FILED
SUPREME COURT
STATE OF WASHINGTON
10/28/2024 4:18 PM
BY ERIN L. LENNON
CLERK

Supreme Court No. 103,500-4

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

IN THE MATTER OF THE RECALL OF JAY KINNEY, et al.,
Commissioners,
Bainbridge Island Metropolitan Park & Recreation District

Kitsap County Superior Court Nos.
23-2-00858-18 (Kinney), 23-2-00859-18 (Janow),
23-2-00860-18 (DeWitt), and 23-2-00861-18 (Swolgaard)
Court of Appeals No. 58939-7-II (consolidated)

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

W. Adam Hunt, WSBA #54529
(appearing *pro se* in these
recall proceedings)

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I. IDENTITY OF RESPONDENT AND COURT OF APPEALS DECISION

Respondent (appearing *pro se* in the recall proceedings) is a Bainbridge Island father of four children, a volunteer youth sports coach (flag football, baseball, basketball) and was most recently employed as an in-house ethics and compliance counsel. Clerk's Papers (CP) 719 at ¶ 42; 875. His efforts as a volunteer youth sports coach have been acknowledged by community members. *See*, *e.g.*, CP 858-861. Integrity is thus essential to his personal and professional reputation. CP 915.

Coach Hunt respectfully requests this Court deny the petition for review of the Court of Appeals published opinion in *In re Recall of Kinney*, 555 P.3d 426 (Wash. Ct. App. 2024) (attached as Appendix A to the Petition). The Petition should be denied since there was no error by the superior court, nor by Division II, which both applied settled law to the facts set forth in the record below when refusing to impose CR 11 sanctions against a *pro se* recall petitioner who acted in good faith.

II. INTRODUCTION

At a hearing in June 2023, Coach Hunt appeared in person before the superior court to defend himself against CR11 filings made by private counsel for four elected commissioners:

> **These recall proceedings were initiated because of my good faith intention to have these four officials removed from their official positions as a result of their manifestly unreasonable actions and improper failure to uphold the very laws, oaths, resolutions and policies that they had each duly sworn to faithfully execute upon assuming public office on the BIMPRD Board.** VRP 22:19-25 (June 16, 2023).

Intentionally ignoring this testimony and extensive additional evidence contained in the record, counsel for these public officials (personally represented for the first time in these legal proceedings by one of the recall officials) falsely claims in the Petition that "Mr. Hunt did not intend to remove the four commissioners from office." This willful blindness to record evidence is pervasive throughout the Petition and warrants the imposition of sanctions on Commissioners' new counsel pursuant to RAP 18.9(a).

By filling the gaps and correcting the record, this Answer demonstrates how the Petition fails to establish any of the RAP 13.4(b) factors required for this Court to grant discretionary review. For that reason, Coach Hunt (continuing to appear *pro se* in these recall proceedings) respectfully requests that the Court deny the Petition and impose RAP 18.9(a) sanctions on counsel for the public officials who signed and filed it. After spending ~18 months (and roughly $200,000 of taxpayer funds) seeking sanctions against Coach Hunt, it is time for an end to these baseless efforts against a citizen who acted in good faith.

III. RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

Issue 1. Counsel for the Elected Commissioners repeatedly misrepresents that Coach Hunt filed intentionally frivolous recall petitions in bad faith[1] against four elected officials. Both the superior court and Division II refused to

[1] In addition to falsely representing the recall petitions were intentionally frivolous and filed in bad faith, Commissioners' new counsel also misstates the actual number of recall petitions filed in good faith by Coach Hunt as five (he filed four). Petition at 1.

credit these claims. To the contrary, the superior court expressly declined to enter any findings on the sufficiency of Coach Hunt's recall charges after counsel for the Elected Commissioners drafted and signed a mutual Rule 41 order to dismiss the recall petitions prior to the statutory sufficiency hearing or issuance of a sufficiency decision pursuant to RCW 29A.56.140. CP 230 ("[T]his court does not need to reach the matter of whether the recall petitions were without legal or factual sufficiency."). The lack of a statutory sufficiency decision is a direct result of mutual consent to the dismissal.

The petition for review also misleadingly characterizes the nature of Coach Hunt's detailed recall charges as claims "that the public officials are not fulfilling their general duties and responsibilities to the community." Petition at 2. This is not remotely true. Each of the extensively researched, individualized recall petitions Coach Hunt filed were filled with specific legal and factual claims to support the recall charges. *See*, *e.g.*, VRP at 15:12-19.

For example, Charge 1 includes many descriptions of specific dates and official documents such as BIMPRD board resolutions signed by the Elected Commissioners as well as documents from the BIMPRD's official website. CP 10. The manifestly unreasonable actions alleged in Charge 1 include the failure to hold a single board committee meeting since its inception in 2016 (CP 16); failure to address "the myriad of safety and maintenance concerns" of a 50+ year old facility (CP 17-18); as well as improper oversight of the head coach of the Bainbridge Island Swim Club (CP 20). This claim was supported by an internal BIMPRD investigative report concerning the head coach's conduct that Coach Hunt obtained via a public records request. A report summary was included in support of the recall charges. *See*, *e.g.*, CP 60; CP 713 at ¶ 31.

Charge 2 details recallable offenses resulting from mismanagement of public funds sufficient to establish manifestly unreasonable actions. This included failure to account for $1 million in grant funds received from a state

agency, as well as a multimillion dollar recreation facility purchase. CP 20. Charge 2 was supported by a legal opinion (CP 62-66) that had been obtained by concerned citizens and provided to the Elected Commissioners, as well as a letter from the Office of the Washington State Auditor stating "[t]his appears to be a legal matter that is best handled by the court system. You may wish to consider resolving your concerns in this way." CP 67.

The remaining recall charges also referenced specific dates, conduct, legal standards and exhibits necessary to support each charge. For example, Charge 3 included the text of an email sent by Commissioner Jay Kinney that indicated his support of efforts to privately undermine his official actions. CP 13. Charge 4 included Coach Hunt's research related to specific BIMPRD obligations to develop active recreation in connection with a specific parcel. CP 22. And Charge 5 set forth a straightforward claim alleging violations of the Open Public Meetings Act (RCW 42.30), which was supported by

direct communication from one of the Elected Commissioners regarding the alleged conduct. (CP 22).

Issue 2. The *only* issue presented on appeal was whether the superior court abused its discretion in rejecting claims of four elected officials that Coach Hunt filed intentionally frivolous recall petitions in bad faith for purposes of harassment. As noted by Commissioners' counsel, "with respect to the test for such 'bad faith', this Court's *Recall of Piper* decision emphasized that the motives of the person filing recall charges 'are relevant to determining bad faith.'" Consolidated Opening Brief at 38.

The decisions in this Court's controlling recall cost cases consistently emphasize the entire course of conduct by the recall petitioners to establish bad faith. For example, the *Lindquist* opinion states "[s]ufficient evidence shows that petitioners brought the recall petition with charges they knew to be frivolous, they did so for the purpose of harassment, and they acted in bad faith *throughout the recall process*." *In re*

Recall of Lindquist, 172 Wn.2d 120, 136, 258 P.2d 9 (2011) (emphasis added). This expressly included "Petitioners' postfiling conduct [which] also constitute[d] procedural bad faith sufficient to award attorney fees under CR 11." *Id.* at 138.

The unanimous Division II decision that "the superior court did not abuse its discretion in determining that Hunt did not act in bad faith" was based on the record evidence and the superior court's evaluation of the motivation for filing recall petitions. There is no *Piper* issue with Division II's approach.

Issue 3. The claim of sequential confusion identified in the Petition is also a non-issue. As this Court stated in *Piper*, "the superior court holds a hearing on the merits, without cost to any party, to determine whether the alleged acts satisfy the criteria for filing a recall petition." 184 Wash. 2d at 787. Unlike *Pearsall-Stipek*, *Lindquis*t, and *Piper*, no statutory sufficiency hearing on the merits was ever held in these proceedings. This was a direct result of counsel for the Elected Commissioners who drafted and signed a mutual Rule 41 order of dismissal on

May 24, 2023. As a result, the sufficiency hearing that had been specially set for May 30, 2023 by the superior court pursuant to RCW 29A.56.140 was stricken accordingly. CP 78-79.

In the context of recall proceedings, the award of attorney fees to elected officials are authorized only "when recall petitions are intentionally frivolous *and* filed in bad faith." *In re Recall of Piper*, 184 Wash. 2d 780, 787, 364 P.3d 113 (2015) (citing *Lindquist*, quoting *Persall-Stipek*) (emphasis added). Nowhere in this Court's controlling recall cases is there a single sentence, statement or suggestion that the "intentionally frivolous" prong of the two-part test must be independently considered even when the bad faith prong is not met.

Importantly, the "intentionally frivolous" argument was also waived by counsel for the Elected Commissioners in both their superior court and Division II filings seeking sanctions. *See* Amended Brief of Respondent at 35, 51-55.

IV. RESTATEMENT OF THE CASE

This restatement of the case is necessary to correct the many omissions, misrepresentations, and selective quotations set forth in Section D of the Petition ("Statement of the Case").

A. Coach Hunt's Extensive Civic Engagement

Before drafting and filing recall charges against the four Elected Commissioners, Coach Hunt conducted extensive due diligence, including submitting public records requests (CP 710-711, 713) and reviewing nearly a decade of BIMPRD board meeting minutes. CP 922. He also attended BIMPRD board meetings and made public comments on March 2, 2023 (CP 924); March 16, 2023 (CP 925); April 6, 2023 (CP 926); April 20, 2023 (CP 928); May 4, 2023 (CP 931); May 18, 2023 (CP 933); and May 19, 2023 (CP 934).

Several submissions drafted by Coach Hunt were published in the local paper in March 2023 (CP 736-737), April 2023 (CP 738-740), and May 2023 (CP 741-743). Coach Hunt also started a petition with hundreds of signatories that was

hand-delivered to the BIMPRD Board and was read into the record by his daughter on April 6, 2023. CP 652; 757-772.

In addition to these efforts, Coach Hunt exchanged numerous emails with the Elected Commissioners. Incomplete portions of some emails were included as exhibits to the Declaration of Jay C. Kinney. CP 705 at ¶ 12. Coach Hunt subsequently supplemented the record with portions of these emails that had been omitted from Commissioner Kinney's declaration. CP 705-707; 773-799.

Coach Hunt also met with Commissioner Janow at a local coffee shop in April 2023 and prepared for that meeting by doing additional research as Coach Hunt "felt an obligation to be fully informed and prepared to make best use of our time that morning". CP 702 at ¶ 6. Commenting on Coach Hunt's due diligence, Commissioner Janow stated: "I have subsequently done a generic search of myself and cannot readily or easily find these decade-old articles." CP 127 at 8-10.

B. Coach Hunt Filed Detailed Recall Charges

On May 1, 2023 Coach Hunt filed individualized recall charges against BIMPRD Commissioners Jay Kinney (CP 8-68); Dawn Janow (CP 253-313); Ken DeWitt (CP 361-421) and John (Tom) Swolgaard (CP 469-529). Shortly after filing the recall charges, Coach Hunt provided courtesy copies via email to the Elected Commissioners. CP 707 at ¶19.

C. BIMPRD Board Meetings May 18-19, 2023

Coach Hunt's attendance at the May 19, 2023 "Special Board Meeting" is reflected on the official meeting minutes. CP 674. Coach Hunt also attended and gave public comment at a regularly scheduled BIMRPD Board meeting the previous evening. CP 666; 933-934. This board meeting was described in the Kinney Declaration. CP 145 at ¶3 ("Mr. Hunt rallied a large contingent of adults and kids to attend."). The BIMPRD board meeting on May 18th lasted over 3 hours—from 6:00pm until adjournment at 9:04pm. *Id.*

Coach Hunt also gave public comments at the Special Board Meeting on May 19th at 11:30am. CP 674. The Petition failed to include Coach Hunt's complete comments from that meeting, which can be found at CP 934-936. For example, Coach Hunt's public statement began as follows:

> **Thank you. I also appreciate the time and service. It's a public job and it takes a lot of time and effort. So thank you. Thanks to the staff for all the work you've done. I'm going to read an email into the record that I sent to the Board earlier today. I'm the person that brought the recall charge, just so everyone is aware…**
>
> **I'm open to dialogue about dismissal of the recall charges in the interests of the greater good of our kids (many of whom you heard from last night) and the whole community."** CP 935.

The Petition also omits the fact that within hours of the BIMPRD's Special Board Meeting on May 19th, Coach Hunt had informed the Elected Commissioners in writing of his intention to dismiss the recall charges. That May 19th email from Coach Hunt to the Commissioners stated in relevant part:

> **Perhaps the only thing more disappointing than the behavior outlined in the Recall Charges themselves is asking taxpayers to pay for the cost of being held**

accountable for misfeasance, malfeasance & violations of your respective oaths of office. In light of your collective votes at the Special Meeting held just hours ago at the BIRC, I have contacted the Kitsap County Superior Court to determine the proper procedural mechanism for dismissing the Recall Charges and avoid incurring any taxpayer expense before counsel is retained. CP 714 at ¶ 32.

D. Key Elements of the Recall Dismissal and Brief Representation by Counsel for the Elected Commissioners Prior to Voluntary Dismissal of the Recall Charges in May 2023

An illustrative timeline of the May 2023 recall proceedings was used by Coach Hunt as a demonstrative in the superior court and included in the record. CP 890.

- **May 21**, 2023 (Sun): Opposing Counsel's 1st email to Petitioner is sent/received (2:50pm)
- **May 21**, 2023 (Sun): [Coach Hunt] emails *Ex Parte* Motion to Dismiss by Mail to opposing counsel (11:42pm)
- **May 22**, 2023 (Mon): Opposing Counsel emails Notices of Appearance to Petitioner (2:50pm)
- **May 23**, 2023 (Tues): Opposing Counsel emails Notices of Forthcoming Objections to Petitioner (~12:50pm)

- **May 24**, 2023 (Wed): Rule 41 voluntary dismissal order signed (Petitioner/Opposing Counsel) & filed w/Clerk

As Coach Hunt explained in a superior court declaration:

> **Based on the potential harm and hostility previously identified to myself and family as a result of initiating these recall proceedings, I agreed to sign opposing counsel's version of the Rule 41 dismissal order on the spot, signing it in the presence of [the Kitsap County Senior Deputy Prosecuting Attorney Alan Miles] and my daughter.** CP 879-880 at ¶ 4.

E. Statutory Sufficiency Hearing Specially Set for May 30, 2023 Stricken Accordingly

As previously noted, the statutory sufficiency hearing that had been specially set for May 30, 2023[2] by the superior court pursuant to RCW 29A.56.140 was stricken after counsel for the Elected Commissioners drafted and signed a mutual Rule 41 order of dismissal on May 24, 2023. CP 78-79.

[2] The petition for review incorrectly states the statutory sufficiency hearing had been specially set by the superior court for June 30, 2023. *See* Petition at 3.

F. Armed Police Officers Serve Sanctions Motion Without Prior Notice or Contact by Counsel for the Elected Commissioners

On June 5, 2023, Commissioner Kinney personally signed a Certificate of Service resulting in the diversion of three police officers to Coach Hunt's home at 7:45pm. CP880 at ¶ 5; 897-899. Neither Commissioner Kinney nor Commissioners' counsel contacted Coach Hunt prior to service of the sanctions motion. CP880 at ¶ 5.

G. Coach Hunt's Appearance at the Superior Court Sanctions Hearing on June 16, 2023

The Petition fails to acknowledge Coach Hunt's active participation in post-filing recall proceedings. For example, Coach Hunt clearly articulated the reasons for his decision to voluntarily dismiss the recall petitions in superior court:

> **[T]hat was until the hostility directed at myself and my family reached such unacceptable levels as a result of the inflammatory words and actions of the recall officials, that the cost of proceeding here was simply not worth the risk of continuing to exercise my right to recall. The police report I filed as a result of property crimes occurring the week of the recall was**

dismissed, documents exactly the type of hostility I wish to avoid. VRP 22:10-18.

H. Coach Hunt Submitted Substantial Evidence of His Good Faith Basis for Filing and Voluntarily Dismissing the Recall Charges

Coach Hunt supplemented the record for superior court review with a declaration (CP 698-877) and supplemental declaration (CP 878-958). Local citizens concerned by the efforts of public officials to seek sanctions against Coach Hunt added letters of support for the superior court's consideration. CP 856-877; 900-904.

Coach Hunt's efforts to deescalate the situation after being compared to a criminal arsonist by counsel for the Elected Commissioners on multiple occasions (CP 87 at 18-19; 92 at 13-14) were also included. CP 718; CP 850 – 855. Coach Hunt never "admitted [the Elected Commissioners] had done nothing wrong" as alleged in the Petition.

I. Trial Court Denies "Rule 54(d)" Motion Seeking Sanctions Against Coach Hunt

Approximately two weeks after oral argument, the superior court issued its order denying the "Rule 54(d)" motion filed by counsel for the Elected Commissioners. CP 228-230.

J. Division II Unanimously Rules Superior Court Did Not Abuse Discretion in Denying the "Rule 54(d)" Motion for CR 11 Sanctions

On May 29, 2024[3], Division II issued a unanimous decision "hold[ing] the superior court did not abuse its discretion in denying the Commissioners' request for attorney fees." In reaching its decision, Division II stated that counsel for the Elected Commissioners had "misrepresented the superior court order." *Id.* The Division II opinion also emphasized "it is clear from the record that Hunt truly believed the Commissioners were not fulfilling their duties and responsibilities to the community." *Id.*

[3] Coach Hunt filed a motion to publish on June 18, 2024, which was granted by Division II on August 27, 2024. BIMPRD Commissioner (and attorney) Jay Kinney appeared for the first time on behalf of the Elected Commissioners concurrently with filing of the Petition on September 26, 2024.

V. REASONS FOR DENYING REVIEW

The Petition for Review failed to satisfy any of the factors required for this Court to grant discretionary review pursuant to RAP 13.4(b). Therefore, it cannot be granted.

There is no conflict as required for RAP 13.4(b)(1)[4]. The Petition attempts to misleadingly manufacture a conflict by deliberately distorting key facts as well as this Court's controlling recall cases. Unlike the Petition, both lower court rulings correctly set forth the legal and statutory framework applicable in recall proceedings.

The Petition also fails to satisfy RAP 13.4(b)(3) as it failed to set forth a significant question of law under the Constitution of the State of Washington. The superior court engaged in a fact-specific review of Coach Hunt's conduct, and a unanimous Division II decision found no abuse of discretion.

Finally, the Petition failed to satisfy RAP 13.4(b)(4). As evidenced by Commissioner Kinney's personal appearance on

[4] The Petition did not attempt to argue or address RAP 13.4(b)(2).

behalf of the Elected Commissioners for the first time in these proceedings to personally seek sanctions, the only substantial interest in these proceedings at this stage is personal not public.

A. Division II's Opinion that the Superior Court Did Not Abuse Its Discretion Denying the Commissioners' Sanctions Motion Is Consistent With This Court's Cases

The Petition incorrectly asserts Division II's decision is a clear change in the law. This could not be further from the truth. This Court's controlling recall cases make clear that costs (including attorney fees) incurred to litigate the statutory sufficiency of recall petitions is the responsibility of each party. This framework is overridden only if a superior court enters findings the charges "are intentionally frivolous and filed in bad faith." *In re Piper*, 184 Wash. 2d at 787 (internal citations omitted). Nothing in Division II's unanimous opinion conflicts with this Court's limited universe of controlling recall cost cases (*Pearsall-Stipek*, *Lindquist* or *Piper*).

i. No Conflict With Pearsall-Stipek

Division II's unanimous decision is completely consistent with the opinion by this Court in *Pearsall-Stipek* regarding the award of attorney fees in the recall context. In reversing a superior court's award of attorney fees to an official subject to recall, the *Pearsall-Stipek* court held that "[i]n the absence of any findings of bad faith, we are compelled to hold that the trial court abused its discretion in awarding attorney fees." 136 Wn.2d 255, 961 P.2d 343, 349 (1998). Because the superior court made no findings Coach Hunt acted in bad faith, Division II correctly applied the *Pearsall-Stipek* rule.

The Petition's claims about the burdens of responding to recall petitions are also squarely addressed by Division II's discussion of *Pearsall-Stipek*. For example, this Court made clear there is a statutory process "requiring judicial review for sufficiency" and that the relevant recall cost statute[5] "requires

[5] As noted in Division II's opinion below, former RCW 29.82.023 was recodified as RCW 29.A.56.140 in 2003. Opinion at 4, n.1.

the trial court to determine the sufficiency (including frivolousness) of a recall petition without cost." *Id.*

Division II also correctly cited the critical distinction articulated in the *Pearsall-Stipek* decision between "merely frivolous" recall petitions (*i.e.* recall petitions found to lack the required legal and factual sufficiency following the statutory sufficiency hearing) and "intentionally frivolous recall petitions brought for the purpose of harassment."[6] While the superior court cannot award expenses and attorney fees if a recall petitioner brings a "merely frivolous recall petition" (*i.e.*, if the superior court finds the recall charges lack the required legal and/or factual sufficiency in its statutory recall decision), "[b]oth CR 11 and our inherent equitable powers authorize the award of attorney fees in cases of bad faith." *Id.* In other words, "attorney fees may be awarded against a petitioner who brings a recall petition in bad faith." *Id*.

[6] Coach Hunt's recall charges have not been held frivolous in any way.

Importantly, the result reached in *Pearsall-Stipek* (reversing an award of attorney fees for an elected official) occurred even where the *pro se* recall petitioner in the case "conceded at oral argument that he has made the same charges, based upon the same facts" as those brought in earlier recall petitions by another voter which the [superior court] had previously held to be insufficient. *Id.* at 346.

Division II's opinion correctly noted "*Pearsall-Stipek* recognized that the petitioner's actions suggested 'that he may be motivated by spite rather than by a sincere belief in the sufficiency of the recall charges.'" Opinion at 4. After noting the "misrepresentation of the superior court's order" made by counsel for the Elected Commissioners in these proceedings, the Division II opinion went on to affirm Coach Hunt's "sincere belief in the charges underlying the recall petition." *Id.* at 5-6.

ii. No Conflict With Lindquist *or* Piper

The Division II decision is also entirely consistent with this Court's two more recent recall cost cases—*Lindquist* and

Piper. The list of egregious conduct by the petitioners in those cases could not be further from the extensive evidence of Coach Hunt's good faith intentions, integrity and actions in the record developed below. It is therefore unremarkable that Division II held Coach Hunt's conduct in the recall proceedings "did not rise to the level of bad faith demonstrated in *Lindquist* and *Piper*." *Id.* at 6.

The litany of sanctionable conduct by the recall petitioners outlined in *Lindquist* include: (i) failing to conduct a reasonable inquiry into the legal and factual bases for the recall petition charges; (ii) refusing to attend legal proceedings related to the recall charges, including on the merits of the recall petition they had filed; (iii) refusing to produce documents or to answer questions under oath about motivations for filing the recall; and (iv) admitting the recall petitioner knew identical recall charges "had been dismissed for lack of legal and factual sufficiency when he filed the recall petition." 172 Wash. 2d at 125.

In stark contrast to the *pro se* petitioners in *Lindquist*, Coach Hunt expressly declined to file recall charges against the fifth commissioner on the BIMPRD Board "due to (i) the upcoming election for his seat on the BIMPRD Board" (approximately 6 months later). CP 9 at n.1. Coach Hunt also appeared in person before the superior court to directly articulate his good faith intentions and motivations for filing recall charges. *See generally*, VRP. And there is objective record evidence of the extensive due diligence that Coach Hunt performed prior to filing the individualized recall charges. *See*, *e.g.*, CP 922.

Any allegations that Division II failed to follow *Piper* are equally misplaced. In *Piper*, the petitioners (i) signed and filed a recall petition that was a near-verbatim copy of a censure resolution and had been "dropped in the mail slot of [a] barber shop"; (ii) "made no attempt, reasonable or otherwise, to obtain any factual information to support the allegations of the recall petition"; (iii) "failed to conduct a reasonable inquiry"; (iv)

showed a "cavalier and reckless attitude to the recall and the court process"; (v) "had previously filed an unsuccessful recall petition against [the official]; and (vii) "admitted that the purpose of the recall petition was not to successfully recall [the official]…" 184 Wash. 2d at 791. Comparing the circumstances in *Piper* to Coach Hunt's conduct here, Division II properly held "the superior court did not abuse its discretion in determining that Hunt did not act in bad faith." Opinion at 7.

B. The Petition Failed to Establish a Significant Question of Law Pursuant to RAP 13.4(b)(3)

While the Petition does not clearly identify which argument attempts to establish the applicability of RAP 13.4(b)(3), the effort fails because no significant question of law under the Constitution of the State of Washington is implicated by the Division II decision in these proceedings.

Instead, the Petition includes legal claims that are demonstrably false. For example, according to the Petition "[s]urely, the recall petitioners in these cases [*Pearsall-Stipek*,

Lindquist, and *Piper*] would say that they were concerned citizens with a sincere belief that the elected officials were not fulfilling their duties and responsibilities to the community." Petition at 13. This Court's decisions directly rebut this claim. *See*, *e.g.*, Piper, 184 Wash. 2d at 791 (recall petitioner "admitted that the purpose of the recall petition was not to successfully recall [the official]" and "that the recall petition was … not based on any misconduct by [the official]"); *see also* *Lindquist*, 172 Wash. 2d at 125-126 (recall petitioner admitted to knowing charges against the official "had been dismissed for lack of legal and factual sufficiency when he filed the recall petition…").

C. There Is No Substantial Public Interest in the Personal Agendas Advanced by the BIMPRD Commissioners to Sanction Coach Hunt

Coach Hunt is currently an unpaid flag football coach who is being threatened with legal bills of over $200,000 incurred by Commissioners' prior counsel at Foster Garvey.

The personal vendettas of the Elected Commissioners do not warrant a grant of discretionary review under 13.4(b)(4). Coach Hunt has also personally spent hundreds of hours responding to these personal attacks over the past 18 months, including being compared to a criminal arsonist by Commissioners' counsel.

VI. PETITION VIOLATED RAP 18.9(A)

The only evidence of bad faith, sanctionable conduct in these recall proceedings are actions taken by Commissioners' counsel who who signed and filed the frivolous Petition.

A. Improper Omissions of Documentary Evidence in the Petition Constitute Procedural Bad Faith

As this Court explained in *Lindquist*, "[m]isquoting or omitting material portions of documentary evidence constitutes procedural bad faith sufficient to award attorney fees." 172 Wn. 2d at 136 (internal citation omitted). The Petition is replete with such improper omissions, including the complete context of Coach Hunt's actual public comments, emails and other record evidence in the proceedings. *See* Section IV, *supra*.

B. Commissioners' Counsel Waived Argument Required to Impose Sanctions on Coach Hunt

As stated in *Piper*, "[t]o impose CR 11 sanctions when a recall petition lacks factual or legal sufficiency, the court must find that the attorney who filed the complaint failed to conduct a reasonable inquiry into the factual and legal basis of the claim." 184 Wash. 2d at 790 (internal citation omitted). The record is devoid of any discussion, citations or arguments by Commissioners' counsel of how the recall petitions filed by Coach Hunt failed to meet the reasonable inquiry standard as required for a superior court to impose CR 11 sanctions on a *pro se* recall petitioner until after the issue was raised by Coach Hunt in Division II. *Compare* Amended Brief of Respondent at 35, 51-55; Consolidated Reply Brief at 16-18. Since the Petition could not have resulted in a reversal of the lower court's ruling, it violates RAP 18.9. *See Stiles v. Kearney*, 168 Wash. App. 250, 267 (2012) (internal citation omitted)).

VII. CONCLUSION

We live in a democracy, not a dictatorship. This entitles citizens of our state to make public comments, rally the community to attend public meetings, write letters to the editor, and to seek the recall and removal of elected officials when they have a sincere belief in the sufficiency of recall charges.

Disagreement by elected officials over a citizen's good faith decision to seek their recall and removal—no matter how deeply held their personal views—does not entitle their counsel to misrepresent material facts, ignore controlling case law, the statutory recall framework, or our state constitution.

Coach Hunt has spent hundreds of hours over the past 18 months successfully defending his personal and professional reputation against egregious allegations made by taxpayer-funded private counsel on behalf of the Elected Commissioners. The only evidence of bad faith and harassment before this Court is conduct by Commissioners' counsel. This campaign of intimidation must end with denial of discretionary review.

Certificate of Compliance - RAP 18.17(b).

The undersigned certifies this document contains 5,000 words according to the word count calculation of the word processing software used, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 28th day of October, 2024.

/s/W. Adam Hunt

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(appearing *pro se* in these recall proceedings)
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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON
NO. 103500-4

IN THE MATTER OF THE RECALL OF JAY KINNEY, et al., Commissioners, Bainbridge Island Metropolitan Park & Recreation District	**DECLARATION OF SERVICE OF RESPONDENT'S ANSWER**

I, William Adam Hunt, declare under penalty of perjury of the laws of the State of Washington that on this 28th day of October, 2024, at approximately 4:15pm, I electronically served the attached file via email to counsel for the Petitioners in this matter: Jay C. Kinney (kinney@kinneylawgroup.com); Thomas Ahearne (ahearne@foster.com); and Bob C. Sterbank (Bob.Sterbank@foster.com).

DATED this 28th day of October, 2024.

/s/W. Adam Hunt
William Adam Hunt

WILLIAM HUNT - FILING PRO SE

October 28, 2024 - 4:18 PM

Transmittal Information

Filed with Court:	Supreme Court
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Appellate Court Case Title:	In the Matter of the Recall of Jay Kinney, et al.
Superior Court Case Number:	23-2-00858-0

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Comments:

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