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Subject: FW: Proposed changes to CrR 8.3 / CrRLJ 8.3
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From: Vitalich, Andrea <Andrea.Vitalich@kingcounty.gov>
Sent: Thursday, April 24, 2025 10:27 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed changes to CrR 8.3 / CrRLJ 8.3

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To the Justices of the Washington Supreme Court,

I urge the Court not to adopt the proposed changes to CrR 8.3 and CrRLJ 8.3 that would remove the requirement for a showing of prejudice to the defendant's right to a fair trial before a criminal case may be dismissed due to arbitrary action or governmental misconduct.

This Court's controlling precedent holds that dismissal under rule 8.3 is an extraordinary remedy that may be granted only where there has been prejudice to the defendant's right to a fair trial; removing this well-settled requirement would be in direct conflict with that controlling precedent. See *State v. Michielli*, 132 Wn.2d 229, 239-40, 937 P.3d 587 (1997); *State v. Rohrich*, 140 Wn.2d 647, 654-55, 71 P.3d 638 (2003); *State v. Baker*, 78 Wn.2d 327, 332-33, 474 P.2d 254 (1970). Rather than a rule tethered to the defendant's fundamental right to a fair trial, the proposed amendments would instead allow a trial court to dismiss any criminal prosecution based on what amounts to a policy disagreement with the prosecutor—a violation of separation of powers.

The justifications alleged for the proposed rule changes do not support eliminating the requirement of prejudice. In fact, those justifications are nearly identical to those offered in support of the proposed amendment that was rejected just last year. Moreover, the proponents of the rule changes do not explain how those changes would actually address the issues they raise. For example, proponents cite the "overrepresentation of Black Americans" in the criminal justice system. While this problem certainly exists, especially on a national level, the proponents do not explain how allowing trial judges nearly unfettered discretion to dismiss individual criminal cases without reference or connection to any prejudice to the defendant's right to a fair trial would help to solve this problem. Moreover, if proponents are suggesting that

trial courts should dismiss only cases with Black defendants, the equal protection implications should be obvious.

There certainly are cases where dismissal is an appropriate remedy for governmental misconduct, as this Court has held repeatedly. However, the foundation for granting this extraordinary remedy is the government's violation of the defendant's right to a fair trial. Anything less would be arbitrary and completely dismissive of victims' rights.

Thank you,
Andrea Vitalich



Andrea Vitalich (she/her)

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