

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

LEGAL COUNSEL FOR YOUTH AND
CHILDREN, a nonprofit organization;
LAVENDER RIGHTS PROJECT, a nonprofit
organization; MOMSRISING, a nonprofit
organization; OASIS YOUTH CENTER, a
nonprofit organization; PEOPLE OF COLOR
AGAINST AIDS NETWORK, a nonprofit
organization; SEXUAL VIOLENCE LAW
CENTER, a nonprofit organization;
SOUTHWEST WASHINGTON EQUITY
COALITION, a nonprofit organization; KARI
LOMBARD, in her individual capacity; JANE
DOE, in her individual capacity; and SOUTH
WHIDBEY SCHOOL DISTRICT, a public
school district,

Plaintiffs,

v.

STATE OF WASHINGTON,

Defendant.

Case No.: 24-2-11540-4 SEA

**PROPOSED INTERVENORS' RESPONSE
TO MOTION FOR PRELIMINARY
INJUNCTION**

I. INTRODUCTION

Let's Go Washington ("LGW"), Jim Walsh, Informed Choice Washington ("ICWA"),
and OneWashington ("OneWA") (collectively "Intervenors") oppose Plaintiffs' Motion for

Preliminary Injunction. There is no legitimate interest in restricting the public's open access to

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1 the courts, which is in the public interest and protected by Wash. Const. art. I, § 10. Plaintiffs
2 erroneously cite RCW 42.56.540, a section of the Public Records Act, to support the proposition
3 that pseudonymity is warranted. Plaintiffs’ motion to proceed under pseudonym should be
4 denied.

5 II. STATEMENT OF FACTS

6 A. Initiative 2081 does not change or frustrate any existing laws.

7 1. Initiative 2081 does not change or conflict with existing medical privacy and 8 health laws.

9 Plaintiffs assert Initiative 2081 (I-2081) conflicts with RCW 70.02.030 and the
10 right of youth to the confidentiality of their health records when they are legally authorized to
11 access healthcare without parental consent. Pls. [’] Mot. for Prelim. Inj. 3: 16-18. But sections
12 (2)(b)(i)),(iv) of I-2081 do not conflict with this provision in the law, which is concerned with
13 healthcare representatives and the ability of an authorized person to consent for the healthcare of
14 another. I-2081(2)(b)(i)),(iv) refer to a parent’s right to inspect their child’s public school
15 records, including medical, health, and mental health counseling records. This medical and
16 health information is part of the “education record” or “treatment record,” under the Family
17 Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232g. As the name implies, FERPA
18 protects parental rights of access to their children’s education records as well as control over the
19 disclosure of private information in those records. Because medical, health, and mental health
20 counseling information obtained in public schools is part of the education record and covered by
21 FERPA, it is not Health Insurance Portability and Accountability Act (HIPAA) protected health
22

1 information, as the HIPAA privacy rule explicitly excludes education records covered by
2 FERPA. 45 C.F.R. § 160.103 (definition of “protected health information,” ¶¶ (2)(i),(ii)).

3 Additionally, the HIPAA privacy rule does not apply to nurses, school counselors,
4 behavioral health providers, or other healthcare providers in public schools because schools are
5 not HIPAA covered entities involved in “covered transactions.” 45 C.F.R. §160.102. When
6 plaintiffs contend pre-existing law includes school nurse notes about a student’s mental health,
7 and the notes created by the nurse are not a part of the “public school record,” they
8 misunderstand the law and what the education record encompasses under FERPA. Mot. 11: 2-5.
9 Plaintiffs also inaccurately state I-2081(2)(b)(i)),(iv) expands “public school records” to include
10 private health information. *Id.* As explained, it does not, as health information obtained in public
11 school is part of the education record under FERPA, which is excluded from the HIPAA privacy
12 rule. 45 C.F.R. § 160.103.

13 Plaintiffs again assert, incorrectly, that I-2081 expands public school records by
14 requiring schools to notify parents prior to offering medical services (except in emergencies) or
15 direct or indirect arrangements for medical treatment that result in follow-up care beyond normal
16 school hours. I-2081§ 2(c)(e). Plaintiffs state this parental notification undermines and changes
17 the meaning of current statutory protections youth possess to consent to certain healthcare
18 services without parental notification. Mot. 12: 1-5. Two statutes referenced in the Motion, RCW
19 71.34.530 (outpatient mental health treatment) and RCW 71.34.305, (sexually transmitted
20 disease treatment) describe the ability for youth of a certain age to consent to specified treatment
21 without parental consent. Mot. 10: 17-18. Both statutes only speak to consent for treatment;
22 neither mentions parental notification. Further, the parental notification described in sections (c)

1 and (e) of I-2081 occurs *prior to* any medical service or treatment that may involve protected
2 health information. As such, the laws described in the Motion are unaffected and unchanged by
3 the parental notification provisions of I-2081.

4 Lastly, Plaintiffs claim I-2081 undermines legislation that ensures youth are
5 unsheltered. LCYC Decl. ¶¶ 27-43. Statutes RCW 74.15.020 and RCW 13.32A.082 describe the
6 rules and provisions for providing shelter to youth in host homes or youth shelters without legal
7 authorization, and the requirements and timelines for parental, law enforcement, and Department
8 of Children, Youth, and Families (Department) notification. RCW 13.32A.082(2)(c)(i)(ii) also
9 defines compelling reasons that provide an exception to promptly notifying the parents first,
10 prior to the Department, of the youth's location. These reasons include, but are not limited to,
11 circumstances that may subject the youth to abuse or neglect or when a minor is seeking or
12 receiving protected health services. *Id.*

13 Plaintiff LCYC provides youth with a range of free legal services in WA state
14 with a focus on four program areas. Their declaration focuses on its legal services directed at
15 youth homelessness and the existing laws that aim to keep vulnerable youth off the streets and
16 homeless youth sheltered. LCYC Decl. ¶¶ 19-26. I-2081(h) requires immediate parental
17 notification when a child is taken from public school without parental permission to a youth
18 shelter or host home. LCYC claims this requirement attempts to avoid legislative mechanisms
19 and is contrary to laws intended to prevent homelessness and protect the health and safety of
20 vulnerable youth. LCYC Decl. ¶¶ 38, 43. The majority of youth in WA public schools come
21 from intact or single-parent homes and are living with their parents. They are not homeless or
22 unsheltered, and their parents have a right to know their whereabouts. The plaintiffs claim

1 preventing parental notification of a youth’s location will protect the health and safety of
2 vulnerable youth and keep them off the streets. LCYC Decl. ¶¶ 37-39. I-2081 addresses the
3 potential safety issue for some students by providing an exception to parental notification and
4 access to records during the pendency of an investigation for child abuse or neglect. I-2081(3).
5 This appears to be insufficient for plaintiffs to ensure the “safety” of youth, as they oppose
6 notification to all parents. This opposition implies, without knowledge or verification, that youth
7 are not safe at home, or are at risk of being homeless. A primary reason LCYC provides for the
8 removal of youth from school to a youth shelter is for assistance with receiving gender affirming
9 treatment or reproductive health care services. LCYC Decl. ¶¶ 31, 32, 35. While minor youth
10 may consent to protected health services that do not require parental consent when staying at a
11 youth shelter, this consent only applies to those specific healthcare decisions. It does not extend
12 to all other activities and other information about the youth while attending public school.

13 LCYC defends its opposition to I-2081 by stating “[t]he Initiative rests on the
14 assumption that all homes are safe, and that is sadly not the case.” LCYC Decl. ¶ 43. Sadly,
15 LCYC and the plaintiffs rest on the assumption that all homes are unsafe, and therefore any
16 parental notification, even information of a youth’s location after removal from public school, is
17 unsafe for all youth. This is not the case. The parental notification of I-2081(h) provides parents
18 with information from the public school that is pertinent to their child. As the primary
19 stakeholders in their children’s upbringing, they have a right to this information.

20 III. AUTHORITY AND ANALYSIS

21 Proposed Intervenors write to address three salient elements of this matter: first,
22 Constitutional matters related to Plaintiffs’ claims that I-2081 violates Article II, Section 37 will

1 be addressed; subsequently, this motion will note that I-2081 does not frustrate existing laws, nor
2 does it cause harm.

3 **1. I-2081 is a complete Act.**

4 Defendant State correctly noted that I-2081 is a complete Act; Proposed
5 Intervenor concurs. The “complete Act” analysis requires “is designed to make sure the effect of
6 new legislation is clear and to ‘avoid[] confusion, ambiguity, and uncertainty in the statutory
7 law through the existence of separate and disconnected legislative provisions ... scattered
8 through different volumes.’” *Wash. State Assoc. of Cnty. v. State*, 199 Wn.2d 1, 15, 502 P.3d
9 825, 834 (2022). I-2081 was written with precision, having 30 subsections and 7 specific
10 references to existing sections of the Code. With such specificity, the Act succeeds in “explicitly
11 show[ing] how [the Act] relates to statutes it amends” through its several citations. *El Centro de*
12 *la Raza v. State*, 192 Wn.2d 103, 132, 428 P.3d 1143, 1157 (2018) (quoting *Wash. Ass’n of*
13 *Neighborhood Stores v. State*, 149 Wn.2d 359, 373, 70 P.3d 920, 927 (2003)).

14 Moreover, when read in full and in context, the Act is clear: it promotes parental
15 access to examination of children-student records, textbooks, curriculum, disciplinary records,
16 educational plans, etc. The Act also requires notification of specific occurrences/events, such as
17 medical records/treatments, criminal action involving the child, removal of the child from school
18 camps, etc. As the Supreme Court has held, such legislation should be found constitutional as the
19 plain language and the context of the chapter does not control the reading of I-2081. “Thus, the
20 interpretive principles that we read statutory subsections in the context of the full statute and
21 chapter in which they appear and that the legislature’s use of different words suggests that it
22 intends to convey different meanings also weighs in favor of finding the newer statute

1 constitutional.” *Associated Gen. Contractors of Wash. v. State*, 544 P.3d 486, 495 (Wash.
2 2024)). Plaintiffs fail to meet their challenge under Washington constitution, Article II, Section
3 37 as the Act is complete and statutory construction favors the

4 **2. I-2081 does not change or frustrate existing education laws.**

5 Plaintiffs claim I-2081 amends or revises laws regarding educational curriculum.
6 The existing laws permitting parents to opt-out of specific curriculum, RCW 28A.300.475(7)(a)
7 involving comprehensive sexual health education, RCW 28A.230.070(4) involving AIDS
8 prevention curriculum, and RCW 28A.300.160(4) involving prevention of sexual and child abuse
9 and neglect, are not altered or changed by I-2081. These laws identify specific classroom lessons
10 and curriculum some parents may find inappropriate for their child or may prefer to teach at
11 home. Because these lessons are often taught at scheduled times in the school year in specific
12 classes such as science or health, teacher notification to parents of the upcoming material is
13 straightforward and parents may optionally exclude their child from exposure to such matters.
14 Sections (2)(j)(i)(ii) of I-2081 allow for parental notice and opt-outs for a list of topics and
15 activities instead of specified curriculum as in previous laws because the teaching and discussion
16 of sensitive and personal material is no longer contained to particular classes at specified times.
17 This subject matter is integrated throughout the school year in a range of classes. Often the actual
18 lessons or curriculum are not identified prior to being taught, so parents have no notice or ability
19 to view the material or to opt-out their child. Sections (j)(i)(ii) of I-2081 allow for notification to
20 parents if teaching, discussion, or activities involving sensitive topics are planned in any class so
21 they have the opportunity to opt-out their child. Expanding this option does not amend existing
22 laws nor does it frustrate the ability of educators to comply with state learning standards in

1 school subjects. Teachers can still teach the planned material, but I-2081 provides one simple
2 pre-requisite required: parental notification prior to introduction of classroom discussion of these
3 topics.

4 **B. Initiative 2081 does not cause actual and substantial injury.**

5 The plaintiffs claim I-2081 must be enjoined to prevent substantial harm to
6 plaintiffs and the communities they represent. They base this harm on requirements for parental
7 notification regarding healthcare services in school and their assertion I-2081 expands student
8 records to include school medical and mental health records and correspondence with educators,
9 school nurses, and counselors. As stated previously, these assertions misunderstand state and
10 federal law and protections parents already possess to access student information under FERPA.
11 Parents already have the right to view their child’s public-school records, including health and
12 counseling information obtained in school. I-2081 does nothing to change or conflict with
13 existing laws regarding this information because it is only reasserting parental rights that are
14 already present.

15 Plaintiffs also claim I-2081 should be enjoined because it interferes with student
16 protections with serious consequences for their health, safety, and education. Plaintiffs fear the
17 implementation of the provisions of I-2081 will invade educators’ rights to be “free from
18 confusion” due to its failure to detail the many laws it effects. Pls. [’] Mot. for Prelim. Inj. 2: 16-
19 18. I-2081 clearly defines the circumstances for which parents need to be informed regarding
20 curriculum and the specific topics that require notification prior to planned school lessons. This
21 notification does nothing to change educators’ teaching, as it only provides the option for parents
22 to opt-out of the instruction, not prevent its teaching.

1 Plaintiff Jane Doe purports that Initiative 2081 (“the Initiative”) infringes on her
2 children’s rights to “confidential counseling and health care.” Motion to Proceed Under
3 Pseudonym (“Motion”), p.2. But I-2081 does nothing of the sort. Plaintiff Jane Doe offers
4 nothing more than speculation and hearsay that she or her children will be subject to injury
5 through harassment, bullying, or negative attention as a result of the parental notification
6 provisions in I-2081.

7 Nothing offered by Plaintiff Jane Doe is sufficient to grant the Motion.

8 As found by the legislature in enacting the Initiative, parents are the primary
9 stakeholders in their children’s upbringing, parental involvement is a significant factor in
10 increasing student achievement; and access to student information encourages greater parental
11 involvement. 2024 Wash. Laws ch. 4, § 1.

12 I-2081 simply seeks to protect the fundamental liberty interest of parents in the right to
13 the care, custody, and rearing of their children. Being informed about public school records,
14 including medical or health records and records of mental health counseling is categorically
15 within the interest of parents and offers the basis for DENYING Plaintiffs’ Motion for
16 Preliminary Injunction.

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1 IV. CONCLUSION

2 For the foregoing reasons, the Court should DENY Plaintiffs' Motion for Preliminary
3 Injunction.

4 Dated this 17th of June 2024.

6 /s/ S. Peter Serrano

7 S. Peter Serrano, WSBA No. 54769

8 Austin F. Hatcher, WSBA No. 57449

9 Emily H. Ling, WSBA No. 36253

10 Attorneys for Intervenor-Defendants

11 *I certify that this memorandum contains 2,268*
12 *words, in compliance with the Local Civil Rules.*

CERTIFICATE OF SERVICE

I certify that I filed with the Court and electronically served a copy of this document on all parties on the date below as follows:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 17th day of June 2024, at Pasco, WA.

/s/ S. Peter Serrano

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