NO. 80485-5

SUPREME COURT OF THE STATE OF WASHINGTON

JOSHUA C. SMITH

AND

MATTHEW B. DYSON

VS.

STATE OF WASHINGTON, DEPARTMENT OF LICENSING

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Petitioners Joshua Smith and Matthew Dyson (the motorists) were arrested for driving under the influence (DUI), received notice from the Department of Licensing of their impending license suspensions, and timely requested administrative hearings under the implied consent statute, RCW 46.20.308. Under longstanding case law interpreting the implied consent statute, the Department did not have authority to take action against their licenses until it received the sworn DUI arrest reports from law enforcement. *Broom v. Dep't of Licensing* 72 Wn. App. 498, 502, 865 P.2d 28 (1994); RCW 46.20.308(6). Following that case law and related statutes, the Department stayed the suspension of the motorists' licenses until it received the arrest reports and conducted pre-deprivation hearings.

Under the false premise that the Department suspended their licenses before their administrative hearings, the motorists ask the Court to hold that the implied consent statute requires the Department to conduct administrative DUI hearings "within 30

days" of an arrest, even if the Department has not yet received an arrest report, and even though the Department—as a matter of law and practice—does not suspend drivers' licenses until a hearing can be held. The Court of Appeals properly rejected this absurd statutory reading. Instead, it harmonized all of the statutory provisions in the implied consent statute, along with other provisions of chapter 46.20 RCW and prior case law interpreting those provisions, to hold that the 30-day statutory timeline to hold an administrative DUI hearing under RCW 46.20.308(7) does not commence until the Department receives *both* a timely hearing request from a driver *and* a sworn report from law enforcement. *Smith/Dyson v. Dep't of Licensing*, 19 Wn. App. 2d 419, 427-29, 496 P.3d 1195 (2021). And here, the Department timely held pre-deprivation hearings for each motorist once it received both documents. Accordingly, the Court of Appeals correctly upheld the motorists' driver's license suspensions. *Id.* at 422.

The motorists' Petition strains to characterize the Court of Appeals' decision as conflicting with prior case law and violating due process. It does not. The Court's opinion is a common sense reading of the applicable statutes that is consistent with case law and due process. There is no basis for this Court's review.

Although the Court of Appeals did not reach the issue, review is also unwarranted because there is an additional basis to uphold the license suspensions: the time requirement for holding a hearing is directory, not mandatory or jurisdictional. Review should be denied.

II. COUNTERSTATEMENT OF THE ISSUES

1. When a driver requests an administrative DUI hearing, does the implied consent statute require the Department to suspend the driver's license 30 days after arrest, even if it has not yet received the DUI arrest report, when the Department is not authorized to suspend a license until it receives that report, and a driver's license suspension is stayed until the hearing is held?

2. Is the timeline for holding an implied consent hearing directory, when the statutory language, the primary purpose of the implied consent statute, and equity considerations all evince a legislative intent that the time for holding a hearing be directory rather than mandatory or jurisdictional?

III. COUNTERSTATEMENT OF THE CASE

A. Implied Consent Statute

Under Washington's implied consent statute, RCW 46.20.308, a driver is deemed to have consented to a breath alcohol test if arrested by an officer who has reasonable grounds to believe the person has been driving under the influence. RCW 46.20.308(1).

Prior to administering a breath test, an officer must inform the driver of the right to refuse the breath test, the right to additional tests administered by a qualified person of their choosing, and the consequences of refusing the breath test or of submitting to the test that then indicates the driver's alcohol concentration is over the legal limit. RCW 46.20.308(2).

If the driver refuses the test, or a test indicates the person's breath or blood alcohol concentration is above the legal limit, "the arresting officer or other law enforcement officer at whose direction any test has been given, or the department, where

applicable, if the arrest results in a test of the person's blood," shall provide notice to the driver of its intent to suspend the driver's license and of the driver's right to a hearing. RCW 46.20.308(5). The notice shall specifically inform the driver that their:

> license or permit, if any, is a temporary license that is valid for thirty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or until the suspension, revocation, or denial of the person's license, permit, or privilege to drive is sustained at a hearing pursuant to subsection (7) of this section, whichever occurs first.

RCW 46.20.308(5). The law enforcement officer also shall "[i]immediately notify the department of the arrest and transmit to the department within seventy-two hours, except as delayed as the result of a blood test, a sworn report" stating the officer had reasonable grounds to believe the driver was driving under the influence and any subsequent testing results. RCW 46.20.308(5)(d).

RCW 46.20.308(6) requires the Department to suspend the driver's license "*upon receipt of a sworn report* . . . thirty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or when sustained at [the implied consent statute] hearing," whichever occurs first." (Emphasis added.)

Next, subsection (7) sets the timelines for the implied consent hearing. If a person refuses the breath test and no blood test is obtained, a "hearing shall be held within thirty days, excluding Saturdays, Sundays, and legal holidays, following the date of timely receipt of such request for a formal hearing before the department[.]" RCW 46.20.308(7). If an officer obtains a blood test and submits the results to the Department, then a hearing shall be held within "thirty days, excluding Saturdays, Sundays, and legal holidays following the date notice has been given in the event notice is given by the department following a blood test[.]" RCW 46.20.308(7); *Smith/Dyson*, 19 Wn. App. 2d at 426.

Importantly, the Department's receipt of a timely request for hearing stays a proposed driver's license suspension until the outcome of the hearing. *Id*; RCW 46.20.329.

B. Smith's DUI Arrest and Blood Test Processing

On June 15, 2018, Smith was arrested for DUI. Department of Licensing Certified Record (DOL) 4, 206, Finding of Fact (FF) 3. The arresting officer read Smith the implied consent warnings, and Smith refused the breath test. DOL 203, 206. As authorized by RCW 46.20.308(4), the officer then applied for and obtained a search warrant to draw and test Smith's blood. DOL 5, 206, 209-11; FF 4-6. The officer provided Smith with a Request for DUI Hearing form, indicating that the Department intended to suspend Smith's license for DUI and notifying him of the right to request a hearing. DOL 38-39. Before the blood results were available, Smith mailed a hearing request to the Department. DOL 39-40.

Per RCW 46.20.308(5)(d), the arresting officer did not send the DUI arrest report to the Department until after receiving

the blood test results, which revealed Smith had a blood alcohol content over the legal limit. DOL 201-208. The Department received the report and test results on November 30, 2018. *Id*. That same day, the Department notified Smith of its intent to suspend his driver's license. It also notified Smith of his right to challenge the Department's action. DOL 192, 194. Because Smith had already requested a hearing following his arrest, the Department scheduled an administrative hearing for January 15, 2019.[1] DOL 189.

At the hearing, Smith argued that the Department's action should be dismissed because the administrative hearing was not held within 60 days of receiving notice from the arresting officer. DOL 5, 41-48; Conclusion of Law (CL) 1. The hearing examiner rejected this argument, and upheld the license suspension. DOL 5-6; CL 1.

[1] At the time of Smith's arrest, the implied consent statute provided for hearings to be held within 60 days of arrest, rather than 30. Former RCW 46.20.308(7) (2015).

Smith appealed to superior court, which reversed the Department's suspension. Clerk's Papers (CP) 1.

C. Dyson's DUI Arrest and Administrative Appeal

On December 30, 2019, a Washington State trooper arrested Matthew Dyson for DUI. Dyson Department of Licensing Certified Record (Dyson DOL) 3, 5, 25–26; FF 2–3. Dyson refused the breath test. Dyson DOL 6, 20, 22; FF 4–5. The trooper did not seek a search warrant to test Dyson's blood. *See* Dyson DOL 27. The trooper provided Dyson with a Request for DUI Hearing form. Dyson DOL 14.

Dyson timely requested a hearing to contest the Department's proposed licensing action. *Id.* For unknown reasons, the Washington State Patrol did not transmit the DUI arrest report to the Department for over two months, on March 3, 2020. Dyson DOL 32. After receiving the report, the Department promptly sent Dyson a Notice of Hearing on March 9, 2020, because Dyson had already requested a hearing in

January following his arrest. Dyson DOL 17. An administrative hearing was held later that month. Dyson DOL 17.

At the hearing, Dyson moved to dismiss the proposed license revocation, arguing that the Department was divested of jurisdiction because an administrative hearing was not held within 30 days of his hearing request, allegedly violating RCW 46.20.308(7) and due process. *Id.* The hearing examiner upheld the license revocation, holding that the statutory hearing timeline was directory, not mandatory or jurisdictional. Dyson DOL 7–8; CL 6.

Dyson appealed to superior court, which affirmed the hearing examiner's order. Dyson CP 1, 13–15.

D. Court of Appeals' Decision

The Court of Appeals consolidated Smith and Dyson's cases for review and affirmed both of the license suspensions. *Smith/Dyson v. Dep't of Licensing*, 19 Wn. App.2d at 421. After a detailed analysis of the implied consent statute and other licensing provisions, the Court observed that under established

precedent, the Department obtains jurisdiction over a motorist's implied consent license suspension only after it receives a sworn police report. *Smith/Dyson*, 19 Wn. App.2d at 427-29. Because the Department lacks authority to conduct any hearings which could result in drivers' licenses being suspended until it receives such evidentiary reports, the Court held the statutory deadline for the Department to hold a hearing commences only when the Department receives both the sworn report and a timely hearing request. *Id.* at 428-29. And, because the Department timely held hearings within the statutory timelines once it received Smith and Dyson's arrest reports, the Court affirmed their suspensions. *Id.* at 433.

IV. REASONS WHY THE COURT SHOULD DENY REVIEW

Review of the Court of Appeals' well-reasoned opinion is unwarranted under RAP 13.4(b), because the decision is consistent with prior appellate decisions and due process principles, and there are no issues of significant public interest.

Contrary to the motorists' claims, the Court of Appeals did not rewrite the statutory language, ignore case law, or undermine due process. Rather, the Court properly harmonized all provisions of the entire statutory scheme to reach a common sense result: the statutory timeline for the Department to hold an administrative DUI hearing commences when the Department receives both a request for hearing and the sworn police report. *Smith/Dyson*, 19 Wn. App. 2d at 427-29. This Court should deny review.

A. The Court of Appeals' Opinion is Consistent with Previous Decisions by This Court and the Court of Appeals

The motorists incorrectly claim the Court of Appeals' decision conflicts with *Devine v. Department of Licensing*, 126 Wn. App. 941, 110 P.3d 237 (2005), and—without discussing any specific case—otherwise broadly claim the Court's opinion ignores rules of statutory construction. The Court of Appeals' opinion followed ordinary principles of statutory construction to harmonize all of the implied consent

statute's language, and the opinion is consistent with *Devine.* There is no conflict.

A court's primary objective in statutory interpretation is to determine and effectuate the intent of the legislature. *Clement v. Dep't of Licensing*, 109 Wn. App. 371, 374, 35 P.3d 1171 (2001). The intent of the legislature is determined "by beginning with the statute's plain language, reading the enactment as a whole, and harmonizing its provisions by reading them in context with related provisions." *Smith/Dyson*, 19 Wn. App.2d at 425 (citing *Segura v. Cabrera*, 184 Wn.2d 587, 593, 362 P.3d 1278 (2015)). That is exactly what the Court of Appeals did here. The Court properly harmonized the notice provisions of RCW 46.20.308(5) with the hearing provisions of RCW 46.20.308(7) and RCW 46.20.329 to hold that "the statutory deadline for the department to hold a hearing commences only when the department receives both the sworn report and a timely hearing request from the motorist." *Smith*/*Dyson*, 19 Wn. App.2d at 421.

When a person is arrested for driving under the influence, the implied consent statute requires law enforcement to serve notice in writing of the Department's intent to suspend the person's driver's license, the person's right to request a hearing, the steps to do so, and that their license is valid for 30 days, or until the proposed suspension is sustained at a hearing, whichever occurs first. RCW 46.20.308(5). The law enforcement officer also shall "[i]immediately notify the department of the arrest and transmit to the department within seventy-two hours, except as delayed as the result of a blood test, a sworn report" stating the officer had reasonable grounds to believe the motorist was DUI and any subsequent testing results. RCW 46.20.308(5)(d).

The Department then must suspend the driver's license "upon receipt of [the] sworn report." RCW 46.20.308(6). Under longstanding case law, the Department is not authorized to take action against a motorist's license until it receives this sworn

DUI arrest report. *Broom v. Dep't of Licensing* 72 Wn. App. 498, 502, 865 P.2d 28 (1994); RCW 46.20.308(6).

Once the Department receives both the sworn report and the hearing request, it has the authority to schedule a hearing "within thirty days, excluding Saturdays, Sundays, and legal holidays, following the date of timely receipt of such request for a formal hearing," or within "thirty days, excluding Saturdays, Sundays, and legal holidays following the date notice has been given in the event notice is given by the department following a blood test." RCW 46.20.308(7).

In harmonizing all of the statutory language, the Court of Appeals initially recognized the legislature conditioned the Department's authority to adjudicate a license suspension under the implied consent statute "upon the receipt of a sworn report." *Smith/Dyson*, 19 Wn. App. 2d at 428 (citing *Broom*, 72 Wn. App. at 502 and RCW 46.20.308(6)). The Court further noted that procedural mechanisms within the licensing chapter—namely, that a driver's license suspension is stayed under RCW 46.20.329

as soon as the driver requests a hearing—"protect[s] a person from an adverse action until the department holds a hearing," satisfying due process. *Id.* at 429 (citing RCW 46.20.329 and WAC 308-101-130(4)). Accordingly, the Court's holding acknowledges both the Department's jurisdictional constraints as well as a motorist's right to due process.

In seeking this Court's review, the only case the motorists explicitly claim conflicts with the Court of Appeals' decision is *Devine v. Department of Licensing*, 126 Wn. App. 941, 110 P.3d 237 (2005). Pet. for Rev. 9-10. It does not. The motorists first assert the decision conflicts with *Devine*'s holding that receipt of the statutory notice triggers the implied consent hearing deadlines. Pet. for Rev. 9. But that was not *Devine*'s holding, because it was not even an issue that was analyzed in *Devine*. *Devine* simply held that providing a post-revocation hearing was not an adequate remedy when the Department had denied a pre-revocation hearing. *Devine*, 126 Wn. App. at 951.

The motorists also claim the Court of Appeals' decision permits the Department to hold post-deprivation hearings, conflicting with *Devine*. Pet. for Rev. 9-10. But as reiterated multiple times in briefing below and in the Court of Appeals' decision, the implied consent statute and the Department's suspension proceedings afford motorists an opportunity to be heard before any suspension is actually imposed. *See infra* pgs. 23-27. And both motorists here received pre-deprivation hearings. There is no conflict.

The motorists otherwise try to manufacture a conflict by arguing the Court of Appeals' decision conflicts with principles of statutory construction. They first claim the Court of Appeals confused the "Department's obligation to conduct a timely hearing" with "its authority to remove driving privileges." Pet. for Rev. 19-20. It is the motorists who are confused. They incorrectly reason that there is "no nexus between receipt of the sworn report and the timing provisions for setting hearings." Pet. for Rev. 21. This proposition makes no sense. The

legislature cannot have intended to require the Department to conduct an administrative DUI hearing without jurisdictional authority and without the very evidence necessary to determine whether a motorist's license should be suspended. *See Smith/Dyson*, 19 Wn. App. 2d at 429-30.

The Department's jurisdictional authority under RCW 46.20.308(6) and the scheduling provisions of RCW 46.20.308(7) are interrelated. Under RCW 46.20.308(7), "the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to" arrest the person for DUI, whether the person received the implied consent warnings, and whether the person refused the breath test or blew over the legal limit. The hearing cannot cover any of these issues without an evidentiary record—i.e., the sworn report. The Court of Appeals correctly recognized that the motorists' "argument ignores the jurisdictional limits the legislature placed upon the department's ability to act on an individual license." *Smith/Dyson*, 19 Wn. App.2d at 426. "Until the department receives a sworn report, the

department lacks the authority and, as a practical matter, the facts, to evaluate" whether an individual violated the implied consent statute. *Id.* at 429. "Because the legislature would not require ultra vires hearings, the motorists' interpretation must be rejected." *Id.* at 430. It was therefore reasonable for the Court of Appeals to conclude the implied consent statute's hearing timeline commences once the Department receives both the sworn report and the hearing request.

The motorists also assert the Court of Appeals' opinion "rewrites" RCW 46.20.308(5)(d) and (6) and renders portions of the statute superfluous. Pet. for Rev. 24-26. This too is incorrect.

Under RCW 46.20.308(5)(d), law enforcement "shall" "[i]mmediately notify the department of the arrest and transmit to the department within seventy-two hours" the sworn arrest report. The motorists argue the Court's opinion rewrites "shall" as "can," and makes the 72-hour language superfluous. Pet. for Rev. 22-23, 25. Rather than "rewrite" this provision, the Court of Appeals interpreted it identically to the Court in *Frank v.*

Department of Licensing, 94 Wn. App. 306, 311, 972 P.2d 491 (1999). *Frank* explicitly held the time limit in RCW 46.20.308(5)(d) is directory, and that failing to transmit the report within 72 hours does not deprive the Department of jurisdiction to suspend a license. *Smith/Dyson*, 19 Wn. App.2d at 431, n.29; *Frank*, 94 Wn. App. at 311.

The *Frank* court found the 72-hour "shall" language was directory because: (1) allowing a suspected drunk driver to escape license revocation because of a time delay would frustrate the legislature's intent to remove dangerous motorists from the roadway, as it would provide a technical basis for dismissal, and (2) only the Department stands to lose if the revocation process is delayed. *Frank*, 94 Wn. App. at 312. The same reasoning applies here, and is why the motorists' claim that the Court of Appeals' opinion is inconsistent with the intent of the implied consent statute is unfounded. *See* Pet. for Rev. 27-29. Allowing a drunk motorist to escape licensing repercussions because the Department has to schedule a hearing within 30 days of an

arrest—even in absence of the DUI sworn report—would frustrate the legislature's intent. Only the Department and the public stand to lose if the revocation process is delayed, because the motorist's license suspension is stayed pending the outcome of the administrative hearing. The motorist suffers no consequences while awaiting the scheduling of the administrative hearing. The Court of Appeals' reading of RCW 46.20.308(5)(d) is consistent with *Frank* and principles of statutory construction.

Nor did the Court rewrite RCW 46.20.308(6). RCW 46.20.308(6) states that the Department shall suspend a motorist's license "effective thirty days from the date of arrest . . . or when sustained at a hearing pursuant to subsection (7) of this section, whichever occurs first." The motorists claim this provision could not operate under the Court's holding, because the Department is not guaranteed to even receive a sworn report within 30 days of arrest. Pet. for Rev. 25. The motorists again err by reading a single sentence of subsection (6) in isolation,

without considering the rest of the subsection, let alone the totality of the statutory language.

If one were to read this subsection in isolation, it could appear that the legislature directs the Department to suspend a motorist's license within 30 days, even if the driver has requested an administrative hearing and the hearing has not yet occurred, because the 30 days would have "occurred first." However, to ensure proper construction, the Court of Appeals appropriately read this provision within the larger statutory structure, including the hearing provisions of RCW 46.20.308(7) and the stay provisions of RCW 46.20.329. *See Smith/Dyson*, 19 Wn. App.2d at 429-32. The only logical reading of RCW 46.20.308(6) in the context of chapter 46.20 RCW is that a license suspension starts: (1) automatically 30 days after arrest if the motorist does not request a hearing, or (2) after the suspension is upheld following a hearing. If a motorist requests a hearing, then any suspension is stayed pending the outcome of the hearing.

The Court of Appeals appropriately rejected the motorists' cherry-picked reading of the statute, and instead conducted a holistic and thorough review of the entire statutory scheme to determine the implied consent hearing timeline commences once the Department receives both the hearing request and sworn report. This effectuates the legislature's intent and is consistent with prior appellate decisions. There is no conflict meriting this Court's review.

B. The Court of Appeals' Opinion Is Consistent with Due Process Because It Ensures Drivers Receive Pre-Deprivation Hearings

As it has maintained throughout these proceedings, the Department agrees with the motorists that a driver's license is a protected property interest that requires notice and a pre-deprivation hearing. Dyson Resp./Smith Reply 12-17; *Devine*, 126 Wn. App. at 951-52. As the Court of Appeals concluded, a pre-deprivation hearing is exactly what the implied consent provides, and it is exactly what the motorists received here. There

is no significant constitutional question for this Court to resolve. RAP 13.4(b)(3); *see* Pet. for Rev. 10, 12-18.

The motorists first claim the Court of Appeals' opinion allows the Department to hold post-deprivation hearings, in violation of due process. Pet. for Rev. 13-14. They are mistaken. As discussed, and as the Court of Appeals accurately noted, under RCW 46.20.329 and WAC 308-101-130(4), the Department's receipt of a request for hearing stays any licensing action pending the outcome of the administrative hearing. *Smith/Dyson*, 19 Wn. App.2d at 429. The motorists' Petition continues to simply ignore these provisions. In each of their cases, consistent with RCW 46.20.329, the motorists' license suspensions were stayed pending the outcome of their administrative hearings. *See* Dyson DOL 2, Smith DOL 36-37. As a result, the motorists did not suffer pre-deprivation suspensions in violation of due process.

The motorists' mistaken factual belief that their licenses were suspended before their hearings stems from their isolated

reading of RCW 46.20.308(5), and their apparent ignorance of the stay provisions of RCW 46.20.329. Dyson also cites to an erroneous notice he received during the pendency of his administrative appeal as evidence his license was suspended prior to the conclusion of his administrative hearing. Pet. for Rev. 7 (citing Dyson DOL 19). The Department has conceded throughout these proceedings that it provided one erroneous notice to Dyson; but Dyson's driver's license was never actually suspended without a pre-deprivation hearing, as evidenced by the Department's final order of suspension. Dyson DOL 2; *see also State v. Storhoff*, 133 Wn.2d 523, 528, 533, 946 P.2d 783 (1997) (Department's erroneous notice, by itself, is insufficient grounds to reverse driver's suspension absent driver demonstrating actual prejudice). And the erroneous notice did not *actually* prejudice Dyson, because his license was already expired at the time of his arrest, and he was therefore unable to lawfully drive a motor vehicle in this state unless he renewed his license. Dyson DOL 5, 26, 34; FF 2. Dyson also failed to demonstrate actual prejudice

because he chose not to testify or present any evidence at his administrative hearing.

The motorists also incorrectly assert that the Court of Appeals' holding undermines due process because it "rewrites" the notice provided by law enforcement on the day of arrest and renders the notice inaccurate. Pet. for Rev. 14-18. At the time of arrest, law enforcement provided both motorists with the exact notice language the legislature required under RCW 46.20.308(5). Dyson DOL 14, Smith DOL 38-39. The notice also cited RCW 46.20.308 for its statutory authority, which, by itself, was legally sufficient to put the motorists on notice regarding where they could look if they had questions on the meaning of the notice, and would have informed them that their license suspensions would be stayed as soon as they requested a hearing. *Storhoff*, 133 Wn.2d at 528 (due process does not require express notification of specific deadline, as long as the notice cites the statute that contains applicable time limit). In fact, the motorists' notices exceeded minimum due process

requirements by providing multiple additional avenues to inquire about their licensing status, including contacting the Department or checking the Department's online portal. *See e.g.*, Dyson DOL 14, 17, 19, Smith DOL 189, 191, 193–94 (notices and additional communications from Department providing phone number and internet links for motorists to check driving status).

The Petition cites *State v. Fulps*, 141 Wn.2d 663, 9 P.3d 832 (2000), and *City of Seattle v. Bonifacio*, 127 Wn.2d 482, 900 P.2d 1105 (1995), to suggest that law enforcement's notice at the time of arrest created something akin to a speedy trial right. Pet. for Rev. 14-17. The Court correctly noted these cases were not germane—the drivers provided no authority or basis to superimpose the Sixth Amendment right to a speedy criminal trial onto a civil administrative proceeding held pursuant to the implied consent statute. *Smith/Dyson*, 19 Wn. App.2d at 429 n. 25. This is not a criminal proceeding, and the drivers' personal liberty is not at stake. *Nowell* v. *Dep't of Motor Vehicles*, 83 Wn.2d 121, 124, 516 P.2d 205 (1973) (implied consent hearing

is "a civil administrative proceeding . . . separate and distinct from the criminal proceedings. . ."). In fact, any timing mechanisms in the implied consent statute are for the benefit of the public, not arrested drivers, as the statute is designed to protect the citizenry from those who insist on driving while under the influence of intoxicants. *Ingram v. Dep't of Licensing*, 162 Wn.2d 514, 523, 173 P.3d 259 (2007). And in any event, a driver's license suspension is stayed pending the outcome of the administrative hearing.

The Court's opinion did not "alter" the due process analysis of the implied consent statute. Rather, it reaffirmed that the implied consent statute and the Department's suspension proceedings comply with due process because they afford motorists an opportunity to be heard before a suspension is actually imposed. *Smith/Dyson*, 19 Wn. App.2d at 429. There is no basis for this Court's review under RAP 13.4(b)(3).

C. The Motorists' Disagreement with the Court of Appeals' Analysis Does Not Create an Issue of Substantial Public Interest

The motorists finally contend that proper interpretation of the implied consent statute—in and of itself—is an issue of substantial public interest meriting this Court's review. Pet. for Rev. 11-12. RAP 13.4(b)(4). Under the motorists' theory, any Court of Appeals' decision interpreting the implied consent statute would be a basis for this Court's review. That is not the case. And it is especially not the case where, as here, the Court of Appeals' statutory interpretation was sound, followed ordinary rules of construction, is consistent with prior case law, and protects due process. There is no basis for this Court's review under RAP 13.4(b)(4).

D. Review is Also Unwarranted Because the Time Requirement for Holding a Hearing is Directory, Not Mandatory or Jurisdictional

Because the Court of Appeals determined the motorists' hearings were held within the statutory timeline, it did not reach the question of whether those timelines are mandatory or

directory. *Smith/Dyson*, 19 Wn. App. 2d at 433. However, the purpose of the implied consent statute and the lack of any statutory consequence for not holding a hearing within the statutory timeframe both demonstrate that the time in which the Department of Licensing "shall" hold a hearing in RCW 46.20.308(7) is directory, not mandatory or jurisdictional. *See Frank*, 94 Wn. App. at 311; Dyson Resp./Smith Reply 20-30. Rather, the law sets forth an orderly procedure for the time and manner for the Department to hold a hearing, without forbidding action after the expiration of the statutory time period. Accordingly, any alleged delay in holding the implied consent hearing does not deprive the Department of jurisdiction, and it is not a basis to overturn motorists' license suspensions. Review is thus also unwarranted because there is an additional, alternative basis to uphold the motorists' license suspensions. RAP 2.5(a).

V. CONCLUSION

The Court of Appeals properly harmonized all the statutory language within chapter 46.20 RCW to determine when

the implied consent hearing timelines commences. Nothing in the decision conflicts with prior case law, raises a significant constitutional question, or involves an issue of substantial public interest. The Court should deny review.

I certify that this document contains 4942 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 16th day of March, 2022.

ROBERT W. FERGUSON
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PROOF OF SERVICE

I, Jeremy Gelms, hereby state and declare as follows:

1. That I am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, and not a party to the above-entitled action.

2. That on March 16, 2022, I caused to be served a true and correct copy of the **Answer to Petition for Review** as follows:

Email Service via Appellate Courts Electronic Filing Portal to

Jonathan Rands
jrands@jonathanrands.com

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Erin L. Lennon, Clerk
The Supreme Court of the State of Washington
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I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON that the foregoing is true and correct.

DATED this 16th day of March 2022, in Seattle, Washington.

s/Jeremy Gelms
JEREMY GELMS, WSBA #45646
Assistant Attorney General

AGO/LICENSING AND ADMINISTRATIVE LAW DIV

March 16, 2022 - 8:03 AM

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