

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
6/20/2019 3:48 PM  
BY SUSAN L. CARLSON  
CLERK

No. 97232-0

SUPREME COURT  
OF THE STATE OF WASHINGTON

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CARRI D. WILLIAMS,

*Petitioner,*

v.

JO WOFFORD, Superintendent, Washington Correctional  
Center for Women, and the DEPARTMENT OF  
CORRECTIONS,

*Respondents*

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**REPLY IN SUPPORT OF A PETITION FOR A WRIT OF  
PROHIBITION AND/OR MANDAMUS**

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## I. INTRODUCTION

This case concerns the regulations and policies of the Washington Department of Corrections (“DOC”) that punish inmates for “lying” (a 549 infraction) when they (allegedly) make a false report that they have been sexually abused by a corrections officer. Petitioner Carri Williams maintains that DOC Policy, No. 490.860, is facially unlawful. It institutionalizes retaliation against inmates who have the temerity to report sexual abuse by a guard. The mere existence of this policy has a chilling effect on women prisoners’ willingness to report such abuse and thereby compromises the safety of the very inmates that the Prison Rape Elimination Act (“PREA”) is designed to protect. The arguments in Respondents’ purported “Answer” should be rejected.

*First*, the Respondents have conceded the facts alleged in Williams’ *Petition*. While Respondents filed a document they labeled an “Answer,” it is not, in fact, an answer to Williams’ *Petition*. The so-called “Answer” does not respond to the allegations of the *Petition*. Respondents have not denied any of the facts alleged in the *Petition*, paragraph by paragraph, as one normally does when responding to a petition or a complaint. Under this Court’s case law, this failure results in a concession that the facts alleged in the *Petition* are true.

*Second*, the *Answer* ignores the fact that Williams seeks a writ of prohibition and seeks a writ of mandamus only in the alternative. The *Petition’s* prayer for relief is in the nature of prohibition: “to

prohibit Respondents from conducting a disciplinary hearing for a 549 serious violation.” *Petition*, p. 10, ¶2. But Respondents pretend that the only writ sought is for mandamus. While the difference between a prayer for relief phrased as a request for an order of prohibition and a prayer phrased as a request for an order of compulsion may seem a matter of word games, the *Answer* misses the central point of the *Petition*: to stop Respondents’ unlawful actions forever.

The *Answer* does not directly address the key point raised by the *Petition* and elaborated on in Petitioner’s *Emergency Motion*: that the structure of Policy No. 490.860 means that the decision on whether Petitioner committed a 549 violation was made in isolation and before she could participate in any way, shape or form; it was made by the Superintendent when she decided by a preponderance of the evidence that Petitioner was lying and should be subject to discipline, after being allowed a later “hearing” by a corrections officer subordinate of the Superintendent which uses a much lower standard of proof.

**Third**, substantively, the *Answer* ignores the fact that RCW 4.24.510 was amended in 2002 and that the language limiting the immunity to cases where reports were made in good faith was removed from the statute at that time. Respondents simply ignore the two cases which Petitioner cited in her *Emergency Motion* where the Court of Appeals explained that there has not been any good faith requirement since 2002 and that the statute grants absolute immunity

even when a report is made in bad faith.

*Fourth*, the *Answer* focuses its argument on the assertion that Williams cannot obtain a writ of mandamus (and, presumably, also cannot obtain a writ of prohibition) because there are other plain, speedy and adequate remedies available to her, such as bringing a personal restraint petition (“PRP”) or filing a civil rights action and seeking injunctive relief. But DOC lost the PRP argument in *Dress v. Department of Corrections*, a case which the DOC studiously fails to mention in its “Answer.” And the *Answer* ignores the limitations placed on civil rights actions by the Prison Litigation Reform Act, which make it virtually impossible for prisoners to obtain speedy and adequate relief by means of a civil rights suit.

In short, the *Answer* makes no meaningful defense of the Alice-in-Wonderland-like procedure of “sentence first—verdict afterward” that the Writ challenges as unlawful. A writ should issue and the DOC should be prohibited from enforcing its unlawful policies against any prisoner, the disciplinary proceeding against Williams should be forbidden by judicial order, and the unlawful policy stricken.

## II. PROCEDURAL POSTURE

Petitioner filed the *Petition* as an original action under RAP 16.2 on May 21, 2019. This Court set a briefing schedule with the Respondents’ *Answer* due June 17, Petitioner’s *Reply* due June 24, and an oral argument date now set for June 26.

Simultaneous with the *Petition*, Williams filed her *Emergency*

*Motion For a Stay of Prison Disciplinary Hearing* (“*Emergency Motion*”) which set out the facts and circumstances supporting issuance of the Writ and filing it in this Court in order to stay the then-pending disciplinary hearing set for ten days later, on May 31, 2019. The *Emergency Motion* also set out in more detail than the *Petition* the legal arguments why the Writ should be granted. Respondents agreed to postpone the May 31, 2019 hearing, and Petitioner withdrew her emergency motion. However, her brief in support of the motion remains of record and she relies on it for this proceeding.

Respondents filed their *Answer* on June 11, 2019. Two amicus curiae briefs have been filed in support of the *Petition*, by Legal Voice on June 12, 2019, and by Columbia Legal Services on June 17, 2019. Petitioner now submits her *Reply* to the Respondents’ *Answer*.

Under RAP 16.2(d), the Commissioner hears the matter and decides whether the *Petition* “should be decided by the Supreme Court, transferred, or dismissed.” Respondents argue the *Petition* should be dismissed, but do not argue in the alternative that the *Petition* should be transferred. The *Petition* should be heard on the merits by this Court.

### III. REPLY ARGUMENT

- A. **The facts set out in the *Petition* are not controverted by the *Answer*. Therefore, all those facts have been conceded and under *Adams* a writ of prohibition must issue.**

The Respondents’ *Answer* does not challenge or dispute any of

the factual allegations set out in the *Petition*. Where the facts in a petition for writ of prohibition and affidavit of counsel “are not controverted by the respondent ... the writ of prohibition must issue if the facts set forth in [the petitioner’s] application are sufficient to authorize it.” *State ex rel. Rupert v. Lewis*, 9 Wn. App. 839, 841, 515 P.2d 548 (1973) (reversing denial of statutory writ of prohibition and avoiding the issue of the denial of petitioner’s constitutional rights). *Accord, State ex rel. Adams v. Superior Court*, 36 Wn.2d 868, 869-870, 220 P.2d 1081 (1950) (accepting petition’s and affidavit’s facts as true where opposing party filed only a brief in response, issuing writ).

The allegations in the *Petition* and affidavit of Mr. Lobsenz thus set out the operative facts for this proceeding. Respondents thus have conceded that on four separate occasions, Williams was sexually touched in an inappropriate manner by Corrections Officer Alice Kaleopa; that Williams reported each incident to prison authorities; that Respondent Wofford “determined” by a preponderance of the evidence that Williams lied and should be subject to a disciplinary hearing with a standard of proof of “some evidence;” and that such post-decision “hearing” was scheduled for May 31, 2019.<sup>1</sup>

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<sup>1</sup> These facts were alleged in Paragraphs 6 through 15 of the *Petition*.

**B. The *Answer*'s Misguided Focus On Mandamus Cases Does Not Genuinely Respond To The Petition.**

- 1. The *Answer* ignores and thus fails to address the arguments in Petitioner's *Emergency Motion*, which are nevertheless before the Court.**

Williams filed her *Emergency Motion* on May 21 to stay the May 31, 2019 disciplinary hearing. The *Emergency Motion* set out the facts and circumstances and case law supporting her application, are still before the Court, and will not be repeated herein except as appropriate restatements to arguments made by the *Answer*.

- 2. The writ of prohibition is designed for precisely the kind of circumstance presented here: an official acting beyond his or her lawful authority, in this case contrary to statutory and constitutional law, who must be stopped immediately.**

Article 4, § 4 of the Washington Constitution recognizes the Court's authority to issue both writs of prohibition and writs of mandamus. See *Riddle v. Elofson*, \_\_\_ Wn.2d \_\_\_, 439 P.3d 647, 650 (2019). Quoting BLACK'S LAW DICTIONARY and its internal quotations, the Court described writs of prohibition as "A kind of common-law injunction against governmental usurpation, the writ of prohibition is a legal order typically issued from a superior court to prevent an inferior court from exceeding its jurisdiction." *Id.* at 650 (internal quotations and citations omitted.) It is "preventive rather than corrective" and "issues to arrest execution of a future, specific act and not to undo an action already performed." *Id.*

The issuing court thus looks to the "power and jurisdiction" of

the inferior tribunal knowing the writ is designed to prevent such tribunals from “enlarge[ing] the powers of their positions,” thus forbidding them from going where they are not authorized to go and where there is no plain, speedy, and adequate remedy to prevent that exercise of unlawful or excess power. *Riddle* at 650.

**3. Prohibition and mandamus are alternative writs. Generally speaking, when an action is categorically prohibited by a statute or a constitutional provision, the opposite action is statutorily or constitutionally required. Thus, the relief sought by a Petitioner can be phrased as a request for a judicial order that either forbids or requires a certain action.**

Williams filed an original action seeking a writ of prohibition, or, *in the alternative*, a writ of mandamus. The DOC completely ignores the fact that Williams sought a writ of prohibition; acts as if a petition for a writ of mandamus is the only type of writ that Williams sought; and implies there is a huge difference between the two writs.

As a practical matter, the same relief can be sought using either writ, and it is largely just a matter of how the request for relief is phrased. For example, in *Anderson v. Chapman*, 86 Wn.2d 189, 191, 543 P.2d 229 (1975), the petitioner filed an original action in this Court “seeking an original writ of mandamus or in the alternative a writ of prohibition to prevent the respondents, [two legislators], from being candidates” for the office of Secretary of State. The issue before this Court involved the construction of Wash. Const. art. 2, § 3 which provides that no member of the legislature can be elected to any office

for a term for which the salary for that office was increased while that person was a member of the legislature. If the relief sought was phrased in terms of a judicial decree preventing the legislators from being placed on the ballot as candidates for Secretary of State, then the action was appropriately styled a petition for a writ of prohibition. But if the relief sought was phrased in terms of a judicial decree enforcing art. 2, §3, the action was appropriately styled a petition for a writ of mandamus. As this Court said, “the provisions of a constitution are mandatory unless otherwise stated.” *Chapman*, 86 Wn.2d at 192. Since a government official has no discretion to disobey a provision of the constitution, the duty to enforce the constitution is mandatory and thus an action seeking to compel obedience to the constitution is an action for a writ of mandamus. This Court decided that “the writ will be granted” because the legislators were not eligible to be elected to the office of Secretary of State in the 1975 election. *Id.* at 196. While it seems that “the writ” granted was a writ of mandamus – because that’s the first name that the Petitioner gave to the writ she sought – this Court was not entirely clear and did not actually specify whether it was granting a writ of mandamus or prohibition, perhaps because it did not make any difference what that writ was called.

In the present case, the relief Williams has requested is to forbid the DOC from charging her with the 549 infraction of lying, and to prohibit it from proceeding with a disciplinary hearing on that

charge. For that reason, she styled her *Petition* as one seeking a writ of prohibition, or in the alternative, as seeking a writ of mandamus. Her *Petition* could also be styled a petition seeking to compel the respondents to obey RCW 4.24.510 which mandates that Williams be afforded complete immunity for her action in having made complaints of sexual assault to the prison. Thus, her *Petition* is also appropriately described as a petition for a writ of mandamus because the DOC has no discretion to ignore that statute and must obey it.<sup>2</sup>

**C. Petitioner has neither a speedy nor an adequate alternative remedy at law.**

**1. It is up to this Court to decide, on the particular facts of this case, whether the existence of a PRP is a plain, speedy and adequate alternative remedy.**

Respondents argue that Williams is not entitled to an extraordinary writ because she has an alternative remedy at law that

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<sup>2</sup> The same can be said of Williams' other claims. For example, it is undisputed that the Respondents are constitutionally required to provide an impartial decision maker at any disciplinary hearing. Williams maintains that the DOC's procedures for handling disciplinary hearings on 549 infractions for making a false accusation of sexual abuse against a corrections officer fail to meet that constitutional due process requirement. Case law demonstrates that courts recognize that both actions for a writ of prohibition and actions for a writ of mandamus are appropriate procedural mechanisms for raising a claim that the right to an impartial decision maker is about to be violated. For example, in *State ex rel. Jones v. Gay*, 65 Wash. 629, 631, 118 P. 830 (1911) this Court issued a writ of prohibition to prevent a biased judge from presiding at defendant's criminal trial, recognizing that notwithstanding the fact that the defendant could appeal from a judgment of conviction, an appeal was not a speedy and adequate remedy because the defendant was entitled to a trial before an unbiased judge "which cannot be had in this case unless this writ is granted." Similarly, in *In re Bulger*, 710 F.3d 42, 45 (1<sup>st</sup> Cir. 2013), the Court held that the defendant was entitled to a writ of mandamus to compel the trial judge to recuse himself because the trial judge's ability to be impartial could reasonably be questioned and the defendant "had no other adequate source of relief." Thus in one case, the relief granted was styled as a writ of prohibition and in the other case as a writ of mandamus.

is both speedy and adequate. *Answer*, at 6. But cases like *Dress v. Washington Dept. of Corrections*, 168 Wn. App. 319, 279 P.3d 875 (2012) show that Respondents are wrong.

“The question as to what constitutes a plain, speedy, and adequate remedy is not dependent upon any general rule, but upon the facts of each case, and its determination therefore rests in the sound discretion of the court in which the proceeding is instituted.” *Riddle v. Elofson*, 439 P.3d at 652, quoting *State ex rel. O’Brien v. Police Court*, 14 Wn.2d 340, 348, 128 P.2d 332 (1942). “The complete absence of any ‘other remedy’ is not strictly required.” *Riddle*, 439 P.3d at 652, citing *State ex rel. W. Canadian Greyhound Lines, Ltd. v. Superior Court*, 26 Wn.2d 740, 747-48, 175 P.2d 640 (1946). “[I]t is the adequacy of the remedy by appeal, not its mere existence, which defeats the right to a writ of prohibition. . . .” *Id.* at 749. As this Court recently stated in *Riddle*:

Reviewing the adequacy of an alternative legal remedy is underscored by our case law explaining that “what constitutes a plain, speedy, and adequate remedy *is not dependent upon any general rule*, but upon the facts of each particular case.

*Riddle*, at 653, quoting *O’Brien*, at 347-48 (emphasis added).

**2. The DOC’s argument that the mere existence of an alternative remedy defeats the availability of an extraordinary writ has been rejected by the Court of Appeals and criticized by this Court.**

Purporting to rely on *Hahn*, the DOC contends that the mere *existence* of an alternate remedy means an extraordinary writ should

not issue. *Answer* at 6. But the Court of Appeals flatly rejected that argument when the DOC raised it in the *Dress* case:

DOC argues that a plain, speedy and adequate remedy “merely requires that there be a process by which the plaintiff may seek redress for the allegedly unlawful action.” It relies on *Washington State Council of County & City Employees v. Hahn* [151 Wn.2d 163, 86 P.3d 774 (2004)]. Such a relaxed standard for what constitutes an adequate alternative remedy is not supported by *Hahn*. There, the employees sought a writ to order Yakima County judges to engage in collective bargaining. The court found that another statute, the Public Employees Collective Bargaining Act (PECBA), chapter 41.56 RCW provided the *same* remedy that had been sought by the employees through a writ of mandamus. Unlike in *Dress*’s case, the speediness of the remedy under the writ appeared to be equivalent to the solution provided by PECBA. Nowhere in *Hahn* did the court state that the existence of *some* process for redressing the petitioners’ injuries was sufficient, and thus the court’s holding does not support DOC’s contention. For a remedy to supplant a writ, it must be plain, *speedy* and adequate. *Dress* did not have such an alternative remedy.

*Dress*, 168 Wn. App. at 339 (emphasis in original, footnotes omitted).

This Court recently intimated it would also reject the DOC’s contention. *See Riddle*, 439 P.3d at 653 n. 5 (noting that although some cases seem to suggest that all that is required is the *existence* of an alternate form of relief, rather than the *adequacy* of the relief, that does not appear to be the correct way to analyze the question).

3. **Williams' right to appeal a finding that she committed the infraction of lying is not an adequate alternative remedy.**
  - (a) **When the claim is that it is unlawful to hold any hearing at all, an appeal following the hearing can never be an adequate alternative remedy since it will always come too late to prevent the violation of law.**

Sometimes an appeal can constitute an adequate alternative remedy, but not in other circumstances. For example, when the petitioner's claim is that no trial or hearing should ever take place, the fact that the petitioner can appeal if she loses at the trial or hearing is not an adequate remedy since it will necessarily come too late to prevent the harm the petitioner is complaining of. Thus, if the petitioner contends that his trial is barred by the speedy trial rule, an appeal following the trial is not an adequate remedy. *Butts v. Heller*, 69 Wn. App. 263, 269, 848 P.2d 213 (1993) ("We conclude that Butts had no 'plain, speedy, and adequate remedy' by post-judgment appeal or otherwise; that the Superior Court did not err when it issued its alternative writ of prohibition; that Butts's right to speedy trial was violated; and that Butts is entitled to dismissal with prejudice.").

In the present case, Petitioner Williams is asserting that the DOC is legally prohibited from seeking to sanction her for reporting sexual abuse perpetrated by a corrections officer because RCW 4.24.510 grants her absolute immunity from any sanction for having properly reported such abuse. Thus, Williams, like petitioner Butts,

is asserting that the Respondents have no power to hold any disciplinary hearing at all.

Nothing other than an extraordinary writ which prohibits the holding of a disciplinary hearing can secure meaningful relief for Williams. No matter what procedure is used, any court ruling that comes *after* a disciplinary hearing has already been held will not afford her the relief to which she is entitled, which is not to go through any disciplinary hearing at all. A subsequent ruling that her disciplinary hearing should never have occurred is not an adequate remedy for violation of her right to be absolutely immune from any form of sanction imposed because she made a report of prison sexual abuse to the prison.

**(b) Petitioner Williams' only "appeal" under the DOC policy is to the Superintendent who "charged" her after determining by a preponderance of the evidence that Williams committed the infraction. An "appeal" to a person who has already decided against the litigant is no appeal at all, and can never be an adequate alternative remedy.**

Any "appeal" that a prisoner in Petitioner Williams' position might take is utterly meaningless. Under Section IV.I.(1) of DOC Policy No. 460.000, if Williams is found to have committed the infraction of "Lying" at her disciplinary hearing – where the prison need only produce "some evidence" to secure a finding of guilty – she then has the utterly worthless "right" to appeal that decision and/or

the sanctions imposed to the Superintendent.

But the Superintendent is the person who “charged” her with the Lying infraction in the first place; and the Superintendent made that determination using the preponderance of the evidence standard. Having already found by a preponderance of the evidence that Williams committed the infraction, the Superintendent is hardly capable of deciding that there was not even “some evidence” to uphold the Hearing Officer’s decision that the infraction was committed. Moreover, Section IV.I.(1)(b) specifically states that “sanctions will not be stayed pending an appeal.” So even if by some miracle the Superintendent did rule in Petitioner’s favor in an appeal from the Hearing Officer’s decision, if, for example, the sanction imposed by the Hearing Officer includes 10 days in segregation, any decision by the Superintendent is going to come too late to prevent that sanction from being imposed. An appeal to the Superintendent clearly is not an adequate alternative remedy.

**4. The DOC’s contention that a PRP is a plain, speedy and adequate alternative remedy was properly rejected by the Court of Appeals in *Dress*.**

The Respondents argue that Williams has an adequate available alternative remedy because she can challenge any disciplinary finding made against her in a Personal Restraint Petition. *Answer*, at 7. But this exact argument was rejected in *Dress* where the Court of Appeals specifically held that a PRP is not an adequate

alternative remedy because it is not a speedy remedy. Since the DOC was a party to the *Dress* case, it cannot contend that it was unaware of this decision, and yet the DOC failed to cite it to the Court. The holding in *Dress* is straightforward:

DOC argues that granting the writ of mandamus was improper because *Dress* had an adequate remedy available in the form of a personal restraint petition (PRP). We disagree.

\* \* \*

Here, the lower court did not abuse its discretion when it found that a PRP was not a speedy legal remedy.

*Dress*, 168 Wn. App. at 337-338.

In *Dress* the Superior Court found that “typically PRPs take six months or probably longer to address.” *Id.* at 338. The Court of Appeals held that there was no reason to overturn the Superior Court’s discretionary determination that a PRP was not an adequate alternative remedy and that the lower court properly exercised its discretion. *Id.* In the present case, it is for this Court to exercise its discretion and, as in *Dress*, there is every reason to believe that a PRP would not be a speedy remedy because it would take six months or more for a PRP to be decided.

**D. A civil rights suit for injunctive relief also is not a plain, speedy and adequate alternative remedy because, before any such suit can be brought, the Prison Litigation Reform Act requires complete exhaustion of all administrative remedies, even if those administrative remedies are incapable of providing the relief sought.**

In one sentence, Respondents assert that “[a]s noted below,

[Williams'] claims of constitutional violations are appropriately raised through civil rights litigation or a Personal Restraint Petition where she has the opportunity to seek preliminary injunctive relief." *Answer*, at 7. Despite the promise they will discuss the availability of these alternate ways of securing relief, Respondents never do discuss any other means of obtaining plain, speedy and adequate relief.

The *Dress* case holds that ordinarily a PRP is not a plain, speedy and adequate alternative way of securing relief. Thanks to the Prison Litigation Reform Act ("PLRA"), attempting to secure speedy and adequate injunctive relief by means of a civil rights lawsuit is an even more inadequate remedy than a PRP. The PLRA requires a prisoner to completely exhaust all available administrative remedies, even when the prison's administrative procedures make it impossible for the prison to grant the relief requested.

As the U.S. Supreme Court has stated, "[a] centerpiece of the PLRA's effort 'to reduce the quantity ... of prisoner suits' is an 'invigorated' exhaustion provision, [42 U.S.C.] §1997e(a)." *Woodford v. Ngo*, 548 U.S. 81, 84, 126 S.Ct. 2378, 165 L.Ed.2d 368 (2006). *Accord Porter v. Nussle*, 534 U.S. 516, 524, 122 S.Ct. 983, 152 L.Ed.2d 12 (2002). A prisoner must now exhaust administrative remedies even where the relief sought cannot be granted by the administrative process. *Booth v. Churner*, 532 U.S. 731, 734, 121 S.Ct. 1819, 149 L.Ed.2d 958 (2001). Finally, exhaustion of available administrative remedies is required for any

suit challenging prison conditions, not just for suits under 42 U.S. §1983. *Nussle*, 534 U.S. at 524. All administrative prison remedies must be exhausted before any lawsuit can be filed, and if a prisoner files suit while exhaustion is going on but before it has been completed, dismissal of the lawsuit is required in all cases. *McKinney v. Carey*, 311 F.3d 1198 (9<sup>th</sup> Cir. 2002). *See Ortiz v. McBride*, 380 F.3d 649, 654 (2<sup>nd</sup> Cir. 2004) (claim pertaining to due process violation at disciplinary hearing would have to be dismissed if it had not been exhausted).

**E. Respondents ignore the 2002 amendment of RCW 4.24.510 that removed any good faith requirement. Since 2002 RCW 4.24.510 has provided absolute immunity. Respondent's attempt to rely on a 1999 case which applied the former version of the statute is wrong.**

Williams' *Emergency Motion* cited two cases which hold RCW 4.24.510 does *not* have a good faith requirement. *Bailey v. State*, 147 Wn. App. 251, 191 P.3d 1285 (2008); *Lowe v. Rowe*, 173 Wn. App. 253, 294 P.3d 6 (2013). Respondents ignored these cases.

Worse, Respondents ignored the fact that RCW 4.24.510 was amended in 2002. The *Bailey* decision noted this amendment and the explicit directive of the Legislature to provide complete immunity even to persons who make false reports in bad faith:

Former RCW 4.24.510 (1999) contained a good faith requirement. ***This phrase was deleted by amendment.*** LAWS of 2002, ch. 232, § 2; *see Segaline v. Dep't of Labor & Indus.*, 144 Wn. App. 312, 325, 182 P.3d 480 (2008).

\* \* \*

*Ms. Bailey asserts that immunity under RCW 4.24.510 does not attach here because Ms. Lindholdt cannot meet the good faith requirement contained in RCW 4.24.500.* She points to language in RCW 4.24.500, the policy statement, which reads: “The purpose of RCW 4.24.500 through RCW 4.24.520 is to protect individuals who made *good-faith reports* to appropriate government bodies.” (Emphasis added.) RCW 4.24.500 has not been amended. LAWS of 1989, ch. 234, §1.

*But Ms. Bailey is incorrect.* The 2002 amendments brought “Washington law ... in line with these court decisions which recognize[ ] that the United States Constitution protects advocacy to government, regardless of content or motive, so long as it is designed to have some effect on government decision making.” LAWS of 2002, ch. 232, § 1. Moreover, the 2002 amendment of RCW 4.24.510 provided that *statutory damages* may be denied if the court finds that the complaint or information was communicated in *bad faith*. See LAWS of 2002, ch. 232, § 2.

\* \* \*

When two statutes appear to conflict, the rules of construction direct the court to, if possible, reconcile them so as to give effect to both provisions. [Citation]. The provision later in the chapter prevails if it is more specific than the provision occurring earlier in the chapter. [Citation]. RCW 4.24.510 is the more specific provision because it sets out the requirements for obtaining immunity, while RCW 4.24.500 sets forth the findings and purpose of the legislation. As a policy statement, RCW 4.24.500 does not detail requirements or limitations regarding a right conferred by a provision that is positioned later in the enactment.

*Bailey*, 147 Wn. App. at 261-63 (emphasis added). *Bailey* reversed the denial of immunity to the defendant and remanded with directions to dismiss the plaintiff’s claims against the defendant. *Id.* at 264.

Similarly, in 2012 the Court of Appeals again held that since 2002, RCW 4.24.510 has not had a good faith requirement. *Lowe*, 173 Wn. App. at 260 (“The 2002 amendments eliminated the ‘good faith’ reporting language of the 1989 law . . .”). *Accord Engler v. City of Bothell*, 2016 WL 3453664 at \*7 (W.D. Wash. June 20, 2016) (“The communicator need not have acted in good faith in order to be entitled to immunity”) (citing *Bailey*, 191 P.3d at 1291); *Peltier v. Sacks*, 2017 WL 3188414 at \*3 (W.D. Wash. 2017) (explaining that the 2002 amendment removed the statute’s good faith requirement, broadening the absolute protection afforded to communicators).

The DOC *Answer* ignores these cases and instead purports to rely on *Port of Longview v. International Raw Materials*, 96 Wn. App. 431, 979 P.2d 917 (1999). But that case was decided three years *before* the 2002 amendments that removed the good faith requirement, and thus has no relevance to Williams’ case.

In sum, RCW 4.24.510 affords Carri Williams absolute immunity from civil liability for having made her PREA complaints to the DOC regarding Corrections Officer Kaleopa. Even if the DOC could prove that her complaints were made in bad faith, she would still be entitled to absolute immunity, although she could be denied her right to recover statutory damages from the Department.

**F. The *Petition* should be retained by the Supreme Court because the issues involve important policy issues of state-wide application and there are no fact issues since Respondents have not controverted the *Petition's* facts.**

As noted, the *Answer* did not controvert the facts in the *Petition*, which must be accepted for purposes of analyzing the Writ. The central legal issue is that DOC Policy No. 490.860 is facially unlawful as in conflict with RCW 4.24.510 and with Petitioner's due process rights under the federal and state constitutions.

Moreover, Petitioner claims that the effect of Policy No. 490.860 is to effectively neuter the entire effort of PREA and its policies to stop rape and sexual abuse of prisoners in our prisons. Here, Petitioner specifically claims that the application of Policy No. 490.860, as demonstrated in her allegations, not only fails to protect all the women prisoners at the WCCW from sexual assault or misconduct, which the policy is *supposed* to do, but because its approach institutionalizes retaliation for reporting, it places all women prisoners at risk their bodies will be violated with impunity.

This Court can stop that risk by retaining the *Petition* and deciding the validity of Policy No. 490.860. There are no facts in dispute. The policy is facially unlawful in ways which not only cut back on the rights of the women prisoners, but place all women prisoners at risk as long as it is in place. Whatever their offenses, their punishment does not include sexual molestation and intimidation, nor retaliation for seeking to have their bodies left alone.

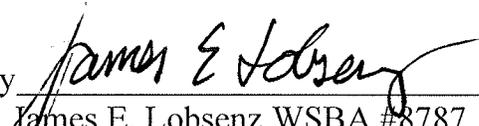
#### IV. CONCLUSION

This case is decided on legal issues which are driven by the express State Policy of protecting reporters of misconduct from retaliation. This Court should retain the case and decide the legal issues without delay. The longer the delay, the more women will be abused with impunity. It must stop.

Petitioner Carri D. Williams respectfully requests that the Court retain the *Petition*, set a briefing schedule for the merits, and schedule it for hearing in the fall term.

Respectfully submitted this 20th day of June, 2019.

**CARNEY BADLEY SPELLMAN, P.S.**

By   
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## CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

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DATED this 20<sup>th</sup> day of June, 2019.

  
Deborah A. Groth, Legal Assistant

# CARNEY BADLEY SPELLMAN

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