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No. 1039450

SUPREME COURT  
OF THE STATE OF WASHINGTON

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PEDRO NAVARO,

Plaintiff/Petitioner,

v.

KING COUNTY SHERIFF'S OFFICE, et al.,

Defendants/Respondents.

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**KING COUNTY RESPONDENTS' ANSWER TO  
PETITION FOR REVIEW**

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### **1. Identity of Respondent**

The King County Sheriff's Office and Deputy Spencer Boyd (King County respondents) are the responding parties.

### **2. Court of Appeals decision**

Petitioner Pedro Navarro (Navarro) is seeking review of the Court of Appeal's decision in *Pedro Navarro v. King County Sheriff's Office and Deputy Spencer Boyd*, 32 Wash.App. 1066, 2024 WL 4824882 (unpublished) (2024), and the Court of Appeals' denial of Navarro's Motion for Reconsideration, filed November 25, 2024 and denied on February 18, 2025.

### **3. Issues Presented for Review**

Whether Navarro's Petition for Review of the Court of Appeals' decision (cited above) satisfies any of the criteria for Direct Review under RAP 13.4(b)(1)-(4).

#### 4. Statement of the Case

According to Mr. Navarro's Second Amended Complaint, he got off work on February 8, 2023 at approximately 11:30 p.m. and started driving home in his BMW. CP 5. He stopped at Jack in the Box in Burien and then drove east on 128<sup>th</sup> street. *Id.* Navarro then noticed a police car behind him and made a turn to see if the car would follow him. *Id.* He noted his own speed at 30 mph. *Id.*

The police vehicle followed him and then activated emergency lights to initiate a traffic stop. *Id.* Navarro stopped and began filming the encounter. *Id.* He claims that Defendant Deputy Boyd told him he was driving under the speed limit at 21 mph and had been doing so for the last 3 miles. CP 6. Navarro responded that he was going 30 mph. *Id.* Boyd asked plaintiff if he had been using drugs or alcohol, and then asked for his license, registration, and insurance. *Id.* Navarro refused

to answer any more questions and Boyd went back to his patrol car to run a check on Navarro's license. *Id.* Boyd then let Navarro go with a warning. *Id.*

The following day, Navarro made a complaint with King County Sheriff's Office, and subsequently filed a claim for damages with King County. He thereafter filed this lawsuit. See CP 3.

Navarro's Complaint and First Amended Complaint, both filed in King County Superior Court, contained federal and state constitutional claims. CP 6. King County removed the case to federal court based on Navarro's federal constitutional claims. See CP 10.

Navarro filed a motion to amend to remove the federal constitutional claims and to proceed only on the state claims. See CP 11; 14. King County did not object, and Plaintiff filed this Second Amended Complaint in Federal Court on October 27, 2023. CP 14.

Judge Lauren King remanded the case back to Superior Court for further proceedings on the state claims and notice was mailed to plaintiff on December 1, 2023 reinstating the original Case Scheduling Order in King County Superior Court. CP 20.

In his operative complaint (CP 14), Navarro alleged two state constitutional causes of action: (1) Violation of Article 1, Section 7 of the Washington Constitution, and (2) Violation of Article 1, Section 12 of the Washington constitution. CP 14. The sheriff's office moved to dismiss his complaint pursuant to CR 12(b)(6). The trial court granted the motion.

Navarro sought direct review at the state Supreme Court. The Court denied review and remanded the case to this Court for disposition. In a November 19, 2024 unpublished decision, the Court ruled in part that: “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.” *Navarro v. King County Sheriff’s Office*, 2024 WL 4824882 (2024) (unpublished).

Navarro filed a motion for reconsideration on November 25, 2024, which the Court of Appeals denied on February 18, 2025. Navarro then filed a Petition for Review with this Court.

## **5. Argument**

RAP 13.4(b)(1)-(4) govern petitions for discretionary review of Court of Appeals decisions. The criteria generally state that this Court will grant discretionary review if the Court of Appeals decision conflicts with a decision of the Supreme Court or Court of Appeals (see RAP 13.4(b)(1)-(2)); if the Court of Appeals’

decision raises a significant issue of law under the state or federal constitutions (see RAP 13.4(b)(3); or if the petition involves an issue of substantial public interest that should be resolved by the state Supreme Court. See RAP 13.4(b)(4).

In this case, Navarro generally claims that the Court of Appeals decision satisfies all four criteria of RAP 13.4(b). See Navarro Petition for Review (Petition) at 1. He contends that the decision conflicts with this Court's decisions in *Seattle School District v. State*, 90 Wn.2d 476 (1978) and *Group Health Cooperative v. King County Medical Society*, 39 Wn.2d 586 (1951), as well as the Court of Appeals decision in *Spurrell v. Block*, 40 Wn.App. 854 (1985). Petition, at 8. He maintains that the Court's decision in *Blinka v. Washington State Bar Association*, 109 Wn.App. 575 (2001) - which rejected a request to create a cause of action for violations of the

state constitution absent augmentative legislation - was wrongly decided. See Petition, at 8.

Navarro also argues that the Court should accept review of "the common law issue" (Petition, at 15) and the "Restatement (Second) of Tort Issue." Petition, at 20. Finally, he contends that the Court should accept review and decide whether the state constitution (Art. I Section 7) provides "greater protection Th[a]n the Federal Counterpart in the Civil Context." Petition, at 22.

- a. Navarro's Petition does not satisfy RAP 13.4(b)(1) because this case does not conflict with any decision of the Court of Appeals or state Supreme Court.

In *Seattle School District v. State*, 90 Wn.2d 476, 496 (1978), the Court ruled that a state constitutional provision stating that it was the paramount duty of the state to provide for the education of resident children was not a mere preamble but instead imposed a mandatory, judicially-enforceable duty. The Court further stated that

"The ultimate power to interpret, construe and enforce the constitution of this State belongs to the judiciary." *Seattle School District*, however, was a *declaratory judgment* action related to the responsibilities of state government concerning funding of education, not a suit for damages. Moreover, *Seattle School District* addressed a different constitutional provision - not article I, Section 7 of the state Constitution. As Washington courts have repeatedly recognized, a private right of action for *damages* as under that provision has not been recognized. See *Navarro*, 2024 WL 4824882 at 4.

Navarro next relies on *Group Health Cooperative v. King County Medical Society*, 39 Wn.2d 586 (1951), which involved "the long and vigorous struggle of the King County Medical Society to curb independent contract medical and hospital service in King County." Navarro relies on a passage where the Court made the general statement 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." Petition, at 12; 39 Wn.2d at 656. Again, however, the Court made that comment in connection with an issue pertaining to equitable relief, not damages. Moreover, the Court was analyzing Article XII, Section 22, not Article I, Section 7 of the state Constitution, and is thus not comparable.

Navarro next asserts - albeit confusingly - that "the *Blinka* court misinterpreted and erroneously relied on a division two case in *Spurrell v. Block*, 40 Wn.App. 854 (1985)." Petition, at 13-14. He goes on to claim that the *Spurrell* court "allowed for a cause of action for constitutional violation of unlawful arrest, contrary to the *Blinka* court's" decision (stating, in part, that Washington courts have not recognized a cause of action for damages based on state constitutional violations.). See Petition, at 14.

Navarro misreads the *Spurrell* decision. The court in that case stated "The constitutional guarantee of due process, Const. art. 1, § 3, does not of itself, without the aid of augmenting legislation, establish a cause of action for money damages against the state in favor of any person alleging deprivation of property without due process." *Spurrell*, 40 Wn.App. at 862.

Navarro next reasons that because the court in *Benjamin v. Washington State Bar Association*, 138 Wn.2d 506 (1999) and *Reid v. Pierce County*, 136 Wn.2d 195 (1998) reserved (according to Navarro) the issue of whether plaintiffs may pursue civil actions for damages for state constitutional violations, the implication is that a cause of action can exist. Petition, at 13. But the Courts in those cases relied on the well-established jurisprudential principle that courts do not decide constitutional issues unless it is necessary to do so, and in neither case did the court find it necessary to do so. It

does not mean that if squarely presented with the question of whether a private right of action exists for state constitutional violations, courts would find that such a private right of action exists.

In sum, Navarro fails to establish that the criteria of RAP 13.4(b)(1) or (2) are met, so his request for discretionary review under those provisions should be rejected.

- b. The Court should decline to address Navarro's argument that "This Court should accept review of the Common law issue."**

Navarro contends that this Court should accept review under RAP 13.4(b)(1)-(4) to address the common law issue - apparently in reference to the Court of Appeals determination that the common law's cause of action for invasion of privacy was sufficient, thus obviating the need to recognize a private right of action under the state constitution. Petition, at 15. The Court

should decline to address this issue because it is not a basis for discretionary review under RAP 13.4(b).

Navarro also complains that the Court of Appeals erred by stating that relief under the common law was sufficient without remanding to the trial court so that he could pursue that remedy. Petition, at 19. But the Court made this statement as a justification for not *creating* a constitutional remedy. Because Navarro did not actually seek damages under the common law for invasion of privacy, the Court had no obligation to remand that issue for the trial court to determine. He further claims that without a private right of action to redress constitutional violations, the state constitution has no meaning and the government can violate a citizen's rights without consequences. Again, however, the state constitution is not meaningless because it provides relief for defendants in the criminal context.



- c. Navarro fails to show, pursuant to RAP 13.4(b)(3) or (4) that the Court should accept review of his argument that a private right of action for state constitutional violations should be adopted because it is implied under Restatement (Second) of Torts

Navarro maintains that this Court should find an implied cause of action for constitutional violations under the Restatement (Second) of Torts Section 874A (1979).

Petition, at 20. That provision states:

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

Washington courts have cited the Restatement (Second) of Torts Section 874A in prior cases when considering whether an implied right of action exists under a statute. See *Bennett v. Hardy*, 113 Wn.2d 912,

920 (1990). Here, Washington courts have consistently denied efforts to create a cause of action based on constitutional provisions (*Blinka*, 109 Wn.App. at 591), and have therefore implicitly determined that a civil remedy is not appropriate "in furtherance of the purpose of the legislation and needed to assure the effectiveness of the provision, . . .". As the Court determined in *Reid*, 136 Wn.2d at 213-214, adequate relief already exists under the common law cause of action for invasion of privacy. For the same reason, Navarro's apparent argument that a civil cause of action is necessary to supplement existing common law (Petition, at 20) necessarily fails. For largely the same reasons, Navarro fails to demonstrate that this issue raises a significant issue of law or is a matter of substantial public interest under RAP 13.4(b)(3) or (4).

- d. Because Washington courts have already determined that Art. 1, Section 7 provides greater protection than its federal counterpart in the

criminal context, there is no need to engage in that analysis in this case.

Navarro argues at length that the art. 1, section 7 of the Washington constitution "provides greater protection to the right of privacy th[a]n the federal constitution." Petition, at 22-25 (comparing the state and federal constitutional provisions under the analysis of *State v. Gunwall*, 106 Wn.2d 54 (1986)). Many courts in this state have previously concluded, in the criminal context, that art. 1 Section 7 provides greater protections than the 4th amendment to the United States Constitution. See *State v. Myrick*, 102 Wn.2d 506, 510 (1984) and cases cited therein. In the civil context, there is no basis to engage in this analysis because there is no private right of action for alleged violations of art. 1, section 7 of the Washington constitution; thus, it would be fruitless to engage in a *Gunwall* analysis.

## 6. CONCLUSION

Because Navarro fails to demonstrate that this case qualifies for review under any provision of RAP 13.4(b), the King County Defendants ask the Court to deny Navarro's Petition for Review.

*I certify that this document contains 2,247 words excluding the parts of the document exempted from the word count by RAP 18.17.*

DATED this 23<sup>rd</sup> day of April, 2025.

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