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NO. 35649-3

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

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

Plaintiffs/Appellants,

v.

STATE OF WASHINGTON,

Defendant/Respondent.

RESPONDENT'S BRIEF

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I. INTRODUCTION

By its express terms, the Wrongly Convicted Persons Act (WCPA) provides an exclusive remedy for those who can show they were wrongly convicted, served prison time, and are innocent. A person who prevails under the Act receives compensation based on a mathematical formula set out in the statute. But in order to receive the WCPA's payment without having to show fault of misconduct, the claimant must forgo other available remedies.

Individuals eligible for WCPA compensation are not required to file a claim, and those who do not are free to pursue other remedies simultaneously. However, if a person pursues compensation in multiple lawsuits, as Plaintiffs did here, the WCPA contains statutory provisions to ensure that they do not ultimately receive multiple recoveries. The Legislature plainly intended the WCPA to provide an exclusive remedy.

Plaintiffs Robert Larson, Tyler Gassman, and Paul Statler collectively received a \$2,250,000.00 settlement in a 42 U.S.C. § 1983 lawsuit against Spokane County. CP 151. When Plaintiffs sought to obtain a second recovery for the same underlying conviction under the WCPA, Spokane County Superior Court Judge John O. Cooney properly denied recovery, finding that the plain and unambiguous language of the WCPA expressly prohibits payment on a WCPA claim absent waiver of all other

recovery. Here the plaintiffs had already received their payment under § 1983.

Plaintiffs try to skirt the WCPA's plain intent to bar double recovery by claiming that the statute only requires them to waive future alternative recovery because, they assert, the statute does not require consideration of compensation they have already received. But that would be contrary to the Legislature's clearly stated intent. The trial court correctly recognized that entry of judgment and payment of compensation are two different things, and payment of compensation is contingent on the WCPA being the exclusive remedy selected. The trial court did not abuse its discretion when it vacated Plaintiffs' judgment to ensure that the WCPA's bar against double recovery was enforced. This Court should affirm.

II. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Whether Plaintiffs can obtain an additional recovery under the Wrongly Convicted Persons Act where they have already received compensation from their § 1983 claim arising from the same conduct and where the plain and unambiguous language of the Act expressly prohibits double recovery.

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III. STATEMENT OF THE CASE

In February 2009, Plaintiffs were convicted of multiple felonies and were sentenced to substantial prison terms. CP 14. In 2012, the Spokane County Superior Court vacated and dismissed those convictions. CP 16. Plaintiffs subsequently filed a claim for compensation under Washington's Wrongly Convicted Persons Act, Chapter 4.100 RCW. CP 8.

In 2015, the WCPA claim proceeded to a bench trial. CP 9. On February 12, 2015, the Honorable John O. Cooney held that Plaintiffs had failed to prove they were "actually innocent" as that term is defined by the WCPA. RCW 4.100.060(1). CP 9-10. Plaintiffs appealed to this Court. CP 10.

This Court reversed, finding that the trial court had applied too high a burden of proof when it found that Plaintiffs failed to prove they were actually innocent. *Larson et. al. v. State*, 194 Wn. App. 722, 742, 375 P.3d 1096, 1107 (2016). This Court remanded the case back to the trial court with instructions to "determine whether the claimants have proved by clear and convincing evidence they are actually innocent." *Id.* at 743. On remand, the trial court found that Plaintiffs were "actually innocent" and therefore entitled to judgment in their favor. CP 5.

The WCPA provides "that the remedies and compensation provided under this chapter shall be exclusive[.]" RCW 4.100.080(1). The State,

aware that Plaintiffs had a pending § 1983 action, moved to stay the proceedings until the federal suit was concluded to ensure that the exclusive remedy provision of the WCPA was not violated.

Plaintiffs moved for entry of a \$790,377.73 judgment in their WCPA suit. CP 29-31. The State filed a motion opposing entry of judgment, advising the trial court that Plaintiffs had settled their § 1983 lawsuit for over two million dollars, an amount in excess of the recovery initially available to them under the WCPA. CP 46-51.

On July 10, 2017, the Court heard argument on Plaintiffs' motion for entry of judgment. The Court correctly interpreted the statute to bar double recovery, stating, "RCW 4.100.080 seems very clear. It provides an exclusive means to receive compensation for those that are wrongly convicted." CP 159. Nevertheless, the Court reserved ruling on the double recovery issue and entered judgment, reasoning that entry of judgment and seeking to enforce a judgment through payment were separate and distinct acts. CP 161. The Court advised the parties to return to court to address the issue of double recovery should Plaintiffs seek payment. CP 161. The order entering judgment expressly required Plaintiffs to notify counsel for the State "at least 14 days in advance of seeking payment from the State." CP 40-44.

Shortly thereafter, Plaintiffs filed a motion to direct the clerk of the court to make and furnish a certified copy of the judgment to the Office of Risk Management, a necessary step to receive payment from that office. CP 106-7. On September 26, 2017, following oral argument, the Court signed an order denying Plaintiffs' motion to direct the clerk to make and furnish a certified copy of the judgment to the Office of Risk Management, and a second order vacating the judgment. CP 204, 207.

Plaintiffs timely appealed the trial court's ruling. CP 214.

IV. THE WRONGLY CONVICTED PERSONS ACT

In 2013, the Wrongly Convicted Persons Act, Chapter 4.100 RCW, became law. RCW 4.100.010 provides: "A majority of those wrongly convicted in Washington have no remedy available under the law for the destruction of their personal lives resulting from errors in the criminal justice system." The Act was intended "to provide an avenue for those who have been wrongly convicted in Washington state to redress the lost years of their lives, and help to address the unique challenges faced by the wrongly convicted after exoneration." RCW 4.100.010.

Not all overturned convictions result in actionable WCPA claims. A claimant seeking compensation under the Act must establish that he meets certain requirements set forth in RCW 4.100.040(1), and that he can present significant new exculpatory information that establishes by clear

and convincing evidence that he is actually innocent. RCW 4.100.020(2)(a); RCW 4.100.040(1); RCW 4.100.060(c)(ii). If the Attorney General's Office concedes the claim as permitted by RCW 4.100.040(5), or if a claimant proves he has met all the Act's requirements, then the amount of compensation is based on a mathematical formula set forth in the Act. RCW 4.100.040(5); RCW 4.100.060. Claimants who chose to pursue a remedy under the WCPA must abide by its statutory mandate that "the remedies and compensation provided under this chapter shall be exclusive[.]" RCW 4.100.080(1).

V. ARGUMENT

A. **Under the Rules of Statutory Construction, the WCPA Prohibits Claimants Who Have Received Any Other Remedy From Receiving Additional Compensation Under the Act.**

Plaintiffs try to evade the Legislature's plain intent that if a wrongly convicted person elects to receive recovery in a separate litigation then additional recovery under the WCPA is no longer available. Plaintiffs contend the exclusive remedy provision of RCW 4.100.080(1) only applies to claimants who receive recovery under the WCPA prior to obtaining another recovery. In doing so, they ignore two fundamental principles of statutory construction. One, in cases involving statutory interpretation, "[t]he court's fundamental objective is to ascertain and carry out the legislature's intent, and if the statute's meaning is plain on its face, then the

court must give effect to the plain meaning as an expression of legislative intent.” *Dep’t of Ecology v. Campbell and Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002); *State v. J.M.*, 144 Wn.2d 472, 480, 28 P.3d 720 (2001). Two, expressions of legislative intent are part of the plain meaning of a statute. *G-P Gypsum Corp. v. Dep’t of Revenue*, 169 Wn.2d 304, 310, 237 P.3d 256 (2010).

1. The Legislature Clearly Intended That the WCPA Provide an Exclusive Remedy.

Statutory interpretation is a question of law that is reviewed de novo. *State v. Wentz*, 149 Wn.2d 342, 346, 68 P.3d 282 (2003). Under the WCPA’s plain language, Plaintiffs cannot receive a recovery under the WCPA because they have already received compensation from their federal § 1983 settlement. The opening provision of RCW 4.100.080(1) clearly expresses the legislature’s unambiguous intent that compensation under the WCPA must be exclusive. The statute unequivocally states: “It is the intent of the legislature that the remedies and compensation provided under this chapter shall be exclusive to all other remedies[.]” RCW 4.100.080(1).

Plaintiffs acknowledge, “[w]here statutory language is plain and unambiguous a statute’s meaning must be derived from the wording of the statute itself.” *Wash. State Human Rights Comm’n v. Cheney Sch. Dist. No. 30*, 97 Wn.2d 118, 121, 641 P.2d 163 (1982). However, Plaintiffs

misconstrue the law when they urge this Court to not consider “abstract notions of legislative intent” suggesting incorrectly that expressions of legislative intent are not part of the plain meaning of a statute. Plaintiffs’ Brief at 16-17. This Court should reject Plaintiffs’ argument, because it is contrary to Washington Supreme Court case law that expressions of legislative intent are part of the plain meaning of a statute.

In *G-P Gypsum Corp. v. Dep’t of Revenue*, the Washington State Supreme Court soundly rejected the very argument Plaintiffs now make, holding that “an enacted statement of legislative purpose is included in a plain reading of a statute.” 169 Wn.2d 304, 310, 237 P.3d 256 (2010).

That case presented an issue of statutory interpretation regarding whether or not G-P Gypsum Corporation “uses” natural gas for the purpose of a local use tax statute. *G-P Gypsum*, 169 Wn.2d at 306. The Supreme Court overturned the Court of Appeals determination that G-P Gypsum did not “use” natural gas within a city limit, finding that the appeals court “erred when it ignored the enacted statement of legislative purpose behind RCW 82.14.239(1).” *Id.* at 311.

The Supreme Court explained that the appeals court misunderstood the law when it stated, “that it could not ‘resort to extrinsic sources in interpreting a statute unless we find more than one reasonable interpretation of the statutory language.’” *Id.* at 309, citing *G-P Gypsum*,

144 Wn. App. 664, 670, 183 P.3d 1109 (2008). The Supreme Court emphasized that courts must discern the plain meaning of a statute “from all that the legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.” *Id.* at 309, citing *Campbell & Gwinn*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002).

In enacting the WCPA, the legislature unambiguously expressed its intent that “the remedies and compensation provided under this chapter shall be exclusive to all other remedies[.]” RCW 4.100.080(1). All of the other language in RCW 4.100.080 must be read with this context in mind. *Dep’t of Ecology v. Campbell and Gwinn, L.L.C.*, 146 Wn.2d 1, 11-12, 43 P.3d 4 (2002). Under the WCPA’s plain language, Plaintiffs cannot receive a monetary recovery from their federal lawsuit and then proceed to receive a second recovery under the WCPA.

2. When Read As a Whole The Plain and Unambiguous Language of the WCPA Prohibits Double Recovery.

“[I]t is settled that the plain meaning of a statute is determined by looking not only ‘to the text of the statutory provision in question,’ but also to ‘the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.’” *State v. Hurst*, 173 Wn.2d 597, 604, 269 P.3d 1023 (2012). Plaintiffs’ suggestion that this Court should ignore the first sentence of RCW 4.100.080(1) which

explicitly states that the remedies “shall be exclusive to all other remedies” is contrary to this well-recognized rule.

When considering the statute as a whole, it is clear that the Legislature intended recovery under the WCPA to be an exclusive remedy. Consistent with this initial statement of intent, the statute also provides procedures and mechanisms to ensure that the Legislature’s intent to bar double recovery is enforced:

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.

RCW 4.100.080(1).

Plaintiffs seem to assert that the exclusive remedy provision of RCW 4.100.080(1) does not apply to them because a § 1983 action differs in some regards from a claim filed under the WCPA. Plaintiffs’ argument fails, because it is contrary to the plain language of the WCPA.

RCW 4.100.080(1) provides that a 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.* (Emphasis added).

Plaintiffs' argument regarding any alleged differences between their § 1983 claim and their WCPA claim is irrelevant, because under the plain language of RCW 4.100.080(1) the prohibition on double recovery does not hinge on any alleged differences between the types of remedies pursued. Plaintiffs' § 1983 lawsuit and WCPA claim were both based on the same underlying convictions. There can be no dispute that the § 1983 lawsuit is "related to [their] wrongful conviction and imprisonment." Thus, RCW 4.100.080(1) bars Plaintiffs from receiving recovery under both claims.

Consistent with its goal of making the WCPA an exclusive remedy, the Legislature made the waiver language in RCW 4.100.080(1) as broad as possible, requiring a claimant to waive all other causes of action and forms of relief against all conceivable actors of the State and its subdivisions in order to recover under the WCPA.

RCW 4.100.080(1) describes the specific claims covered, including "all state, common law, and federal claims for relief, including claims pursuant to 42 U.S.C. Sec. 1983." Once again, consistent with its goal of making the WCPA an exclusive remedy, the legislature also made this sentence as broad as possible specifying all conceivable types of actions the claimant must waive in order to receive the Act's exclusive remedy. This

provision expressly requires a claimant to waive the very action under which Plaintiffs have already received recovery. CP 151.

No one is required to pursue compensation under the WCPA. “A wrongly 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 remedy.” RCW 4.100.080(1).

There is also no language in the WCPA that prohibits claimants from pursuing other causes of actions in addition to a WCPA claim, as Plaintiffs did here. Chapter 4.100 RCW. The WCPA does not bar a claimant from simultaneously pursuing a claim under the WCPA and some other action, but it does require such claimants to choose which single recovery to accept. RCW 4.100.080(1). The WCPA addresses this in RCW 4.100.080(1), which specifically references federal lawsuits and prohibits a claimant who recovers from such a lawsuit to receive an additional recovery under the WCPA.

Finally, RCW 4.100.080(1) requires an executed legal release prior to compensation, and contains a backstop provision requiring reimbursement to the State in case the release is held invalid for any reason.

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 wrongful conviction and incarceration, the claimant must reimburse the state for the lesser of:

(a) The amount of the compensation award, excluding the portion awarded pursuant to RCW 4.100.060(5)(c) through (e);¹ or

(b) The amount received by the claimant under the tort award.

RCW 4.100.080(1).

The plain language of RCW 4.100.080(1), read as a whole, establishes that WCPA recovery is contingent on the WCPA being the claimant's exclusive remedy. Yet even if this Court finds any ambiguity in the statute's language, it can turn to legislative history. This Court has looked to House and Senate bills as sources through which to ascertain legislative intent. *See State v. Medina*, 180 Wn.2d 282, 291, 324 P.3d 682 (2014) (quoting from a 2009 bill report to show the Legislature's intent behind an amendment); *Kadoranian v. Bellingham Police Dep't*, 119 Wn.2d 178, 185, 829 P.2d 1061 (1992) (quoting from a Final Legislative Report to ascertain legislative intent). Pertaining to the WCPA, Final Bill Report, ESHB 1341 (2013), explains that "[P]rior to receiving a

¹ RCW 4.100.060(5)(c) through (5)(e) refer to compensation for child support payments owed by the claimant that became due while the claimant was in custody on the felony that is the ground for the WCPA claim, reimbursement for restitution and other court-ordered financial obligations resulting from the felony conviction, and attorney's fees for pursuing the WCPA claim. The parties stipulated, and the court granted, that Plaintiffs were entitled to receive compensation for attorney fees, expenses and back child support payments.

compensation award, the claimant must execute a legal release waiving any other existing remedies, causes of action, and relief related to the wrongful conviction.” Similarly, Senate Bill Report, ESHB 1341 (2013), contains the recommended amendment that “[T]he legislation provides an exclusive remedy and the claimant must waive any other compensation under state or federal law or common law.” This “exclusive remedy” language is contained in RCW 4.100.080(1) of the WCPA.

Reading the entire text of RCW 4.100.080(1) in context as required, the Legislature’s statement that WCPA compensation “shall be exclusive to all other remedies,” along with its release requirements, is clear, explicit, and unambiguous. The legislature took care to ensure exclusivity by establishing waiver, a comprehensive written release before payment can occur, and a backstop to prevent double recovery even if the other safeguards were somehow defeated.

3. The WCPA Does Not Infringe on Plaintiffs’ Constitutional Rights.

“The doctrine of unconstitutional conditions provides that the government cannot condition the receipt of a government benefit on waiver of a constitutionally protected right.” *Perry v. Sindermann*, 408 U.S. 593, 597, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972). Plaintiffs contend that the WCPA violates this doctrine, claiming that the exclusive remedy provision

somehow impedes individuals from pursuing a § 1983 lawsuit. Plaintiffs' claim is meritless. The WCPA does not condition the receipt of compensation on giving up any constitutional right. The WCPA simply prohibits double-recovery. RCW 4.100.080(1).

Plaintiffs cite to the *Wright v. Dep't of Health* for the statement that 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." 185 Wn. App. 1049 (2015). Because *Wright* is unpublished, it is non-binding on this court and has no precedential value. GR 14.1. To the extent this Court considers this case for persuasive value, *Wright* does not support Plaintiffs' argument. Plaintiffs' quote is misleading, because in the sentence immediately following the one quoted by Plaintiffs the court makes clear that the right being given up must be *a constitutional right* in order for the doctrine to apply.² With that in mind, the *Wright* court rejected all of Wright's claims that the unconstitutional conditions doctrine had been violated.

Wright was investigated by the Medical Quality Assurance Commission (MQAC) for aiding and abetting an unlicensed medical practitioner. During the investigation, Wright was notified multiple times

² "A plaintiff alleging a violation of the unconstitutional conditions doctrine, however, must first establish that a constitutional right is being infringed upon." *Wright*, quoting *Sanchez v. County of San Diego*, 464 F.3d 916, 930-31 (9th Cir. 2006).

that if he did not comply with the MQAC's directive to turn over records without a warrant he would be referred for action based on his failure to cooperate with the investigation. Wright was charged with failing to cooperate with the MQAC's investigation and for aiding and abetting the unlicensed practice of medicine.

Wright was found guilty. His sanction included a 90-day suspension of his medical license and a requirement that he write an essay on the benefits of professional licensing. Wright argued that he was "forced to either comply with an investigation, or waive his rights, including the right to be free from search and seizure, the right to object to an unreasonable search and seizure, his patient's privacy rights, or his right to his medical license." The Court of Appeals rejected all of Wright's claims. The court explained that administrative regulations are presumed to be constitutional, and found that Wright had not shown that he was required to give up any due process rights by complying with the investigation. The court further found that a sanction compelling him to write an essay about the benefits of professional licensing did not violate his First Amendment free speech rights.

The *Wright* Court's finding that the doctrine of unconditional conditions was not violated is consistent with published case law that the government may at times condition benefits on a waiver of constitutional

rights. See for e.g., *U.S. v. Scott*, 450 F.3d 863, 867-68 (2006), citing *Zap v. United States*, 328 U.S. 624, 628, 66 S.Ct. 1277, 90 L.Ed. 1477 (1946) (government may condition benefits on waiver of Fourth Amendment rights when dealing with contractors); *Yin v. California*, 95 F.2d 864, 872 (9th Cir. 1996) (“It is clear that a contract may under appropriate circumstances diminish (if not extinguish) legitimate expectations of privacy.”). Other examples include the right of a criminal defendant to accept a plea bargain in which he waives his constitutional right to a trial, his right against self-incrimination, and his right to confront witnesses in exchange for a plea bargain to lesser charges or a shorter sentencing recommendation. See *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709 (1969) (plea bargain must be made knowingly, voluntarily, and intelligently).

When the legislature enacted the WCPA, it provided a remedy for all wrongly convicted persons regardless of whether they could show that the wrongful conviction involved government misconduct. Statutes are presumed to be constitutional, and the burden is on the challenging party to establish a statute’s unconstitutionality beyond a reasonable doubt. *Island County v. State*, 135 Wn.2d 141,146, 955 P.2d 377 (1998).

Plaintiffs have failed to establish that the WCPA is constitutionally infirm. Plaintiffs have provided no argument or authority to establish that

the WCPA is unconstitutional. Instead, they misstate the waiver provision of RCW 4.100.080(1) by falsely claiming that it requires claimants to give up either their WCPA claim or their 42 U.S.C. § 1983 claim. *See* Plaintiffs' Brief at 37. The plain language of RCW 4.100.080(1) and Plaintiffs' pursuit of both claims demonstrates the falsity of this contention. Plaintiffs fail to explain how not being compensated twice infringes on a constitutional right. Accordingly, their arguments regarding the unconditional conditions doctrine should be rejected.

4. The WCPA's Exclusive Remedy Provision Does Not Bar Multiple Lawsuits but it Does Bar Multiple Recoveries.

In passing the WCPA, the Washington State Legislature understood that some claimants might file a federal lawsuit as well as a claim under the WCPA. RCW 4.100.080(1). This is why the WCPA includes a mandatory reimbursement provision that ensures that any remedy obtained under the WCPA is an exclusive remedy. RCW 4.100.080(1).

A claimant who prevails in a WCPA claim prior to resolution of a federal lawsuit cannot receive actual payment until he signs the legal release mandated by RCW 4.100.080(1). Once signed, the State will be required to pay this as-yet uncompensated claimant. RCW 4.100.080(1). If that claimant continues to pursue his § 1983 claim, then the federal court can decide whether to honor the release or set the release aside. If the release is

invalidated and the claimant receives a federal recovery in excess of that obtained under the WCPA then the claimant is required to reimburse the State the amount he received under the WCPA. RCW 4.100.080(1).

The inclusion of a reimbursement provision in the WCPA demonstrates that the Legislature understood that some wrongly convicted people might choose to pursue multiple causes of action. The reimbursement provision provides a backstop to ensure that no double recovery occurs even in cases where the release is held invalid.

5. The WCPA's Reimbursement Provision Preserves Exclusive Recovery in All Cases Regardless of the Sequence That Potential Recovery Occurs.

Plaintiffs contend that the release provision in RCW 4.100.080(1) only applies when a claimant first recovers under the WCPA, and then subsequently receives a future recovery through some other cause of action. Accordingly, they appear to argue that if they sign a release, they would not be required to reimburse the State for compensation received under the WCPA. They are wrong.

The WCPA's exclusive remedy provision is enforced through two means. The first is through the release and reimbursement provision that ensures that if a claimant receives a subsequent tort award that exceeds what he previously recovered under the WCPA then he must reimburse the State. RCW 4.100.080(1). The second mechanism, which occurred here, is that

claimants who receive compensation under another lawsuit are no longer eligible to receive compensation under the WCPA if that prior recovery exceeds what was potentially available under the WCPA.³ RCW 4.100.080(1).

The WCPA's release and reimbursement provision recognizes that some claimants may pursue both a WCPA and a federal claim, and that in those instances the State has no control over the federal litigation. The reimbursement provision of RCW 4.100.080(1) provides protection against double recovery should a federal court allow a § 1983 claim to proceed after payment and a release have been entered under the WCPA. RCW 4.100.080(1). In those instances, claimants would be required to reimburse the State should the federal litigation result in a recovery above that previously paid by the State. RCW 4.100.080(1).

In instances, such as here, where federal payment occurs first, no release is required. All claimants who file a claim under the WCPA waive "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." RCW 4.100.080(1). That waiver

³ Here, the Court did not err in refusing to enter and then invalidating a release to trigger reimbursement, because the law does not require futile acts. See Respondent's Brief, pages 24-25.

is enforced at the time payment is sought at which point claimants either must sign a release assuring reimbursement if a tort award is received or must abide by the waiver and exclusive remedy provision that prevents them from receiving a second recovery under the Act.

Plaintiffs contend that the release provision in RCW 4.100.080(1) only applies when a claimant first recovers under the WCPA, and then subsequently receives a future recovery through some other cause of action. By making this argument, Plaintiffs not only ask this Court to ignore the express legislative intent that the WCPA provides an exclusive remedy, but they also claim that the same legislative body that explicitly barred double recovery then set up a statutory scheme in which double recovery is readily obtainable. Plaintiffs' interpretation provides that those who seek payment under the WCPA after having already received recovery through a different action would receive two recoveries, whereas those who obtain payment under the WCPA prior to a subsequent tort award would be required to reimburse the State for the difference.

Under Plaintiffs' proposed interpretation, claimants could ensure double recovery simply by staying their WCPA action until the conclusion of other lawsuits or by tactically timing their legal actions to ensure that any WCPA payment occurs second. This would be an absurd construction that should be rejected, because a fundamental tenant of statutory construction

requires that courts avoid interpreting a statute in a manner that leads to unlikely, strained, or absurd results. *Burton v. Lehman*, 153 Wn.2d 416, 423, 103 P.3d 1230 (2005).

When read as a whole, the WCPA establishes that the legislature was doing everything in its power to make the WCPA an exclusive remedy, including enacting a release and reimbursement provision that recognizes that federal courts are not bound by state statutes. The legislative intent to bar double recovery in all cases, regardless of the sequence in which payment occurs, is clear, logical, and unambiguous. The trial court did not err in enforcing the exclusive remedy provision by denying Plaintiffs a second recovery under the WCPA.

B. The Exclusive Remedy Provision Does Not Undermine the Remedial Nature of the WCPA.

The legislative intent of the WCPA is clear. RCW 4.100.010 states: “A majority of those wrongly convicted in Washington have no remedy available under law for the destruction of their personal lives resulting from errors in the criminal justice system.” The WCPA is a no fault statute that provides a remedy for wrongly convicted people who have no other remedy. With the WCPA, people who were wrongly convicted without any fault of the government now have a remedy that previously did not exist.

No one is required to pursue compensation under the WCPA. “A wrongly 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 remedy.” RCW 4.100.080(1). Nor does the WCPA prevent people who believe they were wrongly convicted from pursuing multiple causes of action, they just cannot collect payment under the WCPA and under some other claim.

The WCPA ensures that all wrongly convicted people (including those who have a § 1983 claim that their constitutional rights were violated) have access to at least one avenue of compensation. The exclusive remedy provision, which allows claimants to pursue multiple causes of actions, does not undermine anyone’s ability to have at least one avenue of compensation. Nor does it infringe on a person’s ability to challenge a violation of their constitutional rights. Plaintiffs’ case demonstrates just that. Plaintiffs were not prevented from pursuing both a federal § 1983 claim and a WCPA claim, they were simply prevented from obtaining compensation under the WCPA because their federal recovery exceeded the amount they could have potentially received from the State.

C. Plaintiffs Were Not Required to Sign a Legal Release Ensuring Reimbursement to the State Because the Law Does Not Require Futile Acts.

The WCPA requires an executed legal release prior to the payment of compensation. The release ensures that the WCPA's exclusive remedy provision is enforced. Here, Plaintiffs were not offered a legal release, because doing so would have achieved nothing. The State informed the trial court of this when it objected to the entry of judgment.

[W]hat effect is a release going to have in this case when the County has already paid two and a half million dollars and what's going to happen is they're going to present judgment for \$750,000, that's consumed by the federal – by the amount of the federal judgment, and so what they're going to do is end up taking money out of the federal judgment to pay the State. Of course, their position probably is there won't be any reimbursement, but I don't see how that's possible. So it seems like we're setting this up for kind of a ridiculous hearing to occur, Your Honor.

CP 163.

At the time the Court vacated the judgment and denied Plaintiffs payment under the WCPA, Plaintiffs had already received payment in full from their federal lawsuit. CP 214, CP 151. If they 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. RCW 4.100.080(1).

The trial court properly ruled that payment would violate the WCPA's exclusive remedy provision. Plaintiffs were not offered a legal release, because signing a release mandating the reimbursement of any payment received would have been pointless. The trial court's decision was proper, because the law does not require the performance of futile acts. *Music v. United Ins. Co. of America*, 59 Wn.2d 765, 768-69, 370 P.2d 603 (1962); *Ancheta v. Daly*, 77 Wn.2d 255, 263, 61 P.2d 531 (1969); *State v. Beadle*, 173 Wn.2d 97, 113, 116, 265 P.3d 863 (2011) (citations omitted).

D. The Principles Underlying the Election of Remedies Doctrine Support the Trial Court's Finding That Plaintiffs Are Not Entitled to Payment Under the WCPA Because Such Payment Would Violate the Act's Exclusive Remedy Provision

The trial court initially entered judgment in favor of Plaintiffs reasoning that entry of judgment and actual payment under the WCPA were two different things. CP 161. When Plaintiffs later sought payment after they had already collected payment on their § 1983 settlement, the trial court properly vacated the judgment finding that "payment of compensation under the Wrongly Convicted Persons Act, RCW 4.100 et. Seq., would be contrary to law because RCW 4.100.080(1) provides for an exclusive remedy and plaintiffs have been compensated in federal court by settlement

of their tort claims related to their wrongful convictions under 42 U.S.C. §1983[.]” CP 207.

The trial court vacated the judgment because it correctly found that the WCPA unambiguously provides an exclusive remedy. CP 207. Nothing in the order or the record on appeal demonstrates the trial court’s order was based on the election of remedies doctrine. At most, the trial court may have used the general principles behind the doctrine to supplement its analysis. The election of remedies doctrine is not determinative in this matter, but its principles support the trial court’s finding that Plaintiffs should not receive double recovery.

The clear and unambiguous language of RCW 4.100.080(1) requires claimants to elect a remedy. “The purpose of the doctrine of election of remedies is to prevent a double redress for a single wrong. *Birchler v. Castello Land Company, Inc.*, 133 Wn.2d 106, 942 P.2d 968 (1997), *Lange v. Town of Woodway*, 79 Wn.2d 45, 49, 483 P.2d 116 (1971), *Barber v. Rochester*, 52 Wn.2d 691, 695, 328 P.2d 711 (1958), *Bremerton Central Lions Club, Inc. v. Manke Lumber Company*, 25 Wn. App. 1, 604 Wn. App. 1325 (1979). Three elements must be present before a party will be held bound by an election of remedies. Two or more remedies must exist at the time of the election; the remedies must be inconsistent with each other; and the party to be bound must have chosen

one of them.” *Birchler*, 133 Wn.2d at 112, *Lange*, 79 Wn.2d at 49, and *Bremerton*, 25 Wn. App. at 5.

The plain language of RCW 4.100.080(1), by mandating exclusive recovery, establishes that the remedies under the WCPA and under 42 U.S.C. § 1983 are inconsistent with each other. RCW 4.100.080(1) identifies the multiple remedies available in Washington to the wrongly convicted. The remedies are inconsistent because the Legislature mandated that claimants must chose only one remedy.

Here, Plaintiffs first filed their WCPA claim. They subsequently filed suit in federal court under 42 U.S.C. § 1983. The WCPA specifically lists a §1983 action as one of the lawsuits a claimant must waive in order to seek a potential remedy under the Act. RCW 4.100.080(1). Plaintiffs litigated both claims to completion at which point two remedies were available to them. They chose their remedy when they accepted a \$2,250,000.00 federal settlement check. CP 151. The trial court properly ruled that as a result compensation under the WCPA is no longer available to them.

Article II, Section 26 of the Washington State Constitution provides, “The legislature shall direct by law, in what manner, and in what courts, suits may be brought against the state.” In 2013, the Legislature waived sovereign immunity and enacted the WCPA to prescribe where and in what

manner persons claiming to have been wrongly convicted could seek compensation from the State. This court is required to apply the clear language of the statute as written by the Washington State Legislature.

Plaintiffs contend that the WCPA does not provide for an exclusive remedy, but instead allows claimants to recover under the WCPA in state court and recover tort damages under 42 USC § 1983 in federal court. However, none of cases Plaintiffs cites from other jurisdictions involved claims under the WCPA or under statutes containing an exclusive remedy requirement like Washington's. None of the cited cases support Plaintiffs' contention that this Court can disregard the clear exclusive remedy prescribed by the Washington Legislature.

Plaintiffs also cite *State v. Oakley*, 227 S.W.3d 58 (Tex. 2007), in support of their contention that the WCPA does not bar double recovery. *Oakley* filed a wrongful conviction claim under Tex. Civ. Prac. & Rem. Code Section 103.153(b), which provided, "A person who *receives* compensation under this chapter may not bring any action involving the same subject matter..." (Emphasis added). *Oakley* does not support Plaintiffs' contention. In fact, *Oakley* actually supports the State's position that this court must strictly apply the express terms of the WCPA.

The *Oakley* court stated: "As we generally defer to the legislature in deciding whether and to what extent sovereign immunity should be waived,

we decline to extend Chapter 103’s waiver beyond its express terms.” *Id.* at 62. The *Oakley* court found that by using the word “receives,” the legislature intended to protect local entities, but not the state, from duplicate recoveries. The court explained further, “But the statute does not purport to bar duplicative recoveries; had that been the aim, the legislature could have said simply that no one can recover both.” *Id.* at 63. The Washington Legislature has made it clear by providing for an exclusive remedy that, in Washington, “no one can recover both.” The *Oakley* court strictly applied the clear statutory language. This court must do the same.

The legislative intent of the WCPA is clear. RCW 4.100.010 states: “A majority of those wrongly convicted in Washington have *no remedy available under law* for the destruction of their personal lives resulting from errors in the criminal justice system.” (Emphasis added). Plaintiffs clearly had more than one available remedy for their wrongful conviction. RCW 4.100.080(1) required them to choose which remedy to accept. Plaintiffs elected to receive compensation from Spokane County. Pursuant to RCW 4.100.080(1), and consistent with the reasoning behind the election of remedies doctrine, the trial court properly refused to allow claimants to obtain double recovery for a single wrong.

E. The Trial Court Did Not Abuse its Discretion by Vacating the Judgment.

A trial court's decision to grant or deny a motion to vacate under CR 60(b) will not be reversed on appeal absent an abuse of discretion. *In re Marriage of Wherley*, 34 Wn. App. 344, 348, 661 P.2d 155, review denied, 100 Wn.2d 1013 (1983). A trial court abuses its discretion if it exercises it on untenable grounds or for manifestly unreasonable reasons. *State ex rel. Carrol v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

The State objected to entry of judgment based on its concern that entering judgment would trigger payment under the WCPA if the clerk forwarded a certified copy of the judgment to the Office of Risk Management to process payment. The trial court entered judgment in favor of Plaintiffs, reasoning that entry of judgment and actual payment are separate acts. CP 161.

The trial court addressed the State's concerns by allowing the State to add language to the judgment requiring that Plaintiffs notify opposing counsel "at least 14 days in advance of seeking payment from the State." CP 40-44. When Plaintiffs sought an order directing the clerk to forward a certified copy of the judgment to the Office of Risk Management, the State moved to vacate the judgment in order to prevent double recovery in violation of the WCPA's exclusive remedy provision. CP 137-142. The trial

court did not abuse its discretion when it granted the State's motion to vacate.

1. Civil Rule (60)(b) Allows An Order To Be Vacated Within a Reasonable Time.

CR 60(b), Relief From Judgment or Order, allows a court to "relieve a party or the party's legal representative from a final judgment, order, or proceeding" for any reason set forth in CR 60(b), including for "any other reasons justifying relief from the operation of judgment." CR 60(b)(11). A CR 60(b) motion to vacate "shall be made within a reasonable time and for reasons (1),(2) or (3) not more than 1 year after the judgment, order, or other proceeding was entered or taken."

The State objected to entry of judgment because the entry of judgment was clearly a means to pursue the double recovery prohibited by the WCPA. RP 8. On August 18, 2017, Plaintiffs sought to enforce the judgment by asking the court to note a hearing without oral argument on its motion to direct the clerk of the court to make and furnish a certified copy of the judgment to the Office of Risk Management. CP 106-7. Understanding that this would trigger payment, the State moved the court on August 31, 2017, to set the motion for hearing with argument. CP 130-31. The trial court granted the State's motion, and heard argument on September 26, 2017. After hearing argument, the trial court properly

vacated the judgment in order to enforce the exclusive remedy provision of RCW 4.100.080(1). CP 204, 207.

Plaintiffs' argument that the trial court was prohibited from vacating the judgment because the State did not appeal the entry of judgment is without merit. The State objected to the entry of judgment, and immediately moved for a hearing when Plaintiffs sought to enforce the judgment by seeking payment. CP 46-51, CP 130-31.

CR 60(b) allows a court to vacate the judgment anytime "within a reasonable time." RP 8. Here, the motion to vacate and the court's granting of the motion occurred "within a reasonable time" as permitted by CR 60(b).

2. Civil Rule 60(b)(6) Allows a Court to Vacate a Judgment When it is No Longer Equitable to Enforce it.

CR 60(b)(6) gives a court the discretion to vacate a judgment when "it is no longer equitable that the judgment should have prospective application." The trial court initially entered the judgment because it distinguished between the entry to judgment and the enforcement of judgment through payment. CP 161. When Plaintiffs sought to have the judgment paid by asking the clerk to forward a certified copy of the judgment to the Office of Risk Management, the only way to prevent payment from occurring in violation of RCW 4.100.080(1) was to vacate the judgment. The trial court did not abuse its discretion in doing so, because

once Plaintiffs sought payment they were not entitled to under the judgment it was “no longer equitable that the judgment should have prospective application.” CR 60(b)(6).

3. Civil Rule 60(b)(5) Allows a Court to Vacate a Judgment When the Judgment is Void.

CR 60(b)(5) gives a court the discretion to vacate a judgment when “the judgment is void.” The judgment’s only legal effect, to facilitate payment under the WCPA, was extinguished when the court received proof that Plaintiffs had collected their federal settlement. The Court did not abuse its discretion when it vacated a judgment that was no longer legally enforceable.

4. Civil Rule 60(b)(1) Allows a Court to Vacate a Judgment When There is Irregularity in Obtaining the Judgment.

CR 60(b)(1) gives a court discretion to vacate a judgment when there is “irregularity in obtaining a judgment or order.” The trial court initially entered judgment reasoning that the entry of judgment and actual payment were separate and distinct procedural acts. CP 161.

When the trial court entered judgment, it understood Plaintiffs had settled their federal claim. CP 161. The court reserved any findings on whether the settlement had been paid, stating there was no evidence that had

occurred and finding that issue was not material to whether or not entering judgement was appropriate. CP 161, RP 32.⁴

When Plaintiffs sought payment under the WCPA, the State provided the court with a copy of the federal settlement check establishing that Plaintiffs had received payment in their federal suit. CP 152. This sequence of events necessitated the trial court vacating a judgment it had entered before Plaintiffs had triggered the WCPA's exclusive remedy provision by seeking to collect a second payment under the Act. The Court did not abuse its discretion in finding that a substantial change in circumstances constitutes an irregularity that justifies a court vacating the judgment under CR 60(b)(1).

5. Civil Rule 60(b)(11) Allows a Court to Vacate a Judgment When Relief From the Operation of the Judgment is Justified.

Lastly, CR 60(b)(11) allows a court to vacate a judgment for “any other reason justifying relief from the operation of the judgment.” At the time the trial court entered the judgment it strongly indicated its belief that RCW 4.100.080(1) prohibits double recovery,⁵ but that it would not rule on the issue unless Plaintiffs actually sought payment. CP 161. Plaintiffs

⁴ The Report of Proceedings for the September 26, 2017 hearing vacating the judgment are attached to Plaintiffs' brief as “Appendix B.”

⁵ “RCW 4.100.080 seems very clear. It provides an exclusive means to receive compensation for those that are wrongly convicted.” CP 159.

sought to enforce payment, despite the court signaling that it would not allow double recovery, thereby necessitating that the judgment be vacated.

The unambiguous language of RCW 4.100.080(1) prohibits a claimant who has received compensation from a § 1983 lawsuit arising out of the same conviction at issue in the WCPA claim from obtaining double recovery. The trial court vacated the judgment it had entered because it was the only way to enforce the WCPA's exclusive remedy provision. The trial court did not abuse its discretion in doing so.

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VI. CONCLUSION

This case involves a straightforward application of an unambiguous statute where the plain language establishes the clear legislative intent to provide an exclusive remedy for claimants seeking compensation under the WCPA. Plaintiffs have received a substantial recovery following the settlement of their §1983 claim arising from the same underlying convictions, and are thus barred from double recovery. For the forgoing reasons, this Court should affirm the ruling of the Spokane County Superior Court that Plaintiffs are not entitled to receive recovery under the WCPA, because they have already received recovery under a federal claim arising out of the same underlying conviction.

RESPECTFULLY SUBMITTED this 14 day of August, 2018.

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NO. 35649-3

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

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

DECLARATION
OF SERVICE

Plaintiffs/Petitioners

v.

STATE OF WASHINGTON,

Defendant/Respondent.

I, Joslyn Wallenborn, declare as follows:

On August 7, 2018, I sent via U.S. mail a true and correct copy of
the Respondent's Brief and Declaration of Service, addressed as follows:

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

DATED this 7th day of August, 2018, at Seattle, Washington.


JOSLYN WALLENBORN

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE - CRIMINAL JUSTICE DIVISION

August 07, 2018 - 5:00 PM

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