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WASHINGTON STATE
SUPREME COURT

COA No. 46400-4-II

SC#934595

IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON, DIVISION II

ARTHUR WEST,
Appellant,
v.

TESC
Respondent

APPELLANT'S PETITION
FOR DISCRETIONARY REVIEW

Arthur West
120 State Ave, NE # 1497
Olympia, Washington 98501

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I. IDENTITY OF PETITIONER

Appellant Arthur West respectfully moves the Court for the relief designated in Part II of this petition.

II. RELIEF REQUESTED

West respectfully requests review of the decision of the Washington State Court of Appeals, Division II, in Case No. 46400-4-II filed August 30, 2016. A copy of the August 30 decision is appended as Appendix II.

The Washington State Supreme Court should accept review, and reverse the Division II opinion as it applies to West's Tort Claim and claim of unlawful investigative seizure under false color of the illegal TESC Trespass Policy.

This case should be remanded with instructions for the Superior Court to conduct further proceedings on West's unreasonable seizure claim.

III. SUMMARY & WHY REVIEW SHOULD BE ACCEPTED

RAP 13.4(b) sets forth the following grounds for review of appellate decisions:

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 decision by another division 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.

This case should be considered under prongs one, two, three and four of this rule. The issue of whether Washington State may employ and strictly construe burdensome pre-claim filing procedures to unfairly deprive litigants of a cause of action when they have substantially complied with the Statute by filing a claim asserting violations of constitutional rights is an issue of substantial public importance that should be decided by the Supreme Court.

In addition, the issue of whether the Courts can expressly deny that investigative detentions can be seizures under the 4th Amendment, Terry, and Washington State's Const. Art. 1, § 7, which provides: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law" is an issue of public importance.

The Court of Appeals ruling determined important issues of statewide importance and should be corrected by the Supreme Court. The Supreme Court should also accept review because the Appeals Court ruling below conflicts with previous rulings of the Courts in Niemer, Renner, Gunwall Terry, and Young.

IV ISSUES PRESENTED

1. Is the Issue of whether the Tort Claim Statute can be applied as an unconstitutional obstacle to access to the Courts under Article 1, section 4 and the 1st Amendment an issue of substantial public importance.

2. Is the issue of whether citizens in Washington have an Article 1 section 7 and 4th Amendment right to be free from unlawful seizures in investigative stops under Terry v. Ohio and Gunwall an issue of substantial public importance.

3. Does the Appeals Court decision below conflict with prior Appeals Court and Supreme Court rulings concerning access to justice, substantial compliance with tort claim statutes and the right to be free from unreasonable investigatory seizures under Terry v. Ohio and Article 1 & 7?

4. Do the right to access to justice free from unconstitutional "gotcha" pre-filing claim statutes under Hall v. Niemer, the right to be free from unlawful investigative seizures under Terry v. Ohio, and the right to access to justice under Doe v. Puget Sound Blood Center present questions under the Constitution of the United States and the laws and Constitution of the State of Washington?

5. Do the 1st Amendment and Article 1 Section 7 rights to petition for redress free from unconstitutional "gotcha" pre-filing claim statutes recognized in Hall v. Niemer present a question under the Constitution of the United States and the laws and Constitution of the State of Washington?

6. Does the right of citizens in Washington to be free from unlawful seizures in investigative stops under Terry v. Ohio and the heightened protections of Article 1, section 7 as established in Gunwall and Young present a

significant question under the Constitution of the United States and the laws and Constitution of the State of Washington?

7. Does the right to petition for redress in regard to unlawful seizures free from burdensome technical obstacles present a question under the 1st Amendment to the Constitution of the United States and the laws and Constitution (at Article 1, section 4) of the State of Washington ?

V STATEMENT OF THE CASE

This case involves the illegal TESC Trespass Policy that respondent has been knowingly and unlawfully enforcing for well over a quarter of a Century, (See Appendix III) and an unlawful investigatory seizure of West in 2012 made under color of enforcement of this illegal TESC Trespass Policy. (Transcript of December 20 at page 22-25)

Way back in May of 1989, following the filing of a Motion for Summary Judgment in West v. TESC, Thurston County Cause No. 89-2-00696-8, the College allegedly discontinued the illegal practice of illegally seaizing and arresting citizens under color of TESC's illegal, unfiled policy. (See Appendix III, CP 82-89)

However, in 2016 we still see the institution maintaining a Trespass List and illegally excluding members of the public from peaceable and legal

access to State land (CP at 20-34) Under such conditions, it is no wonder they have issues with the full disclosure of the details of their enforcement of such a policy.

On May 8, 2014, plaintiff filed the instant action, asserting that he was unreasonably "seized" during an investigatory stop on the TESC Campus pursuant to and under color of the TESC Trespass Policy in an effort to deter him from obtaining public records about the College's illegal exclusion policies. (CP at 4-8)

Over 60 days prior to filing the suit, West filed a tort claim asserting violations of rights protected under 42 USC 1983-5 and 18 USC 241 in connection with an incident where he was arbitrarilly threatened with being placed on the TESC Trespass List and subjected to a criminal investigation by TESC police under color of law.

On December 20, 2013, the Court heard argument on a second Motion for Summary Judgment and a cross motion. During this hearing a prima facia case was presented that West had been unlawfully seized under color of the TESC Trespass Policy during the investigation conducted by TESC police, as was clearly indicated in West's duly filed Tort Claim.

On January 3, 2014, entered a Final Order. (CP at 110-112)

On January 13, the plaintiff made a timely motion for

reconsideration. (CP at 177-180)

On May 16, 2014, the Court abused its discretion by refusing to enter an order denying reconsideration.(CP at 189)

On June 16, 2014, a timely notice of appeal was filed. (CP at 190-199)

On August 30, 2016, the Court of Appeals issued the decision appearing in Appendix II. Significantly, even though the record clearly reflected the proper filing of a tort claim alleging constitutional violations in connection with a criminal investigation by law enforcement under color of the illegal Trespass Policy, the Court of Appeals strictly construed the Tort Claim statute to bar West's claim for an unreasonable investigatory seizure.

The Court of Appeals committed reversible error and violated the equal protection provisions of the 14th Amendment when it failed to interpret West's duly filed Tort Claim liberally as required by the express terms of Myles v. Clark County, 170 Wn. App. 521, 289 P.3d 650. 2012 and RCW 4.92.100(3), which provides...

> With respect to the content of claims under this section and all procedural requirements in this section, this section must be liberally construed so that substantial compliance will be deemed satisfactory.

VI ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

A. The petition involves issues of substantial public interest that should be determined by the Supreme Court.

1. The right to petition for redress free from burdensome technical constraints is an issue of substantial public importance.

The question of whether the 1st Amendment and Article 1 section 4 rights to petition for redress may be selectively abridged by pre-filing claim statutes that substantially burden prospective claimants is an issue of substantial and statewide importance that has been previously addressed by both the Legislature and the Courts.

Both the Legislature and the Courts have expressly held that substantial compliance with pre-filing statutes is sufficient. Yet the Court of Appeals in this case failed to evaluate West's tort claim under this standard. In doing so it also refused to recognize the possibility of a claim for an unlawful investigatory seizure.

The facts of this case clearly demonstrate that not only does the TESC maintain an illegal Trespass policy, but it employed it to threaten and seize West unlawfully in an attempt to chill the exercise of constitutional rights protected under 42 USC 1983-5 and 18 USC 241, as alleged in West's Tort Claim.

The Transcript of the hearing of December 20, at pages 22-25, along

with the declarations of John Hurley, Ed Sorger, and the Plaintiff, clearly set forth facts sufficient to establish *at least* a material issue as to wether the appellant was seized, arrested, and unreasonably detained in violation of the 4rth Amendment and Article 1, section 7, under false color of the illegal TESC Trespass Policy.

When West entered onto the campus to inspect TESC records, he was threatened with the application of the TESC Trespass Policy and seized, arrested, detained, and falsely imprisoned for investigation of "Criminal Trespass" pursuant to policies usages and customs of the Evergreen State College. The first, unaltered declaration of John Hurley (CP 52, lines 4-5) attests to the Unlawful policy correctly.

In Bouie v. City of Columbia, South Carolina, 378 U.S. 347 (1964) it was held that, in giving retroactive application to a new construction of a criminal trespass statute to prosecuting two citizens for Trespass, a totalitarian and discriminatory local agency much like TESC deprived petitioners of their right to fair warning of a criminal prohibition, and thus violated the Due Process Clause of the Fourteenth Amendment.

The declaration of Officer Monohon attests to an arrest and detention under color of the TESC Trespass Policy (CP 117) Yet despite clear contested facts concerning the unlawful seizure and detention of West

under color of the TESC Trespass Policy, and inconsistent and contradictory testimony from the TESC witnesses, the court wrongfully granted summary judgment to TESC on all issues.

In upholding the ruling of the Superior Court based on a lack of strict compliance with the Tort Claim Statute, the Court of Appeals invidiously abridged West's rights to petition for redress of grievances, as well as his rights to be free from unreasonable seizures and attendant invasions of his privacy without authority of law.

2. The right to be free from unlawful and unreasonable seizures in violation of Article 1, section 7 and the 4th Amendment and to maintain actions for violation of these rights are issues of substantial public importance.

The question of whether the people of this state have the right to be free from unlawful seizures and violations of their privacy under color of illegal policies in violation of Article 1, section 7 and the 4th Amendment and the right to access to the courts to petition for redress when these rights are abridged are issues of substantial and statewide importance that have been previously addressed by both the Legislature and the Courts, and this Court should accept review to confirm the existence of these rights.

B. The decision of the Court Appeals is in conflict with the Ruling of the Supreme Court in Hall v. Niemer, 97 Wn.2d 574, 580-81, 649 P.2d 98 (1982) and Renner v. City of Marysville, 165 Wn.2d 1027, 203 P.3d 382 (2009) and the Court of Appeals in

The Appeals Court decision below conflicts with the express intent of RCW 4.92 that it be liberally interpreted to allow substantial compliance, as well as the Supreme Court's consistent rulings that RCW 4.92 be interpreted to allow for its terms to be fulfilled by substantial compliance.

As this Court has held in Hall v. Niemer, 97 Wn.2d 574, 580-81, 649 P.2d 98 (1982)...

> ...(S)ince the Legislature has made the State and its subdivisions liable in tort "to the same extent as if it [they] were a private person or corporation", RCW 4.92.090, 4.96.010, we will strike down procedural burdens that substantially undermine the possibility of obtaining tort relief.

This is in accord with the manifest intent of the legislature...

...(O)n July 26, 2009, the legislature added a fifth section to former RCW 4.96.020, which reads, "With respect to the content of claims under this section and all procedural requirements in this section, this section must be liberally construed so that substantial compliance will be deemed satisfactory." CP at 39; LAWS OF 2009, ch. 433, $ 1. The House Bill Report generated during deliberation over the statutory amendments, stated the position in support of the amendments, in part, as follows:

Injured plaintiff's claims are being denied because of the strict

> claim filing statutes. The original intent of the statutes was to provide notice so that the government can get the facts of the claim and investigate. They were not meant to be "gotcha" statutes. Some of the procedural requirements are tricky. Cases are being dismissed based on technical interpretations of the statute. The bill is aimed at restoring the original intent. It corrects historical unfairness and makes the statute functional. It requires notice to the government, but eliminates the barnacles of judicial bureaucracy. H.B. REP. on Engrossed Substitute H.B. 1553, at 3, 61st Leg., Reg. Sess. (Wash. 2009)

In the present case although the law and the legislative amendments requiring liberal construction and deeming substantial compliance with pre-suit claim filing requirements sufficient are clearly established, the Court of Appeals failed to rule in accord with them, in violation of the 14th Amendment and the Supremacy Clause.

C. The decision of the Court Appeals is in conflict with the Ruling of the Supreme Courts in Terry v. Ohio, Davis v. Mississippi, and State v. Young, 123 Wn.2d 173, 867 P.2d 593 (1994)

In denying that an investigatory detention could ever constitute a seizure, the Court of Appeals was in conflict with Terry v. Ohio, Davis v. Mississippi, and State v. Young.

Detention for custodial interrogation -- regardless of its label -- intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest. *Davis*

v. Mississippi, 394 U. S. 721, (1969).

To argue that the Fourth Amendment does not apply to the investigatory stage is fundamentally to misconceive the purposes of the Fourth Amendment. Investigatory seizures would subject unlimited numbers of innocent persons to the harassment and ignominy incident to involuntary detention. Nothing is more clear than that the Fourth Amendment was meant to prevent wholesale intrusions upon the personal security of our citizenry, whether these intrusions be termed "arrests" or "investigatory detentions."

We made this explicit only last Term, in *Terry v. Ohio,*392 U. S. 1, 392 U. S. 19, (1968), when we rejected "the notions that the Fourth Amendment does not come into play at all as a limitation upon police conduct if the officers stop short of something called a 'technical arrest' or a 'full-blown search.'" Davis, at 394-5

Clearly, an investigative stop can be a seizure, and the Court of Appeals erred in failing to adhere to the clearly established precedent concerning investigatory seizures.

VII CONCLUSION

Appellant West maintains that his Tort Claim substantially complied with the pre-filing claim statute by fairly alleging a pattern of constitutional violations under color of the TESC Trespass Policy and an investigatory seizure.

This substantial compliance, in combination with his claims and the undisputed record of the incident where he was accosted, threatened with being "Trespassed", and subjected to detention, and a criminal investigation, present legitimate and viable Article 1 section 7 claims under Young and Gunwall, and a legitimate 4th Amendment claim under Terry v. Ohio, 392 U.S. 1, (1968).

The Appellate Court's ruling in this case was, in essence, that the pre-filing claim statute was to be strictly construed to impose a substantial technical burden upon claimants like West to bar their right tp petition for redress, that no "investigation" could ever result in an unlawful seizure and, thus, no claim could be made for a seizure or constitutional violation stemming from an investigatory detention based upon a Tort Claim asserting constitutional violations arising out of a criminal investigation under color of an illegal policy.

The rights of the people to be free from illegal restraints upon their liberty like the TESC Trespass Policy, their rights to petition for redress free

from burdensome constraints and to be free from seizures in violation of Article 1 section 7, (which provides a greater protection that the 4th Amendment) are issues of substantial and statewide public importance.

The Order of the Court of Appeals ruling otherwise flies in the face of established precedent that Article 1 section 7 provides a greater protection than the 4th Amendment against unlawful seizures. See Gunwall, 106 Wn. 2d 54, 720 P.2d 808 (1986), State v. Young. 123 Wn.2d 173, 867 P.2d 593 (1994), and fails to conform to the required standard of substantial compliance with the Tort claim statutes. All of this also violates due process, equal protection of law and the right to be free from deprivations of liberty under the 14th Amendment

Based on the forgoing arguments, West respectfully requests the Supreme Court accept review of this case because it meets the four criteria under RAP 13.4.

Respectfully submitted this 4th day of September 2014.

ARTHUR WEST

Declaration of Service

I declare that on the date and time indicated below, I caused to be served via email and personally, a copy of the documents and pleadings listed below upon the attorney of record for the defendants herein listed and indicated below.

APPELLANT WEST'S PETITION FOR REVIEW

Colleen Warren TESC

I declare under penalty of perjury under the laws of the United States that the foregoing is True and correct.

Done this 29th day of September, 2016.

ARTHUR WEST

APPENDIX I

Washington Constitution, Article 1, Section 7

No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

Washington Constitution, Article 1, Section 4

The right of petition and of the people peaceably to assemble for the common good shall never be abridged.

4th Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized

1st Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

14th Amendment

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX II

Filed
Washington State
Court of Appeals
Division Two

August 30, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

ARTHUR WEST, Appellant, v. THE EVERGREEN STATE COLLEGE BOARD OF TRUSTEES; THE EVERGREEN STATE COLLEGE; STATE OF WASHINGTON, Respondents.	No. 46400-4-II UNPUBLISHED OPINION

MELNICK, J. —Arthur West appeals two orders granting partial summary judgment to the Evergreen State College, the Evergreen State College Board of Trustees, and the State of Washington (collectively the College). We conclude that the trial court properly granted summary judgment. We further conclude that the trial court did not err when it permitted the College to file a specific declaration. Therefore, we affirm the trial court.

FACTS

This case arises out of a suit West filed on May 8, 2012, asserting several claims, including a violation of the Public Records Act (PRA)[1] and false arrest or unlawful seizure.[2] West filed

[1] Ch. 42.56 RCW.

[2] West also asserted claims of fraud, negligence, malicious prosecution, defamation, and false light, and sought a declaratory judgment. West does not appeal the dismissal of these claims.

several PRA requests with Evergreen State College (Evergreen) on March 4, 2010, May 17, 2010, and March 16, 2012.[3]

I. PRA REQUESTS

On May 14, 2010, West went to Evergreen to review and collect documents from his first PRA request. After some time, the public records officer, Patricia "Patte" King, reported to John Hurley, the Vice President for Finance and Administration at Evergreen, that West was "being abusive towards her." Clerk's Papers (CP) at 51. Hurley had the police called. According to King, she asked West "three or four times to sit out in front until [she] was able to finish with his request." CP at 54. Ed Sorger, the Chief of Police for Evergreen, and Officer Dwight Monohon spoke with West. During that time, King completed preparation of the documents, and Sorger determined the situation did not warrant further action.

According to Sorger, West "appeared to calm down once Police Services became involved and did not present any concerns that warranted issuance of a trespass warning." CP at 114. In a declaration later filed with the trial court for partial summary judgment, Sorger stated, "Monohon and I then asked [West] to leave the area. [West] requested that he be trespassed from the College. I advised him that we would not do so. He seemed disappointed and voluntarily left the area." CP at 114. Sorger and Monohon also stated that West did not ask them if he was "free to leave" and Evergreen did not take further action. CP at 114, 117.

Monohon also executed a declaration for the partial summary judgment motion and stated that he arrived and asked West for identification. West initially refused but "gladly" gave the officer his identification after Monohon said he was investigating a "disturbance and possible trespass." CP at 117. Sorger informed Monohon that West did not need to be issued a trespass

[3] These dates are the dates Evergreen received West's PRA requests.

warning, and Monohon and Sorger asked West to leave the area. Monohon stated, "West seemed disappointed that we were not going to take further action, but voluntarily left the area on his own without an escort." CP at 117.

On May 17, 2010, West filed a second PRA request. He asked for "A list of all persons presently on the [Evergreen] Criminal Trespass List, and a copy of relevant policies, procedures and statutory authority for each individual case." CP at 232. After being notified that all the records requested were ready to be picked up, West failed to pick up the documents. The request was closed in 2012 due to abandonment.

On March 16, 2012, immediately after receiving notice that his prior request was closed, West requested that he be able to review parts of his May 17, 2010 request and he filed a new third PRA request, asking for "a copy of those persons presently on the 'Trespass List.'" CP at 249. West's renewed second PRA request and new third PRA request were divided into several smaller sections and given numeric identifiers.

Evergreen responded to West's PRA request five business days after receiving the request. It estimated that responsive records would be provided "on or before May 4." CP at 16. On May 8, two business days later, Evergreen sent a letter to West regarding one of his requests numbered 2012-010, and attached the "Trespass Report Listing for The Evergreen State College." CP at 17. The letter referenced exemptions for certain information. It further stated,

> The only way to provide you with information about the individuals who have been trespassed and the offenses they committed would be to provide you with copies of each police incident report listed in the Trespass Report Listing. If you wish to obtain copies of the individual incident reports listed in the Trespass Report Listing, please submit a new public records request. This completes our response and closes this request.

CP at 17-18.

On the same day, May 8, Evergreen also wrote to West regarding request numbers 2012-010, 2012-011, 2012-013, and 2012-014. The letter stated, "In regards to the above-mentioned requests, additional time is needed in order to assemble and review the responsive records. Accordingly, your new estimated response date is May 18, 2012." CP at 18. Evergreen continued to correspond with West and to provide documents on May 18, May 31, June 29, July 20, and July 27.

On July 27, Evergreen wrote that because of a "clarification" on May 11, 2012, it had "expanded [the] search for records in order to include 'any trespass notices, records of verbal notices, records of any review or hearing related to such notices, and any final orders or dispositions of any appeals of said notices.'" CP at 262. It also stated that "if the latter records 'are contained in police reports, or any other sources' they will be provided as requested." CP at 262. The new estimated time for delivery of the documents was December 28.

II. SUMMARY JUDGMENT

The College first moved for partial summary judgment on the PRA claims related to the first and second requests. West cross moved for summary judgment on the third request, arguing the College failed to comply with its own time estimate, did not make a good faith search for responsive records, and did not provide an accurate copy of the Trespass List. West attached copies of the Trespass Report Listing and another list provided by Evergreen to a previous requestor in 2011. The College cross moved for summary judgment regarding the third PRA request.

King filed a declaration with the partial summary judgment motion and stated, "The current list of those persons trespassed from [Evergreen] as of the date of his March 16, 2012 [request] appear on the 'Trespass Report Listing' attached as Exhibit I to his brief. This is the list I provided

West in response to his March 16, 2012 PRA request." CP at 249-50. King also declared that after a previous PRA requestor asked for the list of people banned from campus in August 2011, Police Services realized the list was outdated and updated it so as to not include the individuals "no longer considered trespassed from campus." CP at 250. She stated that as a result, the list provided to West was the current list.

On November 15, 2013, after hearing argument from the parties, the trial court issued a written order granting partial summary judgment, ruling that Evergreen responded in full to the first two requests, and that the amended time estimate within two business days of the original estimate was reasonable and complied with the PRA statute. The court also ruled that the Trespass List West argued was not the same as that provided to another requestor, was revised between the two record requests, and was the correct document. The trial court signed the written order in favor of the College, denied West's motion for summary judgment, and dismissed the PRA claims related to all three PRA requests.

On November 22, the College filed a motion to dismiss all remaining claims for failure to state a claim upon which relief could be granted[4] and for summary judgment.[5] On December 9, West again cross moved for summary judgment and for sanctions, under CR 11. On December 13 and December 19, West filed personal declarations that included attached documents and his version of the May 14, 2010 incident at Evergreen.

Also on December 13, the College filed its reply and several declarations including a second Hurley declaration with additional details of the incident at Evergreen. Hurley declared that he neither threatened to trespass West nor threatened to ban him from campus. Hurley further

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[4] CR 12(b)(6).

[5] CR 56.

declared that West was free to come on campus and had done so since the May 14, 2010 incident. Hurley also corrected his previous statement about Sorger to say, "Chief Sorger determined that the situation did not warrant the issuance of a trespass warning to [West] prohibiting him from being on campus." CP at 91.

The Risk Management Client Services Director for the Washington Department of Enterprise Services also executed a declaration. He verified that West previously filed two tort claims: one on March 11, 2010, and one on May 14, 2010. He stated that the state did not have record of any other tort claims involving West and Evergreen. The May 14, 2010 claim regarded the May 14 incident at Evergreen. In the claim, West asserted,

> As part of a continuing pattern and policy of invidious violation of rights protected under 42 U.S.C. 1983-5 and 18 U.S.C. 241, [Evergreen] Vice president and other officials attempted to obstruct access to public records and threatened to "Trespass" West for attempting to obtain records in a reasonable time. [Evergreen] Police were summoned and conducted an investigation, although the police did not do anything of their own accord.

CP at 99. He also stated, "These continuing violations have caused substantial mental and emotional distress." CP at 99.

West filed a motion to continue summary judgment so that he could "reasonably review all the evidence." Report of Proceedings (RP) (Dec. 20, 2013) at 4. The College moved to strike West's December 13 and 19 declarations for being untimely. The trial court heard all of the motions on December 20.

The trial court denied West's motion to continue. It granted the College's motion to strike West's declarations. It further found no legal basis to conclude a seizure or false arrest occurred and granted the College's motion to dismiss and for summary judgment. The College argued that several causes of action should have been dismissed because West had not filed a tort claim; however, the trial court did not rely on this basis for dismissal in its ruling.

At the close of the motions hearing, West withdrew his CR 11 sanctions motion but stated, "I would point out that the undisputed facts that counsel relies upon were made in responsive filings to which no response was permitted. So to the extent that the Court rules on summary judgment, it's doing so based upon declarations that were not filed in a timely manner along with the original motion." RP (Dec. 20, 2013) at 42. The trial court responded that it had already determined the College's materials were properly filed.

On December 26, West filed a motion requesting a three day extension to file a supporting declaration, to allow his December 19 declaration to be filed, to allow his supplemental response to the College's December 19 filing, and to strike Hurley's second declaration. On January 3, 2014, the trial court entered the written final order that included denying West's motion for a continuance, granting the College's motion to strike West's declarations, granting the College's motion for summary judgment, and denying West's cross motion for summary judgment.

On January 13, West filed a motion to reconsider. In the motion, West asked the trial court to reconsider and to allow him to file his December 19 response. West argued the court abused its discretion by allowing the College to submit an altered declaration and by denying him the opportunity to file a response. Multiple citations[6] were entered to present an order denying West's motion to reconsider before different judges. On May 16, the parties argued the motion but the trial court did not sign the proposed order.

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[6] In Thurston County Superior Court, a party notes a motion for hearing by filling a "Notice of Issue" document. We will refer to the filing as a citation.

On June 13, West filed a citation for his motion to reconsider to be heard on June 20. This hearing was stricken for "incorrect setting." CP at 202. West filed a notice of appeal on June 16, 2014. The notice indicated West's intent to appeal from the January 3 order, the May 16 final order, and all interlocutory rulings, including the November 15, 2013 order.

On June 19, West filed a citation for his motion to reconsider to be heard on June 27. On June 25, the College filed a motion to strike the motion and the hearing. The College argued the motion was untimely because West failed to note it for a hearing when he filed it. Additionally, the College argued the hearing was improper because West did not provide 14 days' notice prior to the hearing. On June 27, the trial court granted the College's motion because West's motion to reconsider was untimely.

ANALYSIS[7]

I. MOTION TO RECONSIDER

West argues that the trial court abused its discretion and attempted to evade an appeal by not hearing his motion to reconsider. We disagree.

CR 59(b) requires that the movant file a motion to reconsider no later than 10 days after the entry of the judgment, order, or other decision. Here, the trial court granted the College's motion for partial summary judgment on January 3, 2014, dismissing all remaining claims. On January 13, West filed his motion to reconsider.

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[7] As a threshold issue, the College argues that West's appeal is time barred under RAP 5.2(a). West contends that he filed his notice of appeal within the requisite time period. We prefer to decide cases on their merits rather than on procedural technicalities. *Buckner, Inc. v. Berkey Irrig. Supply*, 89 Wn. App. 906, 914, 951 P.2d 338 (1998). The Rules of Appellate Procedure are to be liberally interpreted "to promote justice and facilitate the decision of cases on the merits." RAP 1.2(a). West's failure to note the motion did not deprive the trial court of the ability to hear the issue, and despite being far outside CR 59(b)'s 30 day requirement, it otherwise met the basic requirements of RAP 5.2(e). Without deciding the timeliness issue, we exercise our discretion to review West's appeal on the merits. RAP 1.2.

Roughly five months later, West then did not wait for the trial court's decision on the motion to reconsider and filed a notice of appeal. He filed the notice of appeal 11 days before the trial court issued its ruling on the motion to reconsider and three days before he noted his motion to reconsider for a hearing. The record does not support West's argument that the superior court attempted to evade an appeal by not hearing his motion for reconsideration. It also does not appear from the record before us that West was waiting for the outcome of his motion as he asserts in his brief. Additionally, West cites no legal authority to suggest the trial court abused its discretion, much less that it did so in order to avoid entering a final order that he could appeal from. We conclude West's assertions are meritless.

II. SUMMARY JUDGMENT

West argues the trial court erred by granting the College's motions for partial summary judgment, which resulted in the dismissal of all his claims, including his PRA claim and the unlawful arrest and seizure claim. We disagree.

A. Standard of Review

We review an order granting summary judgment de novo, engaging in the same inquiry as the trial court. *Germeau v. Mason County*, 166 Wn. App. 789, 801, 271 P.3d 932 (2012). Summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c). We construe all facts and their reasonable inferences in the light most favorable to the nonmoving party. *Loeffelholz v. Univ. of Wash.*, 175 Wn.2d 264, 271, 285 P.3d 854 (2012). PRA disputes may be resolved on summary judgment. *Neigh. All. of Spokane Cty. v. County of Spokane*, 172

Wn.2d 702, 729, 261 P.3d 119 (2011). Judicial review of agency actions taken or challenged under the PRA is also de novo. RCW 42.56.550(3); *Neigh. All.*, 172 Wn.2d at 715.

A party moving for summary judgment bears the burden of demonstrating that there is no genuine issue of material fact. *Atherton Condo. Apt.–Owners Ass'n Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990). "A material fact is one upon which the outcome of the litigation depends in whole or in part." *Atherton*, 115 Wn.2d at 516. If the moving party satisfies its burden, the nonmoving party must set forth specific facts demonstrating that a material fact remains in dispute. *Loeffelholz*, 175 Wn.2d at 271. "[C]onclusory statements of fact will not suffice." *Grimwood v. Univ. of Puget Sound, Inc.*, 110 Wn.2d 355, 360, 753 P.2d 517 (1988).

If the nonmoving party fails to do so, and reasonable persons could reach but one conclusion from all the evidence, then summary judgment is proper. *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005). We may affirm summary judgment on any ground supported by the record. *Blue Diamond Grp., Inc. v. KB Seattle 1, Inc.*, 163 Wn. App. 449, 453, 266 P.3d 881 (2011).

B. PRA Claim

West argues the trial court erred by granting summary judgment on his PRA claim because Evergreen failed to make a good faith search and did not provide all the records West requested, withholding a "known responsive record." Br. of Appellant at 15. West asserts that Evergreen withheld the "Criminal Trespass Lists" and that he was provided a different list than another PRA requestor received "just a few months prior." Br. of Appellant at 12. West's argument only relates to his third PRA request made on March 16, 2012. West does not appeal the dismissal of the claims related to the first and second PRA requests.

We have not been provided West's March 16 PRA request. However, King stated in her declaration that West requested "a copy of those persons presently on the 'Trespass List.'" CP at 249. She also stated that after the previous PRA requestor asked for the list of people banned from campus in August 2011, Police Services realized the list was outdated and updated it to omit individuals no longer considered "trespassed from campus." CP at 250. She further declared that the list she provided to West was the current list.

Because we were not provided West's actual PRA request, we can only determine whether Evergreen failed to provide responsive records based on the record before us. While we have the power to correct or supplement the record, we are not required to do so. RAP 9.10; *In re Det. of Halgren*, 156 Wn.2d 795, 805, 132 P.3d 714 (2006). It is the appellant's responsibility to designate the necessary documents for review. *Halgren*, 156 Wn.2d at 804-05. Based on the record before us, West has not established that a genuine dispute of material fact exists regarding whether Evergreen withheld the Trespass List.

West also contends that Evergreen improperly instructed him to file another request when police reports should have been provided to him. The College does not deny that in one correspondence, Evergreen instructed West to file another request. Instead, the College seems to argue that the instruction was harmless because regardless of the correspondence, Evergreen continued to provide documents, even when the complaint was before the superior court. The College contends that the record shows Evergreen continued to comply with the request and was providing police reports and other responsive records after May 8.

In his summary judgment materials, West included copies of communications between himself and Evergreen. In a May 8 exchange, Evergreen informed West he needed to file a new PRA request in order to get individual incident reports. However, King's undisputed supplemental

declaration stated that she provided records on May 18, June 29, July 20, July 27, and notified West that the last installment of the requests would be complete by December 28.

West did not establish a genuine dispute of material fact as to his PRA claim and the College was entitled to judgment as matter of law. The trial court acted properly.

C. Unlawful Arrest or Seizure Tort Claim

West also argues the trial court erred by dismissing his remaining claims. However, he only appeals his unlawful arrest or seizure claim arising out of the incident at Evergreen in May 2010. Therefore, we do not consider the additional claims dismissed at summary judgment. RAP 10.3(a).

Regarding the unlawful arrest or seizure claim, the College argues that we should affirm summary judgment because West failed to file a tort claim as required under RCW 4.92.100 and .110. We agree.

RCW 4.92.100(1) requires that all claims against the state arising out of tortious conduct must be filed with the office of risk management. To do so, the claim must be presented in person or by certified mail, on the standard tort claim form. RCW 4.92.100(1). "No action subject to the claim filing requirements of RCW 4.92.100 shall be commenced against the state . . . for damages arising out of tortious conduct until [60] calendar days have elapsed after the claim is presented to the office of risk management." RCW 4.92.110.

The College filed a declaration verifying that West previously filed two tort claims based on other factual situations. In the claim addressing events at Evergreen on May 14, 2010, West asserted that the College "attempted to obstruct access to public records and threatened to 'Trespass' [him]." CP at 99. Further, he stated, "[Evergreen] Police were summoned and conducted an investigation, although the police did not do anything of their own accord." CP at

99. He also stated, "These continuing violations have caused substantial mental and emotional distress." CP at 99.

The undisputed evidence demonstrates that West did not file a tort claim asserting unlawful arrest or seizure. West failed to properly file a tort claim. Summary judgment was proper.

III. CONTINUANCE AND DECLARATIONS

West asserts that the trial court erred by "failing to grant a continuance, suppressing relevant evidence, allowing the submission of inconsistent and/or perjured testimony, and in granting summary judgment when factual issues were disputed." Br. of Appellant at 18. However, in his brief, West only argues that the trial court abused its discretion when it allowed Hurley's second declaration. West's arguments as to partial summary judgment are addressed above. Because West's brief presents no other clear arguments, we only review whether the trial court erred by admitting Hurley's second declaration. RAP 10.3(a)(6); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

West contends the trial court allowed a "materially altered declaration" to be filed "at the last minute." Br. of Appellant at 19. West provides no argument to establish that either statement is true. Also, our review of the record does not support his assertions. The adverse party in a motion for summary judgment may file documents no later than 11 calendar days prior to the hearing and the moving party may file rebuttal documents no later than five days prior to the hearing. CR 56(c). Here, the moving party, the College, filed the first Hurley declaration approximately a month prior to the hearing date. It filed its reply in rebuttal, including the second Hurley declaration, seven days prior to the hearing. Therefore, the College timely filed the second Hurley declaration.

Additionally, in his first declaration, Hurley described the events on the day West went to Evergreen to review one of his 2010 PRA requests. Hurley stated, "Chief Sorger determined that the situation did not warrant the issuance of a criminal trespass *order* to [West] prohibiting him from being on campus." CP at 52 (emphasis added). In the second declaration, Hurley expanded on what happened and declared that he did not threaten West with criminal trespass or threaten to ban West from campus. Hurley clarified that West was free to come to campus and had done so since the incident. Hurley also corrected his statement about Sorger to say, "Chief Sorger determined that the situation did not warrant the issuance of a trespass *warning* to [West] prohibiting him from being on campus." CP at 91 (emphasis added).

West appears to argue that the use of the word "order" rather than "warning" proves a clear "illegal application" of Evergreen's trespass policy. Br. of Appellant at 19. Hurley's second declaration did not materially alter the first declaration and West fails to explain the significance of change from "order" to "warning." We conclude the trial court did not err by accepting Hurley's second declaration.

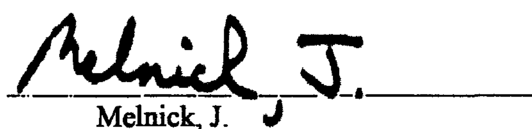
IV. COSTS AND FEES

Wests asks that the case be remanded to the trial court "with instructions for the award of appropriate costs and penalties for the unlawful withholding of records related to the [Evergreen's] Trespass Policy and its unlawful application to arbitrarily bar citizens from lawful enjoyment of public lands in the absence of due process of law." Br. of Appellant 23. RCW 42.56.550(4) entitles the prevailing party in a PRA appeal against an agency to "all costs, including reasonable attorney fees, incurred in connection with such legal action," as well as a discretionary award of not more than $100 per day for each day the party's right to inspect or copy public records was

improperly denied. West is not entitled to costs and penalty fees under the PRA because he does not prevail. We do not award costs or other fees to West.

We affirm the trial court.

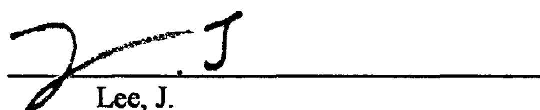
A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



Melnick, J.

We concur:

Maxa, A.C.J.



Lee, J.

APPENDIX III

MC-PUBLIC #3

2.

Ken Eikenberry

ATTORNEY GENERAL OF WASHINGTON

7th FLOOR, HIGHWAYS-LICENSES BUILDING • OLYMPIA, WASHINGTON 98504-8071

May 9, 1989

THUCOU0010000132004070010000002030

MEMORANDUM

TO: Gail Martin
Vice President for Student Affairs
The Evergreen State College

FROM: Michael E. Grant MEG
Assistant Attorney General

RE Student Conduct Code and Related Issues

During recent reviews of the proposed student conduct code, we have discussed the inclusion of policies relating to nonstudents in the same code. For the reasons I have outlined to you previously, I recommend that the student conduct code deal exclusively with that subject: students at TESC, standards for their conduct, and procedures for sanctions if necessary.

The college's relationship with nonstudents is entirely different. Nonstudents include by definition all other individuals in society who do not at a given time enjoy the privilege of matriculating at TESC. The college can deal with student conduct because of the special status that students hold. The college cannot seek to affect the conduct of nonstudents except as it affects directly the welfare of the college community. In such cases, the primary means of achieving control over such unwelcome conduct is through community resources, including the police and the courts.

If a nonstudent is causing problems affecting TESC's security and welfare, the proper step is for the college, through duly authorized representatives, to notify local law enforcement (including campus security who have been properly deputized). This could result in arrest and, if a crime has been committed (including the crime of trespass), trial, conviction and punishment.

Repeat offenses can be dealt with in the same manner or, injunctive relief can be obtained, including court-ordered restriction on access to the campus. In my view, TESC does not

EXHIBIT 3

have unilateral authority to restrict access to the public areas of the campus. Consequently, any kind of list which may have been maintained in the past at the college which bars access of private citizens to the common campus areas is ineffective.

As we also discussed, housing and related activities have a different posture. These are not public areas. Nor, for example, is a classroom or office. But I must stress that self-help remedies are not appropriate. The college, like any other member of the community, must rely on community law enforcement resources.

Please indicate if you concur in these recommendations and, if so, a time convenient to meet so as to establish a plan to implement these recommendations.

MEG:lb

THUCOU001000013200407001000002031

MC PUB #3

FILED
SUPERIOR COURT
89 MAY 8 P4:55
BY DEPUTY

1
2
3 THE SUPERIOR COURT OF WASHINGTON IN AND FOR THURSTON COUNTY

ARTHUR WEST, Plaintiff, v. TESC Board of Trustees, Defendant.	NO. 89 2 00696 8 MOTION FOR SUMMARY JUDGMENT FOR DECLARATORY RELIEF

8 Comes now the plaintiff, Arthur West, Pro Se, and
9 respectfully moves the court for the following relief:
10 1. That the Court enter a summary judgment for declar-
11 atory relief in his favor declaring EAC 174-136-050 and
12 EAC 174-136-052 to be invalid, and
13 2. That TESC authority to arrest any person or persons
14 for violation of RCW 9A.52 be restricted to having the
15 authority to arrest only those persons in violation of
16 RCW 9A.52.
17 There is no question in this cause as to whether the
18 above mentioned EAC rule was adopted without compliance with
19 statutory rule-making procedure and whether it exceeds the
20 institution's statutory authority, and the plaintiff is en-
21 titled to judgment as a matter of law.
22 This motion is based on CRs 56 and 57, RCW 28B.19, the
23 two certifications from the Code Revisor, attached hereto,
24 the notice of proposed rules, WSR 88-22-080, attached hereto,
25 the statement withdrawing said notice, attached hereto, the
26 the files and records herein, and the Declaration set forth
27 below.
28 ///////////

ARTHUR WEST
3135 Kaiser Road, N.W.
Olympia, Washington 98502

THUCOU00100001320040700100002283

MC-PUBLIC #3 — 4

The Evergreen State College

CRIMINAL TRESPASS LIST INFO

	NAME	ISSUED BY	REASON
A	Armstrong, Robert J.	C/R 86-2598/Anderson/Non student,	drinking in public & carr a.weapon. (club)
B	Bloodgood, James R.	C/R	ident, indecent exposure, no clo
	Bouge, Linda B.	C/R	ident, disturbance, accident & D
	Bowen, Dale J. AKA, Puma /Aquilla	C/R	lent, transient & OPD rape suspect
	Brock, Raymond P.	C/R	nt, under age drinking in B-lot
C	Carlson, Jeff AKA, Southwood, Jeff	C/R	icator, Vandalism & behavioral
	Cleeves, Robert Allen	C/R	ent, disturbance, accident & DW
	Colwell, Terri Marie	C/R	ent, malicious Mischief & drinki
	Cummins, Tom	C/R	..., adjudicator, social contract violation housing eviction.
	Curry, Robert M.	C/R 83-534/Anderson, non student,	vehicle impound escape.
D	Dalzell, Janice S.	C/R 85-315/Smithson, non student,	public drinking & disturba in the dorms.
	Dugan, Patrick M.	C/R 85-826/Anderson & Adjudication request,	behavioral
E	Eash, James M.	C/R 83-614/Savage, student,	under age drinking in B-lot
	Edwards, Daniel M.	C/R 82-841/Adjudicator Jacob,	transient in dorms, disturbanc open drinking
	Evans, Ben W.	C/R 80-1279/Adjudicator Jacob,	transient, disturbances
F.	Frost, Vance	C/R 83-511/Adjudicator Jacob,	adjudicator hold & trespass

Exhibit 6-2

Olympia, Washington 98505
Telephone (206) 866-6000

THJCOU001000132004070010000002286

RECEIVED

OCT 25 1990

DAVID RIDGWAY
7327 Martin Way
Olympia, WA 98506

October 25, 1990

President Les Purce
The Evergreen State College
Olympia, WA

RE: Petition for review of decision to deny access to Public Records, related matters

Dear President Purce;

Please consider this letter a petition to review a letter denying me access to TESC public records (Appendix A) as well as a request for more timely access to records which will be provided.

I have been requesting records pertaining to TESC criminal trespass policy since December 4, 1989 and TESC public records officers have been denying the existence of any such records up through October 4, 1990 (Appendix B). In response to my request of October 19, 1990 (Appendix C) Mr. Jones first said the records would be provided (Appendix D), then denied half my requests the next day.

Now Mr. Jones contends my requests relating to TESC security officers and criminal trespass policy are subject to the rules of discovery because a Mr. Arthur West filed suit against TESC on these matters, then instructs me to address my discovery requests to the school's lawyer, who I believe is Assistant AG Mike Grant.

I have only requested material which is defined in the various statutes as public records. Perhaps if I were requesting the sort of records which would only be available to a litigant such as Mr. West pursuant to a discovery request I could see some basis for Mr. Jones' decision. But I have not.

In fact, I believe even Mr. West can still expect a prompt response to any public records request and would only need to use discovery to obtain material which is not defined as public records but which may be relevant to his lawsuit.

I can find no lawful authority which suspends the Public Disclosure Act when a public agency such as TESC is involved in litigation. Of course, if the school cites an authority which clearly does so, and is not superceded by the PDA, I could consider such an authority basis for denial of this petition.

However I don't believe any such authority exists so I am asking that you instruct Mr. Jones to comply with my requests as required by law.

THUCOU0010000132004070010000002147

MC PUBLIC #3

That a public agency, particularly TESC, which has promulgated WAC 174-120-020, would conduct its affairs in such a manner that persons affected thereby must resort to litigation, then inform anyone requesting public records in the subject area of the litigation that his or her request is subject to the rules of discovery, which are governed by 11 lengthy court rules and hundreds of appellate court decisions and which even confound many attorneys, and which entail procedures that, in any event, are only available for use between parties to litigation, presents an absurd picture of new depths of bureaucratic obfuscation that appears suspiciously like a violation of the above mentioned WAC 174-120-020. While the school might, and should, be concerned about its officers violating the Social Contract, my concern is that I be dealt with according to law.

My experience attempting to get access to TESC public records has been waiting months, then only getting a fraction, if any, of the records I requested. Since much of the earlier requested material has still not been provided, I am not by any subsequent request waiving my earlier requests. Some of my latest request are geared toward determining the veracity of earlier responses.

The materials requested in Appendix C should be in easily discernable and obtainable indices and files. I don't believe a delay of more than two or three weeks, if that long, would be the prompt response required by the Public Disclosure Act. Would you please instruct Mr. Jones to comply with the law in that regard, also?

My experience seems to indicate some members of the TESC community are seeking to evade scrutiny of their past conduct. Possibly the records I have requested, and related material which might not necessarily be available to me, would be of interest to yourself in light of the grave responsibilities you have taken on at this critical time in TESC history.

Thank you for your consideration. I remain

Respectfully yours,

David Ridgway

THUCOU00100000132004070010000002148