No. 102047-3

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

DANIEL CAMPEAU, individually and
on behalf of all persons similarly situated,

Petitioner/Plaintiff,

v.

YAKIMA HMA, LLC, a Washington corporation,

Respondent/Defendant.

YAKIMA HMA, LLC'S CONSOLIDATED ANSWER TO THE AMICUS CURIAE MEMORANDA SUBMITTED BY WASHINGTON EMPLOYMENT LAWYERS ASSOCIATION, PUBLIC JUSTICE, AND TOWARDS JUSTICE, AND BY WASHINGTON STATE LABOR COUNCIL

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A. Identity of Respondent and Decision Below

Respondent Yakima HMA, LLC, opposes review of Division Three's unanimous May 2, 2023, opinion reversing the superior court's order on Yakima HMA's motion for judgment on the pleadings and dismissing Plaintiff/Petitioner Campeau's untimely claims. *Campeau v. Yakima HMA, LLC*, No. 38125-8-III. Yakima HMA submits this consolidated Answer to the amicus briefing of Washington Employment Lawyers Association, Public Justice, and Towards Justice, and of the Washington State Labor Council.

B. Statement of the Case

Division Three's unanimous opinion dismissing Petitioner's claims rests on three propositions: (i) the three-year statute of limitations on Petitioner's claims ran before he filed suit; (ii) Petitioner's claims did not qualify for equitable tolling under the standard this Court reiterated in *Fowler v. Guerin*, 200 Wn.2d 110, 123, 515 P.3d 502 (2022); and (iii) the equitable tolling principal announced in *American Pipe & Construction*

Co. v. Utah, 414 U.S. 538, 94 S. Ct. 756, 38 L. Ed. 2d 713 (1974), did not toll Petitioner's claim because it only permits tolling for absent class members, which Petitioner admittedly was not. This straightforward holding presents no reason to grant review.

1. Background

This matter follows this Court's opinion in *Wash. State Nurses Ass'n v. Cmty. Health Sys., Inc.*, 196 Wn.2d 409, 469 P.3d 300 (2020). In 2015, the Washington State Nurses Association ("WSNA") brought suit on behalf of 28 nurses, including Petitioner, alleging various wage and hour violations. This Court found WSNA lacked standing and dismissed. *See id.*

Petitioner filed this action on October 7, 2020, asserting the same claims raised by WSNA in 2015 personally and on behalf of a putative class. CP 1-6. Because the statute of limitations on those claims passed,[1] Yakima HMA moved for

[1] Petitioner terminated his employment with Yakima HMA in 2016. CP 2 ¶ 3.1. The statute of limitations for his unpaid wage claims is three years. RCW 4.16.080(3).

judgment on the pleadings. CP 23-38. That motion was denied based on an equitable tolling standard all parties, including Petitioner, now acknowledge is inconsistent with this Court's recent decision in *Fowler. See* CP 111; Slip. Op. at 1-2.

2. Proceedings in the Court of Appeals

The Court of Appeals accepted discretionary review. The issue presented on appeal was whether the superior court erred by applying equitable tolling in the absence of even alleged bad faith or misconduct by Yakima HMA. *See generally* Order Granting Discretionary Review. Yakima HMA argued bad faith was a prerequisite and Petitioner argued it was not, citing *In re Pers. Restraint of Fowler*, 197 Wn.2d 46, 54, 479 P.3d 1164 (2021). *Id.* at 4-5. While the appeal was pending, this Court clarified bad faith was required to toll civil actions like Petitioner's. *Fowler v. Guerin*, 200 Wn.2d 110, 123, 515 P.3d 502 (2022). Because Petitioner admitted Yakima HMA did not inappropriately or in bad faith affect the timeliness of his claim,

Yakima HMA asked the Court of Appeals to reverse the superior court and dismiss his claim.

His argument for equitable tolling defeated, Petitioner pivoted his Answer to ask the Court of Appeals to toll his claim under *American Pipe*. Answer at 6-8. Yakima HMA replied by reminding the Court that *American Pipe* tolling merely "suspends the statute of limitations for individual claims of putative class members after a timely class action has been filed and until the court determines [the issue of] class certification" and none of these predicates were satisfied here. Reply at 1, 5-11. It also addressed Petitioner's argument that the prior WSNA litigation was "just like a Rule 23 class action," explaining some of the myriad ways it was not. *See id.* Neither party briefed whether Washington recognized *American Pipe* tolling generally; the issue first presented by Petitioner's Answer was whether *American Pipe* might toll his claims and those he brought on behalf of a purported class. Answer at 6-12.

The Court of Appeals concluded it did not, holding "the initial lawsuit brought by WSNA was not a class action. Thus, the *American Pipe* rule does not apply." Slip. Op. at 10.

C. Argument

1. The Court of Appeals' Holding is Narrow and Noncontroversial

The decision below holds that *American Pipe* does not toll Petitioner's claim because he was, admittedly, not a putative class member. Slip. Op. at 10. That decision is entirely consistent with the decisions of this state and the federal courts. *See, e.g., Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wn.2d 178, 195, 35 P.3d 351 (2001) (the doctrine announced in *American Pipe* tolls the limitations period on viable claims "while the trial court determines the parameters of the class in any possible class action") (quoting *Anderson v. Unisys Corp.*, 47 F.3d 302, 308 (8th Cir. 1995)); *Crown Cork & Seal Co. v. Parker*, 462 U.S. 345 (1983) (commencement of class action suspends the applicable period of limitation "for all members of the putative class until

class certification is denied."). This straightforward holding is the necessary result of the application of the facts to existing law.

Amici do not disagree. Instead, they alternately ask this Court to correct dicta in the panel's decision or to change the law to benefit Petitioner. Neither argument warrants review.

a. This Court Need Not Revise Dicta

Amici Washington Employment Lawyers Association, Public Justice, and Towards Justice argue this Court should correct the panel's erroneous 'holding' that Washington does not recognize the equitable tolling principles for class actions announced in *American Pipe*. This misstates Division Three's holding. *See* part C(1), *supra*. Further, this Court does not sit to correct error, and certainly not to correct dicta with no effect on the disposition of the case. *See* RAP 13.4(b).

The panel's discussion of the availability of *American Pipe* tolling in Washington is plainly dicta. *See* Slip. Op. at 8-9. It is not necessary to the Court's decision; indeed, it has no effect

on the decision. *See id*. at 10 ("even if *American Pipe* tolling was available in Washington, that doctrine would not apply here.").

Put another way, review for alleged error is particularly inappropriate where, as here, the discussion created no prejudice and revision would not provide relief to any party. Striking part A of the Opinion would not affect the disposition. *See* Slip. Op. at 7-9. Nor would reversing it and holding the exact opposite. Because *American Pipe* tolling is inapplicable to Petitioner's claims, whether it is available to other litigants in a different context is immaterial.

Because it is dicta, amici's hypothetical harms are also overstated. The panel's discussion has no precedential effect. *See In re Electric Lightwave, Inc.*, 123 Wn.2d 530, 541, 869 P.2d 1045 (citing *State ex. rel. Todd v. Yelle*, 7 Wn.2d 443, 110 P.2d 162 (1941)) (stare decisis does not apply to language that is not necessary to the conclusion reached); *Hildahl v. Bringolf*, 101 Wn. App. 634, 650–51, 5 P.3d 38 (2000) (dicta is not binding authority). No other Division of the Court of Appeals may rely

upon it. *See Matter of Arnold*, 190 Wn.2d 136, 138, 410 P.3d 1133 (2018) (rejecting doctrine of "horizontal stare decision" as not advancing "the robust, adversarial development of the law that is the gem of our current approach."). And, of course, Washington litigants remain free to advocate for equitable tolling under *American Pipe* while the decision on class certification is pending. *See, e.g., Pickett*, 145 Wn.2d at 195.

To the extent the Court is concerned the panel made an error on an immaterial and unbriefed issue, the Court of Appeals is well-situated to correct that error. Petitioner did not file one here, but a motion for partial reconsideration exists to afford a court the opportunity to correct errors, thereby avoiding unnecessary appeals and further litigation. *See* RAP 12.4. The Court of Appeals may also address the issue clearly and directly in a subsequent opinion where it is squarely presented and briefed—and frequently does so. *See, e.g., State ex rel. Evergreen Freedom Foundation v. Nat'l Educ. Ass'n*, 119 Wn. App. 445, 452 and n.8, 81 P.3d 911 (2003) (stating "[c]ourts

often clarify ambiguities created by dicta" and citing examples) (citations omitted). Amici's concerns with the dicta at part A of the Court of Appeals' opinion do not merit review.

b. The Court of Appeals' Holding that Petitioner Does Not Qualify for *American Pipe* Tolling is Correct

Petitioner and amicus Washington State Labor Council further assert that this Court should accept review to 'correct' the Court of Appeals' holding limiting *American Pipe* tolling to putative class members. Neither claim this holding is in conflict with any other decision, which of course is this Court's criterion for granting review. *See* RAP 4.2(a)(3); 13.4(b)(1), (2). Instead, each argue this is an "error" or "erroneous conclusion" because they disagree with the policy and law narrowly construing exceptions to any limit on bringing claims.

Amicus refrain from alleging a conflict for good reason: the holding that *American Pipe* does not toll Petitioner's claim because he was not a putative class member is consistent with every Washington, Ninth Circuit, and U.S. Supreme Court

decision to consider the issue. *See* part C(1), *supra*. Neither Petitioner nor amicus cite a single case tolling another kind of action under *American Pipe* or a related, unbriefed doctrine.[2]

As the Court of Appeals observed, many of amicus' policy arguments were addressed by this Court's decisions in *WSNA* and *Fowler*, including those regarding the statute of limitations and finality. *See* Slip. Op. at 11-13. As this Court said in *Fowler*, "[a] statutory time bar is a 'legislative declaration of public policy which the courts can do no less than respect,' with rare equitable exceptions." 200 Wn.2d at 118 (quoting *Bilanko v. Barclay Ct. Owners Ass'n*, 185 Wn.2d 443, 451-52, 375 P.3d 591 (2016). This Court has also recently addressed the differences

[2] Petitioner cites *Level I Sportswear Inc. v. Chaikin* for the proposition that court provided tolling during the pendency of a "union's claim for breach of a collective bargaining agreement." Pet. at 24-25 (citing 662 F. Supp. 535, 539-40 (S.D.N.Y. 1987)). That case provides no support to Petitioner, as it concerns how long the intervenor-employee's claim could be tolled where two putative class actions were brought by different representatives in different forums. *See* 662 F. Supp. at 539-40.

between class and associational actions. *See WSNA v. Yakima HMA*, 196 Wn.2d 409, 421-24 (2020).

The Washington State Labor Council's argument regarding those principles and policies is nothing new. Parroting the *WSNA* dissent, amicus emphasize the similar efficiencies and benefits between class actions and associational cases, as well as the rich history and underlying purpose of associational cases. *See* Memo. at 5-6, 8-12. In so doing, amicus ignore this Court's response describing the many procedural safeguards class actions provide that associational cases do not, including (1) certification before testimony is heard to assess commonality and typicality, (2) a requirement that common issues predominate in actions seeking damages, (3) decertification if testimony is not representative, (4) notice, (5) a court's approval of settlement agreements, and (6) a procedure to ensure damages awarded to an association are then provided to its members. *WSNA*, 196 Wn.2d at 421-24. The actions are simply not the same.

Amicus present nothing new, and this case is not an opportunity to revisit this Court's recent decisions.

2. Amici Seek Review Because They Disagree with This State's Narrow Equitable Tolling Doctrine

At bottom, the Washington State Labor Council asks this Court to prevent the dismissal of Petitioner's claim by changing the law and creating a new equitable tolling principle for untimely cases failing existing criteria. This case presents a poor vehicle for addressing amicus' policy concerns. It is a poor vehicle because, *inter alia*, (i) the argument is an alternative, underdeveloped legal theory advanced in response on appeal and only after this Court decided *Fowler*, and (ii) the Court still cannot provide relief to Petitioner by accepting amicus' position because WSNA lacked standing in the first instance.

This is not a case where the Court may simply craft a new exception to provide Petitioner with a discrete remedy. Petitioner's claim did not fail solely because the prior action was an associational case rather than a class action. If the Court

created a new, *American Pipe*-like path for Petitioner to seek relief for his 2015 claims, it would also need to resolve the limitations on successive actions under the *American Pipe* doctrine[3] and the prohibition on tolling claims where the original named plaintiff lacked standing.

The latter issue is preclusive. This Court has already determined WSNA lacked standing to bring a representative action here. 196 Wn.2d at 425-26. Courts cannot provide equitable tolling during the pendency of a plaintiff's claim where that plaintiff lacked standing to assert the claims in the first instance. *See Boilermakers Nat. Annuity Trust Fund v. WaMu Mortg. Pass Through Certificates*, 748 F. Supp. 2d 1246, 1259 (W.D. Wash. 2010) ("statute of limitations does not toll for putative class actions whose named plaintiff lacks standing to advance claims in the first place.") (citing *Walters v. Edgar*, 163 F.3d 430, 432 (7th Cir. 1998)); *Palmer v. Stassinos*, 236 F.R.D.

[3] *See China Agritech, Inc. v. Resh*, 138 S. Ct. 1800 (2018).

460, 465-66 and n.6 (N.D. Cal. 2006) ("it would be beyond the constitutional power of a federal court to toll a period of limitations based on a claim that failed because the claimant had no power to bring it"). This is not, as amicus argue, a mere "procedural defect"— "[i]f a plaintiff lacks standing to bring a suit, courts lack jurisdiction to consider it." *See High Tide Seafoods v. State*, 106 Wn.2d 695, 702, 725 P.2d 411 (1986).

The prohibition against equitably tolling a claim the original plaintiff lacked standing to bring also makes sense. Litigants should not be permitted to circumvent the Legislature's chosen limitations period by using a stand-in or placeholder representative (i.e., a representative who lacks standing). This is yet another issue this Court must address in the first instance if it accepts amici's policy arguments and crafts a new exception to the Legislature's chosen limitations period.

D. Conclusion

The Court of Appeals' determination that the narrow exception stated at *American Pipe* does not toll Petitioner's

claims is a clear application of settled law. Amici do not identify a conflict between this holding and any other decision, and their policy arguments are not squarely presented and have been recently considered by this Court. To the extent amici are concerned by the panel's dicta, that language has no effect and may be clarified by the Court of Appeals.

This case does not merit review and so review should be denied.

This document contains (2,413) words, excluding the parts of the document exempted from the word count by RAP 18.17(c)(9).

RESPECTFULLY SUBMITTED this 23rd day of August, 2023.

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CERTIFICATE OF SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, I, Susan Bright, served a true and correct copy of **YAKIMA HMA, LLC'S ANSWER TO THE AMICUS CURIAE MEMORANDUM SUBMITTED BY WASHINGTON EMPLOYMENT LAWYERS ASSOCIATION, PUBLIC JUSTICE, AND TOWARDS JUSTICE** on the below named recipients via the Washington State Appellate Courts Portal:

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DATED this 23rd day of August, 2023.

Susan Bright

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