No. 1044861

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

WASHINGTON STATE ASSOCIATION OF COUNTIES, et al.,

Respondents,

v.

STATE OF WASHINGTON,

Petitioner.

RESPONDENTS' ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

In *Davison v. State*, 196 Wn.2d 285, 466 P.3d 231 (2020), this Court addressed whether the State could be liable for failing to meet its affirmative obligation to provide indigent defense under the Sixth Amendment to the U.S. Constitution and article I, section 22 of the Washington Constitution. This Court recognized that although the State has delegated that obligation to county governments, it nonetheless may be liable if its "statutory scheme systemically fails to provide [counties] . . . with the authority and means necessary to furnish constitutionally adequate indigent public defense services." *Id*. at 300. The Washington State Association of Counties, Lincoln County, Pacific County, and Yakima County (collectively, the "Counties") filed this lawsuit bringing the exact claim outlined in *Davison*.

Relying on this Court's decisions in *City of Seattle v. State*, 103 Wn.2d 663, 694 P.2d 641 (1985) ("*City of Seattle*"), and *Seattle School District No. 1 of King County v. State*, 90 Wn.2d

476, 585 P.2d 71 (1978) ("*Seattle School District*"), and accepting the Counties' allegations as true as required on a 12(b) motion, the Court of Appeals correctly held the Counties have standing. The Court concluded: (a) the Counties—charged with administering the State's obligatory indigent defense duty—have a direct interest in the functioning of the criminal justice system through the adequate provision of indigent defense services; (b) the Counties alleged the State's scheme systemically fails to provide adequate resources for indigent defense; (c) the Counties have adequately shown injury in fact by alleging direct harm to their ability to provide constitutionally adequate services; and (d) standing is additionally warranted under the public importance doctrine.

The State's Petition largely attacks the merits of the Court of Appeals' Opinion ("Opinion" or "Op."), rather than addressing (or even citing) the considerations listed in RAP 13.4(b). While the State does argue the Opinion conflicts with *City of Seattle* and *Seattle School District*, that is wrong. The

Counties' interest in the proper functioning of the criminal justice system is fully analogous to the interest in the integrity of government that established standing in *City of Seattle*. And there are "striking" similarities between the State's affirmative constitutional obligation to fund indigent defense and the State's paramount duty to fund public education, which established standing in *Seattle School District*. The other cases cited in the Petition have nothing to do with the State's systemic failure to provide funding, mostly pre-date *Davison*, and do not conflict with the Opinion.

Because the Petition does not satisfy RAP 13.4(b), this Court should deny review and allow the parties to proceed toward resolving the State's indigent defense crisis without delay.

II. COUNTERSTATEMENT OF THE ISSUES

The U.S. and Washington Constitutions impose an affirmative obligation on the State to provide a defense for indigent defendants—including funding lawyers, support

services, and other necessary expenses—that the State has delegated to its counties. Is the State's statutory scheme of delegating taxing authority to the counties sufficient to allow them to provide constitutionally adequate indigent defense services, particularly in light of the State's imposition of increasingly stringent caseload and related requirements and the counties' other assigned governmental obligations?

III. COUNTERSTATEMENT OF THE CASE

A. The State Has an Affirmative Constitutional Duty to Provide Counsel for Indigent Criminal Defendants.

The Sixth Amendment to the U.S. Constitution and article I, section 22 of the Washington Constitution guarantee the right to effective assistance of counsel—"a fundamental component of our criminal justice system." *United States v. Cronic*, 466 U.S. 648, 653, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984); *Strickland v. Washington*, 466 U.S. 668, 685–86, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *Davison*, 196 Wn.2d at 293.

This constitutional guarantee "requires that counsel be appointed for an indigent in noncapital as well as capital cases" and "is **obligatory** upon the states by virtue of the Fourteenth Amendment[.]" *State v. Kanistanaux*, 68 Wn.2d 652, 654, 414 P.2d 784 (1966) (emphasis added) (citing *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963)). There is no question that "[t]he State plainly has a duty to provide indigent public defense services." *Davison*, 196 Wn.2d at 293.

B. The State Has Delegated Its Indigent Defense Duty to Counties Without Providing Sufficient Resources.

The State Legislature has delegated the State's duty to provide indigent defense services to local governments. *See generally* chs. 10.101 & 36.26 RCW. Under this system, counties carry out and fund essentially all trial court indigent defense with negligible State support.

State law requires that counties "adopt standards for the delivery of public defense services," for which the Washington State Bar Association's (WSBA) indigent defense standards

"should serve as guidelines." RCW 10.101.030. WSBA's standards address compensation, caseload limits, and attorney responsibilities, among other things. CP 11. In March 2024, WSBA adopted additional guidelines that reduce maximum caseloads for public defenders, which will require counties to retain additional defense counsel. CP 979–85.

Separately, this Court has adopted Standards for Indigent Defense, including caseload limits and other requirements with which public defense attorneys must certify compliance. *See* CrRLJ 3.1(d)(4); CrRLJ 3.1 stds; CrR 3.1(d)(4); CrR 3.1 stds; JuCR 9.2(d); JuCR 9.2 stds. Mere months ago, this Court—recognizing "the crisis in the provision of indigent criminal defense services throughout our state requires action now to address the crisis and to support quality defense representation at every level"—issued an order imposing new "caseload standard[s]" limiting the number of cases public defenders can handle in a 12-month period. *See* Order No. 25700-A-1644, *In re Standards for Indigent Defense Implementation of CrR 3.1,*

CrRLJ 3.1, and JuCR 9.2 (Wash. Jun. 9, 2025).[1] Further adding to counties' fiscal burden, as of September 1, 2025, this Court now requires arraignment of defendants held in custody within 3 days (down from 14 days). CrR 4.1(a); CrRLJ 4.1(a); CrRLJ 3.2.1.

Providing indigent defense services that meet these state-defined requirements costs money, but the State provides minimal dedicated funding. Under the current scheme, counties pay over 96 percent of this expense, CP 11–13, 186, with costs growing exponentially in recent years, CP 12–13, 165–66, 168–70, 172–74, 979–85.[2] Between 2012 and 2022, counties' public defense costs increased by 88 percent, from $105 million to $198

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[1] *Available at* https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Order%2025700-A-1644.pdf (last visited Sept. 17, 2025).

[2] *See* Brittany Toolis, *'Rights Are Being Violated': WA Public Defender Shortage Leads to Alleged Gap in Representation*, Kiro 7 News (Jan. 25, 2024), https://www.kiro7.com/news/local/rights-are-being-violated-wa-public-defender-shortage-leads-alleged-gap-representation/7REDLOCZCBDAZKLQPKVMCICLWI/.

million, while state funding rose by only 3.5 percent, from $5.6 million to $5.8 million. CP 12–13, 186. In 2022, the State's percentage share of these costs was only 2.9 percent. CP 186.

The State has thus burdened counties with nearly the entire cost of its indigent defense obligation, without providing sufficient authority and resources to cover it. The Legislature has established no dedicated funding source for county indigent defense services, leaving counties to rely largely on unrestricted local tax revenues (mainly the general property tax). CP 14–18. But those revenues are needed for other critical county services, most of which are themselves delegated or mandated by the State.[3] CP 16–18, 166, 169, 173. And the statutory 1 percent growth cap on the general property tax—as well as other legislatively-imposed limits on county tax authority[4]—has left

[3] These include, *inter alia*, public health, elections, jails, courts, and law enforcement.

[4] *See, e.g.*, RCW 84.55.005, .010 (general property tax); RCW 82.14.030 (0.5% cap on basic and optional sales tax); RCW 84.52.135 (criminal justice levy capped at $0.50 per $1,000

counties on a financial precipice as the costs of essential services outstrip revenues. *See id*.

The Legislature has repeatedly failed to adopt proposed measures that would increase state funding or enhance counties' ability to raise revenue for indigent defense. *See* CP 29 (examples through 2020); *see also, e.g.*, S.B. 5773, 68th Leg., Reg. Sess. (Wash. 2024) (proposing the State cover half of public defense services by 2028); S.H.B. 1592, 69th Leg., Reg. Sess. (Wash. 2025) (proposing the State cover half of county public defense costs based on five-year average, and all costs exceeding that average, starting in FY 2026). Counties are, therefore, forced to devote an ever-increasing percentage of their general fund budgets to indigent defense, at the cost of other core services. CP 16–18, 166, 169, 173. And because counties' ability to dedicate already-limited resources varies across county lines, CP 18–20,

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assessed value); RCW 82.14.340 (criminal justice sales tax set at 0.1%).

the quality of indigent defense depends on location—i.e., "'[j]ustice by geography.'"[5]

C. The Trial Court Rules the Counties Lack Standing.

In 2020, this Court recognized "a critical area in which [the State] may be subject to liability" for its indigent defense scheme: "systemic and structural deficiencies in our state system delegating authority to local governments." *Davison*, 196 Wn.2d at 300. In 2023, the Counties filed this lawsuit making exactly that claim, seeking a declaratory judgment that the State's indigent defense system violates the right to counsel and equal protection under the U.S. and Washington Constitutions. CP 30–36. The Counties also sought an injunction requiring the State to provide stable and dependable funding for trial court indigent defense. CP 36–37.

[5] Toolis, *supra* (quoting OPD director Larry Jefferson).

The State moved to dismiss. CP 40–66.[6] Despite acknowledging "serious challenges" facing the State's indigent defense system, the trial court ruled the Counties lack standing and dismissed their claims. CP 1034–35, 1038. The court ruled the Counties are not within the zone of interests of—and cannot show injury in fact under—the federal or state constitutional rights to counsel or equal protection because those rights are "personal" and "not their rights to assert." CP 1035–37. The court also declined to find public importance standing because "[c]lass actions of indigent criminal defendants can and have asserted their own constitutional rights." CP 1037.

D. The Court of Appeals Reverses.

After this Court denied direct review, the Court of Appeals reversed and held the Counties have standing to bring their systemic challenge. Relying on *City of Seattle* and *Seattle School District*, the Court of Appeals first concluded the Counties are

[6] The State also argued the Counties' injunctive relief claim should be dismissed even if they have standing. CP 61–64. The trial court did not reach that argument.

within the zone of interests of the rights to counsel and equal protection. The Court of Appeals explained the "Counties have a direct interest in the constitutionality and fairness of the criminal legal system, and in that way, their interests are closely aligned with those of indigent defendants." Op. at 16; *id.* at 22–23. Further, the Counties' interests "involve actual financial constraints" imposed by the system itself, *id*. at 22 (cleaned up), and the Counties as administrators of indigent defense services have "more insight" into the system's impacts, *id*. at 23.

The Court of Appeals also held the Counties had adequately shown injury in fact, noting their complaint alleges the "system's financial constraints have directly harmed [their] ability to meet [their] constitutional duty to provide indigent defense—a problem that . . . has spanned over three decades." Op. at 25. The alleged "broad systemic failures" and "disparities among the counties" "not only harm the Counties' ability to meet their constitutional duty, they also harm their legitimate governmental interests, within the protections of the equal

protection clause, to protect the legitimacy of the criminal legal system." *Id*.

Finally, the Court of Appeals held that even if traditional standing were a close call, the "self-evident" public importance of these issues and the fact they have long escaped review warrants public importance standing. Op. at 25–27.

IV. ARGUMENT

This Court will "only" accept a petition for review that meets the requirements of RAP 13.4(b). The State fails to identify which parts of the RAP apply, but appears to argue the Opinion is "in conflict with" decisions of this Court or the Court of Appeals, and involves "a significant question of law" under the U.S. or Washington Constitutions.

The Court of Appeals' Opinion, however, is consistent with prior decisions of this Court and the Court of Appeals, as well as the constitutional guarantees at issue. Granting review would only delay resolution of the undisputed statewide indigent

defense crisis this Court has repeatedly acknowledged. The Petition should be denied.

A. The Opinion Does Not Conflict with Decisions of this Court.

1. The Opinion Is Consistent with *City of Seattle* and *Seattle School District.*

The Opinion principally relies on *City of Seattle* and *Seattle School District*. In *City of Seattle*, this Court recognized a local government can fall within the zone of interests of a constitutional provision—and so have standing—even if it "does not itself have rights . . . ." 103 Wn.2d at 668. The Court looked to *Seattle School District*, which "found standing for the [District] to challenge unconstitutional action by the Legislature which placed financial constraints on the District's ability to meet the State's constitutional obligation to fund public education." *Id*. at 669 (citing *Seattle Sch. Dist.*, 90 Wn.2d at 493–94).

Like the City of Seattle's interest in the functioning of the political process, the Counties have a direct interest in the

"functioning of the criminal justice system through the adequate provision of indigent defense counsel," including the constitutionality and fairness of a state scheme requiring them to fulfill the State's "obligatory" constitutional indigent defense duty. Op. at 16 (cleaned up); *see Kanistanaux*, 68 Wn.2d at 654; *Davison*, 196 Wn.2d at 293. And like the Seattle School District, the Counties challenge the State's statutory funding scheme's failure to provide sufficient resources to carry out a delegated State constitutional obligation.

The State's attempt to manufacture conflict is grounded in an overly narrow reading of these cases. Starting with *City of Seattle*, the State suggests this Court's standing determination was grounded solely in representational interests. Pet. at 17–18. But representational standing was an **additional** ground for standing, separate from this Court's determination that the City's direct interests in the "integrity of the political process" established standing. *See* 103 Wn.2d at 668–69.

The State next argues this Court has "narrow[ed]" *City of Seattle*, but cites only *Yakima County (West Valley) Fire Protection District No. 12 v. City of Yakima*, 122 Wn.2d 371, 858 P.2d 245 (1993)—which did not involve alleged deficiencies in the State's schemes for delegating a constitutional duty and was instead based on a lack of financial interest in the agreements being challenged and is thus inapposite. Regardless, nothing in *Yakima County* requires "complete[] overlap[]" or "perfect[] align[ment]" of local governmental interests with "those of the actual rightsholders [sic]." Pet. at 17, 20. *City of Seattle* makes clear the Court viewed the respective interests there as akin but not identical. 103 Wn.2d at 668–69.[7] Accordingly, the State's assertion that "Counties' interests in the criminal legal system are not the same as those of indigent defendants," Pet. at 19, is beside the point (and wrong as well).

[7] It is not clear that *City of Seattle* was decided on public importance grounds as the State claims. *See* 103 Wn.2d at 668–69. Regardless, the State's claim of conflict with the public importance doctrine fails as discussed *infra*, Section IV.A.3.

Relatedly, nothing in *City of Seattle* limits standing to parties "able and better positioned" to bring a claim. Pet. at 18; *see also id*. at 19–20 (suggesting "input of indigent defendants or public defenders" is required). One party's standing does not depend on the identities and interests of others.[8] Regardless, the Counties are critical parties and better situated than indigent defendants to address the system-wide funding issues this suit raises. *See Davison*, 196 Wn.2d at 300. As the Court of Appeals noted: "[I]t would . . . be difficult to imagine a party better suited to challenge the alleged systemic constitutional failures of our statutory scheme for providing indigent defense." Op. at 22 (cleaned up).

The State's cited authorities for the proposition that the "same level of government making decisions about which crimes to prosecute (Counties) should bear the cost of those decisions," Pet. at 19, are inapposite: None involved the adequacy of a

[8] The State could have (but did not) move to join indigent defendants or public defenders as necessary parties.

statewide system for fulfilling a constitutional mandate, and all pre-date *Davison*'s recognition of a cause of action challenging the same. *See Thurston Cnty. ex rel. Snaza v. City of Olympia*, 193 Wn.2d 102, 104-05, 440 P.3d 988 (2019) (addressing city-county dispute over liability for inmates' healthcare expenses); *State v. Howard*, 106 Wn.2d 39, 44, 722 P.2d 783 (1985) (State could not itself prosecute an indigent defendant while "shift[ing the defense costs] . . . to the county"); *Kitsap Cnty. v. Moore*, 144 Wn.2d 292, 296-99, 26 P.3d 931 (2001) (statute requiring State to pay appellate indigent defense costs did not extend to appeals to courts of limited jurisdiction).

Finally, recognizing the Counties' standing under *City of Seattle* will **not** open the floodgates to county challenges regarding "any issue touching the criminal legal system." Pet. at 18–19 (cleaned up). This is the rare case where the State has delegated an obligatory constitutional duty to local governments. Finding standing to challenge the State's systemic failure to provide funding to fulfill that duty is well within *City of Seattle*'s

scope. *See* 103 Wn.2d at 669 (discussing similar standing determination in *Seattle School District*).

Turning to *Seattle School District*, the State's claims of conflict are similarly groundless. First, the State attempts to distinguish *Seattle School District* because students and parents were co-plaintiffs. But the only in-depth standing analysis in *Seattle School District* related to the District. *See* 90 Wn.2d at 491–94. The State did not brief its challenge to the parent-taxpayers' standing, so this Court did not consider it. *Id*. at 494–95. And the Court separately considered the students' standing in analysis that was distinct and irrelevant to the District's standing there, or the Counties' here. *Id*. at 495.

The State's attempt to distinguish the right at issue in *Seattle School District* from the right to counsel also fails. Pet. at 21-23. There is no substantive difference between the "obligatory" indigent defense duty, *Davison*, 196 Wn.2d at 293, and the "judicially enforceable affirmative duty" to provide education at issue in *Seattle School District*, 90 Wn.2d at 500. In

focusing narrowly on article IX's "paramount duty" language, the State ignores that the right to counsel is made obligatory on the State under the **federal** Constitution—which undeniably is "paramount" to our own Constitution. *See* U.S. Const. art. VI, cl. 2 ("This Constitution . . . shall be the supreme Law of the Land . . . ."); Wash. Const. art I, § 2 (U.S. Constitution "is the supreme law of the land").[9] Regardless, this Court in *Seattle School District* did not rely on or even mention the "paramount" nature of the right to education in holding the District had standing, and nothing in that case holds or implies this Court's "more liberalized view of standing" applies only to claims under article IX. *See Seattle Sch. Dist.*, 90 Wn.2d at 493 (citing cases where "municipal corporation[s] challenge[d], as unconstitutional, . . . legislative act[s]" that had nothing to do with article IX's paramount duty).

[9] This Court has declared the right to counsel is "of **paramount importance** to all persons appearing in our courts . . . ." *City of Seattle v. Ratliff*, 100 Wn.2d 212, 218, 667 P.2d 630 (1983) (emphasis added).

It was this "more liberalized view of standing"—and not the "paramount" nature of the right—that made it "clear the District ha[d] standing to challenge the constitutionality of the school financing system." *Id*. Like the District there, the Counties are "at the very vortex of the entire financing system" for indigent defense, and so have standing to challenge that system. *Id*. at 494.

Finally, the State's assertion that this Court's standing ruling "does not travel outside the education context," Pet. at 23, relies on inapposite cases that did not involve a local governmental challenge to the State's system of delegating an "obligatory" constitutional duty. *See Lakehaven Water & Sewer Dist. v. City of Federal Way*, 195 Wn.2d 742, 769–74, 466 P.3d 213 (2020) (districts lacked standing to challenge city excise tax); *City of Ellensburg v. State*, 118 Wn.2d 709, 715, 826 P.2d 1081 (1992) (State had no obligation to fully fund fire protection services, absent a constitutional mandate).

The Opinion does not conflict with *City of Seattle* or *Seattle School District*.

2. The Opinion Is Consistent with This Court's Decisions Involving Constitutional Claims by Political Subdivisions.

The State's claim of conflict arising from recognizing standing on equal protection or due process grounds rests on the assertion that the Counties do not have constitutional rights of their own. Pet. at 7–10. But as this Court has explained, although a local government "does not itself have rights under . . . the state and federal constitutions," it nonetheless "ha[s] a direct interest in the fairness and constitutionality" of the statutes governing its conduct. *City of Seattle*, 103 Wn.2d at 668-69; *see supra* Section IV.A.1.

The Counties' allegations—presumed true in this appeal—show the State's scheme requires them to provide public defense services while failing to provide adequate funding, thus constraining their ability to do so in a constitutionally adequate manner. CP 11-20, 33-35. As in *City of*

Seattle, the Counties have a direct interest in the constitutional integrity of the State's statutory scheme sufficient to confer standing.

None of the cases the State cites involved a local governmental challenge to the State's system of delegating an obligatory constitutional duty as in *Seattle School District*, nor direct constitutional interests as in *City of Seattle*. *See Lakehaven*, 195 Wn.2d at 770–71 ("municipal corporations do not have personhood like private corporations" and cannot rely on cases addressing constitutional rights of same); *Samuel's Furniture, Inc. v. Dep't of Ecology*, 147 Wn.2d 440, 461–63, 54 P.3d 1194 (2002) (for purposes of LUPA petition time limits, state agency was not entitled to specific notice of city's shoreline boundary determination).

Indeed, one of the State's cited cases acknowledged that under *City of Seattle* "municipalities acting on behalf of their residents have standing to raise constitutional issues," but denied fire districts standing where the only interest they asserted was

"the protection of their tax base." *Grant Cnty. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 803–04 (2004). In others, the Court actually reviewed the merits of a public entity's constitutional claim, contrary to the State's contention that this Court "h[eld] due process claims brought by governmental entities categorically fail for lack of standing." Pet. at 8–9; *Moses Lake Sch. Dist. No. 161 v. Big Bend Cmty. Coll*., 81 Wn.2d 551, 555–63, 503 P.2d 86 (1972); *see also Wash. State Ass'n of Cntys. v. State*, 199 Wn.2d 1, 19–20 & n.5, 502 P.3d 825 (2022) (questioning whether counties could acquire vested rights under unfunded mandate statute, but evaluating merits on assumption they could).

The State claims the Opinion "upends direction from this Court" holding the right to counsel is "personally held and cannot be asserted by others." Pet. at 10. But the Counties are not asserting individual ineffective assistance of counsel claims. They allege **systemic** deficiencies directly affecting their ability to fulfill the State's delegated indigent defense obligation—

exactly the claim *Davison* recognized. 196 Wn.2d at 300; CP 30-33. None of the State's cited cases involve systemic claims. *See* Pet. at 10–11.

As the State acknowledges, at least one out-of-state case held a county had standing to challenge a state indigent defense system. *See State v. Quitman Cnty*., 807 So. 2d 401, 410 (Miss. 2001). That the Missouri Supreme Court ultimately rejected the county's claims on the merits, *see Quitman Cnty. v. State*, 910 So. 2d 1032 (2005), is irrelevant to the Counties' standing here. Whether the Counties can prove their allegations on the merits will be determined on remand.

3. The Opinion Is Consistent with This Court's Decisions on Public Importance Standing.

The State does not identify any conflict with the Court of Appeals' determination that public importance standing is appropriate. Again, none of the State's cited cases involved an acknowledged statewide "crisis" in the delivery of a constitutional right or a challenge to the State's system of delegating an "obligatory" constitutional duty. *See* Pet. at 12-13.

And the State' suggestion that public interest standing is limited to cases "necessary" to ensure the issues raised did not escape review, Pet. at 13, is inaccurate. This Court has repeatedly found public importance standing without considering whether the matter would necessarily escape review. *See, e.g., City of Snoqualmie v. King Cnty. Exec. Dow Constantine*, 187 Wn.2d 289, 297, 386 P.3d 279 (2016); *Wash. Nat. Gas Co. v. Pub. Util. Dist. No. 1 of Snohomish Cnty*., 77 Wn.2d 94, 96, 459 P.2d 633 (1969).

Regardless, the critical issue of state funding has escaped review despite the Court's invitation to the defendants and counsel in *Davison*. As the Court of Appeals noted, multiple studies have found for decades the indigent defense system is failing and more state money is the answer, Op. at 7 & n.3, yet the State has refused to act. This Court's liberal standing precedent supports the Court of Appeals' conclusion that public interest standing is warranted.

B. The Opinion Does Not Conflict with Decisions of the Court of Appeals.

The State's attempt to contrive a conflict with decisions of the Court of Appeals similarly misstates the cited cases and fails to recognize the systemic nature of the Counties' claim.

First, *Ralston v. State* did not address local government standing at all, but held that "private litigants" could not compel the legislature to "better fund the courts," because "[t]he courts' inherent power to compel their own funding is appropriately exercised rarely and only by the courts themselves." 25 Wn. App. 2d 31, 42, 522 P.3d 95 (2022). The State's purported conflict rests on *Ralston*'s holding that two constitutional provisions not at issue here—article I, sections 10 and 21—"can[not] permit private litigants to compel funding" because they "do not impose on the legislature a duty to act enforceable by private litigants." *Id*. at 45. But as this Court recognized in *Davison*, the right to counsel is distinct: it imposes an "obligatory," enforceable duty and permits the very "claim[] premised on alleged systemic,

structural deficiencies" that the Counties bring here. 196 Wn.2d at 293, 303.

Second, *King County v. Washington State Board of Tax Appeals* neither conflicts with the Opinion, nor supports the State's narrow reading of *Seattle School District*. 28 Wn. App. 230, 236, 622 P.2d 898 (1981). That case bore only "slight" resemblance to *Seattle School District* because (1) "[u]nlike the constitutional questions at issue" there, the issues at hand "were ones of statutory interpretation," and (2) "[t]he appellants [were] unable to demonstrate anything more than the loss of a relatively small amount of tax revenue." *Id*.

Third, *Stevens County v. Stevens County Sheriff's Office* addressed the unusual—and inapposite—situation where a county sued its own sheriff's department in an attempt to invalidate a state law imposing mental health firearm restrictions. 20 Wn. App. 2d 34, 37–38, 499 P.3d 917 (2021). Emphasizing that the plaintiff county had provided no evidence of injury, the Court of Appeals concluded the county lacked standing because

its "interest in this issue is not direct and substantial." *Id*. at 47. Here, in contrast, the Counties "stand at the very vortex of the entire financing system" they claim is inadequate. *Seattle Sch. Dist.*, 90 Wn.2d at 494; Op. at 20–21.

Finally, the State's claim of conflict with *State v. Anderson*, 72 Wn. App. 253, 863 P.2d 1370 (1993) and *Kittitas County v. Department of Transportation*, 13 Wn. App. 2d 79, 461 P.3d 1218 (2020) is equally meritless. The State cites those cases in arguing "political subdivisions" lack individual constitutional rights. Pet. at 27, 28. But that argument fails for the reasons discussed above. *See supra* Section IV.A.1; *City of Seattle*, 103 Wn.2d at 668–69. Regardless, *Anderson* held the State lacked standing to challenge its **own statute** on right to counsel or due process grounds, 72 Wn. App. at 258-59 & n.13, and *Kittitas County* held a county lacked standing to challenge the exemption of state but not private lands from county weed control assessments on equal protection grounds. 13 Wn. App. 2d at 97–98. Neither case involved a local governmental

challenge to the State's system of delegating an "obligatory" constitutional duty.

As the Opinion correctly reasoned, the mere fact that "there have been other cases where municipal corporations have failed to establish standing" does not mean the Counties lack standing here. Op. at 21 n.7. The State's cited cases do not "support an overly narrow reading of *Seattle School District*, . . . do [not] have clear application to this case," *id.*, and thus create no conflict warranting this Court's review.

C. The Opinion Does Not Raise Significant Unresolved Constitutional Questions.

The State raises no "significant question" warranting review under RAP 13.4(b)(3). The State's suggestion that the Counties' suit—intended to increase funding and services for indigent defendants—is somehow "perilous for [the defendants'] interests," Pet. at 30, hardly warrants a response.

V. CONCLUSION

The State has not shown the Court of Appeals' standing decision merits review under RAP 13.4. The State's effort to

escape liability for its affirmative constitutional obligations and prolong the undisputed indigent defense crisis does not warrant review. The Counties respectfully request the Petition be denied.

This document contains 4,941 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 22nd day of September, 2025.

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