

FILED
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No. 102586-6
SUPREME COURT OF THE
OF THE STATE OF WASHINGTON

PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH
COUNTY, a Washington municipal corporation, BARRY
CHRISMAN and KERRY CHRISMAN, individually and as
husband and wife,

Respondents,

v.

STATE OF WASHINGTON, SIERRA PACIFIC INDUSTRIES
DBA SIERRA PACIFIC INDUSTRIES, INC., a California
corporation, PRECISION FORESTRY, INC., a Washington
corporation, and JOHN DOE NOS. 1-10,

Petitioner.

**RESPONDENT PUBLIC UTILITY DISTRICT NO. 1 OF
SNOHOMISH COUNTY'S ANSWER TO AMICUS CURIAE
MEMORANDUM OF WASHINGTON FOREST
PROTECTION ASSOCIATION, WASHINGTON
ASSOCIATION OF LAND TRUSTS, WASHINGTON
STATE ASSOCIATION OF COUNTIES, WASHINGTON
FARM FORESTRY ASSOCIATION, THE
CONSERVATION FUND, AMERICAN FOREST
RESOURCE COUNCIL, AND WASHINGTON FARM
BUREAU LEGAL FOUNDATION IN SUPPORT OF
PETITIONS FOR REVIEW**

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TABLE OF CONTENTS

	PAGE
I. INTRODUCTION	1
II. ARGUMENT	3
A. Amici Have Not Shown That Review Is Warranted Under RAP 13.4(b).....	3
B. Even If RCW 76.09.330’s Language Were Ambiguous, Stakeholder Agreements Do Not Trump The Official Legislative Record as Evidence of Legislative Intent.....	5
C. This Court Should Not Accept Amici’s Invitation To Interpret RCW 76.09.330 Based on “Public Policy” Concerns at The Expense of Ignoring The Statute’s Plain Language	10
III. CONCLUSION.....	15

TABLE OF AUTHORITIES

	PAGE
CASES	
<i>Beauregard v. Wash. State Bar Ass’n</i> 197 Wn.2d 67, 480 P.3d 410 (2021).....	11
<i>Brown v. City of Yakima</i> 116 Wn.2d 556, 807 P.2d 353 (1991).....	6
<i>Condit v. Lewis Refrigeration Co.</i> 101 Wn.2d 106, 676 P.2d 466 (1984).....	12
<i>Dep’t of Ecology v. Campbell & Gwinn, L.L.C.</i> 146 Wn.2d 1, 43 P.3d 4 (2002).....	5
<i>Doe ex rel. Roe v. Wash. State Patrol</i> 185 Wn.2d 363, 374 P.3d 63 (2016).....	12
<i>Hearst Commc’ns, Inc. v. Seattle Times Co.</i> 154 Wn.2d 493, 115 P.3d 262 (2005).....	8
<i>Michaels v. CH2M Hill, Inc.</i> 171 Wn.2d 587, 257 P.3d 532 (2011).....	6
<i>Pub. Util. Dist. No. 1 of Snohomish Cnty. v. State</i> __ Wn. App.2d __, 534 P.3d 1210 (2023).....	1, 6, 15
<i>Ruiz v. State.</i> 154 Wn. App. 454, 225 P.3d 458 (2010).....	3, 4
<i>State v. Bash</i> 130 Wn.2d 594, 925 P.2d 978 (1996).....	6
<i>State v. Haggard</i> 195 Wn.2d 544, 461 P.3d 1159 (2020).....	8

Wilson v. Boots
57 Wn. App. 734, 790 P.2d 192 (1990)..... 12

STATUTES

RCW 76.09.300..... 6
RCW 76.09.330..... *passim*

REGULATIONS AND RULES

RAP 13.4(b)..... *passim*
RAP 13.4(b)(2)..... 3
RAP 13.4(b)(4)..... 4, 13, 15

I. INTRODUCTION

No industry or government entity welcomes tort lawsuits. But whether a defendant is subject to statutory immunity is a choice made by the Legislature. Statutory immunity does not arise from an agreement between potential future tortfeasors and is not based on certain stakeholders' preference that their policy interests trump the interests of injured parties seeking redress and accountability in a tort action. In sum, a litigant or an industry cannot define its own immunity.

Amici are organizations purporting to “represent[] a large swath of Washington’s forestland owner community[.]”¹ Amici urge this Court to accept review of the Court of Appeals’ decision in *Pub. Util. Dist. No. 1 of Snohomish Cnty. v. State*, ___ Wn. App.2d ___, 534 P.3d 1210 (2023), in which the Court of Appeals interpreted the plain language of RCW 76.09.330, an immunity provision in the Forest Practices Act (“FPA”) that

¹ See Motion for Leave to File Amicus Curiae Memorandum (“Amicus Mot.”) at 2.

governs what conduct is immunized and defines the scope of parties entitled to immunity when they engage in such conduct.

Rather than explain how the RAP 13.4(b) criteria are satisfied, Amici argue that the Court of Appeals' decision "is entirely inconsistent with the clear intent of, and policy rationale for, RCW 76.09.330." Amicus Mem. at 16. They insist the Court of Appeals' decision "improperly exposes landowners to liability for implementing conservation measures designed to benefit public resources." Amicus Mot. at 3.

Oddly, however, while Amici argue that the Court of Appeals' interpretation of RCW 76.09.330 is at odds with the Legislature's intent, Amici do not challenge the Court of Appeals' detailed analysis of the statute's plain language. Nor do Amici claim that RCW 76.09.330's language is ambiguous such that an analysis of legislative history is even necessary. Rather, Amici lean on what they characterize as a "commitment" to immunity in a stakeholder agreement they claim subsequently "became law[.]" Amicus Mem. at 4. Reliance on stakeholder

agreements and policy arguments as evidence of legislative intent is counter to sanctioned principles of statutory interpretation.

Amici have not made a compelling argument that the Petitions for Review present issues warranting this Court's review under RAP 13.4(b). As did Petitioners, Amici disagree with the Legislature's policy decision to limit the scope of RCW 76.09.330 immunity, but that disagreement is not a basis for review. Respondent Public Utility District No. 1 of Snohomish County (the "District") respectfully requests the Court deny review.

II. ARGUMENT

A. Amici Have Not Shown That Review Is Warranted Under RAP 13.4(b).

Amici largely ignore the RAP 13.4(b) criteria. They claim the Court of Appeals' decision conflicts with *Ruiz v. State*, 154 Wn. App. 454, 225 P.3d 458 (2010) and thus "demands review under RAP 13.4(b)(2)" but note that they "rely on Petitioners to explain this conflict." Amicus Mem. at 13. As the District

explained in its Answers to the Petitions for Review, there is no conflict with *Ruiz* and the decisions can be reconciled.² The Court should reject Amici’s (and Petitioners’) attempts to shoehorn the claims and facts in this case into *Ruiz*.

Amici make a passing reference to RAP 13.4(b)(4), attempting, as did Petitioners, to manufacture “an issue of substantial public interest” meriting review. *See* Amicus Mem. at 13. But Amici fail to explicitly identify any “public interest,” much less a “*substantial* public interest.” The only “interests” Amici reference are the “diverse interests of [A]mici” and the “interests” of forestland “purchasers and operators[.]” *Id.* at 2, 18. But whether a case raises issues impacting a particular industry’s interests is not a RAP 13.4(b) criteria. Amici insist that “[t]he impacts of the [Court of Appeals’ decision] are obvious—public resources will be given less protection, public access will be restricted as associated liabilities grow, costs of

² *See* District’s Answer to State’s Petition for Review at 14-18; District’s Answer to Sierra Pacific Industries’ and Precision Forestry Inc.’s Petitions for Review at 6-18.

doing business will increase, and some forestlands will be converted to other uses (such as urban development) as the risks of forest management rise[,]” but fail to cite any authority or statistics to support that conclusory statement. *See* Amicus Mem. at 15-16.³

Amici have failed to show how the RAP 13.4(b) criteria are satisfied.

B. Even If RCW 76.09.330’s Language Were Ambiguous, Stakeholder Agreements Do Not Trump The Official Legislative Record as Evidence of Legislative Intent.

Reliance on legislative history is unnecessary where, as here, the statutory language is unambiguous. *See Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002) (explaining that courts may “resort to aids to construction, including legislative history[,]” if “the statute

³ *See* District’s Answer to SPI and Precision’s Petitions for Review at 2-3, 18-22 and District’s Answer to State’s Petition for Review at 23-24 for the District’s detailed response to Petitioners’ similar “public interest” arguments, including Amici’s argument, *see* Amicus Mem. at 14, that the Court of Appeals’ decision “incentivizes landowners to stop independently evaluating whether additional public resource protections are appropriate, and to instead cut every tree possible.”

remains susceptible to more than one reasonable meaning” *after* plain language analysis). When necessary to analyze legislative history, Washington courts “ha[ve] frequently looked to final bill reports as part of an inquiry into legislative history.” *State v. Bash*, 130 Wn.2d 594, 601, 925 P.2d 978 (1996); *see also Brown v. City of Yakima*, 116 Wn.2d 556, 562, 807 P.2d 353 (1991) (explaining that “[r]ecourse to [a] Final Legislative Report as an aid in determining intent has been sanctioned.”).

Amici do not argue that RCW 76.09.330’s plain language is ambiguous, or address the Court of Appeals’ analysis of the statutory language. Nor do Amici disagree that as a “[s]tatutory grant[] of immunity[,]” RCW 76.09.300 “is construed strictly to the extent the language is not plain on its face.” *Pub. Util. Dist. No. 1*, 534 P.3d at 1216 n.2 (quoting *Michaels v. CH2M Hill, Inc.*, 171 Wn.2d 587, 600, 257 P.3d 532 (2011)). And Amici do not address the *content* of the final bill reports relevant to the 1992 and 1999 amendments to RCW 76.09.330 which resulted in the statute’s immunity language.

Instead, Amici rely on “stakeholder agreements” to support their interpretation of RCW 76.09.330’s legislative history. *See* Amicus Mem. at 4 (explaining that the 1987 Timber/Fish/Wildlife Agreement (“TFW Agreement”) resulting from stakeholder discussions “included [a] commitment” that the “falling” of trees required to be left standing “shall be regarded as a natural occurrence and shall not lead to landowner liability”); Amicus Mot. at 18-19 (arguing that “[t]he unique legislative history of RCW 76.09.330...arose out of a series of landmark stakeholder conservation agreements” and that “[t]hese *agreements* are the *critical* legislative history of [RCW 76.09.330]”) (emphasis added).

The fact that stakeholders participating in discussions resulting in the TFW Agreement “adopted new ground rules for doing business with one another[,]”⁴ including an agreement that there should be limits on “landowner liability[,]”⁵ is immaterial

⁴ *See* TFW Agreement at 1, *available at* https://www.dnr.wa.gov/publications/fp_tfw_agrmnt_1987.pdf.

⁵ *See id.* at 26.

for purposes of interpretation of RCW 76.09.330's plain language. Indeed, the 1987 TFW Agreement does not (and could not) document any "agreement" as to the 1992 and 1999 amendments to RCW 76.09.330.

Statutory immunity is not a matter of contract. Amici's arguments conflate principles of contract interpretation with the more limited set of interpretive tools courts use when statutory language is ambiguous. *Compare Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 502, 115 P.3d 262 (2005) (explaining that when contract language is susceptible to more than one meaning, courts may turn to extrinsic evidence including "the subject matter and objective of the contract," "all the circumstances surrounding the making of the contract," "the subsequent acts and conduct of the parties," and "the reasonableness of respective interpretations urged by the parties") *with State v. Haggard*, 195 Wn.2d 544, 548, 461 P.3d 1159 (2020) (when a statute is ambiguous, courts "may resort to statutory construction, legislative history, and relevant case law

for assistance in discerning legislative intent”).

Nor do Amici cite any authority – and there is none – supporting the proposition that an interest group’s recommendation of how a final bill should read or the group’s post-enactment interpretation of the statute trumps the Legislature’s intent as expressed in the statute’s plain language and the actual legislative record.

But even if RCW 76.09.330’s legislative history were relevant, the appropriate extrinsic evidence of the Legislature’s intent – final bill reports – supports the Court of Appeals’ interpretation. Amici characterize the 1992 and 1999 amendments as “strengthen[ing]” RCW 76.09.330, but do not address specific amendments to the immunity language. *See* Amicus Mem. at 5-6. As the District discussed in its Court of Appeals’ briefing, however, analyzing the final bill reports for these amendments confirms the Legislature’s intent to immunize specific *conduct*: the action of “leaving trees,” which is consistent with RCW 76.09.330’s plain language. *See* District’s

Reply Br. at 6-8.⁶

As much as forestland owners wish that RCW 76.09.330 was an “injury-immunity” statute, immunizing the State and parties who meet the statutory definition of “landowner” when they cause a certain type of injury, their *agreement* that landowner liability should be limited cannot convert the statute’s plain language immunizing specific *conduct* into a law that effectively eliminates all accountability for tortious conduct related in any way to trees required to be left standing.

C. This Court Should Not Accept Amici’s Invitation To Interpret RCW 76.09.330 Based on “Public Policy” Concerns at The Expense of Ignoring The Statute’s Plain Language.

Ultimately, Amici resort to arguing that the Court of Appeals’ opinion is “inconsistent” with RCW 76.09.330’s “*policy rationale*” and “is in direct conflict with [RCW 76.09.330’s] *environmental rationale*[.]” Amicus Mem. at 16-

⁶ Copies of the final bill reports for SHB 2330 (which included the 1992 amendments) and for ESHB 2091 (which included the 1999 amendments) are included in the Supplemental Appendix to the District’s Reply Brief.

17 (emphasis added). But whether a Court of Appeals decision is inconsistent with an interested party’s “policy rationale” is not the test this Court applies when determining whether to accept review. *See* RAP 13.4(b).

This Court has rejected invitations to interpret a statute “as a matter of public policy” rather than using recognized “tools of statutory interpretation.” *See, e.g., Beauregard v. Wash. State Bar Ass’n*, 197 Wn.2d 67, 79 n.10, 480 P.3d 410 (2021) (rejecting dissent’s “propos[al] to interpret the [Open Public Meetings Act] to apply to the WSBA [Board of Governors] regardless of usual statutory interpretation ‘as a matter of public policy’”; noting that “if public policy requires additional transparency, both this court and the BOG can pursue it through other means. But those regulatory and rule-making means are not tools of statutory interpretation to decide a pending case”). This is true even when a policy rationale is contained in a report summarizing the “findings and recommendations” of a government agency or board tasked with addressing issues

related to the issue before the court. *See, e.g., Doe ex rel. Roe v. Wash. State Patrol*, 185 Wn.2d 363, 383-84, 374 P.3d 63 (2016) (declining to consider “recommendations” of the state Sex Offender Policy Board regarding interpretation of the Public Records Act with respect to public disclosure of sex offender information; explaining that “the SOPB report includes policy arguments to exempt the blanket release of level I sex offender registration records” but noting that “policy decisions are best left to the legislature”).

Relying on Amici’s public policy concerns as a basis for acceptance of review disregards the statutory interpretation principles this Court applies when interpreting a statute. Indeed, “an overriding public policy consideration is that a statute be interpreted to give full effect to the legislative intent.” *Wilson v. Boots*, 57 Wn. App. 734, 737-38, 790 P.2d 192 (1990) (citing *Condit v. Lewis Refrigeration Co.*, 101 Wn.2d 106, 110, 676 P.2d 466 (1984)) (rejecting “public policy reasons” appellant offered to support its desired interpretation of worker’s compensation

statute; explaining that “[t]he overall legislative intent must govern”).

Amici note that “Washington’s forests provide countless benefits.” Amicus Mem. at 1. The District does not dispute this statement. Amici also state that “[s]ustainably delivering all of these benefits requires landowners to balance when, where, and how to harvest trees.” *Id.* But there is nothing in the Court of Appeals’ decision that prohibits landowners from performing this balancing act. Amici contend that, in performing this balancing act, *they* should be allowed to *define their own immunity* through their own choices of which trees to harvest and which to leave. Amicus Mem. at 7-12. But Amici’s desire for such remarkable discretion does not present “an issue of substantial public interest that should be determined by” this Court. RAP 13.4(b)(4).

Similarly, with respect to Amici’s lengthy discussion of the regulations and “numerous site-specific determinations and measurements that inform where trees are left[,]” *see id.* at 9, and

the decisions that forestland owners must make as they harvest trees, there is nothing in the Court of Appeals' decision that prohibits forestland owners from complying with those regulations and determinations.

Nor can Amici rely on public policy to support their argument that the Court of Appeals' opinion "eviscerates RCW 76.09.330 by permitting lawsuits against timber sale purchasers and operators" and that the Court of Appeals erred by holding that "the purchaser [SPI] and operator [Precision] could not claim RCW 76.09.330's immunity because they were not landowners." Amicus Mem. at 17-18. Amici claim that as a result of this holding, "[t]he statute's immunity becomes essentially meaningless if a plaintiff can simply sue a landowner's purchaser or contractor for leaving trees standing." *Id.* at 18. This argument ignores RCW 76.09.330's plain language, which provides, in pertinent part, that only "...the **landowner**, the department, and the state of Washington shall not be held liable for any injury or damages resulting from these

actions...” (emphasis added). The Court of Appeals correctly held that purchasers or contractors of rights to harvest trees *other than* those required to be left standing are not such “landowner[s].” *Pub. Util. Dist. No. 1*, 534 P.3d at 1217-18. Amici offer no reason why the Court of Appeals’ reliance on RCW 76.09.330’s plain language, rather than language Amici prefer the statute would include, provides a basis for review pursuant to RAP 13.4(b)(4).

III. CONCLUSION

For the reasons detailed above and in the District’s Answers to the Petitions for Review, there is no basis for review of the Court of Appeals’ decision under RAP 13.4(b). The District respectfully requests the Court deny review.

RESPECTFULLY SUBMITTED this 16th day of February, 2024.

I certify that this memorandum contains 2402 words, in compliance with Rules of Appellate Procedure.

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I certify that on this 16th day of February, 2024, a copy of this document was sent as stated below.

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DATED this 16th day of February, 2024.

/s/ Marco Sanchez
Marco Sanchez

GOLDFARB & HUCK ROTH RIOJAS, PLLC

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