No. 102049-0

SUPREME COURT

OF THE STATE OF WASHINGTON

TWIN W OWNERS' ASSOCIATION,

Petitioner,

v.

ANDREW MURPHY and JENNIFER MURPHY,

Respondents.

ANSWER TO PETITION FOR REVIEW

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A. INTRODUCTION

Respondents Andrew Murphy and Jennifer Murphy (the "Murphys") respectfully ask this Court to deny Petitioner Twin W Owners' Association's (the "Association") Petition for Review.

Having failed to comply with requirements necessary to adopt new restrictive covenants relating to short-term rentals, the Association pivots and now seeks to overturn this Court's ruling in *Wilkinson v. Chiwawa Communities Ass'n,* 180 Wn.2d 241, 327 P.3d 614 (2014) to effectuate the Association's true goal—the complete elimination of short-term rentals within the Association without having to obtain unanimous member approval.

Stare decisis directs this Court to follow its correct decision in *Wilkinson* where it ruled on similar facts (1) that short-term vacation rentals are not commercial uses, and (2) recognizing the long-standing principle that where covenants only permit *changes* to existing terms by majority vote, then a

unanimous vote is required to *create* or record *new* covenants.

Notably, at summary judgment and on appeal to the Court of Appeals, Division III, the Association did not challenge that the use of property for short-term vacation rentals was a non-commercial use. *See Twin W Owners' Ass'n v. Murphy*, 529 P.3d 410, 417 (2023) ("In this appeal, Twin W does not challenge the first holding of the Supreme Court in *Wilkinson v. Chiwawa Communities Association"*). As such, the Murphys request this Court disregard the Association's arguments on the issue. *See State v. Riley*, 121 Wn.2d 22, 31, 846 P.2d 1365 (1993) ("[a]rguments not raised in the trial court generally will not be considered on appeal"). The Murphys have, however, included discussion on the issue in case this Court considers the Association's argument.

This case does not meet RAP 13.4(b)(3)–(4)'s criteria. The law's treatment of short-term rentals as residential uses for purposes of restrictive covenants is not "an issue of substantial public interest that should be determined by the Supreme

Court." RAP 13.4(b)(4). Similarly, this case does not involve a question of law under the Constitution of the State of Washington. RAP 13.4(b)(3).

B. NATURE OF THE CASE AND DECISION

The Association's covenants, easements, conditions, and restrictions ("CCRs") list the rights and duties of owners in meticulous detail and contain general restrictions prohibiting owners from using lots in a fashion which unreasonably interferes with other lot owners' use and enjoyment or carrying on noxious or offensive activities. CP 14–16. The CCRs further provide that "[n]o store or business shall be carried on upon said premises or permitted thereon which involves on-premises sales, or which constitutes a nuisance." CP 18.

The CCRs do not restrict owners' ability to rent or lease their lots. *See* CP 14–20. Owners have historically rented their properties on short-term bases and the Association has never had nor enforced restrictions on any rentals, including short-term rentals. CP 49–50, 52–53.

The CCRs require a 60% vote of the owners – one vote for each lot – to "amend" the CCRs but are otherwise silent on the vote required to add new covenants. CP 18.

In 2020, the Association proposed new restrictive covenants on short-term rentals which it attempted to derive from existing broad, catch-all CCRs that did not address residential rentals or their limitations. *See* CP 82–88. In October 2020, the new covenants were approved with a roughly 66% vote. CP 42–43.

The Association filed suit in Douglas County Superior Court against the Murphys on March 23, 2021, and the Murphys answered and brought their own counterclaims. In June 2021, the parties filed motions for summary judgment. In its motion, the Association never claimed that the new rental covenants were related to the business use restrictive covenant.

The superior court denied the Association's motion for summary judgment and granted the Murphys' motion for partial summary judgment, ruling that the 2020 CCR amendments

restricting and eventually eliminating short-term rentals passed by a less than unanimous vote were "invalid, void, and of no effect." CP 122–124, 125–127.

On August 21, 2021, the Association sought direct, interlocutory review under RAP 4.2(a)(4). The Commissioner denied review because the Association failed to establish RAP 2.3(b)'s considerations. CP 312–316.

Subsequently, the superior court entered final judgment, deemed the Murphys the prevailing party, and provided them an award for attorneys' fees and costs incurred in connection with the Association's unsuccessful appeal for discretionary review. CP 427–431.

On May 3, 2022, the Association again petitioned this Court requesting direct review of the superior court's final judgment. This Court again denied the Association's petition and transferred the appeal to the Court of Appeals, Division III.

On May 16, 2023, Division III issued its opinion affirming the superior court's final judgment on all issues and awarding the

Murphys their appellate attorneys' fees as the prevailing party. *See Twin W Owners' Ass'n v. Murphy*, 529 P.3d 410 (2023).

C. REASONS WHY REVIEW IS NOT MERITED

The Association requests review under RAP 13.4(b)(4), but fails to provide any evidence showing that this case "involves an issue of substantial public interest that should be determined by the Supreme Court." *See* RAP 13.4(b)(4). Subsequent legislation by cities and counties regarding short-term rentals does not affect the rule established in *Wilkinson*, let alone render it "incorrect and harmful." Moreover, the fact that the CCR analysis under *Wilkinson* restricts the Association's ability to eliminate short-term rentals does not transform the issues presented in this case into ones of substantial public interest requiring this Court to revisit and abandon well-established law. Further, the Association's request for this Court to disregard *Wilkinson* and adopt Idaho's "unconscionable harm" standard on the basis of the Association's dissatisfaction with the result in this case does meet the requirements under RAP 13.4(b)(4).

Similarly, the Association's request under RAP 13.4(b)(3) fails as this case does not involve a significant question of law under the Constitution of the State of Washington. The Association conflates the ability of homeowners' associations to adopt restrictive covenants with the ability of governmental entities to enforce codes or ordinances regulating short-term rentals as commercial uses of residential property. *Wilkinson* does not address or place any restrictions on the authority of governmental entities, only homeowners' associations. Despite their often self-perceived authority, homeowners' associations are not governmental entities.

As discussed in detail below, the Association fails to meet the criteria under RAP 13.4(b)(3)–(4), and thus, review is not merited.

1. This Court Is Bound by Stare Decisis to Follow Its Correct Decision in *Wilkinson* Where It Held That Short-Term Vacation Rentals Are Not "Commercial Uses" Under Similar Facts.

This Court is bound by its prior decisions via stare decisis. *W.H. v. Olympia Sch. Dist.*, 195 Wn.2d 779, 787, 465

P.3d 322 (2020) (citing *State v. Otton*, 185 Wn.2d 673, 678, 374 P.3d 1108 (2016)). "The principle of stare decisis 'requires a clear showing that an established rule is incorrect and harmful before it is abandoned.'" *City of Fed. Way v. Koenig*, 167 Wn.2d 341, 346, 217 P.3d 1172 (2009) (citations omitted). "This respect for precedent 'promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.'" *Id.* at 347 (citing *Payne v. Tennessee,* 501 U.S. 808, 827, 111 S.Ct. 2597 (1991)).

When this Court is asked to reconsider a prior decision, it "is an invitation [this Court does] not take lightly." *State v. Barber*, 170 Wn.2d 854, 863, 248 P.3d 494 (2011).

> The question is not whether we would make the same decision if the issue presented were a matter of first impression. Instead, the question is whether the prior decision is so problematic that it *must* be rejected, despite the many benefits of adhering to precedent[.]

Otton, 185 Wn.2d at 678 (italics in original).

The Association presents no valid basis for this Court to disregard stare decisis and abandon *Wilkinson*. The Association does not argue that *Wilkinson* was incorrect when decided—for good reason. Yet, the Association believes "this Court is ideally positioned to revisit *Wilkinson*" and should accept review on the basis that *Wilkinson* was a 5-4 decision where "[n]ow, only three of the five Justices signing onto the majority opinion serve on the Court." Petition for Review at 30. Clearly, the underlying hope of the Association is that the current makeup of this Court will make a different decision—under almost the exact same facts—than when *Wilkinson* was decided. This blatant attempt by the Association at Justice shopping is an afront to the judicial integrity of Washington courts:

> The doctrine of stare decisis is probably more important in Washington than in other states. This is because when judges are elected, there is a tendency toward higher turnover in the judicial ranks than when judges are appointed. The resulting changes in court makeup consequently increase the likelihood that the court's judicial philosophy will change and, with such changes, the desire to abandon precedent intensifies. The doctrine of stare

> decisis provides a check on such tendencies by emphasizing the rule of law so essential to our legal system.

Kelly Kunsch, *Stare Decisis: Everything You Never Realized You Need To Know.* Wash. Bar J. (Oct., 1998) at 32 (discussing *CLEAN v. City of Spokane,* 133 Wn.2d 455, 477-478, 947 P.2d 1169 (1997), *cert.* 515 U.S. 812 (1998)).

In *Wilkinson*, this Court unambiguously held that short-term rentals are not "commercial uses." *Wilkinson*, 180 Wn.2d at 249. As this Court explained, "[i]f a vacation renter uses a home 'for the purposes of eating, sleeping, and other residential purposes,' this use is residential, not commercial, no matter how short the rental duration." *Id.* at 252–53 (citing *Ross v. Bennett,* 148 Wn. App. 40, 51–52, 203 P.3d 383 (2009) (holding rental use is residential not commercial because it "is identical to [the homeowner's] use of the property, as a residence, or the use made by a long-term tenant").

Because the focus is on the character of renters' use of the property, this Court further held that the fact that association

owners may receive income from short-term rentals or that such owners—or companies they list their properties through—may be required to remit business, occupation, or lodging taxes does not change the nature of the property's use from residential to commercial. *See Wilkinson*, 180 Wn.2d at 253 (citing *Ross*, 148 Wn. App. at 51 ("[W]hether the short-term rental is subject to state tax does not alter the nature of the use").

Wilkinson is correct because there is nothing inherently different between the use of a property by a short-term renter "for the purposes of eating, sleeping, and other residential purposes" versus that of the landowner or long-term renter.

For example, in *Wilkinson* this Court distinguished two prior cases, *Mains Farm Homeowners Ass'n v. Worthington,* 121 Wn.2d 810, 816, 854 P.2d 1072 (1993) and *Metzner v. Wojdyla,* 125 Wn.2d 445, 886 P.2d 154 (1994), on this point:

> In Mains Farm…[w]e held the operation of an adult family home violated a covenant restricting use to " 'single family residential purposes only' " because it was " 'more institutional in nature than ... familial' "; " '[t]he single-family residential nature

> of defendant's use of her home [was] destroyed by the elements of commercialism and around-the-clock care.' " *Id.* at 813, 821, 854 P.2d 1072 (emphasis omitted). Similarly, in *Metzner,* we held the operation of a child day care violated a provision requiring properties " 'be used for residential purposes only' " because it involved the exchange of money for care of persons unrelated to the homeowner. 125 Wn.2d at 447, 451, 886 P.2d 154 (emphasis omitted).
>
> Wilkinsons' short-term rental of their properties is distinguishable from the commercial uses in *Mains Farm* and *Metzner.* Both the operations in *Mains Farm* and *Metzner* provided some form of on-site service that the Wilkinsons do not provide to their guests.

Wilkinson, 180 Wn.2d at 253.

Based on the factual record in *Wilkinson* (almost identical to this case), this Court held that "[t]he Wilkinsons' short-term rentals do not, **without more**, violate the 1988/1992 covenant prohibiting commercial use." *Id.* at 253-54 (emphasis added). Here, the Association provides no evidence that renters used the Murphys' property for anything other than eating, sleeping, and other residential purposes.

Even the dissent in *Wilkinson* acknowledged that "[b]oth *Ross* and persuasive out-of-state authority indicate that short-term vacation rentals may be consistent with covenants limiting members to 'single family' and 'residential' use." *Wilkinson*, 180 Wn.2d at 277 (collecting cases). And neither dissenting opinion would have found short-term rental use to be "commercial use" as a matter of law, as the Association asks this Court to do. Rather, both dissenting opinions would have remanded the case for further factual inquiries, *see Wilkinson*, 180 Wn.2d at 262, 271, which the majority addressed. *See id.* at 254, fn. 3.

Thus, *Wilkinson* was and is correct, and the superior court and Division III correctly applied *Wilkinson* to the facts. No basis exists for this Court to depart from the principle of stare decisis and overrule its correct decision in *Wilkinson*.

a. The Association Has Not Made a "Clear Showing" That Any Subsequent Legislation Has Rendered the Rule Established in *Wilkinson* Regarding Short-Term Rentals Both "Incorrect and Harmful"

The Association cannot show that *Wilkinson* was incorrect and harmful when decided. It instead argues that the alleged post-*Wilkinson* expansion of the short-term vacation rental industry and legislation warrants overruling *Wilkinson*.[1] However, this argument is a red herring and based on both a fundamental misunderstanding of the principles underpinning *Wilkinson* and misrepresentations of irrelevant state and local legislation. The Association cites no new, persuasive legal authority that would warrant departing from *Wilkinson*.

[1] The Murphys object to the numerous websites the Association cites that were not part of the trial court record and respectfully request that this Court strike them from consideration. *See State v. Stockton*, 97 Wn.2d 528, 530, 647 P.2d 21 (1982) ("Matters referred to in the brief but not included in the record cannot be considered on appeal."). The Association goes far beyond citing "legislative facts."

The Association's summary statement that "[a]fter *Wilkinson* was decided in 2014, local, state, and national authorities . . . passed laws defining STVRs as 'commercial uses' and holding SVTRs to the same commercial business standards as bed-and-breakfasts, hotels, and other lodging businesses"[2] is unsupported by evidence and irrelevant because *Wilkinson* did not base its decision on the classification of short-term rentals by governmental entities.

This Court in *Wilkinson* and the Court of Appeals in *Ross* already expressly considered and ruled that the fact landowners—or companies through which they list their rental properties—may be required to register with the Department of Revenue (DOR) as a business and/or remit business, occupation, or lodging taxes does not change the nature of the use of the property from residential use to a commercial business. *See Wilkinson*, 180 Wn.2d at 253; *Ross*, 148 Wn. App. at 51 (a short-

[2] Petition for Review at 4.

term rental property owner registered with the DOR as a sole proprietor of a traveler accommodation business located at the address of his rental home and paid excise tax to the DOR for rental income). Additionally, the Association fails to establish that the CCRs' drafters relied on governmental entities' classification of short-term rentals or Washington business classifications for tax purposes. *See e.g., Ross*, 148 Wn. App. at 51.

Nevertheless, the Washington legislature has not passed any legislation purporting to classify and regulate short-term rentals as commercial businesses. The Short-Term Rental Act (RCW 64.37.010–050), effective July 28, 2019, in no way "establishes once and for all the commercial business character of STVRs in Washington state," as the Association erroneously argues. Petition for Review at 16. The bill summary and statutory language clearly show that the purpose is to make "short-term rentals subject to the same local, state, and federal taxes that hotels and bed and breakfast establishments are subject to,"

require "short-term rental operators to provide certain safety information for guests," and require "short-term rental platforms to register with the DOR and inform operators of their responsibilities in the collection and remittance of taxes." *See* SHB 1798 at 1; RCW 64.37.010–050.

Further, the Association has not provided any legal authority suggesting that requiring short-term rental operators to provide safety information or carry liability insurance to protect guests would change this analysis. In fact, the Short-Term Rental Act specifically distinguishes short-term rentals from "duly licensed bed and breakfast, inn, hotel, motel, or timeshare" properties. *See* RCW 64.37.010(3), (9)(a). And the guest safety requirements specifically refer to residential—not commercial—codes. *See, e.g.,* RCW 64.37.030(1)(b) (requiring short-term rentals to comply with RCW 19.27.530, which sets forth carbon monoxide alarm requirements for all buildings classified as "residential occupancies" or "owner-occupied single-family residences").

The Short-Term Rental Act does not even contain the term "commercial" and the lone reference to "business" is with respect to short-term rental *platforms* (i.e., Airbnb, VRBO, etc.), not owners and renters of subject properties. *See* RCW 64.37.040(1).

Likewise, neither the city of Orondo nor Douglas County have any legislation classifying short-term rentals as commercial businesses. Thus, even if a legislative body's commercial business classification was relevant to whether short-term rentals can be regulated under a commercial or business use restrictive covenant—which it is not—no such classification applies to Association property.

On this basis alone, the Association's argument for disregarding stare decisis fails.

Further, the alleged expansion of the short-term vacation rental industry since *Wilkinson* is irrelevant to whether short-term rentals are commercial uses. Rather, this Court correctly

looked to the nature of a property's use by renters, which is the same as the nature of use by an owner or longer-term renter.

And short-term vacation rentals existed long before short-term rental platforms. Even short-term rental platforms, such as Airbnb and VRBO, have been widespread since the early 2000s and was a multibillion-dollar industry when *Wilkinson* was decided. Petition for Review at 11–13. Concerns regarding alleged impacts from short-term rental expansion are legislative issues properly addressed by applicable state, county, or local municipalities—not this Court.

The Association's reliance on—and erroneous interpretation of—legislation passed by two Washington cities and one county likewise provides no basis for this Court to set aside stare decisis and upset years of established law on a state-wide basis.

In addition to being inapplicable to property located in Orondo, Douglas County, the legislation passed by Seattle and

Spokane, for example, does not classify or otherwise seek to regulate short-term rentals as commercial use businesses.

Like the Washington Short-Term Rental Act, Seattle explicitly distinguishes short-term rentals from lodging businesses. *See* SMC 6.600.030 ("'Short-term rental' means a lodging use, **that is not a hotel or motel**, in which a dwelling unit, or portion thereof, that is offered or provided to a guest(s) by a short-term rental operator for a fee for fewer than 30 consecutive nights.") (emphasis added).

The Association disingenuously cites one line from SMC 6.600.010, while leaving out the remaining language which clearly shows the purpose of the ordinance is to preserve housing stock and maintain affordable housing and long-term rentals:

> The purpose of the ordinance is to preserve the City's permanent housing stock, balance the economic opportunity created by short-term rentals with the need to maintain supply of long-term rental housing stock available at a range of prices, reduce any indirect negative effects on the availability of affordable housing, create a level playing field for all parties engaged in the business of providing lodging...

SMC 6.600.010.

Likewise, the Spokane short-term rental regulations clearly state their purpose is to maintain residential use[3] and they contain restrictions distinguishing short-term rentals from traditional business lodging. S*ee, e.g.,* SMC 17C.316.040(B)(3), (4) (limiting adult guests per bedroom and prohibiting nonresident employees from working at residential properties).

Ultimately, the Association cites no relevant legislation or legal authority that supports overturning established, state-wide law to allow associations to restrict short-term rentals by passing new covenants unrelated to existing covenants, with a less than unanimous vote.

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[3] *See* SMC 17C.316.040 ("These regulations are intended to allow for a more efficient use of certain types of **residential structures** in a manner which keeps them **primarily in residential use**, and without detracting from neighborhood character. The regulations also provide an alternative form of lodging for visitors who prefer a **residential setting**.") (emphasis added).

Finally, the Association cannot prove any harm from the *Wilkinson* rule. The CCRs do not regulate rentals and the Association has allowed short-term and long-term rentals since its inception. The Association cannot point to any alleged violations specifically resulting from using property as a short-term rental that is inherently different from violations that can occur from an owner's or long-term renter's use of such property. And the Association can enforce its existing covenants with respect to any specific conduct by individuals—whether renters or owners—that would constitute unreasonable interference with other lot owner's use of their lots or noxious or offensive activity. *See* CP 191 at ¶ 3.4. The Association's request for review is part of an ongoing and improper attempt to rewrite its CCRs to add rental restrictions that the original drafters did not contemplate nor intend to include.

2. The Association's Improper Adoption of a New Restrictive Covenant Does Not Involve an Issue of Substantial Public Interest That Should be Determined by This Court.

The Association primarily focuses on its own inability to change its covenants to restrict and eventually eliminate short-term rentals—which is a function of the specific language contained in the Association's CCRs—language the Association's creator drafted. It is undisputed that the CCRs do not reference renting or contain any related restrictions, and that the Association has always allowed rentals.

The fact that the Association cannot add new covenants restricting or eliminating short-term rentals with a less than unanimous vote is not an issue of substantial public interest. This remains a case dependent on facts unique to the Association and its CCRs that the superior court properly decided consistent with *Wilkinson*.

Moreover, the public policy that the Association asserts is a basis for review is *vastly* outweighed by countervailing public policy and contractual principles the Association ignores. In

Wilkinson, this Court recognized the long-standing principle that where covenants only permit *changes* to existing terms (not the creation of *new* terms) by majority vote, this Court will "respect the expectation of the parties and the contract they entered" and favor "protecting the reasonable and settled expectation of landowners in their property." *Wilkinson*, 180 Wn.2d at 257. The Association's requested relief would rewrite covenants across Washington state and destroy the reasonable and settled expectation of landowners in their property.

Finally, the Association concedes both short-term and long-term rentals have been allowed since its inception and that its CCRs contain no rental restrictions of any kind. The Association remains free to enforce its existing covenants with respect to any specific conduct by individuals—renters or owners—that constitutes unreasonable interference with others' use of their lots or noxious or offensive activity. In a nod to this argument, Division III stated:

> We also note the possibility that Twin W could amend the 2004 nuisance covenants by a sixty percent vote under paragraph 3.2 of the covenants in order to address problems inherent in short-term rentals. We issue no opinion as to whether such amendments would be deemed modifications to the covenants rather than new covenants.

Twin W Owners' Ass'n v. Murphy, 529 P.3d 410, 419 (2023); *see also id.* at 421 (Lawrence-Berrey, J. concurring).

Again, this remains a fact specific case and not an issue of substantial public interest. Thus, the Association fails to satisfy RAP 13.4(b)(4).

a. The Association's Request for this Court to Disregard *Wilkinson* and Adopt Idaho's "Unconscionable Harm" Standard is Unsupported.

Admitting that *Wilkinson* controls in Washington, the Association cites to a 2015 Idaho Supreme Court, *Adams v. Kimberley One Townhouse Owner's Ass'n, Inc.*, 158 Idaho 770, 352 P.3d 492 (2015), in attempt to persuade this Court to disregard stare decisis and adopt Idaho's "unconscionable harm" standard.

In *Adams*, a case decided shortly after *Wilkinson*, the court states that there is a split of authority among the states regarding the distinction between adopting new restrictions and modifying existing ones. *Id.* at 775. Some states, like Washington, have more of a bright-line distinction, while others do not. The court found that Idaho's approach was more consistent with the line of cases that did not use a bright-line distinction. *Id.*

In *Wilkinson*, this Court was clear: "when the general plan of development permits a majority to change the covenants but not create new ones, a simple majority cannot add new restrictive covenants that are inconsistent with the general plan of development or have no relation to existing covenants" *Wilkinson*, 180 Wn.2d at 256 (citing *Ebel v. Fairwood Park II Homeowners' Ass'n*, 136 Wn. App. 787, 793, 150 P.3d 1163 (2007); *Meresse v. Stelma*, 100 Wn. App. 857, 865–66, 999 P.2d 1267 (2000); *Lakeland Prop. Owners Ass'n v. Larson*, 121 Ill.App.3d 805, 459 N.E.2d 1164, 77 Ill.Dec. 68 (1984)).

Here, the superior court properly applied *Wilkinson* when it ruled that the 2020 CCRs were unrelated to existing amendments and inconsistent with the Association's general plan of development. The Association may be dissatisfied with the differing requirements for new versus modified restrictive covenants, but the Association's dissatisfaction does not mean the superior court erred in its application of the rule in a manner that warrants this Court to reject *Wilkinson* and adopt Idaho's standard.

3. There is No Question of Constitutional (In)Validity for Legislation Involving Government Regulation of Short-Term Rentals Post-*Wilkinson*.

The Association's strained attempt to create a constitutional conflict by claiming *Wilkinson* preempts any local codes or ordinances seeking to regulate short-term rentals as commercial uses of residential property ignores the limited scope of *Wilkinson*, which addresses only adoption of restrictive covenants by homeowners' associations.

As discussed in more detail above, *Wilkinson* did not base its decision on the classification of short-term rentals by governmental entities. *See supra* pp. 13–21. As Division III stated, "the universal rule is that use of property for short-term vacation rentals does not transform a home from residential use to commercial use for purposes of covenants restricting commercial use." *Id.* at 417 (citing *Wilson v. Maynard*, 2021 S.D. 37, 961 N.W.2d 596 (2021); *Kinzel v. Ebner*, 2020-Ohio-4165, 157 N.E.3d 898 (Ct. App.); *Forshee v. Neuschwander*, 2018 WI 62, 381 Wis. 2d 757, 914 N.W.2d 643; *Tarr v. Timberwood Park Owners Association*, 556 S.W.3d 274 (Tex. 2018); *Houston v. Wilson Mesa Ranch Homeowners Association, Inc*., 2015 COA 113, 360 P.3d 255; *Russell v. Donaldson*, 222 N.C. App. 702, 731 S.E.2d 535 (2012)).

Cities and counties across Washington state remain free to enact codes and ordinances regulating short-term rental activity. To the extent such a code or ordinance may be in conflict with *Wilkinson*, a party with proper standing to bring such a claim and

appeal may do so. Here, however, the facts of the case and appeal are limited to the authority of a homeowners' associations to adopt restrictive covenants with less than unanimous consent—not the classification and regulation of short-term rentals by the city of Orondo or Douglas County.

D. THE MURPHYS ARE ENTITLED TO THEIR ATTORNEY'S FEES AND COSTS

The CCRs state that "[t]he substantially prevailing party in any dispute of the enforcement of these covenants shall be entitled to recover reasonable attorney's fees." CP 191, ¶ 3.4. The Murphys were the prevailing parties and were awarded their attorneys' fees and costs, including those incurred defending the Association's unsuccessful discretionary review request. CP 429–430. Division III also awarded the Murphys their appellate fees. As the prevailing parties, the Murphys are entitled and they hereby request to recover their attorney's fees and costs on review before this Court, pursuant to RAP 18.1.

E. CONCLUSION

This case does not warrant direct review under RAP

13.4(b). This Court should not disregard stare decisis and overturn its correct ruling in *Wilkinson*. The Murphys respectfully request that this Court deny the Association's request for review and award their attorney's fees and costs.

I certify that this answer contains 4,649 words, in compliance with RAP 18.17.

RESPECTFULLY SUBMITTED this 30th day of June, 2023.

LEVY | VON BECK | COMSTOCK | P.S.

By: *s/ Seth E. Chastain*

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CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on this date I filed and caused to be served in the manner indicated a copy of the within and foregoing document upon the following persons:

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DATED this 30th day of June 2023 at Seattle, Washington.

s/ Tmnit Tewolde
Tmnit Tewolde, Paralegal

LEVY VON BECK COMSTOCK PS

June 30, 2023 - 4:10 PM

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