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Supreme Court No. 102791-5
COA No. 389910
Spokane County Superior Court Cause No. 21-2-01609-32

SUPREME COURT OF THE STATE OF WASHINGTON

COWLES COMPANY,
Respondent

vs.

JEFFREY THURMAN,
Petitioner

RESPONSE TO PETITION FOR REVIEW

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I. INTRODUCTION

Supreme Court review is reserved for cases that seek to resolve conflicting opinions in the Court of Appeals or decisions involve significant public interest. Rule of Appellate Procedure 13.4(b) states:

> Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

None of these considerations are present here.

The issue in this case, whether the Uniform Public Expression Protection Act (UPEPA) applies to Petitioner Thurman's claims against Cowles Company, is a procedural issue that is unlikely to repeat and for which there are no conflicting opinions. UPEPA "applies to a civil action filed or cause of action asserted in a civil action on or after July 25,

2021." The novelty of this case is that the case commenced *before* this deadline but an amended complaint asserted new and expanded claims *after* this deadline. The Court of Appeals held that under the plain language of the statute, the causes of action were "asserted in a civil action on or after July 25, 2021." The Court of Appeals further determined that the Motion for Expediated Relief, pursuant to RCW 4.105.020, was timely in that it was brought withing 60 days after the Respondent was served with the Amended Complaint. As a result, the rule set forth in this case would *only* apply to any lawsuits that (1) were pending before July 25, 2021; (2) were amended after July 25, 2021; and (3) are "against a person based on the person . . . Exercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States Constitution or Washington state Constitution, on a matter of public concern." This is a very narrow subset of cases and, as far as Respondent is aware, there are no other cases and no

other cases will ever fit under this rule. This case does not meet the standards for discretionary review of the Supreme Court.

II. STATEMENT OF THE CASE

In June 2019, Spokane County Sheriff Ozzie Knezovich issued a press release and held a press conference to explain why he was firing then Sergeant Thurman who had been accused of making violent racist comments and threatening to impregnate a female coworker. CP 49- (citing hyperlink), 536 – 542 (unofficial transcript of press conference). A Spokesman-Review reporter attended the conference and questioned the Sheriff, after which The Spokesman-Review wrote a story about the Sheriff's public explanation and apparent efforts to ensure police accountability. *Id*. at 514 - 517 (article), 536 (unofficial transcript).

Mr. Thurman sued the Sheriff for defamation and other torts based on these public remarks in September 2019. CP 5, ¶¶ 2.1, 2.4. As part of discovery in that matter, Respondent

attempted to subpoena Cowles Publishing Company (d/b/a The Spokesman-Review) and depose its reporters and editor in violation of Washington's Reporter Shield and Privilege Law. *Jeffrey Thurman, et al v. Ozzie Knezovich, et al*, Case # 384446. RCW 5.68.010.

After Cowles Publishing Company opposed attempts to subpoena privileged press records and depose its employees during that case, Mr. Thurman filed a separate lawsuit against Cowles Company, a separate and distinct legal entity from Cowles Publishing Company, on June 14, 2021. CP 1 – 14, 88 – 91. Respondent sued the wrong legal entity.[1]

After procedural motions, the trial court denied the addition of a new party but allowed the substantive amendment of the claims, specifically: adding the CPA claim and expanding the defamation claim. Respondent was allowed to amend his complaint, which was filed on December 3, 2021. The "Complaint For Damages – First Amended" ("Amended

[1] Petitioner's failure to name the correct legal entity is fully documented in the Court of Appeals briefing below and will not be belabored here.

Complaint") included a newly asserted CPA claim and a greatly revised and expanded defamation claim. CP 394 – 415. Importantly, the Amended Complaint included allegations and bases for defamation that were not included in Respondent's initial Complaint.

On January 21, 2022, Cowles Company filed its motion under UPEPA. CP 484 – 508. In it, Cowles Company asked the superior court to dismiss all or part of Mr. Thurman's lawsuit because: (1) all of Mr. Thurman's claims were based on protected public expression; and (2) Mr. Thurman could not establish a prima facie case for his claims. *Id*.

In response, Mr. Thurman split his arguments into two separate briefs: (1) an initial motion to strike; and (2) a separate response brief which he filed after Cowles Company filed its reply. CP 616 – 630, 734 - 750.

In his motion to strike, Mr. Thurman chiefly argued that Cowles Company: (1) should have filed its Special Motion within 60 days of receiving Mr. Thurman's original Complaint

even though Mr. Thurman filed his original Complaint months before UPEPA's coverage began; and (2) had waived its right to seek expedited relief for one reason or another. *See generally* CP 616 – 630, 636 - 676. Cowles Company argued that: (1) it had timely moved within 60 days after Mr. Thurman filed his First Amended Complaint.

In response, Mr. Thurman primarily argued that UPEPA unconstitutionally restricted his right to a jury trial and to prosecute his defamation claims. CP 636 – 639, 642 – 653. These arguments relied almost exclusively on *Davis v. Cox*, 183 Wn.2d 269, P.3d 862 (2015) (invalidating Washington's Anti-SLAPP statute) and *Putman v. Wenatchee Valley Med. Ctr*., P.S., 166 Wn.2d 974, 216 P.3d 374 (2009) (invalidating a statutory pre-filing "certificate of merit" process for medical negligence claims).

The superior court granted in part and denied in part Cowles Company's Special Motion. CP 922 - 927. The superior court addressed whether UPEPA applied to an Amended

Complaint filed after UPEPA went into effect on July 25, 2021 and whether Cowles Company timely filed its Special Motion. First, the Court correctly found that UPEPA applied to the new CPA claim "brought in Plaintiff's Amended Complaint" in December 2021. *Id*. (findings 3-4).

However, the superior court also held that UPEPA did *not* apply to what it believed was a "single" defamation claim asserted in the original Complaint; even though the superior court concurrently found that Mr. Thurman had identified additional defamatory statements in his Amended Complaint. *Id*. (finding 6).

Turning to the merits, the superior court then dismissed Mr. Thurman's CPA claim. Properly applying *Fid. Mortgage Corp. v. Seattle Times Co.*, 131 Wn. App. 462, 128 P.3d 621 (2005), the superior court found that "Plaintiff's CPA claim is based on acts which did not occur within trade or commerce." CP 925 (finding 9); RCW 19.86.020. Additionally, the superior court held that the First Amendment barred Mr. Thurman's

CPA claim for the reasons articulated in *State v. TVI*, 18 Wn. App. 2d 805, 493 P.3d 763 (2021) and *Washington League for Increased Transparency & Ethics v. Fox News*, 19 Wn. App. 2d 1006, 2021 WL 3910574 (2021). CP 925 (finding 10).

On June 22, 2022, Appellant filed its Notice of Appeal pursuant to RCW 4.105.080. The Court of Appeals found:

1. "[T]he UPEPA applies to Mr. Thurman's original and amended defamation claims." *Thurman v. Cowles* Co., 541 P.3d 403, 409 (Wash. Ct. App. 2024)

2. "[C]laims against protected expression are covered by the UPEPA notwithstanding a plaintiff characterizing that expression as defamation." *Id.*

3. "The reporting was of public concern. Mr. Thurman's assertion that the reporting was untrue and deceptive fails to satisfy the heightened mens rea standard that protects this type of First Amendment activity. The trial court did not err in dismissing this cause of action under a CR 12(b)(6) standard." *Id.*

4. "Mr. Thurman did not attempt to convince the court that he needed additional discovery. . . . But because Mr. Thurman has not established he was precluded from obtaining needed discovery, we reject his challenge." *Id.*

Curiously, the Court of Appeals also issued two findings regarding the procedure of UPEPA that do not ultimately affect

this case in any way. The Court of Appeals held that the discovery standard set forth in UPEPA was overruled by CR 26, which would control any scope of discovery allowed in an underlying case, and that the "right to appeal" contained in the statute, should be evaluated by the standards found in RAP 2.2. However, no discovery was sought in this case and the case was already on appeal. Therefore, these rules are ultimately of no consequence. Petitioner now seeks discretionary review.

III. ARGUMENT

A. Review by the Supreme Court of Washington is discretionary and should be reserved for the types of cases set forth in RAP 13.4(b).

Washington Rule of Appellate Procedure 13.4(b) states:

> **(b) Considerations Governing Acceptance of Review.** A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Each of these considerations weigh against review in this case.

1. The decision does not conflict with a decision of the Supreme Court.

The primary issues in this case are whether UPEPE applies to a case that was filed before July 2021 but was amended after to include new and expanded claims. See RCW 4.105.903. As of this filing, Respondent has only been able to find one case that cites this statute: this one.

Similarly, the "Applicability" of the statute, RCW 4.105.010, Respondent has only been able to find three cases that cite the provision at all and none are Supreme Court decisions: *Thurman v. Cowles Co.*, 541 P.3d 403 (Wash. Ct. App. 2024); *Dimension Townhouses, LLC v. Leganieds*, LLC, No. 84969-7-I, 2024 WL 226768 (Wash. Ct. App. Jan. 22, 2024); *Jha v. Khan*, 24 Wash. App. 2d 377, 520 P.3d 470 (2022), review denied, 530 P.3d 182 (Wash. 2023).

RCW 4.105.020, which outlines the "Special Motion for Expedited Relief," similarly only has two citing Washington opinions: *Thurman*, 541 P.3d 403, and *Khan*, 24 Wn. App. 2d

377.

As to Petitioner's arguments regarding dismissing the CPA claim on First Amendment grounds, that issue is *consistent* with a subsequently issued Supreme Court decision in *State v. TVI, Inc.*, 524 P.3d 622, 639 (2023) ("While we affirm the Court of Appeals in result, it is not necessary to decide whether a narrowing construction could be properly applied to the CPA in an as-applied First Amendment challenge. . . . Therefore, we affirm the Court of Appeals in result. We remand to the trial court to dismiss the State's CPA claims and to rule on attorney fees and costs.").

2. The decision does not conflict with any published decision of the Supreme Court.

As outlined above, only three cases in total have looked at UPEPA: *Thurman*, *Dimension Townhouses*, and *Kahn*. Neither of these other two cases contradict the decision below. In fact, neither *Kahn* nor *Dimension Townhouses*, included a constitutional challenge. The cases analyzed whether particular conduct—revenge porn (*Kahn*) and property line discussion

with the county assessor (*Dimension Townhouses)*—fell within UPEPA. And neither case included a CPA claim. There is no conflict with this case.

3. The decision does not pose a "significant question" under the constitution.

Additionally, the case does not pose a significant question under the constitution. The sole "constitutional" question that Petitioner speak of is an "access" to the courts claim. The Court of Appeals summed it as follows:

> Whatever the right's underpinnings, however, access to the courts is not unlimited. The right of access is necessarily accompanied by those rights accorded litigants by statute, court rule or the inherent powers of the court. . . . Civil litigants enjoy a right to discovery tied to the constitutional right of access to the courts. . . .
>
> Mr. Thurman argues, in the context of his lawsuit, the UPEPA's discovery stay under RCW 4.105.030 unconstitutionally interfered with his access to courts. We reject Mr. Thurman's as-applied challenge. . . .
>
> RCW 4.105.030(4) permits a court to allow limited discovery if a party shows discovery is necessary to prove the chapter does not apply. Here, Mr. Thurman did not attempt to convince the court that he needed additional discovery. This might be

> because he obtained substantial pertinent discovery in his litigation against Sheriff Knezovich. Had the trial court denied Mr. Thurman discovery despite a sufficient showing of need for that discovery, then we could address Mr. Thurman's as-applied challenge. But because Mr. Thurman has not established he was precluded from obtaining needed discovery, we reject his challenge.

Thurman v. Cowles Co., 541 P.3d at 411.

In other words, Petitioner's primary "constitutional" challenge is that he was denied discovery that he never asked for. This is not a significant question under the constitution.

4. <u>The decision does not involve an issue of "substantial public interest."</u>

Finally, the decision below does not involve an issue of "substantial public interest. While the *facts* underlying the case are newsworthy—hence the exercise of the freedom of the press and the UPEPA defense—the *decision* does not involve substantial public interest.

Recall, the primary decision being appealed is the holding that: the claims in Petitioner's amended complaint are subject to UPEPA and that the Motion for Expedited Relief is

timely if filed with 60 days of an amended complaint. As a result, the <u>decision</u> set forth in this case would <u>only</u> apply to any lawsuits that (1) were pending before July 25, 2021; (2) were amended after July 25, 2021; and (3) are "against a person based on the person . . . Exercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States Constitution or Washington state Constitution, on a matter of public concern." Respondent is unaware of any such case. In other words, not only is the decision being appealed not affect a substantial public interest, as far as we are aware, the decision would not affect anyone other than the parties in this case. For these procedural reason the Court should deny review. Respondent will reserve the weight of its substantive arguments for its primary brief if review is accepted. However, to fully inform the Court as to another reason why review should be denied, a summary of the arguments are below and Petitioner is unlikely to prevail on the merits.

B. **Washington's Uniform Public Expression Protection Act was enacted to protect against the exact type of frivolous and retaliatory lawsuit at hand.**

Petitioner's primary assertion is that "defamation" is not protected speech and, therefore, Washington's Uniform Public Expression Protection Act ("UPEPA") does not apply. This is both logically flawed and contrary to the plan text of UPEPA. First, to hold that defamatory speech is not afforded the protections of UPEPA *presumes* that speech was defamatory before any tribunal has found it to be defamatory. Cowles Company asserts that it did not engage in defamation and the content of the claims cannot support a claim of defamation. UPEPA's primary function is to serve as an expedited resolution mechanism when a party sues for public expression. To hold that it does not apply simply because a party *alleges* defamation, would necessarily mean that the expedited relief within the statute would *never* be available to a defendant. Under RCW 4.105.010(2), the statute applies to "to a cause of action asserted in a civil action against a person

based on the person's . . . Exercise of the right of freedom of speech or of the press . . . on a matter of public concern." It is undisputed that the statements that Respondent is suing under were statements published in the Spokesman Review, a regional newspaper, about the Respondent's conduct as a public officer. The statements fall squarely withing the text of UPEPA and UPEPA unquestionably applies.

C. **UPEPA Standards and Construction**

The Legislature passed UPEPA to safeguard the traditional First Amendment rights guaranteed to the public and the press. *See* RCW 4.105.901. "This chapter must be broadly construed and applied to protect the exercise of the right of freedom of speech and of the press, the right to assemble and petition, and the right of association, guaranteed by the United States Constitution or the Washington state Constitution." *Id*. (emphasis added).

In practice, the law creates a special procedure to quickly resolve cases which target the "[e]xercise of the right of

freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States Constitution or Washington state Constitution, on a matter of public concern." RCW 4.105.010(2)(e). It does this by allowing parties to bring a special motion for expedited relief "[n]ot later than sixty days after a party is served with *a complaint*, cross-claim, counterclaim, third-party claim, *or other pleading that asserts a cause of action* to which this chapter applies… to dismiss the cause of action or part of the cause of action." RCW 4.105.020(1)-(2) (emphasis added).

RCW 4.105.020(2) lets parties "file a special motion for expedited relief to dismiss the cause of action or part of the cause of action" which targets protected public expression. Upon filing the motion, all other proceedings—including pending discovery and other motions—are stayed. RCW 4.105.030(1)(a). Further, the law explicitly limits the record for the special motion to "the pleadings, the motion, any reply or response to the motion, and any evidence that could be

considered in ruling on a motion for summary judgment under superior court civil rule 56." RCW 4.105.050.

D. **UPEPA applies to the conduct asserted in Respondent's complaint.**

As stated above, Respondent's primary assertion is that "defamation" is not protected speech and, therefore, Washington's Uniform Public Expression Protection Act ("UPEPA") does not apply. To hold that defamatory speech is not afforded the protections of UPEPA *presumes* that speech was defamatory before any tribunal has found it to be defamatory. Again, Cowles Company asserts that it did not engage in defamation—in fact, it asserts that it did not make the alleged statements at all. UPEPA's primary function is to serve as an expedited resolution mechanism when a party sues for public expression. To hold that it does not apply when a party *alleges* defamation, necessarily means that the expedited relief within the statute would *never* be available to a defendant, rendering the statute useless.

In fact, the statute has a provision for just such

arguments. Under 4.105.050, "In ruling on a motion under RCW 4.105.020, the court shall consider the pleadings, the motion, any reply or response to the motion, and any evidence that could be considered in ruling on a motion for summary judgment under superior court civil rule 56." In other words, if Respondent had made a prima facie case, and sufficient evidence to survive the CR 56 standard, then these arguments might be relevant. But they are not. Respondent is proceeding as if he has already *prevailed* at summary judgment on whether defamation occurred. He is presuming defamation. None has been found. The trial court should have applied UPEPA's expedited relief provisions to Respondent's defamation claims in this case. If it had done so, Respondent would have had the opportunity to bring his available evidence supporting defamation, had he done so, the trial court may have found that he survived the CR 56 standard based on that fact. Instead, Respondent is skipping that step and asking the court to presume that the statements do, in fact,

constitute defamation. Therefore, the issue of whether the speech is defamatory is not subject to this or any appeal.

E. UPEPA Applies to "causes of action asserted in a civil action on or after July 25, 2021."

The primary issue raised by Appellant's appeal is whether and to what extent does Washington's UPEPA apply to Respondent's defamation claims in this case based on the timing and sequencing of the pleadings and claims. This is a matter of statutory construction. The meaning of a statute is a question of law reviewed de novo. *State Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4, 9 (2002). "[The court] start[s] with the plain and unambiguous language of a statute." *Magney*, 195 Wn.2d at 802 (citing *Campbell & Gwinn*, 146 Wash.2d at 9-10, 43 P.3d 4.). "[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *Id.*

RCW 4.105.903 states, in whole: "This chapter applies to a civil action filed or cause of action asserted in a civil action on or after July 25, 2021."

The following facts are not undisputed in this case:

1. Respondent filed an Amended Complaint on December 3, 2021. CP 394.
2. Respondent served its Amended Complaint on December 3, 2021. CP 544.
3. Respondent's Amended Complaint "asserted a cause of action" for defamation *and* included new facts that form the bases for additional defamation claims. *Findings and Conclusions No. 5 & 6.* CP 924 – 925.
4. UPEPA "applies to a civil action filed or cause of action asserted in a civil action on or after July 25, 2021." RCW 4.105.903.

Based on these undisputed facts and the plain and unambiguous language of RCW 4.105.903, UPEPA applies to Respondent's defamation claims. Nonetheless, the trial court erred in holding that UPEPA does *not* apply to *any* of Respondent's defamation claims.

F. **Respondent's assertion that Cowles Company's Motion for Expedited Relief was untimely is misleading in its description and legally flawed.**

In addition to arguing that the statute does not apply, Respondent also argues that Cowles Company's invocation of UPEPA was untimely. Critically, these are two separate claims

that must be analyzed independently. Whether the statue applies under RCW 4.105.903 is discussed above. Whether Cowles Company timely invoked UPEPA is another matter entirely.

Respondent argues nonsensically that Cowles had the right to assert the UPEPA as of the effective date of the statute, July 25, 2021, and it had 60 days after it was served with Thurman's complaint on June 14, 2021 to file its motion.

The full statute states as follows:

> (2) Not later than sixty days after a party is served with a complaint, cross-claim, counterclaim, third-party claim, or other pleading that asserts a cause of action to which this chapter applies, or at a later time on a showing of good cause, the party may file a special motion for expedited relief to dismiss the cause of action or part of the cause of action.

RCW 4.105.020. Critically, the statue allows a party to invoke UPEPA for 60 days after it is served with a "complaint, cross-claim, counterclaim, third-party claim, or other pleading that asserts a cause of action to which this chapter applies." *Id.* Respondent conveniently omits "or other pleading," which includes an "amended complaint."

Again, the following facts are undisputed: (1) Respondent filed an Amended Complaint on December 3, 2021; (2) Respondent served its Amended Complaint on December 3, 2021. These are "other pleadings" under the statute and Cowles Company had the right to assert UPEPA protection for causes of action asserted in that "other pleading."

G. **Washington's UPEPA is constitutional.**

Respondent argues that UPEPA is unconstitutional because it abrogates the common law claim of defamation and prevents him from petitioning the Court. But special motions under UPEPA operate under the dispositive motion standards of CR 12 and CR 56, depending on the moving party's argument. RCW 4.105.050; RCW 4.105.060(1)(c). As Washington Courts have long recognized, "[w]hen there is no genuine issue of material fact, ... summary judgment proceedings do not infringe upon a litigant's constitutional right to a jury trial." *Davis v. Cox*, 183 Wn.2d 269, 289, 351 P.3d 862 (2015).

Nor does UPEPA contain any substantive protections or

immunities that would prevent Mr. Thurman from adjudicating his claims. *See* RCW4.105 et seq. Nor does it otherwise shift the burden of proof or create artificial barriers plaintiffs need to meet to keep their claims alive before the dispositive motion stage. Rather, UPEPA protects free expression by: (1) temporarily staying discovery; (2) allowing parties to file a "special motion for expedited relief"; and (3) allowing the parties to recover costs and fees if certain conditions are met. RCW 4.105.010(2)(c); RCW 4.105.020-.040; RCW 4.105.090. UPEPA also contains provisions which allow for the taking of additional discovery, continuing the hearing date to allow for more proceedings, or for awarding fees to the non-moving party. RCW 4.105.030(4); RCW 4.105.040(1); RCW 4.105.090(2).

Respondent also repeatedly argues that the stay of proceedings is unconstitutional and prevented him from taking discovery. But this is not true because Respondent could have, but did not, file a motion under RCW 4.105.030(4) asking the

Court to allow him to conduct discovery. Further, "[t]he mere fact that discovery is limited does not in and of itself render a statute unconstitutional." *Spratt v. Toft*, 180 Wn. App. 620, 635, 324 P.3d 707 (2014) (upholding the stay of proceedings and discovery limitations under Washington's Anti-SLAPP statute); *In re Estate of Fitzgerald*, 172 Wn. App. 437, 449, 294 P.3d 720 (2012). Thus, he created any prejudice he may now face.

H. **The Trial Court properly dismissed Respondent’s CPA claims under UPEPA.**

Aside from the timing arguments raise above, the trial court property dismissed Respondent’s CPA claims. Washington's Consumer Protection Act prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." RCW 19.86.020. RCW 19.86.090 allows "[a]ny person who is injured in his or her business or property by a violation" to sue for damages. "A party asserting a CPA claim must establish five elements: (1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) that affects the public interest, (4) injury to the

party's business or property, and (5) causation." *Kosovan v. Omni Ins. Co.*, — Wn. App. —, 496 P.3d 347, 356 (Wash. Ct. App. 2021). Mr. Thurman will be unable to establish any of the elements of the CPA.

At the threshold, Mr. Thurman's CPA claim fails as a matter of law because: (1) his claim rests on The Spokesman-Review's public reporting about Mr. Thurman; and (2) news articles are not published "in the conduct of any trade or commerce" as required by the CPA. *Fid. Mortgage Corp. v. Seattle Times Co.*, 131 Wn. App. 462, 468, 128 P.3d 621 (2005). In *Fid. Mortgage Corp.*, the plaintiff brought a CPA claim against The Seattle Times for publishing "false and deceptive" quarterly mortgage rate charts in its Sunday edition. *Id*. at 465. The trial court granted summary judgment and the Court of Appeals affirmed, holding that "As a threshold matter, the quarterly rate chart is not paid advertising. It is a news article, and as such it is not published 'in the conduct of any trade or commerce.' It does not fall within those activities

governed by RCW 19.86.020." *Id*. at 468. The same holds true here because Mr. Thurman's CPA suit depends on the news articles that The Spokesman-Review published about him, and thus is not actionable under the CPA.

The Court of Appeals came to the same conclusion in *Washington League for Increased Transparency & Ethics v. Fox News*, 19 Wn. App. 2d 1006, 2021 WL 3910574 (2021). In that case, the plaintiff "alleged that Fox television personalities violated Washington's Consumer Protection Act1 (CPA) by making false statements on-air about the COVID-19 pandemic." *Id*. at *1. The trial court granted a 12(b)(6) motion to dismiss, and the Court of Appeals affirmed, applying *TVI* and holding that "WASHLITE's allegations that the challenged statements are false and recklessly made simply cannot overcome the protections afforded speech on matters of public concern under the First Amendment, even in the face of the State's undoubtedly compelling interest in the public dissemination of accurate information regarding threats to

public health." *Id*. at *5.

Here, Mr. Thurman's CPA claim exclusively rests on The Spokesman-Review's public reporting about Mr. Thurman's termination. The meat of his claims and the sole source of alleged damages are what Mr. Thurman alleges to be the untrue and deceptive statements published in The Spokesman-Review. Thus, his claim absolutely reaches protected speech on issues of public concern and is barred by the First Amendment.

IV. CONCLUSION

For the reasons set forth above, the Court should deny discretionary review.

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V. CERTIFICATION

Pursuant to RAP 18.17(b), Cowles Company certifies that this objection complies with the formatting requirements of RAP 18.17(a) and has 4843 words pursuant to RAP 18.17(c)(10).

Dated this 13th day of March, 2024.

RIVERSIDE NW LAW GROUP, PLLC

s/Casey Bruner

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Counsel for Appellant

PROOF OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington, that on the 13th day of March 2024, the foregoing was filed with the Supreme Court, and delivered to the following persons in manner indicated:

Mary Schultz Mary Schultz Law, P.S. 2111 E. Red Barn Lane Spangle, WA 99031 **Attorney for Plaintiffs/ Respondents**	☐ Hand Delivery ☐ U.S. Mail, postage prepaid ☐ Overnight Mail ☐ Facsimile Transmission ☒ Via E-Service Portal mary@mschultz.com

_s/Casey Bruner_____________
Casey Bruner

RIVERSIDE LAW GROUP, PLLC

March 13, 2024 - 12:45 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,791-5
Appellate Court Case Title:	Jeffrey Thurman v. Cowles Company
Superior Court Case Number:	21-2-01609-1

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