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SUPREME COURT OF THE STATE OF WASHINGTON

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KARL WOOLERY,

Appellant,

v.

STATE OF WASHINGTON and COUNTY OF SPOKANE, a political
subdivision of the State of Washington,

Respondent.

STATE RESPONDENT'S OPENING BRIEF - CORRECTED

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ORIGINAL

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	ISSUES PRESENTED ON APPEAL	2
III.	COUNTERSTATEMENT OF THE CASE	3
	A. Underlying Tort Case In Spokane County	4
	B. Collateral Case In Thurston County	5
IV.	LEGAL ARGUMENT	6
	A. Standards Of Review	7
	1. Rule 12(b) Motions Assume The Truth Of All Of Plaintiff’s Allegations But Only Entitles The Non- Movant To Reasonable Inferences	7
	2. The Non-Constitutional Bases For The CR 12 Dismissal Of Woolery’s Case Are The Primary Issues On Appeal	8
	3. Appellate Courts Can Affirm On Any Grounds That Will Sustain The Trial Court’s Dismissal	9
	B. Woolery’s Appeal Is Moot As There Is No Relief That A Court Can Award To Address His Alleged Injuries	9
	C. Alternatively, The Thurston County Superior Court’s Dismissal On CR 12(b) Grounds Was Appropriate.....	12
	1. Woolery’s Adequate Remedy At Law In The Spokane Court Rules And Procedures Precluded The Declaratory/Injunctive/Mandamus Relief He Requested From The Thurston Court	13
	2. Woolery Had No Claim For Monetary Relief	15

3.	Woolery Lacks Standing To Obtain Relief On Behalf Of Other Persons And Entities, Including The Spokane Superior Court	17
4.	Const. Art. I, § 10 Does Not Guarantee Or Require A “Speedy Civil Trial”	21
V.	CONCLUSION	25

TABLE OF AUTHORITIES

Cases

<i>Anderson v. City of Seattle</i> , 123 Wn.2d 847, 873 P.2d 489 (1994).....	8
<i>Blinka v. Wash. State Bar Ass'n</i> , 109 Wn. App. 575, 36 P.3d 1094 (2001).....	16
<i>Brown v. State</i> , 155 Wn.2d 254, 119 P.3d 341 (2005).....	20
<i>Carrick v. Locke</i> , 125 Wn.2d 129, 882, P.2d 173 (1983).....	19
<i>Casebere v. Clark County Civil Cvs. Comm'n</i> , 21 Wn. App. 73, 584 P.2d 416 (1978).....	18
<i>Christensen v. Munsen</i> , 123 Wn.2d 234, 867 P.2d 626 (1994).....	10
<i>City of Seattle v. State</i> , 100 Wn.2d 16, 666 P.2d 359 (1983).....	25
<i>Davenport v. Washington Educ. Ass'n</i> , 147 Wn. App. 704, 197 P.3d 686 (2008), <i>review granted</i> , 166 Wn.2d 1005, 208 P.3d 1124 (2009).....	8
<i>Ducote v. DSHS</i> , 167 Wn.2d 697, 222 P.3d 785 (2009).....	21
<i>Federal Way v. State</i> , 167 Wn.2d 514, 219 P.2d 941 (2009).....	18, 19
<i>Gerberding v. Munro</i> , 134 Wn.2d 188, 949 P.2d 1366 (1998).....	20
<i>Gorman v. City of Woodinville</i> , 160 Wn. App. 759, 249 P.3d 1040 (2011).....	8

<i>Haberman v. Wash. Pub. Power Supply System,</i> 109 Wn.2d 107, 744 P.2d 1031 (1987).....	18
<i>Harvest House Rest. v. Lynden,</i> 102 Wn.2d 369, 685 P.2d 600 (1984).....	12
<i>Hosing Auth. of Everett v. Terry,</i> 114 Wn.2d 558, 789 P.2d 745 (1990).....	10
<i>In re Cross,</i> 99 Wn.2d 373, 662 P.2d 828 (1983).....	10
<i>In re Juvenile Director,</i> 87 Wn.2d 232, 552 P.2d 163 (1976).....	20
<i>In re Marriage of Giordano,</i> 57 Wn. App. 74, 787 P.2d 51 (1990).....	13, 22
<i>In re Rebecca K.,</i> 101 Wn. App. 309, 2 P.3d 501 (2000).....	10
<i>In re Salary of Superior Court Judges,</i> 82 Wash 623, 144 P. 929 (1914)	24
<i>King Cnty. v. Boeing Co.,</i> 18 Wn. App. 595, 570 P.2d 713 (1977).....	14
<i>King v. King,</i> 162 Wn.2d 378, 174 P.3d 659 (2007).....	22
<i>Kucera v. State Dep't of Transp.,</i> 140 Wn.2d 200, 995 P.2d 63 (2000).....	14
<i>Ludwig v. Dep't of Retirement Systems,</i> 131 Wn. App. 379, 127 P.3d 781 (2006).....	18
<i>Marchioro v. Chaney,</i> 90 Wn.2d 298, 582 P.2d 487 (1978).....	17
<i>McMurry v. Chevy Chase Bank,</i> 169 Wn.2d 96, 233 P.3d 861 (2010).....	8

<i>Nat'l Elec. Contractors Assoc. v. Seattle Sch. Dist. No. 1,</i> 66 Wn.2d 14, 400 P.2d 778 (1965).....	11
<i>Orwick v. Seattle,</i> 103 Wn.2d 249, 692 P.2d 793 (1984).....	10, 11
<i>Paxton v. City of Bellingham,</i> 129 Wn. App. 439, 119 P.3d 373 (2005).....	14
<i>Pearson v. Vandermay,</i> 67 Wn.2d 222, 407 P.2d 143 (1965).....	8
<i>Pischue v. Olson,</i> 173 Wash. 60, 21 P.2d 516 (1933)	24
<i>Rausch v. Chapman,</i> 16 Wash. 568, 48 P. 253 (1897)	23
<i>Reeder v. King Cnty.,</i> 57 Wn.2d 563, 358 P.2d 810 (1961).....	14
<i>Reid v. Pierce County,</i> 136 Wn.2d 195, 961 P.2d 333 (1998).....	7, 15, 16
<i>Rustlewood Ass'n v. Mason Cnty.,</i> 96 Wn. App. 788, 981 P.2d 7 (1999).....	16
<i>Rutherford v. State of Wash.,</i> No. CV04-5020RBL, 2008 WL 2953560 (W.D.Wash. July 29, 2008)	16
<i>Schneider v. Amazon.com, Inc.,</i> 108 Wn. App. 454, 31 P.3d 37 (2001).....	7
<i>Seattle Sch. Dist. v. State,</i> 90 Wn.2d 476, 585 P.2d 71 (1978).....	19, 22
<i>Sorenson v. Bellingham,</i> 80 Wn.2d 547, 496 P.2d 512 (1972).....	10, 12

<i>Spurell v. Bloch</i> , 40 Wn. App. 854, 701 P.2d 529 (1985).....	16
<i>Stafne v. Snohomish Cnty.</i> , 156 Wn. App. 667, 234 P.3d 225 (2010).....	14
<i>State v. Harp</i> , 13 Wn. App. 273, 534 P.2d 848 (1975).....	23
<i>State v. Smith</i> , 104 Wn.2d 497, 707 P.2d 1306 (1985).....	8
<i>State v. Vukich</i> , 158 Wash. 362, 290 P. 992 (1930)	23
<i>State v. Wise</i> , 148 Wn. App. 425, 200 P.3d 266 (2009).....	18
<i>Sys. Amusement, Inc. v. State</i> , 7 Wn. App. 516, 500 P.2d 1253 (1972).....	16
<i>Wendle v. Farrow</i> , 102 Wn.2d 380, 686 P.2d 480 (1984).....	9
<i>Weyerhaeuser Co. v. Commercial Union Ins.</i> , 142 Wn.2d 654, 15 P.3d 115 (2000).....	10
<i>Wilkes v. Hunt</i> , 4 Wash. 100, 29 P. 830 (1892)	14
<i>Yurtis v. Phipps</i> , 143 Wn. App. 680, 181 P.3d 849 (2008).....	9, 13, 22
<i>Zylstra v. Piva</i> , 85 Wn.2d 743, 539 P.2d 823 (1975).....	18

Constitutional Provisions

Wash. Const. art. I, § 10.....	passim
Wash. Const. art. I, § 22.....	23

Wash. Const. art. IV, § 13.....	24
---------------------------------	----

Statutes

42 U.S.C. § 1983.....	16
RCW 2.08.061	24, 25
RCW 43.135.060	20, 21, 25

Other Authorities

1980 Op. Att'y Gen. No. 3	25
1981 Op. Att'y Gen. No. 5.....	20, 21

Rules

CR 12	8
CR 12(b).....	passim
CR 12(b)(6).....	1, 8, 25
CR 40	12, 14
CR 59	12
RAP 2.3.....	4, 12, 14, 15
RAP 2.1(a)	15
RAP 2.2.....	15
Spokane LCR 40	12
Spokane LCR 40(d)	14

I. INTRODUCTION

Karl Woolery appeals from the Thurston County Superior Court's CR 12(b)(6) dismissal of his collateral attack on discretionary rulings made in another case by the Spokane County Superior Court. CP at 83-86. The rulings continued the trial date in a civil case Woolery brought in Spokane County. CP at 42-51. Woolery claimed that the continuances occurred due to insufficient court resources and in violation of Woolery's constitutional right to a "speedy civil trial." CP at 45, ¶ 3.6; 46, ¶ 3.8; 47, ¶ 3.9; 50, ¶¶ 3, 4. The sole basis alleged for this right was Wash. Const. art. I, § 10: "Justice in all cases shall be administered openly without unnecessary delay." CP at 43, ¶ 3.1; 49, ¶¶ 3.13 to 50, ¶ 4.5

When he filed his Thurston County Complaint, Woolery claimed entitlement to three types of relief: 1) an order assigning a firm trial date for his Spokane case; 2) damages for allegedly higher litigation costs due to the Spokane continuances; and 3) an order to the Legislature to appropriate increased funding earmarked specifically to the Spokane Superior Court to ensure that Woolery's trial would occur without further delay. CP at 10-11. Events since the Complaint was filed have completely mooted Woolery's case because his Spokane case was, in fact, tried in June 2011 and he has waived his appeal regarding the dismissal of

his damages case. There is no relief a court can now award for injuries allegedly suffered by Woolery.

Even if his case were not moot, the Thurston County Superior Court properly dismissed his case as a matter of law. With respect to his now moot request for a firm trial date and for court-ordered funding to hold that date, the court properly held that it could not award declaratory, injunctive, or mandamus relief because plaintiff had an adequate remedy at law. With respect to Woolery's now abandoned claim for damages, the court properly ruled that damages are not recoverable for alleged violations of the Washington Constitution. Alternatively, Woolery lacks standing to assert the right of others, including the state courts. Finally, Cont. art. I, § 10 does not guarantee a "speedy civil trial" and Woolery cites no authority from Washington or any other jurisdiction that has so held.

II. ISSUES PRESENTED ON APPEAL

The State disagrees with Woolery's Statement of Issues on appeal. The following identifies the issues that dispose of this case:

1. Is Woolery's case now moot, given that he has received his trial on the merits in Spokane and has abandoned his appeal of the dismissal of his damages claim?

2. Alternatively, was the trial court correct in dismissing the Thurston County case because:

a. Declaratory and injunctive relief were not recoverable because Woolery had a mandatory and adequate remedy at law in his Spokane case under the civil rules governing trial date settings and continuances and under the Rules of Appellate Procedure (RAP) that apply to review of trial court rulings that Woolery disagreed with?

b. Damages are not recoverable for alleged violations of the Washington Constitution;

c. Woolery had no standing to obtain relief on behalf of other persons or to institutional relief in the form of court-ordered, increased legislative appropriations for the state judiciary;

d. Const. art. I, § 10 does not create a “right to a speedy civil trial” but it does require Woolery to abide by the court rules (Civil Rules, Local Rules, and Rules of Appellate Procedure) applicable to the Spokane forum when he brought his underlying claims.

III. COUNTERSTATEMENT OF THE CASE

The Thurston County Superior court dismissed Woolery’s Amended Complaint for failure to state a claim for which the relief he

requested could be granted. CP at 83-86; RP at 28-30. The allegations in the Amended Complaint were taken as true; however, these allegations and subsequent admissions by Woolery confirm the appropriateness of the dismissal order.

A. Underlying Tort Case In Spokane County

Woolery brought his tort claim in Spokane County Superior Court in July 2008 to redress injuries he sustained in 2006. CP at 43, ¶ 3.2. The case went to trial in June 2011. Petitioner’s Brief (Pet’r. Br.) at 6. An initial assigned trial date of October 12, 2009, was continued because the defendant requested an extension that Woolery did not oppose. *Id.* at 1. Similarly, Woolery has admitted that he asked for two subsequent continuances. CP at 43, ¶ 3.2 to 44, ¶3.3. Woolery’s allegations, “taken as true,” established that three of the five continuances he complained about were with his consent. Woolery’s pleadings thus confirmed that his own litigation strategy accounted for most of the delay he experienced in getting to trial in Spokane.

Significant by its omission from the Amended Complaint is any allegation that he made his Const. art. I, § 10 “unnecessary delay” claim in opposition to the Spokane court’s continuing his Spokane trial. Nor does he allege that he exercised his right to raise Const. art. I, § 10 as a basis for the right to seek discretionary review under RAP 2.3 in Division III of the

Court of Appeals. Thus, Woolery has conceded that neither the Spokane County Superior Court nor the appropriate Court of Appeals were provided the opportunity to consider Woolery's constitutional claim as it related to the continuances of his Spokane trial. Both of these options were available to Woolery and neither required him to institute another case in Spokane or to join additional defendants or claims to his tort case.

B. Collateral Case In Thurston County

In September 2010, instead of raising his "unnecessary delay" constitutional arguments in opposition to the Spokane court's continuance of this trial date, Woolery raised that claim in a collateral lawsuit against the State and Spokane County. CP at 42-52. When he filed the Thurston County case, Woolery asked for damages, a court-ordered trial date for the Spokane case and a court order directing that the Legislature provide more funding to Spokane so he could get his Spokane case to trial. CP at 50-51. Woolery filed his Thurston County case before the Spokane County Superior Court assigned the June 20 trial date for his personal injury claim. RP at 25. The assignment of that trial date in late 2010 led Woolery to abandon his demand that the Thurston court order the Spokane court to give him a trial date. RP at 31. He amended his complaint and continued to demand damages and court-ordered funding, if needed, to hold that trial date. CP at 50-51.

The Amended Complaint consistently alleges that Woolery's claims of harm relate to injuries that he – not others – has suffered. CP at 43, ¶ 2.1; 51, ¶¶ 1 to 5. Indeed, of the seven paragraphs of relief requested in the Amended Complaint, the completion of his Spokane trial has provided all the declaratory and injunctive relief Woolery demanded to redress his injuries. Having abandoned his claim for damages on appeal (as discussed *infra*), the only remaining relief was for court-ordered funding for “citizens such as Plaintiff” to get to trial “without unnecessary delay” (CP 50, ¶¶ 3-4) and court-ordered funding for the Spokane Superior Court to remedy “a violation of the separation of powers doctrine.” CP at 50, ¶¶ 5-6. That relief would not benefit Woolery, but unidentified non-parties or the judicial branch.

IV. LEGAL ARGUMENT

The appellate court should affirm the CR 12(b) dismissal because Woolery has received his trial on the merits in Spokane and has abandoned his damages claim. This appeal is moot. Even if the case were not moot, however, the dismissal was appropriate because, as a matter of law, Woolery was not entitled to the monetary and injunctive relief he sought. Finally, and most importantly, Woolery's constitutional argument that he had a right to a “speedy civil trial” had no basis in Washington law,

under the laws of other states, or under the other authorities extensively cited in his brief.

A. Standards Of Review

Woolery discusses the standards applicable to deciding CR 12(b) motions while his fourth Assignment of Error states that the trial court failed to accept his allegations as true in dismissing his case. Pet'r Br. at 4, 7. As this Court can determine from the Report of Proceedings, RP at 28-31, the Thurston County Court did no such thing. Indeed, other legal standards will determine this appeal and a review of the trial court's rulings confirms that, in deciding every issue adversely to Woolery, Judge Casey accepted Woolery's paramount factual allegation – that continuances occurred because of a lack of an available judge to hear his case. *Id.* Judge Casey ruled that Woolery was not entitled to the relief he requested despite this "assumed" fact. *Id.*

1. Rule 12(b) Motions Assume The Truth Of All Of Plaintiff's Allegations But Only Entitles The Non-Movant To Reasonable Inferences

A court evaluates a CR 12(b) motion to dismiss by accepting as true the allegations of a well-pleaded complaint. *Reid v. Pierce County*, 136 Wn.2d 195, 201, 961 P.2d 333 (1998); *Schneider v. Amazon.com, Inc.*, 108 Wn. App. 454, 459, 31 P.3d 37 (2001). A plaintiff can overcome a CR 12(b) challenge if facts can be established to support the allegations

in the complaint. *McMurry v. Chevy Chase Bank*, 169 Wn.2d 96, 101, 233 P.3d 861 (2010). Only “reasonable” inferences from the facts pleaded can be drawn in Woolery’s favor. *Gorman v. City of Woodinville*, 160 Wn. App. 759, 249 P.3d 1040 (2011). While the court accepts as true factual allegations in a complaint when deciding 12(b)(6) motions, neither the trial court nor the appellate court accepts legal conclusions proceeding from those facts in the complaint, but instead decides legal questions de novo. *E.g., Pearson v. Vandermay*, 67 Wn.2d 222, 230, 407 P.2d 143 (1965); *Davenport v. Washington Educ. Ass’n*, 147 Wn. App. 704, 715-16, 197 P.3d 686 (2008), *review granted*, 166 Wn.2d 1005, 208 P.3d 1124 (2009). Where, as here, the facts alleged do not justify the requested remedies, CR 12 dismissal is appropriate. .

2. The Non-Constitutional Bases For The CR 12 Dismissal Of Woolery’s Case Are The Primary Issues On Appeal

A fundamental proposition guiding appellate review is that courts of appeals must decide cases, wherever possible, on grounds that do not require the court to interpret or construe the constitution or to resolve constitutional questions. *Anderson v. City of Seattle*, 123 Wn.2d 847, 853, 873 P.2d 489 (1994); *State v. Smith*, 104 Wn.2d 497, 707 P.2d 1306 (1985). The trial court dismissed Woolery’s case on non-constitutional reasons like the unavailability of damages and declaratory or injunctive

relief. RP at 28-31. In deciding this appeal, the reviewing court need not address the constitutional merits of Woolery's claim (*infra* at section C. 4) because black letter principles of law governing remedies (*infra* at sections B. and C. 1-3) require that the dismissal be affirmed. The non-constitutional grounds for dismissal render irrelevant the constitutional analysis that consumes 40 pages of Woolery's 45 page opening brief.

3. Appellate Courts Can Affirm On Any Grounds That Will Sustain The Trial Court's Dismissal

Another standard for appellate review that pertains to Woolery's appeal is that any grounds that support the trial court's CR 12(b) dismissal can be the basis for affirming the result below. *Wendle v. Farrow*, 102 Wn.2d 380, 382, 686 P.2d 480 (1984); *Yurtis v. Phipps*, 143 Wn. App. 680, 690, 181 P.3d 849 (2008). Where, as here, the trial court's judgment was based on a number of grounds, the court need only find one of the bases justified in order to affirm.

B. Woolery's Appeal Is Moot As There Is No Relief That A Court Can Award To Address His Alleged Injuries

Woolery's Spokane case was tried on the merits and concluded by the time he filed his appellate brief. Pet'r Br. at 6. That trial provided all of the non-monetary relief he had requested to redress his alleged injuries: a specific trial date and an order to provide the resources needed to hold that trial date. CP at 50-51, ¶¶ 1, 3, 5. The remaining relief—monetary

damages—has also become unavailable to Woolery because he failed to assign error to the dismissal of his damages claim, he did not identify the damages claim dismissed as an “Issue Pertaining to Assignment of Error” and did not brief the issue on appeal. Woolery thus has waived the appeal of the dismissal of his damages claim. *Weyerhaeuser Co. v. Commercial Union Ins.*, 142 Wn.2d 654, 692-93, 15 P.3d 115 (2000); *Christensen v. Munsen*, 123 Wn.2d 234, 867 P.2d 626 (1994).

As the Spokane trial and Woolery’s waiver have eliminated the prospect that he can get any relief in this case for his alleged injuries, this appeal is completely moot. *Orwick v. Seattle*, 103 Wn.2d 249, 253, 692 P.2d 793 (1984); *In re Cross*, 99 Wn.2d 373, 377, 662 P.2d 828 (1983). Appellate courts generally will not decide moot questions or abstract propositions. *Hosing Auth. of Everett v. Terry*, 114 Wn.2d 558, 570, 789 P.2d 745 (1990); *In re Rebecca K.*, 101 Wn. App. 309, 2 P.3d 501 (2000).

Anticipating this argument, Woolery alludes to, but does not discuss or cite authority regarding, a limited exception that allows (but does not mandate) discretionary review of moot cases involving recurring issues of substantial or continuing public interest. Pet’r Br. at 6. This exception applies only if the real merits of the controversy remain unsettled. *Sorenson v. Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972); *Nat’l Elec. Contractors Assoc. v. Seattle Sch. Dist. No. 1*, 66

Wn.2d 14, 400 P.2d 778 (1965). Woolery's Spokane case has now been tried and he has waived his damages, thereby resolving the dispute between Woolery and defendants and leaving only claims for relief allegedly belonging to unidentified or institutional non-parties. The "real merits" of Woolery's claim against the State and County are completely resolved.

Furthermore, Woolery's appeal is from a pre-trial dismissal order and the public interest exception will not apply to cases becoming moot before they go to trial: "the moot cases which this [Supreme Court] has reviewed in the past have been cases which became moot only after a hearing on the merits of the claim." *Orwick*, 103 Wn.2d at 253. In *Orwick*, the court declined to consider a case that became moot before trial, distinguishing its earlier opinions that had considered cases that had become moot after a trial. The court reasoned that unlike those cases in which trial had occurred, "[d]ismissal of their claim will not involve a waste of judicial resources and will avoid the danger of allowing petitioners to litigate a claim in which they no longer have an existing interest." *Orwick*, 103 Wn.2d at 253-54. Woolery's Thurston County case was dismissed within months of its filing, on pre-trial motions, well before a hearing on the merits of his claim that he could not get to trial in Spokane due to the Legislature's inadequate funding of the Spokane

courts. Woolery's Thurston County case became moot because he got his relief from the Spokane court, where he had his exclusive remedy at law. Thus, even if Woolery could demonstrate the requisite "public interest" to allow discretionary review of an otherwise moot case,¹ the lack of a trial on the merits of his Thurston County case militates in favor of dismissing this moot appeal.

C. Alternatively, The Thurston County Superior Court's Dismissal On CR 12(b) Grounds Was Appropriate

Even if this case were not moot, the trial court properly dismissed Woolery's case on a number of grounds. RP at 28-31. First, Woolery had an adequate remedy at law through the civil court rules governing trial assignments in his Spokane case (CR 40, 59; LCR 40) and through the right to seek discretionary review (RAP 2.3), which rendered the injunctive relief he sought in his collateral Thurston case unavailable as a matter of law. Second, Washington law prohibits claims for damages

¹ The factors that determine "substantial public interest" in deciding whether to exercise discretion to hear an appeal that has become moot are 1) the public or private nature of the question presented; 2) the need for an authoritative determination for the future guidance of public officers; and 3) the likelihood of future recurrence of the questions. *Sorensen*, 80 Wn.2d at 558. They do not apply here because there are no individual litigants identified or alleged to have trial setting issues in Spokane County, other than Woolery. Woolery's allegations were personal to him, relating to his need to get to trial. Mootness determinations do not carry with them the factual presumptions and inferences that govern CR 12(b) motions and the general, unspecified references to "others" cannot turn a private litigant's concerns into a recurring issue of public interest. Moreover, where, as in this case, the public interest alleged applies only to a portion of the State – Spokane County – there is insufficient interest to the public at large to prevent dismissal of the appeal. See *Harvest House Rest. v. Lynden*, 102 Wn.2d 369, 373, 685 P.2d 600 (1984).

allegedly arising due to violations of the Washington Constitution. Third, Woolery lacked standing to obtain relief for unidentified non-parties or to receive institutional relief. Fourth, the Washington Constitution in no way creates a right to a “speedy civil trial.”

1. Woolery’s Adequate Remedy At Law In The Spokane Court Rules And Procedures Precluded The Declaratory/Injunctive/Mandamus Relief He Requested From The Thurston Court

As discussed *infra*, a civil litigant’s right to access the state courts is conditioned on that litigant’s good faith compliance with court rules and procedures. *Yurtis*, 143 Wn App. at 694; *In re Marriage of Giordano*, 57 Wn. App. 74, 77, 787 P.2d 51 (1990). Indeed, Woolery himself has cited the constitutional and statutory provisions and civil rules adopted by Washington courts that vested in the Spokane Superior Court the authority to make rulings in order to “best promote and secure the convenient and expeditious transaction” of the court’s business. Pet’r Br. at 17, 30. When it suited his litigation strategy to obtain a more accessible jurist or an earlier trial date, Woolery invoked those very rules. CP at 5-6, ¶ 3.2; 3, ¶ 3.3. However, he declined to use those same rules to advance his Const. art. I, § 10 argument to the Spokane court as a factor to be considered in continuing or holding his Spokane trial date. Pet’r Br. at 42-43.

It is axiomatic that a party cannot get declaratory, injunctive, or mandamus relief whenever he or she has a plain, speedy, and adequate remedy at law. *E.g.*, *Reeder v. King Cnty.*, 57 Wn.2d 563, 358 P.2d 810 (1961) and *King Cnty. v. Boeing Co.*, 18 Wn. App. 595, 570 P.2d 713 (1977) (declaratory relief unavailable); *Kucera v. State Dep't of Transp.*, 140 Wn.2d 200, 995 P.2d 63 (2000) and *Wilkes v. Hunt*, 4 Wash. 100, 29 P. 830 (1892) (injunctive relief unavailable); *Stafne v. Snohomish Cnty.*, 156 Wn. App. 667, 234 P.3d 225 (2010) and *Paxton v. City of Bellingham*, 129 Wn. App. 439, 119 P.3d 373 (2005) (mandamus relief unavailable). Woolery's adequate remedy at law has always existed in the Civil Rules that pertain to the forum he selected to hear his personal injury case. Both CR 40 and Spokane LCR 40(d) and (e) provide (emphasis added):

(d) **Trials.** When a case is set and called for trial, it shall be tried or dismissed unless good cause is shown for a continuance. The court may in a proper case, and upon terms, reset the same.

(e) **Continuances.** All continuances will be considered only upon written motion, for unforeseeable emergencies, for good cause shown, and upon terms the court deems just.

These rules provided Woolery the exclusive vehicle to assert his alleged constitutional right to a speedy civil trial.

If dissatisfied with a trial court ruling that continued his Spokane case, Woolery had an adequate legal remedy in his right to seek discretionary review of that ruling under RAP 2.3: a party may seek

discretionary review of any act of the superior court not appealable as a matter of right.² RAP 2.1(a) mandates that civil litigants use the appeal and discretionary review procedures outlined in RAP 2.2, 2.3 as “the only methods for seeking review of the decisions of the superior court.” Review of trial court decisions by “extraordinary writs of review . . . [and] mandamus” are superseded. *Id.* Thus, Washington law prohibits collateral lawsuits (like Woolery’s Thurston County case) to challenge and, in effect to obtain appellate review of trial date continuances.³ The Thurston court’s dismissal of Woolery’s claims for injunctive relief was appropriate as a matter of law.

2. Woolery Had No Claim For Monetary Relief

In *Reid v. Pierce Cnty.*, 136 Wn.2d at 213-14, this Court declined to create a constitutional claim for damages for alleged violations of a

² Woolery suggests he had no remedy in Spokane because he had no right to appeal the continuances under RAP 2.2. Pet’r Br. at 40. While true that a continuance ruling is not an appealable “final judgment,” Woolery had the option of seeking immediate discretionary review or waiting to see if the final judgment in Spokane was a result Woolery wanted to appeal from, at which point he could raise his Const. art. I, § 10 claim as part of that appeal.

³ Woolery also makes the curious argument that his remedy in Spokane was foreclosed by the dismissal of his Thurston case “with prejudice.” This contention is absurd. Woolery always had the option of raising his Const. art. I, § 10 rights each time that the court considered moving his Spokane trial date. He concedes that he declined to do so. The Thurston County dismissal, in effect, was a rejection of Woolery’s collateral attack to make constitutional or other arguments about the Spokane court’s discretionary rulings. He always has had the ability and the duty to raise these arguments directly in Spokane.

state constitutional right to privacy.⁴ The *Reid* decision was consistent with appellate court holdings precluding the recovery of damages in such cases:

Washington courts have consistently rejected invitations to establish a cause of action for damages based upon constitutional violations without the aid of augmentative legislation.

Blinka v. Wash. State Bar Ass'n, 109 Wn. App. 575, 591, 36 P.3d 1094 (2001); *Spurell v. Bloch*, 40 Wn. App. 854, 860-61, 701 P.2d 529 (1985); *Sys. Amusement, Inc. v. State*, 7 Wn. App. 516, 517, 500 P.2d 1253 (1972). No augmentative (or other) legislation creates a private cause of action for damages for a violation of Const. art. I, § 10.

Finally, in a more recent federal case, the court held, as a matter of Washington law, that there is no claim for damages for alleged violations of state constitutional rights to free speech, due process and equal protection “considering [the] Washington courts’ consistent refusals to recognize a cause of action in tort for constitutional violations.” *Rutherford v. State of Wash.*, No. CV04-5020RBL, 2008 WL 2953560 at *6-8 (W.D.Wash. July 29, 2008). If damages are not

⁴ Unlike state law, federal courts can award damages for federal constitutional violations under the federal civil rights statute, 42 U.S.C. § 1983. There is no state law equivalent to the federal statute. *Rustlewood Ass'n v. Mason Cnty.*, 96 Wn. App. 788, 801, n.10, 981 P.2d 7 (1999). Neither the original or amended Complaint contained federal law claims. The sole basis for liability is Const. art. I, § 10.

recoverable for alleged violations of these important constitutional rights, they cannot be awarded for alleged Const. art. I, § 10 violations.

3. Woolery Lacks Standing To Obtain Relief On Behalf Of Other Persons And Entities, Including The Spokane Superior Court

Woolery's Amended Complaint contained requests for relief to alleviate his alleged injuries. CP at 50-51, ¶¶ 1, 2, 6. He brought the Thurston case "individually on his own behalf. . . . [a]s a private citizen and taxpayer." CP at 43, ¶ 2.1. He also prayed for injunctive relief on behalf of unidentified, non-party "citizens such as plaintiff" who needed a trial without unnecessary delay (CP at 50, ¶¶ 3, 4) and for injunctive relief to cure alleged "violation of the separation of powers doctrine." CP at 50-51, ¶¶ 4, 5. However, he has never alleged specifically the identities and circumstances pertaining to others who had been denied the right to a "speedy civil trial" or alleged any specifics that could identify the person(s) or event(s) pertinent to any "citizens such as plaintiff." Equally dispositive is his failure to plead the basis for his ability to assert the rights of third-parties or the rights of the Spokane Superior Court.

Washington's courts have uniformly held that an individual does not have standing⁵ to assert or defend the constitutional, statutory or

⁵ Woolery contends (without citing authority) that standing is a three part determination, Pet'r Br. at 21, relying in part on *Marchioro v. Chaney*, 90 Wn.2d 298, 303, 582 P.2d 487 (1978). However, *Marchioro* mandates that Woolery have a "personal

common law rights of a third-party or the public. *Haberman v. Wash. Pub. Power Supply System*, 109 Wn.2d 107, 138, 744 P.2d 1031 (1987); *State v. Wise*, 148 Wn. App. 425, 441-42, 200 P.3d 266 (2009); *Ludwig v. Dep't of Retirement Systems*, 131 Wn. App. 379, 385, 127 P.3d 781 (2006). A person whose interest in a legal controversy is one shared with citizens in general has no standing to sue on behalf of other citizens. *Casebere v. Clark County Civil Cvs. Comm'n*, 21 Wn. App. 73, 76, 584 P.2d 416 (1978). The trial court correctly dismissed Woolery's claim for relief on behalf of "citizens such as plaintiff."

Nor does Woolery have taxpayer standing, on behalf of himself or third-parties. In *Federal Way v. State*, 167 Wn.2d 514, 527-29, 219 P.2d 941 (2009), the court rejected the claim that private citizens and taxpayers had standing to challenge the state's funding mechanisms for public schools. The court reasoned that those individuals (including parents, students, and teachers) "have no personal claim to education funding allocations [because] the funds are a benefit paid to the school district."

Id. Distinguishing *Seattle Sch. Dist. v. State*, 90 Wn.2d 476, 585 P.2d 71

interest" to pursue. He has had his Spokane trial and has waived his damages claim so he has no "personal stake" left in this lawsuit. Similarly, contrary to Woolery's claim, the *Zylstra v. Piva* decision (85 Wn.2d 743, 539 P.2d 823 (1975)) does not hold that a court is obliged to compel the state to appropriate more funding to the courts. Nor does *Zylstra* address the standing of individuals to sue for institutional funding. The majority in *Zylstra* expressly "limited" its holding to the unrelated issue of whether county judicial employees could bargain collectively. 85 Wn.2d at 748. The concurring opinion, quoted in Pet'r Br. at 26-27, is dicta, not a "holding."

(1978) – a case relied on by Woolery – the court also determined that “taxpayers” do not have standing to claim that taxpayer-funded institutions should get more funding. *Id.* at 529-30. The *Federal Way* case thus forecloses the claim that Woolery has standing to sue for funds destined for the courts. He has no standing as a “public citizen” or “taxpayer.”

Similarly, Woolery has no standing to assert claims for relief on behalf of the Spokane courts for an alleged “separation of powers” claim.⁶ As discussed above, Woolery alleged no authority granted to him by others or by the courts to sue on their behalf. Nor did he bring, or allege facts entitling him to bring, a class action.

The dismissal of his claim for relief on behalf of the Spokane courts was proper because, as a matter of law, an individual lacks standing to obtain institutional relief. *See Carrick v. Locke*, 125 Wn.2d 129, 136, 882, P.2d 173 (1983) (Injury caused by alleged separation of powers violation accrues directly to the branch involved, protecting institutional, not individual, interests.) Thus, in the only case where court-ordered

⁶ Woolery devotes considerable analysis to the proposition that state courts possess the authority to order funding needed to perform their constitutional functions. Pet’r Br. at 24-40. This argument misses the point because the key to the CR 12(b) dismissal at issue in this appeal was that Woolery was not entitled to the three types of relief he demanded, as a matter of law. The ruling was predicated, in part, on the principle that Woolery (an individual) lacked standing to sue for relief on behalf of state courts. In short, Woolery does not have the court’s right to compel institutional funding.

funding to the State courts was considered, the affected court or its judge had standing to sue. See *In re Juvenile Director*, 87 Wn.2d 232, 552 P.2d 163 (1976). In that case, the court confirmed the standing of a court to obtain increased funding, but rejected the claim on its merits and imposed the “highest” civil burden of proof on the institutional plaintiff that had standing to bring such a claim. *Id.* Institutional standing principles control whether funding for the courts is sought for alleged constitutional violations or, as Woolery argues, for alleged violations of RCW 43.135.060.⁷

Woolery has not asserted a cause of action for alleged violations of any statute; nor has he cited authority suggesting an individual has a private cause of action because the unfunded mandate statute, RCW 43.135.060, has been violated. However, in AGO 1981 No. 5, Attorney General Eikenberry opined that the unfunded mandate statute and the Initiative 62 creating it were intended to apply to “only such state legislation as requires units of local government to increase the levels of services offered” and, when it does do so, the right to compensation

⁷ Woolery has never asserted a claim based upon alleged violations of RCW 43.135.060. His analysis at pp. 30-34 of Pet'r Br. was apparently intended to bolster the erroneous argument that the unfunded mandate statute changes the constitutional requirement that the State and counties split responsibility for judicial compensation equally. Const. art. 4, § 13. Initiatives and legislation, however, cannot amend the constitution. *Brown v. State*, 155 Wn.2d 254, 268, 119 P.3d 341 (2005); *Gerberding v. Munro*, 134 Wn.2d 188, 949 P.2d 1366 (1998).

arises “on the part of any affected taxing district.” AGO 1981 No. 5 at 4, 11. RCW 43.135.060 by its terms gives rights to “political subdivisions,” not persons. Woolery thus lacks standing to recover funding on behalf of Spokane County. *See Ducote v. DSHS*, 167 Wn.2d 697, 703-04, 222 P.3d 785 (2009) (no private action for alleged statutory violations for persons not within class for whose benefit statute enacted).

4. Const. Art. I, § 10 Does Not Guarantee Or Require A “Speedy Civil Trial”

The underlying, erroneous contention behind Woolery’s Thurston County collateral attack was that Const. art. I, § 10 guarantees civil litigants a right to a speedy trial. Neither the language of the constitution nor the cases construing Const. art. I, § 10 support the existence or the invention of such a constitutional entitlement. Moreover, the extensive briefing of the history of Anglo-American jurisprudence (Pet’r Br. at 8-14) provides no support for converting the duty to “administer justice without unnecessary delay” into a right to have a civil trial conducted within a particular timeframe. Similarly, Woolery cites to no authority, whether from Washington, from other states, or from other common-law nations, that holds that civil litigants have a right to trial within a particular timeframe. Of the many state constitutional provisions listed in App. I to

Petitioner's. Brief, none contains even a reference to, must less a mandate to provide, the right to a "speedy civil trial."

Washington courts determine what provisions of the state constitution mean and what legal effect they have. *Seattle Sch. Dist*, 90 Wn.2d at 496. This Court's most recent pronouncement on Const. art. I, § 10 and the right it confers is in *King v. King*, 162 Wn.2d 378, 388, 174 P.3d 659 (2007):

We have generally applied the open courts clause in one of two contexts: "the right of the public and press to be present and gather information at trial and the right to a remedy for a wrong suffered." (citations omitted)

Thus, Const. art. I, § 10, serves a dual purpose: open proceedings and the right of all citizens to access state courts to redress their injuries. The right guaranteed is not to a speedy civil trial which deprives the forum court of its discretion to set and reset civil trial dates.

The constitutional right of access to state courts is subject to court rules and state statutes. *Yurtis v. Phipps*, 143 Wn. App. at 694. "[A]n implicit requirement of access to the courts is that the litigant must proceed in good faith and comply with court rules." *In Marriage of Giordano*, 57 Wn. App. at 77. In this case, Woolery has not acted in good faith and complied with the court rules. Instead of dealing with proposed continuances in accordance with the procedures established in

the civil rules and in the forum he selected for his personal injury case, he collaterally attacked the Spokane court's rulings by filing a case in the superior court of another county.⁸

Woolery has cited no case that has construed provisions like Const. art. I, § 10 to be a guarantee of "a speedy civil jury trial." He quotes a substantial passage from *Rausch v. Chapman*, 16 Wash. 568, 575, 48 P. 253 (1897), for the proposition that a civil litigant has a right to a speedy trial, but leaves out that portion of the quote that is fatal to this claim. The omitted language actually confines such a right to criminal cases: "In criminal prosecutions the accused shall have the right. . . to have a speedy public trial by an impartial jury. . . ." Moreover, even in the criminal context where there is a constitutional right to "a speedy public trial" pursuant to Const. art. I, § 22, no violation of constitutional rights occurs because trial delays are caused by the lack of court resources. *See, e.g., State v. Vukich*, 158 Wash. 362, 290 P. 992 (1930) (County's policy of not calling juries at all during summer months producing delays in criminal trials held not a violation of Const. art. I, § 10); *see also State v. Harp*, 13 Wn. App. 273, 275, 534 P.2d 848 (1975) (Continuances and delay under Const. art. I, § 10 are matters largely within the discretion of the trial

⁸ Woolery makes the unfounded claim that dismissal of his collateral case somehow would render Const. art. I, § 10 a nullity. Pet'r Br. at 8. This is nonsense. Woolery's case went to trial which demonstrates the forum he selected had the resources, rules, and procedures to vindicate his alleged rights under Const. art. I, § 10.

court.). There is no authority or basis, historical or contemporary, in Washington or elsewhere, for converting a right of access to the courts into a right to a speedy and immovable civil trial date.

Next, Woolery's contention that Const. art. I, § 10 is violated because the State refuses to pay the total costs of judges in Spokane County is legally incorrect. See Pet'r Br. at 31, 35. To compel the State to bear the entire cost of any superior court judgeship would violate Const. art. IV, § 13 of the state constitution, which mandates that the State and County split that cost equally. The mandatory nature of this cost-sharing arrangement is constitutional recognition that superior court judges have both state and county responsibilities and therefore, the costs of those judges are not to be imposed on the state. *Pischue v. Olson*, 173 Wash. 60, 65, 21 P.2d 516 (1933); *In re Salary of Superior Court Judges*, 82 Wash 623, 627-28, 144 P. 929 (1914) (framers of state constitution did not regard state to be responsible for costs of judicial positions and court facilities; judicial salaries are split equally while court staff, facilities and equipment are furnished wholly by counties.)

Woolery also is mistaken when he contends (Pet'r Br. at 34-35) that state legislation authorizing Spokane County to have up to thirteen judicial positions, RCW 2.08.061, contravenes the unfunded mandate statute or otherwise supports Woolery's constitutional claims. Only state

legislation that requires local governments to create new, or to expand existing, programs is subject to RCW 43.135.060. *City of Seattle v. State*, 100 Wn.2d 16, 22, 666 P.2d 359 (1983). RCW 2.08.061⁹ contains no mandates; instead it caps the number of authorized judges and allows a thirteenth position once Spokane County agrees to pay its constitutional share of the costs of that position. The state constitution is the mandate, not a state statute.

The non-constitutional bases for the lower court's dismissal make it unnecessary for the appellate court to consider the merits of Woolery's novel constitutional claim. Based on the above analysis, this court can also reject that claim on the merits. There is simply no authority from which to infer or create a right to a "speedy civil trial."

V. CONCLUSION

Woolery's Const. art. I, § 10 claim was dismissed within months of its filing because, as a matter of law, he "failed to state a claim upon which relief can be granted." CR 12(b)(6). After dismissal, Woolery received the benefit of the declaratory and injunctive relief he requested - and he got that relief in his Spokane case, not the collateral case the Thurston County court dismissed. Finally, in addition to the many reasons

⁹ Contrary to plaintiff's argument, AGO 1980 No. 3, does not support the proposition that the State must pay fully for any superior court judgeship the Legislature "authorizes." Pet'r Br. at 32-33. State responsibility might arise only if legislation "required" the addition of judges. See *City of Seattle v. State, supra*, 100 Wn.2d at 22.

for dismissal and the mootness of his appeal, the state constitution in no way guarantees a civil litigant the right to a speedy trial. The court should dismiss this appeal.

RESPECTFULLY SUBMITTED this 16th day of August 2011.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury in accordance with the laws of the State of Washington, that on the date below the *State Respondent's Opening Brief* and this *Certificate of Service* were filed in the Washington State Supreme Court according to the Court's Protocols for Electronic Filing, as a PDF attachment, at the following e-mail address: Washington State Supreme Court (Supreme@courts.wa.gov).

And, that I arranged for a copy of the *State Respondent's Opening Brief* and this *Certificate of Service* to be served on the following counsel of record at the addresses below, by First Class U.S. Mail and by e-mail as a PDF attachment:

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Attached for filing is the State Respondent's Opening Brief – Corrected.

Corrections to references to the record, specifically the Clerk's Papers, have been made on pages 1 and 13.

Sent on behalf of Bill Clark, WSBA No. 9234

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