Supreme Court NO.
COA No. 86659-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

PEDRO NAVARRO,

PETITIONER,

v.

KING COUNTY SHERIFFS OFFICE;
DEPUTY SPENCER BOYD,

RESPONDENTs.

PEDRO NAVARRO'S PETITION FOR REVIEW

On Appeal From King County Superior Court
Hon. David Whedbee, presiding

Pedro Navarro, Pro Se Appellant
Phone: 206-742-2820
Email: navarropedro2019@gmail.com

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A. INTRODUCTION

Petitioner Pedro Navarro (hereinafter "Navarro") sued the King County Sheriff's office and Deputy Spencer Boyd for a constitutional tort, for conducting an illegal traffic stop and detaining Navarro without reasonable suspicion of a crime. The trial court ultimately dismissed the case on respondence ***CR 12(b)*** motion and pursuant to a division one case ***Blinka v. Washington State Bar Ass'n***, 109 Wn. App. 575, 36 P.3d 1094 (2001). The court of appeals division one affirmed the trial court's dismissal and denied overturning the *Blinka* decision in an unpublished opinion.

The very nature of this case calls for review under ***RAP 13.4(b)(1) – (4)*** because the *Blinka* decision is in conflict with the decision of this court in ***Seattle School Dist. V. State***, 90 Wn. 2d 476, 496-97, 585 P.2d 71 (1978) (En Banc); the *Blinka* decision also is in conflict with the division two case ***Spurrell v. Block***, 40 Wn.App. 854, 701 P.2d 529 (1985); this case

involves a significant question of law under the constitution of the state of Washington, whether a constitutional tort should be recognized under the state constitution and the mandatory nature of the constitution; this case also involves an issue of substantial public interest and should be determined by the Supreme Court, since the public has substantial interest in a determination of whether the public has a constitutional right to a constitutional tort.

The court of appeals' opinion directly conflicts with a generation of cases from this court and the court of appeals,. The court of appeals opinion erroneously resolves the constitutional issue. If left standing, the opinion essentially renders prior cases from this court and other court of appeals divisions meaningless, and completely ignores our founding fathers mandatory nature of the constitutional provisions. See ***Seattle School Dist. V. State***, 90 Wn. 2d 476, 496-97, 585 P.2d 71 (1978) (En Banc); ***Wash. Const. Art. 1, Sec. 29***. Review is proper under ***RAP 13.4(b)(1) – (4)***.

B. IDENTITY OF PETITIONER

Pedro Navarro, petitioner and appellant below, asks this court to accept review of the decision designated in section C, *infra*.

C. DECISION BELOW

Pedro Navarro seeks review of the unpublished opinion of the court of appeals in ***Navarro v. King Cnty. Sheriff's Office***, No. 86659-1-I, issued on November 19, 2024. Appendix A.

D. ISSUES PRESENTED FOR REVIEW

1. The constitutional tort and the ***Blinka v. Washington State Bar Ass'n,*** decision should be overturned.

   a. Does the mandatory provision ***Art.1, Sec. 29*** of the Washington State Constitution recognize a cause of action for constitutional tort in the constitution itself and Should the court of appeals have overturned the *Blink* decision because the *Blinka* decision was wrongly decided.

2. Common Law cause of action for constitutional tort

   a. Does the common law recognize a cause of action for constitutional tort.

3. Restatement of second torts cause of action for constitutional torts.

    a. Does the restatement of second torts recognize a cause of action for constitutional torts.

4. ***Article 1, Section 7*** of the Washington state constitution.

    a. Does ***Article 1, Section 7*** of the Washington state constitution provide greater protection in the civil context then the federal counterpart.

E. STATEMENT OF THE CASE

This incident arose from a traffic stop initiated against Navarro by King County Sheriff's Office deputy Spencer Boyd. No citation or fine resulted.

On February 8, 2023 at around 11:30 AM Navarro got off work in Renton and started driving home to Burien in his BMW. CP 10 at 2. Navarro stopped at jack in the box in Burien and then drove east on 128th street. CP 10 at 2.

Navarro then made a right turn onto 8th Ave. CP 10 at 3. The Police vehicle subsequently followed Navarro on to 8th Ave and immediately activated his emergency lights to initiate a traffic stop. CP 10 at 3.

Navarro then pulled his vehicle over and began to film the encounter. CP 10 at 10. Respondent told Navarro he was driving under the speed limit at 21 mph for the last 3 miles. CP 10 at 3. Navarro responded that he was going 30 mph. CP at 3. Respondent then asked Navarro if he had been using drugs or alcohol, and then asked for Navarro's license, registration, and insurance. CP 10 at 3.

Navarro then refused to answer any further questions and defendant went back to his patrol car to run a check on Navarro and his license. CP 10 3. Respondent then walked back to Navarro's car and stated that he was letting Navarro go with a warning but he could give him a ticket for reckless driving, acting like he was doing Navarro a favor, Navarro then told defendant no he could not. CP 10 at 4.

The next day Navarro lodged a complaint with Deputy Boyd's sergeant and with the internal investigation unit, Then subsequently filed a tort claim with the King County Sheriff's Office and then filed this lawsuit which is the subject of this appeal.

1. Procedural History

On August 22, 2023, Navarro filed a complaint and summons in the King County Superior Court against the King County Sheriffs office and Deputy Spencer Boyd. CP 1. On August 25, 2023, Navarro filed a motion to amend complaint. CP 4. The court granted the motion to amend that same day August 25, 2023. CP 5. On September 5, 2023, Navarro filed the amended complaint. CP 10.

On September 26, 2023, respondents filed notice of petition for removal to U.S. District Court. CP 12-15. Navarro ultimately filed another motion to amend complaint in the U.S. District Court of Western Washington to withdraw his federal

constitutional rights claims and to transfer the complaint back down to the King County Superior Court. CP 19.

On December 14, 2023, respondents filed a motion to dismiss. CP 22. On February 16, 2024, the trial court held a hearing on the motion to dismiss and ultimately granted the motion to dismiss due to a division one decision in *Blinka.*

On February 22, 2024, Navarro filed a notice of appeal directly to this court. CP 30. Navarro then filed a Statement of Grounds for direct review in this court, under cause number 102823-7. This court ultimately transferred the appeal to the Court of Appeals Division one.

On November 19, 2024, the Court of Appeals division one issued an unpublished opinion affirming the trial courts dismissal and holding that there is not constitutional torts in Washington. On November 25, 2024, Navarro filed a motion to reconsider. On December 9, 2024, the Court of Appeals ordered the respondents to submit an answer to the motion for reconsideration. On February 6, 2024, respondents filed a

answer to the motion for reconsideration, but failed to answer the newly discovered precedent from this court. Despite respondent failure to adequately answer Navarro's motion for reconsideration, on February 18, 2024, the court of appeals denied the motion for reconsideration.

Navarro seeks review in this court

F. REASONS WHY REVIEW SHOULD BE GRANTED

1. The Court Should Accept Review of the constitutional tort issue

The *Blinka* decision from the court of appeals division one is in direct conflict with decade old decisions from this court in ***Seattle School Dist. V. State,*** 90 Wn. 2d 476, 496-97, 585 P.2d 71 (1978) and ***Group Health Cooperative v. King County Medical Society***, 39 Wn. 2d 586, 656, 237 P.2d 737 (1951) and division two of the court of appeals decisions in ***Spurrell v. Block***, 40 Wn.App. 854, 701 P.2d 529 (1985). The *Blinka* decision rested on an Oregon Supreme Court Decision that held "without the aid of argumentative legislation, it would

decline to recognize a constitutional tort for alleged violations of the Washington Constitution." ***Blinka,*** 109 Wn.App. at 591. Despite the Oregon Constitution not having similar provisions as the Washington Constitution, in particular a "mandatory provision, when there's other states that have similar constitutional provisions as Washington and their courts have held that there is a cause of action for constructional torts[1]."

This court in ***Seattle School Dist. V. State***, has held that the ultimate power to interpret, construe and enforce the constitution of this State belongs to the judiciary. ***Seattle School***

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[1] ***Binette v. Sabo***, 244 Conn. 23, 33, 710 A.2d 688 (1998) (holding state constitutional damages remedy exists); ***Bott v. DeLand***, 922 P.2d 732, 737-39 (1996) (holding state constitutional "unnecessary rigor" clause regarding cruel and unusual punishment created damages remedy); ***Gay Law Students Ass'n v. Pacific Tel. Tel. Co.***, 24 Cal.3d 458, 595 P.2d 592, 602 n. 10, 156 Cal.Rptr. 14 (1979) ("The absence of such an administrative remedy, however, provides no justification for the judiciary to fail to enforce individual rights under the state Constitution."); ***Walinski v. Morrison & Morrison***, 60 Ill. App.3d 616, 377 N.E.2d 242 (1978) (holding civil action for damages may be maintained for violation of state constitutional rights); ***Moresi v. State***, 567 So.2d 1081, 1093 (La. 1990) (In accepting the Bivens damage remedy, the court stated that "[r]ecovery of damages is the only realistic remedy for a person deprived of his right to be free from unreasonable searches and seizures."); ***Phillips v. Youth Dev. Program, Inc.***, 390 Mass. 652, 459 N.E.2d 453, 457 (1983) ("a person whose constitutional rights have been interfered with may be entitled to judicial relief even in the absence of a statute providing a procedural vehicle for obtaining relief"); ***Strauss v. State***, 131 N.J. Super. 571, 330 A.2d 646, 649 (1974) ("our [state] courts do recognize tort actions based upon violations of an individual's constitutional rights"); ***Corum v. University of N. Carolina***, 330 N.C. 761, 413 S.E.2d 276, 290 (1992) ("It is the state judiciary that has the responsibility to protect state constitutional rights of the citizens; this obligation to protect the fundamental rights of individuals is as old as the State . . . Having no other remedy, our common law guarantees plaintiff a direct action under the State Constitution for alleged violations of his constitutional freedom of speech."); ***Widgeon v. Eastern Shore Hosp. Ctr.***, 300 M.D. 520, 479 A.2d 921 (1984) (holding common law action for damages available to enforce state constitutional rights); ***Woodruff v. Board of Trustees***, 173 W. Va. 604, 319 S.E.2d 372 (1984) (mandamus with back pay available to enforce state constitutional rights).

Dist. V. State, 90 Wn. 2d at 496-97 (En Banc) (The effects of a judicial interpretation of the constitution may not be modified or impaired in any way by the legislature.). Which means that it's the judiciary's responsibility to create a constitutional remedy for violation of the mandatory rights guaranteed by the state constitution, not the legislatures.

In ***Seattle School Dist. V. State***, this Court interpreted ***Art. 9, Sec. 1*** of the Washington Constitution and our Supreme Court determined that ***Art. 1, Sec. 29***, the mandatory nature of the constitution requires judicial enforcement, and stated:

> *when it comes to considering individual rights such as* are protected by the guaranties, that the *right to trial by jury* shall remain inviolate; that *no person shall be deprived of life, liberty or property without due process of law; that no law shall grant to any citizen or class of citizens privileges or immunities* which upon the same terms shall not equally belong to all citizens; *and many other constitutional guaranties that look to protection of personal rights, the courts have ample power*, and will go to any length within the limits of judicial procedure, *to protect such constitutional guaranties.* ***Seattle School Dist***, 90 Wn. 2d at 501.

This Court thus has recognized that the judiciary has ample power to protect constitutional provisions that look to protection of personal "guaranties." ***Seattle School***, 90 Wn. 2d at 502 ("At this late date in our judicial history we doubt that one could seriously contend any of the foregoing [constitutional rights] do not set forth judicially enforceable affirmative duties of the State.)[2] Equally illogical would be a rule that a mandatory constitutional provision placing an affirmative "paramount duty" on the [government]... is not judicially enforceable. ***Seattle School Dist.***, 90 Wn. 2d at 502.

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[2] It is of interest that appellants would attempt to belittle the importance of judicial action in the constitutional areas enunciated. For example, it appears to be suggested that "of course" they are unquestionably addressed to the judiciary and are to be implemented by the judiciary. Thus, it is said that even though stated affirmatively they have an important negative aspect and thus are conditional in nature. So, if the State fails to provide the constitutionally required public trial, jury, bail or free counsel the negative conditional nature of the constitutional provision authorizes the court to inject itself as it would in the case of self-executing provisions. This merely ignores the role of judicial interpretation. Nothing in the constitution suggests that these enumerated constitutional sections are "unquestionably" addressed to the judiciary. They are so treated by reason of *judicial interpretation*, a fact appellants ignore. Nothing in the constitution suggests that although stated affirmatively these constitutional sections are in fact negative and conditional in nature, unless that result is achieved solely by *judicial interpretation;* again, a fact that appellants ignore. In fact, the judiciary can and does enforce these provisions based upon a longstanding *interpretation* that the power so to do rests with the judiciary. ***Seattle School Dist.***, 90 Wn. 2d at 503 fn. 6

The court recognized the need to protect those constitutional guarantees of a personal nature. ***Seattle School Dist.***, 90 Wn. 2d at 502-03. This court explicitly held that the power of the judiciary to enforce rights recognized by the constitution, even in the absence of implementing legislation, is clear. ***Seattle School Dist.***, 90 Wn. 2d at 503 n.7. This means that the *Blinka* decision requirement that the courts will not interpret and enforce mandatory constitutional provisions without the aid of argumentative legislation, is in direct conflict with this court's precedence.

In ***Group Health Cooperative v. King County Medical Society***, this court held that "A cause of action arises when one party breaches a duty owed to another party, whereby the latter's interest or right is invaded." ***Group Health Cooperative,*** 39 Wn. 2d 656.

Also, contrary to the *Blinka* court's assertion, no Washington Supreme Court case has declined to recognize a private right of action for constitutional violations. See ***Reid v.***

Pierce County, 136 Wn. 2d 195, 214, 961 P.2d 333 (1998)(The Washington Supreme Court held "we reserve the question of whether a plaintiff may maintain a civil cause of action for violation of our state constitution for another day" because the same relief was granted on non-constitutional grounds); ***Benjamin v. Wash. State Bar Ass'n***, 138 Wn. 2d 506, 980 P.2d 742 (1999)(the Washington Supreme Court held that *Benjamin's* constitutional rights were not violated, so there was no need to decide whether a cause of action for constitutional violations is permitted. But the simple fact that the Supreme court entertained the possibility *Benjamin's* rights might have been violated leads to the conclusion that there would have been a cause of action had *Benjamin's* rights been violated, or else the supreme court would have determined that a cause of action did not exist for constitutional violations before it decided whether *Benjamins* rights were violated or not).

Furthermore, the *Blinka* court misinterpreted and erroneously relied on a division two case in ***Spurrell v. Block***,

40 Wn.App. 854, 701 P.2d 529 (1985). In ***Spurrell v. Block***, the court reversed and remanded back to the trial court on the constitutional violation of false arrest, which is a violation of ***Art. 1 Sec. 7***, the same constitutional provision that Navarro is claiming was violated here. ***Spurrell***, 40 Wn. App. At 864. The ***Spurrell*** decision allowed for a cause of action for constitutional violation of unlawful arrest, contrary to the *Blinka* courts assertion.

Justice Sanders dissenting stated: Although the state constitution doe not explicitly include a mechanism for redressing violation of state constitutional rights. Where the constitution grants a right it is incumbent upon the judiciary to provide a remedy. ***Benjamin***, 138 Wn. 2d at 548. Ever since Marbury v. Madison, the rule has been as Chief Justice John Marshall stated it: "[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." Marbury v. Madison, 5 U.S. 137, 163, 1 Cranch 137, 2 L.Ed. 60 (1803).

Finally, the court of appeals did not even address the mandatory nature of the constitution in their decision in the present appeal despite Navarro arguing the mandatory nature of the constitution in his opening brief nor did the *Blinka* court address the mandatory nature of the constitution when it decided *Blinka*.

This court should accept review of the constitutional tort issue under ***RAP 13.4(b)(1)-(4)***.

2. *This Court Should Accept Review of the Common Law Issue*

Since the adoption of ***RCW 4.04.010*** in 1862 this court as recognized that Washington state is governed by the common law to the extent the common law is not inconsistent with constitutional, federal, or state law. ***Potter v. Wash. State Patrol***, 165 Wn. 2d 67, 76, 196 P.3d 691 (2008) (citing ***RCW 4.04.010***). Which has been in effect for 27 years before the framers of our state constitution met at

the convention. Early in our states history, this Court construed **RCW *4.04.010*** to mean that:

> In the absence of governing statutory provisions, the courts will endeavor to administer justice according to the promptings reason and common sense, which are the cardinal prompting of the common law; but will not blindly follow the decisions of the English courts as to what is the common law without inquiry as to their reasoning and application to circumstances.

Parentage of L.B, 155 Wn. 2d 679, 689, 122 P.3d 161 (2005) (citing ***Bernot v. Morrison***, 81 Wash. 538, 544, 143 P. 104 (1914) (citing ***Say Ward v. Carlson***, 1 Wash. 29, 23 P. 830 (1890))).

Washington courts have also construed this statute to permit the adoption of the common law to address *gaps* in existing statutory enactments, providing that the common law may serve to "fill interstices that legislative enactments do not cover." ***Parentage of L.B***, 155 Wn. 2d at 689 (citing ***Department of Social & Health Services v. State Personnel Board***, 61 Wn. App. 778, 783-84, 812 P.2d 500 (1991), cited

with approval in ***Clark Cty. Public Utility Dist. No. 1 v. I.B.E.W.***, 150 Wn. 2d 237, 245, 76 P.3d 248 (2003)).

The Judiciary's responsibility to provide a remedy for the violation of constitutional rights and the prohibition against unlawful search and seizure reaches to the deepest roots of American Jurisprudence. The principle that for every right there must be a remedy begins with the ***Magna Carta*** in 1215, which was later incorporated into the common law by ***Lord Coke***[3] and has been a part of Washington state's statutory law since 1854.

There is historical support to show that the right against unlawful search and seizure have common law antecedents warranting a tort remedy for invasion of the rights they

[3] ***Lord Coke*** completely transformed Henry III's 1225 "reissue" of the 1215 Charter that John signed at Runnymede, changing it from a long-neglected "utilitarian...legal document" into "something intangible and ideal, a symbol for the essential principles of The English constitution, a palladum of English liberties." McKechnie, William L., ***Magna Carta: A commentary***, at 120 (2nd ed. 1914). *Coke* succeeded literally "reading into the *Magna Carta* the entire body of common law of the seventeenth century, of which he was admittedly a master." *Id.* At 178.

recognize. Moreover, implying a damage remedy here is consistent with the purposes underlying the duties imposed by these provisions and is necessary and appropriate to ensure the full realization of the rights they state *see* ***Bivens v. Six Unknown Named Agents of The FBI,*** 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971) [Harlan, J., concurring].

Included in the common law inherited by the United States was the concept that for every right there must be a remedy. The United States Supreme Court relied upon ***Marbury v. Madison,*** 5 U.S. 137, 163 in recognizing a common law cause of action for the violation of federal constitutional rights in *Bivens*. ***Bivens,*** 403 U.S. 388, 395.

As the Michigan court of appeals explained: "Constitutional rights serve to restrict government conduct. These rights would never serve this purpose if the state could use governmental immunity to avoid constitutional

restrictions." *Burdette v. Michigan*, 166 Mich. App. 406, 421 N.W.2d 185 (1988).

Without providing citizens with the ability to redress constitutional violations gives government agencies and their employees de facto immunity and allows the government to violate citizens' rights without consequences or limitations. Without a remedy to address constitutional violations, the state constitution has no meaning and the rights the founding fathers intended to provide to it's citizens are meaningless.

In the court of appeals opinion that court stated that Navaro could receive the appropriate relief under the common law but did not remand back to the trial court despite the trial court dismissing the cause of action with prejudice nor did the court of appeals hold that there was a common law right for constitutional violations despite Navarro arguing it in his opening brief. But the court nevertheless stated in *dicta* that Navarro could receive the appropriate relief under the common

law but did not give Navarro the opportunity to by reversing the trial court's dismissal order.

This court should accept review of the constitutional tort issue under ***RAP 13.4(b)(1)-(4)***.

3. This Court Should Accept review of the Restatement of Second Tort Issue

The existence of an implied remedy for constitutional violations is supported by section 874A ***Restatement of Tort (Second)***, a provision upon which this court expressly relied. See ***Bennett v. Hardy***, 113 Wn.2d 912, 920, 784 P.2d 1253 (1990) (Creating an implied cause of action for age discrimination). ***Restatement Second of Tort***, *§ 874A*, and comment thereto, discuss circumstances when legislative enactments or constitutional provisions can create or should create private causes of actions. ***Restatement Second of Tort***, *§ 874A*, provides as follows:

> When a legislative provision protects a class of persons by proscribing or requiring certain conduct, but does not provide a civil remedy for the violation, the court may, if it determines

that the remedy is appropriate in the furtherance of the purpose of the legislation and needed to assure the effectiveness of the provision, accord an injured member of the class a right of action, using a suitable tort action or a new cause of action analogous to and existing tort action.

Comment A defines "legislative provision", in part, as "...it also includes constitutional provisions...". Thus, the drafters of the *Restatement* understood that contemporary tort law includes a set of remedies for violations of state constitutions.

Under *Comment H*, the Restatement lists a number of factors that the court should consider in determining whether it should provide a tort remedy.

The court of appeals did not even address the ***Restatement Second of Tort*** issue despite Navaro arguing it in his opening brief. This court should adopt ***Restatement Second of Tort***, *§ 874A* as prevailing law in Washington state as it pertains to an implied cause of action for constitutional violations.

This court should accept review of the constitutional tort issue under ***RAP 13.4(b)(1)-(4)***.

4. *This Court Should Accept Review of the Issue Whether Art. 1, Sec. 7 Provides Greater Protection Then the Federal Counterpart in the Civil Context*

A *Gunwall* analysis has been required only in cases where Appellant claims a state constitutional interpretation different from the federal constitution.[4] ***State v. Gunwall***, 106 Wn. 2d 54, 720 P.2d 808 (1986).

In the case at bar, Navarro claims that *Art. 1, § 7* provide greater protection than the *4th Amendment* of the United States Constitution.

The language of the six *Gunwall* factors focuses on the difference in the constitutional texts. The following nonexclusive criteria are relevant in determining whether, in a

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4 The courts jurisprudence concerning state constitutional interpretations and the application of *Gunwall* is often confusing and inconsistent. See *Seattle University Law Review*, 21:1187 (1998)(analyzing 108 Supreme Court opinions that referred to *Gunwall* and recognizing "a surprising divergence theory and practice").

given situation, the Washington State Constitution should be considered as extending broader right to its citizens then the United States Constitution.

1. *The textual language of the state constitution.* The text of the state constitution may provide cogent grounds for a decision different from that which would be arrived at under the federal constitution. It may be more explicit or it may have no precise federal counterpart at all.

2. *Significant differences in the texts of parallel provisions of the federal and state constitutions.* Such differences may also warrant reliance on the state constitution. Even where parallel provisions of the two constitutions do not have meaningful differences, other relevant provisions of the state constitution may require that the state constitution be interpreted differently.

3. *State constitutional and common law history.* This may reflect an intention to confer greater protection from the state government than the federal constitution affords from the federal government. The history of the adoption of a particular state constitutional provision may reveal an intention that will support reading the provision independently of federal law.

4. *Preexisting state law.* Previously established bodies of state law, including statutory law, may also bear on the granting of distinctive state constitutional rights. State law may be responsive to concerns of its citizens long before they are addressed by analogous constitutional claims. Preexisting law can thus help to define the scope of a constitutional right later established.

5. *Differences in structure between the federal and state constitutions.* The former is a grant of enumerated powers to the federal government, and the latter serves to limit the sovereign power which inheres directly in the people and indirectly in their elected representatives. Hence the explicit affirmation of fundamental rights in our state constitution may be seen as a guaranty of those rights rather than as a restriction on them.

6. *Matters of particular state interest or local concern.* Is the subject matter local in character, or does there appear to be a need for national uniformity?[5] The former may be more appropriately addressed by resorting to the state constitution.

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[5] For example, the United States Supreme Court upheld local concerns in *Coyle v. Smith*, 221 U.S. 559, 55 L.Ed. 853, 31 S.Ct. 688 (1911) (each state has the power to locate its own seat of government, to determine when and how it shall be changed from one place to another, and to appropriate its own public funds for that purpose) and *Cooley v. Board of Wardens*, 53 U.S. (12 How.) 299, 13 L.Ed. 996 (1851) (pilotage does not require uniform national rule).

This court has already held that ***Article 1, Sec. 7*** provides greater protect to an individual's rights in the criminal context then the federal counterpart. ***State v. Parker***, 139 Wn. 2d 486, 493, 987 P.2d 73 (1999)(citing ***State v. Ferrier***, 136 Wn.2d 103, 111, 960 P.2d 927(1998) ; ***State v. Hendrickson***, 129 Wn.2d 61, 69 n. 1, 917 P.2d 563(1996); ***State v. Young***, 123 Wn. 2d 173, 180, 867 P.2d 593 (1994); ***State v. Stroud***, 106 Wn. 2d 144, 148, 720 P.2d 436 (1986); ***State v. Williams***, 102 Wn.2d 733, 741-42 , 689 P.2d 1065(1984); ***State v. Myrick***, 102 Wn.2d 506, 510 , 688 P.2d 151(1984).

This court should accept review of the constitutional tort issue under ***RAP 13.4(b)(1)-(4)***.

G. CONCLUSION

This court should grant review and reverse and hold that there is a constitutional tort in Washington State for violating citizens constitutional rights.

Dated this 7 day of March 2025.

I Certify that this pleading contains 4593 words (as determined by the word counter function), absent those categories excluded by RAP 18.17.

Respectfully Submitted,

/s Pedro Navarro
Pedro Navarro, Pro Se
Navarropedro2019@gmail.com

Appendix A

FILED
11/19/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

PEDRO NAVARRO,

Appellant,

v.

KING COUNTY SHERIFF'S OFFICE and DEPUTY SPENCER BOYD (in his individual and official capacity),

Respondents.

DIVISION ONE

No. 86659-1-I

UNPUBLISHED OPINION

DWYER, J. — Washington courts have consistently rejected requests to establish an implied cause of action for damages directly based on an alleged violation of our state constitution. Pedro Navarro asks us to reject this precedent. We decline his invitation to do so. Accordingly, we affirm.

I

The allegations herein arose from a traffic stop initiated against Navarro by a King County Sheriff's Office deputy. No citation or fine resulted.

Navarro subsequently filed a complaint in King County Superior Court for monetary damages against the sheriff's office and the deputy based on, as pertinent here, an alleged violation of article I, section 7 of our state constitution. The sheriff's office moved to dismiss his complaint pursuant to CR 12(b)(6).

The trial court granted the motion. Navarro now appeals.

II

In requesting that we reverse the trial court's order dismissing his complaint, Navarro urges us to reject our well-established precedent and recognize an implied cause of action in tort arising from an alleged violation of our state constitution. In so doing, he relies on the United States Supreme Court's recognition of such an implied cause of action arising from an alleged violation of the federal constitution. Navarro's reliance is unavailing.[1]

It is a truism that "[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." Marbury v. Madison, 5 U.S. 137, 163, 2 L. Ed. 60 (1803). With regard to the protections of the federal legal system, the United States Supreme Court has recognized that "'where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief.'" Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388, 392, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971) (quoting Bell v. Hood, 327 U.S. 678, 684, 66 S. Ct. 773, 90 L. Ed. 939 (1946)). However, per the Court, "'[t]here is no body of Federal common law separate and distinct from the common law existing in the several states.'" Kansas v. Colorado, 206 U.S. 46, 96, 27 S. Ct. 655, 516 L. Ed. 956 (1907)

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[1] Dismissal under CR 12(b)(6) is proper "only if the court concludes, beyond a reasonable doubt, the plaintiff cannot prove 'any set of facts which would justify recovery.'" Kinney v. Cook, 159 Wn.2d 837, 842, 154 P.3d 206 (2007) (quoting Tenore v. AT & T Wireless Servs., 136 Wn.2d 322, 330, 962 P.2d 104 (1998)). "The purpose of CR 12(b)(6) is to weed out complaints where, even if that which plaintiff alleges is true, the law does not provide a remedy." Markoff v. Puget Sound Energy, Inc., 9 Wn. App. 2d 833, 839, 447 P.3d 577 (2019).

(quoting W. Union Tel. Co. v. Call Pub. Co., 181 U.S. 92, 101, 21 S. Ct. 561, 45 L. Ed. 765 (1901)).

Accordingly, in Bivens, the United States Supreme Court recognized the existence of an implied cause of action for monetary damages arising under the Fourth Amendment to the federal constitution to vindicate an alleged violation of a right granted by that constitutional amendment. 403 U.S. at 397. This was appropriate, according to the Court, because the petitioner had alleged injuries arising from a federal agent's violation of the Fourth Amendment to the federal constitution and there was "no explicit congressional declaration that persons injured by a federal officer's violation of the Fourth Amendment may not recover money damages from the agents, but must instead be remitted to another remedy, equally effective in the view of Congress." Bivens, 403 U.S. at 397.

With regard to the protections offered by our state's legal system, in contrast, our Supreme Court has long-recognized that "the common law prevails in this state except as modified by statute." State v. Mays, 57 Wash. 540, 542-43, 107 P. 363 (1910). Accordingly, when an appellant urged our Supreme Court to recognize a private right of action under article I, section 7 of our state constitution, the court declined to do so.

> We feel, at this time, that Plaintiffs may obtain adequate relief under the common law and that such actions are better addressed under the common law invasion of privacy action. Plaintiffs have not presented a reasoned or principled basis upon which to construct a constitutional cause of action, nor have they established why a constitutional cause of action is more appropriate than the common law cause of action which already exists. Because we hold Plaintiffs are entitled to maintain an action for

> invasion of privacy under the common law, we decline to reach this issue in this case.

Reid v. Pierce County, 136 Wn.2d 195, 213-14, 961 P.2d 333 (1998).

Three years later, we were presented with a similar argument predicated on article I, section 5 of our state constitution. Rejecting that argument, we stated:

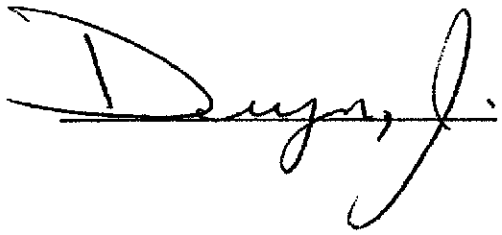
> Washington courts have consistently rejected invitations to establish a cause of action for damages based upon constitutional violations "without the aid of augmentative legislation." Sys. Amusement, Inc. v. State, 7 Wn. App. 516, 517, 500 P.2d 1253 (1972); see also Spurrell v. Bloch, 40 Wn. App. 854, 860-61, 701 P.2d 529 (1985); Reid v. Pierce County, 136 Wn.2d 195, 961 P.2d 333 (1998).

Blinka v. Wash. State Bar Ass'n, 109 Wn. App. 575, 591, 36 P.3d 1094 (2001). We concluded that "[t]he same reasoning has direct applicability to this case" because of the "lack of legislative guidance on this issue, and considering Washington courts' consistent refusals to recognize a cause of action in tort for constitutional violations." Blinka, 109 Wn. App. at 591.

We decline Navarro's request to recognize an implied cause of action arising from an alleged violation of our state constitution. The protections offered by the federal legal system are distinct from those offered by the legal system of our state, and we have repeatedly rejected requests to recognize the type of cause of action sought by Navarro. See, e.g., Reid, 136 Wn.2d at 213-14 (CONST. art. I, § 7); Blinka, 109 Wn. App. at 591 (CONST. art. I, § 5); Spurrell, 40 Wn. App. at 860-61 (CONST. art. I, § 3); Sys. Amusement, 7 Wn. App. at 517 (CONST. art. I, § 3). In the absence of legislative modification, our common law provides sufficient protection for his alleged injury. Reid, 136 Wn.2d at 213-14.

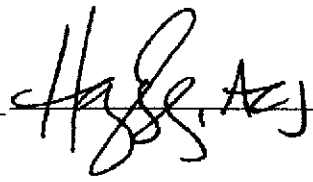
Thus, Navarro fails to state a claim for which relief may be granted.[2] Accordingly, the trial court did not err by dismissing his complaint.

Affirmed.



WE CONCUR:

Díaz, J.



[2] Given this resolution, we need not address Navarro's remaining assertions.

Appendix B

FILED
2/18/2025
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

PEDRO NAVARRO,

Appellant,

v.

KING COUNTY SHERIFF'S OFFICE and DEPUTY SPENCER BOYD (in his individual and official capacity),

Respondents.

DIVISION ONE

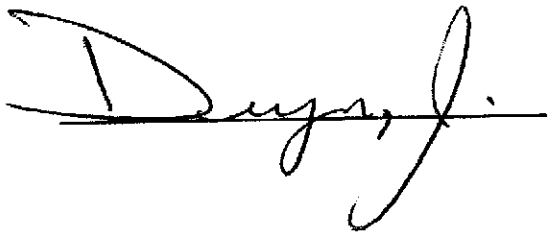
No. 86659-1-I

ORDER DENYING MOTION FOR RECONSIDERATION

The appellant having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration is hereby denied.

For the Court:



PEDRO NAVARRO - FILING PRO SE

March 07, 2025 - 6:16 PM

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