

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
9/18/2025 4:18 PM  
BY SARAH R. PENDLETON  
CLERK

FILED  
Court of Appeals  
Division III  
State of Washington  
9/18/2025 4:12 PM  
COA No. 40189-8-III

Case #: 1045964

SUPREME COURT OF THE STATE OF WASHINGTON

---

UMB BANK, N.A., as successor trustee under the Indenture of  
Trust dated October 1, 2013 for the benefit of the holders of  
Multifamily Housing Revenue Bonds (Eagle Crest Apartments  
LLC Project), Series 2013,

Respondent,

v.

EAGLE CREST APARTMENTS LLC; BAKKEN HOUSING  
COMPANY LLC; JOHN T SESSIONS; HISTORIC FLIGHT  
FOUNDATION; HISTORIC HANGARS LLC; FWF, LTD.;  
ORKNEY AIR LLC; ANY PERSONS UNKNOWN, claiming  
any estate or interest in or lien or encumbrance upon the real  
estate described in the Complaint,

Petitioner/Appellants.

---

PETITION FOR REVIEW

---

ASTI M. GALLINA  
GRANITE POINT LAW, PLLC  
522 W. Riverside Ave., Ste. 7153  
Spokane, Washington 99201  
Phone: (509) 592-0108  
asti@granitepointlaw.com

MATTHEW A. MENSİK  
RIVERSIDE NW LAW GROUP, PLLC  
905 W. Riverside, Ste. 208  
Spokane, WA 99201  
Phone: (206) 949-3540  
mam@rnwlg.com

*Counsel for Historic Flight Foundation*

## **TABLE OF AUTHORITIES**

### **Cases**

<i>Brown v. Garrett</i> , 175 Wn. App. 357, 306 P.3d 1014 (2013) ..	14
<i>Camp Finance, LLC v. Brazington</i> , 133 Wn. App. 156, 135 P.3d 946 (2006) .....	17
<i>Daley v. Am. States Preferred Ins. Co.</i> , 587 N.W.2d 159 (N.D. 1998) .....	14, 23
<i>Israel v. Nat'l Bd. of YMCA</i> , 369 A.2d 646, 651 (R.I. 1977) ...	24
<i>Issendorf v. Olson</i> , 194 N.W.2d 750 (N.D. 1972) .....	25
<i>Lundberg ex rel. Orient Found. v. Coleman</i> , 115 Wn. App. 172, 179, 60 P.3d 595 (2002) .....	20
<i>Nodak Mut. Ins. Co. v. Wamsley</i> , 687 N.W.2d 226 (2004) .....	25
<i>Plante v. Columbia Paints</i> , 494 N.W.2d 140 (N.D. 1992) .....	25
<i>State v. Berry</i> , 141 Wn.2d 121, 5 P.3d 658 (2000) .....	14, 17
<i>State v. Taylor</i> , 58 Wn.2d 252, 362 P.2d 247 (1961) .....	20
<i>Vigen Constr. Co. v. Millers Nat. Ins. Co.</i> , 436 N.W.2d 254 (N.D. 1989) .....	25
<i>Wilkinson v. Bd. of Univ. &amp; Sch. Lands</i> , 981 N.W.2d 853 (N.D. 2022) .....	15, 23

### **Statutes**

Laws of 2021, ch. 176, § 4101 .....	18
RCW 11.110.120 .....	15, 18
RCW 24.03.944 .....	15

RCW 24.03A.944 ..... 18

**Rules**

N.D. R. Civ. P. 12(h)(3) ..... 27

RAP 18.17(a)..... 28

RAP 18.17(c)(11)..... 28

## **TABLE OF CONTENTS**

I.	IDENTITY OF PETITIONER .....	1
II.	DECISION .....	1
III.	ISSUES PRESENTED FOR REVIEW .....	1
IV.	STATEMENT OF THE CASE .....	2
V.	ARGUMENT .....	10
	A. THE COURT OF APPEALS’S DECISION CONFLICTS WITH WASHINGTON’S STATUTORY SCHEME AND INVITES END-RUNS VIA FOREIGN PROCEEDINGS. ....	16
	B. FULL FAITH AND CREDIT REQUIRED A NORTH DAKOTA CHOICE-OF-LAW ANALYSIS, WHICH, APPLIED CORRECTLY, REQUIRED NOTICE TO THE WASHINGTON ATTORNEY GENERAL AS A CONDITION OF SUBJECT-MATTER JURISDICTION.....	20
VI.	CONCLUSION .....	25

## **I. IDENTITY OF PETITIONER**

Pursuant to Washington Rule of Appellate Procedure (RAP) 13.4, Petitioner-Appellant Historic Flight Foundation, a Washington nonprofit corporation (“HFF”), respectfully requests review of the decision of the Washington State Court of Appeals, Division III, identified below.

## **II. DECISION**

On April 22, 2025, Division III issued its unpublished opinion in *UMB Bank, N.A. v. Eagle Crest Apartments, LLC, et al.*, Case No. 40189-8-III, which affirmed the trial court’s denial of HFF’s motion to vacate the North Dakota judgment favoring UMB Bank, N.A. (“UMB”). HFF moved for reconsideration on June 4, 2025. The court of appeals denied HFF’s motion on August 19, 2025.

## **III. ISSUES PRESENTED FOR REVIEW**

1. Did the Court of Appeals err in holding that the Attorney General has no statutory authority to intervene in lawsuits like the underlying North Dakota action, which the Court

erroneously characterized as a suit to “collect a debt owed by the Washington nonprofit corporation, HFF”?

2. Did the Court of Appeals err in upholding the superior court’s ruling that RCW 24.03A.944 cannot limit North Dakota jurisdiction, where a proper North Dakota choice-of-law analysis would apply Washington’s Attorney-General-notice statute as “law” eliminating the North Dakota court’s subject-matter jurisdiction?

#### **IV. STATEMENT OF THE CASE**

##### **A. HFF is a Spokane-based nonprofit corporation.**

HFF is a Washington nonprofit formed in 2005 under the Washington Nonprofit Corporation Act, ch. 24.03 RCW. CP 100. Its charitable mission is to exhibit aircraft that demonstrate the development of aviation technology for the three decades between Charles Lindbergh’s solo transatlantic flight and Sputnik. CP 159–60. HFF is recognized as a public charity under I.R.C. §§ 509(a)(1) and 170(b)(1)(A). CP 169. Its historic collection included wood-and-fabric biplanes, early airliners,

World War II fighters and bombers, and a turbine aircraft. CP 100. The collection offered the public a distinctive educational opportunity and was a popular destination. CP 101.

Beginning in 2017, HFF undertook to relocate its collection from Paine Field in Snohomish County to Felts Field in Spokane. *Id.* The Spokane Airport Board approved a twenty-year hangar lease and operating agreement at Felts Field, and a facility was designed and built. *Id.* HFF began displaying its collection at the Felts Field hangar in December 2019. *Id.*

After moving to Felts Field, HFF played an active role in the Spokane community. CP 165. Although the facility had to close during the COVID-19 pandemic, HFF continued to advance its mission through presentations, an interactive STEM program, and virtual or broadcast tours. CP 102. Normal operations resumed in 2022. *Id.* HFF also hosted numerous events at the Felts Field hangar, including celebrations, memorials, and nonprofit fundraisers. CP 165. In the first post-COVID year, HFF welcomed more than 30,000 guests, including

over 1,500 STEM students. *Id.* Since relocating, more than 142 individuals have volunteered with HFF, ranging from students pursuing aerospace or aviation careers to retirees who look to HFF for fellowship and civic engagement. CP 166.

**B. A North Dakota court applied “horizontal veil piercing” to impose liability on HFF arising from an unrelated North Dakota development.**

In 2013, John Sessions became involved in an apartment development in North Dakota through Eagle Crest Apartments, LLC (“Eagle Crest”). When the project failed, lenders acting through UMB Bank, N.A. (“UMB”) foreclosed. CP 70. UMB initially sued only Eagle Crest and its parent, Bakken Housing Company, LLC. *Id.* In August 2020, UMB amended its complaint to add HFF, a Washington nonprofit, and FWF, Ltd., a Washington entity. *Id.* UMB alleged, among other things, that Mr. Sessions served as a governor of HFF and was the sole shareholder of FWF, Ltd., and that Mr. Sessions and these entities engaged in fraudulent transfers of municipal-bond



proceeds loaned to Eagle Crest, for which UMB was successor trustee. CP 70.

At trial, UMB's expert, James Bartholomew, testified that Eagle Crest made one transfer to HFF and that Mr. Sessions caused those funds to be returned to Eagle Crest's bank account once he learned of the error. *Id.* A jury nevertheless found for UMB and determined HFF was the "alter ego" of Mr. Sessions and Eagle Crest. *Id.* The court entered a deficiency judgment against HFF and the other entities. CP 206.

HFF appealed. The North Dakota Supreme Court affirmed, applying "horizontal veil piercing" among entities under common ownership, and reasoning that because Mr. Sessions was an "owner" of all entities, Eagle Crest's liability could be imputed to the others. *UMB Bank, N.A. v. Eagle Crest Apartments, LLC*, 984 N.W.2d 360, 363 (N.D. 2023), *reh'g denied* (Feb. 14, 2023). The court did not acknowledge that HFF is a Washington nonprofit corporation or that Mr. Sessions was a director rather than an owner of HFF. *Id.* The North Dakota

Supreme Court also made no determination regarding subject-matter jurisdiction as to HFF. *Id.* It is undisputed that the Washington Attorney General never received notice of the North Dakota action.

**C. UMB domesticated the North Dakota judgment in Washington and pursued ancillary receivership.**

In April 2022, UMB registered the North Dakota judgment in Spokane County Superior Court. In August 2022, UMB sought appointment of an ancillary receiver over HFF and certain other entities in King County. CP 203.

In July 2023, the Receiver moved for approval to sell receivership assets, including aircraft owned by FWF. *Id.* Six FWF aircraft were held in trust to support HFF's charitable purpose, and other FWF assets were used in HFF's Felts Field displays. *Id.* HFF objected and sought a stay to raise funds to pay the Receiver and preserve the collection for charitable use. *Id.* The King County Superior Court declined to delay the sale. *Id.*

Multiple FWF and HFF aircraft were sold to private purchasers at below-market prices. The collection that had been exhibited at Felts Field has been substantially reduced, and those aircraft are no longer available for the benefit of Washington residents.

**D. The Spokane County Superior Court denied HFF's motion to vacate the foreign judgment**

On July 20, 2023, HFF moved the Spokane County Superior Court to vacate the foreign judgment's registration under CR 60(b)(5). CP 22–37. HFF argued that the North Dakota judgment is void because the Washington Attorney General did not receive the notice required by RCW 24.03A.944 and RCW 11.110.120, and therefore the North Dakota district court lacked subject-matter jurisdiction over HFF. CP 30–36.

UMB's response did not address whether Washington law could apply to the North Dakota action. *See* CP 185–201. Instead, it disputed the applicability of Washington's notice statutes on the merits, asserting that the North Dakota case was

not a proceeding the Attorney General could have initiated, and that the version of the Nonprofit Corporation Act in effect when the action was filed did not require notice. *Id.* UMB's only statement as to whether Washington law could govern appears in a single uncited sentence: "[T]he Washington legislature does not have the power to divest the North Dakota Court of subject matter jurisdiction – and, therefore, any purported failure of the Plaintiff to serve the AG is of no moment." CP 192.

In reply, HFF clarified it was not arguing that Washington's legislature could divest North Dakota courts of jurisdiction. Rather, HFF explained that North Dakota law requires a choice-of-law analysis in matters with multistate contacts, that Washington's notice statutes may supply the controlling law, and that because the North Dakota Constitution grants district courts jurisdiction over all matters "except as otherwise provided by law," Washington's statutes could, in these circumstances, be the relevant "law" that limits their jurisdiction. CP 373, 375. UMB did not dispute that Washington

has the most significant interest in the application of its notice, but did not undertake any choice-of-law analysis, as HFF noted. CP 375.

On December 14, 2023, the trial court denied HFF's motion to vacate. CP 451–56. The court did not reach UMB's arguments about the substance of Washington's notice statutes. *Id.* Instead, it held that “RCW 24.03A.944 did not divest North Dakota of subject-matter jurisdiction where North Dakota was not bound by Washington law.” CP 455. In doing so, the court did not conduct the required choice-of-law inquiry that would be necessary to support the apparent conclusion that Washington law can never limit the jurisdiction of a North Dakota district court.

HFF moved for reconsideration to prompt the choice-of-law analysis. CP 457–68. HFF provided authorities showing that North Dakota courts apply another state's law when that state has a significant and compelling interest. *Id.* The court denied

reconsideration on January 16, 2024. CP 506–07. HFF timely appealed. CP 489–97.

The Court of Appeals, Division III affirmed the denial of HFF’s CR 60(b)(5) motion to vacate registration of the North Dakota judgment. Assuming without deciding that Washington law could apply, the court held that RCW 24.03A.944 and .946 did not require notice to the Washington Attorney General for UMB’s North Dakota debt-collection/veil-piercing action, because those statutes apply only to proceedings the Attorney General is authorized to bring under chapter 24.03A RCW, not to a creditor’s suit in another state; and RCW 11.110.120 (charitable trusts) was inapplicable.

HFF moved for reconsideration, and the court of appeals summarily denied the motion on August 19, 2025. HFF timely appeals.

## **V. ARGUMENT**

This case asks whether out-of-state litigants can pierce a Washington nonprofit’s veil without notifying the Washington

Attorney General. The Court of Appeals answered in the affirmative by mischaracterizing the veil piercing action as mere “action to collect a debt,” Op. 9, and affirmed the trial court’s decision, which erroneously bypassed North Dakota’s choice-of-law rules that compel application of Washington’s notice statute and strip the North Dakota court of jurisdiction.

As a general rule, foreign judgments are entitled to full faith and credit and should be enforced by Washington courts as though they were issued in Washington. *See Brown v. Garrett*, 175 Wn. App. 357, 366, 306 P.3d 1014 (2013). However, a foreign judgment cannot be enforced in Washington if the issuing court lacked jurisdiction. *See State v. Berry*, 141 Wn.2d 121, 128, 5 P.3d 658 (2000).

North Dakota district courts have jurisdiction over all matters “except as otherwise provided by law.” N.D. Const. art. VI § 8. Where a case involves foreign parties, North Dakota decides which state’s law applies by conducting a choice-of-law analysis. *See, e.g., Daley v. Am. States Preferred Ins. Co.*, 587

N.W.2d 159, 160 (N.D. 1998). Applied here, that analysis compels the use of Washington law.

Under Washington law, whenever a party institutes a proceeding against a Washington nonprofit, that party must give notice to the Attorney General, who may then intervene in the proceedings to represent the interests of Washington's citizens. *See* RCW 24.03.944; RCW 11.110.120. North Dakota treats noncompliance with required notice as a jurisdictional defect. *See, e.g., Wilkinson v. Bd. of Univ. & Sch. Lands*, 981 N.W.2d 853, 862 (N.D. 2022) ("Absent the timely filing of a notice of claim . . . the court lacks subject matter jurisdiction to entertain the lawsuit."). Accordingly, where the North Dakota choice of law analysis compels application of Washington law, Washington's notice statute serves as "law" limiting the jurisdiction of the North Dakota court. Because UMB never notified the Washington Attorney General before seeking to pierce the veil of HFF, the North Dakota court lacked subject-



matter jurisdiction, and the judgment is void and unenforceable in Washington.

The court of appeals reached the opposite result only by mis-framing the question and skipping the required analysis. It accepted the superior court's premise that the issue was whether the Washington Legislature can "divest" a North Dakota court of jurisdiction—rather than whether North Dakota's own choice-of-law rules make Washington's Attorney General notice statute the governing "law" that limits jurisdiction. *See* CP 192. It further mischaracterized the underlying case as mere "action to collect a debt owed by the Washington nonprofit corporation, HFF," Op. 9, ignoring that veil-piercing turns on the proper administration of a nonprofit entity, which falls squarely within the bounds of the Attorney General's statutory oversight. Those errors conflict with settled Washington authority that full faith and credit does not extend to judgments entered without jurisdiction, and with North Dakota authority making statutory notice a jurisdictional prerequisite.

Review is warranted because the decision below conflicts with controlling authority and raises issues of constitutional dimension and substantial public importance. First, by enforcing a foreign judgment despite a jurisdictional defect, the opinion conflicts with this Court's opinion in *State v. Berry*, 141 Wn.2d 121, 128, 5 P.3d 658 (2000) (holding a foreign judgment cannot be enforced in Washington if the issuing court lacked jurisdiction), and with published court of appeals precedent including *Camp Finance, LLC v. Brazington*, 133 Wn. App. 156, 160–61, 135 P.3d 946 (2006) (AG notice as a jurisdictional prerequisite), and *Brown*, 175 Wn. App. at 366 (full faith and credit conditioned on jurisdiction). RAP 13.4(b)(1)–(2). Second, the case presents significant constitutional questions regarding the Full Faith and Credit Clause and due process when a forum enforces a foreign judgment entered without notice to the representative of Washington's public beneficiaries. RAP 13.4(b)(3).

The ruling also raises issues of substantial public interest *See* RAP 13.4(b)(4). Washington is home myriad charitable nonprofits— from local museums and community foundations to large foundations with national and international reach—that hold their assets for the benefit of the public. The Legislature has recognized that these organizations are “vital to our economy and support communities across the state.” Laws of 2021, ch. 176, § 4101. Requiring notice to the Attorney General before a court reallocates charitable assets is how Washington safeguards that public trust. The Attorney General is the only official charged with representing the diffuse beneficiaries of a charity; without notice, those beneficiaries have no voice. RCW 24.03A.944 and RCW 11.110.120 give meaning to that role by ensuring the State can appear, test the allegations, and protect the organization’s charitable purpose before its assets are diverted.

Stripping away that notice invites forum shopping and exposes Washington nonprofits—particularly large nonprofits with multi-state initiatives—to out-of-state veil-piercing or

similar governance attacks premised on the unrelated conduct of a director or affiliate, all without any participation by the Attorney General. The predictable consequence is a chilling effect on charitable activity here: donors lose confidence that gifts will remain devoted to charitable uses, volunteers and directors face heightened, unpredictable risk, and nonprofits may avoid cross-jurisdictional collaborations, or even avoid locating in Washington, to guard against surprise judgments entered elsewhere. Enforcing the Attorney General notice requirement preserves uniform governance standards, prevents end-runs around Washington's nonprofit protections, and promotes the stability that charities need to serve the public.

**A. The Court of Appeals' Decision Conflicts With Washington's Statutory Scheme and Invites End-Runs via Foreign Proceedings.**

The opinion below erroneously constricts the Washington Attorney General's statutory role to a short list of enumerated proceedings, and it compounds that error by mischaracterizing the North Dakota action as a simple "action to collect a debt

owed by the Washington nonprofit corporation, HFF.” Op 9.

Both premises are wrong.<sup>1</sup>

For more than sixty years, Washington courts have recognized that assets dedicated to charitable purposes are held in trust for the public, and the Attorney General is the public’s designated representative to protect those assets. *See State v. Taylor*, 58 Wn.2d 252, 362 P.2d 247 (1961) (Attorney General is “the only proper person” to enforce a public trust or charity); *Lundberg ex rel. Orient Found. v. Coleman*, 115 Wn. App. 172, 179, 60 P.3d 595 (2002) (Attorney General is the proper party to invoke and protect the public interest in nonprofit governance and charitable trust enforcement). HFF’s aircraft and related assets are dedicated to education, preservation, and community programming—not to private gain. Treating those assets as if they were owned by a director or “shareholders” ignores the

---

<sup>1</sup> Notably, the North Dakota action never alleged that *HFF* owed any debt to any plaintiff in that case. The theory of recovery against HFF was based solely on veil piercing.

nonprofit form and the trust character of charitable property.

The court of appeals held that RCW 24.03A.944 and .946 did not require notice to the Attorney General because UMB's suit was for "debt collection." OP. 10. That reading cannot be squared with the facts or the statutes' words or structure.

RCW 24.03A.944(1) & (3) require service of notice on the Attorney General in "any proceeding which this chapter authorizes the attorney general to bring," expressly "not limited to" the listed examples. The Legislature's "not limited to" clause forecloses a wooden, item-by-item approach.

RCW 24.03A.946 empowers the Attorney General to commence "any action or proceeding" to ensure compliance with chapter 24.03A, secure the proper administration of a charitable corporation, and restrain and prevent violations governing charitable property. The phrase "any action or proceeding" is deliberately expansive.

RCW 11.110.120 independently requires notice to the Attorney General in "all judicial proceedings involving or

affecting the charitable trust or its administration.” Charitable assets do not cease being “charitable trust” property because a creditor proceeds in another forum or uses a different caption.

Veil-piercing is not a garden-variety collection device; it is a governance-premised remedy that depends on alleged abuse of the corporate form and, if granted against a nonprofit, directly reallocates charitable assets to satisfy private debts. That is precisely when Attorney General oversight is most critical. Even under the court’s own narrowed framing (“governance” cases only), this case qualifies: UMB sought to disregard HFF’s nonprofit separateness and treat HFF as the alter ego of a private developer. Notice was therefore required.

Review is necessary to restore the Legislature’s design: charitable assets held in trust for Washington’s people may not be repurposed to satisfy private liabilities without notice to, and an opportunity to be heard by, the Attorney General. The Court should grant review, hold that the Attorney General’s notice and intervention authority applies to veil-piercing proceedings that

threaten Washington charitable assets, and reverse.

**B. Full Faith and Credit Required a North Dakota Choice-of-Law Analysis, Which, Applied Correctly, Required Notice to the Washington Attorney General as a Condition of Subject-Matter Jurisdiction.**

North Dakota's Constitution grants district courts jurisdiction over "all causes, except as otherwise provided by law." N.D. Const. art. VI § 8. North Dakota courts decide which law applies through a choice-of-law analysis. *Daley*, 587 N.W.2d at 160. Applied here, that analysis points to Washington law. *Id.* (directing application of foreign law where the only connection between the foreign defendant and North Dakota is a single, insignificant contact). Washington's notice statute therefore qualifies as a "law" that can limit North Dakota jurisdiction—not because the Washington legislature has plenary authority to limit the jurisdiction of other states' courts, but because of the specific operation of North Dakota's own laws. North Dakota courts treat failure to satisfy required notice as a defect eliminating subject-matter jurisdiction. *Wilkinson*, 981 N.W.2d at 862. Accordingly,



because the Washington Attorney General was not notified of the North Dakota proceedings against HFF, the North Dakota court was divested of subject-matter jurisdiction.

When the determination of whether to give a foreign judgment full faith and credit turns on which state's laws govern, the court tasked with enforcing the judgment (here, the Spokane County Superior Court) must first conduct a choice of law analysis using the law of the foreign state. *Israel v. National Board of YMCA*, 369 A.2d 646, 651 (R.I. 1977), illustrates the proper approach. There, the Rhode Island Attorney General sought to enjoin a New York judgment because the judgment was entered without notice to the Attorney General. *Id.* at 620. The Rhode Island court conducted a choice-of-law analysis to decide whether the judgment was entitled to full faith and credit. *Id.* at 620–21. Applying New York choice-of-law rules, the court held New York's notice statute governed. *Id.* at 621. Because the parties notified the New York Attorney General, all necessary

parties were deemed notified. *Id.* at 621–22. The court therefore upheld the New York judgment as valid and enforceable. *Id.*

Here, the trial court should have applied North Dakota’s choice of law analysis to determine whether Washington’s notice statute applied. North Dakota applies a “significant contacts” choice-of-law test. *See Issendorf v. Olson*, 194 N.W.2d 750, 756 (N.D. 1972). That analysis directs courts to use foreign law when another state has the greater interest. *See Plante v. Columbia Paints*, 494 N.W.2d 140, 144 (N.D. 1992) (applying Washington insurance law due to stronger contacts); *Vigen Constr. Co. v. Millers Nat. Ins. Co.*, 436 N.W.2d 254, 256 (N.D. 1989) (applying Minnesota law).

When determining which state has the most significant contacts, North Dakota courts use the so-called *Leflar* factors—predictability, interstate order, simplification, advancement of the forum’s interests, and the better rule. *Nodak Mut. Ins. Co. v. Wamsley*, 687 N.W.2d 226, 230 (2004). North Dakota also decides issue by issue, so different questions in the same case

may be governed by different states' laws. *Id.* at 230. Applying that framework here, the relevant issue is whether the Washington Attorney General was entitled to notice under RCW 24.03A.944 in proceedings questioning a Washington nonprofit's governance and use of assets. Under North Dakota's choice of law framework, the court should have asked which state had the stronger interest in the notice question and then applied that state's law. On that framing, the North Dakota District Court should have applied RCW 24.03A.944.

The *Leflar* factors point decisively to Washington. HFF's North Dakota contacts were negligible—an single inadvertent transfer later repaid—while Washington's stake in Attorney General oversight of charitable assets is substantial. Due process and full faith and credit principles also disfavor selecting forum law based on a nonsignificant contact. Predictability favors a clear, uniform notice rule to the Attorney General; simplification is neutral; interstate order and advancement of governmental interests strongly favor Washington because its statutes protect

the public's interest in nonprofit assets. North Dakota's interest in regulating a Washington nonprofit is minimal on these facts. Even if the "better law" factor is neutral, Washington uniquely safeguards its citizens through Attorney General participation.

North Dakota law compels dismissal whenever subject-matter jurisdiction is lacking. N.D. R. Civ. P. 12(h)(3). Accordingly, failing a statutory prerequisite deprives a North Dakota district court of jurisdiction. That jurisdictional defect may be raised at any time.

Properly applying North Dakota's choice-of-law method here leads to Washington's notice statute governing. North Dakota law makes compliance with applicable notice statutes a prerequisite to subject-matter jurisdiction. UMB's noncompliance rendered any North Dakota judgment against HFF void and unenforceable in Washington.

## **VI. CONCLUSION**

For the foregoing reasons, the North Dakota District Court lacked subject-matter jurisdiction to enter judgment against HFF and the North Dakota Judgment should be vacated.

## **CERTIFICATION**

Pursuant to RAP 18.17(b), Appellant hereby certifies that this brief complies with the formatting requirements of RAP 18.17(a) and has 3758 words pursuant to RAP 18.17(c)(10).

Respectfully submitted this 18th day of September 2025.

GRANITE POINT LAW, PLLC

/s Asti Gallina

ASTI GALLINA, WSBA #53361  
522 W. Riverside Ave., Ste. 7153  
Spokane, WA 99201  
(509) 592-0108  
asti@granitepointlaw.com

*-and-*

RIVERSIDE NW LAW GROUP, PLLC

/s Matthew A. Mensik

MATTHEW A. MENSİK, WSBA No. 44260

905 W. Riverside Ave., Ste. 208

Spokane, WA 99201

(206) 949-3540

mam@rnwlg.com

*Counsel for Historic Flight Foundation*

## **APPENDIX**

<b><u>Date</u></b>	<b><u>Document</u></b>	<b><u>Page</u></b>
May 15, 2025	Unpublished Opinion	1-12
June 4, 2025	Motion for Reconsideration	13-33
August 19, 2025	Amended Order Denying Motion for Reconsideration	34

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE

UMB BANK, N.A. as successor trustee	)	
under the Indenture of Trust dated October	)	No. 40189-8-III
1, 2013, for the benefit of the holders of	)	
Multifamily Housing Revenue Bonds	)	
(Eagle Crest Apartments LLC Project),	)	
Series 2013,	)	
Respondent,	)	
	)	
v.	)	
	)	
EAGLE CREST APARTMENTS, LLC;	)	
BAKKEN HOUSING COMPANY, LLC;	)	UNPUBLISHED OPINION
JOHN T. SESSIONS; HISTORIC	)	
HANGARS LLC; FWF, LTD.; ORKNEY	)	
AIR LLC; ANY PERSON(S) IN	)	
POSSESSION; and ALL PERSONS	)	
UNKNOWN, claiming any estate or	)	
interest in, or lien or encumbrance upon,	)	
the real estate described in the Complaint,	)	
	)	
Defendants,	)	
	)	
HISTORIC FLIGHT FOUNDATION,	)	
	)	
Appellant.	)	

FEARING, J. — North Dakota judgment debtor Historic Flight Foundation (HFF), a Washington nonprofit corporation, appeals the Washington superior court denial of his motion to vacate the North Dakota judgment favoring UMB Bank, N.A. (UMB). We affirm the superior court.



## FACTS

We garner most of the facts from the North Dakota Supreme Court's decision affirming the underlying judgment. *UMB Bank, NA v. Eagle Crest Apartments, LLC*, 2023 ND 4, 984 N.W.2d 360. In 2005, John Sessions founded the John T. Sessions Historic Aircraft Foundation. He later renamed the organization the Historic Flight Foundation.

HFF was established under Washington's Nonprofit Corporation Act, chapter 24.03 RCW, and operates as a public charity under Internal Revenue Code (IRC) sections 509(a)(1) and 170(b)(1)(A). John Sessions serves as the corporation's executive director. The corporation's mission is to display aircraft that illustrate the evolution of aviation technology. HFF's collection includes wood-and-fabric biplanes, early airliners, World War II fighters and bombers, and a turbine-powered aircraft. In December 2019 just in time for COVID-19, HFF began showcasing its historic aircraft collection at Felts Field in Spokane.

John Sessions incorporated other entities in Washington and North Dakota, including Historic Hangers, LLC; FWF, Ltd.; and Orkney Air, LLC. All these entities revolve around aviation.

In 2013, during the Bakken Field oil boom, John Sessions, along with a business partner, formed Eagle Crest Apartments, LLC (the limited liability company) to finance, construct, and operate the 168-unit multifamily Eagle Crest Apartments and related facilities in Williston (“Eagle Crest Project”). UMB Bank serves as the successor trustee for bonds issued by the City of Williston to finance the construction of the project. While seeking financing for the Eagle Crest Project, Sessions claimed personal assets of nearly \$39 million and further stated that he controlled two private foundations, Historic Flight Foundation and Sessions Family Foundation, with assets of \$21,500,000 and no debt.

In 2015, the limited liability company defaulted on its note securing repayment of the bonds. In 2019, UMB brought suit on the debt in North Dakota District Court, the Peace Garden State’s court of general jurisdiction. After securing summary judgment on its foreclosure claim, UMB credit bid its judgment and acquired title to the Eagle Crest Project. The bid did not satisfy the entire debt. Based on evidence from a UMB representative regarding the remaining debt, the court entered a deficiency judgment against the limited liability company for \$20,129,475.97.

In the North Dakota District Court, UMB also asserted claims of fraudulent transfers, deceit, and punitive damages against John Sessions and his entities Bakken Housing Company, Historic Flight Foundation, Historic Hangars, LLC, FWF, Ltd., and

Orkney Air, LLC (the entities). UMB sought to pierce the corporate veils of the limited liability company and the other entities. UMB alleged that Sessions used the entities as a facade for his own individual dealings, treated their accounts as one continuous flow of funds, and, through fraud, emptied the coffers of Eagle Crest to put fuel in his planes, support his failing businesses, and visit luxury hotels, to the detriment of investors, bondholders, and the City of Williston. *UMB Bank, NA v. Eagle Crest Apartments, LLC*, 984 N.W.2d 360, 363 (N.D. 2023). Before submitting the case to the jury, the court instructed it on the principles of piercing the corporate veil and the alter ego doctrine.

The North Dakota District Court jury determined that each defendant was the alter ego John Sessions, the limited liability company, and the other defendants. It also found that Sessions and his entities fraudulently transferred \$2.9 million from the limited liability company. The jury awarded UMB both compensatory and exemplary damages. The district court issued a judgment in favor of UMB that held all defendants jointly and severally liable. The court entered additional and separate judgments against Sessions for \$902,184.75 and against HFF for \$300,728.25.

In 2023, the North Dakota Supreme Court affirmed the judgment after holding that substantial evidence supported the jury verdict. The court wrote:

The jury heard testimony and viewed evidence that indicated Sessions disregarded the entities' corporate form and used them for personal purposes. The jury found each

Defendant was the alter ego of both Sessions and the other Defendants. The jury also found Sessions and various entities fraudulently transferred roughly \$2.9 million to the detriment of investors and engaged in a conspiracy to commit deceit.

*UMB Bank, NA v. Eagle Crest Apartments, LLC*, 984 N.W.2d 360, 367 (N.D. 2023).

The North Dakota Supreme Court also rejected the defendants' challenge to their joint and several liability, by stating, "Defendants have not offered a persuasive explanation for why they, as the alter egos of Eagle Crest Apartments, should not also be responsible for the amount of the deficiency judgment." *UMB Bank, NA v. Eagle Crest Apartments, LLC*, 984 N.W.2d 360, 367 (N.D. 2023). During the course of the North Dakota proceeding, HFF never argued that the North Dakota court lacked subject matter jurisdiction or personal jurisdiction over the defendants.

## PROCEDURE

On April 8, 2022, and before the North Dakota Supreme Court affirmed the judgment against John Sessions and his entities, UMB registered the North Dakota judgment in Spokane County Superior Court under the Uniform Enforcement of Foreign Judgments Act, RCW 6.36.035. The registered judgment named Eagle Crest Apartments, LLC, Bakken Housing Company, LLC, John T. Sessions, HFF, Historic Hangars, LLC, FWF, Ltd., and Orkney Air, LLC as judgment debtors. On August 2, 2022, HFF and the other defendants agreed to the appointment of an ancillary receiver for HFF and several

other entities in King County Superior Court. HFF never challenged the validity of the North Dakota judgment in the receivership proceeding.

On July 20, 2023, HFF filed a motion, under CR 60(b)(5), in Spokane County Superior Court to vacate the registration of the foreign judgment. HFF contended that the North Dakota judgment was void because the Washington State Attorney General did not receive notice of the North Dakota lawsuit required under RCW 24.03A.944 and .946. In so arguing, HFF emphasized that the North Dakota Constitution provides that the state district courts possess general jurisdiction over all matters “except as otherwise provided by law.” N.D. CONST. art. VI, § 8. In turn, North Dakota courts would look to Washington law to determine notice needed in a suit against a Washington nonprofit corporation. HFF argued that, due to the lack of notice to the Washington Attorney General, the North Dakota District Court lacked subject-matter jurisdiction over HFF.

On July 26, 2023, the King County Superior Court receiver filed a motion to approve the sale of aircraft owned by FWF. HFF objected to the motion and requested a stay of the sale process to raise funds to pay the receiver and preserve the aircraft collection for its charitable purpose. The King County Superior Court denied the request.

On December 14, 2023, the Spokane County Superior Court denied HFF’s motion to vacate the North Dakota judgment registered in Washington State. The superior court

reasoned that Washington courts must recognize the North Dakota judgment under the Full Faith and Credit clause of the United States Constitution. U.S. Const., Art IV, §1. Whereas a party may collaterally attack a foreign judgment if the issuing state lacked subject matter jurisdiction or personal jurisdiction, the North Dakota District Court possessed both.

### LAW AND ANALYSIS

On appeal, HFF asks this court to reverse the superior court's denial of his motion to vacate the judgment registered in Washington State. In response to HFF's appeal, UMB argues, among other contentions, that HFF waived any right to object to the jurisdiction of the North Dakota court because HFF never argued a lack of jurisdiction before the North Dakota courts. UMB also contends that, even if the Washington notice statutes, on which HFF relies, demanded notice of the North Dakota suit on the Washington State Attorney General, the statutes are not jurisdictional. Washington courts disfavor collateral attacks based on allegations of defective notice. *In re Welfare of H.S.*, 94 Wn. App. 511, 526, 973 P.2d 474 (2000). Furthermore, UMB asserts that the North Dakota court needed to only apply its state's law, not Washington law, when assessing the need to serve interested parties. We do not address these alternative arguments because we agree with UMB that RCW 24.03A.944 and .946 did not require

notice of the North Dakota lawsuit be given the Attorney General even assuming the North Dakota court should have applied Washington law.

All of HHF's assignments of error dovetail into its central contention that the Spokane County Superior Court should have vacated the registration of the North Dakota judgment because UMB failed to send notice of the pending suit to the Washington Attorney General. According to HHF, Washington State need not afford the North Dakota judgment full faith and credit to a judgment rendered by a court that lacked jurisdiction over the subject matter or the relevant parties. *V.L. v. E.L.*, 577 U.S. 404, 407, 136 S. Ct. 1017, 194 L. Ed. 2d 92 (2016). HHF's appeal assumes that the North Dakota court lacked jurisdiction because UMB did not comply with RCW 24.03A.944 or .946, Washington statutes that require the Attorney General to receive notice of some suits against a Washington nonprofit corporation.

HHF relies on RCW 24.03A.944. The statute reads:

(1) Every notice to the attorney general required under this chapter must be served upon the attorney general. Service upon the attorney general must be via United States mail, postage prepaid, or by other means as authorized by the attorney general.

(2) Every notice to the attorney general under this chapter shall identify the provisions of this chapter relevant to the subject matter of the notice.

(3) *Any person that has commenced any proceeding which this chapter authorizes the attorney general to bring, including but not limited to any proceeding involving a charitable corporation or property held for charitable purposes brought under RCW 24.03A.185, 24.03A.200,*

*24.03A.610, 24.03A.922, 24.03A.936, or 24.03A.966, shall serve notice of the commencement of the proceeding upon the attorney general. Any other party to such a proceeding may serve notice of the commencement of the proceeding upon the attorney general. To be valid, the notice must identify that it is being given pursuant to this subsection. The attorney general may waive this notice at any time.*

(Emphasis added.)

The statute, part of the nonprofit corporation code, requires notice to the Washington Attorney General in proceedings authorized to be brought by the attorney general under Chapter 24.03A RCW. The statute lists some of those lawsuits: a suit brought by the Washington Attorney General to enforce a restriction in a nonprofit corporation's gift instrument, RCW 24.03A.185; a suit brought by the nonprofit corporation to apply a gift to a purpose other than the corporation's charitable purpose, RCW 24.03A.200; a suit against a director or officer of the nonprofit corporation for an unlawful distribution of property, RCW 24.03A.610; a suit against a dissolved nonprofit corporation for the purpose of realizing on undistributed assets, RCW 24.03A.922; a proceeding by the Washington Attorney General to dissolve the nonprofit corporation, RCW 24.03A.936; and a challenge to the validity of any of the nonprofit corporation's action, RCW 24.03A.966.

The North Dakota suit was an action to collect a debt owed by the Washington nonprofit corporation, HFF. RCW 24.03A.944 demands no notice to the Attorney



General when a creditor or a bond trustee sues a nonprofit corporation in Washington State or in any other state. RCW 24.03A.944 does not read that its provisions extend to a suit in a foreign jurisdiction.

HFF particularly relies on RCW 24.03A.946. This second statute reads:

The attorney general may commence in the court described in RCW 24.03A.025 any action or proceeding to:

(1) Ensure compliance by a nonprofit corporation, or its members, directors, officers, employees, or agents, with any provision of this chapter that governs the distribution, disposition, management, or expenditure of, or reporting obligations relating to, any property held for charitable purposes;

(2) Secure the proper administration of a charitable corporation, or of property held for charitable purposes by a nonprofit corporation, when reasonably necessary to protect property held for charitable purposes; and

(3) Restrain and prevent any act that violates any provision of this chapter that governs the distribution, disposition, management, or expenditure of, or reporting obligations relating to, any property held for charitable purposes.

The Washington legislature adopted RCW 24.03A.946 during the pendency of the North Dakota District Court litigation. Assuming for argument's sake that the statute applies retroactively, neither the North Dakota case nor the subsequent enforcement action in Washington qualifies as an action that RCW chapter 24.03A "authorizes the attorney general to bring." RCW 24.03A.946. UMB's suit in North Dakota was a debt collection action, wherein UMB sought to pierce the corporate veil. The suit did not seek to ensure HFF's compliance with any provision of Chapter 24.03A. RCW. The suit did

not seek to secure the proper administration of HFF as a charitable trust. The North Dakota lawsuit did not ask for an injunction against a violation of Chapter 24.03A. RCW. RCW 24.03A.944 did not restrict UMB's right to pursue an action under North Dakota law against John Session and his alter egos for misappropriating millions of dollars.

Finally, HFF cites RCW 11.110.120. This last statute declares:

The attorney general may institute appropriate proceedings to secure compliance with this chapter and to secure the proper administration of any trust or other relationship to which this chapter applies. He or she shall be notified of all judicial proceedings involving or affecting the charitable trust or its administration in which, at common law, he or she is a necessary or proper party as representative of the public beneficiaries.

HFF contends that some of its assets are in a charitable trust. Regardless, HFF is a nonprofit corporation, not a charitable trust. UMB did not sue in North Dakota to secure the proper administration of any trust. HFF does not argue that the Attorney General would have been a necessary or proper party under common law for a debt collection action filed against a charitable trust in another state.

### CONCLUSION

We need not discuss principles behind vacating judgments. We affirm the superior court's denial of the motion to vacate the registration of the North Dakota judgment.

No. 40189-8-III

*UMB Bank, N.A. v. Eagle Crest Apartments, LLC*

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

  
Fearing, J.

WE CONCUR:

  
Cooney, J.

  
Staab, A.C.J.

FILED  
Court of Appeals  
Division III  
State of Washington  
6/4/2025 12:49 PM  
No. 40189-8-III

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

---

UMB BANK, N.A., as successor trustee under the Indenture of  
Trust dated October 1, 2013 for the benefit of the holders of  
Multifamily Housing Revenue Bonds (Eagle Crest Apartments  
LLC Project), Series 2013,

Plaintiff/Respondent,

v.

EAGLE CREST APARTMENTS LLC; BAKKEN HOUSING  
COMPANY LLC; JOHN T SESSIONS; HISTORIC FLIGHT  
FOUNDATION; HISTORIC HANGARS LLC; FWF, LTD.;  
ORKNEY AIR LLC; ANY PERSONS UNKNOWN, claiming  
any estate or interest in or lien or encumbrance upon the real  
estate described in the Complaint,

Defendants/Appellants.

---

APPELLANT HISTORIC FLIGHT FOUNDATION'S  
MOTION FOR RECONSIDERATION

---

ASTI M. GALLINA, WSBA No. 53361  
RIVERSIDE NW LAW GROUP, PLLC  
905 West Riverside Avenue, Suite 208  
Spokane, Washington 99201  
Phone: (509) 606-0746  
[amg@rnwlg.com](mailto:amg@rnwlg.com)

BLAIR M. RUSS, WSBA No. 40374  
TOMLINSON BOMSZTYK RUSS  
1000 Second Ave., Ste. 3660  
Seattle, WA 98104  
Phone: (206) 203-8009  
[bmr@tbr-law.com](mailto:bmr@tbr-law.com)

*Counsel for Historic Flight Foundation*

**1. IDENTITY OF MOVING PARTY**

Appellant Historic Flight Foundation (“HFF”) seeks the relief designated in Part 2.

**2. STATEMENT OF RELIEF SOUGHT**

HFF respectfully requests reconsideration of this Court’s May 15, 2025 Opinion (the “Opinion”) affirming the trial court’s decision denying HFF’s motion to vacate the registration of the North Dakota Judgment. This Motion is brought pursuant to RAP 12.4 and was timely filed within 20 days of the Court’s Opinion.

**3. FACTS RELEVANT TO MOTION**

HFF was established under Washington’s Nonprofit Corporation Act, chapter 24.03 RCW, and operates as a public charity under Internal Revenue Code (IRC) sections 509(a)(1) and 170(b)(1)(A). CP 169. The corporation’s mission is to display aircraft that illustrate the evolution of aviation

technology. *Id.* John Sessions serves as the corporation's director.

In 2013, John Sessions, along with a business partner, formed Eagle Crest Apartments, LLC, a North Dakota limited liability company. CP 70. The company obtained financing to develop a 168-unit multifamily apartment complex through bonds issued by the City of Williston, which were later assumed by UMB Bank. *Id.* In 2015, the limited liability company defaulted on its note securing repayment of the bonds. *Id.* In 2019, UMB Bank brought suit on the debt in North Dakota District Court. After securing a judgment, UMB Bank foreclosed on the apartment project. *Id.* The North Dakota District Court entered a deficiency judgment against the company for \$20,129,457.97. *See UMB Bank, N.A. v. Eagle Crest Apartments, LLC*, 984 N.W.2d 360, 363 (N.D. 2023), *reh'g denied* (Feb. 14, 2023).

UMB also asserted claims of fraudulent transfers, deceit, and punitive damages against John Sessions and his entities

Bakken Housing Company, Historic Hangars, LLC, FWF, Ltd., Orkney Air, LLC, as well as the nonprofit corporation HFF. *Id.* UMB sought to pierce the corporate veils of the limited liability company and the other entities. *Id.*

The North Dakota District Court jury determined that each defendant was the alter ego John Sessions, the limited liability company, and the other defendants. *Id.* The district court issued a judgment in favor of UMB that held all defendants jointly and severally liable. *Id.* The court entered additional and separate judgments against Sessions for \$902,184.75 and against HFF for \$300,728.25. *Id.*

On April 8, 2022, and before the North Dakota Supreme Court affirmed the judgment against John Sessions and his entities, UMB registered the North Dakota judgment in Spokane County Superior Court under the Uniform Enforcement of Foreign Judgments Act, RCW 6.36.035. CP 1–8. On July 20, 2023, HFF filed a motion, under CR 60(b)(5), in Spokane County Superior Court to vacate the registration of the foreign judgment.

CP 22–37. HFF contended that the North Dakota judgment was void because the Washington State Attorney General did not receive notice of the North Dakota lawsuit required under RCW 24.03A.944 and .946. *Id.* On December 14, 2023, the Spokane County Superior Court denied HFF’s motion to vacate the North Dakota judgment registered in Washington State, and HFF timely appealed. CP 455. On May 15, 2025, the Court of Appeals issued its Opinion affirming the trial court’s denial of HFF’s motion to vacate.

#### **4. GROUND FOR RELIEF AND ARGUMENT**

The Opinion adopts an unduly narrow view of the Attorney General’s statutory authority and, in so doing, undermines the safeguards Washington law provides to protect charitable assets. Nothing in the statutes justifies such a limited interpretation. Reconsideration is necessary to ensure that charitable property held in trust for the people of Washington is not diverted without notice to, and oversight by, the Attorney General.



The Opinion mistakenly states that “the North Dakota suit was an action to collect a debt owed by the Washington nonprofit corporation, HFF.” Op. at 9. In reality, the North Dakota suit was an action to collect a debt owned by an entirely separate for-profit limited liability company, Eagle Crest Apartments, LLC. HFF was not a borrower, guarantor, or obligor of any debt at issue in the North Dakota action. The judgment against HFF arose solely from a veil-piercing theory that treated HFF as if it were owned and controlled by John Sessions—without considering the legal standards that govern nonprofit corporations or the unique protections afforded to charitable assets under Washington law.

The Opinion also adopts an unduly narrow construction of RCW 24.03A.944, effectively limiting the Attorney General’s statutory right to notice and participation to a small set of enumerated proceedings. *See* Op. at 9–10. That reading disregards the statute’s plain language, which applies to any proceeding the Attorney General is authorized to bring under

Chapter 24.03A, and ignores other governing statutes—RCW 24.03A.946 and RCW 11.110.120—that confirm the Attorney General’s broad and historic role in protecting charitable trusts.

Most significantly, the Court’s ruling permits a foreign plaintiff to pierce the veil of a Washington charitable nonprofit and reallocate public-benefit assets without notice to the Attorney General. That outcome is incompatible with Washington law and public policy. It treats charitable property as ordinary corporate assets, fails to respect the Attorney General’s statutory authority, and opens the door to enforcement of foreign judgments that impair the public interest without accountability or oversight.

Reconsideration is warranted to correct these legal and factual errors, and to reaffirm the critical principle that charitable assets held in trust for the people of Washington may not be diverted—by any court—without the Attorney General’s knowledge and participation.

**A. Washington Law Recognizes Charitable Assets as Public Trust Property Requiring Attorney General Oversight**

The assets of a charitable nonprofit corporation do not belong to its directors, officers, or affiliated entities. They belong to the public. *Cf. State v. Taylor*, 58 Wn.2d 252, 260–61 (1961). This principle is deeply rooted in Washington law and informs every aspect of the Attorney General’s supervisory role. *See id.* at 254–55. The Attorney General is not just a stakeholder—he or she is the sole representative of the public’s interest in charitable assets. *See id.* at 255. That role cannot be fulfilled if proceedings that impact charitable property occur without notice to the Attorney General or an opportunity for participation.

Washington courts have long recognized this foundational duty. As the Washington State Supreme Court held in *State v. Taylor*, “the attorney general [is] the only proper person to institute proceedings for the enforcement of a public trust or charity.” 58 Wn.2d at 255. More recently, in *Lundberg ex rel. Orient Foundation v. Coleman*, 115 Wn. App. 172, 178–79

(2002), the Court of Appeals reaffirmed that the Attorney General is the “proper party” to “invoke and protect the public interest” in nonprofit corporate governance and charitable trust enforcement. These cases underscore that a nonprofit’s directors do not stand in the same shoes as shareholders of a private corporation and that lawsuits involving charitable entities are not private matters to be negotiated or litigated without the public’s designated advocate.

HFF is a recognized charitable organization with assets devoted to a public mission—namely, education, historical preservation, and community programming. Its tax-exempt status has been acknowledged by the IRS, the Washington Department of Revenue, and the Washington Attorney General. As such, its assets are subject to the same protections that Washington law affords to charitable trusts. *See In re Breast Cancer Prevention Fund*, 574 B.R. 193, 217 (Bankr. W.D. Wash. 2017) (noting that assets dedicated to charitable purposes are held in trust for the public benefit).

The Opinion—which permits a foreign court to pierce the veil of a Washington charitable nonprofit and divert its assets to satisfy the debts of a for-profit enterprise, all without notice to the Attorney General—contravenes these protections. It treats charitable property as though it were interchangeable with private corporate funds, ignores the unique trust-based structure of Washington nonprofit law, and disregards the statutory notice requirements that exist to safeguard public resources.

This is not a mere procedural irregularity. It is a substantive failure that threatens the integrity of Washington's entire regime for charitable oversight. RCW 24.03A.944 and RCW 11.110.120 exist precisely to prevent charitable assets from being seized or redirected without public involvement. Their requirements are not optional and cannot be bypassed through foreign litigation.

**B. The Opinion Mistakenly Treated HFF as a Private Debtor and Ignored Its Nonprofit Status**

The danger of excluding the Attorney General is illustrated by the Opinion's mischaracterization of HFF as a

debtor in its own right. The Opinion states that “the North Dakota suit was an action to collect a debt owed by the Washington nonprofit corporation, HFF.” Op. at 9. That is factually incorrect and reflects a broader legal error.

The debt at issue in the North Dakota litigation was incurred by Eagle Crest Apartments, LLC—not by HFF. HFF was not a borrower, a guarantor, or in any other contractual relationship giving rise to the obligation. The record shows just the opposite: HFF had an independent board, a distinct charitable mission, and a long-established history of operating exclusively for public benefit. HFF’s operations have nothing to do with real estate development or private investment. HFF is a cornerstone of the greater Spokane community, offering educational programs for students, hosting aviation-related events for the public, collaborating with local schools and veterans’ organizations, and maintaining a museum-quality fleet of historical aircraft. CP 100-01. Its work supports public STEM education, community engagement, and cultural preservation—all core charitable functions that have no

connection to the activities of Eagle Crest in North Dakota. The *only* financial transfer between Eagle Crest and HFF was promptly reversed and refunded. There was no evidence that HFF's assets were used to benefit Eagle Crest or that HFF was engaged in the business activities underlying the debt.

The only basis for imposing liability on HFF was the North Dakota jury's veil-piercing verdict—a determination rendered without the participation of the Washington Attorney General. The North Dakota Court erroneously treated HFF as though it were “owned” by its executive director, John Sessions—a concept that has no application to nonprofit corporations under Washington law. HFF has no owners. Its assets do not belong to Mr. Sessions, its board, or its directors. They belong to the people of Washington, held in trust for charitable purposes.

Precisely because of this unique structure, nonprofit corporations lack any private party with a financial incentive

to defend its assets as vigorously as a shareholder might in a for-profit context. Its assets exist for public use and public benefit. Without the Attorney General's presence, no one was positioned to assert that interest in the North Dakota litigation. The determination that HFF was an alter ego of Mr. Sessions was the result of a proceeding that excluded the very party empowered by law to defend HFF's charitable integrity. The people of Washington were never given the chance to challenge that determination or to present the charitable value and independent role that HFF continues to play for the citizens of Washington State.

**C. RCW 24.03A.944 Requires Attorney General Notice in a Broader Range of Proceedings Than the Court Recognized**

The Opinion's narrow interpretation of RCW 24.03A.944 strips the Attorney General of the very authority that would have prevented HFF's assets from being wrongly diverted. Specifically, the Court concluded that "[RCW] 24.03A.944 demands no notice to the Attorney General when a creditor or a



bond trustee sues a nonprofit corporation in Washington State or in any other state.” Op. at 9–10. But this reading overlooks the text of the statute and the long-established role of the Attorney General in supervising charitable assets.

The Opinion effectively limits the statute to a short, enumerated list of proceedings—ignoring that the statute expressly applies to “any proceeding that this chapter authorizes the attorney general to bring” and that the listed actions are “not limited to” those specified.

RCW 24.03A.944(1) provides that “[i]n any proceeding that this chapter authorizes the attorney general to bring,” notice must be given to the Attorney General. Subsection (3) then lists several examples of such proceedings, but it explicitly states that the list includes “but [is] not limited to” those identified. The Legislature’s choice to use that phrase confirms it intended to encompass a broad range of proceedings—not merely those itemized.

RCW 24.03A.946 expressly authorizes the Attorney General to bring “any action or proceeding” necessary to ensure that charitable assets are administered in accordance with law. RCW 11.110.120 separately requires notice to the Attorney General in “all judicial proceedings involving or affecting the charitable trust or its administration.” This framework simply reinforces what has long been the law. “It is the attorney general that has the authority to represent the public interest in securing the enforcement of charitable trusts.” *Lundberg ex rel. Orient Found. v. Coleman*, 115 Wn. App. 172, 179, 60 P.3d 595 (2002).

Courts across jurisdictions have long recognized the Attorney General’s authority to intervene in any proceeding where charitable assets are at risk of diversion to private benefit. In *Stowell v. Prentiss*, 323 Ill. 309 (1926), the Illinois Supreme Court held that the state Attorney General could intervene in an estate-related property dispute to enforce a charitable trust for public use, even though the suit was not originally brought under charitable trust law. The court emphasized that the Attorney

General was the proper party to assert the public's interest in land meant for perpetual public access, holding that such an interest triggers oversight even in reformation actions involving land records.

Likewise, in *Summers v. Estate of Ford*, 146 S.W.3d 541 (Tenn. Ct. App. 2004), the Tennessee Attorney General successfully intervened in a probate proceeding to reclaim assets that had been diverted from a nonprofit daycare organization into the founder's personal estate. The court upheld the Attorney General's standing and stressed that the assets of a nonprofit corporation do not revert to private parties—even after dissolution—and that the Attorney General's authority to protect those assets extends into estate proceedings if necessary. As the court noted, “[u]pon administrative dissolution, corporate property of a public benefit corporation does not become the property of the corporate directors or officers.” *Id.* at 570.

These cases highlight a well-recognized principle: when charitable assets are threatened—no matter the nature of the

proceedings—the Attorney General should be given the opportunity to intervene. Washington’s nonprofit statutes reflect the same policy. RCW 24.03A.944(1) requires notice to the Attorney General in “any proceeding that this chapter authorizes the attorney general to bring,” and subsection (3) expressly provides that the listed examples are “not limited to” those specified. RCW 24.03A.946 separately authorizes the Attorney General to bring “any action or proceeding” necessary to enforce compliance with nonprofit obligations. RCW 11.110.120 further requires notice in “all judicial proceedings involving or affecting the charitable trust or its administration.”

The Court’s reasoning—that the statute does not apply to veil-piercing in “debt collection” proceedings—would mean that no notice is required in a proceeding that reallocates charitable assets to satisfy private debts. But that is precisely the kind of action in which Attorney General oversight is most urgently needed.

Moreover, even if the Court were correct in assuming that RCW 24.03A.944 applies only to matters of nonprofit corporate governance, this case still falls squarely within that scope. The North Dakota action was not brought against HFF to collect a debt it had incurred; it was brought to pierce the corporate veil of a nonprofit and impose liability based on alleged governance failures and misuse of the corporate form. That is a dispute intrinsically premised on matters of corporate governance—the very premise of veil piercing is that the corporate form was abused or disregarded. See *UMB Bank, N.A. v. Eagle Crest Apartments, LLC*, 984 N.W.2d 360, 365–67 (N.D. 2023). Thus, even under a narrower reading of the statute, notice was required.

The Legislature's 2021 amendments to the Nonprofit Corporation Act did not create new duties or rights for the Attorney General—they codified and reorganized oversight responsibilities that already existed in prior law. The legislation was intended to clarify and reinforce the Attorney General's continuing supervisory framework, not restrict it. The legislative

history of Senate Bill 5034 confirms the “Attorney General’s longstanding role in supervising charitable corporations and protecting charitable assets.” 2021 Washington Senate Bill No. 5034, Washington Sixty-Seventh Legislature - 2021 Regular Session.

Reconsideration is warranted so that this Court’s decision does not establish precedent for ignoring mandatory notice requirements or permitting charitable assets to be redirected without oversight.

## **5. CONCLUSION**

The North Dakota District Court lacked subject-matter jurisdiction to enter judgment against HFF, and registration of the North Dakota Judgment should be vacated. For the foregoing reasons, HFF respectfully requests reconsideration of the Opinion, which should hold that the Washington Attorney General was entitled to notice of the North Dakota Action.

## CERTIFICATION

Pursuant to RAP 18.17(b), Appellant hereby certifies that this motion complies with the formatting requirements of RAP 18.17(a) and has 2,631 words pursuant to RAP 18.17(c).

Respectfully submitted this 4th day of June 2025.

RIVERSIDE NW LAW GROUP, PLLC

/s/ Asti Gallina

ASTI M. GALLINA, WSBA No. 53361  
905 W. Riverside Ave., Ste. 208  
Spokane, WA 99201  
(509) 592-0108  
amg@rnwlg.com

*Counsel for Historic Flight Foundation*

**FILED**  
**AUG 19, 2025**

**In the Office of the Clerk of Court**  
**WA State Court of Appeals, Division III**

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE

UMB BANK, N.A. as successor trustee )  
under the Indenture of Trust dated October )  
1, 2013, for the benefit of the holders of )  
Multifamily Housing Revenue Bonds )  
(Eagle Crest Apartments LLC Project), )  
Series 2013, )  
Respondent, )

No. 40189-8-III

**AMENDED** ORDER DENYING  
MOTION FOR  
RECONSIDERATION

v. )  
)  
)

EAGLE CREST APARTMENTS, LLC; )  
BAKKEN HOUSING COMPANY, LLC; )  
JOHN T. SESSIONS; HISTORIC )  
HANGARS LLC; FWF, LTD.; ORKNEY )  
AIR LLC; ANY PERSON(S) IN )  
POSSESSION; and ALL PERSONS )  
UNKNOWN, claiming any estate or )  
interest in, or lien or encumbrance upon, )  
the real estate described in the Complaint, )  
Defendants, )  
)

HISTORIC FLIGHT FOUNDATION, )  
)  
Appellant. )

THE COURT has considered appellant's motion for reconsideration, and is of the  
opinion the motion should be denied. Therefore,

IT IS ORDERED the motion for reconsideration of this court's opinion of May 15, 2025,  
is denied.

PANEL: Judges Fearing, Staab, Cooney

FOR THE COURT:



TRACY STAAB, A.C.J.  
Chief Judge



# GRANITE POINT LAW PLLC

September 18, 2025 - 4:12 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 40189-8  
**Appellate Court Case Title:** UMB Bank, N.A., v. Eagle Crest Apartments, LLC, et al  
**Superior Court Case Number:** 22-2-01084-8

### The following documents have been uploaded:

- 401898\_Petition\_for\_Review\_20250918161151D3152922\_8458.pdf  
This File Contains:  
Petition for Review  
*The Original File Name was 2025 09 18 Petition for Review.pdf*

### A copy of the uploaded files will be sent to:

- JFaubion@cairncross.com
- andrienne@washingtonappeals.com
- bmr@tbr-law.com
- byeung@cairncross.com
- cate@washingtonappeals.com
- hguthrie@cairncross.com
- howard@washingtonappeals.com
- jacobr@schweetlaw.com
- jbarton@smithfreed.com
- jrizzardi@cairncross.com
- lae@tbr-law.com
- litdocket@foster.com
- mam@rnwlg.com
- sjohnson@cairncross.com

### Comments:

---

Sender Name: Asti Gallina - Email: asti@granitepointlaw.com  
Address:  
522 W RIVERSIDE AVE STE 7153  
SPOKANE, WA, 99201-1099  
Phone: 509-592-0108

**Note: The Filing Id is 20250918161151D3152922**

# GRANITE POINT LAW PLLC

September 18, 2025 - 4:18 PM

## Filing Petition for Review

### Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** Case Initiation  
**Appellate Court Case Title:** UMB Bank, N.A., v. Eagle Crest Apartments, LLC, et al (401898)

#### The following documents have been uploaded:

- PRV\_Petition\_for\_Review\_20250918161519SC762165\_6792.pdf  
This File Contains:  
Petition for Review  
*The Original File Name was 2025 09 18 Petition for Review.Filed.pdf*

#### A copy of the uploaded files will be sent to:

- JFaubion@cairncross.com
- andrienne@washingtonappeals.com
- bmr@tbr-law.com
- byeung@cairncross.com
- cate@washingtonappeals.com
- hguthrie@cairncross.com
- howard@washingtonappeals.com
- jacobr@schweetlaw.com
- jbarton@smithfreed.com
- jrizzardi@cairncross.com
- lae@tbr-law.com
- litdocket@foster.com
- mam@rnwlg.com
- sjohnson@cairncross.com

#### Comments:

---

Sender Name: Asti Gallina - Email: asti@granitepointlaw.com

Address:

522 W RIVERSIDE AVE STE 7153

SPOKANE, WA, 99201-1099

Phone: 509-592-0108

**Note: The Filing Id is 20250918161519SC762165**