

71790-1

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COA No: 71790-1
No. 89099-4

SUPREME COURT OF THE STATE OF WASHINGTON

WILL KNEDLIK,

Appellant,

v.

COUNTY OF SNOHOMISH,

Respondent.

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BRIEF OF APPELLANT

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I. INTRODUCTION

Civil litigation below and consequent appeal herein result from vast-and-egregious wrongdoing by the most recently elected and yet more recently resigned Snohomish County Executive, formerly Honorable Aaron Reardon, and from affirmative acts both violative of a fundamental state constitutional right of citizens harmed personally by his misfeasance, or his malfeasance, to halt that civil-or-criminal misconduct by means of our state civil right of recall (under Article I, sections 33-34), and also contrary to a further state statutory right to reballoting since Mr. Reardon's nominal victory, in 2011, rested on literally thousands of thefts of taxpayer-funded assets and of public facilities by him, and by other county managers, in order for his reelection campaign to prevail, thereby, only by destroying the integrity of that election and all public trust in the tainted outcome thereof (under RCW 42.17A.765 as an essential element of Initiative 276 as created by state citizens to clean up politics here).

That series of affirmative acts by the Snohomish County Prosecutor, Honorable Mark Roe, not only shielded a patent malefactor by abusing both a quintessential state constitutional right of citizens to recall miscreants from office for cause, and also a pivotal statutory right to protect electoral integrity *via* a "citizen action" novation legislated to afford reballoting, but thus aided manipulation that has allowed their political party to retain the highest partisan county office notwithstanding almost certain loss thereof under state statutes.

Even if Mr. Roe did not act with **actual** bad faith to preserve the chief executive position in Snohomish County for the Democratic Party – through machinations both violative of Article I, sections 33-34 and also contrary to RCW 42.17A.765 – legal cover was provided so as to allow a brazen thief of government properties to manipulate his replacement with another Democrat, as appointed through his strategically timed resignation *qua* partisan sleight-of-hand, to thwart our state’s applicable statute for rectifying the 2011 election befouled by him (instead of losing that office in reballoting to his Republican opponent therein, Honorable Mike Hope, who was and is a state legislator).

Nor is *res ipsa loquitur* political manipulation squarely beneficial for the Democratic Party – and concomitantly harmful for the Republican Party – the most troubling aspect of Mr. Roe’s effective sheltering for Mr. Reardon, initially by affirmatively preventing the Snohomish County Auditor from fulfilling her lawful duties to process a petition to recall Mr. Reardon filed with her office on February 28, 2012, and of his effective protection of the highest partisan office in Snohomish County government for his own party thereafter, **first** by failing to exercise his legal ability established by RCW 42.17A.750 *et sequens* to initiate reballoting procedures, despite **two** mandatory notices from appellant, and **later** by acting to prevent the “citizen action” authorized, including explicit misrepresentation to the trial court purporting lack of information about Mr. Reardon’s wrongdoing despite facts that he clearly knew.

That Mr. Reardon was a rogue pretender is largely beyond dispute – even if some *compos mentis* supporter could be located, at this juncture, among state citizens, elected officials or editorial writers – as the piteous-but-obvious reality that forced his self-announced plans to resign soon after *The Herald* in Everett began to add its follow-on series of damning articles in 2013 to its earlier award-winning investigative reporting that had detailed his *modus operandi* of deceit, political maneuvering and pervasive theft.

Adverse consequences from misfeasant-or-malfeasant wrongdoing by Mr. Reardon that continue to damage state citizens living in Snohomish County, and in a junior taxing district encompassing a majority of residents there as well as in King and Pierce counties, are the core *foci* of this appeal, together with related misadventures due to repeated subversions of Article I, sections 33-34, and of RCW 42.17A.750 *et sequens*, that have assisted in, and extended, harm to taxpayers through affirmative acts violative thereof.

State citizens not only deserve a government that operates honestly at state, regional and local levels – through rigorous fiducial responsibility owed to every resident in myriad local jurisdictions, and in even more junior taxing districts, by all elected officials therein based on those oaths of office required of each public officer serving the People as the source of all legitimate power under Article I, section 1 – but we have demanded and obtained it, as our right, through those provisions so abused *via* unilateral prosecutorial nullifications.

II. ASSIGNMENTS OF ERROR AND RELATED MATTERS

A. Assignments of Error and Issues Pertaining Thereto

Among numerous issues presented for legal review, and otherwise implicated by summary disposition in the trial court, the most critical are:

Can the central ill-gotten booty from a totally corrupted election for a partisan office through massive thefts of taxpayer-financed assets and through exploitation of those wrongfully misappropriated public resources in order to advantage the candidacy of one party and to disadvantage the candidacy of the other party – in this instance in order thereby to steal the election for the highest partisan office in Snohomish County for the incumbent Democrat, then-Honorable Aaron Reardon, and from the Republican challenger, Honorable Mike Hope – be preserved by the partisan county prosecutor’s passive failures on two occasions to seek reballoting initially, pursuant to his preemptive right thereby to preclude a “citizen action” herein at issue, under RCW 42.17A.765, and by said partisan prosecutor’s subsequent affirmative acts to prevent such “citizen action” based upon the patently bogus claim made to the trial court, below, that he had lacked sufficient information to determine whether or not to exercise his preemptive right, under Initiative 276, notwithstanding that he had requested, and obtained, a report from the Washington State Patrol that documented literally thousands of thefts of public assets central to this appeal in its 13,500 pages of documentation?

Do state citizens bear an evidentiary burden, in order to pursue legal reballoting rights, beyond all procedural requirements established by state law as to notice, twice, to government legal authorities *vis-à-vis* their preemptive legal rights to seek reballoting (particularly given penalties imposed, statutorily, on citizens determined to have acted improperly in commencing any civil litigation to seek reballoting)?

Did the trial court abuse discretion in granting dismissal under the circumstances of this case respecting the core issue of reballoting to cleanse a patently corrupted election, without prejudice, when RCW 42.17A.750(1)(a)’s specified “one year” filing limitation for such reballoting thus prevents refiling, and thereby precludes this crucial statutory remedy, notwithstanding highly egregious circumstances

that underlie this case, and notwithstanding clear legislative intent of state citizens as squarely mandated therein (*i.e.* “It is intended that this remedy be imposed freely in all appropriate cases to protect the right of the electorate to an informed and knowledgeable vote”)?

Did the trial court abuse discretion in granting dismissal under the circumstances of this case regarding the core civil right of recall as guaranteed by the 8th Amendment, with prejudice, given its direct relevance were formerly Honorable Aaron Reardon to prevail over Honorable Mike Hope in the reballoting legally specified by RCW 42.17A.750 *et sequens*, given the Snohomish County Prosecutor's previously asserted preclusion by *fiat* of appellant's constitutional right to recall Mr. Reardon for misfeasance or malfeasance and for violations of his oath of office respecting his position as an officer of the Central Puget Sound Regional Transit Authority, in which such capacity his wrongdoing has directly and adversely impacted upon appellant, based upon imposition of purported requirements for his recall through additions of terms and of conditions by prosecutorial *fiat* that both go beyond and also contradict our state constitution's clear language, as thus amended, and this Honorable Court's rather broad interpretation of a constitutionally guaranteed right to recall, and given that said *fiat* interpretation both furthered Mr. Reardon's electoral misconduct for many months and also needlessly creates an issue of lethal unconstitutionality, for said junior taxing district, when adherence to clear constitutional usage and to major appellate precedents renders such issue of said unconstitutionality unnecessary?

Did the trial court abuse its discretion or commit another reversible error in dismissing both statutory claims and also constitutional litigation – notwithstanding fraud on the court at the hearing below on May 31, 2013 as outlined within Grounds for Direct Review submitted pursuant to requirements imposed through RAP 4.2(c)(3) – with other impositions less severe than dismissal readily available, and with respondent unable to claim any harm from any alternative less extreme than dismissal, since Mr. Reardon had either resigned then or else would resign within a matter of a few hours on that day?

Should issues with respect to unconstitutionality of legislation for the Central Puget Sound Regional Transit Authority implicated by denial of the fundamental civil right of recall guaranteed to appellant by our state constitution, which such *fiat* preclusion of this vital citizen inter-

est through unilateral prosecutorial nullification was nominally under color of law, be developed on remand in conjunction with other bases for judicial determination of unconstitutionality of RCW 81.104 or of RCW 81.112, *e.g.*, due process, equal protection and one-person, one-vote guarantees, *inter alia*, under state and federal constitutions?

Do issues with regard to damages for denials of the fundamental civil right of recall guaranteed to appellant by our state constitution, which preclusion thereof was nominally under color of law, require remand?

B. Standard of Review

All constitutional matters – including those that derive legally from the fundamental state civil right of recall provided by the 8th Amendment to the Washington State Constitution as now codified at Article I, sections 33-34 and that were denied affirmatively by unilateral prosecutorial nullification – are to be reviewed *de novo*. *State v. Jorgenson*, ___ Wn.2d ___ (2013).

Because of a unilateral prosecutorial nullification of that fundamental constitutional right by the Snohomish County Prosecutor – for approximately two million state citizens living in and paying *circa* \$2 million in taxes, each day, to a junior taxing district wherein Mr. Reardon nominally represented us, and wherein his wrongdoing as a statutory member of and as an initially appointed and subsequently elected officer for said district was identified in, and constituted the core of, grounds stated by the petition for his recall filed by appellant on February 28, 2012 – that office's *ex cathedra* assertions that a recall petition resulting from Mr. Reardon's misconduct, as a member of a junior taxing district covering three counties, can be presented for filing only

by one county's residents, so as thus to negate a fundamental state civil right for the vast majority of state citizens who reside in and who pay taxes to said district, thereby legally implicate creation of that junior jurisdiction, through RCW 81.104 and RCW 81.112, as unconstitutional, despite controlling state jurisprudence that squarely requires our state's judiciary to "presume a legislative enactment constitutional and, if possible, construe an enactment so as to render it constitutional," *Ibidem*, to resolve preemptory prosecutorial acts either implicating unconstitutionality of two enactments above referenced (if Mr. Roe is correct), or else yielding unconstitutional denial of the major state civil right of recall (if said unilateral prosecutorial nullification is erroneous). These pivotal issues are therefore also encompassed within *de novo* review.

Also, were related constitutional defects reviewed as to, *inter alia*, due process, equal protection and one-person, one-vote requirements, *sua sponte*, rather than examined on remand based on terms of such remand, then those matters would also be examined *de novo* since they would be *sua sponte*.

Statutory matters – including the right of a "citizen action" to obtain reballoting in rare instances in which candidate misconduct has so corrupted electoral integrity that it thereby justifies relief legislated by Initiative 276 – are legally ancillary and are, thus, appropriately reviewed *de novo* as well.

Given Initiative 276's explicit purpose of cleaning up government in our state, at all levels, from the highest of statewide offices in the executive-

and-judicial branches to the lowest rungs of public officeholders serving on the smallest of special-purpose commissions; given its directive for a liberal application of its statutory provisions for achieving that crucial *raison d'être*; given the antithesis thereof created by Mr. Reardon's vast-and-egregious misconduct through his thousands of misappropriations of taxpayer-funded public assets in order thereby to steal the election of the highest partisan office in Snohomish County in 2011, and thereby to be able to continue his abuses of taxpayers who pay nearly \$2 million each and every day to the junior taxing district which he had chaired; and given unilateral prosecutorial nullification of a core mechanism supplied by Initiative 276 to ensure basic probity by all public officials, *inter alia*, judicial analysis should be informed **both** by interference with critical constitutional-and-statutory rights by naked *fiat* acts in order affirmatively to prevent their exercise as necessary to allow citizens to review misfeasance or malfeasance by a rouge partisan pretender who, at that critical juncture, had turned much of Snohomish County government into his own melodramatic film *noir* version of a three-ring sexcapade, and who was also undermining a large junior taxing district financed by nearly 2.8 million residents in three counties paying nearly \$2 million to it, each and every day, and **also** by vile outcomes of such prosecutorial preemptions, including not simply extension of government-as-circus abuses but overt misrepresentation to the trial court, through a falsely claimed ignorance of Mr. Reardon's gar-

gantuan misconduct, in order to manipulate appointment of a replacement for Mr. Reardon so as to preserve the county executiveship for the Democratic Party, and to deny it to the Republican Party, as reviewed hereinafter, and thus to thwart the reballoting remedy legislated as a core element of Initiative 276.

Because the civil litigation below was dismissed so as to terminate both the fundamental constitutional right of recall as afforded to every state resident harmed by Mr. Reardon's wrongdoing as provided by Article I, sections 33-34 and harmed further by unilateral prosecutorial nullification, nominally under color of law but violative of fiduciary duties, and thus subject to federal damages for violations of civil rights nominally under color of law (dismissed with prejudice), and also a statutory right to a "citizen action" in order to require reballoting between Mr. Reardon and Representative Hope as provided by RCW 42.17A.750 *et sequens* (dismissed without prejudice), constitutional-and-statutory provisions are each subject to review *de novo* under principles applicable to summary judgment motions, including for all damages applicable for violations of civil rights that require remand. *Moeller v. Farmer Insurance Co. of Washington*, 173 Wn.2d 264 (2011).

While not yet apparently reviewed by this Honorable Court, "fiduciary duties are questions of law, exclusively with the province of the court," according to Professor Tamar Frankel's treatise, *Fiduciary Law*, quoting a series of Texas cases holding that "fiduciary duties arise as a matter of law."

III. STATEMENT OF THE CASE

Initial unraveling of Mr. Reardon's misfeasant-or-malfeasant tenure as Snohomish County Executive began when one of his sexual liaisons on the county payroll contacted a Snohomish County Council member averring fear for her personal safety shortly before the 2011 General Election, which claim in short order then exposed for documentation Mr. Reardon's sexual relations with multiple female county employees, including a reported *ménage à trios* tryst on a workday afternoon involving the initial complainant; Mr. Reardon's use of a county credit card to pay for a hotel "intimacy kit," included as but one of numerous revelations within a 13,500-page report as to results of an extensive criminal investigation conducted by the Washington State Patrol at the specific request of Mr. Roe; and Mr. Reardon's managerial staff *vis-à-vis* other sexual misbehavior, including unlawful misuses of county computer equipment for recording sexual or related pornographic activities, *inter alia*.

The WSP report also documented gargantuan exploitation of county computer-and-telephone equipment in order thereby to further Mr. Reardon's reelection campaign, as conducted out of the executive suite for the Snohomish County Executive, contrary to key prohibitions of Initiative 276 (including but not limited to literally hundreds of such misuses during business hours on ordinary workdays), and award winning investigative journalism by two dogged reporters employed by *The Herald*, Noah Haglund and Scott North,

has constructed a remarkably detailed time-line, together with other major demonstrative evidence of enormous misappropriations of expensive public resources both to advantage his campaign for reelection, in 2011 and also to disadvantage the campaign of his Republican opponent, then, largely by bold uses of taxpayer-funded assets to destroy him personally (*cf.* Appendix A).

In this factual and legal context, but before much key information had been developed by the lengthy WSP report and by the estimable investigative reporting that would later receive peer approbation and professional awards, appellant filed his petition with the Snohomish County Auditor on February 28, 2012 to commence recall of Mr. Reardon from office for multiple acts of misconduct in his position as a statutory member of the legislative body of a junior taxing district as Snohomish County Executive as authorized by RCW 81.104 and by RCW 81.112, as a statutory authority for appointing two other persons to sit on that legislative body and as an appointed-and-elected officer thereof, initially as chair of its Finance Committee, and subsequently as first chair and thereafter as vice chair of that legislative body, with documentation of wrongdoing in such capacities, with particularity, in each such category to the extent available at that time, including but not limited to repeated failures to attend and to participate in critical legislative meetings and in major committee functions, and irregularities regarding his statutory appointive powers, more probably than not because of the actual extent of his workday liaisons,

with taxpayer-paid county employees, and of his campaigning for reelection, through persistent-and-pervasive misuses of other taxpayer-funded assets.

Appellant's recall petition is set forth in Clerk's Papers at 26-to-30, and is discussed within motion papers below and in Clerk's Papers herein.

Mr. Roe's office affirmatively intervened under nominal color of law to preclude the Snohomish County Auditor from fulfilling her lawful duties to process said petition to commence recall proceedings against Mr. Reardon – contrary to a state civil right that is indisputably fundamental as guaranteed legally by Article I, sections 33-34 of the Washington State Constitution – as based on a bald assertion of a residency requirement added by *fiat* to the text of the Washington State Constitution in an arbitrary fashion, as an *ultra vires* act, so as thereby to preclude exercise of the civil right of recall in respect to Mr. Reardon's misconduct as a statutory member of, and elective officer for, a junior taxing district taking *circa* \$2 million in local-option tax dollars, each day, largely from over 2.2 million state citizens who fund that transit agency, but who reside within that junior taxing district in King and Pierce counties, which includes appellant and more than 80 percent of that junior taxing district's 2.8 million taxpayers residing in Snohomish, Pierce and King counties.

Appellant requested Mr. Roe to allow exercise of the fundamental state civil right of recall, CP at 34, but his office continued to prevent that civil right until Mr. Reardon had resigned, in disgrace, as of May 31, 2013.

Subsequently, as Mr. Reardon's administration imploded as further documentation of his wrongdoing was revealed by the WSP report and by *The Herald's* continuing investigations, including the extent of thefts of vital government resources by Mr. Reardon and by his minions in order thereby to advance his 2011 reelection campaign and to undermine the campaign of his Republican opponent, and as he avoided his county and junior taxing district obligations as he increasingly absented himself from circumstances required to perform his fiduciary duties at a minimal level able to fulfill rigorous fiducial responsibility as a public officer, including but not limited to that legally imposed by his required oath of office, appellant began the multistep process required by state statutory law to obtain reballoting – between Mr. Reardon and Representative Hope – by first giving an initial written notice to Mr. Roe and to our state's then-Attorney General as mandated by RCW 42,17A.750 *et sequens*, on September 7, 2012, and by thereafter giving a second written notice to those two local-and-state officials as also statutorily mandated, on October 24, 2012, before a "citizen action" could be validly commenced, pursuant thereto, either by service of pleadings or by filing thereof. CP 11-15.

Following completion of all statutory requisites for a "citizen action," appellant's civil litigation to obtain declaratory and all other relief available legally under constitutional, common law, statutory, equitable, fiduciary and any further applicable bases in respect to Article I, sections 33-34 and with

regard to provisions of Initiative 276, *inter alia*, was commenced by service, on November 7, 2013, followed by a timely filing in early February, 2013.

On February 21, 2013, Mr. Reardon announced his plan to resign as of close of business on May 31, 2013 – then several months hence – and Mr. Roe’s office later filed a motion to dismiss appellant’s civil litigation, noting it for a hearing before Honorable Dean S. Lum on the afternoon of May 31st.

On May 31, 2013, Mr. Roe’s deputy prosecuting attorney urged upon the trial court **both** that all constitutional recall issues were or would become moot later that day, when Mr. Reardon’s resignation became effective, since his office’s affirmative interference with that fundamental civil right would by then have succeeded in running out the clock on that civil right so as thus effectively to have voided the state constitution (albeit silent as to federal law damages due to denial of a pleaded civil right under nominal color of law), and **also** that appellant had not provided adequate information to allow the Snohomish County Prosecutor to determine whether reballoting is justified based on Mr. Reardon’s wrongdoing regarding the 2011 election for county executive (notwithstanding that all statutory requirements were fulfilled and, more importantly, notwithstanding that this open court assertion of insufficient information as the basis for said county prosecutor’s two failures to use his explicit statutory right to preclude a “citizen action” by simply exercising his own preemptive right under Initiative 276 to control the reballoting issue

through action, was a patently false averment to the trial court, VRP at 13, and was made despite Mr. Roe having specifically requested, in writing, a criminal investigation of Mr. Reardon's wrongdoing by the Washington State Patrol, and having therefore received a WSP report thereafter than ran to 13,500 pages with extensive documentation of literally thousands of thefts of government assets, facilities, properties and resources, *inter alia*, each and every one of which was funded by taxpayers, in order thereby to advance his campaign and to destroy his opponent's efforts, which has thereby corrupted the 2011 election for the highest partisan office in Snohomish County as evidenced by the WSP report first requested by him and later received by him).

Having been thus affirmatively misinformed in open court by deputy counsel from Mr. Roe's professional legal staff, Judge Lum dismissed those constitutional claims with prejudice (including damages issues for acts taken nominally under color of law), and he dismissed the "citizen action" claims without prejudice (after further argument by Mr. Roe's legal representative).

Mr. Roe's unilateral prosecutorial nullifications both of the fundamental constitutional civil right of recall, pursuant to Article I, sections 33-34, so as to prevent voters from being able to decide whether to recall Mr. Reardon during nearly 15 months of disabling governmental chaos in Snohomish County and of then-degraded functions in the junior taxing district's legislative body of which he was an officer (as each was then being thereby

facilitated by Mr. Roe), and also of the core statutory right to rebalot in order to select between Mr. Reardon and Representative Hope, pursuant to RCW 42.17A.750 *et sequens*, so as to further extend governmental turmoil in one county and legislative degradation in a junior taxing district in three counties (as each was then being likewise facilitated by Mr. Roe), appear to have been to preserve the office for Mr. Reardon's and Mr. Roe's "preferred" party (as well as for the Snohomish County Democratic Party's partisan apparatus).

On June 1, 2013, the Snohomish County Democratic Party organization met in Everett to review three Democrats who had expressed an interest theretofore in being appointed as county executive by the Snohomish County Council, which has four Democratic members and one Republican member, and adopted its partisan recommendations for appointment of a Democrat to become the thus-nominal interim county executive (which such meeting was conducted without any discussion of pending litigation to obtain the remedy of citizen rebalotting as statutorily afforded by RCW 42.17A.750 *et sequens*).

On June 3, 2013, the Snohomish County Council approved the first-listed Democrat proposed by the county Democratic Party organization – at a *pro forma* Council session also conducted with no discussion of the pending litigation to obtain the remedy of rebalotting as statutorily provided by RCW 42.17A.750 *et sequens* – and Honorable John Lovick was then sworn in (after a brief delay to facilitate a tendering of his resignation as county Sheriff).

On June 10, 2013, appellant filed a motion for reconsideration and, after its denial, an appeal was taken on July 15, 2013 seeking direct review pursuant to RAP 4.2 due to major constitutional-and-statutory rights at issue, and a Statement of Grounds for Direct Review was filed on July 30, 2013.

On December 2, 2013, appellant moved for leave to file this brief two weeks thereafter, which was granted by letter dated December 3, 2013.

On December 9, 2013, *The Herald's* award-winning investigative reporting team of Messrs. Haglund and North extended their series, with a further article entitled "Ex-aide to Reardon may face criminal tampering charge," documenting results from forensic analyses of Snohomish County computers by experts on the King County Sheriff's staff, which identified use of government assets on county property during regular working hours to advance Mr. Reardon's 2011 reelection campaign, for county executive, by attacking his political opponent (along with other untoward purposes):

Hulten resigned from his county job in April [2013], just as he was about to be fired after pornography and sexually explicit images of himself and a former girlfriend were found on another county laptop he used.

Hulten said he did nothing wrong, and that the images somehow accidentally wound up on the county computer, or were deliberately put there by somebody trying to get him in trouble.

When King County detectives searched county computers used by Hulten they also found sexually explicit images and more evidence that he'd downloaded commercial pornography, according to sheriff's office records.

During his two years as a county employee, Hulten had access to multiple computers. He was given a county laptop when he joined Reardon's staff in January 2011 and used it through mid-June 2012. That's when he traded it in for a second laptop he had county information services staff build for him.

From the older laptop detectives recovered files related to Reardon's 2011 re-election campaign.

County Auditor Carolyn Weikel found the same thing when the laptop was examined.

When authority for public records was stripped from Reardon in February [2013] and given to Weikel, she also inherited a public records challenge that began in November 2011 when The Herald sought documents about Hulten's involvement in Reardon's re-election campaign.

Hulten admitted trying to dig up dirt on the Republican challenger, state Rep. Mike Hope, but insisted he did so on his own time and without using county resources.

The newspaper and Reardon's office spent much of a year sparring over whether the executive and his public records staff had adequately searched for responsive records.

A letter from the newspaper's attorney early this year prompted county officials to re-examine the search.

When county staff looked at Hulten's first county laptop, they not only found the sexually explicit images but also folders with names that hinted at campaign-related activity.

Somebody had made an attempt to delete those folders and their contents. At The Herald's urging, Weikel in September [2013] directed her staff to see if those folders still contained any data responsive to the newspaper's 2011 records request.

In October she turned over more than 400 individual files found on the hard drive of Hulten's older county laptop. The documents show Hulten was deeply involved in efforts to get Hope investi-

gated by the state Public Disclosure Commission and the Seattle Police Department, where Hope then worked as a patrol officer. Metadata from those files show Hulten prepared many of those documents during hours he reported working at his county job.

One of the recovered documents, drafted on March 31, 2011, laid out strategy for attacking Hope with a series of ethics complaints brought to state campaign regulators, the Legislature and his employer.

"Ethics charges, again and again and again," says the document, titled "Hope Strategy outline."

The document also contained a section titled "Psy Ops," which suggests, among other things, attacking Hope with a "shadow website" and battling for voters' hearts and minds with posts to comments beneath news stories. It also advocated creating a "farcical twitter to mock him 'RealMikeHope.'"

That exact Twitter account was established during the 2011 election cycle. Its spoof of Hope said: "Thinker of good ideas. Catcher of bad people. Wearer of badge. Shoot first. Why ask questions?"

Both Hulten and Reardon also are the focus of state Public Disclosure Commission investigations into evidence they used public resources in support of Reardon's 2011 campaign.

New County Executive John Lovick's office has provided state investigators with the documents Weikel recovered from the laptop Hulten was using during that election season.

The Herald's complete front-page article is attached as Appendix A hereto for the convenience of the court should its members desire to review new information, therein, to determine whether some or all of same will be consider.

On December 11, 2013, the Washington Coalition for Open Government's president, Honorable Toby Nixon, publicly suggested felony charges.

IV. ARGUMENT

Editorialists, opinion leaders, politicians and various other influential persons throughout our state repeatedly suggest that our government, major underlying partisan-and-nonpartisan politics and other related functions are rather more honest, and therefore more trustworthy, than those modalities in many other states, regions and localities – which optimistic views may also permeate the judiciary here to some degree – in large parts due to our state constitution’s robust protection for civil liberties as promulgated in 1889, due to additions of direct-democracy rights with initiative, referendum and recall powers through the 7th and 8th Amendments thereto in 1912 and due to further additions of transparency and of myriad other requirements for probity by public officials here at all levels through Initiative 276 in 1972, *inter alia*.

What this appeal demonstrates beyond any reasonable basis for much rational dispute is that when a rogue public official holding the highest partisan office in one of our state’s largest counties patently misuses his position of public trust to steal thousands of taxpayer-funded government assets, facilities and properties in order to promote his own reelection campaign (in quite large part by destroying his adversary’s election campaign), and when the individual exercising that county’s prosecutorial authority repeatedly acts so as to shelter such grotesque wrongdoing (and to allow their jointly “preferred” political party to hold onto that high office, rather than to risk its loss to the

Republican opponent pilloried through smears funded with stolen government resources paid for by all citizens living in that county, and by others residing in adjoining counties, pursuant to reballoting provisions of RCW 42.17A.750 *et sequentes*), then good government assumptions necessitate a judicial review here at a legal minimum (and may require, in fact and in law, somewhat more judicially from this Honorable Court on *sua sponte* bases).

Necessary and proper *foci* for starting such a pivotal analysis are the constitutional-and-statutory sources for those powers obviously abused by Mr. Reardon in indisputably violating his constitutional-and-statutory duties while holding a position of public trust, pursuant to his mandatory oath of office as Snohomish County's chief executive officer, repeatedly, and seemingly abused by Mr. Roe in apparently also violating his constitutional-and-statutory duties while holding a position of public trust pursuant to his likewise mandatory oath of office as Snohomish County's chief legal officer.

Because all legitimate power inheres in, and derives from, the People, constitutionally, all elective offices are positions of public trust, of necessity, thereby imposing rigorous fiducial responsibility as owed as a matter of law, legally, and this *sine qua non* verity must inform all considerations, logically.

Indeed, said constitutional, legal and logical triad can have no zenith, higher, in any jurisdiction in the United States, anywhere, than that established for the State of Washington by Article I, section 1 of our ever-enduring state

constitution as the very first entry listed within, and as the core rationale for, the People's "DECLARATION OF RIGHTS" (capitalization in the original):

All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

This powerful commencement to our state's constitutionally expansive "DECLARATION OF RIGHTS" in turn inheres in, and derives from, "The unanimous Declaration of the thirteen united States of America" *cum* its revolutionary-and-transcendent trinity of truths stated as "self evident" by the Founding Fathers – namely, "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, [and] that among these are Life, Liberty and the pursuit of Happiness" – as the triune predicate for all good-and-sufficient causes averred as operating to "impel them to the separation" on July 2, 1776, which were then promulgated on July 4, 1776.

Hence, our state's fundamental liberties rest on, and devolve from, a particular formulation explicitly then identified, forever, by the next phrase in that "unanimous Declaration" (as rephrased within Article I, section 1):

That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.

Thus, in our state constitution's original form, as developed in and as distributed from Olympia by territorial settlers' elected delegates in mid 1889, the DECLARATION OF RIGHTS concluded with a redirection ex-

plicitly back to the foundational principles established “IN CONGRESS” (capitalization in the original), in Philadelphia, through that original Declaration, on July 2, 1776, and thereafter formalized by our First Congress, from our nation’s initial seat of government in New York City, through a Bill of Rights for the United States Constitution, on September 28, 1789, as a means for “extending the ground of public confidence in the Government,” pursuant to the congressional resolution forwarding same to the 13 states, so as to implement James Madison’s views, a year earlier, that “[t]he political truths declared in that solemn manner acquire by degrees the character of fundamental maxims of free Government, and as they become incorporated with the national sentiment, counteract the impulses of interest and passion” (in a letter to Thomas Jefferson, dated October 17, 1788, outlining why he no longer opposed, and was then promoting, a Bill of Rights).

While much later addition of the civil right of recall as fundamental *via* our state constitution on November 5, 1912, among various enumerated “individual rights” that all legitimate governments are “established to protect and maintain,” is quintessential for a congeries of constitutional issues at the heart of this appeal – and, therefore, for appreciation necessary and sufficient as to the gross unconstitutionality of the unilateral prosecutorial nullification thereof by the Snohomish County Prosecutor who has repeatedly thus sheltered vast-and-egregious wrongdoing by Mr. Reardon – that

key expansion over a full century ago, as Article I, sections 33-34, can obscure the crucial reality that the constitutional directive that had concluded the original DECLARATION OF RIGHTS – *i.e.* “A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government” – redirects back to Article I, section 1, and, thus, to the Declaration of Independence, and to the Bill of Rights, on which it and our state DECLARATION OF RIGHTS’ follow-on items rely.

These core constitutional circumstances represent not fictive rhetoric *cum* loose historical license, but factual realities shaped by law and by logic.

Indeed, our state’s constitutional foundations are derivative **from** the revolutionary principles of the Declaration of Independence, **through** federal solemnization thereof in the Bill of Rights for the United States Constitution as initially opposed by Mr. Madison but subsequently championed by him, **to** the DECLARATION OF RIGHTS of the Washington State Constitution – in a historical progression that thus necessarily informs the proper interpretation thereof judicially – pursuant to highly specific congressional mandates by the federal Enabling Act of 1889, in its Section 4, that the state constitution to be proposed to territorial settlers **must** not simply “be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed,” but **must** “not be repugnant to the Constitution of the United States and the principles of the Declaration of Indepen-

dence,” in perpetuity, through federally imposed “ordinances irrevocable without the consent of the United States and the people of said States.”

Thus, in fact and in law, the Washington State Constitution’s initial substantive provision and subsequent elements of its DECLARATION OF RIGHTS were shaped for settlers of the Washington territory then, and for citizens of Washington state permanently thereafter, both by the Declaration of Independence, pursuant to a state constitutional convention commenced on July 4, 1889 as an explicit statutory requirement so federally mandated, and also by the Bill of Rights, in the centennial year of its promulgation, so as legally to inform **every** component of our state’s constitutional, statutory, common law, equitable, fiducial and other jurisprudence, which must inform in turn this Honorable Court’s reviews herein of Article I, sections 33-34, of RCW 42.17A.750 *et sequens* and of all unilateral prosecutorial nullifications both of a fundamental constitutional right quintessential for Article I, section 1 to be meaningful and also of a vital statutory right likewise essential to ensure clean government here, in obviously dire need thereof, given Mr. Reardon’s *modus operandi* of deceit, political maneuvering and pervasive theft, and given Mr. Roe’s effective aiding and abetting of same so as to maintain the highest partisan office in Snohomish County, thereby, for the political party “preferred,” explicitly, both by Mr. Reardon and also by Mr. Roe, by his affirmative interferences to prevent the right of county voters to rebalot.

Recall and reballoting remedies for wrongdoing by persons who hold positions of public trust – as added, respectively, in 1912 constitutionally and in 1972 statutorily – extend a continuum defined over many centuries before by the criminal offense of misconduct in public office at common law (with a maximum term of life imprisonment currently), and by a civil counterpart in the tort of misfeasance in public office at common law (with its monetary damages commensurate with harm done thereby to citizens), as applicable in our state, in part or in whole, pursuant to the reception statute adopted during the Civil War by the territorial legislature (now codified as RCW 4.04.010).

Recall and reballoting are also in addition to statutory crimes for misconduct in public office here, *e.g.*, those codified at RCW 42.20, as well as in addition to various civil penalties legislated for state-and-local officials.

While rigorous fiducial responsibility incumbent on those who enjoy the high privilege of holding positions of public trust during the term set for each specific office, and of exercising governmental authority applicable to that particular trust on a temporary basis, certainly rests on and devolves from Article I, section 1 – together with those oaths of office required by our state constitution and by various statutory requirements imposed to solemnize the fealty to be either sworn or affirmed, through mandatory acts of oath-taking, that date back to the very earliest-known beginnings of the common law system with the oath and pledge to be so undertaken to be kept with care as first

compelled by King Alfred through the long famous “*his að 7 his wed wærlice healde*” formulation set forth in his *Dom Boc* in *circa* 888 A.D. – our state’s current jurisprudence in respect to positions of public trust providing thereby a completely fundamental constitutional foundation for our state government, which must forever “be republican in form,” is far less well developed as to this genuine *sine qua non* than state trust jurisprudence here for asset-based trust estates having a tangible fiscal *corpus* readily subject to economic measurements, or having a tangible physical *res* likewise more easily surveyed, despite all elective offices yielding a public trust, since at least July 4, 1776, which such positions of public trust have been understood, from medieval times, to be among the widely variant modalities classified as “Incorporeal Hereditaments” by Blackstone (*Commentaries on the Laws of England*, Book II, Chapter 3), and as “Incorporeal Things” by Pollock and Maitland (*The History of English Law*, Book II, Chapter 4, section 6), who aptly note: “The realm of medieval law is rich with incorporeal things” (at page 124).

Indeed, to the extent that this Honorable Court has pursued analyses of essentials for a state jurisprudence governing derivative fiduciary duties in positions of public trust – which must start with attention to the basic honesty required of all those who hold any elective office in a representative capacity on a temporary basis, pursuant to Article I, section 1, in conformity with “the principles of the Declaration of Independence” underlying our state’s core

DECLARATION OF RIGHTS as established in 1776 as thus required by the Enabling Act of 1889, and subject to taking an oath of office as a chief legal condition precedent for the privilege of being allowed to exercise any governmental authority – decisional law here can perplex as to such fiduciary issues as much as it clarifies key fiduciary matters, in part since speech rights protected expansively with respect to political questions by the First Amendment under the federal Bill of Rights, and by Article I, section 5 of our state constitution, were central in a very prominent decision here, and in part since that case involved dissembling *vis-a-vis* elements of an initiative, rather than misconduct at issue herein by two then-elected officials through acts contrary to oaths taken (and, as to Mr. Roe, *via* actions nominally under color of law).

Among the most critical – and criticized – decisions of this Honorable Court that now shape this vital but still largely inchoate jurisprudence is *State Public Disclosure Commission v. 119 Vote No Committee*, 135 Wn.2d 618 (1998), which a minority opinion savages for an outcome whereby, “[t]oday, the Washington State Supreme Court becomes the first court in the history of the Republic to declare First Amendment protection for calculated lies,” insisting that, “[i]n so doing, the majority opinion flouts numerous United States Supreme Court pronouncements to the contrary,” despite concurring nonetheless, quite remarkably, in said thereby averred outrage (all at 636).

Disparagement of that decision fails to attend to central intricacies.

While initiative-and-referendum powers are critically important – as an integral component of the paramount legislative authority under Article II, section 1 – exercise of those powers are undertaken by the People directly, at the ballot box, instead of through persons elected to represent state citizens, in positions of public trust, subject to oaths of office. Thus, rigorous fiducial responsibility – as devolving constitutionally and as quintessential for every elective position of public trust – is absent from direct-democracy functions.

As reduced regard for and collapsing confidence in government near the end of the 19th century and at the beginning of the 20th century yielded a surging interest in increased tools for greater exercise of direct democracy – through rights of initiative, referendum and recall enacted, then, in our state, as well as elsewhere – similar circumstances before and since the beginning of the 3rd millennium have engendered a variety of proposals for creation of a jurisprudence to establish and to apply “fiduciary law” through principles to be systematized pursuant to myriad proposals made through a proliferation of law review articles, over several decades, and, more recently, through Professor Frankel’s *Fiduciary Law*, a 300-page treatise constructed on years of her key fiducial scholarship (as issued by Oxford University Press in 2011).

As documented by this treatise’s review of development of fiduciary law from ancient Mesopotamia forward, much commonality of principles do exist and can be made out, but her extensive outline of rigorous fiducial res-

possibility, as applied in a wide variety of disparate legal settings, identifies a remarkable scarcity *vis-à-vis* application thereof to positions of public trust in the body of her *opus* (although she does provide an “Epilogue,” wherein she identifies and summarizes Professor Robert H. Natelson’s view that the “Constitution was conceived as a fiduciary instrument, instituting, to the extent practicable, fiduciary standards,” including his legal position that “[o]ne such purpose, and a very important one, was to adopt for America a federal government whose conduct would mimic that of the private-law fiduciary”).

Indeed, the legal professorial literature that has focused over several decades now on development of “fiduciary law” as an overarching construct separate, to some degree at least, from a remarkably wide array of legal-and-equitable circumstances wherein paramount fiduciary principles have been and continue still to be established, both judicially and also otherwise, is far richer in suggestions about potential utility of such a new legal specialty for resolutions of numerous legal, political and related problems through a broad array of problem-solving ideas – as thus proposed by the professorate – than it has been in ascertaining actual historical, legal and ancillary bases thereof, with none appearing to understand the oath-based foundations that undergird and so define all positions of public trust in every representative government.

Lack of recognition of first-principle significance of this factual-and-legal foundation in oath-taking, historically, for every position of public trust

occupied by all holders of elective offices – on a mandatory basis for subjects from the initial glimmerings in Wessex, in *circa* 888 *A.D.*, of what would in time become our Anglo-American common law, and on the fully voluntary, but nonetheless legally obligatory, basis for those temporarily in positions of public trust within representative democracies organized to be “republican in form” – has not only limited the potential utility of an academic flowering in “fiduciary law” thinking, during the last several decades, including critically important analyses of gerrymandering in D. Theodore Rave’s “Politicians as Fiduciaries,” recently, in the *Harvard Law Review*, 126 *Harv. L. Rev.* 671 (2013), but, far more critically, is facilitative of jurisprudence that fails to afford clear guidance to public officials, including Mr. Reardon, before he had stolen and fostered thefts of thousands of items of government property to aid himself and to damage Representative Hope, and Mr. Roe, before he started effectively to aid and to abet those thefts and, more importantly, the ultimate purpose of those thefts, *i.e.* maintenance of the highest partisan office in Snohomish County in the hands of the Democratic Party which they both prefer.

Oath-based legal constructs quintessential for democratically elected representative governments, since July 1776, were created through processes that began centuries before – in a variety of then-monarchical systems, with pre-English West Saxon kings taking a pivotal role, and throughout English, British, Imperial and Commonwealth devolutions – such that key structures,

essential to ensure all legal power inhering in and deriving from the People, were put into place, in fact and in law, well before the announcements thereof in Philadelphia in mid 1776, as a bold experiment, and in Olympia in mid 1889, as a condition precedent for the grant of statehood to territorial settlers.

Thus, a basic legal understanding of central historical roots that have yielded demanding fiduciary duties, inherent in every position of public trust, must inform sound development of a state jurisprudence expository of bare minimum standards for that *sine qua non* for representative democracies, as established here in a republican form, based both on constitutional foundations here and also on long-and-well-developed state trust jurisprudence here.

As misconduct by Messrs. Reardon and Roe illustrate rather too well, despite the importance of this task, pivotal needs exceed still limited tools.

The starting point currently – as it has been for many centuries across more than a full millennium back to the earliest components of the common law – is and must be, of necessity, the oath of office required from everyone who would undertake a position of public trust in a representative capacity.

The ancient origins of modern oaths of office almost certainly derive historically from revered Wessex King Alfred's core novation of the oath-of-fealty legally mandated as a pledge from each of his subjects, as "*his að 7 his wed,*" pursuant to Section 1 of his *Dom Boc* issued in *circa* 888 *A.D.* initially, which thus went well beyond the prior legal code of a three-centuries-earlier

Kentish King Wihtred's mandate, pursuant to Section 1.1 thereof as issued in *circa 695 A.D.*, that "the king is to be prayed for, and they are to honor him of their own free-will without compulsion," and which was extended further still thereafter by biological-and-intellectual heirs of Alfred the Great, as subjected to renewed interest during several centuries, over the last 1,125 years, including distinguished legal scholarship of Patrick Wormald, as referenced, repeatedly, in Volume I of *The Making of English Law* (as issued by Oxford University Press in 1999), and as recently reannounced for publication in the long-delayed Volume II thereof (with a now-scheduled release date in 2020).

Of rather more recent times, and of likely more influence for modern oaths of office at central issue herein, are those oaths taken reciprocally, 520 and 327 years later, by King John and by his rebellious men to end a raucous baronial revolt that thereby yielded *Magna Carta* at Runnymede during mid 1215, followed shortly by the pivotal *Carta de Foresta* in late 1217, and followed subsequently by other documents that set essential foundations for **all** representative governments based on **all** power being inherent in, and derivative from, the People, as proclaimed many centuries later, including an acme expression thereof in Article I, section 1, before expansion in 1912 by the 8th Amendment's guarantee of the civil right of recall here, and before a further expansion in 1972 to afford the key right to reballoting through Initiative 276 (as affirmatively prevented by Mr. Roe for reasons hence clearly implicated).

Every bit as patent and powerful as the pinnacle articulation defining our state's DECLARATION OF RIGHTS is its crystal clear and consistently confirmed state trust jurisprudence both for **every** private trust and also for **all** government trusts – including but not limited to state constitutional trusts – which overlap substantially, both legally and also logically, with rigorous fiducial responsibility with respect to all elective officers who hold, and who briefly exercise, a position of public trust **solely** in a representative capacity.

Rigorous fiducial responsibility owed by **every** trustee in our state to **every** beneficiary here has long been made crystalline by our state's judicial branch, whether such trusts and trustees are private or governmental, through demanding fiduciary duties imposed both by state trust jurisprudence and also by state constitutional trust jurisprudence long established by decisional law.

Therefore, no doubt can exist that all trustees in this state are legally required to act, **always**, in full compliance with a stringent fiducial standard:

It is the duty of a trustee to administer the trust in the interest of the beneficiaries. The trustee must exclude from consideration not only his own advantage or profit, but also that of third parties in dealing with trust properties and in all other matters connected with the administration of the trust estate. No exception can be made to this rule. Courts have fixed a very high and exceptionally strict standard for trustees to follow in the conduct of their trust activities. *Tucker v. Brown*, 20 Wn.2d 740, 768 (1944).

Further, state constitutional trusts have been squarely determined to “impose upon the State the same fiduciary duties applicable to private trustees,” as di-

rectly indicated in *County of Skamania v. State*, 102 Wn.2d 127, 133 (1984), wherein our state's **disloyalty** and its **imprudence** were squarely disciplined.

However, overarching fiduciary obligations as owed to the People (as the **sole** constitutional source of **all** legitimate governmental authority under Article I, section 1 of our state constitution, as derived from the Declaration of Independence, in conformance with the United States Congress' mandate issued through Section 4 of the Enabling Act of 1889) by persons who hold one-or-more positions of public trust in a representative capacity upon bases necessarily temporary (while exercising that elective trust subject to an oath of office mandatory as a condition precedent) has no clear legal counterpart in territorial-and-state jurisprudence now entering into its 160th year (since the Territorial Supreme Court issued its initial decisions in December, 1854).

This *lacuna* in our state's jurisprudence as to minimum requirements for judicially reasoned fiducial responsibility of persons, who hold positions of public trust, is neither substantially different from, nor significantly inferior to, the somewhat inchoate state of fiduciary law in most American jurisdictions, and was not likely a significant factor in Mr. Reardon's misfeasant-or-malfeasant wrongdoing underlying both the initially filed petition to recall him at issue here and also follow-on efforts to seek reballoting needed to decorrump his nominal reelection in 2011 through RCW 42.17A.750 *et sequens* – since his *modus operandi* of deceit, political maneuvering and pervasive

theft documented by a 13,500-page WSP report in 2012, by reports made by forensic computer experts serving in the office of the King County Sheriff in 2013 and by nonpareil investigative reporting by *The Herald* throughout the serial disgrace of Snohomish County government, *inter alia*, manifests that neither Mr. Reardon nor his most remarkable minions accept any restraints, legally, morally or otherwise, as to his vast-and-egregious misconduct both in person and also through various county employees then paid for by local, regional and state taxpayers – but it is certainly pivotal respecting Mr. Roe’s aiding and abetting of such completely audacious-and-debilitating wrongdoing, effectively, whether in **actual** bad faith or not, given his repeated acts of unilateral prosecutorial nullifications **both** of the important civil right of recall as a fundamental liberty interest as guaranteed by our state constitution since 1912, in order to allow state citizens to check malefactors who misuse a position of public trust through misfeasance, malfeasance or oath-breaking, and **also** of the vital statutory right of reballoting as established by Initiative 276 since 1972, in order to protect the integrity essential for all elections here, so as thereby to preserve the highest partisan office in Snohomish County for his own political party, the Democratic Party, notwithstanding truly immense misconduct as known to, and as shielded by, him as the chief legal officer, in and for said county, by affirmatively acting to thwart recall despite requests made to him, repeatedly, to act in keeping with his basic constitutional duty

to preserve and to protect the civil right of recall pursuant to his own oath of office to uphold our state constitution, rather than to prevent the fundamental right to exercise recall against a complete miscreant of his own political party, as well know to him, then, to be among the most vile of miscreants by that point in time, on March 9, 2012, and notwithstanding further requests made to him, repeatedly, with respect to reballoting, including two formal requests for him to act pursuant to mandatory terms of RCW 42.17A.750 *et sequens*.

The unavoidable *res ipsa loquitur* obviousness of Mr. Roe's actions is evident in his shielding of Mr. Reardon's gross wrongdoing repeatedly – by intervening **both** to prevent exercise of the fundamental constitutional right of recall to protect him from voters in early 2012 and **also** to preclude operation of a vital statutory right of a “citizen action” to protect him from reballoting in 2013 – and can only become more patent with direct misrepresentation to Judge Lum on May 31, 2103 in order thereby to manipulate the trial court outcome that has thus preserved, so far, the highest partisan office in Snohomish County for the local political party of the wrongdoer, who obtained it through theft, without any risk of loss through a corrective statutorily prescribed by the People, *i.e.* reballoting between a malefactor and his opponent in an election wholly polluted by Mr. Reardon in 2011.

The quintessential importance of a “citizen action” – as designed and as adopted by state citizens through Initiative 276, in 1972, is made entirely

manifest by the genuinely leisurely pace of inaction by our state's key Public Disclosure Commission, since it received the 13,500-page WSP report, with respect to massive wrongdoing by Mr. Reardon, many months ago, whether that delay is because of lack of financial resources or for some other reason.

Whatever that cause, the wisdom of the People in framing Initiative 276 to afford a closely drawn and carefully restrained legal right to bring a "citizen action" to preserve the integrity of the election process, throughout our state, is vindicated fully by Mr. Reardon, and by Mr. Roe, in preserving a prominent office stolen in 2011, for the Democratic Party, to the end of 2013, and beyond if this Honorable Court allows this gross wrongdoing to persist, notwithstanding Initiative 276's explicit directive for a liberal application of its statutory provisions for achieving its critically important *raison d'être* to ensure clean government and honesty of elected officials in all public offices.

Given the direct antithesis thereof as created by Mr. Reardon's vast-and-egregious misdeeds through his thousands of misappropriations of assets financed by taxpayers in order thereby to steal the election of the highest partisan office in Snohomish County in 2011, and thereby to be able to continue his abuses of taxpayers who pay nearly \$2 million each and every day to the junior taxing district which he has chaired, and given unilateral prosecutorial nullifications, first of the pivotal civil right of recall and subsequently and until today of a core mechanism supplied by Initiative 276 to foster the most

basic elements of probity by every public officer, this Honorable Court can, should and must act to bring down the curtain on the three-ring circus which has been acted out in that geographically large and economically vital county for far too long now, and to expose and to end partisan manipulation that has been conducted, *sub silentio*, behind a prosecutorial veil for much too long.

As the amended complaint below indicated squarely and accurately:

20. State statutory law provides, explicitly, both for reballoting when election processes are corrupted so as to make revoting an appropriate means to resolve a despoiled election, and also for liberal application of RCW 42.17A to further open-and-honest government in our state.

21. This provision of state statutory law would be rendered meaningless if not applied in circumstances wherein a nominal winner willfully corrupted the election process for the highest position in Snohomish County government, beyond repair, with hundreds and hundreds of legal violations, through misappropriations of public resources by that nominal victor in said thereby completely despoiled process in order to prevail by use of patent corruption as a nominal winner, which he then worsened either by intentionally causing county executive staff to use public time and other taxpayer-financed resources to harass and to attempt to intimate other elected officials and citizens or else by grossly failing to prevent misuses of public assets for such harmful ends.

22. The nominal winner has since nominal election at issue shirked many public duties of county executives, as well as violating fiduciary obligations and his oath of office, and said post-election acts of slothful misconduct are of like kind with his prior shirking of key responsibilities.

23. The nominal winner has also repeatedly engaged either in misfeasance in public office or else in malfeasance in public office – or in both forms of major wrongdoing – in acting as Interested Party SOUND TRANSIT’s Finance Committee chair in 2008 and

2009, Board chair in 2010 and 2011 and Board vice chair during 2012 and 2013, all of which thereby-abused functions have been funded in part with multiple local-option taxes paid within Snohomish, Pierce and King counties by plaintiff as a resident of, voter in and compelled taxpayer to the junior taxing district.

These sad-but-unavoidable realities apply equally to the fundamental and, thus, yet-more-vital constitutional liberty interest established in our state as the civil right of recall made available through Article I, sections 33-34, in order to allow state citizens to stop wrongdoing by oath-breakers who would misuse their positions of public trust in order to further various wrongdoing.

In this pivotal constitutional matter, Mr. Roe has not only unilaterally nullified appellant's civil right of recall to shield Mr. Reardon, but he has repeatedly thwarted other recall petitions filed by a legal resident of Gold Bar.

In short, multiple abusive *fiat* actions repeatedly based on unilateral prosecutorial nullifications of a fundamental civil right guarantee established by our state constitution, and of our state's preeminent initiative legislation whereby state citizens demanded and required clean government statewide – not just to deny a major civil right to appellant but also to a county resident – make out the kind of circumstances that our Founding Fathers determined to be fully adequate as their proof to “be submitted to a candid world” of actual tyranny evidenced by multiplication of unilateral nullifications stated therein as to central rights of colonists violated through “a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute

Tyranny over these States,” as the predicate for their decision to “solemnly publish and declare” separation from Great Britain – as their reciprocal 18th century version of “*his að 7 his wed wærllice healde*” – whereby “we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.”

Indeed, the legal-and-logical import of a multiplication of unilateral nullifications of fundamental rights of colonists, for some years prior to our nation’s declaration of its independence from such tyranny, and of citizens of our state in this matter, for two years now, not only supports the indicated *res ipsa loquitur* conclusion, as necessary and as fitting, but also comports fully, thereby, with our state judicial branch’s repeatedly articulated jurisprudential foundation for its decisional law, within a wide variety of contexts, namely: the “logic, common sense, justice, policy, and precedent,” *King v. State*, 84 Wn.2d 239, 250 (1974), upon which our state jurisprudence is constructed.

V. CONCLUSION

Appellant took no pleasure in the civil litigation below to halt patent wrongdoing, and takes no solace in the consequent appeal herein to that end.

As a life-long Democrat and a partisan supporter of the Democratic Party, who has been privileged to serve in our state House of Representatives in that capacity, and who was more recently elected as a delegate to the most recent Washington State Democratic Party Convention as a supporter of the reelection of President Barack Obama, appellant would have been delighted

by the appointment of then-Sheriff John Lovick by the Snohomish County Council – following the almost certain recall of Mr. Reardon, as Snohomish County Executive, had Mr. Roe **not** repeatedly intervened to prevent county voters from removing him from that position of public trust which he had obviously stolen through thousands of misappropriations of government assets, as then under his stewardship, while he and his taxpayer-financed managers stole those public resources – both as a lawful interim executive and, thereby, also as a lawful member of the legislative body of a junior taxing district on which he now sits, unlawfully, because he is ineligible for appointment **until** reballoting has been conducted between Mr. Reardon and Representative Hope, and **unless** Mr. Reardon prevails therein, and then again resigns, so as to allow a lawful interim executive pursuant to RCW 42.17A.750 *et sequens* (rather than the legally bogus process utilized to avoid county voters thus far).

That Mr. Lovick is now occupying the highest partisan office in Snohomish County, unlawfully, after resigning the high office which he lawfully held, unfortunately, merely adds to enormous chaos, havoc and turmoil that have constantly roiled Snohomish County government for more than two full years to date – all squarely due to Mr. Reardon's *modus operandi* of deceit, political maneuvering and pervasive theft – and that have resulted in genuine destruction which, given this reality, cannot be fully ameliorated by anything that can be done, after the fact, by this Honorable Court or by any other entity.

Clearly, immense damage has been wrought by Mr. Reardon and by his minions, both for Snohomish County and also for the junior taxing district, and much harm will continue from intentional wrongdoing that has thus undermined public trust in government, as necessarily yielded, since – as Mr. Madison suggested to Mr. Jefferson by letter in late 1788 – every government by and for human beings will yield “experience [that] proves the inefficiency of a bill of rights on those occasions when its controul is most needed,” and since not our federal Bill of Rights, nor our DECLARATION OF RIGHTS here, nor estimable provisions of Initiative 276, could slow down, before the fact, much less halt, willful wrongdoing to steal thousands of taxpayer-funded assets in order, thereby, to steal the high partisan county office at issue herein.

As Mr. Madison wrote to Mr. Jefferson in that same correspondence, in November, 1788, “[w]herever there is an interest and power to do wrong, wrong will generally be done, and not less readily by a powerful & interested party than by a powerful and interested prince,” consistent with but extending his critique of political parties for acting in self interest such that “[t]he public good is disregarded in the conflicts of rival parties,” in his *Federalist Paper 10*, almost exactly a year to the day earlier, and rather too prescient as to partisan wrongdoing resulting in misfeasance in public office or in malfeasance in public office, or both, in order to steal a key election, in November, 2011, 223 years after his explanatory letter and 224 years after his vital paper, and

in order thereby to preserve that ugly theft ever since, another two years on, as the Snohomish County Democratic Party enjoys that thus ill-gotten booty.

Indeed, far greater harm has been, and continues to be, done by aiding and abetting of this wrongdoing, effectively, by the Snohomish County Prosecutor's repeated unilateral prosecutorial nullifications of the fundamental civil right of recall as guaranteed to state citizens by our state constitution's DECLARATION OF RIGHTS (for reasons that may or may not have been partisan, initially, without regard to whether then based on **actual** bad faith or not), and of the likewise essential right to reballoting, when a major election was clearly stolen through literally thousands of thefts of taxpayer-financed government property, as provided by Initiative 276 (for reasons that patently are now partisan in order to preserve the county executiveship for Democrats and by means that certainly involved a direct fraud on the trial court below).

These unilateral prosecutorial nullifications, both for our state constitution's quintessential DECLARATION OF RIGHTS, and also for Initiative 276 – each contrary to the oath of office required to hold the position of public trust being vitiated thereby – are something that this Honorable Court can rectify within its constitutional authority and pursuant to its inherent common law powers; should rectify given the gravity of those egregious *fiat* acts so clearly “repugnant to the Constitution of the United States and the principles of the Declaration of Independence”; and must rectify given the oath of office

required of each member of the court, given the peculiar obligations of each Justice to uphold our state constitution's central guarantees specified in the DECLARATION OF RIGHTS, squarely inclusive of the civil right of recall since late 1912, and given particularly, in constitutional light thereof, that:

All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

Certainly, if an election can be stolen by a corrupt Democratic politician through literally thousands of thefts of government property entrusted to his stewardship, acting in a position of public trust as the temporary holder of the highest partisan office in Snohomish County upon his oath to diligence and to probity, and if that office can be maintained for the Democratic Party by partisan manipulations, contrary to reballoting provided by Initiative 276 as prayed for in then-pending litigation, through aiding and abetting, effectively, by the chief legal officer of and for that county, also acting in a position of public trust as the temporary holder of the second highest partisan office therein upon his oath to diligence and to probity, then clean elections quintessential "to protect and maintain individual rights" will have become a dead letter notwithstanding our state constitution and Initiative 276, under the jurisdiction of this Honorable Court, and on the watch of its present members, despite our state constitution, all oaths of office thereunder and Initiative 276.

Any such judicially allowed outcome would reinforce citizen distrust.

This is not a circumstance in which protections for free speech rights, under expansive state-and-federal constitutional guarantees, must trump fully worthy *desiderata* for clean-and-open government here, under Initiative 276.

That difficult situation – with the complex balancing required of this Honorable Court – has been resolved, albeit not *sans* criticisms still ongoing.

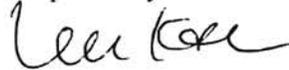
Rather, civil litigation below and consequent appeal herein present a far simpler problem bottomed on thousands of thefts of valuable government assets, facilities, properties and resources, *inter alia*, which were all paid for by local, regional and state taxpayers, and which were all stolen by literally hundreds and hundreds and hundreds of willful misappropriations, *seriatim*, beyond dispute, in order, thereby, to fund the theft of the highest partisan office in a major county in 2011; and wherein, more critically, *res ipsa loquitur* actions continue, serially, in furtherance of allowing the Snohomish County Democratic Party to retain the principle stolen good, namely, that position of public trust which was purloined earlier, and which now requires theft of the right of all county voters to rebalot pursuant to RCW 42.17A.750 *et sequens* (after the fundamental constitutional right of recall had already been stolen).

Simply put, the core question reduces down to precisely how many thefts our state's judicial branch will tolerate before it imposes a final legal halt, thereby, to the three-ring circus, four-theft monte and five-card partisan sleights-of-hand still operating, today, nominally for, but patently against,

the genuine interests of more-than-700,000 state citizens who reside within one large county, and of over 2.8 million who live within a far larger junior taxing district, every one of whom deserves honest government, not acting under the control of any organization's partisan apparatus, as an irreducible minimum owed constitutionally, legally and logically by each and every elected public officer, who takes his or her oath of office, seriously, with the solemnity required by "*his ađ 7 his wed*" for at least 1,125 years now.

Dated on this 16th day of December, 2013, and

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Will Knedlik". The signature is written in a cursive, flowing style.

Will Knedlik, pro se

APPENDIX A

Published: Monday, December 9, 2013, 6:28 p.m.

Ex-aide to Reardon may face criminal tampering charge

By Noah Haglund and Scott North, Herald Writers

EVERETT -- One of Aaron Reardon's aides could face a criminal evidence-tampering charge after an investigation found evidence he tried to scrub data from a laptop used in a scheme to harass the former Snohomish County executive's political enemies.

The county-owned laptop was provided to Kevin Hulten, 34, for his work as Reardon's legislative analyst.

On March 11, just before county staff collected the laptop as part of a King County Sheriff's Office investigation into his activities, Hulten allegedly used a data-wiping program to scrub the device. While a lot of information was lost, Hulten's digital fingerprints still were recovered from the laptop and from other county-owned computers — including those on desks within Reardon's former office suite. Evidence shows Hulten used publicly owned computers to work on Reardon's 2011 re-election campaign on county time, as well as conduct background checks of other elected county leaders. The investigation also found that computer logons connected to Hulten were used to launch Wikipedia and Twitter attacks aimed at Reardon's political enemies, including a Gold Bar blogger who was trying to get him recalled, according to King County sheriff's reports.

The King County investigation was requested earlier this year by Snohomish County leaders after Hulten admitted he used fake identities to make a series of records requests. The documents were released last week under state public records laws.

The Herald in February unmasked Hulten as the person who sought multiple records requests from the county under the name "Edmond Thomas," claiming to represent a company called "Rue Des Blancs-Manteaux."

Hulten, as Thomas, threatened to sue the county if it didn't fork over records about government workers who cooperated with a 2011 Washington State Patrol investigation into Reardon's use of public money during an affair with a county social worker.

The Island County prosecutor ultimately concluded there was insufficient evidence to charge Reardon with any crime related to the affair.

Skagit County prosecutors are reviewing the latest investigation.

King County detectives Thien Do and Chris Knudsen have told them that Hulten's conduct could constitute at least misdemeanor tampering with evidence, as well as other potential violations of state law prohibiting use of public resources in political campaigns.

Officials in King and Skagit counties agreed to conduct and review the investigation to help Snohomish County avoid a conflict of interest. The investigation is continuing. It's unclear when Skagit County prosecutors will make any decisions on charges. The Snohomish County Council received an update on Monday from King County authorities.

"We received notification today and haven't had time to review the material," Council Chairwoman Stephanie Wright said.

If what the police report says is true, says County Councilman John Koster, he wants to see Hulten charged.

"We'll see what they decide in terms of filing charges, but this should go beyond an exercise in discovery, for crying out loud," Koster said. "The guy broke the law and needs to be held accountable." Koster also asked how Hulten's actions could have persisted in light of the constant reminders that politicians receive about keeping political campaigns separate from their taxpayer-funded jobs.

"How did this guy go unsupervised, if he was unsupervised?" Koster said. "How did Aaron not know?" One of the first things King County detectives did when assigned the case on March 6 was to ask Snohomish County staff to gather up all the computers used for county work by Hulten, Reardon and another one of the Democrat's aides, Jon Rudicil.

The detectives have special training in computer forensics, and planned to submit each device to a detailed analysis that would show, among other things, how they'd been used, what websites had been visited and what files were saved.

Hulten still had his county laptop on March 1 when he was put on paid administrative leave. He was supposed to stay at his home during work hours but wasn't there on March 8, when county information systems staff dropped by to get it from him.

When they came back on March 11, Hulten made them wait outside for about 40 minutes before handing it over, according to sheriff's office reports.

Hulten's county laptop initially could not be examined. It was protected by a password and encryption software, and Hulten insisted he knew nothing about either, records show.

The King County detective got around those obstacles by contacting the laptop's manufacturer and getting help under terms of the laptop's warranty. When the detective examined the device, he determined that it had been partially scrubbed and was missing the operating system and other data. Enough information remained, however, that the detective reportedly found evidence that a data-wiping program was loaded and activated on the laptop at 12:47 p.m. March 11. That was a couple of hours before county staff arrived at Hulten's Granite Falls home to get it.

Before Reardon resigned from office May 31, he urged a thorough investigation of himself and his staff. Detectives examined Reardon's laptop and found nothing except for a copy of his resignation speech. Reardon did not return an email seeking comment. He no longer lives in Snohomish County and is pursuing a career out of politics, as a private financial consultant.

When asked to respond to the police report, Hulten emailed a link to a statement claiming he remains the victim of a conspiracy among county officials and the media.

Hulten resigned from his county job in April, just as he was about to be fired after pornography and sexually explicit images of himself and a former girlfriend were found on another county laptop he used. Hulten said he did nothing wrong, and that the images somehow accidentally wound up on the county computer, or were deliberately put there by somebody trying to get him in trouble.

When King County detectives searched county computers used by Hulten they also found sexually explicit images and more evidence that he'd downloaded commercial pornography, according to sheriff's office records.

During his two years as a county employee, Hulten had access to multiple computers. He was given a county laptop when he joined Reardon's staff in January 2011 and used it through mid-June 2012. That's when he traded it in for a second laptop he had county information services staff build for him.

From the older laptop detectives recovered files related to Reardon's 2011 re-election campaign. County Auditor Carolyn Weikel found the same thing when the laptop was examined.

When authority for public records was stripped from Reardon in February and given to Weikel, she also inherited a public records challenge that began in November 2011 when The Herald sought documents about Hulten's involvement in Reardon's re-election campaign.

Hulten admitted trying to dig up dirt on the Republican challenger, state Rep. Mike Hope, but insisted he did so on his own time and without using county resources. The newspaper and Reardon's office spent much of a year sparring over whether the executive and his public records staff had adequately searched for responsive records.

A letter from the newspaper's attorney early this year prompted county officials to re-examine the search.

When county staff looked at Hulten's first county laptop, they not only found the sexually explicit images but also folders with names that hinted at campaign-related activity.

Somebody had made an attempt to delete those folders and their contents. At The Herald's urging, Weikel in September directed her staff to see if those folders still contained any data responsive to the newspaper's 2011 records request.

In October she turned over more than 400 individual files found on the hard drive of Hulten's older county laptop. The documents show Hulten was deeply involved in efforts to get Hope investigated by the state Public Disclosure Commission and the Seattle Police Department, where Hope then worked as a patrol officer. Metadata from those files show Hulten prepared many of those documents during hours he reported working at his county job.

One of the recovered documents, drafted on March 31, 2011, laid out strategy for attacking Hope with a series of ethics complaints brought to state campaign regulators, the Legislature and his employer.

"Ethics charges, again and again and again," says the document, titled "Hope Strategy outline."

The document also contained a section titled "Psy Ops," which suggests, among other things, attacking Hope with a "shadow website" and battling for voters' hearts and minds with posts to comments beneath news stories. It also advocated creating a "farcical twitter to mock him 'RealMikeHope.'"

That exact Twitter account was established during the 2011 election cycle. Its spoof of Hope said: "Thinker of good ideas. Catcher of bad people. Wearer of badge. Shoot first. Why ask questions?"

Both Hulten and Reardon also are the focus of state Public Disclosure Commission investigations into evidence they used public resources in support of Reardon's 2011 campaign.

New County Executive John Lovick's office has provided state investigators with the documents Weikel recovered from the laptop Hulten was using during that election season.

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Verification Of Service

The undersigned appellant, Will Knedlik, hereby certifies on his oath, through his signature below, that this corrected Brief of Appellant and an accompanying Motion for Leave to Correct Brief of Appellant were filed with Division I of the Court of Appeals, on this date below indicated, for its transmittal to the Supreme Court thereby, and was also transmitted on said date to legal counsel for respondent County of Snohomish, as initially identified both by names and also by address within the Notice of Appeal filed herein and as likewise reidentified hereinbelow.

DATED on this 19th day of December, 2013.



Will Knedlik, *pro se*

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