The Honorable John H. Chun

IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

P. POE 5 and P. POES 2-4 and 6-75, individually and on behalf of others similarly situated,

Plaintiffs,

v.

THE UNIVERSITY OF WASHINGTON, a Washington public corporation; PERRY TAPPER, Director of Public Records and Open Public Meetings at the University of Washington, in their official capacity,

Defendants,

and

PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, INC., a Virginia nonstock corporation; and NORTHWEST ANIMAL RIGHTS NETWORK, a Washington nonprofit corporation,

Intervenor-Defendants.

Case No. 2:24-cv-00170-JHC

INTERVENOR-DEFENDANTS PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, INC. AND NORTHWEST ANIMAL RIGHTS NETWORK'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT

Noting Date: May 16, 2025

ORAL ARGUMENT REQUESTED

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Intervenor-Defendants People for the Ethical Treatment of Animals, Inc. ("PETA") and Northwest Animal Rights Network ("NARN") (collectively, "Intervenors") move this Court to dismiss Plaintiffs' Amended Complaint in its entirety for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).

I. INTRODUCTION

Plaintiffs have tried and failed four times to obtain a preliminary injunction preventing the University of Washington ("UW") from releasing the names of the members of its Institutional Animal Care and Use Committee ("IACUC"). They are no more likely to succeed in securing the permanent injunction and declaratory judgment they seek in their Amended Complaint (Dkt. # 73), as all five of their claims fail on legal grounds. This Court should dismiss the Amended Complaint for failure to state a claim under Fed. R. Civ. P. 12(b)(6).

Plaintiffs' two claims for injunctive relief based on their constitutional rights to informational privacy are barred by the law of the case. The Ninth Circuit already held on an interlocutory appeal that Plaintiffs' identities as IACUC members do not implicate such rights. Plaintiffs also fail to allege any claim arising under the constitutional right to personal security and bodily integrity, as they do not allege that disclosure of their IACUC membership would expose them to a substantial risk of serious bodily harm.

For substantially the same reasons, Plaintiffs' claim under RCW 4.24.580 fails as well. First, Plaintiffs fail to allege that they are, or reasonably believe they will be, subject to "harassment" within the meaning of that statute if their IACUC membership is disclosed. Second, RCW 4.24.580 is not an "other statute" exemption to the PRA because it does not expressly prohibit or exempt the release of records. Third, as this Court already held in denying Plaintiffs' motion for a preliminary injunction, the facts alleged are insufficient to show that disclosure of Plaintiffs' UW IACUC affiliation would clearly not be in the public interest or would substantially and irreparably damage any person or vital government functions. Fourth, even if Plaintiffs could clear all those hurdles, RCW 4.24.580 is unconstitutionally viewpoint-discriminatory, overbroad, and vague.

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Plaintiffs' federal preemption claim fails as well because, as a matter of black letter law and as this Court already recognized, the discretionary federal policy they point to does not preempt the PRA. This prior holding should bar Plaintiffs' preemption claim under law of the case. But regardless, the Public Health Service ("PHS") policy on which Plaintiffs rely has never been the subject of formal rulemaking or adjudicatory procedures and therefore cannot have preemptive effect. Moreover, the policy's limited, optional provision for IACUC members' anonymity does not evidence an intent to supersede generally applicable state public records laws, particularly in light of the strong judicial presumption against implied preemption. To the contrary, the PHS Policy disclaims any preemptive intent. That is presumably why Plaintiffs can provide no citation or other support for their entirely speculative imputations of underlying intent to the National Institutes of Health.

Finally, the declaratory judgment that Plaintiffs seek relies on the same legal grounds as their first four claims for relief. Their declaratory relief claim should be dismissed for the same reasons.

II. FACTUAL ALLEGATIONS

The following alleged facts are taken from Plaintiffs' Amended Complaint and are accepted as true only for purposes of this motion.

Plaintiff P. Poe 5 is a current member or alternate of the UW IACUC whose identity has not been publicly disclosed. (Dkt. # 73, ¶ 1.) P. Poe 5 seeks to bring this action on behalf of a class of other UW IACUC members or alternates, "[m]any of" whom are employees of UW or another research or educational facility where animals are used for research, educational, or agricultural purposes. (*Id*. ¶¶ 2-4.)

The UW IACUC is a committee established pursuant to federal law—specifically, 42 U.S.C. § 289d and 7 U.S.C. § 2143—which requires every institution that accepts government funding for animal experimentation to have a committee to review, approve, and monitor all current or proposed animal experiments and ensure that the animals receive the care, treatment, and respect that they deserve. (*Id*. ¶¶ 13-14.) The UW IACUC's website claims that its

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committee includes "at least one non-scientist, and at least one unaffiliated member—someone not employed by UW and whose immediate family members are not UW employees." (*Id*. ¶ 22.) Such members are required by federal law and policy. *See* 7 U.S.C. § 2143(b)(1)(B); 42 U.S.C. § 289d(b)(2); 9 C.F.R. § 2.31(b); PHS Policy on Humane Care and Use of Laboratory Animals IV.A.3.b., https://olaw.nih.gov/policies-laws/phs-policy.htm#AnimalWelfareAssurance (last visited April 15, 2025) ("PHS Policy").

However, the accuracy of the website's assertion is unverifiable by the public because UW "has for some time operated with a limited amount of anonymity for its members and alternates[.]" (Dkt. # 73, ¶ 27.) Plaintiffs claim this anonymity is "specifically due to ongoing threats and harassment of committee members by members of the public who oppose the use of animals in research." (*Id*.) Of course, whether UW IACUC members have been subject to "ongoing threats and harassment" is a *legal conclusion*, not a well-pleaded *factual* allegation. *See*, *e.g.*, *Camboni v. MGM Grand Hotel, LLC*, No. CV11–1784–PHX–DGC, 2012 WL 2915080, at *5 (D. Ariz. Jul. 16, 2012) ("Plaintiffs repeated allegations of threats…[and] harassment…are legal conclusions not entitled to a presumption of truth."). The only examples of such "threats and harassment" that Plaintiffs identify are comments made at public UW IACUC meetings comparing animal experimentation to Nazi atrocities or asking how a UW IACUC member would feel if her cats were subjected to spinal-cut research, as well as an email sent to a general UW Office of Animal Welfare address asking about the UW IACUC members' identities, which led to the cancellation of an IACUC meeting. (Dkt. # 73, ¶¶ 28-29, 59-60.)

Plaintiffs also describe various communications directed at others at UW or elsewhere who are involved in animal experimentation. (*Id*. ¶¶ 29-31, 34-38.) Plaintiffs do not allege, however, that any of those communications were directed at a member of the UW (or any other) IACUC. (*See id*.)

Plaintiffs allege that Dr. Jane Sullivan, the UW IACUC Chair, previously declared that she believed the release of the UW IACUC members' names would have "a profound negative impact on our ability to function as a committee[,]" and that other members believe that the

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alleged "ongoing harassment targeting IACUC members" made it "more difficult to recruit and retain members." (*Id*. ¶ 40.) Plaintiffs acknowledge, however, that UW IACUC members' identities were disclosed in response to earlier public records request (*id*. ¶ 44), and they impliedly admit that additional members have been added since then, as they allege that there are "approximately 70" members or alternates whose identities have not previously been disclosed. (*Id*. ¶ 67.)

Plaintiffs assert five claims in their Amended Complaint, four of which seek to enjoin the disclosure of their UW IACUC membership, and one for declaratory relief. Their first two claims are based on the constitutional rights to informational privacy, personal security, and bodily integrity, either as a standalone basis for injunctive relief or as an exemption to the PRA. (*Id*. ¶¶ 72-82.) Their third claim seeks to enjoin disclosure based on RCW 4.24.580 as an "other statute" exemption to the PRA. (*Id*. ¶¶ 83-88.) Their fourth claim asserts that disclosure under the PRA is preempted by federal law. (*Id*. ¶¶ 89-92.) And their fifth claim seeks declaratory relief on the same basis as their other four claims. (*Id*. ¶¶ 93-97.)

III. ARGUMENT

A. Legal standard.

When deciding a motion to dismiss for failure to state a claim under Rule 12(b)(6), the Court must accept all *well-pleaded* allegations of the Amended Complaint as true. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). But "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id*. The Court should disregard allegations that are conclusions of law. *Id*. at 678 (stating "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions"). Moreover, any inferences in favor of Plaintiffs from well-pleaded facts must be "plausible," and not merely a "possibility[.]" *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556-57 (2007). In addition to any well-pleaded allegations, the Court may consider "documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice" when making its determination. *U.S. v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

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B. Plaintiffs fail to state a claim based on the constitutional rights to informational privacy or personal security and bodily integrity.

1. The law of the case prohibits this Court from granting injunctive relief on the basis of Plaintiffs' constitutional right to informational privacy.

In an earlier interlocutory appeal in this case, the Ninth Circuit held that "UW's disclosure of their identities as members of the IACUC would [not] violate their constitutional right to informational privacy, because the information the Poes seek to keep private is not implicated by this right." *P Poe 5 v. Univ. of Wash.*, No. 24-2765, 2024 WL 4971971, at *1 (9th Cir. Dec. 4, 2024). As the court explained, "basic 'biographical data,' including a person's 'name, address, identification, place of birth, telephone number, occupation, sex, description, and legal aliases,' is not highly sensitive personal information, and thus categorically does not 'implicate the right to privacy.'" *Id*. (quoting *Doe v. Bonta*, 101 F.4th 633, 637–38 (9th Cir. 2024)). As the court further explained, "That such information would identify the Poes as members of UW's IACUC does not save their claim, as the fact that the Poes are members of a 'committee formed by the government to discharge an official purpose' is also not highly sensitive personal information." (*Id*. (quoting *Sullivan v. Univ. of Wash.*, 60 F.4th 574, 581 (9th Cir. 2023)).

This holding precludes any further adjudication on this claim, as it constitutes the law of the case and prevents Plaintiffs from proving the elements of their claim. *Stacy v. Colvin*, 825 F.3d 563, 567 (9th Cir. 2016) (citing *Hall v. City of Los Angeles*, 697 F.3d 1059, 1067 (9th Cir. 2012)) ("The law of the case doctrine generally prohibits a court from considering an issue that has already been decided by that same court or a higher court in the same case."); Dkt. # 90 at 15 n.4 ("The Court does not reconsider these arguments because it is bound by the Ninth Circuit's decision.") Moreover, this particular issue implicates the rule of mandate as well, further preventing this Court from deviating from the Ninth Circuit's holding on this claim. *See Hall*, 697 F.3d at 1067 ("The rule of mandate is similar to, but broader than, the law of the case doctrine. A district court that has received the mandate of an appellate court cannot vary or examine that mandate for any purpose other than executing it.") (internal quotations omitted);

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see also Dkt. # 90 at 11 ("The Ninth Circuit's decision largely depended on the determination that the information PETA seeks is not 'highly sensitive personal information.' *Id*. It is axiomatic that this decision overruling the Court's prior order—and its reasoning— changes the way the Court evaluates Plaintiffs' claims."). In light of the legal doctrines preventing re-litigation of these issues, Plaintiffs' claims premised on the constitutional right to informational privacy fail as a matter of law.

2. Plaintiffs do not allege facts implicating the constitutional right to personal security and bodily integrity.

To state a claim under the federal constitutional right to personal security and bodily integrity, Plaintiffs must allege that the release of their identities as UW IACUC members places them "at substantial risk of serious bodily harm, possibly even death, from a perceived likely threat[.]" *See Kallstrom v. City of Columbus*, 136 F.3d 1055, 1064 (6th Cir. 1998); *see also Lambert v. Hartman*, 517 F.3d 433, 443-44 (6th Cir. 2008); *Barber v. Overton*, 496 F.3d 449, 456 (6th Cir. 2007). Any similar right under the Washington Constitution goes no further. *See In re Estate of Hambleton*, 181 Wash.2d 802, 823 (2014) ("the state constitution does not afford broader due process protection than the Fourteenth Amendment to the United States Constitution"); *State v. McCormick*, 166 Wash.2d 689, 699 (2009) ("Washington's due process clause does not afford broader protection than that given by the Fourteenth Amendment to the United States Constitution"). Because Plaintiffs do not allege that they face any substantial risk of bodily harm if their identities are disclosed, they fail to state a claim based on the right to personal security and bodily integrity. Indeed, this aspect of Plaintiffs' allegations stood out to at least one Ninth Circuit panelist evaluating the most recent interlocutory appeal in this matter. 9th Cir., *24-2765 P Poe 5, et al. v. People for the Ethical Treatment of Animals, Inc., et al.*, YouTube, at 5:36, 29:33 (Nov. 22, 2024), https://youtu.be/u8Au4hntFRg (hereinafter "Ninth Circuit Oral Argument") (observation by Judge Lee during oral argument that Plaintiffs' allegations appeared to amount to constitutionally-protected "criticism," and "probably doesn't amount to true threats").

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C. Plaintiffs fail to state a claim for a PRA exemption under RCW 4.24.580.

1. Plaintiffs fail to allege "harassment" within the meaning of RCW 4.24.580.

RCW 4.24.580(2) defines "harassment" to refer only to a threat that meets the following criteria:

> any threat, without lawful authority, that the recipient has good reason to fear will be carried out, that is knowingly made for the purpose of stopping or modifying the use of animals, and that either (a) would cause injury to the person or property of the recipient, or result in the recipient's physical confinement or restraint, or (b) is a malicious threat to do any other act intended to substantially cause harm to the recipient's mental health or safety.

Because Plaintiffs have not alleged any facts suggesting that they are, or are about to be, "harassed" as so defined, Plaintiffs have failed to state a claim for a PRA exemption under RCW 4.24.580.

First, every alleged communication directed at UW IACUC members was made with "lawful authority"—namely, the authority of the First Amendment. As explained in *State v. Smith*, 111 Wash.2d 1, 9-10 (1988) (citation omitted), "lawful authority" includes any "readily ascertainable sources of law[,]" such as "statutes, the common law, or perhaps other 'legal process'…" In RCW 9.08.080, the Washington legislature made clear it intended "lawful authority" to include the First Amendment: "It is the intent of the legislature that the courts in deciding applications for injunctive relief under RCW 4.24.580 give full consideration to the constitutional rights of persons to speak freely, to picket, and to conduct other lawful activities."

Here, the only alleged communications directed at UW IACUC members are public comments made at UW IACUC meetings, including comments comparing animal experimentation to Nazi atrocities (such as—as revealed by context this Court can treat as incorporated by reference—by respectfully reciting a famous aphorism by a Nobel laureate refugee of Nazi Europe that "for the animals it is an eternal Treblinka"). (Dkt. # 73, ¶¶ 28-29; Dkt. # 81, ¶ 17.) None of those comments, on their face, come anywhere close to meeting RCW 4.24.580's definition of "harassment." Even if IACUC members found Nazi comparisons or other strong rhetoric unpleasant, those comments are still protected by the First Amendment.

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See New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964); *Center for Bio-Ethical Reform, Inc. v. Los Angeles County Sheriff Dep't*, 533 F.3d 780, 788 (9th Cir. 2008); *Gilbrook v. City of Westminster*, 177 F.3d 839, 862 (9th Cir. 1999); *Barron v. Kolenda*, 203 N.E.3d 1125, 1140 (Mass. 2023) ("although a comparison to Hitler [at a public meeting] is certainly rude and insulting, it is still [protected] speech"); *see also* Ninth Circuit Oral Argument at 5:36, 29:33. Indeed, it appears implicit in this Court's prior ruling that Intervenors lacked standing to challenge the constitutionality of RCW 4.24.580(2) that it agrees "no communications received by UW personnel qualify as harassment." (Dkt. # 90 at 21.)

Plaintiffs' allegations concerning an email requesting the IACUC members' names and referencing their meeting location (Dkt. # 73, ¶¶ 59-60) likewise does not show "harassment." Again, on its face, the alleged email does not threaten to do anything that would cause injury to any IACUC member's person or property, to physically confine or restrain them, or to do any other act intended to substantially cause harm to their mental health or safety. *See* RCW 4.24.580(2). Nor, as the Court pointed out in denying Plaintiffs' motion for a preliminary injunction, was the email even directed to "the personal email address of any IACUC members"—rather, it "was sent to a publicly available email address[.]" (Dkt. # 90 at 13; *see also id.* at 21.)

Finally, Plaintiffs' allegations concerning the experiences of animal experimenters who are not alleged to be UW IACUC members (Dkt. # 73, ¶¶ 29-31, 34-38) are likewise unavailing. Again, other than alleged "death threats" directed at Dr. Christine Lattin, an experimenter at Yale University and Louisiana State University with no apparent association with UW, much less its IACUC, none of the alleged communications meets the statutory definition of "harassment." Indeed, those other communications—such as public picketing on sidewalks—fall squarely within the protections of the First Amendment. *See*, *e.g.*, *Carey v. Brown*, 447 U.S. 455, 460, 100 S. Ct. 2286, 65 L.Ed.2d 263 (1980). And in any event, as this Court observed, there is no basis "to equate these highly publicized animal researchers to the relatively inconspicuous scientists who comprise the UW IACUC and conclude that the IACUC members will confront similar

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experiences." (Dkt. # 90 at 13-14.) At minimum, these individuals' high level positions—and courting of publicity and public interaction, such as via publicly available contact information—is susceptible to judicial notice, *Smith v. Coupang, Inc.*, 2025 WL 904460, at *3 (W.D. Wash. Mar. 25, 2025) (taking judicial notice of "facts 'not subject to reasonable dispute'"), and already part of the record in this case. (Dkt. # 81 at ¶¶ 21-28.)

2. RCW 4.24.580 is not an "other statute" within the meaning of the PRA.

Under Washington law, records are presumptively disclosable because the PRA "embodies 'a strongly worded mandate for broad disclosure of public records.'" *Freedom Found. v. Gregoire*, 178 Wash. 2d 686, 694-95, 310 P.3d 1252 (2013) (quoting *Hearst Corp. v. Hoppe,* 90 Wash. 2d 123, 127, 580 P.2d 246 (1978)). But if the requested information falls within the "specific exceptions" of the PRA or an "other statute," that information is exempt from disclosure. RCW 42.56.070(1). Plaintiffs allege that RCW 4.24.580 constitutes an "other statute" that authorizes enjoining the release the requested records. (Dkt. # 73, ¶ 88.) Because controlling state precedent bars RCW 4.24.580 from operating as an "other statute," these claims must be dismissed.

The Washington Supreme Court has never held that RCW 4.24.580 constitutes an "other statute." While Plaintiffs have previously cited language in *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wash.2d 243, 263-64 (1994) ("*PAWS*"), referring to RCW 4.24.580 as an "other statute" for purposes of the PRA, that court immediately thereafter observed that "the names of the researchers in the present case have already been divulged," and noted that "the names of researchers or certain other information in future grant proposals need not be divulged under the Public Records Act, provided the anti-harassment statute is properly invoked and its criteria met." *Id*. (emphasis added). This analysis cannot, therefore, constitute a holding.[1]

[1] Elsewhere in its opinion, the court referenced its "other statute" analysis of RCW 4.24.580 in connection with a live issue to be decided on remand. *See id*. at 269 n.14. But that live issue concerned a *discovery dispute*—whether RCW 4.24.580 might serve as a basis for withholding a document from a pending discovery request under the court's civil rules—*not* whether the statute was a basis for withholding the document *under the PRA*. *See id*. at 267-69 & n.12.

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"Statements in a case that do not relate to an issue before the court and are unnecessary to decide the case constitute obiter dictum, and need not be followed." *In re Domingo*, 155 Wash. 2d 356, 366 (2005) (citation omitted). In particular, statements "about what could happen" based on facts not presented in the case are "unnecessary to decide the case" and therefore constitute dicta. *See State v. Talbot*, 200 Wash.2d 731, 743 (2022); *see also*, *e.g., State v. Swarva*, 86 Wash.2d 29, 35 (1975) (analysis of a "hypothetical" in an earlier case "is dictum"); *State v. Traicoff*, 93 Wash. App. 248, 256 (1998) (statement was "dicta" when it was "based on a hypothetical set of facts"). Regardless, however, subsequent Washington cases have clearly dispensed with any argument that the *PAWS* court was correct on this point.

First, in *Doe ex rel. Roe v. Wash. State Patrol*, 185 Wash.2d 363, 383 n.5 (2016), the court held that "[t]he PRA, and our case law surrounding it, demands that an 'other statute' exemption be explicit. Where the legislature has not made a PRA exemption in an 'other statute' explicit, we will not." *Id*. at 384. As the court explained, "An 'other statute' that exempts disclosure does not need to expressly address the PRA, *but it must expressly prohibit or exempt the release of records*." *Id*. at 372 (emphasis added). "[I]f the exemption is not found within the PRA itself, we will find an 'other statute' exemption only when the legislature has made it explicitly clear that *a specific record, or portions of it*, is exempt or otherwise prohibited from production in response to a public records request." *Id*. at 373 (emphasis added).

The *Washington State Patrol* court made an offhanded reference to RCW 4.24.580, which was not before the court, because it was responding to the dissent's criticism that its holding was inconsistent with the result reached in *PAWS*, where the court held that the Uniform Trade Secrets Act ("UTSA") was an "other statute" under the PRA. *See id*. at 394-95 (McCloud, J., dissenting). The majority disagreed, explaining that its reasoning was not inconsistent because that the UTSA expressly "authorized an injunction to protect trade secrets where a showing was made that such protection was necessary[,]" and that its legislative history specifically declared "it *a matter of public policy that the confidentiality of such information be protected and its unnecessary disclosure be prevented.*" *Id*. (citations omitted; emphasis added in *PAWS*). In an

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unnecessary throwaway line with no analysis, the court added that "[t]he same is true of [RCW 4.24.580,] the antiharassment statute." *Id*. That observation is plainly incorrect—nowhere does RCW 4.24.580 mention injunctive relief specifically to protect *the confidentiality of information* or prohibit its disclosure. And certainly, the court's observation was dictum—not only was it completely unnecessary to decide the case (which had nothing to do with RCW 4.24.580), but it was unnecessary *even to respond to the dissent*, which did not even mention RCW 4.24.580. *See id*. at 394-95 (McCloud, J., dissenting).

In any event, the actual holding of *Washington State Patrol*—that the exemption requirement must be explicit—controls this case. In *SEIU 775 v. State Dep't of Social and Health Servs.*, 198 Wash. App. 745, 755-56 (Div. 2 2017), the court observed that *PAWS*'s analysis of RCW 4.24.580 as an "other statute" was "inconsistent with the holding in *Washington State Patrol*[,]" and therefore, "*Washington State Patrol*'s holding controls." That observation is undoubtedly correct—nowhere does RCW 4.24.580 expressly prohibit the release of any specific records or portions thereof; indeed, it does not mention the release of records *at all*. Neither the dicta in *PAWS* nor *Washington State Patrol*'s own dicta can change the fact that construing RCW 4.24.580 as an "other statute" under the PRA directly conflicts with *Washington State Patrol*'s express holding. Plaintiffs' claim for a PRA "other statute" exemption under RCW 4.24.580 therefore fails as a matter of law.

3. Plaintiffs fail to allege facts sufficient to show that disclosure of their UW IACUC affiliation would clearly not be in the public interest or would substantially and irreparably damage any person or vital government functions.

The PRA authorizes a court to enjoin the release of a public record only when "such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital government functions." RCW 42.56.540. Plaintiffs fail to allege facts that would satisfy any of those elements.

First, Plaintiffs fail to allege facts showing that disclosure of their UW IACUC affiliation "would clearly not be in the public interest." While they allege that the UW IACUC Chair and

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various members *believe* that disclosure could impair the functioning of the committee by, for example, making it more difficult to recruit and retain members (Dkt. # 73, ¶ 40), that alleged belief is belied by the acknowledged facts that additional new members have been recruited, despite the prior disclosure of the membership roster in response to earlier public records requests.[2] (*See id*. ¶¶ 44, 67.) As the Court observed in denying Plaintiffs' motion for a preliminary injunction, in light of those facts, "the release of Plaintiffs' personal information is unlikely to significantly affect the public interest in having qualified personnel oversee animal research at UW." (Dkt. # 90 at 12.) On the other hand, as the Court found, "[p]ublic employees are paid with public tax dollars and, by definition, are servants of and accountable to the public. The people have a right to know who their public employees are and when those employees are not performing their duties." (*Id*.)

Second, Plaintiffs have not alleged that release of the information "would substantially or irreparably damage" them. As this Court noted, the Ninth Circuit has already held that the information Plaintiffs seek to protect is not "highly sensitive personal information." (Dkt. # 90 at 11 (citing *P Poe 5*, 2024 WL 4971971, at *1.).) And, as the Court found based on an evidentiary record that essentially mirrors the factual allegations of the Amended Complaint, Plaintiffs cannot rely on the experiences of animal experimenters who are not similarly situated to them to show that they face any likelihood of harm. (*Id*. at 13-14.) Moreover, as the Court found, any discomfort Plaintiffs claim to feel as a result of communications that relate to them as UW IACUC members does not amount to "substantial" harm, nor can it be logically connected to the release of their identities. (*Id*. at 14 (citing *State v. McKague*, 172 Wash. 2d 802, 806, 262 P.3d 1225, 1227 (2011) ("substantial" is appropriately defined as "considerable in amount, value, or worth")).)

[2] As noted in *Sullivan v. Univ. of Wash.*, No. 23-35313, 2023 WL 8621992, at *1 (9th Cir. Dec. 13, 2023)—which is incorporated by reference in the Amended Complaint (Dkt. # 73, ¶ 44)—a March 4, 2021 disclosure by UW "provided the names of almost all current members of the [IACUC] to PETA in response to PETA's public records request."

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Finally, Plaintiffs do not allege facts sufficient to show that the disclosure of their UW IACUC affiliation would "substantially and irreparably harm any vital government function." As this Court observed, the prior disclosure of UW IACUC members' identities has not impaired its ability to recruit new members, and the one alleged disruption in its activities—the cancellation of the December 2024 meeting—was not the result of the disclosure of anyone's identity. (*Id*. at 13.)

4. RCW 4.24.580 is unconstitutional.

Even if Plaintiffs *had* alleged facts sufficient to state a claim for a PRA exemption pursuant to RCW 4.24.580—and, as discussed above, they have not—their claim would still fail because the statute is unconstitutional, both facially and as applied, due to its viewpoint discrimination, overbreadth, and vagueness.

Intervenors acknowledge that, in its order denying Plaintiffs' motion for a preliminary injunction, this Court found that Intervenors lacked Article III standing to make an as-applied constitutional challenge to RCW 4.24.580 because the Court had denied injunctive relief on other grounds, and therefore, Intervenors were not being denied access to any public records to which it would otherwise be entitled. (Dkt. # 90 at 19-20.) This Court also found that Intervenors lacked standing to make a facial challenge because the statute was "not being enforced by—or against—any party here[,]" and therefore amounted to a pre-enforcement challenge. (*Id*. at 20-21 & n.7.) Respectfully, Intervenors submit that the Court's prior standing analysis is inapposite to the case in its current posture—a motion to dismiss Plaintiffs' claims, including Plaintiffs' demand for a permanent injunction. For purposes of this motion to dismiss, Plaintiffs' claim under RCW 4.24.580 would, if successful, deny Intervenors the records they seek, which amounts to an Article III injury sufficient to confer standing. *See*, *e.g.*, *A Better Way for BPA v. U.S. Dep't of Energy Bonneville Power Admin.*, 890 F.3d 1183, 1186 (9th Cir. 2018) ("The [public records] requester is injured-in-fact for standing purposes because he did not get what the statute entitled him to receive.") (citation omitted). Nor is this a "pre-enforcement challenge." While Plaintiffs are purporting to invoke RCW 4.24.580 indirectly as an "other statute"

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exemption under the PRA, they are still invoking the statute to enjoin a party (UW) from producing public records to other parties (Intervenors) to prevent alleged "harassment"—that is, speech—by third parties. This is not a case involving a hypothetical future application of the statute—it is a case involving its *actual* application.

a. RCW 4.24.580 is viewpoint discriminatory.

RCW 4.24.580 applies only to harassment "by an organization, person, or persons whose intent is to stop or modify the facility's use or uses of an animal or animals[.]" Thus, speech by an animal experimentation *opponent* that is characterized as "harassing" can be enjoined, but harassing speech by a *proponent* of animal experimentation who sought the continuation of the facility's existing animal experimentation practices cannot. By expressly regulating harassment only by those *with a particular ideological intent—i.e.*, "to stop or modify [a] facility's use or uses of an animal or animals"—RCW 4.24.580 engages in viewpoint discrimination, is "presumptively unconstitutional," and is subject to strict scrutiny. *See Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995) (a law discriminates based on viewpoint where "the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction").

It is no answer to say that the statute is viewpoint neutral because it would also apply to a person whose intent was to *increase* animal experimentation. Even if that were true, the statute would still apply only to those seeking to *change* a facility's animal experimentation practices. Those who seek to maintain the *status quo*—say, by threatening a whistleblower who spoke out about animal abuses occurring there—could harass to their heart's content. Regardless, both the statutory context and its legislative history make perfectly clear that it is aimed at animal experimentation *opponents*. *See*, *e.g.*, RCW 9.08.080 (describing the act's intent to protect against "[a]cts against animal facilities" and "disrupt[ion] or damage [to] research"); Senate Bill Report, ESSB 5629, March 20, 1991, at 2; House Bill Report, ESSB 5629, April 5, 1991, at 2-3 (discussing "animal terrorist group[s]" and "animal terrorism"); House Bill Report, ESSB 5629, April 5, 1991, at 1 (identifying concerns about "the increasing number of instances where

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persons concerned about animal welfare resort to criminal or tortious acts *to achieve their goals of stopping, reducing, or changing the use of animals in scientific research*") (emphasis added).

Viewpoint discrimination is presumptively unconstitutional even where a law regulates only unprotected speech. In *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 383-84 (1992), the Supreme Court explained that unprotected categories of speech are not "invisible to the Constitution, so that they may be made the vehicles for content discrimination unrelated to their distinctively proscribable content." Even when it comes to "fighting words," the government cannot "license one side of a debate to fight freestyle, while requiring the other to follow Marquis of Queensberry rules." *Id*. at 392. Multiple federal appellate courts have held that statutes that target animal experimentation opponents amount to unconstitutional viewpoint discrimination. *See People for the Ethical Treatment of Animals, Inc. v. N.C. Farm Bureau Federation, Inc.*, 60 F.4th 815, 823 (4th Cir. 2023); *Animal Legal Defense Fund v. Kelly*, 9 F.4th 1219, 1236-37 (10th Cir. 2021).

RCW 4.24.580 regulates speech on only one side of a public debate. It singles out harassment by persons "whose intent is to stop or modify the facility's use or uses of an animal or animals," even though harassment by proponents of ongoing animal experimentation would impose comparable harm. Therefore, RCW 4.24.580 fails strict scrutiny, which demands that viewpoint discriminatory laws be "necessary to serve a compelling state interest" and "narrowly drawn to achieve that end." *See Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983). To the extent that RCW 4.24.580 serves a compelling state interest, the law "would have precisely the same beneficial effect" if it authorized injunctive relief *irrespective* of a harasser's viewpoint. *R.A.V.*, 505 U.S. at 396. Accordingly, RCW 4.24.580's blatantly discriminatory reach is not "reasonably necessary" to achieve its purported goal. *Id.* at 395-96; *see also Iancu v. Brunetti*, 588 U.S. 388, 399 (2019) (facially invalidating a provision of the Lanham Act because "[t]he Court's finding of viewpoint bias end[s] the matter.").

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b. RCW 4.24.580 is overbroad.

In addition to threats of physical harm, RCW 4.24.580 defines "harassment" to include "threat[s] ... to substantially cause harm to the recipient's mental health[.]" In doing so, RCW 4.24.580 sweeps far beyond unprotected "true threats" and is unconstitutionally overbroad.

The constitutionally unprotected category of "true threats" consists of statements "mean[t] to communicate a serious expression of an intent *to commit an act of unlawful violence* to a particular individual or group of individuals." *Virginia v. Black*, 538 U.S. 343, 359 (2003) (emphasis added). A "threat" to "cause harm to the recipient's mental health" plainly does not fit within that definition. Indeed, in *State v. Williams*, 144 Wash.2d 197, 206-11 (2001), the Washington Supreme Court held a nearly identically-worded criminal harassment statute was unconstitutionally overbroad because, by extending to threats against a person's "mental health," it "prohibit[ed] those threats which would not properly be characterized as true threats to physical safety[.]" *See also Seals v. McBee*, 898 F.3d 587, 595 (5th Cir. 2018) (a statute written to reach "threats of harm … to the character of the person" was unconstitutionally overbroad).

Given its text, RCW 4.24.580's overbreadth is "substantial, not only in an absolute sense, but also relative to the statute's plainly legitimate sweep." *See U.S. v. Williams*, 553 U.S. 285, 292 (2008). Because it encompasses any number of *protected* threats, such as threats to boycott animal experimentation facilities or to expose animal abuse occurring there, which could cause anxiety, distress, or similar harm to the "mental health" of those who work there, *cf. NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 927 (1982), RCW 4.24.580 is facially invalid.

c. RCW 4.24.580 is impermissibly vague.

RCW 4.24.580's definition of "harassment" also renders the law impermissibly vague. The void for vagueness doctrine requires that parties "know what is required of them" and demands "precision and guidance" to prevent "arbitrary or discriminatory" enforcement. *Fed. Comm. Comm'n v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012); *see also Butcher v. Knudsen*, 38 F.4th 1163, 1169 (9th Cir. 2022). "For laws implicating First Amendment freedoms, the void-for-vagueness doctrine has special purchase. Although perfect clarity is not

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required even when a law regulates protected speech, vagueness concerns are more acute when a law implicates First Amendment rights, and, therefore, vagueness scrutiny is more stringent." *Butcher*, 38 F.4th at 1169 (citations and internal quotation marks omitted). By regulating threats implicating "mental health," RCW 4.24.580 runs afoul of that standard.

Williams is once again directly on point. With respect to the nearly identically-worded statute, the court explained that "the average citizen has no way of knowing what conduct is prohibited by the statute because each person's perception of what constitutes the mental health of another will differ based on each person's subjective impressions. To avoid this quandary is the very reason the vagueness doctrine exists." 144 Wash.2d at 206. Likewise, RCW 4.24.580 is void for vagueness and thus facially unconstitutional.

d. RCW 4.24.580 would be unconstitutional as applied here, where Plaintiffs do not allege that they have been or are about to be threatened with physical violence.

Plaintiffs may argue that, even if RCW 4.24.580 is facially unconstitutional, the Court can sever the unconstitutional portions or otherwise interpret the statute to avoid its constitutional infirmities. But doing so here would not solve Plaintiffs' problem, because the *only* interpretation on which Plaintiffs can prevail based on the allegations of the Amended Complaint is an unconstitutional one. As discussed above, Plaintiffs' allegations are devoid of any allegation that any UW IACUC member has ever been threatened with physical violence. Thus, Plaintiffs' claim under RCW 4.24.580 can rest *solely* on allegations of potential harm to their "mental health" resulting from protected speech and expressive conduct. (*Cf.* Dkt. # 73, ¶ 40 (alleging that "the ongoing harassment targeting IACUC members and animal researchers has created an 'environment of fear'…").) Injunctive relief cannot, consistent with the First Amendment, issue to prevent Plaintiffs' exposure to protected expression that does not constitute a "true threat." *See Williams*, 144 Wash.2d at 202-11. Thus, the statute is not only facially unconstitutional—it is unconstitutional as Plaintiffs seek to apply it here.

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D. As a matter of law, the PHS Policy does not preempt the PRA.

In their fourth claim for relief, Plaintiffs seek an injunction on the basis that the Washington PRA is preempted by federal law. (Dkt. # 73, ¶¶ 62-64, 89-92.) But, rather than identify any federal law, Plaintiffs cite only the PHS Policy, which provides, in pertinent part, that "[i]nstitutions may, at their discretion, represent the names of members other than the chairperson and veterinarian with program authority…by using numbers or other symbols in submissions to [the Office of Laboratory Animal Welfare]." (*Id*. ¶¶ 27, 62.) As this Court has already held (Dkt. # 90 at 15-19), the PHS Policy does not preempt the PRA. That holding, either as law of the case, *Hall*, 697 F.3d at 1067, or by its logic, should bar Plaintiffs' preemption claim.

Preemption jurisprudence is governed by "two cornerstones[.]" *Wyeth v. Levine*, 555 U.S. 555, 565 (2009). "First, the purpose of Congress is the ultimate touchstone in every pre-emption case." *Id*. (cleaned up). "Second, in all pre-emption cases, and particularly in those in which Congress has legislated in a field which the States have traditionally occupied, [the Court must] start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress."[3] *Id*. (cleaned up). "[P]re-emption is ordinarily not to be implied absent an actual conflict…. The teaching of [the U.S. Supreme] Court's decisions enjoins seeking out conflicts between state and federal regulation where none clearly exists." *English v. General Elec. Co.*, 496 U.S. 72, 90 (1990) (cleaned up). "Implied preemption analysis does not justify a freewheeling judicial inquiry into whether a state statute is in tension with federal objectives; such an endeavor would undercut the principle that it is Congress rather than the courts that pre-empts state law." *Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582, 606 (2011) (plurality opinion) (cleaned up). The Supreme Court's precedents "establish that a high threshold must be met if a state law is to be preempted for conflicting with the purposes of a federal Act." *Id*. (citation omitted). Here, there

[3] "By enacting the AWA, Congress intruded into an area traditionally regulated by the States and declined to occupy the entire field." *Just Puppies, Inc. v. Brown*, 123 F.4th 652, 664 (4th Cir. 2024).

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is no conflict—and certainly no *clear* conflict—between the PRA and Congress' purposes in enacting either the Food Security Act of 1985 or the Health Research Extension Act of 1985.

Any plausible preemption argument is directly undermined by the federal statutes and regulations themselves. The Food Security Act provides that the standards promulgated by the Secretary of Agriculture for the humane handling, care, treatment, and transportation of animals by animal experimentation facilities "shall not prohibit any State (or a political subdivision of such State) from promulgating standards in addition to those standards promulgated by the Secretary…" 7 U.S.C. § 2143(a)(8); *see also Just Puppies*, 123 F.4th at 664; *DeHart v. Town of Austin, Ind.*, 39 F.3d 718, 722 (7th Cir. 1994). The PHS Policy itself also expressly disclaims any preemptive intent: "This Policy does not affect applicable state or local laws or regulations which impose more stringent standards for the care and use of laboratory animals." PHS Policy, Section II; *see also* NIH Grants Policy Statement, Apr. 2021, *available at* https://grants.nih.gov/grants/policy/nihgps/nihgps.pdf (last visited March 11, 2025) (grant applicants are "expected to be in compliance with applicable State and local laws and ordinances"). Such "anti-implied-preemption clauses" have been found to foreclose implied preemption arguments. *See*, *e.g.*, *Transcontinental Gas Pipe Line Co., LLC v. Penn. Env't Hearing Bd.*, 108 F.4th 144, 162-63 (3d Cir. 2024).

Both statutes also expressly provide for confidentiality—but only for "trade secrets or commercial or financial information[,]" *not* for the identities of IACUC members. *See* 7 U.S.C. § 2143(a)(6)(B); 42 U.S.C. § 289d(e). And nothing in the IACUC-specific provisions of either statute even remotely suggests Congress contemplated that the identities of IACUC members would be immune from disclosure under state public records laws. *See* 7 U.S.C. § 2143(b); 42 U.S.C. § 289d(b). Likewise, 9 C.F.R. § 2.31—the federal regulation implementing 7 U.S.C. § 2143(b)—says nothing about the confidentiality of members' identities, despite *expressly setting forth membership requirements* for IACUCs. As this Court explained in its order denying Plaintiffs' motion for a preliminary injunction:

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> Although there is a single policy that permits IACUCs to keep their membership rosters private, the language of the federal rules that regulate IACUCs shows Congress intended animal research to be conducted in accordance with high standards of professionalism, ethics, and transparency. . . . Animal research facilities can likewise be inspected to ensure "professionally acceptable standards governing the care, treatment, and use of animals" are being adhered to during research and experimentation. 7 U.S.C. § 2143(a)(7)(A). And each IACUC must have "at least one member" that "is intended to provide representation for general community interests in the proper care and treatment of animals[.]" 7 U.S.C. § 2143(b)(1)(B)(iii). Rather than "stand as an obstacle" to these objectives, the PRA promotes them. *Crosby*, 530 U.S. at 372–73; *see* RCW 42.56.030. And PETA says it is requesting the information at issue because it seeks to ensure the UW IACUC complies with applicable federal animal welfare laws. Dkt. No. 79 at 29–30; *see generally* Dkt. No. 81. The PRA provides one avenue for PETA to access this information.

(Dkt. # 90 at 17-18.)

Moreover, the PHS Policy merely gives IACUCs the *option* to anonymize members' names in a single report submitted to the Office of Laboratory Animal Welfare. Section IV.A.3.b. n.6. That hardly evinces a clear intent to displace state public records laws with respect to *any* document generated by any state agency that reflects IACUC members' names. Regardless, federal laws establishing *voluntary* standards do not impliedly preempt state laws making those same standards *mandatory*. *See Chicanos Por La Causa, Inc. v. Napolitano*, 558 F.3d 856, 866-67 (9th Cir. 2009) ("Arizona's requirement that employers use E–Verify was not preempted because, while Congress made participation in E–Verify voluntary at the national level, that did not in and of itself indicate that Congress intended to prevent states from making participation mandatory"); *see also*, *e.g.*, *Dayton Power & Light Co. v. Fed. Energy Regul. Comm'n*, 126 F.4th 1107, 1128 (6th Cir. 2025) ("Congress's decision not to mandate RTO membership federally doesn't necessarily imply an intent to prevent states from imposing such requirements…"); *City of El Cenizo, Tx. v. Texas*, 890 F.3d 164, 180 (5th Cir. 2018). Again, in this Court's words:

> It is also possible to comply with both the PHS Policy and PRA. Where, as here, the PRA requires the identity of IACUC members to be made public, there is no conflict because the PHS Policy is permissive and says, "Institutions may, at their discretion" anonymize the identity of IACUC members. PHS Anonymization Rule. And Plaintiffs do not identify any federal regulation that mandates the identity of IACUC members to remain private.

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(Dkt. # 90 at 18.)

Finally, the PHS Policy is too informal and unclear to have preemptive effect. While the PHS Policy is identified in the Code of Federal Regulations as one of several "policies and regulations" that are applicable to HHS grantees,[4] its actual text is nowhere to be found in the Code of Federal Regulations or the Federal Register, nor is its content (or changes thereto) subject to the notice-and-comment requirements of 5 U.S.C. § 553. *See* 42 C.F.R. § 52.8 (noting that PHS Policy "is subject to changes"); 42 C.F.R. § 52a.8 (same). Numerous cases have held that federal agency policies that are not adopted in formal rulemaking procedures or pursuant to formal adjudications are not "capable of having preemptive effect." *See*, *e.g.*, *Holk v. Snapple Beverage Corp.*, 575 F.3d 329, 340-42 (3d Cir. 2009) (FDA definition of the term "natural" lacked preemptive effect where it was not adopted pursuant to any "formal, deliberative process"); *Fellner v. Tri-Union Seafoods, LLC*, 539 F.3d 237, 245 (3d Cir. 2008) ("[i]t is fair to assume generally that Congress contemplates administrative action with the effect of law when it provides for a relatively formal administrative procedure tending to foster the fairness and deliberation that should underlie a pronouncement of such force.") (citation omitted); *Good v. Altria Group, Inc.*, 501 F.3d 29, 51-52 (1st Cir. 2007) ("Limiting the preemptive power of federal agencies to exercises of formal rulemaking authority…ensures that the states will have enjoyed these protections before suffering the displacement of their laws"), *aff'd*, 555 U.S. 70 (2008); *Wabash Valley Power Ass'n, Inc. v. Rural Electrification Admin.*, 903 F.2d 445, 453-54 (7th Cir. 1990) ("In order to preempt state authority, [an agency] must establish rules with the force of law. Regulations adopted after notice and comment rulemaking have this effect.").

Consequently, this Court must dismiss Plaintiffs' fourth claim for relief for failing to state a claim under Rule 12(b)(6).

[4] HHS grantees are merely a subset of the research facilities required to have an IACUC. *See* 7 U.S.C. § 2132(e) (defining "research facility" to include more than just federal grantees).

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E. Plaintiffs are not entitled to declaratory relief.

Finally, Plaintiffs' fifth claim for relief seeks a declaratory judgment that (1) Plaintiffs' constitutional rights to personal security, bodily integrity, and informational privacy constitute an exemption to the PRA for the disclosure of their UW IACUC affiliation; (2) RCW 4.24.580 constitutes an "other statute" exception to the PRA authorizing an injunction against the disclosure of their personal identifying information; and (3) federal law preempts operation of the PRA with respect to their identities as IACUC members. (Dkt. # 73, ¶¶ 95-97.) For the same reasons this Court should dismiss Plaintiffs' claims for injunctive relief, it should dismiss this claim as well.

A declaratory judgment declares the legal rights and relations of the party seeking the declaration, regardless of whether other relief is warranted. 28 U.S.C § 2201(a); Fed. R. Civ. P. 57. A declaratory judgment is "appropriate when it will 'terminate the controversy' giving rise to the proceeding." Fed. R. Civ. P. 57, Adv. Comm. Notes (1937 adoption). A "federal district court has the duty to decide the appropriateness and the merits of the declaratory request irrespective of its conclusion as to the propriety of the issuance of the injunction." *Zwickler v. Koota*, 389 U.S. 241, 254 (1967). "[T]he same equitable principles relevant to the propriety of an injunction must be taken into consideration by federal district courts in determining whether to issue a declaratory judgment, and that where an injunction would be impermissible under these principles, declaratory relief should ordinarily be denied as well." *Samuels v. Mackell*, 401 U.S. 66, 73 (1971); *Perez v. Ledesma*, 401 U.S. 82, 90 (1971) (where a district court's decision on declaratory relief is "bound up" with its decision on injunctive relief, both may be considered together on appeal) (Stewart, J. concurring).

Practically, the effect of declaratory relief and injunctive relief are identical, and while there are rare exceptions when declaratory relief might issue when injunctive relief is denied, they are generally considered coterminous where they present identical legal issues. *Samuels*, 401 U.S. at 73. For example, where a plaintiff can demonstrate his or her legal rights but not an irreparable injury, a declaratory judgment may be appropriate. *See Conf. Tribes and Bands of*

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Yakama Nation v. Klickitat Cnty., No. 1:17-CV-3192-TOR, 2019 WL 12378995 *16 (E.D. Wash. Aug. 28, 2019).

This is not such a case. Each of Plaintiffs' four claims for injunctive relief fail for legal reasons, and they are identical to the legal issues raised by Plaintiffs' claim for declaratory relief. As a legal matter, Plaintiffs' substantive due process rights are not implicated here; as both a legal matter and on the facts alleged, RCW 4.24.580 does not exempt Plaintiffs' personal identifying information from disclosure under the PRA; and as a legal matter, the PRA is not preempted by federal law. This is not a case in which Plaintiffs have legally valid claims but struggle to demonstrate an injury—such as a facial constitutional challenge to a statute—but a case where Plaintiffs' claims all rest and fail on the same legal questions. In other words, Plaintiffs' claims have no legal merit at all, and declaratory relief is not appropriate for the same reasons injunctive relief is not warranted.

This Court should dismiss Plaintiffs' fifth claim for relief for failure to state a claim under Rule 12(b)(6), for the same reasons it should dismiss Plaintiffs' claims for injunctive relief.

IV. CONCLUSION

For the foregoing reasons, this Court should dismiss Plaintiffs' Amended Complaint in its entirety for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).

DATED this 18th day of April, 2025.

I certify that this memorandum contains 8,364 words, in compliance with the Local Civil Rules.

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