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COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
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NO. 68375-6-I

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

ORIGINAL

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SCOTT D. ENT, a married man,

Appellant,

v.

WASHINGTON STATE CRIMINAL JUSTICE TRAINING  
COMMISSION,

Respondent.

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**BRIEF OF APPELLANT**

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## **I. INTRODUCTION**

This is a matter of first impression for Washington's appellate courts, as there are no reported cases construing RCW 43.101.390, the immunity statute under which the trial court dismissed Appellant's lawsuit on Respondent's CR 12(c) motion on the pleadings.

According to Respondent, RCW 43.101.390 provides it blanket tort claim immunity from claims such as Appellant's negligence claim for severe, serious injuries caused by Respondents, which have left him with permanent loss of taste and smell and relegated to a sterile existence. Although the plain reading of RCW 43.101.390 would tend to support Respondent's position, when read in context and applying other fundamental principles of statutory construction, Respondent's interpretation fails.

Reading RCW 43.101.390 in context and examining the relevant legislative history leading to its creation, it becomes evident that rather than providing blanket tort claim immunity, RCW 43.101.390 actually provides narrow immunity needed to forward the legislature's purpose to create a statewide certification and recertification process for peace officers, thereby providing a sounder, more consistent method for police departments to employ and re-employ peace officers. Further, Respondent's interpretation conflicts at least one other portion of RCW

Chapter 43.101 and leads to unreasonable, absurd results, making its interpretation even more strained.

Despite Respondent's strained interpretation of RCW 43.101.390, the trial court errantly granted Respondent dismissal on the pleadings under CR 12(c). Moreover, even if Respondent's interpretation were correct, the trial court further erred by granting its motion where the pleadings provided insufficient basis to dismiss under CR 12(c).

Accordingly, Appellant respectfully requests this Court reverse the trial court and remand this matter for further adjudication.

## **II. ASSIGNMENT OF ERROR**

**THE TRIAL COURT ERRED IN GRANTING DISMISSAL OF APPELLANT'S CLAIMS ON RESPONDENT'S MOTION ON THE PLEADINGS UNDER CR 12(c).**

## **III. ISSUES**

- A. Whether RCW 43.101.390 provides blanket tort claim immunity, and, thus, immunity from Appellant's negligence claims herein?
- B. If RCW 43.101.390 does apply to Appellant's tort claims herein, whether there exists evidence in the pleadings to demonstrate, beyond doubt, the alleged conduct of Respondent involved "administration and enforcement" of RCW Chapter 43.101 so as to bring the conduct within the scope of RCW 43.101.390?

#### **IV. STATEMENT OF THE CASE**

In his Complaint for Money Damages, filed January 13, 2011, Appellant Scott D. Ent alleged he sustained significant, permanent injuries on January 7, 2009, due to Respondent's negligence while he attended Respondent's Basic Law Enforcement Academy. (CP 17, 19). Specifically, Appellant fainted, fell to the floor, struck his head, and was rendered unconscious after being ordered by Respondent's Academy Staff to stand motionless in a ceremonial formation for a long period of time despite two other Academy students already falling while in formation. (CP 19).

Based on the above facts, and those more specifically set forth in his Complaint, Appellant alleged Respondent owed him "a duty of reasonable care in providing for his personal safety while he attended the Academy," and that it breached the duty "by failing to provide a safe condition for him to participate in the graduation ceremony." (CP 20).

Respondent answered Appellant's Complaint, denying his claims and, among other defenses, asserting Respondent was immune from Appellant's claims under RCW 43.101.390. (CP 3-4).

On February 3, 2012, the trial court granted Respondent's CR 12(c) motion on the pleadings, finding Respondent was entitled to statutory immunity under RCW 43.101.390 and dismissing Appellant's

lawsuit. (CP 1-2).

On February 21, 2012, Appellant filed a Notice of Appeal to this Court, seeking review of the trial court's February 3, 2012 order. (CP 72).

## V. ARGUMENT/AUTHORITIES

### A. STANDARD OF REVIEW

A trial court's decision to dismiss a case for failure to state a claim upon which relief can be granted under CR 12(c) is a question of law and is reviewed *de novo* by an appellate court. *P.E. Systems, LLC v. CPI Corp.*, 164 Wn.App. 358, 364, 264 P.3d 279 (2011). Likewise, interpretation of a statute is also a question of law reviewed *de novo* by an appellate court. *Roy v. City of Everett*, 118 Wn.2d 352, 367, 823 P.2d 1084 (1992) (concurring opinion), *citing Multicare Med. Ctr. v. State*, 114 Wn.2d 572, 582, 790 P.2d 124 (1990).

### B. THE TRIAL COURT ERRED IN DISMISSING APPELLANT'S CLAIMS ON RESPONDENT'S CR 12(C) MOTION ON THE PLEADINGS, BECAUSE RCW 43.101.390 DOES NOT PROVIDE BLANKET TORT CLAIM IMMUNITY AND, THUS, IMMUNITY FROM APPELLANT'S TORT CLAIMS HEREIN

In granting Respondent's CR 12(c) motion on the pleadings, the trial court erred in dismissing Appellant's claims, because RCW 43.101.390 does not provide Respondent blanket tort claim immunity from claims such as Appellant's negligence claims herein.

**1. A Motion to Dismiss Under CR 12(c) Is Unusual and Should Be Granted Sparingly and Only Where It Is Beyond Doubt on the Face of the Complaint that a Plaintiff Is Not Entitled to Relief**

In *M.H. v. Corp. of the Catholic Archbishop of Seattle*, 162 Wn.App. 183, 189, 252 P.3d 914 (2011), citing *Burton v. Lehman*, 153 Wash.2d 416, 422, 103 P.3d 1230 (2005), the Court stated plainly “*dismissal under CR 12(c) is appropriate only if “it appears beyond doubt that the plaintiff can prove no set of facts, consistent with the complaint, which would entitle the plaintiff to relief;”*” citing *Haberman v. Wash. Pub. Power Supply Sys.*, 109 Wash.2d 107, 120, 744 P.2d 1032 (1987) (quoting *Bowman v. John Doe Two*, 104 Wash.2d 181, 183, 704 P.2d 140 (1985) (emphasis added).

Further, when considering a motion under CR 12(c), a trial court must presume the plaintiff’s allegations are true and may consider hypothetical facts not in the record. *M.H. v. Catholic Archbishop of Seattle*, 162 Wn.App. at 189, citing *Tenore v. AT & T Wireless Servs.*, 136 Wash.2d 322, 330, 962 P.2d 104 (1998). And “*a motion to dismiss under CR 12(c) should be granted ‘sparingly and with care,’ and ‘only in the unusual case in which plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief.’”* *M.H. v. Catholic Archbishop of Seattle*, 162 Wn.App. at 189, citing *Tenore v.*

*AT & T*, 136 Wash.2d at 330 (quoting *Hoffer v. State*, 110 Wash.2d 415, 420, 755 P.2d 781 (1988)) (emphasis added). Additionally, in deciding a motion under CR 12(c), a court cannot consider any matter outside the pleadings. *Fondren v. Klickitat County*, 79 Wn.App. 850, 853 n.1, 905 P.2d 928 (1995), citing *Corrigal v. Ball & Dodd Funeral Home, Inc.*, 89 Wn.2d 959, 961, 577 P.2d 580 (1978).

Because Appellant's Complaint plainly states facts upon which relief can be granted to him, and Respondent is not immune from Appellant's claims under RCW 43.101.390, Respondent cannot meet its high burden to justify dismissal, making dismissal by the trial court reversible error.

**2. Respondent Is Not Immune from Appellant's Tort Action, because RCW 43.101.390 was Created Specifically to Provide Immunity Solely for Respondent's Actions Concerning Certifying And Decertifying Peace Officers Under RCW Chapter 43.101**

**a. Construing RCW 43.101.390 to provide blanket tort claim immunity creates conflict with another provision in RCW Chapter 43.101, requiring this Court to construe its scope**

RCW 43.101.390, the statute upon which the trial court granted Respondent dismissal, states:

The commission, its boards, and individuals acting on behalf of the commission and its boards are immune from suit in any civil or criminal action contesting or based upon

proceedings or other official acts performed in the course of their duties in the administration and enforcement of this chapter.

Appellant's counsel has found no reported cases construing RCW 43.101.390. But construing it to provide a "broad grant of immunity" to tort claims, as Respondents argued at the trial court, (CP 23), is to ignore at least one other provision of RCW Chapter 43.101 that conflicts with such an interpretation.

Respondent conceded below that RCW 43.101.080(7) requires it to assume legal responsibility for training: "*The commission shall* have all the following powers: . . . (7) To *assume legal*, fiscal, and program *responsibility for all training conducted by the commission; . . .*" (emphasis added) (CP 24). Thus, the plain language of RCW 43.101.080(7) requires Respondent to assume legal responsibility for its training. This assumed legal responsibility then necessarily required Respondent to assume legal responsibility for its Academy training in which Appellant was injured due to Respondent's negligence.

But Respondent cannot be both legally responsible for its training activities *and* be immune from responsibility for that training. That is simply illogical. Hence, RCW 43.101.390's facial grant of statutory immunity creates internal ambiguity within RCW Chapter 43.101— Respondent must either *have* or *not have* legal responsibility for

its training. This ambiguity requires the Court to construe RCW 43.101.390 “so as to effectuate the legislative intent.” *City of Seattle v. State Dept. of Labor and Industries*, 136 Wn.2d 693, 697, 965 P.2d 619 (1998), quoting *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996).

- b. **A review of the legislative history demonstrates RCW 43.101.390’s grant of statutory immunity was intended specifically to facilitate Respondent’s peace officer certification/recertification regime and nothing more**

Legislative history, rules of statutory construction, and relevant case law may guide a court in construing the meaning of an ambiguous statute. *State v. Roggenkamp*, 153 Wn.2d 614, 621, 106 P.3d 196 (2005). In construing RCW 43.101.390, the Court should be mindful that the “purpose of the enactment should prevail over express but inept wording.” *Seattle v. State*, 136 Wn.2d at 697-98, quoting *Whatcom County v. Bellingham*, 128 Wn.2d at 546. Additionally, “the court must give effect to the legislative intent determined “within the context of the entire statute.” *Seattle v. State*, 136 Wn.2d at 698, quoting *Whatcom County v. Bellingham*, 128 Wn.2d at 546. Statutes must be construed so all the language is given effect with no portion being rendered superfluous or meaningless. *Id.* Moreover, statutory immunity grants in derogation of

common law are strictly construed. *Michaels v. CH2M Hill, Inc.*, 171 Wn.2d 587, 600, 257 P.3d 532 (2011).

Here, the legislative history demonstrates RCW 43.101.390 was intended specifically to provide narrow, purposeful immunity to those involved in administering the Respondent's peace officer certification and decertification regime, which regime began as HB No. 1062 as part of the 2001 legislative session and was deemed "AN ACT Relating to certification of peace officers, amending RCW 43.101.010; adding new sections to chapter 43.101 RCW; and providing an effective date." "Chapter 167 H.B. No. 1062 Law Enforcement Officers—Certification," 2001 Wash. Legis. Serv. Ch. 167 (H.B. 1062)(West) (emphasis added). (CP 31, 33). A review of HB 1062 (CP 33-38) reveals it was specifically designed to set forth a scheme to reform Respondent's peace officer certification and decertification procedures with no mention whatsoever of any other obligations or duties of Respondent. Importantly, proposed "NEW SECTION. Sec. 11" of HB 1062 became RCW 43.101.390. (CP 37, RCW 43.101.390).

The legislature directly explained its intent for the proposed Act was to reform Respondent's certification procedure in its "Bill Analysis" for HB 1062:

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### Brief Summary of Bill

- Requires all Washington peace officers, as a condition of continuing employment, to timely obtain and retain certification as peace officers.
- Establishes a five-member hearings panel to hear cases and make final administrative decisions regarding a law enforcement officer's certification.
- Requires that all contents of personnel action reports, files, and other information obtained by the commission, relating to an officer's certification or decertification, remain confidential and exempt from public disclosure.

Washington State House of Representatives Bill Analysis for HB 1062.  
(CP 31, 40).

As further explained in the Bill Analysis, the legislature's intent for HB 1062 was to create a statewide certification and recertification process for peace officers, thereby providing a sounder, more consistent method for police departments to employ and re-employ peace officers. (CP 41). On May 7, 2001, the Act, titled "**Peace officers – Certification**," became law. "Certification of Enrollment of House Bill 1062" (emphasis added). (CP 31, 46).

Reviewing HB 1062, the Bill Analysis, and the Act together, it is inescapable the legislature was dealing with the single issue of peace officer certification/decertification and nothing else. We know this because each of the 12 "New Sections" work in coordination to facilitate

that specific goal:

- Definitions needed to explain the new certification process were added (CP 33-34, 48-49);
- New Section No. 2 – New requirements for certification were enumerated, including requiring peace officers to allow Respondent to release their employment records regarding certification/decertification matters (CP 34, 49-50);
- New Section No. 3 – Potential conditions leading to denial or revocation of a peace officer’s certification were set forth (CP 34, 50-51);
- New Section No. 4 – Conditions under which re-certification was possible were specified (CP 35, 51);
- New Section No. 5 – How lapses in full-time employment would lead to lapses in certifications is set forth, as are procedures to reinstate lapsed certifications (CP 35-36, 51-52);
- New Section No. 6 – Procedures are described for required reporting on terminations of peace officers to Respondent by employing agencies (CP 36, 52);
- New Section No. 7 – Additional powers and authority were granted Respondent to facilitate its ability to manage the new certification regime imposed by the Act, such as giving it subpoena power, authority to take depositions, authority to appoint hearing board members, and authority to act to grant, deny, or revoke peace officer certifications (CP 36, 52-53);
- New Section No. 8 – Who may file complaints with Respondent alleging a peace officer’s certification should be revoked was set forth, and immunity was provided for those making such complaints (CP 36, 53);
- New Section No. 9 – The procedures to be followed should Respondent choose to revoke a certification, including giving proper notice to involved peace officers and setting time requirements for requested hearings, were specified (CP 36, 53-54);

- New Section No. 10 – How hearings on certification would be conducted, including setting forth the required make up of hearing boards and that the board’s decisions would be subject to judicial review, were set forth (CP 36-37, 54-55);
- New Section No. 11 – Immunity was provided to the commission, its boards, and individuals acting on its behalf in the course of their duties in administering and enforcing the chapter (CP 37-38, 55-56); and
- New Section No. 12 – An exclusion from public disclosure of Respondent’s files kept with respect to its administering the new certification regime was provided (CP 37, 56-55).

What is absent in the legislative history documents, though, is any discussion of any legislative intent to provide Respondent with the blanket tort claim immunity it now asserts. The absence is, of course, consistent with RCW 43.101.080(7) having already required Respondent to assume legal responsibility for its training programs.

In fact, every proposed “New Section” in HB 1082 was specifically designed to provide Respondent an adequate legal and administrative framework to carry out its new duties related to statewide peace officer certification and decertification. Without the ability to conduct discovery by subpoena and deposition, to require peace officers to release their employment records, to appoint hearing boards, and to act on the status of certifications, Respondent could not carry out its newly imposed duties. Thus, those powers were provided Respondent.

Likewise, without immunizing reporters to Respondent that certifications should be revoked and without immunizing those involved in the process of certification/revocation, particularly hearing board members, no reasonably careful person would ever agree to assist Respondent in the process, likely causing the new certification/recertification regime to fail.

It was with this narrow purpose the legislature proposed “New Section No. 11,” which became RCW 43.101.390, to provide the immunity needed to induce necessary cooperation and forward the legislative purpose to institute a certification regime and create a sounder, more consistent method for police departments to employ and re-employ peace officers. (CP 41). There is absolutely no evidence in the legislative history that RCW 43.101.390 was created for any other purpose whatsoever.

And we do not have to speculate what scope of immunity the legislature intended for RCW 43.101.390, because in its Bill Analysis, under its “**Hearings Panel**” section, it plainly expressed its perceived need to provide immunity to those involved in the certification/decertification regime, including Respondent:

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**Hearings Panel.**

\* \* \*

*Persons appointed to a hearings panel by the commission must, in relation to any decertification matter on which they sit, have the powers, duties, and immunities, and are entitled to the emoluments, including travel expenses, of regular commission members.*

\* \* \*

*The commission, its boards, and individuals acting on behalf of the commission and its boards are immune from suit in any civil or criminal action performed in the course of their duties.*

(emphasis added) (CP 43).

Given this express statement by the legislature, it stretches credulity not to recognize the legislative purpose for RCW 43.101.390 was narrowly focused to immunize only those involved in the new peace officer certification/decertification regime created in the Act. In fact, the latter portion quoted above nearly mirrors RCW 43.101.390. That the proposed immunity concerned only peace officer certification/decertification and nothing else is beyond reasonable argument.

Moreover, had the legislature intended RCW 43.101.390 (New Section No. 11) to provide blanket tort claim immunity, it would have stated as much and would have reconciled the New Section No. 11 with RCW 43.101.080(7), which already required Respondent to assume legal responsibility for its training programs. But it did not. And it would not

have solely confined its discussion of immunity to the “Hearings Panel” section of its Bill Analysis. But it did.

Simply put, when considering RCW 43.101.390 (New Section No. 11) in context with the other 11 new sections and definitions in HB 1082 that were later codified in the Act titled “**Peace officers – Certification,**” it is inescapable the legislature meant the immunity grant to facilitate Respondent’s administration of the new certification/decertification regime and to do nothing more. Accordingly, RCW 43.101.390 does not provide blanket tort claim immunity, as asserted by Respondent. It does not provide immunity from Appellant’s tort lawsuit. And the trial court erred in dismissing Appellant’s lawsuit under RCW 43.101.390.

c. **Construing RCW 43.101.390 to provide blanket tort claim immunity, as Respondent suggests, leads to unreasonable, absurd results**

Construing RCW 43.101.390 to provide blanket tort claim immunity leads to unreasonable and illogical results, something the Court must avoid. *See Roy v. City of Everett*, 118 Wn.2d at 357, *citing Seven Gables Corp. v. MGA/UA Entertainment Co.*, 106 Wn.2d 1, 6, 721 P.2d 1 (1986). Rather, the Court must adopt an interpretation that best advances the legislative purpose of the act and avoids unlikely, absurd, or strained consequences. *Roy v. City of Everett*, 118 Wn.2d at 357, *citing State v. Fjermestad*, 114 Wn.2d 828, 835, 791 P.2d 897 (1990), and *Bennett v.*

*Hardy*, 113 Wn.2d 912, 928, 784 P.2d 1258 (1990).

If we were to accept that RCW 43.101.390 provides blanket tort claim immunity, as Respondent suggests, the following hypothetical results could occur:

- Trying to meet budget concerns, Respondent chooses to forego replacing known obviously worn brake pads on training police cars but continues to require student officers to learn and practice high speed driving techniques in those cars. While driving 100 mph in sanctioned training, a student driver attempts to brake, but the brakes fail. Because she cannot slow or stop the car, the student officer leaves the driving course, drives through a fence, and is killed when the car slams into a tree. Respondent would claim it has no liability for this obvious negligence.
- Again trying to cut costs, Respondent purchases cut-rate ammunition for firearms training. Respondent's firearms instructors tested the cut-rate ammunition and had three incidents caused by the ammunition that could have injured them but, fortunately, did not. They report to Respondent that in each incident the cut-rate ammunition failed to fire bullets from pistol barrels, leaving the bullets to rest in the barrels and resulting in the next fired bullets striking them and causing the barrels to explode in their hands. Nonetheless, Respondent instructs its firearms instructors to use the ammunition for student officer training, as it does not want to "waste" the ammunition. Subsequently, a student officer is severely injured and blinded after the weapon he fires explodes in his face when the cut-rate ammunition fails to leave the barrel. Respondent would claim it also has no liability for this obvious negligence.
- To test student officers' "metal," Respondent instructs its training staff to have groups of new student officers stand in circles and play catch with live hand grenades with their safety pins in place. Any student officer leaving the circle would be cut from the Academy for lacking necessary courage to be a police officer. During the "metal" testing, a safety pin falls out of a grenade and the grenade explodes, killing one student and causing another to

lose her leg. Respondent would claim it has no liability for this obvious negligent conduct.

- And finally, one Respondent's firearms instructors is instructing a group of student officers in afternoon live fire pistol training at Respondents firearms training range. This particular instructor had been previously disciplined by Respondent for having alcohol on his breath at the Academy. On this day, the firearms instructor drank a few beers in his vehicle during the lunch break. Given his "relaxed" state, the instructor decides to demonstrate his expert firearms ability by doing "cowboy" style quick draws for the students. As he draws his pistol, he stumbles, pulls the trigger, and fires an errant bullet, which hits a student officer in the head and kills her. Not only was the instructor's conduct grossly negligent, it constituted Assault Third Degree, which is a felony.<sup>1</sup> And Respondent would not only claim it has no liability for this obvious negligent and felonious conduct, it would also claim the instructor is immune from criminal liability.

There are, of course, endless hypothetical situations where Respondent, through its duties to administrate and enforce the Chapter, could act negligently and criminally in doing so. And under the trial court's interpretation of RCW 43.101.390, which is shared by Respondent, Respondent and its staff would avoid "*any civil or criminal*" liability. That result would be absurd and unreasonable. No reasonable person would either expect or accept such a result. But if this Court construes RCW 43.101.390 narrowly, and for the purpose intended by the legislature, such absurd results would be avoided, as they should be.

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<sup>1</sup>Under RCW 9A.36.031(d), one, who "with criminal negligence, causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm" is guilty of Assault Third Degree, which is a Class C Felony.

In summary, if the trial court's interpretation is accepted (1) there remains an unresolved internal conflict in RCW Chapter 43.101, as Respondent would illogically be legally responsible for its training activities at the Academy while also being immune from any legal responsibility for that training; (2) the legislature's intention to provide narrow immunity to promote its purpose to create a sounder, more consistent process for police departments to employ and re-employ peace officers would be expanded well beyond what is needed to forward that purpose; and (3) we would be left with unreasonable, absurd results that let even felons escape liability.

But the Court should not affirm the trial court's errant interpretation of RCW 43.101.390. Instead, it should construe RCW 43.101.390 so as to provide immunity to Respondent, its boards, and those acting on its behalf to administrate and enforce the Act, "**Peace officers – Certification**". RCW 43.101.390 simply cannot be construed to provide Respondent blanket tort claim immunity. Accordingly, the Court should reverse the trial court's dismissal of Appellant's lawsuit against Respondent.

**C. EVEN IF RCW 43.101.390 DID PROVIDE BLANKET TORT CLAIM IMMUNITY, THERE IS NOTHING IN THE PLEADINGS DEMONSTRATING, BEYOND DOUBT, THE ALLEGATIONS IN APPELLANT'S COMPLAINT EVEN IMPLICATE THE STATUTE, SO THE TRIAL COURT**

**ERRED IN GRANTING RESPONDENT'S CR 12(c)  
MOTION ON THE PLEADINGS TO DISMISS**

Even if the Court were to find RCW 43.101.390 provides Respondent blanket tort claim immunity, which it should not, there is nothing in the pleadings for it to find, *beyond doubt*, that the allegations contained in Appellant's Complaint even implicate the statute's immunity, making the trial court's dismissal under CR 12(c) reversible error.

If the court applies RCW 43.101.390 to this tort action, the court must do so narrowly, as the statute acts as derogation of common law inasmuch as it would eliminate a common law right of Appellant to recover for negligence. *See Michaels v. CH2M Hill*, 171 Wn.2d at 600. RCW 43.101.390 states:

The commission, its boards, and individuals acting on behalf of the commission and its boards are immune from suit in any civil or criminal action contesting or based upon proceedings or other official acts performed in the course of their *duties in the administration and enforcement of this chapter*.

(emphasis added).

RCW Chapter 43.101 enumerates a number of "duties" Respondent is required to carry out, including providing basic training of peace officers (RCW 43.101.200), corrections personnel (RCW 43.101.220), and students at institutes of higher education (RCW 43.101.222); and providing training concerning child sex abuse (RCW

43.101.224), vehicle pursuits (RCW 43.101.225), firearms (RCW 43.101.250, RCW 43.101.260), sexual assault (RCW 43.101.270), malicious harassment (RCW 43.101.290), child abuse and neglect (RCW 43.101.365), racial profiling (RCW 43.101.410), etc.. But nowhere in RCW Chapter 43.101 is Defendant charged with holding ceremonies and ordering student police officers to stand motionless for so long they collapse and are seriously and permanently injured, as was Appellant.

The negligent acts alleged in Appellant's Complaint are not acts enumerated in RCW Chapter 43.101. As such, there is nothing before the Court to demonstrate, beyond doubt, Respondent was required to perform the alleged acts to *administrate and enforce* RCW Chapter 43.101. And under CR 12(c), the Court cannot go beyond the pleadings to consider anything else. *Fondren v. Klickitat County*, 79 Wn.App. at 850, *citing Corrigan v. Ball & Dodd Funeral Home, Inc.* 89 Wn.2d at 959.

When applying the stringent standards for dismissal under CR 12(c), which dismissal is unusual and seldom granted, the negligent acts alleged in Appellant's Complaint do not implicate any immunity under RCW 43.101.390 even if it did provide Respondent blanket tort claim immunity. Accordingly, the Court should reverse the trial courts order dismissing Appellant's lawsuit, as there was no basis to dismiss under CR 12(c).

## **VI. CONCLUSION**

Appellant sued Respondent in tort for its negligence that caused him serious, permanent injuries that have left him with no sense of smell or taste, relegating him to a sterile existence.

RCW 43.101.390 was one of 12 new sections to RCW Chapter 43.101 that were each necessary to facilitate the legislature's express intent to provide a sounder, more consistent method for police departments to employ and re-employ peace officers by facilitating Respondent's administration of the new peace officer certification/decertification regime. It was intended to do no more and, thus, provides no immunity to this tort lawsuit.

If RCW 43.101.390 were construed to provide the Respondent the blanket tort claim immunity it asserts, it would conflict with RCW 43.101.080(7), which already required Respondent to assume legal responsibility for its training programs. Accordingly, it cannot be fairly so construed.

But even if the Court were to find RCW 43.101.390 provides Respondent blanket tort claim immunity, the allegations in Appellant's Complaint do not implicate any immunity provided by the statute. And the Court cannot go beyond the pleadings to dismiss a lawsuit under CR 12(c).

Therefore, Appellant respectfully requests that the Court reverse the trial court's order dismissing Appellant's lawsuit against Respondent.

DATED this 11<sup>th</sup> day of May, 2012.

SCHULTHEIS TABLER WALLACE, PLLC

A handwritten signature in black ink, appearing to be 'K. Chadwick', written over a horizontal line.

By: \_\_\_\_\_

Kenneth W. Chadwick, WSBA 33509

Attorney for Appellant Ent

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Phone: 509-754-5264

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STATE OF WASHINGTON

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6 (509) 754-5264  
7 **Attorneys for Appellant, Ent**

8 COURT OF APPEALS, DIVISION I  
9 OF THE STATE OF WASHINGTON

10 SCOTT D. ENT, a married man,  
11 Appellant,

No. 68375-6

12 v.

AFFIDAVIT OF MAILING

13 WASHINGTON STATE CRIMINAL  
14 JUSTICE TRAINING COMMISSION,  
15 Respondent

16  
17 STATE OF WASHINGTON )  
18 ) ss.  
19 COUNTY OF GRANT )

20 THE UNDERSIGNED being first duly sworn, on oath, deposes and states:

21 That on the \_\_\_\_\_ day of March 2012, affiant deposited in the mails of the United  
22 States of America, first class mail, a properly stamped and addressed envelope, containing a  
23 copy of the Appellant's Brief dated May 11, 2012, to:

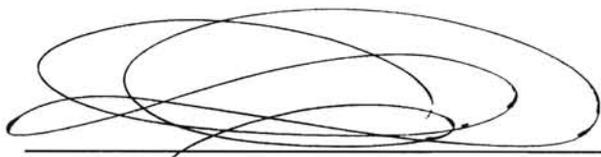
24 Mr. Jon R. Morrone  
25 Assistant Attorney General  
26 800 Fifth Avenue, Ste. 2000  
27 Seattle, WA 98104

28 **AFFIDAVIT OF MAILING - 1**

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Brief.docx

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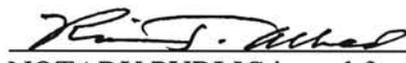
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Harmony L.A. White

SUBSCRIBED AND SWORN to before me on this 11<sup>th</sup> day of May 2012.



  
NOTARY PUBLIC in and for the State of  
Washington, residing at Moses Lake, WA  
My commission expires: 11/09/2014

# SCHULTHEIS TABLER WALLACE PLLC

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RICHARD E. SCHULTHEIS (1929 – 2008)

May 11, 2012

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2012 MAY 14 AM 11:41  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON

Re: *Ent v. Washington State Criminal Justice Training Commission*  
Appellate Court No. 68375-6

Dear Clerk:

I have enclosed an original and one (1) copy each of the following:

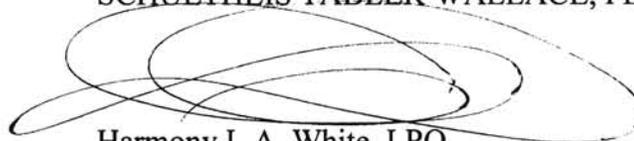
1. Appellant's Brief

Please file the original with the Court and return the conformed copies to me in the enclosed envelope.

Thank you for your assistance. If you have any questions or concerns, please do not hesitate to call.

Sincerely,

SCHULTHEIS TABLER WALLACE, PLLC



Harmony L.A. White, LPO  
Legal Assistant to Rian J. Allred

RJA:hlw  
Enclosures

cc: Mr. Jon Morrone, Assistant Attorney General (w/enclosures)  
Mr. Scott Ent (w/enclosures)