No. 103894-1

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SUPREME COURT
OF THE STATE OF WASHINGTON

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C.C., an individual,

Respondent,

and

A.B., an individual; D.E.F., an individual; M.R., an individual; J.L., an individual; B.F., as guardian for K.F., an individual; C.B., an individual; A.M., an individual,

Plaintiffs,

v.

KIWANIS INTERNATIONAL, a non-profit entity; KIWANIS PACIFIC NORTHWEST DISTRICT, a non-profit entity; KIWANIS OF TUMWATER, a non-profit corporation; KIWANIS OF CENTRALIA-CHEHALIS, a non-profit entity; KIWANIS OF UNIVERSITY PLACE, a non-profit entity; KIWANIS VOCATIONAL HOME, a nonprofit entity; LEWIS COUNTY YOUTH ENTERPRISES, INC. d/b/a Kiwanis Vocational Homes for Youth, a non-profit corporation,

Petitioners,

and

CHARLES McCARTHY, an individual; EDWARD J. HOPKINS, an individual; UNITED WAY OF PIERCE COUNTY, d/b/a CHILDREN'S INDUSTRIAL HOME and/or COFFEE CREEK CENTER; COFFEE CREEK CENTER, a non-profit entity; CHILDREN'S INDUSTRIAL HOME d/b/a COFFEE CREEK CENTER, a non-profit entity; MENTOR HOUSE, d/b/a CHILDREN'S INDUSTRIAL HOME and/or COFFEE CREEK CENTER, a nonprofit entity; STATE OF WASHINGTON; STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, DEPARTMENT OF CHILDREN, YOUTH AND FAMILY SERVICES, CHILD PROTECTIVE SERVICES, governmental entities,

Defendants.

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ANSWER TO C.C.
PETITION FOR REVIEW

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## A. INTRODUCTION

C.C.'s pleading, denominated a "petition for review,"[1] raises an issue from the *unpublished* portion of Division II's opinion that does not merit this Court's review. C.C. fails to carefully analyze the criteria of RAP 13.4(b); review is not merited on the narrow, factually-driven points that C.C. asks this Court to consider. C.C. largely prevailed at Division II on the pertinent legal issues of agency/apparent authority, but now merely raises particular *factual* applications of the broader legal principles from the unpublished portion of Division II's decision for this Court's review. He fails to discuss in any meaningful way any *legal error* Division II allegedly committed.

This Court should only grant the Kiwanis petitioners' petition for review as to the RCW 23B.14.340 issue that Division II recognized was a significant new legal decision by publishing

[1] The Kiwanis petitioners contend that this "petition for review" is not properly before the Court under RAP 13.4(a), (d). Their motion to modify a contrary Clerk's ruling is before the Court.

that portion of its opinion. The Court should deny review as to the narrow factual issue C.C. has surfaced from the unpublished portion of Division II's opinion, as it fails to meet the criteria of RAP 13.4(b).

B. STATEMENT OF THE CASE

The Kiwanis petitioners note the facts and procedure in Division II's published opinion. Op. at 3-16. The sections of C.C.'s petition denominated "identity of petitioner" and "statement of the case," are a one-sided, argumentative recitation of facts, often without any citation to the record, violating RAP 13.4(b)/RAP 10.3(a)(5). This Court should disregard those *arguments*.[2] Some of C.C.'s unsupported factual assertions, however, merit correction.

[2] The fact that the bulk of C.C.'s 31-page "petition for review" is devoted to his one-sided factual narrative fully confirms that he has no real *legal* issues to present to this Court for its review. C.C. doesn't even pretend to address Division II's lengthy, more objective, factual discussion anywhere in his Statement of the Case, but instead rather rambles on with his own one-sided narrative.

Contrary to C.C.'s lengthy argumentative factual recitation, pet. at 7-23, as Division II's opinion notes, KVH was operated by Lewis County Youth Enterprises ("LCYE"), a non-profit corporation; LCYE created and owned KVH. Op. at 3. LCYE, not any of the Kiwanis petitioners, owned KVH's land, facilities, and equipment; LCYE hired the executive director; and paid the staff. CP 1176 (stating that "neither Kiwanis International nor individual Club [sic] has any ownership interest in the boys home and land on which it operates, nor does it have any obligation or commitment to operational support and funding").

LCYE had both a board of directors and an advisory board, Division II referred to the latter as the KVH Board. Op. at 8-11. The LCYE corporate board did not control day-to-day operations; its 1989 bylaws stated: "The role of the Board shall be to set general policy and guidelines for the operation of individual group homes, not to become involved in the direct management and operation of the homes." CP 1298. The LCYF

bylaws specifically provided:

> Recognizing the fact that Mr. McCarthy founded the home and has been its only director, Mr. McCarthy shall continue to have broad authority and discretion in the operation of the home, including authority to hire and to fire personnel and contract for professional assistance. The role of the Board shall be to set general policy and guidelines for the operation of individual group homes, not to become involved in the direct management and operation of the homes.

CP 1299, 1832.

Perhaps most critically, C.C. never demonstrated below that the Kiwanis petitioners controlled in any way the specific conduct out of which liability to C.C. allegedly arose. They did not own the KVH land or buildings or hire, discipline, or fire the staff, CP 1176, 1265, nor did they select the boys placed at KVH (the State did – CP 1319-38), control programs there, or supervise the boys at the group home. CP 1343, 1345, 1347. The State licensed KVH; it even approved McCarthy's appointment as KVH's executive director, CP 1645-46, and directed the firing of KVH staff. CP 1350. The State, not the Kiwanis petitioners,

paid for the boys' residency at KVH. CP 1177, 1223, 1225, 1227, 1230. The Kiwanis petitioners did not abuse the boys at the group home; McCarthy, Cornwell, and others allegedly did.

The Kiwanis entities were service club boosters for what they thought was a worthy charitable organization; local Kiwanis clubs took up their own service projects. CP 1124, 1126-27. KVH, like the Salvation Army and the Boy Scouts, was an object of the Kiwanis entities' good works. CP 1146-47. But that did not transform KVH's two boards of directors into the Kiwanis petitioners' "agents."

As for apparent authority, the case law on the elements of that doctrine is clear. Op. at 35-36. Because Kiwanis appeared in the KVH name, it is important to note that until 1989, KVH's use of the Kiwanis name and logo violated Kiwanis rules. CP 1123, 1193, 1197, 2592. Moreover, there is no evidence that C.C. himself accepted placement at KVH in reliance upon an alleged affiliation of KVH with Kiwanis. Similarly, the State did not rely on any Kiwanis affiliation for placement of boys at KVH; once

KVH changed its name, the State *continued* to place boys in the group home. CP 1425, 1427, 1569.

The separate KVH advisory board was *advisory*, CP 1272, 1277, 1279, providing fundraising and advice. While its bylaws stated that "All Directors shall be Kiwanians," CP 2603, some of the clubs had the ability to *nominate* members to fill two board seats; directors were elected by a majority vote of the board of directors. They were neither elected nor removable by the Kiwanis petitioners. Resp't br. at 17-18.

From this relationship between the Kiwanis petitioners and LCYE's board and the advisory board, C.C. argued that the Kiwanis petitioners were "principals" as to KVH's board and therefore vicariously liable for activities at KVH. Specifically, C.C. claimed that the Kiwanis petitioners were derivatively liable as the actual or apparent principals for the negligence of the LCYE board, the advisory board, and the boards' directors. Op. at 4.

As with apparent authority, the principles governing the

existence of an agency relationship are clear. Op. at 24-27. C.C. is not contending in his "petition for review" that the Kiwanis petitioners had any *direct liability* to him. The putative liability of the Kiwanis petitioners to C.C. is *vicarious* only.

C.C. does not claim that the Kiwanis petitioners were in any kind of special relationship with him under the *Restatement (Second) of Torts* § 315,[3] nor that any Kiwanis petitioner engaged in actual abusive conduct. The trial court specifically ruled that the Kiwanis petitioners had no special protective relationship with C.C. or any of the actual intentional tortfeasors like McCarthy and Cornwell and therefore no *direct liability* existed. CP 3621. *C.C. never appealed the trial court's dismissal of his direct liability claims against the Kiwanis petitioners based on a*

[3] No Kiwanis entity had the requisite day-to-day operational control over KVH for direct liability to meet the requirements of *Restatement* § 315. *N.K. v. Corp. of Presiding Bishop of Church of Jesus Christ of Latter Day Saints*, 175 Wn. App. 517, 535, 307 P.3d 730 (2013).

*special relationship*. This ruling is final. Resp't br. at 30-31.[4]

In sum, C.C.'s argument does not involve direct abuse on the part of any Kiwanis-affiliated board member. Rather, it is the alleged failure of the boards to properly conduct corporate affairs that is the gravamen of his present action, an action foreclosed by RCW 23B.14.340, as the Kiwanis petitioners have asserted in their February 25, 2025 petition for review.

The KVH advisory board was administratively dissolved on May 17, 1991; LCYE was administratively dissolved on June 1, 2010. Op. at 18.[5] *See R.N. v. Kiwanis Int'l*, 19 Wn. App. 2d

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[4] In responses to RAP 10.8 submissions by the Kiwanis petitioners in Division II, C.C. attempted to argue that the boards had more than derivative liability as to the abuse of KVH residents by Charles McCarthy. C.C. contended that the Kiwanis petitioners' alleged "agents" on the boards negligently breached their special relationship duties to protect C.C. while he was at KVH. (8/24/23 response at 1-2; 4/24/24 response at 1-2). That argument was contrary to the trial court's ruling on direct liability and should have been the subject of a cross-appeal C.C. *never filed*.

[5] Any claims against the corporation or its board members needed to have been filed by May 17, 1993 under RCW 23B.14.340. Any claims against LYCE or its board members

389, 404, 496 P.3d 748 (2021), *review denied*, 199 Wn.2d 1002 (2022) (stating that "the period for filing claims against LCYE expired in 2013"). C.C. did not file his cause of action against the Kiwanis petitioners until July 29, 2020. CP 1-36.

Strangely, C.C. also glides past the fact that he tried his case against the McCarthy Estate and Cornwell. The jury awarded him a $375,000 verdict. C.C. is equally silent on the fact that he and other claimants settled claims against McCarthy/Cornwell and the State of Washington for millions of dollars. The reasonableness of those settlements is the subject of the separate appeal by his counsel in *M.A. v. Kiwanis Int'l*, (Cause No. 58574-0-II).

C. ARGUMENT WHY REVIEW SHOULD BE DENIED

In seeking review of an aspect of the unpublished portion of Division II's decision, C.C. is not particularly clear as to what Division II's opinion actually entailed. Although *numerous* trial

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had to be filed by June 1, 2013.

courts concluded, like the *C.C.* trial court, that KVH residents failed to prove that the Kiwanis petitioners had an agency relationship or apparent authority relationship with KVH because of their putative relationship with two corporate boards, Division II concluded that there were fact issues as to Kiwanis International's control of LCYE boards. The court discerned no actual control over the LCYE boards by the Kiwanis district organization, or the local Kiwanis clubs. Op. at 26-35. That court also concluded that there was apparent authority on the part of the International and the local clubs as to the boards, but not the district organization. *Id*. at 35-39.

As the Court can readily discern, the bulk of C.C.'s petition is devoted to his *re-argument of the facts*, pet. at 1-22, and his discussion of the law and why review is merited are but an afterthought. Pet. at 23-30. This Court is ordinarily not about the business of rehashing factually-driven points from the Court of Appeals; the Washington Supreme Court is not an "error-correcting" court, but a court that sets legal precepts.

C.C. does not contend that Division II misapplied the law. *Id*. at 25-29. He cannot because he largely prevailed on agency/apparent authority with Division II recognizing that these were factually-driven issues, and questions of fact were present as to some of the Kiwanis petitioners.[6] Where Division II made factually-driven applications of agency and apparent authority principles, C.C. does not really demonstrate how Division II's application of well-established legal principles to the facts in the unpublished portion of its decision meets the review criteria of RAP 13.4(b). Review is not merited under RAP 13.4(b)(1)-(2) as to the narrow, factually-driven issues from the unpublished portion of Division II's decision.[7]

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[6] The Kiwanis petitioners disagree with Division II's argument that there were fact issues on agency or apparent authority vicarious liability and will vigorously contest that argument at trial, if necessary.

[7] The uniform rule in Washington is that a principal cannot be vicariously liable *as a matter of law* for the sexual misconduct of subordinates because such conduct is so plainly outside the scope of the agency or employment relationship as a matter of law. *Niece v. Elmview Group Home*, 131 Wn.2d 39, 53, 929 P.2d

C.C. tries to argue that RAP 13.4(b)(4) also requires review in this case, pet. at 30, but this argument, too, is simply an afterthought. He asserts that other Kiwanis cases may be affected. But his argument is meritless. Clearly, Division II's *unpublished* opinion has given some guidance to trial courts on agency/apparent authority in the KVH cases. If review is denied, the unpublished portion of Division II's opinion does not even necessarily foreclose other claimants from arguing about all the

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420 (1997); *C.J.C. v. Corp. of Catholic Bishop of Yakima*, 138 Wn.2d 699, 718-19, 985 P.2d 262 (1999); *Evans v. Tacoma Sch. Dist. No. 10*, 195 Wn. App. 25, 38, 380 P.3d 553 (2016); *R.K. v. United States Bowling Congress*, 27 Wn. App. 2d 187, 203-04, 531 P.3d 801 (2023) (no vicarious liability or actual agency or apparent authority as a matter of law); *Sanchez v. Aberdeen Sch. Dist. No. 5*, 2023 WL 2682115 (W.D. Wash. 2023) at *5 (court dismissed claims of student who allegedly was sexually assaulted by a teacher). Division II treated this key issue only in passing and failed to cite any of these pertinent authorities. Op. at 30-31. Division II reasoned that although this was a case where the Kiwanis petitioners were only vicariously liable that vicarious liability extended only to the boards' negligence, not to the sexual/physical misconduct proximately resulting from the negligence. The court offered no authority supporting its truncation of the vicarious liability.

Kiwanis petitioners' liability as the unpublished portion of the opinion is not precedent, but merely persuasive authority. GR 14.1(a). More to the point, C.C. will be able to go to trial against Kiwanis entities on agency/apparent authority.

By contrast, the Kiwanis entities will be deprived of any chance to raise the corporate dissolution statute of repose issue, recognized by so many trial judges,[8] if the Kiwanis petitioners' petition for review is denied as to RCW 23B.14.340.

C.C. simply fails to meet the requirement of RAP 13.4(b)(4) in arguing a narrow *fact* issue here. A factually-driven issue from a portion of an unpublished Court of Appeals decision

[8] Multiple trial judges in cases brought by KVH residents against the Kiwanis petitioners concluded that RCW 23B.14.340 barred all claims against the Kiwanis petitioners, as did the trial court in this case. *See, e.g., N.P. v. Kiwanis Int'l* (Pierce County Superior Court No. 21-2-05153-9); *Beglinger v. Kiwanis Int'l* (Pierce County Superior Court No. 22-2-0519-1); *T.S. v. Kiwanis* (Pierce County Superior Court No. 20-2-05375-4); *R.N. v. Kiwanis Int'l* (Thurston County Superior Court No. 15-2-00383-3). That so many jurists believed that RCW 23B.14.340 barred claims like C.C.'s only reinforces the need for a definitive ruling from this Court on the statute's application.

does not qualify as an issue of substantial public interest meriting this Court's review.

## D. CONCLUSION

C.C.'s "petition for review" is more in the nature of a calculated effort to enlarge upon his factual narrative unconstrained by the page limitations for a RAP 13.4(d) answer to a petition for review. He hopes that by offering his factually driven "petition for review," a diversionary smoke screen, this Court might be deterred from granting review of a real legal issue with significant statewide impact – the application of the corporate dissolution state of repose.

Nothing offered by C.C. should dissuade this Court from granting review on the RCW 23B.14.340 issue, and affirming the trial court's dismissal of the Kiwanis petitioners because they cannot be held vicariously liable for the actions of LCYE's boards where RCW 23B.14.340's statute of repose barred claims predicated on the actions of a long-dissolved corporation, its boards, and its management.

On the narrow, factual issues raised by C.C. from the unpublished portion of Division II's opinion, this Court should deny review. RAP 13.4(b).

This document contains 2,584 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 17th day of April, 2025.

Respectfully submitted,

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DECLARATION OF SERVICE

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

DATED: April 17, 2025 at Seattle, Washington.

/s/ Brad Roberts
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**TALMADGE/FITZPATRICK**

**April 17, 2025 - 11:30 AM**

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**Comments:**

Answer to C.C. Petition for Review

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