No. 102586-6

SUPREME COURT OF THE
OF THE STATE OF WASHINGTON

PUBLIC UTLITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, a Washington Municipal corporation; BARRY CHRISMAN and KERRY CHRISMAN, individually and as husband and wife,

Respondents,

v.

THE STATE OF WASHINGTON; SIERRA PACIFIC INDUSTRIES DBA SIERRA PACIFIC INDUSTRIES, INC., a California corporation; PRECISION FORESTRY, INC., a Washington corporation, and ABC CORPORATIONS 1-10,

Petitioners.

RESPONDENTS BARRY AND KERRY CHRISMANS' ANSWER TO AMICUS MEMORANDUM OF WASHINGTON FOREST PROTECTION ASSOCIATION, *ET AL*.

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I. INTRODUCTION

Amici fail to provide any information or analysis that tips the scales in favor of review under RAP 13.4(b). In fact, the vast majority of *Amici*'s memorandum is directed at the merits. The merits are immaterial at this stage, and *Amici*'s meandering attack on the Court of Appeals' Opinion based on agreements reached behind closed doors is not a basis upon which review can be granted. *See* RAP 13.4(b).

In the scant portions of briefing where *Amici* implicate RAP 13.4(b)(4), most of the information that *Amici* provide is hyper-focused on private forestland owners. Here, there are no private forestland owners – a fundamental and crucial distinguishing factor between *Ruiz v. State*, 154 Wn. App. 454, 225 P.3d 458 (2010) and this case. And private forestland owners' interest in ***maximizing profit*** under a ***limitless*** immunity shield is neither public nor substantial. *See* RAP 13.4(b)(4).

In the even scanter portions of briefing where *Amici* implicate RAP 13.4(b)(4)'s call for "an issue of substantial

public interest that should be determined by the Supreme Court," *Amici*'s arguments are nothing more than conclusory and unsubstantiated allegations. But this Court's precedent clarifies that an alleged "issue of substantial public interest" must be concrete and wide-reaching. In other words, *Amici* cannot manufacture a public interest by merely positing hypothetical harms. *Amici's* arguments simply do not meet the test under RAP 13.4(b). Therefore, this Court should decline review.

II. ARGUMENT

A. *Amici*'s Arguments are Largely Directed at the Merits.

Similar to Petitioners, *Amici* devote almost the entirety of their memorandum to the merits. *Amici*'s memorandum is replete with argument related to how the Court of Appeals' Opinion is purportedly wrongly decided. Examples of Amici's generalized criticisms abound: "incorrectly holds…,"; "is entirely inconsistent with the clear intent of … RCW 76.09.330,"; "directly conflicts with RCW 76.09.330's text…,"; and "eviscerates RCW 76.09.330…," among others. *See* Amicus

Curiae Memorandum at 2, 13-18. By rule, the merits are irrelevant at this stage. *See* RAP 13.4(b). As such, *Amici*'s statements attacking the substance of the Court of Appeals' Opinion provide nothing to support review of this case.

B. *Amici*'s Purported Substantial Public Interests are Cabined to Private Forestland Owners, Not the Public; *Amici* Truly Seek Limitless Immunity Unconstrained by Judicial Interpretation.

RAP 13.4(b)(4) is abundantly clear. For a petition to be granted under RAP 13.4(b)(4), it must involve "an issue of substantial public interest that should be determined by the Supreme Court." Following the rule's directive, review has been granted in cases involving issues that affect the entire public, or at least a significant portion of it. For instance, review was granted where holdings in a line of cases affected the entirety of the public's safety by removing a class of sex offenders from the registration requirements. *See Matter of Arnold*, 189 Wn.2d 1023, 408 P.3d 1091, 1092 (2017). Similarly, review was granted in a case involving COVID-19 in State correctional facilities. *See Matter of Williams*, 197 Wn.2d 1001, 484 P.3d

445 (2021). In that case, this Court recognized that COVID-19 "profoundly affected all segments of American society…". *Id*. at 445-46.

This case is diametrically opposed to precedent granting review under RAP 13.4(b)(4). This is why *Amici*, like Petitioners, hardly implicate or reference the public at all. Instead, *Amici* decry the Court of Appeals' Opinion's effects on ***private forestland owners***. According to *Amici*, these effects range from "expos[ure] … to liabilities," to increases in the "costs of doing business." *See* Amicus Curiae Memorandum at 2 (arguing that if review is not granted the Court of Appeals' Opinion will "expose[] landowners to significant liability…"), and 15 (arguing that if review is not granted, "costs of doing business will increase…").

Of course, private, for-profit forestland owners are not the public. Presumably, private forestland owners make up a miniscule fraction of the public. Moreover, the public has no substantial interest in the repercussions *Amici* claim, such as

Amici's "costs of doing business" when they clearcut their privately held land for their own profit. Taken together, it is impossible to sincerely argue that this case affects even a significant fraction of the public, let alone presents "an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b)(4).

In effect, *Amici* perpetuate Petitioners' self-serving request for immunity unconstrained by judicial interpretation. Stated differently, *Amici* advocate for immunity defined by entities like themselves and Petitioners, with judicial interpretation of immunity statutes in derogation of the common law, relevant State regulations such as WAC 222-16-010, and the State's own requirements (such as the Habitat Conservation Plan requiring a wind buffer) tossed aside. *Amici* make this plain in arguing, *inter alia*, that forestland owners should have license to "independently evaluate" what amounts to their own immunity. *See* Amicus Curiae Memorandum at 14-15. This is *Amicis*' and

Petitioners' only true objective in having review granted. Therefore, review should be denied.

C. Where *Amici* Arguably Implicate the Public, the Interests They Assert are Unsubstantiated, Broad-Brush Assumptions.

Amici arguably implicate the public in two portions of their memorandum. But these opaque references to the public and its interests are nothing more than conclusory statements aimed at manufacturing a substantial public interest where none exists.

First, *Amici* argue that:

> Washington's forests provide countless benefits. They support a key sector of the economy, deliver clean drinking water, serve as recreational outlets, fund public services, support rural communities, sequester atmospheric carbon, and provide habitat for wildlife.

Amicus Curiae Memorandum at 1. Second, *Amici* claim that:

> The impacts of the Opinion are obvious—public resources will be given less protection, public access will be restricted as associated liabilities grow … and some forestlands will be converted to other uses (such as urban development) as the risks of forest management rise.

Id. at 15-16.

Apparently, "[t]he impacts of the Opinion" are so "obvious" that they do not merit any substantive proof or explanation. Beyond the above-quoted allegations, *Amici* do not provide this Court with a single citation to the record, a single statistic, or even an explanation substantiating the hypothetical harms or interests they posit. For instance, how "public resources will be given less protection" by the State following the Washington Administrative Code and its own standards goes unexplained and unsubstantiated by *Amici*. How "a key sector of the economy" will be affected by the Court of Appeals' Opinion also goes unexplained and unsubstantiated by *Amici*.[1] And how the Court of Appeals' Opinion will lead to State-owned riparian land next to a roadway and small waterway—the type of

[1] Aside from a slight reduction, equivalent to 100 feet of trees (the Habitat Conservation Plan's required size for a required wind buffer (CP 139)), in corporate timber harvesters' profits.

forestland at issue in this case—being converted to "other uses" additionally goes unexplained and unsubstantiated by *Amici*.

In total, the interests that *Amici* portray are simply an attempt to mislead this Court into accepting review based on dubious assumptions. However, this Court's precedent shows that review will only be accepted where a purported issue of substantial public interest is cognizable and corroborated. *See e.g.*, *In re Flippo*, 185 Wn.2d 1032, 380 P.3d 413, 414 (2016) (accepting review because of the sheer number of pending personal restraint petitions challenging the imposition of legal financial obligations at the time of the Petition). *Amici* add nothing to Petitioners' unfounded RAP 13.4(b)(4) arguments.

D. *Amici* Support the Absence of a Conflict Between This Case and *Ruiz*.

Amici defer to Petitioners' arguments regarding alleged conflicts between *Ruiz v. State*, 154 Wn. App. 454, 225 P.3d 458 (2010), and this case. *See* Amicus Curiae Memorandum at 13. But *Amici* help demonstrate that no conflict under RAP 13.4(b)(2) exists. Specifically, *Amici* identify themselves as "a

large swath" of ***private*** forestland owners. *See* Motion for Leave to File Amicus Curiae Memorandum at 2-3. As a result, *Amici* highlight at least one crucial distinguishing factor between *Ruiz* and this case: *Ruiz* involved private forestland owners who owned, managed, and controlled the RMZ land where the offending tree stood, whereas this case does not.

Amici are effectively identical to the entities at issue in *Ruiz*, White River Forests, LLC and Hancock Forest Management. *See* 154 Wn. App. at 456. But as explained in the Chrisman Respondents' Answer to Petitioners' Petitions for Review, this case does not involve private forestland owners. *See* Chrisman Respondents' Answer at 17-20. In this case, the State exclusively owned, managed, and controlled the portion of forestland that became the RMZ/CMZ where the offending tree stood. CP 1146 (§G-011); CP 1016-18; CP 1381; State's Petition at 22, n.1. Thus, Respondents Precision and Sierra are not "forestland owners" entitled to immunity under RCW 76.09.020(16)'s plain language.

Accordingly, *Amici* highlight a fatal flaw in Petitioners' attempt to shoehorn this case into *Ruiz* towards creating a conflict. Should any of the private forestland owners that comprise *Amici* face a situation similar to this one, they remain shielded by *Ruiz* because they are "forestland owners" of the RMZ/CMZ under RCW 76.09.020(16).[2] But the circumstances here are completely distinguishable, and consequently, no conflict exists between *Ruiz* and this case.

E. The Chrismans Adopt the Arguments in PUD's Answer.

Pursuant to RAP 10.1(g), the Chrismans adopt the arguments presented in Respondent PUD's Answer.

III. CONCLUSION

Amici's memorandum is nothing more than a self-serving attempt to protect its profits. Essentially, *Amici* argue that clear-cutting is good for the economy. While that is questionable at

[2] Assuming an RMZ/CMZ is properly delineated, as it was in *Ruiz*, and includes a wind buffer if appropriate. *See* 154 Wn. App. at 456, 461.

best, it certainly does not satisfy the requirements of RAP 13.4(b). As a result, review should be denied.

I certify that this memorandum contains 1,599 words, in compliance with RAP 18.17.

DATED this 16th day of February 2024.

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CERTIFICATE OF SERVICE

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