

Supreme Court Issues  
Cases Not Yet Set & April Term 2023  
April 7, 2023

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- Criminal Law—Crimes—Criminal Solicitation—Elements—Offer of “Thing of Value”—What Constitutes—Monetary Value—Necessity.
- \*Criminal Law—Felony Murder—Arraignment—Delay—Effect—Due Process.
- Criminal Law—First Degree Child Molestation—Ineffective Assistance of Counsel—Failure to Request Jury Instruction—Lesser Included Offense—Fourth Degree Assault.
- Criminal Law—First Degree Murder by Extreme Indifference—Jury Instructions—Lesser Included Offense—First Degree Manslaughter—Failure to Instruct.
- Criminal Law—Officer Statements—Fifth Amendment Privilege Against Self-Incrimination—Assertion—Nonparty—Personal Privilege.
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- Property—Slander of Title—Elements—Malice—What Constitutes.
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- Public Employment—Wrongful Discharge—Violation of Public Policy—Accommodation of Employee—Religious Practices.
- Sexual Offenses—Protection Order—Nonconsensual Sexual Conduct—Ability to Consent—Incapability—Affirmative Defense of Consent—Reasonable Belief—Applicability.
- Statutes—Constitutionality—Law Enforcement—Sheriffs—Powers—Delegation of Authority.
- Washington Voter Rights Act—compactness requirement—constitutionality—Fourteenth Amendment—privileges and immunities clause of Washington Constitution.
- Washington Voter Rights Act—minority voters—protected class—vote dilution—redistricting—repeal by implication.

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## Cases Not Yet Set

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### **Automobiles—Driving While Intoxicated—Breath or Blood Test—Testing Procedure—Draeger Alcotest 9510—Administrative Rules—Noncompliance—Effect**

Whether the breath alcohol concentration test results obtained from all Draeger Alcotest 9510 machines are invalid and inadmissible under [RCW 46.61.506](#) because they do not comply with [WAC 448-16-060\(2\)](#), which requires the mean of the breath samples to be calculated and rounded to four decimal places before being analyzed.

No. 101171-7, *State* (plaintiff-petitioner) v. *Keller* (defendant-respondent).

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### **\*Consumer Protection—Action for Damages—Unfair or Deceptive Conduct—Unfairness—What Constitutes—Price Gouging—Determination**

Whether in this class action brought in part under the Washington Consumer Protection Act (CPA) by consumers who made purchases from an online retailer following the declaration of the COVID-19 national emergency, alleged price gouging by the retailer may constitute an “unfair” act or practice under the CPA, and if so, whether the court or the jury determines what percentage increase in the price of goods is “unfair.”

No. 101858-4, *Greenberg, et al.* (plaintiffs) v. *Amazon.com, Inc.* (defendant).

Certified from U.S. Dist. Court, W. Dist. of Wash.

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## **Constitutional Law—Right to Travel—Intrastate Travel—Recreational Vehicle Parking Ordinance**

Whether the Washington Constitution protects the right in intrastate travel, and if so, whether the city of Lacey’s recreational vehicle parking ordinance, [LMC §§ 10.14.020-045](#), violates that right.

No. 101188-1, *Potter* (plaintiff) v. *City of Lacey, et al.* (defendant-appellee).

Certified from the US Court of Appeals 9<sup>th</sup> Circuit Fed. Court.

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## **\*Corporate Negligence—Injuries Arising From Health Care—Hepatitis C Outbreak—Nurse’s Drug Diversion—Proximate Causation—Legal Causation**

Whether in this class action for corporate negligence and injuries stemming from a Hepatitis C outbreak—where the outbreak was caused by a nurse who diverted patients’ medications for her own use and administered the remainder to patients using shared needles, the hospital sent patients letters stating that they had received care in the emergency department at a time when a hospital employee may have exposed patients to Hepatitis C, and the letter advised the patients to have their blood tested—patients who did not receive care from the nurse and did not contract Hepatitis C may establish legal causation for their claimed damages.

No. 101537-2, *M.N. & G.T.* (petitioners) v. *Multicare Health System, Inc.* (respondent).

[23 Wn. App. 2d 558 \(2022\)](#).

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**\*Criminal Law—Felony Murder—Arraignment—Delay—Effect—Due Process**

Whether the defendant was entitled to reversal of his conviction for felony murder on the basis the prosecutor delayed filing charges until 12 years after concluding that probable cause existed to charge the defendant.

No. 101502-0, *State* (petitioner) *v.* *Stearns* (respondent).

[23 Wn. App. 2d 580 \(2022\)](#).

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**Criminal Law—First Degree Child Molestation—Ineffective Assistance of Counsel—Failure to Request Jury Instruction—Lesser Included Offense—Fourth Degree Assault**

Whether in this criminal prosecution for first degree child molestation, defense counsel was prejudicially ineffective in failing to request a lesser included offense instruction on fourth degree assault.

No. 100953-4; *State* (respondent) *v.* *Bertrand* (appellant).

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**Employment—Compensation—Minimum Wage Act—Civil Detainees—Claim for Damages—Equitable Remedies—Unjust Enrichment—Adequate Remedy**

Whether, if the Washington Minimum Wage Act applies to work performed by civil detainees confined in a private detention center operating under a federal contract, an award of damages to the detainees in a class action under the act is an adequate legal remedy that forecloses an award of unjust enrichment to the State in its own action under the act.

No. 101786-3, *Nwauzor, et al.* (plaintiffs-appellees) *v.* *The GEO Grp., Inc.* (defendant-appellant). (See also: [Employment—Compensation—Minimum Wage Act—Applicability—Civil Detainees—“Employee”—Determination](#)).

Certified from the U.S. Court of Appeals for the 9<sup>th</sup> Circuit.

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## **Employment—Compensation—Minimum Wage Act—Applicability—Civil Detainees—“Employee”—Determination**

Whether in this wage action in federal court brought by the State of Washington and a class of federal immigration detainees who participate in voluntary work programs while held in a private detention center operating under a federal government contract, the detainees qualify as “employees” within the meaning of the Washington Minimum Wage Act, and if so, whether civil detainees working in comparable circumstances in a private detention facility operating under a State contract do not qualify as “employees” under the act, thus barring the act’s application to this action under the intergovernmental immunity doctrine.

No. 101786-3, *Nwauzor, et al.* (plaintiffs-appellees) v. *The GEO Grp., Inc.* (defendant-appellant). (See also: [Employment—Compensation—Minimum Wage Act—Civil Detainees—Claim for Damages—Equitable Remedies—Unjust Enrichment—Adequate Remedy](#)).

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## **\*Employment—Retention—Negligent Retention—Elements—Injury-Causing Conduct of Employee—Scope of Employment—Outside Scope—Necessity**

Whether in an action against a law enforcement agency for negligent retention, the plaintiff must prove that the employee-officer’s injury-causing conduct occurred outside the scope of employment.

No. 101820-7, *Dold, et al.* (plaintiffs) v. *Snohomish County, et al.* (defendants).

Certified from US District Court Western District of Washington.

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**\*Insurance—Action for Bad Faith Denial of Coverage—Elements—Harm—Noneconomic Damages—Emotional Distress—Proof—Sufficiency—Objective Symptomatology**

Whether in this action against a health insurer for bad faith denial of coverage, the claimant must produce evidence of objective symptomatology of harm in order to recover emotional distress damages.

No. 101561-5, *Premera Blue Cross* (petitioner) v. *P.E.L., P.L., & J.L.* (respondents). (See also: [Insurance—Health Insurance—Policy—Action for Breach for Failure to Comply with Federal Affordable Health Care Act—Private Right of Action—Availability—Absence of Federal Right of Action—Federal Preemption—Applicability](#); [Insurance—Health Insurance—Coverage—Mental Health Services—Mental Health Parity Act—Policy Exclusions—Validity](#)).

24 Wn. App. 2d 487 (2022).

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**\*Insurance—Health Insurance—Coverage—Mental Health Services—Mental Health Parity Act—Policy Exclusions—Validity**

Whether a health insurance policy’s exclusion of wilderness-based mental health programs violates the federal mental health parity statute, 42 U.S.C. § 300gg-26(a)(3)(A)(ii), or related regulations requiring parity of coverage between medical benefits and mental health or substance abuse-related benefits.

No. 101561-5, *Premera Blue Cross* (petitioner) v. *P.E.L., P.L., & J.L.* (respondents). (See also: [Insurance—Health Insurance—Policy—Action for Breach for Failure to Comply with Federal Affordable Health Care Act—Private Right of Action—Availability—Absence of Federal Right of Action—Federal Preemption—Applicability](#); [Insurance—Action for Bad Faith Denial of Coverage—Elements—Harm—Noneconomic Damages—Emotional Distress—Proof—Sufficiency—Objective Symptomatology](#)).

24 Wn. App. 2d 487 (2022).

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**\*Insurance—Health Insurance—Policy—Action for Breach for Failure to Comply with Federal Affordable Health Care Act—Private Right of Action—Availability—Absence of Federal Right of Action—Federal Preemption—Applicability**

Whether this state contract action for breach of a health insurance policy provision requiring the insurer to comply with the federal Affordable Care Act is preempted on the basis the federal act does not provide a private right of action for the underlying violation.

No. 101561-5; *Premera Blue Cross* (petitioner) v. *P.E.L., P.L., & J.L.* (respondents). (See also: [Insurance—Action for Bad Faith Denial of Coverage—Elements—Harm—Noneconomic Damages—Emotional Distress—Proof—Sufficiency—Objective Symptomatology](#); [Insurance—Health Insurance—Coverage—Mental Health Services—Mental Health Parity Act—Policy Exclusions—Validity](#)).

[24 Wn. App. 2d 487 \(2022\)](#).

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**\*Insurance—Personal Injury Protection—Medical Provider’s Charges—Reasonableness—Determination—Use of Database—Consumer Protection—Unfair Practice—Defenses—Safe Harbor—Good Faith—Applicability**

Whether a personal injury protection insurer’s use of a database to determine the reasonableness of medical providers’ charges for the care of covered insureds, which compares the charges to the 80th percentile of charges for the same treatment in the geographical area, violates the Consumer Protection Act, and whether the act’s “safe harbor” or a common law “good faith” defense exempts the insured from liability.

No. 101576-3, *Schiff* (petitioner) v. *Liberty Mut. Fire Ins. Co.* (respondent).

[24 Wn. App. 2d 513 \(2022\)](#).

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**Mandamus—Duty to Act—Competency Restoration—In-Custody Criminal Defendants—Timeliness**

Whether the secretary of the State Department of Health and Human Services has a clear nondiscretionary legal duty, actionable through mandamus in favor of a county, to perform expedient competency evaluations and restorations of criminal defendants in custody pending trial.

No. 101520-8, *Spokane County* (petitioner) v. *Meneses* (respondent).

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**\*Mechanics’ Liens—Enforcement—Notice to Owners—Second-Tier Subcontractor—Labor Lien—Prelien Notice—Necessity**

Whether in this case involving a second-tier subcontractor’s lien for labor and materials for unpaid framing work, the subcontractor was required to provide the property owner with prelien notice of its labor lien in order to enforce the lien under the applicable statutes.

No. 101591-7, *Velazquez Framing, LLC* (petitioner) v. *Cascadia Homes, Inc.* (respondent).

[24 Wn. App. 2d 780 \(2022\).](#)

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**Public Employment—Wrongful Discharge—Violation of Public Policy—Accommodation of Employee—Religious Practices**

Whether, in this case for wrongful termination of a public employee in violation of public policy, the employee raised a material question of fact as to whether the employer failed to adequately accommodate the employee’s absences to attend religious events.

No. 101386-8, *Suarez* (respondent) v. *State, et al.* (petitioner).

[23 Wn. App. 2d 609 \(2022\).](#)

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**April Term 2023**  
**Cases Set for Oral Argument**

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**Arbitration—Award—Review—Appealability of Pre-Arbitration Court Rulings—Issues Not Addressed at Arbitration**

Whether in this appeal following an arbitration and a trial de novo request, the parties may appeal the trial court’s partial summary judgment ruling entered before arbitration regardless of the validity of the trial de novo request.

No. 101329-9, *Crossroads Mgmt. (respondent) v. Lewis, et al. (petitioner)*. (Oral argument 5/9/23). (See also: [Arbitration—Review—Trial de Novo—Request—Signature of Party—Necessity](#); [Landlord and Tenant—Deposit—Duty to Provide Refund Due—Retention—Statement of Grounds—Adequacy—Double Damages—Availability](#)).

Unpublished.

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**Arbitration—Review—Trial de Novo—Request—Signature of Party—Necessity**

Whether following issuance of an arbitration award, a trial de novo request submitted by a party’s attorney at the party’s direction and signed by the attorney is invalid under [RCW 7.06.050](#) and [SCCAR 7.1](#) if not signed by the party.

No. 101329-9, *Crossroads Mgmt. (respondent) v. Lewis, et al. (petitioner)*. (Oral argument 5/9/23). (See also: [Arbitration—Award—Review—Appealability of Pre-Arbitration Court Rulings—Issues Not Addressed at Arbitration](#); [Landlord and Tenant—Deposit—Duty to Provide Refund Due—Retention—Statement of Grounds—Adequacy—Double Damages—Availability](#)).

Unpublished.

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## **Civil Litigation—Discovery—Depositions—Corporate Officers—Protection Order—“Apex Doctrine”—Applicability**

Whether in this action for damages against a bank, the trial court should have granted the bank’s motion for an order protecting certain high-ranking officers from depositions under the “apex doctrine,” an analytical framework courts in some jurisdictions use to assess whether to permit the depositions of high-ranking corporate officers or government officials.

No. 100717-5, *Stratford, et al.* (respondents) v. *Umpqua Bank* (petitioners). (Oral argument 6/27/23).

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## **Civil Rights—Discrimination—Due Process—Crime Free Rental Housing Program—Action by State Against City—Individual Police Officers—Qualified Immunity**

Whether, in this action by the State alleging discriminatory police enforcement of a city Crime Free Rental Housing Program, the doctrine of qualified immunity bars suit against individually named police officers.

No. 101205-5, *State* (petitioner) v. *City of Sunnyside, et al.* (respondent). Oral argument 6/15/23). (*See also*: [Civil Rights—Discrimination—Due Process—Crime Free Rental Housing Program—Enforcement—Action by State Against City—Authority—Powers and Duties of the Attorney General—Collateral Estoppel](#)).

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## **Civil Rights—Discrimination—Due Process—Crime Free Rental Housing Program—Enforcement—Action by State Against City—Authority—Powers and Duties of the Attorney General—Collateral Estoppel**

Whether in this action by the State against a city alleging discriminatory police enforcement of a Crime Free Rental Housing Program enacted pursuant to statute, the Attorney General has the authority to sue on behalf of the State and whether this action is barred by the doctrine of collateral estoppel in light of a federal district court remand order.

No. 101205-5, *State* (petitioner) *v.* *City of Sunnyside, et al.* (respondent). (Oral argument 6/15/23). (See also: [Civil Rights—Discrimination—Due Process—Crime Free Rental Housing Program—Action by State Against City—Individual Police Officers—Qualified Immunity](#)).

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## **Costs—Attorney Fees—Review—Affirmance on Other Grounds—Equitable Grounds—Bad Faith—Presuit Conduct**

Whether in this slander of title action in which the Court of Appeals reversed a judgment in favor of the plaintiff, the court exceeded its authority in affirming the trial court's attorney fee award for the plaintiff on the equitable ground of presuit bad faith by the defendant, where the trial court did not award fees on that ground and neither party asserted it as a basis for fees.

No. 101149-1, *Dalton M, LLC* (respondent) *v.* *U.S. Bank Nat'l Ass'n, et al.* (respondent). (Oral argument 5/9/23). (See also: [Property—Slander of Title—Elements—Malice—What Constitutes](#)).

[20 Wn. App. 2d 914 \(2022\)](#).

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**Criminal Law—Crimes—Criminal Solicitation—Elements—Offer of “Thing of Value”—What Constitutes—Monetary Value—Necessity**

Whether in this prosecution for criminal solicitation of murder under [RCW 9A.28.030](#), the defendant’s promise to her child to live together forever if the child poisoned his father constitutes a “thing of value” sufficient to support a conviction for solicitation.

No. 101442-2, [State \(petitioner\) v. Valdiglesias LaValle \(respondent\)](#). (Oral argument 6/13/23).

[23 Wn. App. 2d 934 \(2022\)](#).

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**Criminal Law—First Degree Murder by Extreme Indifference—Jury Instructions—Lesser Included Offense—First Degree Manslaughter—Failure to Instruct**

Whether in this prosecution for first degree murder by extreme indifference, the trial court erred in refusing to instruct the jury on first degree manslaughter as a lesser included offense.

No. 101398-1, [Avington, \(petitioner\) v. State \(respondent\)](#). (Oral argument 5/25/23).

[23 Wn. App. 2d 824 \(2022\)](#).

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## **Criminal Law—Officer Statements—Fifth Amendment Privilege Against Self-Incrimination—Assertion—Nonparty—Personal Privilege**

Whether in this criminal prosecution against three city of Tacoma police officers arising from the death of an unarmed Black man while in police custody, the superior court erroneously permitted the city to decline to produce, on Fifth Amendment grounds under *Garrity v. New Jersey*, 385 U.S. 493, 87 S. Ct. 616, 17 L.Ed.2d 562 (1967), the statement of a nonparty officer who responded to the scene, where the statement was made during the city’s internal investigation and the officer was not charged with crimes and did not assert the privilege against self-incrimination.

No. 101297-7, *State* (petitioner) *v.* *Burbank, et al.* (respondents). (**Stricken**)

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## **Criminal Law—Right to Counsel—Critical Stage—Bail Hearing—Violation—Harmless Error**

Whether in this criminal prosecution, the defendant’s bail hearing was a critical stage of the proceedings for which the defendant had a right to the presence of counsel, and if so, whether any error in counsel’s absence was harmless.

No. 101269-1, *State* (respondent) *v.* *Charlton* (petitioner). (Oral argument 6/15/23).

[23 Wn. App. 2d 150 \(2022\)](#).

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## **Criminal Law—Right to Counsel—Critical Stage—Bail Hearing—Violation—Harmless Error—Ineffective Assistance of Counsel**

Whether in this criminal prosecution, the defendant’s initial appearance and/or bail hearing was a critical stage of the proceedings for which the defendant had a right to the presence of counsel, and if so, whether any error in counsel’s absence was harmless or whether counsel was ineffective in failing to subsequently challenge the bail hearing.

No. 101159-8, *State* (respondent) *v.* *Heng* (petitioner). (Oral argument 6/15/23).

[22 Wn. App. 2d 717 \(2022\)](#).

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## **Criminal Law—Trial—Multiple Defendants—Joinder—Propriety—Common Victim But Separate Criminal Acts**

Whether, in this prosecution for child sex crimes committed by two defendants involving a common victim and location but wholly separate criminal acts by the defendants, the trial court erred in joining the two prosecutions for trial

No. 101279-9, *State (respondent) v. Martinez (petitioner)*. (Oral argument 5/30/23).

Consol. w/ 101124-5, *State (respondent) v. Martinez (petitioner)*.

22 Wn. App. 2d 621 (2022).  
Unpublished.

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## **Eminent Domain—Inverse Condemnation—Alternative Theories—Tort Claims**

Whether trespassing and nuisance tort claims stemming from flooding caused by a dam may be asserted in addition to claims for inverse condemnation for the same damage.

No. 101241-1, *Maslonka (respondent) v. Pub. Util. Dist. No. 1 of Pend Oreille County (petitioner)*. (Oral argument 5/16/23). (See also: [Eminent Domain—Inverse Condemnation—Operation of Dam—Flooding—Standing—Property Acquired After Taking—Diminished Value—Burden of Proof](#)).

23 Wn. App. 2d 1 (2022).

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**Eminent Domain—Inverse Condemnation—Operation of Dam—Flooding—Standing—Property Acquired After Taking—Diminished Value—Burden of Proof**

Whether in this inverse condemnation action stemming from flooding caused by a dam, the defendant government agency bore the burden of proving that the flooding caused no additional reduction in value to the affected property after the plaintiff acquired it.

No. 101241-1, *Maslonka (respondent) v. Pub. Util. Dist. No. 1 of Pend Oreille County (petitioner)*. (Oral argument 5/16/23). (See also: [Eminent Domain—Inverse Condemnation—Alternative Theories—Tort Claims](#)).

[23 Wn. App. 2d 1 \(2022\)](#).

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**Garnishment—Marital Wages—Separate Debt—Assets Subject to Garnishment—Limitations—Time Period**

Whether in this debt collection action, RCW 26.16.200, which prohibits the garnishment of either spouse’s marital wages to satisfy a judgment for the separate debt of a spouse unless the debt was reduced to judgment “within three years of the marriage,” the term “within three years of the marriage” means a span of time beginning three years before the marriage and ending three years after the marriage or means no longer than three years after the marriage, and if the statute does not bar garnishment if the debt was reduced to judgment more than three years before the marriage, whether the entirety of the debtor spouse’s marital wages may be garnished if necessary to satisfy the judgment.

No. 101444-9; *Nelson (plaintiffs) v. P.S.C., Inc.* (defendant). (Oral argument 5/18/23).

Certified from the U.S. Dist. Court Western Dist. of Wash.

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**Industrial Insurance—Injury—Causal Link With Employment—Denial of Claim—Request for Reconsideration—Timeliness—Extension—Department’s Request for Addendum—Standing—Independent Medical Examiner**

Whether, in this workers’ compensation case, the injured worker’s request for reconsideration of a Department of Labor and Industries order was timely on the basis the department’s request for an addendum from the independent medical examiner extended the deadline for seeking reconsideration, and whether the independent medical examiner had standing to seek reconsideration on the worker’s behalf.

No. 100855-4, *Long (petitioner) v. Autozone, et al. (respondent)*. (Oral argument 6/1/23).

[Unpublished.](#)

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**Insurance—All Risk Commercial Property Insurance—Action for Breach of Contract and Declaratory Relief—Other Action in Foreign Jurisdiction—Priority of Action Rule—Applicability**

Whether in this action for declaratory relief and breach of an insurance contract, the superior court erred in applying the priority of action rule in a manner that barred the defendant insurers from further prosecuting a related case brought in Illinois.

No. 100752-3, *Pacific Lutheran Univ. (respondents) v Certain Underwriters at Lloyd’s London, et al. (petitioners)*. (Oral argument 6/27/23).

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## **Landlord and Tenant—Deposit—Duty to Provide Refund Due—Retention—Statement of Grounds—Adequacy—Double Damages—Availability**

Whether in this lawsuit by tenants to recover the full amount of their security deposit from their landlords following the termination of their tenancy, the landlords complied with their duty under [RCW 59.18.280](#) to provide a statement of the basis for retaining any of the deposit together with payment of the refund due within the statutorily specified time, and if not, whether the tenants are eligible for double damages pursuant to the statute.

No. 101329-9, *Crossroads Mgmt. (respondents) v. Lewis, et al. (petitioners)*. (Oral argument 5/9/23). (See also: [Arbitration—Award—Review—Appealability of Pre-Arbitration Court Rulings—Issues Not Addressed at Arbitration; Arbitration—Review—Trial de Novo—Request—Signature of Party—Necessity](#)).

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## **Limitation of Actions—Negligence—Negligent Investigation—Wrongful Death—Child Sexual Abuse—Action Against State for Abuse Allegedly Committed During Dependency**

Whether [RCW 4.16.340\(1\)\(c\)](#), which requires an action for injury suffered as a result of childhood sexual abuse to be brought within three years of the time the victim discovered that the act caused the injury for which the claim is brought, bars this action against the State for negligence, negligent investigation, and wrongful death based on child sexual abuse occurring during a dependency, where the State was not the perpetrator of the abuse but was allegedly negligent in failing to prevent it.

No. 101477-5, *Wolf, et al. (petitioner) v. State (respondent)*. (Oral argument 6/27/23).

[24 Wn. App. 2d 290 \(2022\)](#).

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## **Medical Treatment—Malpractice—Limitation Period—Statute of Repose—Constitutionality—Privileges and Immunities**

Whether Washington’s medical negligence statute of repose, [RCW 4.16.350\(3\)](#), violates the privileges and immunities clause of the Washington Constitution, article I, section 12.

No. 101300-1, *Bennett* (plaintiff) v. *United States of America* (defendant). (Oral argument 6/13/23). (See also: [Medical Treatment—Malpractice—Limitation Period—Statute of Repose—Constitutionality—Right of Access to Courts](#)).

Certified from the U.S. District Court, Western District of Washington.

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## **Medical Treatment—Malpractice—Limitation Period—Statute of Repose—Constitutionality—Right of Access to Courts**

Whether Washington’s medical negligence statute of repose, [RCW 4.16.350\(3\)](#), unconstitutionally restricts the right to access the court in violation of article I, section 10 of the Washington Constitution.

No. 101300-1, *Bennett* (plaintiff) v. *United States of America* (defendant). (Oral argument 6/13/23). (See also: [Medical Treatment—Malpractice—Limitation Period—Statute of Repose—Constitutionality—Privileges and Immunities](#)).

Certified from the United States District Court, Western District of Washington.

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**Negligence—Wrongful Death—Premises Liability—Possessor of Land—Employee of Independent Contractor—Duty to Maintain Safe Premises—Delegation**

Whether in this wrongful death action involving an employee of an independent contractor who fell through a skylight while performing work on a landowner's premises, the landowner's common law duty toward invitees to guard against known or obvious dangers on the premises is satisfied by exercising reasonable care in delegating that duty to the independent contractor.

No. 101176-8, *Eylander (petitioner) v. Prologis Targeted U.S. Logistics Fund, et al. (respondents)*. (Oral argument 5/11/23).

[22 Wn. Ap. 2d 773 2022.](#)

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**Nuisance—Public Nuisance—What Constitutes—Statutory Violation—Legislative Declaration of Public Nuisance—Interference with Use or Enjoyment of Property—Injury to Public Health or Safety—Necessity**

Whether a violation of Washington's wildlife laws, animal cruelty laws, and/or the Endangered Species Act establishes a claim for public nuisance in the absence of a showing that the conduct was legislatively declared a public nuisance, interferes with the use and enjoyment of property, or is injurious to public health or safety.

No. 101264-1, *Animal Legal Defense Fund (plaintiff) v. Olympic Game Farm Inc., et al. (defendants)*. (Oral argument 5/30/23).

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**Open Government—Public Disclosure—Public Records—Exemption—Substantive Due Process Right to Personal Security—Victims of Domestic Violence, Sexual Assault—Applicability**

Whether in this Public Records Act suit, public employees have a substantive due process right to not have personal identifying information released by government agencies when the employees have been victims of domestic violence or sexual assault and the disclosed information may put the employees' personal safety at risk.

No. 101093-1; *Wash. Fed'n of State Empys., et al. (respondents) v. Freedom Found. (petitioners)*. (Oral argument 5/16/23).

[22 Wn. App. 2d 392 \(2022\)](#).

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**Personal Restraint—Petition—Timeliness—Statutory Limits—Exceptions—Facial Invalidity—Guilty Plea—Agreed Sentence—Exceptional Sentence—Miscalculated Standard Range—Remedy**

Whether in this criminal prosecution in which the superior court imposed an exceptional sentence pursuant to a plea agreement, the sentence is facially invalid because the standard range was miscalculated, thus exempting the petitioner's personal restraint petition from the one-year time limit on collateral review, and if so, whether the petitioner is entitled to be resentenced.

No. 101144-0, *In re Pers. Restraint of Fletcher* (petitioner). (Oral argument 5/18/23).

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## **Property—Slander of Title—Elements—Malice—What Constitutes**

Whether in this slander of title lawsuit, the plaintiff proved the element of malicious publication by showing that the defendant failed to act to uncover relevant facts about the plaintiff's title to the property at issue.

No. 101149-1, *Dalton M, LLC (respondent) v. U.S. Bank Nat'l Ass'n, et al. (respondent)*. (Oral argument 5/9/23). (See also: [Costs—Attorney Fees—Review—Affirmance on Other Grounds—Equitable Grounds—Bad Faith—Presuit Conduct](#)).

20 Wn. App. 2d 914 (2022).

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## **Property—State—Shorelands—Railroad Right-of-Way—Approval by United States Before Statehood—Land “Patented” by United States—Disclaimer of State Title Under State Constitution**

Whether a right of way along the shoreline of Lake Sammamish approved by the United States Department of the Interior in 1887 under the General Railroad Right-of-Way Act of 1875, 43 U.S.C. §§ 934-939, is a conveyance “patented by the United States” within the meaning of Article XVII, § 2 of the Washington Constitution, under which the state of Washington disclaimed title to lands patented by the United States.

No. 101075-3, *King County (plaintiff) v. Abernathy, et al. (defendants)*. (Oral argument 5/25/23).

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**Sexual Offenses—Protection Order—Nonconsensual Sexual Conduct—Ability to Consent—Incapability—Affirmative Defense of Consent—Reasonable Belief—Applicability**

Whether in this petition for a sexual assault protection order alleging nonconsensual sexual contact while intoxicated, the trial court was required to consider the respondent’s defense of reasonable belief that the petitioner consented.

No. 101330-2, *DeSean (petitioner) v. Sanger (respondent)*. (Oral argument 6/1/23).

[23 Wn. App. 2d 461 \(2022\)](#).

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**Statutes—Constitutionality—Law Enforcement—Sheriffs—Powers—Delegation of Authority**

Whether [RCW 10.116.030](#), which prohibits county law enforcement agencies from using tear gas in most riot situations without first receiving prior approval from the county’s highest elected official, violates article XI, section 5 of the Washington Constitution by delegating a core function of county sheriffs to other elected or appointed county officials.

No. 101375-2, *Snaza, et al. (petitioner) v. State (respondent)*. (Oral argument 5/11/23).

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## **Washington Voter Rights Act—compactness requirement—constitutionality—Fourteenth Amendment—privileges and immunities clause of Washington Constitution**

Whether the WVRA violates the equal protection clause of the Fourteenth Amendment and the privileges and immunities clause of the Washington Constitution because it does not contain a compactness requirement, and therefore makes race a predominant factor, and because it confers a privilege upon a specific class without reasonable grounds.

No. 100999-2; *Portugal, et al.* (petitioner) v. *Franklin County, et al.* (respondent). (Oral argument 5/11/23). (See also: [Washington Voter Rights Act—minority voters—protected class—vote dilution—redistricting—repeal by implication](#)).

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## **Washington Voter Rights Act—minority voters—protected class—vote dilution—redistricting—repeal by implication**

Whether the Washington Voting Rights Act (WVRA), which grants minority voters the right to compel redistricting to remedy vote dilution, was repealed by implication upon the reenactment of RCW 29A.76.010, which prohibits the use of population data for the purpose of favoring or disfavoring any racial group or political party.

No. 100999-2; *Portugal, et al.* (petitioner) v. *Franklin County, et al.* (respondent). (Oral argument 5/11/23). (See also: [Washington Voter Rights Act—compactness requirement—constitutionality—Fourteenth Amendment—privileges and immunities clause of Washington Constitution](#)).

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