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**To:** [Martinez, Jacquelynn](#)  
**Subject:** FW: Comment on proposed CrR 8.3 change  
**Date:** Monday, April 29, 2024 2:50:00 PM

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**From:** Moscowitz, Jason A. <JAMOSCOWITZ@spokanecounty.org>  
**Sent:** Monday, April 29, 2024 12:20 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comment on proposed CrR 8.3 change

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**Comment:**

This change in CrR 8.3 should not be adopted; the change does not further the interest of actual justice and will instead add to trial court judicial burdens by opening litigation in potentially every criminal case on issues that the attorneys find interesting, but which lack relevance to the instant case.

The limiting language in the current rule provides guidance to the courts as to what sort of prejudice is required to warrant dismissal. Without this limiter, courts are free to be as capricious and arbitrary in their use of the rule as they wish. This is not fair to victims and it is not fair to trial courts who value consistency and coherent guidance. This change in the rule (likely intentionally) creates the ability to file motions to dismiss that have no logical connection to the fairness of a given case or the merits of a particular situation. If one can point out a governmental action anywhere that a judge might agree is bad, one can then show “governmental misconduct” and use that as a basis to request dismissal. With the proposed change in the rule, what prevents a trial judge from hearing a motion to dismiss a criminal case based on governmental misconduct in the form of the legislature mishandling the State’s response to climate change? If the judge agrees the legislature’s conduct is “incorrect and harmful,” then that is the only basis needed to strike down a case. The fact that there is no logical connection between the issue the judge feels strongly about and the case being dismissed is irrelevant under the new language. This would be an absurd application, but a permissible one under the proposed change, which completely ignores the merits of the case. Why should a victim be denied justice based on an irrelevant gripe with the government?

Changing the rule to eliminate the logical connection to the ability of the defendant to have a fair trial invites the filing of motions on a whole host of issues which are irrelevant to the merits of the case and which will both clog the courts for no legitimate value and require the trial courts to begin ruling on issues far outside their ambit. The new language will contribute to politicization of the courts, an outcome which has generally been sought to be avoided by courts which recognize that most of their authority derives from a general sense that courts are in fact fair and impartial arbiters. This change in the rule risks further erosion of the public’s trust in the courts, deprives victims of justice, adds to court congestion, and should not be authorized.

**End comment.**

v/r

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