No. 80998-4

ALEXANDER, J. (dissenting)—In my judgment, the Court of Appeals correctly determined that the joinder of Allan Parmelee in an injunction action commenced by staff members at the Washington State Penitentiary was not required by CR 19, a rule that provides for the "joinder of persons needed for just adjudication." Subsection (a) of that rule indicates that joinder is required if in the absence of the person seeking to join "complete relief cannot be accorded among those already parties." I reach the conclusion that Parmelee's joinder was not required by this rule principally because (1) Parmelee did not seek to join the action until it was completed, (2) those who were already parties to the injunction proceeding had the ability to obtain complete relief without Parmelee's joinder, and (3) Parmelee has not demonstrated that he suffered actual prejudice by not being joined.

In determining whether a person is an indispensable party under CR 19, the following factors must be weighed: (1) the extent to which a judgment rendered in the absence of the person seeking intervention might be prejudicial to that person or those

already parties; (2) if there is prejudice, the extent to which prejudice can be lessened or avoided by protective provisions in the judgment or by other measures; (3) whether a judgment rendered in the person's absence will be adequate; and (4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. *Gildon v. Simon Prop. Group, Inc.*, 158 Wn.2d 483, 495, 145 P.3d 1196 (2006). These factors must be carefully analyzed because the question of whether a party is necessary under CR 19 "'calls for determinations that are heavily influenced by the facts and circumstances of individual cases.'" *Id*. (quoting 7 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1604, at 39 (3d ed. 2001)).

On balance, the aforementioned factors weigh against Parmelee. First, it cannot be said that the Department of Corrections (DOC) and its staff members, the parties to the injunction action, suffered any prejudice due to Parmelee's absence from the lawsuit. Furthermore, Parmelee has not explained how he was actually prejudiced by the fact that he was not made a party to the action. He simply contends that under the Public Records Act (PRA), chapter 42.56 RCW, a records requester suffers prejudice per se by not being joined as an indispensable party to an injunction action that is brought by persons who seek to prevent the release of the requested records. On this point I disagree because, as the American Civil Liberties Union (ACLU) points out in its amicus brief, there may be instances where a records requester may not wish to intervene in a case.[1] *See* ACLU Amicus Br. at 15-18. Indeed, requiring mandatory

[1]If, for example, the agency's interests are aligned with the records requester, that person reasonably may decline to join the injunction action in order to avoid the

joinder of the records requester in every injunction action may actually cause prejudice to the person whose joinder is sought and could result in either withdrawal of the records request or grudging participation in what could turn out to be an expensive action. Because, contrary to Parmelee's position, a records requester does not suffer automatic prejudice by not being joined in an injunction proceeding, such persons should not be haled court in every injunction action. A contrary result, in my judgment, does not promote the goal of public access to records.

The second factor also does not weigh in Parmelee's favor. I say that because even if Parmelee were prejudiced by not being joined in the injunction action, a timely motion to intervene pursuant to CR 24(a) could have cured the prejudice. Allowing a records requester the option of joining as a matter of right under CR 24, rather than requiring joinder under CR 19, makes sense and avoids the possibility that an individual will be forced into litigation against his or her will. Here, Parmelee received notice that the persons named in the records request planned to file an injunction action one month before the action was filed and he was kept apprised of the status of the injunction action. Nevertheless, he attempted to intervene only after the trial court enjoined the records request. This joinder effort was clearly untimely and no justification was offered by Parmelee for his delay in seeking to intervene in an action of which he was aware. Furthermore, a records requester whose request has been

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time and expense of litigation. In other instances, the injunction action might appear to the records requester to be baseless and he or she might simply choose to rely on the trial judge to apply the appropriate standard and dismiss the injunction action.

denied may seek judicial review of that decision under RCW 42.56.550(1). Under that statute, the burden is on the agency to establish that the denial of the public records request is in accordance with a statute that exempts or prohibits disclosure. Because there are at least two measures outside of CR 19 to mitigate the prejudice a records requester might endure by not being joined in an injunction action, the second factor is met.

The third factor, whether the judgment rendered in Parmelee's absence is adequate, also weighs against Parmelee. I reach that conclusion because the DOC and the staff members who sought the injunction were afforded the relief they sought. The fact that all parties to the action eventually sought or supported enjoining the release of the records does not detract from the conclusion that the remedy was adequate.

Finally, as to the fourth factor, it cannot be said that the persons named in the records request would not have had an adequate remedy if their injunction action had been dismissed for nonjoinder of Parmelee. This is so because if the injunction action had been dismissed, the DOC staff members could have maintained another injunction action against the DOC with Parmelee joined in that action. Although this factor admittedly weighs in favor of Parmelee, when the four factors are weighed together they militate against Parmelee's argument that he had to be joined in the injunction action. Accordingly, it is apparent to me that Parmelee's participation in the action was not needed for a just adjudication and that the action properly proceeded between only

the DOC and the persons named in the records request. Thus, I would hold that Parmelee was not entitled to join the injunction action as an indispensable party under CR 19.

Finally, the lead opinion heralds the PRA as "'nothing less than the preservation of the most central tenets of representative government, namely, the sovereignty of the people and the accountability to the people of public officials and institutions.'" Lead opinion at 6 (quoting *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d 243, 251, 884 P.2d 592 (1994)). Although I entirely agree with this sentiment, it is important to observe that the trial court determined that Parmelee, who is currently in prison for burning automobiles that belonged to attorneys who represented him, has a history of obtaining personal information that he uses "to harass, intimidate, threaten and slander [his intended] victims and their families." Clerk's Papers at 111. It is undisputed that Parmelee's records request was designed to obtain personal information about the DOC staff members for reasons that could have resulted in harm to those persons. Thus, they reasonably sought an injunction to prevent release of the records. In sum, because the record shows that Parmelee's stated reason for obtaining the requested records was so that he could find "a couple big ugly dudes to come to Walla Walla for some late night service on these punks," *id*. at 108, it cannot be said that a central tenet of representative government was preserved by jeopardizing the safety and well being of penitentiary staff members and their families.

I dissent.

AUTHOR:
Justice Gerry L. Alexander

WE CONCUR:
Chief Justice Barbara A. Madsen

Justice Debra L. Stephens

Elaine Houghton, Justice Pro Tem.