No. 103140-8

SUPREME COURT
OF THE STATE OF WASHINGTON

MAJID NAYERI and BITA ABIDIAN,

Respondents,

v.

EAGLE HARDWARE & GARDEN, INC. d/b/a LOWE'S COMPANIES, INC., a North Carolina Corporation, KUEIFOUN, INC. d/b/a THE HERBAL GARDEN, a Florida Corporation, THE CENTER AT 4815 LLC, a Washington limited liability company, and OGLE PROPERTIES, LLC, a Washington limited liability company,

Petitioners.

ANSWER TO PETITION FOR REVIEW

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A. Introduction.

After purchasing landlocked property from the Department of Transportation, respondent Majid Nayeri spent years negotiating with his neighbors—including the petitioners here, Eagle Hardware & Garden, Inc. (Lowe's) and The Center at 4815 LLC (the Center)—to obtain an easement for legal ingress and egress to the property. When it became clear those negotiations had stalled, Mr. Nayeri initiated this private condemnation action under RCW 8.24.010 seeking a private right of way by necessity. The trial court granted the petitioners' motion for summary judgment despite acknowledging unresolved factual questions regarding the feasibility of development on the property, the location and scope of an easement, and potential burdens on neighboring properties.

The Court of Appeals, Division Two, reversed in a published decision, holding that "a buyer's knowledge that a property is landlocked at purchase does not automatically

bar private condemnation under chapter 8.24 RCW" and that Mr. Nayeri presented sufficient evidence to defeat summary judgment regarding the feasibility of an easement and future development of the property. *Nayeri v. Eagle Hardware & Garden, Inc.*, ___ Wn. App. 2d ___, 548 P.3d 214, 222, ¶31 & 224-25, ¶¶42-48 (2024).[1]

The petitioners now seek this Court's review, arguing Division Two's decision conflicts with *Ruvalcaba v. Kwang Ho Baek*, 175 Wn.2d 1, 282 P.3d 1083 (2012), which they argue "prevents a property owner from landlocking himself and then condemning access." (Pet. 2) Far from conflicting with *Ruvalcaba*, Division Two reaffirmed this Court's rejection of "a bright-line rule that would 'automatically preclude[ ] a private way of necessity any time a landowner voluntarily landlocks [their] own parcel.'" Op. at 222, ¶32 (quoting *Ruvalcaba*, 175 Wn.2d at

[1] This answer cites to Division Two's opinion as published in the Pacific Reporter as "Op. ___."

7-8, ¶10) (alterations in original). Division Two's decision also preserved the public interest by reinforcing the "overriding public policy goal against making landlocked property useless." *Ruvalcaba*, 175 Wn.2d at 8, ¶11.

By asking this Court to accept review and hold that purchasers of landlocked property must be stuck with it, the petitioners urge the Court to upend the public policy supporting private condemnation and adopt a bright-line rule identical to the one it already rejected in *Ruvalcaba*. This Court should deny review.

B. Restatement of the Case.

1. Respondent Majid Nayeri purchased landlocked property and initiated this private condemnation action to obtain a right of way after negotiations with his neighbors proved fruitless.

This case involves two undeveloped parcels comprising roughly one acre near the intersection of Center Street and SR-16 in Tacoma, Washington (the

Property). (CP 254-56) It is undisputed that the Property has no ingress or egress and is "landlocked." (CP 435, 479)

In May 2005, the Washington State Department of Transportation purchased the Property under threat of condemnation in order to construct the SR-16 offramp that intersects with Center Street. Op. at 217, ¶6; (CP 38-40, 43-35, 127-29). In January 2007, the Department posted the Property for sale as surplus when the SR-16 project was complete, concluding the Property was suitable for "[f]uture economic commercial development." (CP 131-32); Op. at 218, ¶9.

In 2015, respondent Majid Nayeri purchased the Property. Op. at 218, ¶9. Mr. Nayeri understood the Property was landlocked, so his first priority was acquiring "egress/ingress access from one of the neighbors." (CP 174-75); Op. at 218, ¶¶9-10. The neighboring property owners included petitioners Eagle Hardware & Garden, Inc.

(Lowe's) and The Center at 4815 LLC (Center), as well as the Kueifoun corporation:

Op. at 218.

Mr. Nayeri negotiated with his neighbors for several years, hoping to "work[ ] something out without going to court." (CP 201) Mr. Nayeri went to great lengths to appease his neighbors' concerns, including by soliciting—

at Lowe's request (CP 201)—several formal studies of the Property. This included a survey study to determine the feasibility of different potential access points (CP 365, 479-80), a traffic impact analysis based on anticipated development (CP 252-83, 480-81), an appraisal of the market value impact to Lowe's property from a potential easement (CP 285-364), and a geotechnical engineering report of the Property. (CP 367-89)

Despite years of negotiating for an easement, it became clear to Mr. Nayeri that Lowe's "was dragging its feet" (CP 201-02) and that he had no choice but to sue the neighboring property owners under RCW 8.24 for "an order establishing a private way of necessity" across any of the adjacent properties. (CP 1-9); Op. at 218, ¶10.

2. The Court of Appeals reversed summary judgment dismissal of Mr. Nayeri's private condemnation action, holding the trial court ignored unresolved factual disputes that require a trial.

In April 2021, Mr. Nayeri initiated this private condemnation action seeking a private way of necessity easement across one of the Lowe's, Center, or Kueifoun properties to accommodate a 10,000 square foot general office building he intended to develop on the Property. (CP 1-9, 481); Op. at 218, ¶11.

In December 2022, the petitioners—Lowe's and the Center—moved for summary judgment. Op. at 218, ¶12. The petitioners argued that a private right of way easement was not "reasonably necessary" because regulatory requirements in the municipal code and certain geological characteristics purportedly precluded "development of any kind" on the Property. (CP 446, 449); Op. at 218-19, ¶12. The petitioners also argued that Mr. Nayeri should be precluded from seeking a private right of way easement as

a matter of law because "he knew the parcels were landlocked when he bought them." Op. at 219, ¶13.

Mr. Nayeri argued that whether he was entitled to a private right of way easement—and the size and scope of that easement—could not be resolved on summary judgment due to unresolved factual disputes; in particular, Mr. Nayeri relied on expert reports showing the geological character of the Property did not preclude development and that the municipal code contained exceptions that would allow development to proceed. Op. at 220, ¶¶19-22.

The trial court acknowledged that the case presented many unresolved factual questions, including "whether [an easement] is even possible to be done, where it's going to be, how much it's going to be, [and] what is the burden to the condemned property." (1/27/23 RP 41); *see* Op. 221-22, ¶¶23-24. Yet rather than deny summary judgment and conduct factfinding, the trial court ruled that Mr. Nayeri was not entitled to a private way of necessity because he

had purportedly not proven the feasibility of either the easement itself or the proposed development project on the Property. (*See* 1/27/23 RP 41: "I think the other ducks need to be lined up before you get this[.]")

Specifically, the trial court believed that Mr. Nayeri needed to acquire permits from the City—not just for the easement, but for the *entire project*—before he was entitled to a private right of way of necessity. (1/27/23 RP 33-34: "[I]t just seems like before I'm going to actually burden private property with private condemnation that I need to know that something is actually going to be able to be done with it[.]"); Op. at 220-21, ¶¶23-24. The trial court ruled that, absent that evidence, Mr. Nayeri was not entitled to a private way of necessity as a matter of law and granted Lowe's motion, dismissing Mr. Nayeri's claims as to all defendants. (CP 593-94); Op. at 221, ¶24.

On April 30, 2024, the Court of Appeals, Division Two, reversed in a published decision, holding that the

unresolved factual disputes acknowledged by the trial court precluded summary judgment. Op. at 224, ¶41 ("[W]e hold that there was a genuine dispute of material fact as to whether it was legally possible to develop the property and develop access through a neighboring property.") Division Two also rejected the petitioners' argument that a purchaser who knowingly buys landlocked property should be precluded from private condemnation as a matter of law, emphasizing that this Court rejected such a bright-line rule in *Ruvalcaba v. Kwang Ho Baek*, 175 Wn.2d 1, 7-8, ¶10, 282 P.3d 1083 (2012). Op. at 222-23, ¶¶31-35. Further, Division Two held that "the lack of concrete development plans does not bar private condemnation under chapter 8.24 RCW as a matter of law," recognizing "the scope of access" ultimately obtained via a private way of necessity easement "is different than the *necessity* of access." Op. at 224, ¶43.

C. Why Review Should Be Denied.

1. Division Two correctly applied this Court's decision in *Ruvalcaba* by holding that Mr. Nayeri is not precluded from private condemnation as a matter of law because he knowingly purchased landlocked property.

The petitioners' main argument is that Mr. Nayeri cannot establish a reasonable necessity for a private right of way easement as a matter of law because he purchased the Property "with full knowledge that . . . it would be landlocked[.]" (Pet. 20) The petitioners contend that Division Two's contrary decision conflicts with this Court's decision in *Ruvalcaba*, warranting review under RAP 13.4(b)(1). (Pet. 17-26) Petitioners are wrong.

The Washington constitution protects an individual right to condemn another's private property "for private ways of necessity." Const. art. I, §16. The Legislature codified this right in chapter 8.24 RCW, which authorizes "an owner . . . of land which is so situate with respect to the land of another that it is necessary for its proper use and

enjoyment to have and maintain a private way of necessity" to "condemn and take lands . . . sufficient in area for . . . such private way of necessity[.]" RCW 8.24.010. These constitutional and statutory provisions reflect Washington's "overriding public policy goal against making landlocked property useless." *Ruvalcaba*, 175 Wn.2d at 8, ¶11.

In *Ruvalcaba*, this Court held that private condemnors could not seek a private way of necessity when they voluntarily landlocked their own property and waited 35 years to pursue condemnation. 175 Wn.2d 8, ¶11. In doing so, however, the Court rejected "[a] bright-line rule . . . that automatically precludes a private way of necessity any time a landowner voluntarily landlocks his or her own parcel." 175 Wn.2d at 7-8, ¶10. Instead, the Court decided *Ruvalcaba* based on its facts, which—as Division Two recognized—"were fairly unique and far more extreme than the facts" here. Op. at 222, ¶34.

The Ruvalcabas "landlocked their own parcel, made claims of reasonable necessity based on financial impracticability, and waited approximately 35 years to bring a condemnation action." *Ruvalcaba*, 175 Wn.2d at 8, ¶11. The Ruvalcabas thus proved that an easement was not reasonably necessary on their own by waiting 35 years to seek condemnation. 175 Wn.2d at 1, ¶2 ("no reasonable finder of fact could find that there was reasonable necessity for an easement . . . where the Ruvalcabas acted to landlock their property and failed to bring a condemnation action for so many years."). Moreover, the Ruvalcabas' goal was not to develop their own property but "to manufacture a cloud on title and, thus, tie up [their neighbors'] right to use and convey their land," which was "a flagrant abuse of the reasonable necessity doctrine" that "turn[ed] our stated public policy goal on its head." 175 Wn.2d at 8, ¶11.

Consistent with *Ruvalcaba*, Division Two held that "[Mr.] Nayeri's knowing purchase of landlocked property

alone should not be the basis for summary judgment." Op. at 222, ¶34. This conclusion also aligns with other jurisdictions, which uniformly recognize that "[k]nowingly purchasing landlocked property . . . does not preclude a purchaser from obtaining a private way of necessity." *Dovetail Props., Inc. v. Herron*, 287 Ga. App. 808, 809, 652 S.E.2d 856 (2007); *Jones v. Ransom*, 184 P.3d 561, 565 (Okla. Civ. App. 2008) (affirming trial court's conclusion that condemnor established a reasonable necessity to condemn private right-of-way of necessity even though the condemnor "bought the property knowing there was no access[.]"); *Childers v. Quartz Creek Land Co.*, 946 P.2d 534, 535 (Colo. App. 1997) (affirming condemnation for private way of necessity even though "[a]t the time of purchase, [the condemnor] was aware that the property was 'landlocked'[.]"), *cert. denied*, 525 U.S. 1104 (1999); *Graff v. Scanlan*, 673 A.2d 1028, 1035, n.12 (Pa. Cmwlth. 1996) ("The Graffs' actions in voluntarily

creating their hardship are distinguishable from cases wherein the landowner *purchases* property with the *knowledge* that it is landlocked. In such a case, the purchaser's *knowledge* does not preclude" a private condemnation action.) (emphasis in original). Petitioners' arguments—not Division Two's decision—"conflict" with *Ruvalcaba* by advocating for the same "bright-line" rule this Court, like many others, refused to adopt.

Moreover, unlike the Ruvalcabas, Mr. Nayeri is not abusing the private condemnation process, contrary to petitioners' repeated allegations. (*See* Pet. 20-21, 27, 29) Mr. Nayeri wants to develop his property—not prevent the petitioners from using their property—thereby furthering the "overriding public policy goal against making landlocked property useless." *Ruvalcaba*, 175 wn.2d at 8, ¶11. In contrast, the petitioners argue that the Property must remain forever unused based on a bright-line rule this Court already rejected.

Mr. Nayeri also acted far more diligently than the Ruvalcabas, who waited 35 years to seek condemnation. Mr. Nayeri bought property the State advertised as suitable for economic development and, understanding that he needed to gain access for ingress and egress, immediately started negotiations with the neighboring property owners. Mr. Nayeri pursued those negotiations for years, hoping to avoid litigation—procuring several professional studies and surveys of the Property at Lowe's request—and only initiated this action as a last resort. (CP 174-75, 200-02); Op. at 223-24, ¶34 (Mr. Nayeri "sued for private condemnation after a few years of failed negotiations with his neighbors; he did not wait 35 years before he began pursuing condemnation.")

Petitioners attempt to manufacture a conflict with *Ruvalcaba* by criticizing Division Two's conclusion that Mr. Nayeri "bought landlocked property" and "did not landlock it himself." (Pet. 24); Op at 222, ¶34. They claim

"the parcel was not landlocked when WSDOT owned it but became landlocked upon WSDT's sale to [Mr.] Nayeri" and thus Mr. Nayeri *did* "landlock[ ] the property himself," just like the Ruvalcabas. (Pet. 24) In other words, the petitioners argue that Mr. Nayeri did not, in fact, buy landlocked property—he bought property that only *became* landlocked upon his purchase. (Pet. 24)

This semantic hair-splitting is absurd. The State posted the Property for sale, notifying potential buyers that it would not grant access through SR-16 and thus it would be landlocked. (CP 174-75, 187; *see also* CP 48-50, 59: State appraisals from before the sale noting the property is landlocked) Even the petitioners recognize this is unlike *Ruvalcaba*, which involved "a property owner's decision to restrict access to property she already owns." (Pet. 27) Here, either the property would remain with the State—unused, though not technically landlocked—or someone would buy it, and the new owner would be landlocked. Mr.

Nayeri thus did not *choose* to landlock the property—he chose to buy property that would be landlocked no matter who bought it.

Accordingly, there is no logical reason to distinguish between Mr. Nayeri's purchase and the purchase of already-landlocked property. Indeed, the petitioners concede elsewhere that there is no difference, arguing that anyone who "purchase[s] land knowing it is or will become landlocked upon purchase" should not be allowed to seek private condemnation. (Pet. 27)

The petitioners' pretzel logic doesn't end there; they also disagree with Division Two's conclusion that Mr. Nayeri "could not have otherwise obtained an easement to access . . . his land." Op. at 223, ¶34; (Pet. 24) The petitioners argue Mr. Nayeri could have obtained an easement by negotiating with either the State or neighboring owners, but because he "was unsuccessful in

getting them to enter an easement voluntarily," this failure "should preclude condemnation." (Pet. 25-26)

Obviously, had Mr. Nayeri's negotiations for access succeeded, *he would never have needed to sue in the first place*. The petitioners' argument that Mr. Nayeri should be precluded from private condemnation as a matter of law simply because he was unsuccessful in negotiating a private right of way easement amounts to "heads we win, tails you lose." Under that rule, a neighboring owner could intentionally undermine negotiations with a landlocked neighbor knowing the failure of those negotiations would also preclude any future private condemnation lawsuit. Neither *Ruvalcaba*—nor basic logic—justifies such preposterous reasoning, which entirely negates the right enshrined in Article I, section 16 and chapter 8.24 RCW.

For all these reasons, Division Two's rejection of petitioners' proposed bright-line rule is consistent with Washington law and should not be reviewed.

2. Division Two did not create a conflict with this Court's precedent by holding factual questions regarding Mr. Nayeri's planned development and potential burdens on the petitioners could not be resolved on summary judgment.

Although the petitioners focus on Division Two's holding that "a buyer's knowledge that a property is landlocked at purchase does not automatically bar private condemnation under chapter 8.24 RCW," Op. at 222, ¶31, they also suggest that Mr. Nayeri could not establish a reasonable necessity for a private right of way easement because he never "presented any development plan, or even defined the size and scope of the easement he seeks" and because the "proposed condemnation would impose severe burdens on his neighbors." (Pet. 21-22) To the extent the petitioners seek review on these grounds, they have failed to explain how Division Two's decision conflicts with any authority from this Court. *See* RAP 13.4(b)(1). There is no conflict; Division Two correctly held that these

issues involved factual questions that could not be resolved on summary judgment.

A party seeking private condemnation under RCW 8.24.010 "has the burden to show that the private way of necessity is reasonably necessary for the use and enjoyment of the property." Op. at 224, ¶42, citing *Noble v. Safe Harbor Family Preservation Tr.*, 167 Wn.2d 11, 17, ¶9, 216 P.3d 1007 (2009). The statute provides that whether an easement is necessary depends on the property's relationship to the surrounding land:

> An owner . . . of land *which is so situate with respect to the land of another that it is necessary* for its proper use and enjoyment to have and maintain a private way of necessity . . . may condemn and take lands of such other sufficient in area for . . . such private way of necessity[.]

RCW 8.24.010 (emphasis added).

Accordingly, "Washington appears to have announced a reasonably necessity rule that holds a taking will not be tolerated unless the necessity is paramount in

the sense that *there is no way out*"—in other words, when the property is landlocked like the Property here. *Beeson v. Phillips*, 41 Wn. App. 183, 187, 702 P.2d 1244 (1985) (emphasis added); *see Ruvalcaba*, 175 Wn.2d at 6, ¶9 (Article I, §16 of Washington's constitution "demonstrates that a remedy for *landlocked* property was envisioned.") (emphasis added).

Thus, Washington courts typically assess whether a private right of way easement is reasonably necessary without regard to the feasibility of any potential future development. *See, e.g., Beeson*, 41 Wn. App. at 188 ("The question [of reasonable necessity] then resolves itself into whether or not the [condemnors] could obtain 'proper use and enjoyment' of their property—*with or without the erection of a residence*[.]") (emphasis added); *Brown v. McAnally*, 97 Wn.2d 360, 370, 644 P.2d 1153 (1982) ("RCW 8.24 authorizes a limited private condemnation

proceeding" that does not include "contemplation of a future real estate subdivision development.").

Division Two's decision is consistent with this understanding of private condemnation: "It is true that [Mr.] Nayeri's lack of concrete development plans leaves significant questions about the scope of the easement that a trier of fact could grant. But the scope of access is different than the *necessity* of access." Op. 224 at ¶43.

Further, while "the property's future use is certainly a factor that" a trial court "should consider," Division Two correctly recognized that Mr. Nayeri presented sufficient evidence proving the feasibility of future development, and thus any doubt regarding his plans could not defeat his private condemnation claim on summary judgment:

> Several experts opined that it was possible to obtain the necessary permits or exemptions from the city, both to build on the property and to access the landlocked property. And the experts made clear that access through one of the neighboring properties would be necessary to build on [Mr.] Nayeri's land.

Op. at 224, ¶43.

Indeed, even the petitioners' expert conceded that genuine issues of material fact remained regarding the feasibility of development, oxymoronically stating that development was "*possibly* impossible[.]" (CP 467, emphasis added) Petitioners—not Division Two—make "incorrect factual conclusions" (Pet. 23) in repeatedly viewing the facts in the light most favorable to them and not Mr. Nayeri, the non-moving party on summary judgment. *See Woodward v. Lopez*, 174 Wn. App. 460, 468, ¶15 & 472-73, ¶¶26-29, 300 P.3d 417 (2013) (reversing summary judgment dismissal of private condemnation claim under RCW 8.24 because plaintiff's "expert opinion raises genuine issues of material fact regarding feasibility and reasonable necessity of access").

Petitioners' contention that a reasonable necessity "can exist only when there is a 'definite plan' for development" is premised on their distortion of this

Court's decision in *Port of Everett v. Everett Improvement Co.*, 124 Wash. 486, 214 P. 1064 (1923); (Pet. 21-22). In *Port of Everett*, the Port—a government entity—was required to establish a sufficient public use to prove that condemnation was reasonably necessary, and thus the Port's plan for development and future use was directly at issue. 124 Wash. at 489-94. In contrast, no showing of contemplated public use is required in a private condemnation action. RCW 8.24.010; *see Brown*, 97 Wn.2d at 372-73 (distinguishing private condemnation under RCW 8.24.010 from condemnation by the government, which "requires proof of a contemplated public use").

In sum, Division Two correctly considered "the facts in the light most favorable to" Mr. Nayeri when it held that genuine disputes of material fact remained—specifically regarding the feasibility of development, along with the size, scope, location, and resulting benefits and burdens of

a potential easement—and thus this private condemnation action "could not be resolved at the summary judgment stage." Op. at 225, ¶47. That run-of-the-mill holding does not conflict with any authority from this Court and does not warrant review under RAP 13.4(b)(1).

3. Division Two's decision reaffirms the overriding public policy that landlocked property should not be rendered useless and thus it does not involve an issue of substantial public interest warranting review under RAP 13.4(b)(4).

Echoing their misplaced belief that *Ruvalcaba* should control here (Pet. 29; *see supra*, §C.1.), the petitioners contend that Division Two's decision involves an issue of substantial public interest warranting review under RAP 13.4(b)(4) because it allows purchasers to pursue private condemnation under chapter 8.24 RCW even when they know the purchased property either "is or will become landlocked upon purchase[.]" (Pet. 27)

Again, the petitioners urge this Court to accept review and adopt a bright-line rule identical to the one it

rejected in *Ruvalcaba* by holding that anyone who purchases landlocked property is stuck with it. This rule does not serve the public interest; to the contrary, it obliterates "Washington's 'overriding public policy goal against making landlocked property useless.'" Op. at 222, ¶33, quoting *Ruvalcaba*, 175 Wn.2d at 8, ¶11. Division Two correctly rejected it. *See* Op. at 222-23, ¶¶31-35.

Petitioners' rule would create a litany of absurd results that undermine the goal of preventing landlocked property from being useless. For starters, under petitioners' rule, any subsequently purchased landlocked property would remain so indefinitely. Additionally, owners of land that became landlocked after its acquisition would be required to sue their neighbors for an access easement before selling the property—even if they do not intend to use the easement—because any purchaser would be precluded from seeking an easement. Moreover, these owners would be forced to seek condemnation while

speculating on the needs of a hypothetical future owner, contrary to the rule that courts do not hear claims that are "speculative and hypothetical." *Lewis Cnty. v. State*, 178 Wn. App. 431, 440, ¶15, 315 P.3d 550 (2013) (citing *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137 (1973)), *rev. denied*, 180 Wn.2d 1010 (2014).

The petitioners erroneously argue Division Two's decision "gives investors and flippers no incentive to negotiate access in good faith when they can simply sue for private condemnation instead." (Pet. 27) Petitioners have it backwards—if purchasers of landlocked property could never obtain a private right of way easement as a matter of law under RCW 8.24, neighboring property owners like the petitioners would have no incentive to negotiate in good faith. After all, why would anyone negotiate an easement with a purchaser of landlocked neighboring property if they knew private condemnation under RCW 8.24 was legally impossible? Potential easement grantors like the

petitioners could refuse to negotiate altogether without consequence or—knowing a voluntarily granted easement is the only option—extort the landlocked owner by withholding legal ingress and egress hostage at an exorbitant cost.

Moreover, chapter 8.24 RCW already provides a sufficient incentive for purchasers of landlocked property to negotiate for access in good faith. Any landlocked owner would try to reach a reasonable agreement with neighbors to avoid a costly litigation process that may result in paying for the condemnee's attorney fees—on top of their own attorney fees—regardless of the outcome. *See* RCW 8.24.030. This is precisely why Mr. Nayeri spent years trying to "work[ ] something out without going to court" (CP 201)—including by paying for studies and surveys of the Property at Lowe's request—and initiated this action only as a last resort. (CP 174-75, 200-02); Op. at 223, ¶34.

The petitioners suggest Mr. Nayeri acted in bad faith here, contrasting this case with Division Three's unpublished decision in *Lutz v. Buffington*, No. 32878-3-III, 2016 WL 821327 (Mar. 2, 2016), *rev. denied*, 186 Wn.2d 1011 (2016) (unpublished, cited per GR 14.1).[2] In attempting to distinguish between good faith and bad faith uses for private condemnation, the petitioners essentially argue that private condemnation should be limited to property owners who become landlocked due to forces entirely outside their control, such as "changed regulations" or "public condemnation of a prior access route." (Pet. 28) This rule would substantially undermine the overriding public policy of private condemnation by

[2] The petitioners never argue that Division Two's decision conflicts with another Court of Appeals decision warranting review under RAP 13.4(b)(2), and thus they essentially concede *Lutz* does not present any conflict warranting this Court's review. Nor can any conflict with an unpublished decision serve as a basis for review. *See* RAP 13.4(b)(2); GR 14.1(a) ("Unpublished opinions . . . have no precedential value and are not binding on any court.").

guaranteeing that more landlocked property would be rendered useless. For example, the State would never be able to sell surplus property it did not intend to use—like the Property here—if purchasers knew obtaining legal access was forbidden.

As discussed, Mr. Nayeri acted in good faith when he bought the Property for development, in furtherance of the overriding public policy that landlocked property not be rendered useless—unlike the Ruvalcabas, who used private condemnation to stifle their neighbors. Similarly, Mr. Nayeri cannot "profit at the expense of [his] neighbors" (Pet. 26) because RCW 8.24.030 requires that he pay the petitioners for whatever access he is granted.

More importantly, even assuming the petitioners' doubts regarding Mr. Nayeri's good faith are somehow relevant, neither this Court nor the trial court could infer that he acted in bad faith given the summary judgment standard requires that the evidence of Mr. Nayeri's efforts

to avoid litigation by negotiating an easement must be viewed in the light most favorable to him. (*See supra*, §B.1.)

Finally, the petitioners' panic regarding Division Two's decision is unnecessary considering the trial court has yet to determine whether Mr. Nayeri is entitled to an easement at all. Division Two held that Mr. Nayeri's "knowledge at the time of purchase is a factor that can be considered" on remand, further noting that the trial court "could ultimately find that an easement is not reasonably necessary based in part on [his] knowledge that the property was landlocked at the time of purchase." Op. at 223, ¶35. Division Two also acknowledged that the factual disputes regarding potential future development may affect the scope of any easement and whether an easement is reasonably necessary. Op. at 225, ¶47 ("It is certainly possible that [Mr.] Nayeri may not ultimately be able to secure any easement, much less one of the scope that he desires.").

In essence, while Division Two held that Mr. Nayeri cannot be denied a private right of way easement as a matter of law, it also emphasized that an easement is by no means guaranteed. Accordingly, Division Two preserved the public interests at stake in private condemnation by reversing summary judgment dismissal here; indeed, the petitioners aptly describe private condemnation as creating "tension" between "two competing interests: a public policy goal that favors putting property to use against the Washington Constitution's protection of private property." (Pet. 26-27) Division Two's well-reasoned decision recognizes that resolving this tension often requires a fact-specific analysis of a number of factors that—as in this case—cannot be resolved on summary judgment.

Because Division Two's decision protects the public interest in private condemnation, the petitioners cannot show it warrants this Court's review under RAP 13.4(b)(4).

D. Conclusion.

This Court should deny review.

I certify that this brief is in 14-point Georgia font and contains 4,904 words, in compliance with the Rules of Appellate Procedure. RAP 18.17(b).

Dated this 12th day of July, 2024.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on July 12, 2024, I arranged for service of the foregoing Answer to Petition for Review, to the Court and to the parties to this action as follows:

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DATED at Brooklyn, New York this 12th day of July, 2024.

*_/s/ Andrienne E. Pilapil_*
Andrienne E. Pilapil

SMITH GOODFRIEND, PS

July 12, 2024 - 1:46 PM

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