Case No. 93034-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

WASHINGTON COUNTIES RISK POOL,

Respondent,

v.

TAMARA MARIE CORTER, a married individual,
STEVE GROSECLOSE, an individual,

Petitioners,

and

DOUGLAS COUNTY, a municipal corporation,

Respondent.

RESPONDENT WASHINGTON COUNTIES RISK POOL'S ANSWER TO PETITON FOR REVIEW

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I. INTRODUCTION

As the parties seeking discretionary review, Petitioners Tamara Corter and Steve Groseclose bear the burden of showing that the Court of Appeals' unanimous decision holding that the Washington Counties Risk Pool and Douglas County had no duty to indemnify Steve Groseclose for a federal judgment conflicts with a decision of this Supreme Court or with another decision of the Court of Appeals; involves a significant question of law under the state or federal Constitution; or involves an issue of substantial public interest. Rule of Appellate Procedure ("RAP") 13.4(b)(1)-(4).

Corter and Groseclose fail to meet this burden. Although they appear to contend that the Court of Appeals' discussion of a federal court decision in California somehow contradicts a Washington Supreme Court decision in *Davis v. Cox,* 183 Wn.2d 269, 351 P.3d 862 (2015), they fail to establish any conflict. They claim the underlying decision conflicts with federal law, but any such conflict – and none is established – does not fall within the rubric of RAP 13.4(b). They assert no conflict with another decision of the Court of Appeals and no questions of law under the state or federal constitution. Finally, they fail to establish why or how this decision raises an issued of substantial public interest.

II. IDENTITY OF ANSWERING PARTY

Respondent Washington Counties Risk Pool ("WCRP") files this answer to Petitioners Corter's and Groseclose's petition for discretionary review. The trial court granted WCRP's and respondent Douglas County's motions for summary judgment; the Court of Appeals unanimously affirmed the trial court, holding that neither the WCRP nor Douglas County had any duty to indemnify Groseclose for Corter's judgment against him.

III. COURT OF APPEALS DECISION

The Court of Appeals, in its unpublished March 15, 2016 decision, unanimously affirmed the trial court's entry of summary judgment holding that neither the WCRP nor Douglas County had a duty to indemnify Groseclose.

IV. COUNTERSTATEMENT OF ISSUES

1. Whether discretionary review should be denied because the underlying decision neither conflicts with a Supreme Court decision nor another Court of Appeals decision. (RAP 13.4(b)(1)-(2).

2. Whether discretionary review should be denied because the underlying decision does not raise a significant question of law under the state or federal Constitution, nor does it involve an issue of substantial public interest. (RAP 13.4(b)(3)-(4).

V. COUNTER-STATEMENT OF THE CASE

Respondent WCRP rests on the Restatement of the Case in its Court of Appeals' response brief, as well as the facts recited in the Court of Appeals unpublished decision issued on March 15, 2016.

VI. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. The Underlying Decision Does Not Conflict with any Supreme Court or Court of Appeals Decision.

Petitioners admit that the underlying decision does not conflict with any Court of Appeals decision. They do contend that the Court of Appeals' reference to a line of federal cases interpreting a California indemnification statute is contrary to this Court's decision in *Davis v. Cox*, 183 Wn.2d 269, 351 P.3d 862 (2015).

In *Davis v. Cox*, this Court held that Washington's Anti-SLAPP statute, RCW 4.24.525, was an unconstitutional infringement on a litigant's right to a trial by jury. In so holding, this Court rejected the argument raised by those seeking to enforce the statute that because Washington's Anti-SLAPP statute was based on a California's Anti-SLAPP statute that had been repeatedly construed to create a summary judgment standard, Washington's statute should be construed the same way. *Id.* at 283-84. This Court reasoned that because the Washington Anti-SLAPP statute had certain deviations from the California Anti-

SLAPP statute, it was bound to conclude that the deviation was purposeful and evidenced the Legislature's intent to differ from the original source on that particular issue. *Id.*

In this case, the Court of Appeals construed the meaning of the phrase "scope of official duties" as applied in RCW 4.96.041(4), the Douglas County implementing statute, 4§ 2.90, and the language of the Joint Self-Insurance Liability Policy issued by the WCRP for its member counties, including Douglas County. The Court of Appeals determined that although petitioner Groseclose was found in the underlying federal lawsuit between Corter and Groseclose to be acting under color of state law under 42 U.S.C. §1983, that lawsuit did not establish that Groseclose was acting within the "scope of his official duties" when he accessed the Spillman system to obtain private information about his ex-wife Corter.

In support of this holding, the Court of Appeals conducted its own analysis of the intent of RCW 4.96.041 and the county code provisions and relied on existing Washington case law, including *Whatcom County v. State*, 99 Wn.2d 237, 993 P.2d 273 (2000); *Hardesty v. Stenchever*, 82 Wn.App. 253, 917 P.2d 577 (1996) and *LaMon v. City of Westport*, 22 Wn.App. 215, 588 P.2d 1205 (1978). Underlying Decision at 16-20.

In its discussion of the California line of cases, *McDade v West*, 60 Fed.App'x 146, 147 (9th Cir. 2003), which the Court of Appeals merely described as "illustrative", the Court of Appeals stated:

> While California law controlled whether the county was obligated to indemnify Ms. West, and, unlike RCW 4.96.041, explicitly conditioned indemnification on a "'scope of employment'" standard, *see id.* (quoting CAL. GOV'T CODE § 825(a)), we reach the same result given our construction of "scope of official duties" under RCW 4.96.041.

Underlying Decision at 22.

Without any analysis of the legislative history of either RCW 4.96.041 or Douglas County Code § 2.90, or any discussion of how either of these statutes were based on the California indemnification statute construed in *McDade v. West,* the petitioners claim the Court's of Appeals' discussion quoted above conflicts with this Court's holding in *Davis v. Cox.* There is no basis in the Underlying Decision for asserting this conflict and this Court should reject the petitioners' attempt to invoke RAP 13.4(b)(1) in this regard.

B. The Underlying Decision does not raise a significant question of law under the state or federal constitution nor does it involve an issue of substantial public interest.

Petitioners admit that the Underlying Decision does not involve a significant question of law under the state or federal constitution. Instead,

they claim that the underlying decision involves an issue of substantial public interest because the Court of Appeals decision defeats the purpose of claims brought under 42 U.S.C. §1983. In support of this position, petitioners claim variously that the underlying decision eliminates "insurance coverage" for §1983 suits and that the underlying decision eliminates protection for government employees from personal liability for §1983 lawsuits. Notwithstanding the fact that the liability coverage provided to Douglas County through the WCRP is not "insurance" (*See* RCW 48.01.050), the underlying decision merely addresses the contractual requirement in the WCRP's Joint Self-Insurance Liability Policy that indemnity for employee liability is conditioned upon that employee's "acting in good faith or purporting to act within the scope of their official duties for the member county or on its behalf." Slip Opinion at 3.

As to eliminating protection for government employees against §1983 lawsuits, RCW 4.96.041 continues to provide exactly that protection and petitioners provide no authority for the proposition that the Legislature intended this statute to require a local governmental entity to indemnify its employees for their conduct under any and all circumstances. Petitioners' speculative hyperbole is insufficient to create an issue of substantial public interest as required by RAP13.4(b)(4).

VII. CONCLUSION

The petition for discretionary review should be denied because the unanimous, underlying decision does not conflict with Washington Supreme Court decision or other decisions of the Washington Court of Appeals. Further, the petition does not raise a significant issue of law under the federal or state Constitution and does not involve an issue of substantial public interest. The Court of Appeals' decision is fair and grounded on unambiguous statutory and contractual language and well-established case law. Discretionary review should be denied.

RESPECTFULLY SUBMITTED this 23rd day of May 2016.

HACKETT, BEECHER & HART

J. William Ashbaugh, WSBA #21692
Attorney for Washington Counties Risk Pool

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

WASHINGTON COUNTIES RISK POOL, a public entity,	)	Case No. 93034-1
Respondent,	)	DECLARATION OF
v.	)	SERVICE
TAMARA MARIE CORTER, a married individual, STEVE GROSECLOSE, an individual,	)	
Petitioners,	)	

Linda Voss declares, under penalty of perjury, that on May 23, 2016 she sent via the methods described below, a copy of Respondent Washington Counties Risk Pool's Answer to Petition for Review to the parties listed below:

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Signed in Seattle, WA this 23rd day of May 2016.

Linda Voss

Linda Voss