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Case #: 1028482

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Court of Appeals
Division I
State of Washington
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No. 82897-5-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION I

SINA GHODSEE, an individual, through Litigation Guardian Ad Litem, JOSHUA BROTHERS,

Petitioners,

and

SHAHRBANOO GHODSEE, an individual,

Plaintiff,

vs.

CITY OF KENT, a political subdivision of the State of Washington,

Respondent,

and

KING COUNTY, d/b/a King County Crisis and Commitment Services,

Defendant.

RESPONDENT'S RESPONSE TO PETITION FOR REVIEW

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

The Court should not grant the Petition for Review.[1] The Court of Appeals correctly ruled that police have a duty to act reasonably when they affirmatively act to cause harm to civilians. Here, since the police took no such affirmative acts, they had no duty. In that regard the decision is completely consistent with settled law. And the Court of Appeals also held that the *Norg* case did not change its analysis.

Moreover, the Court of Appeals' decision is harmonious with the settled public policy of this state. That policy strikes a balance in favor of a citizen suffering a mental crisis, and against the police who would violently seize them, against the hospitals that would inject them with drugs against their wishes and against the courts that might be tempted to detain them without due process.

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[1] The decision below addressed Plaintiffs' claims against both the City and King County. The Petition only seeks a review of the decision involving the City.

Here, the Court of Appeals correctly rejected the violent and unconstitutional acts suggested by Plaintiffs' experts and repeated here. The policy of this state is de-escalation by police and not the violent and unprovoked use of a SWAT Team, tasers, tear gas, and bullets suggested to this Court.

It is critical to understand that the Plaintiff did not appeal – and the Court of Appeals did not decide – whether the eventual self-defense shooting by the police was reasonable or lawful. While that issue was decided in the trial court, that issue was not decided by the Court of Appeals because it was not properly appealed by the Plaintiffs. And they make no challenge to that holding here. This case is not about the shooting. That is the law of this case.

The Plaintiffs invite this Court to declare that any Non-Emergent Detention Order under RCW 71.05, contains a *sub silentio* search warrant authorizing the police to violently enter a residence. Such a declaration would contradict decades of settled Fourth Amendment and Article 1, Section 7 jurisprudence.

Equally problematic is the Plaintiffs' request that this Court declare that a Non-Emergent Detention Order strips the police of any discretion about where and how to detain a person in a mental crisis, and instead compels immediate and violent action, amounting to a "arrest dead or alive" order from the Old West. In these two arguments, Petitioner is not showing conflict with existing precedent under RAP 13.4, but is seeking to advance new and uncharted laws, conflicting with established policy. As a prudential and rules-based basis, the Petition should be denied.

II. NO AFFIRMATIVE ACTS – NO DUTY IN THIS CASE

A. The Public Duty Doctrine Does Apply Here And There Was No Duty Before The Police Took Affirmative Action To Cause Harm On July 10

1. The Public Duty Doctrine's Central Purpose.

In the Court of Appeals, Plaintiffs admitted that "the public duty doctrine comes into play when special governmental obligations are imposed by statute or ordinance." *Beltran-Serrano v. City of Tacoma*, 193 Wn.2d 537, 549, 442 P.3d 608, 614 (2019) (See, Appellants' Court of Appeals Brief at p. 52,

acknowledging principle). "Because governments, unlike private persons, are tasked with duties that are not legal duties within the meaning of tort law, we carefully analyze the threshold element of duty in negligence claims against governmental entities." *Washburn v. City of Fed. Way*, 178 Wn.2d 732, 753, 310 P.3d 1275, 1287 (2013). "The central purpose behind the public duty doctrine is to ensure that governments do not bear greater tort liability than private actors." *Beltran-Serrano*, supra.

Here, Mr. Ghodsee had committed no crimes. The police were attempting to interact with him based on the language of RCW 71.05, and nothing more. Their attempt to interact arose out of the Involuntary Treatment Act, an activity that no private actor engages in. Thus, the central purpose of the doctrine was met in this case and properly applied based on settled law.

In contrast, when the City of Seattle set up an ambulance business which negligently went to the wrong address, injuring Mr. Norg, there was no public duty defense. *Norg v. Seattle*.

The Court of Appeals properly distinguished between this case and *Norg* on that exact point.

B. The Common Law Duty Cases Require Affirmative Action Causing Harm

The "common law duty" that Plaintiff claims is at work in this case, has only been applied when the police take affirmative acts to cause harm. An analysis of both the case law relied upon by Plaintiff and the Restatement establishes that there is a significant distinction between police when taking affirmative action which causes harm, as opposed to what happened here, which was inaction or nonfeasance.

In *Mancini*, the police negligently executed a search warrant, battered down a door, drug an innocent woman from her bed, and forced her to stand in her nightgown while they figured out that they had the wrong apartment. In affirming a jury verdict, this Court emphasized that it was the nature of the affirmative actions that created a duty and then liability. "At common law, every individual owes a duty of reasonable care to

refrain from causing foreseeable harm in interactions with others. This duty applies in the context of law enforcement and encompasses the duty to refrain from directly causing harm to another through affirmative acts of misfeasance." *Mancini v. City of Tacoma*, 196 Wn.2d 864, 879, 479 P.3d 656, 664 (2021) (citation omitted, bold added).[2]

In *Beltran-Serano*, the Tacoma officer pulled her gun and shot an unarmed man. *Beltran-Serrano v. City of Tacoma*, 193 Wn.2d 537, 442 P.3d 608 (2019).[3]

The cases relied upon by Plaintiffs were cases where the police actors took affirmative action and caused harm. Something that never happened here. Cf. *Watness v. City of*

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[2] As the *Mancini* court stated, "Our decisions recognize a difference in the public duty doctrine context between 'misfeasance' and 'nonfeasance.'" *Mancini v. City of Tacoma*, 196 Wn.2d 864, 885, 479 P.3d 656, 667 (2021).

[3] In their brief before the Court of Appeals, Plaintiffs relied upon *Coffel v. Clallam County*, 47 Wn. App. 397, 735 P.2d 686, review denied, 108 Wn.2d 1014 (1987) and *Garnett v. City of Bellevue*, 59 Wn. App. 281, 284, 796 P.2d 782, 784 (1990). Both were cases where the police acted affirmatively and caused harm.

Seattle, 16 Wn. App. 2d 297, 304, 481 P.3d 570, 577 (2021) (police entered home of mentally ill woman, failed to de-escalate, and shot and killed her).

C. The Common Law Duty Cases Distinguishes Between Misfeasance And Nonfeasance

When it comes to cases involving tort claims against the government, this Court has made two significant observations. First, "we carefully analyze the threshold element of duty in negligence claims against governmental entities." *Washburn v. City of Fed. Way*, 178 Wn.2d 732, 753, 310 P.3d 1275, 1287 (2013). Second, the Court has noted the important distinction between affirmative acts causing harm and the doctrine of nonfeasance which is at work in this case:

> The difference between this case and *Parrilla*[4] is the distinction between an act and an omission. The distinction is explained in

[4] *Parrilla v. King Cty.*, 138 Wn. App. 427, 157 P.3d 879 (2007) (county owed duty to motorists because bus driver's affirmative act of leaving bus with the engine running with a visibly erratic passenger on board exposed motorists to a recognizable high degree of risk of harm through the passenger's criminal conduct in stealing the bus, which a reasonable person would have foreseen).

> Restatement § 314 comment c: The origin of the rule lay in the early common law distinction between action and inaction, or "misfeasance" and "non-feasance." In the early law one who injured another by a positive affirmative act was held liable without any great regard even for his fault. But the courts were far too much occupied with the more flagrant forms of misbehavior to be greatly concerned with one who merely did nothing, even though another might suffer serious harm because of his omission to act. Hence liability for non-feasance was slow to receive any recognition in the law. It appeared first in, and is still largely confined to, situations in which there was some special relation between the parties, on the basis of which the defendant was found to have a duty to take action for the aid or protection of the plaintiff.
>
> Thus, under § 314, an actor might still have a duty to take action for the aid or protection of the plaintiff in cases involving misfeasance (or affirmative acts), here the actor's prior conduct, whether tortious or innocent, may have created a situation of peril to the other. Liability for nonfeasance (or omissions), on the other hand, is largely confined to situations where a special relationship exists.

Robb v. City of Seattle, 176 Wn.2d 427, 435–36, 295 P.3d 212, 217 (2013) ("In order to properly separate conduct giving rise to liability from other conduct, courts have maintained a firm line

between misfeasance and nonfeasance.").

The Court of Appeals correctly applied this analysis. Review is not needed.

D. Plaintiffs Are Claiming Nonfeasance And Cannot Point To Any Affirmative Act Causing Harm

In this case, Plaintiffs are not accusing the police of affirmative acts that would meet the test of the Restatement or the case law. Indeed, the Plaintiffs are accusing the police of the opposite. The police "gave up and left." Brief of Appellants, p. 18, 21, 22. They "refus[ed] to act." *Id.* p. 19. They would not "force entry." *Id.* p. 20. They were "dithering." *Id.* p. 40. Those same characterizations are repeated here. Petition, p. 7 ("pattern of failure"); p. 7("do nothing"); p.9 ("no action").

In *Washburn*, the Officer's affirmative acts (of serving the anti-harassment order, serving it at the female's home, and giving it to the male with no one to translate) "had created a new and very real risk to Roznowski's safety" *Washburn v. City of Fed. Way*, 178 Wn.2d 732, 760, 310 P.3d 1275, 1290 (2013).

This Court noted that in these cases "only misfeasance, not nonfeasance, could create a duty to act." *Id.* at 759. Before the jury, "[t]he bulk of testimony offered by Washburn at trial concerned [the police officers] misfeasance in serving the antiharassment order." *Id.* at 760.

Here, prior to the shooting, the City's actions consisted of trying to speak to Ghodsee. They looked at his house. They tried to call him, text him and use a public address system with no success. They asked others to call if they saw him walking in the neighborhood or visiting the local store. On one occasion they opened the door to his house to check on his welfare, and quickly closed the door when he was menacing, de-escalating the encounter. None of these can be properly characterized as affirmative acts, and none caused Mr. Ghodsee any harm. This is a case about nonfeasance, and only nonfeasance, prior to July 10.

Further proof that this is about nonfeasance versus malfeasance is found by examining the affirmative and violent actions the experts hired by Plaintiffs claim the City should have

performed.

Ignoring the illegality of these actions, they claim the City should have used mom's unilateral permission, entered the home and snatched him. CP 586, 587. When Officer Blake opened the door for a welfare check, Plaintiffs claimed he should have affirmatively entered Sina's house and violently grabbed him or perhaps shot him with a bean bag round if he was holding the skateboard as a weapon. CP 566[5]. The expert claims police should have brought SWAT with its military weapons and armored vehicle and gassed Sina from his house. CP 572, 568. These are the classic example of affirmative acts, that if done unreasonably and caused harm, violate the common law duty in the cases. But Kent did none of these things.

[5] Bean bag shotguns are capable of causing serious bodily injury. *Deorle v. Rutherford*, 272 F.3d 1272, 1275 (9th Cir. 2001) (police blinded mentally ill man with bean bag rifle inside his home).

E. Plaintiff Never Argued That Kent Had A Duty Based On Judge Bender's Order. That Is Newly Minted And Should Not Compel Review

In the Court of Appeals, Plaintiffs claimed, for the first time, that the City's duty arose from the language of Judge Bender's involuntary treatment order and so-called "mandatory" language. Plaintiffs argued that Judge Bender's order created a "take charge" relationship and cited an unpublished case, never mentioned in the trial court. Brief of Appellant, p. 45. It is a newly minted argument. It was never argued below and should be rejected now.

Below, Plaintiffs made three arguments in opposition to the City's Motion for Summary Judgment. It argued that the City had a common law duty to Mr. Ghodsee, citing *Beltran-Serano*, *supra*. CP 296. They argued that the immunity of RCW 71.05.120 does not apply. CP 300. Finally, they argued that the felony defense should fail due to their claim of diminished capacity. CP 303.

Plaintiffs mentioned Judge Bender's order on one

occasion (CP 289) and did not claim the language created a duty, and did not argue that when the order said "shall" it created a mandatory duty to somehow act. These arguments were brand new in the Court of Appeals, and should not be examined now. RAP 2.5(a).

The Court of Appeals said that RAP 2.5(a) was not violated because Ghodsee argued that a "special relationship" existed. It noted this in a section analyzing liability of King County. Opinion, p. 6, fn. 6. But that argument was limited to Ghodsee's claims against King County. CP 609, 623-624. At no time did Plaintiff make that claim as regards City of Kent. CP 295-307. Plaintiffs' Petition does not address the case against King County. And since this argument was never made before the trial court as to City of Kent, it is not proper now. RAP 2.5(a).

Even now, Respondent fails to explain the source of this duty, or tackle the myriad of problems such a broad duty would create. As the Court of Appeals said, "[t]here is nothing in statute or in the NED order that required KPD to enforce the detention

order in any particular way; the officers had discretion to determine the safest way to carry out the court's order. Their actions in effectuating the NED order were further constrained by various constitutional considerations that necessitate a flexible response based on the particular circumstances of the interaction… To expand liability of a law enforcement agency based on failure to detain pursuant to the ITA or a NED order in a particular way or within a particular timeframe would undermine the very language of the ITA itself, which seeks to safeguard individual rights. The risk that imposing liability 'could encourage' law enforcement 'to detain patients merely to avoid potential liability to third parties,' presents a significant challenge to the individual rights of potential detainees who are protected under the ITA." Opinion, p. 14-15.

The order said "shall detain." It did not say "shall detain immediately." It did not say "shall detain using whatever force is necessary." It did not say "shall detain dead or alive." And Plaintiffs do not explain the circumstances that would trigger the

duty. Is the duty triggered the minute Judge Bender puts pen to paper, or would it only arise when the order is presented to the police? If Kent knew of the order, but never went to Ghodsee's home, would the duty arise? What if Kent never saw the order? What if Ghodsee left Kent and traveled to Auburn, would the Auburn police be subject to the duty? Because the Plaintiffs' argument is unmoored to any case law, or any line of jurisprudence, there is nowhere to go to answer these real and practical questions.[6]

Moreover, the argument advanced by Plaintiffs would be contrary to the public policy of the state, as noted by the Court of Appeals. Opinion, p. 15. The policy of the ITA is to preserve and safeguard individual rights. A rule that a Non-Emergent Detention Order mandates immediate arrest might have the

[6] Every day, the Courts of Washington issue bench and arrest warrants that "shall command that the defendant be arrested and brought forthwith before the court issuing the warrant…" CrR 2.2(c). The language is no different from a NED Order. A ruling that such language creates a mandatory duty by individual police to arrest on pain of tort liability, would upend the current system.

dangerous effect of encouraging police to seize people simply because they were having a mental crisis in order to avoid liability. *Id.*

1. Any Entry Based on The Non-Emergent Detention Order Would Violate Decades of Case Law.

Plaintiff asserts that when Division I held that Judge Bender's Non-Emergent Detention Order did not authorize an entry and search of Mr. Ghodsee's home, the Court was "wrong" and making "pernicious public policy." Pet. at p. 21. In support of these claims, Plaintiff offers three threadbare claims. First, Plaintiff repeats the false claim that mother's alleged permission allows the officers to enter without a warrant. Second, Plaintiff claims the police, and the SWAT team armed with tear gas, could enter to provide "community caretaking." Finally, Plaintiff claims that Judge Bender's Non-Emergent Detention Order contains a silent and implied search warrant, even though no one asked her to secretly include a search warrant in the Non-Emergent Detention Order. Each of these claims will be

addressed seriatim.[7]

a. Permission

Plaintiffs note that Mrs. Shari Ghodsee gave permission for the Kent Police to enter. Petition, p. 7, fn. 8; p. 21. They fail to acknowledge that Sina Ghodsee was a cohabitant in the residence. This has constitutional implications. In 1989, this Court said:

> Where the police have obtained consent to search from an individual possessing, at best, equal control over the premises, that consent remains valid against a cohabitant, who also possesses equal control, only while the cohabitant is absent. **However, should the cohabitant be present and able to object, the police must also obtain the cohabitant's consent.** Any other rule exalts expediency over an individual's Fourth Amendment guarantees.

State v. Leach, 113 Wn.2d 735, 744, 782 P.2d 1035, 1040 (1989) (emphasis added).

[7] The King County case worker's opinion about search and seizure law should have no impact. Pet. at p. 5, fn. 5.

Plaintiffs' Petition has no answer for this bedrock principle. The Court of Appeals made no error. Review is not warranted.

b. Community Caretaking Function

Plaintiff argues that Kent Police could enter her home without a warrant and would be able to cite the "community caretaking function" exception to the warrant requirement. Pet. at p. 22, n. 17. But this Court has said "[w]e must "cautiously apply the community caretaking function exception because of a real risk of abuse…" *State v. Acrey*, 148 Wn.2d 738, 750, 64 P.3d 594, 600 (2003). The "emergency aid function involves circumstances of greater urgency and searches resulting in greater intrusion. It applies when "(1) the officer subjectively believed that someone likely needed assistance for health or safety reasons; (2) a reasonable person in the same situation would similarly believe that there was a need for assistance; and (3) there was a reasonable basis to associate the need for assistance with the place searched." *State v. Kinzy*, 141 Wn.2d

373, 386–87, 5 P.3d 668, 676 (2000), as corrected (Aug. 22, 2000). And, most importantly, the "noncriminal investigation must end when reasons for initiating an encounter are fully dispelled." *State v. Kinzy*, 141 Wn.2d 373, 388, 5 P.3d 668, 677 (2000), as corrected (Aug. 22, 2000).

The City did enter the Ghodsee home under this exception on the first day, because Mr. Ghodsee became silent for an extended period. CP 121. Officer Blake opened the door to check on his welfare. *Id.* He saw that Ghodsee was not hurt or disabled. Because Mr. Ghodsee did not need emergency help, and the reasons for entry were dispelled, Blake ended the entry and closed the door. *Id.*[8] Otherwise, Plaintiffs fail to identify any

[8] To be sure, Mr. Ghodsee was brandishing a skateboard when Officer Blake looked in on him. And he testified that if someone is threatening an officer with a raised skateboard, that is a potentially deadly force situation. But Officer Blake did not produce his gun and kill Mr. Ghodsee, instead he de-escalated and closed the door, preventing the violence and deaths that happened in *Watness v. City of Seattle*, 16 Wn. App. 2d 297, 481 P.3d 570 (2021) (Charlena Lyles case) and *Davis v. King Cnty.*, 16 Wn. App. 2d 64, 479 P.3d 1181 (2021).

other step in the timeline where the community caretaking function would be appropriate.

2. Judge Bender Issued a Search Warrant, She Just Did Not Know It.

Plaintiffs' final stab at this issue is to claim that Judge Bender – an "impartial magistrate" (Pet. at p. 22) – did provide a search warrant when she issued her Non-Emergent Detention Order. There are several problems with this analysis. The biggest problem is that this was not an argument made in the trial court. CP 294-308; RAP 2.5(a).

The second problem is statutory. There is a law regarding search warrants and it requires the warrant to be specific as to what property is being searched and what "evidence" is being seized. RCW 10.79.035(1) says that "[i]f the magistrate finds that probable cause for the issuance of a warrant exists, the magistrate must …identifying the property or person and naming or describing the person, place, or thing to be searched." Searching a home in violation of this statute is a crime. RCW 10.79.040.

Nowhere do Plaintiffs square their argument with these statutes, possibly because this is newly minted.

The Court of Appeals correctly ruled that "[t]he existence of the NED did not suspend Ghodsee's right to privacy in his home, for example, or to be free from search or seizure in the absence of either a warrant or applicable exception to state and federal warrant requirements." Opinion, p. 15.

At no time during the course of events did the police have any basis to enter the Ghodsee home. And at no time was there probable cause to arrest Ghodsee for anything. Plaintiffs' Petition repeats the false claim that Ghodsee threatened a neighbor with a gun. Petition, p. 9. The police determined that the crime never happened. CP 494-495. The Court of Appeals agreed. Opinion, p. 15-16.

A person in a mental crisis does not surrender their constitutional rights. Opinion, p. 15. The violent and dangerous suggestions of Plaintiffs' experts would be illegal and unconstitutional as a matter of law. CP 566-567 (Recommending

use of rubber bullets, electric TASER and pepper spray on the innocent Ghodsee.) The Plaintiffs' experts recommended that the police utilize a military bearcat and tear gas Ghodsee from his house or shoot him with rubber bullets, even though he committed no crime and police had no warrant. Petition, p. 20 (citing CPs).

Finally, the Petition breathlessly claims, "If Division I is correct, DMHPs or law enforcement officers executing an ITA detention order must stop at the door of a house while the mentally ill person who is a danger to himself or others, or is gravely disabled decompensates, until a further order is obtained." Petition, p. 22. This is not what the opinion said, and contrary to the facts of this case. Ghodsee was only a danger to others, and he was alone in his house. If he was a danger to himself, or gravely disabled, the existing case law allows entry by police without a warrant. *Caniglia v. Strom*, 141 S. Ct. 1596, 1599, 209 L. Ed. 2d 604 (2021). The Court of Appeals was correct and no review is warranted.

III. THE IMMUNITY OF RCW 71.05 FULLY APPLIES

Because this case arose under RCW 71.05, both defendants sought protection under the immunity of RCW 71.05.120. As an independent basis to affirm summary judgment, the Court of Appeals ruled that the immunity applied. Opinion, p. 17. This was a straightforward statutory interpretation case, and does not merit review.

Under Plaintiffs' reasoning, as rejected by the Court of Appeals, the only one making the "decision of whether... to detain" is Judge Bender. Appellants' Brief, p. 48. Ignoring the fact that Kent was on the scene a full day before Judge Bender signed the detention order, and ignoring the absurd consequences of Kent having immunity on June 28, but losing it the minute Judge Bender puts pen to paper, the argument that Kent isn't making "decisions" about whether to detain Mr. Ghodsee is without support in the law or the language of the code.

At every stage in this case, both before and after Judge Bender made her decision to sign a non-emergent detention order

(CP 334), Kent officers were making a decision about whether or not to detain Mr. Ghodsee. The code gives the police authority to detain a person under the ITA without a court order. RCW 71.05.153 (2)(a). The presence of an order merely relieves the police officer of having to determine if a person is in imminent likelihood of harm or becoming gravely disabled. *Id.* (2)(a)(ii).

Further proof of why Plaintiffs construction of the statute is incorrect is that the statute immunizes both civil and criminal liability. It is hard to see where a decision not to detain someone could ever implicate criminal liability. In fact, it is the activities surrounding the decision to act and detain——like the use of violent force to detain—that could implicate criminal law. If the legislature thought it was only immunizing benign thought processes, then it would not have immunized acts that could lead to a crime.

The City's construction is supported by an analysis of the language modified by the phrase "decision of whether to…" The words modified by this phrase are "admit, discharge, release,

administer antipsychotic medications, or detain…" Each of these is a physical activity. And it is a physical activity taken by the people and entities subject to the immunity. It is not, as Plaintiffs' argue, a mere mental activity. The decision to administer medications would never implicate civil and criminal liability if it was not followed by a physical act. And if it were only the decisions that were immunized, and not the act, the immunity would be illusory. The Court of Appeals accepted the construction of this law as proposed above and it was right.

Plaintiffs' reliance on *Harper v. State*, 192 Wn.2d 328, 343, 429 P.3d 1071, 1077 (2018), is curious. Petition, p. 25. That case involved community supervision by the DOC. Liability depended on evidence of gross negligence by the Department. *Supra*, p. 349. This Court criticized the Court of Appeals for improperly focusing on the areas where the DOC could have done more. In reversing the Court of Appeals, this Court said that in a gross negligence summary judgment analysis, the Court must look at what the defendant failed to do, and the affirmative

steps that the defendant took. "Looking at the whole picture—what DOC failed to do and what DOC did with regard to the relevant alleged failure—we agree with the trial court that reasonable minds could not differ about the fact that DOC exercised slight care and was therefore not grossly negligent. *Id.* (emphasis in original).

Here, applying the test from *Harper*, reasonable minds could not find gross negligence when considering what Kent "did." This included multiple trips to the house, attempting to communicate with Mr. Ghodsee though text, email, and a public address system, attempting to lure him out with a promise of food, dropping his picture at local stores, asking neighbors to notify police if he was seen walking about, interviewing his mother about his food and shopping habits, and even asking her if she would shut off the water and power.

Even if the Court holds that there is some "common law" duty, then the immunity of RCW 71.05.120 applies and dismissal should be affirmed. *Konicke v. Evergreen Emergency Servs.*,

P.S., 16 Wn. App. 2d 131, 146, 480 P.3d 424, 432 (Immunity of act applies to existing causes of action and did not create any cause of action out of RCW 71.05).

IV. CONCLUSION

The Court of Appeals' decision is straightforward and applied settled law. Its evaluation of the *Norg* decision was also straightforward and correct. There is no basis for review. The Petition should be denied.

I certify that this memorandum contains 4,732 words, in compliance with RAP 18.17.

DATED this 27th day of April, 2024.

Respectfully submitted,

/s/ Andrew Cooley
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DECLARATION OF SERVICE

I, Cindy Marlatte, declare that I am over the age of 18 and am a legal assistant at the law office of Keating, Bucklin & McCormack, Inc. P.S. I further declare that on 10.14.2021, a true and correct copy of the Respondent's Response to Petition for Review was e-filed and e-served electronically through Washington State Appellate Court's portal as follows:

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