NO. 97182-0
COA No. 77044-6-I

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON, Plaintiff-Petitioner,

v.

KENNETH ARTHUR WARD, Defendant-Respondent.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

In response to burglary and sabotage charges stemming from an act of political protest, Mr. Ward admitted his conduct and proffered the affirmative defense of necessity. Although Ward's proffer included extensive evidence on each element, the trial court barred all evidence and testimony on the necessity defense, obviating the jury's role as fact-finder. The Court of Appeals reversed, finding that the trial court had violated Ward's Sixth Amendment right to a defense. The Court of Appeals' ruling is consistent with this Court's decisions and with those of the Court of Appeals. As a consistent application of settled precedent, it does not implicate a significant question of law or of the public interest. This Court should deny review.

II. STATEMENT OF THE CASE

Mr. Ward, along with individuals in four other states, took part in a simultaneous act of civil disobedience to turn off the flow of Canadian tar sands oil into the United States. June 6, 2017 RP 108-9, 114. The goal of the action was to decrease carbon emissions and prevent imminent, catastrophic climate disruption. June 6, 2017 RP 107-9. Kinder Morgan transports Canadian tar sands oil — a sticky substance with an outsized impact on global greenhouse gas emissions — through Washington via pipeline. CP 1, 28-29, 117, 264-65, 400. On October 11, 2016, Mr. Ward

cut a padlock and entered the premises of a Kinder Morgan facility in Burlington. CP 432; June 5, 2017 RP 42-43. Before Mr. Ward had arrived at the location, an associate had called Kinder Morgan to advise that Ward would soon be at the valve location to turn off the pipeline. CP 2; June 6, 2017 RP 109-10. Once inside the fenced area, Ward cut a chain locking access to a manual block valve, which is designed to shut down the flow of oil during routine maintenance and for emergencies. CP 2; June 6, 2017 RP 115. He then turned the valve wheel to the closed position, replaced the chain with a new one, left a bouquet of sunflowers, and waited for law enforcement to arrive. CP 2; June 6, 2017 RP 112.

Mr. Ward has been a leading advocate on environmental issues for more than 40 years. June 6, 2017 RP 94. He has served as the Executive Director of the New Jersey and Rhode Island chapters of state-level Public Interest Research Groups (PIRGs) and the Deputy Executive Director of Greenpeace USA. June 6, 2017 RP 89-90. He has also served as the President of the National Environmental Law Center and co-founder of U.S. PIRG, Environment America, and the Fund for Public Interest Research. He has, among other things, drafted legislative bills and testified before legislative committees in Congress, intervened in state and federal administrative proceedings on issues of energy efficiency, led field coordination in electoral efforts, lobbied, engaged in public education and

advocacy, coordinated litigation, participated in model communities, and testified before governmental agencies. June 6, 2017 RP 94-6. None of these efforts, by Mr. Ward and by numerous other individuals and groups, has precipitated action adequate to address the climate crisis. CP 2-3, 33-5; June 6, 2017 RP 106. Mr. Ward came to understand that less-incremental methods would be required to meaningfully curb global climate degradation and that direct action to address the sources of the problem was necessary. CP 3; June 6, 2017 RP 103-4. Mr. Ward also became aware of the particularly serious climate and pollution risks posed by tar sands oil. CP 3, 28-29, 117, 264-65, 400; June 6, 2017 RP 102.

III. ARGUMENT

A. The Court of Appeals Applied the Correct Standard of Review to a Claimed Violation of the Sixth Amendment Right to Present a Defense.

The Court of Appeals correctly applied a de novo standard of review to Mr. Ward's claim that the denial of his necessity defense violated his constitutional right to present a complete defense to a jury of his peers. Although the trial court's constitutional error involved evidentiary rulings, the Court of Appeals properly concluded that the complete suppression of Mr. Ward's evidence, witnesses, and theory of the case amounted to a Sixth Amendment violation meriting de novo

review. This analysis is consistent with opinions of this Court and the Court of Appeals.

The Court of Appeals below noted that the right to a complete defense is protected by the Sixth Amendment of the United States Constitution and Article 1, Sections 21 and 22 of the Washington Constitution. *State v. Ward,* 438 P.3d 588, 593 (2019). This right entails "a fair opportunity to defend against the State's accusations." *Chambers v. Mississippi,* 410 U.S. 284, 294 (1973). As this Court has stated:

> Whether rooted in the compulsory process clause of the Sixth Amendment or the due process clause of the Fourteenth Amendment, the United States Constitution guarantees a criminal defendant "'a meaningful opportunity to present a complete defense.'" *Holmes v. South Carolina,* 547 U.S. 319, 324 (2006) (quoting *Crane v. Kentucky,* 476 U.S. 683, 690 (1986)). The fundamental due process right to present a defense is the right to offer testimony and compel the attendance of a witness.

State v. Lizarraga, 191 Wash. App. 530, 551-52, 364 P.3d 810 (2015), *as amended* (Dec. 9, 2015).

This Court "review[s] a claim of a denial of Sixth Amendment rights de novo." *State v. Jones*, 168 Wash.2d 713, 719, 230 P.3d 576 (2010). This rule is not suspended because the right to present a defense is limited by rules of procedure and evidence, *Chambers*, 410 U.S. at 302; *Lizarraga*, 191 Wash. App. at 533, 364 P.3d 810, including rules barring irrelevant evidence, *Jones* 18 Wash.2d at 720, 230 P.3d 576 — despite the

fact that evidentiary rulings are generally reviewed for abuse of discretion, *State v. Powell*, 126 Wash. 2d 244, 258, 893 P.2d 615, 624 (1995). In *Chambers v. Mississippi*, the United States Supreme Court reviewed a series of evidentiary and procedural rulings, including the exclusion of hearsay evidence and the denial of the defendants' opportunity to cross-examine a witness, and concluded that "[w]e need not decide, however, whether [each] error alone would occasion reversal since Chambers' claimed denial of due process rests on the ultimate impact of that error when viewed in conjunction with the trial court's refusal to permit him to call other witnesses." 410 U.S. at 298. The need to focus on the "ultimate impact of [an error] means that rules of evidence "may not be applied mechanistically to defeat the ends of justice." *Id.* at 302. This Court reached a similar conclusion in *Jones* when it reviewed the denial of evidence that the defendant had offered to show consent by an alleged rape victim. Because barring such "highly probative" evidence "effectively barred Jones from presenting his defense," the trial court's ruling amounted to a Sixth Amendment violation meriting de novo review. 168 Wash.2d 713, 721, 230 P.3d 576.

In *State v. Iniguez*, 167 Wash. 2d 273, 280-81 (2009), this Court squarely addressed the potential conflict between the abuse of discretion and de novo standards of review in Sixth Amendment cases. Considering

the defendant's claim that an eight-month lag between arrest and trial violated the right to a speedy trial, this Court held that

> a court 'necessarily abuses its discretion by denying a criminal defendant's constitutional rights.' *State v. Perez*, 137 Wn. App. 97, 105, 151 P.3d 249 (2007). And we review de novo a claim of a denial of constitutional rights. *See Brown v. State*, 155 Wn.2d 254, 261, 119 P.3d 341 (2005); *see also United States v. Wallace*, 848 F.2d 1464, 1469 (9th Cir. 1988) (a Sixth Amendment speedy trial claim is reviewed de novo). Because Iniguez argues his constitutional speedy trial rights were violated, our review is de novo.

Following this rule, the Court of Appeals below correctly noted that the trial court had completely barred Mr. Ward's defense theory and that Mr. Ward had claimed a denial of his Sixth Amendment rights; the Court thus applied de novo review. *Ward*, 438 P.3d at 592. Although the decisions leading to this denial were primarily evidentiary rulings, the Court of Appeals resisted a formalistic equation between discretionary rulings and the abuse of discretion standard, properly applying the rule that a court "necessarily abuses its discretion by denying a criminal defendant's constitutional rights," *Iniguez*, 167 Wash. 2d at 280, and moving on to a de novo consideration of that denial.

The Court of Appeals has consistently applied the *Iniguez* rule. In *State v. Sirzheus*, 163 Wash. App. 820, 262 P.3d 100 (2011), Division I applied de novo review to a trial court's decision to exclude evidence that another person had confessed to the murder with which the defendant was

charged, citing *Iniguez*. The Court of Appeals then found that the trial court's exclusion was proper under the suspect evidence rule. *Id.* at 833-34. In *State v. Duarte Vela*, Division III considered a series of trial rulings that excluded evidence central to the defendant's theory of self-defense:

> We continue to review most trial court evidentiary rulings for an abuse of discretion. But when a trial court's discretionary ruling excludes relevant evidence, the more the exclusion of that evidence prejudices an articulated defense theory, the more likely we will find that the trial court abused its discretion. . . .When it comes to ensuring a defendant's Sixth Amendment right to present a defense, it is best to admit relevant evidence and trust the State's cross-examination to ferret out falsities.

200 Wash. App. 306, 317, 323-24, 402 P.3d 281, 287 (2017), *as amended on denial of reconsideration* (Oct. 31, 2017), *review denied sub nom. State v. Vela*, 190 Wash. 2d 1005, 413 P.3d 11 (2018) (citing *Jones* 168 Wash.2d at 720, 230 P.3d 576). Division III reiterated this principle last year in *State v. Burnam*, another self-defense case — "The more the exclusion of defense evidence prejudiced the defendant, the more likely we will find a constitutional violation" 421 P.3d 977, 980 (Wash. Ct. App.), *review denied*, 192 Wash. 2d 1003, 430 P.3d 257 (2018) (citing *Jones*, 168 Wash.2d at 720-21, 230 P.3d 576) — and again last month in *State v. Vittorio*: "This court generally reviews evidentiary rulings for an abuse of discretion. But when a trial court's evidentiary rulings exclude relevant evidence, the more the exclusion prejudices an articulated defense

theory, the more likely we will find that the trial court abused its discretion." No. 36085-7-III, 2019 WL 2306935 at *3 (Wash Ct. App. May 30, 2019) (unpublished opinion) (citing *State v. Horn*, 3 Wn. App. 2d 302, 310, 415 P.3d 1225 (2018) and *Duarte Vela*, 200 Wash. App. at 317.

In its Petition, the State suggests that the Court of Appeals erred in abiding by this well-established focus on a defendant's constitutional rights. Relying primarily on *Horn*, a domestic violence case, the State argues that all rulings on the relevance of proffered evidence must first be decided under the abuse of discretion standard before the constitutional violation may be considered de novo. This argument incorrectly eliminates the constitutional dimension of evidentiary rulings that was established in *Iniguez* and misinterprets the *Horn* decision. In *Horn*, Division II held that a Sixth Amendment claim stemming from the exclusion of evidence must pass three inquiries: first, whether the excluded evidence was minimally relevant; second, if the evidence was relevant, whether the State showed that it was prejudicial; and third, whether the State's interest in excluding prejudicial evidence outweighed the defendant's need. The first inquiry is reviewed for abuse of discretion, while the latter two are reviewed de novo. *Id.* at 3 Wash. App.2d at 310. In contrast to the test offered by the concurrence, the *Horn* majority held that the abuse of discretion standard applied only to the question of whether evidence is minimally relevant,

and not to the overall decision to exclude the evidence: thus, "[t]o show a violation of the right to present a defense, the excluded evidence . . . must first be of at least minimal relevance." *Id.* at 311-12. The Court then reviewed precedent on battered person syndrome and concluded that the proffered evidence (intended to show that the alleged victim did not fear the defendant) was not minimally relevant, ending the inquiry.

The Court of Appeals below followed a similar procedure. It found that Mr. Ward offered "sufficient evidence" of the reasonableness of his belief that his actions were necessary to minimize the harm he perceived; that the harms of global climate change were greater than the harms caused by his actions; that he did not bring about these harms; and that there were no legal reasonable alternatives to his conduct. *Ward*, 438 P.3d at 594-95. These conclusions were based on an analysis of the elements of Washington's common law necessity defense, which determine what evidence is relevant for a defendant offering such a defense. The Court of Appeals therefore engaged in an inquiry into the minimal relevance of Mr. Ward's evidence, and, given that "[t]he threshold to admit relevant evidence is very low," *Horn,* 3 Wash. App.2d 302, 313, 415 P.3d 1225, found that the trial court erred in ruling all of his evidence irrelevant (noting additionally that the trial court would not have "abuse[d] its discretion" if Mr. Ward had introduced this evidence solely for the

purpose of inducing jury nullification, but finding that he had not, *Ward,* 438 P.3d at 595).

The State's insistence that the Court of Appeals decision is in conflict with other decisions appears to stem from an assumption that, because the Court correctly stated at the outset that de novo review is applied to claims of constitutional error, its findings violate a presumed separation of constitutional and evidentiary questions. As noted above, this Court and the Court of Appeals have stated clearly that no such bright-line distinction exists.[1] However, even under such a strict division, the Court of Appeals' opinion clearly describes several trial court errors that constitute abuses of discretion, even in the absence of the constitutional concern. Abuses of discretion occur where

> (1) The decision is "manifestly unreasonable," that is, it falls "outside the range of acceptable choices, given the facts and the applicable legal standard"; (2) The decision is "based on untenable grounds," that is, "the factual findings are unsupported by the record"; or (3) The decision is "based on untenable reasons," that is, it is "based on an incorrect standard or the facts do not meet the requirements of the correct standard."

[1] For the same reason, the State's claim that there is a general rule that abuse of discretion review applies to motions in limine is unavailing. When, as below, a trial court rules on a motion in limine that seeks to admit or exclude evidence relevant to a defense, it is simply making a ruling on the admissibility of evidence. *See State v. Powell*, 126 Wash. 2d 244, 893 P.2d 615 (1995). The Court of Appeals below correctly treated such a ruling under the same *Iniguez* rule governing evidentiary rulings at trial.

State v. Dye, 178 Wash. 2d 541, 548, 309 P.3d 1192, 1196 (2013) (citing *In re Marriage of Littlefield,* 133 Wash.2d 39, 47, 940 P.2d 1362 (1997)).

The Court of Appeals pointed to several instances in which the trial court incorrectly applied the legal standard of the necessity defense:

- The reasonableness of Mr. Ward's beliefs was a question for the jury, not the court. *Ward*, 438 P.3d at 594.
- Mr. Ward was not required to prove that the targeted harm was actually avoided or minimized. *Id.*
- Mr. Ward created a question of fact on whether there were reasonable legal alternatives. *Id.* at 595.
- Mr. Ward provided evidence that he was not engaged in purely symbolic action intended to induce jury nullification. *Id.* at 596.

Thus, even under a theory that strictly separates evidentiary errors under an abuse of discretion standard from constitutional errors under a de novo standard, the Court of Appeals' standard of review was correct. Its analysis of the trial court's errors should stand.

B. The Court of Appeals Did Not Err in its Conclusion that Mr. Ward's Sixth Amendment Right to a Defense Was Denied.

The United States Constitution guarantees the right of criminal defendants to trial by an impartial jury. U.S. Const. amend. VI; *Duncan v. Louisiana*, 391 U.S. 145, 155-56 (1968) ("A right to jury trial is granted to criminal defendants in order to prevent oppression by the Government. . . .

It has long been settled that due process protects persons charged with criminal conduct by permitting them to present exculpatory evidence to the jury."). The Washington Constitution likewise protects the right of criminal defendants to a fair jury trial. Const. art. I § 22; *Jones*, 168 Wn.2d at 720 ("A defendant's right to an opportunity to be heard in his defense, including the rights to examine witnesses against him and to offer testimony, is basic in our system of jurisprudence.")

To ensure full realization of Sixth Amendment guarantees, defendants must be given a "meaningful opportunity to present a complete defense," *Holmes*, 547 U.S. at 324, including an opportunity to "present [their] version of the facts . . . to the jury so it may decide where the truth lies," *Washington v. Texas*, 388 U.S. 14, 19 (1967). "The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations." *Chambers*, 410 U.S. at 294.

A defendant's ability to call witnesses in her defense is especially important to the vindication of her Sixth Amendment rights. "The rights to confront and cross-examine witnesses and to call witnesses in one's own behalf have long been recognized as essential to due process." *Chambers*, 410 U.S. at 294. *See also id.* at 302 ("Few rights are more fundamental than that of an accused to present witnesses in his own defense.");

Washington, 388 U.S. at 19 ("The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense."); *State v. Smith*, 101 Wn. 2d 36, 41 (Wash. 1984) (reaffirming defendants' right to offer witness testimony).

It is the province of the jury, not the judge, to decide facts. *State v. Fry*, 168 Wn. 2d 1, 18 (Wash. 2010) (finding that the trial court had overstepped its role and reaffirming the province of the jury to decide facts). Where a trial court must evaluate factual evidence to determine the availability of an affirmative defense as a matter of law, it must interpret the evidence "strongly in favor of the defendant" and "must not weigh the proof or judge the witnesses' credibility, which are exclusive functions of the jury." *State v. May*, 100 Wn. App. 478, 482, 997 P.2d 956 (2000).

In this case, evidence and testimony on the necessity defense at trial was indispensable to Mr. Ward's "version of the facts," *Washington*, 388 U.S. at 19, and to his entire theory of the case. The bare facts of his conduct — the facts giving rise to the charges — were not just uncontested but had been video-recorded and publicly disseminated. The question at issue was not whether Mr. Ward was factually responsible but whether he was legally culpable.[2] It was constitutionally mandatory that

[2] The fact that the jury hung on both charges in Mr. Ward's first trial, Feb. 1, 2017 RP 254, and on one of two charges in his second trial, CP 438, may be an indication that ordinary people understand this distinction.

Mr. Ward be permitted to introduce evidence to contest his culpability as long as that evidence was relevant and otherwise proper.

As explained below in Part III.C, Mr. Ward's evidence was more than sufficient to meet his pre-trial burden of proof. By rejecting Mr. Ward's evidence in favor of speculation as to additional facts that might contradict it, Jan. 24, 2017 RP 16-18, and by citing an irrelevant concern for the supposedly controversial nature of the case, Jan. 24, 2017 RP 18 (comparing the case to "the Scopes monkey trial"), the trial court deprived Mr. Ward of the opportunity to present the central theory of his case and denied the jury its province as trier of fact.

The Court of Appeals ruled correctly that the trial court's decision to exclude all necessity evidence violated Mr. Ward's Sixth Amendment right to a defense. Having freely admitted to the conduct charged by the State, the trial court's exclusion of proper evidence left Mr. Ward with no meaningful options for defending himself — the fundamental issue of fairness to which the Sixth Amendment's protections are directed.

C. The Court of Appeals Decision Comports with Washington Law on the Necessity Defense.

The Courts of Appeals recognized the common law defense of necessity in *State v. Gallegos*, 73 Wn.App. 644, 651, 871 P.2d 621 (1994) and in *State v. Bailey*, 77 Wn.App. 732, 893 P.2d 681 (1995). The necessity defense is comprised of four elements, as summarized in the

Washington Pattern Instructions: "(1) the defendant reasonably believed the commission of the crime was necessary to avoid or minimize a harm; and (2) harm sought to be avoided was greater than the harm resulting from a violation of the law; and (3) the threatened harm was not brought about by the defendant; and (4) no reasonable legal alternative existed." WPIC § 18.02. In its Petition the State argues that Mr. Ward admitted that he had legal alternatives and that the Court of Appeals' analysis of the legal alternatives element is in conflict with Washington case law. Neither contention is correct.

As the comments to the Pattern Instructions note, the use of the word "reasonable" before "legal alternatives" is deliberate and has a clear basis in Washington case law. WPIC § 18.02, Committee Cmt. 2016. To be construed as available for purposes of a necessity defense, legal alternatives must be reasonable. *State v. Parker*, 127 Wn.App. 352, 354–55, 110 P.3d 1152 (2005); *see also State v. Jeffrey*, 77 Wn.App. 222, 224–26, 889 P.2d 956 (1995). In *State v. Parker*, Division II held that a defendant satisfying the legal alternatives element must demonstrate that "that he had actually tried the alternative or had no time to try it, *or that a history of futile attempts revealed the illusionary benefits of the alternative*." 127 Wn. App. at 355 (emphasis added). "Reasonable," in this context, means that a given alternative is sufficiently effective in

addressing the problem as not to be "illusionary." Likewise, to be "reasonable," potential legal alternatives must also be evaluated in light of the particularized harm(s) the defendant sought to avert, since any evaluation of the effectiveness or futility of an alternative must take into account the targeted harm.

The reasonability requirement is a common-sense safeguard also found in the case law of other jurisdictions. *See, e.g.*, *Commonwealth v. Magadini*, 474 Mass. 593, 601 (2016) ("Our cases do not require a defendant to rebut every alternative that is conceivable; rather, a defendant is required to rebut alternatives that likely would have been considered by a reasonable person in a similar situation."); *State v. Greenwood*, 237 P.3d 1018, 1026 (Ak. 2010) ("To meet the 'some evidence" test for the fourth element, [the defendant] is not required to present evidence that every possible alternative was unavailable to her"); *People v. Gray*, 571 N.Y.S.2d 851, 860 (Crim. Ct. 1991) (finding that the defendants' history of unsuccessful attempts to minimize air pollution demonstrated that legal means were ineffective); *see also* Wayne LaFave & Austin Scott, Criminal Law, 381-383 (1972); Steven M. Bauer & Peter J. Eckerstrom, *The State Made Me Do It: The Applicability of the Necessity Defense to Civil Disobedience*, 39 Stan. L. Rev. 1173, 1179-80 (1987) ("Reasonable must mean more than available; it must imply effective.").

Here, the Court of Appeals took proper account of the reasonability requirement. As Mr. Ward's offer of proof summarized, and as discussed in the defense's previous briefing, CP 3, 7-8, 31-35, legal methods such as public education, litigation, and advocacy before legislatures — undertaken by Ward over a 40-year period and by many others — have proven remarkably *in*effective in averting harms caused by the growing climate emergency, and the harms of tar sands pipelines in particular. While theoretically available, these methods are in fact "illusionary" under the reasoning of *Parker*.[3] The fact that it is possible for Ward to "distribut[e] . . . a message" about the harms of climate disruption and tar sands pipelines, Pet. Review 9, does not establish the reasonableness of thus attempting to avert the harms caused by them. While Mr. Ward was not required at the pre-trial stage to establish conclusively that reasonable legal alternatives were unavailable to him — only to offer a preliminary showing, *Horn,* 3 Wash. App.2d 302, 313, 415 P.3d 1225; *State v. Rouw*, 156 Wn. 198, 208 (Wash. 1930) ("*Prima facie* case means only that the case has proceeded upon sufficient proof to

[3] As Mr. Ward's experts were prepared to explain in their testimony, empirical evidence now demonstrates that the policy preferences of non-wealthy Americans have a near-zero effect on public policy, on climate as on other issues. Mot. Recons. Ex. G, R, E. Mr. Ward's experts were also prepared to testify to the overriding influence of the fossil fuel industry on both federal and state legislatures and the historical track record of civil disobedience in spurring progress on theretofore-intractable social problems. Mot. Recons. Ex. G, R, E, F, H.

that stage where it must be submitted to the jury, and not decided against the plaintiff as a matter of law") — his evidence, if allowed at trial, could have convinced a reasonable juror that there were no such alternatives.

The Court of Appeals noted correctly that Mr. Ward did not, contrary to the State's assertions in its Petition, admit at trial to the existence of reasonable legal alternatives. *Ward,* 438 P.3d 588 at 597 ("Ward was addressing the ineffectiveness of his alternatives and was not admitting that he had reasonable legal alternatives available to him."). The Court of Appeals was likewise correct in its analysis of the harm Mr. Ward sought to avert. Mr. Ward did not address his actions to averting any and all harms associated with global climate change; rather, his protest targeted the special dangers of tar sands oil, with its disproportionate contributions to climate change as well as sea level rise in Washington. *Ward,* 438 P.3d 588 at 596. The examples cited by the State as evidence that Ward failed to exhaust legal alternatives, Pet. Review 5-6, 7-8 — such as securing renewable energy commitments from the City of Portland — have no bearing on these particularized harms from tar sands pipelines.

The State does not cite any published opinions in Washington that conflict with the Court of Appeals decision. Moreover, there is no legal authority in Washington suggesting that reasonable legal alternatives are necessarily available in protest cases. Pet. Review 9, 10 (arguing that

"harm can always be mitigated by congressional action" and that Ward's "acknowledged engagement in the democratic process defeats . . . his defense").

In the absence of published authority conflicting with the Court of Appeals' analysis of the necessity defense, the State's Petition does not qualify for review under this Court's Rules. RAP 13.4(b)(1)-(2).

D. The State's Mischaracterization of the Evidence Invalidates Its Argument about the Public Interest.

The State's final argument for review cites the public interest. Pet. Review 16. A premise of the State's argument is that legal alternatives were available to Mr. Ward — and, the State implies, to other protesters like him. *Id.* 16-17. However, as noted above, Mr. Ward did not admit that reasonable legal alternatives were available to him — his evidence, if allowed, might have demonstrated otherwise — and there is no authority to indicate that such alternatives must automatically be construed as available in protest cases. The State's argument also assumes that Mr. Ward "commit[ted] [a] crime[]" notwithstanding his affirmative argument as to the justification for his actions. Pet. Review 17. Whether Mr. Ward committed a crime has not been conclusively established, given that, as the Court of Appeals held, the trial court denied his right to a complete defense. Since the State's argument regarding the public interest rests on untenable assumptions, it cannot provide a basis for review.

IV. CONCLUSION

For the reasons set forth in this Answer, this Court should deny review and affirm the Court of Appeals opinion recognizing Mr. Ward's Sixth Amendment right to a complete defense.

Respectfully submitted this 7th day of June, 2019.

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