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COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
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NO. 69630-1

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

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PETER R. BARTON,

Appellant,

v.

THE STATE OF WASHINGTON,

Respondent.

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REPLY IN SUPPORT OF  
MOTION FOR DISCRETIONARY REVIEW

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## I. REPLY

### A. The Parties Agree Discretionary Review Is Necessary and Appropriate in this Case.

This case involves a criminal defendant's right to bail, an essential bulwark of the presumption of innocence, *State v. French*, 88 Wn. App. 586, 593, 945 P.2d 752(1997), and "a matter of continuing and substantial public interest," *Yakima v. Mollett*, 115 Wn. App. 604, 607, 63 P.3d 177 (2003). In the case at bar, as in *Mollett*, "[t]he lack of applicable case law in Washington and the record below illustrate a need to provide judicial guidance on this issue." *Id.*

The State stipulates that discretionary review is appropriate pursuant to RAP 2.3(b)(4), because Washington courts have yet to address the important issues raised here and review will settle a question likely to arise in the future. In addition, the Court should grant review pursuant to RAP 2.3(b)(2) and (3) because the October 18 Order and the Snohomish County Superior Court's interpretation of CrR 3.2(b)(4) deny Petitioner access to a surety and directly conflict with Article I, Section 20 of the Washington State Constitution and the federal and state Equal Protection Clauses. The October 18 Order constitutes probable error that alters the status quo and limits Petitioner's freedom to act, and so far departs from

the accepted and usual course of judicial proceedings as to call for review by this Court.

**B. The Parties Agree Trial Proceedings May Continue During Pendency of this Appeal.**

Petitioner has no objection to the State's request for an order allowing proceedings in the trial court to continue during the pendency of this appeal pursuant to RAP 8.3. The parties agree that resolution of the underlying criminal case will not preclude this appeal because the case involves a matter of continuing and substantial public interest. *See Mollett*, 115 Wn. App. at 607. The proper method of imposing bail in Washington is a matter of public concern. *Id.* The lack of authority on the question of cash-bail favors a decision from this Court. *Id.* "And the problem is likely to recur given the busy criminal dockets in this division." *Id.* Thus, the parties agree there are compelling reasons to consider this appeal even if resolution of the underlying criminal case would otherwise render it moot.

**C. The Parties Agree That Full Briefing and Consideration of this Appeal Is Necessary.**

Although Petitioner's liberty interest is at stake and he would prefer to benefit directly from a favorable ruling on appeal by this Court, Petitioner recognizes that, even with an expedited appeal and a possible

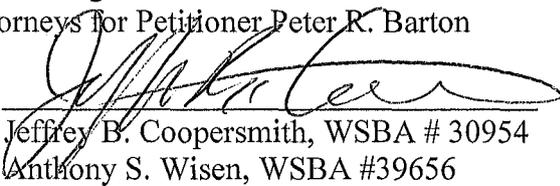
60-day continuance of the criminal trial date,<sup>1</sup> this appeal is unlikely to be resolved prior to resolution of the underlying criminal case. Nevertheless, Petitioner recognizes the importance of the issues presented in this case and wishes to pursue this appeal even if the Court's decision does not impact him directly. The State has agreed that resolution of the underlying criminal case will not preclude review. For these reasons, Petitioner agrees with the State that careful briefing and consideration of this important appeal is the best course.

## II. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court accept discretionary review of the October 18 Order.

RESPECTFULLY SUBMITTED this 16th day of January, 2013.

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<sup>1</sup> Undersigned counsel understand that Petitioner's trial counsel and the Snohomish County Prosecutor's Office have agreed to a 60-day continuance of the January 25, 2013, trial date. The trial court has not yet considered or ruled on any continuance request.

