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

**In re the Petition to Convene a Grand Jury,
Barnes Michael Ware,**

Petitioner

and

**In re the Application for a Citizen Complaint,
Erika Johnson,**

Petitioner

ON REVIEW FROM THE SUPERIOR COURT
OF THE STATE OF WASHINGTON FOR LEWIS COUNTY

**BRIEF OF *AMICUS CURIAE* ANIMAL LEGAL DEFENSE FUND
IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICUS CURIAE*

Founded in 1979, the Animal Legal Defense Fund (“ALDF”) is a national nonprofit organization of attorneys dedicated to protecting the lives and advancing the interests of animals through the legal system. ALDF’s network numbers over 200,000 organizational supporters, including over 2,000 pro bono attorneys who assist with animal law cases. ALDF’s Criminal Justice Program operates nationwide to assist law enforcement and prosecution in animal cruelty cases, support animal cruelty legislation, and produce *amicus curiae* briefs in cases implicating the position of animals within criminal law. The issues in this case have direct implications for animal cruelty victims. Possessed of a breadth and depth of expertise relating to animal law and cruelty prosecutions, ALDF is uniquely suited to aid the Court in deciding the questions presented.

ISSUES PRESENTED

- (1) Do citizens seeking to initiate a criminal complaint via access to a grand jury or presentation to a judge (as laid out in CrRLJ 2.1(c)) have standing to appeal if that attempt is denied?
- (2) Is the process of a citizen seeking to initiate a criminal complaint via presentation to a judge (as laid out in CrRLJ 2.1(c)) constitutionally compliant?
- (3) Is the process of a citizen seeking to initiate a criminal complaint

via access to a grand jury constitutionally compliant?

(4) Has the ability of citizens to petition seeking to convene a grand jury been legislatively abrogated in the state of Washington?

SUMMARY OF ARGUMENT

The ability of Washingtonians to seek initiation of citizen criminal complaints via access to grand juries or presenting to a judge (under CrRLJ 2.1(c)) is a constitutionally-compliant mechanism that leaves untouched the ultimate discretionary authority of prosecuting attorneys, and supports the system of checks, balances, and democratic accountability upon which Washington's justice system is founded.

The instant case is indicative of both the legitimacy and importance of citizen-initiated criminal complaints. Jay, a cat, was subject to brutal—and fatal—abuse in Lewis County. The Lewis County Prosecuting Attorney's Office declined to charge the allegedly involved adults, explaining that the extent of Jay's wounds prevented proving which injury was fatal, as required under a First Degree Animal Cruelty charging theory involving the intentional killing of an animal. Concerned that conduct criminal under either of the *other* two charging theories for First Degree Animal Cruelty (intentional infliction of substantial pain;

intentional causation of physical injury)¹ was going unaddressed in their community, Petitioners sought to initiate citizen criminal complaints via grand jury access and presenting to a judge. Neither option implicates a mandate limiting the Lewis County Prosecuting Attorney's Office's ability to dispose of Jay's case as the prosecuting attorney sees fit, thus avoiding constitutional conflict. The prospect of a criminal complaint being initiated by citizens concerned that Jay's criminal abuse was being improperly unaddressed does, however, speak to the importance of communities having a method to validate the reasoning offered when a prosecutor decides to forgo prosecution, not as a simple matter of policy, but rather due to the prosecutor's asserted reading of the operative law.

In short, whether via grand jury access or under the auspices of CrRLJ 2.1(c), the ability of Washingtonians to seek citizen-initiated criminal complaints does not interfere with the constitutionally required power of prosecuting attorneys to exercise discretion in disposing of a criminal case. Rather, preserving the option for citizens to seek initiation of criminal complaints gives meaningful effect to the accountability built into prosecuting attorneys being locally elected officials.

¹ The relevant portion of Washington's First Degree Animal Cruelty statute reads: "A person is guilty of animal cruelty in the first degree when, except as authorized in law, he or she *intentionally (a) inflicts substantial pain on, (b) causes physical injury to, or (c) kills* an animal by a means causing undue suffering or while manifesting an extreme indifference to life, or forces a minor to inflict unnecessary pain, injury, or death on an animal." RCW 16.52.205(1) (emphasis added).

STATEMENT OF FACTS

Alicia Schroeder owned Jay, a male adult domestic feline.²

Alicia's daughter is Selena Vasquez, who at the time was 11 years old.³

Selena's two friends, Kyla Bowen (then age 13) and Illyleanna Gonzalez (then age 11) were visiting Selena's home on April 28, 2016.⁴

After Jay ate his dinner, Selena let him outside.⁵ A short while later, Selena heard Jay moaning.⁶ She and her two friends went outside and observed EM (then age 11) holding Jay.⁷ Selena and Kyla asked EM to let go of Jay, but EM refused, squeezing Jay so that he appeared unable to breathe.⁸ Selena and Kyla both heard a popping noise come from Jay.⁹

Jay managed to briefly get free.¹⁰ EM chased Jay, stepped on his tail, and grabbed him.¹¹ She again squeezed Jay as she ran away.¹²

Selena and Illyleanna ran back to Selena's apartment to notify Selena's mother, Alicia.¹³ Kyla remained outside with EM and Jay,

² CP 24 ¶ 2.

³ CP 21 ¶ 1.

⁴ CP 16 ¶¶ 1, 3; CP 19 ¶¶ 1-2.

⁵ CP 16 ¶¶ 3-4; CP 19 ¶¶ 2-3; CP 22 ¶ 5.

⁶ CP 22 ¶ 5.

⁷ CP 16 ¶¶ 4-5; CP 19 ¶¶ 3-4; CP 22 ¶ 5.

⁸ CP 16 ¶¶ 5-6; CP 19 ¶ 4; CP 22 ¶¶ 6, 5.

⁹ CP 16 ¶ 6; CP 22 ¶ 6.

¹⁰ CP 22 ¶ 6.

¹¹ CP 22 ¶ 6.

¹² CP 22 ¶ 6.

¹³ CP 19 ¶ 5; CP 22 ¶ 7.

following EM as she ran around.¹⁴ EM ignored Kyla's pleas to relinquish Jay.¹⁵ Jay squirmed, trying to get free, but did not scratch or bite.¹⁶

EM stood below her own family's apartment.¹⁷ EM's mother, Tina Miller, stood above on the apartment's balcony.¹⁸ Miller reached through the gaps of the railing, and EM handed Jay to Miller.¹⁹ Miller then dropped Jay (a distance later estimated to be approximately nine feet) onto the ground.²⁰ Jay let out a sharp cry when he landed.²¹

EM caught Jay and again handed him to Miller on the balcony.²² Miller was laughing as she grasped Jay's neck for 10 seconds.²³ At this point, Jay tried to scratch EM.²⁴ Miller again dropped Jay to the ground.²⁵

EM then grabbed a large rock and threw it into Jay's head, causing blood to spray on the wall.²⁶

At this point, Illyleanna and Selena had returned with Alicia.²⁷ Selena, Illyleanna, Kyla, and Alicia observed Kyle Burke and Richard

¹⁴ CP 16 ¶ 7.

¹⁵ CP 16 ¶ 7.

¹⁶ CP 16 ¶¶ 7, 5.

¹⁷ CP 16 ¶ 8.

¹⁸ CP 16-17 ¶¶ 8-9.

¹⁹ CP 16 ¶ 8.

²⁰ CP 16-17 ¶ 8.

²¹ CP 16-17 ¶ 8.

²² CP 17 ¶ 9.

²³ CP 17 ¶ 9.

²⁴ CP 17 ¶ 9.

²⁵ CP 17 ¶ 9.

²⁶ CP 17 ¶ 10.

²⁷ CP 19 ¶¶ 6-7.

Allshouse eagerly running down the apartment steps.²⁸ As they ran, the men pushed one another, seemingly competing over who would get to hurt “it” first.²⁹ The three young girls, Selena, Kyla and Illyleanna, asked the men what they were doing.³⁰ Burke and Allshouse told the girls not to worry about it.³¹ Kyla ran back to her own apartment.³²

Burke reached Jay, whose head and legs were moving.³³ Burke stabbed Jay in the ear.³⁴ Burke then handed the bloody knife to Allshouse, saying “here, it’s your turn.”³⁵ Allshouse took the knife and returned to Miller’s apartment, reportedly helping Burke to discard the knife.³⁶ EM also ran up to the apartment.³⁷ Burke kicked Jay under a fence.³⁸

Meanwhile, Kyla had ran home.³⁹ She entered the apartment, screaming and crying, saying “They killed the cat!”⁴⁰ She and brother, Elijah Bowen, went downstairs, where they both observed Jay, still alive, under the fence.⁴¹ Jay was bloody, struggling to breathe, with blood

²⁸ CP 17 ¶ 11; CP 19 ¶ 7; CP 24-25 ¶ 4.

²⁹ CP 17 ¶ 11; CP 19 ¶ 7; CP 22 ¶ 8; CP 24-25 ¶ 4.

³⁰ CP 17 ¶ 11; CP 20 ¶ 9; CP 22 ¶ 8.

³¹ CP 17 ¶ 11; CP 20 ¶ 9; CP 22 ¶ 8.

³² CP 17 ¶ 11.

³³ CP 19 ¶ 8.

³⁴ CP 22 ¶ 9; CP 24-25 ¶ 4.

³⁵ CP 22 ¶ 9.

³⁶ CP 22 ¶ 9; CP 26 ¶ 15.

³⁷ CP 22 ¶ 9.

³⁸ CP 24-25 ¶ 4.

³⁹ CP 17 ¶ 11.

⁴⁰ CP 18 ¶ 2.

⁴¹ CP 18 ¶ 5-6; CP 25 ¶ 9.

bubbling from his nose and mouth.⁴²

After Jay died from his injuries, a necropsy report concluded that:

The exact cause of death is either skull fracture, penetrating brain trauma, cervical spinal fracture, or possibly choking, due to the deep contusions and hemorrhage within the wall of the trachea and cervical deep tissues. The cat suffered extensively in his final moments, with painful crushing, blunt and sharp force trauma and possibly asphyxiating trauma.⁴³

ARGUMENT

I. Ware and Johnson Both Have Proper Standing to Appeal in the Instant Case.

A. Ware and Johnson are Aggrieved Parties, Sufficient to Gain Standing.

The lower court acknowledged that Johnson was an “aggrieved party.”⁴⁴ The court notes that, although the term “aggrieved party” is not defined by the Rules, “clearly [Johnson] is the ‘losing’ party to the decision below,” and therefore would have standing to appeal.⁴⁵ By the same logic, Ware has the same standing to appeal.

Furthermore, both Appellants are aggrieved within the definition proffered by the Respondent. That definition characterizes an “aggrieved” party as one whose “proprietary, pecuniary, or personal rights are

⁴² CP 18 ¶ 5; CP 25 ¶ 9.

⁴³ CP 33.

⁴⁴ *Johnson v. Allshouse*, No. 17-2-00013-21 (Lewis County Superior Ct., 2017).

⁴⁵ *Id.*

substantially affected.”⁴⁶ Here, the Appellants’ personal rights are affected because the lower court’s ruling prevents them from exercising their legal right to file a citizen complaint and to petition to convene a grand jury.

The cases cited by the Respondent focus on Appellants not party to lower court actions.⁴⁷ The courts in those cases emphasized in their rulings that third parties did not have a right to appeal, because they were not aggrieved by the lower courts’ ruling. In this case, both Ware and Johnson were parties to the lower court actions. They therefore are distinguishable from the appellants in *Aguirre* and *Sheets*.

B. Ownership of a Victimized Animal is Not Necessary for Initiation of a Citizen Complaint Seeking Justice on the Victimized Animal’s Behalf.

In a civil case treating an animal as damaged property, animal ownership might have relevance to standing. However, neither the process nor the purpose of citizen-initiated criminal complaints are comparable to tort cases. As a matter of process, a citizen seeking to initiate a criminal complaint is not an adverse party in relation to the alleged perpetrator of the criminal conduct in question. Rather the complaining citizen engages a process that brings information to the attention of appropriate responders. The procedural purpose is straightforward: to allow citizens with

⁴⁶ *Aguirre v. AT&T Wireless Servs.*, 109 Wash. App. 80, 85, 33 P.3d 1110, 1112 (2001).

⁴⁷ *Aguirre* at 85; *Sheets v. Benevolent & Protective Order of Keglers*, 34 Wash.2d 851, 855, 210 P.2d 690, 692 (1949).

knowledge of criminal acts to bring the matter to the attention of the justice system, which is able to respond on behalf of the community.⁴⁸ Ownership of a criminally abused animal is irrelevant to the community's interest in addressing such activity, holding perpetrators accountable, and securing justice for victims of criminal animal abuse.

Furthermore, the Respondent's argument would set a dangerous precedent for subsequent animal cruelty cases. Often an abused animal does not have a known owner. At other times, the owner is the one perpetrating the abuse. Therefore, to avoid disparate treatment in cruelty cases, the justice system must recognize standing for advocates as well as owners.

II. Allowing Citizens to Initiate Criminal Complaints as Authorized by Washington State Rules is Not Only Constitutionally Permissible, But Supports Principles Fundamental to Representative Government and the Criminal Justice System.

A. The Process of Citizens Seeking to Initiate Criminal Complaints Does Not Imperil Prosecutorial Discretion.

The instant case does not ask the court to rule on whether prosecution may be compelled or conducted by private parties—arguments regarding such positions are not properly before the court. Rather, the question before this court is whether citizens seeking to *initiate*

⁴⁸ See also *infra* Section II.E and accompanying text (situating citizen-initiated criminal complaints in the context of fundamental values underlying the administration of criminal justice within the United States of America).

a criminal complaint may do so by calling upon the authority of a prosecuting attorney, or via grand jury access, or via complaint to a judge. Regardless of which avenue citizens avail themselves of, prosecutorial discretion is maintained. If a citizen chooses to bring criminal conduct to the attention of executive officers, the prosecutor may choose to themselves pursue the case, decline the case, or seek a special prosecutor to handle the matter. Similarly, a criminal complaint initiated by way of a grand jury or judge gives the prosecutor the same options: take the case, decline the case, or seek to have the case handled by someone else. Nothing in text of CrRLJ 2.1(c) or the process of a citizen approaching a grand jury speaks to any party other than an executive agent of the state (the prosecuting attorney, or a designee from the Attorney General's Office, or a special prosecutor) determining the course of prosecution. The impact on prosecutorial discretion is, therefore, non-existent: citizen-initiated criminal complaints do not result in compulsion to prosecute.

B. Citizen-Initiated Criminal Complaints Fit Within the Constitutional Framework Outlined in *State v. Rice*.

That a citizen complaint initiated by way of grand jury or judge “attach[es no] legal consequences to a prosecutor’s [decision to forgo subsequent prosecution]” reinforces the legitimacy of both options.⁴⁹ Despite the ability of citizens to have their concerns regarding criminal

⁴⁹ *State v. Rice*, 174 Wash.2d 884, 889, 279 P.3d 849, 852 (2012).

conduct recognized by grand juries or judges, both paths lead to the familiar broad discretion held by prosecutors. Despite citizen initiation, it remains prosecutors who ultimately determine whether to proceed with initiated charges. In preserving the ability of prosecutors to decisively halt the progress of criminal cases, grand jury access and CrRLJ 2.1(c) accord with the fundamental framework identified by *State v. Rice*:

[E]ach branch must act in order for criminal punishment to be imposed, and each exercise of governmental authority may be tempered by mercy.... [a co-equal branch] cannot usurp the inherent charging discretion of prosecuting attorneys....⁵⁰

Here, the prosecuting attorney's discretion remains a gatekeeper for criminal punishment. Moreover, the prosecuting attorney may still exercise mercy (among other considerations)⁵¹ in choosing to use "discretion to forgo" a complaint "*even if* sufficient evidence exists" to pass the requisite initiation threshold before a grand jury or judge.⁵² Under *Rice*, a citizen-initiated criminal complaint cannot be said to impermissibly constrain prosecutorial discretion, because "a prosecuting attorney can[not] be forced to comply [and] a prosecutor's failure to comply has [no] legal repercussions."⁵³ In short, the lower court's

⁵⁰ *Rice* at 890.

⁵¹ Such as "individualized justice ... resource limitations ... competing investigations and prosecutions ... the modern 'proliferation' of criminal statutes; and to reflect local values, problems, and priorities." *Rice* at 902.

⁵² *Rice* at 890 (emphasis added).

⁵³ *Rice* at 896.

depiction of citizen-initiated complaints as allowing judges to “in *essence* exercise[e] charging discretion” mistakes form for function,⁵⁴ conflating the initiation process with the quintessential attributes of prosecutorial discretion identified in *Rice*. Prosecuting attorney powers remain undisturbed by citizen-initiated complaints; the prosecuting attorney retains full and unilateral authority to forgo or maintain prosecution.⁵⁵

C. Reading CrRLJ 2.1(c) as Impermissibly Constraining Prosecutorial Discretion Invents a Constitutional Conflict Where None Exists.

While *Rice* focuses upon the nature of statutory phrasing,⁵⁶ the core issue is the same as in the instant case: whether a non-executive pronouncement⁵⁷ enshrined in a statute or rule which does not *compel* exercise of prosecutorial discretion should nonetheless be read in a fashion that creates a constitutional crisis.⁵⁸ The answer properly reached in *Rice*,

⁵⁴ *Johnson v. Allshouse*, No. 17-2-00013-21 (emphasis added).

⁵⁵ This remains so, despite *Rice*'s description of the fundamental role of a prosecuting attorney involving discretion as to “whether to file criminal charges against an individual, and if so, which available charges to file.” *Rice* at 902. The portion of *Rice* immediately following is key: it is the ability to consider “individual facts and circumstances when deciding whether to enforce criminal laws” that typifies “this most important prosecutorial power.” *Id.* The determinant factor is not, therefore, the formal initiation of a criminal complaint, but rather the functional ability of prosecuting attorneys to control—or end—prosecution.

⁵⁶ I.e. whether “shall” as used in RCW 9.94A.835 means ‘must’ or ‘may’) *Rice* at 896. The relevant portion of RCW 9.94A.835 reads, “The prosecuting attorney shall file a special allegation of sexual motivation in every criminal case, felony, gross misdemeanor, or misdemeanor, other than sex offenses as defined in RCW 9.94A.030 when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact finder.”

⁵⁷ In *Rice* the pronouncement originates in the legislative branch; here, both CrRLJ 2.1(c) and the grand jury are creatures of the judicial branch.

⁵⁸ *Rice* at 895–97.

as in the instant case, is no.⁵⁹

Rice draws a critical distinction between language that mandates executive action, and that which “merely [acts as] a guide ... rather than a limitation”⁶⁰ CrRLJ 2.1(c) most clearly fits in the latter camp: while its text offers an opportunity for citizens to initiate criminal complaints pursuant to alleged misdemeanors by presentation to a judge, that same text lacks any language obligating prosecutorial action.⁶¹ Nor is there a separate mechanism to force or otherwise limit the ability of prosecuting attorneys to dispose of the resulting criminal complaints as they think best.

Given that—like the statute considered in *Rice*—CrRLJ 2.1(c) does not create a limit on prosecutorial power, the instant case implies similar issues of interpretation as those considered in *Rice*. Namely, the long-held principle that judicial interpretation should, when possible, preserve both intent and constitutionality.⁶² While there is a dearth of context related to the intent underlying CrRLJ 2.1(c), this hardly provides reason to read the rule in such a way as to create a constitutional conflict that could otherwise be avoided.

⁵⁹ *Rice* at 858, 860–61.

⁶⁰ *Rice* at 896 (quoting *Niichel v. Lancaster*, 97 Wash.2d 620, 623–24, 647 P.2d 1021, 1023 (1982) (internal quotation marks omitted).

⁶¹ CrRLJ 2.1(c).

⁶² See, e.g., *State v. Williams*, 171 Wash.2d 474, 476, 251 P.3d 877, 879 (2011) (“The court’s duty in statutory interpretation is to discern and implement the legislature’s intent. Where possible, we construe statutes so as to preserve their constitutionality.”).

This is all the more so when the Washington Supreme Court has not seen fit to read CrRLJ 2.1(c) as causing an inherent constitutional issue. In 2015, the Washington Supreme Court entertained—for the third time in under a decade—a petition to delete CrRLJ 2.1(c) on substantially the same grounds offered by the Respondent and lower court in the instant case.⁶³ Despite the petition specifically calling out the interpretation of *Rice* relied upon by the Respondent and lower court,⁶⁴ the Washington Supreme Court again declined to delete the rule.⁶⁵ In interpreting statutes, Washington courts presume the legislature to be familiar with constitutional requirements; therefore preferring statutory readings that preserve constitutionality, rather than those that generate constitutional

⁶³ *Suggested Amendments: Criminal Rules for Courts of Limited Jurisdiction Rule 2.1 Complaint—Citation and Notice*, Washington State Bar Association Board of Governors (2015) (available at:

https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=388) (recounting petitions to the Washington State Supreme Court in 1996, 2012, and 2015 seeking deletion of CrRLP 2.1(c) on the theory that the rule poses a constitutional separation of powers problem).

⁶⁴ *Suggested Amendments: Criminal Rules for Courts of Limited Jurisdiction Rule 2.1 Complaint—Citation and Notice*, *supra* note 63; *see also* “re: Proposed Repeal of CrRLJ 2.1(c),” DISTRICT AND MUNICIPAL COURT JUDGES’ ASSOCIATION (April 16, 2015) (available at:

https://www.courts.wa.gov/court_Rules/proposed/2014Nov/CrRLJ2.1/Judge%20David%20A.%20Steiner.pdf) (letter in support of petition to eliminate CrRLJ 2.1(c), advancing a *Rice*-based argument substantially similar to that made by the Respondent and the lower court: that “CrRLJ 2.1(c) violates the separation of powers doctrine by encroaching on a prosecuting attorney’s charging discretion...”).

⁶⁵ *See* Washington Courts, “Proposed Rules Archives,”

https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedDetailsArchive&proposalId=78 (listing the 2015 petition to delete CrRLJ 2.1 as rejected).

conflicts.⁶⁶ This canon of construction holds all the more relevance when applied to rules generated by a body whose business substantially consists of considering constitutional matters: the Washington Supreme Court. Adopting the reading of CrRLJ 2.1(c) and *Rice* offered by the Respondent and the lower court not only requires generating a gratuitous constitutional conflict, but also requires understanding the Washington Supreme Court to be incapable of discerning an unconstitutional rule when it sees one. The proper reading of CrRLJ 2.1(c) is that outlined above: the statute does not limit or control ultimate prosecutorial discretion, and so fits within the *Rice* framework, and therefore poses no inherent constitutional conflict.

D. The Process of Citizens Seeking to Initiate Criminal Complaints via Grand Jury Access Does Not Raise a Constitutional Conflict.

Much as CrRLJ 2.1(c) does control core prosecutorial discretion, so too does a citizen seeking to initiate a criminal complaint by approaching a grand jury not rise to the level of a constitutional conflict. The separation of powers concern raised by the lower court in rejecting Ware’s grand jury petition relies on the same analysis as the lower court’s treatment of CrRLJ 2.1(c).⁶⁷ As such, the constitutional compliance of

⁶⁶ *Rice* at 899; see also *State v. Bryan*, 93 Wash.2d 177, 183, 606 P.2d 1228, 1231 (1980) (“It must be presumed that the legislature intends to enact effective laws.”). By analogy, it seems wise to presume that supreme courts intend to effect constitutionally-compliant decisions.

⁶⁷ Compare *Ware v. Burke*, No. 16-1-00773-21 (Lewis County Superior Ct., 2017) (“separation of powers ... underlies our decision”), with *Johnson v. Allshouse*, No. 17-2-00013-21 (relying upon “the separation of powers doctrine”).

citizen-initiated criminal complaints is as valid for grand jury access as it is under the process laid out in CrRLJ 2.1(c).⁶⁸

E. The Citizen Initiated Complaint Process Enshrined in Grand Jury Access and CrRLJ 2.1(c) Supports the Democratic Accountability Upon Which Prosecutorial Authority Ultimately Depends.

That grand jury access and CrRLJ 2.1(c) refrain from impinging upon ultimate prosecutorial discretion does not, however, render them inconsequential. Quite the contrary, the existence of grand jury access and CrRLJ 2.1(c) have significant implications for the proper function of criminal prosecution. As the Respondent highlights, courts have long situated prosecutors as ultimately accountable to the communities they serve—their constituents by any other name.⁶⁹ If a community feels that its elected prosecutor is not adequately doing the work of justice, the community’s ultimate recourse is indeed “to express their feelings at the polls.”⁷⁰ This simple structural reality speaks to the fundamental source of a prosecutor’s legitimate authority: popular sovereignty.⁷¹ That prosecuting attorneys exercise state power on behalf of the communities to which they are accountable is part and parcel of the system of checks and

⁶⁸ See generally Part II. A–C (no constitutional conflict raised by CrRLJ 2.1(c)).

⁶⁹ See, e.g., Respondent’s Appeal Brief at 14–16, 23.

⁷⁰ Respondent’s Appeal Brief at 41 (quoting *In re Padgett*, 678 P.2d 870, 873 (Wyo. 1984)).

⁷¹ *Rice* at 905 (“...the very concept of a locally elected “prosecuting attorney” includes the core function of exercising broad charging discretion *on behalf of the local community.*”) (emphasis added).

balances underlying our governmental framework.⁷² Prosecutors may explain to voters why they have chosen to prioritize certain cases or to pass on others. Voters take those explanations—and, more generally, a prosecuting attorney’s ability to secure justice on behalf of the community—into account when casting their ballots.

In order for that democratic accountability to function, however, members of the community—most of whom are not criminal justice practitioners—must be able to trust the accuracy of their elected prosecutor’s explanations. In this context grand jury access and CrRLJ 2.1(c) serve an important truth-telling function. If citizens concerned about potential criminal conduct are rebuffed by their prosecuting attorney on the grounds that the conduct is not colorably pursuable, those citizens may seek to generate a criminal complaint via access to a grand jury or CrRLJ 2.1(c). The net impact is to provide voters with useful data: the prosecutor’s characterization of a case as legally untenable (rather than simply de-prioritized on policy grounds) is either validated or rejected before the community. The ability to initiate citizen criminal complaints shores up the accountability of prosecuting attorneys to their

⁷² See, e.g., *Ware v. Burke*, No. 16-1-00773-21 (“As an elected official, prosecuting attorneys are accountable to the voting public—a bedrock of Democracy....”).

communities.⁷³ The ability of citizens to seek initiation of criminal complaints via grand jury access or CrRLJ 2.1(c) is thus the ally, not the foe, of the democratic and separation of powers principles pointed to by the Respondent and the lower court. Indeed, the citizen-initiated criminal complaint process is a mechanism that serves to make notions of democratic accountability and limited state power vis-à-vis prosecution meaningful.

III. The Washington State Legislature Has Not Abrogated The Ability of Citizens to Initiate Criminal Complaints via Approaching a Grand Jury.

The Respondent erroneously argues the legislature abrogated the power of private prosecutors to convene a grand jury. The Respondent points to the fact that, in 1971, the legislature repealed a then-hundred-year-old law regarding technical procedural matters relating to private prosecutions. That law provides that the name of the private prosecutor must be on the indictment, and that costs may be awarded against the

⁷³ “re: Proposed Rule CrRLJ 2.1(c),” WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS (April 2015) (available at: https://www.courts.wa.gov/court_Rules/proposed/2014Nov/CrRLJ2.1/Louis%20Frantz%20and%20Kent%20Underwood%20of%20WACDL.pdf) (“In *Rice*, in considering checks and balances, the court noted that the jury is a check on all three branches of government by its verdict. However, that citizen check applies only to the filing of charges and not to the non-filing of charges. The citizen complaint process is a check on the executive branch and the non-filing of charges. It does not interfere with those decisions. It merely supplements them when the executive branch refuses to act.”).

private prosecutor in cases of malicious or unfounded prosecutions.⁷⁴

This law is not, as the Respondent claims, a “provision allowing private prosecutors to request and access the grand jury.”⁷⁵ The authority of private prosecutors is presumed by the statute, but does not live and die by procedural rules. The authority of private prosecutors is a deeply enshrined tradition within the judicial system that can only be abrogated by intentional and clear legislative action. Therefore the court must construe the repeal of this technical rule as just that—and nothing more.

Furthermore, that same year, the legislature enacted RWC

10.27.030, which states in part:

A grand jury shall by summoned by the court, where the public interest so demands, wherever in its opinion there is sufficient evidence of criminal activity or corruption within the county *or* whenever so requested by a public attorney....⁷⁶

This statute lists two alternatives to public prosecutors. That this statute was enacted the same year as the repeal of Section 996 evinces an intent to preserve the power of private prosecutors.

The lower *Ware* court acknowledges Ware’s request falls into two of the three categories—though one would be sufficient. Not only does the public interest demand a grand jury in this case, there is also sufficient

⁷⁴ Code of 1881 §996.

⁷⁵ Respondent’s Appeal Brief, at 35.

⁷⁶ RWC 10.27.030 (emphasis added).

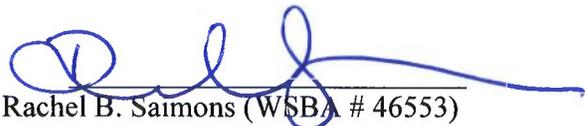
evidence of criminal activity.

CONCLUSION

Though animals suffer when targeted by criminal conduct, they are unable to directly express their need for protection or justice. While animals share with humans membership in the community of sentient creatures, they are not the constituents to whom members of electoral communities are accountable. It falls upon humans to give voice to the justice needs of criminally abused animals—for there is no one else who can. Allowing citizens to check prosecutorial charging decisions by initiating criminal complaints promotes electoral honesty and supports the sort of public accountability foundational to modern public prosecution. As such, it is important that longstanding and constitutionally-compliant avenues enabling citizen-initiation of criminal complaints remain open.

DATED December 7, 2017.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I certify that on December 7, 2017, I caused to have served an original and one copy of **BRIEF OF AMICUS CURIAE ANIMAL LEGAL DEFENSE FUND IN SUPPORT OF PETITIONERS** upon the Clerk of the Court of Division II, and one true and correct copy upon the following by the method(s) indicated below:

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Adam Phillip Karp Email: adam@animal-lawyer.com 114 W. Magnolia St., Ste. 400-104 Bellingham, WA 98225-4354 <i>Counsel for Petitioner</i>	<input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Email <input type="checkbox"/> Facsimile
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Dated this 7 day of December 2017, at Seattle, Washington.

KILPATRICK TOWNSEND & STOCKTON LLP


 Rachel B. Saimons (WSBA # 46553)
 Counsel for Amicus Curiae

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