Motion to Modify Clerk's ruling re answer is pending

No. 103894-1

THE SUPREME COURT OF THE
STATE OF WASHINGTON

C.C., an individual,

Respondent/Cross-Petitioner,

v.

KIWANIS INTERNATIONAL, et al.,

Petitioners/Cross-Respondents.

RESPONDENT/CROSS-PETITIONER C.C.'s ANSWER TO KIWANIS PETITIONERS/CROSS-RESPONDENTS' PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

WASHINGTON CASES

STATUTES

OTHER AUTHORITIES

RULES

OUT-OF-STATE CASES

I. INTRODUCTION

The Kiwanis Petitioners[1] urge this Court to accept review of a Court of Appeals decision concluding that RCW 23B.14.340, the corporate dissolution survival statute, does not bar claims against the principal of a dissolved corporation. Our legislature, by enacting RCW 23B.14.340, abandoned the "harsh common law rule" that claims against a corporation were "absolutely barred" upon its dissolution. *Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co*., 158 Wn.2d 603, 610-11, 146 P.3d 914 (2006). Washington law now permits the assertion of claims against a dissolved "corporation, its directors, officers,

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[1] Because C.C. has also filed a petition for review of the Court of Appeals decision in *C.C. v. Kiwanis International, et al.*, No. 57207-9-II (Wash. Ct. App. Sept. 4, 2024), the Kiwanis Petitioners are more accurately the Kiwanis Petitioners/Cross-Respondents. For ease of reference, they are referred to in this answer as simply "the Kiwanis Petitioners" or "Petitioners."

or shareholders" for a specified time period following corporate dissolution. RCW 23B.14.340.

Here, the Court of Appeals correctly concluded that, while the survival statute imposes a time limitation for asserting claims against the entities and individuals explicitly enumerated therein, it does not bar vicarious liability claims against the principal of a dissolved corporation. *C.C. v. Kiwanis International, et al.*, No. 57207-9-II, at *17 (Wash. Ct. App. Sept. 4, 2024).[2] The plain language of the statute itself—which nowhere references the principal of a dissolved corporation—compels that very conclusion. Indeed, RCW 23B.14.340 is wholly irrelevant to the assertion of claims against a corporation *that has not itself been*

[2] On February 11, 2025, the Court of Appeals granted in part C.C.'s motion for publication, ruling that the portion of the opinion pertaining to RCW 23B.14.340 would be published. *Order Granting Motion to Publish and Publishing Opinion in Part*, No. 57207-9-II (Wash. Ct. App. Feb. 11, 2025).

dissolved. And the Court of Appeals' determination fully comports with the binding precedent of this Court. *Babcock v. State*, 116 Wn.2d 596, 620, 809 P.2d 143 (1991) (*Babcock II*) ("An agent's immunity from civil liability generally does not establish a defense for the principal."); *Vern J. Oja & Assocs. v. Wash. Park Towers, Inc*., 89 Wn.2d 72, 77, 569 P.2d 1141 (1997) (holding that "a principal cannot be held derivatively responsible when the agent has been discharged . . . only insofar as the judgment for the agent is 'on the merits and not based on a personal defense'") (quoting RESTATEMENT (FIRST) OF JUDGMENTS § 99 (1942)).

The Kiwanis Petitioners acknowledge that the survival statute, by its plain language, does not bar claims against the principal of a dissolved corporation. Petition at 9 (recognizing that the statute is "silent as to whether it is to be applied to a principal"). They nonetheless urge this Court to accept review based on "considerations of practicality" and Petitioners' own policy preferences. Pet. at 25. Such considerations are properly

for our legislature. And the plain language of RCW 23B.14.340 clearly shows that our legislature did not intend to immunize principals of dissolved corporations from vicarious liability.

Petitioners have not shown that their petition involves "an issue of substantial public interest that should be determined by" this Court. RAP 13.4(b)(4). Accordingly, the Court should decline to accept review of this issue. However, if the Court chooses to accept review, it should additionally review the Court of Appeals' determination that RCW 23B.14.340 is a statute of repose—a determination that conflicts with this Court's decisional authority. *C.C.*, No. 57207-9-II, at *18-19.

II. COUNTERSTATEMENT OF THE ISSUE

1. Where the corporate dissolution survival statute, RCW 23B.14.340, includes no language limiting lawsuits against the principal of a dissolved corporation, and where this Court has held that statutory time limits are personal defenses unavailable to the principal of a defendant, did the Court of Appeals correctly conclude that the survival statute does not bar Plaintiff C.C.'s claims against the Kiwanis Petitioners?

III. COUNTERSTATEMENT OF THE CASE

The Kiwanis Petitioners request that this Court accept review to address the meaning of RCW 23B.14.340, a wholly legal question. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). They nevertheless use the opportunity to provide this Court with a misleading recitation of the organizational structure of the Kiwanis Vocational Homes for Youth (KVH), the group home where Plaintiff C.C. suffered the childhood sexual abuse from which his claims arise. *See* CP 657-95.

In the Court of Appeals, the Kiwanis Petitioners argued that RCW 23B.14.340 barred liability against the "now dissolved KVH boards, and that bar extended to them." *C.C.*, No. 57207-9-II, at *2. As the Court of Appeals recognized, "KVH had two boards: the [Lewis County Youth Enterprises (LCYE)] Board and the Centralia-Grand Mound-Rochester, Chehalis, Tumwater, Kiwanis Vocational Homes for Youth Board (KVH Board)." *C.C.*, No. 57207-9-II, at *8. "The bylaws of [each] mandated

that the respective boards were to be comprised of Kiwanis club members." *C.C.*, No. 57207-9-II, at *8. And both the LCYE Board and the KVH Board "were involved in the management of the vocational home." *C.C.*, No. 57207-9-II, at *3.

Petitioners misrepresent the extent of the Boards' control over the management of KVH. *See* Pet. at 3-6. LCYE was incorporated in 1977 to act as "the holding corporation" for KVH, which its board members agreed "should not possess any assets." CP 1263, 1272, 2524. The KVH Board, on the other hand, was the "operating corporation" of KVH. CP 2524; *see* CP 2522. That Board—officially, the "Centralia-Grand Mound-Rochester-Chehalis-Tumwater Kiwanis Vocational Homes for Youth"—met monthly "*to address policy questions and to make major decisions regarding operation of the home*." CP 2522 (emphasis added).

Petitioners mischaracterize the KVH Board as simply an "advisory board." Pet. at 3-4. But it was not until 1989, ten years after its incorporation, that the KVH Board was rendered

"advisory." CP 3066. KVH Board members from the Chehalis and Tumwater Kiwanis Clubs had begun requesting KVH "financial statements and State audit results," CP 3013, and expressing concern that they and the other Board members had "not fulfilled our obligations" and had "allowed our corporation to get out of control." CP 3049; *see also* CP 3052, 3060-61, 2066-67.

Shortly thereafter, a KVH Board meeting was held to address the "[c]orporate structure of the Boy's Home." CP 1276-77. Despite that the KVH Board had previously been the "operating corporation" of KVH, the Board determined, over the objections of dissenting members, that it was "in fact advisory and did not have care and control of the Boy's Home." CP 1276; *see* CP 2522, 2525. This "change in corporate structure" "stripped" the Board members of "[their] powers as directors." CP 3066. Only then did the KVH Board become "advisory." CP 3066. As a result of concerns regarding the operation of KVH, the Chehalis and Tumwater Kiwanis Clubs thereafter voted to

have their names removed from the KVH corporation. CP 3071, 3075. A holistic view of the record clearly shows that the KVH Board's role in the management of KVH was far more extensive than the Kiwanis Petitioners suggest.

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

The Court of Appeals correctly concluded that RCW 23B.14.340 does not bar claims against the principal of a dissolved corporation. This conclusion is compelled by the plain language of the statute. The Kiwanis Petitioners' preferred reading of the statute, based on their own policy preferences, would require the improper addition of words that our legislature has chosen not to include. Moreover, the Court of Appeals' conclusion is consistent with this Court's precedent, which holds that statutory time limitations are personal defenses that do not immunize a principal from liability. Because the Kiwanis Petitioners have not shown that their petition involves an issue of substantial public interest that should be decided by this Court,

RAP 13.4(b)(4), the Court should decline to grant review on this issue.

A. The Corporate Dissolution Survival Statute, by its Plain Language, Does Not Bar Claims Against the Principal of a Dissolved Corporation

The Kiwanis Petitioners seek review of the Court of Appeals' determination that the corporate dissolution survival statute does not bar vicarious liability claims against the principal of a dissolved corporation. That conclusion, however, is compelled by the plain language of the statute. This Court should decline review.

Our legislature enacted RCW 23B.14.340 in response to a Court of Appeals decision determining that, "absent a survival statute, claims against a corporation arising after dissolution of the corporation abated." *Chadwick Farms Owners Ass'n v. FHC LLC*, 166 Wn.2d 178, 195, 207 P.3d 1251 (2009) (analyzing RCW 25.15.303, the counterpart survival statute applicable to claims against limited liability companies). As this Court has explained, the statute "shows the legislature's intent that claims

arising after dissolution are not absolutely barred, unlike the harsh common law rule." *Ballard Square*, 158 Wn.2d at 611. In other words, corporate dissolution no longer "strip[s] a claimant of the ability to file a lawsuit." *Leren v. Kaiser Gypsum Co., Inc*., 9 Wn. App. 2d 55, 69, 442 P.3d 273 (2019).

Instead, RCW 23B.14.340 establishes a post-dissolution "limitations period" during which individuals harmed by corporate wrongdoing can assert their claims. *Ballard Square*, 158 Wn.2d at 616. It provides that

> [t]he dissolution of a corporation . . . shall not take away or impair any remedy available against ***such corporation, its directors, officers, or shareholders***, for any right or claim existing, or any liability incurred, prior to such dissolution or arising thereafter, unless action or other proceeding thereon is not commenced within two years of the effective date of any dissolution that was effective prior to June 7, 2006, or within three years after the effective date of any dissolution that is effective on or after June 7, 2006.

RCW 23B.14.340 (emphasis added). Thus, by its plain language, "RCW 23B.14.340 governs the survival of remedies against ***a dissolved corporation, its directors, its officers, or its shareholders***." *Leren*, 9 Wn. App. 2d at 69 (emphasis added).

The Kiwanis Petitioners acknowledge that RCW 23B.14.340 is "silent as to whether it is to be applied to a principal." Pet. at 9. They nonetheless argue that our legislature, in enacting the statute, intended to immunize against liability "any persons who allegedly 'controlled' the owners/managers" of a dissolved corporation.[3] Pet. at 12. Such a reading of the statute contravenes well-established principles of statutory

[3] It is unclear whether the Kiwanis Petitioners are asserting that the "directors, officers, or shareholders" of the dissolved corporation, as set forth in RCW 23B.14.340, constitute "owners and managers" of that corporation, or whether Petitioners contend that ***they***—***the Kiwanis entities***—constitute the "owners or managers" of the dissolved corporations. *See* Pet. at 9 (arguing that, by extending the statute to "the corporate owners and managers," our legislature necessarily intended it to immunize from liability "any persons who allegedly 'controlled' the owners/managers" as well); *see also* Pet. at 14 (arguing that the Court of Appeals decision "makes possible claims against entities who are arguably corporate owners or managers" after corporate dissolution). This lack of clarity is of no consequence. The plain language of RCW 23B.14.340 does not bar claims against the principal of a dissolved corporation.

interpretation. When a statute's meaning is plain on its face, our courts "must give effect to that plain meaning as an expression of legislative intent." *Campbell & Gwinn*, 146 Wn.2d at 9-10. Only if statutory language is ambiguous do our courts resort to aids of construction to determine intent. *Campbell & Gwinn*, 146 Wn.2d at 12. There is no ambiguity here.

Rather, by its plain language, the corporate dissolution survival statute expands the time period during which claimants can assert claims against a dissolved corporation and the related persons explicitly listed in the statute—the corporation's "directors, officers, or shareholders." RCW 23B.14.340. The statute nowhere includes the term "principals." Nor does the statute establish a limitations period for asserting claims against ***an active corporation*** as the principal of a dissolved corporation. Indeed, because chapter 23B.14 RCW governs corporate ***dissolution***, neither that chapter nor the survival statute within it has any applicability to the assertion of claims against ***an active corporation***, regardless of whether the asserted claims are direct

or vicarious. Our courts "must not add words where the legislature has chosen not to include them." *Rest. Dev., Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003). The Kiwanis Petitioners' preferred reading of the statute requires the insertion of the word "principal" where our legislature clearly chose not to include it.

Division One has rejected an argument nearly identical to the one made by the Kiwanis Petitioners here—that claims against entities not listed in the statute can be "time-barred under the limitations period in RCW 23B.14.340." *Leren*, 9 Wn. App. 2d at 69-70. In *Leren*, as here, the dissolved corporation was not a party to the lawsuit; instead, claims were asserted against a successor corporation that had not been dissolved. 9 Wn. App. 2d at 69-70. The Court of Appeals noted that the defendant corporation had provided "no authority for the proposition that the legislature intended to bar successor liability claims when it enacted the dissolution statute." *Leren*, 9 Wn. App. 2d at 69-70. It concluded that RCW 23B.14.340 did not apply. *Leren*, 9 Wn.

App. 2d at 70. Under the plain language of the statute, the same is true here.

The Kiwanis Petitioners further urge this Court to accept review of this issue, which involves the straightforward application of an unambiguous statute, to address Petitioners' own policy preferences. They argue that the purpose of RCW 23B.14.340 is "finality" and that the Court of Appeals "ignored [the] finality principle."[4] Pet. at 11, 25. But that argument contravenes both the plain language of the corporate dissolution survival statute and this Court's decisional authority. Again, our legislature, in enacting RCW 23B.14.340, intended to "cut any

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[4] Petitioners' argument is premised on an incorrect characterization of RCW 23B.14.340 as a statute of repose, which will be addressed *infra*. However, regardless of its characterization, the statute's plain language compels the conclusion reached by the Court of Appeals—that it does not bar vicarious liability claims against the principal of a dissolved corporation.

remaining ties" to the "harsh common law rule" that imposed an absolute bar on claims against a dissolved corporation. *Ballard Square*, 158 Wn.2d at 610-11. *See also Chadwick Farms*, 166 Wn.2d at 196 (legislature's intent in enacting analogous statute was "ensuring that suit could be prosecuted against a limited liability company after dissolution"). Contrary to the Kiwanis Petitioners' suggestion, our legislature, in enacting the survival statute, did not aim to provide "finality" for corporations that had dissolved—and, certainly, it did not aim to provide "finality" for corporations that remain active, like the Kiwanis entities here. Instead, our legislature enacted RCW 23B.14.340 with the express intent of ***permitting claims that would otherwise be unavailable*** against a dissolved corporation and "its directors,

officers, or shareholders."[5] *Ballard Square*, 158 Wn.2d at 610-11; *Chadwick Farms*, 166 Wn.2d at 196.

The Kiwanis Petitioners further argue, as they did before the Court of Appeals, that barring claims against the principals of dissolved corporations "is consistent with considerations of practicality." Pet. at 25. But our legislature "is the fundamental source for the definition of [our] state's public policy," and our courts "'should resist the temptation to rewrite an unambiguous statute to suit [their] notions of what constitutes good public policy.'" *Sedlacek v. Hillis*, 145 Wn.2d 379, 390, 36 P.3d 1014

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[5] This policy underlying RCW 23B.14.340—that of permitting plaintiffs to assert claims that otherwise would have abated following corporate dissolution—parallels the policy underlying vicarious liability against principals, such as the Kiwanis entities here. That policy, which is "to afford the plaintiff the maximum opportunity to be fully compensated," similarly seeks to provide recompense to plaintiffs. *Vanderpool v. Grange Ins. Ass'n*, 110 Wn.2d 483, 487, 756 P.2d 111 (1988).

(2001) (quoting *State v. Jackson*, 137 Wn.2d 712, 725, 976 P.2d 1229 (1999)). *See also Roberts v. Dudley*, 140 Wn.2d 58, 79, 993 P.2d 901 (2000) (Talmadge, J., concurring) ("The specter of judicial activism is unloosed and roams free when a court declares, 'This is what the Legislature meant to do or should have done.'"). And as the Court of Appeals correctly recognized, "the argument that principals should have an expectation that liability would be terminated on the timeline in RCW 23B.14.340 fails because [the statute] does not even mention principals." *C.C.*, No. 57207-9-II, at *24. This Court should decline to accept review based on Petitioners' policy arguments.

B. The Court of Appeals' Conclusion is Consistent with This Court's Binding Precedent

In addition to being compelled by RCW 23B.14.340's plain language, the Court of Appeals' determination comports with this Court's binding precedent. Under Washington law, when an agent's liability is discharged due to statutory time limitations, rather than a judgment on the merits, the principal remains liable for the agent's acts. *Oja*, 89 Wn.2d at 77. The

Court of Appeals correctly concluded that, because the defense provided by RCW 23B.14.340 is procedural, it does not bar the assertion of claims against the principal of a dissolved corporation.

In *Oja*, this Court considered the effect of the dismissal of claims against a subcontractor agent on the plaintiff's ability to maintain an action against the principal premised on the same events. 89 Wn.2d at 77. The action against the subcontractor had been "dismissed as being barred by the statute of limitations." *Oja*, 89 Wn.2d at 77. This Court rejected the principal's argument that it could not "be held derivatively responsible" because its agent had been discharged. *Oja*, 89 Wn.2d at 77. The claims against the principal, this Court held, would be barred "only insofar as the judgment for the agent [was] 'on the merits and not based on a personal defense.'" *Oja*, 89 Wn.2d at 77 (quoting RESTATEMENT OF JUDGMENTS, § 99 (1942)). Because the dismissal was based on the limitations period, "rather than the merits," and was thus "personal to" the

agent, the plaintiff's claims against the principal were not barred. *Oja*, 89 Wn.2d at 77.

Here, relying on this Court's decision in *Oja*, the Court of Appeals correctly held that the corporate dissolution survival statute creates a procedural bar to the assertion of claims and, thus, that dismissals based on the statute are not "judgments on the merits." *C.C.*, No. 57207-9-II, at *20. Accordingly, the Court held that "an agent's defense under RCW 23B.14.340 does not sever liability as to the principal." *C.C.*, No. 57207-9-II, at *20. This conclusion comports with the plain language of the statute, which nowhere suggests an intent by our legislature to bar claims against the principal of a dissolved corporation.

The Kiwanis Petitioners nonetheless argue that RCW 23B.14.340 does not provide a "personal defense" because, according to Petitioners, the statute precludes claims "brought against *anyone* for the actions" of the dissolved LCYE and KVH Boards. Pet. at 16-17. This circular logic erroneously presumes that the survival statute precludes claims against the principal of

a dissolved corporation. Again, by the unambiguous language of the statute, it does not.

Likening the time limitation provided in RCW 23B.14.340 to the statutory immunity of government officials, the Kiwanis Petitioners further suggest that the Court of Appeals decision is contrary to this Court's decisional authority.[6] *See* Pet. at 17-20. To the extent that statutory immunity decisions inform the meaning of RCW 23B.14.340, this Court has made clear that "[a]n agent's immunity from civil liability generally does not establish a defense for the principal." *Babcock II*, 116 Wn.2d at

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[6] As in the Court of Appeals, the Kiwanis Petitioners do not explain why statutory immunity caselaw is applicable to the meaning of the corporate dissolution survival statute. *See C.C.*, No. 57207-9-II, at *22 n.7 ("[T]he Kiwanis Defendants do not explain how the corporate dissolution protection in RCW 23.14.340 is anything like the prosecutorial immunity discussed in *Creelman* [*v. Svenning*, 67 Wn.2d 882, 410 P.2d 606 (1966)].").

620; *see also Mancini v. City of Tacoma*, 196 Wn.2d 864, 885 n.11, 479 P.3d 656 (2021); *Savage v. State*, 127 Wn.2d 434, 439, 899 P.2d 1270 (1995). Moreover, as the Court of Appeals recognized, whether a government official's statutory immunity extends to the State is a fact-specific and policy-based determination involving legislative intent in the context of sovereign immunity. *Savage*, 127 Wn.2d at 445-47; *Babcock II*, 116 Wn.2d at 620-21. *See C.C.*, 57207-9-II, at *22-23. Petitioners' argument is unavailing.

Nor should this Court accept review to consider the nonbinding, inapposite foreign authority cited by the Kiwanis Petitioners. Pet. at 21-23. None of the cited cases involves a corporate dissolution survival statute, such as RCW 23B.14.340. *See McCarthy v. Lee*, 230 N.E.3d 1131 (Ohio 2023); *Tsuji v. Fleet*, 366 So. 3d 1020 (Fla. 2023); *Pitt-Hart v. Sanford USD Med. Ctr*., 878 N.W.2d 406 (S. Dak. 2016). Again, rather than barring claims, a survival statute extends the life of a corporation to bestow upon individuals harmed by corporate wrongdoing the

right to assert claims that otherwise would have abated upon corporate dissolution. *See, e.g.*, *Ballard Square*, 158 Wn.2d at 610-11; *Chadwick Farms*, 166 Wn.2d at 196. Petitioners cite no authority—foreign or otherwise—for the proposition that a corporate dissolution survival statute operates to bar vicarious liability claims asserted against ***an active corporation***. And, significantly, the unambiguous language of RCW 23B.14.340 is directly contrary to such a conclusion.

C. The Kiwanis Petitioners Fail to Demonstrate that their Petition Presents an Issue of "Substantial Public Interest"

The Kiwanis Petitioners urge this Court to accept review of the Court of Appeals' holding regarding RCW 23B.14.340 based solely on purported policy considerations. They assert that the Court of Appeals' holding represents "bad public policy" and that the decision has "created uncertainty" for principals of dissolved corporations. Pet. at 26-27. But our legislature, in enacting the unambiguous language of the survival statute, has already addressed the pertinent policy concerns. *See* Pet. at 20

(requesting that this Court grant review to address "public policy considerations"). Because Petitioners have not shown that review is warranted under RAP 13.4(b)(4), this Court should decline to accept review of this issue.

This Court accepts a petition for review "only" if one of the four enumerated standards is met, RAP 13.4(b), including "[i]f the petition involves an issue of substantial public interest that should be determined by" the Court. RAP 13.4(b)(4). The Court has accepted review under that rule when the underlying decision implicates: a vast swath of sentencing proceedings and the potential to chill policy actions by attorneys and judges in other proceedings, *State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903 (2005); questions regarding parental rights under the Indian Child Welfare Act, *In re Adoption of TAW*, 184 Wn.2d 1040, 387 P.3d 636, 636-38 (2016); public safety concerns resulting from the removal of "an entire class of sex offenders" from registration requirements, *Matter of Arnold*, 189 Wn.2d 1023, 408 P.3d 1091, 1092-93 (2017); and the "constantly

changing threat" of and "chaos wrought by COVID-19" in correctional facilities, *Matter of Williams*, 197 Wn.2d 1001, 484 P.3d 445, 446-47 (2021).

The petition filed by the Kiwanis Petitioners presents no such issues. Contrary to Petitioners' assertion, the Court of Appeals' decision was not based on considerations of "policy." Rather, the conclusion reached by the Court is compelled by the unambiguous language of RCW 23B.14.340 itself. And it is for our legislature, not our courts, to address any policy concerns underlying the statute. *See, e.g., Sedlacek v. Hillis*, 145 Wn.2d at 390. Finally, the alleged "uncertainty" for principals resulting from the Court's decision is a red herring. As the Court of Appeals recognized, "the argument that principals should have an expectation that liability would be terminated based on the timeline in RCW 23B.14.340 fails because [the statute] does not even mention principals." *C.C.*, No. 57207-9-II, at *24.

That the corporate dissolution survival statute does not bar claims against the principals of a dissolved corporation is a

necessary conclusion from both the unambiguous language of the statute and this Court's discernment of the legislative intent underlying it. There is no issue of "substantial public interest" for this Court to address. RAP 13.4(b)(4).

D. If This Court Accepts Review, the Court Should Also Review the Court of Appeals' Determination that RCW 23B.14.340 is a Statute of Repose

Although the Court of Appeals correctly concluded that RCW 23B.14.340 does not bar claims against the principal of a dissolved corporation, the Court incorrectly characterized the survival statute as a statute of repose. If this Court accepts review of this issue, the Court should also review the Court of Appeals' determination that RCW 23B.14.340 is a statute of repose.

This Court has recognized that, while "[s]tatutes of repose provide time limits from bringing an action," they "are of a different nature than statutes of limitation." *Bennett v. United States*, 2 Wn.3d 430, 440, 539 P.3d 361 (2023) (internal quotations omitted). "Broadly speaking, a statute of limitation bars [a] plaintiff from bringing an already accrued claim after a

specific period of time. A statute of repose terminates a right of action after a specified time, even if the injury has not yet occurred." *Bennett*, 3 Wn.2d at 440 (internal quotations omitted). In other words, statutes of repose provide "a time period in which the cause of action must accrue—not a time period from accrual to commencement of the action." *Donovan v. Pruitt*, 36 Wn. App. 324, 327, 674 P.2d 204 (1983). Thus, this Court has held that RCW 4.16.310, which terminates claims that have not accrued within six years of construction completion, is a statute of repose. *Wash. State Major League Baseball Stadium Pub. Facilities Dist. v. Huber, Hunt & Nichols Const. Co*., 176 Wn.2d 502, 511, 296 P.3d 821 (2013).

In contrast, RCW 23B.14.340 does not provide a time period in which the claim must accrue; nor does it, unlike a statute of repose, measure the timeliness of claim accrual from the occurrence of the tortious act. *See Bennett*, 2 Wn.3d at 440 (describing former RCW 4.16.350(3)). Instead, the survival statute creates an extended period of time during which already

existing claims can be commenced. RCW 23B.14.340; *Ballard Square*, 158 Wn.2d at 610-11 (explaining that, under the statute, claims against a dissolved corporation are no longer absolutely barred). Because RCW 23B.14.340 speaks to the timeliness of filing an action, not the timeliness of a claim's accrual, it is properly characterized as a statute of limitation, rather than a statute of repose. *See Ballard Square*, 158 Wn.2d at 616 (referring to the statute as providing a "limitations period"); *Chadwick Farms*, 166 Wn.2d at 182 (describing counterpart statute as a "statute of limitations"). *See also Mutual of Enumclaw Ins. Co. v. T & G Const., Inc*., 165 Wn.2d 255, 260, 199 P.3d 376 (2008) (referring to former corporate dissolution survival statute as a "statute of limitations").

The Kiwanis Petitioners' argument that RCW 23B.14.340 bars claims against principals of dissolved corporations is premised on the characterization of the statute as one of repose. Accordingly, if this Court accepts review of this issue, it should

also review the Court of Appeals' determination that the survival statute is a statute of repose.

V. CONCLUSION

By enacting RCW 23B.14.340, our legislature expanded the time period during which individuals harmed by corporate wrongdoing can assert their claims, thus preventing corporations and their "directors, officers, or shareholders" from escaping liability through corporate dissolution. RCW 23B.14.340. Despite that the survival statute nowhere mentions "principals," the Kiwanis Petitioners argue that the statute immunizes the principal of a dissolved corporation against liability. If our legislature had intended to bar such claims, it could have done so. It did not. This Court should decline to accept review of the Court of Appeals' decision that the corporate dissolution survival statute does not bar claims against the principal of a dissolved corporation.

Respectfully submitted this 3rd day of April 2025.

The undersigned certifies that this answer consists of 4,616 words in compliance with RAP 18.17(c)(10).

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