

NO. 42125-9

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

ARTHUR WEST,

Appellant,

v.

ROB MCKENNA, et al.,

Respondents.

**BRIEF OF RESPONDENTS ROB MCKENNA
AND STATE OF WASHINGTON**

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ORIGINAL

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I. INTRODUCTION

The trial court dismissed this case because it concluded that Appellant Arthur West (“Mr. West”) failed to present a justiciable controversy. Mr. West sought to challenge the constitutionality of RCW 43.135.034(1), which provides for a supermajority vote for legislation raising taxes. Washington voters originally enacted the statute now codified as RCW 43.135.034 in 1993 as part of Initiative 601, and most recently amended it when the voters adopted Initiative 1053 in 2010. Mr. West has not demonstrated that he has suffered any specific, concrete harm caused by RCW 43.135.034(1). Washington law requires more than mere speculation to present a justiciable controversy, and the superior court appropriately dismissed this case.

The fundamental nature of our state government is one of divided powers. Judicial power is appropriately invoked to determine actual, concrete controversies concerning harm to existing legal rights. To entertain this case, the courts would necessarily become embroiled in a hypothetical political disagreement. The Court should, accordingly, decline the invitation to intervene into the people’s lawmaking power. This Court should affirm the superior court’s decision dismissing this case for lack of justiciability.

II. ISSUE

Only a single issue is presented: Has Plaintiff established a justiciable controversy as required to invoke the Superior Court's jurisdiction under the Declaratory Judgments Act?

III. STATEMENT OF THE CASE

A. Superior Court Proceedings

Appellant, Arthur West, commenced this action in the Thurston County Superior Court, challenging the constitutionality of Initiative 1053 (I-1053). I-1053 included a provision that, insofar as it may be relevant to this appeal, provides:

After July 1, 1995, any action or combination of actions by the legislature that raises taxes may be taken only if approved by at least two-thirds legislative approval in both the house of representatives and the senate.

RCW 43.135.034(1) (Laws of 2011, ch. 1, § 2). The statute, previously codified in substantially the same form as RCW 43.135.035 (Laws of 1994, ch. 2, § 4), was originally enacted in 1993 as part of Initiative 601 (I-601). Mr. West sought a declaration that this provision is unconstitutional, as well as an injunction and a writ of prohibition "barring the application or enforcement of I-1053." CP at 8.

Mr. West filed a motion for summary judgment regarding his challenge to the constitutionality of I-1053. CP at 15. The State filed a motion for judgment on the pleadings, also noted for the same date. CP at

29. The State limited its motion to seeking dismissal of this case on the basis of justiciability. CP at 31-36.

The State then moved to continue consideration of Mr. West's motion for summary judgment until after the trial court could hear and determine the State's motion for judgment on the pleadings. CP at 42-44. The State's motion was based on the fact that Mr. West's motion asked the court to address the merits of his claims, but if the court granted the State's motion and dismissed this case on the basis of justiciability, it would be unnecessary for the parties to brief, or the court to resolve, the merits of Mr. West's claims. CP at 42-43.

The trial court granted the State's motion to continue plaintiff's motion for summary judgment. CP at 59-60. As a result, no response by the State to Mr. West's summary judgment motion was due until after the trial court ruled on the State's motion for judgment on the pleadings, making such a response unnecessary when the trial court dismissed the case on the preliminary grounds at issue in the State's motion. CR 56(c).

The trial court granted the State's motion for judgment on the pleadings.¹ CP at 78-80. The court's order granting that motion constituted a final order, fully resolving this case before the trial court. CP at 80. The trial court resolved this case solely on the basis that Mr. West

¹ The standard of review before this court is, accordingly, *de novo*. *Pasado's Safe Haven v. State*, 162 Wn. App. 746, 752, 259 P.3d 280 (2011).

failed to present a justiciable controversy challenging the constitutionality of I-1053. CP at 29-38. Accordingly, the trial court never considered Mr. West's motion for summary judgment or the merits of Mr. West's constitutional challenge to I-1053.

B. Motion Practice On Appeal

Mr. West initially filed an opening brief with this Court, attempting to address the merits of his constitutional challenge to I-1053, even though those issues were not considered by the trial court and are not properly presented on this appeal. The State moved to strike the portions of that brief that improperly addressed the merits of the case. The Commissioner granted the State's motion, concluding that because the trial court had not ruled on the merits of Mr. West's claims, those portions of his opening brief were stricken. The Commissioner ordered Mr. West to "submit a corrected brief within 10 days of the date of this ruling eliminating those issues." Commissioner's Ruling (Dec. 16, 2011). Mr. West moved to modify the Commissioner's ruling, and this Court denied that motion. Order Denying Motion to Modify (Feb. 10, 2012).

IV. ARGUMENT

A. Mr. West Failed to Present A Justiciable Controversy

1. Mr. West Has Failed To Establish A Justiciable Controversy Under The Declaratory Judgments Act

RCW 7.24.020 authorizes an action for declaratory judgment, providing that “[a] person . . . whose rights, status or other legal relations are affected by a statute . . . may have determined any question of . . . validity arising under the . . . statute.” In order to seek a declaratory judgment, a litigant must present a justiciable controversy. *Branson v. Port of Seattle*, 152 Wn.2d 862, 877, 101 P.3d 67 (2004). A justiciable controversy under the declaratory judgments act requires:

“(1) . . . [A]n actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive.”

To-Ro Trade Shows v. Collins, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001) (quoting *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137 (1973)). This action fails to satisfy at least three requirements for a declaratory judgment action.

a. Mr. West Fails To Demonstrate An Actual, Present And Existing Dispute

Mr. West's claim fails to satisfy the first prong of the justiciability requirement because this case presents no "actual, present and existing dispute, or the mature seeds of one." *To-Ro Trade Shows v. Collins*, 144 Wn.2d at 411. Rather, Mr. West's claim presents a "possible, dormant, hypothetical, [and] speculative" disagreement. *Id.* In this regard, Mr. West's claim depends upon multiple layers of hypothesis and speculation. His claim depends upon a first layer of hypothesizing that a majority of the Legislature would vote to impose a new tax or increase an existing tax were it not for I-1053. *See Federal Way School Dist. 210 v. State*, 167 Wn.2d 514, 530, 219 P.3d 941 (2009) (holding the controversy in that case hypothetical as "there is no evidence that the school district would ask for higher levies.") In fact, Mr. West does not know whether future legislatures will enact tax increases, what the nature of those tax measures might be, or how they might affect his interests.

Plaintiff's claim further depends upon a second layer of hypothesizing that such a measure would receive a majority but not the two-thirds majority called for in I-1053. In *Walker v. Munro*, 124 Wn.2d 402, 413, 879 P.2d 920 (1994), the Supreme Court recognized the speculative nature of such a claim, saying:

[i]t is possible that acts which are deemed to fall within [the two-thirds majority section of then Initiative 601] will pass by two-thirds of the votes and so this greater voting requirement will have no real effect.

The course of future events is, again, purely speculative and subject to a challenge when, or if, a specific dispute arises about a particular bill.

Mr. West's claim also depends upon a third layer of hypothesizing or speculating that he would benefit from services funded by the hypothetical new or increased tax. Neither Mr. West nor anyone else can predict what future measures the Legislature might enact or how they would affect Plaintiff's rights, duties, property, or obligations. Moreover, his mere generalized "interest in state funding mechanisms is not sufficient to make a claim justiciable" absent a right to the funding at issue. *Federal Way School Dist.*, 167 Wn.2d at 528. Mr. West's claim thus fails to satisfy the first prong of multiple requirements for presenting a justiciable controversy. It does not allege "an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement." *To-Ro Trade Shows*, 144 Wn.2d at 411. On the contrary, Mr. West seeks to present a purely hypothetical question for the consideration of the court.

b. Mr. West Fails To Raise A Dispute Involving Interests That Are Direct And Substantial, Rather Than Potential, Theoretical, Abstract Or Academic

Similarly, Mr. West's interests in this matter are "potential, theoretical, [and] abstract," rather than "direct and substantial" as they must be to satisfy the third prong of the justiciability standard. *Id.* Mr. West asks the court to decide in the abstract whether the two-thirds vote requirements in I-1053 impair constitutional rights, without reference to any actual controversy existing between Mr. West and the Defendants with respect to such matters.

Moreover, "[i]nherent in the justiciability determination is the traditional limiting doctrine of standing." *Branson*, 152 Wn.2d at 877, citing *To-Ro Trade Shows*, 144 Wn.2d at 411. Justiciability and standing requirements are not the same, although they overlap. *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 302 n. 2, 268 P.3d 892 (2011). The elements required for a justiciable controversy under the Declaratory Judgments Act tend to overlap with the traditional two-part "zone of interest" and "injury in fact" test for standing, including harm to the party that is substantial, rather than speculative or abstract. *Grant Cnty. Fire Prot. Dist. 5 v. City of Moses Lake*, 145 Wn.2d 702, 712-14, 42 P.3d 394

(2002), *vacated in part on rehearing* 150 Wn.2d 791, 83 P.3d 419 (2004) (*Grant County I*).

“The kernel of the standing doctrine is that one who is not adversely affected by a statute may not question its validity.” *Grant Cnty. Fire Prot. Dist. 5 v. City of Moses Lake*, 150 Wn.2d 791, 802, 83 P.3d 419, 423 (2004) (*Grant County II*), quoting *Walker v. Munro*, 124 Wn.2d 402, 419, 879 P.2d 920 (1994). Mr. West cannot show that he is adversely affected by I-1053 and has standing to challenge it.

There is a two-part test for standing under the declaratory judgments act. *Grant County II*, 150 Wn.2d at 802. The party must be within the zone of interests to be protected or regulated by the statute in question, and the party must have suffered an “injury in fact.” *Id.* “To establish harm in a declaratory judgment action, a party must present a justiciable controversy based on allegations of harm personal to the party that are substantial rather than speculative or abstract.” *Id.*; *accord, Am. Legion Post #149 v. Washington State Dep’t of Health*, 164 Wn.2d 570, 593-94, 192 P.3d 306 (2008).

Mr. West satisfies neither part of this standing test, let alone both parts, as required to present a justiciable controversy. As to the first part of the test, Plaintiff’s legal interests are not within the zone of interests regulated or protected by the supermajority provision of I-1053. The

provision addresses only the legislative process and its supermajority language is subject to modification by the Legislature itself. To the extent I-1053 can be considered regulatory in any respect, it “regulates” the Legislature. It does not regulate Mr. West.

Neither does I-1053 protect any “rights, status, or legal relations” of Mr. West. Mr. West has no legal right to a particular legislative process by which taxes may be increased, or to any particular level of taxation. Parties bringing an action “must show they are being affected or denied some benefit; mere interest in state funding mechanisms is not sufficient to make a claim justiciable.” *Federal Way School Dist.*, 167 Wn.2d at 528. And even if one could view the supermajority provision of I-1053 as protecting Mr. West from taxation to some hypothetical or speculative extent, he decidedly does not seek the “protection” of the provision. Rather, Mr. West challenges the provision, alleging that he is harmed by it. In effect, he seems to posit a sort of “inverse taxpayer standing” in which a taxpayer asserts the right to be subject to higher taxes and challenges a law impeding the enactment of tax increases.

Mr. West also fails to satisfy the second part of the standing test under the declaratory judgments act – injury in fact, substantial and personal to the litigant. *Am. Legion Post #149*, 164 Wn.2d at 593-94. The Complaint does not allege harm that is substantial and personal to Mr.

West. To the extent the Complaint alleges harm, the harm alleged is speculative and hypothetical. Mr. West alleges only that he “is particularly impacted by the budget determinations that have been and will continue to be made by the State Legislature in the absence of a constitutional process for levying taxes,” and that he “will be materially and substantially affected by the alteration in State revenue directly and proximately resulting from I-1053.” CP 4. To the extent these allegations express harm, the harm alleged is shared by citizens generally; it is not personal to Mr. West. Moreover, just as the legislative predicates for Mr. West’s declaratory judgment claim are hypothetical and speculative, the harm he alleges as following from those predicates is equally hypothetical and speculative. Indeed, one might just as well speculate that Mr. West would benefit from not being subject to a new or increased tax, and therefore is in no sense aggrieved by I-1053 or in a position to challenge its enactment.

In his appellate brief, Mr. West contends that he has been harmed because of his use of state parks and highways. Appellant’s Opening Brief at 15-16. He claims, for example, that it is “likely” that additional fees will be imposed in the future because of I-1053. *Id.* at 26. This is obviously a guess on Mr. West’s part, both as to whether fee increases will occur and whether they would not occur but for I-1053. Mr. West’s

speculation as to what budgetary decisions or revenue measures the State might or might not take but for the enactment of I-1053 fail to suggest that he has suffered any injury in fact. *See To-Ro Trade Shows*, 144 Wn.2d at 411 (claims are insufficient to the extent they merely rely upon hypothetical or speculative harm). Moreover, he fails to establish a causal connection between I-1053 and the imposition of fees.

Finally, there is a marked disconnect between Mr. West's claim of harm and the relief that he claims would remedy that harm. Mr. West claims that he is harmed because he is required to pay fees that he speculates were imposed because of I-1053's provision on tax legislation. He asserts that the remedy would be to declare a statute addressing tax legislation unconstitutional. It is hard to understand how Mr. West could suffer an injury in fact through the imposition of fees, but that the remedy to this "injury" is to strike down a statute that, he speculates, impairs the legislature's ability or willingness to impose taxes. Mr. West fails to explain how it is that he generally benefits from taxes but is burdened by fees. The magic Mr. West sees in the form in which revenue is collected is not apparent.

c. Mr. West Fails To Satisfy The Requirement That A Judicial Determination Must Be Final And Conclusive

The final element necessary for a justiciable controversy under the Declaratory Judgments Act is a judicial determination that “will be final and conclusive.” *To-Ro Trade Shows*, 144 Wn.2d at 411. This includes the requirement that “the judicial relief sought must be of a type such that it would finally and conclusively resolve the dispute between the parties.” *Pasado’s Safe Haven v. State*, 162 Wn. App. 746, 749, 259 P.3d 280 (2011). “Where this is not so, the court strays into the prohibited practice of issuing an advisory opinion.” *Id.* Like all of the elements of justiciability, this element necessarily assumes a determination of rights or legal interests of the Plaintiff. As explained above, Mr. West fails to demonstrate a right or legal interest as necessary for a cause of action under the Act. For this reason, a judgment with respect to Mr. West’s claims would not be a final and conclusive determination within the contemplation of the Act. RCW 43.135.034(1) addresses the legislative process, and not the rights of Mr. West. Accordingly, a determination of this action would not be final and conclusive because the Legislature itself has not sought to address its institutional prerogatives in this action.

Mr. West has failed to demonstrate a justiciable controversy as required to invoke the court’s jurisdiction, and this Court should

accordingly affirm the trial court's grant of judgment on the pleadings in favor of the State.

2. Mr. West's Claim Does Not Entitle Him To Taxpayer Standing

Mr. West's claim of taxpayer standing fails as a threshold matter because in order to assert taxpayer standing "a taxpayer must first request action by the Attorney General and that request must be refused before action is begun by the taxpayer." *Greater Harbor 2000 v. City of Seattle*, 132 Wn.2d 267, 281, 937 P.2d 1082 (1997). Mr. West made no request of the Attorney General to challenge the constitutionality of RCW 43.135.034 before commencing his own action. CP 3-8; *see also* Appellant's Opening Brief at 12-13 (reciting the procedural history of this case, without claiming to have made any demand on the Attorney General). Nor does Mr. West assert that such a request would have been useless. Appellant's Opening Brief at 26-30 (arguing for taxpayer standing); *see also Farris v. Munro*, 99 Wn.2d 326, 329, 662 P.2d 821 (1983) (noting that the Attorney General's subsequent action of defending against a claim does not render a request to the Attorney General useless).

Taxpayer standing is not available to challenge a limit on taxation—which is the basis for Mr. West's Complaint. As the Washington Supreme

Court explained in *Walker*, responding to a challenge to a prior version of the supermajority requirement that Mr. West challenges:

Although this court has frequently recognized taxpayer standing, *State ex rel. Tattersall v. Yelle*, 52 Wash.2d 856, 859, 329 P.2d 841 (1958), and a number of the Petitioners are taxpayers, it is questionable whether taxpayers have standing to protest limits on taxation. See *State ex rel. Smith v. Haveland*, 223 Minn. 89, 93, 25 N.W.2d 474 (1946) (stating that the “mere denial of a desire to be taxed is not an act adverse or hostile to any legal interest”).

Walker v. Munro, 124 Wn.2d at 419.

The state Supreme Court recognized the same limitation in rejecting a claim for taxpayer standing in *Federal Way School Dist.*, 167 Wn.2d at 528. “While taxpayers may have standing to protest high taxes or improper expenditures, this court has said it is doubtful there is taxpayer standing to protest lower taxes or limits on taxation” *Id.* at 529, citing *Walker v. Munro*, 124 Wash.2d at 402. In short, to the extent a citizen’s status as a taxpayer confers standing to challenge a law, the citizen’s legally cognizable interest is in a lower tax burden, not the possibility of a higher one. In this vein, Mr. West’s claim to taxpayer standing is misleading because he seeks not to address alleged problems with the expenditures of taxpayer dollars but rather to assert that it should be easier for the state to ask for more taxes, both from him and from others. Such a claim does not allege—much less demonstrate—justiciable

harm to him as an individual taxpayer. *Federal Way School Dist.*, 167 Wn.2d at 530.

3. This Case Should Not Be Considered Without A Justiciable Controversy

Mr. West also argues that he has standing based on the asserted importance of the claim he seeks to raise. Appellant's Opening Brief at 21 (citing *Farris*, 99 Wn.2d at 330). The Supreme Court considered and rejected such a contention in *Walker*, 124 Wn.2d at 414-18. In *Walker*, the petitioners asked the court to follow what petitioners termed "the well-established rule that this court will hear matters of great public importance without regard to justiciability," and consider their challenge to provisions of I-601. *Id.* at 414. The court rejected the existence of such a rule: "[E]ven if we do not always adhere to all four requirements of the justiciability test, this court will not render judgment on a hypothetical or speculative controversy, where concrete harm has not been alleged." *Id.* at 415. "We choose instead to adhere to the long-standing rule that this court is not authorized under the declaratory judgments act to render advisory opinions or pronouncements upon abstract or speculative questions." *Id.* at 418. Mr. West similarly seeks an advisory opinion and pronouncement on abstract and speculative questions in this case.

Indeed, the Supreme Court has declined to consider the validity of the two-thirds supermajority vote provision now codified in RCW 43.135.034(1) on three separate occasions because, for varying reasons, the question was not justiciable or otherwise did not properly invoke the jurisdiction of the court. *See Walker*, 124 Wn.2d at 411, 425 (declining request of public advocacy groups, several legislators, and citizens to declare the supermajority vote provision of I-601 invalid prior to its effective date, and declining to declare its referendum provision that was in effect invalid for lack of justiciability); *Futurewise*, 161 Wn.2d 407, 411, 166 P.3d 708 (2007) (declining to consider the validity of the two-thirds supermajority vote and referendum provisions of I-960 in a pre-election challenge for lack of justiciability); *Brown v. Owen*, 165 Wn.2d 706, 727, 206 P.3d 310 (2009) (declining request of state senator to declare the supermajority vote provision then codified in RCW 43.135.035 unconstitutional for the reason that the action was improperly before the court on application for a writ of mandamus, and presented a nonjusticiable political question). That the instant case is nonjusticiable for different reasons from those in *Walker*, *Futurewise*, and *Brown v. Owen* does not make it any less nonjusticiable.

This is not a case of the sort in which, on rare occasion, the court has determined it appropriate to exercise jurisdiction over a request for

declaratory relief without regard to justiciability requirements. *Walker*, 124 Wn.2d at 417 (“[T]his court has, on the rare occasion, rendered an advisory opinion as a matter of comity for other branches of the government or the judiciary.”). No branch of government is before the court seeking an advisory opinion on the validity of RCW 43.135.034(1) or (2)(a). Unlike the rare exceptions discussed in *Walker* (and instead, much like the situation presented in *Walker*) “[h]ere, not only is there no request by the Legislature itself that we adjudicate this case,” but the State seeks its dismissal. *Walker*, 124 Wn.2d at 417; *Yakima Cnty. Fire Prot. Dist. 12 v. City of Yakima*, 122 Wn.2d 371, 380-81, 858 P.2d 245 (1993) (noting that this Court has applied liberalized standing only in cases in which doing so was the only way that important public issues could evade review, such as if the Legislature itself sought review).

Nor is this a case, such as the *Farris* decision upon which Mr. West relies, in which the Plaintiff raised an issue that required immediate resolution because it might affect an issue on an upcoming election ballot. *See Farris*, 99 Wn.2d at 330. Indeed, the statute Mr. West challenges has remained on the books for eighteen years, since it was first enacted as part of Initiative 601. Laws of 1994, ch. 2, § 4. This Court has, moreover, previously distinguished *Farris*, finding it inapposite to a claim of standing under the declaratory judgments act because it

concerned a request for a writ of mandamus. *Pasado's Safe Haven*, 162 Wn. App. at 752 n. 4.

B. No Other Issues Are Preserved For This Court's Consideration

1. This Court Has Already Ordered Mr. West's Arguments On The Merits Stricken From His Brief

Portions of Mr. West's opening brief continue to address the merits of his claim, even after this Court ordered him to submit a corrected brief eliminating his arguments on the merits. Commissioner's Ruling (Dec. 16, 2011); Order Denying Motion to Modify (Feb. 10, 2012). In particular, Mr. West argues as part of his "summary of argument" that the supermajority provision of I-1053 (RCW 43.135.034(1)) is unconstitutional for various reasons. Appellant's Opening Brief at 6-8. Mr. West's "statement of the case" begins with three pages of argument as to the merits of his claim. *Id.* at 10-12. Most dramatically, in setting forth the "relief sought" on this appeal, Mr. West does not stop at asking this Court to reverse the trial court's ruling dismissing this case for lack of a justiciable controversy. He requests:

that summary judgment issue on plaintiff's claims and that a Declaratory Ruling issue under the seal of this Court declaring I-1053 unconstitutional as adopted, written and as applied, and that an immediate injunction issue under the seal of this Court barring the enforcement or application of I-1053, and/or that a Writ of prohibition issue under seal of this Court barring the application or enforcement of I-1053.

Id. at 34-35.

By ordering all arguments related to the merits of Mr. West's claim stricken from his brief, this Court has already concluded that the merits of his claim are not properly presented on this appeal. Accordingly, Mr. West is precluded from offering such arguments or seeking such relief on this appeal, and the State has limited its arguments in this brief to those properly before this Court in light of this Court's prior rulings. *See Zivotofsky v. Clinton*, No. 10-699, 2012 WL 986813, at *9 (U.S. Mar. 26, 2012) (appellate courts do not ordinarily decide in the first instance issues not decided below). Mr. West's brief continues to advocate the merits of his claims beyond the description necessary to give context to his justiciability argument. This amounts to carelessness at best, or a disregard for this Court's orders at worst.

2. Mr. West Has Abandoned His Appeal Of The Trial Court's Procedural Order Entered On March 11, 2011

Mr. West's Notice of Appeal expressed the intent to appeal from "all interlocutory and final orders entered in this case, including the final Order of April 15, 2011, and the Order denying reconsideration of May 20, 2011." CP 114. The orders appended to the Notice of Appeal included not only those two orders, but a third, interlocutory, order renoting the State's Motion for Judgment on the Pleadings for April 15,

2011, and Mr. West's Motion for Summary Judgment for May 6, 2011. CP 119.

Mr. West fails to offer any substantial argument or authority for the proposition that the trial court acted improperly when it continued the hearing on Mr. West's Motion for Summary Judgment until three weeks after the hearing on the State's Motion for Judgment on the Pleadings. Mr. West has accordingly abandoned this argument and this Court need not consider it on appeal. *In re Recall of Washam*, 171 Wn.2d 503, 515 n. 5, 257 P.3d 513 (2011) (appellate court does not reach argument unsupported by substantial argument).

Trial court decisions regarding management of its calendar necessarily involve the exercise of judicial discretion in any event, and would be reviewable only for a manifest abuse of discretion. *State v. Grilley*, 67 Wn. App. 795, 798, 840 P.2d 903 (1992). It is, moreover, clearly appropriate for a court to decline to reach issues presented by a motion for summary judgment when it can fully resolve the case on the basis for a motion for judgment on the pleadings that was also before it. *See Pasado's Safe Haven*, 162 Wn. App. at 752 n.3 (applying the standard of review for judgments on the pleadings because the case could be fully resolved on that basis, even though a summary judgment motion had also been presented to the trial court). Mr. West offers no basis upon which

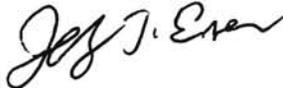
this Court could reasonably conclude that the trial court manifestly abused its discretion in hearing and ruling upon a dispositive motion before requiring briefing and argument on a motion that the Court's scheduling decision rendered unnecessary.

V. CONCLUSION

For these reasons, this Court should affirm the decision of the Superior Court, dismissing this case for lack of a justiciable controversy.

RESPECTFULLY SUBMITTED this 29th day of March 2012.

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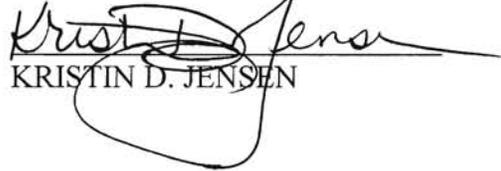
CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the state of Washington, I have caused a true and correct copy of the Brief of Respondents Rob McKenna and State of Washington, to be served on the following via electronic mail:

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DATED this 29th day of March 2012, at Olympia, WA.


KRISTIN D. JENSEN