

No. 89794-8

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SUPREME COURT OF THE STATE OF WASHINGTON

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JOHN F. KLINKERT,

Petitioner

v.

WASHINGTON STATE LIQUOR CONTROL BOARD,

Respondent

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SUPREME COURT  
STATE OF WASHINGTON  
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PETITIONER'S REPLY TO RESPONDENT'S ANSWER TO  
PETITION FOR REVIEW

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## **I. INTRODUCTION**

In this Reply I often refer to the “Attorney General”, because his office is the attorney for the Washington State Liquor Control Board, the state agency which is his client and which is the Respondent on appeal.

I will critique the Attorney General’s “Answer to Petition for Review” (hereafter “Answer”) beginning with item IV (“ISSUES PRESENTED FOR REVIEW”), which starts on Page 2 of the Answer.

## **II. THE ATTORNEY GENERAL’S NEW – BUT IRRELEVANT – ISSUE**

In his Answer section IV the Attorney General avoids addressing the two simple issues I stated on Page 6 of my Petition for Review (hereafter “Petition”) and instead raises a new but irrelevant issue.

### **A reminder of what the real issue is**

In order to set the stage correctly for my arguments that follow, let me here reiterate, almost verbatim from my Petition, and then explain, the grounds of my appeal – the issue -- which depends on the visible language in tobacco statutes RCW 26.28.080, RCW 70.155.100(3), RCW 70.155.100(4), and RCW 70.155.100 (8).

The issues, stated simply in my Petition section IV (“ISSUES PRESENTED FOR REVIEW”) are that the wordings of RCW 70.155.100(3) and RCW 70.155.100(4), when read together with the

wording of RCW 70.155.100(8), which authorize the Liquor Control Board, an administrative agency, to adjudicate an alleged violation of the criminal statute RCW 26.28.080 (a gross misdemeanor), conflict on their face with the Sixth Amendment of the U. S. Constitution and with Article I, Section 22 of the Washington Constitution. Here are the statutes:

a. RCW 26.28.080, the explicitly criminal tobacco statute, states:

“RCW 26.28.080

Selling or giving tobacco to minor – Belief of Representative capacity, no defense – Penalty

Every person who sells or gives, or permits to be sold or given to any person under the age of eighteen years any cigar, cigarette, cigarette paper or wrapper, or tobacco in any form is guilty of a gross misdemeanor...”  
[Emphasis added]

b. Next, “RCW 70.155.100

Penalties, sanction, and actions against licensees.

.....

(3) The liquor control board may impose a monetary penalty upon any person other than a licensed cigarette retailer if the liquor control board finds that the person has violated RCW 26.28.080, 70.155.030, 70.155.040, 70.155.050, 70.155.070, or 70.155.090. [Emphasis added]

(4) The monetary penalty that the liquor control board may impose based upon one of more findings under subsection (3) of this section may not exceed the following:

(a) For violation of RCW 26.28.080 or 70.155.020, fifty dollars for the first violation and one hundred dollars for subsequent violation; [Emphasis added]

.....

(8) All proceedings under subsections (1) through (6) of this section shall be conducted in accordance with Chapter

34.05 RCW. [Emphasis added]

.....”

Chapter 34.05 RCW is Washington’s Administrative Procedure Act.

And here are the relevant portions of the Sixth Amendment of the U. S. Constitution and Article I, Section 22 of the Washington Constitution.

c. The Sixth Amendment requires a public jury trial in criminal cases:

“In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed...”

[Emphasis added]

d. The Washington Constitution in Article I, Section 22 states that all

persons charged with a crime are entitled to a jury trial:

“SECTION 22 RIGHTS OF THE ACCUSED. In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, ....to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases....” [Emphasis added]

**The Attorney General’s lead-in to his new – but irrelevant -- issue**

The Attorney General’s Answer section IV (“ISSUE PRESENTED FOR REVIEW”) contains only two sentences. The first sentence, the lead-in, does not actually state an issue. To do so, it would need to be an interrogative sentence, i.e., ending with a question mark. Here, however, the Attorney General’s first sentence makes an assertion, which happens to be false in several regards.

The first sentence is vague but its vagueness is not readily apparent, so let me point out its defects. The Attorney General's first sentence reads as follows:

“RCW 70.155.100 authorizes the Liquor Control Board to bring a civil enforcement action to adjudicate whether a licensee has violated RCW 26.28.080 by selling tobacco to a minor, and to impose a \$50 to \$100 penalty.” [Emphasis added]

First, my appeal is actually aimed at RCW 70.155.100(3), (4) and (8) which deal not with tobacco licensees, i.e., retailers, but with the persons (for example, a clerk like me, who need not be licensed) who actually sell tobacco to a minor.

Second, the \$50 to \$100 penalty is contained in RCW 70.155.100(4) and is, again, a penalty aimed at the person who sells the tobacco, not at licensees. The monetary penalties for licensees (who might lose their licenses) are stated in RCW 70.155.100 (2), a subsection which is not in dispute in my appeal.

Third, RCW 70.155.100 does not authorize the Liquor Control Board to

“bring a civil enforcement action to adjudicate whether a licensee has violated RCW 26.28.080....”

The Attorney General's wording makes it sound as though RCW 70.155.100 simply authorizes the Liquor Control Board to bring a civil lawsuit in court, but that is not what the statute says. Rather, RCW

70.155.100 (3) purports to authorize the Liquor Control Board itself to adjudicate an alleged violation of RCW 25.28.080, and in (8), to use Chapter 34.05, the Administrative Procedure Act, as part of the adjudication procedure. (Note that the Liquor Control Board has the final word, i.e., makes the final “finding” (adjudication), no matter what an administrative law judge rules, because it is the Board that issues the Final Order. See the Answer Appendix Pages 14-17. Here immediately below, once again, is the relevant statutory language of RCW 70.155.100(3):

“RCW 70.155.100  
Penalties, sanction, and actions against licensees.  
.....

(3) The liquor control board may impose a monetary penalty upon any person other than a licensed cigarette retailer if the liquor control board finds that the person has violated RCW 26.28.080, 70.155.030, 70.155.040, 70.155.050, 70.155.070, or 70.155.090. [Emphasis added]

The word “finds” in the statute above means “adjudicates”.

And here, once again, is the relevant statutory language of RCW 70.155.100(8), which indicates how the Liquor Control Board will make its “findings”:

(8) All proceedings under subsections (1) through (6) of this section shall be conducted in accordance with Chapter 34.05 RCW....” [Emphasis added]

Chapter 34.05 RCW is Washington’s Administrative Procedure Act.

**The Attorney General's new – but irrelevant -- issue**

In the second sentence in IV, the Attorney General correctly states an issue in interrogative form. However it is not the issue I stated in my Petition but is instead a different, new, issue:

“May the legislature provide civil monetary penalties, awarded in a civil adjudicative proceeding, for conduct specified by reference to a statute defining a criminal offense?”

First, the answer to this question is Yes, and moreover, I agree with that answer several times in IV below. However, that is not the issue I stated in my appeal.

Second, the Attorney General's phrase “civil adjudicative proceeding” is artfully vague. The particular “civil adjudicative proceeding” unconstitutionally authorized in RCW 70.155.100 (8) to adjudicate alleged violations of the criminal statute RCW 26.28.080 is an administrative hearing conducted pursuant to Chapter 34.05 RCW, the state's Administrative Procedure Act.

Third, I do not claim that “conduct specified by reference to a statute defining a criminal offense” cannot be the subject of that “civil adjudicative proceeding.” I do claim, however, that an administrative agency like the Liquor Control Board cannot constitutionally adjudicate alleged violations of a criminal statute – here, RCW 26.28.080.

Note that the Attorney General's phrase "by reference to criminal statutes...." comes from Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 105 S. Ct. 3275, 87 L.Ed.2d 346 (1985), which the Attorney General cites later on Answer Page 7. I discuss Sedima below on Page 16 below and I distinguish the case from my situation. Briefly, Sedima does not -- as RCW 70.155.100 (3), (4) and (8) do -- authorize administrative agencies to adjudicate alleged violations of criminal statutes. Rather, Sedima allows a civil statute to authorize private persons to bring civil lawsuits for behavior described and made criminal in a criminal statute.

### **III. DEFECTS IN ANSWER SECTION V ("STATEMENT OF THE CASE")**

I have no disagreement with Answer section V.B. ("Mr. Klinkert Sold Tobacco To A Minor") or to Answer section V.C. ("Mr. Klinkert's Civil Administrative Proceeding") of the Attorney General's "V. STATEMENT OF THE CASE", but Answer section V.A. ("Liquor Control Board's Authority Regarding Youth Tobacco Laws") contains errors.

The Attorney General, at the bottom of Answer Page 2, asserts as established fact that

"The Board is granted the authority to impose and adjudicate monetary penalties for violations of laws regulating the sale of tobacco" [Emphasis added]

and he cites RCW 70.155.100 (without specifying a particular subsection) in support of that proposition. Yet this is the very proposition in dispute in my appeal.

The Attorney General also says, contradictorily, in the last sentence of Answer section V.A. at the top of Answer Page 4,

“The Board does not adjudicate criminal violations itself – that jurisdiction is reserved to the courts.” [Emphasis added]

But this is precisely what RCW 70.155.100 (3) and (4), when read together with RCW 70.155.100 (8), do purport to allow. That is, these statutory provisions purport to allow the Board to adjudicate alleged violations of RCW 26.28.080, a criminal statute, which is exactly what the Board did to me. What’s more, the Attorney General again explicitly admits this in the first sentence of Answer section IV (“ISSUE PRESENTED FOR REVIEW”) on Answer Page 2:

“RCW 70.155.100 authorizes the Liquor Control Board to bring a civil enforcement action to adjudicate whether a licensee has violated RCW 26.28.080 by selling tobacco to a minor...” [Emphasis added]

And note also that RCW 70.155.100 nowhere states, contrary to the Attorney General’s claim on Answer Page 2, that it

“authorizes the Liquor Control Board to bring a civil enforcement action...”

Whether the Board's adjudication is a "civil enforcement action" is just what is in dispute in my appeal.

#### **IV. DEFECTS IN ANSWER SECTION VI**

In the first paragraph of section VI ("REASONS WHY REVIEW SHOULD NOT BE GRANTED") the Attorney General says

"It is well established that the Legislature may create dual enforcement mechanisms that empower agencies to enforce civil penalties for conduct that can also be punished criminally. When an agency chooses the civil enforcement mechanism There is no constitutional right to a jury trial."

I do not dispute these two propositions. However, the issue in my appeal is not whether the Board can use a "civil enforcement mechanism" to punish violations of RCW 26.28.080, the statute which describes the applicable "conduct that can also be punished criminally", namely the conduct of selling tobacco to a minor. The issue in my appeal is whether the Board can adjudicate an alleged violation of that criminal statute, RCW 26.28.080. Note further that the Attorney General here has cited no legal authority for these two propositions. Probably the Attorney General intended to supply the legal authority in Answer section VI.A ("The Legislature May Constitutionally Empower Agencies To Civilly Enforce Violations For Conduct That Also Can Be Punished Criminally"). Unfortunately, when the Attorney General in Answer sections VI.A. and

VI.B. provides the citation, he argues issues that are irrelevant and cites cases in support of those irrelevant issues.

**A. The first defect -- in Answer section VI.A.**

The Attorney General says that

“in its decision, the Court of Appeals correctly explained that the Board assesses civil penalties in civil proceedings under RCW 70.155.100” [Emphasis in original]

citing Page 4 of the unpublished Court of Appeals decision. I do agree: that is one thing the Board does (and which it is properly authorized to do) – assess civil penalties in civil proceedings. However, in the immediately preceding sentence of its opinion, the Court of Appeals also said

“RCW 70.155.100 does not provide for or result in an adjudication of a criminal offense in an administrative agency proceeding.”

Yet this last proposition is precisely what RCW 70.155.100 (3) and (4), when read together with (8), do result in: an adjudication by the Board of an alleged criminal offense, of RCW 26.28.080, in an administrative proceeding. The next sentence in the Court of Appeals opinion – namely, that the Board assesses civil penalties in civil proceedings – is not only no justification for the Court of Appeals’ previous sentence; it also strengthens my argument that RCW 70.155.100 (3) and (4), when read together with (8), should not unconstitutionally assign adjudication of alleged violations of RCW 26.28.080 (a criminal statute) to the Board.

**B. The second defect -- in Answer section VI.A.**

The Attorney General cites a series of cases all leading up to his conclusion in the last sentence in Answer section VI.A. on Page 8:

“Thus, the Legislature may provide for civil enforcement mechanisms for conduct that can also be subject to criminal prosecutions.”

I agree with that conclusion, but the issue in my appeal deals with the statutory language of RCW 70.155.100 (3), (4) and (8), i.e., whether the language is unconstitutional on its face, not whether the Legislature may provide for civil enforcement mechanisms. In order to rebut my claim of facial unconstitutionality, the Attorney General would need to show that the language of RCW 70.155.100 (3), (4) and (8) provide a “civil enforcement mechanism”, but the Attorney General avoids analyzing the statutory language – because he knows that doing so will show that my argument is correct.

As I said at the beginning of the previous paragraph, that the case law which the Attorney General cites in Answer section VI.A. supports his statement of the issue is irrelevant to my analysis of the unconstitutional language in RCW 70.155.100. The first case he cites, Hudson v. U.S., 522 U.S. 93, 95-96, 118 S. Ct. 488, 139 L. Ed. 2d 4450 (1997), is cited for the proposition that

“[t]he Legislature may constitutionally provide for both

criminal and civil sanctions for the same conduct.”

I agree, but RCW 70.155.100 (3), (4) and (8) authorize the Liquor Control Board to adjudicate alleged criminal violations – which is another matter entirely.

The Attorney General cites Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 491, 105 S. Ct. 3275, 87 L. Ed. 2d 346 (1985), for what he implies is its holding, from which the Attorney General quotes a portion:

“[a] civil enforcement statute’s description of offending conduct ‘by reference to criminal statutes does not mean that its occurrence must be established by criminal standards or that the consequences of a finding of liability in a private civil action are identical to the consequences of a criminal conviction.’”

Again, I agree with that statement, but the Attorney General has failed here to clarify that the issue in Sedima, S.P.R.L., which the language within single the quotation marks above refers to, was: whether a statute (the federal civil RICO statute) could authorize a person to bring a civil lawsuit (which also, and not so incidentally, would be adjudicated in a civil trial – not in an administrative agency proceeding) by alleging, in a civil complaint, conduct made criminal in a criminal statute. So the Attorney General’s quotation, besides supporting an irrelevant proposition, is also misleading.

On Answer Pages 7-8 the Attorney General quotes from Winchester v. Stein, 135 Wn.2d 835, 852-53, 959 P.2d 1077 (1988) for the proposition that

“the Legislature may provide for both civil sanctions and criminal sanctions in the same statute without thereby converting the civil proceeding to a criminal or penal one.”

Again, I agree with that proposition, but that is not the issue in my appeal. The issue is whether the language in RCW 70.155.100 (3), (4) and (8) can constitutionally authorize the Liquor Control Board to adjudicate alleged violations of RCW 26.28.080, a criminal statute. And just as with the next case which the Attorney General cites, and which I discuss in the next paragraph, the Attorney General has got things backward. I do not claim That RCW 70.155.100 (3), (4) and (8) “convert[ ] the civil proceeding to a criminal or penal one”; I am claiming exactly the opposite, namely, that RCW 70.155.100 (3), (4) and (8) purport to transform a criminal statute, RCW 26.28.080, into a civil one, violations of which the Liquor Control Board would be constitutionally allowed to adjudicate.

In Answer section VI.A. on Page 8 the Attorney General cites Smith v. Doe, 538 U.S. 84, 92, 123 S. Ct. 1140, 155 L. Ed. 2d 164 (2003), and In re Detention of Turay, 139 Wn.2d 379, 417, 986 P.2d 790 (1999), for the proposition that

“only the clearest proof will suffice to override legislative intent

and transform what has been demonstrated a civil remedy into a criminal penalty.”

Again the Attorney General has got things backward. I am claiming exactly the opposite, as I said at the end of the paragraph above: RCW 70.155.100 (3), (4) and (8) try to transform a criminal statute, RCW 26.28.080, into a civil one, violations of which can be adjudicated by an administrative agency.

**C. What constitutes a “criminal prosecution” for purposes of determining the unconstitutionality of a statute on its face?**

The Attorney General’s Answer section VI. B. (“There Was No Criminal Prosecution Here And Mr. Klinkert’s Arguments Do Not Support His Position That RCW 70.155.100 Is Facially Unconstitutional”) is also deficient.

The Attorney General’s second sentence in section VI. B. on Answer Page 8 says

“His [i.e., my] argument is misplaced because the Board has never attempted to adjudicate criminal violations.”

Now, this is a puzzling statement. First, because that is precisely what RCW 70.155.100 (3), (4) and (8) do purport to authorize, and this is the reason for my appeal. That is, these sections of RCW 70.155.100 purport to authorize the Board to “adjudicate criminal violations” – violations of

RCW 26.28.080. Second, because as I pointed out previously on Page 12 of this Reply, the Attorney General himself asserts that

“RCW 70.155.100 authorizes the Liquor Control Board to bring a civil enforcement action to adjudicate whether a licensee has violated RCW 26.28.080 by selling tobacco to a minor.”  
[Emphasis added]

Again I point out that RCW 26.28.080 is a criminal statute. And again I point out that RCW 70.155.100 does not authorize the Board to bring a “civil enforcement action.” There is no language in RCW 70.155.100 that authorizes the Board to bring a “civil enforcement action” so as to get some other legal institution to adjudicate alleged violations of RCW 26.28.080. According to the language of the statute, the Board adjudicates (“finds”) alleged violations itself.

#### **What is a “criminal prosecution”?**

Contrary to the Attorney General’s statement in Answer section VI.B. on Page 8, I have never contended that I was “convicted of a gross misdemeanor” or that

“as a result of [my] administrative hearing, [I] was subjected to a criminal prosecution.”

All the Attorney General’s statements below on Answer Page 9, that

“[I] was never arraigned, [I] was never summoned to court, the case was never referred to a criminal prosecuting attorney, [I] never faced the possibility of confinement or other criminal sanctions, and [I] was never found guilty of a crime or entered guilty plea.”

are beside the point, because the gist of my appeal deals with the unconstitutional statutory language in RCW 70.155.100 (3), (4) and (8) – the language which the Attorney General steadfastly refuses to discuss or analyze in his Answer – not with the results of my administrative hearing.

On Answer Page 9 the Attorney General does mention the phrase “criminal prosecution”, which is contained in both the Sixth Amendment of the U. S. Constitution and in Article I, Section 22 of the Washington Constitution. On Answer Page 8 the Attorney General says that the phrase “criminal prosecution” “is not defined in statute.” First, I find no legal requirement anywhere that the phrase “criminal prosecution” must be defined in a statute for any purpose at all. Second, the case which the Attorney General cites in footnote 5 at the bottom of Answer Page 10, State v. Ivie, 136 Wn.2d 173, 177-78, 961 P.2d 941 (1998), says that

“the meaning of the phrase ‘criminal prosecution’ must further be determined from the statutory context in which it is used.”

In one sense, that is exactly what my Petition for Review seeks from this Court, i.e., to determine whether “the statutory context” shows that the language in RCW 70.155.100 (3), (4) and (8) violates the “criminal prosecution” provisions of the Sixth Amendment of the U. S. Constitution and Article I, Section 22 of the Washington Constitution.

Note also that the Attorney General's quotation, in his footnote 5, from the Ivie court, supports my assertion immediately above (that the term "criminal prosecution" need not be defined in a statute), by saying that the term's meaning should rather be "determined from the statutory context." And the Ivie court also said, at 961 P.2d 941, in footnote 2, which was not cited by the Attorney General,

"Webster's defines 'to prosecute' as 'to institute legal proceedings against; esp: to accuse of some crime or breach of law or to pursue for redress or punishment of a crime or violation of law in due legal form before a legal tribunal.' Webster's Third New International Dictionary 1820 (1976)."

Thus, according to this definition of "to prosecute" in Webster's, RCW 70.155.100 (3), (4) and (8) do subject persons to a "prosecution" for a crime, violation of RCW 26.28.080, which is to be adjudicated by the Liquor Control Board.

There is an error in the Attorney General's Answer section VI.B., on Page 11. The Attorney General claims

"Mr. Klinkert next argues that the absence of any reference to a criminal charge in the administrative citation shows that the administrative citation itself is a criminal charge, unconstitutionally authorized by RCW 70.155.100. Pet. For Rev. at 15-16." [Emphasis in original]

Now, I have never claimed that the Board's administrative notice to me lacked "a reference to a criminal charge." That was what the Court of Appeals on Page 4 of its unpublished opinion mistakenly said, and I cited

that erroneous Court of Appeals claim in my Petition on Page 15. Here is what I said in my Petition:

“Although the citation refers to RCW 26.28.080, indicating the alleged violation involved sale of tobacco products to a minor, it does not include a reference to a criminal charge, a prosecuting authority, or criminal court proceeding.’ [Emphasis added] O4”

I did say in my Petition Page 15 that “The citation itself is a criminal charge” but not because it lacked a reference to a criminal charge but because “it charges a person with violating RCW 26.28.080, a criminal statute.” I said on Petition Page 15 that the citation “does not include any reference to “a[nother] criminal charge”, meaning another charge in addition to the citation’s easily visible reference to RCW 26.28.080. All this Court needs to do to verify the truth of my assertion here is to look at Appendix Page 1 of the Attorney General’s Answer and notice that the box next to the wording “RCW 26.28.080 – Sale of Tobacco products to a Person under Age 18” was checked. Thus, the Board’s citation charged me with a crime. But again, this fact is really irrelevant, because my appeal deals with the unconstitutional language in the statutes RCW 70.155.100 (3), (4) and (8), not with any defect in the Board’s citation, although the citation’s reference to RCW 26.28.080 actually supports my appeal by showing that the Liquor Control Board charged me with a crime (RCW 26.28.080), the alleged violation of which the language in RCW

70.155.100 (3), (4) and (8) purports to authorize the Liquor Control Board to adjudicate.

## V. A HELPFUL HYPOTHETICAL

Washington's current criminal statute for fourth degree assault is RCW 9A.36.041, making fourth degree assault a gross misdemeanor. The statute reads as follows, sounding quite like RCW 26.28.080, the current criminal tobacco statute.

“RCW 9A.36.041  
Assault in the fourth degree.

(1) A person is guilty of assault in the fourth degree if, under circumstances not amounting to assault in the first, second, or third degree, or custodial assault, he or she assaults another.

(2) Assault in the fourth degree is a gross misdemeanor.”

Now imagine, first, that the state legislature next year enacts a code chapter “HYPO-RCW 70.155” creating a Washington State Civility Control Board (CCB) to promote and enforce civility among the population, and the Board uses trained human decoys to test people's civility by speaking annoyingly to them in order to tempt them into assaulting the decoy (a CCB witness is nearby). Also imagine, second, that the civility code chapter contains the following statutes, worded like the subsections in RCW 70.155.100 which are at issue in my appeal:

“HYPO-RCW 70.155.100 (3): The civility control board may impose a monetary penalty upon any person if the civility control board finds that the person has violated RCW 9A.36.041.

“HYPO-RCW 70.155.100 (4): The monetary penalty that the civility control board may impose based upon one or more findings under subsection (3) of this section may not exceed the following:

- (a) For violation of RCW 9A.36.041, fifty dollars for the first violation and one hundred dollars for subsequent violations.

.....

“HYPO-RCW 70.155.100 (8): All proceedings under subsections (1) through (6) of this section shall be conducted in accordance with Chapter 34.05 RCW.”

Now, I ask this Court: Isn't this language unconstitutional on its face?

## VI. CONCLUSION

This Court should grant my Petition for Review of the Court of Appeals' unpublished opinion and provide me a hearing on the issue of the unconstitutionality on their face of RCW 70.155.100 (3) and RCW 70.155.100 (4), when read together with RCW 70.155.100 (8), because these code sections violate the Sixth Amendment of the U. S. Constitution and Article I, Section 22 of the Washington Constitution.

Dated this 28<sup>th</sup> day of January, 2014

Respectfully submitted,

  
John F. Klinkert  
Petitioner Pro Se

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**SUPREME COURT OF THE STATE OF WASHINGTON**

JOHN F. KLINKERT,

Petitioner

vs.

WASHINGTON STATE  
LIQUOR CONTROL BOARD,

Respondent

NO. 89794-8

CERTIFICATE OF MAILING

I certify that I am over 18 years of age, that I am not a party to this action, and that I served a copy of the attached Petitioner's Reply to Respondent's Answer to Petition for Review on the parties named below on the date below by depositing it in the US mail, postage prepaid, in Lynnwood, Washington.

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DATED this 28<sup>th</sup> day of January, 2014 at Lynnwood, Washington.

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