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STATE OF WASHINGTON
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No. 97277-0

IN THE SUPREME COURT OF WASHINGTON

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

Plaintiffs,

DEREK GRONQUIST,

Respondent,

v.

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.

RESPONDENT'S SUPPLEMENTAL BRIEF

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I. INTRODUCTION

This case presents an opportunity for this Court to clarify the meaning of Washington’s civil contempt statute, RCW 7.21.030, and to uphold an important principle of the rule of law: court orders must be obeyed, and one who violates an order may be found in contempt and ordered to compensate the person harmed, even if it is no longer necessary for the court to coerce compliance with the underlying order. The contrary reading of the civil contempt statute urged by Petitioner King County Prosecutor Satterberg—that compensatory remedies for contempt are available only when coercive sanctions are imposed—would encourage parties to ignore court orders until contempt proceedings are initiated against them, and would leave the beneficiary of the order who was forced to initiate the contempt action without a meaningful remedy.

In this case, Respondent Derek Gronquist was the beneficiary of a permanent injunction affirmed by this Court in 1994. In 2015—when the injunction indisputably remained in place—Gronquist brought a contempt action, alleging violations in 2013 by the Washington Department of Corrections (DOC) and the King County Prosecutor. In early 2016, the trial court vacated the injunction with respect to Gronquist, making clear that its order was “prospective only” and “does not resolve allegations of contempt in the past.” Nonetheless, a different judge later dismissed

Gronquist's contempt action as moot, accepting DOC and the Prosecutor's argument that it could provide no remedy for past contempt when there was no longer an injunction to which it could compel compliance.

Division II of the Court of Appeals reversed. Relying on *In re Rapid Settlements Ltd.*, 189 Wn. App. 584, 359 P.3d 823 (2015), the Court of Appeals concluded that Gronquist's civil contempt action was not moot because the trial court could order DOC and the Prosecutor to compensate Gronquist for his injuries, costs, and attorney's fees attributable to their contemptuous conduct. This interpretation of the contempt statute is correct and this Court should affirm the decision of the Court of Appeals.

II. ISSUE PRESENTED

Does a civil contempt action become moot when the court can no longer coerce compliance with the order that was violated, even though the contempt statute, RCW 7.21.030(3), authorizes additional remedies in the form of any losses suffered as a result of the contempt and costs and attorney's fees incurred in bringing the contempt proceedings?

III. STATEMENT OF THE CASE

In 1994, this Court affirmed a permanent injunction against the DOC, enjoining it from releasing certain portions of confidential treatment records known as "SOTP files" for a class of sex offenders. *See King v. Riveland*, 125 Wn.2d 500, 506–515, 886 P.2d 160 (1994). The injunction

also applied to the King County Prosecutor. *Id.*; CP 149–150.

Respondent Derek Gronquist “was a member of [the] class of inmates” protected by the permanent injunction. DOC COA Br. at 1.

In 2015, Gronquist intervened¹ in the *King* action and filed a motion for an order to show cause why DOC and the Prosecutor should not be held in contempt, alleging that in 2013 they had shared enjoined material as part of their effort to pursue civil commitment proceedings against him. CP 11–20, 63–73, 587–91. In response, the Prosecutor intervened, and King County and DOC filed motions arguing that (1) the injunction should be vacated prospectively based on changes in the law; and (2) Gronquist’s contempt claims should be dismissed on grounds of laches, res judicata, or the unclean hands doctrine. CP 80, 103–106; *see also* CP 592. Gronquist opposed the motions, arguing that they were an attempt to circumvent the collateral bar rule, which prohibits enjoined parties from defending a contempt action by challenging the validity of the injunction. CP 743–761; *see State v. Turner*, 98 Wn.2d 731, 738–39, 658 P.2d 658 (1983) (“A court order which is merely erroneous must be obeyed despite the error and may not be collaterally attacked in a contempt proceeding.”). The Thurston County Superior Court, Judge Erik Price, instructed the parties that it would bifurcate the proceeding,

¹ Although Mr. Gronquist was a member of the class, the Superior Court ruled that he must intervene to pursue relief under the injunction.

considering first the parties' legal arguments and second whether DOC and the Prosecutor had engaged in contempt. *See* CP 621, 635.

In January 2016, after the first hearing, Judge Price granted in part and denied in part DOC's and the Prosecutor's motions. CP 592. The court rejected their arguments that Gronquist's contempt action should be dismissed on grounds of laches, res judicata, or unclean hands. CP 595–97. But the court vacated the injunction prospectively as to Gronquist, explaining that the law had “changed significantly since this injunction was entered.” CP 594. The court acknowledged that “the collateral bar rule . . . forbids defending a contempt action by attacking the validity of the underlying injunction.” *Id.* But the court explained it was “persuaded that the rule does not prevent the prospective vacation of the injunction . . . given Respondents' concession that this aspect of their motion does not directly affect the current action.” CP 595. The court concluded by clarifying: “[T]he Court's order is prospective only, and does not resolve allegations of contempt in the past.” *Id.* The court instructed the parties to set further hearings on the substantive contempt question. *See* CP 597.

After Gronquist exhausted efforts to stay the order vacating the injunction, *see* Gronquist COA Brief at 11, DOC provided the Prosecutor with Gronquist's entire SOTP file, including previously enjoined material. Then, despite the trial court's orders, DOC and the Prosecutor moved to

dismiss the contempt action, arguing that it was moot because there was no longer an injunction with which to coerce compliance. A different superior court judge granted the motion, and Gronquist appealed on several grounds, including that the case was not moot because the court could have awarded compensatory remedies, Gronquist COA Brief at 27–29, the court had inherent authority beyond the civil contempt statute, *id.* at 31–34, and judicial estoppel prohibited DOC and the Prosecutor from seeking to dismiss the allegations of past contempt, *id.* at 16–23.

Division II reversed, holding that the contempt action was not moot because “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 Corrs.*, 7 Wn. App.2d 1054, 2019 WL 949430, at *1 (2019) (unpublished). The court relied on *In re Rapid Settlements, Ltd.*, 189 Wn. App. 584, 359 P.3d 823 (2015), where Division III held that RCW 7.21.030(3) “allows the court to 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.” 189 Wn. App. at 601 (quoting RCW 7.21.030(3)). Because the Court of Appeals reversed on this basis, it declined to reach Gronquist’s other arguments. 2019 WL 949430, at *3 n.4. This Court then granted review.

IV. ARGUMENT

A. A case is not moot if the court can provide meaningful relief.

The trial court dismissed Gronquist’s contempt action on the basis that it was moot once the court prospectively vacated the underlying injunction. CP 723. “[A]n issue is not moot if a court can provide *any* effective relief.” *City of Sequim v. Malkasian*, 157 Wn.2d 251, 259, 138 P.3d 943 (2006) (emphasis added). The “availab[le] remedy need not be fully satisfactory to avoid mootness.” *Id.* (citing *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 13 (1992)). In this case, if it proceeded to find DOC or the Prosecutor in contempt, the trial court could have provided Gronquist with some form of meaningful relief by awarding him compensation for his losses caused by the contempt, including costs and attorney’s fees incurred in obtaining the contempt finding.

B. The civil contempt statute authorizes payment of losses separate from any remedial sanction imposed.

Disobeying a permanent injunction is perhaps the most obvious and egregious form of contempt of court. Washington’s statutes recognize this in two places: the contempt statute, RCW 7.21 *et seq.*, which defines contempt of court to include the “[d]isobedience of any lawful judgment, decree, order, or process of the court,” RCW 7.21.010(1)(b); and the injunction statute, RCW 7.40 *et seq.*, which states that “[w]henver it shall

appear to any court granting . . . an order of injunction . . . that any person has willfully disobeyed the order after notice thereof, such court shall award an attachment for contempt against the party charged, or an order to show cause why it should not issue,” RCW 7.40.150.

When a person disobeys an injunction, the court may find the person in contempt under the definitions in RCW 7.21.010(1); *see also In re Dependency of A.K.*, 162 Wn.2d 632, 644, 174 P.3d 11 (2007) (explaining that “contempt of court” is defined by this section). The potential remedies available for a contempt finding are set forth later in the statute. *See In re Detention of Young*, 163 Wn.2d 684, 693, 185 P.3d 1180 (2008) (describing “the statutory authority to impose a sanction for contempt” as a “corollary to the power to hold a party in contempt”). The remedies for civil contempt are contained in RCW 7.21.030.

That section is titled: “Remedial sanctions—Payment for losses.” This title aligns with the two independent civil contempt remedies that are authorized by the statute: remedial sanctions, which are imposed to coerce compliance, contained in RCW 7.21.030(2); and payment for losses caused by the contemnor, including costs and attorney’s fees incurred in the contempt proceeding, contained in RCW 7.21.030(3).

This Court’s analysis of a statute “begins with the plain language employed by the legislature.” *State v. Costich*, 152 Wn.2d 463, 470, 98

P.3d 795 (2004). The Court’s “primary goal is to give effect to the legislature’s intent,” and it “derive[s] such intent by construing the language as a whole, giving effect to every provision.” *Id.* Here, the independent nature of the two forms of remedies authorized by the civil contempt statute is apparent from its structure and language, which demonstrate that payment for losses is not contingent on imposing remedial sanctions. The sanctions authorized in subsection (2), which can include imprisonment and a forfeiture of up to two thousand dollars a day, are allowed only upon the finding of a clear condition precedent: “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). But subsection (3), which authorizes payment for losses, says this:

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.

RCW 7.21.030(3) (emphasis added). This language, together with the decision to place payment for losses in a separate subsection, signifies two things: first, payment for losses is *not* itself the type of remedial sanction defined in subsection (2), but is a separate power of the court available “in addition to” those remedial sanctions; and second, it is contingent only upon a person being “found in contempt of court,” *not* upon a finding that

the person has failed or refused to perform an act that is yet within the person's power to perform. As discussed above, "contempt of court" is defined in RCW 7.21.010, and requires only a finding that the person has committed "intentional . . . [d]isobedience of any lawful judgment, decree, order, or process of the court." RCW 7.21.010(1)(b).

This distinction between remedial sanctions and payment for losses is what Division III recognized in *Rapid Settlements*:

While chapter 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," RCW 7.21.030(2), a court may find a person in contempt whether or not it is possible to coerce future compliance. Any "intentional . . . [d]isobedience of any lawful judgment, decree, order or process of the court" is a contempt of court as defined by RCW 7.21.010(1)(b). RCW 7.21.030(3) allows the court to 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.

Rapid Settlements, 189 Wn. App. at 601.

To hold otherwise would collapse subsections (2) and (3) and render meaningless the legislature's decision to separate them and use different language to describe when they apply. "It is firmly established . . . that where the legislature uses different language in the same statute, differing meanings are intended." *Costich*, 152 Wn.2d at 475-76; *see also*

Sheehan v. Cent. Puget Sound Reg'l Transit Auth., 155 Wn.2d 790, 811, 123 P.3d 88 (2005) (“[D]ifferences in statutory language are intended by the legislature and *must* be given meaning.”). If payment for losses, costs, and attorney’s fees may be ordered only as part of coercive sanctions, then the legislature would have included them in the options for remedial sanctions available under subsection (2), rather than as a separate, additional form of relief. *Cf. Citizens Alliance for Property Rights Legal Fund v. San Juan Cnty.*, 184 Wn.2d 428, 440, 359 P.3d 753 (2015) (“Statutes must be interpreted and construed so that all language used is given effect, with no portion rendered meaningless or superfluous.” (citation omitted)). Additionally, there is no rational justification for the Legislature to authorize compensating the victim of contumacious behavior who has brought contempt proceedings only when compliance with the underlying court order must still be compelled. *State v. Alvarado*, 164 Wn.2d 556, 562, 192 P.3d 345 (2008) (“Commonsense informs our analysis, as we avoid absurd results in statutory interpretation.”)

C. Independent compensatory remedies for civil contempt are consistent with longstanding state and federal case law.

The reading of the contempt statute followed by Divisions II and III of the Court of Appeals, and urged by Respondent Gronquist, is consistent both with this Court’s application of the contempt power

stretching back for almost a century and with guidance on the purpose of civil contempt from the Supreme Court of the United States, which this Court has followed and incorporated into its own decisions.

In 1933, in *State ex rel. Chard v. Androw*, this Court affirmed a compensatory contempt remedy without any corresponding coercive sanction. 171 Wn. 178, 17 P.2d 874 (1933). The contemnor, Gus Androw, had placed the winning bid on a property at public auction, but refused to pay. *Id.* at 178. The superior court found that Androw’s “conduct was wrongful, reprehensible, and in civil contempt,” but it declined to impose the coercive sanction of “confinement unless and until he complied . . . because of his inability . . . to pay the amount of his bid.” *Id.* at 179. But the court found “that the owners of the property had suffered damages in the sum of \$3,000 – the decline in the reasonable market value of the lands after the date of the sale,” and it entered judgment “in the sum of \$3,000 damages, interest and costs.” *Id.*

This Court affirmed, holding that “a party injured may be indemnified to the extent of his damages in a civil contempt proceeding.” *Id.* at 180; *see also State ex rel. Lemon v. Coffin*, 52 Wn.2d 894, 896, 332 P.2d 1096 (1958) (holding that recovery of loss under the former civil contempt statute was intended “to provide complete relief in the original

action and to eliminate the necessity of a second suit to recover the expense caused by such contempt”).

This interpretation is consistent with the federal approach to civil contempt by the U.S. Supreme Court, which this Court has followed. In this Court’s decision, *In re Dependency of A.K.*, 162 Wn.2d at 644–45, its discussion of contempt power relies heavily on *Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821 (1994). Although not at issue in *Dependency of A.K.*, the *Bagwell* opinion makes clear that compensatory fines are a historical form of civil contempt separate from coercive sanctions. “A contempt fine . . . is considered civil and remedial if it *either* ‘coerces the defendant into compliance with the court’s order *or* compensates the complainant for losses sustained.” *Bagwell*, 512 U.S. at 829 (emphasis added; internal alterations omitted) (quoting *United States v. Mine Workers*, 330 U.S. 258, 303–304 (1947)).

In *Bagwell*, the U.S. Supreme Court held that fines were impermissibly punitive because they were “closely analogous to fixed, determinate, retrospective criminal fines” *and* “neither any party nor any court . . . has suggested that the challenged fines [were] compensatory.” *Id.* at 837, 834. The Court made clear that its “holding . . . leaves unaltered the longstanding authority of judges [to] . . . enter broad *compensatory* awards for all contempts through civil proceedings.” *Id.* at

838 (emphasis added). *See also, e.g., Ahearn ex rel. N.L.R.B. v. Int'l Longshore & Warehouse Union, Locals 21 & 4*, 721 F.3d 1122, 1129 (9th Cir. 2013) (“a sanction generally is civil if it coerces compliance with a court order *or* is a remedial sanction meant to compensate the complainant for actual losses” (emphasis added)); *Ohr ex rel. NLRB v. Latino Express, Inc.*, 776 F.3d 469, 479–80 (7th Cir. 2015) (“A civil contempt order can serve to coerce a party to obey a court order, *or* it can be intended to compensate a party who has suffered unnecessary injuries or costs because of contemptuous conduct.” (emphasis added)).

Three years ago, the Ninth Circuit addressed the issue presented here, and confirmed that “compensatory contempt proceedings survive the termination of an underlying injunction.” *Shell Offshore Inc. v. Greenpeace, Inc.*, 815 F.3d 623, 628 (9th Cir. 2016). In *Shell*, a federal court had entered a preliminary injunction forbidding Greenpeace activists from coming within “safety zones” surrounding Shell’s oil vessels. *Id.* at 626–27. Greenpeace timely appealed. *Id.* at 627. While that appeal was pending, the district court entered a preliminary order imposing coercive civil contempt sanctions against Greenpeace activists who were blocking a drilling vessel, but it did not enter a final order. *Id.* Shell abandoned its plans to explore for oil in offshore Alaska and the preliminary injunction expired. *Id.* at 627–28. Greenpeace, however, sought to keep its

challenge to the injunction alive, arguing “that the still-pending contempt proceeding rescues its appeal from mootness.” *Id.* at 628.

The Ninth Circuit held that because the contempt sanctions against Greenpeace were *coercive*, they had been mooted by expiration of the injunction, whereas *compensatory* contempt remedies are not. *Id.* at 628–631. The court noted that “[a] court may wield its civil contempt powers for two *separate and independent* purposes”: (1) “to coerce the defendant into compliance with the court’s order” and (2) “to compensate the complainant for losses sustained.” *Id.* at 629 (emphasis added) (internal quotation marks and citation omitted). The general rule is that if “a civil contempt order is coercive in nature . . . it is mooted when the proceeding out of which it arises terminates.” *Id.* at 630 (quoting *Ohr*, 776 F.3d at 479–80). But there is a “bright-line distinction between compensatory and coercive contempts,” because even “[o]nce an injunction has been terminated, a court may still award compensation to the plaintiff as a result of injuries caused by its opponent’s contumacy.” *Id.* at 630.

There is nothing in the language or structure of Washington’s current contempt statute, or in the history of this Court’s civil contempt jurisprudence, that suggests an intention or reason to depart from this long-established guidance. Although many of this Court’s cases discuss the distinction between punitive/criminal and coercive/civil sanctions, the

Court has never held that these remedies are exclusive or prohibit the independent, compensatory payment for losses caused by contempt. This Court should take this opportunity to clarify that Washington's current contempt statute provides the same protection for beneficiaries of a court's orders as it did in 1933, and as federal law does today.

D. Prosecutor Satterberg's reading of the civil contempt statute undermines the authority of the court.

The power to remedy contempt exists because "contempt of court . . . undermines the court's authority." *Dependency of A.K.*, 162 Wn.2d at 645. The reading of the contempt statute urged by Prosecutor Satterberg encourages contumacious behavior and further undermines the court's authority in two ways. First, if no civil contempt remedy survived a vacated injunction, it would vitiate the well-established collateral bar rule. "The collateral bar rule prohibits a party from challenging the validity of a court order in a proceeding for violation of that order." *City of Seattle v. May*, 171 Wn.2d 847, 852, 256 P.3d 1161 (2011). Here, DOC and the Prosecutor circumvented that rule by nominally challenging only the "prospective" validity of the injunction they were alleged to have violated, and then once the injunction was prospectively vacated, arguing that the contempt action was moot because there was no longer an order with which to coerce compliance.

If DOC or the Prosecutor believed that the *King* injunction was no longer valid, they should have initiated proceedings to vacate that injunction, *while continuing to comply in the meantime*. But instead, according to Gronquist's allegations, they bypassed the court by choosing to violate its injunction, and in doing so acted in contempt of the court's authority. And they did so intentionally, apparently assuming they would suffer no consequence, whether because their actions were unlikely to be discovered, or unlikely to be challenged by an incarcerated person facing civil commitment proceedings. Only after Gronquist initiated contempt proceedings did they seek to excuse their contempt by challenging the injunction's ongoing validity. Reading the civil contempt statute to provide no compensatory remedy in this circumstance encourages parties subject to permanent injunctions to simply ignore them as time passes rather than seek court modification, knowing they can avoid punishment for contempt by attacking the injunction later.

Second, Prosecutor Satterberg's reading of the statute would also prohibit payment for losses when a court can no longer coerce compliance because the offending party complies once contempt proceedings are initiated. This would provide an incentive for parties to ignore court orders and force the beneficiary of the order to initiate civil contempt proceedings to gain compliance. If the beneficiary is unable to bring the

contempt action, the contemnor can act with impunity; if the beneficiary does bring the action, the contemnor can then comply, and the beneficiary has no remedy for the losses caused by the contempt or the fees and costs incurred in the contempt proceeding. *Cf. Spokane Research & Defense Fund v. City of Spokane*, 155 Wn.2d 89, 103, 117 P.3d 1117 (2005) (rejecting interpretation of Public Records Act that “allows government agencies to resist disclosure of records until a suit is filed and then to disclose them voluntarily to avoid paying fees and penalties”).

Prosecutor Satterberg cites to this Court’s statements that the “purpose” of civil contempt is “to compel compliance,” *see State v. Sims*, 193 Wn.2d 86, 95, 441 P.3d 262 (2019), to argue that there can be *no* civil contempt remedies if coercive sanctions are no longer needed. But the statute’s effectiveness at compelling compliance is not achieved solely through the use of coercive sanctions. The statute also compels compliance through deterrence. The knowledge that a finding of contempt—even once compliance has either been secured or is no longer required—can lead to being ordered to pay compensatory damages and attorney’s fees can encourage parties to *comply with court orders in the first instance*, which of course is the undisputed purpose of a court’s contempt power. *See Mead Sch. Dist. No. 354 v. Mead Ed. Ass’n*, 85 Wn.2d 278, 282, 534 P.2d 561 (1975) (“Without [contempt] power, the

court could ill exercise any other power, for it would then be nothing more than a mere advisory body.”).

E. If this Court adopts Prosecutor Satterberg’s argument, it must decide or remand the remaining issues on appeal.

Under Rule of Appellate Procedure 13.7, “[i]f the Supreme Court reverses a decision of the Court of Appeals that did not consider all of the issues raised which might support that decision, the Supreme Court will either consider and decide those issues or remand the case to the Court of Appeals to decide those issues.” In this case, Division II did not consider all of the issues raised by Gronquist that might have supported its decision to reverse the trial court. Gronquist highlights two of those issues here; the rest are addressed in his Court of Appeals briefs.

1. The contempt action was not moot because the trial court had inherent authority to fashion civil contempt sanctions.

“Because contempt of court . . . undermines the court’s authority, courts are vested with ‘an inherent contempt authority, as a power ‘necessary to the exercise of all others.’” *Dependency of A.K.*, 162 Wn.2d at 645 (quoting *Bagwell*, 512 U.S. at 831 (quoting *United States v. Hudson*, 11 U.S. (7 Cranch) 32, 34 (1812))). “Inherent contempt power is separate from statutorily granted contempt power.” *Id.* at 645. “This inherent authority allows courts to impose sanctions upon the contemnor, after appropriate due process protections are provided.” *Id.* “[A] court

may use its inherent power to impose punitive sanctions for indirect contempt without violating the due process clauses of the United States Constitution,” *id.* at 646, though “courts may not exercise their inherent contempt power ‘unless the legislatively prescribed procedures and remedies are specifically found inadequate,’” *id.* at 647 (quoting *Mead*, 85 Wn.2d at 288). Here, Prosecutor Satterberg has argued that Gronquist’s contempt action was moot “because no civil/coercive sanction was available to him under RCW 7.21.030(2) and criminal/punitive sanctions cannot be obtained by a private party.” Pet. For Review 3. But even if Prosecutor Satterberg’s truncated reading of the civil contempt statute were correct, the trial court still could have provided Gronquist with relief by imposing punitive sanctions through its inherent contempt power if the statutorily prescribed remedies were inadequate. Particularly here, where Gronquist alleged that two government agencies repeatedly violated a permanent injunction, the trial court should have considered sanctions under its inherent contempt power before dismissing the case as moot.

2. *DOC and Prosecutor Satterberg should be judicially estopped from seeking dismissal of the contempt action on the basis of the vacated injunction.*

In the proceedings below, the Prosecutor represented to the trial court that prospectively vacating the injunction did not “resolve the contempt proceeding” but merely mooted “one of Gronquist’s requested

remedies – the return and/or destruction of any portions of his SOTP file that were erroneously released.” CP 111 (emphasis added). In his ruling vacating the injunction, Judge Price stated expressly that the collateral bar rule “does not prevent the prospective vacation of the injunction as to Gronquist, *given Respondents’ concession* that this aspect of their motion does not directly affect the current contempt action,” and that his ruling “does not resolve allegations of contempt in the past.” CP 595 (emphasis added). Gronquist’s *pro se* appellate briefs, COA Opening Brief 16–23 and Reply Brief 4–5, show why DOC and the Prosecutor should be prohibited from seeking the dismissal of the contempt action based on judicial estoppel, which “precludes a party from asserting one position in a court proceeding and later seeking an advantage by taking a clearly inconsistent position.” *Arkison v. Ethan Allen, Inc.*, 160 Wn.2d 535, 538, 160 P.3d 13 (2007).

V. CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals should be affirmed, and this Court should remand the case to the trial court for a substantive ruling on whether DOC and the Prosecutor engaged in contempt of court and if so the award of appropriate remedies.

DATED this 22nd day of November, 2019.

MacDONALD HOAGUE & BAYLESS

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CERTIFICATE OF SERVICE

That on November 22nd, 2019 I arranged for filing of the foregoing **Respondent's Supplemental Brief** with the Supreme Court of the State of Washington, and arranged for service of a copy of the same on the parties to this action as follows:

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DATED this 22nd day of November 2019, at Seattle, Washington.

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