No. 101573-9

SUPREME COURT OF THE STATE OF WASHINGTON

MARIANO ROMULO,

Appellant,

v.

SEATTLE PUBLIC UTILITIES, a Department of the CITY OF SEATTLE, a municipality,

Respondent.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

Washington Court of Appeals Case No. 82790-1-I

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I. INTRODUCTION

This Court's recent *Henderson v. Thompson* decision provides no basis for review here. During trial and in the weeks of post-trial briefing that followed, Petitioner Mariano Romulo ("Romulo") failed to raise any allegation that the jury's verdict or any of the trial court's rulings were motivated in any way by racial bias. Indeed, as the Petition for Review ("Petition") itself makes clear, such an allegation would have been, and is, wholly unsupported by the trial court record. In this and the remaining allegations raised in the Petition, Romulo fails to identify any issue warranting review pursuant to RAP 13.4(b). This Court should deny review.

II. STATEMENT OF THE CASE[1]

A. Cross-Connection Control

Seattle Public Utilities ("SPU") provides reliable, affordable, and environmentally conscious utility services to approximately 1.5 million customers. RP 1711:16-1712:12. Romulo began working as a Senior Inspector in SPU's Utility Service Inspection ("USI") group in 2009. RP 884:10-19. The USI group is tasked with a broad range of responsibilities relating to water quality. RP 1340:19-1342:3. The Senior Inspectors, however, are specifically responsible for SPU's cross-connection control program. *Id.*

A cross-connection is any actual or potential physical connection between a public water system and any source of

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[1] Romulo "accepts most of the facts as stated by the Court of Appeals," but nonetheless claims that some "are wrong or have been omitted." Petition at 12. Romulo, however, fails to identify those facts with which he takes issue. In any event, the Court of Appeals "present[ed] the facts in the light most favorable to Romulo." *Romulo v. Seattle Pub. Utilities*, No. 82790-1-I, 2022 WL 17246817, at *1 (Wash. Ct. App. Nov. 28, 2022).

non-potable liquid, solid, or gas that could contaminate the potable water supply by backflow. WAC 246-290-010(58). Backflow is the undesirable reversal of flow of water or other substances through a cross-connection into the public water system. RP 1336:3-1337:23; WAC 246-290-010(17).

SPU provides water to approximately 14,000 facilities with cross-connections. RP 1345:13-16. Of these facilities, approximately 800 are classified by state regulation as "high health hazard" facilities. RP 1345:17-21; see also Ex. 174. High health hazard facilities utilize substances that could put the quality of potable water at risk and create a public health hazard through injury, poisoning, or spread of disease, should the substances backflow into the public water system. RP 1339:5-16, 1718:8-1719:22; Ex. 163. Examples of high health hazard facilities include hospitals, surgery centers, morgues, mortuaries, and chemical processing facilities. RP 1338:20-1339:16.

SPU requires all 14,000 facilities with cross-connections

to test their backflow devices annually and submit the results to the USI group. RP 1345:22-1346:9. State regulations further mandate that the 800 high health hazard facilities maintain "premises isolation" to protect the public water supply. WAC 246-290-490. Premises isolation exists where a facility has installed approved backflow prevention assemblies (or air gaps) isolating the facility's water system from the City's potable water supply. RP 566:19-567:4, 1358:17-21, 1359:21-1360:7, 1599:6-1600:3; *see also* WAC 246-290-010(188). If such devices are properly installed at an approved location, there is premises isolation, and the potable water supply is protected. *Id.*

Senior Inspectors are responsible for inspecting high health hazard facilities to confirm that they have achieved premises isolation. RP 1219:25-1220:5, 1342:13-18, 1355:14-21, 1357:12-1358:21, 1359:12-14. To conduct such inspections, a Senior Inspector contacts the facility to arrange for a site visit and then physically inspects the facility to

confirm that the customer has an approved backflow prevention assembly installed at an approved location. RP 1600:8-1601:11; *see also* RP 1640:18-1641:7.

B. Romulo's Work Performance and Behavior Deteriorate After Hiring of New USI Manager

In August 2014, the USI group's former manager, Ward Pavel, retired. SPU hired Bob Hubbert to serve as USI manager in the spring of 2015. RP 443:21-23, 935:10-16, 1257:22-24, 1339:17-1340:7. Hubbert is a graduate of Okanagan University College's water quality technology program. RP 1327:15-1328:11. Prior to joining the City, Hubbert had 19 years of professional experience in water operations, including 13 years in cross connection control and backflow program management, and seven years of managerial experience. RP 1328:12-1329:7, 1330:4-8; Ex. 501.

Despite having not yet met Hubbert, Romulo stated in an April 27, 2015, grievance that, after not receiving the USI Manager position himself, he now "[found his] job meaningless, a death to [his] dignity, self worth, family, general

welfare, and even [his] career is now impacting my health." RP 1258:3-1259:3; Ex. 576.2.

Consistent with this admission that he now found his job meaningless, Romulo's work performance and behavior began to deteriorate. Romulo's co-workers testified that he appeared disengaged and did not seem to be completing work tasks. *See* RP 1615:8-16. One co-worker testified that he "never saw [Romulo] on the phone making contacts with customers to arrange for site visits." RP 1615:18-19. Instead, Romulo "was just kind of surfing around on the internet." RP 1615:19-21. Another co-worker testified that Romulo was not focused on work, relating that, in one instance, he observed Romulo "making paper airplanes and flying them along – in the office." RP 1647:2-3.

Beyond his disinterest in completing work tasks, the manner in which Romulo communicated with others "started to disintegrate." RP 1477:9-21. His co-workers reported that, despite Hubbert's respectful tone and clear communication

style, Romulo would often become confrontational and disrespectful during group meetings, making others "very uncomfortable." RP 1611:2-1612:18, 1648:1-1649:15, 1475:19-1476:13. Indeed, Romulo was repeatedly disciplined for his failure to communicate respectfully. *See* Ex. 527 (reprimanding Romulo for sending a follow-up email seven minutes after his prior email stating "Do not ignore me!!!" and "Damn it!!!"); Ex. 533 (reprimanding Romulo after sending a series of disrespectful e-mails to human resources staff).

C. Romulo is Terminated for Failing to Perform a Critical Assignment.

Upon joining the City, Hubbert spent significant time assessing how to improve the USI group's effectiveness and efficiency. RP 1362:12-1365:1. With respect to the cross-connection control program, Hubbert observed that the group's focus "was very heavily on administrative work." RP 1363:7-15. This focus was hindering the group's ability to ensure that premises isolation existed at the high health hazard facilities connected to the City's water system. RP 1363:21-1365:1.

Feedback Hubbert received from the Washington Department of Health ("DOH") reinforced his observations. In August 2015, Hubbert received a call from the DOH expressing concern that, based on the City's prior annual reports (compiled before Hubbert's arrival), there were high health hazard facilities serviced by SPU that did not have premises isolation. RP 1365:2-1366:12; *see also* Ex. 505.

Based on this feedback and his own observations, Hubbert resolved to make significant changes to the group's operation. RP 1363:7-1377:17. In 2017, Hubbert implemented a procedure for the Senior Inspectors to inspect the high health hazard facilities. RP 1418:10-1419:3. Hubbert divided these facilities among the Senior Inspectors and directed that they should "be prepared to submit [their] high health hazard inspection progress weekly." RP 1419:4-1420:14, 1224:7-1225:10; Ex. 535. Hubbert assigned Romulo piers and docks, laboratories, car washes, dedicated fire protection systems with chemical addition, and veterinary clinics. RP 1420:6-14; Ex.

535.

Despite Hubbert's repeated attempts to communicate his expectations to Romulo through written communications, verbal instructions, and fact-finding meetings, Romulo failed to perform his assigned tasks. *See* RP 1429:11-1430:14; Ex. 543. Eventually, Romulo admitted he had not completed more than five inspections of the 200 assigned to him nearly six months prior.[2] RP 1437:21-1438:9, 1449:14-21, 1735:3-1736:1; Ex. 554. In comparison, the other two Senior Inspectors completed nearly 120 combined inspections in just four months. RP 1425:5-1426:14; Ex. 545. Hubbert informed Romulo that this did not comply with administrative regulations or his job expectations. RP 1438:10-15; Ex. 554.

Based on his ongoing failure to complete a core function of his job, Romulo was placed on paid leave pending

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[2] He later admitted to an investigator that he had not completed more than one of his assigned inspections. *See* RP 1738:7-11, 1223:3-16.

investigation. RP 1449:22-24; Ex. 5. The investigation focused on: (1) whether Romulo performed his assigned inspections and (2) if not, whether he was performing other duties that prevented him from performing the inspections. RP 1735:10-19. The internal investigator reviewed pertinent documents; interviewed Romulo, the other Senior Inspectors, and Hubbert; and reviewed Romulo's phone and e-mail usage. RP 1735:20-1737:5. The investigator concluded that Romulo failed to substantively perform more than one of his assigned inspections and that no other tasks prevented Romulo from performing the inspections. RP 1735:21-1736:7, 1738:3-11, 1740:21-8; Ex. 567. Pursuant to these findings, the City terminated Romulo's employment effective May 23, 2019. Ex. 163.

D. Procedural History

Romulo filed his initial Complaint in this matter on May 7, 2018, and filed his operative complaint on November 5, 2019. CP 1, 136. Romulo asserted claims for (1) hostile work

environment based on race and/or national origin and retaliation under the Washington Law Against Discrimination ("WLAD"), (2) "retaliation for complaining about discrimination and retaliation, and for filing a whistleblower complaint" and "wrongful discharge in violation of public policy" under the common law, and (3) harassment and retaliation under the Seattle Municipal Code ("SMC"). CP 136-60.

On February 28, 2020, Romulo filed a Motion for Declaration of Right to Sue Under Local Government Whistleblower Law. CP 198. The court denied the motion and a subsequent motion for reconsideration, holding that it lacked jurisdiction to consider Romulo's claim under the SMC. CP 359-69, 404-05. On September 21, 2020, the Court of Appeals likewise denied Romulo's Motion for Discretionary Review. CP 668-74.

The City moved for summary judgment on all of Romulo's claims on January 8, 2021. CP 406-30. On February 8, 2021, the court dismissed Romulo's claims under the SMC

and his claims for harassment/hostile work environment, but permitted his claims for retaliation under the WLAD and wrongful discharge in violation of public policy to go to trial. CP 1961-64.

Trial began on March 1, 2021. *See* RP 53. Romulo's case-in-chief lasted approximately five days and featured testimony from eight witnesses, including three current City employees also called during the City's defense. RP *passim*. The City presented its defense over approximately three days, a significant portion of which was consumed by Romulo's cross-examination of witnesses Romulo had previously called during his case-in-chief. *Id*. During trial, the jury asked over 60 questions—including more than 15 to Romulo. *Id*. After eight days of testimony, the jury began deliberations on March 17, 2021. RP 1989:18-22. After less than three hours, the jury returned a unanimous verdict in favor of the City on both counts. CP 1993-99.

Romulo timely appealed the decision. CP 2573-75. On

appeal, the Court of Appeals, Division One, remanded the case to the trial court for further proceedings on Romulo's WLAD retaliation claim solely to the extent it is based on alleged adverse employment actions short of termination. *Romulo*, 2022 WL 17246817, at *19. The Court of Appeals affirmed in all other respects. *Id.*

III. ARGUMENT

A. *Henderson* Provides no Basis for Review.

The Court of Appeals remanded the case for further proceedings on Romulo's WLAD retaliation claim. Thus, the sole remaining inquiry relating to Romulo's WLAD retaliation claim is whether, as he claims, *Henderson v. Thompson*, 200 Wn.2d 417, 518 P.3d 1011 (2022), provides a basis for remand to a new trial judge. It does not. Romulo fails to identify any conflict between the Court of Appeals' opinion and *Henderson*, or any alternative basis for review. *See* RAP 13.4(b)(1), (3)-(4).

In *Henderson*, this Court set forth a framework for trial courts to apply "when a civil litigant seeks a new trial on the

basis that racial bias affect[ed]" the verdict." 518 P.3d 1011 at 1023. Here, following the jury's unanimous verdict for the City, Romulo sought a new trial on a range of grounds, none of which alleged racial bias on the part of Judge Parisien. CP 2212-26 (arguing for a new trial because the trial court only identified "termination" as the adverse action central to the retaliation claim, declined to give Romulo's proposed jury instruction on public policies, gave the parties additional peremptory challenges, selected alternate jurors through a random draw of numbers, and required parties to exchange opening and closing PowerPoint slides).

Romulo had ample opportunity during trial proceedings and following the verdict to raise any issues regarding the trial court's alleged bias, and to give the trial court an opportunity to address any such concerns. Yet at no point during the pendency of this case prior to the issuance of the *Henderson* opinion did Romulo ever make such an allegation. On this basis alone, Romulo's claim for remand pursuant to *Henderson*

fails.

Moreover, even if he had properly preserved the issue (he did not), Romulo cannot show that an objective observer could find racial bias to have affected the verdict. Romulo's only evidence of Judge Parisien's purported racial bias is a ruling against him regarding a single jury instruction. But unfavorable rulings do not equal bias. *In re Pers. Restraint of Davis*, 152 Wn.2d 647, 692, 101 P.3d 1 (2004) (stating that judicial rulings alone almost never constitute a valid showing of bias because there is a "presumption that a trial judge properly discharged [her] official duties without bias or prejudice."); *see also Benz v. Rashleigh*, 72225-5-I, 72520-3-I, 2015 WL 4522626, at *4 (Wash. Ct. App. July 27, 2015) (unpublished) ("[A] trial judge's adverse ruling, without more, does not support the slightest inference of bias.").

Romulo fails to cite to any part of the record that could support any inference, much less any determination, that any action Judge Parisien took was motivated or influenced by

racial bias. To the contrary, the trial record shows quite the opposite. For example, Judge Parisien made statements throughout trial regarding the importance of avoiding implicit bias, the value of the Washington Law Against Discrimination, and the significant need for juror diversity. *See, e.g.*, RP 292:16-293:19; 394:2-11. Further, Judge Parisien even allowed Romulo to add to the jury (in place of another juror) an individual Romulo's counsel believed to be Filipino and who originally had been randomly selected to be an alternate juror. RP 376:21-379:23. In arguing for this result, Romulo's counsel claimed that "all of the Supreme Court case law, the general rules, they're all designed to put [this juror] on the panel." RP 376:21-379:23.

Accordingly, there is no evidence in the record even suggesting any impropriety or racial bias on the part of Judge Parisien, much less any evidence to conclude that an objective observer would view race as a factor in the jury's verdict in this case.

B. The Trial Court's Correct Dismissal of Romulo's Hostile Work Environment Claim is Consistent with this Court's Precedent and does not Present an Issue of Substantial Public Interest.

Romulo claims, without any supporting authority, that the Court of Appeals held Romulo to "a much higher bar than what is appropriate at summary judgment." Petition at 22. To the contrary, both the trial court and Court of Appeals correctly applied longstanding precedent of this Court. In order to establish a prima facie case of hostile work environment based on race, Romulo was required to demonstrate, among other things, that any alleged harassment was "because of" a protected characteristic. *See Blackburn v. State*, 186 Wn.2d 250, 260, 375 P.3d 1076 (2016); *see also Doe v. Dep't of Transp.*, 85 Wn. App. 143, 150, 931 P.2d 196 (1997) ("The burden is on the plaintiff to produce competent evidence that supports a reasonable inference that his [membership in a protected class] was the motivating factor for the harassing conduct.").

In response to the City's summary judgment motion, Romulo failed to identify any evidence that the City engaged in any misconduct, let alone that such misconduct was motivated by Romulo's race or national origin. As Romulo admitted, his supervisors never said anything to him regarding these protected characteristics. Instead, Romulo relied on his own subjective interpretation of how routine and innocuous management communications made him "feel," without providing any evidence of inappropriate actions, much less any discriminatory animus. *See, e.g.*, CP 1041-43 (showing Romulo's litany of alleged harassment is dominated by phrases like "[he] feels oppressed," "you make me feel dumb," "this . . . made [Romulo] feel as though . . ."). As the Court of Appeals correctly recognized, Romulo "present[ed] no evidence of

discrimination based on his membership in a protected class."[3] *Romulo*, 2022 WL 17246817, at *16.

Moreover, even if Romulo had identified colorable evidence of any alleged harassment motivated by a protected characteristic (he did not), he failed to establish that any such conduct affected the terms or conditions of his employment. As this Court has noted, to affect the terms and conditions of employment, harassment must be "sufficiently pervasive so as to . . . create an abusive working environment." *Glasgow v. Georgia-Pacific Corp.*, 103 Wn.2d 401, 406-07, 693 P.2d 708 (1985). Courts consider "the frequency and severity of the discriminatory conduct; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it

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[3] Romulo claims that "the acts that support [his] retaliation claim . . . may also be used to support his hostile work environment claim." Petition at 23. Yet Romulo fails to identify with any specificity the additional "acts" that he believes support his hostile work environment claim. Such vague and unsupported allegations provide no basis for review.

unreasonably interferes with the employee's work performance." *Washington v. Boeing Co.*, 105 Wn. App. 1, 10, 19 P.3d 1041 (2000).

Romulo fails to identify any conduct that could be remotely described as severe or pervasive. For instance, Romulo's claim that his manager "refused to allow [Romulo] to attend a full day event" amounts to him only being approved to attend two hours of a four hour event. CP 610, 820. Such an allegation is hardly an example of an "abusive" work environment.

C. The Trial Court's Proper Instructions on Romulo's Wrongful Discharge Claim do not Present an Issue of Substantial Public Interest.

"Jury instructions are sufficient if they allow the parties to argue their theories of the case, do not mislead the jury and, when taken as a whole, properly inform the jury of the law to be applied." *Hue v. Farmboy Spray Co.*, 127 Wn.2d 67, 92, 896 P.2d 682 (1995). Whether to give a particular jury instruction is within the court's discretion. *Boeing Co. v. Key*,

101 Wn. App. 629, 632, 5 P.3d 16 (2000). "The trial court is given considerable discretion in deciding how the instructions will be worded." *Goodman v. Boeing Co.*, 75 Wn. App. 60, 73, 877 P.2d 703 (1994).

In his cursory request for this Court to review the trial court's instructions on his wrongful discharge claim, Romulo fails to cite even a single source of authority. On this basis alone, this Court should deny review. *See State v. Thomas*, 150 Wn.2d 821, 868-69, 83 P.3d 970 (2004) ("[T]his court will not review issues for which inadequate argument has been briefed or only passing treatment has been made.").

In any event, Romulo's claim that there was no "clear expression of public policy on the safety of the public water system" is absurd. The trial court twice instructed the jury that there were "public policies concerning the safety of the public water system." RP 395:11-22, 1892:7-21. Moreover, the parties did not dispute the existence of a policy here. Indeed, City witnesses testified throughout trial regarding public safety

concerns associated with cross-connection control, and the exhibits submitted to the jury included copies of the Department of Health's rules relating to cross-connection control. *See, e.g.*, RP 1718:14-22, 1765:16-1766:2; Ex. 173.

In addition, Romulo fails to identify any error associated with the trial court's refusal to instruct the jury on additional public policies that purportedly supported his wrongful discharge claim. Initially, at the outset of trial, the court gave to the jury as Instruction No. 2, the exact instruction proposed by Romulo regarding the "only claims" at issue in the trial:

> [Plaintiff] is asserting the following two claims on which you will receive separate instructions:
>
> (1) [Plaintiff] alleges that the City wrongfully discharged his employment in violation of public policies concerning the safety of the public water system, and;
>
> (2) [Plaintiff] alleges that the City retaliated against him for having filed and settled a prior lawsuit alleging violations of the Washington Law Against Discrimination.

> These are the only claims that you will be asked to decide at the end of this trial. You will not be asked to decide any claims of discrimination or hostile work environment based on [Plaintiff's] race, national origin or ethnicity.

RP 336:4-22, 395:11-22 (emphasis added); Dkt. 155. Despite the trial court's assurance, at Romulo's request, that these would be the "only claims" the jury would be asked to decide, Romulo nevertheless sought to expand the bases for his claim at the close of trial. CP 2098, 2006, 2056. The trial court correctly declined to provide Romulo's contradictory, confusing instructions.

Furthermore, as the Court of Appeals noted with regard to Romulo's claim that the trial court erred in not including in the wrongful discharge instruction a reference to a purported public policy against the waste of public funds, the statutes upon which Romulo relied in his argument in support of such a public policy expressly exclude "personnel actions" from the definition of "improper governmental action." RCW 42.41.020(1)(b). Romulo being placed on paid administrative

leave was a personnel action. The decision to do so therefore cannot form the basis of a whistleblower retaliation claim, and Romulo cannot have been prejudiced by the trial court's decision not to give his requested instruction. *Romulo*, 2022 WL 17246817, at *15.

With regard to his request that the trial court identify the WLAD as a policy supporting his wrongful discharge claim, the trial court instructed the jury on public policies associated with the WLAD via Romulo's WLAD retaliation claim. The jury unanimously rejected Romulo's claim that his termination violated the WLAD. Romulo does not and cannot explain how a jury that rejected his WLAD retaliation claim could have come to a different determination as to a claim that Romulo was terminated, in violation of public policy, for opposing practices forbidden by the WLAD.

D. The Dismissal of Romulo's SMC Claim Does Not Present an Issue of Substantial Public Interest.

The Local Government Whistleblower Protection Act ("LGWPA") exempts local governments from its provisions if

they adopt "a program for reporting alleged improper governmental actions and adjudicating retaliation from such reporting," and "the program meets the intent of [the LGWPA]." RCW 42.41.050. The LGWPA allows local government employees to pursue administrative relief, but does not provide a private cause of action to pursue whistleblower retaliation claims. *See* RCW 42.41.040; *Woodbury v. City of Seattle*, 172 Wn. App. 747, 752, 292 P.3d 134 (2013) ("[R]ead as a whole, it is clear that the [LGWPA] does not grant local government employees a cause of action in superior court.").

In specified circumstances, the City of Seattle's Whistleblower Protection Code ("WPC") allows City employees who submit a whistleblower retaliation complaint to pursue a private cause of action. *See* SMC 4.20.870. Complainants may only do so after filing a "timely and sufficient complaint with the [Seattle Ethics and Elections Commission Executive Director]." *Id.* To be "sufficient," a complaint must assert facts that, if true, would show:

a. The employee is a cooperating employee;
b. The employee was subjected to an adverse change that occurred within six months of becoming a cooperating employee; and
c. The employee's protected conduct reasonably appears to have been a contributing factor to the adverse change to their employment.

SMC 4.20.860(B)(3).

If the Seattle Ethics and Elections Committee ("SEEC") Executive Director determines that a complaint is insufficient, the complaint is dismissed without further investigation. SMC 4.20.860(B)(2). The employee may, however, re-submit the complaint within the 180-day filing period with further information supporting the claim. *Id.* The WPC provides that nothing contained therein "prohibits an employee from filing in any administrative forum or affects the remedies available in that forum." SMC 4.20.865(A)(1). Under the LGWPA, local government employees who submit a whistleblower retaliation complaint to their employer are permitted to obtain an administrative hearing. RCW 42.41.040(4).

In August 2019, Romulo filed an SMC whistleblower retaliation complaint with the SEEC Executive Director. CP 253. In September 2019, the Executive Director notified Romulo that his complaint was insufficient. CP 285-87, 289-291, 307-308. Romulo subsequently asserted a claim for whistleblower retaliation under the SMC in the trial court. CP 158-59.

In the trial court, as he does here, Romulo made extensive claims regarding the alleged infirmities with the WPC. Yet as the Court of Appeals noted, Romulo did not plead any claim for relief from, or review of, the Executive Director's insufficiency determination, much less prove that it was erroneous or arbitrary. He simply pled a claim for whistleblower retaliation under the SMC. The SMC, however, does not authorize private lawsuits where, as here, the Executive Director finds that the underlying complaint is insufficient. *See* SMC 4.20.870. Romulo simply did not state a claim for relief under the terms of the SMC. His claim was

therefore properly dismissed.

E. The Trial Court Did Not Require Romulo to Reveal Work Product.

Romulo claims, again without authority, that it was an abuse of the trial court's discretion to require the exchange of materials that each party intended to show the jury, claiming that the trial court required him to reveal protected work product. Romulo fails to and cannot explain, however, how the final PowerPoint slides that he intended to show *to the jury* constituted work product.

As stated by the Court of Appeals: "[Romulo] offers no authority for the proposition that a trial court cannot, once trial has begun and as part of the court's discretion to manage the courtroom and trial, require the exchange of materials that each party intends to show the jury." *Romulo*, 2022 WL 17246817, at *43; *see also State v. Lord*, 117 Wn.2d 829, 855, 822 P.2d 177, 193 (1991), *abrogated on other grounds by State v. Schierman*, 192 Wn.2d 577, 438 P.3d 1063 (2018) ("[T]he trial court is given wide latitude in determining whether or not to

admit demonstrative evidence.").

Romulo baselessly claims that the requirement that both sides exchange closing slides was "one more example showing that Judge Parisien did whatever she could to help the City and hurt Mr. Romulo." Petition at 32. Theatrics aside, Judge Parisien's reasonable trial management requirement applied equally to the City, which simply elected not to use PowerPoint slides in its closing.[4]

The trial court reasonably required the parties to disclose materials they intended to show the jury, not protected work product. This decision promoted trial efficiency by ensuring that objectionable materials were not shown to jurors and reducing the risk that counsel might be compelled to make objections during their opponent's presentation. No review is warranted here.

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[4] Romulo is correct that the City was not required to disclose its closing notes. But neither was Romulo.

IV. CONCLUSION

For the reasons set forth above, the City respectfully requests this Court deny review.

DATED this 26th day of January, 2023.

RESPECTFULLY SUBMITTED,

/s/ Ryan J. Groshong
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Supreme Court for the State of Washington by using the Supreme Court's electronic filing system on January 26, 2023.

I further certify that all participants in the case are registered users and that service will be accomplished by the Supreme Court electronic filing system.

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