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NO. 97646-5

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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ERIC JOHNSON AND RICHARD MANKAMYER,

Appellants,

v.

THE WASHINGTON STATE CONSERVATION COMMISSION and  
the following in their individual and official capacities: JIM KROPF,  
CHAIR; DEAN LONGRIE, VICE-CHAIR; HAROLD CROSE,  
COMMISSIONER; LARRY COCHRAN, COMMISSIONER; DARYL  
WILLIAMS, COMMISSIONER; SARAH SPAETH, COMMISSIONER;  
PERRY BEALE, COMMISSIONER; THOMAS MILLER,  
COMMISSIONER; EXECUTIVE DIRECTOR MARK CLARK;  
POLICY DIRECTOR RON SHULTZ; JOHN AND JANE DOES 1-10,

Respondents/Cross-Appellants.

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**WASHINGTON STATE CONSERVATION COMMISSION'S  
BRIEF OF RESPONDENT/CROSS APPELLANT**

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## **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

The Washington State Conservation Commission (Commission) voted to remove Mr. Johnson and Mr. Mankamyer from their volunteer positions as Thurston Conservation District supervisors for malfeasance and neglect of duty. Mr. Johnson and Mr. Mankamyer contend that the statute authorizing the Commission to remove them is unconstitutional as applied to Mr. Mankamyer based on the argument that the recall procedure of article I, sections 33 and 34, is the exclusive means of removing him from office. The Washington Constitution, however, precludes their argument by expressly reserving to the Legislature the authority to provide for the removal of public officers as provided by law. Const. art. V, § 3. The Legislature has exercised that authority by granting the Commission the power to remove local supervisors. RCW 89.08.200.

The Commission cross appealed to seek review of the superior court's decision to invalidate the removal of Mr. Johnson and Mr. Mankamyer on procedural grounds. The Commission's procedure fully complied with due process, even if it was not denominated as an adjudicative proceeding under the Administrative Procedure Act (APA). Before their vote on removal, and consistent with the Commission's statute authorizing such removal, the Commission gave Mr. Johnson and Mr. Mankamyer notice of the charges against them, the opportunity to

respond to the charges, and a public hearing during which Mr. Johnson and Mr. Mankamyer presented argument, examined and cross-examined witnesses sworn under oath, and entered exhibits.

This Court should affirm the superior court's decision as to Mr. Johnson's and Mr. Mankamyer's original appeal, but reverse as to the Commission's cross-appeal. It should affirm the superior court's conclusion that RCW 89.08.200 is not unconstitutional as applied to Mr. Mankamyer because the recall process is not the exclusive means for removing a conservation district supervisor from office. It should reverse the superior court's decision invalidating the Commission's exercise of that authority on procedural grounds, and deny Mr. Johnson and Mr. Mankamyer the relief they seek.

## **II. RESTATEMENT OF ISSUES ON APPEAL**

1. Is a recall petition the exclusive means of removing an elected conservation district supervisor, in disregard of the Commission's removal procedures set out in RCW 89.08.200 and WAC 135-110-960?

2. If the Commission did err procedurally, was the trial court's remand for further action proper?

### **III. ASSIGNMENTS OF ERROR AND ISSUES RELATING TO ASSIGNMENT OF ERROR ON CROSS APPEAL**

#### **A. Assignments of Error**

1. The superior court erred when it found that the Commission erred by holding the hearing to determine the removal of Mr. Johnson and Mr. Mankamyer under the Open Public Meetings Act (OPMA) rather than the APA.

2. The superior court erred when it found that Mr. Johnson and Mr. Mankamyer were denied procedural rights, and that this denial substantially prejudiced them.

#### **B. Issues Pertaining to Assignment of Error 1:**

1. Did the hearing held by the Commission on whether or not to remove Mr. Johnson and Mr. Mankamyer from their volunteer positions comply with the Commission's statutes and rules?

2. Was the Commission required to hold the removal hearing as an adjudication governed by the APA, when the Commission's statutes do not specify use of the APA?

#### **C. Issue Pertaining to Assignment of Error 2:**

1. Were Mr. Johnson and Mr. Mankamyer prejudiced by the hearing procedures, when they had notice of the charges against them, the opportunity to respond to the charges, and a public hearing where they

had the opportunity to present evidence, witnesses, and conduct cross examination?

#### IV. RESTATEMENT OF THE CASE

Local conservation districts are governed by a Board of Supervisors, some of whom are elected, others of whom are appointed by the state Commission. RCW 89.08.160, .190, .200. Mr. Mankamyer is an elected supervisor of the Thurston Conservation District, and his term runs until May 2020. Brief of Appellants Johnson and Mankamyer (Appl. Br.) at 3. Mr. Johnson is an appointed supervisor of the Thurston Conservation District whose term expired in May 2019. *Id.* Supervisor positions are voluntary positions. Supervisors receive no salary, although they may be reimbursed for their expenses while serving. RCW 89.08.200.<sup>1</sup>

In November 2017, during their regular business meeting, the Commission received a written complaint identifying concerns with the conduct of the Thurston Conservation District’s Board of Supervisors, and supervisors Mr. Johnson and Mr. Mankamyer in particular. AR 0003; 0339–41.<sup>2</sup> The Commission adopted a motion empowering the Executive

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<sup>1</sup> Text of RCW 89.08.200 is attached as Appendix A.

<sup>2</sup> “AR” refers to the Bates numbered Administrative Record filed below by the Commission. “CP” refers to Clerks Papers filed with this Court. “SM” refers to the transcript of the Commission’s August 29, 2018 Special Meeting (2018-08-29WSCCSpecialMeetingTranscript.pdf). “SHRP” refers to the transcript of the February 20, 2019 public hearing on removal (2019-02-20WSCCSpecialHearing.pdf). “VRP” refers to the Verbatim Report of Proceedings before the superior court.

Director to issue notices of a hearing to each Thurston Conservation District supervisor, five individuals in all, regarding the potential for their removal from their positions under RCW 89.08.200. AR 0003.

Commission staff investigated all five Thurston District supervisors in relation to the complaints received, and produced an investigative report of their results. AR 0001–61. The investigative report set out eleven specific charges against the supervisors. *Id.* Ultimately, investigative staff recommended removal of Mr. Johnson and Mr. Mankamyer for neglect of duty and malfeasance. AR 0002; 0039–44.

The Commission provided the investigative report to Mr. Johnson and Mr. Mankamyer by certified mailing on July 18, 2018. AR 2371–74. The investigative report detailed the specific elements of neglect of duty or malfeasance for which their removal was recommended. AR 0001–61. The letters informed Mr. Johnson and Mr. Mankamyer of the opportunity to provide a written response within 30 days. AR 2372; 2374. They provided a written response on August 14, 2018. AR 1602–88.

The July 18, 2018 letters and the accompanying investigative report served as formal notice of the charges of neglect duty and malfeasance. The letters stated that the individual state Commissioners would not receive a copy of the investigation report until after 30 days from the supervisors' receipt of the notice. AR 2372; 2374. The letters

informed Mr. Johnson and Mr. Mankamyer that the investigative report and any response would be provided to the Commissioners at the same time. *Id.* The letters also stated that if the Commissioners decided to conduct a hearing to consider removing the supervisors from their positions, Mr. Johnson and Mr. Mankamyer would receive notice of the hearing 60 days prior to the date of the hearing. *Id.*

The Commission held a special meeting on August 29, 2018, in order to decide whether to hold a public hearing to consider Mr. Johnson and Mr. Mankamyer's removal. AR 2439. Thirty-nine people signed in as present at the meeting, and twenty people signed up to provide public comment. AR 2440–45. After receiving public comment, the Commission deliberated and voted to hold a public hearing on the Thurston Conservation District investigation. SM 39–45; AR 2436.

The Commission also discussed the format of the hearing. SM 39–53. Individual Commissioners expressed concern regarding the length of time the investigation had already taken, and their interest in concluding the matter as soon as possible to get the conservation district back to being a functioning entity. SM 42, 43, 49. After discussion as to the format of the meeting, the Commission voted to conduct the required public hearing as an open public meeting under the provisions of the OPMA, rather than holding a formal adjudication governed by the APA, RCW 42.30. SM 39–

53; AR 2436. Mr. Johnson and Mr. Mankamyer were notified of the Commission's decision by letter on September 11, 2018. AR 2385–88. The Commission's September 11, 2018 letter also notified them of the window within which the Commission was considering a hearing date. *Id.* It also informed them of their additional opportunity to provide the Commission with a hearing brief, which could include additional exhibits. *Id.* It set out the order of presentations for the public hearing. *Id.*

Mr. Johnson and Mr. Mankamyer objected to the Commission's decision to hold the hearing under the OPMA, and communicated that in an email between counsel. AR 2383. The Commission treated the September 11, 2018 email as an application for an adjudicative proceeding pursuant to RCW 34.05.413(2). AR 2389–90. As required by RCW 34.05.416, the Commission responded on September 13, 2018, informing Mr. Johnson and Mr. Mankamyer that it would not conduct the public hearing as an APA adjudication. AR 2389–90. In the letter, the Commission provided the reasons for its decision, as required by the statute.

At the August 29, 2018 special meeting, the Commission also voted to retain the services of a hearing examiner to assist them with conducting the removal hearing. SM 59–60; AR 2436. As the hearing date approached, the hearing examiner held two prehearing conferences, and

issued three Prehearing Orders governing hearing procedures. AR 2329–36.

At the supervisors’ request, the Prehearing Orders expressly provided for the examination of witnesses and the entry of additional exhibits. *Id.* The Prehearing Orders also set the agreed time limits for presentations by Commission investigative staff and the supervisors. *Id.*

The supervisors and Commission investigative staff filed prehearing briefs. AR 1478–1520 (supervisors); AR 1521–45 (Staff Brief re Johnson [excluding exhibits]); AR 1945–65 (Staff Brief re Mankamyer [excluding exhibits]). Additionally, the supervisors and the Commission investigative staff both filed lists of witnesses and exhibits. AR 2337–40 (supervisors); AR 2341–60 (staff). In each case, Mr. Johnson and Mr. Mankamyer’s submittals also included motions related to the hearing. Staff filed responses to the motions, and the supervisors filed replies. AR 1461–69 (Staff); AR 1470–77 (supervisors). The hearing examiner ruled on the motions at the start of the hearing. SHRP 31–66.

Although originally scheduled for December 7, 2018, the hearing was ultimately held on February 20, 2019. AR 2395. Commission staff presented two witnesses in their case-in-chief, Kirk Robinson and Sarah Moorehead. SHRP 1–4. In addition to their own testimony, Mr. Johnson and Mr. Mankamyer presented five other witnesses: Diretha Hollenbaugh,

James Goché, Linda Powell, Paul Mikoloski, and Joe Hanna. *Id.* Staff presented one rebuttal witness, Commission Executive Director Mark Clark. *Id.* All witnesses were sworn under oath, subject to cross-examination, and subject to examination by the Commissioners.

At the close of the hearing, the Commission entered executive session to deliberate. SHRP 474:19. When the Commission came back on the record, it voted to remove Mr. Johnson and Mr. Mankamyer from their supervisor positions. SHRP 474:21–477:4. At the Commission’s next regular meeting, the Commission issued its Findings of Fact, which were transmitted to Mr. Johnson and Mr. Mankamyer. WAC 135-110-960(4)<sup>3</sup>; AR 2398–2404; 2396–97.

## V. ARGUMENT

### A. Standard of Review

This Court reviews the Commission’s actions under the APA. *Tapper v. Emp’t Sec. Dep’t*, 122 Wn.2d 397, 402, 858 P.2d 494 (1993). In reviewing the Commission’s action, the appellate court sits in the same position as the superior court and will apply the APA standards to the record before the agency. *Id.* “The burden of establishing invalidity of agency action is on the party asserting invalidity.” *Postema v. Pollution*

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<sup>3</sup> Text of WAC 135-110-960 is attached as Appendix B.

*Control Hearings Bd.*, 142 Wn.2d 68, 77, 11 P.3d 726 (2000). The Court may grant relief only if the person seeking judicial relief has been substantially prejudiced by the action complained of. *Densley v. Dep't of Ret. Sys.*, 162 Wn.2d 210, 226, 173 P.3d 885 (2007) (citing RCW 34.05.570(1)(d)).

Mr. Johnson and Mr. Mankamyer appealed the choice of procedure that the Commission used to remove them from office. CP 16–18; Appl. Br. at 1. The Commission's choice of procedure is an "other agency action," reviewable under RCW 34.05.570(4), because that decision on the procedure used is neither a rule reviewable under RCW 34.05.570(2), nor an order issued in an adjudicative proceeding reviewable under RCW 34.05.570(3). RCW 34.05.570(4)(a).

If Mr. Johnson and Mr. Mankamyer can show they have been substantially prejudiced by the procedure the Commission used, then relief may be granted if the Court determines that the agency action is:

- (i) Unconstitutional;
- (ii) Outside the statutory authority of the agency or the authority conferred by a provision of law;
- (iii) Arbitrary or capricious; or
- (iv) Taken by persons who were not properly constituted as agency officials lawfully entitled to take such action.

RCW 34.05.574(4)(c).

An action is arbitrary or capricious if it "is willful, unreasoning, and taken without regard to the attending facts or circumstances." *Ass'n of*

*Wash. Spirits and Wine Distrib. v. Wash. State Liquor Control Bd.*, 182 Wn.2d 342, 358, 340 P.3d 849 (2015) (internal citations omitted). “Where there is room for two opinions, an action taken after due consideration is not arbitrary and capricious even though a reviewing court may believe it to be erroneous.” *Hillis v. Dep’t of Ecology*, 131 Wn.2d 373, 383, 932 P.2d 139 (1997).

Mr. Johnson and Mr. Mankamyer do not challenge any of the Commission’s Findings of Fact (AR 2398–2404), all of which are thus verities on appeal. *Shoreline Cmty. College Dist. No. 7 v. Emp’t Sec. Dep’t*, 120 Wn.2d 394, 404, 842 P.2d 938 (1992). The Commission’s unchallenged findings may not be reweighed by this Court. *Davis v. Dep’t of Labor and Indus.*, 94 Wn.2d 119, 124, 615 P.2d 1279 (1980).

Mr. Johnson and Mr. Mankamyer also do not appeal any of the rulings made by the hearing examiner during the course of the public hearing, including rulings on motions and rulings made on evidentiary and other objections.

Mr. Johnson and Mr. Mankamyer bear the burden of establishing that the Commission’s removal statute is unconstitutional as applied to Mr. Mankamyer. A party challenging the constitutionality of a statute bears the burden of proving the statute is unconstitutional beyond a reasonable doubt. *State v. Watkins*, 191 Wn.2d 530, 535, 423 P.3d 830

(2018) (internal citation omitted). “If possible, the court will construe a statute so as to render it constitutional.” *Id.* (internal citation omitted).

**B. Elected Supervisors May be Removed Pursuant to RCW 89.08.200**

State law vests in the Commission the authority to remove local conservation district supervisors “upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.” RCW 89.08.200. Mr. Mankamyer does not contest that this statute, by itself, does not distinguish between elected and appointed supervisors. He argues, however, that RCW 89.08.200 cannot be constitutionally applied to him on the theory that as an elected commissioner the sole basis for his removal would be the recall process specified in article I, sections 33 and 34 of the Washington Constitution.

**1. RCW 89.08.200 does not distinguish between the Commission’s authority to remove elected and appointed supervisors**

The plain language of RCW 89.08.200 allows the Commission to remove local supervisors without distinguishing between appointed and elected supervisors. Mr. Mankamyer does not contend otherwise. A few words about the statute itself are appropriate at the outset because Washington courts generally consider the statute itself before proceeding to a constitutional analysis. *See Wash. Pub. Emp. Ass’n v. Wash. State Ctr.*

*for Childhood Deafness & Hearing Loss*, No. 95262-1, 2019 WL 5444797, at \*2 (Wash. Oct. 24, 2019).

RCW 80.08.200 distinguishes between elected and appointed supervisors for some purposes, but not when it comes to their removal. RCW 89.08.200. The statute differentiates between appointed and elected supervisors to set out their initial staggered terms, and to state how vacancies are filled. *Id.* For all other purposes, the statute does not distinguish between elected and appointed supervisors at all. *Id.* Specifically, for the purposes of the length of a term of office, what constitutes a quorum and majority vote, ineligibility for compensation, entitlement to expense reimbursement, and for removal, the statute simply refers to “supervisors” without distinction. *Id.* This contrast in statutory terms demonstrates that the Legislature intended for the Commission’s removal authority to apply to elected and appointed supervisors alike. *See Densley*, 162 Wn.2d at 219 (the use of different terms in a statute indicates different meanings).

By its plain language the statute does not distinguish between appointed and elected supervisors for purposes of their removal from office.

**2. Recall under general election laws is not the exclusive means for removing an individual from office**

Recall is not the exclusive means of removing a person from public office. Neither the state Constitution nor the recall statutes prevents the Legislature from providing other means for removal of an official. Mr. Mankamyer's brief is devoid of any authority for the notion that recall is the *exclusive* method for removing an elected official from office. Appl. Br., *passim*.

The Washington Constitution expressly reserves to the Legislature the authority to provide for the "removal for misconduct or malfeasance in office, in such manner as may be provided by law." Const. art. V, § 3. The constitution "left it entirely to the legislature" to determine how this could be done. *State ex rel. Howlett v. Cheetham*, 19 Wash. 330, 332, 53 P. 349 (1898). The Legislature has used that authority to provide for the removal of elected officials from office through various means. These include:

- Writ of *quo warranto*. See RCW 7.56.010; see also *State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 893, 969 P.2d 64 (1998) ("the writ of *quo warranto* was designed to challenge the entitlement of a person to hold office").
- Judicial contest of the results of an election. RCW 29A.68.020.

- Removal for violation of the code of ethics for municipal officers. RCW 42.23.050; *see also City of Raymond v. Runyon*, 93 Wn. App. 127, 132, 967 P.2d 19 (1998) (discussing forfeiture of office as a remedy for a violation).
- Removal upon conviction of a felony. RCW 9.92.120.
- The occurrence of any event that creates a vacancy by operation of law upon any of the circumstances set out in RCW 42.12.010, including removal from office. RCW 42.12.010(3); *State ex rel. Austin v. Superior Court for Whatcom Cty.*, 6 Wn.2d 61, 65, 106 P.2d 1077 (1940). Such removal is not conditioned in any way, nor limited to removal by recall election.
- Impeachment. Const. art. V, § 1.

Nowhere in article I, section 33 does the constitution state that the recall provision is an exclusive means of removing a person from office. Neither do the recall provisions of state general election law, RCW 29A.56, contain such a limitation, providing only the statutory process that applies whenever any legal voter of the state or political subdivision desires to demand the recall and discharge of any elective public officer. RCW 29A.56.110.

Local conversation district supervisors are not clearly subject to recall in any event. This is because the recall process found in the state

constitution specifies that recall elections are called “as provided by the general election laws” of the state. Const. art. I, § 33. But conservation district supervisors are not elected under the general election laws, but under a special procedure unique to them. RCW 29A.04.330(1)(b) (specifically exempting conservation districts (and certain other special districts); *see also* Laws of 2002, ch. 43 § 1 (“[I]t is in the intent of the legislature that elections of conservation district supervisors continue to be conducted under procedures in the conservation district statutes, chapter 89.08 RCW, and that such elections not be conducted under the general election laws contained in Title 29 RCW”).

Even if local conservation district supervisors are subject to recall, a point this Court need not decide, the two provisions serve different purposes in any event. Under the general election laws, an individual is subject to recall election for malfeasance, misfeasance, or violation of an oath of office. RCW 29A.56.110. Under the Commission’s statute, by contrast, a supervisor may be removed for malfeasance or neglect of duty, which are defined in the Commission election rules. WAC 135-110-110.<sup>4</sup> The conclusion that the recall process is not the exclusive means of removing a supervisor from office renders neither the recall process for

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<sup>4</sup> Text of WAC 135-110-110 is attached as Appendix C.

the process for removal by the Commissioner superfluous. *See Spokane Cty. v. Dep't of Fish and Wildlife*, 192 Wn.2d 453, 458, 430 P.3d 655 (2018) (statutes should be construed so that no part is rendered superfluous). When read together, the statutes are consistent and achieve “a harmonious total statutory scheme . . . which maintains the integrity of the respective statutes.” *Am. Legion Post #149 v. Dep't of Health*, 164 Wn.2d 570, 588, 192 P.3d 306 (2008) (alteration in original) (internal citations omitted). Moreover, the authority for the Commission to remove supervisors and the voters' right to recall do not conflict with each other, but merely provide different actors with different authority on different grounds. *See Riddle v. Elofson*, 193 Wn.2d 423, 433, 439 P.3d 647 (2019) (“When read together, the provisions do not conflict because they speak to different actors and different subject matter.”).

The removal of Mr. Mankamyer, an elected supervisor, was consistent with the Commission's statute and therefore lawful. The Court should affirm the superior court's order finding no violation of Washington Constitution article I, sections 33 and 34, and deny Mr. Mankamyer his requested relief.

**C. The Commission’s Decision Setting the Procedure it used for the Removal Hearing was Proper and Lawful**

Mr. Johnson and Mr. Mankamyer assert that their removal hearing violated the state constitution, the APA, and the OPMA, arguing that the hearing was required to be convened as a formal APA adjudication. Appl. Br. at 18; CP 16–18, 58–59. Neither the state constitution article I, section 3 nor the Commission’s removal statute require that the public hearing be an APA adjudication. The superior court erred when it ruled that the hearing was required to be an adjudicative hearing governed exclusively by the APA. CP 130.

**1. The Commissions’ procedures met state constitutional due process requirements**

The Commission afforded Mr. Johnson and Mr. Mankamyer more than sufficient due process to satisfy the state constitution. They were given notice of the charges against them, the opportunity to respond to those charges in writing, and then a full-day hearing during which they presented testimony and exhibits, called their own witnesses, cross-examined opposing witnesses, and argued their case.

Our state constitution provides that no person shall be deprived of life, liberty, or property without due process of law. Const. art. I, § 3. “State deprivation of any of these protected interests is unconstitutional unless accompanied by adequate procedural safeguards.” *Berst v.*

*Snohomish Cty.*, 114 Wn. App. 245, 254, 57 P.3d 273 (2002). This Court has held that our state constitution's due process protection is coextensive with federal requirements. *State v. Ortiz*, 119 Wn.2d 294, 831 P.2d 1060 (1992) (disapproved on other grounds by *State v. Condon*, 182 Wn.2d 307, 343 P.3d 357 (2015)). This allows state courts to give great weight to federal cases interpreting federal due process requirements when analyzing our state constitution's due process provisions. *Olympic Forest Products, Inc. v. Chaussee Corp.*, 82 Wn.2d 418, 422, 511 P.2d 1002 (1973). Mr. Johnson and Mr. Mankamyer do not claim that the Washington due process clause affords greater protection than the parallel federal provision, and do not provide a *Gunwall* analysis of that question.<sup>5</sup> In the absence of such analysis the Court will presume a coextensive constitutional protection. *In re Dyer*, 143 Wn.2d 384, 394, 20 P.3d 907 (2001). This Court has adopted the U.S. Supreme Court's test for procedural due process found in *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893 (1976). *In re Young*, 122 Wn.2d 1, 43–44, 857 P.2d 989 (1993) (superseded on other grounds by statute, as recognized by *In re Detention of Thorell*, 149 Wn.2d 724, 72 P.3d 708 (2003)).

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<sup>5</sup> The Court in *Gunwall* articulated a series of factors guiding analysis of whether our state constitution is more protective than a parallel provision in the federal constitution. *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986).

The Commission's removal of Mr. Johnson and Mr. Mankamyer was an administrative action taken pursuant to the Commission's removal statute. "In general, 'something less' than a full evidentiary hearing is sufficient prior to adverse administrative action." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 545, 105 S. Ct. 1487, 84 L. Ed.2d 494 (1985) (citing *Mathews*, 424 U.S. at 343). Such a hearing, though necessary, need not be elaborate. *Id.* What procedures satisfy due process in a given situation depends on the context. *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593 (1972).

The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews*, 424 U.S. at 333 (internal citations omitted). The Court must first determine whether a liberty or property interest exists that calls for due process protections. *Id.* at 332. If such an interest exists, the court will then employ a balancing test to determine what process is due. *Id.* at 335. The court will balance the following factors: (1) the private interest affected by the official action, (2) the risk of erroneous deprivation of that interest by the procedures used and the value, if any, of additional procedural safeguards, and (3) the government's interest, including the function involved and the burden that additional procedure would entail. *Id.*

**a. Mr. Johnson and Mr. Mankamyer have no constitutionally protected liberty or property interest in their volunteer position**

As the federal district court found, ruling on Mr. Johnson and Mr. Mankamyer's 42 U.S.C. § 1983 claims, they have no identifiable liberty or property interests in their volunteer positions. *Johnson v. Wash. State Conserv. Comm'n*, No. C18-5824, 2019 WL 1429503, at \*6 (W.D. Wash. March 29, 2019) (slip opinion) (citing *Hyland v. Wonder*, 972 F.2d 1129, 1140–41 (9th Cir. 1992)). Even if Mr. Johnson and Mr. Mankamyer had some expectation of continuing to serve in their volunteer positions, this expectation was minimal. *See Riddle*, 193 Wn.2d at 436 (noting, without holding, that “as a matter of equity” an elected official has “the expectation of holding her elected office until the expiration of her term and carrying out the duties for which she was elected”). Mr. Johnson and Mr. Mankamyer did not appeal the District Court's finding, and they have alleged no facts giving rise to a liberty or property interest in the position of volunteer conservation district supervisor. The finding of the District Court therefore has a preclusive effect here. Even if it did not, because the due process protections of the state constitution are coextensive with the federal constitution, this Court may rely on *Hyland*, as the District Court did, and similarly find no liberty or property interest exists in the

volunteer position of conservation district supervisor under the state constitution.

**b. Even if Mr. Johnson and Mr. Mankamyer have a liberty or property interest in their volunteer positions, due process was met**

Should this Court find Mr. Johnson and Mr. Mankamyer have a cognizable liberty or property interest in their volunteer positions, this Court will balance the *Mathews* factors to determine if the process provided them was sufficient. *Mathews*, 424 U.S. 319. Based on that balancing test, constitutional due process requirements were met in this case.

First, the Court will look at the interest to be protected. “The gravity of the property deprivation is relevant to the questions of how much process is due.” *Crescent Convalescent Ctr. v. Dep’t of Social and Health Services*, 87 Wn. App. 353, 359, 942 P.2d 981 (1997). The supervisors were unpaid, and their ability to pursue their professions as farmers is not impacted by whether or not they are conservation district supervisors. Therefore any property interest Mr. Johnson and Mr. Mankamyer may have is significantly less than in a case where their removal from a position would deny them a monetary benefit or paid employment. As to any claim Mr. Johnson and Mr. Mankamyer may have of a liberty interest in their reputations, any stigma imposed by their

removal “must be severe and genuinely debilitating before the discharge can rise to a level of constitutional concern. In other words, the stigma must ‘seriously damage[] a person’s reputation or significantly foreclose[] his freedom to take advantage of other employment opportunities.’” *Hyland*, 972 F.2d at 1141 (citing *Bollow v. Federal Reserve Bank*, 650 F.2d 1093 (9th Cir. 1981) (alteration in the original)). The removal of Mr. Johnson and Mr. Mankamyer from their volunteer positions does not rise to this level.

Mr. Johnson and Mr. Mankamyer, despite having no cognizable constitutional liberty or property interests at stake, received extensive process prior to their removal. They received written notice and the evidence collected on all the charges against them, the opportunity to respond and present rebuttal evidence to those charges in writing, a hearing prior to removal that was public, during which they were able to enter a hearing brief, testify and present witnesses, enter additional exhibits, and cross-examine witnesses in answer to the complaints against them. Mr. Johnson and Mr. Mankamyer additionally had the post-termination ability to appeal the Commission’s decision to remove them from their volunteer positions.

Second, the Court will look at whether the Commission’s procedures presented a risk of erroneous deprivation of Mr. Johnson and

Mr. Mankamyers volunteer positions. The extensive procedures provided by the Commission allowed Mr. Johnson and Mr. Mankamyers to present evidence and testimony, which the Commission received in an open public hearing. Commission investigative staff presented their witnesses, and Mr. Johnson and Mr. Mankamyers had the ability to cross-examine those witnesses, and to present witnesses of their own. Additionally, the Commissioners had received both Mr. Johnson and Mr. Mankamyers written response to the investigation, and their hearing brief prior to the commencement of the hearing. Taken together, these procedures allowed Mr. Johnson and Mr. Mankamyers to present information to rebut the charges against them prior to the Commissioners vote on removal. As a result, the Commission was fully informed, and there was no risk of an erroneous deprivation of Mr. Johnson and Mr. Mankamyers volunteer positions.

Third, the Court will evaluate the Commission's interest in the proceedings. This includes examining the fiscal and administrative burden that any additional or substitute procedures would entail. *Mathews*, 424 U.S. at 335. This also can include the Commission's interest in the expeditious removal of unsatisfactory supervisors. *Cf. Loudermill*, 470 U.S. at 542-43. Here the investigation had been going on for more than a year by the time the hearing was held in February 2019.

The Commissioners were concerned over the length of time between the original complaint and the hearing, and sought a resolution. The Commission dedicated staff time to the investigation, and had also hired a hearing examiner to preside over the hearing.

The hearing examiner issued three pre-hearing orders that governed the proceedings. Procedures requested by Mr. Johnson and Mr. Mankamyer, including the ability to call witnesses, present new evidence, and provide argument at hearing were all provided. The hearing examiner conducted the hearing, and made rulings on evidence, motions, and objections. The hearing provided significantly more than a minimal opportunity for Mr. Johnson and Mr. Mankamyer to present their case. No additional procedures are justified, as Mr. Johnson and Mr. Mankamyer received all the process they were due.

On balance, Mr. Johnson and Mr. Mankamyer's cognizable interest, if any, in their volunteer positions is small. The process and procedure provided by the Commission prior to its vote on removal was extensive, preventing an erroneous deprivation of Mr. Johnson and Mr. Mankamyer's positions. The Commission's interest in reaching a resolution without unnecessarily lengthening the process was met. The balancing of the *Mathews* factors in this case favors the Commission.

This Court should find that the Commission met the due process requirements of the Washington Constitution, Const. art. I, § 3.

**2. The Commission’s removal procedure did not violate either the APA or OPMA**

Mr. Johnson and Mr. Mankamyier claim that the Commission violated the APA by holding the public hearing required before their removal from their volunteer positions under the OPMA. They argued that only a formal adjudication governed exclusively by the APA would fulfill the requirements of the removal process governed by RCW 89.08.200.

The OPMA allows governing bodies, such as the Commission, to conduct hearings. RCW 42.30.020(2) (listing “conducts hearings” as a task of a governing body). Actions taken by a governing body under the OPMA include receipt of public testimony, deliberation, and the ability to make a collective positive or negative decision or take a vote. RCW 42.30.020(3). Under the OPMA, a hearing held, noticed, or ordered by a governing body is treated in the same manner as a regular meeting for purposes of adjournment or continuance. RCW 42.30.100.

Moreover, the OPMA specifically allows governing bodies, such as the Commission, to convene an open public hearing or meeting *to evaluate complaints or charges against a public officer.*

RCW 42.30.110(f) (emphasis added). In fact, such a public hearing or meeting is required when requested by the subject of the complaint or charge. *Id.* Here, the supervisors did not need to request a public hearing, because the Commission's statute required one. RCW 89.08.200. As this Court has acknowledged, "[a]lthough the legislature indicated that one of its purposes in enacting the current APA in 1988 was to 'provide greater public access . . . to administrative decision making,' it went on to say that, 'to the greatest extent possible and unless this chapter clearly requires otherwise, current agency practices . . . shall remain in effect.' RCW 34.05.001." *Mills v. W. Wash. Univ.*, 170 Wn.2d 903, 913 n.5, 246 P.3d 1254 (2011) (alteration in the original).

Here, the Commission's statute requires a public hearing prior to its vote on the removal of a conservation district supervisor. RCW 89.08.200; WAC 135-110-960. State law does not require that the removal hearing be an adjudication held under the APA. When the Legislature wishes to make such a requirement, it explicitly does so. For example, a hearing under the APA is required prior to the issuance of a site recommendation to the governor by the Energy Facility Site Evaluation Council. RCW 80.50.090(3). Similarly, an administrative law judge appointed under the APA must hear complaints to the state Human Rights Commission. RCW 49.60.250. There is no such requirement in

RCW 89.08.200 for a removal hearing, and the Commissioners, not an administrative law judge, must make the decision on removal. While Mr. Johnson and Mr. Mankamyer demanded that the public hearing be conducted under the APA, the Commission determined that it would hold the hearing pursuant to its authority to hold a hearing under the OPMA. SM 38–59; AR 2383, 2389–90. While the Commissioners considered both formats for the hearing, they were concerned about how long the Thurston Conservation District had been in turmoil, and wished to respond to public concerns that the charges be resolved as quickly as possible. SM 43, 49. Their decision to hold the hearing under the OPMA was taken after due consideration, and was based on their desire to use a process that did not prolong the time before resolution was reached. In addition, to further ensure a fair process, the Commission also voted to retain a hearing examiner to run the hearing. SM 59–60.

Mr. Johnson and Mr. Mankamyer’s sole argument on appeal was that the public hearing required by RCW 89.08.200 could only proceed under the APA because the definition of “adjudicative proceeding” in the APA includes the word “hearing.” CP 58. They point to no authority stating that every hearing an agency holds must be a formal adjudication held under the APA. If that were the case, the OPMA would not provide for a governing body to hold a hearing. *Cf. City of Seattle v. Dep’t of*

*Labor and Indus.*, 136 Wn.2d 693, 698, 965 P.2d 619 (1998) (“Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.” (citations omitted)). Additionally, the APA provides that an agency’s decision whether to conduct an adjudicative proceeding under the APA is discretionary. RCW 34.05.416, .419. An agency can deny an application for an adjudicative proceeding and provide its reasons for doing so, which the Commission did here. RCW 34.05.416; AR 2389–90.

Both the OPMA and the APA provide procedures for hearings available to state agencies and agency governing bodies. Either can apply here, where the Commission’s statute calls only for a hearing. RCW 89.08.200. Mr. Johnson and Mr. Mankamyer were afforded the procedural safeguards of a public hearing governed by prehearing orders, where they presented and cross-examined sworn witnesses, entered exhibits, entered motions and objections, and submitted oral argument to the Commission. The Commission’s decision to hold the hearing under the OPMA was not arbitrary and capricious, but rather was taken after consideration of the length of time the investigation had already been open, and the effects it had had on the function of the Thurston Conservation District.

**D. Mr. Johnson and Mr. Mankamyer Were Not Substantially Prejudiced by the Hearing Procedures Afforded Them**

As set out above, the procedure the Commission implemented for the hearing on the question of the removal of Mr. Johnson and Mr. Mankamyer from their volunteer positions was lawful and consistent with the requirements of RCW 89.08.200. But even if the procedure was flawed, Mr. Johnson and Mr. Mankamyer are not entitled to relief because they were not “substantially prejudiced” by the hearing procedure that was provided. RCW 34.05.570(1)(d); *Densley*, 162 Wn.2d at 226; *Cf. Mills*, 170 Wn.2d at 913 n.6.

Mr. Johnson and Mr. Mankamyer received a full-day public hearing before the Commissioners who had the statutory authority under RCW 89.08.200 to decide on their removal. In response to Mr. Johnson and Mr. Mankamyer’s request, the Commission allowed for witness testimony at the hearing, and allowed them to enter exhibits. AR 2329–36. The Commission accommodated the time limits proposed and agreed to by the parties. AR 2331.

Prior to the hearing, Mr. Johnson and Mr. Mankamyer received notice of the eleven complaints against them and had the opportunity to respond in writing to the charges, which they did. AR 1–61, 2371–74, 1602–88. At the hearing they filed hearing briefs, presented witness,

cross-examined all the witnesses presented by Commission investigative staff, entered exhibits, and argued motions.

During argument before the superior court, Mr. Johnson and Mr. Mankamyer claimed they were prejudiced by the lack of discovery and the lack of subpoena power. VRP 6. This does not amount to prejudice, however, because both discovery and subpoenas, while permitted, are not required to be provided to a party during an APA adjudication. The APA states that a presiding officer “may” issue subpoenas and “may” decide whether to permit discovery. RCW 34.05.446(1), (3). Use of the word “may” is construed as permissive, not mandatory. *Scannell v. City of Seattle*, 97 Wn.2d 701, 704, 648 P.2d 435 (1982) (“Where a provision contains both the words ‘shall’ and ‘may,’ it is presumed that the lawmaker intended to distinguish between them, ‘shall’ being construed as mandatory and ‘may’ as permissive.”). Mr. Johnson and Mr. Mankamyer were not prejudiced by the lack of procedures which were not guaranteed to be available to them in the first instance. In any case, they called witnesses and presented evidence – they do not identify any specific prejudice arising from the lack of discovery.

Mr. Johnson and Mr. Mankamyer misstate the role of the hearings examiner engaged by the Commission to facilitate the hearing in order to

fuel their speculation that the initial hearings officer had concerns regarding the process. Appl. Br. at 6–7, 16. Although Mr. Johnson and Mr. Mankamyer take the position that Judge Lee was concerned over the hearing procedures implemented by the Commission, the record does not support this speculation. *Id.* Judge Lee was initially contacted to facilitate the hearing, however her role was not that of a decision maker, as Mr. Johnson and Mr. Mankamyer erroneously contend. Appl. Br. at 6 n.39, 16 n.95. As the Commission’s letter of agreement states, the Commission requested an administrative law judge to preside at the hearing and be responsible for “conducting the meeting according to the agenda established by the [Commission], enforcing the time limits for presentations and questions, and ensuring that order is maintained throughout the meeting.” AR 1507. The administrative law judge was not contracted to be a decision maker on the question of removal, and the letter specifies: “The [administrative law judge] will not be involved with the preparation of any written order or issue any ruling on the substantive matter before the [Commission].” AR 1507. This is similar to the agreement regarding the hearings examiner, where ultimate decision making was reserved to the Commission. AR 2330.

Mr. Johnson and Mr. Mankamyer received multiple opportunities to respond to the charges against them, and a public hearing during which

they presented and cross-examined witnesses sworn under oath. The Commission issued findings of fact as required by statute. Mr. Johnson and Mr. Mankamyer have not challenged any of the findings of fact made by the Commission, they have only challenged the procedure chosen for the hearing. They have not demonstrated any prejudice to them caused by the Commission's choice of procedure. This Court should find that the public hearing held by the Commission was held consistent with state law.

**E. Mr. Johnson and Mr. Mankamyer Are Not Entitled to Their Requested Relief**

Mr. Johnson and Mr. Mankamyer have abandoned their original request for reinstatement to their positions, and instead now seek a declaratory judgment order from this Court. RCW 34.05.574; CP 18; Appl. Br. at 18. They also seek "all penalties, costs and attorney's fees as authorized by law, including RCW 34.05.574 and RCW 42.30.120." Appl. Br. at 17. They are not entitled to the relief they seek.

The Commission did not violate the state constitution, the APA, or the OPMA when it provided Mr. Johnson and Mr. Mankamyer the public hearing statutorily required prior to their removal from their voluntary positions. Mr. Johnson and Mr. Mankamyer have not articulated a violation of the OPMA that would subject the Commission to penalties

under RCW 42.30.120. They have not substantially prevailed in this matter, and are not entitled to penalties, costs or attorney's fees.

Should this Court, however, find that the Commission erred procedurally, the proper remedy is remand to the Commission to hold the required public hearing under the APA. *Cf. Seattle Bldg. and Const. Trades Council v. Apprenticeship and Training Council*, 129 Wn.2d 787, 804, 920 P.2d 581 (1996). The trial court's invalidation on procedural grounds of the Commission's removal of Mr. Johnson and Mr. Mankamyer did not resolve the merits of the removal itself. The discretion to remove supervisors is vested in the Commission. RCW 89.08.200.

## VI. CONCLUSION

Mr. Johnson and Mr. Mankamyer received a full and fair administrative hearing during which they had the opportunity to present argument, enter evidence and sworn testimony in rebuttal of the charges against them, and cross-examine opposing witnesses. The procedure implemented by the Commission was consistent with its removal statute, and with other applicable laws and regulation. The Commission respectfully asks the Court to find in its favor, uphold the Commission's

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authority to remove Mr. Mankamyer from his elected position under  
RCW 89.08.200, and uphold the procedure the Commission used for the  
removal hearing.

RESPECTFULLY SUBMITTED this 4th day of November 2019.

ROBERT W. FERGUSON  
Attorney General

A handwritten signature in black ink, appearing to read "Phyllis J. Barney", written over the printed name of the Assistant Attorney General.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the state of Washington that on November 4, 2019, I caused to be served Brief of Respondent/Cross-Appellant in the above-captioned matter upon the parties herein via the Appellant Court Portal Filing system, which will send electronic notifications of such filing to the following:

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DATED this 4th day of November 2019 at Olympia, Washington.

  
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GRETCHEN CLARK, Legal Assistant

## Appendix A

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### **RCW 89.08.200**

#### **Supervisors—Term, vacancies, removal, etc.—Compensation.**

The term of office of each supervisor shall be three years and until his or her successor is appointed or elected and qualified, except that the supervisors first appointed shall serve for one and two years respectively from the date of their appointments, as designated in their appointments.

In the case of elected supervisors, the term of office of each supervisor shall be three years and until his or her successor is elected and qualified, except that for the first election, the one receiving the largest number of votes shall be elected for three years; the next largest two years; and the third largest one year. Successors shall be elected for three-year terms.

Vacancies in the office of appointed supervisors shall be filled by the state conservation commission. Vacancies in the office of elected supervisors shall be filled by appointment made by the remaining supervisors for the unexpired term.

A majority of the supervisors shall constitute a quorum and the concurrence of a majority is required for any official action or determination.

Supervisors shall serve without compensation, but they shall be entitled to expenses, including traveling expenses, necessarily incurred in discharge of their duties. A supervisor may be removed by the state conservation commission upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

The governing board shall designate a chair from time to time.

[ [2013 c 23 § 550](#); [1973 1st ex.s. c 184 § 21](#); [1961 c 240 § 12](#); [1955 c 304 § 21](#). Prior: 1949 c 106 § 2, part; 1939 c 187 § 7, part; Rem. Supp. 1949 § 10726-7, part.]

## Appendix B

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### **WAC 135-110-960**

#### **Removal from office.**

(1) As provided in RCW [89.08.200](#), a conservation district supervisor may be removed from office by the conservation commission governing board upon notice and hearing for neglect of duty or malfeasance.

(2) The conservation commission must provide notice to the supervisor detailing the specific elements of the neglect of duty or malfeasance for which removal is sought. The supervisor shall be given the opportunity to respond in writing to the elements contained in the notice within thirty days of the notice to the supervisor from the conservation commission. Notice to the supervisor from the conservation commission shall be by certified mailing to the address of record for that supervisor.

(3) The conservation commission must hold at least one public hearing no earlier than sixty days from the date of certified mailing to the supervisor in the area served by the conservation district supervisor before acting to remove the incumbent from office.

(4) Following the public hearing, the conservation commission shall vote on the removal of the supervisor based on official findings of fact detailing the cause or causes of removal.

[Statutory Authority: RCW [89.08.040](#), [89.08.190](#), and [89.08.200](#). WSR 10-21-084, § 135-110-960, filed 10/19/10, effective 11/19/10.]

## Appendix C

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### WAC 135-110-110

#### Definitions.

"Absentee ballot" or "mail-in ballot" means a ballot issued to a voter before election day that can be delivered to the conservation district or designated election supervisor on or before the day of the election.

"Ballot" or "official ballot" means the final, preprinted ballot containing the name of each declared, nominated candidate found eligible, and at least one line where a voter may enter the name of a write-in candidate.

"Ballot box" means a container secured against tampering into which paper ballots are placed.

"Candidate" means a person seeking the office of elected conservation district supervisor who has provided the required candidate information to the conservation district by the filing deadline and whose eligibility to run and to serve has been verified by the conservation district.

"Canvass" and "canvassing" means to examine carefully or scrutinize the election returns for authenticity and proper count.

"Certify" and "certification" means the canvassing of returns and the verification of substantial compliance with these procedures by the conservation commission.

"Conservation commission" means the Washington state conservation commission governing board and all deputies and representatives authorized to act on its behalf.

"Conservation commission board" and "conservation commission governing board" means the governing board of the Washington state conservation commission.

"Conservation district" means a governmental subdivision of the state of Washington organized under the provisions of chapter [89.08](#) RCW Conservation districts.

"Conservation district supervisors" and "district supervisors" means the governing board of a conservation district, composed of elected and appointed supervisors.

"Declared nominated candidate" and "nominated candidate" means an individual found to be a qualified district elector who is eligible and who has submitted the candidate information required, including a qualified nominating petition, to the conservation district by the filing deadline, and the conservation district has verified the eligibility of the candidate.

"Declared vacant" means a declaration by the conservation commission that a conservation district supervisor position is vacant.

"Declared write-in candidate" means a person seeking the office of elected supervisor who has provided the required candidate information to the conservation district by the filing deadline, and the conservation district has found the person eligible.

"Double envelope balloting" means a paper balloting system consisting of an inner and an outer envelope, where a ballot is placed in an inner envelope with no personally identifying marks on it, and then the inner envelope with ballot is placed in the outer envelope upon which the voter has provided sufficient information to allow polling officers to verify the eligibility of the voter.

"Due notice" or "notice" means a notice published at least twice, with at least six days between publications, in a publication of general circulation within the affected area. If there is no such publication, a notice may be posted at a reasonable number of public places within the

area where it is customary to post notices concerning county and municipal affairs. There is no requirement for publication of a legal advertisement in a newspaper of record. However, if a legal advertisement is published, a copy of the announcement as published, showing the date of publication, is sufficient proof of publication.

"Elected supervisor" means a qualified district elector:

- (a) Who received more valid votes than any other candidate; and
- (b) Whose election has been certified and announced by the conservation commission.

"Election supervisor" means an individual or entity appointed by conservation district supervisors to organize, coordinate, and manage tasks related to the election of conservation district supervisors. Only the conservation district board of supervisors may set election dates and appoint the election supervisor.

"Electioneering" means the act of soliciting or advocating votes for a specific candidate, or speaking for or against a specific candidate within three hundred feet of a ballot box or voting place.

"Farm and agricultural land" is defined in RCW [89.08.020](#) as follows: "Farm and agricultural land" means either:

- (a) Land in any contiguous ownership of twenty or more acres devoted primarily to agricultural uses;
- (b) Any parcel of land five acres or more, but less than twenty acres devoted primarily to agricultural uses, which has produced a gross income from agricultural uses equivalent to one hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter; or
- (c) Any parcel of land of less than five acres devoted primarily to agricultural uses which has produced a gross income of one thousand dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter.
- (d) Agricultural lands shall also include farm woodlots of less than twenty and more than five acres and the land on which appurtenances necessary to production, preparation or sale of the agricultural products exist in conjunction with the lands producing such products.
- (e) Agricultural lands shall also include any parcel of land of one to five acres, which is not contiguous, but which otherwise constitutes an integral part of farming operations being conducted on land qualifying under this section as "farm and agricultural lands."

"Farm operator" or "operator of a farm" means a person who operates farm and agricultural land.

"Filing deadline" means four weeks before election day in the current election cycle, or, if a local filing deadline that is more than four weeks before election day is adopted by formal action of the conservation district supervisors, that adopted filing deadline.

"Full term," "regular term," and "full term of office" means a three-year term of office.

"Incumbent" means the person in present possession of the office of conservation district supervisor.

"Landowner" means a person with legal title of record to real property in the conservation district at the time of filing for election or applying for appointment.

"Mail-in election" means an election in which mail-in ballots are provided before election day to qualified voters. Voters return completed ballots to a receiving location or address authorized by the conservation district board of supervisors.

"Malfeasance" means wrongful conduct that affects, interrupts, or interferes with the performance of a supervisor's official duty.

"Mid-term" and "mid-term vacancy" means a vacancy in the office of conservation district supervisor, when such vacancy occurs before the full term of office has been fulfilled.

"Municipal officer" means all elected and appointed officers of a conservation district, together with all deputies and assistants of such an officer, and all persons exercising or undertaking to exercise any of the powers or functions of a municipal officer.

"Neglect of duty" means failure by a supervisor or supervisors to perform mandatory duties. Such duties include, but are not limited to:

- (a) Compliance with laws and rules imposed by local, state, and federal government entities;
- (b) Attendance at a sufficient number of board meetings so as to not impede the work of the conservation district;
- (c) Maintaining a full and accurate record of district business;
- (d) Securing of surety bonds for board officers and employees;
- (e) Carrying out an annual financial audit;
- (f) Providing for keeping current a comprehensive long-range program;
- (g) Providing for preparation of an annual work plan;
- (h) Providing for informing the general public, agencies, and occupiers of lands within the conservation district of conservation district plans and programs;
- (i) Providing for including affected community members in regard to current and proposed plans and programs; and
- (j) Providing for the submission of the conservation district's proposed long-range program and annual work plan to the conservation commission.

"Nominating petition" means a list of signatures of nominators who desire a candidate's name be placed on the official ballot for a conservation district election.

"Nominator" means a qualified district elector who signs a petition nominating an individual seeking the office of elected supervisor.

"Poll list" or "polling list" means a list of voters who voted in an election.

"Polling officer" means a person appointed by the election supervisor to verify voter eligibility, assure compliance with this rule in and around the polling place, issue ballots, count ballots, and verify the unofficial ballot count in writing to conservation district supervisors.

"Poll site" and "polling site" means a location where votes are collected in a ballot box.

"Poll-site election" and "walk-in election" means an election in which a voter signs in on a poll list, receives a ballot from a polling officer, enters a vote for a candidate on the ballot, and places the ballot in a ballot box at a polling place supervised or monitored by polling officers.

"Provisional ballot" or "contested ballot" means a paper ballot issued to a voter whose qualifications as a qualified district elector cannot be determined at the time the paper ballot is issued. A provisional ballot consists of two envelopes and a paper ballot.

"Qualified district elector" means a registered voter in the county where the district is located and who resides within the conservation district boundary. Qualified district elector means an individual residing within the boundary of the conservation district and registered to vote in a county where the conservation district is located.

"Qualified nominating petition" means a nominating petition which contains at least twenty-five signatures of nominators.

"Remote election" means an election in which ballots are returned by some means other than for a poll-site election. A mail-in election is a type of remote election.

"Short term" or "short term of office" means a term of office less than three years in duration.

"Supervisor" means an elected or appointed board member of a local conservation district governing board, in which the governing board is referred to as the board of supervisors.

"Supervisor-elect" means a supervisor who received more valid votes than any of the other candidates running for the same position in a conservation district election, but the election has not yet been certified by the conservation commission.

"Tie" or "election tie" means an election where no candidate has received a simple majority of votes cast by qualified district electors, and two or more candidates have received the same number of votes cast by qualified district electors.

"Undeclared write-in candidate" means an individual who has not submitted required candidate information to the conservation district and who has not submitted a qualified nominating petition by the filing deadline.

"Voter" means a person who submits a ballot in a conservation district election.

"Withdrawal of candidacy" and "to withdraw" means a written notice, signed and dated by the candidate, and delivered to the conservation district, stating the person's desire to be removed from consideration for the office of conservation district supervisor.

[Statutory Authority: RCW [89.08.040](#), [89.08.190](#), and [89.08.200](#). WSR 10-21-084, § 135-110-110, filed 10/19/10, effective 11/19/10.]

**ATTORNEY GENERAL'S OFFICE - ECOLOGY DIVISION**

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