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Washington State Supreme Court

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No. 91843-1

SUPREME COURT OF THE STATE OF WASHINGTON

IN THE MATTER OF:

RECALL OF TROY KELLEY

OPENING BRIEF OF APPELLANT

Will Knedlik, complainant, *qua* appellant *pro se*
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Comes now appellant Will Knedlik and presents his Opening Brief:

I. INTRODUCTION

This appeal from the Pierce County Superior Court's *fiat* preclusion of exercise of a clearly fundamental and constitutionally provided right of citizens to recall Troy X. Kelley from a state office of quintessential public trust – as *nominal* State Auditor – arises both from his flagrant violation of the Washington State Constitution and implementing statutes, as judicially lent a hand by trial-court speculations contrary to fact and to law, and also due to a state jurisprudence of recall ambiguous *vis-à-vis* understandability on legal bases that are reasonably certain, and thus reliably functional, even though individual recall decisions yield quite persuasive outcomes therein.

While wrongful judicial hindrance of a foundational liberty interest of state citizens derives from multiple errors below, as analyzed more fully *infra*, core inadequacies in state recall jurisprudence devolve from *lacunae* in this Honorable Court's recall opinions, rightly decided rather uniformly, but somewhat wanting in clarity in directives for subsequent usage, which, in turn, require certain refinements, herein, so that no trial court in this state can disregard, ever again, an undisputed fact in multiple counts of a federal criminal indictment, as legally dispositive both below and also herein, such that *ultra vires* judicial *fiat* can thus effectively annul our state constitution.

This appeal presents occasion for resolving both such deficiencies.

II. ASSIGNMENTS OF ERROR

Whether the **residence** requirement squarely established by Article III, §24 of the Washington State Constitution can be amended by judicial *fiat*, through naked trial-court speculations as to a theoretical possibility that an actual residence could have been established in Olympia by Troy X. Kelley “at the seat of government,” with no evidence whatsoever, and contradicting core terms pleaded both as required for valid subject-matter jurisdiction in Pierce County Superior Court and also within a federal criminal indictment.

Whether unprofessional-and-incompetent audits failing to comply with “generally accepted government auditing standards” as promulgated by the United States Government Accountability Office – including the deficient audit of a junior taxing district as issued in 2014 by Mr. Kelley as *nominal* State Auditor – constitute misfeasance, malfeasance or a violation of the oath of office subject to recall, whether for failure to fulfill the obligation faithfully to discharge the duties of that office to “the best of my ability,” as is specifically required by terms stated in RCW 43.01.020, or otherwise.

Whether pressure apparently applied by Mr. Kelley in order to coerce state managers to hire a crony, involved with him in matters alleged to be fraudulent in the federal criminal indictment now pending against him, into a nonexempt position, for which he was unqualified, is adequate for recall.

III. STATEMENT OF THE CASE

This appeal results from charges for recall filed against the *nominal* State Auditor following the Federal Bureau of Investigation’s first search of his residence in Pierce County on or about March 18, 2015, based on a search warrant obtained pursuant to a federal criminal investigation, but before the first multiple-count criminal indictment for a variety of frauds by a federal grand jury sitting in Tacoma was later unsealed on or about April 15, 2015.

Mr. Kelley received a majority of those votes cast for the Office of State Auditor, statewide, at the General Election held on November 6, 2012, and

results of that election were certified by the Office of the Secretary of State in the ordinary course of its election duties respecting 18 statewide offices.

At no point before or after either balloting or else certification and the day upon which Mr. Kelley purported, thereafter, to swear or to affirm the oath of office required in order legally to enter the constitutional Office of State Auditor – as well as between then and this date – did he ever take the only act necessary and sufficient to establish **actual** residence in Olympia, “at the seat of government,” as is indisputably required by Article III, §24.

Mr. Kelley thus never fulfilled this constitutional requirement yielding a legal condition precedent for lawful entry into the office herein at issue, and his constitutional violation and its *sequelae* are the core of this appeal, including his intentional taking of the required oath of office while acting in willful violation of his constitutional duty under Article III, §24 thereof.

Mr. Kelley also issued an unprofessional-and-incompetent audit of a junior taxing district that fails to fulfill key “generally accepted government auditing standards” as now promulgated by the United States Government Accountability Office (which GAGAS breach constitutes the second recall charge), and he further appears to have attempted to coerce state managers to hire a crony, involved with him as to matters alleged to be fraudulent in the federal criminal indictment now pending against him, into a nonexempt position for which he was unqualified (which comprises the third charge).

The Office of State Attorney General reviewed the recall charges filed, prepared materials statutorily required by RCW 29A.56 and petitioned for adjudication, in Pierce County Superior Court, each based on Mr. Kelley's residence in that county, as required for subject-matter jurisdiction by RCW 29A.56.130, as determined by its statutorily mandated review and as shown by, *inter alia*, multiple search warrants to access his home in Pierce County obtained by the United States Department of Justice (and, apparently, for no other residence), by 14 separate identifications of his residence in Pierce County in a pending federal criminal indictment (for multiple frauds) and by news reports of major notoriety by the Associated Press, leading daily newspapers and local affiliates of national television networks (statewide).

The trial court disregarded facts and law, including law of the case that is established by terms for subject-matter jurisdiction in the Pierce County Superior Court as to Mr. Kelley's actual-and-legal residence within Pierce County; failed to take judicial notice of matters *vis-à-vis* his residency, as indicated pursuant to this Honorable Court's directives regarding "general notoriety," and, instead, interposed suspect judicial speculations regarding a theoretical possibility of some residence in Olympia for which there was not one shred of evidence of any kind whatsoever in the record as to which appellant is aware; further disregarded GAGAS obligations; and found all constitutional violations, GAGAS breaches and other charges inadequate.

IV. ARGUMENT

This appeal is not about a quotidian recall matter. Indeed, its prime concern is flagrant violation of the Washington State Constitution's direct residence mandate yielding a legal condition precedent for valid entry into the Office of State Auditor; thus rendering the *nominal* State Auditor Troy X. Kelley an unlawful pretender, and an illegal usurper, as a matter of law; and hence vitiating the oath of office as sworn or affirmed by him falsely.

Further, a multiple-count federal criminal indictment charging Mr. Kelley with a wide range of criminal frauds – unsealed by a federal grand jury shortly after recall charges herein were filed in regard to his *nominal* tenure and enlarged subsequently during the course of the recall process – implicates public corruption, in a person exercising that sinecure of critical public trust, not experienced in this state for more than a full century (since initial impeachment inquiries, in 1912, resulted in the forced resignation of Cornelius Hanford from the judicial position held by him from statehood).

While determination of guilt, or of lack of guilt, as to congeries of federal criminal charges pending against Mr. Kelley, at all times relevant, is not germane to those several charges for recall filed against him initially, in April, 2015, and under review herein, at present, the huge notoriety of all circumstances that commenced with multiple searches in Pierce County of what appears to be his sole residence (searches conducted at said home by

the Federal Bureau of Investigation, repeatedly, under authority of federal search warrants approved for entry into that residence) constitutes a lawful basis for taking of formal judicial notice as to his actual-and-legal residence being in Pierce County as is dispositive, legally, respecting the paramount constitutional issue before the trial court (as the import of such notoriety is squarely approved by this state's recall jurisprudence reviewed more fully hereinafter), and as to his actual-and-legal residence being in Pierce County as is repeatedly pleaded in the initial criminal indictment (as well as in the thereafter expanded federal indictment), each buttressing facts and law of such actual-and-legal residence in Pierce County as legally dispositive for his disqualifying violation of Article III, §24 of our state constitution (and of reality that it was and is the law of the case, below and herein, under the undisputed pleadings filed by the Office of State Attorney General, below, pursuant to its statutory responsibilities mandated by RCW 29A.56.130).

The secondary concern of the underlying recall matter and of this appeal – respecting clearly documentable lack of professional competence by Mr. Kelley in a particular state audit signed by him in violation of his oath of office – would pale in significance in comparison with the primary concern respecting his flagrant violation of our state constitution's specific residence obligation, which constitutes a condition precedent for any valid entry into the Office of State Auditor, were it not for the sad undeniability

that such lack of professional competence and his violations of the oath of office have facilitated, fostered and furthered both a direct ballot-title fraud of gigantic multibillion-dollar dimensions on nearly half of all residents of our state by a junior taxing district, and also its intentional-and-continuing fraud on this Honorable Court initiated against every Justice serving since fraudulent open-court misrepresentations made by the General Counsel of said junior tax district, so as thereby squarely, but falsely, to acknowledge directly and to embrace fully, on June 10, 2003, each and every ballot-title duty legally yielding a statutory contract formed between that subordinate district and its now-more-than-three million residents (which fraud on our state's highest court has continued for over 12 years and is ongoing still).

A tertiary concern below and herein – *vis-à-vis* Mr. Kelley's misuse of a statewide office for personal gain through improper means in order to coerce, for a crony, a nonexempt position for which he was not qualified – is of lesser significance, given that he was terminated within hours of Mr. Kelley's *nominal* leave-of-absence from his purported tenure as our State Auditor (as to which he was and is an unlawful pretender, and an illegal usurper, and as to which he has, therefore, received over one quarter of a million dollars in state compensation, as well as health, pension and related benefits, for which he is ineligible, legally, all through his false pretenses).

Thus, this appeal presents recall issues far removed from routine.

A. Direct Violation of Washington State Constitution's Article III, §24

The true import of each word in every constitution – whether such a foundational charter is thereby to restrict authority or to grant power to any federal, state or other “Form of Government” in the universal principles of the *Declaration of Independence* that **must** inform every aspect of all state functions here pursuant to requirements imposed perpetually by the United States Congress on all state officers, in early 1889, as a condition precedent for statehood then, and thereafter, through Section 4 of the Enabling Act – is evident in great care with which this Honorable Court treats such terms, including even those stated within sections clearly labeled as preambulatory.

Thus, based on verbiage directly self-identified as a “PREAMBLE” for Article IX, this Honorable Court first specifically determined contempt pursuant to *McCleary v. State*, 173 Wn.2d 477 (2012), and later imposed a sanction of \$100,000 per day against our entire state, *qua* sovereign, and thus against all state citizens together comprising the sole legitimate source of and for the sovereign authority thereof, as explicitly stated, in mid 1889, through the very first words of the initial substantive provision of our state constitution, in Article I, §1; as derived from a seminal act, over 113 years earlier, on July 4, 1776; and as notably posited over two millennia before, in *circa* 350 B.C., as to what Aristotle termed in his *Politics* as a key then-“disputed question,” with regard to exactly ““What is a state,”” as to which

was prominently posited that, with “a constitution or government being an arrangement of the inhabitants of a state,” the logical answer must be, of a necessity, that every “state is a composite, like any other whole made up of many parts; these are the citizens, who compose it” (all quotations from *Politics*, Book III, Part 1, page 67, translation by Benjamin Jowett, 1885).

Space limitations imposed on this brief by court rule preclude a full analysis of aspirational-and-supernatural elements common in preambles of American foundational charters – which distinguish such texts from wholly substantive provisions of constitutional documents – but reasonable doubt cannot exist that Mr. Kelley’s disregard for and defiance toward Article III, §24 of our state constitution reflect a misfeasant-or-malfeasant form of true malice aforethought: both for the central duty to hold the critical Office of State Auditor, and also for paramount constitutional policy inherent therein, and, thus, for the Washington State Constitution and for every state citizen.

Careful assessment and competent analysis of Mr. Kelley’s willful misfeasance, or worse malfeasance, through his flagrant violation of Article III, §24 of the Washington State Constitution – in order by said intentional wrongdoing to seize powers of, and compensation for, one of 18 statewide positions of crucial public trust within the executive-and-judicial branches of state government as a crass pretender and as a continuing usurper – can yield reasonably complete understanding of the full dimensions of his acts

only through a careful focus on multiple *sine qua non* steps required by our state constitution and by state statutory law as necessary, and sufficient, for validly entering, legally, and thereby holding, lawfully, the station of State Auditor, involving three separate-but-interrelated conditions precedent that must be fulfilled as to each successful candidate for that statewide position before valid exercise of its powers becomes legally possible only thereafter.

In particular, eligibility of any successful candidate for any elective public trust – whether statewide or in any-and-all smaller jurisdictions right down to officers elected within junior taxing districts and other such lesser agencies – requires a formal certification by the Office of the Secretary of State, or by another agency authorized to certify balloting at a lower level, as an initial condition precedent for lawful entries into all elected offices.

After this initial condition precedent has been fulfilled, as required by law in order to ensure which candidate has in fact prevailed as required to be actually elected, each successful candidate so certified must then also fulfill any-and-all further acts mandated as additional conditions precedent by all applicable constitutional, statutory, ordinance or other requirements, including a specific constitutional responsibility, in this state, for everyone elected to, and certified for lawful entry into, the four statewide offices of “governor, secretary of state, treasurer and auditor,” to establish originally and to maintain subsequently **actual** residence in Olympia, “at the seat of

government,” as a further condition precedent for lawful entry into and for enjoyment thereafter of each honor of and every benefit for said statewide positions of public trust, as directly stated in 1889 through Article III, §24, and as squarely recognized as to the State Auditor office by this Honorable Court over six decades later in *State ex rel. Lemon v. Langlie*, 45 Wn2d 82, 97 (1954), without equivocation of any kind, as is reviewed in detail *infra*.

Only after these first-order and second-order conditions precedent have been fulfilled, legally, can any prevailing candidate then become fully qualified to undertake the constitutionally-and-statutorily mandated oaths of office, which is required as a third-order condition precedent for legally valid entry into and legally effectual exercise of the position of public trust at issue, herein, precisely because the **mandatory** second-order obligation for a residence in Olympia, “at the seat of government,” was intentionally violated by Mr. Kelley’s disregard (perhaps because of financial expenses involved in fulfilling this constitutional condition precedent, which are not immense, but which are more than trivial, rather than due to pure arrogance in intentionally defying a clear legal requirement of our state constitution), and additionally because the **mandatory** third-order requirement for proper swearing or other affirmation of the oath of office by Mr. Kelly, as a *sine qua non* constitutionally, was willfully violated by his undertaking same in bad faith (indisputably knowing that he was swearing or affirming an oath

with malice aforethought in willful *mala fides* in thus-falsified oath-taking, as well as related disregard for and defiance toward our state constitution).

Thus, while a self-identified “PREAMBLE” for our state constitution’s key Article IX – which reports through an intransitive verb usage that “It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, cast, or sex,” and which, in turn, supplies central legal bases on which our state and every citizen constituting that composite have been and are being held in contempt of this Honorable Court for over a full year and are currently being sanctioned \$100,000 per day – is simply a slight recasting of a direct-but-unfunded federal mandate imposed by the United States Congress in early 1889 as a statutory condition precedent for by-then-long-pursued statehood through the Enabling Act (namely: “That provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of said States, and free from sectarian control”), which such rewording evidences a discreetly complaintive tonality respecting the “paramount duty” so imposed (as but the first of myriad unfunded federal mandates that have followed), Article III, §24 is entirely clear in requiring that the four statewide elected officials with direct responsibilities for core state governmental functions (as chief executive officer, chief administrative officer, chief financial officer and

chief auditing officer) **must** establish **actual** residences within Olympia, “at the seat of government,” while this requirement is **not** imposed on 14 other likewise very important officials also elected statewide to undertake a wide variety of duties for our state (including this Court’s nine Justices).

Nor has quintessential logic squarely informing this completely rational public-policy decision imbedded directly into and maintained permanently within our state constitution – through Article III, §24 – changed one *iota*, in more-than-125 years, despite innumerable particulars having devolved.

Simply stated, good state governance requires that the four individuals elected as chief executive for a plethora of functions, as chief administrator for numerous matters, as State Treasurer and as State Auditor be located in “the seat of government” – as estimable common sense compelled in 1889 and likely shall oblige forever – and should our state’s legislative branch in the future ever desire, pursuant to its singular policymaking role, to utilize its indisputably rightful “Legislative Powers, incapable of Annihilation,” according to our nation’s founders in the *Declaration of Independence*, in order to request state citizens to abandon the self-evident wisdom squarely established intelligently and intentionally by Article III, §24, then this long-**mandatory** requirement of our state constitution could be revised, or **not**, by a constitutional amendment thus approved, or **not**, at the next General Election by a simple majority of voters thereby properly exercising the true

sovereign authority of the state memorialized in Article I, §1, wherein our state constitution specifically thus establishes as the first tenet of our state government, here, that “All political power is inherent in the people,” and then immediately quotes directly from our *proto-nation’s Declaration of Independence* for the fundamental, inherent and underlying principle that the people of this state are the sole source from whence there can ever be any lawful derivations of “just powers from the consent of the governed,” pursuant to the federal Enabling Act’s explicit requirement that our state, our constitution, our statutory law and all judicial interpretations thereof, *inter alia*, must “not be repugnant to the Constitution of the United States and the principles of the *Declaration of Independence*” in Section 4 (so as, thus, to inform every state policy, as it is and ought to be, as well as every other act by legislative, executive and judicial branches in their respective representative capacities of citizens as the sole legitimate sovereign here).

1. Residence as to misfeasance or malfeasance toward Article III, §24

Either Mr. Kelley was an actual-and-legal resident of Pierce County on April 24, 2015 when the Office of State Attorney General filed the petition statutorily required to be entered in the Superior Court of the county of his one home pursuant to RCW 29A.56.130(2) – whereafter the trial court then properly held a legally valid hearing, on May 8, 2015, as does clearly appear to be the case, in truth, given reporting by the Associated Press, by leading

newspapers and by local affiliates of national television networks as to the Federal Bureau of Investigation's extensive search of Mr. Kelley's personal residence in Tacoma (on which appellant first relied), given the State Attorney General's statutorily mandated pleadings' specific identification of his said residence in Tacoma (on which appellant subsequently further relied after its filing below), given the United States Department of Justice's 14 separate identifications of Tacoma as Mr. Kelley's actual residence in its indictment of him for criminal frauds and for related wrongdoing on April 15, 2015 (on which appellant thereafter still further relied after the True Bill was then presented), and given his expert private legal counsel's failures to challenge validity of venue in Pierce County before, during or since the hearing held without **any** evidence of any actual-~~or~~-legal residence anywhere other than within Tacoma and therefore in Pierce County (on which appellant has yet further relied), *inter alia* – or else the Pierce County Superior Court lacked lawful jurisdiction to hear and to resolve **any** issue presented to it both by the Attorney General's Petition and also by appellant's motion, and **all** of its acts were thus null and void *ab initio* for *ultra vires* (due to lack of valid subject-matter jurisdiction statutorily available **only** in the county of such residence).

Acceptance of and action on the Petition presented by the Attorney General for adjudication in and by the trial court, based upon that Office's appropriate inquiries into Mr. Kelley's residence in Pierce County, and based

on its proper pleading of residence in such county as a required element for valid subject-matter jurisdiction – following a cagey silence thereupon by Mr. Kelley’s expert private attorney as to this mandatory venue requirement as thereby correctly pleaded by the state – **both** legally resolves every residence question so as to establish actual-and-legal residence in Pierce County for all purposes below and **also** therefore legally yields the law of the case then, and for each stage that would next follow, inclusive of this appeal herein currently.

Indeed, Mr. Kelley’s residence as identified in the state’s pleadings was skirted with a hushed silence, within his expert lawyer’s brief on state recall law, as submitted to the trial court as an officer thereof, *via* its conspicuous omission as to his client’s residence as a quintessential for valid jurisdiction in Pierce County Superior Court (as required for lawful judicial resolution of the state’s Petition under statutory provisions codified at RCW 29A.56.110-270), with sidestepping of this evasive omission added at the hearing below.

While oral argument by Mr. Kelley’s expert counsel suggested that appellant bore an undefined responsibility to prove a logically impossible negatory – namely, Mr. Kelley’s **lack** of any **actual** residence “at the seat of government” – as to our state constitution’s clear **actual** residence obligation as set forth within Article III, § 24 (which this Honorable Court has squarely confirmed in *Langlie*), his constitutional-scofflaw client’s residence was fixed and resolved by the state’s necessary-and-proper pleading of this factual-and-

legal reality, as a statutory condition precedent for lawful subject-matter jurisdiction within the trial court, and by statutorily required actions by the Superior Court, in the county of his residence, as undertaken by the court below without objection by his expert counsel, as aided by written briefing designed to divert judicial attention from the **actual** residence duty *via* its omissions (submitted notwithstanding Civil Rule 11's duties *cum* sanctions).

Unfortunately, the Pierce County Superior Court was not simply misled by patent omissions of and overt misdirections as to paramount constitutional-and-legal issues about Mr. Kelley's multifarious wrongdoing, but the hoary Kentucky decision both quoted at length in briefing therein by his expert attorney (CP ____), and also referenced in his oral argument below (VRP 19), was mischaracterized so as to twist this 167-year-old case into a very musty pretzel and to disguise that it supports appellant's charges squarely (and **not** the position for which it was so offered, brazenly, in defense of Mr. Kelley's unconstitutional misconduct with his utter defiance for his constitutional duty to maintain **actual** residence in Olympia and with his false undertaking of an oath of office as sworn or affirmed either in *mala fides* or else perjurally).

Heavy reliance thereon so urged by Mr. Kelley's expert counsel to the trial court, as averred for an understanding of the simple words of our state constitution's Article III, §24, was problematic in the extreme – based on an intermediate Kentucky appellate court opinion, from 1848, which had therein

disallowed Kentucky legislation, from 1795, which had purported to impose a residency obligation, **statutorily**, on the appointed Secretary of State there, in the absence of any requirement in that commonwealth's constitution for a residence at the seat of government in Frankfurt by that key appointee, and in a fashion found inconsistent with a patent constitutional right to tenure for a specific term of years, after any formal conformation, subject only to good behavior – and that brief, as submitted by his counsel, in fact misrepresents what said decision concluded, legally, in an inapposite case *via* an extended quotation that omits relevant analysis that frames the lengthy passage quoted.

The most pivotal discussion intentionally thus omitted, and willfully thereby withheld from the trial court, was and is said Kentucky appellate court's direct recognition that "it is entirely clear that so far as residency is to be regarded as a qualification for receiving or retaining office, the [Kentucky] constitutional provision on the subject, covers the whole ground, and is a denial of power to the Legislature to impose greater restrictions," *Page v. Hardin*, 47 Ky. 648, 661 (1848), which analysis is located shortly before the lengthy passage employed to mislead by intentionally withholding this, from the court below, as a quintessential preliminary that frames the quite extended passage quoted in order thereby to suggest, incorrectly and disingenuously, that Kentucky's constitution had then been interpreted so as to override a constitutional residence requirement (rather than to disallow a residency

obligation imposed by a purported commonwealth **statute** found contrary to that state's legally dispositive **constitutional** terms (which, unlike Article III, §24, did **not** constitutionally order a residence "at the seat of government").

Following the lengthy quotation thereby exploited to misdirect the trial court – as both inquired of and also relied on by the Court, in error, during the hearing at issue (VRP 19) – that Kentucky case further recognizes **both** the legal validity of constitutional-and-statutory terms when some "officers (*sic*) residence is restricted by the law of his office" (at 667), and **also** limits legislative actions "founded on notions of convenience and fitness, [which] must, as already shown, yield to the higher principles of the constitution" (at 676), thus unmasking thereby a major sleight-of-hand used to deceive below.

Unlike the constitutional law of Kentucky that was thus misrepresented willfully to the trial court – which had been found, in 1848, **not** to require that commonwealth's Secretary of State to live in the seat of government in Frankfurt because its constitution was silent on the subject, and because its legislature could therefore **not** lawfully impose any statutory residency requirement, in 1795, that would thus violate the constitutional right of an appointed-and-confirmed secretary of state to tenure subject only to good behavior – the constitution of our state explicitly and indisputably requires a residence "at the seat of government," within Olympia, by our Governor, Secretary of State, State Treasurer and State Auditor, under Article III, §24.

Importantly, this unique constitutional obligation is **not** imposed on five other state executive officers **nor** on nine Justices also elected statewide.

What our state constitution directly requires is stated in Article III, §24, simply and clearly, as follows, in its entirety, so as to leave no doubt: “The governor, secretary of state, treasurer, auditor, superintendent of public instruction, commissioner of public lands and attorney general shall severally keep the public records, books and papers relating to their respective offices, at the seat of government, **at which place also the governor, secretary of state, treasurer and auditor shall reside**” (bolding added for legal clarity).

What this Honorable Court has clearly explained – contrary to what Mr. Kelley’s expert private attorney suggested through below-urged reliance *via* sleight-of-hand upon an 1848 Kentucky opinion, interpreting an *ultra vires* commonwealth **statute** that had violated an entirely different **constitutional** text very far removed from Article III, §24, both in time and also in place – is as follows, in full, in its enormously powerful explication of that particular constitutional provision exclusively through one of our state’s crucial Article I “Declaration of Rights,” in *Langlie*, whereby this Court, as our state’s highest judicial authority, immediately followed its complete quotation of every word of Article III, §24, as is requoted in full *supra*, thusly: “Like all other sections of our state constitution, these provisions are mandatory, since the section contains no express declaration to the contrary (Art. I, §29).”

What Article I, §29 states as a core element of the “Declaration of Rights” guaranteed to all state citizens is: “The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.”

Thus, even if *Page v. Hardin* had not been willfully misrepresented to the trial court, which it certainly was, a Kentucky case from 1848 finding a commonwealth statute unconstitutional due to *ultra vires* legislation, during 1795, can yield **no** valid legal authority for the Pierce County Superior Court to disregard both unambiguous words as a mandatory-and-dispositive term of our state constitution’s vital Article III, §24 and also this Honorable Court’s specific analysis in *Langlie* through our state’s core “Declaration of Rights.”

Nor can the skill of Mr. Kelley’s expert private counsel validly conflate this Honorable Court’s common-sense discussion in reviewing potentials for constitutionality of payments in the nature of expense reimbursements – as legislated for those five state executive officers **not** required to maintain an **actual** residence in Olympia, in *State ex rel. O’Connell v. Yelle*, 51 Wn.2d 594 (1958), following its direct citation to and square reliance on its earlier *Langlie* decision to reiterate its explicitly stated position therein, at 598, as to the residence requirement imposed on our Governor, our Secretary of State, our State Treasurer and our State Auditor – so as to eviscerate the clear terms of Article III, §24, of our state’s true “Declaration of Rights” and of *Langlie*.

Hence, such fraud on the trial court merits action *sua sponte* herein.

This Honorable Court should also review Mr. Kelley's actual-and-legal residence and thus determine a constitutional vacancy in the Office of State Auditor, due to his usurpation under false pretenses and his asserted tenure as a pretender, either pursuant to appellant's motion below reliant on RCW 29A.56.270, or else pursuant to its inherent judicial powers, and, in whatever instance is determined by the Court to be applicable, in conformance with its specific elucidation that the constitutional right of recall validly "applies only to elective public officers," *Jewett v. Hawkins*, 123 Wn.2d 446, 449 (1994), as the very first of those "criteria" to be determined by trial courts of general jurisdiction charged by RCW 29A.56.140 to resolve recall charges initially.

2. False oath as to misfeasance or malfeasance toward Article III, §24

All successful candidates for public elective office in our state must swear or affirm an oath of office in appropriate form, either as specified by law for the specific office at issue, or else in the minimalist form provided by statute, in RCW 29A.04.133, in absence of a specified oath for an office.

Our state's jurisprudence is rather sparse respecting this *sine qua non* as to oath-taking for those entering properly, and thereafter holding rightly, positions of public trust here, as well as regarding that critical foundation for Anglo-American common law, whether measured from mutual oaths taken in *Magna Carta* (in 1215) or, historically rather more accurately, from those oaths required of every subject through King Alfred's *Domboc* (in *circa* 888),

as to which the *witan*, then comprising his *Witenagemot*, duly confirmed that it pleased them all to keep fully (“*þæt him þæt licode eallum to healdanne*”).

However measured, Mr. Kelley’s oath of office, as taken orally while defying our state constitution, and as also signed, plainly cannot pass muster.

Simply put, the oath requirement for valid entry into every position of public trust under constitutional jurisprudence here – and, hence, the import of Mr. Kelley’s bad faith or perjurious swearing or affirming to support our state constitution even as he violated its constitutionally mandatory residence obligation for the office into which he was thereby pretending to enter – is as notably foundational for American constitutional jurisprudence as it is for the common law in England, since *Marbury v. Madison*, 5 U.S. 137 (1803), sets the conclusion of its judicial *tour de force* and of its genuinely path-breaking analysis by squarely harkening back to the oath-taking function as a fiducial *sine qua non* for lawful governance, including a therein-validated judicial role.

Among several thousand “elective public officers” at all state-and-local government levels, just four **must** have a residence in Olympia, “at the seat of government,” as a condition precedent specifically imposed by our state constitution, which **actual** residence duty cannot be voided by this Honorable Court without eviscerating both Article III, §24 and also multiple provisions of our state’s “Declaration of Rights,” as well as the oath required of Mr. Kelley by RCW 43.01.020 and the judicial oath imposed by Article IV, §28.

3. Patent constitutional requirements to hold office cannot be trivialized

Nor can reasonable argument be made that intentional violations of our state constitution can, as urged below, somehow be simply **technical** – which is the ultimate legal oxymoron usually reserved for risible posturing when no lesser foolishness exists – with such utter illogicality further given the lie by specifics, herein, since Mr. Kelley’s defiance toward the constitutional duty that defines a condition precedent, for his entry into the office to which he still pretends, is thus not merely legal absurdity but absolute legal anathema.

B. Unprofessional-and-incompetent audits and major *sequelae* thereof

As this Argument indicated early on, at page 6 *supra*, but for the pivotal role played by Mr. Kelley’s unprofessional-and-incompetent audits in aiding and abetting a patent fraud on this Honorable Court by a junior taxing district continuously for well over a dozen years now, since June 10, 2003, this issue would be minor in comparison with the gravity of his willful violation of our state constitution, even though it would nonetheless be adequate, legally, for a valid recall for violation of the oath undertaken by Mr. Kelley in *mala fides*.

Yet, in fact and in law, that highly unprofessional-and-incompetent audit by Mr. Kelley did, and is continuing to, aid and abet a brazen fraud on this Honorable Court and against each Justice thereof serving since said junior tax district’s open-court fraud, on a fine spring day, in order to mask its frauds on over three million district residents in the ballot-title specifics

used by it to scam them in order thereby to acquire **literally hundreds of billions of dollars through perpetual taxing authority** (in King, Pierce and Snohomish counties), which gross legal violations through false open-court representations made to the Court, in mid 2003, and through falsified terms of a statutory contract legally created through extremely specific but demonstrably falsified ballot-title representations made to state citizens as voters and as taxpayers, in late 1996, have been successfully concealed for much longer than would have been possible had the audit directly at issue, as well as others, not violated explicit core requirements established for the conduct of every audit of a public agency pursuant to “generally accepted government auditing standards” under the GAO’s “Yellow Book” manual.

These huge frauds have, in turn, also facilitated follow-on financial frauds both against the United States in pursuit and receipt of more-than-\$1.5 billion in federal grants to date (with another \$1 billion federal grant application now pending), along with a huge federal loan guarantee (of over \$1 billion), and also against purchasers of more-than-another-\$2 billion in junior taxing district bonds (sold to buyers reliant on defective state audits).

The core frauds both against more-than-three million state citizens, and also against every Justice serving on this Honorable Court since June 10, 2003, derive squarely from ballot-title guarantees central to the Court’s majority opinion in *Sane Transit v. Sound Transit*, 151 Wn.2d 60 (2004),

as well as pivotal for two powerful statements signed by three Justices as dissenting Court members, all focused on a ballot title's formation of legal obligations, whereafter Justice Sanders concluded that "it is not our role to help Sound Transit railroad the voters" (at 104), joined by Justice Johnson then, and wherein Justice Chambers followed, less colorfully, but not less critically, in directing a constitutional spotlight directly on that ballot title (*i.e.* stating therein that "I fear this court is failing its constitutional duty to protect the legislative role of the people by permitting inaccuracies, false representations, and clever manipulation of these processes"), before sadly then adding: "This court has failed its essential constitutional duty to protect the integrity of the exercise of the people's legislative power" (*Ibidem*).

Sane Transit's focus on the ballot title devolved from the nature of that litigation – which effectively claimed failure of consideration as to the major provisions of the statutory contract between the junior taxing district, *qua* one party, and state citizens living therein as voters and as taxpayers, *qua* the other party, as established by each core ballot-title representation, and by operation of our state's expansive conception of statutory-contract law, albeit not articulated with full clarity as to black-letter contract terms – as well as from Justice Sanders intense questioning of the junior taxing district's General Counsel in open court, on June 10, 2003, with regard to whether the agency is free to pick and to choose among its key ballot-title

obligations, as to which it shall later fulfill, or whether it is legally bound to honor each provision of the ballot title and, through it, every term of its Board Resolution No. 75 referenced therein (whereby he obtained explicit open-court commitments to fulfill **all** such ballot-title guarantees, squarely pursuant to the import of language used to warranty **all** of them, which left Justice Johnson and him inadequately reassured to deter their apothegmatic “railroad the voters” conclusion, but which very substantially informs the majority opinion through its oft-referenced dependence on said resolution).

Indeed, the majority opinion rests directly on said Resolution 75 as its legal polestar, over and over and over and over and then over yet again, and with good reason, given the intensity of Justice Sanders’ demanding in-court interrogation of the junior taxing district’s General Counsel, just shy of an inquisition before he finished, and given the fulsomeness of all open-court commitments then made in order to attempt to protect taxing powers of genuinely remarkable scope, namely, **literally hundreds of billions of dollars through perpetual taxing authority** thus saved by *Sane Transit*.

However, the junior taxing district has violated **both** its ballot-title guarantees to nearly half of our state’s citizens, as voters and as taxpayers, pursuant to central obligations legally established through Resolution 75, as squarely referenced therein, and **also** its legally binding commitments to this Honorable Court, in open court, to fulfill each-and-every duty legally

established by Resolution 75 terms, on which the majority directly relied, incessantly and repetitively, if just short of doth-protest-too-much tonality.

Further, the initial performance audit of the junior taxing district as conducted by the Office of State Auditor pursuant to an initiative that had been promoted by Tim Eyman – whose activities are analyzed, repeatedly, by this Honorable Court – documented its operations to be clearly violating a crucial legal responsibility undertaken and owed both to millions of state citizens under Resolution 75 and also to this Honorable Court due to open-court commitments to honor each-and-every major term of that resolution.

In particular, the previous State Auditor squarely identified that the junior taxing district is **not** fulfilling its pivotal ballot-title legal obligation to “conduct an annual comprehensive performance audit through independent audit services,” as required by Section 5 of Resolution 75, which said then-State Auditor identified in October, 2007, within SAO Report No. 1000005, as his first “Formal Finding,” namely: “Sound Transit has **not** commissioned annual, independent, comprehensive performance audits limiting the ability to identify and address budget, schedule, and scope issues” (bolding added).

Additionally, Section 5 obligates the junior taxing district not merely to “an annual comprehensive performance audit through independent audit services” in order to protect state citizens as voters and as taxpayers, but also to “appoint and maintain a citizens' oversight committee,” which has been

denominated as the Citizen Oversight Panel or COP, and which is therein explicitly “charged with an annual review of the RTA's performance audit and financial plan and for reporting and recommendations to the Board.”

When the COP learned of the then-State Auditor’s Formal Finding, it inquired regarding failure to honor a patent ballot-title guarantee owed to citizens. This resulted in an oral report by the agency’s General Counsel, who informed COP members that there was **no** obligation to “conduct an annual comprehensive performance audit,” and that panelists are therefore **not** obliged either to conduct “an annual review of the RTA's performance audit” or undertake “any reporting and recommendations to the Board” as to same (after directly making expansive open-court commitments to a full compliance with all ballot-title terms in order to protect access to **literally hundreds of billions of dollars through perpetual taxing authority**).

Subsequently, a second performance was conducted by the previous State Auditor, through SAO Report No. 1008277 in October, 2012, which focused substantially on the Citizen Oversight Panel, and which was quite critical of various aspects of its lack of diligence in protecting key interests of over three million state citizens (a nontrivial element of its nonfeasance appearing to result from wholly egregious misinformation falsely provided to that committee of unpaid volunteers that was **both** directly contrary to at least the two core Section 5 obligations quoted hereinabove, and that is

also squarely in conflict with open-court representations made to all nine Justices and, indisputably, accepted by six signers of the majority opinion with its myriad references to and entirely clear reliance on Resolution 75).

Much further wrongdoing by the junior taxing district can and shall be identified and documented when a professional-and-competent audit is eventually undertaken pursuant to its direct ballot-title obligation to ensure “an annual comprehensive performance audit through independent audit services” based on core tenets of and key duties under “generally accepted government auditing standards” for professional-and-competent audits of public bodies through GAGAS principles and practices (outlined below in a filing providing quotations as to central auditing responsibilities and also available herein for this Honorable Court within Clerk’s Papers at ___).

Review of GAGAS principals and practices evidences that auditors of public entities **must** act, with a **genuine** vigilance, **whenever** any audit of a public agency identifies nontrivial defects as to every legal duty owed by any government under constitutional, statutory, regulatory or ballot-title terms, *inter alia*, which in turn triggers key auditor responsibility to inquire **further**; to qualify pending and subsequent audits until a so-identified lack of legal compliance with a major legal obligation is fully corrected; and, in certain instances, to notify appropriate legal authorities. This has **never** yet been done since the above-quoted first Formal Finding called out a major

lack of compliance with Resolution 75, as a central ballot-title obligation, notwithstanding that said Formal Finding states with total clarity that said violation so identified compromises the State Auditor's ability to conduct fully competent audits based on its GAGAS duties owed to state citizens!

This failure to comply with GASAS requirements provides a good-and-sufficient basis for determination that Mr. Kelley's audit of the junior taxing district, in 2014, was unprofessional-and-incompetent; thus violated the oath required to hold the position of State Auditor; and hence provides a lawfully valid basis for removal by recall (but for pretense and usurpation preventing him, legally, from validly holding office as required for recall).

However, it is important to identify that over three million citizens of this state, who are currently paying fully \$2 million per day to the junior taxing district (under the *Sane Transit* majority opinion's clear reliance on Resolution 75), and who have paid enormous sums over to that agency for nearly two decade (based on an explicit ballot title obligation to "conduct an annual comprehensive performance audit through independent audit services" as a central element of that resolution thus utterly depended on repeatedly by that Court majority), have never received even one "annual comprehensive performance audit" to date (not for 1997, nor 1998, nor 1999, nor 2000, nor 2001, nor 2002, nor 2003, nor 2004, nor 2005, nor 2006, nor 2007, nor 2008, nor 2009, nor 2010, nor 2011, nor 2012, nor

2013, nor 2014), even though fiscal-and-other information to be supplied is essential for any rational evaluation of the “test drive,” as also squarely promised to state citizens as voters and taxpayers, in 1996, before one-or-more further tax proposals would be presented (which such additional tax levies would all to be added to **literally hundreds of billions of dollars in perpetual taxing authority** obtained from residents of King, Pierce and Snohomish counties, then, based on each ballot-title guarantee provided to state citizens as voters and as taxpayers at that time pursuant to Resolution 75, as therein identified, and thereafter preserved by this Honorable Court, in 2004, based on equally explicit open-court commitments provided to all nine Justices respecting that subordinate agency’s fully patent undertaking to honor and to implement that resolution completely according to its clear words, as directly solicited by Justice Sanders and as squarely documented by numerous references to Resolution 75 within the majority’s opinion for a then deeply divided Court respecting its pivotal *Sane Transit* decision).

In addition, judicial notice should be taken that without even **one** “annual comprehensive performance audit” having ever been provided to more-than-three million state citizens living in the junior taxing district – despite remarkably specific open-court commitments to this Honorable Court which certainly require, at a minimum, that “annual” means **annual** and not once every 20 years, that “comprehensive” means **comprehensive**

and not a narrow topic and that “performance audit” means **performance audit** and not public-relations trickery – **all** district residents lack factual-and-financial information essential for reasonably informed and rationally intelligent analysis of the “test drive” promised before further tax ballots.

The legally guaranteed “annual comprehensive performance audit” shall also further clarify the role of unprofessional incompetence in aiding and in abetting frauds on over three million citizens and on every Justice.

Despite the Office of State Auditor’s initial performance audit of the that junior agency having squarely identified a key overarching ballot-title guarantee falsely provided to state citizens through specifics of the ballot title central to this Honorable Court’s majority decision in *Sane Transit*, that state agency has repeatedly failed to follow proper GAGAS-required protocols and competent practices derived therefrom, and it has, instead, rolled out one “clean” audit report after another for a subordinate agency that is thereby facilitated, fostered and furthered in its frauds on numerous victims (none more-so than well-over-three-million state citizens and this Honorable Court, who and which have been left in the dark, respectively, due to Mr. Kelley’s unprofessional-and-incompetent auditing since 2013).

Mr. Kelley’s public attorney represented in his briefing and in his oral argument that his constitutional-scofflaw client enjoys absolute discretion as to every audit function and that audits grossly substandard as measured by

GASAS obligations are thus beyond the legal reach of constitutional recall (in part by identifying a predecessor's issuance of public-relations materials, mislabeled with a state audit number, which fail to conform with GAGAS' core requirements for competent audits conducted to professional standards).

Even if this were wholly correct, which it is not, rather than a gross overstatement of discretion rightly exercised by state auditors, which it is, it would **not** be relevant, since a performance audit of the junior taxing district was made, and it revealed a core violation of a central ballot-title duty and, thus, of the statutory contract between the junior taxing district and now-over-three-million state citizens residing therein. Hence, both oath-required best efforts and also patent GASAS guidelines preclude continued issuance of "clean" audit reports (especially when the initial performance audit states squarely that identified failures to comply with ballot-title duties also thereby prevent our state agency from conducting fully competent audits so as thus to further preclude the "clean" report that Mr. Kelley falsely signed in 2014).

In short, once violations of major legal duties are identified, both fidelity to the oath-of-office duty and also basic public-auditing competence require disclosures, in subsequent state audits, until wrongdoing has been corrected; Mr. Kelley's violations of both the oath and also of core GASAS obligations, through issuance of a "clean" audit report for the junior taxing over his signature in 2014, have aided and abetted the junior taxing district's long-

standing and ongoing cover-up of its egregious legal wrongdoing; and such misfeasance or malfeasance affords further valid bases for recall by citizens.

Though Mr. Kelley's predecessor may have been satisfied with issuing a public-relations document masquerading as a state audit, under SAO No. 1002767, its bizarre assertion that ballot-title frauds squarely identified, in 2007, had been resolved even though such purported rectification as to such elemental fraud "may have addressed [an] underlying issue differently than suggested" (CP ___), despite the junior taxing district then not and still never providing even one "annual comprehensive performance audit" as patently guaranteed in the ballot title's direct reference to Resolution 75 (and as also squarely reaffirmed in open court by its General Counsel to every member of this Honorable Court thereafter), a disregard as to this pivotal audit-identified defect, following the initial and still-unresolved Formal Finding in late 2007, **does not** and **cannot** fulfill duties for competent auditing and for best efforts.

Indeed, a competent audit of the junior taxing district, rather than the one signed by Mr. Kelley in 2014, would have necessarily identified that the only step taken to rectify the first Formal Finding was its General Counsel's direct follow-on lies to COP members about two core elements of Resolution 75 (after lying squarely otherwise before, in open court, in order thus to railroad six Justices of this Honorable Court in *Sane Transit* as to its gigantic tax grab).

Therefore, such fraud on this Honorable court merits action *sua sponte*.

Thus, the trial court erred in finding that Mr. Kelley's incomplete-and-unprofessional audits did not afford a valid basis for recall, and remand should require correction of this error in order to authorize recall due to same.

Appropriate actions as to open-court fraud on this Honorable Court by the junior taxing district's General Counsel on June 10, 2003 – which has been ongoing for well-more-than-a-dozen years and which became willful misfeasance or intentional malfeasance no later than his affirmative actions in the course of squarely informing that agency's COP members that **no** legal obligation exists under Resolution 75 to “conduct an annual comprehensive performance audit” in a fashion squarely and necessarily at odds with legally binding open-court commitments that he had made earlier – shall be as the current Justices see fit (as shall be, initially, related frauds against over three million state citizens, the United States Treasury and purchasers of more-than-\$2 billion in fraud-based debt issued to date, even though any such *sua sponte* judicial action should preserve rights of appellant to seek recoveries for the state, *e.g.*, *via* federal false claims and *via* state-based *qui tam* action).

C. Misuse of public office for personal benefit through improper means

While errors in the trial court's Order in respect to Mr. Kelley's huge abuse of an usurped position of public trust in order thereby to attempt to coerce state managers to hire his crony into a nonexempt state position – before slotting him into an exempt position after failure to obtain a much-

more-valuable nonexempt position for him – are of far less import than his attack on our state constitution, *via* his defiance for a constitutional duty for valid entry into the office at issue and *via* his false oath-taking as to the oath of office required, this misuse is nonetheless adequate legally and factually for valid recall pursuant to reasonable inferences that voters are empowered to draw, under all facts properly before the court, previously, and on remand (which the court below had authority to resolve, due to notoriety, but failed to do respecting unconstitutional misconduct and regarding shoddy auditing).

In this instance, intelligence available is thinner than that as to Mr. Kelley's **actual** residence being factually in Pierce County, as is indicated by statutorily required pleadings filed by the State Attorney General, and as set forth 14 separate times within the federal criminal indictment filed initially against him by DOJ officials, and information is less certain than that squarely defining GAGAS through the GAO materials assessed *supra*.

Yet, given that Mr. Kelley's crony long dodged depositions in order to avoid giving testimony, on oath, as to matters that ultimately yielded the expanded multiple-count federal criminal indictment now pending against him – in order by such means almost certainly to aid and to abet a cover-up of apparent criminal frauds now in the process of being ferreted out by FBI-and-DOJ officials – *res ipsa loquitur* under the totality of notorious circumstances, whereby state citizens could rationally conclude, for recall

purposes, that the *nominal* State Auditor thus sought to pay off his crony with a nonexempt state job in a fashion recallable under this state's recall jurisprudence, and that, failing to coerce a misuse of public funds thereby, he then paid off his crony by hiring him into a make-work job, which this Honorable Court should determine also subject to recall, under the totality of circumstances, whether herein or subject to further inquiries on remand.

With this Honorable Court's repeated focus on establishment of an overarching "common sense" jurisprudence for our state through measured judicial standards bottomed on "logic, common sense, justice, policy, and precedent," as is stated in *King v. State*, 84 Wn.2d 239, 250 (1974), and as reiterated using various wordings in decisions respecting several disparate legal circumstances across several decades, as expressed most succinctly through *State ex rel. Heavey v. Murphy*, 138 Wn.2d 800, 813 (1999), in its statement that "we think a quote from Justice Hale puts it best: 'There is nothing unconstitutional about common sense.' *State v. Dixon*, 78 Wn.2d 796, 798, 479 P.2d 931 (1971)," *res ipsa loquitur* – and rather loudly so.

Indeed, Mr. Kelley's apparent use of state funds to pay off a crony who was and is central to the many felonies with which he is charged is as egregious as any public misconduct seen since a congressional committee investigated Judge Hanford in 1912 (for use of a position of public trust in order to gain a sweetheart real-estate opportunity from railroads benefitted

by favorable decisions made to their liking by him in his judicial capacity), with a possible exception as to the junior taxing district's continuing fraud on its own COP through its General Counsel's patent lies about Resolution 75 after having earlier otherwise defrauded this Honorable Court (through common law torts of misfeasance in public office or malfeasance therein).

D. RCW 29A.56.270 resolves Mr. Kelley's pretender-and-usurper role

The position taken in the trial court by Mr. Kelley's expert counsel in recall matters is that a person who violates Article III, §24's undeniable residence obligation, "because he did not reside in Olympia and does not reside in Olympia" (VRP 10), can never be removed except by an election contest now legally precluded by a ten-day statutory limit on same, *e.g.*, in his own next words, at the May hearing below, "Well if that's the case, an action to contest an election has to be brought within ten days of the date of certification" (rather than any rebuttal to lack of residence in Olympia).

This posture was accepted by the trial court, notwithstanding that state legislation adopted since 1912 to fulfill the mandatory constitutional duty imposed by the 8th Amendment can resolve the situation of a pretender and an usurper who has masqueraded as State Auditor for 34 months so far (20 percent of which masked statewide minstrel show is as a *nominal* elective official purporting to have taken a leave, from an office that he never held, which such pitiable charade to dance around endless calls for him to resign

by our Governor, Attorney General and legislative leaders, has been much extended by trial-court disregard for Article III, §24's words and purpose).

While Mr. Kelley's expert private counsel below purported an untimely election contest, posited *quo warranto* proceedings and denied that RCW 29A.56.270 affords lawful authority for the trial court to resolve appellant's timely filed motion then contesting Mr. Kelley's violation of Article III, §24, legal reality is that the statute provides clear legal authority for trial courts to fulfill their statutory duty to determine whether charges presented **could** legally "satisfy the criteria for which a recall petition may be filed," under RCW 29A.56.140, when a pretender usurps an office **unconstitutionally**, as for example when our State Attorney General's uncontested pleadings, as properly before the court below, documented Mr. Kelley's failure to qualify for office due to his lack of a **mandatory** residence in Olympia (as a federal indictment further verified 14 separate times), and when the court below can and did have no lawful subject-matter jurisdiction unless his residence was in Pierce County when the hearing was held (without objection by his counsel).

Indeed, RCW 29A.56.270 makes crystal clear the extensive breadth of *mandamus* power granted to the trial court within the county in which Mr. Kelley resides, **but solely in that county**, to wit: "The superior court of the county in which the officer subject to call resides has original jurisdiction to compel the performance of any act required of any public officer or to prevent

the performance of any such officer of any act in relation to the recall not in compliance with law.” Certainly this scope includes lawful power to compel Mr. Kelley to document full compliance with an explicit Article III, §24 duty.

An election contest is to ascertain which candidate actually received the majority of votes cast. That question is not at issue, herein, since no dispute exists that Mr. Kelley received the most votes. Rather, the proper *foci* are two mandatory post-election acts that Mr. Kelley failed to do in a fashion disqualifying his purported entry into the key Office of State Auditor on two distinct-but-interrelated bases: lack of mandatory residence and falsified oath.

E. Notoriety of Mr. Kelley’s circumstances as triggering “judicial notice”

Further bases exist for this appeal to be granted due to major notoriety of Mr. Kelley’s circumstances so as to trigger the appropriateness of a formal taking of “judicial notice” pursuant to a legal standard that this Honorable Court has established, squarely, for valid determination of factual-and-legal sufficiency of charges presented for recall actions (herein based on evidence of malfeasance, of misfeasance and of oath-breaking under Article 1, §33).

The starting point for proper analysis is this Honorable Court’s clear-and-direct statements a decade ago, in *In re Recall of West*, 155 Wn.2d 659 (2005), that “Recall statutes are construed in favor of the voter” (at 663), and that “Notwithstanding the petitioner’s duty to plead with specificity, we will not strike recall efforts on merely technical grounds” (*Ibidem*), wherein the

Court also further approved the Spokane County Superior Court's rather-extensive incorporation of factual matters, including dates and times, which thus ranged well beyond appellant's submissions, therein, under provisions of the recall statute (at 664-665), and concluded with a completely explicit holding that approved that Court's *modus operandi*: "We hold the trial judge acted within his authority by correcting the synopsis as he did" (at 665).

While the holding's expansive reading of the recall statute did not go as far as Justice James M. Johnson's concurring opinion – given Article I, §§33-34's constitutionally mandated implementation of recall being limited solely to legislation that "authorizes statutes only to 'facilitate its operations,'" such that "any laws affecting recall must be construed by courts to assure the free exercise of this right" at 669 – it clearly authorizes the use of information available to trial courts as presented by complainants, whether originally or subsequently, even when there were technical deficiencies therein, as well as guidance as to when judicial notice can and should be appropriately taken, whereby trial-and-appellate courts can thus resolve questions properly before them pursuant to a court's "entitle[ment] to take judicial notice of facts that are of general notoriety," *Yelle* at 597, including notoriety from multiple FBI searches of Mr. Kelley's home and from repeated DOJ indictments of him.

Given the "general notoriety" of the **actual** residence of Mr. Kelley, in myriad senses of that terminology, as employed by this Honorable Court in

Yelle (a case relied on by his expert private counsel below), given judicial construal in favor of appellant herein (as clearly rendered mandatory on trial courts, statewide, no later than the *West* decision, nearly a full decade ago), and given the breadth of authority to correct any inadequacies in the Ballot Synopsis as presented by our State Attorney General (had any been found on May 8, 2015), the trial court simply did not perform its mandated obligations adequately, in regard to the **actual** residence issue below, under terms clearly established by leading decisional law governing recall cases in this state (in addition to that said court's acceptance of and action on the state's Petition having resolved the residence question, legally, so as to establish actual-and-legal residence in Pierce County for all purposes therein, as well as herein, as set forth in the motion for reconsideration as filed timely below [CP ____]).

After the trial court documented that "respondent Kelly (*sic*) maintains a residence in Pierce County, Washington" (in paragraph 4 of its Order dated May 8, 2015 on an unnumbered page 2), it posited a legal requirement for appellant to prove what strongly appears to be a negatory (based on serial judicial speculations about "whether Kelly (*sic*) also maintains a residence in Olympia and, if so, how often he commutes between Olympia and Pierce County" (in paragraph 1.a on an unnumbered page 3), *inter alia*, which put oral speculations undertaken from the bench, during the hearing, into writing.

This situation borders on fictive Bumblesque "the law is a ass" territory.

State jurisprudence of recall imposes **no** legal obligation here upon any complainant to prove up a true negative or **any other logical impossibility** (e.g., Mr. Kelley’s **nonexistent** residence in Olympia, in this instance, given his expert private counsel’s hushed silence on that core issue in his efforts to sidestep it and to misrepresent its centrality), nor does it allow a trial court to speculate to avoid plain inferences that voters have every right to draw (i.e. Mr. Kelley’s **lack** of a residence “at the seat of government” there, as a near certainty factually and as a verity *qua* the law of the case below and herein).

Indeed, as the *West* majority decision and Justice Johnson’s concurring opinion both illustrate clearly – given how closely aligned the majority’s approvals of trial court actions are with the scope urged by that concurrence therein – trial-court speculations violated inferences that it is bound to honor.

Such judicial suppositions thus eviscerate our state constitution through judicial *fiat* based thereupon, rather than complying with this Honorable Court’s decisions *in re* operation of preferences for complainants as to recall matters and *in re* inferences which voters are to be allowed to draw therein, including whether Mr. Kelley’s taking of an oath was legally in bad faith, perjurious, or both, given his knowledge that he had **no** Olympia residence (while failure to identify an Olympia residence below, had any in fact existed, would likely have been to conceal it, from FBI-and-DOJ officers, as a by-far-most-logical basis for withholding that key *datum* under total circumstances).

Further, each judicial *fiat* determination based on naked speculations runs directly counter to appropriate judicial notice triggered by huge notoriety of Mr. Kelley's circumstances from the FBI's initial search of his home in Pierce County pursuant to a federal search warrant, as followed by far more.

Naked trial-court suppositions that follow on, and that are piled onto, initially unsupported speculations do not, logically, and cannot be allowed to, judicially, annul our state constitution so as thereby to expunge and to void a fully sound public policy decision through casually destructive judicial *fiat*.

F. State recall jurisprudence is not a model of clarity but lucidity inheres

As suggested in the Introduction to this opening brief, while opinions by this Honorable Court yielding the state jurisprudence of recall, through a variety of thus-decided appeals, appear quite uniformly sound *vis-à-vis* both challenged elected officials and also citizen complainants – who have chosen to appeal trial court actions taken within a very short time-frame imposed by statutory requirements that result in a necessarily hurried process for judicial analyses of recall charges ranging from the sometimes petty and occasionally spiteful, at one end of a spectrum thereby defined, to far weightier matters, at the other extreme, with but few possibly more grave than willful violation of a direct condition precedent imposed as an explicit duty on Mr. Kelley by our state constitution as a term of the charter to which he either falsely swore or else wrongly affirmed his support – the collection leaves uncertainty as to

core issues through seeming variations, if not contradictions, as to trial-court duties in balancing the constitutional right of state citizens to recall *versus* interests of duly elected officeholders, *qua* citizens as well, while taking into rational account the utility of stability in structures for good state governance.

Therefore, a statutorily hurried trial-court process for acting on a very broad gamut of recall charges (often motivated by some genuine anger in the state citizen energized sufficiently to initiate formal recall procedures against a public official), and resulting appellate review intent on ensuring that chaff has been winnowed from wheat (and thus focused, rightly, on the individual case rather than on state recall jurisprudence resultant), understandably yield potential for a legal perplexity greater than in other aspects of decisional law.

In such circumstances underlying devolution of a state jurisprudence of recall, immense surprise cannot exist that judicial results are not a perfect model of total clarity and of entire consistency, nor is there likely to be great objection to a suggestion that some tending is timely and likely required for improved comprehensibility of this Honorable Court's articulated directives for trial-court use, under compressed schedules imposed by state legislation, particularly if assessment is undertaken upon a conservative *lex parsimoniae* problem-solving principle respectful of individual recall cases, rightly decided rather consistently, yet affording the power of Occam's thereby-honed razor.

Thus, the following risks entering a zone where sane angels fear to tread.

The logical starting point then is a sorting through accumulations of more-than-a-full century since citizens approved the 8th Amendment here – *via* a somewhat irregular flow of recall charges since filed and appealed – and a candid recognition that recall decisions over recent decades evidence a measure of growing impatience with recall pursued as to apparently petty matters or with other seeming meanness, and a measured-but-understanding support for actions taken by trial courts when “[r]ecall statutes are construed in favor of the voter” (*West* at 663), with respect to an often rather obvious wrongdoing implicating major egregiousness by an elected official holding a substantial position of public trust, including, within the last decade, those wrongly misappropriated by mayors of cities as large as Spokane (*West*), and of towns as small as Pacific (*In re Recall of Sun*, 177 Wn.2d 251 [2013]).

Magnetic forces and gravitational pulls legally generated between the extreme poles of recall discharges – as based in part upon a purported misuse of a John Deere “Gator” for a morning-coffee stop near the trivialization end of recall dynamics in *In re Recall of Bolt*, 177 Wn.2d 168 (2013), and on an alleged misuse of the office and powers of the mayoral office in a larger city to lure and to groom a young man for desired sexual favors near the opposite end in *West* – thereby define some disparateness in this Honorable Court’s receptivity for and reaction to an outcome dismissive as to events played out in Marcus (*Bolt*) in rather stark contrast to those unveiled in Spokane (*West*).

While the underlying dynamic is certainly understandable, latitude so afforded to trial courts *via* resulting state recall jurisprudence is, frankly, not fully comprehensible, nor is notoriety-based authority for judicial notice to be taken (particularly in respect to this Honorable Court's crucial recognition of valid superior-court powers to notice and to rely on newspaper-and-media reporting as sufficient without much more in some instances, and indeed to craft recall charges with added information beyond the recall charges as filed in certain quite egregious recall situations, while also approving trial-court rejections of likewise reportorial-based recall charges in other circumstances).

Occam's razor, founded on a conservative *lex parsimoniae* construct, suggests a possible judicial approach with utility for developing a rather-more-systematic method for separating legitimate grain within recall charges from associated stalks, straw and worse through a legal foundation already clearly recognized by this Honorable Court in regard to "general notoriety."

One further decision added to this jurisprudence is unlikely to resolve inchoateness entirely, but the notoriousness standard already explicit within state decisional law can provide a modality for orderly provision of greater clarity as to already-established amendatory powers afforded to trial courts, as appropriate, in recall charges that implicate a substantial public interest (including elucidation of **when** and **why** matters in press-and-media reports are appropriately subject to formal judicial notice, such as when newspaper-

and-media information is professional and substantial, as is certainly the case in Mr. Kelley's unhappy saga, after several FBI searches, and after repeated multiple-count federal indictments by the DOJ, *versus* when data available is less extensive, less professional and thus less reliable, which such guide is so offered by appellant as a point of departure for judicial consideration herein).

The importance of this matter cannot be overstated, given a citizenry increasingly distrustful of public officials (too often for good cause), given repeated instances wherein government servants are perceived as holding themselves not just above the law but above our state constitution (as with Mr. Kelley's defiance for his residence duty since 2013) and given failures by the 64th Legislature, 63rd Legislature and a series of prior legislatures to fund public schools amply for decades before this Honorable Court was forced to limit its deference (in *McCleary*), such that exacerbating mistrust by any support for a naked judicial *fiat* destructive of our state constitution would not merely undermine fidelity to that state charter under the oath as required of judicial officers in Article IV, §28, but thereby deepen citizens' suspicions of state government generally, and of the judiciary specifically.

V. CONCLUSION

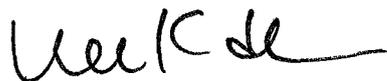
Certainly, a person who campaigns for one of nine executive offices of public trust elected statewide, yet defies our state constitution's **mandatory** residence requirement (as well as this Honorable Court's clear affirmation of

that constitutional obligation through our state's "Declaration of Rights"), is pretending to a quintessential office; is engaged in a gross violation that was, and is, in no sense at all petty whatsoever (even before he was indicted on 14 fraud-based charges by a federal grand jury); and should not be aided, and abetted, in his continuing efforts to game our state constitution, herein, as to his actual-and-legal residence in Tacoma (as established as a matter of law in proceedings below under RCW 29A.56.140), and as to his gross violation of constitutionally required residence in Olympia ("at the seat of government"); as to his professionally incomplete audits (measured by "generally accepted government auditing standards"); and as to his improper pressure on state staff to hire a crony (since fired immediately after his self-authorized leave began).

Thus, the Order dated May 8, 2015 should be rejected and ballot-title and all other related issues should be remanded to the trial court with explicit directions to conduct a hearing below as to every then-remaining item in full compliance with this Honorable Court's decision as issued hereafter, in this most decidedly nonquotidian recall matter, in respect to Mr. Kelley as a false pretender to, and as a fraudulent usurper of, the high Office of State Auditor.

DATED on this 6th day of November, 2015, and

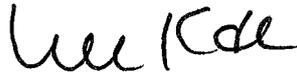
Respectfully submitted,



Will Knedlik, complainant, *qua* appellant *pro se*

VERIFICATION OF SERVICE

The undersigned, Will Knedlik, hereby verifies that he caused the delivery of copies of this document to be made to legal counsel of record on the date of filing of same with the court.



Will Knedlik, complainant, *qua* appellant *pro se*