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SUPREME COURT
STATE OF WASHINGTON
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Case #: 1033222

SUPREME COURT OF THE STATE OF WASHINGTON

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.

PETITION TO REVIEW—57601-5-II AMENDED

DIVISION II'S UNPUBLISHED DECISION
CONFIRMING FAILURE TO STATE A CLAIM
AND
ASSIGNING SANCTIONS

PRESENTED TO THE WASHINGTON STATE SUPREME COURT

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

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1. IDENTITY OF PETITIONER

Comes Joe Patrick Flarity, a pro se marital community, hereafter Flarity. All emphasis is added unless otherwise noted. Meaning no disrespect to any party, titles are removed to save word count. Emphasis added is our own unless otherwise noted. Flarity currently resides at the following address:

101 FM 946 S
Oakhurst, TX 77359
piercefarmer@yahoo.com
(253) 951 9981

2. DECISION TO REVIEW

Flarity moves the Panel to reverse a "shameful"[1] Div. II decision defying numerous precedents and bolstering the "power of the sovereign" by projecting that the State Constitution is "not only useless, but a silly thing."[2] Div. II issued its Order without waiting on the Commissioner's ruling for Mrs. Joe Flarity's Motion to Bifurcate, No. 1031491.

3. AUTHORITY FOR PETITION

This Petition is timely because it is within 30 days of their "shameful" decision. The Panel's Order was issued July 2, 2024, **AP-2.** The criteria for RAP 13.4 (b):

1 Supreme Court's June 4, 2020 letter to lower courts.

2 *Ralph v. Weyerhaeuser Co.*, 187 Wash.2d 326, 386 P.3d 721 (Wash. 2016).

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or

(2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or

(3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

The unpublished Order in **AP-2** defies all FOUR of the listed criteria to review.

4. TIMELINESS OF PETITION

The Petition was submitted on August 1, 2024. On August 2, 2024, the Clerk filed a letter rejecting the Petition for being over the 5000 word limit. The word count was recalculated without the tables and resubmitted on August 5, 2024. No other changes were made to the Petition other than this paragraph.

Rules and laws must be fairly interpreted and enforced, otherwise the public is subject to abuse as described in Federalist No. 62. The Supreme Court Clerk takes any Mandate issued, no matter how arbitrary, as preclusion to prevent any Supreme Court review whatsoever. When the people cannot clearly discern when a Mandate

might be issued, the tactic is fairly described as a "made up immunity."[3] The RAP gives parties thirty days to present a petition for review of a lower court decision.

No. 1032081, in contention now before the Commissioner, describes previous damage to Flarity by this tactic. **AP-11.** With an abundance of caution, this Petition seeks to preclude an additional arbitrary Mandate. This petition is filed concurrently with our Motions to Publish and for Reconsideration still in review at Div. II. Given this history, Flarity is uncertain how Div. II would toll its power to issue the Mandate. **AP-11** also proves Div. II is NOT likely to Recall the Mandate, no matter how improperly issued or the number of precedents it violated.The hasty Order, **AP-2**, demonstrates Div. II's low regard for the jurisdiction of the Supreme Court for pending issues that would directly impact the outcome of the decision.

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3 The ACLU's DC chapter expressing the power of 42 U.S.C. § 1983 at the 150th anniversary: "On April 20, 1871, President Ulysses S. Grant signed one of the most important civil rights laws in U.S. history: the Ku Klux Klan Act. Section 1 of that law – known today as 42 U.S.C. § 1983 – empowers individuals to sue state and local government officials who violate their federal constitutional rights....And we continue to fight to ensure that the law isn't watered down with made-up immunities that give a free pass to government officials to violate the Constitution."

Clark Nealy at the Cato Institute:

...it's important to understand that the judiciary really does invent and blatantly misapply various avoidance doctrines to help insure the judges' former colleagues in the other branches rarely have to account for themselves.

4. ISSUES PRESENTED FOR REVIEW

4.1 JUSTICE IS NOT POSSIBLE IN A COURT WHERE THE RESULT IS "INEVITABLE"

4.2 COURT RETALIATION TO CHILL THE PEOPLE PROTECTING CORE RIGHTS IS CRIMINAL CONDUCT

4.3 DIV. II REFUSES TO OBSERVE SUPREME COURT PROTECTION FOR 42 USC § 1983

4.4 DIV. II REFUSES TO OBSERVE SUPREME COURT PROTECTION OF PRIVACY

4.5 DIV. II REFUSES TO OBSERVE SUPREME COURT PROTECTION OF TIMELY HEARINGS

4.6 PROTECTION OF THE INVIOLATE RIGHT TO A JURY TRIAL, ART 1, SEC. 21.

4.7 NATURAL RIGHTS PROTECTION AUTHORIZED BY ART. 1, SEC. 32

5. STATEMENT OF THE CASE

Flarity had farmed lots 2 and 3 just outside the city of Buckley since 1994 from land that had been continuously farmed after the Wickersham sawmill closed in 1910. The land is designated a “wildlife corridor.” In 2017, Flarity hand built a log barn from scrap cedar timbers on lot 3 while camped on the property in the summer. Despite the lack of power, water, or sewer, Pierce County declared the barn a residence and erroneously listed it’s construction as standard stud wall framing. While waiting for the forms to protest this classification, which officials are required to provide, Hurricane Harvey struck our residence in Texas and we returned to repair the extensive damages. Flarity’s father’s house was also damaged and the stress of repair caused him a debilitating stroke from which he never recovered. Having only one child, Flarity assumed the majority of the responsibility for his care.

During this traumatic period, Pierce County removed the farm tax exemption from both lots, even though Lot 2 remained vacant and in pasture. The Pierce County Board of Equalization (BOE) refused to continue our hearing on the farm status removal. We determined that if the RCW had any legal authority at all, this would be the ideal case to clarify the right to be heard.[4] We moved to North Bend, WA and filed 20-2-16139-0 in King County. This case is now in contention as described before the Supreme Court as No. 1032081, **AP-11.**

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4 Has the law been made “useless and silly” per *Ralph v. Weyerhaeuser Co.*, 187 Wash.2d 326, 386 P.3d 721 (Wash. 2016)

Under protest, we paid over $30,000 to Pierce County in back taxes and penalties for tax year 2017. The next year, we received another large tax bill from Pierce County with large increases to the value of our "residence" and we again protested. The BOE and the Assessor graciously waived their local authority and agreed to a direct review before the Board of Tax Appeals, (BTA). This was accepted and No. 19-105 assigned. The BTA then sat on our case for years and did not move to schedule a hearing until we sold the property and moved back to Texas in 2022. Losing the King County venue put us at a tremendous disadvantage and we filed 22-2-02806-34 in Thurston County to correct the BTA's unconstitutional "methods"[5] demanding infinite delays. Flarity filed to correct improper practices with the belief that no jury would agree Washington has fair due process by contrasting with 20-2-16139-0 where the people are granted ZERO delays. De facto delay tactics have also been shown to impact the mental health of attorneys in general, with Supreme Court involvement at the WSBA in the examination of the extreme suicide rates of attorneys and law students.[6]

The Panel should also note that Div. II did not grant an Oral hearing before the Order, **AP-2**, was issued, even though the State did not

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

6 *National Task Force on Lawyer Well-Being*, P17: "Practices that rob lawyers of a sense of autonomy and control over their schedules and lives are **especially harmful** to their well-being...**Refusal to permit trial lawyers to extend trial dates to accommodate vacation plans** or scheduling trials shortly after the end of a vacation so that lawyers must work during that time;"

contest our Motion. We show proof that our ability to explore the issues in an Oral hearing is extraordinary for a pro se plaintiff, **AP-23**, where the Commissioner revealed the RAP directions to publish are so confusing that good lawyers often get it wrong, **AP-28.** The removal of the people's right to be heard in an oral argument is a significant reversal towards the dark age of jurisprudence, a time when justice was determined by one's ability to pick an iron from a pot of boiling water.

This disparagement of our core right to be heard as a matter of due process can only continue when courts deny the people our "inviolate" right to a jury trial, per Art. 1, Sec. 21.

6. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

6.1 AN OVERVIEW OF CORRUPTION

John Rawls, A Theory Of Justice, P4:

> ...the rights secured by justice are not subject to political bargaining or to the calculus of social interests.

Why do courts refuse to enforce Constitutional rights or observe precedents? Judges may have personal prejudice against a particular plaintiff, or a class plaintiff. They may allow an improper *quid pro quo* arrangement for favored parties. Although the practice is widely condemned, courts often engage in politics and use the power of their position to advance a "campaign." A judge could also abdicate their

responsibility by the “banality of evil,” **AP-17**, a condition that Henry David Thoreau described as “expediency.”

On the bleaker side, a judge could be afraid of retaliation from powerful administrative officials, a situation not unknown in Washington State even for Supreme Court Justices, as Justice Sanders could personally describe. And at the bottom of this pit, a judge could have taken a bribe, such as an innocuous fishing trip from a party with interests in the outcome of a decision before the court.

Whatever the reasons, on the face of court refusal to enforce the Constitutions is smeared the stain of abject corruption and nobody has described this situation better William Paley as incorporated into *On Civil Disobedience*, by Henry David Thoreau:

> “A drab of state, a cloth-o’-silver slut,
>
> To have her train borne up, and her soul trail in the dirt.”

The constitutions represent the “will of the people” with judges the last anchor to protect those vital principles. When the anchor person throws up their hands in a tug of war contest, the Rule of Law goes over the edge. Here is an opportunity for the Panel to dig in their heels and show common people the institution will be protected against the might of the most powerful law firm in the State, the 1000+ agency headed by Attorney General Ferguson, now campaigning to be the State’s next governor.

6.1 WHEN THEN OUTCOME IS "INEVITABLE"

When Wilson admitted in open court that the outcome of Flarity's case was "inevitable", **AP-238, 262-263.**[7] That is clear proof of court prejudice. It is only inevitable because Wilson decided the case for personal or political reasons rather than by the law and precedents after determining the facts. The Panel might also note Wilson did not temper the statement with *probably* or *maybe*. It is clear that Wilson had a result in mind from the very beginning and was eager to dismiss for any convenient reason in complete disregard of the case facts. Recognition of the case facts might given caution to further State abuse of core rights. That possibility has now been lost, with the Div. II Order blessing further abuse of core rights. And in particular, our "inviolate" right to be heard before a jury of our peers per Art. 1, Sec. 21.

Abuse of CR12 by improper dismissal, is also destruction of the 1st Amendment Right to be heard as was recently examined by unanimous SCOTUS in *NRA v. Vullo*, 22-842, which was presented to the Panel as a Supplemental, **AP-272.** But the Panel seemed to have ignored the directions, which would have been brought to their attention in greater detail had our Motion for oral hearing been granted. Per this Panel's June 4, 2020 letter, this is not how a *justice* system must operate (emphasis for justice is original).

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7 Again, the power of oral arguments is that the truth sometimes escapes even from experts determined to keep it hidden. Div. II here follows the advice of many good criminal attorneys. "Take no chances. Say nothing."

6.2 RETRIBUTION IS CRIMINAL CONDUCT BY RCW 42.41.

This “shameful decision” impacts not only residents of Washington State, but every resident in the United States, and also injures every person seeking justice around the globe. Every tyrant can point to this decision as an example of democratic futility even in a self proclaimed “progressive” democracy, such as Washington State.

Tyrants are presented with a path to seize the high ground. At least their neutered courts do not hide their policy of retribution for protesters as Div. II seeks here. They are proud to exact revenge, and Washington State should move to advertise court support of the “power of the sovereign”[8] and contempt for core rights as Art. 1, Sec. 29 makes mandatory unless abridged by “express words.”

Wilson and Div. II have established a new floor for retribution against people whom put faith in the plain wording of their Constitutions.[9] A recent Atlantic article is exactly on point as presented to the Commissioner for No. 1031491. *DEMOCRACY IS LOSING THE PROPAGANDA WAR*, Anne Applebaum, The Atlantic, June 2024:

> “not free” [countries]...teach their people to be cynical and passive, apathetic and afraid, because there is no better world to build. Their goal is to persuade their own people to stay out of politics....*Our state may be corrupt, but everyone else is corrupt too* (emphasis original).
>
> ...the so called fire hose of falsehoods—ultimately produces not courage, but nihilism.

8 *Community Ass'n v. Kitsap County*, 652 P.2d 383, 33 Wash. App. 108 (Ct. App. 1982).

9 Such as Art. 1, Sec. 32

> Fear, cynicism, nihilism, and apathy, coupled with disgust and disdain for democracy: This is the formula that modern autocrats...sell to their citizens...."

The ease at which noble ideals are corrupted into "worthless paper" is described by Neil Gorsuch, *A Republic, If You Can Keep It*, p40. Without correction, Div. II has rendered the Constitution into similar worthless paper. Is there any other possible conclusion? The CR11 violation was examined in detail in Flarity's Motion for Reconsideration. **AP-234.**

In contrast, Police official Covey, a white man, received over $22 MILLION in taxpayer funds for retaliation, a point made to the Commissioner. **AP-245.** Covey was not beaten nearly to death like Zamora[10] and Valentine.[11] He was not arrested after being roused from sleeping in his car like Palla Sum,[12] nor after refusing to show a transit pass like Meredith.[13] The contrast is stark.

SCOTUS recently gave caution that courts should carefully examine official retaliation. Justice Jackson, *NRA v. Vullo*, 22-842:

> ...the First Amendment prohibits government officials from subjecting individuals to 'retaliatory actions' after the fact…

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10 *State v. Zamora*, 512 P.3d 512, 199 Was h.2D 698 (2022), "I've got one resisting."

11 *State v. Valentine*, 935 P.2d 1294, 132 Wash. 2D 1 (1997)

12 *Sum v.State*, 199 Wash.2d 627, 653, 644, 511 P.3d 92 (2022)

13 *State v. Meredith*, 525 P.3d 584, 1 Wash. 3d 262 (2023).

> ...the government has crossed a line from persuasion to coercion...the threat of invoking legal sanctions and other means of coercion, persuasion, and intimidation...who is being coerced to do what, and why….
>
> On remand, the parties and lower courts should consider the censorship and retaliation theories independently...

Flarity does not have the research tools of the AG, but we dare to suggest that not a single government official has spent even a few hours in jail for violating this plainly stated criminal code. We appear here as a *private attorney general*[14] to check official abuse. As a first instance, retaliation by courts on people acting in the public interest enters into the dimension of RCW 42.41. This retaliation goes beyond judicial misconduct. Div. II projects their "shameful decision" into the taint of criminal perpetrators.

6.3 PROTECTION OF CORE RIGHTS BY 42 USC § 1983

Trucking[15] plainly states that administrative agencies are liable for violating 42 USC § 1983. Flarity relies on the Panel's "plain words." Just after *Trucking*, SCOTUS addressed the widespread prejudice in State courts for local officials in *Knick v.Twp. of Scott*, 139 S. Ct. 2162, 204 L.Ed.2d 558 (2019):

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14 *Miotke v. Spokane*, 678 P.2d 803, 101 Wash. 2D 307 (1984). Also, *Townsend v. Holman Consulting Corp*., 929 F.2d 1358 (9th Cir. 1991): the bringing of meritorious lawsuits by private individuals is one way that public policies are advanced.

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

> The Civil Rights Act of 1871, after all, guarantees "a federal forum for claims of **unconstitutional treatment at the hands of state officials,**" and the settled rule is that "exhaustion of state remedies 'is *not* a prerequisite to an action under [42 U.S.C.] § 1983.
>
> A bank robber might give the loot back, **but he still robbed the bank.**

Just after that SCOTUS in unanimous *Axon Enterprise v. FTC*, No. 21-86, insisted that State courts get their "forearms" off the scale of justice and support jury trials. Justice Kagan:

> ...attacks as well the combination of prosecutorial and adjudicatory functions in a single agency. The challenges are fundamental, **even existential.**

If this right truly exists in Washington State, Flarity respectfully requests the Panel defend *Trucking* and Reverse and Remand for a jury trial.

6.4 PROTECTION OF ART. 1, SEC. 7 PRIVACY RIGHTS

Rights are in retreat before all courts. This loss is unique in U.S. history and the people have a right to protest. Thomas Jefferson proclaimed in the Declaration of Independence this is more than a right--but a **duty** of all citizens intent on preserving democracy. The unanimous en banc BTA in 19-105, proclaimed that Washington residents have no right to privacy by vaulting Div. III's *Vonhof*[16] over this Panel's *Matter of Maxfield*, 945 P.2d 196, 133 Wash. 2D 332 (1997). If the Panel refuses to defend its precedent, then Art. 1, Sec. 7, has also been rendered into "worthless paper."

16 *State v Vonhof* 751 P2d 1221 51 WnApp 33 Wash App 1988.

In the domiciles in Washington State, approximately half the occupants are women. If the right to privacy is this easily removed from their domiciles, the right to privacy of their uterus might just as easily be removed. This degradation of a core right across the base of the citizens also flows down to the most disadvantaged citizens, such as already cited *Palla Sum*, *Zamora*, and adding *Long*[17] with *Jack Potter* now under review by this Panel in No.101188-1. The Panel cannot damage the people's rights on a broad basis and then dole out exceptions capaciously. The administrative branch would be justified in observing the "shadow"[18] of the practice, rather than the plainly stated words.

6.5 PROTECTION OF DUE PROCESS FOR TIMELY HEARINGS

In 19-105, the BTA demanded a right to infinite delays. The BTA did not give any explanation that a three year delay in a simple real estate value assessment was necessary. The BTA directly defies Art. 1, Sec. 10:

> Justice in all cases shall be administered openly, and **without unnecessary delay.**

Like Flarity previously described for privacy rights, this Panel has specifically stated that officials DO NOT have a right to infinite delays. *Bosteder v. City of Renton*, 155 Wn.2d 18, 36-37, 117 P.3d 316 (2005).

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17 *City of Seattle v. Long*, 493 P.3d 94, 198 Wash. 2D 136 (2021)

18 *Sofie v. Fibreboard Corp.*, 771 P.2d 711, 112 Wash. 2d 636, 112 Wash. 636 (1989)

If the Panel refuses to enforce its precedent, that makes another section of the Constitution into “worthless paper.” It also gives the public a taste of the sublime unfairness they face in Washington Courts for challenges to official misconduct of all core rights.

If the officials might have infinite delays and the people get ZERO delays, as Flarity has proven is the de facto practice in Pierce County, 20-2-16139-0, the people would see the courts as engaged in farce, rather than a system of justice. The practice also violates the due process clause of Art. 1, Sec. 3. Official actions also fail due process by the *Lawton v. Steele* test, 152 U.S. 133 (1894) because preserving *farmland, green space and wildlife habitat* achieved a “legitimate public purpose.” Our farm with its inherrent *wildlife corridor* has been destroyed.

6.6 THE INVIOLATE RIGHT TO A JURY TRIAL

TS v. Boy Scouts of America, No. 76726-2 (Wash. July 27, 2006):

> ROBERT F. UTTER & HUGH D. SPITZER, THE WASHINGTON STATE CONSTITUTION: A REFERENCE GUIDE 20-21 (2002).
>
> …*see also City of Pasco v. Mace,* 98 Wash.2d 87, 99, 653 P.2d 618 (1982) (affirming right to jury trial in **municipal court** because "**[f]rom the earliest history of this state, the right of trial by jury has been treasured"**).

When a court gives any indication this right will be enforced, the unconstitutional conduct will stop immediately. We witnessed this first-hand when Judge Bryan in Federal court, where the right is NOT "inviolate," ended Rule 10 prohibiting protests in Kitsap County parks by simply refusing to grant the county's motion for Rule 12 dismissal.[19] The public should question why *similarly situated* Flarity, asking for review of Pierce County's closure of the BOE court to the public, would be dismissed in the same court with a similar Pierce County motion? The only logical reason would be some unknown form of corruption.

These "shameful" decisions violate a huge number of precedents, when jury trials should be protected for even small causes, as noted in *Scavenius v. Manchester Port Dist*., 467 P.2d 372, 2 Wn.App. 126 (Wash. App. 1970) and *Christensen v. Swedish Hospital*, 368 P.2d 897, 59 Wash. 2D 545 (1962). How is this Panel's recent *Davis v. Cox*, 351 P.3d 862, 183 Wash. 2D 269 (2015) not applicable to Flarity? But most convincing is *Sofie v. Fibreboard Corp.*, 771 P.2d 711, 112 Wash. 2d 636, 112 Wash. 636 (1989), where this Panel went to extraordinary lengths to explain and define the intent of the founders for Art. 1, Sec. 21.

As noted in the Oral argument to Div. II,[20] Flarity is not your typical pro se plaintiff. Because we were born in Texas, which this Panel cited in both *Sophia* and *Long*, we recognize the power of a jury to end these

19 *Hordon v Kitsap Co*. 3:20-cv-05464-RJB

20 https://tvw.org/video/division-2-court-of-appeals-2023051060/?eventID=2023051060

unconstitutional practices, that juries represent the “moral core” of the community as Justice Stevens has noted by citing her own work,[21] with numerous other citations. *STATE, DEPARTMENT OF TRANSPORTATION v. MULLEN TRUCKING 2005, LTD.*, No. 96538-2 (Wash. Oct. 31, 2019), emphasis original:

> The State's waiver of immunity "operates to make the State presumptively liable in all instances in which the Legislature has *not* indicated otherwise." *Savage v. State,* 127 Wn.2d 434, 445, 899 P.2d 1270 (1995).

Hanson v. Carmona, 525 P.3d 940, 1 Wash. 3d 362, 1 Wash. 2D 362 (2023):

> "The legislature has not retreated whatsoever from the notion of a broad waiver of sovereign immunity. In fact, the opposite is true." *Id.* at 43.

6.7 ART. 1, SEC. 32 COVERS NATURAL RIGHTS

Thomas Jefferson, *Notes on the State of Virginia:*

> ...it is the manners and spirit of a people which preserve a republic in vigor….

The Panel can rely on their own opinions. If Art. 1, Sec. 32 was stretched too far to cover same sex marriage[22] or the use of medical

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21 *POPE RESOURCES v. WASHINGTON STATE DNR*, 418 P.3d 90, 190 Wash. 2D 744 (2018): *The Value of Government Tort Liability: Washington State’s Journey from Immunity to Accountability.* Debra L. Stevens & Bryan P. Harnetiaux. Washington State Trial Lawyers Foundation.

22 *Andersen v. King County*, 138 P.3d 963, 158 Wash. 2D 1 (2006).

cannabis,[23] the Panel did conclude Sec. 32 encompasses "natural laws," like the right to avoid unreasonable delay and invasion of privacy. From *Seeley*:

> Respondent notes that Brian Snure has **argued persuasively** that the phrase "frequent recurrence to fundamental principles" suggests that the framers retained the notion that **natural rights should be considered when protecting individual rights**….Additionally, Justice Utter, in his concurring opinion in *Southcenter Joint Venture v. National Democratic Policy Comm.,* 113 Wash.2d 413, 439, 780 P.2d 1282 (1989), argued that section 32 was evidence of the framers' belief in natural law, stating "the notion of fundamental principles was central to natural law theories at the time [the constitution was adopted]. That the principles are not spelled out further indicates that the framers **looked to other non-governmental sources for the origin of the rights listed in the constitution.**" *Id.* Justice Utter used this clause as a **substantive basis** for the protection of rights. *Id.*

The only reasonable explanation for the Panel to decline to review this decision is that the Panel's "compelling state interest" is the advancement of tyranny, that the Panel's real agenda is to reduce the people into the role of observers in contradiction to an avalanche of legal experts advising the opposite:[24]

> ...taking part in the processes of democracy can work to shape individuals' behavior, with democratic institutions valued in part for their effects on the 'psychological

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23 *Seeley v. State*, 132 Wash. 2d 776,814,940 P.2d 604, 623 (1997).

24 *Participatory Democracy in an Age of Inequality*, 57:2, 145-157, DOI: 10.1080/00344893.2021.1933151, by Rod Dacombe & Phil Parvin (2021), link: https://doi.org/10.1080/00344893.2021.1933151

> orientations' of citizens (Pateman, 1970, p. 26). In this view, participation can be seen as a form of 'socialization', or '**social training**''...Consequently, widespread participation is seen as essential for the development of the outlook and capability required of citizens in an effectively-functioning democracy.
>
> Participation provides an additional layer of scrutiny over the actions of public officials **by increasing the potential avenues for participation**, and **so dissenting voices can be heard,** public figures held to account for their actions and any significant **policy failure is more likely to be brought into the open**. Equally, any errant behavior might be exposed in the same manner. The spotlight provided by the direct engagement of citizens leaves little **place for unscrupulous politicians.**

this Court should resolutely set its face."[25] Flarity presents this Panel with the opportunity to restrain a "pernicious doctrine" and show how a "justice system must operate" by accepting this Petition for review and giving the people our right to be heard.

7. CONCLUSION

King County Bar Association Resolution 400:

> **"No man is above the law."**
>
> – Chesterfield Smith, President, American Bar Association, October 22, 1973

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25 *Olmstead v. United States*, 277 U.S. 438, 48 S. Ct. 564, 72 L. Ed. 944 (1928). SCOTUS shortened Justice Brandeis eloquent dissent in the majority opinion for the famous Watergate burglary case, *U.S. v. McCord*, 166 U.S. App.D.C. 1, 501 F.2d 334, 341: "Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."

> An independent judiciary is the cornerstone of the rule of law and our constitutional republic. It protects the liberty of the people. Yet public support for an **independent judiciary** can only be sustained if there is public confidence in the legitimacy of the judiciary.

With the sanctions as obvious retaliation, Div. II sets a new low for every democracy and throws red meat into the already rampaging pit of advancing tyranny. Here is the perfect opportunity to stop this downward spiral and declare an “independent judiciary” protecting core rights for “all the people.”

CERTIFICATION OF WORD LIMIT.

The Word Count is 3954 words, not including tables of contents and authorities, and is within the limit of rule 18.17, 5,000.

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 Motion.

Date of Signing: August 5, 2024

Signature of plaintiff: /s/ Joe Flarity

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APPENDIX TABLE OF CONTENTS

Filed
Washington State
Court of Appeals
Division Two

July 2, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JOE PATRICK FLARITY, a marital community, Appellant, v. UNKNOWN WASHINGTON STATE OFFICIALS in their official and personal capacities, and STATE OF WASHINGTON, et. al, Respondents.	No. 57601-5-II UNPUBLISHED OPINION

LEE, J. — Joe P. Flarity appeals the superior court's order dismissing his claims against the State of Washington. Flarity argues that the superior court erred by denying his motion to certify questions to this court, by dismissing his complaint, and by granting the State's motion for sanctions. We affirm the superior court.

FACTS

This is the fourth lawsuit arising from Flarity's dispute with Pierce County and the State over tax assessments for property he owned in Buckley, Washington.[1]

In 2019, Flarity filed an appeal with the Board of Tax Appeals (BTA) seeking review of the Pierce County Assessor's 2019 assessment of one of his parcels of property. At the same time,

[1] The facts underlying the dispute are not relevant for resolving the issues raised on appeal. However, we provide a full recitation of the facts underlying the dispute in *Flarity v. Argonaut Insurance Co. et al*, No. 56271-5-II (Wash. Ct. App. June 13, 2023) available at https://www.courts.wa.gov/opinions/pdf/D2%2056271-5-II%20Unpublished%20Opinion.pdf.

Flarity also attempted to appeal two decisions of the Pierce County Board of Equalization (BOE) denying his request for an extension of time to challenge the Pierce County Assessor's decision to remove his property from farm status.

With regard to the BOE's decision denying Flarity's request for an extension of time, the BTA denied Flarity's appeal because WAC 458-14-056(3) states that BOE decisions on extensions of time are final and not appealable to the BTA. With regard to Flarity's appeal of the 2019 tax assessment, the BTA accepted the appeal under No. 19-105. On August 24, 2022, the BTA issued its final decision in No. 19-105, and sustained the Pierce County Assessor's assessment.

On October 11, 2022, Flarity filed a complaint against Vikki Smith, the former director of the Department of Revenue (DOR), John Ryser, acting director of DOR, and the State of Washington. The complaint asserted three specific claims: (1) a due process violation based on the BTA delay in issuing its final decision, (2) a claim that BTA's due process failures amounted to constructive fraud, and (3) review of the administrative ruling in No. 19-105.

Flarity also sought declaratory judgment. Specifically, Flarity requested that the superior court declare (1) the BTA's delay in issuing its decision was unconstitutional, (2) specific WACs and RCWs unconstitutional because they allowed due process violations, (3) inspection of property by trespass is illegal, (4) BOE hearings must be open to the public, (5) the statute requiring exhaustion of remedies is unconstitutional, and (6) the BTA's final decision in No. 19-105 invalid. And Flarity requested damages, a refund for taxes paid on the property for 2018 through 2021, and unspecified injunctive relief.

On October 13, Flarity filed an amended complaint naming unknown Washington officials as defendants in place of Smith and Ryser. The complaint was otherwise unchanged.

On October 17, Flarity filed a motion to have questions certified to this court under RAP 2.3(b)(4). Specifically, Flarity sought to have the following questions certified to this court:

> . . . Question 1: Delay as a state weapon
>
> . . . .
>
> . . . Question 2: When does an assessor inspection violate privacy
>
> . . . .
>
> . . . Question 3: Are state attacks on fundamental liberties indicative of constructive fraud
>
> . . . .
>
> . . . Have peculiar forces risen to the level where federal oversight is necessary?
>
> . . . Does the collection of taxes trump fundamental liberties?

Clerk's Papers at 550-52 (boldface omitted). The superior court denied Flarity's motion to certify questions to this court.

On November 3, Flarity filed a motion to amend his complaint to add Pierce County as a defendant. Flarity's motion to amend was noted for November 18. On November 7, the State filed a CR 12(b)(6) motion to dismiss based on a failure to state a claim upon which relief can be granted. The State's motion to dismiss was noted for December 9. On November 17, the superior court ordered the hearing on Flarity's motion to amend be continued to December 9 so the motion could be heard at the same time as the State's motion to dismiss.

In its motion to dismiss, the State argued that Flarity's complaint was a request for judicial review of agency action under the Administrative Procedure Act (APA), chapter 34.05 RCW. The State also argued that because Flarity failed to timely and properly serve the required parties under the APA—the BTA and the Pierce County Assessor—Flarity's petition for judicial review must

be dismissed. The State further argued several reasons why Flarity's remaining claims must be dismissed, including exceeding the scope of review under the APA, collateral estoppel, quasi-judicial immunity, and failure to comply with RCW 4.92.100, which requires presentation of damages claims to the office of risk management prior to filing a complaint.

On November 23, Flarity filed a motion to stay the case pending appeal and noted the motion for December 9. In his motion to stay, Flarity attached a notice of appeal or, alternatively, a notice of discretionary review that he had filed with this court to challenge the superior court's order continuing the hearing on Flarity's motion to amend from November 18 to December 9. In his notice of appeal to this court, Flarity argued that the superior court's order was appealable as a matter of right under RAP 2.2(a)(3). Flarity also argued that discretionary review would be warranted under RAP 2.3(b)(2). The State opposed the stay. The State also argued the motion to stay was patently frivolous and requested sanctions for responding to the motion.

On December 9, the superior court heard the State's motion to dismiss, Flarity's motion to amend, and Flarity's motion to stay the appeal. At the hearing, Flarity asserted that he had filed a motion for sanctions against the State. The superior court stated that the motion for sanctions was not properly noted and the superior court was not prepared to consider it. Thus, the superior court declined to hear Flarity's motion for sanctions.

The superior court denied Flarity's motion to amend his complaint as futile because there was no way that Flarity could timely serve the Pierce County Assessor as required by the APA. The superior court also denied Flarity's motion for a stay and found that the motion for a stay violated CR 11. The superior court imposed sanctions against Flarity in the amount of $1,775.00, which was the reasonable cost of the attorney general responding to Flarity's motion. The superior court also found that Flarity's complaint was an action seeking judicial review of the BTA's

decision in No. 19-105, which was governed by the APA and that Flarity failed to serve the BTA and the Pierce County Assessor within the statutorily prescribed time limit. Therefore, the superior court dismissed Flarity's APA claims. The superior court also dismissed Flarity's damages claims for failure to comply with RCW 4.92.100.

The superior court granted the State's motion to dismiss and dismissed Flarity's amended complaint with prejudice. The superior court also awarded statutory attorney fees in the amount of $200. The superior court entered a judgment against Flarity that included $1,775 for sanctions and $200 for statutory attorney fees.

Flarity appeals.

ANALYSIS

Flarity appeals, arguing that the superior court erred by dismissing his complaint and sanctioning him for his motion to stay pending appeal. We disagree and affirm the superior court.

A. MOTION TO DISMISS COMPLAINT

Flarity argues that the superior court erred in dismissing his amended complaint against the State. We disagree.

We review a dismissal under CR 12(b)(6) de novo. *Wahkiakum Sch. Dist. No. 200 v. State*, 2 Wn.3d 63, 77, 534 P.3d 808 (2023). "Dismissal is appropriate if the court concludes that the plaintiff can prove no set of facts that would justify recovery." *Id.* We presume the factual allegations in the complaint are true and draw all reasonable inferences in favor of the plaintiff. *Id.* We may affirm the superior court on any ground supported by the record. *See Eylander v. Prologis Targeted U.S. Logistics Fund, LP*, 2 Wn.3d 401, 407, 539 P.3d 376 (2023).

The APA is the exclusive means of reviewing an agency action. RCW 34.05.510. Under RCW 34.05.542(2), "[a] petition for judicial review of an order shall be filed with the court and

served on the agency, the office of the attorney general, and all parties of record within thirty days after service of the final order." When a party fails to comply with the service requirements of RCW 34.05.542(2), dismissal is the appropriate remedy. *Sprint Spectrum, LP v. State*, 156 Wn. App. 949, 963, 235 P.3d 849 (2010), *review denied*, 170 Wn.2d 1023 (2011).

Here, Flarity's complaint was clearly an attempt to seek judicial review of the BTA decision in No. 19-105, despite also attempting to raise additional claims. Therefore, Flarity's complaint is governed by the APA. *See* RCW 34.05.510.

The BTA issued its decision on August 24, 2022. In order to comply with the APA requirements, the complaint seeking judicial review had to be served on the agency (the BTA) and all parties of record (the Pierce County Assessor) by September 23, 2022. RCW 34.05.542(2). It is undisputed that Flarity has failed to serve either the BTA or the Pierce County Assessor, and therefore, Flarity has failed to comply with the service requirements of RCW 34.05.542(2).[2] Accordingly, the superior court properly dismissed Flarity's complaint.[3]

[2] Flarity appears to argue that he should be permitted to amend his complaint to add the appropriate parties. However, no amendment to the complaint can cure Flarity's failure to *serve* the Pierce County Assessor or the BTA within the 30 days required by RCW 34.05.542(2). Therefore, amending the complaint would be futile. *Nakata v. Blue Bird, Inc.*, 146 Wn. App. 267, 278, 191 P.3d 900 (2008), *review denied*, 165 Wn.2d 1033 (2009).

[3] Even if the petition had been properly served, there would be an issue of whether the declaratory judgment claims and the damages claims should be dismissed as outside the scope of a petition. *See* RCW 34.05.554 (prohibiting raises issues not before the agency on judicial review). And this is not a complaint *solely* for damages based on an agency action which would be exempt from APA requirements. RCW 34.05.510(1) ("The provisions of this chapter for judicial review do not apply to litigation in which the *sole issue* is a claim for damages or compensation and the agency whose action is at issue does not have statutory authority to determine the claim.") (emphasis added). Accordingly, the dismissal of the entire complaint was warranted based on the failure to comply with RCW 34.05.542(2).

Furthermore, even if Flarity's claim for damages is considered separately from Flarity's APA claims, dismissal was proper because Flarity failed to comply with RCW 4.92.100. RCW

B. SANCTIONS FOR MOTION TO STAY PENDING APPEAL

Flarity argues that the superior court erred by imposing sanctions against him for filing the motion to stay pending appeal. We disagree.

We review the imposition of CR 11 sanctions for an abuse of discretion. *Stiles v. Kearney*, 168 Wn. App. 250, 260, 277 P.3d 9, *review denied*, 175 Wn.2d 1016 (2012). The superior court abuses its discretion if its decision in manifestly unreasonable or based on untenable grounds. *Id.*

CR 11 addresses two types of filings: (1) baseless filings and (2) filings made for an improper purpose. *West v. Wash. Ass'n of County Officials*, 162 Wn. App. 120, 135, 252 P.3d 406 (2011). A filing is baseless if it is "'(a) not well-grounded in fact, or (b) not warranted by (i) existing law or (ii) a good faith argument for the alteration of existing law.'" *Id.* (internal quotation marks omitted) (quoting *MacDonald v. Korum Ford*, 80 Wn. App. 877, 883-84, 912 P.2d 1052 (1996)). If a party files a baseless motion, the superior court may impose sanctions upon a party's motion or on its own initiative. CR 11(a).

Here, Flarity was sanctioned for filing a baseless motion to stay the superior court proceedings based on Flarity's appeal of the superior court's order continuing his motion to amend for three weeks. Flarity argued that the continuance order was appealable as a matter of right under RAP 2.2(a)(3), or that discretionary review should be granted under RAP 2.3(b)(2). Neither of these arguments is well-grounded in law.

4.92.100(1) requires that all claims for damages against the State must be presented to the office of risk management. The remedy for failure to comply with the claim filing requirements of RCW 4.92.100 is dismissal of the complaint for damages. *Hyde v. Univ. of Wash. Med. Ctr.*, 186 Wn. App. 926, 929, 347 P.3d 918, *review denied*, 184 Wn.2d 1005 (2015). It is undisputed that Flarity failed to file a claim for damages with the office of risk management in compliance with RCW 4.92.100; therefore, the superior court properly dismissed Flarity's damages claims against the State.

RAP 2.2(a)(3) allows direct appeal of "[a]ny written decision affecting a substantial right in a civil case that in effect determines the action and prevents a final judgment or discontinues the action." Here, the superior court's order simply continued Flarity's motion; the order made no substantive decision in the case and certainly did not prevent a final judgment or discontinue the action. There is no well-grounded basis in law to argue that the order continuing the hearing on Flarity's motion to amend was appealable as a matter of right under RAP 2.2(a)(3).

Alternatively, Flarity argued that discretionary review of the order was warranted under RAP 2.3(b)(2). This court will grant discretionary review of a superior court decision if the "superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act." RAP 2.3(b)(2). It is well-established, under existing law, that to meet the requirements of RAP 2.3(b)(2), the superior court's action must go beyond affecting the parties' ability to conduct the litigation. *State v. Howland*, 180 Wn. App. 196, 207, 321 P.3d 303 (2014), *review denied*, 182 Wn.2d 1008 (2015). There is no well-grounded argument that the superior court's order continuing Flarity's motion to amend the complaint for three weeks had any effect outside of the litigation, and therefore, there is no well-grounded argument that discretionary review would be warranted under RAP 2.3(b)(2).

Because there was no basis for a direct appeal or discretionary review of the superior court's order continuing Flarity's motion to amend the complaint for three weeks that was well-grounded in existing law, there was no well-grounded basis for moving to stay the superior court proceedings pending review of the superior court's continuance order by this court. Therefore, Flarity's motion was baseless, and the superior court did not abuse its discretion in imposing sanctions under CR 11.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Lee, J.

We concur:

Veljacic, A.C.J.

Price, J.

FILED
SUPREME COURT
STATE OF WASHINGTON
6/26/2024 4:55 PM
BY ERIN L. LENNON
CLERK

Joe Patrick Flarity
101 FM 946 S.
Oakhurst, TX 77359

Washington State Supreme Court
PO Box 40929
Olympia, WA 98504-0929

RE: **CASE 56271-5-II:** Review of Denial to Vacate Mandate and modify Retaliation Charges

Dear Supreme Court of Washington State:

I respectfully Move the Panel as Joe Patrick Flarity on my own behalf. Although this is a joint Cause, this letter is personal and describes events not applicable to the marital community. It is intended to replace a legal filing, using the precedent of *State v. Gentry*, 356 P.3d 714, 183 Wash. 2D 749 (2015). I take advantage of the creativity this Panel encouraged in *Bryant v. Joseph Tree, Inc.*, 829 P.2d 1099, 119 Wash. 2D 210 (1992). The word count is 3278 words and within the words limit for Motions. Meaning no disrespect to any party, titles are shortened to save word count. All emphasis is my own, unless otherwise noted.

RULING DEFIES RIGHT TO BE HEARD: Div. II's denial without explanation on May 28, 2024, is provided. **AP-2**. The Order guts our basic right to be heard by playing loose with court rules and actively defying RCW 2.06.040, which demands that grounds be stated. Grounds in rulings are an important point this Panel recently recognized, *State v. Sunnyside*, 101205-5:

> Although the court did not specifically state the basis for the grant of summary judgment, we review each ground raised by the defendants and reverse and remand….

I have hope, along with the people, that the Panel gives equal importance to this principle for ALL parties seeking to restore *fundamental principles*. This is especially critical when we seek to check STATE misconduct. The right to be heard before our peers forms the organic

foundation of all our rights by common law.[1] If the highest court treats parties alleging civil rights abuses unevenly, that undermines the Panel's June 4, 2020 letter, and also defies the intent of Art. 1, Sec. 8 and Art. 1, Sec. 12, where the founders sought to level the field for the "weakness of the individual."[2] Denial of the right to even have the Panel read the Petition thwarts the founders purpose below its foundation.

IN DEFENSE OF STARE DECISIS. A basic function of our court system is to educate the people on clearly stated legal principles. How else are the people to understand how to conduct ourselves as responsible citizens? This is especially important when exercising our power by voting. Besides the plainly stated RCW 2.06.040, the Order, **AP-2,** violates the spirit of the law because it refuses to address any recognized legal theory or cite precedents in support. The Motion to Recall, **AP-778,** and Replies, **AP-866, AP-872, AP-889**, listed numerous Supreme Court Rulings with particular application to the Motion. Not a single precedent was addressed by the Defendants or the Div. II Panel.

Without Supreme Court review, the only logical conclusion is that no legal argument is allowed to common people in Washington Courts, that the Rule of Law has failed in Washington State at its core.

USURPING SUPREME COURT JURISDICTION: The Order, **AP-2,** undermines this Panel's fundamental purpose: that the Panel itself decides whether to accept or deny. The Order also precludes the possibility that a dissent might illuminate the enormous hurdles in place to obstruct regular people (and regular lawyers) to restrain officials violating core rights. Judicial dissent is often the starting point for the elimination of systemic abuse as recognized by the Panel's letter of June 4, 2020, which the court again cited in *Sunnyside* to correct municipality abuses much like we have requested in this Cause.

THE PETITION IS FILED. Our Petition to review Div. II's decision meets the stringent formatting requirements in the RAP and is shown in **AP-3**. Both Orders gives a potent

1 Starting from the Magna Carta of June 15, 1215.

2 *Snyder v. Ingram*, 48 Wn.2d 637, 639, 296 P.2d 305 (1956).

example recently decried by unanimous SCOTUS in *Axon Enterprise v. FTC*, No. 21-86, as "two forearms" on the scale of justice in state courts. Here is exactly the "shameful" lower court decision decried in the Panel's June 4, 2020 letter hidden in an unpublished decision defying a long list of this Panel's precedents. **AP-60.**

LEGAL AUTHORITY: Per RAP 13.5(b) (1)(2) or (3), I am aggrieved of Div. II refusal's to Recall the Clerk's Mandate, issued 5 days after this Panel's refusal to accept our Motion to correct the confusing rules violating the "floor"[3] of Federal due process and hiding a ruling contradicting precedents.[4] This letter is filed within the 30 day time allowed to challenge improper appellate decisions by RAP 13.5. The vacant Order defies every precedent for Recall of Mandates as we described in the Motion to Recall. **AP-778.** The Defendant's Responses were *notoriously* weak. Reply to Pierce County, **AP-866.** Reply to State, **AP-872**. Reply to AIC, **AP-889**. That the sovereign still prevailed in the face of numerous uncontested adverse precedents gives a potent indication of court prejudice further hidden by the Panel's refusal to state the grounds as required by law. **AP-120, AP-881.**

CRIPPLING THE PEOPLE AS DE FACTO COURT POLICY: The Jury Trial is a KEY feature of our right to be heard that formed the basis for the world's first functional democracy. On the other side of jury denials is a wasteland of desiccated civil rights corpses. The destruction of this core right in unconscionable in any court system that touts its allegiance to the Rule of Law. This "abridgment"[5] is a figurative kneecapping to civil rights plaintiffs when they enter the court's door. The founders sought to protect this right by using the most forceful possible language in Art. 1, Sec. 21: **The right is *inviolate*.** This Panel examined their intent in great detail in *Sofie v. Fibreboard Corp.*, 771 P.2d 711, 112 Wash. 2d 636, 112 Wash. 636 (1989). The people deserve an explanation on court violation of a plainly stated right we hold

3 *State v. Gregory*, 192 Wn.2d 1, 16, 427 P.3d 621 (2018). Accord *State v. Sieyes*, 168 Wn.2d 276, 292, 225 P.3d 995 (2010): ("the United States Constitution establishes a floor below which state courts cannot go to protect individual rights.").

4 The courts employ here a racist tactic perfected during the long reign of Jim Crow: TAKE A LETTER, YOUR HONOR: OUTING THE JUDICIAL EPISTEMOLOGY OF HART V MASSANARI, Penelope Pether [FNa1], Washington and Lee Law Review Fall, 2005.

5 *State v. Lewis*, 129 La. 800, 804, 56, So. 893, 894 (1911): "rights beyond the authority of the legislative department to destroy or abridge."

precious. The ruling here gives an alarm that Washington courts consider the people *counterfeit human beings* to a large degree. **AP-30.** Refusal of the highest court to address the de facto policy effectively bars the majority from meaningful use of the legal system to right wrongs.

CHARGES OF HARASSMENT LUDICROUS: It would be obvious to any jury that state damage from a pro se plaintiff "harassing" the 1000+ AG attorneys funded by nearly a half BILLION taxpayer dollars is preposterous. Every citizen called to a jury would likely insist that public attorneys observe their oaths to protect our core rights. The clearly stated claim here is exactly what the founders intended when they drafted Art. 1, Sec. 32.

RETALIATION EVIDENT: The Panel also refused to modify the Commissioner's assignment of further charges to *nominal parties,* **AP-803-808,** on our clearly stated claim. The Order, **AP-2**, refused to address the precedents or the RAP 18.1 requirements we insisted the Court observe, **AP-880-881**. If the Panel endorses retaliation on the people's role to restrain lawbreaking officials the founders plainly stated would be necessary in Art. 1, Sec. 32, then "express words" are required for the people's education per Art. 1, Sec. 29. Retaliation flips Art. 1, Sec. 32 on its head and is also prohibited by RCW 42.41.040. State retaliation was just decried by SCOTUS in *NRA v. Vullo*, 22-842, where Justice Jackson described the need for analysis of 1st Amendment rights v. retaliation. The Panel should note that Justice Jackson set aside her personal beliefs and ruled for the NRA as an equal party in New York even though the gun group is so unpopular they were recently fined millions by a jury.[6]

EXAMINATION OF RETALIATION: Administrative courts have greatly reduced powers to sanction which partially offsets their escape from court rules and the Judicial Code of Conduct. But when the judicial branch ignores the rules that hinder officials but then pivot to sanction the people trying to correct lawbreaking officials, that is a well recognized mark of pure tyranny identified by *NRA v. Vullo*, 22-842 as an **improper use of state power.** Retribution is particularity heinous when it is applied to the "weakness of the people,"[7] the

6 https://ag.ny.gov/press-release/2024/attorney-general-james-wins-trial-against-nra-and-wayne-lapierre

7 *Snyder v. Ingram*, 48 Wn.2d 637, 639, 296 P.2d 305 (1956).

most obvious of which are pro se plaintiffs. Besides the shame of CR12 dismissals on clearly stated claims, the addition of further charges "chill" the people and spur further abuses by officials. At the end of this trend is a "graveyard"[8] for the people and "fire" for the judicial institution itself.[9] We have shown obvious "irresponsible action" by officials.

TIMING OF RETRIBUTION: It is significant that Div. II did not add additional charges for the *nominal defendants***, AP-803-808,** until we proceeded to complain about their "shameful" decision before this Panel. **AP-3**. The timing itself indicates that Div. II is "chilling" the people by raising spears to the backs of those that proceed. By refusing to accept this Motion for review, the Panel would send a flare to every lower state court that retribution is acceptable in spite of an appointed "gatekeeper" Commissioner guarding entry to Panel discretion.

PERSONAL DAMAGES FROM ASSIGNED FUTILITY: Instead of this seven year quest to restrain lawbreaking officials, I could have learned another language. Or perhaps several. I could have built a Home for Habitat. Or a row of low income townhouses. I could have ridden my motorcycle to Tierra del Fuego and back, with plenty of time left to turn north to Fairbanks. I could have written a novel, then expanded any success there into a series. My sacrifice for the good of the general public in my waning years has been substantial.

PROVOKING DEPRESSION AND SUICIDE THROUGH COURT FUTILITY. This Panel is included on the WSBA committee investigating the tremendous depression and suicide rates among attorneys and law students.[10] The Panel should take note of the enormous difference in the mental health of public versus private attorneys. I propose this difference is because the courts have anointed public attorneys to a royal status our founders went to extraordinary efforts to dismantle. This case represents the obvious inequality of which Resolution 400 complains: that court favoritism has provoked usurpation of democratic ideals by unrestrained

8 *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).

9 *Open Door Baptist Church v. Clark County*, 995 P.2d 33, 140 Wash.2d 143 (Wash. 2000), "As George Washington warned: "Government is not reason, it is not eloquence—it is force! **Like fire it is a dangerous servant and a fearful master; never for a moment should it be left to irresponsible action."**

10 https://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/well-being-task-force The Panel may wish to included this case in the WSBA study.

administrative officials. These court blessings to AG officials are corrosive to the Rule of Law at its very foundation.[11] More from *Sunnyside*:

> But as the State explains, "Voluntary cessation of allegedly illegal conduct does not moot a case because there is **still a likelihood of the illegal conduct recurring**." *State v. Ralph Williams' N.W. Chrysler Plymouth, Inc.*, 82 Wn.2d 265, 272, 510 P.2d 233 (1973); *see Braam v. State*, 150 Wn.2d 689, 709, 81 P.3d 851 (2003) (**a plaintiff may pursue injunctive relief unless it is "absolutely clear that behavior will not reoccur"**).

The AG arguments accepted by the *Sunnyside* Panel should be applied evenly to this Cause. Otherwise, why do we need courts when one branch is given the power to *capriciously* pick what rights are enforced and those that may be "destroyed" in defiance of *State v. Lewis? Sunnyside* (footnotes removed) claimed similar constitutional violations as Flarity:

> The complaint alleged seven causes of action: (1) denial of **procedural due process** under color of law, in violation of the United States Constitution, (2) denial of **substantive due process** under color of law, in violation of the United States Constitution, (3) denial of **due process under the color of law, in violation of the Washington Constitution**….The State requested declaratory relief, injunctive relief, **and damages**.

THE DESTRUCTIVE POWER OF GASLIGHTING: Both majority and dissent opinions in *303 CREATIVE LLC ET AL. v. ELENIS*, No. 21–476, examined the tremendous detrimental power of public humiliation and shame. *303* referenced numerous studies proving public attack and has the same impact on one's health as alcoholism or drug addiction.[12] As a Marine sworn to an oath to defend the Constitution, I am better prepared to resist what untrained people would perceive as an irresistible tidal wave of official bad faith conduct. I am also prepared to suffer ostracism (resulting from court *chilling*) from my long-time friends for simply summoning the strength to challenge law-breaking officials.

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11 From the ABA June 1, 2024, ***State judicial oversight often lacks consistency and transparency***, Jim Moliterno, the Vincent Bradford Professor of Law, Emeritus at Washington and Lee University School of Law and an expert in judicial ethics: "It is imperative for democracy that judges are held to account for their behavior...Increased consistency between states...would send a stronger signal to the public that judges can be trusted. We've certainly seen countries where the people stop trusting the courts. That's when a country is ripe for anarchy…."

12 "This ostracism, this otherness, is among the most distressing feelings that can be felt by our social species. K. Williams, Ostracism, 58 Ann. Rev. Psychology 425, 432–435 (2007)."

PROTEST NOT A JUST A RIGHT, BUT A DUTY. As Thomas Jefferson explained, coming forward to protest government wrongdoing is not just a right, but a *duty*. After their dismantling of Jim Crow abuse in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954), SCOTUS suffered ostracism in their communities. But a major difference is that Supreme Court Justices should have taken Federalist #78 to heart when they stepped onto the nation's highest court. Whereas, I had no clue of the coming corrosion to my health.

IMPLICIT DAMAGE OF GASLIGHTING AND RETALIATION: I am above average intelligence and mental resolution based on my success at college and USMC training. The AG defenses are base, specious and absurd. They succeed by court abdication of Art. 1, Sec. 1 and Art. 1, Sec. 2, "two forearms" serving up sovereign power reminiscent of King George III, below the "floor" of Federal law, and in direct defiance of unanimous SCOTUS. The family of John T. Williams can attest to this favoritism, that the thin restraint of Washington's constitutional paper is easily pierced as noted by George Washington.[13] Here is the quote above my compute to counter court gaslighting: "Time is always on the side of Truth," by Ezra Taft Benson.

In spite of my *prophylactic* precautions,[14] and a firm grounding in constitutional law the USMC was compelled to provide,[15] the first collateral impact of our quest for justice was the disruption of my sleep. I now get around four hours of good sleep a night, when I used to get eight. Then those shortened hours were trampled by nightmares. The courts appear like a *Forbidden Planet* destructive force from the ID. This is not the cheesy evil that relies on sophomoric sound effects and gimmicks. This is the John Cusak 1408 treatment, the "banality of evil," of hotel room 1408 transformed into an roiling Dante's court, that raised knife now at my back as sanctions for my belief that plainly stated rights ARE enforced, that my idealism,

13 *Open Door Baptist Church v. Clark County*, 995 P.2d 33, 140 Wash.2d 143 (Wash. 2000).

14 NO GOOD DEED GOES UNPUBLISHED: PRECEDENT STRIPPING AND THE NEED FOR A NEW PROPHYLACTIC RULE, By Edward Cantu, UMKC School of Law

15 I benefited from additional legal training after the massacre at My Lai in 1968.

as DPA Hamilton has opined,[16] is a character flaw, a sign of mental instability and weakness.[17] This overwhelming fear comes with the suffocating feeling that no escape is possible, that no similar *Sunnyside*[18] constitutional fire brigade will appear to stop the AG firestorm we have identified.

This nightmare, that a noble institution has been possessed by blank-faced robed demons, creatures that revel in the reduction of citizens into subhumans, has easily overwhelmed my waking intellect. I describe to this Panel the actual reality of the warning that "twilight approaches," the dangerous specter described by William O. Douglas of which Justice Sanders liked to quote in his dissents.[19] I can attest those projections are NOT speculative.

THE BANALITY OF EVIL IN PRACTICE: The Panel should acknowledge that Div. II is avoiding its basic responsibility to enforce the Constitution in its ruling. But more important, the Panel should address sanctions on those that come forward in good faith as the embodiment of tyrannical evil that I have described as subconsciously able to subvert the most determined intellects, including those with a rare combination of skills and the fortitude to challenge state-wide abuses of civil rights.

WHAT HAS BEEN LOST? This Cause warns that our rights are illusions rather than core legal doctrines defended by experts whom have studied and sublimely respect the core principles, that those hard won rights are crushed before personal opinions or the vicissitudes of politics. And when our loss is hidden, "swept under the rug," **AP-362**, that is the exact opaque technique employed by tyrants. For every Palla Sum released from jail, there are a thousand Daniel L. Simms and Daniel Elwell parties whom were not.[20] For every Zamora

16 DPA Hamilton actually used the term *quixotic* in his pleading at Div. I.

17 Described in excruciating detail by Christine Blasey Ford, *One Way Back: A Memoir*.

18 "Briefs of amici curiae have been filed by the Fair Housing Center of Washington and Fred T. Korematsu Center for Law and Equality, Northwest Justice Project, and the American Civil Liberties Union of Washington."

19 *State v. Valentine*, 935 P.2d 1294, 132 Wash. 2D 1 (1997).

20 *Sum v. State*, *99730-6; Simms v. Dept. of Corrections*, 21-2-00928-34; *Elwell v. State*, No. 99546-0.

exonerated after being beaten nearly to death, there are multiple John T Williams and Manual Ellis-like victims that must receive justice through the ether of karma.

The *Sunnyside* citation of Zamora is particularly offensive since we are "similarly situated" to the *Sunnyside* defendants and Zamora seems NOT similar.[21] This Panel should be equally incensed at the same violations if we are indeed equal parties per Resolution 400 and the Panel's June 4, 2020 letter to lower courts.

Time is heavy, and the banality of evil will not be overcome by the occasional corsage fixed to a Towesnute grave.[22] When evil dominates, the base results are perfectly predicted by Yeats in *The Second Coming:*[23]

> The best lack all conviction, while the worst
>
> Are full of passionate intensity.

This Cause gives notice that Washington courts routinely choose to ignore the warning of Justice Brandeis and unwisely fuel the intensity of the worst:[24]

> Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.

21 How was Zamora's beating and Sunnyside's evictions without due process related? Flarity's farm was likewise destroyed by the same "as drafted" and "as applied" due process violations suffered by Angelita Guizar, Eliseo Vargas, Yvonne Chagolla, Heather and Rodney Francis, Hilda León, Yesica Santos Nuño, and Yolanda Paniagua Dimas.

22 *State v. Towessnute*, 486 P.3d 111, 197 Wash. 2D 574 (2021).

23 From *Sunnyside*: George Lipsitz, *"In an Avalanche Every Snowflake Pleads Not Guilty…"*

24 SCOTUS shortened Justice Brandeis eloquent dissent in the majority opinion for the famous Watergate burglary case, *U.S. v. McCord*, 166 U.S. App.D.C. 1, 501 F.2d 334, 341.

I WILL NOT ACCEPT COURT SHAMING: The shame belongs to every similar Dred Scott[25] like cell in the courtroom nightmare of 1408. This is a base pustule this Panel has the power to lance. Denial hurls more tinder onto an already blazing "fearful master." As Martin Luther King Jr. observed (along with Resolution 400,) riots are the inevitable result when courts refuse to hear their people.

CONCLUSION: I respectfully appeal to the "court of last resort" to bolster the Rule of Law in Washington State and preserve the only path for the people to defeat evil without the use of civil disobedience. Although our cause my be small, per the *Haines Doctrine*,[26] it is still vital the people are heard. The Panel should take this opportunity to till the karma of hubris into a more noble future for the institution. The shame described in *303 Creative,* the humiliation by CR12 abuse stopped in *NRA v. Vullo*, 22-842, the added retaliatory fines levied here--should be addressed and halted. Otherwise, what signal is sent to every lower court in Washington State? As Justice Kagan stated in *Axon*, Washington State enters an "existential court crisis" created by the courts themselves.

Civil disobedience, even in its most benign applications, is often lethal or crippling in the presence of evil power wielded by unrestrained officials. Journalist Linda Tirado entered hospice care from long-term brain damage after taking a rubber bullet to the eye covering the George Floyd protests.[27] Soren Stevenson also lost an eye in the same protest.

Why is this happening in the United States in the 21st Century?

25 *Browning v. Slenderella Systems of Seattle,* 341 P.2d 859, 54 Wash. 2D 440 (1959); *DeFunis v. Odegaard*, 507 P.2d 1169, 82 Wash. 2d 11, 82 Wash. 11 (1973); *In re Coats*, 267 P.3d 324, 173 Wash. 2D 123 (2011).

26 *In re Sinka*, 599 P.2d 1275, 92 Wash. 2D 555 (1979); *In re Young*, 622 P.2d 373, 95 Wash. 2D 216 (1980).

27 Karma is the long path to justice when the truth is "self evident:"

https://racketmn.com/linda-tirado-journalist-who-was-half-blinded-in-minneapolis-protests-enters-hospice-care

Sincerely,

Joe Patrick Flarity
101 FM 946 S
Oakhurst, TX 77359
253 951 9981

APPENDIX TABLE OF CONTENTS

DESCRIPTION PAGE

FILED
SUPREME COURT
STATE OF WASHINGTON
12/19/2023 12:36 PM
BY ERIN L. LENNON
CLERK

SUPREME COURT OF THE STATE OF WASHINGTON

Supreme Court # 102435-5
Review of Division II Cause 56271-5-II per RAP 13.5
21-2-06124-1
Before the Honorable Judge Martin
Pierce County

Joe Patrick Flarity, a pro se marital community
v.
Argonaut Insurance Company,
Mary Robnett,
Sue Testo,
Pierce County,
State of Washington, et al

MOTION TO MODIFY RULING COMMISSIONER JOHNSTON'S DENIAL OF REVIEW ON MOTION TO PUBLISH

Joe Patrick Flarity, a marital community
Pro Se Appellant
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Table of Contents

1. PLEADING

Comes Joe Patrick Flarity, a pro se marital community, Flarity hereafter, Moves the Supreme Court to Modify Commissioner Johnston's ruling to account for due process violations in consideration that the "rule is plain on its face" to address the rule conflict provoking a "strained

consequence" and making the motion "superfluous" before the Motion for Reconsideration. All emphasis is added unless otherwise noted.

2. AUTHORITY OF MOTION

Per RAP 17.7, Flarity is aggrieved of errors in the Order filed December 8, 2023. Flarity files this Motion within 30 days of the ruling as allowed. The Order in shown in **AP-2.** Flarity's Motion to Commissioner Johnston is shown in **AP-5.** Flarity's Reply to the State is shown in **AP-179**.

3. FACTS RELATED TO MOTION

3.1 NON PUBLICATION A RACIST STRATEGY

The unscrupulous policy to construct a second tier of citizenship specifically to hide ministerial decisions and encourage opaque confirmation by the "courts of last resort" was first developed by state courts to preserve Jim Crow discrimination in the face of *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).[1] Ironically, this Panel has objected to these racists tactics in the strongest language possible in its June 4, 2020 letter on the subject.

Continued support of racist tactics gives warning to the citizens of Washington State that courts protect civil rights only at their arbitrary or capricious discretion, that the courts enforce a hidden policy of "the end

1 TAKE A LETTER, YOUR HONOR: OUTING THE JUDICIAL EPISTEMOLOGY OF HART V MASSANARI, Penelope Pether [FNa1], Washington and Lee Law Review Fall, 2005.

justifies the means."[2] The people should rightfully be informed as to the exact "end" the Supreme Court seeks to achieve and what unconstitutional "means" are acceptable to achieve the Panel's goals. This tactic was specifically decried in this Panel's *State v. Valentine*, 935 P.2d 1294, 132 Wash. 2D 1 (1997):[3]

> The Government of the State of Washington, as well, was "established to protect and maintain individual rights." Const. art. I, § 1. It was not established to do precisely the opposite.

3.2 DECISION BY DIV. II "SHAMEFUL"

In exactly the same strategy used in Jim Crow courts, Div. II blatantly ignored numerous precedents and made a mockery of others, such as Master Swank's tragic death in a game of tackle football.[4] It is logical Div. II would like to hide the ruling from the people to the maximum extent possible. The ruling here meets the "shameful" desecration of

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2 The original source is attributed to Niccolo Machivelli: "For although the act condemns the doer, the end may justify him…." Discourses: I, 9.

3 *Valentine* also cited *Olmstead v. United States*, 277 U.S. 438, 483- 84, 48 S.Ct. 564, 574, 72 L.Ed. 944 (1928) (Brandeis, J., dissenting).

In *State ex rel. O'Connell v. Slavin*, 452 P.2d 943, 75 Wash. 2d 554, 75 Wash. 554 (1969), this Panel defended the Constitution when the dissent specifically cited "Machiavellian intent:"

"As the trial court in its memorandum opinion observed, the constitution lists the purposes for which the motor vehicle fund can be used, and diverting traffic from the highways is not one of them. It would be difficult to ignore the merit in the appellant's position that this is an objective worthy of the most earnest support, **but until the constitution is amended by the people, it must be financed through other means**."

4 *Swank v. Valley Christian School*, 398 P.3d 1108, 188 Wash. 2d 663 (2017).

the law described in the Supreme Court's eloquent June 4, 2020, letter giving the opposite instruction to lower courts.

4. LEGAL THEORY FOR DENIAL

Per the Order:

> Lack of precedent is not a basis for review under RAP 13.5(b) in any event.

The ruling declines to examine any case Flarity cited, 9th Circuit or Board of Tax Appeal practices, or the single case the State cited. The ruling ignores RAP 1.2 even though the Commissioner admitted familiarity with the Supreme Court's recent *Towessnute* decision and other recent cases where it was used.[5] The ruling rests on RAP 12.3(e) even though it fails the **commonsense** requirement as described in both *In re Dependency of N.G.*, 199 Wn.2d 588, 594-98, 510 P.3d 335 (2022), and *Sundquist Homes, Inc. v. PUD*, 997 P.2d 915, 140 Wash. 2D 403 (2000).

Oral argument response of State was NOT ACCURATE.[6] Unlike Washington State, the 9th Circuit's local rules specifically give a warning that Reconsideration DOES NOT toll the 60 day Motion to Publish:

> CIRCUIT RULE 27-11. MOTIONS; EFFECT ON SCHEDULE...Motions for reconsideration are disfavored

5 Oral argument, rebuttal at 2.10: https://tvw.org/video/washington-state-supreme-court-commissioner-hearing-2023121039/?eventID=2023121039

6 See State Rebuttal at 5.09*:* https://tvw.org/video/washington-state-supreme-court-commissioner-hearing-2023121040/?eventID=2023121040

and **will not stay the schedule** unless otherwise ordered by the Court. *(Rev. 1/1/03)*

5. WHAT TO MODIFY

The Commissioner stipulated that Flarity's misunderstanding of the rule is a common mistake even for good attorneys.[7] If a problem for experienced attorneys**,** the current practice is NOT *plain* or *certain* to the common people either. Unlike the 9th Circuit, the current practice fails the due process requirement as described in *WASHINGTON TRUCKING v. EMPLOYMENT SEC. DEPT*, 393 P.3d 761, 188 Wash. 2d 198 (2017).

The Supreme Court should take action to remove the "strained consequence" the State itself identified as impermissible in *Dep't of Licensing v. Cannon*, 147 Wn.2d 41, 57, 50 P.3d 627 (2002). Or "inept wording" per *Davis v. Department of Licensing*, 977 P.2d 554, 137 Wash. 2D 957 (1999). Or for filings "rendered meaningless or superfluous" per *In re Dependency of N.G.*, 199 Wn.2d 588, 594-98, 510 P.3d 335 (2022).

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7 Oral argument rebuttal, at 2.45:

https://tvw.org/video/washington-state-supreme-court-commissioner-hearing-2023121040/?eventID=2023121040

6. ARGUMENT

6.1 EXAMINING THE "TWO-TIERED" SYSTEM OF JUSTICE

> Suffice it to say at this point that consigning to a footnote the possibility of "irresponsible and unaccountable practices" enabled by the two-tiered system of judging is troubling.[8]

The same observation was given by J. Gorsuch in *Direct Marketing Assn. v. Brohl,* 814 F.3d 1129, 1147–48 (10th Cir. 2016):

> And in taking the judicial oath judges do not necessarily profess a conviction that every precedent is rightly decided, but they must and do profess a conviction that a justice system that failed to attach power to precedent, one that surrendered similarly situated persons to wildly different fates at the hands of unconstrained judges, would hardly be worthy of the name.

The establishment of precedents and their subsequent enforcement by courts is the hallmark of modern democracies going all the way back to the foundation of the U.S. as first described in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), where the Constitution was established as binding law rather than a political statement subject to arbitrary or capricious enforcement. Any "made up immunity" that facilitates the subjugation of the people into a disfavored class should also be "troubling" to the Panel.

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8 Ibid Footnote 1.

6.2 NON-PUBLICATION A POTENT SIGNAL TO THIS PANEL TO REFUSE REVIEW

Even though the Commissioner has used his enormous skill to sell the idea that the Order is effectively published because it can be cited in a subsequent petition,[9] the observed paradigm is that refusal to publish is the end of further review. The Panel should consider the 42 U.S.C. § 1983 claims it accepted for review this year (2023):

> *Hanson v. Carmona*, 525 P.3d 940 (Wash. 2023).
>
> *WASHINGTON FOOD INDUSTRY ASSOCIATION v. City of Seattle*, No. 99771-3 (Wash. Feb. 9, 2023).
>
> *MATTER OF DETENTION OF DH*, 533 P.3d 97 (2023).

All were published decisions. The people should assume refusal to publish an opinion ignoring precedent is subjugation into the second tier of citizenship. *Courts Write Decisions That Elude Long View* - The New York Times, Feb 2, 2015:

> "Nonpublication must not be a convenient means to prevent review," Justice Harry A. Blackmun.

In addition, legal experts indicate the practice as used by Washington State is an attack on first amendment rights. *Are Unpublished Opinions Inconsistent with the Right of Access*, November 19, 2018, By Katrin Marquez, Yale Law School. Also Stephen L. Wasby. Also, *Unpublished Decisions in the Federal Courts of Appeals: Making the Decision to Publish*, 3 J. APP. PRAC. & PROCESS 325 (2001):

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9 Oral argument, Flarity's rebuttal, at 1.02:

https://tvw.org/video/washington-state-supreme-court-commissioner-hearing-2023121040/?eventID=2023121040

> Perhaps it is not surprising that complaints about unpublished rulings would focus on what might be called judicial misdeeds….Lately, however, the decibel level of the clamor about these rulings has increased.
>
> This clamor, which seems to be based on an implicit assumption of a cabal sitting at post-argument conference, saying "Let's hide this one,"

6.3 DISTORTION OF THE LAW

The unpublished ruling here allows Div. II to distort the law as documented in numerous studies.[10] Rempell, Scott (2016). "Unpublished Decisions and Precedent Shaping," SSRN 2785752:

> Finally, panels failed to address highly germane precedents that losing parties raised in their briefs. These shortcomings collectively suggest that appellate courts should reassess their case management procedures.

Avoiding publication bolsters a "shadow body of law" leading to the public's continued loss of faith in court fairness and denial of access that violates due process.[11] It has been argued that the "hidden" conflict between published and unpublished decisions is hard to square with fundamental principles of equal justice.[12]

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10 Suzanne O. Snowden, *"THAT'S MY HOLDING AND I'M NOT STICKING TO IT!" COURT RULES THAT DEPRIVE UNPUBLISHED OPINIONS OF PRECEDENTIAL AUTHORITY DISTORT THE COMMON LAW*, Washington University Law Quarterly, Winter 2001.

11 Carpenter, Charles E. Jr. (1998–1999), No-Citation Rule for Unpublished Opinions: Do the Ends of Expediency for Overloaded Appellate Courts Justify the Means of Secrecy, vol. 50, S. C. L. Rev., p. 235.

12 Gardner, James N. (1975), Ninth Circuit's Unpublished Opinions: Denial of Equal Justice, vol. 61, A.B.A. J., p. 1224.

6.4 DIV. II WAS NOTIFIED PRECEDENTS WERE VIOLATED

Commissioner Johnston reviewed Flarity's Motion:

> Flarity contends his motion for reconsideration contained a de facto request for publication. I reviewed Flarity's motion for reconsideration. There is no discernible motion for publication within it.

The Commissioner simply ignored Flarity's call to Div. II to explain how the cases they cited DO NOT overturn numerous State and Federal cases and defy 42 U.S.C. § 1983. In particular, the citation of *Swank v. Valley Christian School*, 398 P.3d 1108, 188 Wash. 2D 663 (2017), thrusts Div. II onto the stage of farce.

There are a multitude of possible errors that could be presented for examination by Reconsideration. But a court's abdication of stare decicis is a unique point indicating publication is necessary to overturn precedents by rule RAP 12.3(d):

> (1) Whether the decision determines an unsettled or new question of law or **constitutional principle**; (2) Whether the decision modifies, clarifies or **reverses** an established principle of law; (3) Whether **a decision is of general public interest or importance**;

And by law. Per RCW 2.06.040:

> **All decisions** of the court having precedential value **shall be published** as opinions of the court.

This issue was specifically called out in Flarity's Motion for Reconsideration. **AP-184-185.** Div. II violated both the rule and the law

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Fox, Lawrence J. (2003–2004), Those Unpublished Opinions: An Appropriate Expedience or an Abdication of Responsibility, vol. 32, Hofstra L. Rev., p. 1215.

and then hypocritically claims it is Flarity that misread the conflicting rule which is not “plain” or “certain.”

6.5 OPINION BEARS NO RELATIONSHIP TO CASES FILED

The Div. II opinion is much like those decried by Monroe H. Freedman, Professor of Law at Hofstra University School of Law, in a Speech to the Seventh Annual Judicial Conference of the United States Court of Appeals for the Federal Circuit (May 24, 1989):

> Frankly, I have had more than enough of judicial opinions that **bear no relationship whatsoever to the cases that have been filed** and argued before the judges. I am talking about judicial opinions that falsify the facts of the cases that have been argued, judicial opinions that make disingenuous use or omission of material authorities, **judicial opinions that cover up these things with no-publication and no-citation rules.**

California Associate Justice Robert S. Thompson, California State Bar Journal, Nov./Dec. 1975:

> An imperfectly reasoned and generally result-oriented opinion may be **buried in a non-publication grave**. A panel may avoid public heat or appointing authority disapprobation by interring an opinion of real precedential value….In general, it’s the dark side of the judicial process that ought to be brought into daylight.

6.6 THE ATTACK ON STARE DECISIS IS ALSO AN ATTACK ON THE STABILITY OF SOCIETY

U.S. Justice William O. Douglas, "Stare Decisis," 49 Columbia Law Review 736:

> Stare decisis provides some moorings so that men may trade and arrange their affairs with confidence. Stare decisis serves to take the capricious element out of law and to give stability to a society."

Justice on Appeal: The Problems of the U.S. Courts of Appeal," 130 (1994):

> I submit that stare decisis cannot operate as a `workable doctrine' as long as courts, while adjudicating sets of identical facts, are able to reach directly contrary results on diametrically opposed legal theories, **by the simple expedient of publishing one set of results but not the other**.

Thomas E. Baker, Rationing Justice on Appeal: The Problems of the U.S. Courts of Appeal 130 (1994), quoted in Shuldberg, supra note 11, at 555:

> With non-publication "stare decisis is twice diminished. First, the decision itself is freed from their responsibility to reason within the full view. Second, an increment of precedent is rendered unusable.

Citizens United v. FEC, 558 U.S. 310, at 378 (2010) (Roberts, J., concurring):

> [Stare decisis'] greatest purpose is to serve a constitutional ideal—the rule of law. It follows that in the unusual circumstance when fidelity to any particular precedent does more damage to this constitutional ideal than to advance it, we must be more willing to depart from that precedent.

Vasquez v. Hillery, 474 U.S. 254, at 265-66 (1986):

> [T]he important doctrine of stare decisis [is] the means by which we ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion. That doctrine permits society to presume that

> bedrock principles are founded in the law, rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact.

Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228, 597 U.S., 213 L. Ed. 2D 545 (2022), in dissent:

> Weakening *stare decisis* threatens to upend bedrock legal doctrines, far beyond any single decision. Weakening *stare decisis* creates profound legal instability. In all those ways, **today's decision takes aim, we fear, at the rule of law**.

6.7 RAP 1.2 PROVIDES AUTHORITY TO CORRECT THIS PROBLEM

The people are justified to believe one rule should not make another superfluous, create a "strained" inconsistency, and should be "commonsense." The conflicting cases defy the "plain" and "certain" requirement this Panel proscribed in *WASHINGTON TRUCKING v. EMPLOYMENT SEC. DEPT*, 393 P.3d 761, 188 Wash. 2d 198 (2017). In addition, the RAP falls below the floor of due process described to the Commissioner for the Board of Tax Appeals.[13]

Looking in the Federal direction, the 9th Circuit specifically addresses tolling to reconcile the conflict between reconsideration and publication.[14] With 60 days, the 9th Circuit allows triple the time allowed by the Commissioner's interpretation. The Panel should take this

13 Oral argument opening at 4.00:

https://tvw.org/video/washington-state-supreme-court-commissioner-hearing-2023121040/?eventID=2023121040

14 See CIRCUIT RULE 27-11. MOTIONS; EFFECT ON SCHEDULE addressed herein.

opportunity to redress this conflict per *Rozner v. City of Bellevue*, 804 P.2d 24, 116 Wash. 2D 342 (1991), providing for "great weight" consideration of the Federal definition of due process.

The listed precedents create confusion with the current practice.[15] In addition, the current paradigm conflicts with lower and higher court practices, adding further uncertainty. And finally, the confusion the Commissioner described for appellate attorneys for this conflict[16] completes an overwhelming argument for Panel correction of this problem.

The right of the people to be heard is heavily dependent on a published opinion in order to receive a subsequent review. When the opinion is published, it promotes the plaintiff out of the "second tier" and will likely attract amici briefs for further examination.

6.8 CLARITY NEEDED FOR PRESERVATION OF THE PEOPLE'S HUMANITY

The Panel should take this opportunity to describe its goals and the damage the people are required to suffer in order to be considered fully human as was recently gifted to Bette Bennett for problems after sinus surgery in a Naval Hospital, *Bennett v. United States*, No. 101300-1 (Wash. Dec. 7, 2023):

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15 As described to the Commissioner: *Dep't of Licensing v. Cannon*, 147 Wn.2d 41, 57, 50 P.3d 627 (2002); *Davis v. Department of Licensing*, 977 P.2d 554, 137 Wash. 2D 957 (1999); *In re Dependency of N.G.*, 199 Wn.2d 588, 594-98, 510 P.3d 335 (2022); *Sundquist Homes, Inc. v. PUD*, 997 P.2d 915, 140 Wash. 2d 403 (2000).

16 Appellate attorneys are as specialized as brain surgeons in the medical profession.

> However, it is our duty to faithfully apply the Washington Constitution as interpreted in this court's precedent.

Certainly Div. II did NOT "faithfully" follow the *Bennett* idea for Flarity. This Panel's recent opinions give no clear indication when the damages are sufficient to promote a party into the 1st tier.[17] The people are justified in demanding clarity so that we might understand the barriers to full standing in our own courts. Please list the criteria when Washington courts will be ordered to defend civil rights for "all the people."

---

17 *State v. Sum*, 511 P.3d 92, 199 Wash. 2D 627 (2022). Because of his race, Palla Sum is allowed to give false information to a police officer when roused from sleep in his car.

State v. Meredith, 525 P.3d 584 (Wash. 2023). Because of his race, Zachery Meredith is allowed to give false information to police, and excused from paying the transit fare.

State v. Towessnute, 486 P.3d 111, 197 Wash. 2D 574 (2021). Because of race, long deceased Alec Towessnute is exonerated from a 1915 poaching conviction in a ruling with the attributes of posthumous religious rituals.

State v. Zamora, 512 P.3d 512, 199 Wash. 2D 698 (2022): "The case before us is one where the jury was asked to decide, among other things, whether Joseph Zamora, a United States citizen, assaulted a police officer's knuckles with the back of his head."

7. CONCLUSION

That this racist tactic is allowed at all is “shameful” for a Panel with the greatest diversity in the entire U.S. Refusing to publish an obvious precedent setting Opinion is a tremendous indication of Flarity’s demotion to second class citizenship. Desecration of Art. 1, Sec. 8 or Art. 1, Sec. 12 is likewise a “shameful” tactic.

By the Motion to Reconsider presented, Div. II ignored Flarity’s pleas to justify the setting of new precedents, which was in itself a de facto motion to publish.

In particular for civil rights cases, publication is an essential component of Art. 1, Sec. 1, and Art. 1, Sec. 32 protection of “fundamental principles” per this Panel’s rulings in *Valentine* and *Bennett*. Certainly Div. II understands the requirements to publish listed in RAP 12.3(d) and RCW 2.06.040, but they chose to violate both the rules and the law to bolster a policy of class distinction. Meanwhile, Flarity is held to account for “inept wording” which both the BTA and the 9th Circuit have solved. The rule should be clarified and made consistent with other courts.

CERTIFICATION OF WORD LIMIT.

The Word Count is 2639 words and is within the limit of new rule 18.17.

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 Motion.

Date of Signing: Dec. 19, 2023
Signature of plaintiff: /s/ Joe Flarity

JOE PATRICK FLARITY
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APPENDIX
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FILED
SUPREME COURT
STATE OF WASHINGTON
12/8/2023
BY ERIN L. LENNON
CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JOE PATRICK FLARITY, Petitioner, v. ARGONAUT INSURANCE COMPANY, ET AL., Respondents.	No. 1 0 2 4 3 5 - 5 Court of Appeals No. 56271-5-II RULING DENYING REVIEW

Pro se petitioner Joe Flarity seeks discretionary review of a decision by Division Two of the Court of Appeals denying Flarity's motion to publish its decision in *Flarity v. Argonaut Insurance Company, et al.*, No. 56271-5-II. The motion for discretionary review is denied for reasons explained below.

Flarity appealed an adverse superior court judgment. The Court of Appeals affirmed the decision in an unpublished decision filed on June 13, 2023. Flarity timely filed a motion for reconsideration on July 3, 2023. *See* RAP 12.4(b) (20-day limit to file for reconsideration). The court denied reconsideration on July 26, 2023.

On August 14, 2023, Flarity submitted a motion to publish the decision. RAP 12.3(e). The next day, the clerk of the court informed Flarity that the motion was rejected for filing because it was presented beyond the 20-day limit for filing a motion to publish. *See id*. (motion to publish must be filed no later than 20 days after the decision is filed). A panel of judges denied Flarity's motion to modify the clerk's ruling.

RAP 17.7. Flarity now seeks this court's discretionary review. RAP 13.3(a)(2), (c), (e); RAP 13.5(a). Respondent State of Washington, Department of Revenue, filed an answer opposing review, which co-respondent Argosy joined. Flarity filed a reply. The parties argued the case at a videoconference hearing on December 6, 2023.[1]

Flarity contends mainly that the Court of Appeals departed so far from the accepted and usual course of judicial proceedings that this court's review is justified. RAP 13.5(b)(3). Though not stated directly, Flarity implies also that the Court of Appeals committed obvious error that renders further proceedings useless or probable error that substantially alters the status quo or that substantially limits a party's freedom to act. RAP 13.5(b)(1)-(2). None of these criteria applies here.

"A motion requesting the Court of Appeals to publish an opinion that had been ordered filed for public record should be served and filed within 20 days after the opinion has been filed." RAP 12.3(e). The rule could not be any clearer: if someone wants the Court of Appeals to publish one of its unpublished decisions, they must file their motion to publish within 20 days after the Court of Appeals filed the decision. *Id*. Nothing in the text of the rule contains any alternative deadlines to account for a motion for discretionary review (which also must be filed within 20 days after the decision is filed). *Id*. Flarity misreads the plain unambiguous language of RAP 12.3(e), presenting his motion to publish 19 days after the Court of Appeals denied his motion for reconsideration, and more than 60 days after the court filed its decision. His motion to publish was late by a considerable margin.

[1] Prior to the videoconference hearing, Flarity filed a motion for my recusal. That motion is denied and was communicated to Flarity at oral argument. As stated in a previous ruling, Flarity has not identified any circumstances undermining or casting doubt on my ability to decide this matter fairly and even-handedly. Flarity feels my former employment as an assistant attorney general is prejudicial to him. It is not: my employment with the Attorney General's Office ended nearly seventeen years ago. This matter is decided solely on the strength of the briefing submitted and the arguments presented.

Flarity points out a lack of precedent on the question presented: whether RAP 12.3(e) means what it says when it unambiguously states a motion to publish must be filed within 20 days of the decision's filing. The rule is plain on its face. Lack of precedent is not a basis for review under RAP 13.5(b) in any event.

Flarity contends his motion for reconsideration contained a de facto request for publication. I reviewed Flarity's motion for reconsideration. There is no discernible motion for publication within it.

Flarity argues that rejection of his motion to publish violates his due process rights. He presents no authorities, and I am not aware of any, that supports the proposition that the mere refusal to accept for filing a particularly untimely motion for publication offends due process principles. As I explained to Flarity at oral argument, the Court of Appeals decision is accessible even if not published and subject to a timely petition for review.

In light of the foregoing observations, the Court of Appeals did not depart from the accepted and usual course of judicial proceedings when it adhered to the plain meaning of RAP 12.3(e). It cannot be said the court committed either obvious or probable error within the meaning of RAP 13.5(b).

The motion for discretionary review is denied.

COMMISSIONER

December 8, 2023

FILED
SUPREME COURT
STATE OF WASHINGTON
10/2/2023 8:00 AM
BY ERIN L. LENNON
CLERK

SUPREME COURT OF THE STATE OF WASHINGTON

Review of Division II Cause 56271-5-II per RAP 13.5
21-2-06124-1
Before the Honorable Judge Martin
Pierce County

Joe Patrick Flarity, a pro se marital community
v.
Argonaut Insurance Company,
Mary Robnett,
Sue Testo,
Pierce County,
State of Washington, et al

PETITION TO REVIEW

DIVISION II'S DENIAL TO PUBLISH AS UNTIMELY

PRESENTED TO THE WASHINGTON STATE SUPREME COURT

Joe Patrick Flarity, a marital community
Pro Se Appellant
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TABLE OF AUTHORITIES

CASES.....

1. IDENTITY OF PETITIONER

Comes Joe Patrick Flarity, a pro se marital community, Flarity hereafter, moves the Panel to correct an obvious misreading of the rules that aides the State. This case was originally filed in King County when Flarity was a resident at:

249 Main Ave S. STE 107 #330
North Bend, WA, 98045
Phone: (253) 951-9981

Flarity currently resides at the following address:

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2. DECISION TO REVIEW

Div. II has accepted Clerk Byrne's decision **AP-2**, that Flarity's Motion is untimely, **AP-3.** This definition defies the State's own argument, **AP-4,** showing that the determination for a Motion for Reconsideration is the *Final Decision.*

3. ISSUE PRESENTED

Div . II has interpreted the RAP to conflate the time requirements of a Motion to Reconsider to run concurrently with a Motion to Publish,

therefore, Flarity's Motion to Publish was deemed untimely. This decision is contradicted by State precedents, Federal Rules, the State's own argument to this Panel in 102097-0, and common sense. Common law, is based on the "plain"[1] meaning of due process from the foundation first established by the Magna Carta of 1215. Per RAP 13.5 (b)(3), Div. II has sanctioned *a far departure from usual course of judicial proceedings*" by refusing to modify the Clerk's decision**.**

The State definition also fits the "plain" due process requirement this Panel described as controlling lower courts per *WASHINGTON TRUCKING v. EMPLOYMENT SEC. DEPT*, 393 P.3d 761, 188 Wash. 2D 198 (2017), for the *plain* and *efficient*, meaning of due process.

In addition, Washington Courts have a responsibility to protect due process for the "great weight" analysis to the Federal definition, *City of Edgewood (Local Improvement Dist. # 1), Corp.,* 179 Wash.App. 917, 320 P.3d 163 (Wash. App. 2014), *Rozner v. City of Bellevue,* 116 Wn.2d 342, 804 P.2d 24 (Wash. 1991):

> The fourteenth amendment to the federal constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law." Article 1, section 3 of the Washington State Constitution similarly provides that "[n]o person shall be deprived of life, liberty, or property, without due process of law." We give " '**great weight' " to federal cases interpreting the fourteenth amendment.**

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

No Rule should deprive another of of effectiveness, which is what Div. II has done here. *In re Dependency of N.G*., 199 Wn.2d 588, 594-98, 510 P.3d 335 (2022).

4. STATEMENT OF THE CASE

56271-5-II, was initiated on November 3, 2020 in King County as 20-2-16139-0. Flarity's Motion for Reconsideration, **AP-32,** attempted to correct broad challenges to numerous precedents that Flarity assumed were Div. II Panel errors**.** The Panel's denial of Motion to Reconsider was filed on July 26, 2023, which is the the "final decision" on the Order terminating review, **AP-31,** a fact the State also stipulates, **AP-4.**

Flarity's Motion to Publish the Final Decision included extensive justification and was timely filed on August 14, 2023, **AP-97**.

An order was issued denying Flarity's Motion to Publish as untimely by Clerk Byrne, on August 15, 2023. **AP-3.** Flarity filed a Motion to Modify the Clerk's decision on August 17, 2023. **AP-127.** Flarity Replied to State Response on August 30, 2023. **AP-136**.

Flarity submitted a Supplemental authority on September 11, 2023 in support of the Motion to Modify filed by the State for 102097-0. **AP-4.**

On September 18, 2023, the Panel issued an Order confirming the Clerk's Order, dated June 15, 2023. **AP-2.** The Panel's order gives no

further specificity and appears to be in error, because there is no lower Order pertaining to the date given on the Order.

Since the only Motion to Modify on the Panel's docket was Flarity's Motion to Modify the denial of the Motion to Publish, the Supreme Court would be justified to attribute this two month error to Panel II sloppiness. Or, if the obvious error somehow benefits the State, to deliberate malfeasance.

4.1. PRECEDENTS VIOLATED BY 56271-5-II ORDER

4.1.1 STATE RIGHT TO A HEARING

Previous Panels protect a corporation's[2] right to a hearing per *OLYMPIC PROD. v. Chaussee Corp.*, 511 P.2d 1002, 82 Wash. 2D 418 (1973):

> The major question is whether the prejudgment garnishment of a corporation's bank account without prior notice and opportunity for hearing constitutes a deprivation of property without that procedural due process required by the fourteenth amendment to the United States Constitution and article 1, section 3 of the Washington State Constitution.

State v. Danis, 826 P.2d 1096, 64 Wn.App. 814 (Wash. App. 1992);

2 From 82381-7-I, before this Panel, AP p425: "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."

Lakey v. Puget Sound Energy, Inc., 176 Wash.2d 909, 922, 296 P.3d 860 (2013);
Smith v. Skagit County, 75 Wn. 2d 715, 739, 453 P.2d 832, 846;

4.1.2 FEDERAL RIGHT TO A HEARING

City of Los Angeles v. Alameda Books, 535 U.S. 425 (2002)*;*
Ashcroft v. American Civil Liberties Union, 535 U.S. 564 (2002);
Withrow v. Larkin 21 U.S. 35 (1975);
Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970)*;*

4.1.3 STATE PROTECTION OF DUE PROCESS

In re Troupe, 423 P.3d 878 (Wash. App. 2018);
Rozner v. City of Bellevue, 804 P.2d 24, 116 Wash. 2D 342 (1991);
State v. Gunwall, 106 Wn. 2D 54, 720 P. 2d 808, 76 A.L.R. 4th 517 (Wash. 1986);

4.1.4 FEDERAL PROTECTION OF DUE PROCESS

US v. Ullah, 976 F.2d 509 (9th Cir. 1992);

4.1.5 STATE PROTECTION OF INVIOLATE RIGHT TO A JURY TRIAL

Davis v. Cox, 351 P.3d 862, 183 Wash. 2D 269 (2015);

Sofie v. Fibreboard Corp., 771 P.2d 711, 112 Wash. 2d 636, 112 Wash. 636 (1989);
Scavenius v. Manchester Port Dist., 467 P.2d 372, 2 Wn.App. 126 (Wash. App. 1970);
Christensen v. Swedish Hospital, 368 P.2d 897, 59 Wash. 2D 545 (1962).

4.1.6 FEDERAL PROTECTION OF REVIEW BY JURY

Axon Enterprise v. FTC, No. 21-86.

4.1.7 STATE PROTECTION OF CIVIL RIGHTS

WASHINGTON TRUCKING v. EMPLOYMENT SEC. DEPT, 393 P.3d 761, 188 Wash. 2D 198 (2017);
Wilshire v. City of Seattle, 154 Wash. 1, 280 P. 65 (Wash. 1929).

4.1.8 FEDERAL PROTECTION OF CIVIL RIGHTS

Knick v. Twp. of Scott 139 S. Ct. 2162, 204 L.Ed.2d 558 (2019);
Pembauer v. City of Cincinnati, 475 U.S. 449 (1986);
State v. Lewis, 129 La. 800, 804, 56, So. 893, 894 (1911);
Martin v. Hunter's Lessee, 1 Wheat. 304, 348 (1816).

4.1.9 STATE PROTECTION OF VENUE

Ralph v. Weyerhaeuser Co., 187 Wash.2d 326, 386 P.3d 721 (Wash. 2016);

Briedablik, Big Valley, Lofall, Edgewater, Surfrest, North End Community Ass'n v. Kitsap County, 652 P.2d 383, 33 Wn.App. 108 (Wash. App. 1982);
State v. Stiltner, 80 Wn.2d 47, 481 P.2d 1042 (1971);
Wyman, Partridge & Co. v. Superior Court (1905).

4.1.10 UNCONSTITUTIONAL ASSIGNMENT OF PENALTIES

City of Seattle v. Long, 493 P.3d 94, 198 Wash. 2D 136 (2021).

5. ARGUMENT FOR ACCEPTANCE

INTRODUCTION

Div. II has erred in the "plain" due process requirement this Panel described as controlling lower courts per *WASHINGTON TRUCKING v. EMPLOYMENT SEC. DEPT*, 393 P.3d 761, 188 Wash. 2D 198 (2017).

In addition, Washington Courts have a responsibility to protect due process for the "great weight" analysis to the Federal definition, *City of Edgewood (Local Improvement Dist. # 1), Corp.,* 179 Wash.App. 917, 320 P.3d 163 (Wash. App. 2014), *Rozner v. City of Bellevue,* 116 Wn.2d 342, 804 P.2d 24 (Wash. 1991), all emphasis added throughout:

> The fourteenth amendment to the federal constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law." Article 1, section 3 of the Washington State Constitution similarly

> provides that “[n]o person shall be deprived of life, liberty, or property, without due process of law.” We give “ ‘**great weight’ ” to federal cases interpreting the fourteenth amendment.**

Furthermore, no Rule should deprive another of of effectiveness, which is what Div. II has done here effectively overturning *In re Dependency of N.G.*, 199 Wn.2d 588, 594-98, 510 P.3d 335 (2022).

5.1 THE POWER OF TIME TRAVELING

COURT TIME TRAVELING

In State v. Towessnute, 486 P.3d 111, 197 Wash. 2D 574 (2021), the Supreme Court rescued Alec Towessnute from a poaching conviction issued in 1915:

> The opinion in *State v. Towessnute* is an example of the racial injustice described **in this court's June 4, 2020 letter...**This court characterized the Native people of this nation as "a dangerous child," who "squander[ed] vast areas of fertile land before our eyes." *Id.*
>
> Under the Rules of Appellate Procedure...(RAP) 1.2(c), this court may act and waive any of the RAP "to serve the ends of justice." We do so today. We cannot forget our own history, and we cannot change it. **We can, however, forge a new path forward, committing to justice as we do so**.

But indeed, the Panel has “revised history” by vacating Mr. Towessnute’s poaching conviction.

FLARITY TIME TRAVELING

Likewise the Panel for Eric Towessnute, some future Panel may look back on this era and make a similar analysis of obvious court injustice. Flarity speculates on the wording of a similar correction, should the rule of law ultimately prevail:

> In the not so distant past, this court dispossessed the bulk of the people from their right to summon a jury to challenge government abuse as authorized in Art. 1, Sec 21. Although a select class relished the full rights guaranteed in the Constitutions, courts generally abridged those same rights in an arbitrary or capricious manner through hidden class distinctions for the overwhelming majority of civil plaintiffs challenging official misconduct.
>
> For example, in the case of *Flarity v Argonaut*, 56271-5-II, a concerted effort to preserve 1st amendment rights to a hearing was denied, even though Flarity endured the terrific tribulation of a severe hurricane during the period needed to schedule a hearing. Hurricane Harvey caused damage to Flarity's home, and complete destruction of their father's home, with that terrific stress resulting in a severe stroke, from which he never recovered. Denial of all requests for hearing delay was the standard practice of Pierce County during this period.
>
> By abuse of CR12, Superior and Appellate courts refused to allow any review of the decision before a jury, even though an obvious claim was stated. Flarity was forced to sell his land to cover the back taxes and penalties assessed, even though the Panel had recently determined by *City of Seattle v. Long,* 493 P.3d 94, 198 Wash. 2d 136 (2021), that penalties on appropriate conduct were unconstitutional. Yet the penalties were collected with no examination of Flarity's case facts.
>
> This abuse was hidden from the people by a coordinated effort to keep this and similar unconstitutional decisions unpublished. Those that came forward to compel the Courts

to publish wrong rulings were humiliated and declared vexatious. *Lakeside Industries, INC, v. Department of Revenue*, No. 81502-4-I. **AP-144.**

The end result was that the most vulnerable citizens suffered the most, as is shown for prisoner Daniel L. Sims, *Simms v. DOC*, No. 21-2-00928-34, who was forced to go 20 days without shoes. Mr. Simms' case was dismissed by CR12, and then prisoner Simms was subjected to further retaliation for daring to challenge the Department of Corrections. **AP-146.**

The court's refusal to defend the Constitutions, and the additional humiliation the courts added, demonstrated a substantial decline in the rule of law by contempt for rights guaranteed in the Constitutions. The decline eventually culminated in a number of homicides at the hands of officials, with the citizens then provoked to civil disobedience. And later, riots.

Our decline in the rule of law caused suffering by the majority of the citizens and brought shame on state officials and courts.

We rule today to end this practice and guarantee rights to all the people, rather than the privileged few. Flarity and Simms were improperly denied their right to summon a jury to correct official misconduct.

And Mr. Igor Lukashin is here declared a hero of *fundamental principles*, as the State founders understood is essential to the preservation of the "republican form of government" as specified in Art. 1, Sec. 32. His designation as vexatious is hereby vacated.

5.2 AVOIDING THE "MEANINGLESS OR SUPERFLUOUS"

From Flarity's Reply to State, **AP-136**:

> [The people are] required to write a Motion to publish that would become immediately "meaningless or superfluous" if any change resulted from the pending Motion to Reconsider. This assumption defies *In re Dependency of N.G.*, 199 Wn.2d 588, 594-98, 510 P.3d 335 (2022). All emphasis throughout is added:
>
> *Whatcom County v. City of Bellingham*, 128 Wash.2d 537, 546, 909 P.2d 1303 (1996) ("Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.").

Expecting the people to argue to publish while the argument to change the ruling is still under consideration, is an obvious transgression of the "plain" meaning of due process and in conflict with *WASHINGTON TRUCKING v. EMPLOYMENT SEC. DEPT*, 393 P.3d 761, 188 Wash. 2D 198 (2017).

5.3 DIV. II FAILS THE "PLAIN" DUE PROCESS REQUIREMENT

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

> (a state court remedy must "meet[ ] certain minimal *procedural* criteria."...

> "Plain" means the procedures in the state law process are **certain.**
>
> Courts construe the " 'plain, speedy and efficient' " exception narrowly. *Grace Brethren,* 457 U.S. at 413, 102 S.Ct. 2498.

Is combining the conflicting Motions fair? Per *Trucking*:

> ...the court may refer to the dictionary to establish the meaning of the word." *Id.* at 423, 103 P.3d 1230. Under the common meaning, "just" is synonymous with "fair," "equitable," "impartial," "unbiased," "dispassionate," or "objective."

Trucking continues to bolster the reasoning used by the Honorable Judge Bryan to deny DPA Hamilton's Motion to join into the Federal Cause, 21-cv-06083-21-RJB:

> In both *Francis* and *Grace Brethren,* it appears that the constitutional objections could be raised only in the superior court. ...("Nothing in this scheme prevents the taxpayer from 'rais[ing] any and all constitutional objections to the tax' in the *state courts.* "

Flarity brought the damage claim of first amendment rights denial as a consequence of Hurricane Harvey damage to Judge Spector in 20-2-16139-0. The rule of law decline as witnessed by Flarity since 1985 was documented in detail to Div. II in the oral hearing, at **7.38**:

> https://tvw.org/video/division-2-court-of-appeals-2023051060/?eventID=2023051060

5.4 ESTABLISH FLARITY'S STANDING.

Rule bending to aid the 1000+ AG staff flush with resources approaching $400 million of taxpayer funds is an unwarranted

advantage of which no jury would approve. Besides an indication of actual prejudice, the ruling emits a odious *appearance* of prejudice.

Now with *Quinn v. State, No. 100769-8*, *Seattle v. Long,* 198 Wn.2d 136, 493 P.3d 94 (2021), and *State v. Weaver*, No. 99041-7, piling onto *State v. Moreno, 58 P.3d 265, 147 Wash. 2D 500 (2002)*, the people have every right to question the majority's intent to protect fundamental liberties and prevent further collapse of our judicial functions:

> ARTICLE 1, SECTION 2. SUPREME LAW OF THE LAND. The Constitution of the United States is the supreme law of the land.

As described in paragraph 4 herein, the extreme number of precedents violated give multiple reasons Div. II would like to escape without further scrutiny of a terrible decision. The "court of last resort" should avoid covering for officials by prioritizing their embarrassment over protection of the people's *fundamental principles*. Div. II should own and justify their decision. Lack of correction here would confirm exactly the warning of Clark Nealy of the Cato Institute:[3]

> ...it's important to understand that the judiciary really does invent and blatantly misapply various avoidance doctrines to help insure the judges' former colleagues in the other branches rarely have to account for themselves.

Refusal to correct also precludes accountability in Div. II. The people will see this as more Panel whistling in dark while passing a con game

3 *Are a Disproportionate Number of Federal Judges Former Government Advocates*? Cato Institute. May 27, 2021.

the 9th Circuit has labeled TEGWAR?[4] If constructive fraud[5] is an approved State Policy to defeat civil rights plaintiffs, this is the ideal time for "reeducation" as to role of common people in superior courts.[6]

5.5 COURT LEGITIMACY ESSENTIAL TO EQUAL PROTECTION

The obvious disfavored status as illustrated by Flarity's treatment flies in the face of a multitude of official statements proclaiming exactly the opposite, King County Bar Association Resolution 400:

> **"No man is above the law."**
>
> – Chesterfield Smith, President, American Bar Association, October 22, 1973
>
> An independent judiciary is the cornerstone of the rule of law and our constitutional republic. It protects the liberty of the people. **Yet public support for an independent judiciary can only be sustained if there is public confidence in the legitimacy of the judiciary.**

4 The Exciting Game Without Any Rules. *Ramirez-Alejandre v. Ashcroft*, 320 F.3d 858 (9th Cir. 2003).

5 Unanimous SCOTUS describes the practice as "two forearms on the scale of justice." *Axon Enterprise v. FTC*, No. 21-86

6 *The Value of Government Tort Liability: Washington State's Journey from Immunity to Accountability.* Debra L. Stevens & Bryan P. Harnetiaux. Washington State Trial Lawyers Foundation. ALSO,

See also *Townsend v. Holman Consulting Corp*., 929 F.2d 1358 (9th Cir. 1991):

...the bringing of meritorious lawsuits by private individuals is one way that public policies are advanced.

The promise of our magnificent Constitution is hollow when courts simply refuse to enforce the law for officials in defiance of plainly stated rights our founders presciently put in the very front of the Constitution:

> SECTION 1 POLITICAL POWER. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established **to protect and maintain individual rights**.
>
> SECTION 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, **without due process of law.**
>
> SECTION 8 IRREVOCABLE PRIVILEGE, FRANCHISE OR IMMUNITY PROHIBITED. **No law granting irrevocably any privilege, franchise or immunity**, shall be passed by the legislature.

6. CONCLUSION

The Panel should bolster public confidence in our courts by ordering Division II to rule on their opinion's assault on stare decisis, rather than escape scrutiny by hiding behind a Clerk's interpretation of the "plain" meaning of due process in direct conflict with the State's own admission that the ruling on the Reconsideration is the *final determination*, **AP-3.**

The Supreme Court's June 4, 2020 letter:

> As lawyers and members of the bar, we must recognize the harms that are caused **when meritorious claims go unaddressed** due to systemic inequities or the lack of financial, personal, or systemic support. And we must also recognize that this is **not how a *justice* system must operate**. [emphasis for justice is original].

> We can develop a greater awareness of our own conscious and unconscious biases in order **to make just decisions in individual cases**....

Axon Enterprise v. FTC, No. 21-86, Justice Kagan:

> ...attacks as well the combination of prosecutorial and adjudicatory functions in a single agency. The challenges are fundamental, **even existential.**

The people need protection from officials "*not armed with superior wit or honesty, but with superior physical strength.*"[7] The people will be encouraged if the Panel shows here how a "justice system must operate."

7 When I meet a government which says to me, "Your money or your life, why should I be in haste to give it my money?" Henry David Thoreau, *On Civil Disobedience.*

CERTIFICATION OF WORD LIMIT.

The Word Count is 3205 words and is within the limit of new rule 18.17

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 Motion.

Date of Signing: October 2, 2023
Signature of plaintiff: /s/ Joe Flarity

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APPENDIX FOR PETITION TO PUBLISH 56271-5-II

Filed
Washington State
Court of Appeals
Division Two

September 18, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JOE PARTRICK FLARITY, a marital community, Appellant, v. ARGONAUT INSURANCE COMPANY, SUE TESTO, MARY ROBNETT, PIERCE COUNTY, a municipal corporation, STATE OF WASHINGTON, et al., Respondents.	No. 56271-5-II ORDER DENYING MOTION TO MODIFY CLERK'S RULING

Appellant moves to modify a clerk's ruling dated June 15, 2023, in the above-entitled matter. Following consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj: LEE, PRICE, CHE

FOR THE COURT:

PRICE, J.

Washington State Court of Appeals
Division Two
909 A Street, Suite 200, Tacoma, Washington 98402
Derek Byrne, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)
General Orders, Calendar Dates, and General Information at http://www.courts.wa.gov/courts **OFFICE HOURS**: 9-12, 1-4.

August 15, 2023

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CASE #: 56271-5-II Joe Patrick Flarity v. Argonaut Insurance Company
Case Manager: Jodie

Counsel and Parties:

The Court is in receipt of Joe P. Flarity's Motion to Publish the Opinion filed on June 13, 2023 in the above-referenced matter. The Motion to Publish was received by the Court on August 14, 2023. Pursuant to RAP 12.3(e), the party filing the Motion to Publish should submit it within 20 days from the filing of the decision. As your Motion to Publish is considered untimely, it will be stamped as rejected and no further action will be taken on it.

Sincerely,

Derek M. Byrne
Court Clerk

DMB:jlt

FILED
Court of Appeals
Division II
State of Washington
9/11/2023 8:00 AM

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

Cause 56271-5: Cause 21-2-02164-1

Joe Patrick Flarity, pro se, a marital community
v.
Argonaut Insurance Company,
Mary Robnett,
Sue Testo,
Pierce County,
State of Washington

SUPPLEMENT

ON MOTION TO MODIFY

DENIAL OF MOTION TO PUBLISH

AS UNTIMELY

---

1. IDENTITY OF PETITIONER

Joe Flarity, pro se, henceforth Flarity, Appellant, a marital community, provides the following:

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253-951-9981

piercefarmer@yahoo.com

2. AUTHORITY TO INCLUDE

Supplements are allowed by RAP 10.8(b).

3. APPLICABILITY

Flarity's Motion to Modify Denial of Motion to Publish, P2, P3.

Flarity's Reply to State for Denial, Page 4*, In re Dependency of N.G*., 199 Wn.2d 588, 594-98, 510 P.3d 335 (2022).

4. TIMING FOR SUPPLEMENT

The State filed a Response on August 31, 2023, against Flarity's Motion to Modify this Panel's refusal to order the BTA to provide an official record in Cause 57601-5-II in support of a Brief now pending before this Panel, No. 102097-0. The State's Response is a lengthy document of approximately 676 pages. The Supreme Court required the State to

break their filing into portions. The applicable Portion for this Supplement is shown in **EX-1.**

5. ARGUMENT TO ACCEPT SUPPLEMENT

In the Response to the Supreme Court, No. 102097-0, the State acknowledges that an order to a Reconsideration Motion, is the *"final decision."* All emphasis is added. **EX-1, P5:**

> On September 30, 2022, the Board issued its **final decision**, an order denying the Flarities' [sic][1] motion for reconsideration. App. 0557-58.

The State confirms the tolling clock starts for the Motion to Publish AFTER the results of the Motion for Reconsideration is filed as the *final decision.*

6. CONCLUSION

For the reasons provided by the State's own argument, the Panel should accept this supplement in consideration of the pending decision denying Flarity's Motion to Publish as untimely.

1 The misspelling of FLARITY is unacceptable and will be addressed in a motion to strike filed to the Supreme Court.

CERTIFICATION OF SERVICE. All defendants are served electronically by courts.wa.gov.

CERTIFICATION OF WORD LIMIT. The Word Count is 241 words and is within the limit of 350 words by RAP 10.8(b).

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 RAP 10 to the best of my knowledge for this Motion.

Date of Signing September 11, 2023
Signature of plaintiff: /s/ Joe Flarity

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FILED
SUPREME COURT
STATE OF WASHINGTON
8/31/2023 9:49 AM
BY ERIN L. LENNON
CLERK

NO. 102097-0

SUPREME COURT OF THE STATE OF WASHINGTON

JOE PATRICK FLARITY, a marital community,

Petitioner,

v.

UNKNOWN OFFICIALS, in their official and personal capacities, STATE OF WASHINGTON, et al.,

Respondents.

JOINT ANSWER TO MOTION TO MODIFY RULING OF COMMISSIONER JOHNSTON

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Cases

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I. IDENTITY OF ANSWERING PARTIES AND RELIEF REQUESTED

Respondent Board of Tax Appeals (Board), and Respondents State of Washington, and Unknown State Officials (collectively State) jointly request that this Court deny Petitioner Joe Flarity's Motion to Modify Ruling of Commissioner Johnston.

The Commissioner's August 17, 2023, ruling denied Mr. Flarity's motion for discretionary review of a Court of Appeals decision. That decision correctly denied modification of the Court of Appeals' Commissioner's denial of Mr. Flarity's request to compel the Respondents to file the certified administrative record with the appellate court pursuant to RCW 34.05.566. The Respondents' appendices (App.) are attached.

II. STATEMENT OF THE CASE

A. Background on the Flarities' prior litigation

On August 31, 2017, the Pierce County Assessor-Treasurer issued a notice removing two parcels of property owned by Mr. and Mrs. Flarity from preferential property tax status. App. 0049-55. Under RCW 84.40.038(1)(d), the Flarities had sixty days to petition the Pierce County Board of Equalization (County BOE) to review the decision. App. 0051, 0053. They did not. App. 0062.

Instead, more than a month after the deadline, they mailed a petition to the County BOE and requested it waive the filing deadline pursuant to WAC 458-14-056(3). App. 0062-64. The County BOE denied his request and issued a decision setting forth its reasons for declining to waive the deadline. App. 0065-66.

Mr. Flarity then undertook numerous actions related to Pierce County's action and the County BOE decision. This included commencing a lawsuit in state court in 2020 and two

federal court lawsuits. *See Flarity v. Argonaut Ins. Co.*, King County Superior Court No. 20-2-16139-0SEA (transferred to Pierce County Superior Court, No. 21-2-06124-1);[1] *Flarity v. Prather, et al.*, No. 3:20-cv-06083-RJB (W.D. Wash.); *Flarity v. Roberts, et al*., No. 3:20-cv-06247-RJB (W.D. Wash.). All of these actions have been dismissed and those dismissals have been affirmed on appeal. *See Flarity v. Argonaut Ins. Co.,* No. 56271-5-II, 2023 WL 3959813 (Div. 2, June 13, 2023); *Flarity v. Argonaut Ins. Co.*, No. 21-35580, 2022 WL 10382886 (9th Cir., Oct. 18, 2022); *Flarity v. Roberts*, No. 21-35661, 2022 WL 10382921 (9th Cir., Oct. 18, 2022).

[1] Mr. Flarity previously sought interlocutory review of the King County Superior Court's decision to transfer venue to Pierce County in his 2020 state court lawsuit, which Division One of the Court of Appeals denied. *Flarity v. Argonaut*, No. 82381-7-I, *Order Denying Motion to Modify Commissioner's Ruling* (Div. 1, Nov. 30, 2021). Flarity then moved for further discretionary review with this Court, which was also denied. *See Flarity v. Argonaut*, No. 100504-1, *Order* (Wash., June 8, 2020) (denying motion to modify Commissioner's Ruling).

B. In 2022, Flarity Commenced a New Action Seeking Judicial Review of a Board Decision, which was Dismissed and Appealed

In 2019, Mr. and Mrs. Flarity also filed an administrative appeal of a Pierce County Assessor-Treasurer's 2019 property tax assessment of his two parcels of property at the Board of Tax Appeals, where, in addition to challenging the valuation of the two parcels, they attempted to renew their earlier challenges to the County's removal of their properties from the open space program and the County BOE decision denying waiver of the filing deadline. App. 0327-0349 (Decision in BTA No. 19-105).[2] The only respondent in BTA No. 19-105 was Pierce County Assessor-Treasurer Mike Lonergan. App. 0327. The Board issued a decision in Longeran's favor concluding it only had authority to hear an appeal regarding the assessed valuation of property and deciding the valuation was correct. App. 0342-

[2] The Flarities had also previously filed at least two other administrative appeals at the Board concerning his parcels, which had also been denied. App. 0512; *see also* App. 0341 (discussing other appeals filed with the Board).

43. On September 30, 2022, the Board issued its final decision, an order denying the Flarities' motion for reconsideration. App. 0557-58.

Mr. Flarity then initiated this lawsuit by filing a summons and a "Complaint for BTA 19-105 Review" in Thurston County Superior Court on October 11, 2022. App. 0004. He amended his complaint on October 18, 2022 (hereinafter "2022 Action").[3] App. 0376. In the 2022 Action, Mr. Flarity sought three forms of relief. First, he sought judicial review (and certain declaratory relief) with respect to BTA No. 19-105. App. 0398-99. Second, he "repeat[ed] and re-allege[d] all the allegations" in the 2020 complaint and requested tax refunds. App. 0380-81, 396-98. And third, he

[3] Initially, Mr. Flarity brought his Complaint against the State of Washington and Vikki Smith and John Ryser, the previous director and acting interim director of the Department of Revenue. App. 0004. He later amended the complaint and removed Vikki Smith and John Ryser as defendants, replacing them with "unknown state officials." App. 0376.

sought damages and other relief relating to the Board's delay in issuing him a final decision. App. 383-85, 398.

When Mr. Flarity commenced this 2022 Action, he failed to serve the summons and complaint (or the amended summons and complaint) on the Board within 30 days of its final decision. App. 0559. He also failed to both join and serve the Pierce County Assessor-Treasurer Mike Lonergan. *See* App. 0376, 0392-93. After some initial attempts, Mr. Flarity did [redacted]. *See* Motion for Discretionary Review, Flarity Appendix at 50-60.

Respondents appeared, without waiving the requirement of original service of process. App. 650-51. On November 7, 2022, Respondents moved to dismiss the 2022 Action. App. 00561-0583. Respondent argued multiple grounds for dismissal including that Mr. Flarity failed to serve the agency—the Board of Tax Appeals—and failed to join and serve a necessary party—the Pierce County Assessor—within 30 days

as required by RCW 34.05.542(2) to initiate review. App. 0568-0572. Respondents also argued that additional reasons warranted dismissal of Flarity's complaint, including that certain new claims were outside the scope of judicial review and that his claims were barred by quasi-judicial immunity, collateral estoppel, statutes of limitations, and were contrary to the statues authorizing property tax refund claims. App. 0568-69, 0573-81.

The Court granted Respondents' motion and dismissed Mr. Flarity's case. Mr. Flarity appealed. App. 0584-95. His appeal is pending at the Court of Appeals, and his opening brief is due on September 18, 2023. *Flarity v. State*, 57601-5-II.

C. Flarity Sought Review of the Court of Appeals' Denial of a Motion to Compel the Filing of the Certified Administrative Record

While his appeal was pending, Flarity filed several motions including a motion to compel the State to file a certified copy of the BTA No. 19-105 record pursuant to RCW 34.05.566. App. 0613-0648. Court of Appeals

Commissioner Bearse denied his request. Motion for Discretionary Review, Flarity Appendix at 23 (June 14, 2023). Mr. Flarity then moved to modify that ruling, which the Court of Appeals denied on June 6. *Id*., Flarity Appendix at 2.

Flarity then filed a motion for discretionary review of the Court of Appeals' denial with this Court. Mot. for Discretionary Review at 1. The matter was set for oral argument on August 15. *Flarity v. State*, No. 102097-0, Letter (June 15, 2023).

While his motion was pending before this court, Counsel for the State filed a Notice of Screening indicating that the Attorney General's Office had hired three former law clerks and explaining the steps taken to screen them from the case. *See* Notices of Screening Pursuant to RPC 1.12 (Aug. 8, 2023 & Aug. 9, 2023) (Larson, Barrett, and Evans). Around that time, Mr. Flarity moved to recuse Commissioner Johnston because he denied his motion for discretionary review in *Flarity v. Argonaut*, No. 100504-1. Mot. to Recuse Commissioner

Johnston at 2-9 (Aug. 9, 2023). Mr. Flarity then filed two additional pleadings arguing for the Commissioner's recusal because the three former Supreme Court law clerks began working for the Attorney General's Office. *See* Statements of Additional Authorities For Mot. to Recuse Commissioner Johnston (Aug. 9, 2023 & Aug. 11, 2023).

On August 15, Commissioner Johnston heard oral argument on Flarity's motion to recuse and his motion for discretionary review. The following day, the Commissioner issued a written ruling memorializing his decision not to recuse and denying Mr. Flarity's motion for discretionary review. Ruling Denying Review (Aug. 17, 2023). Mr. Flarity then moved to modify the ruling. Mot. to Modify Ruling of Commissioner Johnston (Aug. 21, 2023).

III. ARGUMENT

The Court should deny Mr. Flarity's motion to modify. Commissioner Johnston's ruling properly applied RAP 13.5(b)

and correctly determined that Flarity failed to identify any grounds justifying interlocutory review by this Court.

A. The Court Should Deny Modification of Commissioner Johnston's Ruling Denying Discretionary Review

RAP 13.5(b)(2) requires a showing of both a probable error and either a substantial alteration of the status quo or substantial limitation of the freedom of a party to act. Mr. Flarity failed to demonstrate this case warrants review under RAP 13.5(b).

First, there has been no error—all of the prior decisions have correctly denied Mr. Flarity's request to compel the filing of the certified record. The requirement to file the certified administrative record comes from the Administrative Procedure Act (APA). *See* RCW 34.05.566. It arises only *after* the agency has been properly served a copy of the petition for judicial review. *Id*. And, in this case, the Superior Court determined that Mr. Flarity failed to serve the Board (the agency) as required by

the APA when it dismissed his 2022 Action. So, the statutory obligation to file the certified record has never been triggered.

There is also no error because the certified record is immaterial to resolving Mr. Flarity's appeal of the Superior Court orders. His request for judicial review was dismissed at the outset because he failed to comply with the APA service requirements in RCW 34.05.542. The contents of the certified administrative record is immaterial to determining if dismissal was proper. If the Court of Appeals determines dismissal was in error, then it can remand the case to the Superior Court for further proceedings.

Moreover, there is nothing irregular about the Court of Appeals' decisions to deny Mr. Flarity's motion. The denial was consistent with other appellate rulings–that the failure to serve the petition for judicial review does not trigger the APA's requirement to file the certified record. *See e.g., Sprint Spectrum, LP v. Dep't of Revenue*, 156 Wn. App. 949, 963, 235

P.3d 849 (2010); *Banner Realty, Inc. v. Dep't of Revenue*, 48 Wn. App. 274, 278, 738 P.2d 279 (1987).

Mr. Flarity did not personally deliver a copy of his complaint or amended complaint to the Board. App. 0559. Nonetheless, he argues that service was proper because the Board's attorney, AAG Matt Kernutt, appeared. Mot. to Mod. at 3. But AAG Kernutt appeared as attorney for the Board without waiving the requirement of original service of process. App. 650-51. Additionally, service on the Attorney General's Office alone is insufficient to serve the Agency under the APA. *Union Bay Pres. Coal. v. Cosmos Dev. & Admin. Corp*., 127 Wn.2d 614, 617-18, 902 P.2d 1247, 1249 (1995); *City of Seattle v. Pub. Emp. Rel. Comm'n*, 116 Wn.2d 923, 926, 809 P.2d 1377 (1991). This is especially the case where the attorneys who received copies had no involvement in the underlying administrative proceeding. *Compare*, *Cheek v. Employment Sec. Dep't*, 107 Wn. App. 79, 84-85, 25 P.3d 481 (2001) (where no one from the attorney general's office had appeared for the

Department in any of the administrative proceedings); *with, Matter of Botany Unlimited Design & Supply, LLC,* 198 Wn. App. 90, 96-97, 391 P.3d 605 (2017) (where an assistant attorney general was directly involved in the administrative proceeding). Here, the only attorney of record in administrative proceeding was from the County Prosecuting Attorney's Office who represented the only Respondent Assessor-Treasurer Longeran. App. 0327.

Nonetheless, Mr. Flarity is arguing that he can bootstrap his other claims (both the defeated claims he repeats from his 2020 suit, and his new claims for declaratory relief, tax refunds, and delay damages), to a request for judicial review. And further, he argues this allows him to ignore the APA service requirements, trigger the requirement to file the certified record, and merits interlocutory review by this Court. *See* Mot. to Mod. at 4.

The Commissioner correctly described Mr. Flarity's argument as unpersuasive. Ruling Denying Review at 3. The

APA provides the only authority to obtain judicial review of the Board's decision. RCW 34.05.510; RCW 82.03.180 (judicial review of Board decisions can be obtained only pursuant to RCW 34.05.510 through 34.05.598). And none of Flarity's other claims required the agency to file a certified record similar to RCW 34.05.566. His remaining claims are also properly dismissed *ab initio* for a variety of reasons; including that he may only pursue his claims for relief from a Board decision as a judicial review action under the APA. App. 0574.

Mr. Flarity argues his opening brief at the Court of Appeals is "pointless" if an accurate record cannot be referenced, Mot. to Modify at 5. But, nothing about the decisions below have altered the status quo or substantially limited his freedom to act. Mr. Flarity is on appeal from a motion to dismiss on threshold issues. And the necessary issue which still needs to be resolved by the Court of Appeals is whether dismissal was proper. Judicial review of the contents of the BTA decision is premature.

Mr. Flarity's arguments do not satisfy this Court's requirements for accepting discretionary interlocutory review under RAP 13.4. There was no error, there is nothing irregular, the status quo is he must proceed with his appeal of the dismissal order and he is not substantially limited. This Court should deny his motion for modification of Commissioner Johnston's Ruling denying his motion for discretionary review.

B. The Court Should Deny Modification of Commissioner Johnston's Decision Not to Recuse

The Commissioner also did not err in denying Mr. Flarity's request to recuse. Mr. Flarity did not, in fact, identify any circumstances that cast doubt on the Commissioner's ability to decide the case fairly. Nor was the fact that the Attorney General's Office hired three former Supreme Court law clerks a reason requiring recusal. As the notices state, the former clerks are properly screened from the case in accordance with Rule of Professional Conduct 1.12. And, none of them had worked on this case or on Flarity's prior and unsuccessful motion for discretionary review.

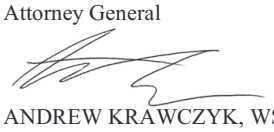
IV. CONCLUSION

In summary, the Commissioner correctly rejected Mr. Flarity's motion for discretionary review. This Court should deny Mr. Flarity's motion to modify that ruling.

This document contains 2,417 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 31st day of August, 2023.

ROBERT W. FERGUSON
Attorney General



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PROOF OF SERVICE

I certify that I electronically filed this document with the Clerk of the Court using the Washington State Appellate Courts' e-file portal and thus served the following:

Joe Flarity
101 FM 946 South
Oakhurst, TX 77359
piercefarmer@yahoo.com

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 31st day of August, 2023, at Tumwater, WA.

Carrie A. Parker

Carrie A. Parker, Legal Assistant

FLARITY FARM

September 11, 2023 - 6:55 AM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	56271-5
Appellate Court Case Title:	Joe Patrick Flarity, Appellant v. Argonaut Insurance Company, et al., Respondents
Superior Court Case Number:	21-2-06124-1

The following documents have been uploaded:

- 562715_Motion_20230911065021D2634771_9015.pdf
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Comments:

Motion to Supplement Flarity's Motion to Modify Ruling as untimely on Motion to Publish. The Supplement is based on the State's Response for 102097-0 with exhibit of 22 pages of their 676 page filing.

Sender Name: Joe Flarity - Email: piercefarmer@yahoo.com
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Filed
Washington State
Court of Appeals
Division Two

July 26, 2023

IN THE COURT OF APPEALS OF THE STATE OF W ASHINGTON

DIVISION II

JOE PARTRICK FLARITY, a marital community, Appellant, v. ARGONAUT INSURANCE COMPANY, SUE TESTO, MARY ROBNETT, PIERCE COUNTY, a municipal corporation, STATE OF WASHINGTON, et al., Respondents.	No. 56271-5-II ORDER DENYING MOTION FOR RECONSIDERATION

Appellant moves for reconsideration of the opinion filed June 13, 2023, in the above entitled matter. Upon consideration, the Court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj: LEE, PRICE, CHE

FOR THE COURT:

PRICE, J.

FILED
Court of Appeals
Division II
State of Washington
7/3/2023 3:10 PM

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

Cause 56271-5: Cause 21-2-02164-1

Joe Patrick Flarity, pro se, a marital community
v.
Argonaut Insurance Company,
Mary Robnett,
Sue Testo,
Pierce County,
State of Washington

MOTION FOR RECONSIDERATION OF UNPUBLISHED OPINION

---

1. PLEADING

Joe Flarity, pro se, henceforth Flarity, Appellant, a marital community, respectfully moves the Panel for Reconsideration of the Unpublished Opinion confirming dismissal per RAP 12.4. All emphasis is added, unless specifically noted. In an abundance of caution of State virus checkers, hot links have been removed. The Panel will need to past them specifically in a Web browser to view.

2. AUTHORITY FOR MOTION

RULE 12.4

MOTIONS FOR RECONSIDERATION OF DECISION TERMINATING REVIEW

(a) Generally. A party may file a motion for reconsideration only of a decision by the judges (1) terminating review...

3. TIME FOR RECONSIDERATION

(b) Time. The party must file the motion for reconsideration within 20 days after the decision the party wants reconsidered is filed in the appellate court.

The Panel's Opinion was issued June 13, 2023. This Motion is filed within the 20 day limit.

4. POINTS OF ERROR

> (c) Content. The motion should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised.

INTRODUCTION

Flarity respectfully requests the Unpublished Opinion be reconsidered and revised to eliminate errors of law and fact such as Div. II recently allowed in *MATTER OF PERSONAL RESTRAINT OF DILKS*, No. 56855-1-II (Wash. Ct. App. Apr. 18, 2023).[1]

1 Div. I uses the term "substituting opinion" in 126 opinions, the most recent being given to the super-law firm Futurewise, *King County v. FRIENDS OF SAMMAMISH VALLEY*, No. 83905-5-I (Wash. Ct. App. June 12, 2023).

ERROR #1—DISCRIMINATION NOT ALLEGED.

The Panel relies on *Bennett v. Hardy*, 784 P.2d 1258 (Wash. 1990) in the Opinion. To recap, twin sisters, Laura and Wanda (Bennett) sued a dentist and his wife (Hardy) for age discrimination even though the legislature specifically granted an exemption for small employers. However, the *Bennett* Panel refused to honor the exemption, citing *legislative intent*. By inclusion of the *Human Rights Commission* in the opinion, the people would view this result as Panel support of the sovereign against the *weakness* of a single dentist, even though wrongful discharge was the deciding factor. Per *Bennett:*

> We hold that a cause of action for **age discrimination** is implied under RCW 49.44.090.
>
> We hold that plaintiff Bennett has met her burden in pleading and proving a stated public policy which may have been contravened by her discharge. She has therefore stated a cause of action for **wrongful discharge under the public policy exception.**

The people can easily recognize that a tort right to wrongful discharge and age discrimination were unknown causes to both the U.S. and State founders.[2] The Panel has here confused a *fundamental principle* with a late coming "especial benefit" **EX-1, P9,** that needed legislative definition to provide a "private cause of action."

2 In a similar groundswell of civil rights in this period, a "private cause of action" for marital rape was provided in 1986 when Washington State made the act illegal.

ARGUMENT

Flarity cannot top the ACLU's DC chapter expressing the power of 42 U.S.C. § 1983 in celebrating its 150th anniversary:[3]

> On April 20, 1871, President Ulysses S. Grant signed one of the most important civil rights laws in U.S. history: the Ku Klux Klan Act. Section 1 of that law – known today as 42 U.S.C. § 1983 – empowers individuals to **sue state and local government officials who violate their federal constitutional rights**.
>
> In D.C., we've used it to challenge unconstitutional arrests and excessive force against demonstrators, failure to protect mental-health hospital patients from exposure to the COVID-19 pandemic, and unreasonable searches of people and property by the police. And we continue to fight to ensure that the law isn't watered down with **made-up immunities**[4] that give a free pass to government officials to violate the Constitution.

Flarity has standing by the resulting damages of "property" losses without due process by the 1st and 14th Amendments. These are "fundamental principle" violations long suffered under King George III with further references to "royalty" by suspicious state founders in which the people were NOT deemed safe after a hundred years of independence from the crown. The state founders went to extraordinary lengths to bolster the State Constitution "to protect and maintain

3 https://www.acludc.org/en/news/happy-150th-anniversary-section-1983

4 *Baxter v. Bracey*, No. 18-1287. "And by letting constitutional wrongs pass without a remedy, it weakens the rule of law itself."

individual rights" in Art. 1, Sec. 1 besides echoing the U.S. Constitution for due process in Art. 1, Sec. 3.[5]

The Opinion gives no citations that remotely address the fundamental principles listed in Flarity's Complaint. And the Panel should remember the case it cited, **EX-1, P9**, *Trucking Associations, Nonprofit Corp. v. State*, 188 Wash. 2D 198, 393 P.3d 761 (Wash. 2017), specifically lists 42 U.S.C. § 1983 as a *private cause of action*, **P19 of Reply**:

> ...the taxpayer is not prohibited from asserting constitutional claims. See Grace Brethren, 457 U.S. at 414, 102 S.Ct. 2498 ; cf. Hillsborough, 326 U.S. at 624-26, 66 S.Ct. 445.

REVIEW OF THE PANEL'S CITATIONS

Swank v. Valley Christian School, 398 P.3d 1108, 188 Wash. 2D 663 (2017)

How is voluntary participation in a football game anywhere close to the founders' understanding of *fundamental principles*? SEE DECLARATION, **EX-2**. Per *Swank*:

> Andrew Swank (Drew) died from complications after contact with another player during a high school football game. Drew's parents sued Drew's school, the football coach, and Drew's doctor on behalf of his estate and individually.

---

5 P43 of Flarity's Brief: *Andersen v. King County*, 138 P.3d 963, 158 Wn.2d 1 (Wash. 2006):

...and the "presence of powerful corporations in Washington was often at the root of the governmental corruption." Snure, 67 WASH. L. REV. at 671. The history underlying our privileges and immunities clause is not the same as Oregon's.

Nakata v. Blue Bird, Inc., 191 P.3d 900, 146 Wash. App. 267 (Ct. App. 2008)

After over a half year of futile searches, Ms. Elsie Nakata, President of Nakata Orchards, failed to find records that supported charges she had been wronged when Blue Bird took over distribution of her fruit from Skookum, Inc. Per *Nakata*:

> The trial court summarily dismissed the suit after ordering the cooperative to produce records and respond to other discovery requests. We conclude that the court did not abuse its discretion by limiting discovery and refusing to allow the plaintiff to amend her complaint.
>
> The trial court granted Ms. Nakata's motion to compel, with some restrictions….The court also gave Ms. Nakata **90 days to complete discovery but later extended the deadline by an additional 80 days.**

This case in no way illustrates proper dismissal of Flarity's claim by CR12—with Flarity getting no discovery—which was likely to show culpability by all defendants.

The Panel should reissue the Opinion with appropriate citations that defeat a 1st Amendment *fundamental principle* to any review whatsoever by strict scrutiny analysis.

ERROR #2—MAINTAINING OPEN SPACES

EX-1, P10:

> Moreover, a private cause of action would not be consistent with the underlying purpose of the legislation, which is to maintain open space lands. RCW 84.34.010.

The Panel has this completely backward. Flarity is here to return his farm to agricultural status and preserve open spaces for the benefit of wildlife and the public as the legislature intended. It was Sue Testo who removed ALL the property from farm status against Flarity's express intent, which the Panel noted, **EX-1, P2**, citing **CP at 54**. This fundamental error should be corrected.

Keep in mind that given 5 years of opportunity, no Declaration has been made by any defendant that Flarity's land is no longer agricultural. The barn was constructed to shelter farm equipment and hay. The RV was used for temporary housing for construction personal building the barn —Flarity—and was removed when construction was completed. Per **Flarity's Brief, P37** for proof of aggressive farm destruction by Pierce County:

> *Future Wise* noted Pierce County is a leading agent of these tactics: **CP87**
>
> Between 1992 and 2012, Pierce County lost 9,267 acres of its land in farms, an area larger than the City of Puyallup and the Town of Roy combined. One of the reasons for this loss of productive farmland is that Pierce County has dramatically reduced its protections that conserve farmland. In Washington state, all counties have to designate their most productive agricultural lands.

It is Pierce County that violated "legislative intent." This point needs to be made clear in the opinion.

ERROR #3—ADDRESS THE DECLARATION PROVIDED

EX-1, P8:

> ...Flarity has failed to present an affidavit or other proof that would support any of the four grounds to change venue in RCW 4.12.030.

By court practice, an unchallenged Declaration stands as fact. A challenge would indicate a dispute of facts and a reason that CR12 dismissal is not appropriate. Established Declaration practice presents a legitimate legal reason that no counter was filed to the Court.

ARGUMENT

When the court simply ignores Flarity's Declarations, a challenge is not necessary. The obvious error should be corrected and the Declaration addressed, otherwise it gives the appearance of prejudice. It was filed with the Motion to Change Venue, **CP158-172**, and clearly referenced in Flarity's Brief and Reply: From Flarity's Brief, P26:

> In **VRP 9-19-21, p30**, the AG has referenced Flarity's Declaration in which an email is provided showing DOR collusion in hearing denials as State policy. The AG disputes the accuracy of the Declaration—but provides no Declaration in response. By precedent, Flarity's Declaration stands as fact until disapproved. But even if denied, per *Christensen v. Swedish Hospital,* denial of facts is NOT suitable to dismiss a cause by Rule 12(c).

P28-30 of Flarity's Reply:

Supplemental EX A to the Motion to Vacate AIC Dismissal Order. CP 273-293. Flarity in the oral argument, VRP 9-10-22, P19:

...and AIC didn't even appear in King County and deny the fact that they are residents, you would think that we would still be in King County.

THE COURT: Okay.

...

Per **VRP 9-10-21, P16**:

MR. FLARITY : This involves the BOE. And the clerk of the superior court, which I understand is Kevin Stock --

THE COURT: Yes.

MR. FLARITY: -- is involved in oversight of the BOE. And I don't see that that's allowed by law. That's a commingling of two different functions. The BOE is the administrative branch, and by law, the prosecutor is the oversight for the BOE. But apparently, in Pierce County, that's not done. It's the clerk.

And there is quite likely -- and I have filed that in declaration one, this is information that was unknown to me. It was given to me by Dan Roach's secretary, Tammi Lewis at the time. And I filed that and I said well, there's a conflict here. And I sent them a letter.

In recent 83010-4-I, Div. I gave an excellent class on suspect Declarations:

(1) Cases in which the principle is recited but not applied;

> (2) Cases in which an ultimate fact at issue (e.g., due diligence,reasonableness) is unsupported by predicate facts; and
>
> (3) Cases applying the notion based on the prudential concern of not rewarding perjury or false swearing at the expense of the integrity of the courts.

Flarity's Declarations are unchallenged and give facts properly applied per 83010-4-I. The Panel should give Flarity equal standing and accept the unchallenged Declarations as fact. This error should be corrected in a new Order.

ERROR #4—JUSTIFY OVERTURNING FEDERAL PRECEDENT

Per footnote 2 of Opinion:

> ...he provides no assignment of error to King County Superior Court decision nor does he provide argument or citation regarding the King County Superior Court decision. Accordingly, we do not review the King County Superior Court decision transferring the case to Pierce County Superior Court.

ARGUMENT

The King County error was proven and presented to the Panel on **P80** of Flarity's **Reply**. By bringing up King County as the proper venue in the Response, defendants opened the door. This is well recognized across the Federal Districts with thousands of citations documented.[6] If the Panel does not think the case Flarity cited in the **Reply**, *US v. Ullah,* 976 F.2d 509 (9th Cir. 1992), is the proper precedent, there are

6 https://scholar.google.com/scholar?q=%22raised+in+the+appellee%27s+brief%22&hl=en&as_sdt=3,247,248&scilib=1&scioq=%22raised+in+the+appellee%27s+brief%22

newer ones: *Etemadi v. Garland*, 12 F.4th 1013 (9th Cir. 2021). There are also local ones, *Ms. S. Ex Rel. G. v. Vashon Island School Dist.*, 337 F.3d 1115 (9th Cir. 2003). Some give a better definition of the reasoning, *State of Louisiana v. Biden*, 45 F.4th 841 (5th Cir. 2022):

> Although we typically do not entertain arguments raised for the first time in a reply brief, we will when a new issue is raised in the appellee's brief **and the appellant responds in the reply brief.** This avoids the unfairness of the situation when "an appellant raises a completely new issue in its reply brief, disadvantaging the appellee…

GREAT WEIGHT TO FEDERAL DUE PROCESS

2130 references are listed showing "great weight" given to Federal Due Process definitions in Washington appellate courts, with 943 in the Supreme Court.[7] Flarity cites the top case: *Rozner v. City of Bellevue*, 804 P.2d 24, 116 Wash. 2D 342 (1991).

Per *In re Troupe*, 423 P.3d 878 (Wash. App. 2018), CP175, from P26 of Flarity's Brief:

> ... [P]erhaps the most important factor affecting the clarity that the Constitution **demands of a law is whether it threatens to inhibit the exercise of constitutionally protected rights.**

Defendants wanted this issue examined--or they would not have brought it to the Panel's attention. The people should be informed

7 https://scholar.google.com/scholar?hl=en&as_sdt=4%2C248&q=great+weight+and+due+process&btnG=

specifically if the Panel intends to overturn Federal and State precedents for issues raised by Defendants to which an appellant addresses in their Reply.

5. "NO JEWS OR DOGS,"[8] THE POWER OF DISSENT

The Honorable Judge Jon Newman is the author of the viability-line used in *Roe v. Wade*, 410 U.S. 113 (1973), and is still an active on the 2nd Circuit:[9]

> It's not up to courts to make moral decisions in a case. **We are not the clergy**. I am obliged to interpret the Constitution. Whatever our views of morality is, we ought not to impose them on others.
>
> ...when any judge decides a case, you decide it based on the record….judges have to pick lines. That's what judges do.

From the 13 page Unpublished Opinion, it seems somebody at Div. II has carefully studied Flarity's record. Since *Swank* has been referenced to confirm, that brings a similar local case to mind, *Kennedy v. Bremerton School District*, 597 U.S. ___ (2022). In the dissent, Justice Sotomayor noted that Justice Gorsuch made up facts to reach the conclusion. She including photographs as proof, which is rare. By inventing facts, the dissent established a record the Opinion was a result of prejudice, a "clerical" rather than a legal decision expanding 1st

8 J. Sotomayor in dissent, *303 CREATIVE LLC ET AL. v. ELENIS*, No. 21–476

9 From interview https://www.wnycstudios.org/podcasts/radiolabmoreperfect/episodes/part-1-viability-line

Amendment Rights into the realm of the prohibited “official” religion. Justice Gorsuch, a proponent of Constitutional “originalism,” seems to have forgotten the Christian founders included the clause because they wanted protection from other Christians.

In *303 CREATIVE LLC ET AL. v. ELENIS*, No. 21–476, a similar moral decision is rendered by Justice Gorsuch protecting free speech. The Panel may note that the Opinion spent considerable effort defending its ruling from the dissent, emphasis original:

> If anything is truly dispiriting here, it is the dissent’s failure to take seriously this Court’s enduring commitment to protecting the speech rights of all comers, no matter how controversial—or even repugnant—many may find the message at hand….Perhaps the dissent finds these possibilities untroubling because it trusts state governments to coerce only “enlightened” speech. But if that is the calculation, it is a dangerous one indeed….A commitment to speech for only *some* messages and *some* persons is no commitment at all.

While the opinion is legally sound, it is in fact protecting a business with ZERO standing. Justice Sotomayor:

> 303 Creative has never sold wedding websites. Smith now believes, however, that “God is calling her ‘to explain His true story about marriage….Colorado, therefore, has never enforce its antidiscrimination laws against the company.

Acceptance by SCOTUS was itself an indication of prejudice with the outcome predetermined. More in dissent:

> When the civil rights and women’s rights movements sought equality in public life, some public establishments refused. Some even claimed, based on **sincere religious beliefs,**

> **constitutional rights to discriminate**. The brave Justices who once sat on this Court decisively rejected those claims.
>
> Our Constitution contains no right to refuse service to a disfavored group….All the more so if the group is small in number or if discrimination against the group is widespread….**it is the humiliation, frustration, and embarrassment that a person must surely feel when he is told that he is unacceptable** as a member of the public because of his [social identity]...This ostracism, this otherness, is among the **most distressing feelings that can be felt by our social species**. K. Williams, Ostracism, 58 Ann. Rev. Psychology 425, 432–435 (2007).
>
> And time and again, this Court has courageously stood up to those claims [right to discriminate]—until today. Today, the Court shrinks….I dissent.

Flarity's record demonstrates a fundamental 1st Amendment Rights case asking for damages/injunctions for a denied right to a hearing long protected in common law. Flarity has been humiliated--with further sanctions pending--for simply asking for the right to be heard per Art. 1, Sec. 32 on a *Fundamental Principle*. That the Cause has been perverted into a game of football, *Swank*, filed Declarations ignored, Flarity's Rely ignored, and the legislative intent to preserve farmland similarity perverted, should give the people an overwhelming sense the outcome was predestined, like *303 Creative*, except that SCOTUS, by evidence given to the Panel by the unanimous Supplemental *AXON ENTERPRISE V. FTC*, No. 21-86, would easily condemn this decision as it currently written.

Unfortunately, acceptance by either the Washington State Supreme Court or SCOTUS for a pro se plaintiff is the equivalent of a lottery bet.

Flarity asks that a single judge show "judicial bravery" and independence as demonstrated by Justice Sotomayor and Justice McCloud[10] by providing a dissent of an obviously incorrect legal opinion destroying the people's standing and right to a jury trial. No matter how "repugnant" the Panel may view a pro se Plaintiff seeking to check official misconduct, it is "a dangerous path indeed" to select any class of plaintiff for coercion of the right to be heard.

6. CONCLUSION

The Opinion should be reissued with citations that deny Fundamental Principles, not employer discrimination against against the "weakness" of a single dentist by a Panel leveraging the "power of the sovereign."[11]

But better, the Panel could simply remand to King County as Flarity has previously requested, **EX-3** and also showed in the Reply as a correct forum. John Rawls, *A Theory Of Justice*, P4:

> ...the rights secured by justice are not subject to political bargaining or to the calculus of social interests.

Flarity respectfully requests Div. II restore faith in judicial independence by preserving the rule of law for "all the people."

10 *QUINN V. STATE*, NO. 100769-8

11 *Briedablik, Big Valley, Lofall, Edgewater, Surfrest, North End Community Ass'n v. Kitsap County*, 652 P.2d 383, 33 Wn.App. 108 (Wash. App. 1982), *Snyder v. Ingram*, 48 Wn.2d 637, 639, 296 P.2d 305 (1956)

CERTIFICATION OF SERVICE. All defendants are served electronically by courts.wa.gov.

CERTIFICATION OF WORD LIMIT. The Word Count is 3293 words and is within the limit of rule 18.17 of 6000 words excluding cover sheets and tables.

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 RAP 10 to the best of my knowledge for this Motion.

Date of Signing: July 3, 2023
Signature of plaintiff: /s/ Joe Flarity

JOE PATRICK FLARITY
101 FM 946 S
Oakhurst, TX 77359
253-951-9981

Filed
Washington State
Court of Appeals
Division Two

June 13, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JOE PATRICK FLARITY, a marital community, Appellant, v. ARGONAUT INSURANCE COMPANY, SUE TESTO, MARY ROBNETT, PIERCE COUNTY, a municipal corporation, STATE OF WASHINGTON, et al., Respondents.	No. 56271-5-II UNPUBLISHED OPINION

PRICE, J. — Joe P. Flarity appeals the superior court's order dismissing his complaint against Argonaut Insurance Company (Argonaut), the State of Washington, and Sue Testo, Mary Robnett, and Pierce County (collectively Pierce County). Flarity argues that the superior court erred by denying his motion to change venue. Flarity also argues that the trial court erred by dismissing his claims. We affirm.

FACTS

Flarity owned two parcels of real property in Pierce County that had been receiving the benefit of a reduced tax value from the county's Farm & Agricultural Tax Program. In July 2017, Sue Testo of the Pierce County Office of the Assessor-Treasurer sent Flarity a letter informing him that an appraiser from her department notified her that it appeared a house was being built on one of Flarity's parcels and a person was residing in a trailer on Flarity's other parcel. Because this would potentially disqualify his property from the farm tax program, Testo included action items

that needed to be resolved in order for Flarity to continue to receive a tax benefit under the program. Flarity responded with a one-page letter denying he spoke to anyone at his property, suggesting that a transcript should be provided of the assessor's activities on his property, and stating that he had "zero interest in withdrawing any portion from my farm agreement." Clerk's Paper (CP) at 54.

On August 31, Testo sent Flarity another letter stating that because Flarity had not provided the necessary information she had requested in her July letter, she was sending a "Notice of Removal." CP at 55. Testo encouraged Flarity to contact her to discuss the issues regarding the property. The Notice of Removal sent with the letter noted the reason for the change in designation as "[f]ailure to provide requested information for continued eligibility." CP at 56, 58. The Notice of Removal also included instructions on how to appeal to the County Board of Equalization (Board).

On September 19, Flarity responded to Testo's letter. Objecting to the potential removal of his property from the program, Flarity asserted the removal was not legally permissible and provided the following information: "**All the land and buildings are farm related on the two parcels.**" CP at 62.

On September 27, Testo sent Flarity a letter offering to meet with him to resolve the outstanding issues regarding the information needed for the property to remain under the farm tax program. Testo stated that if Flarity did not meet with her to resolve the outstanding issues the property would have to be removed from the farm tax program.

Sometime between November 28 and December 4, Flarity sent a petition to the Board requesting an extension of the time limit for filing the petition.[1] Flarity explained that his petition was delayed because he had property in Texas damaged by Hurricane Harvey, his father-in-law had a stroke, and he had received misinformation from employees of the Board, specifically Testo.

The Board denied the request. The Board noted that, because Pierce County had adopted a 60-day appeal period, Flarity had until October 30 to appeal the August 31 Notice of Removal. The Board explained its rationale for determining that none of Flarity's explanations for the delay justified an extension. Flarity attempted to appeal the determination with multiple filings at the Washington State Board of Tax Appeals, all of which were rejected.

On November 3, 2020, Flarity filed a complaint for damages and declaratory judgment in King County Superior Court against the State, Pierce County, and Argonaut based on allegations that the unconstitutional change in the status of his property caused him damages.[2] Later, Flarity amended his complaint. The amended complaint alleged three claims:

COUNT 1
Claim for Violation of Due Process
for Removal from Farm Status
(against all defendants)

> 5. Washington State Constitution, Article 1, SECTION 3 PERSONAL RIGHTS. *No person shall be deprived of life, liberty, or property, without due*

[1] The letter is dated November 28; however it contains no post mark or date stamp. Documents from the Board indicate the letter was not actually mailed until December 4.

[2] Flarity originally filed this action in King County Superior Court. King County Superior Court granted a change of venue and transferred the case to Pierce County Superior Court. Although Flarity asserts that the case was properly filed in King County Superior Court, he provides no assignment of error to the King County Superior Court decision nor does he provide argument or citation regarding the King County Superior Court decision. Accordingly, we do not review the King County Superior Court's decision transferring the case to Pierce County Superior Court.

process of law. Government enforcement agent, Sue Testo, with assistance from the Pierce County Board of Equalization (hereafter BOE), Prosecutor Robnett, and Washington State Department of Revenue (hereafter DOR) did remove Flarity's farm status at significant personal cost effectively ending Flarity's ability to farm the property and forcing Flarity to restructure the property for sale as "best use" with no hearing. This action was in violation of RCW 84.34.320, RCW 84.34.370, RCW 84.34.108 and most significantly, RCW 84.34.300 which contains specific warnings pertaining to farmland removal. Flarity's intent to preserve farm status was made clear to Sue Testo in several letters from 2017. SEE EXHBIT 1.

CONSTITUTIONAL CHALLENGE

COUNT 2
Claim for Substantive Due Process
Violation by Unconstitutional Statutes
WAC 458-14-056 and RCW 84.40.038

6. WAC 458-14-056, with emphasis added, is as follows:

(3) Late filing of petition – Waiver of filing deadline. No late filing of a petition will be allowed except as provided in this sub-section. The board **may** waive the filing deadline if the petition is filed within a reasonable time after the filing deadline and the petitioner shows good cause, as defined in this subsection, for the late filing. . . . **The board's decision regarding a waiver of the filing deadline is final and not appealable to the state board of tax appeals. . . .**

7. *Vagueness doctrine:* (a) *fair notice as to what conduct is allowed or proscribed.* (b) *sufficient detail to prevent arbitrary enforcement.* These statutes are unconstitutional on their face because "may" ALWAYS forces obeisance on even the most compelling petitions. The DOR recognizes the arbitrary nature of these statutes and encouraged the BOE to reject all petitions for waiver as a standard process. The only *compelling state interest* in these statutes is the predatory collection of taxes at the expense of a small number of taxpayers often suffering very difficult circumstances.

8. The people come forward in good faith, forced to expose their personal records to the public with the expectation that the BOE will likewise consider their waivers for delay in good faith, not understanding that "may" in the statute always means NO by pattern and practice in Pierce County. This is a live issue as the illegal practice is ongoing in Pierce County.

COUNT 3: Civil Rights Tort Claims are liable to the Argonaut Insurance Company

> 9. Flarity alleges that there is a bad faith agreement corrupting official behavior at work in Pierce County. The Argonaut Insurance Company knew or should have known that tens of millions of taxpayer dollars for civil rights violations of which they were liable was instead being sneaked onto Pierce County taxpayers. SEE EXHBIT 2. The people paid them about $306,000 of yearly premiums which is about what a small city (like Duvall or Buckley) pays for liability insurance. Despite these suspiciously low premiums, Argonaut should honor their contract for civil rights violations. Public insurers have a moral and legal responsibility for oversight of the officials. Argonaut has bre[a]ched its duty, contributing to Pierce County's pattern and practice of civil rights violations. This failure was an intentional, or negligent tort, by strict or implied liability.

CP at 38-40 (footnote omitted).

On July 2, 2021, Argonaut filed a CR 12(c) motion to dismiss. The same day, Pierce County also filed a CR 12(b)(6) motion to dismiss. On July 19, Flarity filed a notice that he was unavailable from July 19 until August 15 because his parents were visiting for a vacation. Flarity did not file any responses to Argonaut's or Pierce County's motions to dismiss. The superior court granted both motions to dismiss.

On August 9, 2021, Flarity filed a motion for a change of venue. Flarity also filed motions to vacate the orders dismissing his claims against Argonaut and Pierce County. On August 11, the State filed its own motion to dismiss based on CR 12(b)(6) and CR 12(c). The superior court heard all motions on September 10.

At the September 10 hearing, the superior court denied the motion to change venue. The superior court also granted the State's motion to dismiss.[3] However, rather than deny Flarity's

[3] The superior court later denied Flarity's motion to reconsider the order granting the State's motion to dismiss.

motions to vacate the dismissals, the superior court reset consideration of Flarity's motions to September 24 to allow Flarity the opportunity to submit additional briefing in response to Argonaut's and Pierce County's motions to dismiss. On September 24, the superior court denied Flarity's motions to vacate and affirmed the dismissal of his claims.

Flarity appeals.[4]

[4] After the close of briefing but prior to oral argument, Flarity filed numerous additional authorities with this court:

- Motion to Include Supplemental Authority Meredith v. State, No. 100135-5 (Mar. 27, 2023)
- Motion to Include Supplemental Authority Wilkins v. U.S. (Mar. 31, 2023)
- Motion to Include Supplemental Authority Quinn v. State, No. 100769-8 (Apr. 10, 2023)
- Motion to Include Supplemental Authority Idaho House Bill 242 Planned Parenthood v. Labrador, 1:23-cv-00142-DKG (Apr. 17, 2023)
- Motion to Include Supplemental Authority Martinez v. Anderson County 6:22-cv-171-JCB-KNM (Apr. 17, 2023)
- Motion to Include Supplemental Authority Evenson-Childs v. Ravalli County cv-21-89-M-DLC-KLD (Apr. 17, 2023)
- Motion to Include Supplemental Authority Tyler v. Hennepin County, MN et. al (Apr. 28, 2023)
- Motion to Include Supplemental Authority Harper v. Hall, No. 413PA21-2 (May 2, 2023)
- Motion to Include Supplemental Authority Axon Enterprise v. FTC, No. 21-86 SEC v. Michelle Cochran, No. 21-1239 (May 8, 2023)

The Respondents filed objections to some of these additional authorities, questioning their compliance with the rules. State of Washington's Objection to Appellant's Motion to Include Supplemental Authority (Apr. 11, 2023); State of Washington's Objection to Appellant's Motion to Include Supplemental Authority (*Tyler v. Hennepin County, MINN.*) (May 1, 2023). Although we decline to strike these additional authorities, we note they did not have any substantive effect on our decision.

ANALYSIS

Flarity argues that the superior court erred by denying his motion to change venue. Flarity also argues that the trial court erred by dismissing his claims. We affirm.[5]

I. MOTION TO CHANGE VENUE

Flarity argues that the superior court erred by denying his motion to change venue from Pierce County to a neighboring county based on RCW 36.01.050. We disagree.

We review a superior court's decision on a motion to change venue for a manifest abuse of discretion. *Unger v. Cauchon*, 118 Wn. App. 165, 170, 73 P.3d 1005 (2003). A manifest abuse of discretion occurs "when no reasonable person would adopt the trial court's position." *Id.*

RCW 36.01.050(1) provides:

> All actions against any county may be commenced in the superior court of such county, or in the superior court of either of the two nearest judicial districts. All actions by any county shall be commenced in the superior court of the county in which the defendant resides, or in either of the two judicial districts nearest to the county bringing the action.

But RCW 36.01.050 is not the only statute which addresses venue. RCW 4.12.020 provides:

[5] At oral argument, Flarity appeared remotely by Zoom while other parties appeared in person. Flarity questioned whether the court rules required all parties to appear via Zoom when one party requested to appear remotely and suggested that it was improper for the other parties to appear in the courtroom when he was appearing remotely.

However, the protocols for oral argument at Division II provide, "For Judicial Panel oral arguments, those participants who have requested to do so will appear virtually, while those who have not will appear in the courtroom." WASH. STATE CT. OF APPEALS, DIV. TWO, ORAL ARGUMENT PROTOCOLS AND ADDITIONAL INFORMATION (undated), https://www.courts.wa.gov/appellate_trial_courts/div2/pdf/COA2%20Oral%20Argument%20Courtroom%20Protocols.pdf [https://perma.cc/6VSD-TP35]. Flarity was the only party to request a virtual appearance, and therefore, was the only party to appear remotely. (We note that Division II has different protocols for its commissioner hearings.)

> Actions for the following causes shall be tried in the county where the cause, or some part thereof, arose . . . (3) For the recovery of damages for injuries to the person or for injury to personal property, the plaintiff shall have the option of suing either in the county in which the cause of action or some part thereof arose, or in the county in which the defendant resides, or if there be more than one defendant, where some one of the defendants resides, at the time of the commencement of the action.

And RCW 4.12.030 addresses the grounds that authorize a change of venue:

> The court may, on motion, in the following cases, change the place of trial when it appears by affidavit, or other satisfactory proof:
>
> (1) That the county designated in the complaint is not the proper county; or,
>
> (2) That there is reason to believe that an impartial trial cannot be had therein; or,
>
> (3) That the convenience of witnesses or the ends of justice would be forwarded by the change; or,
>
> (4) That from any cause the judge is disqualified; which disqualification exists in either of the following cases: In an action or proceeding to which he or she is a party, or in which he or she is interested; when he or she is related to either party by consanguinity or affinity, within the third degree; when he or she has been of counsel for either party in the action or proceeding.

Here, nothing in RCW 36.01.050 requires that this case be transferred out of Pierce County. And under RCW 4.12.025, Pierce County is presumptively the correct county for the cause of action because the property at issue and all the actions that gave rise to Flarity's cause of action occurred in Pierce County. Finally, Flarity has failed to present an affidavit or other proof that would support any of the four grounds to change venue in RCW 4.12.030. Flarity's conclusory, unsupported claim that he could not receive a fair trial in Pierce County is insufficient to warrant a change of venue.

Because there was no evidence supporting a change of venue, the superior court did not abuse its discretion in denying Flarity's motion. Accordingly, we affirm the superior court's order denying Flarity's motion for a change of venue.

II. MOTIONS TO DISMISS

Flarity brought three claims in his complaint: (1) a claim for damages for the removal of farm status against all three defendants, (2) a claim that RCW 84.40.038 is unconstitutionally vague, and (3) a claim that Argonaut is liable for paying civil rights claims paid by Pierce County. Flarity argues that the superior court erred by dismissing all three of Flarity's claims. We disagree.

We review dismissals under CR 12(b)(6) and CR 12(c) de novo. *Wash. Trucking Assoc. v. Emp. Sec. Dep't*, 188 Wn.2d 198, 207, 393 P.3d 761, *cert. denied*, 138 S. Ct. 261 (2017). " 'We treat a CR 12(c) motion . . . identically to a CR 12(b)(6) motion.' " *Id.* (alteration in original) (quoting *P.E. Sys., LLC v. CPI Corp.*, 176 Wn.2d 198, 203, 289 P.3d 638 (2012)). "Dismissal under either subsection is 'appropriate only when it appears beyond doubt' that the plaintiff cannot prove any set of facts that 'would justify recovery.' " *Id.* (quoting *San Juan County v. No New Gas Tax*, 160 Wn.2d 141, 164, 157 P.3d 831 (2007)); *P.E. Sys.*, 176 Wn.2d at 210.

A. DISMISSAL OF CLAIM FOR REMOVAL OF FARM STATUS

Flarity's first claim was against all defendants for damages related to the loss of farm status on his property. Flarity alleged that all defendants violated multiple statutes when removing the farm status from his property. But because Flarity fails to establish that any referenced statute creates a private cause of action, the superior court properly dismissed this claim.

In order to determine whether a statute creates an implied cause of action, we apply the test from *Bennett v. Hardy*, 113 Wn.2d 912, 784 P.2d 1258 (1990). *Swank v. Valley Christian Sch.*, 188 Wn.2d 663, 675, 398 P.3d 1108 (2017) (confirming the use of the *Bennet* test in subsequent cases). *Bennet* established a three-part test: "first, whether the plaintiff is within the class for whose 'especial' benefit the statute was enacted; second, whether legislative intent, explicitly or

implicitly, supports creating or denying a remedy; and third, whether implying a remedy is consistent with the underlying purpose of the legislation." 113 Wn.2d at 920-21.

Flarity alleges Testo violated RCW 84.34.030, RCW 84.34.108, RCW 84.34.320, and 84.34.370 but offers no explanation or argument establishing that any of these statutes create a private cause of action. Nothing in any of the cited statutes indicates that the legislature intended to create a private cause of action for violation of the statutes cited by Flarity. Moreover, a private cause of action would not be consistent with the underlying purpose of the legislation, which is to maintain open space lands. RCW 84.34.010.

Because Flarity has failed to show that the statutes he references create a private cause of action, there are no set of facts that would entitle Flarity to relief for this claim. Therefore, the superior court properly granted all the defendants' motions to dismiss Flarity's claim for damages.

B. DISMISSAL OF CLAIM FOR UNCONSTITUTIONALITY OF RCW 84.40.038 AGAINST THE STATE

Flarity's second claim against the State alleged that RCW 84.40.038 and its corresponding administrative rule, WAC 458-14-056,[6] are unconstitutionally vague. The superior court properly dismissed this claim.

"Statutes are presumed to be constitutional, and the party asserting that a statute is unconstitutionally vague must prove its vagueness beyond a reasonable doubt." *State v. Evergreen Freedom Found.*, 192 Wn.2d 782, 796, 432 P.3d 805, *cert. denied*, 139 S. Ct. 2647 (2019). " 'A statute is vague if either it fails to define the offense with sufficient precision that a person of ordinary intelligence can understand it, or if it does not provide standards sufficiently specific to

[6] WAC 458-14-056 mirrors the language of RCW 84.40.038. Accordingly, we do not address WAC 458-14-056 separately from RCW 84.40.038.

prevent arbitrary enforcement.' " *State v. Yishmael*, 195 Wn.2d 155, 176, 456 P.3d 1172 (2020) (quoting *State v. Eckblad*, 152 Wn.2d 515, 518, 98 P.3d 1184 (2004)).

RCW 84.40.038(1) sets the time limit for filing petitions with the county board of equalization. And RCW 84.40.038(2) provides when the board of equalization may waive the filing deadline:

> The board of equalization may waive the filing deadline if the petition is filed within a reasonable time after the filing deadline and the petitioner shows good cause for the late filing. However, the board of equalization must waive the filing deadline for the circumstance described under (f) of this subsection if the petition is filed within a reasonable time after the filing deadline. The decision of the board of equalization regarding a waiver of the filing deadline is final and not appealable under RCW 84.08.130. Good cause may be shown by one or more of the following events or circumstances:
>
> (a) Death or serious illness of the taxpayer or his or her immediate family;
>
> (b) The taxpayer was absent from the address where the taxpayer normally receives the assessment or value change notice, was absent for more than fifteen days of the days allowed in subsection (1) of this section before the filing deadline, and the filing deadline is after July 1;
>
> (c) Incorrect written advice regarding filing requirements received from board of equalization staff, county assessor's staff, or staff of the property tax advisor designated under RCW 84.48.140;
>
> (d) Natural disaster such as flood or earthquake;
>
> (e) Delay or loss related to the delivery of the petition by the postal service, and documented by the postal service;
>
> (f) The taxpayer was not sent a revaluation notice under RCW 84.40.045 for the current assessment year and the taxpayer can demonstrate both of the following:
>
> (i) The taxpayer's property value did not change from the previous year; and
>
> (ii) The taxpayer's property is located in an area revalued by the assessor for the current assessment year; or
>
> (g) Other circumstances as the department may provide by rule.

Flarity asserts that the statute fails to provide standards to prevent arbitrary enforcement. However, the plain language of the statute clearly contains standards for determining whether good cause is established by providing specific, enumerated grounds that qualify as good cause. Therefore, as a matter of law, RCW 84.40.038 is not unconstitutionally vague. Accordingly, the superior court properly granted the State's motion to dismiss Flarity's claim that RCW 84.40.038 is unconstitutionally vague.

C. CLAIM AGAINST ARGONAUT

Finally, Flarity claimed that Argonaut is liable for civil rights claims that were actually paid by Pierce County taxpayers. Flarity has failed to establish that such a cause of action exists.

Flarity has alleged nothing more than that Argonaut is Pierce County's insurance company. He has provided no factual or legal basis for his contention that an individual taxpayer has a claim against a county's insurance company for sums the individual taxpayer believes the insurance company, rather than the taxpayers, should have paid. Further, we have found no legal basis for such a claim.

Because Flarity's claim against Argonaut insurance company has no legal basis, there is no set of facts that would entitle Flarity to relief for such a claim. Accordingly, the superior court properly granted Argonaut's motion to dismiss Flarity's claim that it is liable for civil rights torts claims.

CONCLUSION

The superior court did not abuse its discretion by denying Flarity's motion to change venue. Further, the superior court properly dismissed all of Flarity's claims. Accordingly, we affirm the superior court's orders.[7]

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

PRICE, J.

We concur:

J.J., P.J.

CHE, J.

[7] Flarity also argues that the superior court's orders should be reversed because they were obtained by trial irregularities and that we should remand this case to allow him to amend his complaint to remedy any deficiencies. However, because Flarity's complaint failed to allege any legal cause of action, dismissal of his complaint was proper. Moreover, although Argonaut and Pierce County obtained the initial dismissal without a response from Flarity, the superior court ultimately allowed Flarity to present briefing and argument on the motions to dismiss by extending the date for consideration of his motions to vacate until September 24 and inviting additional briefing. And because Flarity has failed to allege any legal cause of action, remand to amend his complaint would be futile. *Nakata v. Blue Bird, Inc.*, 146 Wn. App. 267, 278, 191 P.3d 900 (2008), *review denied*, 165 Wn.2d 1033 (2009).

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

Cause 56271-5: Cause 21-2-02164-1

Joe Patrick Flarity, pro se, a marital community
v.
Argonaut Insurance Company,
Mary Robnett,
Sue Testo,
Pierce County,
State of Washington

DECLARATION IN SUPPORT OF RECONSIDERATION

***Swank v. Valley Christian School*, 398 P.3d 1108, 188 Wash. 2d 663 (2017).**

I, Joe Patrick Flarity, Certify or Declare per RCW 9A.72.085 that the following is true under penalty of perjury. I am over 18 years of age and of sound mind and relate the following as relevant to the inappropriate case cited against Flarity in confirmation of dismissal:

I have no knowledge of what agreement Drew Swank's parents signed in the 2007 football season at a private school, but I do have personal knowledge of the agreements required at Buckley High School in 2001. Since football is regulated by the WIAA, I assume the requirements are similar at all schools, private or public.[1]

We have two sons hardened by years of physical labor on our farm in Buckley, Washington and a family legacy of high school football support. The oldest son returned from school with a large packet of forms to sign before play could proceed.

I instructed our son to read the package and show me where to sign. He quickly pointed out the bold print, DEATH OR SERIOUS INJURY IS LIKELY and asked why I would compel him to engage in a sport where death was LIKELY?

I assumed the language was overblown boilerplate legal jargon to avoid lawsuits and unrealistic. But I investigated by talking to the team doctor and a local chiropractor. The investigation revealed that two students (still at school) had been permanently injured playing football and one

1 https://wiaa.com/subcontent.aspx?SecID=312

had recently died of acetaminophen poisoning trying to recover from football injuries.

The children were enrolled in cross-country instead of football. *Swank* was properly dismissed.

I Declare per RCW 9A.72.085 that the following is true under penalty of perjury.

Date of Signing: July 3, 2023

Signature: Joe Patrick Flarity

Joe Patrick Flarity

JOE PATRICK FLARITY
101 FM 946 S
Oakhurst, TX 77359
253-951-9981

FILED
Court of Appeals
Division II
State of Washington
2/27/2023 1:56 PM

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

Cause 56271-5: Cause 21-2-02164-1

Joe Patrick Flarity, pro se, a marital community
v.
Argonaut Insurance Company,
Mary Robnett,
Sue Testo,
Pierce County,
State of Washington

MOTION TO TRANSFER

TO DIVISION ONE

---

1. IDENTITY OF PETITIONER

Joe Flarity, pro se, henceforth Flarity, Appellant, a marital community, provides the following:

101 FM 946 S

Oakhurst, TX 77359

253-951-9981

piercefarmer@yahoo.com

2. DECISION TO REVIEW

TRANSFER OF VENUE TO PIERCE COUNTY. In 20-2-16139-0, the Honorable Judge Spector transferred the case to Pierce County when she had jurisdiction of Bermuda based AIC receiving cash in the sum of millions through SIX insurance agents in King County. No oral argument was allowed and Judge Spector gave the minimum possible specificity when she endorsed Pierce County's proposed Orders. These decisions are well documented in Flarity's Brief and Reply.

In a rare of moment of legal weakness, DPA Hamilton failed to specify in his proposed Order if the transfer was for the "convenience of the witnesses" or a required venue per the RCW 36.01.050. Division I then

declined to Order Judge Spector to choose between the options. 82381-7-I.

In appeal 82381-7-I, Commissioner's Koh and Johnston thwarted reality in their recommendations that the Panels should not accept review. See Flarity's **Combined Reply**, **APP-1 and APP-8**. Div. II should conclude that denial of obvious facts gives an indication of pre-judgment.

This case demonstrates that precedent and rules do not apply to pro se challenges to the sovereign. Without publication, the people have no transparency for the efficacy of CR82(a)(3) and RCW 4.12.030(3) as to venue.

3. ISSUES PRESENTED FOR REVIEW

VENUE is critical for civil rights issues. This is easily proven by AAG Melody's effort to file her case in King County for exactly the same *systemic* obstruction of access to courts Flarity claims.[1]

By the precedents cited, Flarity has a right to proceed in their home county if ANY DEFENDANT resides per CR82(a)(3) and RCW 4.12.030(3).

---

1 2:19-cv-02043-TSZ: FIFTH CLAIM (Right of Access to the Courts),'...constitutional right of access to the courts prohibits systemic official action that bans or obstructs access to the courts, including the filing or presenting of suits....Defendants' actions deprive Washington and its residents of meaningful access to the courts in violation of rights under the First, Fifth, Sixth, and Fourteenth Amendments.

Div. II should note that Flarity lost the Venue challenge to a defendant who did not even bother to argue. The State, using taxpayer dollars in defiance of the stated AG policy, argued on behalf of a foreign corporation based in the "tax haven" of Bermuda as shown to the Commissioners.

The proper venue is King County.

4. STATEMENT OF THE CASE

Div. I should seize this opportunity to restore the confidence that they noted has been eroded. 84142-4-I. This case perfectly demonstrates Div. I's contribution to the people's erosion of confidence. Transfer provides the ideal vehicle to show respect for *fundamental principles* for all classes of litigants.

Div. II should NOT be saddled with the responsibility Div. I has avoided. Per Art. 1, Sec. 29, it is Div. I's responsibility to identify what has been abridged[2] from the Constitution for the people seeking to check official violations per Art., Sec. 32.

2 *State v. Lewis,* 129 La. 800, 804, 56, So. 893, 894 (1911): "rights beyond the authority of the legislative department to destroy or abridge."

5. ARGUMENT

LEGAL FOUNDATION

Rule 4.4 with emphasis:

> The Court of Appeals, on its own initiative or on motion of a party, may transfer a case from one division to another division pursuant to CAR 21(a). A party should not file a motion to transfer until **the record has been perfected and all briefs have been filed in the Court of Appeals.**

CAR 21:

TRANSFER OF JUDGES AND CASES--JUDGES PRO TEMPORE

> (a) Generally….**A case may be transferred from one division to another by written order** of the Chief Judge of the transferring division, with the concurrence of the Chief Judge of the division to which the case is transferred.

Although a dozen venue cases were provided for precedents in Division I, this is the most striking case ignored, *Briedablik, Big Valley, Lofall, Edgewater, Surfrest, North End Community Ass'n v. Kitsap County,* 652 P.2d 383, 33 Wn App. 108 (Wash. App. 1982):

> RCW 4.12.030 established jurisdiction and dominates RCW 36.01.050 for "fairness of the forum to the other party, **not to the county."**

With the record perfected and all briefs filed, the Transfer Motion is completely dependent on the Chief Judges. The first argument must convince Div. II that any effort is justified to transfer.

ARGUMENT TO DIV. II

To Acting Chief Judge Anne Cruser
or
Chief Judge Rebecca Glasgow

DUE PROCESS BROKEN. Due process for tax appeals is broken in Washington State. While AIC is a prime component of Pierce County's infamous role as the "worst offender of civil rights in the State," **CP 276,** this case is before Div II because the DOR encourages BOE civil rights violations all across the state.

JUDGE SHOPPING. The AG seeks to preserve access to courts in Seattle before Judge Zilly,[3] but argues aggressively to move to Pierce County to block access to courts. The State **should be required** to argue the opposite ends of the claims in the same venue. Div. II should NOT encourage judge shopping by allowing the State to move to a court RCW 36.01.050 identified as conflicted and argue hypocritically.

AIC A RESIDENT OF KING COUNTY. Documents of proof were properly filled under oath to Commissioner Koh. No defendant objected as Div. I detailed in 83010-4-I is appropriate to contest a Declaration.

3 2:19-cv-02043-TSZ.

Obviously, AIC is a King County resident and any opposition risks the sanction of a bad faith filing. To excuse this corruption of reality is an insult to the people. Div. II Commissioners avoid this type of legal contortions.

Div. I should hold their Commissioners to same standard of reasonableness. The Chief Justice has a right to second guess Div. I's overall intention and the methods used to implement those intentions. Div. I is equally responsible to the Judicial Code and Federalist #78 as Div. II. It is Div. I's responsibility to show bravery on systemic state problems where Flarity has standing and jurisdiction.

SCOPE OF DUE PROCESS FAILURE IS ENORMOUS. This problem is so entrenched the legal community itself is disillusioned. **EX-1.** Flarity's survey of a number of attorneys quickly illuminated the "power of the sovereign" and the reluctance of courts and the WSBA to restrain public attorneys. The "regular" private attorneys' "franchise" has abdicated its role to check State officials as "unrealistic." This de facto practice gives a sharp slap to the people whom have a duty to defend the Constitution as the founders specifically noted would be necessary. Art. 1, Sec. 32.

FAILURES RECAPPED.

1) Pierce County BOE is closed to the public.

2) Every residential petitioner loses without any appearance by the assessor.

3) All taxpayer petitions for delay are denied.

4) The BTA takes unlimited delays. This issue is so unbalanced that Flarity was given a $1770 sanction for simply asking for a delay. 57601-5-II.

5) Pierce County has established a policy of trespass and that "fruit of the poisonous tree" evidence is allowed for tax assessments. 57601-5-II. This policy is in conflict with numerous Supreme Court rulings and violates the "sacred"[4] right to privacy our founders went to great care to enumerate in Art. 1 Sec. 7.

While 3) is the specific claim presented on appeal, the scope of the problems give an overview of Washington court's respect of the people's rights. The attitude by officials sworn to defend the Constitution is shocking. Div. II should not be obligated to take on these problems when they were shirked by Div. I. By rule, the Chief Justice only has to convince one person to transfer. That is a reasonable task.

ARGUMENT TO DIV. I

Chief Judge Beth M. Andrus

COURT EFFICIENCY. With all due respect Judge Andrus, if Div. I remands this case back to Judge Spector, the defendants will fold and settle. Transfer is a practical approach to court efficiency.

4 *T.S. v. Boy Scouts of America*, 138 P.3d 1053, 157 Wn.2d 416 (Wash. 2006).

As AAG Melody illustrated in 2:19-cv-02043-TSZ, King County is where a plaintiff can best restore civil rights.[5] Defendants are justified in their fear of King County juries for the correction of officials.[6] Flarity has complete confidence that Judge Spector will provide a fair forum. Judge Spector simply needs a sign from Div. I that things have gone "too far."[7] A "recurrence" is appropriate per Art. 1. Sec 32.

OBLIGATION OF DIV. I TO SUPPORT RESIDENTS. As residents of North Bend, it was onerous to transfer the case to a DISTANT, unfair forum in violation of CR82(a)(3) and RCW 4.12.030(3). In addition, per RCW 34.05.514, the Court should note that review of ANY county tax ruling gives venue "at the petitioner's option,...(b) the county of the petitioner's residence…."

All defendants were so enthusiastic for transfer to Pierce County that Flarity's Motion to dismiss Pierce County to preserve venue was contested. See **REPLY COMBINED, APP-1.**

---

5 If you read AAG Melody's lengthy complaint, Seattle did NOT have a problem with ICE arrest of immigrants at courts. The clerk could have sent the complaint to Tacoma, where it would have likely been assigned to the Honorable Judge Leighton and quickly dismissed by Rule 12.

6 *Bosteder v. City of Renton*, 155 Wn.2d 18, 36-37, 117 P.3d 316 (2005), *City of Seattle v. McCready*, 123 Wn.2d 260, 868 P.2d 134 (Wash. 1994), *See v. City of Seattle, 387 U.S. 541, 87 S.Ct. 1741, 18 L.Ed.2d 930 (1967).*

7 *Seattle School Dist. No.1of King County v. State*, 585P.2d71,90Wn.2d476 (Wash. 1978).

THE APPEARANCE OF FAIRNESS. “Law abiding citizens” expect the same justice as criminals.[8] It appears that Division I gives enhanced respect for the “former” of the two classes.[9] Div. I has sent a clear message that pro se challenges to the State are not tolerated to the point that Commissioner’s have license to desparage reality.

Every “disinterested observer” would have no trouble reading the law and understanding that AIC is a resident of King County. This case strikes at the heart of court legitimacy. That damage is best repaired at the location of the crash. John Rawls, *A Theory Of Justice*, P4:

> ...the rights secured by justice are not subject to political bargaining or to the calculus of social interests.

FEDERALIST #78 DEMONSTRATED. In tremendous demonstrations of court bravery, both the Montana and South Carolina Supreme Courts struck down popular anti-abortion laws because of privacy provisions they noted were copied from Washington State.[10] These decisions could likely end their careers as judges. Nonetheless, they enforced their State Constitutions in the face of opposition as fierce as any suffered in *Brown v Board of Education* 347 US 483 74 SCt 686 98 LEd 873 38 ALR2d 1180 1954.

---

8 This dynamic is described in Justice Reinhardt’s dissent in *Jacobsen v. Filler*, 790 F.2d 1362 (9th Cir. 1985).

9 *Hernandez v. City of Kent*, (Wash. App. 2021). Convicted Meth mule Hernandez got his seized car back.

10 South Carolina Appellate Case No. 2022-001062.

CONFIDENCE IS BOLSTERED WHEN COURTS "DO THE RIGHT THING." Washington citizens expect the same bravery as demonstrated in Montana and South Carolina. Otherwise, what do any of these published promises mean? Outrage is justified when rights are capriciously enforced by the primary enforcement authority. This paradigm is especially damaging when the founders included specific language to prevent exactly that trickling down of rights. The people should question a court's legitimacy when the court decides what rights the people "deserve." Our rights are not dependent on the court's graciousness. The practice goes against the very foundation of the rule of law.

6. CONCLUSION

"Lawbreaking is contagious."[11] This is an opportunity to bolster court legitimacy and provide clarity on the actual rights Div. I is willing to enforce for their residents. The disdain officials have heaped on Flarity gives the people warning officials are not constricted by sworn oaths nor observance of the law whatsoever. Transfer by itself is a sign of respect that Div. I accepts that the Constitution was designed to protect the rights of the people, rather than officials.

11 *Olmstead v. United States*, 277 U.S. 438 (1928).

Respect of law and precedent is at the foundation for any “system of justice” and must be applied to all classes as the Supreme Court has illustrated in their June 4, 2020 letter. The letter follows the sentiment of Justice Gorsuch in *Direct Mktg. Ass'n v. Brohl,* 135 S. Ct. 1124, 191 L.Ed.2d 97 (2015).

The Chief Justices are requested to coordinate and return Flarity to the rightful venue to check official malfeasance..

CERTIFICATION OF SERVICE. All defendants are served electronically by courts.wa.gov.

CERTIFICATION OF WORD LIMIT. The Word Count is 2316 words and is within the limit of new rule 18.17 excluding cover sheets and tables.

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 RAP 10 to the best of my knowledge for this Motion.

Date of Signing February 27, 2023
Signature of plaintiff: /s/ Joe Flarity

JOE PATRICK FLARITY
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FILED
Court of Appeals
Division II
State of Washington
2/7/2023 12:23 PM

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

Cause 56271-5: ABUSE OF DISCRETION IN PIERCE COUNTY
SUPERIOR COURT, Cause 21-2-02164-1
The Honorable Judge Martin
Hearing Dates:
September 10, 2021
September 24, 2021

Joe Patrick Flarity, pro se, a marital community
v.
Argonaut Insurance Company,
Mary Robnett,
Sue Testo,
Pierce County,
State of Washington

MOTION FOR JUDICIAL NOTICE
AMENDED

ORAL ARGUMENT REQUESTED

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1. PLEADING

Comes Joe Flarity, pro se, a member of a marital community, Moves the Court for Judicial Notice per ER 201 and FROE 201(c)(2). Judicial Notice as defined per Black's Law Dictionary, Fifth Edition:

> ...existence and truth of certain facts, having a bearing on the controversy at bar, which from their very nature, are not properly the subject of testimony, or which are universally established by common notoriety.

The Court is here asked to acknowledge the **notorious** predicament people seeking to check officials in Washington State observe as tacit court policy. A Division II Notice will benefit all parties here and future petitioners by illuminating the authorized practices. Judicial Notice will increase court efficiency and deflect a major source of frustration for the people.

2. STATUS

A Motion for Judicial Notice was filed with the Court on December 30, 2021. There has been no ruling on this Motion.

DELAYS GRANTED: The Clerk has been generous by the granting of numerous delays to which Flarity is thankful. As a direct result of these delays, quality Briefs have been filed by all parties of which the Panel and the public should benefit by thorough examination of the issues.

ISSUES REMAINING. With the Court fully briefed, several issues requesting Notice are now moot. The Motion is here Amended to clarify those that remain.

3. ISSUES FOR JUDICIAL NOTICE

UNEQUAL PARTIES BEFORE THE COURT. The WSBA and lower courts defer to public attorneys for tactics that would result in sanction or disbarment for private attorneys. The tacit policy effectively grants a privileged Class (or franchise) to state officials and constrains the people into a class of "subjects".[1]

INVIOLATE RIGHT TO JURY TRIAL HAS BEEN *ABRIDGED.* When a plaintiff has a claim and the court dismisses by CR12, the plaintiff's right to be heard has been denied. The people's right to check official misconduct is routinely *abridged*.[2] While any abridgment is unconstitutional, the maelstrom's anchor is rooted on court violation of the "inviolate" right to a jury trial per Art. 1 Sec. 21.

RIGHT TO A FAIR HEARING IN THE 1ST INSTANCE NOT WASHINGTON STATE POLICY. Appeals are a complicated, lengthy

1 In Violation of Art. 1 Sec. 8 and Art. 1 Sec. 12.

2 *State v. Lewis*, 129 La. 800, 804, 56, So. 893, 894 (1911) "rights beyond the authority of the legislative department to destroy or abridge."

and an inconsistent avenue for the people to seek justice. Division II has an important, but limited power to influence lower courts. Nonetheless, an important step to correction should include acknowledgment the Federal policy is not observed in Washington State.

DENIAL OF RIGHT TO BE HEARD ENFORCED THROUGH COURT OPACITY. Courts routinely deny stare decisis, court rules and obvious facts for plaintiffs that had the misfortune of appearing without a "super lawyer" to challenge the State. Unpublished contradictions of precedents enforce the separation of plaintiffs into classes.

4. THE QUESTIONS ARE DEBATABLE FOR NOTICE

Haberman v. Washington Public Power Supply System, 109 Wn.2d 107, 744 P.2d 1032 (Wash. 1987):

> "First, the Legislature could have reasonably concluded that bond counsel should be held to a higher standard of care because of their expertise upon which the public at large has a right to rely....it is evident from all the considerations presented to [the legislature], and those of which we may take judicial notice, **that the question is at least debatable."**

Weyerhaeuser Co. v. Commercial Union Ins., 15 P.3d 115, 142 Wash.2d 654 (Wash. 2000):

> Weyerhaeuser is one of Washington's major corporations and a Washington **court can certainly take judicial notice of Weyerhaeuser's business sophistication** and ability to

> fend for itself while making arm's length insurance contracts with equally sophisticated insurance companies.

5. TENOR OF THE MATTER NOTICED

Per ER201, FROE 201(e):

> Opportunity To Be Heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed.

From Black's Law, Fifth Edition, the term *tenor* is defined that an "exact copy has been set out."

6. LEGAL ANALYSIS

ASSIGNMENT TO UNEQUAL CLASSES

The *premise of the matter is* evident in the destruction of numerous fundamental principles by Pierce County. This is only possible when courts refuse to hold officials accountable. These tacit policies have also "chilled" the state's private attorneys. **EX-1, P11:**

> AP p425: "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."

Flarity soon found this jaded attitude infected other attorneys who admit they were not in the "super lawyer" class able to check the state.[3] The "regular lawyers" with success against officials for civil rights violations immediately pointed out that Flarity was NOT a "fellow government employee." The tacit policy's immediate effect was to offload the court's responsibility to enforce civil rights onto a small group of private "super lawyers" who are then overwhelmed with requests for help. There is no legal authority for this de facto policy.

There are few "David and Goliath" legal stories in Washington State because the "Davids" are quickly denied a forum. Only the equivalent legal "Goliaths" are given the opportunity to build a record for examination of the facts.

PRO SE SKILL TO PROCEED SHOULD BE EVALUATED SEPARATELY. Per the *Haines Doctrine*,[4] even small causes should be allowed to proceed to trial to check the government. This will NOT result in an avalanche of pro se lawsuits clogging the courts. Taking on the State requires an extraordinary degree of skill and patience that can frustrate (or bankrupt) even medium sized law firms.[5]

---

3 Super law firms Hart Wagner (Portland) and Gordon Thomas Honeywell LLP kindly explained how the "inside connections" system provides compelling reasons for their declining to take this case. This system will be explained in the oral argument as it was related to Flarity.

4 *Haines v. Kerner*, 404 U.S. 519 (1972).

5 *A Civil Action* is a John Travolta movie documenting the destruction of Jan Schlichtmann's law firm in a class action lawsuit with Beatrice Foods. This case is taught in law schools as a warning.

As Div. II showed in *Hannum v. Friedt*, 947 P.2d 760, 88 Wn.App. 881 (Wash. App. 1997), a court can dismiss a claim for failure (or inability) to prosecute at any time. That path is constitutional, while dismissing a claim per CR12 as unilateral court policy with no consideration of the merits is NOT. It is also a personal rebuke to the people.

ABUSE OF CR 12 AS SYSTEMIC DAMAGE. On its face, CR12 dismissal implies the claim was frivolous from the onset. As SENIOR AAG Comfort has demonstrated in 57601-5-II, a CR 12 dismissal is easily shape-shifted from a citizen's good faith effort to check officials into a "vexatious litigant" charge that results in further sanctions piled onto the dismissal.[6]

PUBLIC ATTORNEY CORRECTION. **EX-2, Exhibit 1, P2**, gives a clear indication that public attorneys are not held to the same standard as private attorneys. (EX-2 is truncated for brevity.) The WSBA has failed to enforce it's charter to protect the people from unethical conduct for public attorneys. For oversight of public attorneys, the WSBA is a "captured administrative agency."[7]

6 Shape-shifted is the common term used in fantasy literature for the transformation of a human into a werewolf or a vampire into a bat.

7 *Administrative Justice In The United States*, by Peter L. Strauss. *Bureaucracy in America: The Administrative State's Challenge to Constitutional Government*, by Joseph Postell.

The Panel should contrast public attorney accountability with the "shock" the Supreme Court just showed to private attorney violations. 99939-2, with emphasis:

> Van Idour was not authorized to practice law when he represented the petitioners, along with **100 other indigent defendants in Asotin County**. Van Idour's failure to gain admittance to the Washington bar **is not just shockingly unprofessional—it is unethical and indefensible.**
>
> Every state bar association has rules and standards governing bar admissions, **including a test of moral character.**

From the evidence, the people could conclude there is no moral floor for public attorneys.[8]

Flarity will propose a defense of Van Idour: He was given a contract by the county and granted an exception by APR 8 by the Court. In addition, Van Idour seems to be exceptionally qualified for criminal defense, a problem that confounded the state in *State v. Perala*, 130 P.3d 852, 132 Wn. App. 98 (Wash. App. 2006).

And Van Idour was good enough for the Supreme Court to keep the appellants locked up:

---

8 When Attorney Ex-DA Lindquist appears at Div. II, keep in mind he probably got away with sending his protege, DPA Robnett, a death threat letter he blamed on Detective Nissen. He also encouraged DPA Robnett to sue Detective Nissen personally and went so far as to provide free legal service from his "friend" Jack Connelly.

These facts are documented in the Serbis Busto James Report dated October 22, 2015, and the TNT. Flarity filed the tawdry tale to the WSBA and Judge Martin. This was not provided in clerk's papers for cost reasons.

Further, Van Idour's flawed application under APRs 3 and 8 does not amount to a denial of counsel.

RECAP OF OBSERVED POLICY

The Tacitly Authorized Civil Challengers:

a) Super Law firms such as the ACLU, Pacific Legal Foundation or MacDonald Hoague & Bayless.

b) Lawyers representing "fellow government employees."

c) Lawyers representing plaintiffs with "significant wealth or employment leverage."

d) A citizen with an "inside connection."

DENIAL OF A JURY TRIAL

The authors of the Washington State Constitution were witness to horrendous civil rights violations in Oregon, California, and southern states. The authors showed a unique, laser-like focus to protect civil rights. The "inviolate right" per Art. 1, Sec. 21, is as plain as can be stated. Indeed, Justice Stevens understood this ideal in her very clear *Davis v. Cox*, 183 Wn.2d 269, 290, 351 P.3d 862 (2015) decision protecting the right to a jury trial for corporations. That Flarity was so easily denied a jury trial gives credence to those jaded lawyer's assumptions.

A jury trial should NOT be a rare exception. Flarity showed a early expectation this right would be protected by paying the NON REFUNDABLE jury 12 fee.

If the fee is required, will NOT be refunded, and the abuse of CR12 then skirts the summoning of a jury--the people are due a clear explanation of the tacit practice before their hard-earned cash is squandered.

FAIR HEARING IN THE *FIRST INSTANCE* NOT STATE POLICY

Ironically, SCOTUS in *Ward* protected rights the Washington State Constitution was expressly designed to enhance. It appears the current practice is that Washington State does NOT meet the Federal **bare minimum** of due process. *Clements v. Airport Authority of Washoe County*, 69 F.3d 321 (9th Cir. 1995):

> At a minimum, Due Process requires a hearing before an impartial tribunal. *Ward v. Village of Monroeville*, 409 U.S. 57, 59-60, 93 S.Ct. 80, 83, 34 L.Ed.2d 267 (1972).

Per *Ward*, with emphasis:

> Nor, in any event, may the State's trial court procedure be deemed constitutionally acceptable simply because the State **eventually** offers a defendant an impartial adjudication. **Petitioner is entitled to a neutral and detached judge in the first instance.**

> ...there is nothing to suggest that the incentive to convict would be diminished by the **possibility of reversal on appeal.**

This Cause is focused on the undisputed fact that Flarity got NO hearing. Yet the Cause was dismissed by rule 12 even though Judge Martin gave Flarity praise as an excellent advocate. The contrast is stark, because Judge Wilson gave Flarity two sanctions as a vexatious litigant in Thurston County. 57601-5-II.

IT HAPPENS OFTEN ENOUGH. It is rare that a plaintiff quotes a dissent against his Cause. But the dissent by Justice White in *Ward* exactly shows the obstacle set before the people in Washington Courts. *Ward*, with emphasis:

> To justify striking down the Ohio system on its face, the Court must assume either that every mayor-judge in every case will disregard his oath and administer justice contrary to constitutional commands **or that this will happen often enough to warrant the prophylactic, per se rule urged by petitioner.**

Flarity's Cause by itself demonstrates a de facto abuse of due process in Washington State and that a *prophylactic rule* is needed.[9] The Panel is requested to give the people Notice that Washington Courts do not observe the SCOTUS definition of due process when the people challenge State officials.

---

9 This Cause started in 2017. Flarity has appeared before the BOE, the BTA, Judge Spector, Commissioner Koh, Commissioner Johnston, and Judge Martin. The process is NOT plain or timely and is arbitrary and capricious. The warning the Supreme Court gave in *Wyman, Partridge & Co. v. Superior Court* (1905), was a prescient forecast of the danger to due process by over reliance on appeals for correction.

ENFORCEMENT OF CLASS SUBJECTION BY OPACITY

Opacity by governments was recognized as a prime attack on democracy long before this country was founded. *Richmond Newspapers, Inc v. Virginia*, 448 U.S. 555, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980), provides an excellent review of common law:

> People assemble in public places not only to speak or to take action, but also to listen, observe, and learn; indeed, they may "assembl[e] for any lawful purpose," Hague v. CIO, 307 U.S. 496, 519, 59 S.Ct. 954, 965, 83 L.Ed. 1423 (1939) (opinion of Stone, J.).
>
> ...."contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power,"
>
> Since the Virginia Supreme Court declined plenary review, it is reasonably foreseeable that other trials may be closed by other judges without any more showing of need than is presented on this record.

The people have an expectation that precedents will be enforced. When precedents are not enforced, the people should be informed and the reasons explained. For the court to be taken as legitimate, the people rely on a consistent interpretation of the law that applies to all parties. Refusing to publish a contradiction impacting precedent is a direct attack on the rule of law and court integrity. It bolsters the appearance

that Washington Courts dispute the premise that “the humblest is a peer of the most powerful.”[10]

The 9th Circuit has made opacity official policy to avoid ruling on the merits of pro se complaints. Many of the unpublished decisions are laughable even to the untrained public. (Flarity assumes the 9th Circuit has assigned these curt decisions to their Clerks, who make sport of the people’s rights in decisions that could be used in Saturday Night Live sketches.)

That the people would respond with contempt was predicted by the prescient Judge Brandeis.[11]

Portland Oregon, Mark O. Hatfield Courthouse, 2020:

10 *Plessy v. Ferguson*, 163 U.S. 537 (1896), from this lone dissent, Justice Harlan became known as the “great dissenter”, with emphasis:

There is no caste here....In respect of civil rights, **all citizens are equal before the law**. **The humblest is the peer of the most powerful.**

11 Justice Brandeis in Olmstead v. United States, 277 U.S. 438 (1928): Lawbreaking is contagious. The government should follow the law scrupulously. Otherwise, it breeds contempt for the law. It invites anarchy. Against this policy, the court must resolutely set its face.

As Thomas Jefferson advised, the people's role to check illegal official conduct is not simply a right--it is a duty. Duty is no way correlates to anything resembling "the pursuit of happiness." But if the people of Washington State desire to sustain a democracy, the pain of duty is a vital part of the freedom equation.

The Panel is requested to give Notice that unpublished decisions conflicting with precedent are a direct violation of Art. 1, Sec. 3, Sec. 10 and the 1st Amendment of the U.S. Constitution. Because the right for justice "to be administered openly" is protected by the State

Constitution, failure to publish for a disadvantaged class is also a 14th Amendment violation for equal protection of the law.

As the 9th Circuit has proven, this unconstitutional practice enforces the suppression of the common people into “subjects” making moot PACER’s outstanding utility to prepare a cohesive record that is superbly suited to pro se plaintiffs.

7. CLARITY REQUIRED BY ART. 1, SEC. 29

The illegal policies now in place in Pierce County are only possible by court neglect to defend the Constitution:

> Documented Notice by DPA Prather of trespass policy.
>
> BOE Closure to the Public.
>
> All residential petitions ruled in favor of the assessor.
>
> All residential petitions for delay denied.
>
> In contrast, the State demands unlimited delay as described in 57601-5-II.

As the Washington Supreme Court observed in their June 4, 2020 letter, the Panel can take notice that Flarity appears as a “private attorney general” at a great disadvantage before State officials leveraging sovereign powers. Flarity asks the policies be stated outright

(or denied) so Flarity can focus the Oral Argument on the remaining issues in dispute.

> SECTION 29 CONSTITUTION MANDATORY.
>
> The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.

The State Founders provided a clear path to defy the Constitution and precedents, but **express words must** be provided.

Per the VRP, Judge Martin expects that Div. II supports the de facto policies. DPA Hamilton in Div. I, identified this Cause as *quixotic*. Div. II is asked to specify the *realistic boundary* on the people's Art. 1, Sec. 32 duty to correct officials.

Clarity by Judicial Notice benefits all parties and the general public.

CERTIFICATION OF WORD LIMIT. The Word Count is 2,916 words and is within the limit of RAP 10.4 (6,000) excluding cover sheets and tables.

CERTIFICATION OF SERVICE. All defendants are served electronically by courts.wa.gov.

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 RAP 10 to the best of my knowledge for this Brief.

Date of Signing Feburary 7, 2023

Signature of plaintiff: /s/ Joe Flarity

JOE PATRICK FLARITY
101 FM 946 S
Oakhurst, TX 77359
253-951-9981

FLARITY FARM

February 27, 2023 - 1:56 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	56271-5
Appellate Court Case Title:	Joe Patrick Flarity, Appellant v. Argonaut Insurance Company, et al., Respondents
Superior Court Case Number:	21-2-06124-1

The following documents have been uploaded:

- 562715_Motion_20230227135222D2417636_3772.pdf
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- kristin.anderson@bullivant.com
- matthew.sekits@bullivant.com
- pcpatvecf@piercecountywa.gov
- revolyef@atg.wa.gov

Comments:

Motion to Transfer to Division I. For brevity, the attachments to EX-1 are deleted but can be filed if requested. The complete filing is available on the record. See Motion For Judicial Notice--Amended.

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

July 03, 2023 - 3:10 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	56271-5
Appellate Court Case Title:	Joe Patrick Flarity, Appellant v. Argonaut Insurance Company, et al., Respondents
Superior Court Case Number:	21-2-06124-1

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- revolyef@atg.wa.gov

Comments:

Motion to Reconsider Unpublished Opinion perverting 1st Amendment Rights into a football game.

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FILED
Court of Appeals
Division II
State of Washington
8/14/2023 4:59 PM

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

Cause 56271-5: Cause 21-2-02164-1

Joe Patrick Flarity, pro se, a marital community
v.
Argonaut Insurance Company,
Mary Robnett,
Sue Testo,
Pierce County,
State of Washington

MOTION TO PUBLISH OPINION

---

1. PLEADING

Joe Flarity, pro se, henceforth Flarity, Appellant, a marital community, respectfully moves the Panel to publish the decision per RAP 12.3(e) confirming dismissal, refusal to change to venue to Kitsap County, and declining to review change of venue from King County.

2. TIME FOR MOTION

The Panel's denial of Flarity's Motion for Reconsideration was filed July 26, 2023. By RAP 12.3(e), Flarity has 20 days to file a Motion to Publish. This Motion is filed within 20 days.

3. REQUIREMENTS TO PUBLISH OPINIONS

Criteria to Publish is listed in RAP 12.3(d) specifically references RCW 2.06.040:

> ...All decisions of the court having precedential value shall be published as opinions of the court. Each panel shall determine whether a decision of the court has sufficient precedential value to be published as an opinion of the court.

Per RAP 12.3(d):

> (1)Whether the decision determines an unsettled or new question of law or constitutional principle;
>
> (2) Whether the decision modifies, clarifies or reverses an established principle of law;

> (3) Whether a decision is of general public interest or importance; or
>
> (4) Whether a case is in conflict with a prior opinion of the Court of Appeals.

The unpublished opinion has precedential value per the RCW and EVERY criteria listed in RAP 12.3(d).

4. IMPACT OF UNPUBLISHED DECISION

Unlike Federal districts, the Appellate courts of Washington State are not separate entities. A decision in one division is binding unless another division specifically rules otherwise. Regular people, like Flarity, have almost zero visibility on unpublished decisions. The people act upon *published decisions* for information on what is correctable government misconduct. While generally *opaque* to the people, unpublished decisions still give courts authority. *State v. Weaver,* No. 99041-7, J. McCloud in dissent:

> He testified that "as far as I know, I knew the people that lived there. I assumed they still lived there. Otherwise...I would not have entered it.
>
> While unpublished, this case still stands as persuasive authority, [*State v. Gallegos*, No. 36387-2-III, slip op. at 16 (Wash. Ct. App. 2020)] yet the majority fails to address it at all.

Joseph v. Bartlett, 981 F. 3d 319, 341 n. 105 (5th Cir. 2020):

> ...unpublished opinions 'can illustrate or "guide us to such authority," by "restating what was clearly established in precedents they cite or elsewhere.

5. PUBLICATION SERVES THE "INTERESTS OF JUSTICE"

Publication will give the people a clear understanding of the efficacy of the State Constitution to protect *fundamental principles*. Publication will eliminate many complaints and reduce the court's docket by *chilling* pro se plaintiffs. Multiple specters of tyranny lurk in the shadows and rely on opacity. Protection of the Rule of Law depends on the people knowing the truth. *Sofie v. Fibreboard Corp.*, 771 P.2d 711, 112 Wash. 2d 636, 112 Wash. 636 (1989), all emphasis herein is added, unless specifically noted as original:

> As this court stated in State v. Strasburg, 60 Wash. 106, 110 P. 1020 (1910) ... "`**The constitution deals with substance, not shadows**. Its inhibition was leveled at the thing, not the name...."' ...In other words, **a constitutional protection cannot be bypassed by allowing it to exist in form but letting it have no effect in function**.

The unpublished ruling attacks the "function" of numerous precedents.

6. STATE PRECEDENTS UPSET BY THIS OPINION

CAUSE OF ACTION

The Panel relies upon a "made-up immunity"[1] that denies all Flarity's claims and could be used against every plaintiff for any civil rights violation. The Opinion should be published so the people can understand their standing in Washington Courts for challenges to the sovereign on a variety of constitutional claims. As a witnessed example, for prisoner Daniel J. Simms, WA Courts are moving the rule of law towards the hell of third world prisons. Like Flarity, Simms was denied a jury trial by a "made up immunity" for an obvious constitutional violation.[2]

Since Flarity was in the Pierce County Council meeting when Det. Ames was paid over $300,000 for his denied hearing, (with over a million in attorney fees), there must be some explanation so the people might understand their place in Washington Courts. *Ames v. Pierce County* ,374 P.3d 228 (2016).

1 The ACLU's DC chapter expressing the power of 42 U.S.C. § 1983 in celebrating its 150th anniversary:

On April 20, 1871, President Ulysses S. Grant signed one of the most important civil rights laws in U.S. history: the Ku Klux Klan Act. Section 1 of that law – known today as 42 U.S.C. § 1983 – empowers individuals to **sue state and local government officials who violate their federal constitutional rights**....And we continue to fight to ensure that the law isn't watered down with **made-up immunities** that give a **free pass** to government officials to violate the Constitution.

2 Simms was denied shoes for 20 days. According to the Honorable Judge Wilson, the State is not held to **any** standard of care. *Simms v. Dept. of Corrections*, 21-2-00928-34. **EX-1.**

At a subsequent meeting, Flarity witnessed the taxpayers--not the AIC insurance agent--pay Det. Nissen over a million dollars for similar 1st Amendment civil rights violations denied to Flarity. *Nissen v. Pierce County*, 182 Wash.2d 1008, 343 P.3d 759 (2015). The people demand an explanation for these discrepancies on “cause of action.”

Besides *Ames* and *Nissen*, confirmation is a direct repudiation of *Sofie* requiring the opinion be published:

> Justice Dolliver also **misconstrues the nature of the Legislature's power to create and eliminate causes of action and the attachment of the jury right to these actions.** When the Legislature abolishes a cause of action, it does so explicitly, as it did when it created the workers' compensation scheme.

For Flarity, no explicit abolishing of a *cause of action* for denial of ANY hearing was shown. No replacement scheme was discussed that could substitute for denial of ANY hearing. County officials have been gifted a “free pass” to violate fundamental due process liberties. Flarity relied upon the text of *State v. Strasburg*, 60 Wash. 106, 110 P. 1020 (1910). If this is no longer a precedent, the people should be told the truth by a published decision. Per *Strasburg:*

> It is contended by learned counsel for appellant that this statute withholds from him rights guaranteed by our state constitution, and particularly those rights guaranteed by the following provisions thereof:
>
> Art. 1, Sec. 3. "No person shall be deprived of life, liberty, or property without due process of law."

> Art. 1, Sec. 21. "The right of trial by jury shall remain inviolate."
>
> This is indeed an occasion for heeding the admonition of the concluding section of our constitutional bill of rights, which reads:
>
> "A frequent recurrence to fundamental principles is essential [p. 113] to the security of individual rights and the perpetuity of free government." **Constitution, art. 1, § 32.**

Griffin v. Eller, 922 P.2d 788, 130 Wash. 2D 58 (1996):

> "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection." *Marbury v. Madison,* 5 U.S. (1 Cranch) 137, 163, 2 L.Ed. 60 (1803).
>
> This Court has the inherent authority to reach constitutional issues that determine a case. *Hanson v. City of Snohomish,* 852 P.2d 295, 121 Wash. 2d 552 (1993).

STATE CASES PROTECTING FUNDAMENTAL RIGHTS BY 42 U.S. Code § 1983

The Opinion gives a clear indication that the people DO NOT have any right to appear in court to protect “core rights” by § 1983. The following cases say otherwise and should be reversed by a published decision:

Trucking Associations, Nonprofit Corp. v. State, 188 Wash. 2D 198, 393 P.3d 761 (Wash. 2017), specifically lists 42 U.S.C. § 1983 as a *private cause of action*, P19 of Reply:

> ...the taxpayer is not prohibited from asserting constitutional claims. See Grace Brethren, 457 U.S. at 414, 102 S.Ct. 2498 ; cf. Hillsborough, 326 U.S. at 624-26, 66 S.Ct. 445.

Lutheran Day Care v. Snohomish County, 829 P.2d 746, 119 Wash. 2d 91, 119 Wash. 91 (1992):

> BRACHTENBACH, J.
>
> This **land use case** involves the following issues:
>
> 3. Does plaintiff have a cause of action under **42 U.S.C. § 1983? Yes….**
>
> *5. Is plaintiff entitled to attorney fees under RCW 64.40.020(2) and **42 U.S.C. § 1988? Yes.***

Hontz v. State, 714 P.2d 1176, 105 Wash. 2D 302 (1986):

> ...the County has promulgated unconstitutional policies or customs which are the "moving force" behind the alleged deprivations — or in other words, if the statute is unconstitutionally applied pursuant to county policy or custom — **then the County cannot escape § 1983 liability.**

Kuehn v. Renton School Dist., 694 P.2d 1078, 103 Wash. 2D 594 (1985):

> A second determination required in a **42 U.S.C. § 1983 action is whether the action was under "color of law.**" "`Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken "under color of" state law.'" *Monroe v. Pape,* 365 U.S. 167, 184, 5 L.Ed.2d 492, 81 S.Ct. 473 (1961).

Miotke v. Spokane, 678 P.2d 803, 101 Wash. 2D 307 (1984):

> ...by the discretionary nature of their decision to discharge the sewage into the Spokane River, or by the tort claims statute (RCW 4.92.110); and finally, we adopt the **"private attorney general"** theory and affirm the trial court's award of attorney fees for the injunctive phase of the litigation.

ZDI GAMING v. State, 268 P.3d 929, 173 Wash. 2D 608 (2012):

> ...But in 1967, the Washington State Legislature abolished sovereign immunity. LAWS OF 1967, ch. 164, § 1, codified as RCW 4.96.010. We have recognized that in so doing, the State intended to repeal all vestiges of the shield it had at common law. *See Hunter v. N. Mason High Sch.,* 85 Wash.2d 810, 818, 539 P.2d 845 (1975); *Cook v. State,* 83 Wash.2d 599, 613-17, 521 P.2d 725 (1974) (Utter, J., concurring). **We noted long ago that the waiver of sovereign immunity was "unequivocal" and abolished special procedural roadblocks placed in the way of claimants against the State**….immunity it has unequivocally waived.

Wilson v. City of Seattle, 863 P.2d 1336, 122 Wash. 2D 814 (1993).

> ...A municipal corporation is limited in its powers to those necessarily or fairly implied in or incident to the powers expressly granted by the State**; if there is any doubt about whether the power is granted, it must be denied**. *Employco Personnel Servs., Inc. v. Seattle,* 117 Wn.2d 606, 617, 817 P.2d 1373 (1991).

Also:

> *Campbell v. Bellevue*, 530 P.2d 234, 85 Wash. 2d 1, 85 Wash. 1 (1975);
>
> *Munich v. SKAGIT EMERGENCY COMMUNICATION CENTER*, No. 85984-1 (Wash. Nov. 1, 2012).

INVIOLATE RIGHT TO A JURY TRIAL VIOLATED

An unpublished decision is exactly the hiding in the "shadows" prohibited in *Sofie v. Fibreboard Corp.*, 771 P.2d 711, 112 Wash. 2d 636, 112 Wash. 636 (1989), where jury trials were adamantly buttressed. J. Stevens confirmed this right again in *Davis v. Cox*, 183 Wn.2d 269, 290, 351 P.3d 862 (2015). More from 83010-4-I, quoting Davis:

> However, "a trial is not useless, but is absolutely necessary where there is a genuine issue as to **any material fact….Davis, 183 Wn.2d at 289**. This is as our Supreme Court has explained, adjudication by the trial court on the merits of nonfrivolous factual issues **invades the role of the jury and violates the right to a jury trial.**

Flarity also cited *Christensen v. Swedish Hospital*, 368 P.2d 897, 59 Wn.2d 545 (Wash. 1962), preserving the people's right to a jury trial for small issues. The people deserve notice that this right is NOT preserved as Art. 1, Sec. 21 indicates. From Flarity's Motion to Reconsider:

> If the fee is required, will NOT be refunded, and the abuse of CR12 then skirts the summoning of a jury--the people are due a clear explanation of the tacit practice before their hard-earned cash is squandered.

There should be no dispute that this *fundamental principle* is of "general public interest or importance." *Sofie* gives an extraordinary examination for protection of Art. 1, Sec. 21 on which the people should be expected to examine and rely as applicable to all courts:

> The Sofies argue that RCW 4.56.250 violates their constitutional rights to **trial by jury, equal protection, and due process.** We find that the statute's damages limit interferes with the jury's traditional function to determine damages.
>
> The term "inviolate" connotes deserving of the highest protection. *Webster's Third New International Dictionary* 1190 (1976), defines "inviolate" as "free from change or blemish: pure, unbroken ... free from assault or trespass: untouched, intact ..." Applied to the right to trial by jury, this language indicates that the **right must remain the essential component of our legal system that it has always been.** For such a right to remain inviolate, **it must not diminish over time and must be protected from all assaults to its essential guaranties.** In Washington, those guaranties include allowing the jury to determine the **amount of damages in a civil case.**

Sofie referenced Texas, the state in which the Flarity's now resides, as a similar haven for jury reviews:

> Tex. Const. art. 1, § 15 ("The right of trial by jury shall remain inviolate")….

DIV. II DEFIES ITS OWN PRECEDENTS FOR DECLARATIONS

The people should be warned that Declarations filed against the sovereign may be ignored as if they were never filed. The Panel has demonstrated a willingness to defy its own rulings in a CR12 dismissal protecting the sovereign. Flarity cited 83010-4-I which referenced TWO Div. II cases in its analysis of appropriate Declarations. *In Reagan v. Newton*, 7 Wn. App. 2d 781, 436 P.3d 411 (2019). Per *Reagan*:

> "a party's declaration is enough to create a **question of fact where her . . . testimony was based on her personal observations."**

83010-4-I again referred to Div. II by *Mackey*, 12 Wn. App. 2d at 575:

> Home Depot asserted that Mackey's declaration was properly disregarded because "Mackey's statement is not sufficient to show that she actually complained before her termination because it was self-serving, was unsubstantiated, and could not be corroborated. **Division Two again rejected this argument**, holding that "on summary judgment a nonmoving party's declaration must be taken as true and can create a **genuine issue of material fact even if it is 'self-serving.**'"

Protests to Declarations should be raised in Superior Courts and were waived by lack of contest. From No. 101188-1, Jack Potter's Reply to the City of Lacey:

> Consequently, the City waived its evidentiary objections long ago. *Lamon v. McDonnell Douglas Corp.*, 91 Wn.2d 345, 352, 588 P.2d 1346 (1979) ("Failure to make such a motion waives deficiency in the affidavit if any exists.").

> "A city councilor made clear the City's goal should be 'to make it uncomfortable enough for [homeless persons] in our city so they will want to move on down the road.

MEANINGFUL OPPORTUNITY TO BE HEARD OVERTURNED

The Panel has destroyed the peoples' due process right to **any** hearing. *Olympic Forest Products*, 82 Wash.2d at 422, 511 P.2d 1002 with RCW 7.33.010(1)(b) judged unconstitutional:

> **(D)ue process requires, at a minimum**, that absent a countervailing state interest of overriding significance,

> persons forced to settle their claims of right and duty through the judicial process **must be given a meaningful opportunity to be heard.**
>
> ...federal cases while not necessarily controlling should be given **'great weight'** in construing our own due process provision.'

Martin v. DOC 100103-7:

> [access to courts] “[t]he very essence of civil liberty” and the “bedrock foundation upon which rests all the people’s rights and obligations.”

GREAT WEIGHT TO FEDERAL DUE PROCESS

The Opinion disputes that Federal Courts provide protections for due process. *Rozner v. City of Bellevue*, 804 P.2d 24, 116 Wash. 2D 342 (1991):

> Washington Courts should give “great weight” to Federal standards protecting due process.

Per *In re Troupe,* 423 P.3d 878 (Wash. App. 2018), CP175, from P26 of Flarity’s Brief:

> ... [P]erhaps the most important factor affecting the clarity that the Constitution demands of a law is whether it threatens to inhibit the exercise of constitutionally protected right.

PRECEDENT FOR VENUE VIOLATED

Briedablik, Big Valley, Lofall, Edgewater, Surfrest, North End Community Ass'n v. Kitsap County, 652 P.2d 383, 33 Wn App. 108 (Wash. App. 1982):

> RCW 4.12.030 established jurisdiction and dominates RCW 36.01.050 for "fairness of the forum to the other party, **not to the county."**

Ralph v. Weyerhaeuser Co., 187 Wash.2d 326, 386 P.3d 721 (Wash. 2016):

> "Cf. Russell, 61 Wash.2d at 767, 380 P.2d 744 ('[T]he legislature not only did a **useless but a silly thing**, if it gave a plaintiff an option to sue in the county where the cause of action arose or in the county **where some one of the defendants resides**, if it must in any event be tried in the former."

ABUSE OF CR12

Worthington v. Westnet, 182 Wash.2d 500, 506, 341 P.3d 995 (2015):

> CR 12(b)(6) motions **should be granted only " 'sparingly and with care**' " and only when it is "beyond doubt" that the plaintiff can prove "no set of facts, consistent with the complaint, which would justify recovery." San Juan County v. No New Gas Tax, 160 Wash.2d 141, 164, 157 P.3d 831 (2007) (quoting Tenore v. AT & T Wireless Servs., 136 Wash.2d 322, 330, 962 P.2d 104 (1998)). **We accept all facts in the plaintiff's complaint as true**.

PANEL HAS A DUTY TO GIVE PRIORITY TO STATE RIGHTS

State v. Coe, 679 P.2d 353, 101 Wash. 2d 364, 101 Wash. 364 (1984):

> First, state courts have a **duty to independently interpret and apply their state constitutions that stems from the very nature of our federal system and the vast differences between the federal and state constitutions** and courts.
>
> Second, the histories of the United States and Washington Constitutions clearly demonstrate that the protection of the fundamental rights of Washington citizens was intended to be and remains a **separate and important function of our state constitution** and courts that is closely associated with our sovereignty.
>
> Finally, **to apply the federal constitution before the Washington Constitution would be as improper** and premature as deciding a case on state constitutional grounds when statutory grounds would have sufficed, and for essentially the same reasons.

FEDERAL CASES PROTECTING 42 U.S. CODE § 1983

The U.S. Constitution protects due process, the right to ANY hearing, equal protection of the law, and the right to jury trials by the first, fifth, sixth, seventh and fourteenth Amendments to the U.S. Constitution. The Panel has an obligation to publish challenges to recent Supreme Court of United States Decisions:

AXON ENTERPRISE V. FTC, No. 21-86, given to the Panel by supplemental authority:

> As I have explained, when private rights are at stake, **full Article III adjudication is likely required.** Private rights encompass "the three 'absolute' rights," life, liberty, and **property...**
>
> ...Finally, the appellate review model may run afoul of the Seventh Amendment by allowing an administrative agency to adjudicate what may be **core private rights without a jury.** See Tull v. United States, 481 U. S. 412, 417 (1987) ….Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.
>
> ...In fact, there seems to be no basis for treating factfinding differently from deciding questions of law.

303 CREATIVE LLC ET AL. v. ELENIS, No. 21–476:

> If anything is truly dispiriting here, it is the dissent's failure to take seriously this Court's enduring commitment to protecting the speech rights of all comers...**because it trusts state governments to coerce only "enlightened" speech**. But if that is the calculation, it is a dangerous one indeed....**A commitment to speech for only some messages and some persons is no commitment at all.**

Knick v.Twp. of Scott, 139 S. Ct. 2162, 204 L.Ed.2d 558 (2019):

> The Civil Rights Act of 1871, after all, guarantees "a federal forum for claims of unconstitutional treatment at the hands of state officials….

FEDERAL RIGHT TO A HEARING

Thousands of Federal cases give power the people's right to a hearing, with no hearing obviously unfair from common law going back to the Magna Carta:

Clements v. Airport Authority of Washoe County, 69 F.3d 321 (9th Cir. 1995):

> At a minimum, Due Process requires a hearing before an impartial tribunal. Ward v. Village of Monroeville, 409 U.S. 57, 59-60, 93 S.Ct. 80, 83, 34 L.Ed.2d 267 (1972).

Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970):

> ...due process requires an adequate hearing.

US v. Ullah, 976 F.2d 509 (9th Cir. 1992);
Etemadi v. Garland, 12 F.4th 1013 (9th Cir. 2021);
Ms. S. Ex Rel. G. v. Vashon Island School Dist., 337 F.3d 1115 (9th Cir. 2003);

STATE BOUND BY FEDERAL LAW AND PRECEDENT

The unpublished ruling proposes that Washington State is NOT bound by Federal Law of which SCOTUS strictly prohibits, *Haaland v. Brackeen*, No. 21–376:

> The Supremacy Clause provides that "the Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby.…
>
> ...[Texas] leads with what one might call an "unclean hands" injury....

If the citizens of Washington State desire to leave the union, then the Panel has an argument to deny their citizens "core rights" per the U.S. Constitution and ignore Federal decisions, even when they are unanimous. But there has been no indication the Panel is following the "will of the people." The Panel has an obligation to publish adverse decisions defeating "core rights" in defiance of *State v. Lewis*, 129 La. 800, 804, 56, So. 893, 894 (1911):

> ...rights beyond the authority of the legislative department to destroy or abridge.

6. CONCLUSION

The Atlantic, August 2019, *MEASLES AS A METAPHOR What the diseases' return tells us about America's ailing culture*:

> ...central to measles return and at least as worrying for society overall: diminished trust in government....approval rates of our government were 77% in 1964 and now regularly dip below 20 percent....**conspiracy theorists thrive when government is corrupt and opaque**.

Refusal to publish this decision is an obvious seeking of the "shadows" per *Sofie.* Opaqueness provokes the people to further distrust their officials whom "play with the oath" per 1:23- cr-00257-TSC, P11. To spurn the majority's will, which is resolutely supportive of "core rights," is a direct attack on the "republican form of government."[3] The Panel should publish the decision and give the people notice of the value of the Supreme Court's rulings. To do otherwise attacks the Court's legitimacy as a fair system of justice.

We conclude with Vice President Harris speaking in Jacksonville, Florida on July 21, 2023:

> They insult us in an attempt to gaslight us. We will not have it.

3 1:23- cr-00257-TSC, Indictment, P11:

"I and my fellow legislators swore an oath to support the U.S. Constitution and the constitution and laws of the state of Arizona. It would violate that oath, **the basic principles of republican government, and the rule of law** if we attempted to nullify the people's vote based on unsupported theories of fraud."

CERTIFICATION OF SERVICE. All defendants are served electronically by courts.wa.gov.

CERTIFICATION OF WORD LIMIT. The Word Count is 3875 words and is within the limit of new rule 18.17 (5000) excluding cover sheets and tables.

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 RAP 10 to the best of my knowledge for this Motion.

Date of Signing August 14, 2023
Signature of plaintiff: /s/ Joe Flarity

JOE PATRICK FLARITY
101 FM 946 S
Oakhurst, TX 77359
253-951-9981

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF THURSTON

DANIEL JEREMIAH SIMMS,	)	
	)	
Plaintiff,	)	NO. 21-2-00928-34
	)	
vs.	)	
	)	
STATE OF WASHINGTON,, DEPARTMENT OF CORRECTIONS,	)	
	)	
Defendant.	)	

VERBATIM REPORT OF PROCEEDINGS
Ruling of the Court

BE IT REMEMBERED that on February 24, 2023, the above-entitled and numbered cause came on for motion hearing before the HONORABLE MARY SUE WILSON, judge of Thurston County Superior Court, Olympia, Washington.

Cheri L. Davidson
Official Court Reporter
Thurston County Superior Court
Olympia, Washington 98502
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7141 Cleanwater Drive SW
Olympia, WA 98504-0126

ALL PARTIES APPEARED VIA ZOOM

I N D E X

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FEBRUARY 24, 2023

THE HONORABLE MARY SUE WILSON, PRESIDING

* * * * * * * * * *

(After hearing argument, the court ruled as follows.)

THE COURT: Thank you. I do wish I had more time today. I would like to elaborate in more detail.

I think Mr. Simms' case raises some important topics and issues, and certainly when you're held in custody by the State you need humane care, and clothing and shows, and that's important.

The issues before the court today on the State's motion for summary judgment is whether as a matter of law the court determines that there is no genuine issue of material fact to preclude a determination on the three claims that Mr. Simms presents. In this scenario, Mr. Simms has pled claims of negligence, intentional infliction of emotional distress, and negligent infliction of emotional distress.

The court is going to grant summary judgment to the State on all three claims, finding as a matter of law that there is no genuine issue of material fact and that Mr. Simms is unable to make his claims or establish his claims even construing the evidence in

the light most favorable to Mr. Simms. And I don't do this lightly. I do intend to explain with a few more words the reasons.

First, as to negligence, I'm not reaching the assumption of the risk argument, although I think that the State makes a strong argument, but I don't think that I need to reach it. In this case, the issue of duty and breach of duty is usually a determination by the jury after considering hearing the evidence and weighing the evidence. But the standard is whether the duty and breach of duty amounts to a failure on the defendant's part to exercise reasonable care from an ordinary prudent person standpoint. And the 13 business days in terms of responding to the request for new shoes, with the State's duty to provide the care and provide the necessities for the individuals in custody, in this case Mr. Simms, the court is finding that there is no specific timeframe. Certainly three or four days would be better and quicker, but whether we call it 13 business days or 20 calendar days, given the details provided in the State's declarations about the obligations and the various tasks, the court finds that there is not a shorter timeframe that the State is held to from a duty standpoint. And so

there is no clear duty of the shorter timeframe, and given the specific timeframe here, and from an ordinary prudent person, the timeframe was not unreasonable. And so I am determining as a matter of law that the evidence does not show a breach of any duty that exists.

Turning to the intentional infliction of emotional distress, there are a number of elements, and the threshold element is whether the evidence establishes or could establish extreme and outrageous conduct on the facts that have been presented or alleged, construing the evidence in the light most favorable to Mr. Simms, and the court finds that there is -- even construing the evidence in the light most favorable to Mr. Simms, he is unable to as a matter of law to establish extreme and outrageous conduct based upon the allegations here.

Finally, under negligent infliction of emotional distress, there needs to be emotional distress established through objective symptomatology, including medical testimony on a more probable than not that the emotional distress is established or could be established on the evidence, and the court finds that there is not that evidence presented in response to the summary judgment to be able to meet

that burden, so that claim should also be dismissed.

The court, therefore, is granting the summary judgment motion on all three claims of the State. I have a proposed order that was submitted.

Ms. Lefing, I will start with you whether the proposed order that you submitted needs any updates or edits.

MS. LEFING: It doesn't, Your Honor. Thank you.

THE COURT: Mr. Simms, do you have any suggested edits for the proposed order on summary judgment? Mr. Simms, you're on mute. Mr. Simms, can you unmute and tell me whether you have any proposed edits?

MR. SIMMS: Oh, I'm sorry, Your Honor. I thought I already did.

I said I don't, Your Honor. Thank you.

THE COURT: All right. I'm going to indicate on the order that Ms. Lefing was here by Zoom and Mr. Simms was here by Zoom today.

Ms. Lefing, I'm requesting that you provide a copy of this order once you take it from Odyssey to Mr. Simms. Could you promise to do that?

MS. LEFING: Yes, Your Honor.

THE COURT: Okay. Very good.

So I appreciated your argument and your patience in waiting to get to you and both of your efficiency in making the argument. I look forward to seeing you next time.

That concludes Simms vs. DOC, and I will return to the last matter. Thank you.

(Proceedings were concluded.)

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C E R T I F I C A T E

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

I, Cheri L. Davidson, Official Court Reporter, in and for the State of Washington, residing at Olympia, do hereby certify:

That the annexed and foregoing Verbatim Report of Proceedings, Ruling of the Court, was reported by me and reduced to typewriting by computer-aided transcription;

That said transcript is a full, true, and correct transcript of the ruling portion of the proceedings heard before Judge Mary Sue Wilson on the 24th day of February, 2023 at the Thurston County Courthouse, Olympia, Washington;

That I am not a relative or employee of counsel or to either of the parties herein or otherwise interested in said proceedings.

WITNESS MY HAND THIS 8th day of March, 2023.

/s/Cheri L. Davidson
Official Court Reporter

FLARITY FARM

August 14, 2023 - 4:59 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	56271-5
Appellate Court Case Title:	Joe Patrick Flarity, Appellant v. Argonaut Insurance Company, et al., Respondents
Superior Court Case Number:	21-2-06124-1

The following documents have been uploaded:

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- matthew.sekits@bullivant.com
- pcpatvecf@piercecountywa.gov
- revolyef@atg.wa.gov

Comments:

Motion to Publish decision with exhibits

Sender Name: Joe Flarity - Email: piercefarmer@yahoo.com
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249 Main Ave S. STE 107 #330
North Bend, WA, 98045
Phone: (253) 951-9981

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Court of Appeals
Division II
State of Washington
8/17/2023 1:54 PM

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

Cause 56271-5: Cause 21-2-02164-1

Joe Patrick Flarity, pro se, a marital community
v.
Argonaut Insurance Company,
Mary Robnett,
Sue Testo,
Pierce County,
State of Washington

MOTION TO MODIFY RULING

OF CLERK

DENYING MOTION TO PUBLISH

AS UNTIMELY

---

1. PLEADING

Joe Flarity, appellate, pro se, and a marital community, Flarity hereafter, Moves the Panel to Modify the Clerk's ruling, **EX-1,** denying Flarity's lengthy Motion to Publish as untimely.

2. LEGAL AUTHORITY FOR MOTION

This Motion is filed within the limits of RAP 17.7. The denial is dated February 10, 2023. Rap 17.7, with emphasis:

> (a)Motion to modify. An aggrieved person **may object to a ruling** of a commissioner or clerk, including transfer of the case to the Court of Appeals under rule 17.2(c), only by a motion to modify the ruling directed to the judges of the court served by the commissioner or clerk... **not later than 30 days a]er the ruling is filed.**

3. STATEMENT OF CIRCUMSTANCES

Flarity filed a timely Motion to Reconsider the June 13, 2023 decision, on July 7, 2023, in which Flarity documented the egregious errors in the decision in a very detailed filing.

Flarity had every right to believe Div. II would correct the errors as appellate courts have shown in hundreds of corrections. These were also documented in the filing.

A Motion to Publish necessarily must be based on the result from the Motion to Reconsider per RAP 12.4.

Flarity's Motion to Publish was presented within 20 days of the Panel's refusal to modify their decision. **EX-2.**

4. ARGUMENT

The people have every reason to believe that our basic 1st Amendment rights to ANY hearing per U.S. 1983 (and common law) are NOT the equivalent of Andrew Swank's voluntary participation in a high school football game. *Swank v. Valley Christian School,* 398 P.3d 1108, 188 Wash. 2D 663.

The Panel's decision is embarrassing, but by the same reasoning for public disclosure of records, the Panel should publish the decision to establish new precedents for the people's recognition of their actual standing in Washington Courts for civil rights abuses. Per the AG's website, https://www.atg.wa.gov/open-government-resource-manual:

> Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others.**RCW 42.56.550(3).**

The Panel should own its decision and establish precedent. The Clerk is here looking for a procedural reason for the Panel to avoid embarrassment. Observance of the basic principles of the rule of law should move the Panel to rule on the Motion to Publish, despite its obvious flaws.

The Clerk is moved to engage in TEGWAR[1] giving an indication the rule of law has failed for the people of Washington State. Div. II should show bravery and not hide in the "shadows" per *Sofie v. Fibreboard Corp*., 771 P.2d 711, 112 Wash. 2d 636, 112 Wash. 636 (1989).

PRO SE RIGHT TO BE HEARD

The Clerk's extreme position also defies the Judicial Code of Conduct giving preferences to a pro se plaintiff's right to be heard per Rule 2.2 [4]. It also goes against the AG's position as articulated in Rule CJC 2.2 for support of pro se positions. If the Panel's intent is to eliminate the people's right to challenge officiials per Art. 1, Sec. 32, then that intent should be published for the people's illumination per Art. 1, Sec. 29. This requirement is not optional, but the basic duty of a court.

1 The Exciting Game Without Any Rules. *Ramirez-Alejandre v. Ashcroft*, 320 F.3d 858 (9th Cir. 2003).

6. CONCLUSION

For the reasons stated, the Panel should Modify the Clerk's denial and review Flarity's Motion to Publish setting new precedents. The decision reverses numerous precedents and should not be hidden from the people. To do otherwise looks like gaslighting. The proper response to ambient abuse is outrage. Per Vice President Harris speaking in Jacksonville, Florida on July 21, 2023:

> **They insult us in an attempt to gaslight us. We will not have it.**

CERTIFICATION OF SERVICE. All defendants are served electronically by courts.wa.gov.

CERTIFICATION OF WORD LIMIT. The Word Count is 799 words and is within the limit of new rule 18.17 excluding cover sheets and tables.

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 RAP 10 to the best of my knowledge for this Motion.

Date of Signing August 17, 2023
Signature of plaintiff: /s/ Joe Flarity

JOE PATRICK FLARITY
101 FM 946 S
Oakhurst, TX 77359
253-951-9981

Washington State Court of Appeals
Division Two
909 A Street, Suite 200, Tacoma, Washington 98402
Derek Byrne, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)
General Orders, Calendar Dates, and General Information at http://www.courts.wa.gov/courts **OFFICE HOURS**: 9-12, 1-4.

August 15, 2023

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CASE #: 56271-5-II Joe Patrick Flarity v. Argonaut Insurance Company
Case Manager: Jodie

Counsel and Parties:

The Court is in receipt of Joe P. Flarity's Motion to Publish the Opinion filed on June 13, 2023 in the above-referenced matter. The Motion to Publish was received by the Court on August 14, 2023. Pursuant to RAP 12.3(e), the party filing the Motion to Publish should submit it within 20 days from the filing of the decision. As your Motion to Publish is considered untimely, it will be stamped as rejected and no further action will be taken on it.

Sincerely,

Derek M. Byrne
Court Clerk

DMB:jlt

Filed
Washington State
Court of Appeals
Division Two

July 26, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JOE PARTRICK FLARITY, a marital community, Appellant, v. ARGONAUT INSURANCE COMPANY, SUE TESTO, MARY ROBNETT, PIERCE COUNTY, a municipal corporation, STATE OF WASHINGTON, et al., Respondents.	No. 56271-5-II ORDER DENYING MOTION FOR RECONSIDERATION

Appellant moves for reconsideration of the opinion filed June 13, 2023, in the above entitled matter. Upon consideration, the Court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj: LEE, PRICE, CHE

FOR THE COURT:

PRICE, J.

FLARITY FARM

August 17, 2023 - 1:54 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	56271-5
Appellate Court Case Title:	Joe Patrick Flarity, Appellant v. Argonaut Insurance Company, et al., Respondents
Superior Court Case Number:	21-2-06124-1

The following documents have been uploaded:

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  The Original File Name was Modify Denial of Motion to Publish with Exhibits.pdf

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- kristin.anderson@bullivant.com
- matthew.sekits@bullivant.com
- pcpatvecf@piercecountywa.gov
- revolyef@atg.wa.gov

Comments:

Motion to Modify Flarity's Motion to Publish Ruling as untimely, with exhibits.

Sender Name: Joe Flarity - Email: piercefarmer@yahoo.com
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North Bend, WA, 98045
Phone: (253) 951-9981

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State of Washington
8/30/2023 3:05 PM

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

Cause 56271-5: Cause 21-2-02164-1

Joe Patrick Flarity, pro se, a marital community
v.
Argonaut Insurance Company,
Mary Robnett,
Sue Testo,
Pierce County,
State of Washington

REPLY TO STATE

ON MOTION TO MODIFY

DENIAL OF MOTION TO PUBLISH

AS UNTIMELY

---

1. PLEADING

Joe Flarity, appellate, pro se, and a marital community, Flarity hereafter, Replies to the State Answer contesting Flarity's Motion to Modify Denial of Motion to Publish as untimely.

2. PUBLISHING PRECEDENTS PROTECTS THE JUSTICE SYSTEM

The Panel has in this case defied numerous precedents, confirming what the Honorable Judge Martin advised was a "notorious matter"[1] in Division II, even though Flarity was identified as a good advocate for the Cause. Defying precedents and then refusing to publish that contempt for higher court decisions, is exactly the problem identified by J. Gorsuch in *Direct Marketing Ass'n v. Brohl*, 814 F.3d 1129 (10th Cir. 2016)

> And in taking the judicial oath judges do not necessarily profess a conviction that every precedent is rightly decided, but they must and do profess a conviction that a **justice system** that failed to attach power to precedent, one that surrendered similarly situated persons to **wildly different fates at the hands of unconstrained judges, would hardly be worthy of the name**.

1 Judge Martin did not use the term, which was later identified by the Commissioner in citations responding to Flarity's Motion for Judicial Notice.

Using the timeliness for denial digs a hole one step below the already low bar of simply denying the request to publish. At the very least, the Panel should own their decision and not let the Clerk hold the coats.

3. STATE'S LEGAL THEORY ABSENT

In probably once of the barest Answers the State has ever written, not a single case is cited in support of the Clerk's denial of Flarity's Motion to publish. Flarity properly waited until the Panel ruled on the Motion to Reconsider. The State asserts that every attorney in the State is required to write a Motion to publish that would become immediately "meaningless or superfluous" if any change resulted from the pending Motion to Reconsider. This assumption defies *In re Dependency of N.G.*, 199 Wn.2d 588, 594-98, 510 P.3d 335 (2022). All emphasis throughout is added:

> *Whatcom County v. City of Bellingham,* 128 Wash.2d 537, 546, 909 P.2d 1303 (1996) ("Statutes must be interpreted and construed so that all the language used is given effect, **with no portion rendered meaningless or superfluous.**").

3. STATE SHOULD GIVE "GREAT WEIGHT" TO FEDERAL DUE PROCESS

Rozner v. City of Bellevue, 116 Wn.2d 342, 804 P.2d 24 (Wash. 1991):

> The fourteenth amendment to the federal constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law." Article 1, section 3 of the Washington State Constitution similarly provides that "[n]o person shall be deprived of life, liberty, or property, without due process of law. "We give "'**great**

> **weight**' " to federal cases interpreting the fourteenth amendment when construing our constitution's due process provision.

4. FEDERAL RIGHTS ARE THE "FLOOR"

State v. Gregory, 192 Wn.2d 1, 16, 427 P.3d 621 (2018). *Accord State v. Sieyes,* 168 Wn.2d 276, 292, 225 P.3d 995 (2010):

> ("the United States Constitution **establishes a floor** below which state courts cannot go to protect individual rights.").

Given the immense pride the State takes in enhancing State rights over U.S Constitution as expressed in *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986), the Panel should note the "floor" in this area provided by the 9th Circuit.

4. REVIEW OF FEDERAL RULES

Federal Rules give a lengthy time for Motions after the *disposition*, which includes a Motion per rehearing en banc per FRAP 35-1, the equivalent of reconsideration.

> CIRCUIT RULE 36-4. REQUEST FOR PUBLICATION
>
> Publication of any unpublished disposition may be requested by letter addressed to the Clerk, stating concisely the reasons for publication. Such a request will not be entertained unless received within 60 days of the issuance of this Court's **disposition**….*(Rev. 12/1/09)*

In addition the FRAP specifically notes the reverse process on Motions to Publish:

> CIRCUIT RULE 40-2. PUBLICATION OF PREVIOUSLY UNPUBLISHED DISPOSITION
>
> An order to publish a previously unpublished memorandum disposition in accordance with Circuit Rule 36-4 **extends the time to file a petition for rehearing to 14 days after the date of the order of publication** or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. If the mandate has issued, the petition for rehearing shall be accompanied by a motion to recall the mandate. *(Rev. 1/96)*

If there is nothing anywhere in the RAP the equivalent of the FRAP for conflicts on these motions, then that ambiguity should be interpreted in favor of the right to be heard, the right of people to know where they stand on precedents, and the Panel's support for the interests of justice.

6. CONCLUSION

Given the State found nothing of legal value to cite, the Panel can rely on *In re Dependency of N.G*., 199 Wn.2d 588, 594-98, 510 P.3d 335 (2022). If the Reconsideration would have made the Motion to Publish "**meaningless or superfluous"** then the Panel should NOT require tangled Motions. Requiring the people to proceed in parallel on conflicting Motions does not meet basic due process per Federal Rules nor common sense in general. Refusal to Modify would be viewed by the people as the Honorable Panel at Div. II saving face and decreasing the legitimacy of the judicial branch. We respectfully implore the Panel to take every possible path to bolster the people's confidence in their courts.

CERTIFICATION OF SERVICE. All defendants are served electronically by courts.wa.gov.

CERTIFICATION OF WORD LIMIT. The Word Count is 979 words and is within the limit of new rule 18.17 excluding cover sheets and tables.

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 RAP 10 to the best of my knowledge for this Motion.

Date of Signing August 30, 2023
Signature of plaintiff: /s/ Joe Flarity

JOE PATRICK FLARITY
101 FM 946 S
Oakhurst, TX 77359
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FLARITY FARM

August 30, 2023 - 3:05 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	56271-5
Appellate Court Case Title:	Joe Patrick Flarity, Appellant v. Argonaut Insurance Company, et al., Respondents
Superior Court Case Number:	21-2-06124-1

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- revolyef@atg.wa.gov

Comments:

Reply to State on Motion to Modify Denial of Motion to Publish

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FILED
SUPREME COURT
STATE OF WASHINGTON
3/4/2022
BY ERIN L. LENNON
CLERK

THE SUPREME COURT OF WASHINGTON

LAKESIDE INDUSTRIES, INC., Petitioner, v. WASHINGTON STATE DEPARTMENT OF REVENUE, Respondent.	)	No. 100437-1 **ORDER** Court of Appeals No. 81502-4-I

Department II of the Court considered pro se non-party Igor Lukashin's motion for discretionary review and motion to modify at its March 1, 2022, Motion Calendar. The motions were referred to the March 3, 2022, En Banc Conference for decision.

Igor Lukashin has filed pro se non-party motions in more than 25 cases before the Washington Supreme Court. The Rules of Appellate Procedure do not permit pro se non-parties to file motions in the Supreme Court. Igor Lukashin has been informed that pro se non-parties are not permitted to file motions in cases, but he continues to file a substantial volume of frivolous pro se non-party motions. These motions take considerable staff and court time to process, but even more importantly, these motions delay the finalization of cases, affecting the actual parties to the case. Based on the volume of frivolous filings that negatively affect actual parties to cases, Igor Lukashin is determined to be a vexatious litigant. The Court unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's motion for discretionary review is denied. The Petitioner's motion to modify the Commissioner's ruling is denied.

IT IS FURTHER ORDERED:

That Igor Lukashin is prohibited from filing any future pro se non-party motions with the Supreme Court in any case. Any pro se non-party motions filed by Mr. Lukashin in any case before the Supreme Court shall be placed in unfiled papers without action. The Clerk's decision to place a pro se non-party motion filed by Mr. Lukashin in unfiled papers shall not be subject to a motion to modify.

DATED at Olympia, Washington, this 4th day of March, 2022.

For the Court

CHIEF JUSTICE

FILED
SUPREME COURT
STATE OF WASHINGTON
9/19/2023 10:46 AM
BY ERIN L. LENNON
CLERK

September 19, 2023

Justice Charles McCloud
Washington State Supreme Court
PO Box 40929
Olympia, WA 98504-0929

RE: No. 102097-0, for Judicial Notice, and the Court's Open Letter of June 4, 2020

Dear Honorable Justice McCloud:

This letter pertains to Flarity's unusual Motion for Judicial Notice. In the Motion, we pointed to a podcast with Marc Elias, discussing *Allen v. Milligan,* a ruling which Alabama immediately refused to follow. Marc also provided a pertinent historical analysis of *Home Building & Loan Association v. Blaisdell*, from depression era Minnesota, which by good fortune, we also discussed in the Judicial Notice for 56271-5-II.

Progressive Washington State seems no exception to "unconstrained" judges defying precedents. The unconstrained term was used by J. Gorsuch in *Direct Marketing Assn. v. Brohl* when he was on the 10th Circuit. Without correction, lower courts can easily make your rulings "worthless paper," no matter how robust the legal theory. "Worthless paper" was also quoted from J. Gorsuch. but it feels really weird to constantly cite J. Gorsuch on civil rights, given his dissent in *Allen v. Milligan.*

The podcast specifically references "learned helplessness" and appeals to the people to stand up in their available "town square" and advocate for the rule of law. By standing here, we provide an excellent opportunity to prove your June 4, 2020, letter is not more *worthless paper.*

"A riot is the language of the unheard." MLK Jr. The "injustice still plaguing our country," eloquently described in the letter seems a reaction to Seattle riots in support of George Floyd, killed on May 25, 2020 in Minnesota. But those protests might also represent the accumulated anger of many "broken windows" for civil rights violations across a broad spectrum of citizens. Also from the open letter, "[Judges] must also recognize that this is not how a *justice* system must operate."

I would guess not a single judge has campaigned for office with the slogan, "Vote for me, I don't enforce the Constitution. And I'm very popular with AG officials and prosecutors."

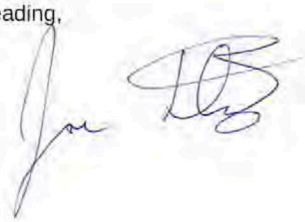
Ruth Bader Ginsburg argued that class based legal decisions will eventually backfire. History shows that social unrest disproportionately impacts those on the fringes of society, the ones your Panel seeks to protect. Riots are a lighthouse warning that the shoals of tyranny approach, that democracy is breached.

Washington courts seem to assume justice is zero sum game. If justice is withdrawn from one group, it would then be available to another? Where do the courts keep this reservoir of saved up Justice? I suggest this zero sum idea dances in the shadows of *Sohpie v. Fiberboard*.

My standing in this *public square* comes with the responsibility to understand those shadows. What is the Panel's actual "will" to correct decisions enforcing systemic oppression that "is not merely incorrect and harmful; it is shameful and deadly."

Assuming this knowledge is acquired, what argument might convince the Panel to enforce the Constitution for all the people?

Thank you for reading,



Joe Flarity

253 951 9981
101 FM 946 S
Oakhurst, TX 77359

ENCLOSURE: Letter from Daniel J. Simms dated September 9, 2023, with description.

September 19, 2023

Justice Sheryl Gordon McCloud
Washington State Supreme Court
PO Box 40929
Olympia, WA 98504-0929

RE: Daniel Simms letter received September 18, 2023.

Dear Honorable Justice McCloud:

The Court Reporter required I get written permission from Daniel Simms to transcribe and post his ruling in the Judicial Notice. Attached is an unsolicited letter we received from Daniel Simms on September 18, 2023. I redacted personal information.

I did not think I could file this as a supplemental authority, but would have included it in our Motion for Judicial Notice if timely. We are wary of how easily the State's requests to Strike are granted, as shown in the Motion.

I include the letter to illustrate how the denial of rights in general severely impacts the rights of people on the fringes.

Thank you for reading Daniel Simms' letter.

Joe Flarity

253 951 9981
101 FM 946 S
Oakhurst, TX 77359

ENCLOSURE: Daniel Simms letter, dated September 9, 2023

Daniel J. Simms #795743
Monroe Correctional Complex/IMU
P.C. Box 777
Monroe, WA 98272
www.DanielJSimms.com
www.defundDOC.net

09 September 2023

Joe Flarity
101 FM 946 S
Oakhurst, TX 77359

Dear Joe!

Hello my friend! Its so good to hear from you again. Suffering State violence in the form of solitary confinement is incredibly debilitating but hearing from friends combats it. I've been fighting hard to be released from solitary without diesel treatment (transfer) but so far its been ineffective. Which is sad because there is no open beds at the prison they want to transfer me to so they plan to keep me in solitary until one opens up. That has taken up to six months! Crazy. Whats worse is I've got the points to stay here (MCC-TRU) but DOC accelerated the classification one day so they could transfer me. This is highly irregular and unfair. Virtually every other inmate would of been allowed back to MCC/TRU. Due to my outspoken free-speech and activism DOC constantly treats me harshly and cruelly. DOC always finds some petty pretext, in this case they're using a incident where I was attacked and hit three times in the face before self-defending myself, and use it to keep me in solitary and transfer me. Ugh.

—1—

DoC routinely abuses its power with impunity. On another topic my business endeavors have been going well. Turns out theres a bipartisan demand for prison reform across the country. Lol.

I like that your a supporter of the wounded warrior project. Thats awesome. I greatly thank you and veterans for your service. I wrote a blog on how mass incarceration preys on the trauma of veterans which causes them to self-medicate with drugs or commit crime. Veterans are ~~are~~ one of the fastest growing populations in prisons nationwide. ~~Its~~ immensely sad. These soldiers put their life and limb on the line for this country. ~~and~~ Instead of having them treated and provided the tools to reintergrate back into society they warehouse them, enslave them, oversentence them, and exploit them, its a sick and inhumane system. I guess that's why I'm so passionate about reforming it for all of the

-2-

millions of Americans today and in the years to come that will be ensnared in it. Obviously it will be a hard arduous struggle but we must embark on it to end all vestiges of slavery, hate, and systemic oppression. Sorry for the diatribe but it's been incredibly hard to suffer silently anymore which has made me a huge target for suppression and unfair treatment.

Sincerely
Daniel

-2-

FLARITY FARM

September 19, 2023 - 10:46 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,097-0
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:

- 1020970_Letters_Memos_20230919104335SC697798_0206.pdf
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- revolyef@atg.wa.gov

Comments:

Letter to J. McCloud concerning Flarity's Motion for Judicial Notice with recent letter from prisoner Daniel J. Simms.

Sender Name: Joe Flarity - Email: piercefarmer@yahoo.com
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249 Main Ave S. STE 107 #330
North Bend, WA, 98045
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Note: The Filing Id is 20230919104335SC697798

FLARITY FARM

October 01, 2023 - 3:25 PM

Filing Petition for Review

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	Joe Patrick Flarity, Appellant v. Argonaut Insurance Company, et al., Respondents (562715)

The following documents have been uploaded:

- PRV_Petition_for_Review_20231001152230SC089914_7030.pdf
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  Petition for Review
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- kristin.anderson@bullivant.com
- matthew.sekits@bullivant.com
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- revolyef@atg.wa.gov

Comments:

Div. II seeks to escape publication of a decision conflicted dozens of precedents by hiding behind the Clerk's finger on the scales of RAP rules on timeliness.

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Note: The Filing Id is 20231001152230SC089914

FILED
SUPREME COURT
STATE OF WASHINGTON
11/27/2023 3:09 PM
BY ERIN L. LENNON
CLERK

NO: 102435-5

SUPREME COURT OF THE STATE OF WASHINGTON

Review of Division II Cause 56271-5-II per RAP 13.5
21-2-06124-1
Before the Honorable Judge Martin
Pierce County

Joe Patrick Flarity, a pro se marital community
v.
Argonaut Insurance Company,
Mary Robnett,
Sue Testo,
Pierce County,
State of Washington, et al

REPLY TO STATE
ON
PETITION TO REVIEW
DIVISION II'S DENIAL TO PUBLISH AS UNTIMELY
PRESENTED TO THE WASHINGTON STATE SUPREME COURT

Joe Patrick Flarity, a marital community
Pro Se Appellant
101 FM 946 S
Oakhurst, TX 77359
253-951-9981
piercefarmer@yahoo.com

Table of Contents

1. PLEADING INTRODUCTION

Comes Joe Patrick Flarity, a pro se marital community, Flarity hereafter, moves the Commissioner to submit this question to the Panel to establish precedent on which the people will be *certain* by the principles of due process. This Reply combines State's Answer to both the Motion and letter to Recuse. Meaning no disrespect to any official or judge, titles are shortened to save word count. All **emphasis** is added, unless otherwise noted.

2. QUESTION TO CERTIFY TO THE PANEL

1) Does the RAP as interpretation by Div. II, meet the due process requirement by the "plain" or "certain" definition when a party waits for a ruling on their pending request for Reconsideration before making a Motion to Publish?

2) Does the current practice fall below the *floor* of the Federal Standard, or cause confusion with the APA Standard?

3. ARGUMENT

3.1 PRECEDENTS SILENT ON THIS ISSUE

Despite the State's enormous resources, the Response relies on a single case that is not applicable in general.[1] This weakness gives the Commissioner additional reason to certify the question to the Panel. From State's Reply P6:

> But a court will not add to the clear language of a rule. *Dep't of Licensing v. Cannon*, 147 Wn.2d 41, 57, 50 P.3d 627 (2002).

Cannon identified a clear issue for Supreme Court discussion concerning a criminal charge:

> Does WAC 448-13-040 require the proponent of the breath test in an implied consent proceeding to produce evidence

1 In addition, *Cannon* was likely accepted for review because the State was the appellant, demonstrating the "power of the sovereign."

> that the thermometer used in the test was certified as required by WAC 448-13-035?

From the *Cannon* Order:

> WAC 448-13-035 ... requires safeguards that must be observed by an operator before a breath test is performed. These safeguards include verifying that the thermometer is certified under WAC 448-13-035.

The State neglected to mention this applicable part of the ruling in *Cannon*:

> This court will avoid a literal reading of a provision if it would result in unlikely, absurd, or **strained consequences**.[55]
>
> [55] *See State ex rel. Royal v. Yakima County Comm'rs,* 123 Wash.2d 451, 462, 869 P.2d 56 (1994) (quoting *State v. Neher,* 112 Wash.2d 347, 351, 771 P.2d 330 (1989).

Per *Royal*:

> The sole question presented by this case is whether under RCW 3.34, providing for district judges, Yakima County is required to have four district court judges or six district court judges.

Per *Neher*:

> At issue is whether the vehicular assault statute requires that the defendant's actions in driving recklessly or while intoxicated be the *sole* proximate cause of serious bodily injury to another, or whether that conduct can be one of two or more proximate causes.

None of the identified questions came even close to this issue.

3.2 EXAMINATION OF THE "STRAINED CONSEQUENCE"

Per the State's own citation in Cannon, this situation presents a "strained consequence." *Sundquist Homes, Inc. v. PUD*, 997 P.2d 915, 140 Wash. 2D 403 (2000):

> This absurd, and we believe unintended, consequence is avoided by simply reading the statute in a **commonsense manner.**

State v. McDougal, 841 P.2d 1232, 120 Wash. 2D 334 (1992):

> *Sutherland Statutory Construction* provides some advice on this point:
>
> It has been called a golden rule of statutory interpretation that unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result.

The "not plain" enforcement of the "inept" RAP interpretation only makes sense if the Supreme Court intended to substantially reduce the published opinions in defiance of Federal Due Process. *Davis v. Department of Licensing*, 977 P.2d 554, 137 Wash. 2D 957 (1999):

> The purpose of an enactment should prevail over **express but inept wording.**

State v. Day, 638 P.2d 546, 96 Wash. 2d 646, 96 Wash. 646 (1981):

> In light of the purpose of the statutes and **the unique facts herein**, it would be an unreasonable exercise of police power to extend the prohibition to petitioner's conduct...The vehicle was unlicensed and he was not on or even near a public road.... His arrest did not further the purpose of the statute in any way.

3.3 FLARITY'S RECONSIDERATION CONTAINS A DE FACTO REQUEST TO PUBLISH

Div. II simply held the Reconsideration ruling until the time for a Motion to Publish had expired even though the Reconsideration requested examination of the gross violation of precedents which implicitly then demands publication. The Div. II reading of the rules is "commonsense" only if the 'court of last resort" intends to make opaque opinions in defiance of their own precedents an established practice.

The ruling is further *strained* given the wording in Flarity's Motion for Reconsideration. Any flagrant disregard of precedent should be published without the urging of any party. Div. II's opinion was "absurd" as was made clear in the Reconsideration:

> MOTION FOR RECONSIDERATION OF UNPUBLISHED OPINION
>
> The Opinion gives no citations that remotely address the fundamental principles listed in Flarity's Complaint….
>
> *Swank v. Valley Christian School*, 398 P.3d 1108, 188 Wash. 2D 663 (2017):

> How is voluntary participation in a football game anywhere close to the founders' understanding of fundamental principles?
>
> ERROR #4— JUSTIFY OVERTURNING FEDERAL PRECEDENT

Flarity's call for *justification,* is also a call to publish a new precedent.

3.4 NO "COMMONSENSE" ARGUMENT PRESENTED TO OVERTURN *In re Dependency of N.G.*

Sweeney v. ADAMS COUNTY PUBLIC HOSPITAL DISTRICT NO. 2, No. 32486-9-III (Wash. Ct. App. Aug. 2, 2016):

> IT IS ORDERED, the motion for reconsideration and the motion to enlarge time to publish opinion of this court's decision of August 2, 2016, is hereby denied.
>
> IT IS FURTHER ORDERED the **opinion filed August 2, 2016, is hereby withdrawn; a new opinion will be filed this day** and has been amended as follows….

The *Sweeney* decision made the original motion for delay "meaningless or superfluous." *In re Dependency of N.G.*, 199 Wn.2d 588, 594-98, 510 P.3d 335 (2022):

> Whatcom County v. City of Bellingham, 128 Wash.2d 537,546, 909 P.2d 1303 (1996) ("Statutes must be interpreted and construed so that all the language used is given effect, **with no portion rendered meaningless or superfluous**."

Likewise, No. 85620-6:

> ORDER

> ¶ 1 Department I of the Court, composed of Chief Justice Madsen and Justices C. Johnson, Chambers, Fairhurst, and Stephens, considered this matter at its April 26, 2011, Motion Calendar and unanimously agreed that the following order be entered.
>
> ¶ 2 IT IS ORDERED:
>
> ¶ 3 That the Petitioner's Motion for Discretionary Review is granted and the matter is remanded to Division One of the Court of Appeals for a decision on the motion for reconsideration and the motion to publish. **The Court of Appeals is directed to recall its mandate in order to ensure that the Petitioner has the opportunity to file a Petition for Review** if he chooses to do such.

The State has shown NO argument that *In re Dependency of N.G.* does NOT apply to this situation. Therefore, the people would assume the Reconsideration as written makes "meaningless or superfluous" any Motion to Publish on an opinion that is clearly defying multiple precedents as is being reviewed by Reconsideration.

3.5 BELOW THE "FLOOR" OF FEDERAL DUE PROCESS OR THE APA STANDARD

The people have a right to assume that State courts observe Federal due process. From State's Response, P 6-7:

> First, the Board has different procedural rules which apply to its proceedings. See WAC 456-09-001(1) (Board conducts proceedings in accordance with Administrative Procedure Act (APA)). Because they are different, **the rules allow different results**.

Changing the rules to get different results is exactly the problem. The Commissioner should consider the 9th Circuit Rule:

> CIRCUIT RULE 36-4. REQUEST FOR PUBLICATION
>
> Publication of any unpublished disposition may be requested by letter addressed to the Clerk, stating concisely the reasons for publication. Such a request will not be entertained unless received within **60 days of the issuance of this Court's disposition**.

In despair of *Gunwall*,[2] Washington State seeks here to plunge "below the floor of Federal Due Process,"[3] even though *Gunwall* promised the people a higher standard as the founders clearly intended. Div. II shows a Rule of Law decline addressed in Flarity's Motion to Modify filed 10/18/2023 for 57601-5-II, footnote references removed:

> Marc Elias of the Elias Law Group and founder of Democracy Docket paraphrased:
>
> Civil procedure is the key. **If you change the rules, you effect the outcome.**
>
> Clark Nealy of the Cato Institute:
>
> ...it's important to understand that the judiciary really does invent and **blatantly misapply various avoidance doctrines** to help insure the judges' former colleagues in the other branches rarely have to account for themselves.

---

2 *State v. Gunwall*, 106 Wn. 2D 54, 720 P. 2d 808, 76 A.L.R. 4th 517 (Wash. 1986)

3 *State v. Gregory*, 192 Wn.2d 1, 16, 427 P.3d 621 (2018). Accord *State v. Sieyes*, 168 Wn.2d 276, 292, 225 P.3d 995 (2010):

("the United States Constitution establishes a floor below which state courts cannot go to protect individual rights.").

Div. II does not meet the APA Standard. Nor the Federal Standard. The Panel should be given the opportunity to rule specifically to clarify this departure so the people will have a "certain" outcome.

4. RECUSAL AVOIDS OBVIOUS CONFLICT

Recusal is a personal matter and rarely overturned. When the recusal decision was scheduled on the same day as the hearing for the Motion to Modify, that is a potent indication the decision is forgone. However, Flarity remains undeterred in our quest to restore humanity to the common people of Washington State.

We request time before the hearing set for Dec. 6, 2023, to address the conflict shown in the Appendix.

5. CONCLUSION

Quoting Millie Jeffery:[4]

> You never win freedom permanently. You have to win it time after time...whether it's union rights, civil rights, or equality for women. We have to keep at it and at it.

Defendants give academy worthy performances for the umbrage that Flarity continues to advocate for the return of fundamental liberties removed from the people in multiple areas. It is well known that rights

4 *In 2000, at age 90, Millie Jeffrey was awarded the Presidential Medal of Freedom by Bill Clinton.*

are easy to remove by a callus sovereign and very difficult to get back. Stout resistance is needed on a wide range of fronts.

As shown herein, frontal assaults on civil rights by officials impacts the people's right to be heard as a fundamental requirement from common law. Defendants constantly harp on "copycat" issues, such as 1) the people's right to privacy,[5] 2) the right to attend a public BOE hearing, 3) State demand for unlimited delays,[6] 4) the assignment of sanctions in defiance of Art. 1, Sec. 32, and as shown here 5) the denial of any hearing whatsoever.

Taking a full sweep of the multitude of insults to the people, the Commissioner should conclude DIV. II hides contempt for the people's rights. This tactic is the **first** tactic used by tyrants:[7]

> Control of public information and opinion: It begins with withholding information, and leads to putting out false or misleading information.

5 No. 102465-7 heard on the same day.

6 Ibid

7 *16 Signs of Tyranny*, by Jon Roland of Listverse.com

CERTIFICATION OF WORD LIMIT.

The Word Count is 2155 words and is within the limit of new rule 18.17

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 Motion.

Date of Signing: November, 27 2023
Signature of plaintiff: /s/ Joe Flarity

JOE PATRICK FLARITY
101 FM 946 S
Oakhurst, TX 77359
piercefarmer@yahoo.com
(253) 951 9981

APPENDIX

TABLE OF CONTENTS

Subject: Thank you for submitting your application for a Gubernatorial Appointment to a Board or Commission CRM:0038667
From: svcGOVNotify <svcGOVNotify@ofm.wa.gov>
Date: 10/15/23, 11:30
To: Joe Flarity <piercefarmer@yahoo.com>

Thank you for your application and for your willingness to serve your fellow Washingtonians. We appreciate your patience. Due to the high volume of applications, our office will contact you if additional information is needed, or you are selected for an interview, or you are selected for appointment. Please note that your application will be kept in consideration for any future vacancies for 12 months from date of submission. Additional information about our Boards and Commissions can be found under Boards & Commission Profiles.

Best Regards,

Boards and Commissions Staff
Boards & Commissions | Office of Governor Jay Inslee
Office: 360.902.4111 |
www.governor.wa.gov | governorboardsandcommissions@gov.wa.gov
Email communications with state employees are public records and may be subject to disclosure, pursuant to Ch. 42.56 RCW.

FLARITY FARM

November 27, 2023 - 3:09 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,435-5
Appellate Court Case Title:	Joe Patrick Flarity v. Argonaut Insurance Company, et al.
Superior Court Case Number:	21-2-06124-1

The following documents have been uploaded:

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- kristin.anderson@bullivant.com
- matthew.sekits@bullivant.com
- pcpatvecf@piercecountywa.gov
- revolyef@atg.wa.gov

Comments:

Reply to Response that Courts should be allowed opaque rulings that defy numerous precedents.

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Note: The Filing Id is 20231127150623SC460112

FLARITY FARM

December 19, 2023 - 12:36 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,435-5
Appellate Court Case Title:	Joe Patrick Flarity v. Argonaut Insurance Company, et al.
Superior Court Case Number:	21-2-06124-1

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  Motion 1 - Modify Commissioners Ruling
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- kristin.anderson@bullivant.com
- matthew.sekits@bullivant.com
- pcpatvecf@piercecountywa.gov
- revolyef@atg.wa.gov

Comments:

Div. II knows full well it violated RAP 12.3(d) and RCW 2.06.040. The rule to publish is not plain and falls below the "floor" of 9th Circuit local rules. Washington State is using a policy pioneered by racists. The rule should be reviewed and clarified by the entire Panel.

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Note: The Filing Id is 20231219123048SC886758

FILED
Court of Appeals
Division II
State of Washington
7/9/2024 8:00 AM

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

Cause 57601-5: ABUSE OF DISCRETION IN THURSTON COUNTY SUPERIOR COURT, Cause 22-2-02806-34
The Honorable Judge Wilson
Hearing Dates:
November 18, 2022
December 9, 2022
January 6, 2023
January 20, 2023
February 24, 2023

Joe Patrick Flarity, a marital community
v.
Unknown State Officials in their Personal and Official Capacities, State of Washington

---

MOTION FOR RECONSIDERATION

ORDER ISSUED ON JULY 2, 2024

WITH ASSOCIATED SANCTION

---

1. PLEADING

Joe Flarity, pro se, henceforth Flarity, Appellant, a marital community, respectfully moves the Panel to Reconsider the order issued on July 2, 2024. Meaning no disrespect any party, titles are shortened to save word count. All emphasis is our own unless otherwise noted.

2. AUTHORITY AND TIMING FOR MOTION

RULE 12.4

MOTIONS FOR RECONSIDERATION OF DECISION TERMINATING REVIEW

(a) Generally. A party may file a motion for reconsideration only of a decision by the judges (1) terminating review...

(b) Time. The party must file the motion for reconsideration within 20 days after the decision the party wants reconsidered is filed in the appellate court.

Per RAP 12.4 (c)

Content. The motion should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised.

This Motion is filed within the 20 day limit.

3. POINTS OF ERROR

INTRODUCTION

DEMOCRACY IS LOSING THE PROPAGANDA WAR, Anne Applebaum, *The Atlantic*, June 2024:

> "not free" [countries]...teach their people to be **cynical and passive, apathetic and afraid**, because there is no better world to build. Their goal is to persuade their own people to **stay out of politics**….*Our state may be corrupt, but everyone else is corrupt too*, [emphasis original].
>
> ...the so called fire hose of falsehoods—ultimately produces not courage, but nihilism.
>
> Fear, cynicism, nihilism, and apathy, coupled with disgust and disdain for democracy: This is the formula that modern autocrats...sell to their citizens…."

The Panel should observe that autocrats around the world can now point to this decision as justification that democracy is a sham, especially since Washington State is a self-proclaimed "progressive" democracy.

The Order's intended lesson, that we be "cynical and passive, apathetic and afraid" is rejected, even though disgust is the appropriate emotion. We will not "stay out of politics" and appeal to the higher purpose of the Panel *as an institution of justice for all* as has been directed to lower courts by the Supreme Court in their letter of June 4, 2020.

3.1 ORDER CREATES AN IMPROPER DEFINITION OF "BAD FAITH"

This Order does not just chill pro se challengers, it chills innovation by all attorneys by defiance of *Bryant v. Joseph Tree, Inc*., 829 P.2d 1099, 119 Wash. 2D 210 (1992). CR11 is very specific as to what Motions qualify for sanctions. Since Flarity is aware of Resolution 400 and the Supreme Court's letter of June 4, 2020, we trust that Wilson gives credence to this fundamental leveling of parties as the foundation of any "system of justice." We believed Wilson would likewise grant a delay so the Panel could review our Motion for discretionary review since she had already granted the State TWO delays in this Cause.

How could Flarity's request for delay be in "bad faith" per CR11? Is the Panel suggesting we did not really want a delay? Of course not. The Order states the sanction is justified because our Appeal was futile. Taking away retaliation as a motive, the only logical conclusion for the Panel's punishment is for our failure to be clairvoyants. Let's take a look again at CR11(a):

(1) it is well grounded in fact;

The pleading was well grounded in fact.

(2) it is warranted by existing law….

Delays for appeal challenges to rulings that thwart the "ability to proceed" are a well established and COMMON procedure which we followed in the Motion.

(3) it is not interposed for any improper purpose….

The Ex Parte delay granted by Wilson presented a tremendous obstacle to Flarity's CR12 dismissal argument. Challenging Wilson's prejudice, especially when she openly predicted the Cause's dismissal as "inevitable," **VRP 1-25-2023, P7,** is exactly the "purpose" of appellate courts for correction of lower court prejudice. The stated "purpose" of this Cause is to stop unconstitutional "methods" of officials as authorized in *Wash. Trucking Associations, Nonprofit Corp. v. State*, 188 Wash.2d198,393P.3d761 (Wash. 2017).

(4) the denials of factual contentions are warranted on the evidence….

There are no factual contentions of any kind. This section seems specifically written to stop attorneys from inventing "facts" they know to be untrue. It does not apply to our Motion for a delay.

ARGUMENT

There is NO provision in CR11 for a sanction to be assigned because a Panel in hindsight determined an appeal was "futile." In particular, this logic could not be applied to an appeal that was never presented to the Panel. The Order has expanded CR11 into an realm which it was never intended to apply.

The only other logical conclusion is that the sanction is intended as retaliation to stop Flarity, and *similarly situated* civil rights plaintiffs, from checking government civil rights abuses, which the founders declared repeatedly was a fundamental civic duty. If this is the Panel's intent, this should be stated in "express words" per Art. 1, Sec. 29.

That the sanction was assigned for asking for a delay, which is probably the most common request made in EVERY case by ALL parties, is a particularly potent sign the sanction is intended as retaliation. The conduct the Panel seeks to stop is a vital function of every living democracy.

3.2 NO REQUIREMENT TO EXHAUST ADMINISTRATIVE REMEDIES FOR 42 U.S. § 1983 CHARGES

Dismissals for RCW 4.92 failure only apply to claims that are **purely tort in nature.** This was well described by Div. I in *Amo v. HARBORVIEW MEDICAL CENTER*, No. 79479-5-I (Wash. Ct. App. Apr. 20, 2020). Div. II used this same logic in *Lyons v. WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES*, No. 57453-5-II (Wash. Ct. App. Apr. 9, 2024), **a contract employment dispute.**

Flarity's Cause plainly states civil rights abuses for delay and trespass. One of the four other cases filed to which the Order points, was 3:20-cv-06083-21-RJB, where Judge Bryan specifically noted that tolling DOES NOT APPLY because Flarity had no requirement to exhaust

state remedies for U.S. 1983 civil rights abuses per *Boston v. Kitsap County*, 852 F.2d 1182, 1185 (9th Cir. 2017), and more recently, *Southwick v. Seattle Police Officer John Doe* #s 1-5, 186 P.3d 1089, 1093 (Wash. Ct. App. 2008). [1]

The State's demand for infinite delays was specifically decried in *Bosteder v. City of Renton*, 155 Wn.2d 18, 36-37, 117 P.3d 316 (2005). The State's demand to trespass per *State v Vonhof* 751 P2d 1221 51 WnApp 33 Wash App 1988, was specifically overturned per *Matter of Maxfield*, 945 P.2d 196, 133 Wash. 2D 332 (1997).

Furthermore, the Washington State Supreme court has a long list of precedents indicating exhaustion of state remedies does NOT apply to 42 U.S. § 1983 abuses. *Binkley v. City of Tacoma*, 787 P.2d 1366, 114 Wash. 2D 373 (1990), *Orion Corporation v. State*, 693 P.2d 1369, 103 Wash. 2D 441 (1985), *Sintra, Inc. v. City of Seattle*, 829 P.2d 765, 119 Wash. 2D 1 (1992). The foundation of the State doctrine is *Patsy v. Board of Regents of Fla*., 457 US 496, 1982, recently re-affirmed in *Knick v.Twp. of Scott*, 139 S. Ct. 2162, 204 L.Ed.2d 558 (2019).

The Order also conflicts with the recent *Wash. Trucking Associations, Nonprofit Corp. v. State*, 188 Wash.2d 198, 393 P.3d 761 (Wash. 2017), where the Supreme Court promised reviews of constitutional abuses by administrative courts **without exhaustion**:

1 DPA Hamilton had also cited *Robinson v. City of Seattle*, 119 Wn. 2d 34, 86, *cert. denied*, 506 U.S. 1028 (1992), and *Wilson v. Gar- cia*, 471 U.S. 261 (1985) as similar.

> ...neither RCW 50.32.180 **nor the doctrine of exhaustion of administrative remedies bars the Carriers' claim** for tortious interference so long as the claim is based on allegations that the Department **had improper motives or used improper means in imposing its assessments.**

Demanding infinite delays and the right to trespass are the exactly "improper means" described by *Trucking*. *Hanson v. Carmona*, 525 P.3d 940, 1 Wash. 3d 362, 1 Wash. 2D 362 (2023), gave further illumination:

> Indeed, it will often be difficult for a plaintiff to determine before filing suit whether an individual tortfeasor is a governmental employee who was acting within the scope of their employment at the time of the incident giving rise to the claim.

And it appears that the Panel has also neglected to analyze that Flarity's Cause specifically lists "personal capacity" which also provides escape from RCW 4.92.100. More from *Hanson:*

> "Thus, while an award of damages against an official in his personal capacity can be executed only against the official's personal assets, a plaintiff seeking to recover on a damages judgment in an official-capacity suit *must look to the government entity itself.*" *Graham,* 473 U.S. at 166, 105 S.Ct. 3099 (emphasis added).

And after *Bosteder, Wright v. Terrell*, 170 P.3d 570, 162 Wash. 2D 192 (2007) continued to enable Flarity to pursue officials personally:

> We reiterate here that former RCW 4.96.02 (2001) **does not apply to claims against individual government employees…**.

Also see the Div. II decision in *Ranger Ins. Co. v. Pierce County*, 192 P.3d 886, 164 Wash. 2D 545 (2008), where the State was not allowed to invoke RCW 4.92.100 even for a purely tort case.

ARGUMENT

From the precedents shown, the Order should be revised to differential 42 U.S. § 1983 charges from tort charges and to protect the numerous precedents cited by both Washington and U.S. Supreme Courts.

4. CONCLUSION

For the reasons stated, the Panel should revise the Order to adhere to the plainly stated wording of CR11 and observe court precedents for 42 U.S. § 1983 to stop civil rights abuses by Washington State officials.

CERTIFICATION OF SERVICE. All defendants are served electronically by courts.wa.gov.

CERTIFICATION OF WORD LIMIT. The Word Count is 1475 words and is within the limit of rule 18.17 (5000) excluding cover sheets and tables.

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 RAP 10 to the best of my knowledge for this Motion.

Date of Signing: July 9, 2024
Signature of plaintiff: /s/ Joe Flarity

JOE PATRICK FLARITY
101 FM 946 S
Oakhurst, TX 77359
253-951-9981

FLARITY FARM

July 08, 2024 - 6:41 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	57601-5
Appellate Court Case Title:	Joe Patrick Flarity, Appellant v. State of Washington, et al.
Superior Court Case Number:	22-2-02806-5

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- revolyef@atg.wa.gov

Comments:

Motion to Reconsider Order issued July 2, 2024 establishing retaliation as acceptable practice for civil rights challenges.

Sender Name: Joe Flarity - Email: piercefarmer@yahoo.com
Address:
249 Main Ave S. STE 107 #330
North Bend, WA, 98045
Phone: (253) 951-9981

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FILED
SUPREME COURT
STATE OF WASHINGTON
7/24/2024 8:00 AM
BY ERIN L. LENNON
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SUPREME COURT OF THE STATE OF WASHINGTON

NO. 1031491

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.

MOTION TO INCLUDE

COVEY V. PORT OF SEATTLE, 22-2-20666-7-SEA
AND
MOSS V. PORT OF SEATTLE, 20-2-10901-1-SEA
AS

SUPPLEMENTAL AUTHORITIES SUPPORTING MOTION TO REVIEW DENIAL TO BIFURCATE

---

1. IDENTITY OF PETITIONER

Mrs. Joe Flarity, on my own behalf, residing at:

101 FM 946 S

Oakhurst, TX 77359

piercefarmer@yahoo.com

All emphasis is my own.

2. AUTHORITY TO INCLUDE

RAP 9.10(1) provides the authority to supplement the record. Alternately, supplements are allowed for recent decisions that influence the outcome by RAP 10.8(b).

3. APPLICABILITY

Applicability to my MOTION FOR DISCRETIONARY REVIEW:

P9, 11, 13-15, 20.

The Supplements are included as **AP-2** for Covey, and **AP-3**, for Moss.

4. NEW FACTORS THAT SUPPORT MOTION

The Supreme Court, by a new policy, has abridged the RAP 11(f) encouragement for oral hearings. **AP-4.** This Order now precludes a compelling oral argument I could have made before the commissioner in person. Since the issue of retaliation and shame to women are of

broad interests, this new policy should be added to the logic to include the supplements.

Rosalee Silberman Abella, retired Supreme Court Justice of Canada, now a Harvard Law professor, speaking on July 20, 2024:

> ...**many of us have had our minds changed by oral argument**...otherwise, the courts are just another legislative body imposing its will without having to go back to the electorate for approval….**it's a fake legislature when its not listening.**

5. REASONS TO INCLUDE SUPPLEMENTS

The following statement was filed with the court we received from numerous attorneys and shown in **AP-14**:

> 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.

An public official, a white man, Rod Covey, earning a salary of $300,000 per year at the Port Authority, was just awarded $22 million for emotional damage because he unfairly was terminated. **AP-2. That is over 73 times his already lush salary.**

Meanwhile, the instigator of the controversy, Yandle Moss, was also awarded an undisclosed sum for similar retaliation by officials. **AP-3.** Both sides of the "government family" have been compensated by the

taxpayers for abuses that were completely independent of the taxpayers. In addition, Yandle Moss was previously implicated for abuse as a TSA agent for unecessary violence, illegal arrest, and evidence spoiling at the airport, Federal cases 3:2011-cv-05251, and 2:2011-cv-00551.

The Supreme Court should explain how officials are allowed to reel in millions of taxpayer funds, while myself, a women who was dependent on the fixed income of her retired, ex-Marine husband, gets no trial at all.

The hypocrisy is stark when obvious bad actors are rewarded lavishly by Seattle juries. As the attorney for Rod Covey noted in the Seattle Times, **AP-20**, for conduct “shameful and reprehensible....the failures started at the top.”

6. CONCLUSION

For the reasons stated, and per attorney Jake Downs, **AP-20**, the protection of women in the State of Washington should start at the top. The issue of the public shaming and emotional damage to women should be recommended for review by the Supreme Court.

CERTIFICATION OF WORD LIMIT. The Word Count is 584 words and is within the limit of the RAP.

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 13 to the best of my knowledge for this Motion.

Date of Signing: July 23, 2024
Signature of plaintiff:

Mrs. Joe Flarity
101 FM 946 S.
Oakhurst, TX 77359
piercefarmer@yahoo.com

APPENDIX TABLE OF CONTENTS

Covey V. Port of Seattle, 22-2-20666-7-SEA

Copy to be filed when delivered by King County,
Portal Case Number: PPR24-416952.

Moss V. Port of Seattle, 20-2-10901-1-SEA

Copy to be filed when delivered by King County,
Portal Case Number: PPR24-416952.

ERIN L. LENNON
SUPREME COURT CLERK

SARAH R. PENDLETON
DEPUTY CLERK/
CHIEF STAFF ATTORNEY

THE SUPREME COURT
STATE OF WASHINGTON

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www.courts.wa.gov

July 16, 2024

LETTER SENT BY E-MAIL ONLY

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Re: Supreme Court No. 1031491 – 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:

On July 16, 2024, the Court received a "MOTION FOR ORAL ARGUMENT TO REVIEW DIV II DENIAL TO BIFURCATE" from the Petitioner.

On March 7, 2024, this Court entered general order No. 25700-B-707, which provides that motions set before the Commissioner or Clerk will be decided without oral argument unless oral argument is requested by the Commissioner or Clerk. A copy of the general order is here enclosed for the parties.

Therefore, no action can be taken on the request for oral argument. Oral argument will only be scheduled if requested by the Commissioner. At this time, the matter remains set on the Commissioner's July 31, 2024, Motion Calendar for consideration without oral argument.

Sincerely,

Sarah R. Pendleton
Supreme Court Deputy Clerk

SRP:mt

Enclosure as stated

FILED
Court of Appeals
Division II
State of Washington
7/18/2024 3:16 PM

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

Cause 57601-5: ABUSE OF DISCRETION IN THURSTON COUNTY SUPERIOR COURT, Cause 22-2-02806-34
The Honorable Judge Wilson
Hearing Dates:
November 18, 2022
December 9, 2022
January 6, 2023
January 20, 2023
February 24, 2023

Joe Patrick Flarity, a marital community
v.
Unknown State Officials in their Personal and Official Capacities, State of Washington

---

STAY OF MANDATE

and

OBJECTION TO COSTS

---

1. PLEADING

Joe Flarity, pro se, henceforth Flarity, Appellant, a marital community, respectfully moves the Clerk or Commissioner to Deny the Requested Costs and Stay the Mandate until the Supreme Court has reached its final decision on Denial of Bifurcation of the claim. Meaning no disrespect to any party, titles are shortened to save word count. All emphasis is our own unless otherwise noted.

2. STAY OF MANDATE

In support of a Stay, the Commissioner should recall that Flarity alleges a due process violation when a Div. II Commissioner issued a Mandate FIVE days after assigning costs in 56271-5-II, a similar case.

Div. II then refused to Recall the Mandate, giving no grounds, even though the decision defied every existing Supreme Court precedent on Recall of Mandates. This action precluded further review of the "shameful"[1] decision by the Supreme Court. We have protested this

1 As described by the Supreme Court to lower courts in their letter of June 4, 2020.

"made up immunity"[2] and the matter is under review by the Supreme Court as No. 1032081.

By precedent, the assignment of costs is the TRIGGER. *Black v. Dept. of Labor and Industries*, 933 P.2d 1025, 131 Wash. 2D 547 (1997):

> We hold service of notice of appeal under RCW 51.52.110 on the assistant attorney general assigned to represent the Department of Labor and Industries in the matter is reasonably calculated to result in notice to the Department. Dale Black perfected his appeal and the case is remanded for a hearing on the merits. We also affirm that **the 30-day appeal period was triggered** when the Board communicated its final order to Black and **affirm the award of $125 in statutory attorneys' fees to the Department for Black's appeal of this issue**

In an abundance of caution to further avoid this "made up immunity," we request a decision on a Stay of the Mandate until THIRTY DAYS after the final decision of the Supreme Court on all matters pending before the Supreme Court in this Cause.

---

2 The ACLU's DC chapter expressing the power of 42 U.S.C. § 1983 in celebrating its 150th anniversary:

On April 20, 1871, President Ulysses S. Grant signed one of the most important civil rights laws in U.S. history: the Ku Klux Klan Act. Section 1 of that law – known today as 42 U.S.C. § 1983 – empowers individuals to sue state and local government officials who violate their federal constitutional rights....And we continue to fight to ensure that the law isn't watered down with made-up immunities that give a free pass to government officials to violate the Constitution.

3. OBJECTION TO COSTS: RCW 4.84.080

On July 10, 2024, the State filed a cost bill on this case for $557.50. The $200.00 cost bill per RCW 4.84.080 had already been assigned by Wilson upon dismissal per CR12, for not stating a claim. This charge is redundant and should not be duplicated as described in *Armstrong Constr. Co. v. Thomson*, 390 P.2d 976, 64 Wash. 2D 191 (1964).

Further punishment at Div. II is not warranted for additional "attorney's fees." The Court would be pouring insult onto injury in violation of the Supreme Court's support for the American Rule.[3]

4. RCW 4.84.080 NOT SUPPORTED BY PRECEDENTS

We would appreciate some explanation of the statute's history and purpose. Was the intent to stop frivolous suits, or to punish civil right plaintiffs checking state abuse? A clear examination would serve the people well in further actions to check state abuse of civil rights. *State v. Richardson*, 302 P.3d 156, 177 Wash. 2D 351 (2013):

3 There are 93 Supreme Court decision supporting the American Rule in Washington State: https://scholar.google.com/scholar?hl=en&as_sdt=4%2C248&q=%22american+rule%22&btnG=

> Siegel cites RCW 4.84.080 in support of an award for attorney fees. However, because that statute deals with the $200 "**costs to be called the attorney fee**," it does not provide a statutory basis for attorney fees under RAP 18.1. Because Siegel fails to cite to any other authority in support of his request, we deny Siegel's attorney fees request.

Armstrong Constr. Co. v. Thomson, 390 P.2d 976, 64 Wash. 2D 191 (1964):

> The attorney's fees recoverable...are nominal only in Washington, being fixed at **$10 by statute in actions going to judgment in the superior court without a jury**. RCW 4.84.080 (2).
>
> We should make it clear that the court has already allowed appellants Thomson judgment against the respondent architects for the $250 attorney's fee allowed the builder in his lien foreclosure proceeding….**a court has no power to award an attorney's fee as part of the costs of litigation**.

State v. Costich, 98 P.3d 795, 152 Wash. 2D 463 (2004):

> Despite *Swarva,* both the Court of Appeals and trial court relied heavily on *City of SeaTac v. Cassan,* 93 Wash.App. 357, 967 P.2d 1274 (1998) for support. *Cassan* held a property owner **could not use** statutory attorney fees,[8]
>
> [8] *See* former RCW 4.84.080(1) (1985)…

In particular, the Commissioner should consider the often cited *City of Seattle v. McCready*, 931 P.2d 156, 131 Wash. 2D 266 (1997), a similar trespass case also examining the *American Rule*.

5. NO "AFTER ARGUMENT"

Because our request for Oral Hearing was denied, a reasonable person could conclude there was no "after argument" as required in RCW 4.48.080(2). On this basis, the charge is not valid on its face unless the Order is Remanded and Oral argument granted. This is particularly heinous for Flarity because Oral Arguments are encouraged in the RAP and the State did not contest our Motion for Oral Argument.

In addition, argument continues on this matter before the Supreme Court in No. 1031491. Therefore, assignment of costs per RCW 4.84.080(2) would be invalid as premature regardless of a ruling for denial of any Oral Argument.

6. OBJECTION TO COSTS: RAP 14.3

State v. Ralph Williams, 553 P.2d 423, 87 Wash. 2D 298 (1976):

> Dismissal is a strong sanction….

The key word in *Ralph* is *sanction*. Because this case included obvious claims impacting core civil rights that were never disputed, dismissal by CR 12 was indeed a "strong sanction" all by itself. No reputable law school would recognize a legal foundation for dismissal defying numerous precedents, other than "expediency."[4] This expediency is likely the result of Washington courts having established a lower class of plaintiff. Wilson and the Panel have removed our standing. In

4 Defined in *On Civil Disobedience*, by Henry David Thoreau, 1849.

essence, we have been stripped of our humanity executed by violation of the supposedly “inviolate” right to a jury trial, along with a number of well established precedents. The humiliation is crowned in thorns by refusing to publish the ruling, a racist tactic protected in the era of Jim Crow.[5]

The Federal “floor”[6] of due process, which the Panel collapsed here, recognizes that dismissal is sanction enough on pro se civil rights claims. This was discussed in detail in our Brief quoting from both the Federal Judicial Guide and the ABA Practice book. **See Brief, P47.** Assignment of additional costs is not authorized by Federal Due process of which Washington Courts are advised to give “great weight.”[7]

5 TAKE A LETTER, YOUR HONOR: OUTING THE JUDICIAL EPISTEMOLOGY OF HART V MASSANARI, Penelope Pether [FNa1], Washington and Lee Law Review Fall, 2005.

6 State v. Gregory, 192 Wn.2d 1, 16, 427 P.3d 621 (2018). Accord State v. Sieyes, 168 Wn.2d 276, 292, 225 P.3d 995 (2010):

(“the United States Constitution establishes a floor below which state courts cannot go to protect individual rights.”).

7 *Rozner v. City of Bellevue*, 116 Wn.2d 342, 804 P.2d 24 (Wash. 1991).

7. IRRELEVANT DEFENSES NOT PAID

Precedents abound denying relief for unnecessary filings.[8] In this case, Wilson stated on the record that the outcome was "inevitable," a concept that defeats due process at its core. See Brief, **P65, VRP 1-25-2023, P7.** This prejudice gives a clear indication that the effort expended by the State was not necessary and fundamentally irrelevant. Flarity should not be forced to pay for a needless legal expense by the precedents cited.

An excellent example is also 56271-5-II, now examined by the Supreme Court in No. 1032081, where AIC did not even bother to appear and nonetheless won the contest to change venue. For further proof, the State did not contest our Motion for Oral hearing. Oral arguments are encouraged by RAP11, but we lost on the "uncontested" contest for a first amendment right protected by strict scrutiny. It appears it is easy for the sovereign to win any argument against a pro se plaintiff simply by being the sovereign.

The Commissioner should conclude the State would have won if they had submitted no records whatsoever. Therefore, the charges are not relevant and should not be reimbursed.

---

8 State v. Nolan, 8 P.3d 300, 141 Wash. 2D 620 (2000); State ex rel. Lemon v. Langlie, 273 P.2d 464, 45 Wash. 2d 82, 45 Wash. 82 (1954); Reykdal v. Espinoza, 473 P.3d 1221, 196 Wash. 2D 458 (2020); Family Med. Bldg., Inc. v. DSHS, 38 Wash.App. 738, 739, 689 P.2d 413 (1984); State v. Rogers,487P.3d177,185(Wash. App. Div. 1 2021); Kashem v. Barr, 941 F.3d 358, 382–83 (9th Cir. 2019); Zerezghi v. USCIS, 955 F.3d 802, 808–09, 810–11, 813 (9th Cir. 2020), and **denial of due process is never a harmless error,** SEC v. Torchia, 922 F.3d 1307, 1316–18 (11th Cir. 2019).

8. CHARGES SHOULD ONLY APPLY ONLY TO THOSE WITH STANDING

The following statement was filed with the court we received from numerous attorneys:

> 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.

This case confirms the prediction that we are afforded no Standing in Washington Courts to challenge civil rights violations. When dismissal is "inevitable," additional charges constitute retaliation as recently examined by unanimous SCOTUS in *NRA v Vello*, 22-842. Charges are then a deliberate chilling of the people by a court philosophy which is not based on the law, but cognitive dissonance induced though political *expediency*. The AG encourages abuse of court power to force nihilism onto the people. This is a reprehensible practice unsupported by any responsible proponent of democracy. Therefore, retaliation should be resisted at Div. II.

9. EXAMINATION OF COURT HARM BY REMOVAL OF STANDING

In order for the courts to enforce the AG's paradigm of retaliation and learned helplessness, court officials must demote the already

subjugated people, where Flarity was judged to have *stated no claim*, to an even lower level. The State requests Flarity be cast from the *serf class*, into the role of monsters.[9] Relevant is the UK's logic that resulted in the abolition of slavery in 1833 through discussion and consensus, which avoided a bloody civil war. The danger of subjugation in this Court is similar to historical subjugation that should be examined in detail. The UK arguments are recounted by Luke Tomes at historyhit.com:

> 1) **Amelioration is impossible.** Amelioration, the general improvement of society, is thwarted by official actions enforcing a subjugated class. The proof came from continued slave uprisings in keeping with the Seattle riots that prompted the Supreme Court's June 4, 2020 letter.
>
> 2) **The declining image of the slave society.** The modern day equivalent here is the U.S. rapid decline in the Rule of Law Score as measured by the World Justice Project. Indeed, because this case sets a new low for retaliation, it is very likely to drive down the U.S. score all by itself. The courts also suffer from the "lack of class," by punishing an

9 Dr. David Livingston Smith:

First, dehumanization is neither wholly psychological nor wholly political. It is a **psychological response to political forces**. Dehumanizing beliefs do not arise spontaneously within the human mind.

From the existentialist perspective, how an entity looks can mislead us about its true nature. An individual might seem human on the "outside"...they are not truly human. They are, so to speak, **counterfeit human beings**.

...This sets up a very dangerous tension in the dehumanizing mind, because the dehumanized others are seen as human and subhuman simultaneously. This weird combination goes beyond transforming them into subhuman animals. **It turns them into horrifying monsters.**

obvious good faith attempt to speak truth to power and restrain corrupt officials.

3) **Free labor ideology.** The strength of the U.S. democracy is based directly on the strength of the middle class. Slavery is a direct attack on the size and resilience of the middle class. A general reduction of agency as this Cause gives evidence, attacks the foundation of democracy at its core. Riots are the usual result when the government refuses to hear their people and class distinctions become increasingly unbearable.

4) **Government support of slavery was ultimately decried as corrupt.** Retaliation on the weak by a powerful sovereign is reprehensible at its base. Washington State has officially made retaliation by officials a crime in RCW 42.41.040. Flariity appears here as a public servant, a "private attorney general"[10] to check government abuse. We are public whistleblowers and court retaliation makes criminals of the courts. It puts court officials squarely in the mire of obvious corruption.

For these reasons, the Clerk or Commissioner should not assign further punishments to the already "shameful" Order. Div. II has contributed its share of damage to the Rule of Law.

10. CONCLUSION

For the reasons stated, Flarity requests denial of assignment of further costs as retaliation, redundant, or irrelevant; and a Stay of Mandate until thirty days after the Supreme Court has ruled on all open issues.

10 *Miotke v. Spokane*, 678 P.2d 803, 101 Wash. 2d 307 (1984).

CERTIFICATION OF SERVICE. All defendants are served electronically by courts.wa.gov.

CERTIFICATION OF WORD LIMIT. The Word Count is 2449 words and is within the limit of rule 18.17 (5000) excluding cover sheets and tables.

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 RAP 10 to the best of my knowledge for this Motion.

Date of Signing July 18, 2024
Signature of plaintiff: /s/ Joe Flarity

JOE PATRICK FLARITY
101 FM 946 S
Oakhurst, TX 77359
253-951-9981

FLARITY FARM

July 18, 2024 - 3:16 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	57601-5
Appellate Court Case Title:	Joe Patrick Flarity, Appellant v. State of Washington, et al.
Superior Court Case Number:	22-2-02806-5

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- matthew.kernutt@atg.wa.gov
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Comments:

Stay Mandate and OBJECTION to Costs as inappropriate punishment.

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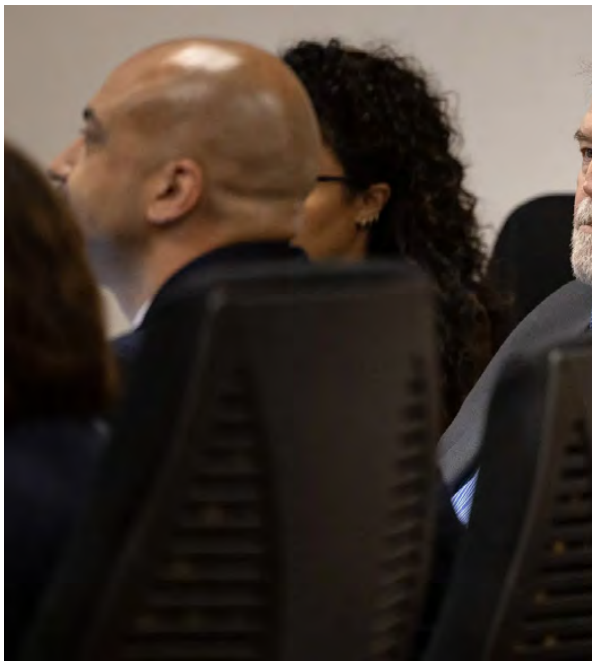
Note: The Filing Id is 20240718151519D2586859

Business

The Seattle Times

Jury awards former Port of Seattle police chief $24.2M over wrongful firing

July 22, 2024 at 2:43 pm | *Updated July 22, 2024 at 6:12 pm*



1 of 5 | Former Port of Seattle police Chief Rod Covey listens to closing arguments in his wrongful termination case on Thursday in Seattle. (Nick Wagner / The Seattle Times)

By Alex Halverson

Seattle Times business reporter

A former Port of Seattle police chief fired three years ago after claims of workplace misconduct was awarded $24.2 million in damages by a King County jury.

Chief Rod Covey was placed on administrative leave in June 2020 after a Port investigation. That probe came after racial discrimination complaints were made by Port police Officer Yandle Moss against superior officers, including Covey. Moss sued the Port in July 2020 for failing to provide records of the investigation, and settled in February 2021.

The Port fired Covey that August, a year after placing him on administrative leave. Covey sued the Port in December 2022 for wrongful termination in violation of public policy that stemmed from his frustration over the investigation.

Jake Downs, the Seattle attorney representing Covey, argued during the six-week trial that the Port's timing capitalized on the racial uprising after the murder of George Floyd. Covey was placed on administrative leave weeks after Floyd was murdered by Minneapolis police on May 25, 2020.

"The Port's conduct that led to Chief Covey's wrongful termination was nothing short of shameful and reprehensible," Downs said after the verdict. "In our opinion, the Port's failures start at the top."

The Port of Seattle said in an emailed statement that it is considering an appeal.

"The Port continues to stand by its decision to terminate former Police Department Chief Rod Covey based on violations of the Port's Code of Conduct," the Port said. "The Port will continue to enforce its Code of Conduct and will take appropriate action when someone is found to have violated these policies."

The roots of the dispute stretch to July 2018. Moss had filed an internal complaint against his supervising sergeant claiming she had retaliated against him for using sick leave, according to court documents. The department deemed it unfounded as no evidence could be provided.

Covey issued a letter of reprimand to Moss a month later detailing "performance shortcomings" that were also included in a review earlier in the year. Later in the year, Moss filed a complaint with the Port's workplace responsibility unit, separate from the police department. It accused the department of having a hostile environment.

That complaint started an investigation, which Covey said lacked courtesy and transparency and was "wandering," according to court documents. He also said he did not know he was implicated in the investigation until seven months into it, believing it only involved Moss' sergeant.

The first investigation resulted in findings against Covey that could have resulted in termination. The Port issued Covey a letter of reprimand in November 2019, and later denied him a pay raise.

Once the investigation closed, Covey said in an email to Port leadership that he was recusing himself from any issues involving Moss. The Port then opened two overlapping investigations into Covey in 2020, according to court documents.

One stemmed from another complaint from Moss, and ultimately saw Covey placed on administrative leave. The complaint claimed Covey had perpetuated a negative narrative about Moss, keeping him from postings within the Port's police department and from year-end department accolades.

That investigation wrapped up in 14 months and backed up the negative narrative accusation. Covey's attorneys claimed the investigation was stacked against him. No employees who worked close with him were interviewed, they claimed, and the investigator asked selective questions that avoided exonerating Covey.

The second investigation followed claims that Covey retaliated against employees for participating in the initial investigation. The outside investigator tapped for the probe found the complaints unsubstantiated.

Covey's attorneys said his termination was retaliation for reporting that the Port failed to provide due process in the investigation.

After closing arguments concluded midday Thursday, the Seattle jury deliberated for the rest of the day and for the first half of Monday.

Jurors ultimately found in favor of Covey's wrongful termination accusation. The jury awarded Covey $1.7 million in economic damages due to his lost salary and benefits. Covey made about $300,000 a year, plus benefits, when he was fired.

The jury also awarded $22.5 million in noneconomic damages, as Covey's attorneys argued he suffered post-traumatic stress disorder following the firing that affected personal relationships with friends and family.

Alex Halverson: *206-652-6352 or ahalverson@seattletimes.com;*

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Motion to include decisions for Covey v. Port Authority and Moss v. Port Authority as relevant to my motion to Bifurcate.

Sender Name: Joe Flarity - Email: piercefarmer@yahoo.com
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COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

Cause 57601-5: ABUSE OF DISCRETION IN THURSTON COUNTY
SUPERIOR COURT, Cause 22-2-02806-34
The Honorable Judge Wilson
Hearing Dates:
November 18, 2022
December 9, 2022
January 6, 2023
January 20, 2023
February 24, 2023

Joe Patrick Flarity, a marital community
v.
Unknown State Officials in their Personal and Official Capacities,
State of Washington

MOTION TO INCLUDE

SUPPLEMENTAL AUTHORITY

NRA v. Vullo, 22-842

---

1. IDENTITY OF PETITIONER

Joe Flarity, pro se, henceforth Flarity, Appellant, a marital community, provides the following:

101 FM 946 S

Oakhurst, TX 77359

253-951-9981

piercefarmer@yahoo.com

2. AUTHORITY TO INCLUDE

Supplements are allowed by RAP 10.8(b). *NRA v. Vullo*, 22-842 was decided on May 30, 2024. All emphasis is added.

3. APPLICABILITY

The U.S. Supreme Court's decision in *NRA v. Vullo*, 22-842, is applicable to Flarity for the SCOTUS delineation of RETALIATION in contrast to 1st Amendment violations. Both are evident in this Cause. The Decision is included as an Appendix.

BRIEF: P10-16, 19-20, 23-24, 26, 30, 33, 35-36, 43, 45-56.

REPLY: P8-10, 14, 23, 36, 38.

4. PERTINENT ARGUMENTS IN *NRA*

Page 1:

> Because this case comes to us at the **motion-to-dismiss stage**, the Court assumes the truth of "**well-pleaded factual allegations" and "reasonable inference[s]"** therefrom.

Page 7:

> The District Court concluded that Vullo was **not entitled to qualified immunity at the motion-to-dismiss stage**.

Page 9:

> ...it is "**the application of state power** which we are asked to scrutinize."

Page 12

> The power that a government official wields...**whether a reasonable person would perceive the official's communication as coercive.**

Page 18:

> "The analogy," the Seventh Circuit explained, "**is to killing a person by cutting off his oxygen supply** rather than by shooting him."

J. Jackson, Concurring:

P1:

> **...the government has crossed a line from persuasion to coercion...**

P2:

> "the threat of **invoking legal sanctions** and other means of coercion, persuasion, and intimidation"

P3:

> ...who is being coerced to do what, and why...

P4

> the First Amendment prohibits government officials from subjecting individuals to '**retaliatory actions' after the fact.**..

P6:

> On remand, the parties and lower courts should **consider the censorship and retaliation theories independently**...

5. CONCLUSION

Div. II should accept *NRA v. Vullo*, 22-842 as uniquely pertinent to this appeal and include the SCOTUS directions in the decision.

The Panel should also remember Flarity's request to argue these points was denied even though the State had no objection to an Oral Argument. *NRA* provides a striking position for courts to protect the people against further retaliation AFTER their common law due process rights have been denied.

CERTIFICATION OF SERVICE. All defendants are served electronically by courts.wa.gov.

CERTIFICATION OF WORD LIMIT. The Word Count is 243 words and is within the limit of 350 by RAP 10.8(b).

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 RAP 10 to the best of my knowledge for this Motion.

Date of Signing June 27, 2024
Signature of plaintiff: /s/ Joe Flarity

JOE PATRICK FLARITY
101 FM 946 S
Oakhurst, TX 77359
253-951-9981

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Text only comparison

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1 Replacement

0 Insertions

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Styling and Annotations

0 Styling

0 Annotations

Go to First Change (page 1)

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NATIONAL RIFLE ASSOCIATION OF AMERICA *v.* VULLO

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 22–842. Argued March 18, 2024—Decided May 30, 2024

Petitioner National Rifle Association (NRA) sued respondent Maria Vullo—former superintendent of the New York Department of Financial Services (DFS)—alleging that Vullo violated the First Amendment by coercing DFS-regulated parties to punish or suppress the NRA's gun-promotion advocacy. The Second Circuit held that Vullo's alleged actions constituted permissible government speech and legitimate law enforcement. The Court granted certiorari to address whether the NRA's complaint states a First Amendment claim.

The NRA's "well-pleaded factual allegations," *Ashcroft* v. *Iqbal*, 556 U. S. 662, 678–679, are taken as true at this motion-to-dismiss stage. DFS regulates insurance companies and financial services institutions doing business in New York, and has the power to initiate investigations and civil enforcement actions, as well as to refer matters for criminal prosecution. The NRA contracted with DFS-regulated entities—affiliates of Lockton Companies, LLC (Lockton)—to administer insurance policies the NRA offered as a benefit to its members, which Chubb Limited (Chubb) and Lloyd's of London (Lloyd's) would then underwrite. In 2017, Vullo began investigating one of these affinity insurance policies—Carry Guard—on a tip passed along from a gun-control advocacy group. The investigation revealed that Carry Guard insured gun owners from intentional criminal acts in violation of New York law, and that the NRA promoted Carry Guard without the required insurance producer license. Lockton and Chubb subsequently suspended Carry Guard. Vullo then expanded her investigation into the NRA's other affinity insurance programs.

On February 27, 2018, Vullo met with senior executives at Lloyd's,

Syllabus

expressed her views in favor of gun control, and told the Lloyd's executives "that DFS was less interested in pursuing" infractions unrelated to any NRA business "so long as Lloyd's ceased providing insurance to gun groups, especially the NRA." App. to Pet. for Cert. at 199–200, ¶21. Vullo and Lloyd's struck a deal: Lloyd's "would instruct its syndicates to cease underwriting firearm-related policies and would scale back its NRA-related business," and "in exchange, DFS would focus its forthcoming affinity-insurance enforcement action solely on those syndicates which served the NRA." *Id.,* at 223, ¶69.

On April 19, 2018, Vullo issued letters entitled, "Guidance on Risk Management Relating to the NRA and Similar Gun Promotion Organizations." *Id.*, at 246–251 (Guidance Letters). In the Guidance Letters, Vullo "encourage[d]" DFS-regulated entities to: (1) "continue evaluating and managing their risks, including reputational risks, that may arise from their dealings with the NRA or similar gun promotion organizations"; (2) "review any relationships they have with the NRA or similar gun promotion organizations"; and (3) "take prompt actions to manag[e] these risks and promote public health and safety." *Id*., at 248, 251. Vullo and Governor Cuomo also issued a joint press release echoing many of the letters' statements, and " 'urg[ing] all insurance companies and banks doing business in New York' " to join those " 'that have already discontinued their arrangements with the NRA.' " *Id*., at 244. DFS subsequently entered into separate consent decrees with Lockton, Chubb, and Lloyd's, in which the insurers admitted violations of New York's insurance law, agreed not to provide any NRA-endorsed insurance programs (even if lawful), and agreed to pay multimillion dollar fines.

Held: The NRA plausibly alleged that respondent violated the First Amendment by coercing regulated entities to terminate their business relationships with the NRA in order to punish or suppress gun-promotion advocacy. Pp. 8–20.

(a) At the heart of the First Amendment's Free Speech Clause is the recognition that viewpoint discrimination is uniquely harmful to a free and democratic society. When government officials are "engaging in their own expressive conduct," though, "the Free Speech Clause has no application." *Pleasant Grove City* v. *Summum*, 555 U. S. 460, 467. "When a government entity embarks on a course of action, it necessarily takes a particular viewpoint and rejects others," and thus does not need to "maintain viewpoint-neutrality when its officers and employees speak about that venture." *Matal* v. *Tam*, 582 U. S. 218, 234. While a government official can share her views freely and criticize particular beliefs in the hopes of persuading others, she may not use the power of her office to punish or suppress disfavored expression.

In *Bantam Books*, *Inc.* v. *Sullivan*, 372 U. S. 58, this Court explored

the distinction between permissible attempts to persuade and impermissible attempts to coerce. The Court explained that the First Amendment prohibits government officials from relying on the "threat of invoking legal sanctions and other means of coercion . . . to achieve the suppression" of disfavored speech. *Id*., at 67. Although the defendant in *Bantam Books*, a state commission that blacklisted certain publications, lacked the "power to apply formal legal sanctions," the coerced party "reasonably understood" the commission to threaten adverse action, and thus its "compliance with the [c]ommission's directives was not voluntary." *Id*., at 66–68. To reach this conclusion, the Court considered things like: the commission's authority; the commission's communications; and the coerced party's reaction to the communications. *Id*., at 68. The Courts of Appeals have since considered similar factors to determine whether a challenged communication is reasonably understood to be a coercive threat. Ultimately, *Bantam Books* stands for the principle that a government official cannot directly or indirectly coerce a private party to punish or suppress disfavored speech on her behalf. Pp. 8–11.

(b) To state a claim that the government violated the First Amendment through coercion of a third party, a plaintiff must plausibly allege conduct that, viewed in context, could be reasonably understood to convey a threat of adverse government action in order to punish or suppress speech. See *Bantam Books*, 372 U. S., at 67–68. Here, the NRA plausibly alleged that Vullo violated the First Amendment by coercing DFS-regulated entities into disassociating with the NRA in order to punish or suppress gun-promotion advocacy.

As DFS superintendent, Vullo had direct regulatory and enforcement authority over all insurance companies and financial service institutions doing business in New York. She could initiate investigations, refer cases for prosecution, notice civil charges, and enter into consent decrees. Vullo's communications with the DFS-regulated entities, particularly with Lloyd's, must be considered against the backdrop of Vullo's authority. Vullo made clear she wanted Lloyd's to disassociate from all gun groups, although there was no indication that such groups had unlawful insurance policies similar to the NRA's. Vullo also told the Lloyd's executives she would "focus" her enforcement actions "solely" on the syndicates with ties to the NRA, "and ignore other syndicates writing similar policies." App. to Pet. for Cert. 223, ¶69. The message was loud and clear: Lloyd's "could avoid liability for [unrelated] infractions" if it "aided DFS's campaign against gun groups" by terminating its business relationships with them. *Ibid*. As the reaction from Lloyd's further confirms, Vullo's alleged communications—whether seen as a threat or as an inducement—were reasonably understood as coercive. Other allegations concerning the Guidance

Syllabus

Letters and accompanying press release, viewed in context of their issuance, reinforce the NRA's First Amendment claim. Pp. 12–15.

(c) The Second Circuit concluded that Vullo's alleged communications were "examples of permissible government speech" and "legitimate enforcement action." 49 F. 4th 700, 717–719. The Second Circuit could only reach this conclusion, however, by taking the complaint's allegations in isolation and failing to draw reasonable inferences in the NRA's favor.

Vullo's arguments to the contrary lack merit. The conceded illegality of the NRA-endorsed insurance programs does not insulate Vullo from First Amendment scrutiny under *Bantam Books*. Nor does her argument that her actions targeted "nonexpressive" business relationships change the fact that the NRA alleges her actions were aimed at punishing or suppressing speech. Finally, Vullo claims that the NRA's position, if accepted, would stifle government speech and hamper legitimate enforcement efforts, but the Court's conclusion simply reaffirms the general principle that where, as here, the complaint plausibly alleges coercive threats aimed at punishing or suppressing disfavored speech, the plaintiff states a First Amendment claim. Pp. 15–18.

(d) The NRA's allegations, if true, highlight the constitutional concerns with the kind of strategy that Vullo purportedly adopted. Although the NRA was not the directly regulated party here, Vullo allegedly used the power of her office to target gun promotion by going after the NRA's business partners. Nothing in this case immunizes the NRA from regulation nor prevents government officials from condemning disfavored views. The takeaway is that the First Amendment prohibits government officials from wielding their power selectively to punish or suppress speech, directly or (as alleged here) through private intermediaries. P. 19.

49 F. 4th 700, vacated and remanded.

SOTOMAYOR, J., delivered the opinion for a unanimous Court. GORSUCH, J., and JACKSON, J., each filed a concurring opinion.

NOTICE: This opinion is subject to formal revision before publication in the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, pio@supremecourt.gov, of any typographical or other formal errors.

SUPREME COURT OF THE UNITED STATES

No. 22–842

NATIONAL RIFLE ASSOCIATION OF AMERICA, PETITIONER *v.* MARIA T. VULLO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[May 30, 2024]

JUSTICE SOTOMAYOR delivered the opinion of the Court.

Six decades ago, this Court held that a government entity's "threat of invoking legal sanctions and other means of coercion" against a third party "to achieve the suppression" of disfavored speech violates the First Amendment. *Bantam Books, Inc.* v. *Sullivan*, 372 U. S. 58, 67 (1963). Today, the Court reaffirms what it said then: Government officials cannot attempt to coerce private parties in order to punish or suppress views that the government disfavors. Petitioner National Rifle Association (NRA) plausibly alleges that respondent Maria Vullo did just that. As superintendent of the New York Department of Financial Services, Vullo allegedly pressured regulated entities to help her stifle the NRA's pro-gun advocacy by threatening enforcement actions against those entities that refused to disassociate from the NRA and other gun-promotion advocacy groups. Those allegations, if true, state a First Amendment claim.

I

A

Because this case comes to us at the motion-to-dismiss stage, the Court assumes the truth of "well-pleaded factual

allegations" and "reasonable inference[s]" therefrom. *Ashcroft* v. *Iqbal*, 556 U. S. 662, 678–679 (2009). Unless stated otherwise, the allegations aver as follows:

The New York Department of Financial Services (DFS) oversees insurance companies and financial services institutions doing business in the State. See N. Y. Fin. Servs. Law Ann. §201(a) (West 2012). DFS can initiate investigations and civil enforcement actions against regulated entities, and can refer potential criminal violations to the State's attorney general for prosecution. §§301(b), (c)(4). The DFS-regulated entities in this case are insurers that had business relationships with the NRA.

Since 2000, the NRA has offered a variety of insurance programs as a benefit to its members. The NRA contracted with affiliates of Lockton Companies, LLC (Lockton), to administer the various policies of these affinity insurance programs, which Chubb Limited (Chubb) and Lloyd's of London (Lloyd's) would then underwrite. In return, the NRA received a percentage of its members' premium payments. One of the NRA's affinity products, Carry Guard, covered personal-injury and criminal-defense costs related to licensed firearm use, and "insured New York residents for intentional, reckless, and criminally negligent acts with a firearm that injured or killed another person." 49 F. 4th 700, 707 (CA2 2022).

In September 2017, a gun-control advocacy group contacted the New York County District Attorney's office to tip them off to "compliance infirmities in Carry Guard." App. to Pet. for Cert. 206, Second Amended Complaint ¶34. That office then passed on the allegations to DFS. The next month, then-Superintendent of DFS Vullo began investigating Carry Guard, focusing on Chubb and Lockton. The investigation revealed at least two kinds of violations of New York law: that Carry Guard insured intentional criminal acts, and the NRA promoted Carry Guard without an

insurance producer license. By mid-November, upon finding out about the investigation following DFS information requests, Lockton and Chubb suspended Carry Guard. Vullo then expanded her investigation into the NRA's other affinity insurance programs, many of which were underwritten by Lloyd's and administered by Lockton. These NRA-endorsed programs provided similar coverage and suffered from the same legal infirmities.

In the midst of the investigation, tragedy struck Parkland, Florida. On February 14, 2018, a gunman opened fire at Marjory Stoneman Douglas High School, murdering 17 students and staff members. Following the shooting, the NRA and other gun-advocacy groups experienced "intense backlash" across the country. 49 F. 4th, at 708. Major business institutions, including DFS-regulated entities, spoke out against the NRA, and some even cut ties with the organization. App. to Pet. for Cert. 244. MetLife, for example, ended a discount program it offered with the NRA. On February 25, 2018, Lockton's chairman "placed a distraught telephone call to the NRA," in which he privately shared that Lockton would sever all ties with the NRA to avoid "'losing [its] license' to do business in New York." *Id.*, at 298, Complaint ¶42. Lockton publicly announced its decision the next day. Following Lockton's decision, the NRA's corporate insurance carrier also severed ties with the organization and refused to renew coverage at any price. The NRA contends that Lockton and the corporate insurance carrier took these steps not because of the Parkland shooting but because they feared "reprisa[l]" from Vullo. *Id.*, at 210, ¶44; see *id.*, at 209–210, ¶¶41–43.

Around that time, Vullo also began to meet with executives at the insurance companies doing business with the NRA. On February 27, Vullo met with senior executives at Lloyd's. There, speaking on behalf of DFS and then-Governor Andrew Cuomo, Vullo "presented [their] views on gun control and their desire to leverage their powers to combat

the availability of firearms, including specifically by weakening the NRA." *Id.*, at 221, ¶67. She also "discussed an array of technical regulatory infractions plaguing the affinity-insurance marketplace" in New York. *Id.*, at 199, ¶21. Vullo told the Lloyd's executives "that DFS was less interested in pursuing the[se] infractions" unrelated to any NRA business "so long as Lloyd's ceased providing insurance to gun groups, especially the NRA." *Id.*, at 199–200, ¶21; accord, *id.*, at 223, ¶69 (alleging that Vullo made it clear to Lloyd's that it "could avoid liability for infractions relating to other, similarly situated insurance policies, so long as it aided DFS's campaign against gun groups").[1] Vullo and Lloyd's struck a deal: Lloyd's "would instruct its syndicates to cease underwriting firearm-related policies and would scale back its NRA-related business," and "in exchange, DFS would focus its forthcoming affinity-insurance enforcement action solely on those syndicates which served the NRA, and ignore other syndicates writing similar policies." *Ibid.*, ¶69.

On April 19, 2018, Vullo issued two virtually identical guidance letters on DFS letterhead entitled, "Guidance on Risk Management Relating to the NRA and Similar Gun Promotion Organizations." *Id.*, at 246–251 (Guidance Letters). Vullo sent one of the letters to insurance companies and the other to financial services institutions. In the letters, Vullo pointed to the "social backlash" against the NRA and other groups "that promote guns that lead to senseless violence" following "several recent horrific shootings, including in Parkland, Florida." *Id.*, at 246, 249. Vullo then cited recent instances of businesses severing their ties with the NRA as examples of companies "fulfilling their corporate social responsibility." *Id.*, at 247, 250.

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[1] According to the complaint, other affinity organizations offered similar insurance policies, including the New York State Bar Association, the New York City Bar, and the New York State Psychological Association, among others. See App. to Pet. for Cert. 207–208, Complaint ¶36.

In the Guidance Letters' final paragraph, Vullo "encourage[d]" DFS-regulated entities to: (1) "continue evaluating and managing their risks, including reputational risks, that may arise from their dealings with the NRA or similar gun promotion organizations"; (2) "review any relationships they have with the NRA or similar gun promotion organizations"; and (3) "take prompt actions to manag[e] these risks and promote public health and safety." *Id.*, at 248, 251.[2]

The same day that DFS issued the Guidance Letters, Vullo and Governor Cuomo issued a joint press release that echoed many of the letters' statements. The press release included a quote from Vullo "'urg[ing] all insurance companies and banks doing business in New York'" to join those "'that have already discontinued their arrangements with the NRA.'" *Id.*, at 244. The press release cited Chubb's decision to stop underwriting Carry Guard as an example to emulate. The next day, Cuomo tweeted: "'The NRA is an extremist organization. I urge companies in New York State to revisit any ties they have to the NRA and consider their reputations, and responsibility to the public.'" *Id.*, at 213, Complaint ¶51.

Less than two weeks after the Guidance Letters and press release went out, DFS entered into consent decrees with Lockton (on May 2), and Chubb (on May 7). The decrees stipulated that Carry Guard violated New York insur-

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[2] The financial-regulatory term "reputational risk" is "'the risk to current or projected financial condition and resilience arising from negative public opinion,' which 'may impair a bank's competitiveness by affecting its ability to establish new relationships or services or continue servicing existing relationships.'" Brief for United States as *Amicus Curiae* 27–28, and n. 10 (quoting Office of the Comptroller of the Currency, Comptroller's Handbook, Examination Process, Bank Supervision Process 28 (Sept. 2019)). DFS monitors the reputational risk of regulated institutions because of its potential effect on market stability. See Brief for Respondent 6.

ance law because it provided insurance coverage for intentional criminal acts, and because the NRA promoted Carry Guard, along with other NRA-endorsed programs, without an insurance producer license. The decrees also listed other infractions of the State's insurance law. Both Lockton and Chubb admitted liability, agreed not to provide any NRA-endorsed insurance programs (even if lawful) but were permitted to sell corporate insurance to the NRA, and agreed to pay fines of $7 million and $1.3 million respectively. On May 9, Lloyd's officially instructed its syndicates to terminate existing agreements with the NRA and not to insure new ones. It publicly announced its decision to cut ties with the NRA that same day. On December 20, 2018, DFS and Lloyd's entered into their own consent decree, which imposed similar terms and a $5 million fine.

B

The NRA sued Cuomo, Vullo, and DFS. The only claims before the Court today are those against Vullo—namely, claims that Vullo violated the First Amendment by coercing DFS-regulated parties to punish or suppress "the NRA's pro-Second Amendment viewpoint" and "core political speech." *Id.*, at 231, ¶91, 234, ¶101. The complaint asserts both censorship and retaliation First Amendment claims, which the parties and lower courts have analyzed together. Vullo moved to dismiss, arguing that the alleged conduct did not constitute impermissible coercion and that, in the alternative, she was entitled to qualified immunity because she did not violate clearly established law.

The District Court denied Vullo's motion to dismiss the NRA's First-Amendment damages claims. The court held that the NRA plausibly alleged that "the combination of [Vullo's and Cuomo's] actions . . . could be interpreted as a veiled threat to regulated industries to disassociate with the NRA or risk DFS enforcement action." *NRA of Am.* v. *Cuomo*, 525 F. Supp. 3d 382, 402–403 (NDNY 2021). That

threat, the court said, crossed a First Amendment line. The District Court concluded that Vullo was not entitled to qualified immunity at the motion-to-dismiss stage.

The Second Circuit reversed. It concluded that Vullo's alleged actions constituted permissible government speech and legitimate law enforcement, and not unconstitutional coercion. The Second Circuit determined that the Guidance Letters and accompanying press release were not unconstitutionally coercive because they "were written in an even-handed, nonthreatening tone and employed words intended to persuade rather than intimidate." 49 F. 4th, at 717. The court found it significant that Vullo "did not refer to any pending investigations or possible regulatory action" and alluded only to business-related risks "amid growing public concern over gun violence." *Ibid.* As for Vullo's meeting with the Lloyd's executives, the court admitted that the allegations presented a "closer call." *Id.*, at 718. Nonetheless, just as with the consent decrees, it found that Vullo "was merely carrying out her regulatory responsibilities." *Id.*, at 718–719. The Second Circuit also held that, even if the complaint stated a First Amendment violation, the law was not clearly established, and so Vullo was entitled to qualified immunity.

The NRA filed a petition for a writ of certiorari, seeking either summary reversal or review of the First Amendment and qualified immunity holdings. This Court granted certiorari on only the first question presented whether the complaint states a First Amendment claim against Vullo. See 601 U. S. ___ (2023).[3]

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[3] Vullo argues that the Court must dismiss the case as improvidently granted because the Court deprived itself of jurisdiction by limiting its review to the First Amendment question and declining to review the Second Circuit's alternative holding that Vullo is entitled to qualified immunity. See Brief for Respondent 21–24. Not so. In this case, "[a]n order limiting the grant of certiorari does not operate as a jurisdictional bar." *Piper Aircraft Co.* v. *Reyno*, 454 U. S. 235, 247, n. 12 (1981). Because the

II

As discussed below, Vullo was free to criticize the NRA and pursue the conceded violations of New York insurance law. She could not wield her power, however, to threaten enforcement actions against DFS-regulated entities in order to punish or suppress the NRA's gun-promotion advocacy. Because the complaint plausibly alleges that Vullo did just that, the Court holds that the NRA stated a First Amendment violation.

A

At the heart of the First Amendment's Free Speech Clause is the recognition that viewpoint discrimination is uniquely harmful to a free and democratic society. The Clause prohibits government entities and actors from "abridging the freedom of speech." When government officials are "engaging in their own expressive conduct," though, "the Free Speech Clause has no application." *Pleasant Grove City* v. *Summum*, 555 U. S. 460, 467 (2009). The government can "'say what it wishes'" and "select the views that it wants to express." *Id.*, at 467–468 (quoting *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 833 (1995)). That makes sense; the government could barely function otherwise. "When a government entity embarks on a course of action, it necessarily takes a particular viewpoint and rejects others," and thus does not need to "maintain viewpoint-neutrality when its officers and employees speak about that venture." *Matal* v. *Tam*, 582 U. S. 218, 234 (2017).

A government official can share her views freely and criticize particular beliefs, and she can do so forcefully in the

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Second Circuit is free to revisit the qualified immunity question in light of this Court's opinion, the NRA still could obtain "'effectual relief'" on remand. *Chafin* v. *Chafin*, 568 U. S. 165, 172 (2013). In such circumstances, it cannot be said that the resolution of the First Amendment question is merely advisory.

hopes of persuading others to follow her lead. In doing so, she can rely on the merits and force of her ideas, the strength of her convictions, and her ability to inspire others. What she cannot do, however, is use the power of the State to punish or suppress disfavored expression. See *Rosenberger*, 515 U. S., at 830 (explaining that governmental actions seeking to suppress a speaker's particular views are presumptively unconstitutional). In such cases, it is "the application of state power which we are asked to scrutinize." *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449, 463 (1958).

In *Bantam Books*, this Court explored the distinction between permissible attempts to persuade and impermissible attempts to coerce. There, a state commission used its power to investigate and recommend criminal prosecution to censor publications that, in its view, were "'objectionable'" because they threatened "youthful morals." 372 U. S., at 59–62, 71. The commission sent official notices to a distributor for blacklisted publications that highlighted the commission's "duty to recommend to the Attorney General" violations of the State's obscenity laws. *Id.*, at 62–63, and n. 5. The notices also informed the distributor that the lists of blacklisted publications "were circulated to local police departments," and that the distributor's cooperation in removing the publications from the shelves would "'eliminate the necessity'" of any referral for prosecution. *Ibid.* A local police officer also conducted followup visits to ensure compliance. In response, the distributor took "steps to stop further circulation of copies of the listed publications" out of fear of facing "'a court action.'" *Id.*, at 63.

The publishers of the blacklisted publications sued the commission, alleging that this scheme of informal censorship violated their First Amendment rights. The commission responded that "it d[id] not regulate or suppress obscenity but simply exhort[ed] booksellers and advise[d] them of their legal rights." *Id.*, at 66. This Court sided with

the publishers, holding that the commission violated their free-speech rights by coercing the distributor to stop selling and displaying the listed publications.

The Court explained that the First Amendment prohibits government officials from relying on the "threat of invoking legal sanctions and other means of coercion . . . to achieve the suppression" of disfavored speech. *Id.*, at 67. Although the commission lacked the "power to apply formal legal sanctions," the distributor "reasonably understood" the commission to threaten adverse action, and thus the distributor's "compliance with the [c]ommission's directives was not voluntary." *Id.*, at 66–68. To reach this conclusion, the Court considered things like: the commission's coordination with law enforcement and its authority to refer matters for prosecution; the notices themselves, which were "phrased virtually as orders" containing "thinly veiled threats to institute criminal proceedings" if the distributor did not come around; and the distributor's reaction to the notices and followup visits. *Id.,* at 68.

Since *Bantam Books*, the Courts of Appeals have considered similar factors to determine whether a challenged communication is reasonably understood to be a coercive threat. Take the decision below, for example. The Second Circuit purported to consider: "(1) word choice and tone; (2) the existence of regulatory authority; (3) whether the speech was perceived as a threat; and, perhaps most importantly, (4) whether the speech refers to adverse consequences." 49 F. 4th, at 715 (citations omitted).[4] Other Circuits have taken similarly fact-intensive approaches,

[4]The NRA posits a three-factor test that looks to: (1) the actor's authority; (2) the content and purpose of the actor's communications; and (3) the reactions of the recipient. Brief for Petitioner 26. The NRA concedes, however, that its test is the same as the Second Circuit's, as it considers the fourth factor in the Second Circuit's test of "'whether the speech refers to adverse consequences'" to be an "aspect of the inquiry into the content and purpose of the communication." *Id.*, at 27, n. 8.

utilizing a multifactor test or a totality-of-the-circumstances analysis. See, *e.g.*, *Missouri* v. *Biden*, 83 F. 4th 350, 380 (CA5 2023) ("[T]o help distinguish permissible persuasion from impermissible coercion, we turn to the Second (and Ninth) Circuit's four-factor test"); *Kennedy* v. *Warren*, 66 F. 4th 1199, 1207 (CA9 2023) (applying the Second Circuit's "useful non-exclusive four-factor framework"); *Backpage.com, LLC* v. *Dart*, 807 F. 3d 229, 230–232 (CA7 2015) (considering the same factors as part of a totality-of-the-circumstances analysis); *R. C. Maxwell Co.* v. *New Hope*, 735 F. 2d 85, 88 (CA3 1984) (same). The Courts of Appeals that employ a multifactor test agree that "[n]o one factor is dispositive." 49 F. 4th, at 715; accord, *Kennedy*, 66 F. 4th, at 1210 (explaining that the absence of direct regulatory authority is not dispositive).

Ultimately, *Bantam Books* stands for the principle that a government official cannot do indirectly what she is barred from doing directly: A government official cannot coerce a private party to punish or suppress disfavored speech on her behalf. See, *e.g.*, 372 U. S., at 67–69; see also *Backpage.com*, 807 F. 3d, at 231 (holding that the First Amendment barred a sheriff from "using the power of his office to threaten legal sanctions against . . . credit-card companies for facilitating future speech"); *Okwedy* v. *Molinari*, 333 F. 3d 339, 344 (CA2 2003) (*per curiam*) (holding that a religious group stated a First Amendment claim against a borough president who wrote a letter "contain[ing] an implicit threat of retaliation" against a billboard company displaying the group's disfavored message); cf. *Penthouse Int'l, Ltd.* v. *Meese*, 939 F. 2d, 1011, 1016 (CADC 1991) ("[W]hen the government threatens no sanction—criminal or otherwise—we very much doubt that the government's criticism or effort to embarrass the [intermediary] threatens anyone's First Amendment rights").

B

The parties and the Solicitor General, who filed an *amicus* brief supporting vacatur, agree that *Bantam Books* provides the right analytical framework for claims that the government has coerced a third party to violate the First Amendment rights of another. They also embrace the lower courts' multifactor test as a useful, though nonexhaustive, guide. Rightly so. Considerations like who said what and how, and what reaction followed, are just helpful guideposts in answering the question whether an official seeks to persuade or, instead, to coerce. Where the parties differ is on the application of the *Bantam Books* framework. The NRA and the Solicitor General reject the Second Circuit's application of the framework, while Vullo defends it. The Court now agrees with the NRA and the Solicitor General.

To state a claim that the government violated the First Amendment through coercion of a third party, a plaintiff must plausibly allege conduct that, viewed in context, could be reasonably understood to convey a threat of adverse government action in order to punish or suppress the plaintiff's speech. See 372 U. S., at 67–68. Accepting the well-pleaded factual allegations in the complaint as true, the NRA plausibly alleged that Vullo violated the First Amendment by coercing DFS-regulated entities into disassociating with the NRA in order to punish or suppress the NRA's gun-promotion advocacy.

Consider first Vullo's authority, which serves as a backdrop to the NRA's allegations of coercion. The power that a government official wields, while certainly not dispositive, is relevant to the objective inquiry of whether a reasonable person would perceive the official's communication as coercive. See *id.*, at 66–67. Generally speaking, the greater and more direct the government official's authority, the less likely a person will feel free to disregard a directive from the official. For example, imagine a local affinity group in New York that receives a strongly worded letter. One

would reasonably expect that organization to react differently if the letter came from, say, the U. S. Attorney for the Southern District of New York than if it came from an out-of-state school board.

As DFS superintendent, Vullo had direct regulatory and enforcement authority over all insurance companies and financial service institutions doing business in New York. See N. Y. Fin. Servs. Law Ann. §§202, 301. Just like the commission in *Bantam Books*, Vullo could initiate investigations and refer cases for prosecution. Indeed, she could do much more than that. Vullo also had the power to notice civil charges and, as this case shows, enter into consent decrees that impose significant monetary penalties.

Against this backdrop, consider Vullo's communications with the DFS-regulated entities, particularly with Lloyd's. According to the NRA, Vullo brought a variety of insurance-law violations to the Lloyd's executives' attention during a private meeting in February 2018. The violations included technical infractions that allegedly plagued the affinity insurance market in New York and that were unrelated to any NRA business. App. to Pet. for Cert. 199–200, Complaint ¶21; accord, *id.,* at 207–208, ¶¶36–37; *id*., at 223, ¶69. Vullo allegedly said she would be "less interested in pursuing the[se] infractions . . . so long as Lloyd's ceased providing insurance to gun groups, especially the NRA." *Id*., at 199–200, ¶21. Vullo therefore wanted Lloyd's to disassociate from all gun groups, although there was no indication that such groups had unlawful insurance policies similar to the NRA's. Vullo also told the Lloyd's executives she would "focus" her enforcement actions "solely" on the syndicates with ties to the NRA, "and ignore other syndicates writing similar policies." *Id*., at 223, ¶69. The message was therefore loud and clear: Lloyd's "could avoid liability for [unrelated] infractions" if it "aided DFS's campaign against gun groups" by terminating its business relationships with them. *Ibid.*

As alleged, Vullo's communications with Lloyd's can be reasonably understood as a threat or as an inducement. Either of those can be coercive. As Vullo concedes, the "threat need not be explicit," Brief for Respondent 47, and as the Solicitor General explains, "[t]he Constitution does not distinguish between 'comply or I'll prosecute' and 'comply and I'll look the other way,'" Brief for United States as *Amicus Curiae* 18, n. 7. So, whether analyzed as a threat or as an inducement, the conclusion is the same: Vullo allegedly coerced Lloyd's by saying she would ignore unrelated infractions and focus her enforcement efforts on NRA-related business alone, if Lloyd's ceased underwriting NRA policies and disassociated from gun-promotion groups.

The reaction from Lloyd's further confirms the communications' coercive nature. Cf. *Bantam Books*, 372 U. S., at 63, 68 (noting that the distributor's "reaction on receipt of a notice was to take steps to stop further circulation of copies of the listed publications"). At the meeting itself, Lloyd's "agreed that it would instruct its syndicates to cease underwriting firearm-related policies and would scale back its NRA-related business." App. to Pet. for Cert. 223, Complaint ¶69. Minutes from a subsequent board of directors' meeting reveal that Lloyd's thought "the DFS investigation had transformed the gun issue into 'a regulatory, legal[,] and compliance matter.'" 2 App. to Pet. for Cert. 29 (Sealed). That reaction is consistent with Lloyd's public announcement that it had directed its syndicates to "terminate all insurance related to the NRA and not to provide any insurance to the NRA in the future." App. to Pet. for Cert. 224, Complaint ¶72; accord, *id*., at 306, ¶20 (consent decree memorializing commitment not to underwrite, or participate in, NRA-endorsed programs).

Other allegations, viewed in context, reinforce the NRA's First Amendment claim. Consider the April 2018 Guidance Letters and accompanying press release, which Vullo issued on official letterhead. Cf. *Bantam Books*, 372 U. S., at

61–63, and n. 5 (discussing notice issued in "official Commission stationery"). Just like in her meeting with the Lloyd's executives, here too Vullo singled out the NRA and other gun-promotion organizations as the targets of her call to action. This time, the Guidance Letters reminded DFS-regulated entities of their obligation to consider their "reputational risks," and then tied that obligation to an encouragement for "prompt actio[n] to manag[e] these risks." App. to Pet. for Cert. 248, 251. Evocative of Vullo's private conversation with the Lloyd's executives a few weeks earlier, the press release revealed how to manage the risks by encouraging DFS-regulated entities to "'discontinu[e] their arrangements with the NRA,'" just like Chubb did when it stopped underwriting Carry Guard. App. to Pet. for Cert. 244. A follow-on tweet from Cuomo reaffirmed the message: Businesses in New York should "'consider their reputations'" and "'revisit any ties they have to the NRA,'" which he called "'an extremist organization.'" *Id.*, at 213, ¶51.

In sum, the complaint, assessed as a whole, plausibly alleges that Vullo threatened to wield her power against those refusing to aid her campaign to punish the NRA's gun-promotion advocacy. If true, that violates the First Amendment.

C

In holding otherwise, the Second Circuit found that: (1) the "Guidance Letters and Press Release are clear examples of permissible government speech"; and (2) the Lloyd's meeting was "legitimate enforcement action" in which Vullo was "merely carrying out her regulatory responsibilities" by offering "leniency in the course of negotiating a resolution of the apparent insurance law violations." 49 F. 4th, at 717–719. The Second Circuit could only reach this conclusion by taking the allegations in isolation and failing to draw reasonable inferences in the NRA's favor in violation

of this Court's precedents. Cf. *Iqbal*, 556 U. S., at 678–679; *Bell Atlantic Corp.* v. *Twombly*, 550 U. S. 544, 570 (2007).

For example, the Second Circuit failed to analyze the Guidance Letters and press release against the backdrop of other allegations in the complaint, including the Lloyd's meeting. Moreover, as discussed above, the complaint alleges that Vullo made a not-so-subtle, sanctions-backed threat to Lloyd's to cut all business ties with the NRA and other gun-promotion groups, although there was no sign that other gun groups also had unlawful insurance policies. See *supra*, at 13. It is also relevant that Vullo made this alleged threat in a meeting where she presented her "desire to leverage [her] powers to combat the availability of firearms, including specifically by weakening the NRA." App. to Pet. for Cert. 221, Complaint ¶67; *id.*, at 223, ¶69 (alleging Vullo hoped to enlist DFS-regulated entities in "aid[ing] DFS's campaign against gun groups"). Given the obligation to draw reasonable inferences in the NRA's favor and consider the allegations as a whole, the Second Circuit erred in reading the complaint as involving only individual instances of "permissible government speech" and the execution of Vullo's "regulatory responsibilities." 49 F. 4th, at 717–719.

For the same reasons, this Court cannot simply credit Vullo's assertion that "pursuing conceded violations of the law," Brief for Respondent 29, is an "'obvious alternative explanation'" for her actions that defeats the plausibility of any coercive threat raising First Amendment concerns, *id.*, at 37, 40, 42 (quoting *Iqbal*, 556 U. S., at 682). Of course, discovery in this case might show that the allegations of coercion are false, or that certain actions should be understood differently in light of newly disclosed evidence. At this stage, though, the Court must assume the well-pleaded

factual allegations in the complaint are true.[5]

Moreover, the conceded illegality of the NRA-endorsed insurance programs does not insulate Vullo from First Amendment scrutiny under the *Bantam Books* framework. Indeed, the commission in that case targeted the distribution and display of material that, in its view, violated the State's obscenity laws. Nothing in that case turned on the distributor's compliance with state law. On the contrary, *Bantam Books* held that the commission violated the First Amendment by invoking legal sanctions to suppress disfavored publications, some of which may or may not contain protected speech (*i.e.*, nonobscene material). See 372 U. S., at 64, 67. Here, too, although Vullo can pursue violations of state insurance law, she cannot do so in order to punish or suppress the NRA's protected expression. So, the contention that the NRA and the insurers violated New York law does not excuse Vullo from allegedly employing coercive threats to stifle gun-promotion advocacy.

Vullo next argues that this case does not involve unconstitutional coercion because her challenged actions in fact targeted business practices and relationships, which qualify as "nonexpressive activity." Brief for Respondent 32. The argument is misplaced. That Vullo "regulate[d]" business activities stemming from the NRA's "relationships with insurers and banks," *ibid.*, does not change the allegations that her actions were aimed at punishing or suppressing speech. In *Bantam Books*, the commission interfered with the business relationship between the distributor and

[5] Vullo also argues that she is entitled to absolute prosecutorial immunity for her enforcement actions. See Brief for Respondent 25–28. Putting aside whether a financial regulator like Vullo is entitled to such immunity in the administrative context, because Vullo did not raise this defense below with respect to the First Amendment claim (or even with respect to allegations unrelated to the consent decrees), the Court declines to consider that argument here in the first instance.

the publishers in order to suppress the publishers' disfavored speech. 372 U. S., at 66–71. Similarly, in *Backpage.com*, a sheriff interfered with a website's business relationships with payments-service providers in order to eliminate the website's "adult section" (if not the website itself). 807 F. 3d, at 230–232, 235–236. In that case, the sheriff wanted to "suffocat[e]" the website, "depriving the company of ad revenues by scaring off its payments-service providers." *Id.*, at 231. "The analogy," the Seventh Circuit explained, "is to killing a person by cutting off his oxygen supply rather than by shooting him." *Ibid.* So too here. One can reasonably infer from the complaint that Vullo coerced DFS-regulated entities to cut their ties with the NRA in order to stifle the NRA's gun-promotion advocacy and advance her views on gun control. See, *e.g.*, *supra*, at 12–15; App. to Pet. for Cert. 221, 230–235, Complaint ¶¶67, 87–105. Vullo knew, after all, that the NRA relied on insurance and financing "to disseminate its message." *Id.*, at 231, ¶92; see *id.*, at 203–204, ¶¶28–29.[6]

Lastly, Vullo falls back on the argument that a ruling in the NRA's favor would interfere with the government's ability to function properly. She claims that the NRA's position, if accepted, would stifle government speech and hamper legitimate enforcement efforts. This argument falls flat for the simple reason that it requires the Court to accept Vullo's limited reading of the complaint. The Court does not break new ground in deciding this case. It only reaffirms the general principle from *Bantam Books* that where, as here, the complaint plausibly alleges coercive threats aimed at punishing or suppressing disfavored speech, the plaintiff states a First Amendment claim.

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[6]Vullo's boss, Governor Cuomo, also urged businesses to disassociate with the NRA to put the organization "into financial jeopardy" and "shut them down." App. 21 (Aug. 3, 2018, tweet).

III

The NRA's allegations, if true, highlight the constitutional concerns with the kind of intermediary strategy that Vullo purportedly adopted to target the NRA's advocacy. Such a strategy allows government officials to "expand their regulatory jurisdiction to suppress the speech of organizations that they have no direct control over." Brief for First Amendment Scholars as *Amici Curiae* Supporting Petitioner 8. It also allows government officials to be more effective in their speech-suppression efforts "[b]ecause intermediaries will often be less invested in the speaker's message and thus less likely to risk the regulator's ire." *Ibid.* The allegations here bear this out. Although "the NRA was not even the directly regulated party," Brief for Respondent 32, Vullo allegedly used the power of her office to target gun promotion by going after the NRA's business partners. Insurers in turn followed Vullo's lead, fearing regulatory hostility.

Nothing in this case gives advocacy groups like the NRA a "right to absolute immunity from [government] investigation," or a "right to disregard [state or federal] laws." *Patterson*, 357 U. S., at 463. Similarly, nothing here prevents government officials from forcefully condemning views with which they disagree. For those permissible actions, the Constitution "relies first and foremost on the ballot box, not on rules against viewpoint discrimination, to check the government when it speaks." *Shurtleff* v. *Boston*, 596 U. S. 243, 252 (2022). Yet where, as here, a government official makes coercive threats in a private meeting behind closed doors, the "ballot box" is an especially poor check on that official's authority. Ultimately, the critical takeaway is that the First Amendment prohibits government officials from wielding their power selectively to punish or suppress speech, directly or (as alleged here) through private intermediaries.

* * *

For the reasons discussed above, the Court holds that the NRA plausibly alleged that Vullo violated the First Amendment by coercing DFS-regulated entities to terminate their business relationships with the NRA in order to punish or suppress the NRA's advocacy.

The judgment of the U. S. Court of Appeals for the Second Circuit is vacated, and the case remanded for further proceedings consistent with this opinion.[7]

It is so ordered.

[7] On remand, the Second Circuit is free to reconsider whether Vullo is entitled to qualified immunity.

SUPREME COURT OF THE UNITED STATES

No. 22–842

NATIONAL RIFLE ASSOCIATION OF AMERICA,
PETITIONER *v.* MARIA T. VULLO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[May 30, 2024]

JUSTICE GORSUCH, concurring.

I write separately to explain my understanding of the Court's opinion, which I join in full. Today we reaffirm a well-settled principle: "A government official cannot coerce a private party to punish or suppress disfavored speech on her behalf." *Ante,* at 11. As the Court mentions, many lower courts have taken to analyzing this kind of coercion claim under a four-pronged "multifactor test." *Ibid.* These tests, the Court explains, might serve "as a useful, though nonexhaustive, guide." *Ante,* at 12. But sometimes they might not. Cf. *Axon Enterprise, Inc.* v. *FTC*, 598 U. S. 175, 205–207 (2023) (GORSUCH, J., concurring in judgment). Indeed, the Second Circuit's decision to break up its analysis into discrete parts and "tak[e] the [complaint's] allegations in isolation" appears only to have contributed to its mistaken conclusion that the National Rifle Association failed to state a claim. *Ante,* at 15. Lower courts would therefore do well to heed this Court's directive: Whatever value these "guideposts" serve, they remain "just" that and nothing more. *Ante,* at 12. "Ultimately, the critical" question is whether the plaintiff has "plausibly allege[d] conduct that, viewed in context, could be reasonably understood to convey a threat of adverse government action in order to punish or suppress the plaintiff's speech." *Ante,* at 12, 19.

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[May 30, 2024]

JUSTICE JACKSON, concurring.

Applying our decision in *Bantam Books, Inc.* v. *Sullivan*, 372 U. S. 58 (1963), the Court today explains that a "government official cannot coerce a private party to punish or suppress disfavored speech on her behalf." *Ante,* at 11. I agree. I write separately to stress the important distinction between government coercion, on the one hand, and a violation of the First Amendment, on the other.

I

Coercion of a third party can be the means by which the government violates the First Amendment rights of another. But the fact of coercion, without more, does not state a First Amendment claim. Rather, in addition to finding that the government has crossed a line from persuasion to coercion, courts must assess how that coercion actually violates a speaker's First Amendment rights.

Our decision in *Bantam Books* provides one example of how government coercion of a third party can indirectly bring about a First Amendment violation. As the majority explains, *ante,* at 9–10, *Bantam Books* held that a Rhode Island commission's efforts to coerce intermediary book distributors into pulling certain publications from circulation violated the First Amendment rights of the books' publish-

ers, 372 U. S., at 61–62, 66–67. Even though the state commission had not itself "seized or banned" any books, "the threat of invoking legal sanctions and other means of coercion, persuasion, and intimidation" against the distributors "directly and designedly stopped the circulation of publications in many parts of Rhode Island." *Id.*, at 67–68. Essentially, the State's threats to third parties—the distributors—erected through private hands an "effective state regulation . . . of obscenity." *Id.*, at 69. And the government could not escape responsibility for the distributors' actions merely because the commission did not itself seize any books. See *id.*, at 66–67.

Notably, however, the government's coercion of the distributors into doing its bidding was not—in and of itself—what offended the First Amendment. Rather, by threatening those third-party conduits of speech, the state commission had effectively "subject[ed] the distribution of publications to a system of prior administrative restraints" lacking the requisite constitutional safeguards. *Id.*, at 70. Put another way, by exerting pressure on a third party, the State had constructed a "system of informal censorship." *Id.*, at 71.

The lesson of *Bantam Books* is that "a government official cannot do indirectly what she is barred from doing directly." *Ante,* at 11. That case does *not* hold that government coercion alone violates the First Amendment. And recognizing the distinction between government coercion and a First Amendment violation is important because our democracy can function only if the government can effectively enforce the rules embodied in legislation; by its nature, such enforcement often involves coercion in the form of legal sanctions. The existence of an allegation of government coercion of a third party thus merely invites, rather than answers, the question whether that coercion indirectly worked a violation of the plaintiff's First Amendment rights.

II

Whether and how government coercion of a third party might violate another party's First Amendment rights will depend on the facts of the case. Indeed, under our precedents, determining whether government action violates the First Amendment requires application of different doctrines that vary depending on the circumstances. Different circumstances—who is being coerced to do what, and why—may implicate different First Amendment inquiries.

In *Bantam Books* and many cases applying it, the coercion and First Amendment inquiries practically merge. This is because those cases tend to follow a similar fact pattern: The plaintiff claims that the government coerced a distributor, purveyor, or conduit of expression—like a billboard company, television station, or book retailer—to shut down the speech of another party that relies on that distributor, purveyor, or conduit to spread its message.* Coercing an entity in the business of disseminating speech to stop disseminating someone else's speech obviously implicates the First Amendment, insofar as it may result in censorship similar to the prior restraint identified in *Bantam Books*.

But, in my view, that censorship theory is an awkward fit with the facts of *this* case. According to the complaint, Vullo coerced various regulated entities to cut business ties with the National Rifle Association (NRA). See *ante*, at 3–5. The

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*See, *e.g.*, *Okwedy* v. *Molinari*, 333 F. 3d 339, 340, 342–344 (CA2 2003) (*per curiam*) (billboard company); *R. C. Maxwell Co.* v. *New Hope*, 735 F. 2d 85, 85–88 (CA3 1984) (same); *American Family Assn., Inc.* v. *City and County of San Francisco*, 277 F. 3d 1114, 1119–1120 (CA9 2002) (television stations); *Kennedy* v. *Warren*, 66 F. 4th 1199, 1204–1205 (CA9 2023) (online book retailer); *Penthouse Int'l, Ltd.* v. *Meese*, 939 F. 2d 1011, 1013–1016 (CADC 1991) (convenience stores carrying pornographic magazines); *Hammerhead Enterprises, Inc.* v. *Brezenoff*, 707 F. 2d 33, 34–38 (CA2 1983) (department stores carrying satirical board game); *VDARE Foundation* v. *Colorado Springs*, 11 F. 4th 1151, 1156–1157 (CA10 2021) (resort hosting advocacy group conference).

NRA does not contend that its (concededly unlawful) insurance products offered through those business relationships were themselves "speech," akin to a billboard, a television ad, or a book. Nor does the complaint allege that Vullo pressured the printer of American Rifleman (a longstanding NRA periodical) to stop printing the magazine, or coerced a convention center into canceling the NRA's annual meeting. See *VDARE Foundation* v. *Colorado Springs*, 11 F. 4th 1151, 1157 (CA10 2021). In other words, the effect of Vullo's alleged coercion of regulated entities on the NRA's speech is significantly more attenuated here than in *Bantam Books* or most decisions applying it. It is, for instance, far from obvious that Vullo's conduct toward regulated entities established "a system of prior administrative restraints" against the NRA's expression. *Bantam Books*, 372 U. S., at 70.

Of course, as the majority correctly observes, none of that means that Vullo may target with impunity the NRA's "'nonexpressive'" activity if she is doing so to punish the NRA for its expression. See *ante*, at 17. But it does suggest that our First Amendment retaliation cases might provide a better framework for analyzing these kinds of allegations—*i.e.*, coercion claims that are not directly related to the publication or distribution of speech. And, fortunately for the NRA, the complaint in this case alleges both censorship and retaliation theories for how Vullo violated the First Amendment—theories that, in my opinion, deserve separate analyses.

"'[A]s a general matter,' the First Amendment prohibits government officials from subjecting individuals to 'retaliatory actions' after the fact for having engaged in protected speech." *Houston Community College System* v. *Wilson*, 595 U. S. 468, 474 (2022) (quoting *Nieves* v. *Bartlett*, 587 U. S. 391, 398 (2019)). "[A] plaintiff pursuing a First Amendment retaliation claim must show, among other things, that the government took an 'adverse action' in response to his

speech that 'would not have been taken absent the retaliatory motive.'" *Wilson*, 595 U. S., at 477 (quoting *Nieves*, 587 U. S., at 399). Although our analysis has varied by context, see *Lozman* v. *Riviera Beach*, 585 U. S. 87, 96–99 (2018), we have generally required plaintiffs claiming First Amendment retaliation to "establish a 'causal connection' between the government defendant's 'retaliatory animus' and the plaintiff's 'subsequent injury,'" *Nieves*, 587 U. S., at 398 (quoting *Hartman* v. *Moore*, 547 U. S. 250, 259 (2006)).

Requiring that causal connection to a retaliatory motive is important, because "[s]ome official actions adverse to . . . a speaker might well be unexceptionable if taken on other grounds." *Id.*, at 256. In this case, for example, analyzing causation matters because much of Vullo's alleged conduct, if not done for retaliatory reasons, might otherwise be legitimate enforcement of New York's insurance regulations.

How a retaliation analysis should proceed in this case was not addressed below, so the Court rightly leaves that question unanswered today. But, importantly, any such analysis requires more than asking simply whether the government's actions crossed the threshold from permissible persuasion to impermissible coercion. The NRA concedes that, at the very least, our burden-shifting framework from *Mt. Healthy City Bd. of Ed.* v. *Doyle*, 429 U. S. 274 (1977), likely applies. See Reply Brief 16–17. Should that test govern, the NRA would have to plausibly allege that a retaliatory motive was a "'substantial'" or "'motivating factor'" in Vullo's targeting of the regulated entities doing business with the NRA. *Mt. Healthy*, 429 U. S., at 287. Vullo, in turn, could rebut that allegation by showing that she would have taken the same action "even in the absence of the [NRA's] protected conduct." *Ibid.*; see *Lozman*, 585 U. S., at 96 ("[E]ven if retaliation might have been a substantial motive for the board's action, still there was no liability unless the alleged constitutional violation was a but-for cause of the employment termination").

* * *

The NRA's complaint advances both censorship and retaliation claims, yet the lower courts in this case lumped these claims together and ultimately focused almost exclusively on whether Vullo's conduct was coercive. See *ante,* at 6–7. Consequently, the strength of the NRA's claim under the *Mt. Healthy* framework has received little attention thus far. On remand, the parties and lower courts should consider the censorship and retaliation theories independently, mindful of the distinction between government coercion and the ways in which such coercion might (or might not) have violated the NRA's constitutional rights. That analysis can and should likewise consider which First Amendment framework best captures the NRA's allegations in this case. See, *e.g.*, *VDARE*, 11 F. 4th, at 1159–1175 (separately analyzing censorship and retaliation claims).

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