Ct. 247, 5 L. Ed. 2d 231 (1960); *NAACP v. Alabama*, 357 U.S. 449; *see also Doe v. Reed*, 561 U.S. 186, 232, 130 S. Ct. 2811, 177 L. Ed. 2d 493 (2010) (Thomas, J., dissenting) ("This Court has long recognized the 'vital relationship between' political association 'and privacy in one's associations,' and held that '[t]he Constitution protects against the compelled disclosure of political associations and beliefs.' " (alteration in original) (citation omitted) (quoting *NAACP v. Alabama*, 357 U.S. at 462; *Brown v. Socialist Workers '74 Campaign Comm. (Ohio)*, 459 U.S. 87, 91, 103 S. Ct. 416, 74 L. Ed. 2d 250 (1982))).

For example, in *Talley v. California*, 362 U.S. 60, 80 S. Ct. 536, 4 L.Ed.2d 559 (1960), this Court embraced the tradition of anonymity in the advocacy of political causes. In that case, this Court considered whether a Los Angeles City ordinance violated the First Amendment by requiring the names and addresses of anyone

distributing and compiling handbills to appear on the cover. *Id*. at 61. In finding the right to anonymously distribute handbills, the court said:

> There can be no doubt that such an identification requirement would tend to restrict freedom to distribute information and thereby freedom of expression. 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.'

Id. at 64 (quoting *Lovell v. City of Griffin*, 303 U.S. 452, 58 S.Ct. 666, 82 L.Ed. 949 (1938)). The *Talley* court also referenced *NAACP v. Alabama*, noting, "there are times and circumstances when States may not compel members of groups engaged in the dissemination of ideas to be publicly identified" because "identification and fear of reprisal might deter perfectly peaceful discussions of public matters of importance." *Id*. at 65. According to *Talley,* the ordinance at issue was subject to the same infirmity.

In this case, Applicants maintained a higher level of anonymity than those distributing handbills in *Talley*. Applicants merely attended a public rally amongst thousands of attendees. In contrast, the petitioners in *Talley* personally approached individuals to distribute pamphlets hundreds or even thousands of times. Therefore, the Applicants in this case should also be able to maintain their First Amendment right of anonymity.

Furthermore, this Court protected the anonymity of religious proselytizers going door to door in *Watchtower Bible and Tract Society of New York, Inc. v. Villate of Stratton*, 536 U.S. 150, 122 S.Ct. 2080, 153 L.Ed.2d 205 (2002). In that case, Jehovah's Witnesses challenged a village ordinance which required them to register with the mayor and receive a permit before door-to-door canvassing. *Id*. at 153. In explaining what this court called the "pernicious" effects of such a permit requirement, it explained "there are a significant number of persons who support causes anonymously. 'The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible.'" *Id*. at 166 (*quoting McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 341-42, 115 S.Ct. 1511131 L.Ed.2d 426 (1995)). This Court took issue with the permit requirement because it would necessarily result in a surrender of that anonymity. *Id*.

Watchtower makes a clear distinction that a "conspicuous public act," like going door-to-door, does not extinguish ones First Amendment right to remain anonymous in public. Again, by going door-to-door in a small community, the proselytizers in *Watchtower* were far less anonymous than the petitioners here.

Furthermore, even though the proselytizing activity was allowed, this Court still took issue with the permit requirement because of the effect it could have on speech. Similarly in this case, it is irrelevant whether the government allowed the Applicants to attend the rally, because the government disclosure pursuant to the PRA will chill

the activity. It is not simply a "heavy-handed frontal attack" against which First Amendment freedoms are protected, but "also from being stifled by more subtle governmental interference." *Bates*, 361 U.S. at 523. The government need not take direct action to unlawfully impinge an individual's constitutional privacy right. *NAACP v. Alabama*, 357 U.S. at 461. Rather, even if it is unintentional, infringement on such rights may inevitably follow from varied forms of governmental action, including action that "may appear to be wholly unrelated to protected liberties." *Id.*

Also instructive here is *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595, 141 S. Ct. 2373, 210 L.Ed.2d 716 (2021). In that case, this Court considered whether a California regulation requiring tax exempt charities to disclose names and addresses of their major donors to the Attorney General's Office violated First Amendment association rights. *Id.* at 600. This Court analyzed this issue under an "exacting scrutiny" standard, which requires a substantial relation between the government's disclosure requirement and a sufficiently important government interest. *Id.* at 607. "To withstand this scrutiny, the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights." *Id.* "Such scrutiny … is appropriate given the 'deterrent effect on the exercise of First Amendment rights' that arises as an 'inevitable result of the government's conduct requiring disclosure.'" *Id* (quoting *Buckley v. Valeo*, 424 U.S. at 65).

Under this standard, this Court found that the Attorney General's disclosure requirement imposed a widespread burden on donor associational rights, and that the

burden could not be justified on the grounds that it was "narrowly tailored" to investigating charitable wrongdoing or for administrative convenience. *Id.* at 618. This Court reasoned that, when it comes to a person's beliefs and associations, broad and sweeping state inquiries into these protected areas discourage citizens from exercising rights protected by the constitution, and compelled disclosure regimes were no exception. *Id.* at 610.

Similarly, in *Shelton v. Tucker*, 364 U.S. 479, this Court considered an Arkansas statute that required teachers to disclose every organization to which they belonged or contributed. *Shelton*, 364 U.S. at 480. Acknowledging the importance of "the right of a State to investigate the competence and fitness of those whom it hires to teach in its schools," this Court distinguished prior decisions in which It had found "no substantially relevant correlation between the governmental interest asserted and the State's effort to compel disclosure." *Id.* at 485. Nevertheless, this Court held that the Arkansas statute was invalid because even a "legitimate and substantial" governmental interest "cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." *Id.*, at 488.

Shelton stands for the proposition that a substantial relation to an important interest is not enough to save a disclosure regime that is insufficiently tailored. This requirement makes sense. Narrow tailoring is crucial where First Amendment activity is chilled—even if indirectly— "[b]ecause First Amendment freedoms need breathing space to survive." *NAACP v. Button*, 371 U.S. at 433.

In analyzing this case under the same principles as *Bonta* and *Shelton*, exacting scrutiny fails. The same result should apply to privacy rights implicated by a PRA request directed specifically at one's identity concerning public political participation. Here, Applicants were given the choice between self-incrimination and losing their livelihoods. Given this choice, it is likely that those willing to engage in such political expression and association would decline to do so, thereby chilling their First Amendment activity. Even if there is an important government interest in obtaining this information that the Applicants willingly supplied, it does not follow that the government can then go and supply that information in response to the public records request without infringing on the Applicants' First Amendment rights. Understandably, Applicants would have significant and well-founded concerns about their privacy and safety if their identities were to be disclosed pursuant to the PRA. The chilling effect this would have on First Amendment activity is obvious.

Thus, there is a reasonable probability that this Court will grant certiorari to determine whether the Government's disclosure, pursuant to the PRA, of the Applicant's identities in the requested records, which implicate their political beliefs, and associations, is proper.

2. There Is A Significant Possibility That A Majority Of The Court Will Conclude That The Decision Below Was Erroneous Because The Washington Supreme Court Overlooked Issues Beyond Mere Attendance At A Public Rally.

The OPA investigation was not limited to whether the Applicants attended the January 6, 2021, Rally at the Capitol. The Applicants were subject to further inquiries about their political beliefs and associations, as well as their reasons for attending the Rally. Some questions included:

- Why did they attend the January 6th Rally?
- Who did they plan to attend the Rally with?
- Were they at January 6th Rally to articulate their political views?
- Were they showing support for a political group by attending the January 6th Rally?
- Were they affiliated with any political groups?
- What were their impressions of, and reactions to, the content of the January 6th Rally?
- Why was their mere attendance at the January 6th Rally professional conduct?

These very private questions strike at the core of political speech that the Government is now threatening to disclose publicly. The Washington State Supreme Court's decision does not address the fact of the further imposition posed by the Government

here beyond mere attendance—these questions were personal and knowing that these would be disclosed in tandem with their identities would simply further chill them.

Even with a legitimate interest, the Washington State Supreme Court gave no credence to the principle that the scope of the State's inquiry cannot be unlimited. For example, in *Shelton*, where this Court addressed the constitutionality of statute requiring public school teachers to disclose all organizations with which they had been associated, this court recognized the legitimate interest in investigating the fitness and competency of teachers. *Shelton*, 364 U.S. at 479. However, it found that this interference with associational freedom went far beyond what might be justified in the exercise of a legitimate inquiry.

Although the public is entitled to be informed concerning the workings of its government, and the SPD is entitled to investigate potential wrongdoing on the part of its officers, this entitlement cannot be unlimited and inflated into general power to invade the constitutional privacy rights of individuals. Core components of personal identity, such as political activities, are deeply private and not the proper subject of a public records request. Police officers are entitled to the same constitutional protections as all other Americans, and do not forfeit those rights by merely attending a political rally.

Moreover, based on seminal First Amendment jurisprudence, the Washington State Court of Appeals, Division I, *unanimously* recognized the right to express one's

First Amendment rights "anonymously while in public." *Doe 1*, 531 P.3d at 827. Based on the precedent cited above, there is a significant possibility that this Court will decide similarly to the court of appeals.

Furthermore, a majority of this Court will likely conclude that the decision below was erroneous because the Applicants' position squarely aligns with both the majority and the dissent in *Bonta*. In the *Bonta* dissent, Justice Sotomayor's main disagreement with the majority was that it allowed regulated entities who wish to avoid their obligations the ability to do so by vaguely waving toward First Amendment privacy concerns. *AFP v. Bonta*, 594 U.S. at 624 (Sotomayor, J., dissenting). The dissent reasoned that the majority opinion was discarding the requirement that plaintiffs must plead and prove that disclosure will likely expose them to objective harm, such as threats, harassment, or reprisals. *Id.* at 645 (citing *Doe v. Reed*, 561 U.S. at 232).

The Applicants have already been the targets of such harassment. The core of this matter is that members of the greater Seattle Community do not believe that Applicants are entitled to a First Amendment right to attend a political rally while off duty. The very purpose of this action is to expose Applicants and constitutes harassment itself.

The opposing party has also publicly assailed Applicants with insults, repeatedly claiming that the rally attended was for fascists and white supremacists. They have attempted to paint guilt by association, wondering aloud on the purpose for

Applicants' attendance at the rally, obviously insinuating they are tied to right wing extremists.

National organizations have also targeted Applicants. The National Lawyers Guild (NLG) and National Police Accountability Project (NPAP) filed Amici Briefs in the Washington State Supreme Court stating multiple falsehoods about the Applicants, calling them white supremacists and claiming they have a propensity for racially motivated crimes. Neither brief bothered to mention the results of the OPA investigation, which concluded that Applicants did not participate in any insurrection or commit any crimes.

These briefs, full of false and inflammatory allegations about the Applicants, are available to anyone who wishes to access them. This alone is a reprisal as a result of lawfully exercising First Amendment rights.

Other Seattle Police Officers involved in high publicity cases have had their professional and personal lives effected once their identities became known. In fact, there is an online forum, "DivestSPD," dedicated to harassing and threatening police officers. According to an expert report submitted at trial:

> Careful study of the social media climate in the days following the events of January 6, 2021, lead me to conclude there is a reasonable probability that the compelled disclosure of these officers' personal information would subject them and their families to threats, harassment, or reprisals that would discourage them from further political

> participation. A well-known theory called Spiral of Silence, which is routinely used in the study of human communication and public opinion, suggests that "the perception that one's opinion is unpopular tends to inhibit or discourage one's expression of it." As a result, were these police officers to be named publicly, it would almost certainly result in a chilling effect on their First Amendment rights to freedom of expression by discouraging them from publicly voicing unpopular political views in the future.

In this report, Dr. Amy Sanders identifies the following eight factors summarized as follows: (1) Appellants hold views that differ significantly from Seattle; (2) History of anti-police sentiment in Seattle; (3) Vitriol directed to those attending the January 6 rally; (4) Tactics to harass are easily discernible and repeatable; (5) Police officers are particularly subject to doxxing; (6) sole purpose of litigation is to get names; (7) speech on the internet is hyperbolic and tends to ignore facts; and (8) high profile coverage of this case.

Further, each Applicant has testified that this entire experience has already chilled their First Amendment Rights and willingness to voice unpopular opinions. This is understandable: would anyone feel free to exercise their First Amendment rights knowing that their names would be plastered all over the Seattle Times?

Accordingly, the *Bonta* dissent standard, as well as the majority standard, is met here.

In sum, pursuant to the United States Supreme Court decisional authority, the State must demonstrate that disclosure of the unredacted requested records would further a compelling state interest and that such disclosure is narrowly tailored to achieve that interest. Here, no compelling State interest exists to justify disclosure of the unredacted records. For the same reasons as in *Talley*, *Watchtower*, *Shelton*, *Bonta*, and other precedent cited above, as well as the extensive reasoning based on First Amendment jurisprudence set out by the Washington Court of Appeals, Division I, there is a significant possibility that a majority of this Court would conclude that the decision below to disclose Applicants' identities was erroneous.

3. There Is No Doubt That Irreparable Harm Will Result If The Decision Below Is Not Stayed.

If Applicants are not allowed to proceed *in pseudonym*, the injury litigated against would be incurred as a result. By requiring the Applicants to use their names in the case caption, their ability to assert the First Amendment privacy right in political beliefs and associations would be permanently undermined, rendering any further litigation useless. The reaction in the life of the officers could be disastrous, especially given the unorthodox and unpopular nature of these beliefs amongst the Seattle Community in general.

If the Court finds Applicants have this First Amendment right, then they should be allowed to proceed *in pseudonym*. The Washington Supreme Court found: "[t]he "need" the [Applicants] advance in favor of anonymity is to prevent the harm of an

invasion of their statutory or constitutional privacy rights." *Does 1, 2, 4, & 5*, 563 P.3d at 1055. However, the Court found that the Respondents had not shown a sufficient privacy interest that could be invaded. *Id.* "Without demonstrating such a privacy interest that could be invaded by disclosure of their identities within public records, the officers cannot show a compelling privacy concern 'that outweigh[s] the public interest in access to the court record.'" *Id.* However, the inverse must be true. If the Applicants can identify such an interest, then they can proceed *in pseudonym*. Accordingly, Applicants would ask, if the Applicants do establish the First Amendment anonymity and/or belief/associational interest—as argued above—then this Court allow them to continue to proceed *in pseudonym*.

Finally, if this Court were to "balance the equities," the Applicants would suffer an immediate, irreparable harm as opposed to the Respondents and the public at large. Applicants' substantial privacy right implicated by the First Amendment outweighs the presumption of openness in judicial proceedings, especially when the alleged misconduct did not occur in the course of their public duties, the allegations against them were unsubstantiated, and disclosure of their identities would have fulfilled only the impermissible objective of exposure for exposure's sake.

In contrast, if the stay is granted, Respondents would merely have to wait for the final disposition of this case to obtain unredacted records and would not suffer any irreparable harm.

CONCLUSION

The Mandate should be stayed pending the filing and disposition of a petition for a writ of certiorari and any further proceedings in this Court. This Court should also issue an injunction preventing the disclosure of Applicants' names under the PRA to preserve the status quo and avoid severe harm while the Court considers this application. This will allow the Applicants to keep their identities, beliefs, and associations private as secured by the First Amendment to the United States Constitution.

Respectfully submitted.

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APPENDIX

RCW 42.56.070 Documents and indexes to be made public—Statement of costs. (1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (8) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

(2) For informational purposes, each agency shall publish and maintain a current list containing every law, other than those listed in this chapter, that the agency believes exempts or prohibits disclosure of specific information or records of the agency. An agency's failure to list an exemption shall not affect the efficacy of any exemption.

(3) Each local agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(4) A local agency need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:

(a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and

(b) Make available for public inspection and copying all indexes maintained for agency use.

(5) Each state agency shall, by rule, establish and implement a system of indexing for the identification and location of the following records:

(a) All records issued before July 1, 1990, for which the agency has maintained an index;

(b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(c) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(d) Interpretive statements as defined in RCW 34.05.010 that were entered after June 30, 1990; and

(e) Policy statements as defined in RCW 34.05.010 that were entered after June 30, 1990.

Rules establishing systems of indexing shall include, but not be limited to, requirements for the form and content of the index, its location and availability to the public, and the schedule for revising or updating the index. State agencies that have maintained indexes for records issued before July 1, 1990, shall continue to make such indexes available for public inspection and copying. Information in such indexes may be incorporated into indexes prepared pursuant to this subsection. State agencies may satisfy the requirements of this subsection by making available to the public indexes prepared by other parties but actually used by the agency in its operations. State agencies shall make indexes available for public inspection and copying. State agencies may charge a fee to cover the actual costs of providing individual mailed copies of indexes.

(6) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if:

(a) It has been indexed in an index available to the public; or

(b) Parties affected have timely notice (actual or constructive) of the terms thereof.

(7) Each agency may establish, maintain, and make available for public inspection and copying a statement of the actual costs that it charges for providing photocopies or electronically produced copies, of public records and a statement of the factors and manner used to determine the actual costs. Any statement of costs may be adopted by an agency only after providing notice and public hearing.

(a)(i) In determining the actual cost for providing copies of public records, an agency may include all costs directly incident to copying such public records including:

(A) The actual cost of the paper and the per page cost for use of agency copying equipment; and

(B) The actual cost of the electronic production or file transfer of the record and the use of any cloud-based data storage and processing service.

(ii) In determining other actual costs for providing copies of public records, an agency may include all costs directly incident to:

(A) Shipping such public records, including the cost of postage or delivery charges and the cost of any container or envelope used; and

(B) Transmitting such records in an electronic format, including the cost of any transmission charge and use of any physical media device provided by the agency.

(b) In determining the actual costs for providing copies of public records, an agency may not include staff salaries, benefits, or other general administrative or overhead charges, unless those costs are directly related to the actual cost of copying the public records. Staff time to copy and send the requested public records may be included in an agency's costs.

(8) This chapter shall not be construed as giving authority to any agency, the office of the secretary of the senate, or the office

of the chief clerk of the house of representatives to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall not do so unless specifically authorized or directed by law: PROVIDED, HOWEVER, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor: PROVIDED FURTHER, That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter 34.05 RCW, the administrative procedure act. [2017 c 304 s 1; 2005 c 274 s 284; 1997 c 409 s 601. Prior: 1995 c 397 s 11; 1995 c 341 s 1; 1992 c 139 s 3; 1989 c 175 s 36; 1987 c 403 s 3; 1975 1st ex.s. c 294 s 14; 1973 c 1 s 26 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.260.]

Part headings—Severability—1997 c 409: See notes following RCW 43.22.051.

Effective date—1989 c 175: See note following RCW 34.05.010.

Intent—Severability—1987 c 403: See notes following RCW 42.56.050.

Exemption for registered trade names: RCW 19.80.065.

Paid family and medical leave information: RCW 50A.05.020(4).