No. 102480-1

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

JEFFREY BRITTIG, an individual,

Petitioner,

v.

MASON COUNTY FIRE DISTRICT NO. 6, a public agency,

Respondent,

RESPONDENT MASON COUNTY FIRE DISTRICT NO. 6's ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

On August 8, 2023, the Court issued an unpublished opinion ("the Opinion") reversing the Mason County Superior Court's rulings and remanding the matter for dismissal. In petitioning this court for review, Petitioner Brittig fails to explain how the issues presented meet the criteria for accepting review under RAP 13.4(b). For this reason alone, the Court should deny the petition.

Brittig fails to identify any issue of public importance or any conflict with decisions of this Court or other decisions of the Court of Appeals that merit review under RAP 13.4(b). The Court of Appeals opinion did not resolve any new issues of law, but faithfully followed well established law. The Court of Appeals did not decide any constitutional issues. It routinely applied settled law that does not involve any issue of substantial public interest. Brittig has failed to satisfy the criteria set forth in RAP 13.4(b) and the petition for review should be denied.

II. STATEMENT OF FACTS

This petition seeks review of an unpublished opinion issued by Division Two of the Court of Appeals on August 8, 2023. The case arises under the Public Records Act, Ch. 42.56 RCW. In its Opinion, the Court of Appeals conducted de novo review of the record and reversed the rulings of the Superior Court and ordered dismissal of the claims at issue.

The case focused on two records requests, No. 2019-011 and 2020-018. The Court of Appeals first held that the District did not violate the PRA in responding to Request 2020-018, which requested minutes of a special fire commission meeting. Brittig claimed the minutes were altered. The court of appeals held that the District did not violate the PRA by providing an authenticated copy of the approved minutes for that meeting.

Secondly, the Court of Appeals held that a claim raised fourteen months after the District's final response to a records request for records concerning the commission's decision to approve a firefighters' quarters project (PRA # 2019-011) was

barred by the one year statute of limitations in RCW 42.56.550(6).

The facts determined after conducting *de novo* review of the record are set forth in the Court of Appeals Opinion, at 2-10, and need not be repeated. The Petition, however, seeks to reargue the facts determined by the Court and makes numerous erroneous statements.[1]

A. The Records Requests to the District

This request sought minutes of a special meeting where the Board of Fire Commissioners approved a project to build housing for its firefighters. They included a cap of $150,000. The dispute here arises from the wording used in the minutes to describe that cap and differences between draft and final versions approved by the Board.

[1] For example, Brittig falsely claims that the District's counsel was its Public Records Officer. No evidence to support such a claim was ever provided and none is cited in the Petition.

The minutes were prepared by the Board's secretary, Fire Chief Clint Volk. CP 112. Per his routine, he typed them in MS Word using 11 point Calibri font and emailed the draft to the Commissioners and members of the Fire Department, including Brittig. CP 113. The draft minutes described the cap as the "total project cap." CP 886. At the telephonic request of a commissioner, Volk revised the draft to use the term "total home purchase cap" which the Board approved as the final minutes at their April 24, 2018 meeting. *Id.*

The Petition claims that the District produced "meeting minutes" during discovery, citing CP 780, which is misleading. What the District provided was a copy of the email attaching draft minutes to the Commissioners and also to Brittig. It was not the final approved meeting minutes. Brittig appended the draft version to his declaration, stating that it was provided in discovery. Brittig then provided a version in a different font, at CP 780, which is a version that Brittig states was "converted to the style and format of the 2019-011 records". CP 778. It was

not converted by Chief Volk and was not the approved meeting minutes. CP 885-887.

The District provided the final approved meeting minutes to Brittig in response to PRA 2019-011 and PRA 2020-018. They appeared as Bates numbered pages 32-34 of the first installment and used 11 point Calibri font. CP 129-131, 320-322, 931-933. The version provided in 2019-011 was the approved minutes and used the term "total home purchase cap." *Id.* The District's version was verified by the District's Office Manager, CP 119, 310, 893, the Fire Chief who was the Board's secretary and custodian of the records, CP 113, 346, and the Chair of the Board, who reviewed and voted to approve the minutes. CP 110, 352, 883. The District's version was also confirmed by a resolution of the Board of Fire Commissioners. CP 1688, 1675.

Brittig did not authenticate the version of minutes he claimed to be approved by the Board. Brittig's evidence was unauthenticated, relied on hearsay and was inadmissible. However, the trial court never ruled on these evidentiary

objections or the District's motion to strike. Moreover, Brittig provided his evidence in a reply declaration that the District did not have an opportunity to respond to until reconsideration. CP 775-806. Ultimately, the trial court ruled against the District, which appealed to Division Two of the Court of Appeals. Its opening brief was filed on September 21, 2023.

B. Motion to file Substitute videos in Court of Appeals.

The District filed its Opening Brief on September 21, 2022. Respondent Brittig filed supplemental designations of clerk's papers designating for Docket Number 130, which included videos on a CD/DVD from the District's July 2, 2019 Special Meeting and April 24, 2018 Meetings.

On December 6, 2022, Brittig filed Respondent's Brief, which cited to the CD/DVD and referred to other unspecified "District videos" which were not contained in the record. On January 24, 2023, the parties received an email notifying Brittig's counsel that these clerk's papers had not been received by the Court of Appeals and requesting an update.

On February 6, 2023, the District filed its Reply Brief. The next day, on February 7, 2023 at approximately 9:56 a.m., the Court sent a second email addressing the clerk's papers. Later, Brittig's counsel sent an email requesting that the District's counsel provide a copy of the videos that they claimed had been lost by the clerk. Myers Decl. Opposing Motion, **Exhibit 1**. In response, the District's counsel requested an explanation as to why Brittig needed the opposing party to provide a copy of what Brittig had filed. The District asked why counsel couldn't get the video from Brittig. *Id.*, **Exhibit 2.** The District was also concerned that Brittig's counsel filed a brief citing to videos without having a copy to review. Counsel never responded.

On February 10, 2023, after briefing had been completed, Brittig filed a motion to permit direct him to directly file new videos with the Court of Appeals.[2] The motion cited no

[2] The Petition misrepresents Brittig's own motion filed in the Court of Appeals. It asked for permission for Brittig to file a substituted version of the video. The Petition's multiple attacks on the District for not providing the video are misdirected.

authority. The only support provided for the motion was an email from the deputy clerk addressing the "phantom" disc, which Brittig appended to his brief. The email from Deputy Clerk Susan Lord stated in pertinent part:

> Just a little tickle… I'm wondering what your law office wishes to do with this "Plaintiff Brittig's second supplemental designation of clerk's papers" that was sent via fed ex and received here 11/21/22
>
> **This supplemental document is regarding the disc that the judge spoke of but was never entered/filed etc, and so it does not exist in the record**.
>
> Did you want me to shred this or file it anyway?

Appendix A to Motion. (emphasis added).

The Commissioner denied the motion on February 22, 2023. Brittig moved to modify the Commissioner's ruling. Brittig again failed to support his motion with any legal authority. The motion to modify was denied by the panel on April 26, 2023.

III. STATEMENT OF ISSUES

1. Whether the Opinion presents an issue of broad public interest or conflicts with established case law where the record omitted videos that were not properly filed with the Superior Court Clerk.

2. Whether the Opinion presents any issue meriting review where the court applied de novo review under RCW 42.56.550(3) to a record consisting of declarations and documentary evidence and the court did not hear live testimony.

3. Whether the Opinion presents any issue meriting review where it held that claims brought more than one year after an agency's final response to a records request were barred by the statute of limitations in RCW 42.56.550(6).

IV. ARGUMENT

A. THE COURT OF APPEALS DID NOT DECIDE ANY ISSUE OF BROAD PUBLIC IMPORTANCE IN DETERMINING THIS CASE UNDER THE RECORD CREATED IN THE TRIAL COURT.

The petition first asserts that review should be granted because the record below did not include videos that Brittig claims should have been considered. The Court Commissioner below found that they had not been properly filed with the Superior Court Clerk and did not exist in the record.

Contrary to the petition's arguments, this is a unique factual issue, not an issue of broad public interest. The Court of Appeals opinion does not conflict with established case law.

Plaintiff claims that this case should be reviewed because it conflicts with *Stiles v. Kearney*, 168 Wn.App. 350, 277 P.3d 9 (2012). As an initial matter, Brittig makes this argument for the first time in his petition for review and therefore did not preserve the issue. Brittig failed to cite any of the cases that he now relies upon to the Court of Appeals in either his motion to require the District to file a substitute exhibit or in his motion to modify.

Brittig relies on inapposite case law in criticizing the District for not filing a substituted copy of the video, even though it was originally filed by Brittig, not the District. Petition at 16. There is no conflict with *Stiles v. Kearney* or any of the other cases cited by the Petition. *Stiles* did not involve a mis-filed document in the trial court, much less a contention that an appellant has a duty to file a substitute exhibit where the respondent failed to properly file the original.

The petition cites to *Stiles*, and *Bulzomi v. Dep't of Labor & Industries*, 72 Wn.App. 522, 525, 864 P.2d 996 (1994) for the familiar proposition that an insufficient record precludes appellate review. Brittig does not dispute the observation of the Court of Appeals where the Court found that the videos and the trial judge's statements about what was said at meetings conducted months after the approval of the disputed meeting minutes did not address what was in the language of the approved minutes. The Opinion notes that the videos are not relevant to their de novo review, stating:

> But even if the videos were part of our record on review, the question before us is not whether the approved meeting minutes for the April 16, 2018, meeting *accurately reflect what was said at the meeting*. Rather, the question before us is whether the approved meeting minutes were provided to Brittig in response to his request. We conclude that they were.

Opinion at 15. (emphasis in original).

The Petition argues, without citing any authority, that it was up to the District to correct Brittig's failure to properly file

the video with the clerk's office. Indeed, Brittig's motion to the Court Commissioner to require the District file a substitute version is misdirected. When Brittig's counsel was asked whether it had a copy of the "phantom disc," he did not respond or otherwise explain why Brittig could not produce the videos. Counsel now wants to shift responsibility for Brittig's failure to properly file the disc onto the District, without citing any legal authority, even though that was not what he asked from the Court of Appeals in his motion. The responsibility for properly filing a proposed exhibit in the trial court lies with the party seeking to file it, not with the opposing party. There was no error.

Brittig's citation to *Engstrom v. Goodman,* 166 Wn.App. 905, 271 P.3d 959 (2012) demonstrates the fundamental error in his position. Brittig was responsible for filing the record and had the ability to designate any filing in the record as part of the clerk's papers. RAP 9.6(a). This is explained in *Engstrom,* which involved an instance where the plaintiff's attorney had a key piece of evidence that was in the record removed. Engstrom

supports the district's position that the Court of Appeals did not err. Footnote 2 of the Engstrom opinion states:

> The rules of appellate procedure allow a party to designate "those clerk's papers and exhibits the party wants the trial clerk to transmit to the appellate court." RAP 9.6(a).

Thus, under *Engstrom*, Brittig had the ability to designate the portions of the record that it believed were relevant and cannot blame the District for Brittig's failure to properly file the video with the superior court in the first instance. Brittig's citations to isolated quotes from *Norway Hill Prserv. Protect. Ass'n v. King Cnty.*, 87 Wn.2d 267, 552 P.2d 674 (1976); *Mountain Park Homeowners Ass'n v. Tydings*, 125 Wn.2d 337, 341, 883 P.2d 1383 (1994); and *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998) add nothing to the court's consideration.

Norway Hill sets forth the standard of review in cases under the State Environmental Policy Act (SEPA) and articulated the clearly erroneous test based on review of the entire

record, which is broader than review for "substantial evidence." 87 Wn.2d at 274. *Norway Hill* did not address any missing parts of the record and does not conflict with the Opinion.

Mountain Park Homeowners Ass'n is a case regarding abandonment or selective enforcement of covenants, not review under the Public Records Act. It does not say that the appellate court must examine "all the evidence presented to the trial court." See Petition at 21. What it actually says is that when reviewing an order for summary judgment, the appellate court engages in the same inquiry as the trial court. 125 Wn.2d at 341. *Mountain Park* does not conflict with how the Court of Appeals conducted the de novo review mandated in public records cases.

Finally, *Folsom v. Burger King* discussed the appellate court's review of expert testimony that was stricken. *Folsom* then affirmed the exclusion of that evidence under a de novo standard of review applicable to a summary judgment ruling. There is no conflict with *Folsom* in this case.

Finally, the petition cites multiple places in the record where plaintiff summarized what it believes was shown in the videos. Petition at 22, citing CP 780 (Brittig's reply declaration conceding that there was no open discussion of the language of the minutes approved for the April 16, 2018 special meeting and summarizing statements at the Board's July 2, 2019 meeting). Thus, because these summaries of what Brittig thought was depicted were part of the record, there is no prejudice arising from his failure to properly file the videos.

The issue of whether the court had an adequate record to determine the PRA issues in a particular case is not a question of substantial public interest. There is no basis to believe that it would "seed discontent" or undermine the integrity of the appellate process. The court should deny review because there is no issue of broad public interest, nor is there a conflict with any of the cited cases concerning the record on review.

B. THE COURT OF APPEALS FOLLOWED WELL SETTLED CASE LAW IN APPLYING DE NOVO REVIEW TO THE RECORD.

Progressive Animal Welfare Soc'y v. Univ. of Wash. (*PAWS*), 125 Wn.2d 243, 884 P. 592 (1994), established a *de novo* standard of review where the record on review consists solely of written declarations and documentary evidence and where no live testimony is considered. This thirty year old legal standard has been followed uniformly in cases where live testimony is not presented and the hearing is conducted and as a show cause hearing under the procedures outlined in RCW 42.56.550. See, e.g., *Zink v. City of Mesa*, 140 Wn.App. 328, 337, 166 P.3d 738 (2007), citing *PAWS*, 125 Wn.2d at 252-253.

This rule has been consistently followed by the Supreme Court and all three divisions of the Court of Appeals in PRA cases. *See, e.g., Kilduff v. San Juan Cnty.*, 194 Wn.2d 859, 867, 453 P.3d 719 (2019); *Anderson v. Department of Social and Health Services, Division of Child Support* 196 Wn.App. 674, 384 P.3d 651 (2016), review denied 188 Wn.2d 1006, 393 P.3d

786; *West v. City of Tacoma* 12 Wn.App. 2d 45, 456 P.3d 894 (2020); *Hobbs v. State Auditor*, 183 Wn.App. 925, 335 P.3d 1004 (2014); *Kittitas Cnty. v. Allphin*, 195 Wn.App. 355, 364, 381 P.3d 1202 (2016), aff'd, 190 Wn.2d 691, 416 P.3d 1232 (2018).

Brittig now contends that this Opinion in this case conflict with the rule in *PAWS* arguing that it should defer to the trial court because the trial court assessed credibility in weighing conflicting declarations from the parties. Petition at 28. Significantly, Brittig has now done an about-face from his briefing to the Court of Appeals, which argued that the *de novo* standard of review applied. Respondent's Brief at 23. Despite this concession, Brittig now claims that it was error for the court to apply the very *de novo* standard that he agreed should be applied in his brief. Brittig invited application of the *de novo* standard and is judicially estopped from now contending this was error. doctrine of judicial estoppel. *State v. Peck*, 194 Wn.2d 148, 171, 449 P.3d 235, 246 (2019) (doctrine permits a court to bar a

party from unfairly benefiting from shifting contradictory positions during continuing litigation).

Brittig ignores the portion of the language in *PAWS* which was quoted by the Court of Appeals, Opinion at 11, describing the circumstances for applying de novo review where "the trial court has not seen nor heard testimony". It is undisputed that the trial court did not see or hear testimony of witnesses. As such, there is no conflict with *PAWS.*

Given the settled nature of the standard of review where the record does not involve live witnesses, and is entirely consisting of documents and exhibits, it cannot seriously be maintained that the Court of Appeals erred in following *PAWS*. None of the cases applying *PAWS* are discussed by the Petition. The routine application of the *de novo* standard of review, which Brittig advocated in his brief, is not justification for review by the Supreme Court.

The Court's opinion also does not conflict with *Smith v. Skagit County*, 75 Wn.2d 715, 718, 453 P.2d 832 (1969). The

petition does not explain how there is a conflict, citing *Smith* only in a heading and noting it was cited in *PAWS*. Petition at 28. *Smith* is not a public records case and was decided before the PRA was adopted in 1972. It was a land use case that reviewed a trial court's consideration of a petition for a writ of certiorari, which like this case was decided based entirely on a documentary record. *Smith* held that the appellate court would give the matter an "independent review" because the trial court had not seen nor heard testimony requiring it to assess the credibility or competency of witnesses, and to weigh the evidence, nor reconcile conflicting evidence. *Smith v. Skagit Cnty.*, 75 Wn.2d at 718. The rule followed in *Smith* supports what occurred here, as the trial court did not hear testimony from witnesses but relied exclusively on declarations and documentary exhibits.

Respondent argues that the standard of review in this case is "unique." The Opinion's description of the factual conflicts in the declarations presented here as "unique" does not affect the settled nature of the standard of review in PRA cases. Indeed,

the court was following this well-settled standard as articulated in *Cantu v. Yakima School District*, 23 Wn.App.2d 57, 80, 514 P.3d 661 (2022). There, *Cantu* observed that "fact-finding hearings on PRA claims are unique." 23 Wn.App.2d at 80. *Cantu* followed the well settled rules applying de novo review to cases where the record consists solely of affidavits and that the appeals court is not bound by trial court findings of fact on disputed factual issues. *Id.*,

Next, Brittig points to the Opinion's alternative explanation which shows why his claims fail under either a *de novo* standard or the more deferential substantial evidence standard, as a basis to muddy the waters as to which standard applies. That the substantial evidence standard only applies where the court hears live testimony has been made clear by the subsequent cases that the Petition fails to address. *Zink v. City of Mesa, supra*, at 336-337, held that when a trial court hears live testimony and judges the credibility of the witnesses, appellate courts afford deference to its determinations of fact by applying

the substantial evidence test. Since there was no live testimony in this case, the Court of Appeals did not err.

Even if the substantial evidence test were used, Brittig's claim would fail because, as the Opinion explained, Brittig relied on inadmissible, unauthenticated evidence. Opinion at 15.

In contrast, the District's evidence was consistent and persuasive on this decisive point, as the Court of Appeals correctly found. Opinion at 13, 16. The District provided authenticated records of the approved minutes with multiple declarations verifying their authenticity. The District explained how a draft version of the minutes was distributed to the Board and others including Brittig but was corrected by a commissioner prior to Board approval.[3] The Court relied on the declarations of

[3] Brittig contends that the District's declarations are false because the revision of the draft was not fully explained until reconsideration. Brittig does not address the prior Declaration of the Board Chair that explained the process for circulating and correcting draft minutes and which attested to the correctness of the minutes provided by the District. CP 110. Brittig further fails to disclose that the District's more detailed explanation only became necessary to respond when Brittig improperly filed his

persons with personal knowledge of what was approved, not speculation from Brittig (who was not there) or others confused by what Brittig later told them.

C. THE COURT OF APPEALS OPINION DOES NOT INVOLVE ANY ISSUE OF SUBSTANTIAL PUBLIC INTEREST IN ITS ROUTINE APPLICATION OF THE STATUTE OF LIMITATIONS.

Brittig also argues that the Court should accept review because the Court of Appeals misinterpreted *O'Dea v. City of Tacoma,* 19 Wn.App.2d 67, 493 P.3d 1245 (2021) and how the statute of limitations applies. Brittig distorts the holdings of *O'Dea* and fails to identify how the Court of Appeals decision conflicts. Brittig fails to explain how application of the one year statute of limitations to bar claims brought 14 months after the agency's final response presents an issue of substantial public interest warranting review under RAP 13.4(b).

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alternative versions of the minutes for the first time in a reply declaration. CP 778. Because the trial court failed to strike these untimely filings, the District's first opportunity to address these untimely contentions was during reconsideration.

First, *O'Dea* did not construe the statute of limitations or how it should apply to PRA claims, making it wholly inapplicable to the facts of this case. *O'Dea* is not factually similar to this case, as the Opinion points out. *O'Dea* concerned the unique circumstance where a PRA request was received by an agency for the first time when it was attached to a complaint served upon the City. The issue in *O'Dea* was whether a records request transmitted as an attachment to a lawsuit provided fair notice to an agency that a records request had been made.

The Opinion properly distinguished *O'Dea*, explaining that it did not involve a records request that the agency already fully responded to, or an email inquiring about filing an amended complaint about that completed response. Opinion at 18. Instead, *O'Dea* presents unique and distinguishable facts. *Id.*

Given the fact-specific circumstances presented in Brittig's email, this case is not of general interest to the public. The Opinion did not analyze whether Brittig's email to opposing counsel asking to amend his complaint met the standards for

putting the District on "fair notice" of a records request because the District already had received and responded to the request. Opinion at 18, n.6. The email was not itself a PRA request, as the Opinion correctly determined. This factual determination is unremarkable and not of general public interest. Thus, it does not meet the criteria for review under RAP 13.4(b)(4).

The Petition continues to misrepresent what its lawsuit was about. Brittig's third amended complaint added an untimely claim for violations responding to Request 2019-011, which was made in April 2019 and finally responded to on October 3, 2019. Brittig did not sue for failing to satisfy a records request in his August 24, 2020 email, which was not a PRA request, as the Court ruled, noting that the email requested a stipulation to amend the complaint. Opinion at 19.

Brittig misrepresents the Opinion, claiming it found the email was a "clarification." Petition at 25. The court noted that it might have been prudent to treat it as such, but then found that the email was sent to request consent to amend the complaint to

add a cause of action, which differed from *O'Dea* because in this case, the District had already fully responded to the original records request more than a year earlier. [4]

The Petition relies on inapposite case law in a failed attempt to buttress its argument. Brittig cites *West v. City of Tacoma*, 12 Wn.App.2d 45, 456 P.3d 894 (2020) where an agency narrowly interpreted the scope of a records request, causing an inadequate search to argue that the Court misconstrued Brittig's August 2020 email. *West* does not require the court to disregard the plain meaning of an email requesting consent to amendment of a complaint in favor of a self-serving argument invented on appeal. *West* did not involve the statute of limitations, or an email sent months after the conclusion of the agency's response in an effort to extend the limitations period.

[4] The email from Brittig was not a clarification, but complained about inadequacy of the District's response, particularly not having included a record shown to the Commissioners in the April 16, 2018 meeting. The District later explained that this record was not retained after that meeting and did not exist when Brittig made his request.

Likewise, *Violante v. King County Fire Dist. No. 20*, 114 Wn.2d 565, 567 59 P.3d 108 (2002) does not stand for the proposition cited by Brittig. It did not involve a statute of limitations issue, but the appropriateness of attorney's fees to a prevailing requester. It says nothing about when a records request is considered closed.

Next, Brittig incorrectly asserts that rejection of his untimely claims means that an agency can avoid liability by doing nothing, Petition at 27, citing *Cantu v. Yakima Sch. Dist. No. 7, supra*. *Cantu* did not involve application of the statute of limitations and its facts bear no resemblance to those in this case. *Cantu* involved an agency's persistent and prolonged failure to respond at all to a PRA request, missing multiple promised dates to provide records and thereby constructively denying a records request. *Cantu*, 23 Wn.App.2d at 66.

In contrast to the delay in *Cantu*, this case involved a request which the District promptly responded to in multiple installments. After receiving Request 2019-11, the District

provided a first installment of records 18 days later, with a second installment on June 30, 2019 when it initially closed its response. When Brittig identified that he also wanted videos in September 2019, the District provided them within two weeks on October 3, 2019. However, Brittig did not add claims concerning this response for 14 months, until December 21, 2020, which is well beyond the statute of limitations.

Brittig's claim is untimely under clearly established case law and under the language of RCW 42.56.550(6) which allows one year from the "final production" of a record. The Petition addresses none of the cases applying the statute of limitations and takes no issue with the Opinion's interpretation of the statute of limitations and its citation to *Dotson v. Pierce County* 13 Wn.App.2d 455, 464 P.3d 563 (2020) and *Belenski v. Jefferson County*, 186 Wn.2d 452, 378 P.3d 176 (2016). Opinion at 17. By any measure, whether the court applies the statute of limitations from the last date of production of a record (October 3, 2019) or from the date the agency initially closed its response, (June 30,

2019), the claims filed in December 2020 were clearly beyond the one year statute of limitations.

Brittig cites no authority that a statute of limitations can be tolled or re-set by the unilateral act of sending of an email to opposing counsel alleging inadequacies in the agency's response and seeking consent to file an amended complaint. If anything, it shows that Brittig knew enough to bring his claim but delayed and failed to timely file his complaint. There is no basis for the court to grant review under RAP 13.4(b)(2) or (4).

V. CONCLUSION

Because the Opinion does not meet the criteria set forth in RAP 13.4(b), the Petition should be denied. The Court's Opinion followed established law, applied the correct standard of review advocated by both parties, and did not determine new issues of law or constitutional issues. The factually specific determinations in this case are not of general public interest or importance. Hence, the petition should be denied.

DATED this 15th day of November, 2023.

I certify that this brief contains 4,953 words as determined by computer word count in conformity with RAP 18.17(c)(17).

LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH,
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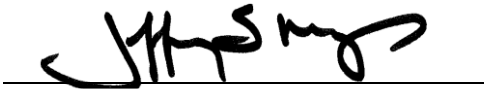

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CERTIFICATE OF SERVICE

I hereby certify, under the penalty of perjury, under the laws of the State of Washington that I have caused a true and correct copy of the foregoing document to be served to the below listed party by the Washington State Court of Appeals e-filing system as well as by electronic mail per service agreement upon the following person(s):

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DATED this 15th day of November, 2023, at Olympia, WA.

/s/ Lisa Gates
Lisa Gates, Assistant to Jeffrey S. Myers

LAW LYMAN DANIEL KAMERRER & BOGDANOVICH

November 15, 2023 - 11:35 AM

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