

FILED
SUPREME COURT
STATE OF WASHINGTON
10/28/2024 8:00 AM
BY ERIN L. LENNON
CLERK

SUPREME COURT OF THE STATE OF WASHINGTON

No. 1033222

Review of Division II Cause 57601-5
22-2-02806-34
Before the Honorable Judge Wilson
Thurston County

Joe Patrick Flarity, a marital community
v.
Unknown Officials, in their official and personal capacities,
State of Washington, Et Al.

OBJECTION AND MOTION TO MODIFY CLERK'S LETTER
ISSUED ON OCTOBER 24, 2024

URGENT: DELAY REQUESTED TO ADDRESS UNSEEN MOTION

Joe Flarity, a marital community
Pro Se Appellant
101 FM 946 S
Oakhurst, TX 77359

1. OBJECTION AND MOTION TO MODIFY

Comes Joe Patrick Flarity, a pro se marital community, hereafter Flarity, OBJECTS to the Clerk's Letter promising a Strike Motion from the Acting Supreme Court Clerk, Sarah R. Pendleton. **AP-2.** The success of the Clerk's (as of this date) unseen Motion could very well determine the outcome of the decision, because the State has included a new issue in their Answer and the Panel could decline further review based on that issue.

This filing is NOT the Reply the Clerk determined is allowed in the letter for November 6, 2024. The Panel should note its officials are keen to log any question on the Clerk's deliberately created ambiguity as the allowed response. See **AP-4.**

All emphasis is added unless otherwise noted. Meaning no disrespect to any party, titles are removed to save word count.

2. AUTHORITY OF PETITION

This Petition meets the time requirements for modification of lower court decisions per RAP 17.7, "not later than 30 days after the ruling is filed." By promising a motion to strike will be submitted, and establishing a date to Reply to the hidden Motion, the letter meets the intent of a "ruling." Flarity is aggrieved of rebutting an unseen Motion to Strike with the Acting Clerk advocating for the State, whom is the last opponent needing further legal help.

3. AUTHORITY OF CLERK'S MOTION

The letter does NOT state the authority of court officials to take sides on issues. Is this role suitable for an ACTING clerk?¹ Can any Supreme Court clerk take part in the judicial arguments with hidden filings? How about other appointed members of the Supreme Court staff such as Commissioners and staff attorneys? The authority, a requirement of any Motion, should have been made clear in the letter so that a proper response can be made.

Of course the State will be delighted to put a new issue before the Panel with help from the Chief Staff Attorney that might eliminate a detailed response. Here is the well worn trope of shooting fish in a barrel, the “hammering” of which Flarity was warned.²

3. GROUNDS FOR OBJECTION

3.1 AMBIGUITY AND TIMELINESS

The people should know how to proceed in the Supreme Court. As was done in the past for Flarity's letters intended as Comments, the Clerk has the power of refusing to file the Reply, which would have opened a path to Modify and required a delay. By abdicating the Clerk's authority,

1 Under Federal rules, *Acting* officials cannot change policy or set new precedents, which this letter, **AP-2**, defies.

2 “I can't take this case. There are only a handful of people in the world who understand how this really works in Washington State. You are going to get **hammered** and there is nothing you can do about it. You are a regular citizen with no inside connections, wealth/employment leverage potential, or a fellow government employee. It would be unseemly to take your money.”

the people are put in the terrible position of ambiguity, which a court concerned with justice should scrupulously avoid.³ What is the Motion going to say? Will Flarity see it at all? If so when?

By this forced argument with the Court's Chief Staff Attorney on a hidden Motion, a second "forearm"⁴ has been added to the State's side of the scale of justice.

3.2 END RUN AROUND *EX PARTE* COMMUNICATION

The proper party to Motion to Strike is the State and the AG has enjoyed enormous success on its Motions against Flarity, despite the fact that Martin gave Flarity accolades as good advocates. The most notorious success here was the sanction for Flarity for simply asking for a delay when the State had already been granted two delays, one *ex parte*. As Flarity pointed out repeatedly to Wilson, Flarity had no argument on the sanction because the Motion was not served at all. Flarity was ambushed. When Div. II confirmed this sanction, a unique new threshold for retaliation is established across the entire U.S.

³ *Alvarez v. Tracy*, 773 F.3d 1011, 1024-25 (9th Cir. 2014):

When we take the judicial oath of office, we swear to "administer justice without respect to persons, and do equal right to the poor and to the rich" 28 U.S.C. § 453. I understand this to mean that we must not merely be impartial, but must appear to be impartial to a disinterested observer. ... [Petitioner here would] have had a fairer shake in a tribunal run by marsupials....

⁴ *Axon Enterprise, Inc. v. FTC*, 598 U.S. 175, 143 S. Ct. 890, 215 L. Ed. 2D 151 (2023).

Official retaliation was again prohibited in unanimous *NRA v. Vullo*, 22-842.

But the most useful of the Motions granted to the State was the dismissal by CR12 for failure to state a claim, because of no “Cause of Action” available by State law. Wilson set precedent and eliminated the people’s protection by 42 USC § 1983 that *Trucking*⁵ specifically validated to confront abusive “methods” employed by officials. By confirming, Div. II has overturned *Trucking* and then refused to publish the new precedent in a tactit developed by courts protecting the outrages of Jim Crow.

The hidden Motion by the Clerk is unusual and likely to raise the ire of other legal professionals. But the letter serves a second purpose. It gives the AG the idea to Strike with an indication that a State motion would be accepted by the Panel. The letter provided the idea of an alternate path without violating the prohibition of *ex parte* communication.

4. MODIFICATION REQUESTED

Well before November 6, 2024, the Panel should Order the Clerk’s letter withdrawn or the date extended. Despite the fact that the “bell has been rung” and the State is encouraged to serve its own Motion to

⁵ *WASHINGTON TRUCKING v. EMPLOYMENT SEC. DEPT*, 393 P.3d 761, 188 Wash. 2D 198 (2017)

Strike, this process is the usual nature of court opposition. Legal theories and precedents must be available for rebuttal.

The letter promises Clerk advocacy for the AG on a hidden Motion. By the Clerk taking sides, the State would then avoid describing the portions of their Answer they prefer the Panel to disregard. For this reason alone, the Panel should withdraw the letter and force the AG to provide reasoning that could set a new precedent on Answers that Flarity could review and rebutt.

5. MOTION FOR DELAY

Flarity does not believe the Court's Chief Staff Attorney can provide ANY case where the Answer raised a new issue and a Reply was denied in defense. This blank in a filing should prompt a "conclusory" charge by any competent attorney in opposition. But Flarity can't make that argument without seeing the Motion with the necessary time added to prepare a proper Reply.

If Pendleton can find a precedent case, Flarity needs to research it well in advance of November, 6, 2024, which is EIGHT working days away as of this filing. For this reason, Flarity requests a delay of 30 days to receive, research and develop a proper defense of the Reply which could be vital in convincing the Panel to accept review.

6. CONCLUSION

For the reasons stated, the Panel should modify to withdraw the letter and make the State follow the standard due process to provide reasons the Panel should ignore its Answer. Obviously, this is an absurd proposition from the State. And it's just as absurd from the Court's Chief Staff Attorney.

Flarity assumes Pendleton has read Flarity's Reply in detail, including the use of absurdity as a tyrannical tactic to display power. Her letter ironically confirms Flarity's Reply, and the people should not be denied this important document as a historical court record.

CERTIFICATION OF WORD LIMIT.

The Word Count is 1468 words, and is within the limit of rule 18.17, 5000 words for Motions.

CERTIFICATION AND SIGNING:

Per RCW 9A.72.085, I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and I have followed the RAP 17 to the best of my knowledge for this Reply.

Date of Signing: October 28, 2024

Signature of plaintiff: /s/ Joe Flarity

JOE PATRICK FLARITY

101 FM 946 S

Oakhurst, TX 77359

piercefarmar@yahoo.com

(253) 951 9981

APPENDIX TABLE OF CONTENTS

DESCRIPTION	PAGE
CLERKS LETTER PROMISING A MOTION TO STRIKE.....	AP-2
EMAIL CONCERNING CLERK'S LETTER.....	AP-4

ERIN L. LENNON
SUPREME COURT CLERK

SARAH R. PENDLETON
DEPUTY CLERK/
CHIEF STAFF ATTORNEY

THE SUPREME COURT
STATE OF WASHINGTON



TEMPLE OF JUSTICE
P.O. BOX 40929
OLYMPIA, WA 98504-0929

(360) 357-2077
e-mail: supreme@courts.wa.gov
www.courts.wa.gov

October 24, 2024

LETTER SENT BY E-MAIL ONLY

Joe Patrick Flarity
101 Fm 946 South
Oakhurst, TX 77359
piercefarmar@yahoo.com

Andrew J. Krawczyk
Atty Generals Ofc/Revenue Division
PO Box 40123
Olympia, WA 98504-0123
Andrew.Krawczyk@atg.wa.gov

Matthew Kernutt
Attorney General of Washington
1125 Washington St SE
Olympia, WA 98504-0100
matthew.kernutt@atg.wa.gov

Re: Supreme Court No. 1033222 – Joe Patrick Flarity v. State of Washington, et al.
Court of Appeals No. 576015 – Division II
Thurston County Superior Court No. 22-2-02806-5

Counsel and Joe Flarity:

On October 23, 2024, this Court received and filed the “REPLY TO ANSWER ON NEW ISSUE – 57601-5-II” [sic].

The Rules of Appellate Procedure only allow for the filing of a reply to an answer “if the answering party seeks review of issues not raised in the petition for review.” See RAP 13.4(d).

In this case, it does not appear that the answer seeks review of any additional issues. Therefore, the reply does not appear to be permitted under the rules.

Accordingly, a clerk’s motion to strike the reply will be set for consideration without oral argument by a Department of the Court at the same time that the Court considers the pending petition for review. Any party may file an answer to the motion to strike the reply by **November 6, 2024**.

Page 2
No. 1033222
October 24, 2024

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah R. Pendleton". The signature is fluid and cursive, with the first name "Sarah" being the most prominent part.

Sarah R. Pendleton
Acting Supreme Court Clerk

SRP:jm

Subject: RE: Supreme Court No. 1033222 Joe Patrick Flarity v. State of Washington, et al.--Note on Motion to Strike

From: "OFFICE RECEPTIONIST, CLERK" <SUPREME@COURTS.WA.GOV>

Date: 10/24/24, 13:12

To: Joe Flarity <piercefarmer@yahoo.com>

CC: "revolyef@atg.wa.gov" <revolyef@atg.wa.gov>, "matthew.kernutt@atg.wa.gov" <matthew.kernutt@atg.wa.gov>, "Andrew.Krawczyk@atg.wa.gov" <Andrew.Krawczyk@atg.wa.gov>

Please let this Court know if you wish to have your e-mail treated as a response to the Clerk's motion to strike.

Supreme Court Clerk's Office

From: Joe Flarity <piercefarmer@yahoo.com>

Sent: Thursday, October 24, 2024 10:56 AM

To: Martinez, Jacquelynn <Jacquelynn.Martinez@courts.wa.gov>; revolyef@atg.wa.gov; matthew.kernutt@atg.wa.gov; Andrew.Krawczyk@atg.wa.gov; OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>

Subject: Re: Supreme Court No. 1033222 Joe Patrick Flarity v. State of Washington, et al.--Note on Motion to Strike

You don't often get email from piercefarmer@yahoo.com. [Learn why this is important](#)

External Email Warning! This email has originated from outside of the Washington State Courts Network. Do not click links or open attachments unless you recognize the sender, are expecting the email, and know the content is safe. If a link sends you to a website where you are asked to validate using your Account and Password, **DO NOT DO SO!** Instead, report the incident.

Hello Ms. Martinez:

Could you forward the below question to the Clerk writing the Motion to Strike:

If the State puts new issues in their Brief, it goes without saying that they want the issues to be read by the Panel and considered. In fact, by the similar analogy of throwing a skunk into the jury box and asking they not smell it--it is impossible for the Panel to read the new issues and NOT consider them.

To deny any answer to the new issues is highly prejudicial and the Motion to strike only make senses if the new issues are also stricken from the State's Brief so the court is not forced to smell the skunk and then to try to ignore it. The long history of this tactic shows this is an impossible request and a new trial is the only real cure.

RE: Supreme Court No. 1033222 Joe Patrick Flarity v. State of Washington, et al.--Note on Motion to Strike

I ask the Motion to Strike fairly address both sides of this argument with no mention of comity.

Otherwise, the Clerk's Motion will embroil the court in another round of Motions and reviews of Motions.

Thank you for this consideration.

Joe Flarity

On 10/24/24 11:20, Martinez, Jacquelynn wrote:

Attached is a copy of a document in the above referenced case. Please consider this as the original for your files, a copy will not be sent by regular mail.

Any documents filed with this Court should be submitted via our E-filing Portal:

<https://ac.courts.wa.gov/>

Please do not respond to this email. Any questions or response should be directed to our main email address, which is: supreme@courts.wa.gov.

Jacquelynn Martinez (she/her)

Administrative Office Assistant

Washington State Supreme Court

jacquelynn.martinez@courts.wa.gov

FLARITY FARM

October 27, 2024 - 1:23 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 103,322-2
Appellate Court Case Title: Joe Patrick Flarity v. State of Washington, et al.
Superior Court Case Number: 22-2-02806-5

The following documents have been uploaded:

- 1033222_Motion_20241027131910SC590684_6364.pdf
This File Contains:
Motion 1 - Modify Clerks Ruling
The Original File Name was Motion to Modify Letter with Appendix.pdf

A copy of the uploaded files will be sent to:

- Andrew.Krawczyk@atg.wa.gov
- danielle.anderson@atg.wa.gov
- matthew.kernutt@atg.wa.gov
- revolyef@atg.wa.gov

Comments:

Modify Acting Clerk's letter promising to strike Flarity's reply with a hidden motion.

Sender Name: Joe Flarity - Email: piercefarmer@yahoo.com

Address:

249 Main Ave S. STE 107 #330

North Bend, WA, 98045

Phone: (253) 951-9981

Note: The Filing Id is 20241027131910SC590684