No. 39862-5-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

IN RE THE RECALL OF KEITH CLARK,
IN RE THE RECALL OF CYNTHIA MCMULLEN
IN RE THE RECALL OF DEBRA LONG

On Appeal from the Superior Court
of the County of Spokane
No. 21-2-02888-32
No. 21-2-02890-32
No. 21-2-02891-32

MOTION FOR DISCRETIONARY REVIEW
Treated as a PETITION FOR REVIEW

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I. Identity of Petitioner

Robert Linebarger, recall petitioner in the trial court and Appellant in the Court of Appeals, is the Petitioner.

II. Court of Appeals Decision

Petitioner seeks review of Opinion of the Court of Appeals dated July 2, 2024 and the Order Denying Motion for Reconsideration dated September 17, 2024.

III. Issues Presented for Review

1. Whether monetary sanctions ostensibly designed to deter frivolous filings are related to attorney fees for purposes of the exception in RAP 2.4(b);

2. Whether constitutional rights insulate first time recall petitioners absent bad faith.

IV. Statement of the Case

This case tests the foundational principle of meaningful access to justice. Petitioner was apportioned $22,500 of a $30,000 sanction for filing his first-ever recall petition. Despite key factual differences, the Spokane County Superior Court relied upon three recall cases to support its imposition of these sanctions.[1] Instead of simply finding that the recall petition was legally and factually insufficient, the trial court, without a strong evidentiary analysis, found that it was under-researched and had been filed for an improper purpose, namely, to influence an

[1] *In re Recall of Pearsall-Stipek*, 136 Wn.2d 255, 961 P.2d 343 (1998); *In re Recall Charges Against Lindquist*, 172 Wn.2d 120, 258 P.3d 9 (2011); *In re Recall of Piper*, 184 Wn.2d 780, 364 P.3d 113 (2015).

election in which none of the three Respondent school board members, Keith Clark, Debra Long, and Cynthia McMullen, were running.

In effect, the trial court ushered in a sea change to recall petition case law; the three recall cases relied upon by the trial court to impose sanctions involved petitioners who had all previously filed numerous recall petitions against the same elected official, were all self-represented, and had engaged in conduct that evinced a disregard for both the recall *and* court processes. A first-time recall petitioner who undertook efforts to research the recall criteria and process, hired legal counsel to assist with research and procedural requirements, and complied with all court orders and procedures is diametrically situated

from the petitioners in the relied upon cases. Petitioner should not be subject to sanctions.

The right to recall elective officers is enshrined in the Declaration of Rights in the Washington Constitution. Accordingly, there must be compelling reasons to chill the exercise of that right.

None exist here.

In fact, the Court of Appeals upheld the sanctions *because* Petitioner was exercising constitutional rights such as his right to free speech, freedom to associate, and liberty to engage in the political process. Appendix, 18. Exercising constitutional rights should not serve as the basis for sanctions, let alone in the amount of tens of thousands of dollars. Such an outcome makes a mockery of

fundamental principles enshrined in the constitutions of the United States and the State of Washington.

The Court of Appeals erred in two additional and significant respects: *first*, sanctions imposed ostensibly to deter frivolous filings are not "an award 'relat[ed] to attorney fees' for purposes of the exception in RAP 2.4(b);" App. 20, and *second*, the claim of error affecting a constitutional right was raised in the trial court, in Appellant's Opening Brief, reiterated in Appellant's Reply Brief, and was discussed at oral argument. Constitutional rights were the crux of Petitioner's arguments and were not "first raised … in his reply brief." App. 20 (citing *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). The trial court ignored

the constitutional rights of Petitioner, and the Court of Appeals failed to examine constitutional rights as well.

The compounding error of ignoring constitutional rights should stop here. Leaving the below decisions intact would essentially restrict the access to the courts vis-à-vis the right to recall elective officials to only those individuals who can pay substantial sanctions in case the recall petition is deemed legally and factually insufficient. This would contravene the statutory process which directs that such a determination is to be at no cost to either party.

V. Argument

This Court should accept review of this case as three significant issues are present. *First*, under RAP

13.4(b)(1), the decision of the Court of Appeals conflicts with the three decisions of this Court referenced *ante*, n.1, as sanctions or fees were granted in those cases only because the recall petitioners there were repeat petitioners, evincing harassment or spite as the true purpose of the recall petition, and because the petitioners exhibited procedural bad faith. *Second*, under RAP 13.4(b)(3), a significant question of law under both the Constitution of the State of Washington and of the United States is involved: specifically, Wash. Const. art. I, §§ 5 and 33 and 34, and U.S. Const. amend. I. *Third*, under RAP 13.4(b)(4), an issue of substantial public interest should be determined by this Court as to whether a sanctions award relates to attorney fees.

A. The Court of Appeals decision conflicts with this Court's decisions in *Pearsall-Stipek*, *Lindquist*, and *Piper*.

In *Pearsall-Stipek*, the Supreme Court held that attorney fees are not available under RCW 4.84.185, due to the provision of a sufficiency hearing under RCW 29A.56.140, which is "without cost to any party[.]" While the legislative history is silent as to whether the Legislature intended to insulate recall petitioners from sanctions for frivolous recall petitions, the

> special dispensation indicates that the Legislature intended to broaden citizen access to the courts in the recall context. The threat of sanctions for filing a frivolous recall petition may discourage citizens from exercising their recall rights. This potential chilling effect could undermine the Legislature's intent that citizens be able to freely initiate recall efforts.

Pearsall-Stipek, 136 Wn.2d at 349. Merely frivolous recall petitions are not enough to warrant sanctions. More is needed to prevent discouraging citizens from exercising their constitutional rights. Bad faith is required.

Bad faith, in the context of recall petitions, is harassment of the public official, an attempt to influence the election concerning that official, or procedural bad faith such as refusing to participate in court hearings or discovery. See, e.g., *Lindquist*, 172 Wn.2d at 138-39 ("These examples of petitioners' *procedural* bad faith are sufficient to uphold the trial court's discretion in awarding attorney fees.") (emphasis added). Here, none of the officials were

running for reelection; Petitioner attended all hearings and hired attorneys to represent him; Petitioner responded to discovery requests (which were directed at the nonprofit foundation for which he serves as a board member). There was no procedural bad faith.

Harassment is found when a petitioner files numerous recall petitions against the same public official or has knowledge that such a petition has no likelihood of success. All three cases are inapposite to the instant matter:

- In *Pearsall-Stipek*, the petitioner filed two separate recall petitions against an elected official, one of which was identical to three

earlier recall petitions filed by a different petitioner.

- In *Lindquist*, the petitioners "present recall action against Lindquist contains many of the same documents included in the recall against Madsen." *Lindquist*, 172 Wn.2d at 124. The recall against Madsen had previously been deemed legally and factually insufficient. *Id.*

- In *Piper*, one of the petitioners had "previously filed an unsuccessful recall petition against Piper." *Piper*, 184 Wn.2d at 791. Additionally, the petitioners "admitted that the purpose of the recall petition was not to successfully recall Piper." *Id.*

This Court in *Pearsall-Stipek* held that the first recall petition was barred by res judicata, and the second was filed because the petitioner "may be motivated by spite rather than by a sincere belief in the sufficiency of the recall charges." *Pearsall-Stipek*, 136 Wn.2d at 267. Even still, the award of attorney fees was reversed.

In *Lindquist*, this Court noted that petitioners had, prior to filing the recall petition, "been told by government officials, including the governor, attorney general, Pierce County sheriff, and Tacoma police chief," that the discretion to prosecute rests with the prosecuting attorney, namely Lindquist. *Lindquist*, 172 Wn.2d. at 137. Yet, "[d]espite this knowledge, petitioners' recall petition charged Lindquist with

failing to investigate and prosecute Madsen." *Id.* Coupled with the petitioners' failure to attend hearings, including the sufficiency hearing, refusal to respond to subpoenas or prepare for deposition, and refusal to agree to a continuance so that Lindquist was forced to cut short a family vacation, this Court declared that "[t]hese examples of petitioners' procedural bad faith are sufficient to uphold the trial court's discretion in awarding attorney fees." *Id.* at 139.

Finally, in *Piper*, throughout the proceedings, the petitioners exhibited "a 'cavalier' and 'reckless attitude' to the recall and the court process." *Piper*, 184 Wn.2d at 791.

These cases all stand for the proposition that procedural bad faith, harassment, and contumacious behavior can warrant a grant of fees or sanctions and acknowledge the "special dispensation" of RCW 29A.56.140 which provides that the sufficiency hearing is to be held at no cost to either party. It is after all, "the Legislature's intent that citizens be able to freely initiate recall efforts." *Pearsall-Stipek*, 136 Wn.2d at 266. But no such procedural bad faith, harassment, or contumacious behavior occurred here. The Court should accept review to rectify this conflict between the instant matter and the three cases relied upon by the trial court.

B. Significant questions of law under the Constitutions of the State of Washington and the United States are involved.

Given the paramount importance of constitutional rights, a party may raise claimed errors for the first time in the appellate court if there was "manifest error affecting a constitutional right." RAP 2.5(a). Petitioner asserted that a manifest error affecting his constitutional rights prejudiced the proceedings. Petitioner cited to the record where the trial court completely ignored the constitutional rights at issue. The trial court opined that the only constitutional right implicated was the right to petition for redress of grievances under U.S. Const. amend. I. However, that ignores both the provisions of U.S. Const. amend. I concerning free speech as well

as the parallel of Wash. Const. art. I, § 5. Additionally, the right to recall elective officers, enshrined in the Declaration of Rights of the Washington Constitution, art. I, §§ 33, 34, was completely ignored. The trial court asserted that the recall procedure was simply a statutory process. RP 65-66. This is manifest error affecting constitutional rights. Indubitably, ignoring constitutional rights affects those rights.

For the appellate court to consider such errors, "[t]he appellant must demonstrate the error is manifest and 'truly of constitutional dimension.' In order for an error to be manifest, there must be a showing of actual prejudice." *In re Det. of B.M.*, 7 Wn. App. 2d 70, 89, 432 P.3d 459 (2019) (quoting *State v.*

O'Hara, 167 Wn.2d 91, 98-99, 217 P.3d 756 (2009)). "To demonstrate actual prejudice, there must be a "'plausible showing by the [appellant] that the asserted error had practical and identifiable consequences in the trial of the case.'" *O'Hara*, 167 Wn.2d at 99 (quoting *State v. Kirkman*, 159 Wn.2d 918, 935, 155 P.3d 125 (2007) (alteration in original).

The Court of Appeals, in denying the motion for reconsideration, asserted that Petitioner "failed to timely raise his RAP 2.5(a) argument, since he first raised it in his reply brief." App. 20 (citing *Cowiche*, 118 Wn.2d at 809). But Petitioner did raise the argument that manifest error affecting a constitutional right had occurred in his Opening Brief, p.14-21, and in his Reply Brief p.10-17. There

was no explicit citation of RAP 2.5(a), but that is not required. *Cowiche* expressly states that if arguments "are not supported by any reference to the record nor by any citation of authority; we do not consider them." 118 Wn.2d at 809 (citing RAP 10.3(a)(5); *McKee v. American Home Prods. Corp.*, 113 Wn.2d 701, 705, 782 P.2d 1045 (1989)). But Petitioner did cite to the record and did provide extensive citations to authority as to the constitutional rights at stake. The manifest error affecting constitutional rights occurred by ignoring those rights. That argument was raised by Petitioner in his Opening Brief.

While the trial court did mention the right to petition the government for a redress of grievances set forth in U.S. Const. amend. I, that is not the only, or

even the most salient, constitutional right at stake here. The Washington Constitution contains a similar provision. Wash. Const. art. I, § 4. Even if the trial court was correct that the right to petition for redress of grievances was the constitutional right at issue, "Washington retains 'the sovereign right to adopt in its own Constitution individual liberties *more expansive* than those conferred by the Federal Constitution.'" *State v. Gunwall*, 106 Wn.2d 54, 59, 720 P.2d 808 (1986) (quoting *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 81, 100 S. Ct. 2035 (1980)) (emphasis added). No *Gunwall* analysis was conducted by the trial court, nor was such an analysis briefed by either party. That is because it is not necessary.

The Washington Constitution explicitly provides the right to recall elective officers. It is a completely separate provision concerning a discrete right. So too does the Washington Constitution provide the right to "freely speak, write and publish on all subjects[.]" Wash. Const. art. I, § 5. Yet the trial court ignored any constitutional right as possibly implicated. This is manifestly prejudicial.

The complete disregard of constitutional rights resulted in an identifiable consequence; the trial court simply looked at the recall petition as a statutory process, one that the Legislature simply intended for citizens to be able to freely initiate. That is not the true extent of protection afforded the recall process, however, as the right is included in two separate

sections of the Washington Constitution's Declaration of Rights. First, the right is set forth in Wash. Const. art. I, § 33. Then, the legislature was directed to pass the necessary laws to carry out the provisions of the preceding article. Wash. Const. art. I, § 34.

The right to recall elective officers is one of the mechanisms by which the people can protect their rights against encroachment by the government. First, the Constitution enumerates the right, then provides that the government must develop a framework with which to exercise it.

The Declaration of Rights was meant to be a primary protector of the fundamental rights of Washingtonians. Robert F. Utter, *Freedom and Diversity in a Federal System: Perspectives on State*

Constitutions and the Washington Declaration of Rights, 7 Seattle U. L. Rev. 491, 491 (1984). The Preamble to the Washington Constitution gives thanks to the supreme creator for the pre-existing liberties of Washingtonians; "[a]t the heart of the Washington Constitution is the emphasis on protecting individual rights. Washington, like other states, begins its constitution with a Declaration of Rights… [it] proclaim[s] the paramount purpose of government; 'governments … are established to protect and maintain individual rights.'" Brian Snure, *A Frequent Recurrence to Fundamental Principals: Individual Rights, Free Government, and the Washington State Constitution*, 67 Wash. L. Rev. 669, 675 (1992) (quoting Wash. Const. art. I, § 1). The

conclusion of the Declaration of Rights provides that "frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government." Wash. Const. art. I, § 32. Importantly, "the very first enactment of our state constitution is the declaration that governments are established to protect and maintain individual rights." *Doe v. Puget Sound Blood Center*, 117 Wn.2d 772, 780, 819 P.3d 370 (1991). There is a "higher law embodied in the constitution, which is '[d]esigned for [the people's] protection in the enjoyment of the rights and powers which they possessed before the constitution was made.'" Debra Stephens, *The Once and Future Promise of Access to Justice in Washington's Article I, Section 10*, 91 Wash. L. Rev.

Online 41, 54 (2016) (quoting *Rauch v. Chapman*, 16 Wash. 568, 572, 48 P. 253 (1897)) (alteration in original).

Simply ignoring a constitutional right is antithetical to the scheme of protection the constitution should afford. The result is a manifest error that resulted in prejudice to Petitioner.

Similarly to the trial court ignoring the constitutional rights and provisions at issue, the Courts of Appeals, in its decision, continued the prejudice toward exercising rights by using constitutionally protected activity to affirm the imposition of sanctions. The actions described consist of: "set[ting] up a nonprofit corporation to raise money for lawsuits challenging the mask mandates and

vaccination requirements[;]" identifying "particular targets for the recall petitions and solicit[ing] replacement candidates[;]" sending "a demand letter to the District's superintendent and school board to coax a response that would justify the filing of the recall petitions[;]" and telling a "parent group about the rumor that Long was lying about her district residency." App. 18.

Not only is the right to recall elected officials enshrined in Wash. Const. art. I, §§ 33 and 34, free speech is a preferred right in Washington, even when balanced against other constitutional rights. *State v. Coe*, 101 Wn.2d 364, 375, 679 P.2d 353 (1984); *Alderwood Associates v. Wash. Environmental Council*, 96 Wn.2d 230, 242, 635 P.2d 108 (1981). The

"broad language [of] art. I, § 5 has been interpreted to offer greater protection than the First Amendment in the context of pure noncommercial speech in a traditional public forum." *Ino Ino, Inc. v. City of Bellevue*, 132 Wn.2d 103, 118, 937 P.2d 154 (1997).

Petitioner interacting with the District's board of directors and engaging with other parents is protected activity. Against the backdrop that the Washington Constitution affords greater protections than the First Amendment, it is clear that such concerns need to be addressed. Where, as here, Petitioner was engaging in political discourse and public officials are criticized, "such speech is essential to citizens' ability to thoughtfully engage in public debate and the democratic process. The public good

that arises from such criticism and examination of public officials' records requires laws and policies that will not chill such speech." *Reykdal v. Espinoza*, 196 Wn.2d 458, 465, 473 P.3d 1221 (2020).

So too is Petitioner's formation of a nonprofit corporation protected activity. It is ineluctable and "beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of" civil liberties such as the freedom of speech, protected under both the First Amendment and the Due Process Clause of the Fourteenth Amendment. *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449, 460, 78 S. Ct. 1163 (1958). The First Amendment protects "forms of 'association' that are not political in the customary sense but

pertain to the social, legal, and economic benefit of the members." *Griswold v. Connecticut*, 381 U.S. 479, 483, 85 S. Ct. 1678 (1965); see also, *Alabama ex rel. Patterson*, 357 U.S. at 460–61 (stating that it is immaterial, for First Amendment purposes, whether the beliefs sought to be advanced by association pertain to political, economic, religious, or cultural matters).

Here, the sanctions have the obvious effect of "chilling" at minimum, the right to file recall petitions or to engage in the political process. A first-time recall petitioner is faced with $22,500 in sanctions. His right to associate and engage in the political process are protected, as First Amendment protections "are triggered not only by actual restrictions on an

individual's ability to join with others to further shared goals," but also by actions which may have a "chilling effect on association[.]" *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 618, 141 S. Ct. 2373 (2021). Here, the Court of Appeals and the trial court use protected activity for the rationale that sanctions are warranted.

This Court should protect constitutional rights by examining the case with an acknowledgment of such rights; otherwise, the protections and constitutional rights are so many words on paper.

C. Public interest would be served by a determination of whether sanctions relate to attorney fees.

Upholding the Court of Appeals decision, or even simply letting it stand, would result in an exception

that would swallow the rule that superior courts are to determine, "without cost to any party," whether a recall petition may be filed and the adequacy of the ballot synopsis. RCW 29A.56.140. The questions presented to this Court accordingly implicate both the individual and collective access to justice as well as the separation of powers.

The Court of Appeals erred in its Opinion by determining that only the June 2023 order apportioning sanctions was reviewable. App. 13. The Court of Appeals conceded that the June 2022 and December 2022 sanctions orders were entered before this Court accepted review, and that they prejudicially affected the June 2023 order apportioning sanctions. *Id.* However, the Court of

Appeals erred by determining that the second sentence of RAP 2.4(b) controls; that sentence is not applicable.

The second sentence of RAP 2.4(b) limits review in that:

> A timely notice of appeal of a trial court decision *relating to attorney fees and costs* does not bring up for review a decision previously entered in the action that is otherwise appealable under rule 2.2(a) unless a timely notice of appeal has been filed to seek review of the previous decision.

RAP 2.4(b) (emphasis added). The June 2023 order does not pertain to attorney fees and costs. The trial court explicitly denied the request for attorney fees requested by the Respondents, and instead levied sanctions. CP 141. The Respondents conceded that the trial court imposed "$30,000 in monetary

sanctions *rather than* granting attorneys' fees and costs." Respondents' Amended Response, p.26 (citing CP 139-41, 2426-28, 3407-09). The Respondents rely on two cases for the proposition that sanctions are the "functional equivalent" of orders relating to attorneys' fees and costs, but in both cases, the CR 11 orders granted attorney fees and did not involve sanctions. See, *Bushong v. Wilsbach*, 151 Wn. App. 373, 213 P.3d 42 (2009); and *City of Kahlotus v. Lind*, 2014 Wash. App. LEXIS 1957.[2]

Here, the trial court "elect[ed] to depart from awarding fees as a sanction in this matter." CP 141.

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[2] *Kahlotus* is unreported and non-binding pursuant to GR 14.1(a); interestingly, the fees were granted due to Lind's untimely and repetitive motions to vacate, much like the petitioners in the three cases cited *ante*, n.1.

This is not a distinction without a difference. In parsing RAP 2.4(b), the use of "attorney fees" is specific and intentional; "[c]ourt rules are construed using the rules of statutory construction." *Jones v. Stebbins*, 122 Wn.2d 471, 476, 860 P.2d 1009 (1993) (citing *In re McGlothlen*, 99 Wn.2d 515, 522, 663 P.2d 1330 (1983)). And "[w]here statutory language is plain and unambiguous, the statute's meaning must be derived from the wording of the statute itself." *Id.* (citing *Bellevue Fire Fighters Local 1604 v. Bellevue*, 100 Wn.2d 748, 750, 675 P.2d 592 (1984), *cert. denied*, 471 U.S. 1015 (1985)). If language is unambiguous, no construction or interpretation is permissible. *State ex rel. Anderson v. Chapman*, 86 Wn.2d 189, 191, 543 P.2d 229 (1975). Sanctions are addressed in

numerous court rules, including both the Superior Court Civil Rules and the Rules of Appellate Procedure, as are attorney fees. Sometimes attorney fees can be granted as a sanction for specific conduct, but attorney fee provisions are separate and distinct from rules allowing for sanctions. If the June 2022, December 2022, or June 2023 orders were for attorney fees, then a cost bill would have been required within 10 days of any of those orders. See, CR 54. No such cost bill was directed by the trial court. That is because they did not pertain to attorney fees.

Therefore, the explicit limitation of the second sentence of RAP 2.4(b) to "attorney fees" necessitates giving meaning to those specific words; "under *expressio unius est exclusio alterius*, a canon of

statutory construction, to express one thing in a statute implies the exclusion of the other. Omissions are deemed to be exclusions." *Schnitzer W., LLC v. City of Puyallup*, 190 Wn.2d 568, 582, 416 P.3d 1172 (2018) (citation omitted).

As the plain language of the second sentence of RAP 2.4(b) makes clear, only a timely notice of appeal of a trial court decision relating to attorney fees and costs does not bring up for review previous decisions. An order pertaining to sanctions is fundamentally different than an order granting attorney fees. The trial court's goal was to "deter" Petitioner, not to recompense the Respondents. This comports with the governing statute of the sufficiency hearing, which directs that the hearing is to be "without cost to any

party[.]" RCW 29A.56.140. To hold that a sanctions order pertains to attorney fees would result in an exception that swallows the rule of RCW 29A.56.140. It would in essence also encourage interlocutory appeals, since any appeal of a sanctions order would need to be appealed within 30 days, regardless of whether the recall petition has been determined legally or factually sufficient, which can also be appealed. This is contrary to common sense and case law.

Generally, "a court generally must resolve all claims for and against all parties before it enters a final and enforceable judgment on any part of the case. The goals are to avoid confusion and piecemeal appeals." *Loeffelholz v. C.L.E.A.N.*, 119 Wn. App. 665,

693, 82 P.3d 1199 (2004) (internal footnotes omitted). Judicial economy and private resources are not something to discard lightly. "Interlocutory review is disfavored. Piecemeal appeals of interlocutory orders must be avoided in the interests of speedy and economical disposition of judicial business." *Minehart v. Morning Star Boys Ranch, Inc.*, 156 Wn. App. 457, 462, 232 P.3d 591 (2010) (internal quotation marks and citation omitted).

As acknowledged by the Court in its Opinion, the "trial court's June 2022 and December 2022 sanctions orders were entered before we accepted review and those orders prejudicially affect the June 2023 orders apportioning sanctions." App. 13. They

are therefore within the ambit of the first sentence of RAP 2.4(b).

The Court should accept this case to settle the matter of whether sanctions which are explicitly imposed rather than attorney fees are within the scope of review.

VI. Conclusion

For the foregoing reasons, the Court should accept discretionary review to settle the conflict between the Court of Appeals decision and decisions of this Court; because significant questions of law are presented which arise under the Constitutions of the State of Washington and of the United States; and because the public interest would be served.

This document contains 4,362 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 17th day of October, 2024,

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CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2024, I electronically filed the foregoing with the Clerk of the Court using the Washington State Appellate Courts' Secure Portal, which sends a copy of uploaded files and a generated transmittal letter to active parties on the case. The generated transmittal letter specifically identifies recipients of electronic notice.

DATED this 17th day of October, 2024, at Spokane, Washington.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

IN THE MATTER OF THE RECALL OF: KEITH CLARK, Central Valley School Board Member.	)	No. 39862-5-III (consolidated with
IN THE MATTER OF THE RECALL OF: CYNTHIA MCMULLEN, Central Valley School Board Member.	)	No. 39863-3-III
IN THE MATTER OF THE RECALL OF: DEBRA L. LONG, Central Valley School Board Member.	)	No. 39864-1-III) UNPUBLISHED OPINION

LAWRENCE-BERREY, C.J. — Robert Linebarger filed separate recall petitions against three Central Valley School District (the District) school board members: Keith Clark, Debra Long, and Cynthia McMullen (collectively, the three board members). The superior court found that the allegations in the petitions were not well grounded in facts, were intentionally frivolous, and were made for the improper purpose of bullying the three board members into taking a political position contrary to the law. The court dismissed the petitions with prejudice, but retained jurisdiction to consider the issue of sanctions.

Later, the trial court entered orders imposing a total of $30,000 in CR 11 sanctions jointly and severally against Linebarger and his two former attorneys. Linebarger did not appeal those orders.

Months later, the three board members entered into a settlement agreement with Linebarger's two former attorneys for each to pay $1,000 and extinguish their liability for the remainder. On the three board members' motion to approve the settlement agreement, the court determined that a reasonable apportionment of the sanctions was $1,000 for the first attorney and $6,500 for the second, and therefore partially granted the motion. The court entered an order concluding that apportioning the remaining $22,500 to Linebarger was reasonable as a deterrent because he bore the greatest responsibility for initiating the improper recall petitions.

Linebarger appeals from the trial court's orders awarding CR 11 sanctions and also the order, entered months later, apportioning him $22,500 in sanctions. He argues the court (1) erred by finding there was no constitutional right to recall, (2) erred by finding bad faith when the petitions were merely legally and factually insufficient, (3) abused its discretion by imposing sanctions, and (4) abused its discretion in apportioning sanctions. The three board members contend Linebarger may raise only the last issue because he failed to properly appeal the sanctions orders.

We agree that Linebarger failed to timely appeal the orders awarding CR 11 sanctions, so his appeal is limited to the order apportioning sanctions. We conclude that the trial court did not abuse its discretion in apportioning sanctions, but deny the three board members their requested attorney fees on appeal.

FACTS

Before we discuss the facts and procedural history of the underlying recall petitions, it is necessary to provide background on the COVID-19 pandemic and our state government's response.

In February 2020, Governor Jay Inslee proclaimed a state of emergency for all counties in Washington State due to the outbreak of the COVID-19 virus. One month later, the Governor issued a proclamation prohibiting schools statewide from conducting in-person educational, recreational, and other programs using school facilities. The Governor later extended the prohibition to last through the end of the 2019-2020 school year.

In June 2020, the Governor issued a proclamation allowing schools to reopen for the 2020-2021 school year, provided they follow health and safety guidance issued by the Washington State Department of Health (WSDH). During the 2020-2021 school year, the Governor also issued various orders and proclamations related to schools. Among

those, the Governor ordered schools to provide in-person education while adhering to the WSDH guidelines related to masking, vaccination, social distancing, and quarantining.

In July 2021, prior to the 2021-2022 school year, the District's superintendent and board of directors, including the three school board members, received a letter from the State's superintendent of public instruction, warning them that the masking mandates "are not at the discretion of local boards or local superintendents" and that failure to follow them "will jeopardize school budgets." Clerk's Papers (CP) at 310. The letter continued:

> Local community members will always have the right to bring their grievances to their elected leaders, but in the case of these public health measures, they are not local decisions. Local boards of directors have broad discretion on the details of instructional delivery. They are not empowered, however, to override the legal authority of public health officers or the Governor in times of a public health emergency.
>
> Community actions that result in board actions that violate the law, including executive orders, will jeopardize school budgets, local school personnel, and ultimately the opening of school to in-person learning this fall and beyond.
>
> Individuals who violate the mask orders, or other layered mitigation strategies, not only carry individual legal risks, but they also risk cases and outbreaks in school that will warrant quarantines, school building closures, and disruptions in high-quality in-person learning.

CP at 310.

The day after this letter was received, the Governor issued a proclamation prohibiting school districts from offering in-person education unless they complied with the WSDH's requirements for K-12 schools, the Office of Superintendent of Public Instruction's (OSPI) COVID-19 guidance, and the Department of Labor and Industries' requirements and guidance.

In August 2021, the Governor issued a proclamation requiring public school employees to receive an authorized COVID-19 vaccination. The proclamation allowed exemptions for disability-related accommodations and sincerely held religious beliefs.

Later that month, the Superintendent of Public Instruction sent another letter reminding state public school district superintendents and boards that OSPI "intended to withhold funds from school districts who willfully fail to comply with a health and safety measure" required by the Governor. CP at 341. The letter outlined the process OSPI would follow in the event a school district willfully failed to comply with the mask and vaccination requirements. The letter ended by reiterating that the mask and vaccination requirements "are **not at the discretion of local school boards or superintendents**." CP at 342.

The District complies with the proclamations and the board takes no action

Ahead of the 2021-2022 school year, during an August 9 school board meeting, the District's superintendent informed the school board that masks would be required for

all staff, students, and visitors pursuant to WSDH's requirements for K-12 schools and the Washington State Secretary of Health's order. The board did not take any action or adopt any policies regarding masks during this meeting.

On August 25, during another school board meeting, the District's superintendent presented the board with his plan for reopening schools and discussed the measures the District was taking to mitigate the spread of COVID-19. The District's superintendent also informed the board that he would support District staff in complying with the state vaccination mandate and that all staff would be offered medical or religious exemptions. The board did not take any action or adopt any policies regarding vaccinations during that meeting.

Linebarger builds support for recalling the three school board members

During the summer before the 2021-2022 school year, Linebarger was running for a seat on the District's school board. On August 4, 2021, the *Spokesman-Review* published an article about the primary race results explaining that both Linebarger and Pam Orebaugh advanced to the general election, and both "oppose any recommendations from the Centers for Disease Control and Prevention for any pandemic-related masking or vaccination requirements in k-12 schools." CP at 536. The article quoted Linebarger calling COVID-19 "'a big phony hoax.'" CP at 536.

On August 12, prior to a parent group meeting, Linebarger and Orebaugh met with school board member Long to discuss the mask and vaccine mandates. During this meeting, Linebarger asked Long if she would be willing to push back on the mask mandate. Long declined, explaining that the District could lose state funding if it disobeyed the mandates. After the meeting, Linebarger and Orebaugh discussed the need for a legal remedy and shared this information with a parent group that opposed vaccines and facemasks. The following week, Linebarger and the parent group met with counsel to discuss the possibility of filing recall petitions against District board members.

Around this time, Linebarger filed articles of incorporation with the Washington Office of the Secretary of State forming a nonprofit organization named Washington Citizens for Liberty (WCL). In an e-mail to a parent, Linebarger explained that the purpose of the WCL was "to raise money for lawsuits to challenge the unconstitutional mandates, requirements, etc." CP at 1192.

On August 26, Orebaugh e-mailed WCL members with updates on the group's strategy and plan. Relevant to the recall petitions, she explained:

> The district and the board will not stand against the mandates. I honestly agree that the state would pull funding—but that would create an insane mess since the kids still need to be educated. We need to change how we are fighting this. Putting data at the board and asking them to stand is not working. We are moving onto other methods. Including a recall. Petitions hopefully coming soon.

CP at 1197.

That day, Linebarger claimed in an online post that Long had lied about her address and residency in the District:

> Scandal brewing in [Central Valley School District] #3. School Board Member may have listed an address that she doesn't actually live in. Rumor has it she actually resides in the [East Valley] school district. This is fraud if true. Is there somebody from this group who would be interested in filling this spot if true???

CP at 1219.

On September 1, Linebarger sent an e-mail to WCL members updating them on the plan to recall three targets: Long, Clark, and McMullen. He articulated his strategy to write a demand letter:

> Strategy—write a demand letter to the Board and District demanding they honor the "citizen's voice" and refuse to obey the mask mandate. Get a reply from the Board/District and that response can be justification for the recall. Chain of events, one supports the other.

CP at 1186.

Around two hours later, Linebarger e-mailed a demand letter to the District's superintendent and board. In it, he wrote:

> I am writing to voice my objection to your support of the Governor's vaccine mandate. . . . Nowhere in their contract does it say the employee can be compelled, coerced or required to waive their individual rights to privacy and medical freedom. If we don't take a stand and refuse to comply with the unlawful vaccine mandate, what's next? Neverending [sic] injections? Forced organ or blood donations? Mandatory sterilization

> or birth control? Where do you draw the line. Nobody, including an employer and certainly not petty elected and unelected officials, have the right to do this and I demand the School District take a stand and publicly denounce this order that clearly violates the right of every employee in the District. . . .

CP at 529.

On September 11, Linebarger asked WCL members for candidates from the group to fill the three board positions targeted by the recall petitions.

Linebarger files the recall petitions

On September 24, Linebarger filed recall petitions with the Spokane County Auditor against the three board members. He and his two attorneys signed the statements of charges. The statements of charges included nearly identical allegations against each of the three board members. The statements alleged in part:

- The three school board members committed acts of misfeasance, specifically misuse of power and wrongful use of lawful authority in the exercise of their office because they mandated the use of facemasks and required District employees to be vaccinated against COVID-19.
- The three school board members committed acts of misfeasance, specifically misuse of power and wrongful use of lawful authority in the exercise of their office because they agreed to execute the Governor's vaccination mandate.
- The three school board members violated their oaths of office by acting contrary to the wishes and direction of the majority of their constituents.

See CP 6-9, 1573-76, 2555-57.

Linebarger also alleged that Long committed an act of malfeasance by using a false address and not meeting the residency requirements because she lived at an address outside the District. Linebarger further alleged that Clark and McMullen potentially had knowledge of Long's deceit about her residency.

Superior court recall petition procedure

The Spokane County Prosecutor's Office filed three actions in Spokane County Superior Court to determine the sufficiency of the charges in each of the recall petitions. The three board members filed briefs opposing the recall petitions. They contended the charges were factually and legally insufficient and requested the court dismiss the petitions. The next day, the three board members filed motions for CR 11 sanctions against Linebarger and his attorneys for filing baseless petitions for an improper purpose.

The superior court held a hearing to determine the sufficiency of the charges in the three recall petitions. In December 2021 orders, the court concluded that the charges outlined above were legally and factually insufficient, and dismissed the petitions with prejudice. The orders expressly stated that the court retained jurisdiction to consider the three board members' motions for sanctions.

In June 2022, after a hearing, the court entered orders in each of the three cases granting the three board members' motions, concluding that CR 11 sanctions were warranted. The orders contained extensive findings and conclusions that Linebarger's

charges were not well grounded in fact, not based on a sufficient inquiry into the facts, not warranted by existing law, intentionally frivolous, filed for an improper purpose, and filed in bad faith. With respect to improper purpose, the court found that Linebarger filed the petitions "for the improper purpose of bullying the Board Members into taking a political position contrary to the law." CP at 94 (Long), 2360 (McMullen), 3346 (Clark). Linebarger did not appeal the June 2022 orders.

In December 2022, the court issued orders in each of the three cases awarding a total of $30,000 in sanctions in favor of the three board members against Linebarger and his two attorneys.[1] The court imposed the sanctions as joint and several obligations. The court also entered a memorandum decision explaining its decision to impose the monetary sanction instead of attorney fees. Linebarger did not appeal the December 2022 orders.

In January 2023, Linebarger, represented by new counsel, filed a motion to vacate the orders imposing sanctions. The court held a hearing on the motion and later entered a written order denying it.

[1] The three board members had asked for an award of $167,671, which was the total attorneys' fees the District had incurred by that time.

The three school board members settle with Linebarger's two former attorneys

In May 2023, the three board members filed a notice of their intent to enter a settlement agreement with Linebarger's two former attorneys to apportion their share of the $30,000 sanctions. As part of the proposed settlement agreement, each agreed to pay $1,000, which would discharge them from liability for the remaining $28,000 in sanctions. The three board members asked the court to approve the proposed settlement.

The court held a hearing on the motion. Following argument by counsel, the court orally approved the proposed settlement as to one attorney, but stated that the second attorney bore more responsibility than the proposed $1,000 because of "dilatory behavior," "late filings," and a failure to screen the petitions. Report of Proceedings (RP) (June 9, 2023) at 25. The court ruled that $6,500 was a reasonable apportionment for the second attorney and that the remaining $22,500 was a reasonable apportionment for Linebarger. The court noted that Linebarger bore the bulk of responsibility for the sanctions because "he was the one that started this ball and brought that information to counsel." RP (June 9, 2023) at 26.

In June 2023, the court entered orders in each of the three cases consistent with its oral rulings. Linebarger timely appealed the June 2023 orders, and designated and attached a copy only of those orders to his notices of appeal.

ANALYSIS

A. LINEBARGER'S FAILURE TO APPEAL THE ORDERS AWARDING SANCTIONS

As a threshold issue, the three board members contend we cannot review the June 2022 and December 2022 orders awarding sanctions because Linebarger did not properly appeal them. They contend Linebarger's appeal of the June 2023 orders apportioning sanctions did not bring up the two sets of previous orders. We agree.

Among other things, a notice of appeal must "designate the decision or part of decision which the party wants reviewed." RAP 5.3(a). However, subject to one exception discussed below, we will review a trial court's decision entered before review is accepted if that decision prejudicially affects the designated decision. RAP 2.4(b). Here, the trial court's June 2022 and December 2022 sanctions orders were entered before we accepted review and those orders prejudicially affect the June 2023 orders apportioning sanctions. Specifically, if the orders awarding sanctions were entered contrary to law, then there would be no sanctions award to apportion.

The exception, mentioned above, provides:

> A timely notice of appeal of a trial court decision *relating to attorney fees and costs* does not bring up for review a decision previously entered in the action that is *otherwise appealable under* [*RAP*] *2.2(a)* unless a timely notice of appeal has been filed to seek review of the previous decision.

RAP 2.4(b) (emphasis added).

Here, each of the June 2023 orders apportioning sanctions is a decision "relating to attorney fees and costs." Thus, the resolution of this issue depends on whether the June 2022 and December 2022 sanctions orders are "appealable under [RAP] 2.2(a)."

RAP 2.2(a) sets forth the types of decisions and orders that are subject to appeal as of right, rather than as of discretion. We note that the sanctions orders were not reduced to a judgment.

Our review of RAP 2.2(a) convinces us that the most likely subsection that applies is RAP 2.2(a)(3), "*Decision Determining Action.*" RAP 2.2(a)(3) permits an appeal of "[1] [a]ny written decision affecting a substantial right in a civil case [2] that in effect determines the action and [a] prevents a final judgment or [b] discontinues the action."

Here, the December 2021 orders dismissed the three recall petitions with prejudice, but retained jurisdiction to consider an award of sanctions. The June 2022 orders provided the findings and conclusions for imposing CR 11 sanctions, but did not determine the amount of the sanctions award. The December 2022 orders determined the amount of sanctions. The combination of these three orders (1) affected a substantial right in the civil case, i.e., dismissed the recall petitions with prejudice and determined the amount of sanctions, (2) in effect determined the action, and (2)(b) discontinued it. Thus, after the December 2022 orders were entered, the sanctions orders were appealable under RAP 2.2(a). We conclude that the RAP 2.4(b) exception quoted above applies, and

Linebarger's timely appeal of the June 2023 orders apportioning sanctions did not bring up the June 2022 or the December 2022 orders. Our review is accordingly limited.

B. APPORTIONMENT OF SANCTIONS

Linebarger contends the superior court's apportionment of sanctions is not supported by the record and was made for untenable reasons. We disagree.

Joint and several contribution settlement standards

A right of contribution exists between or among two or more persons who are jointly and severally liable on the same indivisible claim for the same harm, whether or not judgment has been recovered against all or any of them. RCW 4.22.040(1). However, if a liable person settles with the claimant and the trial court determines that the settlement is reasonable, then the settlement discharges the liable person from all liability for contribution. RCW 4.22.060(2).

In *Glover v. Tacoma General Hospital*, 98 Wn.2d 708, 717-18, 658 P.2d 1230 (1983), our Supreme Court set out nine nonexclusive factors courts should consider when determining whether a settlement is reasonable under RCW 4.22.060:

> "[T]he releasing person's damages; the merits of the releasing person's liability theory; the merits of the released person's defense theory; the released person's relative faults; the risks and expenses of continued litigation; the released person's ability to pay; any evidence of bad faith, collusion, or fraud; the extent of the releasing person's investigation and preparation of the case; and the interests of the parties not being released."

The court noted that to aid appellate review, "trial judges should enunciate those factors which lead them to conclude that a settlement is reasonable." *Id.* at 718.

The superior court's findings of reasonableness under RCW 4.22.060 necessarily involve factual determinations that will not be disturbed on appeal if they are supported by substantial evidence. *Id.*; *Bird v. Best Plumbing Grp., LLC*, 175 Wn.2d 756, 774-75, 287 P.3d 551 (2012).

We review a superior court's determination regarding whether a settlement is reasonable under RCW 4.22.060 for an abuse of discretion. *See Bird*, 175 Wn.2d at 774-75. Abuse of discretion means the decision is manifestly unreasonable or is based on untenable grounds or untenable reasons. *Id.*

Here, the three board members entered into a proposed settlement agreement with Linebarger's two former attorneys pursuant to RCW 4.22.060. The superior court held a hearing on the proposed settlement agreement to determine its reasonableness. The parties briefed the *Glover* factors in advance of the hearing. During the hearing, Linebarger argued that the second attorney bore the most responsibility for the petitions and should therefore bear more responsibility than $1,000. During the hearing, Linebarger stated he did not object to the first attorney's $1,000 settlement.

The superior court orally reviewed the *Glover* factors and explained that it relied primarily on factor four, the released person's relative fault, when making its decision.

The court ruled that the proposed settlement with the first attorney was reasonable. However, the court credited Linebarger's argument and determined that the second attorney bore more responsibility than the proposed $1,000 settlement because of his dilatory behavior, late filings, and failure to screen the petitions. The court ruled that $6,500 was a reasonable apportionment of the sanctions for that attorney, and that the remaining $22,500 was a reasonable apportionment to Linebarger. The court noted that Linebarger bore the bulk of responsibility for the sanctions because "he was the one that started this ball and brought that information to counsel." RP (June 9, 2023) at 26.

On appeal, Linebarger argues that the superior court and opposing counsel blamed ***both*** of his former attorneys for the amount of fees incurred, and, therefore, the court should have apportioned more of the sanctions to both. We are not persuaded by this argument.

First, CR 11 is not a fee-shifting rule; rather, its purpose is to deter improper filings. *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 219-20, 829 P.2d 1099 (1992). Second, Linebarger argued below, and the trial court agreed, that the second attorney was more culpable than the first. Third, as discussed below, substantial evidence supports the trial court's apportionment to Linebarger of most of the sanctions because Linebarger started the recall petitions to bully the three board members to take a legal position contrary to law and brought the factually deficient information to counsel.

After Linebarger met with board member Long and she refused to push back on the mask mandates, Linebarger discussed the possibility of legal action and met with an attorney to discuss the recall petition process. He set up a nonprofit corporation to raise money for lawsuits challenging the mask mandates and vaccination requirements. He identified the particular targets for the recall petitions and solicited replacement candidates. He e-mailed a demand letter to the District's superintendent and school board to coax a response that would justify the filing of the recall petitions. He told the parent group about the rumor that Long was lying about her district residency. All considered, substantial evidence supports the superior court's finding that Linebarger was mostly to blame for filing the improper recall petitions. We conclude the trial court did not abuse its discretion in apportioning CR 11 sanctions.[2]

ATTORNEY FEES ON APPEAL

The three board members request their reasonable attorney fees incurred on appeal because Linebarger filed the recall petitions in bad faith. We deny their request.

First, CR 11 is not a fee-shifting rule. *Bryant*, 119 Wn.2d at 219-20. Simply because the three board members incurred attorney fees on appeal does not warrant our

[2] Linebarger also argues he relied on the advice of counsel prior to filing the petitions. We express no opinion whether Linebarger has any viable claims against his former attorneys. His attorneys are not parties to this case. The resolution of the issues in this appeal do not impact these nonparty claims.

shifting those fees to Linebarger. Second, the trial court determined that $22,500 in sanctions was appropriate to deter Linebarger from improper filings. We see no reason to impose additional sanctions. Had his arguments on appeal been frivolous, our decision might be different.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Lawrence-Berrey, C.J.

WE CONCUR:

Staab, J.

Cooney, J.

FILED
SEPTEMBER 17, 2024
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

IN THE MATTER OF THE RECALL OF: KEITH CLARK, Central Valley School Board Member.	)	**No. 39862-5-III (consolidated with**
	)	**No. 39863-3-III**
IN THE MATTER OF THE RECALL OF: CYNTHIA MCMULLEN, Central Valley School Board Member.	)	
	)	**No. 39864-1-III)**
IN THE MATTER OF THE RECALL OF: DEBRA L. LONG, Central Valley School Board Member.	)	**ORDER DENYING MOTION FOR RECONSIDERATION**

The court has considered appellant's motion for reconsideration of this court's opinion dated July 2, 2024, and is of the opinion the motion should be denied because:

(1) For the reasons argued by the school board members in their briefing, a monetary sanction entered at the end of litigation for purposes of deterring frivolous filings is an award "relat[ed] to attorney fees" for purposes of the exception in RAP 2.4(b); and

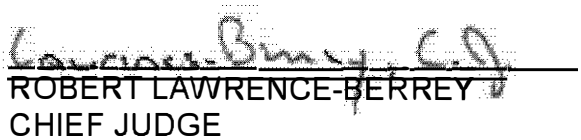
(2) Mr. Linebarger failed to timely raise his RAP 2.5(a) argument, since he first raised it in his reply brief. *See Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (issue raised and argued for the first time in a reply brief

is too late to warrant consideration).

THEREFORE, IT IS ORDERED that the motion for reconsideration is hereby denied.

PANEL: Judges Lawrence-Berrey, Staab, and Cooney

FOR THE COURT:



ROBERT LAWRENCE-BERREY
CHIEF JUDGE

SECTION 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law.

SECTION 4 RIGHT OF PETITION AND ASSEMBLAGE. The right of petition and of the people peaceably to assemble for the common good shall never be abridged.

SECTION 5 FREEDOM OF SPEECH. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.

SECTION 6 OATHS - MODE OF ADMINISTERING. The mode of administering an oath, or affirmation, shall be such as may be most consistent with and binding upon the conscience of the person to whom such oath, or affirmation, may be administered.

SECTION 7 INVASION OF PRIVATE AFFAIRS OR HOME PROHIBITED. No person shall be disturbed in his private affairs, or his home invaded, without authority 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.

SECTION 9 RIGHTS OF ACCUSED PERSONS. No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.

SECTION 10 ADMINISTRATION OF JUSTICE. Justice in all cases shall be administered openly, and without unnecessary delay.

SECTION 11 RELIGIOUS FREEDOM. Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: PROVIDED, HOWEVER, That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional, and mental institutions, or by a county's or public hospital district's hospital, health care facility, or hospice, as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony. [**AMENDMENT 88,** 1993 House Joint Resolution No. 4200, p 3062. Approved November 2, 1993.]

Amendment 34 (1957) — Art. 1 Section 11 RELIGIOUS FREEDOM — *Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment:* Provided, however, *That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional and mental institutions as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.* [AMENDMENT 34, 1957 Senate Joint Resolution No. 14, p 1299. Approved November 4, 1958.]

Amendment 4 (1904) — Art. 1 Section 11 RELIGIOUS FREEDOM — *Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment* Provided, however, *That this article shall not be so construed as to forbid the employment by the state of a chaplain for the state penitentiary, and for such of the state reformatories as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.* [AMENDMENT 4, 1903 p 283 Section 1. Approved November, 1904.]

Original text — Art. 1 Section 11 RELIGIOUS FREEDOM — *Absolute freedom of conscience in all matters of religious sentiment, belief, and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person, or property, on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for, or applied to any religious worship, exercise or instruction, or the support of any religious establishment No religious qualification shall be required for any public office, or employment, nor shall any person be incompetent as a witness, or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.*

SECTION 12 SPECIAL PRIVILEGES AND IMMUNITIES PROHIBITED. No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

SECTION 13 HABEAS CORPUS. The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety requires it.

SECTION 14 EXCESSIVE BAIL, FINES AND PUNISHMENTS. Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted.

shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed body of men.

SECTION 25 PROSECUTION BY INFORMATION. Offenses heretofore required to be prosecuted by indictment may be prosecuted by information, or by indictment, as shall be prescribed by law.

SECTION 26 GRAND JURY. No grand jury shall be drawn or summoned in any county, except the superior judge thereof shall so order.

SECTION 27 TREASON, DEFINED, ETC. Treason against the state shall consist only in levying war against the state, or adhering to its enemies, or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or confession in open court.

SECTION 28 HEREDITARY PRIVILEGES ABOLISHED. No hereditary emoluments, privileges, or powers, shall be granted or conferred in this state.

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

SECTION 30 RIGHTS RESERVED. The enumeration in this Constitution of certain rights shall not be construed to deny others retained by the people.

SECTION 31 STANDING ARMY. No standing army shall be kept up by this state in time of peace, and no soldier shall in time of peace be quartered in any house without the consent of its owner, nor in time of war except in the manner prescribed by law.

SECTION 32 FUNDAMENTAL PRINCIPLES. A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government.

SECTION 33 RECALL OF ELECTIVE OFFICERS. Every elective public officer of the state of Washington expect [except] judges of courts of record is subject to recall and discharge by the legal voters of the state, or of the political subdivision of the state, from which he was elected whenever a petition demanding his recall, reciting that such officer has committed some act or acts of malfeasance or misfeasance while in office, or who has violated his oath of office, stating the matters complained of, signed by the percentages of the qualified electors thereof, hereinafter provided, the percentage required to be computed from the total number of votes cast for all candidates for his said office to which he was elected at the preceding election, is filed with the officer with whom a petition for nomination, or certificate for nomination, to such office must be filed under the laws of this state, and the same officer shall call a special election as provided by the general election laws of this state, and the result determined as therein provided. [**AMENDMENT 8,** 1911 p 504 Section 1. Approved November, 1912.]

SECTION 34 SAME. The legislature shall pass the necessary laws to carry out the provisions of section thirty-three (33) of this article, and to facilitate its operation and effect without delay: *Provided,* That the authority hereby conferred upon the legislature shall not be construed to grant to the legislature any exclusive power of lawmaking nor in any way limit the initiative and referendum powers reserved by the people. The percentages required shall be, state officers, other than judges, senators and representatives, city officers of cities of the first class, school district boards in cities of the first class; county officers of counties of the first, second and third classes, twenty-five per cent. Officers of all other political subdivisions, cities, towns, townships, precincts and school districts not herein mentioned, and state senators and representatives, thirty-five per cent. [**AMENDMENT 8,** 1911 p 504 Section 1. Approved November, 1912.]

SECTION 35 VICTIMS OF CRIMES — RIGHTS. Effective law enforcement depends on cooperation from victims of crime. To ensure victims a meaningful role in the criminal justice system and to accord them due dignity and respect, victims of crime are hereby granted the following basic and fundamental rights.

Upon notifying the prosecuting attorney, a victim of a crime charged as a felony shall have the right to be informed of and, subject to the discretion of the individual presiding over the trial or court proceedings, attend trial and all other court proceedings the defendant has the right to attend, and to make a statement at sentencing and at any proceeding where the defendant's release is considered, subject to the same rules of procedure which govern the defendant's rights. In the event the victim is deceased, incompetent, a minor, or otherwise unavailable, the prosecuting attorney may identify a representative to appear to exercise the victim's rights. This provision shall not constitute a basis for error in favor of a defendant in a criminal proceeding nor a basis for providing a victim or the victim's representative with court appointed counsel. [**AMENDMENT 84,** 1989 Senate Joint Resolution No. 8200, p 2999. Approved November 7, 1989.]

ARTICLE II
LEGISLATIVE DEPARTMENT

SECTION 1 LEGISLATIVE POWERS, WHERE VESTED. The legislative authority of the state of Washington shall be vested in the legislature, consisting of a senate and house of representatives, which shall be called the legislature of the state of Washington, but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature, and also reserve power, at their own option, to approve or

RCW 29A.56.140 Determination by superior court—Correction of ballot synopsis. Within 15 days after receiving the petition, the superior court shall have conducted a hearing on and shall have determined, without cost to any party, (1) whether or not the acts stated in the charge satisfy the criteria for which a recall petition may be filed, and (2) the adequacy of the ballot synopsis. The court shall notify the person subject to recall and the person demanding recall of the hearing date. Both persons may appear with counsel. The court may hear arguments as to the sufficiency of the charges and the adequacy of the ballot synopsis. The court shall not consider the truth of the charges, but only their sufficiency. An appeal of a sufficiency decision shall be filed in the supreme court as specified by RCW 29A.56.270. The superior court shall correct any ballot synopsis it deems inadequate. Any decision regarding the ballot synopsis by the superior court is final. The clerk shall certify and transmit the ballot synopsis to the officer subject to recall, the person demanding the recall, and either the secretary of state or the county auditor, as appropriate. [2021 c 92 s 1; 2003 c 111 s 1410. Prior: 1984 c 170 s 4. Formerly RCW 29.82.023.]

HATCHER LAW, PLLC

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