NO. 24A982

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

SAM SUEOKA'S SUPPLEMENTAL APPENDIX

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THE SUPREME COURT
STATE OF WASHINGTON

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April 11, 2025

LETTER SENT BY E-MAIL ONLY

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Re: Supreme Court No. 1021828 – John Does 1, 2, 4, 5 v. Sam Sueoka, et al.
Court of Appeals No. 837001 – Division I
King County Superior Court No. 21-2-02468-4

Counsel:

On April 10, 2025 at 3:28 p.m. this Court issued the mandate in this case. At 4:05 p.m. the Court received the "APPLICATION FOR A STAY OF MANDATE ISSUED BY THE

WASHINGTON STATE SUPREME COURT" filed by Respondents John Does 1,2,4, and 5 at the United States Supreme Court.

Since the mandate has already issued, the filing will be placed in the case file without further action at this time. *See* RAP 12.6.

Sincerely,

Reza J. Pazooki
Supreme Court Deputy Clerk

RJP:af

cc: Solicitor General Division Attorney General
La Rond Baker
Andrea Lynn Bradford
Bianca G Chamusco
Robert S Chang
Jonathan Collins
Katherine George
Melissa R. Lee
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Neil Fox

From: Aric Bomsztyk <asb@tbr-law.com>
Sent: Thursday, April 10, 2025 4:05 PM
To: Tracy, Mary; lifeisgood357@comcast.net; Neil Fox; Jessica.Leiser@Seattle.gov; Blair Russ; ghazal.sharifi@seattle.gov; thomanlegal@gmail.com
Cc: Bailey McCoy; Victoria Anderson; Lisa Sebree; Joel Ard; Okevia Pryce
Subject: EMAIL SERVICE: APPLICATION FOR A STAY OF MANDATE ISSUED BY THE WASHINGTON STATE SUPREME COURT
Attachments: 20250410 SPOG Stay of Mandate ALG FINAL.pdf; 20250410 SPOG Stay of Mandate COS.pdf; 20250410 SPOG Stay of Mandate LCOs.pdf

Counsel,

Please find Applicants, Does 1, 2, 4 & 5, Application For A Stay Of Mandate Issued By Washington State Supreme Court that was filed in the United States Supreme Court today by Mr. Joel Ard, Esq.

A hard copy will be arriving to you by US Mail as well deposited today.

ASB

Aric S. Bomsztyk
Attorney at Law

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Sent: Thursday, April 10, 2025 3:28 PM
To: lifeisgood357@comcast.net; Aric Bomsztyk <asb@tbr-law.com>; nf@neilfoxlaw.com; Jessica.Leiser@Seattle.gov; Blair Russ <bmr@tbr-law.com>; ghazal.sharifi@seattle.gov; thomanlegal@gmail.com
Subject: Supreme Court No. 1021828 John Does 1, 2, 4, 5 v. Sam Sueoka, et al.
Importance: High

Attached is a copy of a document in the above referenced case. Please consider this as the original for your files, a copy will not be sent by regular mail.

Any documents filed with this Court should be submitted via our E-filing Portal: https://ac.courts.wa.gov/

Please do not respond to this email. Any questions or response should be directed to our main email address, which is: supreme@courts.wa.gov.

THE SUPREME COURT OF WASHINGTON

JOHN DOES 1, 2, 4, and 5,

Respondents,

JANE DOE 1 and JOHN DOE 3,

Plaintiffs,

v.

SEATTLE POLICE DEPARTMENT and the SEATTLE POLICE DEPARTMENT OFFICE OF POLICE ACCOUNTABILITY,

Cross-Petitioners,

and,

SAM SUEOKA,

Petitioner,

JEROME DRESCHER, ANNE BLOCK, and CHRISTI LANDES,

Defendants.

M A N D A T E

Supreme Court No. 102182-8

Court of Appeals No.
83700-1-I

King County Superior Court
No. 21-2-02468-4 SEA

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for King County

The opinion of the Supreme Court of the State of Washington was filed on February 13, 2025. The Respondents filed a motion for reconsideration on March 4, 2025. The opinion

became final on April 9, 2025, upon entry of the "ORDER DENYING MOTION FOR RECONSIDERATION." This case is mandated to the superior court for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule of Appellate Procedure 14.6(c), costs will be awarded in a supplemental judgment at such time as the Clerk's Ruling on Costs is final.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of this Court at Olympia, Washington, on April 10, 2025.

SARAH R. PENDLETON
Clerk of the Supreme Court
State of Washington

cc: Clerk, King County Superior Court
Anne Block
Ghazal Sharifi
Jessica Lynn Zornes Leiser
Neil Martin Fox
Janet L. Thoman
Blair Russ
Aric Sana Bomsztyk
Reporter of Decisions

Neil Fox

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Subject: Supreme Court No. 1021828 John Does 1, 2, 4, 5 v. Sam Sueoka, et al.
Attachments: - 1021828 - Public - Disposition - Mandate - - 4 10 2025.pdf

Importance: High

Attached is a copy of a document in the above referenced case. Please consider this as the original for your files, a copy will not be sent by regular mail.

Any documents filed with this Court should be submitted via our E-filing Portal: https://ac.courts.wa.gov/

Please do not respond to this email. Any questions or response should be directed to our main email address, which is: supreme@courts.wa.gov.

THE SUPREME COURT OF WASHINGTON

JANE and JOHN DOES 1-6, Appellants/Cross-Respondents, v. SEATTLE POLICE DEPARTMENT, et al., Respondents.	)	No. 99901-5 **O R D E R** Court of Appeals No. 82430-9-I

This case came before the Court on direct interlocutory review of the superior court decisions denying a preliminary injunction and allowing the appellants to litigate using pseudonyms. Following oral argument on November 9, 2021, the Court unanimously voted in favor of the following result:

Now, therefore, it is hereby

ORDERED:

That review is hereby dismissed and the matter is remanded to the trial court for further proceedings. Review of the preliminary injunction ruling is moot in light of changed circumstances, and interlocutory review of the ruling allowing the use of pseudonyms is not warranted by the interests of justice. The cross-appellant/respondent's request to change the case title to disallow the use of pseudonyms is denied without prejudice to such a motion being filed in the trial court following remand.

To facilitate the orderly administration of justice, the court hereby extends the trial court's temporary restraining order prohibiting the disclosure of certain information in response to Public Records Act requests until 30 days after the mandate issues in this case to allow the trial court to consider any motion to extend the temporary restraining order pending further proceedings in that court.

DATED at Olympia, Washington this 17th day of November, 2021.

For the Court

González C.J.

CHIEF JUSTICE

Supreme Court No. 102182-8
(Court of Appeals Case No. 83700-1-I)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

JOHN DOES 1, 2, 4, and 5,
Respondents,
v.
SEATTLE POLICE DEPARTMENT and
SAM SUEOKA,
Petitioner.

DOE OFFICERS' 1, 2, 4, AND 5 MOTION FOR RECONSIDERATION

On Appeal From King County Superior Court
Hon. Sandra Widlan, Presiding

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Respectfully, this Court's decision does not address the fact of the further imposition posed by the Government here beyond questions of simple attendance—these involved the Government asking questions about their political beliefs, associations and impressions which chilled the Respondents. They only would be chilled more now that all this privately stated information will further be publicly disclosed.

3. *If The Court Finds The Respondents Have This First Amendment Right Then They Should Be Allowed To Proceed* In Pseudonym.

This Court found, "[t]he "need" the Respondent's 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 v. Seattle Police Dep't*, No. 102182-8, 2025 WL 522274, at *14 (Wash. Feb. 13, 2025). However, the Court found that the Respondents had not shown the 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.*

Thus, respectfully, the inverse must be true. If the Respondents can identify such an interest, as set forth in this Reconsideration, then they can proceed *in pseudonym*. Accordingly, Respondents would ask, if the Respondents 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*.

IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request Court consider the three issues addressed above. If the Court revises its assessment of the First Amendment Issues here, then the Respondents request this Court continues with the remainder of the analysis so the Respondents may keep their identities, beliefs, and/or associations private as secured by the First Amendment to the United States Constitution.

//

Supreme Court No. 102182-8
(Court of Appeals Case No. 83700-1-I)

IN THE SUPREME COURT
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JOHN DOES 1, 2, 4, and 5,

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SEATTLE POLICE DEPARTMENT and
SAM SUEOKA,

Petitioner.

SUPPLEMENTAL BRIEF OF JOHN DOE OFFICERS 1, 2, 4, AND 5

On Appeal From King County Superior Court
Hon. Sandra Widlan, Presiding

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E. This Court should affirm the Doe Officers' ability to continue to proceed in pseudonym.

Sueoka cross-appeals Judge Widlan's denial of his motion to change the case title and bar pseudonyms, but failed to assign error to the order originally granting the leave to proceed in pseudonym entered by then-Judge Regina Cahan. Because Sueoka did not challenge Judge Cahan's findings as to the factors laid out in *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982), those finding are verities on appeal. *Doe 1*, 27 Wn. App. 2d at 365, fn. 46, 531 P.3d at 858); CP 246-50.

Nonetheless, Sueoka asserts a wide raft of arguments about Washington's open courts jurisprudence, mixed with online gossip and speculation, in an attempt to obscure the obvious fact that litigating this case pseudonymously is essential to having it meaningfully heard.

Although Sueoka carps about the Court of Appeals' consideration of Federal Constitutional principles (in addition to *Ishikawa* and GR 15), he fails to point to any meaningful

difference demonstrating an abuse of discretion. *Doe AA v. King Cnty.*, 15 Wn. App. 2d 710, 717, 476 P.3d 1055, 1061 (2020) (decision to allow use of pseudonyms reviewed abuse of discretion). Because the language of CR 10 is identical to its federal counterpart, the Court may rely on federal authority, while also addressing the *Ishikawa* factors, as the Court of Appeals did here. *See Rufer v. Abbott Labs*, 154 Wn.2d 530, 551, 114 P.3d 1182 (2005) (affirming sealing because the trial court effectively applied *Ishikawa* by allowing all parties to assert their respective interests, weighing the parties' interests, and applying the federal "compelling interest" standard in making its determination).

Not only does Sueoka fail to assign error to Judge Cahan's factual findings favoring pseudonym usage, he also has no answer for the obvious necessity of these Officers to proceed in pseudonym to vindicate their rights. Nor can he deny maintaining anonymity has been previously accepted by this Court under similar circumstances. *See, e.g., Bellevue John Does*

1-11, 164 Wn.2d 199, 189 P.3d 139 (2008) (pseudonyms used in action to enjoin school district from releasing names of public school teachers in response to public records request); *Doe G. v. Dep't of Corr.*, 190 Wn.2d 185, 200-02, 410 P.3d 1156 (2018) ("Washington courts have allowed pseudonymous litigation" but "this court has still required a showing that pseudonymity was necessary").

Consistent with every other judicial officer having considered the pseudonym issue, this Court should reject Sueoka's attempt to learn these Doe Officers' identities despite their clear privacy rights which prohibit such disclosure.

IV. CONCLUSION

For the foregoing reasons, and for those stated in the Doe Officers' briefing submitted to the Court of Appeals and its Answer to the Petition for Review, this Court should affirm the decision of the Court of Appeals.

//

//

Supreme Court No. 102182-8
(Court of Appeals Case No. 83700-1-I)

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JOHN DOES 1, 2, 4, and 5,

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ANSWER OF JOHN DOE OFFICERS 1, 2, 4, AND 5 TO SAM SUEOKA'S PETITION FOR REVIEW

On Appeal From King County Superior Court
Hon. Sandra Widlan, Presiding

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IV. ARGUMENT

A. Review of the Pseudonym Issue is not Warranted.

Like four times before, Sueoka fails to explain how it is feasible to enforce one's right to remain anonymous if the very process for enforcement requires one to reveal their identity by filing a lawsuit in their own name. It is not only unfeasible; it is impossible.

And, despite the fact that the Doe Officers' *procedural necessity* to proceed in pseudonym (i) was granted at its initial presentation, (ii) has been affirmed by the trial court[2], an Appellate Court Commissioner, and this Appellate Panel, **and** (iii) a full panel of this Court has already determined that "interlocutory review of the ruling allowing the use of pseudonyms is not warranted by the interests of justice," Sueoka seeks review of this obvious procedural necessity once again. *See* CP 246-49; CP 273-84; CP 561-62; CP 1213; CP 1530; RP

[2] Notably, even when ruling against the Doe Officers regarding the substantive merits of their case.

61-62. And, just like every time before this, instead of supplying some cogent argument as to how one can proceed publicly in order to attain a remedy preserving anonymity, Sueoka, instead, resorts to selectively reasoned hyper technical arguments, which are dismissed below:

First, citing RAP 12.1, Sueoka argues the Court of Appeals should not have resolved the pseudonym issue on First Amendment grounds without ordering initial briefing on that issue. However, Doe Officers did, indeed, argue that their right to proceed in pseudonym was grounded in First Amendment concerns and, in particular, argued: "[t]o force the [Four Doe Officers], to proceed in their own names in Court would instantly deprive them, without adjudication, of the privacy and Constitutional rights they are going to Court to protect." *See* Appx, ***Exhibit D*** at p. 0192.[3]

Not surprisingly, the Court of Appeals found Officers Does' simple (and repeated) argument accorded *exactly* with

[3] Additionally, *see id.* at pp. 0199-0200, 0202-0204, 0207.

"federal open court jurisprudence," as "[s]uch jurisprudence permits litigants to proceed pseudonymously [because] the injury litigated against would be incurred as result of the disclosure of their identities. [And] that precise outcome would occur were the Does not permitted to litigate using pseudonyms." *See* Appx., ***Ex. C*** at p. 0072.

In addition to United States Constitutional jurisprudence, the Court of Appeals also made it clear that "application of Washington open courts law would dictate the same resolution of this [pseudonymity] issue." *Id.* at p. 0080. The Court noted there are numerous statutory exceptions already existing which allow individuals to proceed in pseudonym. This would indicate that requiring all parties proceed in their own names is not a compelling state interest – certainly not one which would override clear other First Amendment rights. *Id.* at p. 0081.

In sum, the Court of Appeals obviously concluded that the First Amendment issues throughout the briefing, and raised specifically in relation to pseudonyms, were "set forth in the

briefs" and no additional briefing was implicated, let alone necessary. *See* RAP 12.1. Finally, regardless of RAP 12.1, the Court of Appeals could rely on RAP 1.2(a) & (c) to liberally interpret Rules of Appellate Procedure to determine that the First Amendment issues were sufficiently present throughout the entire briefing, and "waive or alter" RAP 12.1(b) to avoid more in depth briefing on this procedural pseudonym issue side show – where Sueoka fails, time and again, to address, let alone solve, the conundrum.

Sueoka's second point that the Court of Appeals, or the Doe Officers, never engaged in "full open court" analysis and/or "logic" and "experience" analysis is as much confusing as it is inaccurate. Doe Officers and the Court of Appeals did engage in a lengthy discussion regarding the "logic" and "experience" tests and argued that Article I, §10 did not apply, *inter alia*, because of First Amendment concerns.

For instance, in *Doe G.*, Division One did examine Constitutional First Amendment jurisprudence in regard to

pseudonymity and found that the same rationale would support pseudonymity to address a *non-constitutional* right without implicating Article I, §10. *John Doe G v. Dep't of Corr.*, 197 Wn. App. 609, 391 P.3d 496 (2017), rev'd sub nom. *Doe G v. Dep't of Corr.*, 190 Wn.2d 185, 410 P.3d 1156 (2018). And, although the Washington Supreme Court did reject Division One's reliance on First Amendment jurisprudence to resolve that issue—*Doe G*, unlike this case, did not implicate a claim of First Amendment infringement. Rather, *Doe G* concerned only a *statutory* exemption to the PRA. Thus, RAP 13.4(b)(1) does not apply here because the Court's Opinion looked to *federal* law to evaluate *federal* constitutional issues. Accordingly, there is no conflict with the Supreme Court's decision in *Doe G*. *Doe G v. Dep't of Corr.*, 190 Wn.2d 185, 410 P.3d 1156 (2018).

Moreover, the Court's Opinion does not create a "conflict" between Article I, Section 10, and the First Amendment—and certainly not in this case where Article I, Section 10 does not apply—as argued by both Doe Officers and the Court's Opinion.

As to Sueoka's third point; needless to say, Sueoka did not address a right to a court record predicated on the First and Fourteenth Amendment in any of his briefings. It is unclear how he then cries foul that the Court's Opinion failed to address First and Fourteenth Amendment issues. More importantly, however, this assertion is false.

The Court of Appeals *did*, in fact, consider the "customary and constitutionally-embedded presumption of openness in judicial proceedings" implicated when restricting full public access to judicial proceedings." *Id.* at pp. 0078-0079, citing *Doe v. Frank*, 951 F.2d 320, 323 (11th Cir. 1992). In contrast, Sueoka's cited cases, *Del Rio* and *Index Newspapers*, are inapposite. Neither involved a litigant seeking to remain anonymous when pursuing preservation of a First Amendment right to remain anonymous. *Doe v. Del Rio*, 241 F.R.D. 154, 156 (S.D.N.Y. 2006); *United States v. Index Newspapers LLC*, 766 F.3d 1072, 1083–84 (9th Cir. 2014). There is no need for the Supreme Court to revisit the Court's Opinion balancing these

two First Amendment issues, *to wit,* access to courts versus anonymous political activity.

As to Sueoka's final point, he simply contorts the record and then misunderstands First Amendment basics. First, as stated, no attorney has ever confirmed the Officers' identities – not even Sueoka's. RP 76:17-18. There is a fundamental difference between speculative innuendo and Government confirmation – no doubt the Seattle Times is not publishing names based on Sueoka's gossip.

Second, Sueoka's argument that some tangible pecuniary or reputational harm must have, or will, befall the Doe Officers in order for disclosure to constitute a First Amendment violation is flatly inconsistent with longstanding First Amendment authority. The test is whether forced disclosure of the Doe Officers' identity would "chill" the First Amendment rights of the Doe Officers or others who would face a similar situation. This is thoroughly reviewed herein. *See* §C, *infra.*

Sueoka's position regarding pseudonymity inherently chills the First Amendment expression. It would force the Doe Officers to publicly disclose their names in order to prevent public disclosure of their names. The obviousness of this is self-evident. The Supreme Court should reject Sueoka's gimmick like all other jurists have.

B. Review of the PRA Issues is not Warranted.

Review of the PRA issues is unwarranted because the Court of Appeals did not base its decision on any statutory exemption to the PRA. Instead, it observed that the PRA envisions both constitutional exemptions and statutorily created exemptions. Although it found the rubric of RCW 42.56.540 applicable only to statutory exemptions, it squarely held that, even if the injunction statute applied to a constitutional exemption, an injunction was warranted here because "[g]iven the State's paramount interest in affirming the federal constitutional rights of its citizens, disclosure that would impinge the Does' First Amendment right to privacy would clearly not be

Case No. 83700-1-I
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and

JEROME DRESCHER, ANNE BLOCK, SAM SUEOKA, and CRISTI LANDES,
Respondents.

REPLY BRIEF OF APPELLANTS

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get to determine what "responsibilities" one *undertakes* because First Amendment rights *granted* are established jurisprudence. Appellants believe their off-duty and lawful political expression is of private concern. They have every right, even on principle alone, to determine that they do not want their private lives strewn across the Seattle Times which makes them a public affair.

III. ARGUMENT RELATED TO CROSS-APPEAL & MOTION TO CHANGE CASE TITLE

A. Introduction.

Sueoka discusses all sundry of cases, theory, and alleged tests in his Cross-Appeal & Motion to Change Case Title (collectively referred to as "Cross Appeal & Motion"). However, just like his dodge at the Trial Court, Sueoka refuses to address the most basic question:

> If the sole purpose of your lawsuit is to establish your privacy and Constitutional right to keep your identity from being exposed, how do you vindicate your rights except by proceeding in pseudonym?

CP 1193.

Though posed this question multiple times, Sueoka refuses to answer. *See also* RP 23. This is because Respondent Sueoka cannot. Therefore, Respondent Sueoka's Cross Appeal & Motion must fail on that basis alone.

Appellants filed an action pursuant to Washington's Public Records Act 42.56 *et. seq.* to prevent the SPD from releasing their names in response to a public records request.[13] Appellants lodged both statutory and Constitutional grounds to prevent disclosure both originally, and then again once remanded. The Trial Court denied Appellants' second preliminary injunction motion on January 28, 2022. Nevertheless, Appellants timely appealed on these very statutory

[13] Appellants' action also encompasses a request to prevent the disclosure of *any* identifying information. However, for the purposes of responding to the Cross-Appeal & Motion, Appellants' argument is directed towards, specifically, the Appellants' names as that is, essentially, what changing the case title and barring the use of pseudonyms would do – reveal the names of the Appellants by designating them on the case title.

and Constitutional grounds and the status quo of their anonymity was preserved, which will be reviewed *de novo*. CP 1441-1442.

As King County Superior Court Judge Regina Cahan, King County Superior Court Judge Sandra Widlan, and Appellate Commissioner Jennifer Koh have all stated, in a Public Records Act lawsuit like the instant case, where the *only* substantive claim is to prevent the disclosure of Appellants' unknown names, how would Appellants have any meaningful opportunity to do so *unless the Appellants are allowed to proceed in pseudonym*.[14] To force them to proceed in their own names in Court would instantly deprive them, without adjudication, of the privacy and Constitutional rights they are going to Court to protect.

If the Appellate Court ultimately rules that Appellants have preliminarily established their privacy, safety, and Constitutional right to remain anonymous, then Appellants have

[14] Judge Cahan at CP 246-249; Commissioner Koh's April 9, 2021 Notation Ruling at 3, CP 1213; Judge Widlan at RP 61-62.

no other means to vindicate their rights *but* to proceed in pseudonym. Thus, this Court should sustain Judge Widlan's ruling which is, itself, a continuation of Judge Cahan's re-affirm of Commissioner Koh's previous ruling. FN 13.

B. Article I, §10 Does Not Apply. Thus, Only a Flexible GR 15(c)(2) Analysis Is Needed.

The Washington Supreme Court affirmed using pseudonyms in a PRA litigation to protect privacy interests. *See Doe G. v. Dep't of Corr.*, 190 Wn.2d 185, 200, 410 P.3d 1156 (2018) ("Washington courts have allowed pseudonymous litigation" in PRA cases, provided that "in *some* circumstances this court has still required a showing that pseudonymity was necessary") (emphasis added). In *Doe G.*, publicly convicted sex offenders *already publicly named* in their *public* criminal court cases and convictions, sought to – in a different court case – proceed in pseudonym to block disclosure of their SSOSA evaluations under the PRA. *Id.* at 189-91.

When discussing *Doe G.*, Sueoka muddles the two-step analysis the Court undertakes to determine if a litigant can

proceed in pseudonym. Sueoka improperly conflates and merges Article I, Section 10, GR 15, and *Ishikawa's* five-factor evaluative framework into a single step. However, Courts are instructed to *first* review Article I, §10, to see if it is even applicable, and then, *only* if Article I, §10 is necessary, review *Ishikawa's* five factors. *Id.* at 199 ("Whether an *Ishikawa* analysis is necessary depends on whether article I, section 10 applies."). *See also State v. S.J.C.,* 183 Wn.2d 408, 412, 352 P.3d 749 (2015) (finding that Article I, §10 did not apply; thus, there was no *Ishikawa* analysis necessary).

Here, Article I, Section 10, is simply not applicable to this case – especially when compared *vis-à-vis* to *Doe G.* or *Hundtofte* – the two cases Sueoka relies upon.

Article I, Section 10 requires that "[j]ustice in all cases shall be administered openly, and without unnecessary delay." *Wash. Const. Art. I, § 10*. Moreover, "[w]hether article I, section 10 applies depends on application of the experience and logic test." *Doe G.* at 199. Under the "experience" prong, a

Court evaluates "whether the place and process have historically been open to the press and general public." *Id.* Here, "experience" informs this Court that rank-and-file public employees expect their political beliefs and private travel are simply not "open to the public." This is in stark contrast to *Doe G.*, where that Court found "the names of people convicted of criminal offenses, including sex offenders, have historically been open to the public" because "[c]onviction records [are required to] be disseminated without restriction. RCW 10.97.050." *Id*. at 199.

Meanwhile, the "logic" prong examines "whether public access plays a significant positive role in the functioning of the particular process in question." *Id.* Here, there is no "significant positive role" that the public could conceivably play in uncovering nonelected government workers' off-duty political beliefs and travel plans. This is especially true since Appellants have been investigated regarding January 6, 2021, and their attendance at the rally was determined not to violate SPD Policy.

In fact, so long as no violation of SPD Policy occurred, the public would play a *negative role* in that it would require government workers to undergo a public political litmus test to be able to serve. This is in contrast to *Doe G*. Regarding the "logic prong," this Court found that "because the SSOSA is a sentencing alternative, the public 'plays a significant positive role in the functioning of the particular process in question.'" *Id*. at 201. Specifically, "the public must be able to scrutinize the sentences given to offenders to ensure the court is following the sentencing statutes, is not overly deferential in granting SSOSA sentences, or is denying SSOSA sentences where warranted." *Id.*

Moreover, Sueoka's analysis of the "experience prong" and "logic prong" does nothing. While he correctly repeats each prong verbatim, Sueoka does not actually analyze the meaning Courts attach to the words. For the "experience prong," Respondent Sueoka simply repeats the presumption of the Court's openness. Sueoka Br. at 67-69. However, that applies to all cases, even ones where pseudonymity is a certainty – for

instance, cases involving minors. Moreover, presumption does not mean "a given." Courts look at the substance of what is sought to be protected.

For instance, *Doe G*. discussed, specifically, whether SSOSA records were open to the public. In fact, *Doe G.* distinguished between the private names whose acts were of public record, and "parties who have not been convicted of any crime may have a legitimate privacy interest because there is no public record associating them with the subject of their litigation." *Id.* at 200 Thus, it is clear, the analysis actually centers on the subject matter – not merely reciting the platitude that Courts are open "and well there you go." Instead, "experience" is that public employees expect their political beliefs and private travel will not be "open to the public."

Similarly, Sueoka does not actually analyze the logic prong. He only states that "[a]s for 'logic,' as noted, the Supreme Court has rejected the argument that a party seeking to prevent release of their identify under the PRA can automatically use a

pseudonym." Sueoka Br. at 69. However, the logic prong is "whether public access plays a significant positive role in the functioning of the particular process in question." The public plays no positive role and, indeed, a negative role, if they can demand that SPD officers forfeit off-duty lawful First Amendment expression.

In conclusion, *Doe G.* evaluated both these prongs, determined that Article I, §10 applied, and redaction must meet the *Ishikawa* factors. *Id.* at 201. However, *Doe G.*'s facts are so inapposite, they are not applicable here.

i. Since Article I, §10 does not apply, this Court can simply apply GR 15(c)(2).

Since Sueoka cannot prove that proceeding in pseudonym runs afoul of Article I, §10 – this Court's pseudonymity analysis can stop with a very basic, flexible, and relevant GR 15(c)(2) analysis:

> (2) After the hearing, the court may order the court files and records in the proceeding, or any part thereof, to be sealed or redacted if the court makes and enters written findings that the

> specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record…..Sufficient privacy or safety concerns that may be weighed against the public interest include findings that…:
> …
>
> (E) The redaction includes only restricted personal identifiers contained in the court record; or
>
> (F) Another identified compelling circumstance exists that requires the sealing or redaction.

See GR 15.

Here, Appellants *only* seek to redact their personal identifiers – *e.g.,* that which identifies them to protect their privacy, safety, and Constitutional interests. Three Jurists have evaluated the pseudonymity issue in this case and determined there is no way to do this until final adjudication except to proceed in pseudonym. FN 13. There is clearly an "identified compelling circumstance [that] exists." *See* GR 15(F).

Throughout the Cross Appeal & Motion, Sueoka lobs bombastic and conspiratorial reasons why the "public interest"

demands to know the names of Appellants "right here, right now." These are refuted in other portions of Appellant's Brief and Reply. However, most importantly, the "public interest" was fully satisfied by OPA investigation 2021OPA-0013. OPA Director Myerberg proved fully capable of finding that certain Seattle Police Officers who attended the January 6, 2021 rally engaged in acts which undermined "public trust in the Department." PD Policy 5.001-POL-10. However, Appellants did not. If the "public interest" needs a name, they have it – OPA Director Myerberg. If they are unsatisfied with the quality of the investigation in 2021OPA-0013 or otherwise, the "public interest" can contact the OPA's Independent Auditor or OPA's Supervisory Board. *See* SMC 3.28.850, SMC 3.28.900

Moreover, the "public interest" has full access to everything it needs – and can review the Trial Court's and this Appellate Court's analysis of the facts and application of the law in determining whether these Appellants have a sufficient privacy, safety, or Constitutional interest significant enough to

keep their names out of the public domain – without requiring a Kafkaesque mockery by compelling Appellants to first publicly disclose their names in order to file a lawsuit to keep their names private.

C. Even if Article I, §10 Does Apply, this Court can Apply the *Ishikawa* Factors to Find that Proceeding in Pseudonym is Appropriate.

If this Court finds that Article I, §10 does apply, then this Court must apply the seminal *Ishikawa* case. *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982). As articulated by the Supreme Court in that case, the closure or sealing of court records under GR 15 is permitted where/when:

1. The proponent of closure or sealing must make some showing of the need for doing so, and where that need is based on a right other than an accused's right to a fair trial, the proponent must show a "serious and imminent threat" to that right.

2. Anyone present when the closure motion is made must be given an opportunity to object to the closure.

3. The proposed method for curtailing open access must be the least restrictive means available for protecting the threatened interests.

4. The court must weigh the competing interests of the proponent of closure and the public.

5. The order must be no broader in its application or duration than necessary to serve its purpose.

Ishikawa at 36-39.

i. Showing of Need.

With regard to the first *Ishikawa* factor, Appellants present ample evidence in their Second Preliminary Injunction Motion that they have, and would, face a serious and imminent threat and harm to their privacy, safety, and Constitutional rights if their identities become known. CP 494-509. While the Trial Court did not agree, this was timely appealed. CP 1440-1441. The Appellate Court will review the factual record *de novo* and make its own determination upon the facts and law. *See, II.A.1, supra*.

This is far different than the situation in *Hundtofte*, the other Washington case Sueoka extensively discusses regarding pseudonymity. Sueoka Br. at 64-65; *see also Hundtofte v. Encarnacion*, 181 Wn.2d 1, 330 P.3d 168 (2014).

Hundtofte issued a narrow ruling involving two tenants (Tenants). Those Tenants sought to change the case title of a different unlawful detainer action. They believed having their names associated with an unlawful detainer prevented them from living in the suburb they desired. Their belief relied on a single landlord in Burien who rejected their application due to the unlawful detainer. However, the Tenants found another apartment on their second attempt. *Id.* at 3-6, 11.

Thus, *Hundtofte* provides no guidance here. Appellants do not seek to address a harm to a "reputation," or an unrecognized interest of "finding future rental housing in a desired location." *Id.* at 9. Appellants seek to address a harm to recognized PRA statutory privacy rights and Constitutional First Amendments rights. Clear jurisprudence establishes these rights.

Atop lacking a cognizable interest, the Tenants failed to show a serious and imminent threat. *Hundtofte* found the Tenants produced "no evidence of an imminent rejection based on the unlawful detainer action" and "merely cite one past

rejection based on the action and speculate about their future inability to find a suitable home. The threat of rejection is not imminent." *Id*. at 10. Indeed, the Tenants found housing on their *second* attempt. *Id.* at 11. *Hundtofte* found "pure speculation about the future inability to obtain housing in a desired location is not a serious and imminent threat to a compelling interest." *Id.*

Appellants, unlike the Tenants, have produced all sundry of evidence of past, current, and future threats to their privacy, safety, and Constitutional rights. This is not "pure speculation." It is all but certainty.

Finally, Sueoka's selective reference to Justice Madsen's *Hundtofte* concurrence is misleading. This concurrence also recognizes exceptions to the importance of court dockets using complete names – such as alcohol and drug treatment commitment records, mental illness commitment records, termination of parental rights, and confidential name change records. *Id.* at 17 (Madsen J. Concurring). Thus, there are matters where a privacy right supersedes the court docket.

ii. Opportunity to Object.

It is undisputed that, at the Second Preliminary Injunction Hearing, Mr. Sueoka, and any other party, was given an opportunity to object.

iii. Weighing Competing Private/Public Interests.

All the Jurists reviewing this matter have determined that Appellants' private interest and rights supersede the public's right until, at least, final adjudication – for the straightforward reason that, if the opposite would be true, it extinguishes the very rights Appellants ultimately seek to protect. If favorable adjudication occurs, it makes no sense to vitiate Appellants' victory by publicly slapping Appellants' name across the very decision which deemed their names private.

iv. Least Restrictive Means/Order No Broader than Necessary.

Finally, the third and fifth *Ishikawa* factors also support allowing Appellants to continue to proceed pseudonymously. Permitting this pseudonymity *is the only means* that will

adequately protect the interests that Sueoka's PRA threatens. If Appellants were to proceed using some other method of identifying information (*e.g.,* their initials or badge numbers), the public could use that information to "reverse engineer" Appellants' identities from other publicly available records.

Moreover, *even if Appellants proceed in pseudonym*, members of the public will still have access to the full court record in this matter – except for the identities of te Appellants. It is hard to fathom what exactly the public is being deprived of at this juncture.

D. Judge Widlan's Ruling and Standard Were Correct.

Sueoka misstates *Doe G.* and Judge Widlan's ruling when claiming, "Judge Widlan Used the Wrong Legal Standard." Sueoka Br. at 69-71. First, in *Doe G.*, the Washington Supreme Court overruled the Appellate Court because the Appellate Court failed to undertake an *Ishikawa* analysis. *John Doe G v. Dep't of Corr.*, 197 Wn. App. 609, 391 P.3d 496 (2017), *rev'd sub nom, Doe G v. Dep't of Corr.*, 190 Wn.2d 185, 410 P.3d 1156

(2018). The Supreme Court believed that Article I, §10, and, thus, *Ishikawa* was implicated. *Id.* at 202.

Here, Article I, Section 10, does not apply to Appellants proceeding in pseudonym. Thus, a simple GR 15 analysis was sufficient. Reply, pg. 62-65 *supra.* If the ultimate adjudicator finds that these Appellants have these privacy, safety, and Constitutional interests, then the only way to ensure that this adjudication has any meaning is to allow Appellants to remain in pseudonym. *Id.* This is exactly how Judge Widlan ruled. RP 61-62. Moreover, to the extent that *Ishikawa* does apply, Judge Cahan already undertook a full *Ishikawa* analysis regarding pseudonymity. CP 246-49. Then, after remand, Sueoka asked Judge Widlan to revisit Judge Cahan's determination. CP 273-84. Judge Widlan declined to do so and allowed Appellants to receive a meaningful final adjudication. RP 61-62.

E. There Is No Reason For This Court To Change The Case Title If Appellants Are Successful.

Commissioner Koh previously ruled that changing the case title would "dest[roy] the fruits of a successful appeal". FN 13. This Appellate Court is going to rule on Appellants' privacy, safety, and Constitutional issues. They have full discretion to overrule Judge Widlan's previous ruling on the basis of the facts, the law, or both. Until this Appellate Court rules, the caption should remain in pseudonym so as not to deprive the Appellant's of the fruits of their appeal. *Wash. Fed'n of State Emps. v. State*, 99 Wn.2d 878, 883, 665 P.2d 1337 (1983).

IV. CONCLUSION

Based on the aforementioned, Appellants respectfully request that this Appellate Court reverse the Trial Court's order denying their request for a preliminary injunction, deny Sueoka's attempt to change the case title, and remand with instructions to the Trial Court to enjoin production of Appellants' names or any other identifying information in the Investigative Files for the