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IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

ROBERT E. LARSON, TYLER W. GASSMAN
and PAUL E. STATLER,

Plaintiffs/Appellants,

v.

STATE OF WASHINGTON,

Defendant/Respondent.

APPELLANTS' REPLY BRIEF

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I. INTRODUCTION

Plaintiffs and the State agree about a fundamental principle in this appeal: the question before the Court is one of statutory interpretation. Plaintiffs' position is straightforward: the specific, operational text of the Wrongly Convicted Persons Act ("WCPA" or "Act"), RCW 4.100, should control. In that respect, the State's brief is telling in that it completely omits any discussion of Plaintiffs' argument that, when construing the Act, the specific controls over the general. Here, this established canon of interpretation means that the specific statutory language concerning *how* the Legislature created a mechanism for seeking a release of other claims must control over general notions of intent, even when codified.

The State nonetheless asks this Court to give a general statement of "intent" some sort of talismanic effect that goes beyond—and apparently trumps—specific statutory language. But, this is not how statutory interpretation works. Courts do not write the statutes or decide how legislative intent is operationalized beyond the statutory text; they construe the statute, as written. If the Legislature desires a different result, it can amend the statute.

Here, with the WCPA, the Legislature chose to operationalize its intent by creating a forward-looking, one-way mechanism: conditioning payment upon executing a release that would preclude other related claims going forward. There is simply no operative language providing for a retroactive or universal bar to compensation without an executed release.

Had legislature wanted to effectuate its intent differently—by creating a “two way street”—it could have done so. But, it did not.

As a consequence, the State’s currently-favored interpretation of the Act rests upon a number of guesses about *how* the legislature might have chosen to effectuate its intent beyond what actually appears in the statute. These guesses are not laid out in the statute itself. For example, there is no clear guidance for whether claimants can pursue a civil-rights action and a WCPA claim at the same time. The State previously argued that 4.100.080 prevents simultaneous causes of actions, but now argues just the opposite. Plaintiffs agree with this new interpretation—which this Court should adopt and is consistent with the remedial nature of the act.

That concession does not justify re-writing or contorting other explicit provisions of the Act, which that require a release of claims at the time payment is sought. Plaintiffs’ construction also avoids constitutional problems. By contrast, contrary to established canons of interpretation, the State’s “universal forfeiture” suggestion extends beyond the operative statutory language and encourages constitutional problems.

The core of State’s brief rests upon an extremely troubling premise: that Robert Larson, Tyler Gassman, and Paul Statler seek “double recovery” by attempting to avail themselves of the payment allowed under the Act after settling a civil-rights lawsuit. The notion that a two-and-a-half million dollar settlement fully compensated these three innocent men for more than 12 collective years of wrongful conviction is offensive. The notion is also contrary to the Act—a remedial statute that

allows exonerated individuals to obtain some limited relief for the injustice of being wrongfully stripped of their liberty.

Indeed, the WCPA *never* uses the phrase “double recovery” and the trial court below did not use this phrase either. The State’s appeal to this concept is thus troubling, disingenuous, and has an origin in the State’s misguided and narrow view of the profound harm suffered by Larson, Gassman, and Statler.

II. ARGUMENT

A. The Proper Framing of the Procedural History Below

The procedural history in this case demonstrates that the any characterization of the WCPA as presenting some sort of “streamlined” method of seeking limited compensation is an erroneous misnomer. *See* CP 138 (State below arguing the Act creates a “streamlined” process); CP 159 (trial court below). This case illustrates that litigation under the WCPA can be anything but quick, easy, or “streamlined.” Here, given the State’s opposition (which is its right), Plaintiffs were forced to take their case to trial, suffer a loss, to prevail on appeal, and then engage in additional litigation that resulted in a final judgment. Plaintiffs also had to prove their claims by an exceptionally demanding burden of proof—clear and convincing evidence—and substantively prove their innocence based upon among the highest standards adopted in the Country. *Cf.* 2013 WA

H.B. 1341, Committee Report (Apr. 1, 2013) (The bill provides strict and narrow criteria for obtaining compensation.”). But, that was not the end. The judgment was vacated and the saga now continues.

Four additional procedural points bear mention.

First, when the trial court entered a final judgment—to which the State did *not* appeal—the trial court fully predicted that Plaintiffs would seek payment from the State; that the State would offer a release; and that the issue of attorney’s fees and child support would come up in the future. In so doing, the trial court recognized that the statute “indicates that a claimant must execute a legal release prior to any payment,” CP 161, and anticipated that “plaintiffs will have some objections to that release.” *Id.* at 162. The trial court also recognized that, instead of seeking a release that might be contentious the “State could just treat this as another judgment and pay it without obtaining that legal release.” *Id.* Trial court also recognized that the parties “will probably be back in here to talk about the attorney fees and child support issue as well.” CP 164. That is precisely what happened thereafter; there were absolutely no “irregularities” or “unforeseen” circumstances that took place after judgment was entered.

Second, as indicated above and in the totality, CP 159-65, the trial court did not “reserve ruling” when it entered the judgement to which the State did not appeal. As a necessary consequence, contrary to the State’s

misleading suggestion otherwise, the trial court absolutely did not “reserve ruling on a double recovery issue,” or “advise[]the parties to return to the court to address the issue of double recovery.” State Brief at 4 (citing CP 161).¹ Instead, the Court reasoned that there was a distinction between entering a judgment and obtaining a payment, and emphasized the issues of an executed release, child support, and attorney fees just discussed. Indeed, contrary to the State’s insinuation, the trial court *never once* used the phrase “double recovery” in so ruling—either when entering judgment or when vacating that judgment at a later time.

Third, and related, the trial Court did not—and could not—make any finding sufficient to support in any way the notion that by seeking limited compensation under the Act that Plaintiffs had already been fully compensated and were therefore seeking full recovery twice. In fact, the Court below made statements that directly undermine any notion of a *double* payment, recognizing that “all three of you have probably haven’t

¹ Disappointingly, the State’s has elected to provide this Court with a brief that is materially and intentionally misleading in a number of respects. The State has even gone so far as to suggest that Plaintiffs have “falsely” presented an argument—one the State itself made below—to this Honorable Court. State Brief at 18. The State’s apparent goal is clear: to get this court to adopt the notion that a prohibition on “double recovery” is somehow part of the WCPA despite the fact that “double recovery” is not mentioned in the statutory and the fact that such a concept is anathema to the limited payment offered by the Act. It is one thing for the State to advance an interpretation of the statute it favors, it is entirely another for the State to make misleading arguments or untrue arguments to do so. *Cf.* R. Prof. Conduct 3.1

been adequately compensated.” ROP at 30. In addition, the court below recognized that there was no determination about the adequacy of Plaintiffs’ compensation in the WCPA. *See id.* (“But, as stated, I’m not in a position to make a determination as to whether or not that settlement was adequate, because that’s not contemplated in the statute.”). In short, there is no evidence, and could be no sufficient evidence, in the record that Plaintiffs already received full and complete compensation for their wrongful convictions.

Finally, Plaintiffs did not file their §1983 suit until *after* the trial court (erroneously) dismissed their claims under the WCPA. There was nothing “strategic” or nefarious about what happened here. ROP at 31. Part of the reason for this was because the State took the position below that Plaintiffs could not pursue both a claim under the WCPA and in the federal district court simultaneously. For example, in its response in opposition to entry of the final judgment, the State argued: “Plaintiffs have simultaneously pursued their claims in state court under the WCPA and in federal court under 42 U.S.C. 1983. This is inconsistent with the legislative intent clearly expressed in 4.100.080.” Appendix A at 3. Likewise, in moving the Court for an order vacating the judgment below, the State emphasized an “either-or” *choice* in pursuing an action under the Act, or in seek other relief. *See* CP 138-39 (“RCW 4.100.080(1)

establishes that the recovery under the WCPA is an exclusive remedy. It requires that potential wrongful conviction claimants make a choice. They can take advantage of the WCPA with its no-fault provisions, statutory compensation, and streamlined procedures. If they do, they must accept the limits on recovery. On the other hand, they can opt to *file* a tort action in federal court under 42 USC 1983, accept their burden of proving fault and damages, and receive the benefit of virtually unlimited recovery.”²

The State has changed its mind, apparently, during this appeal.

B. The Waiver and Release In the WCPA Is Entirely Prospective

Both sides here seem to agree that the statutory language should control. Plaintiffs’ interpretation is consistent with the statutory text. By contrast, the State seeks to expand and contort the statutory language in an effort to prevent Plaintiffs from obtaining a small measure of relief from the State—the sovereign entity that was responsible for obtaining the wrongful conviction of Larson, Statler, and Gassman. Their interpretation should be rejected.

² Echoing the arguments previously made by the State, the trial court suggested at times that the WCPA would prohibit a claimant from seeking relief while also pursuing a claim under the Act. CP 159 (“It seems that without this statute providing an exclusive remedy, a wrongfully convicted person could file all kinds of different causes of actions, leaving the State to defend each of those separately. Here, it allows for someone who’s wrongly convicted to choose what remedy they’d like to pursue. You can either pursue a cause of action through RCW 4.100 or some other type of cause of action, including a federal claim. But if brought under RCW 4.100, it doesn’t allow for multiple claims.”).

1. The Plain Operative Language Controls Here

Plaintiffs have no quarrel with the idea that the plain operative language of the Statute controls. *See* Opening Brief at 16-18. The State, nonetheless argues that Plaintiffs have ignored this canon of statutory construction. Indeed, the State has gone so far as accusing Plaintiffs of misconstruing the law and the proposition that an “enacted statement of legislative purpose is included in a plain reading of a statute.” *G-P Gypsum Corporation v. Department of Revenue*, 169 Wn.2d 304, 311 (2010). The State is wrong. In the opening brief, plaintiffs pointed out that the Washington Supreme Court also made it clear that “the legislature’s codified declaration of intent cannot ‘trump the plain language of the statute.’” Opening Br. at 16 (quoting *State v. Granath*, 415 P.3d 1179, 1183 (Wash. 2018) (quoting *State v. Reis*, 183 Wn.2d 197, 212, 351 P.3d 127 (2015)) (emphasis added).

It is uncontroversial that the statement of intent in 4.100.010 is *part* of the construction of the statute. The point that the State has entirely ignored (and not even addressed) is that the more specific, operative language of the statute must control over general, abstract statements of intent. That is, the State has ignored the “rule of statutory interpretation that the specific controls over the general.” *Young v. Remy*, 149 Wn. App. 1033 (2009) (citing *ETCO, Inc. v. Dep’t of Labor & Indus.*, 66 Wn. App. 302, 305–06, 831 P.2d 1133 (1992)); *see also W. Plaza, LLC v. Tison*, 184 Wn.2d 702, 712, 364 P.3d 76, 80 (2015) (explaining that “‘general statutory provision normally yields to a more specific statutory provision’”

(quoting *Waste Mgmt. of Seattle, Inc. v. Utils. & Transp. Comm'n*, 123 Wn.2d 621, 629–30, 869 P.2d 1034 (1994)).

Here, that means the Court must look to nature and type of “waiver” actually enacted to implement the legislature’s intent. In this regard, it is significant that the Legislature did not enact a release or forfeiture of all prior claims, as it hypothetically could have done. Nor did the Legislature prohibit a claimant from pursuing a claim under the Act and some other legal forum at the same time (as the State now agrees).

Perhaps most significantly, the Legislature did not create a universal setoff provision providing that *any* payment to Plaintiff’s in another action had to be set off against recovery under the Act. Instead, the Legislature created a limited form of reimbursement under the WCPA—reimbursement applicable only after a release has been executed *and* later declared invalid. RCW 4.100.080(1) (“The claimant must execute a legal release prior to the payment of any compensation under this chapter. If the release is held invalid for any reason and the claimant is awarded compensation under this chapter and receives a tort award related to his or her wrongful conviction and incarceration, the claimant must *reimburse* the state for the lesser of . . .) (emphasis added).³

³ The State appears to agree that the reimbursement provision is entirely prospective. *See* Opening Br. at 20 (noting that the reimbursement provision kicks in should a subsequent claim be allowed “to proceed *after* payment and a release have been entered under the WCPA”) (emphasis added).

Likewise, the legislature did not use the phrase “double recovery” or “election of remedies” when drafting the WCPA. Again, the Legislature said something different: it demanded a release upon payment and, therefore, a waiver of any claims going forward. *Id.*

Whether the Legislature could have worded the statute differently—indeed, whether it *should* have been written differently—is not for this Court to decide. A reviewing court “is required to assume the Legislature meant exactly what it said and apply the statute as written.” *Duke v. Boyd*, 133 Wn.2d 80, 87, 942 P.2d 351 (1997).

2. The Plain Operative Language Creates a Prospective Release, Not a Retroactive or Universal Forfeiture

The WCPA sets forth a prospective release of claims when a claimant executes a release. See Opening Br. at 18-31. The extensive discussion need not be repeated here.

The State’s only argument to the contrary is that the first sentence of RCW 4.100.080 includes language about the legislature intending “exclusive” remedies. But, *how* the legislature implemented this intent is found in the operative language that follows: “The claimant must execute a legal release prior to the payment of any compensation under this chapter.” RCW 4.100.080(1). Then, if that release is deemed invalid, a claimant must reimburse the State. *Id.*

The State complains that this plain language interpretation undermines the legislature’s intent to prevent “double recovery,” but the

WCPA does not include that sort of language. The State’s argument, then, is a classic red herring—it has built its argument about an assumed but incorrect premise that it itself introduced to the discussion.

There is no “absurdity” in concluding that the legislature chose a very specific way of implementing its intent and did not choose others. Indeed, there may very well be strong reasons for the legislature to have created a forward-looking waiver mechanism. Consider, for example, wrongfully convicted individuals who settled for small or nominal amounts separate suits before the WCPA was enacted but whom the Legislature wanted to compensate. This is not too unlike the situation presented in *Town v. State*, No. 16-2-00655-2 (Chelan County), where Mr. Town received a mere \$200,000 in a civil rights action over a decade before the WCPA was enacted and after spending 6 years wrongly imprisoned. By the State’s interpretation of the Act, even though Town did not even have the *opportunity* to pursue a WCPA claim, any such claim is now barred. *See Town v. State*, No. 16-2-00655-2 (*Chelan County*) (State’s motion to dismiss), attached as Appendix B.⁴

Likewise, the notion that a wrongly convicted person might be required to sign a release of their rights and forced to reimburse the state also raises the specter of the release being deemed invalid as a matter of federal law under *Town of Newton v. Rumery*, 480 U.S. 386 (1987).

⁴ This Court can take judicial notice of this pleading—signed by the same attorneys representing the State here—the authenticity of which cannot reasonably be contested. *Rodriguez v. Loudeye Corp.*, 144 Wn. App. 709, 726, 189 P.3d 168 (2008).

Indeed, a strong argument can be made that by setting forth a provision that works prospectively *after* the limited compensation provided under the WCPA has been given the Legislature sought to insulate itself from having a release be deemed invalid under *Rumery*. See RCW 4.100.080(1) (anticipating that a release could be “held invalid”). Put differently, the federal concerns expressed in *Rumery* are certainly far *less* compelling if a claimant has been given the opportunity to first pursue another action before signing a release rather than the statute itself being interpreted to imply a universal and absolute forfeiture of the right to a civil-rights payment, even retroactively.

C. The Concept of “Double Recovery” Has No Place In Interpreting the WCPA

The State’s brief is built upon its self-invented premise that the WCPA was designed to prevent “double recovery.” This concept—which is contingent upon full recovery and a notion that Plaintiffs are seeking *double* what might make them whole—is offensive when invoked here. There is a substantial difference between obtaining payment from two sources or that remedies must be “exclusive,” on the one hand and, on the other, arguing that Larson, Statler, and Gassman seek a *double* recovery by trying to avail themselves of the Act. The latter principle would require that this Court find Larson Gassman, and Statler were made whole for their collective 12 years of wrongful conviction by settling their civil-

rights action. They were not. And, the notion of “double recovery” as being a part of the WCPA should be rejected by this Court.

1. The Notion of Double Recovery Has Come From the State, Not the Legislature

The State’s claim that the WCPA prevents “double recovery” should be rejected in the strongest terms by this Court.

Reading the State’s brief, one might think that the first sentence of 4.100.080 says “the legislature intends to bar double recovery, which is considered to be two separate payments, no matter the size and without regard to the extent of the harm suffered by the claimant.” Indeed, the State uses this phrase 13 times during its brief, see State Brief at 2, 4, 10, 15, 19, 20, 21 (three times), 22, 28, & 31. The State even goes so far as to claim that, by making an argument about the application of the Act “Plaintiffs ... claim that the same legislative body that *explicitly barred double recovery* then set up a statutory scheme in which double recovery is readily obtainable.” *Id.* at 21 (emphasis added). Plaintiffs did not ever make an argument or advance one built upon such a flawed premise.

Fortunately, the Legislature did not enact such a statute either. The Legislature did not “explicitly bar double recovery,” as the State incorrectly asserts. *See* RCW 4.100. Those terms are not in the statute or,

as far as Plaintiffs have found, in the legislative history of the Act either. *See, e.g.*, Committee Report, 2013 WA H.B. 1241 (Apr. 1, 2013).

Nor does that Act ever state that any payment, no matter the size automatically constitutes a full and complete recovery related to a claimant's wrongful conviction. The statute does include the phrase "exclusive remedies," but does not include any operational language concerning what happens where another lawsuit is resolved *before* a claimant seeks payment under the Act. Nor does the statute provide any guidance about what should happen to a claimant who resolved another lawsuit related to their claim before the WCPA was ever passed (e.g., Town). The easiest thing to do, of course, would be to apply the plain operational text of the statute and find that its waiver provision is triggered when a claimant executes a release that waiving other claims.

In short, the State has gone to great lengths to attempt to re-frame the issue before the Court from one of statutory interpretation—*e.g.*, what does the WCPA *say*—to being about some abstract argument about double recovery. This appeal is ought not to be about "double recovery"; it should be about the remedial Act that provides limited compensation to the wrongfully convicted.

2. Double Recovery Is Contingent Upon Full Compensation, Something Plaintiffs' did Not Receive

The State's invocation of the concept of "double recovery" is troubling—indeed, offensive—because that concept is not the same thing as receiving partial, contributory payments from two sources. Instead, a so-called "double recovery" "cannot occur *unless* an [injured party] has first been *fully* compensated for the loss. *Sherry v. Fin. Indem. Co.*, 160 Wn. 2d 611, 621-22, 160 P.3d 31, 36 (2007); Indeed, a party seeking to invoke the concept of double recovery bears an affirmative burden of establishing that the "injured party was fully compensated." *Brown v. Snohomish Cty. Physicians Corp.*, 120 Wash. 2d 747, 759, 845 P.2d 334, 340 (1993); *see also id.* (discussing an instance where double recovery applied because the injured party was fully compensated and there had been "full recovery for general and nonduplicative special damages").

A hypothetical is perhaps illustrative: suppose an automobile accident victim is deemed completely disabled as a result of another driver's reckless driving where "full compensation" would amount to payment of \$1,000,000. Receipt of \$500,000 from source, and then attempting to obtain an additional payment of \$250,000 from a second would involve multiple payments but would not be a *double* recovery in any way, shape, or form. That second payment would not even *fully* compensate the injured driver.

This is analogous to the harm suffered by Larson, Gassman, and Statler, only their injuries exist on a far larger scale. These three were wrongfully convicted for roughly four years each, or 12 years collectively. They have not at all been fully compensated for their loss, which includes not only a loss of their liberty but and the harm of having their entire lives turned upside down, but also substantial immeasurable emotional trauma. In comparison to the damages they have actually suffered—and to which they should be entitled—the \$2.5 mm settlement split between them and their attorneys is far nearer to the paltry end of the spectrum than any sort of “full compensation,” even assuming that were theoretically possible.⁵ Seeking to obtain, in a mathematically limited fashion, a second payment that even the trial court agreed would not make them whole is not a *double* recovery. Like our hypothetical injured driver, should Larson, Statler, and Gassman be paid under the Act, they would remain less-than-fully compensated for their innumerable losses.

The State has gone to great lengths to make this case about “double recovery.” These arguments insult and seek to diminish the harms suffered

⁵ For context, it is worth noting that it is well recognized that “both juries and courts sitting without juries have found that wrongfully imprisoned plaintiffs were entitled to compensation of at least \$1 million per year.” *Limone v. United States*, 497 F. Supp. 2d 143, 243 (D. Mass. 2007); *see also Smith v. City of Oakland*, 538 F. Supp. 2d 1217, 1242-43 (N.D. Cal. 2008) (describing \$1 million per year of wrongful incarceration as “a floor for wrongful imprisonment awards, not a ceiling”).

by each Plaintiff for their years of wrongful conviction. The WCPA was designed to perform the opposite function—to provide an acknowledgement that Plaintiffs *have* been harmed and are entitled to redress. Simply put, there is not—and cannot be—a “double recovery” here. The argument should be rejected.⁶

3. The Election of Remedies Doctrine Cannot Apply Here

As an entirely independent matter, the notion of “double recovery” should be rejected here because the vindication of one’s civil rights is separate and distinct from the no-fault statutorily-limited compensation set forth in the WCPA. The State’s suggestion that the difference between a constitutional claim under § 1983 as being “irrelevant” rests on the faulty premise that the Act “explicitly” prohibits some version of “double recovery,” despite the fact that such a concept is not described in the statute whatsoever. State Br. at 11.

Confusingly, even after calling the comparison to § 1983 claims “irrelevant,” *id.* State Br. at 11, the State later appeals to the concept of an election of remedies. *Id.* at 25-29. The analogy does not work.

Instead, as above, the notion of an “election of remedies” cannot apply here because Plaintiffs did not receive full compensation for their

⁶ As an evidentiary matter, the State has not at all fulfilled its burden or even attempted to demonstrate that Plaintiffs have received anything near full recovery in any respect.

significant damages. This narrow doctrine concerns “double redress” to prevent a party “from asserting inconsistent positions in order to recover *more than* the value of the harm suffered.” *Bremerton Central Lions Club, Inc. v. Manke Lumber Co.*, 25 Wn. App. 1, 5, 604 10 P.2d 1325 (Div. 2 1979) (emphasis added).

But, there can be no argument that even if Plaintiffs were to recover under the WCPA that would receive *more than* the value of the tremendous harm they have suffered. In this way, the State has missed the import of the numerous authorities cited in the opening brief illustrating that there is nothing inconsistent between the State—the entity whose sovereign authority was invoked to convict Plaintiffs—from separately providing payment without any reference to fault and plaintiffs proving their constitutional rights were violated as well.

The one and only basis the State can cite for calling a WCPA and civil-rights remedy as “inconsistent” is the State’s interpretation of the Act. *See* State Br. at 27 (“The remedies are inconsistent because the Legislature mandated that claimants must chose only one remedy.”). But, there is nothing inherently inconsistent about obtaining limited statutory compensation under a no-fault innocence-based regime like the WCPA and Plaintiff’s going above and beyond that and proving that their constitutional rights were likewise violated. And, the State’s suggestion of

“inconsistency” rests upon a misreading of the Act, contrary to its operational text and the remedial purpose of the statute. *See supra* II(1).

* * *

In sum, Plaintiffs acknowledge that that RCW 4.100.080(1) mentions an “intent” concerning “exclusive remedies.” However, when effectuating this “intent” the Legislature stated *how* that that notion would be implemented. Thus, whatever one makes of the first sentence of RCW 4.100.080(1), the notion of “double recovery” is not part of the statute, insults the wrongs Plaintiffs have suffered and undermines the WCPA.

D. Constitutional Avoidance Demands Plaintiffs’ Interpretation To Be Adopted

There is no question that “this court must always seek to construe statutes in a manner that avoids constitutional problems.” *Bostain v. Food Exp., Inc.*, 159 Wash. 2d 700, 733, 153 P.3d 846, 862 (2007). When interpreting a statute, it is a court’s “duty to avoid rendering a statute unconstitutional by interpretation if by an alternative interpretation [a court] may render it constitutional.” *In re Ways’ Marriage*, 85 Wash. 2d 693, 703, 538 P.2d 1225, 1231 (1975) (citing *Swanson v. White*, 83 Wash.2d 175, 183, 517 P.2d 959 (1973), *Spokane v. Vaux*, 83 Wash.2d 126, 129-30, 516 P.2d 209 (1973)).

Here, an expansive interpretation of the Act presents constitutional problems in at least three ways.

First, the notion that a claimant must, at the outset, possibly give up their right to even pursue a civil-right action constitutes an unconstitutional condition. “The doctrine of unconstitutional conditions provides that the government cannot condition the receipt of a government benefit on waiver of a constitutionally protected right.” *In re Dyer*, 175 Wn.2d 186, 203, 283 P.3d 1103, 1111 (2012) (citation omitted). Indeed, the “‘unconstitutional conditions’ doctrine limits the government’s ability to exact waivers of rights as a condition of benefits, even when those benefits are fully discretionary.” *Wright v. Washington State Dep’t of Health*, 185 Wn. App. 1049, 2015 WL 541150, at *4 (2015) (citing *United States v. Scott*, 450 F.3d 863, 866 (9th Cir. 2005)) (unpublished).

The State seeks to evade *Wright* by pointing out that it is unpublished; but, it remains persuasive. Indeed, the State does not quarrel with the accurate statement of the prevailing legal standards. And, the factual differences between *Wright* and the situation here—where the expansive interpretation of the Act advanced by the State involves a retroactive forfeiture of one’s constitutional rights—only reinforces the unique constitutional problems posed by the State’s interpretation.

To be sure, and contrary to the State’s insinuation otherwise, forcing Plaintiffs to give up even pursuit of a civil-rights action seeking vindication of constitutional rights as a condition of pursuing a WCPA

claim would, constitute a compelled, unconstitutional relinquishment of those *constitutional* rights. See *City of Riverside v. Rivera*, 477 U.S. 561, 574 (1986) (“[A] civil rights plaintiff seeks to vindicate important civil and constitutional rights that cannot be valued solely in monetary terms.”); *Memphis Community School Dist. v. Stachura*, 477 U.S. 299, 306 (1986). The State now agrees that this interpretation should not be adopted.

Second, even the State’s new interpretation—that the Act permits simultaneous actions but prohibits multiple payments (State Br. 12)—does not cure those constitutional concerns. It is not just the *opportunity* to pursue one’s constitutional rights that is guaranteed by the constitution, but some form of remedy as well. Cf. *State v. Stein*, 144 Wn. 2d 236, 248, 27 P.3d 184, 190 (2001) (“Where there is a wrong the court should provide a remedy.”) (citing *Marbury v. Madison*, 5 U.S. 137, 163 (1803) (“[I]t is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded.”)).

Third, the State’s interpretation of the Act creates constitutional problems by providing that wrongfully convicted persons who were never given notice or an opportunity to avail themselves of the remedies provided under the Act might be prohibited from doing so merely because the previously received some payment—however small, presumably even

including nominal damages—in a civil-rights action. *Cf. Post v. City of Tacoma*, 167 Wn.2d 300, 313, 217 P.3d 1179 (2009) (due process requires notice and opportunity to be heard and make an election of one’s rights). Indeed, as the Town case indicates, *supra* II(A), this is no hypothetical.

E. Should The WCPA Be Deemed Ambiguous, Plaintiffs Must Prevail

In passing, the State suggests that if the statute is ambiguous, the Court can turn to legislative history. State Br. at 13. The legislative history offers no support for the State’s expansive interpretation of the Act in any way—it essentially repeats the statutory text.

However, if the WCPA is deemed ambiguous, that necessarily means the State’s so-called “plain language” interpretation of the Act—with an excessive, undefined version of “double recovery” is not as plain as the State contends. At that juncture, and in light of the fact that the WCPA must be construed in light of its remedial purpose, any barrier to compensation under the Act must be narrowly construed, as this Court has already recognized. *See Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851, 870 (2012); *Larson v. State*, 194 Wn. App. 722, 725 (2016).

Here, should the Court find that the WCPA is ambiguous, that would mean there are two interpretations on the table. Plaintiffs’ interpretation—which fully implements the operational text of the statute

while also treating a possible exception from compensation narrowly—must apply. The State’s broad, unwieldy interpretation that rests upon a troubling concept of “universal forfeiture” that should be rejected.

F. A Legal Release Would Not Have Been Futile Or Meaningless

The State claims that providing Plaintiffs with a release would have been “futile.” State Br. 24-25. Not so. The trial court anticipated that the parties might disagree about the language of that release for good reason: that release could have real, enforceable effect going forward.

The point is short, but important. In making its “futility” argument, the State has again offered an interpretation of the statute that conflicts with the text of the Act. Specifically, the State claims that if Plaintiffs:

had signed a release that conformed with RCW 4.100.080(1), the release would have required them to reimburse the State any compensation they would have temporarily received under the Act.

State Br. 24.

This argument, a misleading construction, suggests that the reimbursement provision works even where no release has been signed. But, that suggestion is contrary to the operative language of the statute, which provides for reimbursement only after (1) a release has been executed, (2) payment is made, and (3) that release is subsequently deemed to be invalid. Nothing in the Act constitutes a mechanism requiring forfeiture or divestment of monies paid to claimants who have

received some payment—however small or large and without reference to the whether that payment was “full”—without that release having been deemed invalid. RCW. 4.100.080(1). In other words, signing a release would have in no way been “futile.”

G. The Court Abused Its Discretion In Vacating A Final Judgment The State Did Not Appeal

The opening brief sets forth Plaintiffs’ arguments concerning Rule 60. The core issue is straightforward: when the trial court entered a final judgment, it knew that Plaintiffs had settled their § 1983 claims. CP 161. The trial court knew that the State was obligated to provide Plaintiffs with a release (which never came) as a condition for Plaintiffs obtaining any payment of compensation under the Act. CP 161-62. The trial court knew that the parties might disagree about the language in that release. And, the trial court knew the issue of attorney fees and child support needed to be separately addressed as well. CP 161-62, 164. The state did not appeal.

Despite all of that, the trial court granted the State’s motion for relief from judgment based upon the fact that there were “two different actions proceeding at the same time, one of those occurring after this case had been finalized and on appeal.” ROP 35. The problem with this rationale is that it was entirely known by the trial court at the time the judgment to which the State did not appeal was entered. It is not the case

that Plaintiffs filed their civil-rights action after the judgment was entered; indeed, the case had already settled. It is also not the case that the appeal of the WCPA claim was pending when the trial court entered its judgment; the appeal had been resolved in Plaintiffs' favor long before.

In sum, there were no “irregularities” that took place after the judgment was entered that justify the drastic remedy of vacating a final judgment to which the adverse party did not even appeal. As a consequence, between the time the judgment was entered and the time in which the court vacated that judgment there were absolutely no “extraordinary circumstances” relating to “irregularities extraneous to the action of the court or questions concerning the regularity of the court’s proceedings” that would justify vacating the judgment. *In re Marriage of Yearout*, 41 Wn. App. 897, 902, 707 P.2d 1367 (1985). The trial court abused its discretion in finding otherwise.⁷

III. CONCLUSION

The WCPA is designed to provide limited relief for wrongly convicted individuals like Larson, Gassman, and Statler. They respectfully ask this Court to reverse the decision of the trial court and enter judgment in their favor to provide them that small measure of compensation.

⁷ The State cites other provisions of Rule 60 that the trial court itself did not invoke. These could not have been the basis for decision and they are therefore unaddressed.

RESPECTFULLY SUBMITTED AND DATED this 14th day of
September, 2018.

LOEVY & LOEVY

A handwritten signature in black ink, appearing to read 'D B Owens', is centered within a light gray rectangular box.

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CERTIFICATE OF SERVICE

I certify that, on September 14, 2018, I caused a true and correct copy of the foregoing to be served on the following via the means indicated:

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DATED this 14th day of September, 2018.

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Attorneys for Plaintiffs/Appellants

APPENDIX A

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STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT

ROBERT E. LARSON, TYLER W.
GASSMAN AND PAUL E. STATLER,

Plaintiff,

v.

STATE OF WASHINGTON,

Defendant.

NO. 14-2-00090-6

DEFENDANT'S OBJECTION TO
ENTRY OF JUDGMENT

COMES NOW defendant State of Washington, by and through its attorney, Robert W. Ferguson, Attorney General, and Melanie Tratnik, Senior Attorney General and Richard L. Weber, Assistant Attorney General, and hereby objects to entry of judgment in this case. This objection is made pursuant to chapter RCW 4.100, the Wrongly Convicted Persons Act, and specifically, RCW 4.100.080.

RCW 4.100.080 states:

- (1) It is the intent of the legislature that the remedies and compensation provided under this chapter shall be exclusive to all other remedies at law and in equity against the state or any political subdivision of the state. **As a requirement to making a request for relief under this chapter, the claimant waives any and all other remedies, causes of action, and other forms of relief or compensation against the state, any political subdivision of the state, and their officers, employees, agents, and volunteers related to the claimant's wrongful conviction and imprisonment. This waiver shall also include all state, common law, and federal claims for relief, including claims pursuant to 42 U.S.C. Sec. 1983.** (Emphasis added). A wrongfully convicted person who elects not to pursue a claim for compensation pursuant to this chapter shall not be precluded from seeking relief through any other existing

1 remedy. The claimant must execute a legal release prior to the payment of
2 any compensation under this chapter. (Emphasis added). If the release is held
3 invalid for any reason and the claimant is awarded compensation under this
4 chapter and receives a tort award related to his or her wrongful conviction and
5 incarceration, the claimant must reimburse the state for the lesser of:

- 6 (a) The amount of the compensation award, excluding the portion
7 awarded pursuant to RCW 4.100.060(5) (c) through (e); or
8 (b) The amount received by the claimant under the tort award.

9 Plaintiffs have simultaneously pursued their claims in state court under the WCPA and
10 in federal court under 42 U.S.C. 1983. This is inconsistent with the legislative intent clearly
11 expressed in 4.100.080. Given the clear and unambiguous language of the WCPA, the state
12 objects to entry of the proposed judgment against the state until claimants have executed the
13 release from liability required in RCW 4.100.080(1).

14 RESPECTFULLY SUBMITTED this 10th day of May, 2017.

15 ROBERT W. FERGUSON
16 Attorney General of Washington



17 MELANIE TRATNIK, WSB #25576
18 Senior Counsel



19 RICHARD L. WEBER, WSB #16583
20 Assistant Attorney General

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STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT

ROBERT E. LARSON; TYLER W.
GASSMAN; and PAUL E. STATLER,

NO. 14-02-00090-6

DECLARATION OF SERVICE

Plaintiffs,

v.

STATE OF WASHINGTON,

Defendant.

On the 10th day of May, 2017, I served a true and correct copy of Defendant's
Objection To Entry Of Judgment and Declaration of Service on the parties named below by
sending via electronic mail and standard U.S. mail, all charges fully pre-paid and addressed as
follows:

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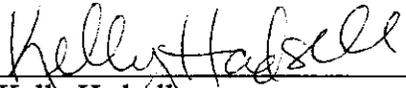
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1 I declare under penalty of perjury under the laws of the State of Washington that the
2 foregoing is true and correct.

3 DATED this 10th day of May, 2017, at Seattle, Washington.
4

5 
6 Kelly Hadsell
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APPENDIX B

1 Town timely filed his complaint on July 25, 2016. However, he failed to perfect
2 service by serving the State of Washington within 90 days of filing. On May 17, 2017,
3 almost 10 months after service, he finally served the Office of the Attorney General with
4 a copy of his complaint and summons. The deadline for filing his claim expired on
5 July 28, 2016. On that date, Town's claim was extinguished. He never established
6 jurisdiction. Also, his complaint lacked the documentary evidence required by
7 4.100.040(1).

8 In 2001, years before filing his claim under WCPA, Meredith Town filed suit in
9 federal district court against Chelan County, the City of Wenatchee and numerous other
10 defendants alleging civil rights violations under 42 U.S.C. 1983. (**Attachment B**). These
11 federal claims were related to his 1994 convictions. In 2003, 13 years before filing his
12 WCPA claim, Town settled his civil rights tort claims and received total compensation of
13 \$200,000.00. (**Attachment C**).

14 II. STATEMENT OF ISSUES

15 Should the court dismiss Meredith Town's wrongful conviction claim because he
16 has already been compensated for his claims and RCW 4.100.080 prohibits double
17 recovery, he failed to provide the documentation required under RCW 4.100.040(1), and
18 he failed to perfect service within 90 days of filing his claim?

19 III. ARGUMENT AND LEGAL AUTHORITY

20 On July 28, 2013, the WCPA, 4.100 RCW, became law. (The entire act is attached
21 hereto as **Attachment D** for the court's convenience). It establishes an avenue for those
22 who claim to have been wrongly convicted in Washington state to seek redress for the lost
23 years of their lives, and help to address the unique challenges faced by the wrongly
24 convicted after exoneration. RCW 4.100.010.

25 Three fatal flaws compel the court to dismiss Town's complaint. First, he has
26 already been compensated \$200,000.00 for his claims related to his 1995 convictions and

1 RCW 4.100.080 clearly prohibits double recovery. Second, for the claim to be
2 “actionable,” the claimant must establish by documentary evidence that he/she meets the
3 requirements of RCW 4.100.040(1) and Town has failed to provide any documentation.
4 Third, Town tentatively commenced his action by filing his complaint, but he failed to
5 serve the state within 90 days as required by RCW 4.16.170. He failed to perfect service
6 before the filing deadline of July 28, 2016 and the court never acquired jurisdiction. Each
7 of these factors compels the court to dismiss Town’s complaint.

8 **A. RCW 4.100 Provides an Exclusive Remedy**

9 RCW 4.100.080 states:

10 (1) It is the intent of the legislature that the **remedies and**
11 **compensation** provided under this chapter shall be **exclusive** to all other
12 remedies at law and in equity against the state or any political subdivision
13 of the state. **As a requirement to making a request for relief under this**
14 **chapter, the claimant waives any and all other remedies, causes of**
15 **action, and other forms of relief or compensation against the state, any**
16 **political subdivision of the state, and their officers, employees, agents,**
17 **and volunteers related to the claimant’s wrongful conviction and**
18 **imprisonment. This waiver shall also include all state, common law,**
19 **and federal claims for relief, including claims pursuant to 42 U.S.C.**
20 **Sec. 1983. A wrongfully convicted person who elects not to pursue a claim**
21 **for compensation pursuant to this chapter shall not be precluded from**
22 **seeking relief through any other existing remedy. (Emphasis added).**

18 In 2002, Town filed suit under 42 U.S.C. 1983 against the City of Wenatchee,
19 Chelan County, and other defendants in U.S. District Court, Eastern District of
20 Washington claiming civil rights violations related to his 1994 convictions. In 2003, Town
21 settled this lawsuit and received \$200,000.00. (**Attachment C**). The clear and
22 unambiguous language of the RCW 4.100.080 identifies the WCPA as an exclusive
23 remedy and requires that a claimant choose between a claim under the WCPA and all
24 other available remedies, specifically including actions under 42 U.S.C. 1983. Town,
25 without a doubt, has chosen his remedy. 13 years before filing this complaint, he received
26

1 \$200,000.00 in compensation related to his 1994 convictions. Compensation under the
2 WCPA is no longer available to him.

3 **B. Town's Claim Lacks the Required Documentary Evidence**

4 RCW 4.100.040 sets out the requirements for filing an actionable claim.

5 RCW 4.100.040(1) states:

6 In order to file a claim for compensation under this chapter, the claimant
7 must establish by documentary evidence that:

8 (a) The claimant has been convicted of one or more felonies in
9 superior court and subsequently sentenced to a term of
imprisonment, and has served all or part of the sentence;

10 (b)(i) The claimant is not currently incarcerated for any offense;
and

11 (ii) During the period of confinement for which the claimant is
12 seeking compensation, the claimant was not serving a term of
13 imprisonment or a concurrent sentence for any crime other than the
felony or felonies that are the basis for the claim;

14 (c)(i) The claimant has been pardoned on grounds consistent with
15 innocence for the felony or felonies that are the basis for the claim;
or

16 (ii) The claimant's judgment of conviction was reversed or vacated
17 and the charging document dismissed on the basis of significant
18 new exculpatory information or, if a new trial was ordered pursuant
19 to the presentation of significant new exculpatory information,
either the claimant was found not guilty at the new trial or the
claimant was not retried and the charging document dismissed; and

20 (d) The claim is not time barred by RCW 4.100.090.

21 RCW 4.100.040(1)(d) requires specifically that in order to file an actionable claim,
22 a claimant must establish by documentary evidence that he meets the requirements of
23 4.100.040(1)(d) and that his claim is not time-barred. Mr. Town has failed to establish
24 these requirements by documentary evidence. He has not filed an actionable claim.
25
26

1 **C. Town’s Claim is Time-barred**

2 RCW 4.100.090 provides:

3 Except as provided in RCW 4.100.070, an action for compensation under
4 this chapter must be commenced within three years after the grant of a
5 pardon, the grant of judicial relief and satisfaction of other conditions
6 described in RCW 4.100.020, or release from custody, whichever is later.
7 However, any action by the state challenging or appealing the grant of
8 judicial relief or release from custody tolls the three-year period. **Any
9 persons meeting the criteria set forth in RCW 4.100.020 who was
10 wrongly convicted before July 28, 2013, may commence action under
11 this chapter within three years after July 28, 2013.** (Emphasis added).

12 Town’s complaint is time-barred. His convictions were vacated on June 8, 2000.
13 He filed his WCPA complaint on July 25, 2016. RCW 4.100.090 provides that his deadline
14 for commencing an actionable claim was July 28, 2016. Town did not serve the state with
15 his complaint until May 1, 2017, almost 10 months after his filing deadline expired.

16 “A civil action is commenced by service of summons and complaint or by filing
17 a complaint.” CR 3(a). *Derendt v. Kumbera*, 45 Wn. App. 485, 726 P.2d 34 (1986).
18 CR 3(a) further provides: “An action shall not be deemed commenced for the purpose of
19 tolling any statute of limitations except as provided in RCW 4.16.170.” *Id.* Pursuant to
20 RCW 4.16.170, filing the complaint before the filing deadline tentatively commences the
21 action. However, “[a]n action tentatively commenced by filing a complaint must be
22 perfected within 90 days from the date of filing by personal service...” *Id.* at 487, *Citizens*
23 *Interested in the Transfusion of Yesteryear v. Board of Regents*, 86 Wn.2d 323, 329,
24 544 P.2d 740 (1976). Town tentatively commenced this action on July 25, 2016 by filing
25 his complaint. However, he failed to perfect service as required in RCW 4.16.170 because
26 he did not serve at least one defendant with his summons and complaint within 90 days of
 filing his complaint. As of July 28, 2016, Town’s claim was extinguished. The court never
 acquired jurisdiction and must now dismiss Town’s complaint.

1 **D. Dismissal is Mandatory**

2 Article II, Section 26 of the Washington State Constitution provides, “The
3 legislature shall direct by law, in what manner, and in what courts, suits may be brought
4 against the state.” In 1963 the legislature passed 4.92 RCW, abolishing sovereign
5 immunity for the state. In 1967 the legislature passed 4.96 RCW, abolishing sovereign
6 immunity for the state’s political subdivisions. These statutes prescribe where and in what
7 manner a citizen can bring tort claims against the state and its subdivisions. Similarly, in
8 2013 the legislature waived sovereign immunity and enacted the WCPA to prescribe
9 where and in what manner persons claiming to have been wrongly convicted could seek
10 compensation from the state.

11 4.92 RCW and 4.96 RCW are non-claim statutes. *Lane v. Department of Labor &*
12 *Industries*, 21 Wn.2d 420, 425, 151 P.2d 420 (1944). *Mercer v. State*, 48 Wn. App. 496,
13 497, 739 P.2d 703 (1987), “Inherent in the nature of these non-claim statutes is the creation
14 of a right and an obligation to assert the right within a fixed time period or the right sought
15 to be enforced will be barred. *Bellevue School District No. 405 v. Brazier Construction*
16 *Co.*, 103 Wn.2d 111, 691 P.2d 178 (1984), *Hutton v. State*, 25 Wn.2d 402, 171 P.2d 248
17 (1946). The “rights” created by non-claim provisions are statutory rights that ordinarily
18 would not exist without the existence of the non-claim provision. “The ‘obligation’ is
19 generally the duty to file a claim with the particular entity prior to the lapse of the statutory
20 time period or the claim is barred.” *Id.* “[W]here time requirements are concerned, a
21 plaintiff must strictly comply with the claim filing statute.” *Id.* at 230, *Medina v. Public*
22 *Utility District No. 1 of Benton County*, 147 Wn.2d 303, 53 P.3d 993 (2002). “Strict
23 compliance with the statutory claim filing procedure in chapter 4.96 RCW is a condition
24 precedent to filing a lawsuit for damages against a government entity.” *Johnson v. King*
25 *County*, 148 Wn. App. 220, 198 P.3d 546 (2009).

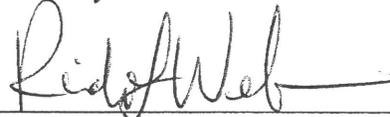
1 Similarly, 4.100 RCW is a non-claim statute. As with 4.92 RCW and 4.96 RCW,
2 strict compliance with the claim filing procedure in chapter 4.100 RCW is a condition
3 precedent to filing a claim against the state for wrongful conviction under the WCPA. The
4 legislature specified in RCW 4.100.040 the requirements a claimant must satisfy to file an
5 actionable claim. Mr. Town has failed to satisfy those requirements.

6 **IV. CONCLUSION**

7 Meredith Town has already been compensated for his wrongful conviction. He
8 failed to establish by documentary evidence that he was eligible for compensation and his
9 claim is time-barred because he failed to perfect service. The law requires that this court
10 dismiss Mr. Town's claim with prejudice.

11 DATED this 12th day of October, 2017.

12 ROBERT W. FERGUSON
13 Attorney General

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15 RICHARD L. WEBER, WSBA #16583
16 Assistant Attorney General
17 Attorney for State of Washington
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LOEVY & LOEVY

September 14, 2018 - 1:04 PM

Transmittal Information

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Appellate Court Case Title: Robert E. Larson, et al v. State of Washington
Superior Court Case Number: 14-2-00090-6

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