No. 96983-3
Court of Appeals No. 50228-3-II

SUPREME COURT
OF THE STATE OF WASHINGTON

GEORGE KARL, REBECCA ANN, and a class of similarly situated individuals,,

Petitioners/Appellants,

v.

CITY OF BREMERTON,

Respondent.

PETITION FOR REVIEW

BENDICH STOBAUGH
& STRONG, P.C.
Alexander F. Strong, WSBA No. 49839
David F. Stobaugh, WSBA No. 6376
Stephen K. Strong, WSBA No. 6299
126 NW Canal St, Suite 100
Seattle WA 98107
(206) 622-3536

Attorneys for Petitioners

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I. IDENTITY OF THE PETITIONERS

Plaintiffs George Karl and Rebecca Ann, and a certified class of over 1,000 individuals (the "Drivers") who were fined by the Defendant City of Bremerton, ask this Court to accept review.

II. COURT OF APPEALS DECISION

The Court of Appeals filed its decision barring any original action in superior court challenging the City of Bremerton's unlawful fines on February 20, 2019. A copy of that decision is attached.

III. ISSUES PRESENTED FOR REVIEW

1. Should this Court review the trial court's ruling that the City may, without authority under state law, use private for-profit contractors to issue tickets because it is an issue of substantial public importance where (1) the Supreme Court Commissioner ruled earlier in this action that this issue is one of "potential statewide significance," (2) jurisdictions in Washington and across the U.S. are increasingly privatizing various law enforcement functions and (3) the Washington Legislature and Attorney General have repeatedly weighed in on law enforcement agencies' contracting authority?

2. Should this Court review the Court of Appeals' decision that the Drivers cannot bring an original action in superior court challenging the legality of the fines issued to them by the City of Bremerton, but are

restricted to litigating municipal court infraction cases, when (1) the decision conflicts with the Constitution which grants superior courts original jurisdiction over actions involving the legality of a municipal fine, (2) hundreds of thousands of individuals receive municipal traffic fines each year, and (3) under the decision no one could ever obtain declaratory, injunctive, or incidental monetary relief?

IV. STATEMENT OF THE CASE

This is a certified class action filed in Kitsap County Superior Court challenging the legality of parking fines. CP 640-41. The Drivers challenged the City's contracting out to a private company the law enforcement function of issuing parking tickets, without statutory authority. CP 291-92. The Drivers also challenged the City's authority to impose traffic fines based on no-parking signs that did not comply with uniform state law standards governing such signs. CP 156-67.

The trial court granted the Drivers' motion for summary judgment, ruling that the City's blue no-parking signs violate state law. CP 634. Later, despite that ruling in the Drivers' favor and despite previously acknowledging that the municipal court has no jurisdiction over class-wide declaratory, injunctive, or restitution claims based on state law, VRP 06-04-16 at 5-7, 9, the trial court dismissed the Drivers' claim, saying they can only file individual motions to vacate in municipal court. CP 619.

Before dismissing the challenge to fines based on the unlawful no-parking signs, the trial court ruled on the merits of the Drivers' separate claim that private Imperial Parking employees have no authority to conduct traffic enforcement and issue tickets under state law. CP 630-34. The Legislature authorizes only "law enforcement officers" to issue traffic tickets, including parking tickets, and Imperial Parking employees are not "law enforcement officers" under those statutes. CP 301-10. The trial court agreed with the Drivers that only a "law enforcement officer" can issue tickets. CP 630-34. However, the trial court ruled that Imperial Parking employees "could be considered" law enforcement officers because the City had, by ordinance, authorized the police chief to contract out parking enforcement. CP 633.

The trial court dismissed the action. CP 609. The Drivers appealed. CP 612; CP 649. The Court of Appeals ruled on February 20, 2019. It did not rule on other issues raised by the City.[1]

V. ARGUMENT

A. Standard for Accepting Review.

Under RAP 13.4, this Court will review cases that involve "an issue of substantial public interest that should be determined by the

[1] The city contended the blue no-parking sign claim was barred by res judicata, although the trial court did not agree, except for a minor part that is not at issue here. VRP 06-04-16 at 5-7, 9; RB 6-15. The Court of Appeals did not address res judicata or the City's argument on class certification. CoA Dec. at 9 n.4, 12 n.6.

Supreme Court," that involve "a significant question of law under the Constitution of the State of Washington," or are "in conflict with a decision of the Supreme Court." The Court of Appeals' decision should be reviewed because it involves issues of substantial public interest, important questions of superior court jurisdiction under the Washington Constitution, and conflicts with decisions of this Court.

B. Whether a City, by Ordinance, Can Authorize Itself to Contract Out Law Enforcement Regardless of State Law Is an Issue of Broad Public Importance.

In considering an earlier motion to transfer in this case, the Supreme Court Commissioner ruled that the issue of "a municipality's authority to contract out parking enforcement services" raised here is an issue of "potential statewide significance." Ruling at 3, No. 95934-0. At the time the Commissioner denied transfer because he did not find the issue to be "so urgent that it now requires this Court to address it" immediately and the "Court of Appeals is more than capable of deciding this issue in the first instance." *Id* at 4. While the Commissioner found that this appeal did not meet the urgency requirement for immediate review under RAP 4.2(a)(4), urgency is not a consideration for accepting review of this petition under RAP 13.4(b).

The Commissioner stated that "whether a law enforcement agency, by way of a municipal ordinance, may contract with a private entity for the

limited law enforcement purpose of parking enforcement seems debatable and is an apparent issue of first impression." Ruling at 3. Moreover, the trial court also stated this case presents issues of first impression and stated that it is important "for a higher court to really give us some direction on these issues, because we don't have any Washington State cases directly on these issues." VRP 02/06/17 at 47. The trial court also said that its decisions are "perfectly ripe" for appellate review. *Id.*

The Court of Appeals, rather than ruling on this important issue and despite the fact that the trial court decided this contracting-out issue on the merits, CP 634, ruled that the Drivers can never raise a challenge to the legality of the City's fines in the superior court. CoA Dec. at 7-9.

The record shows that the City of Bremerton contracted out its police department parking enforcement to a private company, Imperial Parking. CP 259-64, 321-22, 346. The City's parking tickets issued by for-profit private contractors violate state statutes because the law enforcement function of issuing parking infractions must be performed by a "law enforcement officer." RCW Ch. 46.63.[2] Further, the State explicitly restricts law enforcement agencies to contracting only with other

[2] The Legislature provided that "a *law enforcement officer has the authority to issue a notice of traffic infraction.*" RCW 46.63.030(1) (emphasis added). And any law enforcement not performed in accordance with RCW 46.63.030 is "invalid and of no effect." RCW 46.08.020. Parking citations issued by people who are not law enforcement officers are thus "invalid and of no effect." *Id.*

law enforcement agencies. RCW 10.93.130 ("Contracting Authority of Law Enforcement Agencies").[3] Finally, the Drivers argued that the City's privatization of traffic enforcement violates other statutes on City law enforcement personnel. See *Teamsters Local 760 v. City of Moses Lake*, 70 Wn. App. 404, 407, 853 P.2d 951 (1993), citing RCW 41.12.050; *Wash. Fed'n of State Employees v. Spokane Cmty. Coll.,* 90 Wn.2d 698, 702-03, 585 P.2d 474 (1978).

The trial court's ruling that Bremerton can, by ordinance alone, authorize law enforcement to be contracted out to private companies has no limit. This would allow any municipality to employ private contractors to perform any manner of enforcement functions without regard to state statutory limitations. For example, one out-of-state jurisdiction granted limited police commissions to the Koch brothers' security force and another granted full police powers to a church's security team. Motion to Transfer at 7-8; see generally Boghosian, Heidi, *Applying Restraints to Private Police*, 70 Missouri Law Rev. 1, 9 (2005) (collecting laws and

[3] By specifically providing Bremerton and other cities limited authority to contract with other law enforcement agencies for law enforcement functions, the Legislature prohibited any other contracts. *Landmark Development, Inc. v. City of Roy*, 138 Wn.2d 561, 571, 980 P.2d 1234 (1999). In *Landmark* this Court explained that under expressio unius est exclusio alterius, a canon of statutory construction, "the expression of one is the exclusion of others." *Id.* Therefore, where a statute specifically designates the things or classes of things upon which the statute operates, the legislature is deemed to have "intentionally omitted" the things or classes that are not included. *Id.*; *In re Det. Of Williams*, 147 Wn.2d 476, 491, 55 P.3d 597 (2002).

practices regarding privatization of law enforcement functions).

In California, the Attorney General considered, and rejected, a city's proposal to contract out parking enforcement in the same manner that Bremerton and other cities in Washington do. 85 Ops. Cal. Atty. Gen. 83, 2002 WL 726359 (2002). Applying the rule that law enforcement officers must be public employees, the Attorney General concluded that the City was not authorized to contract out parking enforcement without specific statutory authority because "it is for the Legislature to determine whether a city should be allowed to use private employees to issue parking citations, just as it has considered (and granted) the authority of a city to contract" out the processing of parking fines. *Id.* at *3.

Here in Washington, cities will face many law enforcement contracting-out questions in the future. For example, the City of Redmond also uses a private company to conduct parking enforcement. *Downtown Parking*, City of Redmond, at http://www.redmond.gov/cms/one.aspx?objectId=24851. And Imperial Parking, Bremerton's for-profit contractor, advertises that as "the largest operator of U.S. municipal parking systems" it can "provide[] municipalities with comprehensive patrol and enforcement capabilities" which will result in a "legitimate source of income." Impark, *Six Ways Municipalities Benefit From*

Privatized Parking, https://www.impark.com/parking-insight/six-ways-municipalities-benefit-privatized-parking/ (last accessed March 20, 2019).

Washington's Attorney General has issued several opinions regarding the scope of a law enforcement agency's authority to contract out law enforcement functions in light of the issue's statewide significance. In 1965, before the Legislature authorized interlocal contracting (Chapter 39.34 RCW), the Attorney General considered whether a municipality could contract with a county sheriff for law enforcement. Wash. Att'y Gen. Op. 1965-66 NO. 28 The Attorney General decided, consistent with the Drivers' argument here, that a city cannot contract out its law enforcement in the absence of specific statutory authority (*Id.* at *1-2):

> May a county, and a city located therein, enter into a contract whereby the sheriff of the county will provide law enforcement services to the city…?
>
> …
>
> A review of the statutes of our state pertaining to counties and cities reveals no express statutory authority enabling them to contract with each other… Nor do we find any implied authority for such contracts under existing law. Accordingly, …we must conclude that contract law enforcement as described in your question (above paraphrased) is not authorized.

In 1967, the Legislature enacted the Interlocal Cooperation Act, chapter 39.34 RCW, allowing local governments to contract with each

other.[4] Subsequently, the Attorney General revisited the issue and determined that the Act now authorized law enforcement agencies to contract with other public law enforcement agencies. Wash. Att'y Gen. Op. 1990 NO. 4 (noting that the "entity providing the services in question must have the authority to perform such services independent" of the contract).[5] The Legislature also addressed this issue of authority to outsource law enforcement in the parking context when it created a narrow exception whereby law enforcement agencies can authorize volunteers to enforce disability parking rules. RCW 46.19.050(10).

More recently, the Attorney General opined that cities cannot contract with a private entity for law enforcement functions in the context of a jail. Wash. Att'y Gen. Op. 2000 NO. 8 at *7 (2000). These Attorney General opinions (and the statutes adopted in light of them) demonstrate that this is an important public issue of statewide significance.

The novel issue of whether a municipality may, by ordinance, contract out law enforcement functions, despite statutes and Attorney General opinions to the contrary, is an issue of broad public importance that should be decided by this Court.

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[4] As close in time, the 1965 AG opinion "may shed light on the intent of the legislature." *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 308, 268 P.3d 892 (2011).

[5] The Legislature later specifically clarified law enforcement agencies' contracting authority under Chapter 39.34 RCW in RCW 10.93.130 which provides authority to contract only with other law enforcement agencies.

C. Whether Individuals May Challenge in Superior Court Municipal Fines that Violate State Statutes Under the Washington Constitution Is an Issue of Broad Public Importance.

1. The Washington Constitution Specifically Grants Superior Courts Original Jurisdiction to Hear Cases Involving the Legality of a Municipal Fine.

In addition to the issue of the City's ability to contract out law enforcement by ordinance, there is an important issue whether there can ever be judicial review of a municipal fine that violates state law.

Here, the Court of Appeals ruled that the class "does not have a cause of action because [their] refund claim[s] could only be brought through a motion to vacate in the limited jurisdiction [municipal] court." CoA Dec. at 8. The Court of Appeals acknowledged that the Constitution "provides superior courts with jurisdiction for challenges to the legality of municipal court fines," but found that the "*exclusive remedy* [to challenge the fines] was to file a CRLJ 60(b) motion" to vacate a judgment *in municipal court*. CoA Dec. at 8-9 (emphasis added).

The Court of Appeals has a fundamental misunderstanding of the Constitution's grant of jurisdiction. "Jurisdiction means the power to hear and determine" and "[a]uthority to rule." *State v. Barnes*, 146 Wn.2d 74, 85, 43 P.3d 490 (2002). It is the "[f]undamental power of our courts to act," *i.e.*, the power to grant relief. *ZDI Gaming, Inc. v. State*, 173 Wn.2d 608, 616-17, 268 P.3d 929 (2012). Here, the Constitution provided the superior courts

"the power to hear and determine" and the "authority to rule" over cases involving the legality of a municipal fine. Wash. Const. art. IV, §6; *Matter of 13811 Highway 99*, 194 Wn. App. 365, 371-72, 378 P.3d 568 (2016) (affirming jurisdiction of the superior court ('the power to act') to return property unlawfully taken in separate municipal court action).

The Constitution's grant of original jurisdiction to hear challenges is an important element of the superior court's authority. Indeed, "the Legislature cannot restrict enumerated powers of the superior court." *State v. Posey*, 174 Wn.2d 131, 136, 272 P.3d 840 (2012). "Under [art. IV §6], original jurisdiction for the causes of action listed and judicial action lies in superior court." *New Cingular Wireless v. City of Clyde Hill*, 185 Wn.2d 594, 600, 374 P.3d 151 (2016).[6] "Superior courts have original jurisdiction in the categories of cases listed in the constitution which the legislature cannot take away." *ZDI Gaming*, 173 Wn.2d at 616-17. Because the superior court has original jurisdiction over the challenges to the legality to the City's fines, the plaintiffs could pursue all remedies available there.[7]

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[6] The California Supreme Court, examining an identical constitutional grant of specific original jurisdiction to the superior court, held that "[t]he general purpose of that provision obviously is to give to the sovereign power of the state, whether exercised generally or locally, the protection of having the legality of any exaction of money for public uses or needs cognizable in the first instance in the superior courts alone." And thus it is "within the exclusive original jurisdiction of the superior court." *City of Madera v. Black*, 181 Cal. 306, 311, 184 P. 397 (1919).

[7] The superior courts and this Court, under their general jurisdiction, routinely enforce state statutes that are being violated by a public agency without any specific statute

The municipal courts are statutory creations for the limited purpose of litigating municipal crimes and traffic infractions. *State v. Ulhoff*, 45 Wn. App 261, 263, 724 P.2d 1103 (1986); Const art. IV, §12. Municipal courts have jurisdiction to "determine whether [a] civil infraction was committed." RCW 7.80.100. Infraction proceedings are just "a "more expeditious system for handling minor traffic cases[.]" *Hadley v. Maxwell*, 144 Wn.2d 306, 312, 27 P.3d 600 (2001).[8] However, there is no mechanism in municipal court to challenge the validity of a municipal fine under state statutes; a litigant cannot file a counterclaim in municipal court and the municipal court has no jurisdiction over claims for declaratory or injunctive relief.[9]

This Court held in *Orwick v. Seattle*, 103 Wn.2d 244, 252, 692 P.2d 793 (1984), that even though the "factual basis for a claim is related to enforcement of a municipal ordinance," claims "for injunctive and declaratory relief [] based on [] rights under a state statute…do not 'arise

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telling the courts to do so. See *Moore v. Health Care Auth.*, 181 Wn.2d 299, 332 P.3d 461 (2014); *Dolan v. King County*, 172 Wn.2d 299, 258 P.3d 20 (2011). This Court has issued a number of decisions on claims that state statutes preclude the legality of a tax, impost, assessment, toll, or municipal fine. See, e.g., *Dore v. Kinnear*, 79 Wn.2d 755, 766, 489 P.2d 898 (1971); *Covell v. Seattle*, 127 Wn.2d 874, 877, 891-92, 905 P.2d 324 (1995); *Okeson v. Seattle*, 150 Wn.2d 540, 546, 78 P.3d 1279 (2003); *Okeson v. Seattle*, 159 Wn.2d 436, 447, 150 P.3d 556 (2007).

[8] Tellingly, the Court of Appeals noted "specific procedures govern the contesting of traffic fines," *e.g.*, a driver contesting whether she parked too long, not that there are procedures and remedies to challenge the legality of a municipal fine. CoA Dec. at 8-9.

[9] The Restatement recognizes that a "prosecution and a claim for remedy are regarded as separate causes of action that may be independently pursued." Restatement (Second) of Judgments, §85.

under' a municipal ordinance and, therefore, are not within the exclusive jurisdiction of the [m]unicipal [c]court." The Court ruled that the superior court had jurisdiction over the claims, and had authority to grant injunctive relief and damages. *Id* at 251-52, 257. Here, the Drivers allege specific statutory violations for (a) their state statutory claim that the City cannot contract out parking enforcement (see statutes cited *supra* at 2-3, 8-9) and for (b) their state statutory claim that the City cannot issue parking tickets based on unlawful blue no-parking signs. RCW 46.08.020 (any law enforcement not performed in accordance with Titles 46 and 47 RCW is "invalid and of no effect").[10] Because the Drivers allege the City ordinances violate state statutes, the claims are not within the exclusive jurisdiction of the municipal court and can be pursued in superior court. *Orwick*, 103 Wn.2d at 252.

Thus, the Court of Appeals' decision that the Drivers cannot challenge unlawful fines in superior court (and are limited to fighting tickets in municipal court) is contrary to the Washington Constitution, which expressly provides a superior court "original jurisdiction" over cases involving the legality of a municipal fine, and to the *Posey, ZDI Gaming*, and

[10] Tickets predicated on the City's improper blue no-parking signs cannot be enforced because drivers only have the duty to "obey the instructions of any official traffic control device" with regards to parking time limits. RCW 46.61.050. The trial court ruled that the City's signs violate state law. CP 634. As illegal signs, the blue signs are not "official traffic control devices." RCW 46.04.611 (such devices that are "not inconsistent with Title 46 RCW"); RCW 46.98.020 (Title 46 RCW shall be "costrued in pari materia with...Title 47 RCW."); RCW 47.36.030 ("traffic devices...erected within incorporated cities...shall conform to such uniform state standard of traffic devices," *i.e.*, the Manual.).

New Cingular decisions by this Court interpreting that provision.[11]

Whether the Drivers can challenge unlawful fines in a class action seeking injunctive and declaratory relief in superior court is an independent important issue that warrants review in this Court. Under Court of Appeals' decision, any city can issue unlawful tickets but no one can ever bring an action in superior court to have the fines declared unlawful, enjoin the fines, or obtain relief for those who are unlawfully fined. CoA Dec at 8-9.

Judicial review of municipal fines is of great importance because there are nearly 800,000 traffic infraction cases each year. Harris, Alexis, *Monetary Sanctions As a Permanent Punishment* (2018) fig. 6 (Wash. State Minority & Justice Commission) https://www.courts.wa.gov/subsite/mjc/docs/2018WA%20Sup%20Ct%202018%20Monetary%20Sanctions%20Harris%20Slides.pdf (last accessed March 15, 2019). Municipal courts impose over $50 million a year in traffic fines and have over $400 million in outstanding fines. *Id.*, fig. 5, 6. When unpaid, these fines can be sent to collection and can accrue interest at twelve percent per annum. RCW

[11] The Court of Appeals erroneously relied on *Doe v. Fife Municipal Court,* 74 Wn. App. 444, 874 P.2d 182 (1994). *Doe* involved *court costs* imposed in criminal proceedings which were in the exclusive jurisdiction of the municipal court; it is not a case involving the legality of a municipal fine, for which the Washington Constitution provides "original jurisdiction" to the Superior Court. *Id.*

3.62.040(5).[12] Bremerton provides that "[i]f your account is referred to a collection agency, substantial additional fees will apply," including possible "wage garnishment." City of Bremerton, *Court Payments*, https://www.bremertonwa.gov/197/Court-Payments (last accessed March 15, 2019).

Judicial review of municipal fines is of further importance because monetary sanctions disparately affect poor populations. See *State v. Blazina*, 182 Wash.2d 827, 836, 344 P.3d 680 (2015) ("[I]ndigent offenders owe higher LFO sums than their wealthier counterparts because they cannot afford to pay, which allows interest to accumulate and to increase the total amount that they owe.") (citing Becket, Katherine, *et al.*, *The Assessment and Consequences of Legal Financial Obligations in Washington State* (2008) 21-22 (Wash. State Minority & Justice Comm'n), http://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf); *In re Amendment to IRLJ 6.2*, Order No. 25700-A-1103 (May 2015) at *4, 6 (Gordon McCloud, J., Dissenting) (When "fines are based on revenue needs, rather than on legitimate penological goals, unfairness results" because "people who are least able to pay up front…are the ones who end up paying most.") and at *1 (Yu, J., Dissenting) ("[T]o the working class or poor [small increases in fines] are not trivial or inconsequential.").

[12] Wash. Laws 2018, Ch. 269, §3 amended the law to prohibit interest on legal financial obligations "imposed against a defendant in a criminal proceeding," but did not change the rule for infraction proceedings.

Imperial Parking's offer to provide a "turnkey" solution to cities by turning parking enforcement "into a legitimate source of income" greatly amplifies those concerns. Impark, *Six Ways Municipalities Benefit From Privatized Parking*, *supra* at 7.[13]

Furthermore, this issue is important because this Court has repeatedly stated the policy in favor of class actions, which can only be brought in superior court. See, *e.g.*, *Moore v. Health Care Auth.*, 181 Wn.2d 299, 309, 332 P.3d 461 (2014) ("[T]he purpose of a class action…is to provide relief for large groups of people with the same claim, particularly when each individual claim may be too small to pursue."); *Scott v. Cingular Wireless,* 160 Wash.2d 843, 851, 161 P.3d 1000 (2007).

Infraction cases can be too small to contest individually. The infraction "fee schedule has led critics to analogize this system to a 'cafeteria,' each infraction coming with a preestablished price." *Hadley*, 144 Wn.2d at 313; *Scott,* 160 Wn.2d at 855 ("only a lunatic or fanatic sues for $30."). Here, Karl would have had to spend $230 to appeal the municipal court's imposition of a $47 fine, not including the cost of

[13] Diamond Parking, the City's previous for-profit private contractor, was also criticized for its loyalty to profit over municipal goals. CP 324, 340, 345-46; see also Gardner, Steven, *Diamond Parking soon to relinquish Bremerton parking enforcement*, Kitsap Sun (2011), http://archive.kitsapsun.com/news/local/diamond-parking-soon-to-relinquish-bremerton-parking-enforcement-ep-418508154-357220991.html ("any discussion about Bremerton's parking…has included complaints about Diamond's enforcement of Bremerton's rules," particularly "when it chained up the tires of its enforcement vehicles and began ticketing cars stuck on Bremerton streets because of the snow.")

employing counsel to brief the legal issues. CP 68, 70. Under the Court of Appeals' decision, each individual driver would separately have to obtain a lawyer to draft and file a motion in municipal court in order to challenge a $47 fine. CoA Dec. at 8-9.

And, even if one driver wins in municipal court, the decision is not binding on the City or other drivers. *Kennedy v. Seattle*, 94 Wn.2d 376, 378, 612 P.2d 713 (1980) (municipal court rulings do not estop city in later litigation).[14] As a result, no one would ever be able to stop the City from continuing to issue unlawful fines because the municipal court does not have jurisdiction over claims for injunctive relief.

Whether individuals may challenge unlawful fines in superior court, or whether they are foreclosed from seeking declaratory relief, injunctive relief, or restitution, is an important issue.

2. The Court of Appeals Offered Two Additional Incorrect Reasons to Not Rule on the Important Issues Raised in this Appeal.

The Court of Appeals held that the Drivers had no standing to

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[14] The City also has demonstrated that it will continue to issue unlawful fines unless barred by a superior court order. Bremerton Municipal Court Judge James Docter and City Attorney Roger Lubovich jointly investigated whether there were state law standards governing parking signs and determined that that the Manual on Uniform Traffic Control Devices is Washington law because it is "adopted by WAC 468-95-010[.]" CP 11-16. Judge Docter then quoted RCW 47.36.030: "**Traffic devices hereafter erected within incorporated cities and towns shall conform to such uniform state standard of traffic devices so far as is practicable.**" CP 14 (Judge Docter's emphasis). Despite this, the City continued to fine the Drivers based on the unlawful no-parking signs. CP 12.

obtain declaratory relief for either claim and that they did not have standing to receive injunctive relief regarding the City's use of private contractors to issue parking tickets. The Court of Appeals "conclude[d] that Karl does not have any interest greater than that of the general citizenry in preventing the City from using private contractors to enforce its parking regulations" and "[b]ecause no monetary or injunctive relief is available to Karl, he lacks standing to assert any remaining claims for declaratory relief." CoA Dec. at 11-12. Here, the Court of Appeals ignored the principles of standing. *Nelson v. Appleway Chevrolet, Inc.*, 160 Wn.2d 173, 186, 157 P.3d 847 (2007) (party must "have suffered injury in fact, economic or otherwise"). Karl does *not* have the same interest in the issue as the "general citizenry" – he had an "injury in fact," *i.e.*, he received a ticket.[15]

Even under the more stringent standing requirements in federal court, the Drivers here would have standing to challenge the legality of their fines because they received tickets. *Horne v. U.S. Dept. of Agric.*, 750 F.3d 1128, 1136 (9th Cir. 2014), rev'd on other grounds, __ U.S. __, 135 S.Ct. 2419, 192 L.Ed.2d 388 (2015) ("A monetary penalty is an actual, concrete and particularized injury-in-fact."); *Brooks v. City of Des*

[15] The Court of Appeals decision appears to have confused claims with relief; the opinion's headings all concern relief, not claims. The Drivers bring two separate claims that the tickets issued to them violate state statutes. See discussion *supra* at 12-14. For each claim, they sought declaratory and injunctive relief under CR 23(b)(2) and incidental monetary relief. CP 640-41.

Moines, 844 F.3d 978, 979 (8th Cir. 2016) ("All drivers received a Notice of Violation which is sufficient injury in fact.").

The Court of Appeals also ruled -- though the issue was seemingly not before the court because of its holding that the Drivers did not have standing or a cause of action -- that some claims were moot. CoA Dec. at 9-10. First, the Drivers' claim that the City could not impose fines based on unlawful blue no-parking signs did not become moot when they received declaratory relief because they still have an injury – the class consists of individuals who either paid or have outstanding tickets. CP 640. Mootness only occurs when "changes in circumstances…have forestalled any occasion for meaningful relief. *City of Sequim v. Malkasian*, 157 Wash.2d 251, 259, 138 P.3d 943 (2006).

Here, even though the City submitted no evidence regarding how many fines were paid, and it is common knowledge that not everyone has a financial ability to pay fines (see reference to $400 million in municipal court debt, *supra* at 14), the Court of Appeals said that Drivers' request that the City be enjoined from collecting fines and associated fees based on the unlawful blue no-parking signs was moot because there was no evidence that any fines were still unpaid. *Id.* The court turned the summary judgment standard on its head because the undisputed record shows that thousands received tickets. CP 639. In fact, the City only

argued in the trial court that the issue was moot because it had replaced the unlawful blue no-parking signs, simply ignoring that the Drivers were requesting the City be enjoined from continuing to collect fines based on those signs. CP 544-45, VRP 2/6/17 at 6. Because the moving party must first come forward with evidence to meet its initial burden, there is at least a genuine issue of material fact as to whether there are outstanding fines. *Graves v. P. J. Taggares Co.*, 94 Wn.2d 298, 616 P.2d 1223 (1980).[16]

Moreover, the court did not lose jurisdiction when the City ceased an unlawful activity due to losing on the merits. *State v. Ralph Williams*, 87 Wn.2d 298, 302, 312, 553 P.2d 423 (1976). It would be nonsensical for the claim to become moot because the Drivers prevailed on summary judgment and the City removed the unlawful signs in response.[17]

VI. CONCLUSION.

This case raises issues of public importance that have not been addressed by this Court and the Court of Appeals erred in refusing to decide the important issues.

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[16] Even assuming *arguendo* mootness is somehow applicable, the Court of Appeals also erred by refusing to the City's enforcement of unlawful tickets as a matter of importance. CoA Dec. at 10 n.5. The Court of Appeals said that it would not consider the argument because it was raised in the Drivers' reply. *Id.* However, the City had already conceded the point in its response brief. City's Brief at 36. And the trial court said that these are important issues that should be addressed on appeal. VRP 02/06/17 at 47.

[17] Because the Drivers prevailed (CP 634), they should have received whatever further relief was available, minimally including costs. Instead, the case was dismissed without consideration of what relief could be available beyond the declaratory ruling in their favor. CP 619. Availability of costs alone would preclude mootness. *Jumamil v. Lakeside Casino, Inc.*, 179 Wn. App. 665, 678, 319 P.3d 868 (2014).

Respectfully submitted this 22nd day of March, 2019.

BENDICH STOBAUGH & STRONG, P.C.

By: _____

Alexander F. Strong, WSBA No. 49839
David F. Stobaugh, WSBA No. 6376
Stephen K. Strong, WSBA No. 6299
Attorneys for Petitioners

APPENDIX

Filed
Washington State
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Division Two

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

GEORGE KARL, REBECCA ANN, and a class of similarly situated individuals, Appellants/Cross-Respondents, v. CITY OF BREMERTON, Respondent/Cross-Appellant.	No. 50228-3-II UNPUBLISHED OPINION

MELNICK, J. — George Karl and Rebecca Ann (collectively Karl) sued the City of Bremerton both personally and on behalf of a class alleging that they received invalid parking citations. Karl argues the City's parking signs, which had a blue background with white lettering, violated state law. He also argues that the City's use of private contractors to enforce parking regulations violated numerous state statutory provisions. We affirm the trial court's dismissal of Karl's claims.

FACTS

I. THE CITY'S PARKING ENFORCEMENT

In 1998, the City began contracting with private companies for parking enforcement, including Imperial Parking (Impark). As authorized under the Bremerton Municipal Code, the Bremerton Chief of Police issued a limited commission to Impark employees to enforce parking regulations.

In the early 2000s, the City changed the background of some of the parking signs in its downtown core to "Bremerton blue." Clerk's Papers (CP) at 237. The signs had blue backgrounds with white lettering.

II. PROCEDURAL HISTORY

In August 2014, Karl received a parking ticket issued by an Impark employee. A Bremerton blue parking sign gave notice. Karl contested his ticket in Bremerton Municipal Court.

At the hearing, Karl argued that the City could not lawfully fine him because the blue signs did not comply with the *Manual on Uniform Traffic Control Devices for Streets and Highways* (Manual),[1] which he argued had been adopted as state law. At the hearing, Karl did not argue that the ticket was unenforceable because it was issued by an Impark employee. The municipal court found the infraction committed and upheld the fine. Karl did not appeal to superior court.

In March 2015, Karl filed a class action against the City in Kitsap County Superior Court, proposing to represent a class of individuals who received tickets pursuant to the City's blue parking signs and/or individuals who received parking tickets issued by third-party private contractors. Karl sought declaratory relief that the City's use of the blue parking signs and private contractors were both unlawful. He sought injunctive relief requiring the City to remove the blue signs and replace them with Manual-compliant signs, and stopping the City from using private contractors. He prayed for monetary relief that required the City to refund amounts paid pursuant to tickets received under blue signs and/or tickets enforced by the private contractors.

The City moved to dismiss the complaint on all claims pursuant to CR 12(b)(6). The trial court granted the motion as to Karl's monetary relief in the form of a refund because "[a]ny request

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[1] FED. HIGHWAY ADMIN., U.S. DEP'T OF TRANSP., MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES FOR STREETS AND HIGHWAYS (2009 ed., rev. 2012), https://mutcd.fhwa.dot.gov/pdfs/2009r1r2/mutcd2009r1r2edition.pdf.

to recover the fines assessed [was] already . . . litigated under the same defense and should have been appealed to the Superior Court." CP at 661. The court denied the City's motion to dismiss the declaratory and injunctive relief claims because "[t]he Municipal Court could not, as a matter of law, decide the issues of injunctive and declaratory relief." CP at 660.

Karl then moved to certify the class. The trial court granted the request and certified a class under CR 23(b)(2). The court defined the class as:

> Those individuals who were ticketed or will be ticketed as a consequence of the City's issuance of citations in areas containing blue parking signs and the City's use of a private contractor to issue parking citations. The class period begins March 12, 2012 and continues to the completion of this action.

CP at 640.

Karl and the City then brought cross-motions for summary judgment. Karl argued that the blue signs violated state law. The City argued that the blue signs substantially complied with the Manual, but even if the blue signs were unlawful Karl did not have a cause of action. The City also argued that it lawfully used Impark employees to issue parking tickets.

The court ruled that Washington had adopted the Manual and that the blue signs did not substantially comply with the Manual. But the court did not decide whether the City's noncompliance established a cause of action. The court asked for supplemental briefing on whether Karl had a cause of action for either injunctive or declaratory relief regarding the City's blue signs.

The court also ruled that the City's use of private employees to enforce parking violations did not conflict with any state statutes. It granted the City's motion on that issue.

Karl and the City again brought cross-motions for summary judgment. Karl argued that monetary relief flowed from the court's previous order that the blue signs did not substantially comply with state law, that a cause of action existed, and that the City owed restitution damages

to the class. Karl also sought an injunction preventing the City from collecting unpaid fines and penalties from class members. Karl never amended his complaint to reflect this new injunctive relief.

The City argued that no cause of action existed and that Karl was attempting to circumvent the court's previous ruling dismissing his monetary relief claim as res judicata by relabeling his damages sought. The City also argued that Karl's claim for injunctive relief was moot because it was removing the signs.

The City then replaced all of its blue signs with standardized parking signs, which had white backgrounds with either red or green text.[2]

In its final order, the trial court first clarified its rulings up to that point. It had dismissed Karl's claim for monetary relief based on res judicata, but it had not dismissed Karl's claims for declaratory and injunctive relief. It then found that because the City had removed all of its blue signs, the parties had agreed at oral argument that the plaintiff's claim for injunctive relief was now moot and dismissed that claim.[3] Finally, the court ruled that Karl had "not established that a cause of action exist[ed] for declaratory relief by which [he could] challenge the [City's] use of non-compliant parking signage," and it dismissed that claim. CP at 619. Karl appeals.

[2] Karl does not challenge the trial court's finding that the City replaced all of the blue signs.

[3] At oral argument on the motion for summary judgment, Karl stated that he hadn't "fully received" the injunctive relief he was seeking. Report of Proceedings (Feb. 6, 2017) at 6.

ANALYSIS

Karl argues that the City's blue parking signs violated state law and that parking citations issued pursuant to the blue signs were invalid. He also argues that the City's use of private contractors violated state law and that parking citations issued by private contractors were invalid. Accordingly, he argues that he is entitled to a refund for all unlawful parking citations. He also argues that he is entitled to injunctive and declaratory relief. We disagree.

I. LEGAL PRINCIPLES

We review a trial court's CR 12(b)(6) dismissal de novo. *Trujillo v. Nw. Tr. Servs., Inc.*, 183 Wn.2d 820, 830, 355 P.3d 1100 (2015). A dismissal for failure to state a claim under CR 12(b)(6) is appropriate only if "'it appears beyond doubt that the plaintiff can prove no set of facts, consistent with the complaint, which would entitle the plaintiff to relief.'" *Bravo v. Dolsen Cos.*, 125 Wn.2d 745, 750, 888 P.2d 147 (1995) (internal quotations omitted) (quoting *Haberman v. WPPSS*, 109 Wn.2d 107, 120, 744 P.2d 1032 (1987)).

We review an order granting summary judgment de novo, performing the same inquiry as the trial court. *Aba Sheikh v. Choe*, 156 Wn.2d 441, 447, 128 P.3d 574 (2006). "Summary judgment is appropriate only if the pleadings, affidavits, depositions, and admissions on file demonstrate the absence of any genuine issues of material fact and that the moving party is entitled to judgment as a matter of law." *Sheehan v. Cent. Puget Sound Reg'l Transit Auth.*, 155 Wn.2d 790, 797, 123 P.3d 88 (2005).

We review questions of statutory interpretation de novo. *Flight Options, LLC v. Dep't of Revenue*, 172 Wn.2d 487, 495, 259 P.3d 234 (2011). In interpreting statutes, "[t]he goal . . . is to ascertain and carry out the legislature's intent." *Jametsky v. Olsen*, 179 Wn.2d 756, 762, 317 P.3d 1003 (2014). We give effect to the plain meaning of the statute as "derived from the context of

the entire act as well as any 'related statutes which disclose legislative intent about the provision in question.'" *Jametsky*, 179 Wn.2d at 762 (quoting *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002)).

If a statute's meaning is plain on its face, we must give effect to that meaning as an expression of legislative intent. *Blomstrom v. Tripp*, 189 Wn.2d 379, 390, 402 P.3d 831 (2017). However, if "after this inquiry, the statute remains ambiguous or unclear, it is appropriate to resort to canons of construction and legislative history." *Blomstrom*, 189 Wn.2d at 390. If the statute "uses plain language and defines essential terms, the statute is not ambiguous." *Regence Blueshield v. Office of the Ins. Comm'r*, 131 Wn. App. 639, 646, 128 P.3d 640 (2006). "A statute is ambiguous if 'susceptible to two or more reasonable interpretations,' but 'a statute is not ambiguous merely because different interpretations are conceivable.'" *HomeStreet, Inc. v. Dep't of Revenue*, 166 Wn.2d 444, 452, 210 P.3d 297 (2009) (quoting *State v. Hahn*, 83 Wn. App. 825, 831, 924 P.2d 392 (1996)).

II. MONETARY RELIEF

Karl argues that the City's blue parking signs and use of private contractors violated state law and he is entitled to a refund for the unlawful parking citations. We disagree.

Parking infractions are traffic infractions. RCW 46.63.020. Traffic infractions arising under city ordinances are within the exclusive jurisdiction of the municipal court. RCW 3.50.020. Infraction proceedings are governed by the Infraction Rules for Courts of Limited Jurisdiction (IRLJ). IRLJ 1.1(a).

The issuance of a notice of infraction initiates an infraction case. IRLJ 2.2(a). A person who receives a notice of infraction may pay the penalty without contest, request a hearing to contest that the infraction occurred, or request a hearing to explain mitigating circumstances. IRLJ

2.4(b). At a contested hearing, "[i]f the court finds the infraction was committed, it shall enter an appropriate order on its records." IRLJ 3.3(d). A person may appeal a judgment entered at a contested hearing to superior court. IRLJ 5.1; Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ) 1.1(a). The time limit to file such an appeal is 30 days. RALJ 2.5. If the person does not appeal within 30 days, then to obtain relief from that judgment, a party must bring a motion under the Civil Rules for Courts of Limited Jurisdiction (CRLJ) 60(b). IRLJ 6.7(a). Under CRLJ 60(b), the court may grant relief from a judgment in a number of circumstances, including where the judgment is void.

In *Jane Doe v. Fife Municipal Court*, 74 Wn. App. 444, 446-47, 874 P.2d 182 (1994), the plaintiffs did not appeal from orders imposing court costs. Instead, the plaintiffs filed a separate lawsuit in superior court seeking both a refund of court costs and injunctive relief. *Jane Doe*, 74 Wn. App. at 447. The trial court denied the plaintiffs' refund claim because they failed to appeal the orders in the limited jurisdiction courts or move for relief from judgment under the appropriate rule. *Jane Doe*, 74 Wn. App. at 448. The Court of Appeals agreed, recognizing a motion under the applicable rule in the court of limited jurisdiction provided "the sole mechanism for a party . . . to vacate a void judgment or order issued by a court of limited jurisdiction." *Jane Doe*, 74 Wn. App. at 453.

Here, Karl seeks monetary relief in the form of a refund that flows from a previously committed infraction. Karl may not collaterally attack the imposition of fines imposed on him and others by the municipal court for committed traffic infractions in an independent action in superior court. After the 30-day deadline to file an appeal under RALJ 2.5 has passed, the exclusive means for him to vacate the parking tickets allegedly issued contrary to state law is through a CRLJ 60(b)

motion. Therefore, Karl does not have a cause of action because his refund claim could only be brought through a motion to vacate in the limited jurisdiction court.

We want to be clear that we agree with Karl that article IV, section 6 of the Washington State Constitution provides superior courts with jurisdiction for challenges to the legality of municipal court fines. However, this grant of jurisdiction does not provide an independent cause of action to challenge such legality. It simply provides superior courts original jurisdiction "over all claims which are not within the exclusive jurisdiction of another court." *Orwick v. City of Seattle*, 103 Wn.2d 249, 251, 692 P.2d 793 (1984).

In *Orwick*, the Supreme Court recognized that the superior court has "original jurisdiction over claims for equitable relief from alleged system-wide violations of mandatory statutory requirements by a municipal court and from alleged repetitious violations of constitutional rights by a municipality in the enforcement of municipal ordinances." 103 Wn.2d at 251.

In *New Cingular Wireless PCS, LLC v. City of Clyde Hill*, 185 Wn.2d 594, 596-97, 600, 374 P.3d 151 (2016), the court recognized that when certain statutory schemes exist, these procedures require litigants to seek relief through these schemes before they may seek judicial review in superior court.

> The issue . . . focuses on whether specific statutory schemes exist that require alternative procedures, and whether a resolution must first proceed through the specified statutory process before judicial review [in superior court] is sought.
>
> Stated differently, the focus is whether the legislature has enacted a statutory scheme that diverts the superior courts' jurisdiction into an alternate procedure that a party must use to challenge a municipal fine.

New Cingular Wireless, 185 Wn.2d at 600.

Here, Karl does not allege the type of constitutional claims that were at issue in *Orwick*. Nor has Karl shown any other cause of action that enables him to seek restitution for his allegedly invalid parking ticket directly in superior court. Furthermore, specific procedures govern the

contesting of traffic infraction fines, and Karl failed to follow those procedures. His exclusive remedy was to file a CRLJ 60(b) motion. We conclude that the superior court properly dismissed Karl's claims for all forms of monetary relief because Karl's exclusive remedies were to appeal through the IRLJs or to file a motion to vacate in municipal court.[4]

III. INJUNCTIVE RELIEF

Karl argues that the trial court erred in finding that his request for injunctive relief was moot. He argues that he never agreed his injunctive relief claim was moot and that his claim is not moot because he is seeking to prevent the City from collecting on all outstanding fines and fees. He also claims that the City should be enjoined from using private contractors to issue parking citations. We disagree.

A. Blue Signs

An issue is moot when we cannot provide the relief that the appealing party seeks. *Dioxin/Organochlorine Ctr. v. Pollution Control Hr'gs Bd.*, 131 Wn.2d 345, 350, 932 P.2d 158 (1997).

The parties agree that the City has removed the blue parking signs. Accordingly, Karl's injunctive relief claim seeking such removal is moot.

B. Outstanding Tickets

Karl argues that his request for injunctive relief regarding the blue signs is not moot because he seeks to enjoin the City from collecting on all outstanding fines and fees issued pursuant to the blue signs. We disagree.

[4] Because we conclude that a CRLJ 60(b) motion was Karl's exclusive means for relief, we need not reach the parties' alternative arguments regarding res judicata.

On summary judgment, the moving party has the initial burden to show there is no genuine issue of material fact. *Lee v. Metro Parks Tacoma*, 183 Wn. App. 961, 964, 335 P.3d 1014 (2014). A moving defendant meets this burden by showing that there is an absence of evidence to support the plaintiff's case. *Lee*, 183 Wn. App. at 964. "Once the moving party has made such a showing, the burden shifts to the nonmoving party to set forth specific facts that rebut the moving party's contentions and show a genuine issue of material fact." *Zonnebloem, LLC v. Blue Bay Holdings, LLC*, 200 Wn. App. 178, 183, 401 P.3d 468 (2017).

The City argues the record does not show that any outstanding fines and fees exist, and therefore no genuine dispute of material fact exists. Accordingly, the City met its initial burden. The burden therefore shifted to Karl to show that a genuine issue of material fact exists on this issue. Karl's bare assertions that outstanding fines and fees issued pursuant to the blue signs exist are insufficient at summary judgment. *See Seybold v. Neu*, 105 Wn. App. 666, 676, 19 P.3d 1068 (2001). There is no evidence in the record that such outstanding fines and fees do exist. Accordingly, Karl's injunctive relief claim is moot.[5]

C. Private Contractors

Karl seeks an injunction preventing the City from contracting with Impark to enforce its parking regulations. Karl's argues the trial court erred in finding that the City's use of private contractors does not conflict with state law. Because Karl does not have standing to assert this claim, we need not address the merits of Karl's argument.

"[A] person whose only interest in a legal controversy is one shared with citizens in general has no standing to invoke the power of the courts to resolve the dispute." *Casebere v.*

[5] Karl argues that, in the event we conclude his claim is moot, we should still review the issue "because it raises important issues of public law." Reply Br. of Appellant at 28. However, Karl only raised this argument in his reply brief, and therefore, we refuse to consider it. RAP 10.3(c).

Clark County Civil Serv. Comm'n, 21 Wn. App. 73, 76, 584 P.2d 416 (1978); *see also Kirk v. Pierce County Fire Prot. Dist. No. 21*, 95 Wn.2d 769, 772, 630 P.2d 930 (1981).

Here, Karl does not have standing to seek an injunction preventing the City from using private contractors to enforce its parking regulations. Because we conclude that the trial court did not err in dismissing Karl's claim for monetary relief, we also conclude that Karl does not have any interest greater than that of the general citizenry in preventing the City from using private contractors to enforce its parking regulations. Karl will receive no tangible redress in the event his requested injunctive relief is granted. Accordingly, we affirm the dismissal of Karl's claims for injunctive relief.

IV. DECLARATORY RELIEF: OUTSTANDING CLAIMS

We are unclear whether Karl seeks additional redress in the form of declaratory relief. To the extent Karl argues that he still maintains a declaratory relief claim, he does not have standing to bring such a claim.

A claimant must present a justiciable controversy to obtain a declaratory judgment under the Uniform Declaratory Judgment Act, chapter 7.24 RCW. *Branson v. Port of Seattle*, 152 Wn.2d 862, 877, 101 P.3d 67 (2004). The claimant must show:

> "(1) . . . an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive."

League of Educ. Voters v. State, 176 Wn.2d 808, 816, 295 P.3d 743 (2013) (alteration in original) (internal quotations omitted) (quoting *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001)).

Because no monetary or injunctive relief is available to Karl, he lacks standing to assert any remaining claims for declaratory relief. Any further allegations concerning the City's blue signs or private contractors are not part of an actual controversy between parties with a genuine claim for relief.[6]

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Melnick, J.

We concur:

Maxa, C.J.

Sutton, J.

[6] Because of our resolution of the issues in this case, we need not address the City's cross-appeal on whether the trial court properly certified the class. Because there are no remaining causes of action, the trial court's ruling is moot.

CERTIFICATE OF SERVICE

I certify that I effected electronic service of foregoing the Petition for Review on the following:

David P. Horton, WSBA #27123
Kylie Purves, WSBA #34997
Email: Dhorton@kitsaplawgroup.com
Email: Kylie@kitsaplawgroup.com
Templeton Horton Weibel & Broughton PLLC
3212 NW Byron Street Suite 101
Silverdale, WA 98383
Tel: (360) 692-9444
Fax: (360) 692-1357

Kenneth W. Masters, WSBA No. 22278
Email: ken@appeal-law.com
Masters Law Group, PLLC
241 Madison Avenue North
Bainbridge Island, WA 98110
Tel: (2060 780-5033

DATED: March 22, 2019, at Seattle, Washington.

Alexander F. Strong, WSBA 49839
Attorney for Petitioners

BENDICH STOBAUGH & STRONG

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