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NO. 97277-0

WASHINGTON SUPREME COURT

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RICHARD KING and RICHARD JACKSON, individually and representing a  
class of similarly situated individuals,

Plaintiffs,  
DEREK GRONQUIST

Respondent,  
vs.

CHASE RIVELAND and JANET BARBOUR in their official capacities; the  
DEPARTMENT OF CORRECTIONS OF THE STATE OF WASHINGTON; the  
INDETERMINATE SENTENCING REVIEW BOARD; and KEN  
EIKENBERRY in his official capacity as Attorney General of the State of  
Washington,  
Defendants,

KING COUNTY PROSECUTOR DANIEL T. SATTERBERG,

Petitioner.

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**PROSECUTOR DANIEL T. SATTERBERG' S SUPPLEMENTAL BRIEF**

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## I. INTRODUCTION

Consistent with this Court’s precedent and constitutional requirements, RCW Ch. 7.21 establishes two types of contempt – civil and criminal. Private parties can initiate civil contempt to obtain a “remedial sanction . . . for the purpose of coercing performance” with a court order “that is yet in the person's power to perform.” RCW 7.21.010(3). In contrast, criminal contempt charges must be initiated by the local prosecutor through an information seeking a “punitive sanction . . . imposed to punish a past contempt of court for the purpose of upholding the authority of the court.” RCW 7.21.010(2). Thus, civil contempt has a remedial purpose and criminal contempt has a punitive purpose. In the decision below, the Court of Appeals relied on its own precedent to create a hybrid punitive *and* remedial sanction separate from the statutory framework, where “a defendant may be ‘punished’ even in a civil contempt proceeding if the purpose is to compensate the complainant.” *Gronquist v. Dep’t of Corr.*, 49392-6-II, 2019 WL 949430, at \*4 (Wash. Ct. App. Feb. 26, 2019) (quoting *In re of Rapid Settlements, Ltd.’s*, 189 Wn. App. 584, 608, 359 P.3d 823, 832–33 (2015)). Because the Court of Appeals reasoning has no provenance in the language of the statute, this Court’s precedence or the requirements of the constitution, this Court should reverse the Court of Appeals decision and affirm the trial court decision dismissing Respondent Gronquist’s contempt action.

## II. FACTS

### A. **GRONQUIST SOUGHT CIVIL CONTEMPT TO THWART HIS COMMITMENT AS A SEXUALLY VIOLENT PREDATOR.**

In 2013, due to his lengthy and persistent history of sexual assaults, Gronquist was referred by the Department of Corrections (“DOC”) to the Sexually Violent Predator (“SVP”) Unit of the King County Prosecuting Attorney’s Office (“KCPAO”) for possible civil commitment under RCW Ch. 71.09. Supp. CP 808. In accord with RCW 71.09.025, the referral from DOC included Gronquist’s extensive prison records, as well as selected records from his failed efforts in the Sex Offender Treatment Program (“SOTP”). *Id.* at 809. A portion of his SOTP record was not produced by DOC to the KCPAO SVP Unit in compliance with a 1993 injunction that was affirmed by this Court in *King v. Riveland*, 125 Wn.2d 500, 503, 886 P.2d 160, 163 (1994) (“1993 Injunction”). *Id.* No one from KCPAO reviewed the SOTP records that were withheld by DOC, or otherwise violated the 1993 Injunction. *Id.*

After DOC referred Gronquist for civil commitment, his case was evaluated by expert psychologist Harry Hoberman, who determined that Gronquist met criteria for civil commitment.<sup>1</sup> *Id.* at 809-10. Given this

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<sup>1</sup> Gronquist has a lengthy history of sexually violent acts. CP 808. In 1988, he was convicted of Kidnapping in the First Degree and Indecent Liberties. *Id.* While imprisoned for these offenses, he completed the SOTP. *Id.* In 1993, Gronquist was released from DOC without facing SVP civil commitment, but he quickly reoffended by committing several new sexually

determination, Gronquist will likely remain in DOC custody until his maximum release date of May 31, 2022, when DOC is required to release him and KCPAO obtains jurisdiction to initiate civil commitment proceedings. *Id.*

In order to invalidate Dr. Hoberman's opinion and obtain release prior to 2022, Gronquist initiated a civil contempt proceeding against DOC and Prosecutor Daniel T. Satterberg in Thurston County Superior Court under the old *King v. Riveland* cause number. Supp. CP 810. He based his motion on the remedial civil contempt provisions of RCW Ch. 7.21. *See* CP 21, 26 (citing provisions of statute). Gronquist alleged in his contempt motion that DOC violated the 1993 Injunction by disseminating his SOTP records to the KCPAO SVP Unit when it referred him for possible civil commitment.<sup>2</sup> CP 5-6. He asked for the destruction of those records and an order preventing their use in civil commitment proceedings. CP 6.

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violent acts. *Id.* "Over a two day period, Gronquist attempted to kidnap three teenage girls." *State v. Gronquist*, 36203-8-I, 1996 WL 470607, at \*1 (Wash. Ct. App. Aug. 19, 1996) (affirming conviction). He was convicted in 1995 on three counts of Attempted Kidnapping in the First Degree with sexual motivation. CP 808. The sentencing court imposed an exceptional sentence due to Gronquist's danger of future re-offense and he remains incarcerated for these offenses. *Id.*

<sup>2</sup> Neither KCPAO, nor Prosecutor Satterberg were parties to this proceeding. Gronquist was not a plaintiff, but may have fallen within the class definition.

**B. PROSECUTOR SATTERBERG SUCCESSFULLY VACATED THE 1993 INJUNCTION AND DOC PRODUCED THE REMAINING SOTP RECORDS.**

In order to remove any doubt about the propriety of the DOC records produced with Gronquist's civil commitment referral, Prosecutor Satterberg intervened under the old *King v. Riveland* cause number and brought a motion to vacate the 1993 Injunction. *See* CP 810-11. Such relief would also allow the KCPAO SVP Unit to access the withheld SOTP documents and would prevent Gronquist from manipulating his release date to avoid civil commitment. *Id.* Due to an intervening change in the law, the Thurston County Superior Court granted Prosecutor Satterberg's motion:

The injunction is premised on an equitable theory of promissory estoppel, and it must give way to legal mandates. *In re QLM v. State*, 105 Wn.App. 532, 540, 20 P.3d 465 (2001). The current statutory scheme is wholly unlike the scheme discussed extensively in the *King* decision and, accordingly, no longer supports the viability of the injunction going forward as it relates to Gronquist.

CP 594. After Gronquist's efforts to appeal the vacation order failed,<sup>3</sup> DOC

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<sup>3</sup> Gronquist did not timely appeal the vacation order so it is not part of this case. Gronquist voluntarily abandoned his first effort to seek review of the order vacating the injunction. Motion to Voluntarily Withdraw Petition for Discretionary Review, *King v. Riveland*, No. 49057-9 (Wash. App. Div. II June 13, 2016). He then tried to re-raise his challenge to the vacation order under this cause number, but this issue was dismissed by order of the Court of Appeals Commissioner. Ruling on Motion to Dismiss, *King v. Riveland*, No. 49392-6-II (Wash. App. Div. II Dec. 6, 2016). Motions to modify this ruling were then denied by both the Court of Appeals and the Supreme Court Commissioner. Ruling Denying Review, *King v. Riveland*, No. 94338-9 (Wash. Aug. 22, 2017). No motion to modify was filed in this Court so the Commissioner's ruling became final and is law of the case. *State v. Roy*, 147 Wn. App. 309, 315, 195 P.3d 967, 970 (2008)

produced Gronquist's entire SOTP record to the KCPAO SVP Unit for consideration under the SVP statute. Those records remain in the Prosecutor Satterberg's lawful control and possession.

**C. GRONQUIST'S CONTEMPT MOTION WAS DISMISSED AS MOOT.**

With Gronquist's entire SOTP file in the lawful possession of the Prosecutor Satterberg and the KCPAO SVP Unit, the trial court could no longer enter a remedial civil contempt order coercing the destruction of those records. As a result, DOC moved to dismiss Gronquist's motion for contempt due to mootness and Prosecutor Satterberg joined in this motion. In essence, a remedial civil contempt remedy was no longer available under RCW 7.21.030 because the SOTP records were within the KCPAO SVP Unit's lawful possession; no coercive sanction to return or destroy the records was appropriate or available. On August 5, 2016, the trial court dismissed Gronquist's motion for contempt as moot due to the lack of an available remedial remedy under the statute.

It is important to note that no court has found any violation of the 1993 Injunction by either DOC or Prosecutor Satterberg related to Gronquist's referral for civil commitment. Because the 1993 Injunction was vacated and the issue of contempt deemed moot due to the lack of an available civil commitment remedy, it was unnecessary to hold any further

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("commissioner's ruling is the law of the case").

proceedings in this case.

**D. THE COURT OF APPEALS REVERSED THE TRIAL COURT.**

In an unpublished opinion, Division II of the Court of Appeals reversed. It recognized that Gronquist’s contempt motion was moot unless “a remedial sanction” was available to the trial court. 2019 WL 949430, at \*3. Rather than applying the RCW 7.21.010(3) definition of “remedial sanction,” the Court of Appeals relied on its own *Rapid Settlements* case:

“a court may find a person in contempt whether or not it is possible to coerce future compliance.” *Id. Rapid Settlements*, 189 Wn. App. at 601. In such a case, the court may “order a contemnor to pay losses suffered as a result of the contempt and costs incurred in the contempt proceedings for any ‘person found in contempt of court’ without regard to whether it is possible to craft a coercive sanction.”

*Id.* Blurring the line between civil and criminal contempt, the court held that “a defendant may be ‘punished’ even in a civil contempt proceeding if the purpose is to compensate the complainant.” *Id.* at \*4 (*quoting Rapid Settlements*, 189 Wn. App. at 608). Although the Court of Appeals recognized that a remedial/coercive sanction was no longer possible due to vacation of the 1993 Injunction, it nonetheless determined that Gronquist’s case was not moot “[b]ecause the trial court could have awarded Gronquist compensation for any losses, costs, and attorney fees associated with DOC’s and KCP’s contemptuous acts.” *Gronquist v. Dep’t of Corr.*, 49392-6-II, 2019 WL 949430, at \*1 (Wash. Ct. App. Feb. 26, 2019). Such relief was available under RCW 7.21.030(3) even though a finding of contempt and a

remedial sanction were unavailable under section .030(2). *Id.* at \*4.

### **III. ISSUE**

This Court granted review to determine the following issue: “Whether a court may order compensatory damages for civil contempt under RCW 7.21.030(3) when a coercive remedial sanction is no longer available under .030(2), and if not, should the civil contempt motion be dismissed as moot?” Prosecutor Satterberg’s Petition for Review at 9.

### **IV. THE COURT OF APPEALS SHOULD BE REVERSED.**

In *King v. Dep't of Soc. & Health Servs.*, 110 Wn.2d 793, 800, 756 P.2d 1303 (1988) and other cases, this Court has repeatedly emphasized that civil and criminal contempt are separate doctrines that raise distinct constitutional concerns. *See also, e.g. In re Dependency of A.K.*, 162 Wn.2d 632, 645, 174 P.3d 11, 17 (2007) (due process requirements); *State v. Breazeale*, 144 Wash.2d 829, 842, 31 P.3d 1155 (2001) (“Contempt may be criminal *or* civil.”). Indeed, “[d]ue process protections are determined by whether the sanction is remedial or punitive.” *In re Silva*, 166 Wn.2d 133, 141, 206 P.3d 1240, 1245 (2009). For example, when a punitive sanction is sought, criminal due process rights apply and contempt must be initiated by the prosecutor through an information. *Smith v. Whatcom Cty. Dist. Court*, 147 Wn.2d 98, 105, 52 P.3d 585 (2002). In contrast, “**a civil contempt sanction is allowed as long as it serves coercive, not punitive, purposes.**” *Id.* (emphasis added).

As adopted in 1989, RCW Ch. 7.21 maintains the constitutionally required boundary between civil and criminal contempt. Consistent with this Court’s decisions, the Legislature repealed Washington’s old general contempt statute (RCW Ch. 7.20) and adopted the required civil/remedial and criminal/punitive contempt approach, which is now codified in RCW Ch. 7.21. *See* Laws of 1989 Ch. 373. Available remedial sanctions associated with civil contempt are defined in RCW 7.21.030. *State v. Sims*, 193 Wn.2d 86, 93 (2019).

The fundamental problem with the decision below of the Court of Appeals is its uncritical reliance on *Rapid Settlements*,<sup>4</sup> which ignored the plain language of Washington’s contempt statute, RCW Ch. 7.21. Because *Rapid Settlements* actively obscures the line between civil and criminal contempt by mixing remedial and punitive sanctions, it should be overturned along with the Court of Appeals decision in this case. A lower appellate court decision “has no stare decisis effect on this court.” *Fast v. Kennewick Pub. Hosp. Dist.*, 187 Wn.2d 27, 40, 384 P.3d 232, 239 (2016). As a result, the *Rapid Settlements* line of authority is subject to correction by this Court because it fails to follow the language of the contempt statute

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<sup>4</sup> This Court has rejected the application of “horizontal stare decisis” between panels, or among the divisions of the Court of Appeals. *Matter of Arnold*, 190 Wn.2d 136, 148–49, 410 P.3d 1133, 1139 (2018). Instead, this Court has encouraged a “system of rigorous debate at the intermediate appellate level [which] creates the best structure for the development of Washington common law.” *Id.* at 154.

and raises constitutional concerns.

**A. THE TRIAL COURT DID NOT ERR BY DISMISSING GRONQUIST'S CONTEMPT MOTION AS MOOT BECAUSE NO COERCIVE CIVIL CONTEMPT REMEDY WAS AVAILABLE.**

**1. Gronquist's Contempt Motion Was Moot Because the Trial Court Could Grant No "Remedial Sanction" Under RCW 7.21.010.**

A case must be dismissed as moot when a "court can no longer provide an effective remedy." *Hart v. Dep't of Soc. & Health Servs.*, 111 Wn.2d 445, 447, 759 P.2d 1206, 1207 (1988). Here, the 1993 Injunction was vacated as to Gronquist and the SOTP documents are now in the proper possession of the KCPAO SVP Unit. There is no conceivable remedy available to Gronquist through the trial court's civil contempt powers. The case is moot.

It is well-established that a claim is moot when the court can no longer provide effective relief. *E.g. In re Cross*, 99 Wash.2d 373, 376-77, 662 P.2d 828 (1983) ("A claim is moot if the court can provide no effective relief."). The problem of mootness is particularly apparent when an injunction is vacated and the losing party fails to obtain a stay. *Oakville Dev. Corp. v. F.D.I.C.*, 986 F.2d 611, 613-14 (1st Cir. 1993). Because mootness leaves the court without a justiciable controversy, the necessary result is dismissal of the motion. *E.g., Washington State Dep't of Transp. v. City of Seattle*, 192 Wn. App. 824, 835-36, 368 P.3d 251, 256 (2016) ("As a general rule, we will dismiss a case as moot if we can 'no longer

provide effective relief.”).

Under Washington’s contempt statute, RCW ch. 7.21, only two types of relief are available and they are mutually exclusive:

A “[r]emedial sanction” is one “imposed for the purpose of coercing performance when the contempt consists of the omission or refusal to perform an act that is yet in the person's power to perform.” RCW 7.21.010(3). “Remedial sanctions” are also known as “coercive” sanctions, and they are civil in nature.

In contrast, a “[p]unitive sanction” is “imposed to punish a past contempt of court for the purpose of upholding the authority of the court.” RCW 7.21.010(2). Punitive sanctions are criminal in nature.

...

*In re Silva*, 166 Wn.2d 133, 141–42, 206 P.3d 1240, 1245 (2009). Because Gronquist is a private party, he is limited to bringing a civil contempt motion which may result only in a “remedial sanction” to coerce compliance with the trial court’s order. RCW 7.21.030.

But, Gronquist’s contempt motion became moot once the 1993 Injunction was vacated as to him. At that point, there was no available remedial sanction – i.e. one that would coerce Prosecutor Satterberg into returning the SOTP records – because those records were within the legal possession of the KCPAO SVP Unit under the authority of the un-appealed vacation order. There could be no claim that the injunction was being actively violated by Prosecutor Satterberg because it was no longer effective. There could be no remedial contempt sanction to “coerce” Prosecutor Satterberg into returning the SOTP files because the records

were legally held as of right by the KCPAO SVP Unit under the direct authority of a Superior Court order. In short, the matter was moot because a coercive sanction was no longer relevant or available.<sup>5</sup>

**2. RCW Ch. 7.21 Establishes Civil Contempt for Remedial Sanctions and Criminal Contempt for Punitive Sanctions.**

A mootness determination is mandatory in this case because “punitive sanctions” and “remedial sanctions” are defined terms under chapter 7.21 RCW that are not subject to expansion or reinterpretation by the Court of Appeals. A “punitive sanction” is broadly defined to mean any “sanction imposed to punish a past contempt of court for the purpose of upholding the authority of the court.” RCW 7.21.010(2). It stands in contrast to a “remedial sanction,” which is a “sanction imposed for the purpose of coercing performance when the contempt consists of the omission or refusal to perform an act that is yet in the person's power to perform.” RCW 7.21.010(3). For alleged contempt outside the presence of the court, these are the only two available sanctions. *State v. Sims*, 193 Wn.2d 86, 93, 441 P.3d 262 (2019).

Under RCW 7.21.030(1), the “court may initiate a proceeding to impose a *remedial sanction* on its own motion or on the motion of a person aggrieved by a contempt of court in the proceeding to which the contempt

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<sup>5</sup> Of course, Prosecutor Satterberg disputes that any documents were provided in violation of the prior injunction, even back in 2013. This question has not been litigated due to mootness.

is related.” (Emphasis added). This is what Gronquist has done with his motion for contempt. Following notice and hearing, a court is authorized to impose a “remedial sanction.” *Id.* Consistent with the statutory definition of “remedial sanction,” subsection (2) of the statute allows a court to find contempt and impose such a sanction when “the court finds that the person has failed or refused to perform an act that is yet within the person's power to perform.” *Id.* at §(2). Upon a finding of contempt and the imposition of a remedial sanction, the court may award other damages: “The court may, *in addition to the remedial sanctions set forth in subsection (2) of this section, order a person found in contempt of court* to pay a party for any losses suffered by the party as a result of the contempt and any costs incurred in connection with the contempt proceeding, including reasonable attorney's fees.” RCW 7.21.030(3) (emphasis added).

In contrast, a punitive sanction for contempt may be imposed only under RCW 7.21.040.<sup>6</sup> An action seeking to impose a punitive contempt sanction “shall be commenced by a complaint or information filed by the prosecuting attorney or city attorney charging a person with contempt of court and reciting the punitive sanction sought to be imposed.” RCW 7.21.040(2)(a). In other words, it is a criminal proceeding initiated by the prosecuting authority with a right counsel and to trial. *See* RCW

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<sup>6</sup> An additional method for punitive sanctions is set out in RCW 7.21.050, which allows for summary contempt when committed in the presence of the court.

7.21.040(3)(trial on the information). If found guilty, the contemnor faces imprisonment of up to 364 days and a fine of up to \$5,000. RCW 7.21.040(5). The conviction is for a Gross Misdemeanor.

**3. The Plain Language of RCW 7.21.030 Precludes Finding Civil Contempt Where An Act Is No Longer Within a Person’s Power to Perform, And Prevents Awarding Losses and Attorney Fees When No Remedial Sanction is Available.**

In *State v. Sims*, 193 Wn.2d 86, 93, 441 P.3d 262 (2019), this Court observed that RCW 7.21.030 is a “plain language” statute, not subject to construction. “When the plain language is unambiguous—that is, when the statutory language admits of only one meaning—the legislative intent is apparent, and we will not construe the statute otherwise.” *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318, 320 (2003). It is a “fundamental principle of statutory construction” that this Court “will not construe unambiguous language in a statute.” *Harris v. State, Dep’t of Labor & Indus.*, 120 Wn.2d 461, 472 n.7, 843 P.2d 1056, 1062 (1993). Due to the statute’s plain language, there is no room for the Court of Appeals effort to establish a hybrid civil/criminal contempt that includes sanctions with both remedial and punitive elements.

The Court of Appeals holding that losses and attorney fees are available under RCW 7.21.030(3) even though remedial sanctions cannot be awarded under .030(2) is contrary to the plain language of the statute. First, losses and attorney fees are available under subsection (3) only against

a person who is “found in contempt.” But under subsection (2), the court “may find the person in contempt of court” only “[i]f the court finds that the person has failed or refused to perform an act that is yet within the person's power to perform.” Such a finding cannot be made after the contempt is resolved and no court order is being actively violated. By conditioning a contempt finding on the ability to purge the contempt, RCW 7.21.030 ensures that the remedial nature of civil contempt does not confound the punitive purposes of criminal contempt. Because dissolution of the 1993 Injunction removed any possibility of active contempt, there is no possibility that either DOC or Prosecutor Satterberg “has failed or refused to perform an act that is yet within the person's power to perform.”

Second, under the terms of the statute, subsection (3) is not a stand-alone, avenue for alternative relief. By its plain language, a court may order losses and attorney fees only “in addition to the remedial sanctions set forth in subsection (2)” of RCW 7.21.030. As a result, if no “remedial sanction” is available under subsection (2), there is no further award available under subsection (3). A subsection (3) award of losses and attorney fees cannot be “in addition to” a subsection (2) remedial/coercive remedy if no such remedy is available due to the underlying mootness of the contempt.<sup>7</sup> Thus, contrary to the Court of Appeals analysis, the mootness of Gronquist’s

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<sup>7</sup> This is consistent with how attorney fees generally work. They are awarded to a “prevailing party,” not a party whose substantive case was dismissed for mootness.

contempt claims precludes a finding of contempt, and also the availability of losses and attorney fees under RCW 7.21.030(3).

**4. *Rapid Settlements* is Contrary to Statute and Case Law.**

With no support in the statute for either a contempt finding or an award of losses and attorney fees under RCW 7.21.030(3) when relief is moot under .030(2), the Court of Appeals relies on its precedent of *Rapid Settlements* to revive Gronquist’s moot case. Rather than address the plain and controlling language of the statute, the Court of Appeals merely stated that these statutory arguments are “inconsistent with *Rapid Settlements*.” 2019 WL 949430, at \*4. The *Rapid Settlements* case should be overturned, however, precisely because it is contrary to the plain statutory language and the well-recognized dichotomy between civil and criminal contempt.

The *Rapid Settlements* case substantially departs from controlling Washington law. Rather than following *In re Silva* and other cases maintaining the separate civil versus criminal contempt approach established in RCW Ch. 7.21, *Rapid Settlements* remarkably ignores this controlling law. Citing the general definition of “contempt” and ignoring the controlling language of RCW 7.21.030(2), *Rapid Settlements* claims that “a court may find a person in contempt whether or not it is possible to coerce future compliance.” 189 Wn. App. at 601. But there is no explanation how the general definition of contempt – which applies to both civil and criminal contempt proceedings – can be bootstrapped to allow a finding of civil

contempt that actually violates the explicit requirements of RCW 7.21.030(2). The *Rapid Settlements* opinion fully acknowledges that “7.21 RCW provides that a court may find a person in contempt *and* impose a coercive sanction only upon ‘[a] person [who] has failed ... to perform an act that is yet within the person's power to perform,’” but it makes no effort to explain how a general definition in another statute allows a finding of *civil* contempt in the absence of proof under this statutory standard.

Jumping past the necessary statutory grounds for a civil contempt finding under subsection (2), *Rapid Settlements* next claims that losses and attorney fees are available under subsection (3) “without regard to whether it is possible to craft a coercive sanction.” For this remarkable, extra-statutory position, the Court of Appeals cites this Court’s 1933 decision in *State ex rel. Chard v. Androw*, 171 Wash. 178, 180, 17 P.2d 874, 875 (1933). Presumably, the Court of Appeals is claiming support in *Chard*’s holding that “a party injured may be indemnified to the extent of his damages in a civil contempt proceeding is warranted by Rem. Comp. Stat. § 1058.” *Id.* There is no reason to revisit this holding from *Chard* because Remington Rev. Stat. §1058 – the statute relied upon in *Chard* – was a section in Washington’s *criminal* contempt statute as it existed in the early 1930s. It allowed restitution to victims of contempt “in addition to the punishment imposed for the contempt.” *Id.*<sup>8</sup> Of course, a 1933 case

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<sup>8</sup> A copy of this statute is attached as App. A. for the Court’s convenience.

interpreting an old criminal contempt statute has no bearing on the meaning of the *current civil contempt* statute, RCW 7.21.030.

The error in the *Rapid Settlements* reasoning is further compounded by its reliance on federal and out-of-state authority to reach the non-statutory conclusion that “compensatory damages or fines [are] payable to the injured party as relief in a civil contempt proceeding.” 189 Wn. App. at 609. But this is a matter controlled by Washington’s civil contempt statute, RCW 7.21.030, not by non-Washington case law. As this Court noted in *In re Silva*, “[t]he legislature may regulate [the contempt] power, so long as such regulation does not render the court's contempt power ineffectual.” 166 Wn.2d at 141. It was error for *Rapid Settlements* to ignore express statutory limits on civil contempt and expand available remedies.<sup>9</sup>

Because Washington’s *current* contempt statute controls, the effort in *Rapid Settlements* to expand available contempt sanctions through reference to out-of-jurisdiction cases and old statutes fails. For example, the Court of Appeals cites the hoary case of *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 441, 31 S.Ct. 492, 55 L.Ed. 797 (1911), for the proposition that contempt is “ ‘neither wholly civil nor altogether criminal,’ ” such that “a defendant may be ‘punished’ even in a civil contempt

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<sup>9</sup> A court may depart from the controlling statute and exercise its “inherent contempt” powers only in extraordinary situations that are not presented in this case. *See In re Silva*, 166 Wn.2d at 143 (discussing preconditions to exercising inherent contempt authority).

proceeding if the purpose is to compensate the complainant,” but as demonstrated above, this is not how Washington’s *current* contempt statute works. 189 Wn. App. at 608. Likewise, the citation for *State ex rel. Lemon v. Coffin*, 52 Wash.2d 894, 896, 332 P.2d 1096 (1958), involves a statute that is wholly unlike RCW 7.21.030.<sup>10</sup> 189 Wn.App. at 609-10. In short, because the plain language of RCW 7.21.030 controls, it must be given its full effect.

There is no doubt that *Rapid Settlements* was the *sin quo non* of the decision below from the Court of Appeals. Rather than giving effect to the plain language of RCW 7.21.030, the Court of Appeals cited to *Rapid Settlements* for its reasoning without critically examining this decision. Any court’s “first priority in statutory interpretation is to ascertain and carry out the Legislature’s intent.” *Cent. Puget Sound Reg’l Transit Auth.*, 191 Wn.2d at 233 (internal quotations omitted). Because the decision below and its exclusive reliance on *Rapid Settlements* reaches a decision in direct conflict with the statutory requirements of RCW 7.21.030(2) and (3), the Court of Appeals decision should be reversed and Gronquist’s contempt motion dismissed as moot.

**B. BLURRING THE LINE BETWEEN CIVIL AND CRIMINAL CONTEMPT RAISES CONSTITUTION CONCERNS.**

By ignoring the crucial difference between civil and criminal

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<sup>10</sup> The old statute cited in *Lemon* appears very close to Rem. Rev. St. §1058.

contempt sanctions under RCW ch. 7.21, the approach of the Court of Appeals violates due process. The only type of contempt that may be initiated by a private party is civil contempt where the court “may impose a remedial sanction authorized by this chapter.” RCW 7.21.030(1). The person may be held in contempt only if “the court finds that the person has failed or refused to perform an act that is yet within the person's power to perform.” RCW 7.21.030(2). At this point, the court may impose a remedial sanction to help the person purge their contempt. *Id.* Anything beyond coercing compliance with a court order slips into the realm of criminal contempt – punishing a *past* decision to violate a court order. *See* RCW 7.21.010 (definitions).

This also raises a separation of powers concern. The Court of Appeals, in its decision below, appears unconcerned with exceeding the remedial sanction approach of the contempt statute, reasoning that “a defendant may be ‘punished’ even in a civil contempt proceeding if the purpose is to compensate the complainant.” 2019 WL 949430, at \*4 (*quoting Rapid Settlements*, 189 Wn. App. at 608). But the ability to seek criminal contempt and a punitive sanction lies within the exclusive authority of the local prosecuting attorney. RCW 7.21.040(2)(a) (“An action to impose a punitive sanction for contempt of court shall be commenced by a complaint or information filed by the prosecuting attorney or city attorney charging a person with contempt of court and reciting the punitive sanction

sought to be imposed.”). By allowing Gronquist to pursue a sanction that is punitive under RCW 7.21.010(2) and non-remedial under RCW 71.21.010(3), the Court of Appeals infringes on the filing authority of the Thurston County Prosecutor. “Prosecuting attorneys are vested with great discretion in determining how and when to file criminal charges.” *State v. Korum*, 157 Wn.2d 614, 625, 141 P.3d 13, 19–20 (2006). In exercising this discretion, prosecutors consider “numerous factors, including the public interest as well as the strength of the state's case.” *State v. Lewis*, 115 Wn.2d 294, 299, 797 P.2d 1141, 1143 (1990). A court may not substitute its judgment for that of the prosecutors. *State v. Tracer*, 173 Wn.2d 708, 725, 272 P.3d 199, 207 (2012).

Gronquist claims that it is bad public policy to limit the recovery of losses and attorney fees only to situations where a remedial sanction is also available,<sup>11</sup> but this policy judgment is the Legislature’s sole prerogative. *See Rousso v. State*, 170 Wn.2d 70, 87, 239 P.3d 1084, 1093 (2010) (Policy determinations are “reserved to the legislature.”). It makes particular sense in this case. The purpose of civil contempt is to coerce compliance with a court order, not to punish for a past contempt. There is no need to waste valuable court time and state resources determining facts related to Gronquist’s bare *allegations* of a past contempt, especially when such a proceeding has no relevance to any civil contempt inquiry.

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<sup>11</sup> Answer to Petition for Review at 15-16.

## V. CONCLUSION

Under the circumstances of this case, Gronquist's contempt allegations became moot once the 1993 Injunction was vacated. At that point, it was no longer possible to hold Prosecutor Satterberg in civil contempt because there was no active or continuing violation of the dissolved 1993 Injunction. A contempt finding was impossible because no court could find that "the person has failed or refused to perform an act that is yet within the person's power to perform." RCW 7.21.030(2). Moreover, the matter was moot because no remedial sanction was necessary to bring about compliance with the vacated 1993 Injunction. *Id.* No court could order losses and attorney fees "in addition" to a remedial sanction because there was no possible remedial sanction. RCW 7.21.030(3). Because the plain language of Washington's contempt statute controls this case, this Court should reverse the decision of the Court of Appeals as well as the erroneous *Rapid Settlements* analysis that it relies upon.

DATED this 22nd day of November, 2019.

Respectfully submitted,

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King County Prosecuting Attorney

*/s/ David J. Hackett*  
DAVID J. JACKETT, WSBA #21236  
Civil Division Appellate Chair  
Senior Deputy Prosecuting Attorney  
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# Exhibit A

## CHAPTER 3

### CONTEMPTS AND THEIR PUNISHMENT

§ 1049. **Contempts, defined.** The following acts or omissions, in respect to a court of justice or proceedings therein, are deemed to be contempts of court:—

1. Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings;

2. A breach of the peace, boisterous conduct, or violent disturbance tending to interrupt the due course of a trial or other judicial proceeding;

3. Misbehavior in office, or other willful neglect or violation of duty by an attorney, clerk, sheriff, or other person appointed or selected to perform a judicial or ministerial service;

4. Deceit, abuse of the process, or proceedings of the court by a party to an action, suit, or special proceeding;

5. Disobedience of any lawful judgment, decree, order, or process of the court;

6. Assuming to be an attorney or other officer of the court, and acting as such without authority in a particular instance;

7. Rescuing any person or property in the lawful custody of an officer, held by such officer under an order or process of such court;

8. Unlawfully detaining a witness or party to an action, suit, or proceeding while going to, remaining at, or returning from the court where the same is for trial;

9. Any other unlawful interference with the process or proceedings of a court;

10. Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness;

11. When summoned as a juror in a court, improperly conversing with a party to an action, suit, or proceeding to be tried at such court, or with any other person in relation to the merits of such action, suit or proceeding, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court;

12. Disobedience by an inferior tribunal, magistrate, or officer of the lawful judgment, decree, order, or process of a superior court, or proceeding in an action, suit, or proceeding contrary to law, after such action, suit, or proceeding shall have been removed from the jurisdiction of such inferior tribunal, magistrate, or officer. [L. '69, p. 167, § 667; Cd. '81, § 725; 2 H. C., § 778.]

§ 1050. **Punishment for contempt.** Every court of justice and every judicial officer has power to punish contempt by fine or imprisonment, or both. But such fine shall not exceed three hundred dollars, nor the imprisonment six months; and when the contempt is not [one] of those mentioned in subdivisions one and two of the last section, it must appear that the right or remedy of a party to an action, suit, or proceeding was defeated or prejudiced thereby,

before the contempt can be punished otherwise than by a fine not exceeding one hundred dollars. [L. '69, p. 168, § 688; Cd. '81, § 726; 2 H. C., § 779.]

§ 1051. **Contempts in presence of court, how punished.** When a contempt is committed in the immediate view and presence of the court or officer, it may be punished summarily, for which an order must be made reciting the facts as occurring in such immediate view and presence, determining that the person proceeded against is thereby guilty of contempt, and that he be punished as therein prescribed. [L. '69, p. 168, § 669; Cd. '81, § 727; 2 H. C., § 780.]

§ 1052. **Procedure in other cases.** In cases other than those mentioned in the preceding section, before any proceedings can be taken therein, the facts constituting the contempt must be shown by an affidavit presented to the court or judicial officer, and thereupon such court or officer may either make an order upon the person charged to show cause why he should not be arrested to answer, or issue a warrant of arrest to bring such person to answer in the first instance. [L. '69, p. 169, § 670; Cd. '81, § 728; 2 H. C., § 781.]

§ 1053. **Defendant may be produced if in custody.** If the party charged be in custody of an officer by virtue of a legal order or process, civil or criminal, except upon a sentence for a felony, an order may be made for the production of such person by the officer having him in custody that he may answer, and he shall thereupon be produced and held until an order be made for his disposal. [L. '69, p. 169, § 671; Cd. '81, § 729; 2 H. C., § 782.]

Cited in 67 Wash. 318, 121 Pac. 467, Ann. Cas. 1913D, 456.

§ 1054. **How prosecuted.** In the proceeding for a contempt, the state is the plaintiff. In all cases of public interest, the proceeding may be prosecuted by the prosecuting attorney on behalf of the state, and in all cases where the proceeding is commenced upon the relation of a private party, such party shall be deemed a coplaintiff with the state. [L. '69, p. 169, § 672; Cd. '81, § 730; 2 H. C., § 783.]

§ 1055. **Warrant, how executed.** Whenever a warrant of arrest is issued pursuant to this chapter, the court or judicial officer shall direct therein whether the person charged may be let to bail for his appearance upon the warrant, or detained in custody without bail, and if he may be bailed, the amount in which he may be let to bail. Upon executing the warrant of arrest, the sheriff must keep the person in actual custody, bring him before the court or judicial officer, and detain him until an order be made in the premises, unless the person arrested execute and deliver to the sheriff, at any time before the return day of the warrant, a bond, with two sufficient sureties, to the effect that he will appear on such return day and abide the order or judgment of the court or officer thereupon. [L. '69, p. 169, § 763; Cd. '81, § 731; 2 H. C., § 784.]

Cited in 122 Wash. 529, 211 Pac. 275.

§ 1056. **Return of warrant—Investigation.** The sheriff shall return the warrant of arrest and the bond, if any, given him by the defendant, by the return day therein specified. When the defendant has been brought up or appeared, the court or judicial officer shall proceed to investigate the charge by examining such defendant and witnesses for or against him, for which an adjournment may be had from time to time, if necessary. [L. '69, p. 169, § 674; Cd. '81, § 732; 2 H. C., § 785.]

Cited in 40 Wash. 220, 82 Pac. 287; 67 Wash. 318, 121 Pac. 467, Ann. Cas. 1913D, 456.

§ 1057. **Judgment and sentence.** Upon the evidence so taken, the court or judicial officer shall determine whether or not the defendant is guilty of the contempt charged; and if it be determined that he is so guilty, shall sentence him to be punished as provided in this chapter. [L. '69, p. 170, § 675; Cd. '81, § 733; 2 H. C., § 786.]

§ 1058. **Indemnity to injured party.** If any loss or injury to a party in an action, suit, or proceeding, prejudicial to his rights therein, have been caused by the contempt, the court or judicial officer, in addition to the punishment imposed for the contempt, may give judgment that the party aggrieved recover of the defendant a sum of money sufficient to indemnify him, and to satisfy his costs and disbursements, which judgment, and the acceptance of the amount thereof, is a bar to any action, suit, or proceeding by the aggrieved party for such loss or injury. [L. '69, p. 170, § 676; Cd. '81, § 734; 2 H. C., § 787.]

§ 1059. **Imprisonment until performance.** When the contempt consists in the omission or refusal to perform an act which is yet in the power of the defendant to perform, he may be imprisoned until he shall have performed it, and in such case the act must be specified in the warrant of commitment. [L. '69, p. 170, § 677; Cd. '81, § 735; 2 H. C., § 788.]

§ 1060. **Offender liable to indictment.** Persons proceeded against according to the provisions of this chapter are also liable to indictment [or information] for the same misconduct, if it be an indictable offense, but the court before which a conviction is had on the indictment [or information] in passing sentence shall take into consideration the punishment before inflicted. [L. '69, p. 170, § 678; Cd. '81, § 736; 2 H. C., § 789.]

Cited in 19 Wash. 243, 52 Pac. 1056, 43 L.R.A. 717.

§ 1061. **Alias warrant—Prosecution of bond.** When the warrant of arrest has been returned served, if the defendant do not appear

on the return day, the court or judicial officer may issue another warrant of arrest, or may order the bond to be prosecuted, or both. If the bond be prosecuted and the aggrieved party join in the action; and the sum specified therein be recovered, so much thereof as will compensate such party for the loss or injury sustained by reason of the misconduct for which the warrant was issued shall be deemed to be recovered for such party exclusively. [L. '69, p. 170, § 679; Cd. '81, § 737; 2 H. C., § 790.]

§ 1062. **Appeal.** Either party to a judgment in a proceeding for a contempt may appeal therefrom in like manner and with like effect as from judgment in an action, but such appeal shall not have the effect to stay the proceedings in any other action, suit, or proceeding, or upon any judgment, decree, or order therein, concerning which or wherein such contempt was committed. Contempts of justices' courts are punishable in the manner specially provided for in the chapter relating to justices of the peace and to their practice and jurisdiction. [L. '69, p. 171, § 680; Cd. '81, § 738; 2 H. C., § 791.]

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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 22<sup>nd</sup> day of November, 2019 at Seattle, Washington.



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RAFAEL MUNOZ-CINTRON  
Legal Assistant  
King County Prosecuting  
Attorney's Office

**KING COUNTY PROSECUTING ATTORNEYS OFFICE CIVIL DIVISION**

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**Appellate Court Case Title:** Derek Gronquist v. King Co. Pros. Daniel Satterburg  
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