NO. 101796-1

SUPREME COURT OF THE STATE OF WASHINGTON

DION BLACKBURN,

Petitioner,

v.

STATE OF WASHINGTON, ET AL.,

Respondent.

STATE RESPONDENTS' ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Regulations

I. INTRODUCTION

Dion Blackburn seeks damages from the Office of Administrative Hearings (OAH) and the Department of Social and Health Services (DSHS) for the way in which those agencies handled her petition to administratively reduce her child support obligation to the custodial parent of her child.[1] Blackburn also seeks penalties against DSHS under the Public Records Act for a request that DSHS was still responding to when she filed her lawsuit. The trial court granted summary judgment in favor of the agencies and the Court of Appeals affirmed. While Blackburn may disagree with the outcome of the case, the Court of Appeals decision does not satisfy any of the criteria for granting review under RAP 13.4(b).

First, Blackburn seeks damages from OAH on the basis that the administrative law judges involved in her administrative

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[1] OAH is an independent state agency responsible for impartial administration of administrative hearings for a variety of individual clients and other state agencies. *See* RCW 34.12.010. As such, OAH takes no position regarding the legal arguments specifically related to DSHS.

hearing process did not *sua sponte* refer her for a representative at state expense under the Americans with Disabilities Act. The Court of Appeals properly concluded that the doctrine of quasi-judicial immunity protects OAH from Blackburn's lawsuit.

Next, Blackburn seeks damages from DSHS because it, too, did not *sua sponte* refer her for appointment of a representative as a disability accommodation. The Court of Appeals properly concluded that Blackburn's claim against DSHS was barred by res judicata.

Finally, Blackburn seeks penalties from DSHS under the Public Records Act. The Court of Appeals properly concluded that this claim was unripe because DSHS took no final action and was still producing records when the lawsuit was filed.

The Court should deny review of this unpublished Court of Appeals decision, which followed existing law and created no new precedent. The decision does not conflict with controlling case law, nor does Blackburn articulate any specific constitutional issues raised by the decision.

II. COUNTERSTATEMENT OF THE ISSUES

1. Does quasi-judicial immunity protect OAH from liability for damages where its administrative law judges did not *sua sponte* refer a litigant to be appointed a representative as a disability accommodation to assist the litigant during an administrative hearing process?

2. Are Blackburn's damages claims predicated on the Americans with Disabilities Act and due process against DSHS barred by res judicata when they share concurrent identity in subject matter, cause of action, persons and parties, and the quality of the persons for whom the claims are made with Blackburn's claims in the 2016 and 2018 administrative child support proceedings?

3. Is Blackburn's Public Records Act claim unripe when DSHS did not take final action and was producing installments of records when Blackburn filed her lawsuit?

III. COUNTERSTATEMENT OF THE CASE

A. DSHS Administratively Established Blackburn's Child Support Obligations, Which Blackburn Challenged in 2016 and Modified in 2018

In January 2016, DSHS received an application for support enforcement services from the custodial parent of Blackburn's two children. CP 258. There was no child support order addressing Blackburn's support obligation, so DSHS established the obligation administratively. CP 259. Blackburn timely requested a hearing to challenge the obligation established by DSHS. CP 259. Blackburn did not appear at her hearing, so OAH entered a default order. CP 259. Blackburn moved to vacate, which was denied because she did not appear at that hearing. CP 259.

Blackburn then requested that her hearing be reinstated. CP 259. OAH determined that Blackburn had good cause for not appearing "due to her medical condition," vacated the default order, and reinstated her hearing. CP 266, 269-70.

OAH concluded that Blackburn was "voluntarily unemployed" and that her "other circumstances, expenses, and debts do not warrant further deviation from the standard calculation support obligation." CP 271-73. OAH set Blackburn's support obligation at $585 per month for her two children, consistent with the Washington State Child Support Schedule. CP 271. Blackburn appealed the order to superior court, which was dismissed as untimely under RCW 34.05.542. CP 261, 289-90.

In 2018, Blackburn asked for a hearing to modify her support obligation. CP 40. Blackburn requested that her support obligation be reduced from $585 to $10. CP 296, ¶ 4.3. Blackburn contacted OAH to request accommodations in the hearing process. CP 224. She requested "an in-person hearing, additional notices and flexible time restraints, and reminder calls." *Id.* Division Chief Administrative Law Judge (ALJ) Kathryn Koehler granted all of the requested accommodations except for the reminder calls. *Id.* ALJ Koehler explained that

OAH was not set up to provide reminder calls, but suggested that DSHS might be able to do so. *Id.* Blackburn did not request appointment of a "suitable representative" as an accommodation.[2]

After granting her accommodations, Blackburn's support modification case was assigned to ALJ Ami Abuan. CP 295. ALJ Abuan held a hearing at which Blackburn appeared and testified regarding her medical conditions for the purpose of determining what modification, if any, should be made to Blackburn's support obligation. CP 295-309.

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[2] Effective January 1, 2018, WAC 10-24-010(1) allows a party in an OAH adjudicative proceeding to request, as an accommodation under the federal Americans with Disabilities Act (ADA), appointment of a suitable representative at government expense. The rule also requires the ALJ to make a referral to the ADA coordinator to be screened for such an accommodation if the unrepresented party consents and if the ALJ or any party has "a reasonable belief that an otherwise unrepresented party may be unable to meaningfully participate in the adjudicative proceeding because of a disability." WAC 10-24-010(3).

At no point prior to or during the hearing did Blackburn request appointment of a representative. The record shows that Blackburn actively participated throughout the administrative proceeding. *See* CP 40-42 (Petition for Modification completed by Blackburn); CP 43-47 (Child Support Schedule Worksheet completed by Blackburn); CP 90, 92 (notes of interactions between DSHS and Blackburn during the pendency of the administrative proceeding); CP 94-95, 97-98 (emails between Blackburn and DSHS discussing the administrative proceeding); CP 296, ¶ 4.3 (Blackburn requested a continuance of the hearing); CP 295, ¶ 3.4 (Blackburn appeared for the hearing); CP 296, ¶ 4.4 (Blackburn testified at the hearing). Nothing in the record indicates that ALJ Koeler, ALJ Abuan, or DSHS had any concern that Blackburn was unable to meaningfully participate in the administrative proceeding with the approved accommodations in place.

Following the hearing, the ALJ issued an order reducing Blackburn's monthly child support obligation from $585 to

$470. CP 295, ¶ 2.1; CP 296, ¶ 4.2. Blackburn did not appeal the order. *See* CP 183, ¶ 25.

In 2019, DSHS stopped enforcing Blackburn's child support obligation because her younger child began living with her and her older child was emancipated. CP 263. As of July 3, 2020, Blackburn paid a total of $238.36 toward her obligation. CP 263.

B. Blackburn Made Several Public Records Requests

1. First request

Meanwhile, in June 2018, Blackburn requested DCS records related to her child support case. CP 18-19. DSHS acknowledged Blackburn's request and explained that confidential child support records are disclosed under RCW 26.23.120. CP 315, 318. DSHS described the records it would provide, estimating it would take about 45 business days to respond. CP 318.

In August 2018, under RCW 26.23.120, DSHS mailed Blackburn a letter and CD with 437 pages of DCS records at no

charge. CP 320-21. DSHS included a withholding log and redaction key with legal citations and explanations. CP 320, 322-31. DSHS indicated that the response was complete. CP 321. DSHS then emailed Blackburn about the mailing. CP 334.

2. Second request

In January 2019, Blackburn submitted a second records request on a DSHS form. The form included a handwritten request for "[a]ll recorded conversations on the ICMS system[;]" all boxes next to DSHS programs were checked. CP 100, 336.

In the experience of the public records specialist who responded, requesters who identify specific records on the form typically only want those records. CP 336. Incapacity Case Management System (ICMS) notes are maintained by DSHS's Community Services Division (CSD). CP 336. Accordingly, DSHS responded that it understood Blackburn's request to "be for records maintained by [CSD]." CP 336, 340. DSHS asked Blackburn to let DSHS know if it misunderstood her request. CP 336, 340. At the same time, DSHS provided all ICMS notes

and phone recordings available on a CD for Blackburn. CP 336, 340.

3. Third request

In July 2019, Blackburn emailed Western State Hospital, requesting "an in person review and hard copies as previously request[ed] in January 2019 of all DSHS DCS records in my case and files," "to know every party my information has been requested from and or shared with by your agency," and "all communication with DCS from June 01/2016-August 31st 2019." CP 343. DSHS's response again noted that confidential child support records are disclosed under RCW 26.23.120. CP 345. DSHS estimated it would take about 30 business days to respond. CP 346.

DSHS produced installments in August, October, and November 2019, and January 2020. CP 336-37, 348-49.

4. DSHS re-opens the second request

On August 30, 2019, DSHS emailed that it had re-opened the second request because Blackburn clarified by phone that

morning that she wanted all DSHS program records about her, not just ICMS notes. CP 398, 402. DSHS estimated that an installment would be ready in about 45 business days. CP 402. That same day, DSHS resent the January records. CP 405.

Between October 11 and 15, 2019, Blackburn sent four emails about wanting to personally inspect records responsive to the second request. CP 398, 408, 410-15, 417-21, 423-24. DSHS emailed Blackburn on October 17, 2019, noting that it originally understood that she wanted to receive records by mail and have access to a program expert to discuss questions. CP 426. DSHS indicated that it now understood that Blackburn preferred to inspect records in-person; accordingly, DSHS provided Blackburn with information about the in-person inspection process. CP 426.

On October 23, 2019, DSHS emailed Blackburn that a second installment was ready for in-person inspection. CP 336, 367. DSHS emailed again on October 25, 2019, providing three appointment options. CP 337, 369. On November 4, 2019,

DSHS mailed the second installment, totaling 841 pages, to Blackburn's P.O. Box. CP 371. DSHS estimated that a third installment would take about 30 business days. CP 371.

C. The Trial Court Dismissed Blackburn's Complaint

On December 4, 2019, nearly a year after the 2018 order modifying her support obligation, Blackburn sued OAH and DSHS, seeking damages. CP 1, 21-23. Blackburn alleged that OAH and DSHS violated the Americans with Disabilities Act (ADA) by not appointing a representative during her 2018 administrative hearing process, and that DSHS violated the Public Records Act. *Id.*

The trial court granted OAH's and DSHS's motions for summary judgment. CP 505; CP 567-68. The Court of Appeals affirmed in an unpublished decision. *See* Pet. for Review, App. (Slip Op.).

IV. REASONS THE COURT SHOULD DENY REVIEW

The Court of Appeals properly applied the relevant legal authority to conclude that Blackburn was not entitled to seek

damages from OAH or DSHS for their roles in her administrative child support establishment process. The Court of Appeals also properly concluded that Blackburn's Public Records Act claim was unripe because DSHS had not taken final action to deny her request when she filed the lawsuit. Blackburn does not satisfy any of the RAP 13.4 criteria for review.

A. The Court of Appeals' Decision That OAH Is Entitled to Quasi-Judicial Immunity Does Not Warrant Review Under RAP 13.4(b)(1) or (3)

The Court of Appeals' unpublished holding that OAH is entitled to quasi-judicial immunity from Blackburn's lawsuit does not conflict with this Court's decision in *Lutheran Day Care v. Snohomish Cnty.*, 119 Wn.2d 91, 829 P.2d 746 (1992). Review of this issue is therefore not warranted under RAP 13.4(b)(1).

Alternatively, Blackburn asserts that the Court of Appeals decision regarding quasi-judicial immunity implicates a significant question of constitutional law. Pet. for Review at 14. But she fails to specify what she believes that significant question

is. Review under RAP 13.4(b)(3) is therefore not merited. As discussed below, there is no basis for disturbing the Court of Appeals decision regarding OAH's quasi-judicial immunity.

1. The Court of Appeals decision does not conflict with this Court's analysis in *Lutheran Day Care*

The Court of Appeals decision correctly concluded that the doctrine of quasi-judicial immunity shields OAH from liability for the actions of its ALJs. The only case Blackburn cites as conflicting with that decision is *Lutheran Day Care*, 119 Wn.2d 91.

Blackburn's alleged conflict rests on her incorrect conclusion that *Lutheran Day Care*'s three-part test for applying quasi-judicial liability to individual officials effectively eliminated quasi-judicial immunity for government agencies because the agencies cannot satisfy the second and third parts of the test. 119 Wn.2d at 106-08; *see* Pet. for Review at 16. This was not the holding of *Lutheran Day Care*, 119 Wn.2d 91. Blackburn also alleges that the Court of Appeals simply failed to analyze the second and third parts of the test. Pet. for

Review at 16. As discussed below, the Court of Appeals adequately and correctly analyzed all three parts of the test.

Under the *Lutheran Day Care* test, the official must first perform "a function which is analogous" to a judge. 119 Wn.2d at 106. Second, "the policy reasons which justify absolute immunity for the judge [must] also justify absolute immunity for that official." *Id.* Finally, there must be "sufficient safeguards . . . to mitigate the harshness to the claimant of an absolute immunity rule." *Id.* The Court adopted this test from *Butz v. Economou*, 438 U.S. 478, 512-13, 98 S. Ct. 2894, 57 L. Ed. 2d 895 (1978). In its analysis, the Court of Appeals consistently cited to both *Lutheran Day Care* and *Butz*. *See, e.g.,* Slip Op. at 37-43.

At issue in *Lutheran Day Care* was whether a specific statute—RCW 64.40.020—abolished a municipality's quasi-judicial immunity in certain land use decisions by creating a particular cause of action against the "agency" in that context.

119 Wn.2d at 98-99. No such statutory creation of a cause of action is applicable here.

Acknowledging the general applicability of quasi-judicial immunity for government agencies, this Court in *Lutheran Day Care* noted that "a city, county, or state which employs an officer also enjoys the quasi-judicial immunity of that officer for the acts of that officer." *Id.* at 101 (citing *Creelman v. Svenning*, 67 Wn.2d 882, 885, 410 P.2d 606 (1966)). And, this Court specifically stated it did "not call the holding of *Creelman* into question . . . ." *Id.* at 102. But, the Court found that the specific statute at issue in *Lutheran Day Care* "evidence[d] a legislative intent to abrogate the *Creelman* rule of vicarious municipal immunity for the quasi-judicial acts of its officials" in the context of land use decisions. *See id.* at 103.

Blackburn apparently takes this to mean that quasi-judicial immunity for government agencies has been abrogated in all cases, not just in the context of RCW 64.40.020. That was clearly not what the Court's analysis concluded. What Blackburn

characterizes as a conflict is merely an outcome with which Blackburn disagrees. *See* Pet. for Review at 15-16 ("While the Court of Appeals did go through this analysis, it reached the incorrect conclusion."). As discussed below, the Court of Appeals provided an analysis consistent with *Lutheran Day Care* and other relevant case law. 119 Wn.2d 91.

a. The Court of Appeals found that the ALJs were performing a function analogous to a judge

Blackburn apparently concedes the first element of the *Lutheran Day Care* test, which requires the official or actor to prove that they were acting in a judge-like capacity. *See* Pet. for Review at 16 ("[L]ikely the first prong was met as the ALJ was acting in a judicial capacity . . . ."). And regardless, the Court of Appeals conducted a proper analysis of this element and held that it was met. *See* Slip Op. at 44-45.

b. The Court of Appeals found that policy reasons justified extending immunity to the ALJs' actions

The Court of Appeals also adequately analyzed the second part of the *Lutheran Day Care* test, which requires that the policy reasons for immunity of a judge performing a judicial function also justify immunity for the official. 119 Wn.2d at 106. In examining the policy reasons for judicial immunity, the Court of Appeals observed that administrative adjudications within an agency share "enough of the characteristics of the judicial process that administrative law judges should also be immune from suits for damages," and that "[t]he conflicts which hearing examiners seek to resolve are as fractious as those which come to court." Slip Op. at 40 (citing *Butz,* 438 U.S. at 512-13). Indeed, the Court of Appeals considered the same policy considerations as were discussed in *Lutheran Day Care. Compare* Slip Op. at 38-40 (stating that judicial immunity "protects the administration of justice by ensuring that judges decide cases without fear of personal lawsuits," and judges "should not fear that unsatisfied

litigants will hound him or her with litigation charging malice or corruption") *and Lutheran Day Care,* 119 Wn.2d at 107-108 (stating that "absolute immunity prevents injustice to officials whose position requires them to exercise discretion," and immunity "prevents the paralysis that might otherwise result if officials were constantly preoccupied with the liability-creating potential of their acts"). Thus, the Court of Appeals properly analyzed the second part of the *Lutheran Day Care* test.

Blackburn generically asserts that "[t]he policy reasons for extending immunity are contravened by the policies of state and federal law related to the right to be free from discrimination by state agencies." Pet. for Review at 17. Yet, Blackburn offers no authority in support of this assertion, or explanation of how the policy reasons would be any different here than in the context of absolute judicial immunity. Blackburn also does not explain any other way in which Court of Appeals analysis of the second part of the *Lutheran Day Care* test is deficient.

c. The Court of Appeals found that there were sufficient safeguards in place to mitigate the harshness of immunity for the ALJs' actions

Finally, the Court of Appeals adequately analyzed the third part of the *Lutheran Day Care* test, which requires there to be "sufficient safeguards" in place to mitigate the harshness of absolute immunity. 119 Wn.2d at 106. Again, the Court of Appeals discussed many of the same safeguards that this Court discussed in *Lutheran Day Care* and *Butz. Compare* Slip Op. at 40-42 (describing the nature and duties of ALJs employed by OAH as retaining independence from other state agencies to provide impartial administration of administrative hearings, and noting a multitude of procedural safeguards in place, including a litigant's opportunity to seek review of a denial of ADA accommodations and also to seek judicial review of the final OAH decision) *with Lutheran Day Care,* 119 Wn.2d at 108 (citing *Butz*, 438 U.S. at 512, for a variety of factors to consider, including insulation of the judge from political influences, the importance of precedent in resolving controversies, the

adversary nature of the process, and the correctability of error on appeal).[3] Thus, the Court of Appeals appropriately analyzed this final part of the *Lutheran Day Care* case. In sum, this Court should reject Blackburn's assertion that the Court of Appeals erred by failing to apply the second and third elements of the *Lutheran Day Care* test. Blackburn's disagreement with the Court's well-reasoned analysis of both these elements does not merit this Court's review.

Having determined that the function and actions of the ALJs met all three parts of the *Lutheran Day Care* test, the Court of Appeals then concluded, consistent with established case law, that "OAH, however, is entitled to the same quasi-judicial immunity afforded the ALJs." Slip Op. at 47 (citing *Lutheran Day Care,* 119 Wn.2d at 101; *Creelman*, 67 Wn.2d at 885; *Janaszak v. State*, 173 Wn. App. 703, 719, 297 P.3d 723 (2013)).

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[3] While the Court in *Lutheran Day Care* ultimately concluded that the facts in that case did not satisfy this element of the test, it did so because of the unique nature of the land use regulatory process at issue there. 119 Wn.2d at 109.

As a result, the Court of Appeals analysis regarding quasi-judicial immunity exhibits no conflict with *Lutheran Day Care*, and Blackburn has not demonstrated that review is appropriate under RAP 13.4(b)(1).

2. Blackburn has not identified any significant constitutional question regarding quasi-judicial immunity

Finally, Blackburn has not demonstrated that the Court of Appeals decision regarding quasi-judicial immunity is reviewable under RAP 13.4(b)(3), because she identifies no specific significant question of constitutional law in her Petition for Review. Blackburn generically states that "[d]ue process considerations are likewise implicated when a party has a mental illness in a hearing that adjudicates their rights when they are not appointed counsel to assist with the proceedings." Pet. for Review at 17.

Blackburn offers no further specifics on this point.[4] As this Court has previously held regarding conclusory invocations of due process, "naked castings into the constitutional sea are not sufficient to command judicial consideration and discussion." *State v. Johnson*, 179 Wn.2d 534, 558, 315 P.3d 1090 (2014), as amended (Mar. 13, 2014) (internal quotation marks and citations omitted). Blackburn has failed to demonstrate that the Court of Appeals decision regarding quasi-judicial immunity needs review under RAP 13.4(b)(3).

B. The Court of Appeals' Decision That Res Judicata Bars Blackburn's Negligence, ADA, and Due Process Claims Against DSHS Does Not Warrant Review Under RAP 13.4(b)(1) or (4)

1. The Court of Appeals decision does not conflict with a Supreme Court decision

Under Washington law, res judicata prohibits parties from relitigating claims and issues that were litigated, or could have

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[4] Notably, Blackburn does not seek review of the Court of Appeals holding that OAH and DSHS were immune from any damages claims related to alleged due process violations. *See* Slip Op. at 36.

been litigated, in a prior action. *Loveridge v. Fred Meyer, Inc.*, 125 Wn.2d 759, 763, 887 P.2d 898 (1995). This includes administrative proceedings. *In re Marriage of Aldrich*, 72 Wn. App. 132, 138, 864 P.2d 388 (1993).

Blackburn argues that the Court of Appeals decision conflicts with a Supreme Court decision, *Rains v. State*, 100 Wn.2d 660, 663, 674 P.2d 165 (1983), by concluding that res judicata bars her negligence claims predicated on the ADA and due process. There is no conflict. *Rains* supports the decision.

Rains provides a four-part test for res judicata, requiring concurrence of "identity of (1) subject matter; (2) cause of action; (3) persons and parties; and (4) the quality of the persons for or against whom the claim is made." *Rains*, 100 Wn.2d at 663 (citing *Seattle First Nat'l Bank v. Kawachi*, 91 Wn.2d 223, 588 P.2d 725 (1978)). These four factors guide the court's analysis, but all four need not be present for res judicata to apply. *Rains*, 100 Wn.2d at 664.

The Court of Appeals correctly applied these factors. Addressing subject matter, the Court of Appeals determined "[t]he facts [Blackburn] now asserts about her need for assistance were facts observed by the ALJ during the 2018 hearing." Slip Op. at 51. The Court of Appeals also determined that the identity and quality of the parties "corresponds" in both matters. *Id.* Blackburn does not challenge these factors.

Blackburn attacks the Court of Appeals' conclusion that there was a concurrence of identity between her current action and the 2018 administrative proceeding. The Court of Appeals applied the correct analysis when determining there is substantial identity between the administrative proceeding and the present cause of action. *See Civil Service Comm'n of City of Kelso v. City of Kelso*, 137 Wn.2d 166, 171, 969 P.2d 474 (1999). First, the court noted that Blackburn's present action expressly sought to void her underlying child support order. Slip Op. at 50. Accordingly, the rights or interests established in the prior judgment would be destroyed or impaired by prosecution of this

second action, and the two actions involve infringement of the same right.

Second, the court noted that "the facts, on which [Blackburn] relies for her due process and ADA claim were integral to the administrative process." Slip Op. at 51. The court stated:

> The facts Dion now asserts about her need for assistance were facts observed by the ALJ during the 2018 hearing. If one objects to the ongoing process before a court or hearing examiner, the law expects one to object at the time of the process. We highlight that [Blackburn] asked the ALJ, during the 2016 hearing, whether she should present psychological records she now wishes DSHS would have forwarded. The ALJ may have committed error when responding that he did not need the records, but any error should have been appealed and was not the fault of DSHS.

Slip Op. at 51-52. Accordingly, substantially the same evidence is presented in the two actions, and the two matters arise out of the same transactional nucleus of facts.

The Court of Appeals further noted that Blackburn had the opportunity to appeal the 2018 DCS order to the superior court

under the Administrative Procedure Act (APA), RCW 34.05.570. *Id.* at 58. Under the APA, Blackburn could challenge the ALJ's procedure or decision-making. *See* RCW 34.05.570(3)(c). And Blackburn could present evidence outside the record under RCW 34.05.562. Slip Op. at 58-59. And Blackburn could seek to invalidate the order. *Id.* at 59. The court noted that Blackburn did this in 2016. *Id.* at 58.

As the Court of Appeals applied the correct analysis, there is no conflict with a Supreme Court decision and this Court should deny review.

2. Blackburn's claims do not involve a matter of public importance

Blackburn's claims do not involve an issue of substantial public interest. Contrary to Blackburn's contentions, the Court of Appeals decision would *not* bar all ADA clams against state agencies that occurred in proceedings before them. Again, the APA allows parties to seek judicial review of administrative orders. RCW 34.05.570. This includes review of the lawfulness of procedure and decision-making within the proceeding.

RCW 34.05.570(3)(c). Parties can submit extraneous evidence related to claims of improper procedure and decision-making. RCW 34.05.562(1)(b). And the reviewing court can grant relief when the tribunal erroneously interprets or applies the law. RCW 34.05.570(3)(d). Thus, one can raise issues associated with an agency's ADA compliance before the superior court under the APA.

In addition, as highlighted by the Court of Appeals, res judicata bars the untimely pursuit of many significant legal claims, including those brought under 42 U.S.C. § 1983 and which allege the violation of constitutional due process, First Amendment, and equal protection rights. Slip Op. at 23-24. Thus, the policy against multiplicity of actions applies with equal force to all claims that should have been raised in an earlier proceeding, not just those involving the ADA. *See Bordeaux v. Ingersoll Rand Co.*, 71 Wn.2d 392, 395-96, 429 P.2d 207 (1967).

Accordingly, this Court should deny review.

C. The Court of Appeals' Conclusion that Blackburn's Public Records Act Claim Against DSHS Is Unripe Does Not Warrant Review Under RAP 13.4(b)(2)

Blackburn argues that the decision below conflicts with a Court of Appeals decision in *Hikel v. City of Lynnwood*, 197 Wn. App. 366, 389 P.3d 677 (2016), when it determined that DSHS took no final action while it continued to produce responsive installments of records. There is no conflict. *Hikel* is consistent with the Court of Appeals decision.

Hikel does not support the contention that a party may recover attorney's fees and costs without a Public Records Act violation. In *Hikel*, the City "violated the [Public Records Act] because it did not provide any estimate of the time the City needed to respond." 197 Wn. App. at 372. Here, there is no allegation that DSHS did not provide any estimate of time it needed for its response. And DSHS did not otherwise violate the Public Records Act because it took no final action and "continued to provide responsive records in installments." Slip Op. at 60. Unlike the violation in *Hikel*, Blackburn prematurely

claims a violation of the Public Records Act, without any requisite denial. 197 Wn. App. 366.

Blackburn further argues that the decision conflicts with *Cedar Grove Composting, Inc. v. City of Marysville*, 188 Wn. App. 695, 702, 354 P.3d 249 (2015), by confusing what constitutes final agency action. *Cedar Grove* merely applies the rule that that an agency's denial of records is a necessary predicate of a cause of action under RCW 42.56.550, as determined in *Hobbs v. State*, 183 Wn. App. 925, 936, 335 P.3d 1004 (2014). *Cedar Grove*, 188 Wn. App. at 714. Just as in *Hobbs*, Blackburn seeks recovery under the Public Records Act before DSHS has taken final action. There is no conflict. The ruling in *Cedar Grove* is clear and supports the Court of Appeals decision.

As the Court of Appeals applied the correct analysis, there is no conflict with another Court of Appeals decision and this Court should deny review.

V. CONCLUSION

The Court of Appeals correctly interpreted and applied the applicable law. Blackburn's petition raises no conflict with other cases and identifies no specific constitutional issue or issue of substantial public interest meriting review. Accordingly, the Court should deny Blackburn's petition.

This document contains 4,887 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 10 day of April, 2023.

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PROOF OF SERVICE

I certify that I caused to be served a true and correct copy of the foregoing document on all parties or their counsel of record on the date below as follows:

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

DATED this 10 day of April, 2023, at Olympia, Washington.

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