

Supreme Court Issues
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November 12, 2019

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***Arbitration—Contractual Agreement—Validity—Procedural and Substantive Unconscionability**

Whether in this labor and employment lawsuit brought by a former pizza delivery employee, the employer was entitled to compel arbitration under the terms of an agreement located in an employee handbook, and whether that agreement is procedurally and substantively unconscionable.

No. 97429-2, *Burnett, et al. (respondents) v. Pagliacci Pizza, Inc. (petitioner)*.

[9 Wn. App. 2d 192 \(2019\)](#).

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Arbitration—Public Employment—Action Against Employer—Collective Bargaining Agreement—Right to Arbitrate—Waiver—By Conduct

Whether in this lawsuit for statutory wage and hour violations brought by a public employee, the employer waived its right to compel arbitration under the collective bargaining agreement by its delay in asserting the right to arbitrate after the commencement of the lawsuit.

No. 97201-0, *Lee, et al. (petitioners) v. Evergreen Hosp. Med. Ctr. (respondent)*. (*See also: Arbitration—Public Employment—Collective Bargaining Agreement—Arbitration Clause—Applicability—Statutory Claims*).

[7 Wn. App. 2d 566 \(2019\)](#).

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Arbitration—Public Employment—Collective Bargaining Agreement—Arbitration Clause—Applicability—Statutory Claims

Whether in this lawsuit brought by a public employee, the employer was entitled to compel arbitration under the collective bargaining agreement for statutory wage and hour claims.

No. 97201-0, *Lee, et al. (petitioners) v. Evergreen Hosp. Med. Ctr. (respondent)*. (See also: [Arbitration—Public Employment—Action Against Employer—Collective Bargaining Agreement—Right to Arbitrate—Waiver—By Conduct](#)).

[7 Wn. App. 2d 566 \(2019\)](#).

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***Automobiles—Theft—Motor Vehicles—What Constitutes—Snowmobile**

Whether a snowmobile constitutes a “motor vehicle” for purposes of the crime of theft of a motor vehicle under [RCW 9A.56.065](#).

No. 97283-4, *State (petitioner) v. Tucker (respondent)*.

[8 Wn. App. 2d 705 \(2019\)](#).

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Civil Rights—Law Against Discrimination—Public Accommodations—School District—Acts of Agents and Employees—Strict Liability—Unlawful Discrimination—Intentional Sexual Misconduct

Whether a school district may be subject to strict liability for discrimination committed by its employees in violation of the Washington Law against Discrimination and if so, whether “discrimination” for purposes of this cause of action encompasses intentional sexual misconduct including physical abuse and assault.

No. 97630-9, *W.H., et al. (plaintiffs) v. Olympia Sch. Dist., et al. (defendants)*.

Certified from the U.S. Dist. Court of Western Washington, No. C16-5273 BHS.

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***Constitutional Law—Gift or Loan of Money or Credit—Consideration—Sufficiency—Donative Intent—Receipt of Significant Benefit—Private Benefit—Consideration—Sufficiency**

Whether the Port of Benton County violated the prohibition against gifts of public funds under article VIII, section 7 of the Washington Constitution by permitting a private railroad company to use port-owned railroad tracks without paying rent or leasehold taxes when, before transfer of ownership of the tracks to the port, the railroad company had a contract with the federal government allowing it to use the tracks rent-free in exchange for making a payment toward construction of the track and a one-time payment toward maintenance of the track.

No. 97410-1, *Peterson (petitioner) v. Port of Benton, et al. (respondent)*.

[9 Wn. App. 2d 220 \(2019\)](#).

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Contempt—Civil Contempt—Action for Contempt for Violating Injunction—Vacation of Injunction—Effect—Mootness—Availability of Monetary Relief

Whether this civil contempt action based on the violation of an injunction became moot when the injunction was vacated as to the movant even though the civil contempt statute authorizes additional remedies in the form of recovery for any losses suffered as a result of the contempt and costs and attorney fees incurred in connection with the contempt proceedings. *See* [RCW 7.21.030\(3\)](#).

No. 97277-0, *Gronquist (respondent) v. King County Prosecutor Daniel Satterburg (petitioner)*.

[Unpublished](#).

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***Controlled Substances—Punishment—Enhancement—Second or Subsequent Offense—Doubling of Maximum Penalty—Automatic or Discretionary**

In this prosecution for sale of heroin for profit, [RCW 69.50.410\(1\)](#), whether [RCW 69.50.408](#) automatically doubled the maximum sentence for a second violation of chapter [69.50 RCW](#) and eliminated the sentencing court's discretion to apply the 60-month limitation set forth in [RCW 69.50.410\(2\)\(a\)](#).

No. 97323-7, *State* (respondent) v. *Cyr* (petitioner).

[8 Wn. App. 2d 834 \(2019\)](#).

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Courts—Powers—Conduct of Litigation—Sanctions—Bad Faith—Express Finding—Absence

Whether the trial court in a criminal prosecution erred in sanctioning the State for moving to amend the information despite the court's ruling that the State acted within its rights in doing so.

No. 96365-7, *State* (respondent) v. *Numrich* (petitioner). (*See also*: [Criminal Law—Statutes—Construction—General and Specific Crimes—Manslaughter—Violation of Safety Regulation with Death Resulting; Indictment and Information—Amendment—Additional Charge—Broadening of Charge—Different Felony Levels and Penalties—Improper Purpose—Effect on Pending Discretionary Review](#)).

Consolidated with No. 96566-8, *State* (respondent) v. *Numrich* (plaintiff).

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Criminal Law—Advisement of Rights—Necessity—Custody—Detention While Border Agents Search Automobile

Whether in this prosecution for possession of a controlled substance, a defendant who was kept nearly five hours in the waiting room of an international border crossing station while border patrol agents searched the van in which he was riding was “in custody” for purposes of *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), thus requiring suppression of statements he made in response to questioning conducted without *Miranda* warnings.

No. 97268-1, [State \(respondent\) v. Escalante \(petitioner\)](#).

[Unpublished.](#)

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***Criminal Law—Plea of Guilty—Advisement of Rights—Consequences of Plea—Misunderstanding of Consequences—Felony Firearm Offender Registration Requirement—Direct or Indirect Consequence**

Whether in this criminal prosecution resulting in a guilty plea, the plea was rendered involuntary when the defendant was misinformed that he had no obligation to register as a felony firearm offender as result of his conviction.

No. 97517-5, [State \(respondent\) v. Gregg \(petitioner\)](#). (See also: [Criminal Law—Punishment—Sentence—Juvenile Offender—Youthfulness of Offender—Presumption—Necessity—Burden of Proof—State Constitution](#)).

[9 Wn. App. 2d 569 \(2019\)](#).

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Criminal Law—Punishment—Sentence—Criminal History—Offender Score—Misdemeanors—Vacation—Statutory Requirements—Dismissal

Whether in this criminal prosecution the defendant’s 2010 misdemeanor disorderly conduct conviction prevented prior felony convictions from “washing out” under [RCW 9.94A.525\(2\)\(c\)](#) for purposes of calculating the offender score on subsequent arson and burglary convictions where the misdemeanor conviction was vacated pursuant to [RCW 3.66.067](#) after the defendant completed a deferred sentence.

No. 97375-0, *State (respondent) v. Haggard (petitioner)*.

[9 Wn. App. 2d 98, 442 P.3d 628 \(2019\)](#).

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***Criminal Law—Punishment—Sentence—Juvenile Offender—Youthfulness of Offender—Presumption—Necessity—Burden of Proof—State Constitution**

Whether under the prohibition against cruel punishment in article I, section 14 of the Washington Constitution, the State is required to rebut a presumption that youth is a mitigating factor when a juvenile offender is sentenced as an adult.

No. 97517-5, *State (respondent) v. Gregg (petitioner)*. (*See also*: [Criminal Law—Plea of Guilty—Advisement of Rights—Consequences of Plea—Misunderstanding of Consequences—Felony Firearm Offender Registration Requirement—Direct or Indirect Consequence](#)).

[9 Wn. App. 2d 569 \(2019\)](#).

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Criminal Law—Statutes—Construction—General and Specific Crimes—Manslaughter—Violation of Safety Regulation with Death Resulting

Whether in a prosecution stemming from a construction worker's death, the State was precluded under the general-specific rule from charging both manslaughter and the offense of violation of a safety regulation with death resulting.

No. 96365-7, *State* (respondent) *v.* *Numrich* (petitioner). (See also: [Indictment and Information—Amendment—Additional Charge—Broadening of Charge—Different Felony Levels and Penalties—Improper Purpose—Effect on Pending Discretionary Review](#); [Courts—Powers—Conduct of Litigation—Sanctions—Bad Faith—Express Finding—Absence](#)).

Consolidated with 96566-8, *State* (respondent) *v.* *Numrich* (plaintiff).

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***Decent and Distribution—Intestate Succession—Death of Spouse During Pending Dissolution Proceedings—Surviving Spouse—Waiver of Intestate Rights—Separation Agreement**

Whether in a case where a spouse died intestate before the completion of pending dissolution proceedings, a settlement agreement previously entered into by the spouses that divided the community assets into separate property constituted a waiver of the surviving spouse's intestate succession rights.

No. 97463-2, *In re the Matter of the Estate of Petelle, Deceased* (respondent).

[8 Wn. App. 2d 714 \(2019\)](#).

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Elections—Fair Campaign Practices Act—Citizen Action—Action Not Commenced by State—Timeliness of Citizen Action

Whether under former RCW 42.17.765(4)(a)(iii), a citizen's lawsuit challenging an alleged campaign practices violation is time-barred unless it is filed within 10 days after the citizen gives notice to the attorney general and the county prosecuting attorney of the citizen's intent to file suit unless those agencies commence an enforcement action.

No. 97109-9, *Freedom Found.* (appellant) v. *Teamsters Local 117, et al.* (respondents/cross-appellants).

Consolidated with

No. 97111-1, *Freedom Found.* (appellant) v. *Serv. Emps. Int'l Unio Political Education & Action Fund* (respondent/cross-appellant).

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Indictment and Information—Amendment—Additional Charge—Broadening of Charge—Different Felony Levels and Penalties—Improper Purpose—Effect on Pending Discretionary Review

Whether the State in a criminal prosecution was entitled to amend the information to add a first degree manslaughter charge despite the trial court's determination that the amendment's purpose was to gain a tactical advantage as to the defendant's then-pending motion for discretionary review of the propriety of the original second degree manslaughter charge.

No. 96365-7, *State* (respondent) v. *Numrich* (petitioner). (See also: [Criminal Law—Statutes—Construction—General and Specific Crimes—Manslaughter—Violation of Safety Regulation with Death Resulting](#); [Courts—Powers—Conduct of Litigation—Sanctions—Bad Faith—Express Finding—Absence](#)).

Consolidated with No. 96566-8, *State* (respondent) v. *Numrich* (plaintiff).

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**Intoxicating Liquors—Negligence—Contributory Fault—Intoxication Defense—
Extent of Intoxication Bearing on Proximate Cause—Blood Alcohol Content—
Evidence—Plaintiff’s Admission to Having Been Intoxicated—Effect—
Evidence—Opinion Evidence—Expert Testimony**

Whether in this negligence action stemming from a fall from an apartment balcony, evidence of the plaintiff’s blood alcohol content was relevant to proving the affirmative defense of involuntary intoxication under [RCW 5.40.060\(1\)](#) and establishing a plaintiff’s contributory fault even though the plaintiff admitted she was intoxicated, and if so, whether expert testimony on the biomechanical effects of an injury and how the level of intoxication affects judgment and psychomotor skills was admissible.

No. 97325-3, *Gerlach (petitioner) v. The Cove Apts., et al. (respondent)*. (See also: [Landlord and Tenant—Defects in Premises—Liability of Landlord—Noncommon Areas—Nontenants—Implied Warranty of Habitability](#)).

[8 Wn. App. 2d 813 \(2019\)](#).

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***Juveniles—Parental Relationship—Termination—Adoption—Degree of
Proof—Clear, Cogent, and Convincing Evidence—What Constitutes—Parental
Unfitness—Findings—Sufficiency**

Whether in proceedings involving a petition by a potential adoptive parent to terminate a biological father’s parental rights to a child, the trial court relied on improper factors and lacked clear, cogent, and convincing evidence that the father failed to perform parental duties in a manner that showed a substantial lack of regard for his parental obligations.

No. 97390-3, *In re the Adoption of K.M.T.*

[Unpublished](#).

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Landlord and Tenant—Defects in Premises—Liability of Landlord—Noncommon Areas—Nontenants—Implied Warranty of Habitability

Whether a nontenant injured in a fall from an apartment balcony may sue the landlord for breach of the implied warranty of habitability under *Restatement (Second) of Property: Landlord and Tenant* section 17.6 (1977).

No. 97325-3, *Gerlach (petitioner) v. The Cove Apts., et al.*, (See also: [Intoxicating Liquors—Negligence—Contributory Fault—Intoxication Defense—Extent of Intoxication Bearing on Proximate Cause—Blood Alcohol Content—Evidence—Plaintiff’s Admission to Having Been Intoxicated—Effect—Evidence—Opinion Evidence—Expert Testimony](#)).

[8 Wn. App. 2d 813 \(2019\)](#).

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***Negligence—Rescue—Rescue Doctrine—Professional Rescuer—Nature of Doctrine—Implied Primary Assumption of Risk**

Whether in this tort action brought by a firefighter who was injured fighting a forest fire, this court should abandon or limit the affirmative defense of the “professional rescuer doctrine,” such that the firefighter may bring negligence or gross negligence claims against the power companies allegedly responsible for starting the fire.

No. 97826-3, *Lyon (appellant) v. Okanogan County Electric Cooperative, Inc. & Pub. Util. Dist. No. 1 of Douglas County* (defendants).

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***Negligence—Res Ipsa Loquitur—Elements—Presence of Negligence—Proof—Result Not be Expected Without Negligence—Injury or Injury-Causing Act or Occurrence as Relevant “Result.”**

Whether in a negligence action seeking to establish breach of a duty of care in a roller coaster accident on the basis of res ipsa loquitur, proof that the “result” is one that would not be expected in the absence of negligence must consist of proof that the injury-causing act or occurrence is a result not expected or may also consist of proof that the injury suffered would not be expected without negligence.

No. 97503-5, *Brugh (respondent) v. Fun-Tastic Rides Co., et al. (petitioners)*.

[8 Wn. App. 2d 176 \(2019\)](#).

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Open Government—Public Meetings—“Public Agency”—What Constitutes—Washington State Bar Association

Whether, in this lawsuit claiming that the Washington State Bar Association violated the Open Public Meetings Act, the trial court correctly determined that the bar association is a “public agency” for purposes of the act.

No. 97249-4, *Beauregard (respondent) v. Wash. State Bar Ass’n (petitioner)*.

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***Personal Restraint—New Principle of Law—Retroactivity—Appellate Holding—*Houston-Sconiers* Case**

Whether the supreme court’s decision in *State v. Houston-Sconiers*, [188 Wn.2d 1, 391 P.3d 409 \(2017\)](#), holding that a trial court sentencing a juvenile offender in the adult criminal justice system has discretion to depart from sentencing guidelines and mandatory sentence enhancements in light of the particular circumstances surrounding a defendant’s youth, applies retroactively to this offender seeking resentencing by personal restraint petition.

No. 97205-2, *In re Pers. Restraint of Domingo-Cornelio* (petitioner).

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***Personal Restraint—Petition—Timeliness—Statutory Limits—Exceptions—Significant Change in Law—Appellate Decision—Retroactivity—*Houston-Sconiers* Case**

Whether the supreme court’s decision in *State v. Houston-Sconiers*, [188 Wn.2d 1, 391 P.3d 409 \(2017\)](#), holding that a trial court sentencing a juvenile offender in the adult criminal justice system has discretion to depart from sentencing guidelines and mandatory sentence enhancements in light of the particular circumstances surrounding the offender’s youth, constitutes a “significant change in the law” that applies retroactively, exempting this personal restraint petition from the one-year limit on collateral relief under [RCW 10.73.100\(6\)](#).

No. 95578-6, *In re Pers. Restraint of Ali* (petitioner).

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***Personal Restraint—Petition—Timeliness—Statutory Limits—Exceptions—Significant Change in Law—Appellate Decision—Retroactivity—*O’Dell* Case**

Whether this court’s decision in *State v. O’Dell*, [183 Wn.2d 680, 696, 358 P.3d 359 \(2015\)](#), or the United States Supreme Court’s decision in *Miller v. Alabama*, 567 U.S. 460, 469-70, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), constitutes a significant, material, and retroactive change in the law under [RCW 10.73.100\(6\)](#), exempting from the time limit on collateral relief a personal restraint petition challenging a sentence of life without release for aggravated first degree murder brought by a petitioner who was 19 years old when he committed the offense.

No. 96772-5, *In re Pers. Restraint of Monschke*, (petitioner).

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***Personal Restraint—Petition—Timeliness—Statutory Limits—Exceptions—
Significant Change in Law—Appellate Decision—Retroactivity—O’Dell Case**

Whether this court’s decision in *State v. O’Dell*, [183 Wn.2d 680, 696, 358 P.3d 359 \(2015\)](#), or the United States Supreme Court’s decision in *Miller v. Alabama*, 567 U.S. 460, 469-70, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), constitutes a significant, material, and retroactive change in the law under [RCW 10.73.100\(6\)](#), exempting from the time limit on collateral relief a personal restraint petition challenging a sentence of life without release for aggravated first degree murder brought by a petitioner who was 20 years old when he committed the offense.

No. 96773-3, *In re Pres. Restraint of Bartholomew*, (petitioner).

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**Prisons—Disciplinary Proceeding—Mandamus and Prohibition—Availability—
Alleged Sexual Misconduct by Correctional Officer—Allegedly False Report—
Statutory Right to Report—Statutory Immunity**

Whether a prison inmate may challenge a pending disciplinary action by means of a petition for a writ of mandamus or prohibition seeking to preclude the prison superintendent from conducting a disciplinary hearing claimed to be unlawful, and if so, whether [Department of Corrections Policy 490.860](#), which authorizes disciplinary action against an inmate if the superintendent determines that the inmate provided false information that caused an innocent person to be accused, impermissibly chills the inmate’s right to report alleged sexual misconduct by a correctional officer under the Prison Rape Elimination Act, 34 U.S.C. § 30301, et seq., and whether the inmate’s allegedly false report of sexual misconduct is immune from disciplinary action under [RCW 4.24.510](#).

No. 97232-0, *Williams* (petitioner) v. *Wofford, et al.* (respondents).

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Taxation—Local Tax—Excise Tax—Authority—City Tax on Utility District Water and Sewer Services—Governmental Immunity Doctrine—Due Process—Privileges and Immunities

Whether the city of Federal Way as a municipal corporation has authority under [RCW 35A.82.020](#) to impose an excise tax on a utility district's water and sewer services despite governmental tax immunity, and if so, whether the excise tax otherwise violates state constitutional due process or privileges and immunities principles.

No. 96585-4, *Lakehaven Water & Sewer Dist., et al.* (appellant) v. *City of Federal Way* (respondent).

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Cases Set for Oral Argument

Attorney and Client—Practice of Law—Unauthorized Practice—“Practice of Law”—GR 24 Testimony and Evidence—Instruction Using Language of GR 24—Validity—Comment on Evidence

Whether in this criminal prosecution for the unlawful practice of law, the trial court improperly commented on the evidence by using [GR 24](#) to instruct the jury on the definition of “practice of law” when an expert witness had testified that [GR 24](#) defined the term and the text of [GR 24](#) was admitted into evidence.

No. 96775-0, *State (respondent) v. Yishmael (petitioner)*. (Oral argument: 9/10/19). (*See also*: [Attorney and Client—Practice of Law—Unauthorized Practice—Strict Liability Offense](#); [Attorney and Client—Practice of Law—Unauthorized Practice—“Practice of Law”—Validity—Vagueness](#)).

[6 Wn. App. 2d 203 \(2018\)](#).

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Attorney and Client—Practice of Law—Unauthorized Practice—Strict Liability Offense

Whether the crime of unlawful practice of law, [RCW 2.48.180\(3\)](#), is a strict liability offense.

No. 96775-0, *State (respondent) v. Yishmael (petitioner)*. (Oral argument 9/10/19). (*See also*: [Attorney and Client—Practice of Law—Unauthorized Practice—“Practice of Law”—Validity—Vagueness](#); [Attorney and Client—Practice of Law—Unauthorized Practice—“Practice of Law”—GR 24 Testimony and Evidence—Instruction Using Language of GR 24—Validity—Comment on Evidence](#)).

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Attorney and Client—Practice of Law—Unauthorized Practice—“Practice of Law”—Validity—Vagueness

Whether the statute establishing the crime of unlawful practice of law, [RCW 2.48.180\(3\)](#), is unconstitutionally vague as to the meaning of “practice of law.”

No. 96775-0, *State* (respondent) *v.* *Yishmael* (petitioner). (Oral argument: 9/10/19). (*See also*: [Attorney and Client—Practice of Law—Unauthorized Practice—Strict Liability Offense](#); [Attorney and Client—Practice of Law—Unauthorized Practice—“Practice of Law”—GR 24 Testimony and Evidence—Instruction Using Language of GR 24—Validity—Comment on Evidence](#)).

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Automobiles—Arrest—Traffic Violation—Detention for Questioning—Validity—Turns—Signal—Necessity—Turn Out of Turn-Only Lane

Whether in this prosecution for driving under the influence, a police officer lacked probable cause to stop the defendant for failing to signal because the defendant, having signaled before entering a left-turn only lane, was not statutorily required to reactivate his signal when making the left turn at the intersection unless public safety was implicated.

No. 96884-5, *State* (petitioner) *v.* *Brown* (respondent). (Oral argument 10/29/19).

[7 Wn. App. 2d 121 \(2019\)](#).

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Carriers—Taxation—Transportation Services—Operation of School Buses— Under Contract with School Districts—Classification

Whether a school bus operator is an operator of transportation services “for hire,” and thus is subject to the public utility tax, chapter [82.16 RCW](#), rather than the business and occupations tax, chapter [82.04 RCW](#).

No. 96694-0, *First Student, Inc.* (petitioner) *v.* *State, Dep’t of Revenue* (respondent).
(Oral argument: 9/12/19).

[4 Wn. App. 2d 857 \(2018\)](#).

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Civil Rights—Law Against Discrimination—Exemptions—Religious Organizations—Validity—Sexual Orientation—Staff Attorney Position— Applicability

Whether in this employment discrimination suit against a religious organization, the exclusion of religious and sectarian organizations from the Washington Law Against Discrimination shields the defendant from liability for refusing to hire an applicant for a staff attorney position in the defendant’s legal clinic based on the applicant’s sexual orientation.

No 96132-8. *Woods* (appellant) *v.* *Seattle’s Union Gospel Mission* (appellee). (Oral argument: 10/10/19).

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Constitutional Law—Right to Privacy—State Guaranty—Searches and Seizures—Mandatory Impoundment of Vehicle Incident to Arrest for Driving Under the Influence—Validity

Whether [RCW 46.55.360](#) (also known as Hailey’s Law), which requires the impoundment of a vehicle for at least 12 hours when the driver is arrested for driving under the influence, violates article I, section 7 of the Washington Constitution, requiring the suppression in a criminal prosecution of evidence seized in an inventory search conducted incident to an impoundment.

No. 96183-2, *State* (petitioner) *v. Villela* (respondent). (Oral argument 9/10/19).

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Counties—Use of Public Right-of-Way—Utility Services—Franchised Right—Charge of Rent—Validity

Whether King County has authority to charge public and private utilities rent for the utilities’ use of rights-of-way along county roads.

No. 96360-6, *King County* (petitioner) *v. King County Water Dists. & Ames Lake, et al.* (respondent). (Oral argument: 9/17/19).

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Courts—Superior Court—Judicial Records—Form—Paper or Electronic—Authority of Judges

Whether the judges of the Benton and Franklin County Superior Courts had authority to enact a local rule requiring the superior court clerks to maintain paper records for all cases and prohibiting them from implementing electronic paperless records systems without the judges’ written approval.

No. 96821-7, *The Judges of Benton & Franklin Counties Superior Court* (respondents) *v. Killian* (appellant). (Oral argument 11/12/19).

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Credit—Collection—State Collection Agency Act—Collection Efforts—What Constitutes—Communications Between Attorneys

Whether a judgment holder violates Washington’s Collection Agency Act when its attorney communicates by email to the judgment debtor’s attorney demanding more money than the judgment holder is entitled to.

No. 96853-5, *Fireside Bank, fka Fireside Thrift Co.* (respondent) v. *Askins* (petitioner). (Oral argument: 10/22/19). (See also: [Judgment—Vacation—Scope—Affirmative Relief—Show Cause Hearing Under CR 60\(b\)—Authority of Court](#)).

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Criminal Law—Duress—Applicability—Aggravated First Degree Murder—Aggravating Factor

Whether in a prosecution for aggravated first degree murder predicated on kidnapping, the defendant was entitled to assert a duress defense to the kidnapping aggravating factor.

No. 96777-6, *State* (respondent) v. *Whitaker* (petitioner). (Oral argument: 10/22/19).

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**Criminal Law—Preliminary Appearance—Jurisdiction—Superior Court—
District Court Case—Priority of Action Doctrine**

Whether the Stevens County Superior Court may conduct preliminary appearance hearings and enter related orders in all Stevens County misdemeanor and gross misdemeanor cases involving in-custody defendants, even when the charge is filed in Stevens County District Court and the district court has assumed exclusive jurisdiction over the trial process.

No. 97071-8, *State (respondent) v. Stevens County Dist. Court Judge (petitioner)*. (Oral argument 10/24/2019).

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Criminal Law—Punishment—Sentence—Juvenile Offenders—*Miller v. Alabama*—*Miller Fix*—Indeterminate Sentence Review Board—Petition for Early Release—Factors—Remedy for Improper Denial of Release

Whether in this offender’s petition for early release pursuant to [RCW 9.94A.730](#) for crimes committed as a juvenile, the Indeterminate Sentence Review Board (ISRB), in denying release, considered improper factors, including the underlying crimes, victim impact, and the portion of the offender’s sentence already served, and if so, whether the proper remedy is to remand to the board for reconsideration under appropriate evaluation factors or, as the Court of Appeals ordered here, remand with directions to release the offender after establishing release conditions.

No. 96695-8, *In re Pers. Restraint of Brashear* (respondent). (**Stricken**).

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Criminal Law—Punishment—Sentence—Juvenile Offenders—*Miller v. Alabama*—*Miller Fix*—Resentencing—Direct Appeal—Conversion to Personal Restraint Petition—Validity

Whether a resentencing pursuant to *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), and the *Miller*-fix statute, [RCW 10.95.030\(3\)](#), may be challenged under the terms of the statute only by a personal restraint petition, and if so, whether requiring an appellate challenge to be made by personal restraint petition violates a defendant's right to appeal under article 1, section 22, of the Washington Constitution.

No. 96709-1. [State \(petitioner\) v. Delbosque \(respondent\)](#). (Oral argument: 9/12/19). (See also: [Criminal Law—Punishment—Sentence—Juvenile Offenders—*Miller v. Alabama*—*Miller Fix*—Resentencing—Findings of Fact](#)).

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Criminal Law—Punishment—Sentence—Juvenile Offenders—*Miller v. Alabama*—*Miller Fix*—Resentencing—Findings of Fact

Whether in this case involving juvenile resentencing pursuant to *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), the superior court's findings leading to the imposition of a 48-year minimum sentence were supported by substantial evidence where the court found that the defendant had an ongoing attitude towards others reflective of the underlying crime and that the aggravated first degree murder he committed when he was 17 was not symptomatic of transient immaturity, and whether the trial court otherwise complied with the *Miller*-fix statute, [RCW 10.95.030\(3\)](#), in setting the defendant's minimum term.

No. 96709-1, [State \(petitioner\) v. Delbosque \(respondent\)](#). (Oral argument: 9/12/19). (See also: [Criminal Law—Punishment—Sentence—Juvenile Offenders—*Miller v. Alabama*—*Miller Fix*—Resentencing—Direct Appeal—Conversion to Personal Restraint Petition—Validity](#)).

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**Criminal Law—Self-Defense—Aggressor—Instructions—Evidence in Support—
Incident-Provoking Conduct—Charged Assault—Single Course of Conduct**

Whether in this prosecution for assault in which the defendant claimed self-defense, a provoking act that was the basis for a first aggressor instruction may consist of the charged act of assault if credible evidence shows that the defendant first drew his weapon leading in a single course of conduct to the charged assault.

No. 97183-8, *State (petitioner) v. Grott (respondent)*. (Oral argument 11/19/19). (*See also: Criminal Law—Self-Defense—Aggressor—Instructions—Issue Not Raised in Trial Court—Manifest Constitutional Error—Determination—Right to Counsel—Effective Assistance of Counsel—Failure to Object to Instruction*)

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**Criminal Law—Self-Defense—Aggressor—Instructions—Issue Not Raised in
Trial Court—Manifest Constitutional Error—Determination—Right to
Counsel—Effective Assistance of Counsel—Failure to Object to Instruction**

Whether in this prosecution for second degree murder and first degree assault in which the defendant claimed self-defense, the giving of a first aggressor instruction claimed to be unsupported by the evidence constituted a manifest constitutional error properly reviewed by the Court of Appeals for the first time on appeal, and if not, whether defense counsel was ineffective in not objecting to the instruction.

No. 97183-8, *State (petitioner) v. Grott (respondent)*. (Oral argument 11/19/19). (*See also: Criminal Law—Self-Defense—Aggressor—Instructions—Evidence in Support—Incident-Provoking Conduct—Charged Assault—Single Course of Conduct*).

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Criminal Law—Trial—Presence of Defendant—Right to be Present—Waiver—What Constitutes—Pro Se Defendant—Removal for Disruptive Behavior—Voluntariness of Waiver—Further Conduct of Trial—Validity

Whether in this criminal prosecution in which the defendant represented himself, the defendant voluntarily absented himself from trial and waived his right to be present through his disruptive behavior, and if so, whether the court properly allowed witnesses to testify in the defendant’s absence.

No. 96663-0, *State (respondent) Davis (petitioner)*. (Oral argument: 10/10/19).

[6 Wn. App. 2d 43 \(2018\)](#).

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Declaratory Judgment—Parties—Standing—Test

Whether the plaintiffs in this case, who include an individual excused from jury service due to economic hardship and an individual who served as a juror, have standing to seek a declaratory judgment on whether [RCW 2.36.080\(3\)](#) created a private right of action for disparate impact based on economic status and whether jurors are “employees” entitled to the minimum wage under the Minimum Wage Act, ch. [49.46 RCW](#).

No. 96990-6, *Bednarczyk, et al. (appellants) v. King County (respondent)*. (*See also: Jury—Selection—Nondiscrimination—Economic Status—Implied Right of Action; Employment—Compensation—Minimum Wage—Statutory Provisions—“Employee”—Scope—Jurors*). (Oral argument 10/29/19).

[7 Wn. App. 2d 647 \(2019\)](#).

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**Discovery—Privilege—Marriage-Therapist
Order—Scope—Privacy—Relevance**

Privilege—Waiver—Protective

Whether in this medical negligence lawsuit stemming from misdiagnosis of cancer in an infant, the defendant physicians are entitled to discovery of the parents' marriage counselling records on the basis they may be relevant to contest the parents' claim for emotional distress damages, even though the records are concededly privileged under [RCW 5.60.060\(9\)](#).

No. 96669-9, *Magney* (petitioner) v. *Pham, M.D., et al.* (respondents). (Oral argument: 11/14/19).

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**Elections—Fair Campaign Practice Act—Campaign Contributions—Identities of
Contributors—Concealment—Statutory Provision—Validity**

Whether in a civil action by the State alleging concealment of the source of a campaign contribution in violation of [RCW 42.17A.435](#) of the Fair Campaign Practices Act, the State may rely solely on evidence that the defendant failed to register as a political committee and failed to report contributions as required under [RCW 42.17A.205\(1\)](#) and [RCW 42.17A.235\(1\)](#).

No. 96604-4, *State* (respondent) v. *Grocery Mfrs. Ass'n* (petitioner). (Oral argument: 10/22/19). (See also: [Elections—Fair Campaign Practice Act—“Political Committee”—Reporting Requirement—Validity—First Amendment—Adverse Consequences to Organization’s Members; Elections—Fair Campaign Practice Act—Enforcement—Civil Remedies—Treble Damages—Intentional Conduct—Subjective Intent](#)).

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Elections—Fair Campaign Practice Act—Enforcement—Civil Remedies—Treble Damages—Intentional Conduct—Subjective Intent

Whether, to obtain treble damages under [RCW 42.17A.765\(5\)](#) on the basis of an “intentional” Fair Campaign Practices Act violation, the State must prove that the defendant knowingly violated the act.

No. 96604-4, *State (respondent) v. Grocery Mfrs. Ass’n (petitioner)*. (Oral argument: 10/22/19). (See also: [Elections—Fair Campaign Practice Act—“Political Committee”—Reporting Requirement—Validity—First Amendment—Adverse Consequences to Organization’s Members](#); [Elections—Fair Campaign Practice Act—Campaign Contributions—Identities of Contributors—Concealment—Statutory Provision—Validity](#)).

State’s petition for review.

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Elections—Fair Campaign Practice Act—“Political Committee”—Reporting Requirement—Validity—First Amendment—Adverse Consequences to Organization’s Members

Whether provisions of the Fair Campaign Practices Act, chapter [42.17A RCW](#), requiring “political committees” to disclose campaign contributors’ identities violate First Amendment freedom of speech and freedom of association principles.

No. 96604-4, *State (respondent) v. Grocery Mfrs. Ass’n (petitioner)*. (Oral argument: 10/22/19). (See also: [Elections—Fair Campaign Practice Act—Campaign Contributions—Identities of Contributors—Concealment—Statutory Provision—Validity](#); [Elections—Fair Campaign Practice Act—Enforcement—Civil Remedies—Treble Damages—Intentional Conduct—Subjective Intent](#)).

State’s petition for review.

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Employment—Compensation—Minimum Wage—Overtime—Agricultural Exclusion—Validity—Privileges and Immunities—Equal Protection

Whether the agricultural exclusion from the overtime pay requirement of the Washington Minimum Wage Act violates article I, section 12 of the Washington Constitution, which bars laws granting to any citizen, class of citizens, or non-municipal corporation privileges or immunities not equally belonging to all citizens or corporations.

No. 96267-7, *Martinez-Cuevas, et al.* (petitioners, cross-respondents) v. *DeRuyter Bros. Dairy, Inc., et al.* (respondents, cross-petitioners). (Oral argument: 10/24/19).

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Employment—Compensation—Minimum Wage—Statutory Provisions—“Employee”—Scope—Jurors

Whether jurors constitute “employees” under the Minimum Wage Act, ch. [49.46 RCW](#), entitling them to be paid the minimum wage for their service.

No. 96990-6, *Bednarczyk, et al.* (appellants) v. *King County* (respondent). (See also: [Jury—Selection—Nondiscrimination—Economic Status—Implied Right of Action; Declaratory Judgment—Parties—Standing—Test](#)). (Oral argument 10/29/19).

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Employment—Conditions of Labor—Meal Periods—Denial of Meal Periods—Withholding of Wages—Right of Action—Labor Union—Associational Standing

Whether the Washington State Nurses Association has associational standing to sue on behalf of its members for unpaid wages and missed meal breaks.

No. 97532-9, *Wash. State Nurses Ass'n* (respondent/cross appellant) v. *Yakima HMA, LLC d/b/a Yakima Reg'l Med. & Cardiac Ctr.* (appellant/cross respondent). Oral argument 11/14/19). (See also: [Parties—Standing—Organizational Standing—Claim for Damages for Denial of Meal Periods and Withholding of Wages—Certainty of Damages—Representative Testimony—Sufficiency](#)).

Certified from Washington, Division III Court of Appeals.

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Indictment and Information—Amendment—Date of Crime—Charging Period—Enlargement—After State and Defense Rested—Prejudice

Whether in this prosecution for child molestation, an amendment to the information enlarging the time period during which the crime allegedly occurred, made after both the State and defense rested their cases, prejudiced the defendant in violation of article I, section 22 of the Washington Constitution.

No. 97150-1, *State* (respondent) v. *Brooks* (petitioner). (Oral argument 11/19/19)

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Indictment and Information—Sufficiency—Notice of Charge—School Bus Route Stop Sentence Enhancement

Whether in a prosecution for a drug delivery offense in which the State sought to impose a school bus stop sentence enhancement, the information was deficient in alleging that the delivery occurred within 1,000 feet of a “school bus route” rather than within 1,000 feet of a “school bus route stop,” as provided in [RCW 69.50.435\(1\)\(c\)](#).

No. 97148-0, *State (respondent) v. Hugdahl (petitioner)*. (Oral argument 11/19/19).

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Insurance—Consumer Protection—Automobile Insurance—Unlawful Limits or Unlawful Termination of Personal Injury Protection Benefits—Remedy

Whether injured automobile insureds whose personal injury protection (PIP) benefits were terminated or limited in violation of [WAC 284-30-330](#) may bring a Consumer Protection Act claim against the insurer to recover out-of-pocket medical expenses and/or compel payments to medical providers, and to recover excess premiums paid for the PIP coverage, the costs of investigating the unfair acts, and/or the time lost complying with the insurer’s unauthorized demands.

No. 96931-1, *Peoples, et al. (plaintiffs) v. United Servs. Auto. Ass’n, et al. (defendants)*. (Oral argument: 9/19/19).

Certified from the United States District Court Western District of Washington, No. C18-1173RSL.

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Insurance—Duty to Defend—Determination—Benefit of Doubt—Insurer’s Bad Faith—Title Insurance—Exclusions—Easements Undisclosed by Public Records—Indian Shellfish Harvesting Treaty Right

Whether in an action for breach of a title insurer’s duty to defend, the insured proved a breach and the insurer’s bad faith where the insurer refused to defend against an Indian tribe’s asserted right to harvest shellfish from the insured’s tidelands on the basis of a policy exclusion for easements not disclosed by the public record.

No. 96726-1, *Robbins* (respondent) v. *Mason County Title, et al.* (petitioner). (Oral argument: 9/19/19). (See also: [Judgment—Summary Judgment—Scope of Relief—Affirmative Defenses Not Encompassed by Motion for Summary Judgment](#)).

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Judges—Disqualification—Affidavit of Prejudice—Timeliness—Exercise of Discretion—Motions—Joint Motion—Agreed Order Extending Discovery Deadlines

Whether in this civil product liability case, the trial judge’s ruling on an agreed motion continuing witness disclosure deadlines was a “discretionary ruling” disallowing any party from thereafter filing an affidavit of prejudice against the judge pursuant to [RCW 4.12.050](#).

No. 96952-3, *Godfrey & Kornfeld* (respondent) v. *Ste. Michelle Wine Estates, Ltd., et al.* (petitioners). (Oral argument: 9/17/19).

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Judgment—Summary Judgment—Scope of Relief—Affirmative Defenses Not Encompassed by Motion for Summary Judgment

Whether an insurer's affirmative defenses to a claim of breach of the duty to defend survived the plaintiff's summary judgment motion where the plaintiff did not specifically move for summary dismissal of the defenses and the insurer claimed that further discovery was required related to the defenses.

No. 96726-1, *Robbins (respondent) v. Mason County Title, et al. (petitioner)*. (Oral argument: 9/19/19). (See also: [Insurance—Duty to Defend—Determination—Benefit of Doubt—Insurer's Bad Faith—Title Insurance—Exclusions—Easements Undisclosed by Public Records—Indian Shellfish Harvesting Treaty Right](#)).

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Judgment—Vacation—Scope—Affirmative Relief—Show Cause Hearing Under CR 60(b)—Authority of Court

Whether, in an action on a judgment creditor's purported Collection Agency Act violation, the judgment debtor may seek relief through a [CR 60](#) motion to vacate the underlying judgment.

No. 96853-5, *Fireside Bank, fka Fireside Thrift Co. (respondent) v. Askins (petitioner)*. (Oral argument: 10/22/19). (See also: [Credit—Collection—State Collection Agency Act—Collection Efforts—What Constitutes—Communications Between Attorneys](#)).

[6 Wn. App. 2d 431 \(2018\)](#).

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Jury—Selection—Nondiscrimination—Economic Status—Implied Right of Action

Whether an implied private cause of action for disparate impact exists under [RCW 2.36.080\(3\)](#), which prohibits the exclusion of any Washington citizen from jury service on account of economic status.

No. 96990-6, *Bednarczyk, et al. (appellants) v. King County (respondent)*. (See also: [Employment—Compensation—Minimum Wage—Statutory Provisions—“Employee”—Scope—Jurors; Declaratory Judgment—Parties—Standing—Test](#)). (Oral argument 10/29/19).

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Juveniles—Juvenile Justice—Right to Counsel—Effective Assistance of Counsel—Constitutional Adequacy of Indigent Defense Services—Duty to Ensure—State—Actionability

Whether the State of Washington or the Washington State Office of Public Defense has an actionable duty to cure claimed systemic and significant deficiencies in a county’s provision of indigent defense services to juveniles charged with criminal offenses.

No. 96766-1, *Davidson, et al., (plaintiffs) v. State, et al. (defendants)*. (Oral argument: 11/12/19).

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Municipal Corporations—Ordinances—Initiatives—Employee Rights—City of Seattle Initiative 124—Validity—Subject and Title Requirements—Rational Unity

Whether I-124, a city of Seattle initiative that concerns health, safety, and labor standards for Seattle hotel employees, lacks rational unity in violation of the single subject rule.

No. 96781-4, *Am. Hotel & Lodging Ass'n* (respondent) v. *City of Seattle, et al.* (petitioners). **(Stricken)**. (See also: [Municipal Corporations—Ordinances—Initiatives—Validity—Subject and Title Requirements—Single Subject—Statutory Provisions—Applicability to First Class Charter Cities](#)).

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Municipal Corporations—Ordinances—Initiatives—Validity—Subject and Title Requirements—Single Subject—Statutory Provisions—Applicability to First Class Charter Cities

Whether [RCW 35A.12.130](#), which requires municipal ordinances and initiatives to contain no more than one subject, applies to first class charter cities such as the city of Seattle.

No. 96781-4, *Am. Hotel & Lodging Ass'n* (respondent) v. *City of Seattle, et al.* (petitioners). **(Stricken)**. (See also: [Municipal Corporations—Ordinances—Initiatives—Employee Rights—City of Seattle Initiative 124—Validity—Subject and Title Requirements—Rational Unity](#)).

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**Negligence—Juveniles—Child Abuse—Investigating—Government Duty—
Report of Child Abuse or Neglect—Scope—Statutory Reporting Duty—Possible
Future Abuse or Neglect—Proposed Placement**

Whether in this negligence action against the Department of Children, Youth, and Families arising out of the death of a child at the hands of his birth father after the child was removed from his birth mother and placed with the father, allegations the mother relayed to the department about the father’s past acts of violence against her and warning that the child would die if placed with the father amounted to “a report concerning the possible occurrence of [child] abuse or neglect” within the meaning of [RCW 26.44.050](#), triggering the department’s duty to investigate.

No. 96830-6, *Wrigley, et al. (respondents) v. State of Wash., DSHS, et al. (petitioners)*.
(Oral argument: 10/10/19).

[5 Wn. App. 2d 909 \(2018\)](#).

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**Open Government—Public Disclosure—Judicial Review—Right to Review—
Final Agency Action—What Constitutes—County Ordinance—Requirement to
Petition Prosecutor for Review of Records Request Denial—Administrative
Exhaustion Requirement—Validity**

Whether San Juan County ordinance [SJC 2.108.130 \(C\) and \(D\)](#) impermissibly imposes as a prerequisite to a Public Records Act lawsuit that the aggrieved records requestor petition the county prosecutor for review of a county agency’s denial of a records request.

No. 95937-4, *Kilduff* (petitioner) v. *San Juan County, et al.* (respondent). (Oral argument 10/29/19). (See also: [Quo Warranto—Private Action—Standing—Special Interest—Entitlement to Office—Necessity—Costs—Attorney Fees—Frivolous Claim or Defense](#)).

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Parties—Standing—Organizational Standing—Claim for Damages for Denial of Meal Periods and Withholding of Wages—Certainty of Damages—Representative Testimony—Sufficiency

Whether in this action by a nurses’ labor union seeking damages for the denial of meal periods and the withholding of wages, the testimony of nurse witnesses was sufficiently representative and was properly used to establish liability and damages.

No. 97532-9, *Wash. State Nurses Ass’n* (respondent/cross appellant) v. *Yakima HMA, LLC d/b/a Yakima Reg’l Med. & Cardiac Ctr.*(appellant/cross respondent). (Oral argument 11/14/19). (See also: [Employment—Conditions of Labor—Meal Periods—Denial of Meal Periods—Withholding of Wages—Right of Action—Labor Union—Associational Standing](#)).

Certified from Washington, Division III Court of Appeals.

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Personal Restraint—Petition—Denial of Petition—Finality—What Constitutes

Whether for purposes of determining the timeliness of a federal petition for a writ of habeas corpus, the time limit for which is tolled while a state postconviction petition is “pending,” the denial of a Washington personal restraint petition is final on the date the Washington Supreme Court denies a motion to modify a ruling of its commissioner denying discretionary review of the Court of Appeals denial of the petition, or rather when the clerk of the Court of Appeals issues a certificate of finality as required by [Rule 16.15\(e\)\(1\)\(c\)](#) of the Rules of Appellate Procedure.

No. 96980-9, *Phongmanivan* (petitioner) v. *Haynes* (respondent). (Oral argument 11/14/19).

Certified from U.S. Court of Appeals for the Ninth Circuit.

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Products Liability—“Seller”—“Manufacturer”—Temporary Use Product—Amusement Ride

Whether a sale for temporary use of a product such as an amusement ride makes the owner of the product a “seller” of a product potentially subject to liability under the Washington Product Liability Act, and if so, whether the owner is a “manufacturer” under the act when it disassembles and reassembles, constructs, overhauls, or changes the ride before it is put into commerce.

No. 97223-1, *Swartwood, et al.* (plaintiffs) v. *Fun-Tastic Shows, Inc., et al.* (defendants). (**Stricken**). (See also: [Products Liability— Washington Product Liability Act—“Apparent Manufacturer” Liability—Tests— Objective Reliance Test—Applicability](#)).

Certified from U.S. District Court, Western District of Wash., Fed. No. C17-5971 BHS.

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Products Liability—Washington Product Liability Act—“Apparent Manufacturer” Liability—Tests—Objective Reliance Test—Applicability

Whether in an action under the Washington Product Liability Act, only the factors articulated in *Ruble v. Carrier Corp.*, 192 Wn.2d 190, 210-11 (2018), are relevant in determining whether the owner of a product held itself out as a manufacturer, or whether additional factors such as those articulated in *Cadwell Industries, Inc. v. Chenbro America, Inc.*, 119 F. Supp. 2d 1110 (E.D. Wash. 2000), may also be relevant.

No. 97223-1, *Swartwood, et al.* (plaintiffs) v. *Fun-Tastic Shows, Inc., et al.* (defendants). (**Stricken**). (See also: [Products Liability—“Seller”—“Manufacturer”—Temporary Use Product—Amusement Ride](#)).

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Prosecuting Attorneys—Disqualification—Conflict of Interest—Disqualification of Entire Prosecuting Attorney’s Office—Necessity

Whether, in this first degree murder prosecution involving retrial on remand, the entire Grant County Prosecuting Attorney’s Office must recuse itself based on a conflict of interest where the newly-elected prosecuting attorney represented the defendant as a consulting attorney in the first trial but had no involvement on remand.

No. [96943-4](#), *State* (petitioner) *v.* *Nickels* (respondent). (Oral argument: 9/19/19).

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Quo Warranto—Private Action—Standing—Special Interest—Entitlement to Office—Necessity—Costs—Attorney Fees—Frivolous Claim or Defense

Whether an action for quo warranto seeking to oust a county council member from a simultaneously-held county office was frivolous where the plaintiff had no special interest in the office, and if so, whether the trial court permissibly sanctioned the plaintiff under [CR 11](#) and [RCW 4.84.185](#).

No. [95937-4](#), *Kilduff* (petitioner) *v.* *San Juan County, et al.* (respondent). (Oral argument 10/29/19). (*See also:* [Open Government—Public Disclosure—Judicial Review—Right to Review—Final Agency Action—What Constitutes—County Ordinance—Requirement to Petition Prosecutor for Review of Records Request Denial—Administrative Exhaustion Requirement—Validity](#))

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Taxation—Motor Vehicle Excise Tax—Funding of High Capacity Transportation Service—Statutory Provisions—Validity—Amending Legislation

Whether [RCW 81.104.160\(1\)](#), which authorizes the imposition of a motor vehicle excise tax to fund high capacity transportation services, violates article II, section 37 of the Washington Constitution, which prohibits the revision or amendment of an act by mere reference to its title, and requires amending legislation to set forth the full text of the amended section.

No. 97195-1, *Black, et al.* (appellants) v. *Cent. Puget Sound Reg'l Transit Auth. & State* (respondents). (Oral argument 9/10/19).

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Torts—Wrongful Death—Public Duty Doctrine—Exceptions—Enforcement of Statute—Summary Judgment—Conditional Grant Pending Jury Findings on Reasonableness of Government's Actions—Validity

Whether in a wrongful death suit alleging that a county health department negligently failed to warn medical providers within its jurisdiction of a health risk relating to Hantavirus, the superior court erred in “conditionally” granting the plaintiff’s motion for partial summary judgment, ruling that application of the failure to enforce exception to the public duty doctrine would depend on the jury determining whether the county’s actions in light of a previous nonfatal Hantavirus case were “appropriate” under [WAC 246-101-505](#).

No. 96464-5, *Ehrhart* (respondent) v. *King County, et al.* (petitioner). (Oral argument: 11/12/19).

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