No. 90355-7

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Appellant,

v.

S.J.C.,

Respondent.

BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON, WASHINGTON DEFENDER ASSOCIATION, and TEAMCHILD

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IDENTITIES AND INTERESTS OF *AMICI CURIAE*

The identities and interests of *amici curiae* are described in the Motion for Leave to File *Amici Curiae* Brief submitted simultaneously with this Brief.

ISSUE TO BE ADDRESSED BY *AMICI*

Whether the court records of rehabilitated juveniles—which have historically not been open to the public, pursuant to longstanding policy promoting the reintegration of former juvenile offenders—are subject to the presumption of public access under Article I, Section 10 of the Washington Constitution.

STATEMENT OF THE CASE

The facts and procedure of the case are adequately presented by the parties' briefing. A few facts bear repeating, as they are relevant to the arguments below.

Since his adjudication as a juvenile offender, S.J.C. has done everything required by the juvenile justice system to demonstrate his rehabilitation. He successfully completed all conditions of his disposition, has not been convicted of any other crimes or cases that resulted in diversion, and has paid all court-ordered financial obligations. CP 32, 38.

After completing all of the conditions set out in former RCW 13.50.050(12) (2011),[1] S.J.C. moved in 2011 for an order vacating his conviction and sealing his court file so that he could move forward with his life. The court granted S.J.C.'s Motion to Seal on the basis of former RCW 13.50.050 (2011), holding that it need not consider the factors set forth in *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982). CR 65-66. This appeal followed.

ARGUMENT

When a juvenile who committed offenses years ago has demonstrated his rehabilitation, sealing his record does not implicate the core values served by the constitutional open courts provision. The right of public access under Article I, Section 10 of the Washington Constitution does not attach to particular court proceedings or records where, as here, historical experience or logic counsels against it. Experience demonstrates that juvenile records have not historically been available to the public in Washington or elsewhere in the United States after a juvenile has met the terms of his sentence and lived in the community for a period of years

[1] Former RCW 13.50.050(11)-(24) (2011) has since been recodified at RCW 13.50.260 and 13.50.270. *See* Laws of 2014, ch. 175, §§ 3-5 (codified at RCW 13.50.050, 13.50.260, 13.50.270). While these provisions of former RCW 13.50.050 have been recodified, they remain substantively the same. *Compare* RCW 13.50.260 and RCW 13.50.270, *with* Laws of 2014, ch. 175, § 3. When referring to the version of the RCW in effect at the time of S.J.C.'s Motion to Seal, citations will be made to former RCW 13.50.050; portions of this Brief discussing the current regulatory scheme will refer to these provisions as currently codified.

without committing another offense—in short, after he is rehabilitated. Logically, public access to such records would not play a significant positive role in the functioning of the juvenile justice system—it would enhance neither the proceedings' fairness or appearance of fairness—and it would, in fact, hamper the system's rehabilitative goals.

Because experience and logic do not recommend public access to the court records of rehabilitated juveniles, the open courts right in Article I, Section 10 does not attach and the *Ishikawa* test should not be applied to motions filed under former RCW 13.50.050(11) and (12) and current RCW 13.50.260(3) and (4).

A. The Experience and Logic Test Determines Whether the Right of Public Access Under Article I, Section 10 Attaches to Juvenile Records

A test of experience and logic determines whether a right of public access attaches to court proceedings. *State v. Sublett*, 176 Wn.2d 58, 72-73, 292 P.3d 715 (2012) (adopting test from *Press-Enterprise Co. v. Super. Ct. of Cal.* (*Press-Enterprise II*), 478 U.S. 1, 8-10, 106 S. Ct. 2735, 92 L. Ed. 2d 1 (1986)). In order for this qualified right to attach, the particular proceeding in question must satisfy two complementary criteria:

> The first part of the test, the experience prong, asks 'whether the place and process have historically been open to the press and general public' . . . The [second part of the test, the] logic prong[,] asks 'whether public access plays a significant positive role in the functioning of the particular process in question.' If the answer to

both is yes, the public trial right attaches . . . .

Id. at 73 (internal citations omitted). In other words, when either experience or logic demonstrates that the presumption of public access does not apply to a particular judicial proceeding or record, a "closure" has not occurred, and the standards enumerated in statutes or court rules regarding public access should be respected. Even when these two criteria establish that a right of public access does attach, that right is not absolute, but "may be limited to protect other significant and fundamental rights." *Dreiling v. Jain*, 151 Wn.2d 900, 909, 93 P.3d. 861 (2004).

The rationale in *Sublett*, a case arising under Article I, Section 22 of the Washington Constitution, applies equally to cases arising under Article 1, Section 10. Washington courts have "historically analyzed allegations of a court closure under either article I, section 10 or article I, section 22 analogously." *Sublett*, 176 Wn.2d at 71 n.6. Indeed, the *Sublett* court imported the experience and logic test directly from *Press-Enterprise II*, which was a federal First Amendment case. *Id.* at 74 n.9. Thus, the experience and logic test should be applied here to determine whether a right of public access attaches to particular juvenile records under Article I, Section 10 of the Washington Constitution.

B. Experience and Logic Demonstrate that no Right of Public Access Attaches to the Court Records of Rehabilitated Juveniles

Neither historical practice nor the core values protected by Article I, Section 10 require application of the stringent *Ishikawa* test to motions to seal the court records of rehabilitated juveniles. First, such records have not historically been open to the press and the general public, either in Washington State or elsewhere in the United States. Second, public access to the records of rehabilitated juveniles undermines the primary purpose of the juvenile justice system—rehabilitation. Accordingly, the right of public access protected by Article I, Section 10 does not extend to such records, and motions to seal those records pursuant to RCW 13.50.260 need not be analyzed under the *Ishikawa* factors.

1. Court Records of Rehabilitated Juveniles Have not Historically Been Open to the Press and General Public

For the past 100 years, the State of Washington has unceasingly protected the ability of juvenile offenders to prevent juvenile court records from following them into adulthood. This policy initially sprang from a nationwide reform movement beginning in the 1820s that advocated for the development of separate juvenile courts to rehabilitate juvenile offenders. *See* Kathleen M. Laubenstein, *Media Access to Juvenile Justice: Should Freedom of the Press Be Limited to Promote*

Rehabilitation of Youthful Offenders?, 68 Temp. L. Rev. 1897, 1899-900 (1995). Early on, the juvenile system identified confidentiality as essential to achieving rehabilitation of juvenile offenders and accordingly mandated that juvenile proceedings and records be shielded from public scrutiny. *Smith v. Daily Mail Publ'g Co.*, 443 U.S. 97, 107, 99 S. Ct. 2667, 61 L. Ed. 2d 399 (1979) (Rehnquist, J., concurring) ("It is a hallmark of our juvenile justice system . . . that virtually from its inception at the end of the last century its proceedings have been conducted outside of the public's full gaze . . . ."). According to this philosophy, records of juvenile offenses must be "bur[ied] in the graveyard of the forgotten past," *id.* at 107-08, lest the stigma that they create endanger the "youths' prospects for adjustment in society and acceptance by the public," *In re Gault*, 387 U.S. 1, 24-25, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967).

In accord with this movement, in 1913 Washington enacted its first comprehensive juvenile justice code. Laws of 1913, ch. 160; *see also* Laubenstein, *supra*, at 1899-1901 (describing nationwide establishment of juvenile courts in the late 19th and early 20th centuries). The 1913 law expressly set juvenile offenders apart from adult offenders and aimed to provide them with the "care, custody and discipline . . . approximat[ing] as nearly as may be that which should be given by its parents." Laws of 1913, ch. 160, § 14. In order to protect a juvenile from continuing to suffer

the consequences of a youthful offense into adulthood, the 1913 law required not only that juvenile offense records be withheld from the public in the first instance, but that they also be destroyed on or before the child reached age 21. *Id.* § 10. In other words, the law stipulated that juvenile records may not continue to shadow individuals "after they have reached the age of full accountability." Letter from Governor Lister to Mary A. Swan (Apr. 10, 1913) (on file with Washington State Archives) (describing the "practices in the courts of this state").

The juvenile justice system in Washington State remained substantially unchanged until 1977, when the first major revision occurred. *See* Laws of 1977, 1st Ex. Sess., ch. 291. While the 1977 statute opened the official juvenile court file to public inspection, it continued to require sealing of that file upon the motion of any juvenile who had committed no additional offenses in the two years since their conviction or discharge from custody. *Id.* §§ 10, 12(2). After a juvenile reached the age of majority, he or she could move for destruction of all records pertaining to his or her case. *Id.* § 12(6). This policy struck a balance between public access and rehabilitation, permitting a juvenile who had mended his ways to seal the record of youthful offenses and thereby escape any stigma or

embarrassment from continued access to that record.[2] These changes were refined when RCW 13.50.050 was codified. Laws of 1979, ch. 155, § 9.

This essential character persists today. *See* J. Legis. Task Force on Sealing Juv. Records, *Rep. to Leg.*, at App. C (2012) (summarizing revisions through 2012), *available at* http://www.leg.wa.gov/JointCommittees/JRS/Documents/FinalReport.pdf; *compare id.*, *with* RCW 13.50.260 (current statute). Under the version of the statute in effect at the time of S.J.C.'s application, a juvenile who demonstrated rehabilitation by completing the terms of the disposition and spending a number of consecutive years in the community without re-offense could petition to seal the otherwise public official juvenile court file. Former RCW 13.50.050(2), (11)-(12) (2011);[3] J. Legis. Task Force on Sealing Juv. Records, *supra*, at App. C.

In its most recent revision of the juvenile sealing statute, effective on June 12, 2014, the Washington State legislature continues to enable

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[2] Consistent with this balance between openness and rehabilitation, the statute also provided that "[a]ny adjudication of the commission of a crime subsequent to sealing" would nullify the sealing order. Laws of 1977, 1st Ex. Sess., ch. 291, § 12(5).

[3] Under the version of RCW 13.50.050 in effect at the time S.J.C. moved to seal his juvenile record, a juvenile convicted of a Class A offense must have spent five consecutive years in the community since his release without reoffending, while juveniles convicted of class B or C offenses, misdemeanors, or diversions must have spent two consecutive years in the community without re-offense. All juvenile offenders seeking to have their records sealed must not have been subject to any pending proceedings seeking diversion or conviction, must not have been required to register as a sex offender (or must have subsequently been relieved of their duty to register), and must have paid full restitution. Former RCW 13.50.050(12) (2011).

juveniles to seal their offense records as they complete the terms of their disposition and reach the age of majority. RCW 13.50.260; *see also* Laws of 2014, ch. 175, § 4. In amending the sealing requirements and providing for routine sealing hearings for particular offenses, the legislature affirmed that "the primary goal of the Washington state juvenile justice system is . . . rehabilitation," and emphasized that a critical component of this mandate is the ability of a juvenile to facilitate his reintegration into society by restricting access to his juvenile file. *Id.* § 1 ("[I]t is the policy of the state of Washington that the interest in juvenile rehabilitation and reintegration constitutes compelling circumstances that outweigh the public interest in continued availability of juvenile court records.").

Like the Washington legislature, the state judiciary has consistently safeguarded the confidentiality protections of the juvenile justice system. In *In re Lewis*, the State Supreme Court held that a statute permitting juvenile courts to exclude the public from proceedings did not violate Article I, Section 10. 51 Wn.2d 193, 316 P.2d 907 (1957). The Court recognized that the purpose of confidentiality in juvenile proceedings was to "protect the child from notoriety and its ill effects," a goal consistent with the rehabilitative mission of the juvenile system, and held that this policy did not violate the open courts right. *Id.* at 198-200.

The State argues that *Lewis* is no longer good law because it pre-

dated the U.S. Supreme Court's decision in *Gault* and was decided at a time when juveniles were not granted full due process rights. Br. of Appellant at 11-14. However, *Gault* did not reject the confidentiality ingrained in the juvenile justice system, and instead explicitly affirmed that "there is no reason why, consistently with due process, a State cannot continue . . . to provide and to improve provision for the confidentiality of records of . . . court action relating to juveniles." *In re Gault*, 387 U.S. at 25. Accordingly, after *Gault*, Washington has continued to protect the right of rehabilitated juvenile offenders to confidentiality. The Washington State legislature originally codified RCW 13.50.050 with the benefit of *Gault's* guidance,[4] and Washington courts have consistently enforced that statute as it is written. *See, e.g.*, *State v. T.K.*, 139 Wn.2d 320, 987 P.2d 63 (1999) (superseded by statute); *Nelson v. State*, 120 Wn. App. 470, 85 P.3d 912 (2003). Indeed, the *Ishikawa* decision itself identified juvenile proceedings as a "clear" example of an area where open judicial proceedings are not required. *Ishikawa*, 97 Wn.2d at 367; *see also Cohen v. Everett City Council*, 85 Wn.2d 385, 388, 535 P.2d 801 (1975).

Like Washington, the federal system and the vast majority of states have continued, after *Gault*, to promote the rehabilitation of juveniles

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[4] In fact, the overhaul of the juvenile justice system in 1977 was explicitly undertaken to bring Washington's code into compliance with *Gault*. Wash. State Leg., *1977 Legislative Report*, 45th Sess. & 1st Ex. Sess., at 38-39 (1977) (on file with University of Washington Gallagher Law Library and with the author).

through the confidentiality of juvenile court records and even proceedings. Federally, the Juvenile Justice Delinquency Prevention Act of 1974 authorizes federal courts to close juvenile delinquency proceedings and records, prohibiting in particular the publication of the juvenile's name. Pub. L. No. 93-415, § 508, 88 Stat. 1109 (1974) (codified as amended at 18 U.S.C. § 5038); 18 U.S.C. § 5032 (permitting juvenile delinquency proceedings in chambers). Likewise, the vast majority of states consider juvenile court records confidential and presumptively closed to the general public in all[5] or nearly all[6] cases. Am. Bar Ass'n Crim. Justice Section, *Think Before You Plead: Juvenile Collateral Consequences in the United States* (last accessed Aug. 11, 2014), http://www.beforeyouplead.com (outlining practices in all 50 states). Even states that permit general access to juvenile records require or permit sealing of the records of rehabilitated

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[5] 17 states consider juvenile records closed to the general public, with some allowing confidential access to specified entities involved in the juvenile's care, such as law enforcement, child protective agencies, and administrators at the school where the child is enrolled: Alabama, Arkansas, California, Connecticut, Hawaii, Kentucky, Maryland, North Carolina, North Dakota, New Hampshire (permits release of certain information for felonies but not the name of the juvenile offender), Ohio, Rhode Island, South Carolina (court proceedings may be open), South Dakota, Texas (records available for employment requiring licensure), Vermont (hearings open for ages 16-17), and Wyoming. Am. Bar Ass'n Crim. Justice Section, *Think Before You Plead: Juvenile Collateral Consequences in the United States* (last accessed Aug. 11, 2014), http://www.beforeyouplead.com.

[6] 23 states consider juvenile court records confidential except in certain enumerated situations or where records or identifying information may be public, including cases involving the commission of certain serious offenses, juveniles of certain ages, or repeat offenders: Alaska, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Oklahoma, Pennsylvania, Tennessee, Utah, Virginia, West Virginia, and Wisconsin. *Id.*

juveniles.[7] *Id.* Indeed, the courts of several other states have found that experience and logic do not require public access to all aspects of juvenile proceedings. *See Natural Parents of J.B. v. Fla. Dep't of Children & Family Servs.*, 780 So.2d 6, 9, 26 Fla. L. Weekly S86 (Fla. 2001); *State ex rel. Plain Dealer Publ'g Co. v. Geauga Cnty. Ct. Com. Pl., Juv. Div.*, 734 N.E.2d 1214, 1218, 90 Ohio St. 3d 79 (Ohio 2000); *San Bernardino Cnty. Dep't of Pub. Soc. Servs. v. Super. Ct. of San Bernardino Cnty.*, 283 Cal. Rptr. 332, 338-43, 232 Cal. App. 3d 188, 19 Media L. Rep. 1545 (Cal. Ct. App. 1991); *In re N.H.B.*, 769 P.2d 844, 851 (Utah Ct. App. 1989).

2. Public Access to the Court Records of Rehabilitated Juveniles Would not Have a Significant Positive Effect on the Functioning of the Juvenile Justice System

Under the logic prong of the "experience and logic" test, public access is favored when it would play "a significant positive role in the functioning of the particular process in question." *Sublett*, 176 Wn.2d at 73 (quoting *Press-Enterprise II*, 478 U.S. at 8). Public access would

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[7] Of the nine states that, like Washington, presumptively grant public access to juvenile court records, all either require or permit such records to be sealed or destroyed after a period of time has passed without re-offense: Arizona (destruction on petition at age 18 or 25 depending on offense); Idaho (expungement on petition at age 18 or five years after end of court jurisdiction or release from corrections); Iowa (sealing on petition at age 18 and two years after last official action on case); Kansas (expungement for most crimes on petition at age 23 or two years after discharge); Michigan (adjudication for a single offense excepting certain felonies may be set aside on petition at age 24 or five years after disposition or completion of detention; diversion records automatically destroyed at age 17); Montana (sealing automatic at age 18); Nebraska (sealing automatic at age 17 or earlier on petition if satisfactorily rehabilitated); New Mexico (sealing automatic at age 18 or earlier on motion if two years after release from custody/supervision); and Oregon (expunction for most crimes on petition five years after termination). *Id.*

undermine the primary purpose behind creating and operating a juvenile justice system separate from the adult criminal system—promotion of the rehabilitation and reintegration of juveniles. *See supra*, Part B.1. In addition, public access to the records of rehabilitated juveniles would also fail to enhance the "basic fairness" and "appearance of fairness" of juvenile proceedings. *Cf. Sublett*, 176 Wn.2d at 75 (quoting *Press-Enterprise Co. v. Super. Ct. of Cal.* (*Press-Enterprise I*), 464 U.S. 501, 508, 104 S. Ct. 819, 78 L. Ed. 2d 629 (1984)).

As the Washington legislature recognized in crafting our state's juvenile records policy, "[w]hen juvenile court records are publicly available, former juvenile offenders face substantial barriers to reintegration, as they are denied housing, employment, and education opportunities on the basis of these records." Laws of 2014, ch. 175, § 1; *see also* King County Prosecuting Attorney's Office, *Investing for no Return* at 3 (2012), http://www.kingcounty.gov/~/media/Prosecutor/documents/2013/final_reentry_summit_report_2012.ashx ("It is *not* the mission of the criminal justice system to impose lifelong disabilities upon people who have been convicted of a crime, served their time, and paid restitution and other legal financial obligations."). This loss of opportunity may lead to recidivism. *See Smith*, 443 U.S. at 107-08 (Rehnquist, J., concurring) ("Publication of

the names of juvenile offenders may seriously impair the rehabilitative goals of the juvenile justice system and handicap the youths' prospects for adjustment in society and acceptance by the public . . . and may cause the juvenile to lose employment opportunities . . . ."); Danielle R. Oddo, *Removing Confidentiality Protections and the "Get Tough" Rhetoric: What Has Gone Wrong with the Juvenile Justice System?*, 18 B.C. Third World L.J. 105, 131-32 (1998) (disclosure of juvenile record hinders employment and educational opportunities, which may ultimately lead to recidivism); Laubenstein, *supra*, at 1904-05 (same).

This harm is particularly acute when access to records reveals the name of past juvenile offenders to community members such as would-be employers, landlords, or educators, who commonly run criminal background checks to screen applicants. *See* Society for Human Resource Management, *SHRM Survey Findings: Background Checking – the Use of Criminal Background Checks in Hiring Decisions* (July 19, 2012), http://www.shrm.org/Research/SurveyFindings/Articles/Pages/CriminalBackgroundCheck.aspx (2012 survey finding 69% of employers conduct criminal background checks on applicants); Center for Community Alternatives, *The Use of Criminal History Records in College Admissions Reconsidered* at 8, 12 (Nov. 2010), http://www.communityalternatives.org/pdf/Reconsidered-criminal-hist-

recs-in-college-admissions.pdf (66% of universities surveyed collect criminal justice information regarding applicants, with 20% running criminal background checks).[8] Indeed, a significant portion of the public accesses juvenile records to conduct background checks on potential tenants, volunteers, or employees—not to report the news or monitor the proper functioning of the courts. SEARCH Nat'l Consortium for Justice Info. & Statistics, *Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information* at 19 (2005), http://www.search.org/files/pdf/RNTFCSCJRI.pdf ("[I]t is the sense of the Task Force that the overwhelming majority of criminal background checks that commercial vendors conduct are for purposes of employee, volunteer, and tenant screening."). To this end, approximately 250 private consumer reporting agencies subscribe to the courts' JIS-Link database, where they have access to juvenile records that they can then disseminate to their customers at the click of a mouse. *See* Admin. Office of the Courts, Open 2013 JIS-Link Self-Reported Business Type Accounts (May 29, 2014) (on

[8] The University of Washington is now among those universities that collect criminal justice information regarding applicants. University of Washington, *2014-15 Application for Freshman Admission & Scholarships* at A10, http://admit.washington.edu/sites/default/files/Fr-App-2014-v3.pdf. The University requires applicant disclosure rather than background checks, but the effect of sealing on such queries is the same—permitting an applicant to respond as if the juvenile court proceedings never occurred. RCW 13.50.260(6)(a).

file with author).[9] Such advances in technology have made records much more widely available today than they were in the past, exacerbating the harm caused by lifelong access to juvenile records. SEARCH Nat'l Consortium for Justice Info. & Statistics, *supra*, at 29-30.[10]

Requiring the application of the *Ishikawa* factors before sealing juvenile records would, for many juveniles, erect a substantial, almost insurmountable barrier to success. The burden of demonstrating that the *Ishikawa* factors support sealing is far more demanding than satisfying the factors established by the legislature in the former RCW 13.50.050. The statute required that a juvenile have demonstrated rehabilitation by completing the terms of disposition, but under *Ishikawa*, the proponent of sealing would also carry the burden of demonstrating, *inter alia*, a "serious and imminent threat" to a "compelling interest" and that sealing is the "least restrictive means available" that is effective to protect against that threat. *Ishikawa*, 97 Wn.2d at 37-38. In addition, *Ishikawa* would require that the court consider limiting the duration of sealing, potentially requiring a rehabilitated juvenile to return to court over and over to

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[9] According to a list of 2013 JIS-Link customers obtained through a public records request to the Administrative Office of the Courts, 251 customers self-identify as using the system for background investigations, business information databases, credit checks, employment screening, information services, property management, screening services, and tenant screening. *See* Admin. Office of the Courts, Open 2013 JIS-Link Self-Reported Business Type Accounts (May 29, 2014) (on file with author).

[10] The Fair Credit Reporting Act limits the dissemination of sealed records by requiring that records be up to date before credit reporting agencies may disseminate them to employers. 15 U.S.C. §1681k(a)(2).

preserve his ability to reintegrate into society. *See id.* at 39. That records are more difficult to seal under *Ishikawa* is exemplified by the statistics obtained by *amici* through a public records request to the Administrative Office of the Courts. A miniscule percentage of adult criminal cases are sealed under the *Ishikawa* test: of the approximately 3.8 million adult criminal cases filed between 2000 and 2010, only 628 (or 0.016%) have been sealed. In contrast, juvenile records have been sealed under former RCW 13.50.050 in nearly 16,500 cases, or approximately 6.2% of the over 260,000 juvenile criminal cases filed during that same period. Admin. Office of the Courts, Sealed Adult and Juvenile Criminal Cases 2000-2012 (rec'd June 3, 2014) (on file with author). Were the State to prevail, the number of juveniles able to benefit from the rehabilitative premise of sealing would plummet.

In addition to subverting the rehabilitative purpose of the juvenile justice system, public access to records of rehabilitated juveniles would also fail to enhance the structural fairness or legitimacy of proceedings. The open courts right ordinarily promotes structural fairness by permitting the public to "bear[] witness and scrutinize[] the proceedings, assuring they are fair and proper." *In re Detention of D.F.F.*, 172 Wn.2d 37, 45, 256 P.3d 357 (2011). The State argues that sealing of juvenile records will impair structural fairness by hampering researchers' ability to access

sealed records in order to monitor and uncover abusive or neglectful practices. Br. of Appellant at 15-20. However, current law provides numerous opportunities to monitor the juvenile justice system that are specifically tailored to its unique, rehabilitative goals.

First, the legislature carefully designed Washington's juvenile justice system to provide the public with a variety of avenues to access information about juvenile cases. Statutes permit members of the press and the public to access all juvenile records—sealed and unsealed—for "legitimate research for educational, scientific, or public purposes." RCW 13.50.010(8);[11] *Seattle Times Co. v. Benton Cnty.*, 99 Wn.2d 251, 661 P.2d 964 (1983) (journalism may constitute "legitimate research" permitting access under RCW 13.50.010(8)). RCW 13.50.010(8) requires researchers to maintain the anonymity of all persons mentioned in juvenile records, which strikes an ideal balance between ensuring the ability of researchers to uncover systemic abuses while protecting the individual juveniles who were the victims of those abuses from public stigma. In addition, all members of the public enjoy access to juvenile court

[11] Although RCW 13.50.010(8) was amended in 2010 to delete the sentence explicitly including sealed records in the universe of documents researchers may inspect, this revision did not change the meaning of the paragraph. Laws of 2010, ch. 150, §3. Rather, the sealing provisions of RCW 13.50 continue to recognize that records included in a sealing order are subject to inspection under RCW 13.50.010(8). RCW 13.50.260(7). The legislative history behind the revision evidences no intention to change the meaning of RCW 13.50.010(8).

proceedings, which are open unless closed for good cause. RCW 13.40.140(6). Accordingly, the juvenile justice system designed by the legislature offers ample opportunities for the public to monitor and uncover abuses in the juvenile system.

Second, Washington's juvenile justice system contains other safeguards to ensure the fairness of proceedings. For instance, the availability of appellate review for non-standard dispositions and the system of judicial discipline provide a significant check on abuses of power. RCW 13.40.230; RCW 2.64 (establishing the Washington State Commission on Judicial Conduct and authorizing disciplinary actions for conduct that impairs "the integrity of the judiciary" and "undermines the public confidence"). In Luzerne County, Pennsylvania—one leading example of abuse cited by the State—the Interbranch Commission on Juvenile Justice found that similar safeguards struck "the correct balance of public access and child protection" and thus were a more appropriate means to address abuses than a policy of total openness. Interbranch Commission on Juvenile Justice, *Report* at 41 (May 2010), *available at* http://www.pacourts.us/assets/files/setting-2032/file-730.pdf?cb=4beb87.

Accordingly, public access to the records of rehabilitated juveniles would not only impair the juvenile justice system's ability to complete its mission of reintegrating juvenile offenders, it would also fail to enhance

the fairness of the juvenile justice process. This result runs contrary to the policy balance struck by the Washington legislature, *see supra* Part B.1, and also to the preferences of Washingtonians themselves, who prefer a rehabilitative approach to juvenile justice over a punitive approach. *See* Alex R. Piquero & Laurence Steinberg, *Public Preferences for Rehabilitation Versus Incarceration of Juvenile Offenders*, 38 J. Crim. Just. 1, 2-3, 5 (2010). Because preventing juveniles from re-assimilating into society harms the rehabilitative goals of the juvenile justice system, it can only serve to undermine public confidence in the process.

CONCLUSION

For the foregoing reasons, *amici* respectfully request the Court to affirm the superior court order sealing S.J.C.'s juvenile record and to hold that the right of public access protected by Article I, Section 10 does not extend to the court records of rehabilitated juveniles.

Respectfully submitted this 11th day of August 2014.

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