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DIVISION II

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STATE OF WASHINGTON

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Court of Appeals Case No. 48185-5-II

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

JOHN LEY, an individual, JOHN HALLINEN, an individual, GERALD R. HALLE, an individual, MICHAEL & CAROLE KELLEY, husband and wife, MICHAEL CONNER, an individual, LISA ROSS, an individual DEBORAH WARD, an individual PAT ANDERSON, an individual, BRIAN J. ROHAN, an individual, ROBERT NICHOLS, an individual, JOHN BURKE, an individual, ROBERT RAY LARIMER, JR., an individual, MARK HEAGY, an individual,

Appellants,

v.

CLARK COUNTY PUBLIC TRANSPORTATION BENEFIT AREA, dba C-TRAN, a Washington Public Transportation Benefit Area, C-TRAN BOARD COMPOSITION REVIEW COMMITTEE, a statutorily-created special committee, C-TRAN BOARD OF DIRECTORS, GREG ANDERSON, C-TRAN Board of Directors Member, JACK BURKMAN, C-TRAN Board of Directors Member, BART HANSEN, C-TRAN Board of Directors Member, JIM IRISH, C-TRAN Board of Directors Chair, LYLE LAMB, C-TRAN Board of Directors Member, DAVID MADORE, C-TRAN Board of Directors Member, JENNIFER MCDANIEL, C-TRAN Board of Directors Member, ANNE MCENERNY-OGLE, C-TRAN Board of Directors Vice-Chair, JOHN SHREVES, C-TRAN Board of Directors Member, JEANNE STEWART, C-TRAN Board of Directors Member, TOM MIELKE, C-TRAN Board of Directors Member, CONNIE JO FREEMAN, C-TRAN Board of

Directors Member, JEFF HAMM, chief administrative
officer of the Clark County Public Transportation Benefit
Area,

Respondents.

APPELLANTS' REPLY BRIEF

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TABLE OF CONTENTS

I. ARGUMENT.....1

A. FIRST ASSIGNMENT OF ERROR.....1

 1. The BCRC has the capacity to be sued under the OPMA..... 1

 2. The BCRC is subject to Washington's OPMA.....4

B. SECOND ASSIGNMENT OF ERROR.....16

 1. Respondents did not have standing to dismiss Appellants' claim for a statutory writ of review.....16

 2. Respondents argue for the first time on appeal defects in Appellants' pleading related to their statutory writ of review claim.....17

 3. Appellants properly alleged a statutory writ of review claim.....17

C. THIRD ASSIGNMENT OF ERROR20

 1. Respondents did not have standing to dismiss Appellants' claim for a constitutional writ of review.....20

 2. Respondents argue for the first time on appeal Appellants lack standing to plead a constitutional writ of review claim.....21

 3. Appellants properly alleged a constitutional writ of review claim.....21

II. CONCLUSION23

TABLE OF AUTHORITIES

CASES

| | |
|---|--------|
| <i>Clark v. City of Lakewood</i> , 259 F.3d 996 (9th Cir. 2001) | 14, 15 |
| <i>Dewey v. Tacoma Sch. Dist. No. 10</i> , 95 Wn.App. 18, 23, 974 P.2d 847 (1999)..... | 18 |
| <i>Five Corners Family Farmers v. State</i> , 173 Wn.2d Wash.2d 296, 308, 268 P.3d 892 (2011)..... | 7, 8 |
| <i>Future Realty, Inc. v. City of Spokane</i> , 331 F.3d 1082, 1091 (9th Cir. 2003) | 13 |
| <i>Future Select Portfolio Management, Inc. v. Tremont Group Holdings, Inc.</i> , 175 Wn.App. 840, 865, 309 P.3d 555 (2013) | 18 |
| <i>Gaspar v. Peshastin Hi-Up Growers</i> , 131 Wn.App. 630, 635, 128 P.3d 627, 629 (2006)..... | 17 |
| <i>Henry v. Oakville</i> , 30 Wn.App. 240, 246, 633 P.2d 892 (1981)..... | 13 |
| <i>Hoffer v. State</i> , 110 Wn.2d 415, 420, 755 P.2d 781 (1988)..... | 18 |
| <i>Kinney v. Cook</i> , 159 Wn.2d 837, 842, 154 P.3d 206 (2007)..... | 18 |
| <i>Kirby v. City of Tacoma</i> , 124 Wn.App. 454, 470, 98 P.3d 827 (2004)..... | 18 |
| <i>Kumar v. Gate Groumet, Inc.</i> , 180 Wn.2d 481, 488, 325 P.3d 193 (2014)..... | 18 |
| <i>Organization to Preserve Agricultural Lands (OPAL) v. Adams County</i> , 128 Wn.2d 869, 913 P.2d 793 (1996) | 14, 15 |
| <i>Orwick v. City of Seattle</i> , 103 Wn.2d 249, 254, 492 P.2d 793 (1984)..... | 18 |
| <i>Raynes v. City of Leavenworth</i> , 118 Wn.2d 237, 244, 821 P.2d 1204 (1992)..... | 18 |
| <i>Roth v. Drainage Imp. Dist. No. 5 of Clark County</i> , 64 Wn.2d 586, 392 P.2d 1012 (1964)..... | 3 |
| <i>Telford v. Thurston County Board of Commissioners</i> , 95 Wn.App. 149, 974 P.2d 886 (1999)..... | 11 |
| <i>Wash. Pub. Employees Ass'n v. Wash. Personnel Resources Bd.</i> , 91 Wn.App. 640, 646, 59 P.2d 143 (1998)..... | 18 |
| <i>West v. State of Washington</i> , 162 Wn.App. at 120, 134, 252 P.3d 406 (2011)..... | 11 |

| | |
|---|------|
| <i>Woods v. Bailet</i> , 116 Wn.App. 658, 67 P.3d 511 (2003) | 5, 6 |
|---|------|

STATUTES

| | |
|----------------------|------------------|
| RCW 27.12.190 | 2 |
| RCW 36.57A.055..... | 3, 6, 10, 19, 22 |
| RCW 42.030.020 | 2 |
| RCW 42.17A.005..... | 5 |
| RCW 42.30.010 | 3 |
| RCW 42.30.020 | 2, 3, 4, 5 |
| RCW 42.30.030 | 2 |
| RCW 42.30.910 | 1, 3, 4, 12 |
| RCW42.30.130..... | 3 |
| RCW 42.56.010 | 5 |
| RCW 43.210.050 | 9 |

ATTORNEY GENERAL OPINION

| | |
|------------------------------------|----------|
| 1970 Op. Att’y General No. 58..... | 7 |
| 1991 Op. Att’y General No. 5..... | 8, 9, 10 |

OTHER AUTHORITIES

| | |
|--|---|
| BLACK’S LAW DICTIONARY | 6 |
| MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS §2.13 | 6 |

I. ARGUMENT

The Legislature has declared an express intent that Washington's Open Public Meetings Act ("OPMA") be liberally construed to promote openness of governmental action. RCW 42.30.910. Respondents argue for a strict construction of the Act, which is contrary to the letter and spirit of the OPMA, and should be rejected by this Court here. The C-TRAN Board Composition Review Committee ("BCRC") falls within a liberal construction of the definition of a public agency under the OPMA. It was reversible error for the trial court to hold otherwise. Moreover, it was reversible error for the trial court to dismiss Appellants' claims against parties who did not appear or who did not otherwise move against the claims alleged, including in particular the BCRC and Mr. Meilke. For these and all the reasons set out below, this Court should reject Respondents' attempt to strictly construe the OPMA and find the trial court's grant of Respondents' Motion to Dismiss should be reversed.

A. FIRST ASSIGNMENT OF ERROR

1. The BCRC has the capacity to be sued under the OPMA.

Respondents argue the BCRC does not have the capacity to be sued, and thus the trial court properly dismissed Appellants' claims.

Notwithstanding Respondents' lack of standing to assert an argument for dismissal of Appellants' claims against the BCRC and Mr. Meilke,¹ Washington's OPMA sets forth who is subject to the Act and the BCRC's capacity to be sued under the same.² The BCRC is the governing body of a "public agency," therefore, Appellants' declaratory relief claim is proper and Respondents' argument regarding the BCRC's capacity to be sued is irrelevant.

The plain language of Washington's OPMA supports Appellants' position the BCRC has the capacity to be used under the OPMA.. For example, the definition of a "public agency" under the OPMA expressly includes any "library or park boards." RCW 42.30.020(1)(c). RCW 27.12.190 is the enabling legislation for creation of a library board. Nowhere in RCW 27.12.190 does it mention a library board's capacity to sue or be sued. Nonetheless, a library board is clearly within the definition of a public body subject to the OPMA.

¹ See *Appellants' Opening Brief* at pgs. 13-14.

² RCW 42.30.030 (meetings of a governing body of a public agency must be open to the public); RCW 42.30.020(1)(defining "public agency" under the Act).

Roth v. Drainage Imp. Dist. No. 5 of Clark County, 64 Wn.2d 586, 392 P.2d 1012 (1964), on which Respondents' rely, is likewise unhelpful. There the Supreme Court held that a drainage district did not have the legal capacity to be sued by a plaintiff for breach of contract. *Id.* at 590. According to the court, the drainage district did not qualify as either a municipal corporation or a quasi-municipal corporation, and therefore, the district lacked the legal capacity to be sued. *Id.* However, analyzing that same defendant in the context of the OPMA, the drainage district would qualify as a "special purpose district" under RCW 42.30.020(1)(b). Thus, although the drainage district's enabling legislation may not have allowed for a private right of action against the district for breach of contract (the court indicated the proper party to be sued was the county), that does not necessarily foreclose an action for declaratory relief against that same entity for violation of the OPMA. *See* RCW 42.30.130(2).

The Legislature has expressly stated that the OPMA be liberally construed with an emphasis toward openness of governmental action. RCW 42.30.910; RCW 42.30.010. The BCRC's general capacity to sue or be sued in other contexts is simply irrelevant to whether the OPMA applies and makes the BCRC a proper defendant. The BCRC falls within

the definition of a “public agency,” it is properly named as a defendant in this action, and the claims against it should not have been dismissed on a Motion filed by other parties.

2. The BCRC is subject to Washington’s OPMA.

Next, Respondents argue the BCRC is not a “public agency” subject to the requirements of Washington’s OPMA because: (a) the OPMA does not expressly include quasi-municipal corporations within the definition section of a public agency set forth under RCW 42.30.020(1), and (b) a quasi-municipal corporation must be *created by* a municipality and the BCRC was created by state statute. Both of these arguments miss the mark.

i. The BCRC is a political subdivision of the state.

First, the BCRC qualifies as a political subdivision of the state, which is an undefined phrase under RCW 42.30.020(1)(b). As noted by Appellants in their Opening Brief, Washington’s Legislature has given the phrase “political subdivision” a broad scope, including everything from cities, towns, to municipal and quasi-municipal corporations.

Rather than adopt a liberal construction of the phrase, as directed by the Legislature under RCW 42.30.910, Respondents argue for a strict

construction of the phrase “political subdivision,” asserting that had the Legislature intended to include “quasi-municipal corporations” within the definition of a political subdivision, the Legislature simply could have just used that express term. In support of this argument, Respondents cite two statutory schemes wherein the Legislature expressly included the phrase “quasi-municipal corporation” within the statutory definition of an “agency.” *See Respondents’ Response Brief* at pg. 21 (citing Washington’s Public Disclosure Act at RCW 42.17A.005(2) and Washington’s Public Records Act at RCW 42.56.010(1)). However, neither of those statutory schemes uses the phrase “political subdivision.” This is important because a “political subdivision,” as pointed out in Appellants’ Opening Brief, has been used to define a much broader scope of public agencies. Thus, while it may be true the Legislature did not expressly use the term “quasi-municipal corporations” in RCW 42.30.020(1)(b), a liberal construction of the definition of a “political subdivision” requires inclusion of these bodies within the scope and context of the OPMA.

Next, BCRC is a quasi-municipal corporation as that term is defined in Washington common law. In *Woods v. Bailet*, 116 Wn.App.

658, 67 P.3d 511 (2003), on which Respondents rely, the Washington Court of Appeals (Division I) held that a public medical center fell within the definition of a quasi-municipal corporation for purposes of applying a claims-filing statute related to the plaintiff's medical malpractice action. The Court, relying on both the same BLACK'S LAW DICTIONARY definition and treatise from MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS cited to by Appellants (*Appellants' Opening Brief* at pgs. 18-19) found that a quasi-municipal corporation is "any corporation created by a municipality that performs a public service but does not fit the traditional definition of a public corporation." *Id.* at 664. The Court then went on to hold "PacMed falls squarely within this definition since it was created by a city to perform the limited objective of providing health care for the general welfare." *Id.*

Here, although the BCRC derives its authority and power by state statute, the body itself is created by local representatives. RCW 36.57A.055 states "After a public transportation benefit area has been in existence for four years, members of the county legislative authority and the elected representative of each city within the boundaries of the public transportation benefit area shall review the composition of the governing

body of the benefit area and change the composition of the governing body if the change is deemed appropriate....” (emphasis added). Thus, the BCRC is organized by local officials serving a public purpose.

Respondents also ignore entirely the three part criteria adopted by the Washington Attorney General in determining the existence of a quasi-municipal corporation. Although not binding, a formal attorney general opinion is persuasive and “entitled to great weight.” *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 308, 268 P.3d 892 (2011)(internal quotation marks omitted). As noted by Appellants in their Opening Brief, According to the Attorney General, “[t]he critical points to be noted in this definition of the term ‘quasi-municipal corporation’ are (1) that such a corporation must have been created by, pursuant to act of the legislature; (2) that it must derive its powers from the legislature; and (3) that it exercises those powers on a local rather than a state-wide basis.” 1970 Op. Att’y General No. 58 (emphasis added). The BCRC meets all three criteria. It is created by an act of the legislature and derives its power from such statute. Finally it exercises those powers on a local rather than state-wide basis. Thus, according to the three-part criteria set forth by the Attorney General, the BCRC qualifies as a quasi-municipal corporation,

and thereby likewise a political subdivision of the state, such that the OPMA applies to its conduct and actions.

ii. Alternatively, the BCRC is the “functional equivalent” of a state agency.

Alternatively, the BCRC is the functional equivalent of a state agency such that the OPMA applies. Respondents argue this Court should ignore the functional equivalency test set out by Washington’s Attorney General in its 1991 opinion (1991 Op. Att’y General No. 5) because: (1) the entity at issue in that opinion, the Small Business Export Finance Assistance Center was ultimately found not to be subject to the OPMA, and (2) the functional equivalent test has only been applied when analyzing whether a private organization is subject to the OPMA. Once again, both of Respondents’ arguments miss the mark.

Again, although non-binding, the Attorney General’s 1991 Opinion is considered persuasive authority to which this Court traditionally gives great weight. *Five Corners Family Farmers*, 173 Wash.2d at 308. The fact the Small Business Export Finance Assistance Center (SBEFA) was ultimately found not to be subject to the OPMA has no bearing on whether the BCRC qualifies as a state agency under such

test. The two entities are quite different. As the Attorney General's Opinion notes, the SBEFA did not meet the second and third prongs of the functional equivalency test, which again are: (1) the level of government funding, and (2) the extent of government involvement or regulation. As the opinion notes:

It is clear that the Center is not funded by the state's general fund. Moreover, its only access to state funds is under contract to perform specific services for [the Department of Trade and Economic Development]. RCW 43.210.050. Otherwise, the Center must obtain operating capital from any fees it may charge for its services, or through private contributions. In this respect the Center is more similar to the Red Cross (found not to be an 'agency') in *Irwin Memorial Blood Bank*, 640 F.2d 1051, than to the school (found to be an 'agency') in *Board of Trustees v. Freedom of Info. Comm'n.*, 436 A.2 266.

With respect to the 'governmental involvement' factor, it is true that the Center's board is appointed by the Governor; it is subject to sunset legislation; and [the Department of Trade and Economic Development] has rulemaking authority to 'carry out the purposes' of chapter 43.210 RCW.

However, it does not follow from these indicia of governmental involvement that

there is substantial day-to-day state direction of the Center's activities. Indeed, other than availing itself of the state contract, the Center is not directly answerable to any state agency or legislative or executive personnel.

1991 Op. Att'y No. 5 at 6-7.³

In contrast, the BCRC expressly uses public funds and resources to carry out its business, including C-TRAN funds to publish notice of its meetings and C-TRAN staff to schedule and coordinate its business. CP 380-384, CP 401, CP 411-416, CP 480-482. Additionally, the BCRC uses C-TRAN's website to publish its meeting minutes and communicate to the public at-large regarding its business. CP 25 at n. 4. The committee itself is made up of elected officials performing a public function-analyzing and, where appropriate, making decisions regarding the make-up of the board of directors for a municipal corporation and public transportation benefit area – C-TRAN. RCW 36.57A.055; *Respondents' Brief* at 10. Thus, the BCRC, unlike the SBEFA, uses government funding and has some level

³ Full opinion is available at: <http://www.atg.wa.gov/ago-opinions/public-records-open-public-meetings-act-corporations-small-business-export-finance>.

of government involvement such that its meets the functional equivalency test set out by Washington's Attorney General in its 1991 opinion.

Appellants likewise disagree with Respondents' characterization the Attorney General's four-part balancing test has only been adopted where considering whether a "private organization" that performs a public function is the functional equivalent of a state agency. *Respondents' Brief* at pgs. 25-26. In the case of the SBEFA, the Center was a statutorily-created non-profit. 1991 Att'y General No. 5 at pg. 2. In *Telford v. Thurston County Board of Commissioners*, 95 Wn.App. 149, 974 P.2d 886 (1999) and *West v. State of Washington*, 162 Wn.App. 120, 134, 252 P.3d 406 (2011) this Court considered the Washington Association of County Officials' ("WACO") status as a state agency.⁴ As the Court in *West* noted, WACO is a statutorily-created organization formed for the purpose of coordinating the administrative programs of all counties in Washington State. *West*, 162 Wn.App. at 132. Thus, contrary to Respondents' assertion, the four-part balancing test has been directly applied to

⁴ In *West v. State of Washington*, 162 Wn.App.120, 134, 252 P.3d 406 (2011) the Court of Appeals considered the four-factor test in relation to the OPMA, but made its decision on separate grounds.

statutorily-created committees or organizations, like the BCRC, that may not directly meet the definition of a state agency but nonetheless, by their actions, are deemed the functional equivalent of a state agency.

Further and finally, it is irrelevant that the four-part test has only been applied by Washington Courts to private organizations. The purpose of the test is to determine whether an entity, by its actions, is the functional equivalent of a state agency. There is no limitation that the test only be applied to private organizations. Again, as noted by the Attorney General:

On its face, the Center has not been denominated a state board, committee, department, educational institution, office, division, bureau, or agency. We note, however, that the provisions of both the Open Public Meetings Act and the Public Disclosure Act are to be liberally construed. RCW 42.30.910, 42.17.945. Moreover, in other situations, the Washington court has stated that the meaning of the term 'agency' depends on its context.

1991 Op. Att'y No. 5 at pg. 3.

In every facet of its business, the BCRC walks and acts like a state agency. As a state agency, the BCRC is subject to the requirements of the

OPMA. The trial court erred in finding the BCRC was not subject to the OPMA, and this Court should reverse that incorrect decision.

iii. Appellants properly alleged claims against C-TRAN and its directors.

Appellants properly alleged a claim against C-TRAN and its individual directors for violation of the OPMA. An action taken in violation of the OPMA is void and may only be implemented if ratified by the local government taking the same action in an open meeting, in compliance with the OPMA. *Future Realty, Inc. v. City of Spokane*, 331 F.3d 1082, 1091 (9th Cir. 2003); *citing Henry v. Oakville*, 30 Wn.App. 240, 246, 633 P.2d 892 (1981) (“‘The well-established rule’ in Washington ‘is that where a governing body takes an otherwise proper action later invalidated for procedural reasons only, that body may retrace its steps and remedy the defect by reenactment with the proper formalities.’”). When an initial act violates the OPMA, unless the local government ratifies the initial action by “retracing its steps,” subsequent actions implementing the initial action are likewise inconsistent and thereby void as well, even if taken in an open meeting. *Id.*

Here, although the January 2015 meeting of the C-TRAN directors may have been held in compliance with the OPMA, Appellants alleged the November 2014 meeting of the BCRC was not. The newly reconstituted C-TRAN board was thus continuing to implement an action that was inconsistent with the OPMA. That action was thereby void as a matter of law. Appellants alleged, and demonstrated through evidence in the record, that C-TRAN directors were aware the BCRC meeting was held in violation of the OPMA. CP 245-246; (APP 11-12). These allegations and evidence, if proven, would result in a violation of the OPMA as demonstrated in *Future Realty*.

Respondents rely on *Clark v. City of Lakewood*, 259 F.3d 996 (9th Cir. 2001) and *Organization to Preserve Agricultural Lands (OPAL) v. Adams County*, 128 Wn.2d 869, 913 P.2d 793 (1996), for the proposition that local governments need not ratify defective actions, but can take subsequent implementing actions in open meetings. Neither case is helpful to Respondents' position. In *Clark v. City of Lakewood*, the city convened a task force that met in closed meeting, in violation of the OPMA. *City of Lakewood*, 259 F.3d at 1014. Based on the recommendation of the task force, the Lakewood city council adopted an

ordinance in an open meeting. *Id.* The court held that the task force violated the OPMA and that its decisions were null and void, but that by approving the same ordinance in an open meeting, the city council had cured the task force's defective actions. *Id.* Similarly, in *OPAL*, two commissioners discussed official business outside of an open meeting. *OPAL*, 128 Wn.2d at 884. The Court found that such discussions constituted a violation of the OPMA, but that the defect was cured by the subsequent action taken by the entire commission in an open meeting. *Id.* Because the BCRC never ratified its decision, *City of Lakewood* and *OPAL* do not support Respondents' arguments.

In the absence of ratification by the BCRC, and with unrefuted evidence that the C-TRAN Board was informed of its OPMA violation, Appellants' claims against C-TRAN and its individual directors were properly pled.

iv. Appellants properly alleged claims against Mr. Hamm.

As described in Appellants' Opening Brief, Mr. Hamm was responsible for noticing the BCRC meetings. Appellants sought a declaration that the notice provided by Mr. Hamm was defective and not

in line with his statutory obligations under RCW 36.57A.055.

Accordingly, Mr. Hamm was properly named as a defendant and Appellants' claim against Mr. Hamm should not have been dismissed. If the BCRC is subject to the OPMA then its meetings were likewise required to be noticed in compliance with the OPMA. Appellants' request for declaratory relief the notice provided by Mr. Hamm failed to comply with these requirements was therefore properly alleged and the trial court's finding otherwise should be reversed.

B. SECOND ASSIGNMENT OF ERROR

1. Respondents did not have standing to dismiss Appellants' claim for a statutory writ of review

Again, Respondents did not have standing to move to dismiss Appellants' claim for a statutory writ of review against the BCRC. *See Appellants' Opening Brief* at pgs. 13-14. Respondents were not injured by such claim and did not have any interest in the outcome. Both writ of review claims were alleged *solely against the BCRC*. By their own admission, Respondents are independent of the BCRC. Thus, Respondents were without standing to move to dismiss Appellants' statutory writ claim. Accordingly, this Court should reverse the trial court's decision to grant dismissal of such claim on appeal.

2. Respondents argue for the first time on appeal defects in Appellants' pleading related to their statutory writ claim.

Respondents argue for the first time on appeal that Appellants' claim for statutory writ of review fails because Appellants failed to allege that the BCRC exercised a judicial or quasi-judicial function. *See Respondent's Brief* at pg. 46. This argument should be rejected. RAP 2.5(a)(only allows that a party to present a ground for affirming a trial court decision that wasn't presented below "if the record has been sufficiently developed to fairly consider the ground.") The trial court did not consider, nor did Appellants have an opportunity to brief in what ways the BCRC acted in a judicial or quasi-judicial role.

3. Appellants' properly alleged a statutory writ of review claim.

Without waiving any objections regarding Respondents' newly asserted arguments on appeal, Appellants nonetheless properly alleged a claim for statutory writ of review.⁵ *Wash. Pub. Employees Ass'n v. Wash.*

⁵ Again, dismissal under Rule 12(b)(6) is only appropriate "if it is beyond doubt that the plaintiff can prove no facts that would justify recovery." *Gaspar v. Peshastin Hi-Up Growers*, 131 Wn.App. 630, 635, 128 P.3d 627, 629 (2006). On review, this Court "must presume that the plaintiff's allegations are true and may consider hypothetical facts that are not included in the record." *Id.* Motions to dismiss are to be granted "'sparingly and with care' and, as a practical matter, 'only in the unusual case in which plaintiff includes

Personnel Resources Bd., 91 Wn.App. 640, 646, 959 P.2d 143 (1998), on which Respondents rely, sets forth what a statutory writ claimant must prove, not what he or she must allege in their pleading.⁶ Under Washington’s notice pleading, “a complaint need contain only ‘(1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which he deems himself entitled.’” *Future Select Portfolio Management, Inc. v. Tremont Group Holdings, Inc.*, 175 Wn.App. 840, 865, 309 P.3d 555 (2013) citing *Kirby v. City of Tacoma*, 124 Wn.App. 454, 470, 98 P.3d 827 (2004) (internal quotation marks omitted) (quoting *Dewey v. Tacoma Sch. Dist. No. 10*, 95 Wn.App. 18, 23, 974 P.2d 847 (1999)). A pleading is insufficient only when “it does not give the opposing party fair notice of

allegations that show on the face of the complaint an insuperable bar to relief.” *Kimney v. Cook*, 159 Wn.2d 837, 842, 154 P.3d 206 (2007) citing *Hoffer v. State*, 110 Wn.2d 415, 420, 755 P.2d 781 (1988)(internal quotation marks omitted) (quoting *Orwick v. City of Seattle*, 103 Wn.2d 249, 254, 692 P.2d 793 (1984)) and (quoting 5 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, *FEDERAL PRACTICE AND PROCEDURE* § 1357, at 604 (1969)). A plaintiff will be found to have adequately stated a claim for relief if it is possible that facts could be established that would support relief. *Kumar v. Gate Groumet, Inc.*, 180 Wn.2d 481, 488, 325 P.3d 193 (2014)(emphasis added).

⁶ “[T]o obtain a writ of review, the petitioner must show: (1) that an inferior tribunal (2) exercising judicial functions (3) exceeded its jurisdiction or acted illegally, and (4) there is no adequate remedy at law. *Raynes v. City of Leavenworth*, 118 Wn.2d 237, 244, 821 P.2d 1204 (1992)(statutory writ must be granted only when all four criteria are present).” *Wash. Pub. Employees Ass’n v. Wash. Personnel Resources Bd.*, 91 Wn.App. 640, 646, 59 P.2d 143 (1998) (emphasis added).

what the claim is and the ground upon which it rests.” *Id.* at 866.

Here, Appellants’ pleading was sufficient to place the BCRC on notice of Appellants were seeking a claim for statutory writ and on what grounds the claim was based. Appellants requested that the trial court “grant a statutory writ of review finding the actions of the C-TRAN BCRC at the November 18, 2014 Meeting” were “a violation of RCW 36.57A.055.” CP 9. Appellants further alleged that they were entitled to a statutory writ on grounds “the C-TRAN BCRC failed to provide any findings or explanations justifying a change in the composition of the C-TRAN Board of Directors, the nature of such a change, and that such change would be appropriate as required by RCW 36.57A.055.” CP 9. Thus, Appellants alleged that the BCRC violated its enabling statute and the basis for such alleged violation.

Appellants further alleged that “as residents of Clark County and users of the C-TRAN public transportation system [they] have an interest in understanding the basis for the C-TRAN Board of Directors’ composition, and in maintaining the integrity of the composition of the C-TRAN Board of Directors***” CP 7. Appellants also alleged that the BCRC has never issued any written or verbal explanation or findings

regarding its decision to change the make-up of the C-TRAN board. CP 8-9. Thus, Appellants alleged that they have no adequate remedy at law to resolve their dispute because the BCRC, even as recent as the filing of Appellants' amended complaint, had failed to justify its decision.

Based upon Washington's general notice pleading requirements, Appellants sufficiently alleged a claim of statutory writ of review. The trial court's order granting Respondents' Motion to Dismiss should therefore be reversed.

C. THIRD ASSIGNMENT OF ERROR

1. Respondents did not have standing to dismiss Appellants' constitutional writ of review claim.

Similar to Appellants' other claims, Respondents did not have standing to dismiss Appellants' claim of constitutional writ of review against the BCRC. Respondents had no interest and stood to suffer no injury as a result of this claim. Respondents fail to demonstrate in what way they suffered a real and cognizable harm by such claim. Thus, it was reversible error for the trial court to dismiss Appellants' claim for a constitutional writ of review and this Court should reverse that decision on appeal.

2. Respondents raise for the first time on appeal Appellants' alleged lack of standing to plead a constitutional writ of review claim.

Respondents raise for the first time on appeal the new argument Appellants do not have standing to plead a constitutional writ of review claim. Similar to the new arguments referenced above, this Court should reject Respondents' attempt to insert new arguments on appeal. RAP 2.5(a)(new reasons to affirm a trial court decision may only be considered where a "record has been sufficiently developed to fairly consider the ground.""). The trial court did not consider, nor did Appellants have an opportunity to brief, in what ways Appellants may satisfy the two-part test for seeking a constitutional writ of review as referenced by Respondents. Thus, this Court should reject Respondents attempt to unfairly assert this new argument on appeal.

3. Appellants' properly alleged a constitutional writ of review claim.

Notwithstanding the above, Appellants' properly alleged a claim for a constitutional writ of review. According to Respondents, a constitutional writ of review claim requires that a petitioner demonstrate that the interest he or she seeks to protect is arguably within the zone of

interests to be protected or regulated by the statute or constitutional guarantee in question, and an injury in fact. Here, Appellants alleged both.

Appellants alleged an interest in “understanding the basis for the C-TRAN Board of Directors’ composition, and in maintaining the integrity of the composition of the C-TRAN Board of Directors in order to reflect adequate representation of area subject to C-TRAN’s taxing authority.” CP 7. Reviewing this allegation in the light most favorable to Appellants, and assuming all reasonable inferences and hypothetical facts which might be derived from such allegation, Appellants have alleged an interest within the zone of interests arguably sought to be protected by RCW 36.57A.055. Additionally, Appellants have alleged a real injury in that without written or verbal findings as to why the BCRC decided to change the make-up of the C-TRAN board, Appellants have no way of confirming the “integrity of the composition of the C-TRAN Board of Directors.” CP 7. Based upon Washington’s general notice pleading, Appellants have properly alleged a claim for constitutional writ of review such that the trial court’s Order should be reversed.

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II. CONCLUSION

Based upon the above, Appellants request an Order reversing the trial court's grant of the Respondents' Motion to Dismiss and that this case be remanded back for further proceedings on the merits.

DATED: April 6, 2016.

Respectfully submitted,

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NOTICE OF FILING AND PROOF OF SERVICE

I certify that on April 6, 2016 I filed the foregoing *APPELLANTS' REPLY BRIEF* by mailing a copy to:

Washington Appellate Court Clerk
Court of Appeals Division II
950 Broadway
Ste 300, MS TB-06
Tacoma, WA 98402-4454

I further certify that on April 6, 2016, I served a copy of the foregoing *APPELLANTS' REPLY BRIEF* by e-service, per agreement of the parties, to the following party:

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