

AUG 19 2021

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No. 21-425

In the
Supreme Court of the United States

Riccardo Green,
Petitioner,

v.

Washington State

Employment Security Department,

Respondent.

*On Petition for Writ of Certiorari to the
Supreme Court of Washington*

PETITION FOR A WRIT OF CERTIORARI

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ORIGINAL

QUESTIONS PRESENTED

1. Whether or not the Washington State Supreme Court erred in judgement & abused discretion when it failed/refused to grant the Petition for Review under RAP 13.4(b)(1-4), RCW 34.05.570(4)(b), & RCW 34.05.526 violate the Petitioner's Substantive & Procedural Due Process Rights & Equal Protection Rights, & violate the Washington State Constitution Articles I § 1, 2, 3, 10, 12, 28, 29, 30; XXV § 1; XXVII § 1, 2; XXXI § 1; & the U.S. Constitution 5th & 14th Amendts.; & Articles III § 2 & VI § 2?
2. Whether or not the Washington State Supreme Court erred in judgement & abused discretion when it failed/refused to grant the Motion for Reconsideration under DRJ Rule 9(d)(e) violate the Petitioner's Substantive & Procedural Due Process Rights & Equal Protection Rights, & violate the Washington State Constitution Articles I § 1, 2, 3, 10, 12, 28, 29, 30; XXV § 1; XXVII § 1, 2; XXXI § 1; & the U.S. Constitution 5th & 14th Amendts.; & Articles III § 2 & VI § 2?
3. Whether or not the Washington State Supreme Court erred in judgement & abused discretion when it failed/refused to enforce Washington State Laws against the Respondent & Mr. Jacob W. Dishion violate the Washington State Constitution Articles I § 1, 2, 3, 10, 12, 28, 29, 30; XXV § 1; XXVII § 1, 2; XXXI § 1; & the U.S. Constitution 5th & 14th Amendts.; & Articles III § 2 & VI § 2?
4. Whether or not the Washington State Supreme Court erred in judgement & abused discretion when it failed/refused to enforce Sanctions & RPC violations including but not limited to RPC 1.3, 3.3, 4.1, 4.3, 8.4 against the Respondent & Mr. Jacob W. Dishion violate the Washington State Constitution Articles I § 1, 2, 3, 10, 12, 28, 29,

30; XXV § 1; XXVII § 1, 2; XXXI § 1; & the U.S. Constitution 5th & 14th Amends.; & Articles III § 2 & VI § 2?

5. Whether or not the issues presented in the PFR under RAP 13.4(c)(5) & issues related to the “assignments of error” in the Appellant Brief filed in the Washington State Court of Appeals Division One under RAP 10.2(a) resolved by Washington State COA Division One or by the Washington State Supreme Court?

PARTIES TO THE PROCEEDINGS

Petitioner

Riccardo Green was the Petitioner in King County Superior Court. He was the Appellant in the Washington State Court of Appeals Division One. He was the Petitioner in Washington State Supreme Court. He is the Petitioner in the United States Supreme Court.

Respondent

The Washington State Employment Security Department “state ESD” was the Respondent in King County Superior Court. The state ESD was the Respondent & Appellee in the Washington State Court of Appeals Division One; & the Respondent in the Washington State Supreme Court. The state ESD is the Respondent in the United States Supreme Court.

RELATED PROCEEDINGS

There are related proceeding under **Rule 14.1(b)(iii):**

- *Riccardo Green v. Washington State Employment Security Department*, No. 19-2-19168-6, King County Superior Court. Judgement entered on Nov. 18, 2019. The court dismissed the Petitioner's appeal & denied Petitioner's motion for jury demand, motion for sanctions, & motion for consolidation.
- *Riccardo Green v. Washington State Employment Security Department*, No. 19-2-19168-6, King County Superior Court. Judgment entered on Dec. 12, 2019. The court denied Petitioner's motion for reconsideration.
- *Riccardo Green v. Washington State Employment Security Department*, No. 80975-0-1, Washington State Court of Appeals Division One. Judgement entered Nov. 11, 2020. The court reversed & remanded case in favor of Petitioner.
- *Riccardo Green v. Washington State Employment Security Department*, No. 80975-0-1, Washington State Court of Appeals Division One. Notation Ruling by Commissioner Jennifer Koh of the Court entered on May 27, 2021, regarding Appellant's Cost Bill. The Court awarded the Petitioner's cost bill in the total amount of \$675.
- *Riccardo Green v. Washington State Employment Security Department*, No. 80975-0-1, Washington State Court of Appeals Division One. Order Denying Motion to Modify the Commissioner's ruling entered on July 26, 2021.

CORPORATE DISCLOSURE STATEMENT

There is not one parent or publicly held company that owns 10 percent or more of a corporation's stock that the disclosure which is required under Rule 29.6.

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A. Abbreviations/Terms

1. City of Seattle Third Party Government Agencies

- 1) Seattle Office of Civil Rights - **SOCR**
2. **Washington State Third Party Government Agencies**
 - 1) Washington State – **WS, WA state, WA State**
 - 2) Washington State Attorney General - **state ATG, state AGO**
 - 3) Washington State Bar Association - **WSBA, WA State Bar Association**
 - 4) Washington State Commissioner Review Office - **state OCR, state CRO, state OCR/CRO, WA state CRO**
 - 5) Washington State Court of Appeals Division One - **WSCA-1, state COA, WA state COA**
 - 6) Washington State Department of Health - **state DOH, WA state DOH**
 - 7) Washington State Department of Labor/Industries - **state DOSH, WS DOSH, WA state DOSH**
 - 8) Washington State Employment Security Department Collection Unit - **state ESD CU, WA state ESD CU**
 - 9) Washington State Employment Security Dept. - **state ESD, WA state ESD**
 - 10) Washington State Human Rights Commission - **WS HRC, WSHRC, state HRC, WA state HRC**
 - 11) Washington State Office of Administrative Hearing - **state OAH, WA state OAH**
3. **Federal Third Party Government Agencies**
 - 1) United States Department of Justice - **US DOJ**
 - 2) United States Department of Labor - **US DOL**
 - 3) United States Equal Employment Opportunity Commission - **US EEOC**
 - 4) United States Federal Trade Commission - **FTC**

- 5) United States Occupational Safety Health Administration - OSHA
4. **SHS Executive/Managerial/Supervisory Staff at FH**
 - 1) Ethan C. Howard - HRM E. Howard, HR Manager. He became the HRM at FH in about 2017. He retained employment at SHS at FH in 2018, & thereafter.
 - 2) Gregory [Greg] May - L/ED G. May, Linen/Environmental Services Director. He became Linen/EVS Director at FH in about 2015 or 2016.
 - 3) Kristen Fox - VP HR K. Fox, Chief VP of HR Officer.
 - 4) Margaret Krueger - HRD M. Krueger, HR Director.
 - 5) Robert [Bob] Bernard - LM R. Bernard, Linen Manager/EVS Manager. He became Linen Manager in about 2014 at FH *after* S. Massong retired. He retained employment at SHS at FH in 2018, & thereafter.
 - 6) Ruben Guy Hudson - CEO R. Hudson, Chief Executive Officer CEO.
 - 7) Steven J. Massong - LM S. Massong, Linen Manager. He was employed by SHS at FH for 35 to 40 + yrs. He was the former LM at FH over 20 yrs. Pet'r worked *under* S. Massong since 2008 till about 2014. Pet'r gave direct advice/suggestions/recommendations to S. Massong since about 2008 to 2014 related to the improvement of health/safety of linen staff, work assignments, etc. in the linen dept. & in the hospital.
 - 8) Toni Sorenson - T. Sorenson, Executive Assistant to the CEO.
 - 9) Tracey Fugami - HRM T. Fugami, HR Manager. She was the former HRM till about 2017.
 - 10) Wade Allen Schafer - LM W. Schafer, Linen Manager. He was hired as Linen Supervisor at FH in 2015, promoted to LM in about 2017 at FH

despite being part of directly/indirectly employment discrimination & health/safety complaints to third party government agencies since about 2015. He retained employment at SHS at FH in 2018, & thereafter.

5. **SHS Linen Staff at FH**

- 1) David Russell [last name may be incorrect] - **D. Russell**, Linen attendant. He was employed by SHS at FH for about 35 to 40+ yrs. He retired in about 2011 or 2012.
- 2) Haidie Del Castillo - **H. Castillo**, Linen attendant. She is employed by SHS at FH. She was hired in Dec. 2016 & started work in the linen dept. at FH in Jan. 2017. She may have been promoted to Linen supervisor in about 2020 or 2021. She retained employment at SHS at FH in 2018, & thereafter.
- 3) Hiang Somsack - **H. Somsack**, Linen attendant. He is employed by SHS at FH for about 20+ yrs. He retained employment at SHS at FH in 2018, & thereafter.
- 4) James Duangprasaert - **J. Duangprasaert**, Linen attendant. He is employed by SHS at FH for about 20+ yrs. He retained employment at SHS at FH in 2018, & thereafter.
- 5) Jean D. Venant - **J. Venant**, Linen attendant. He is employed by SHS at FH for about 10+ yrs. He retained employment at SHS at FH in 2018, & thereafter.
- 6) Jeremy Joseph App - **J. App**, Linen attendant. He was employed by SHS at FH since about 2009 for 5 + yrs. Voluntarily quit in about Nov. 2015/Dec. 2015.

- 7) Joseph Earl Spangler - J. Spangler, Linen attendant. He is employed by SHS at FH for 30 to 35+ yrs. He retained employment at SHS at FH in 2018, & thereafter.
- 8) Mark Domingo - M. Domingo, Linen attendant. He was employed by SHS at FH. He was hired in about Dec. 2016 & started in the linen dept. at FH in about Jan. 2017. Voluntarily quit in about 2017.
- 9) Mogos Woldemicael - M. Woldemicael, Linen attendant. He was employed by SHS at FH for about 20+ yrs. He retained employment at SHS at FH in 2018, & thereafter. He potentially retired in about 2020 or 2021.
- 10) Warren M. Hawkins - W. Hawkins, Linen attendant. He is employed by SHS at FH for 25 + yrs. He retained employment at SHS at FH in 2018, & thereafter.
- 11) Wayne Ticknor - W. Ticknor, Linen attendant. He was employed by SHS at FH for 40 to 45 plus yrs. He retired in about 2017.

6. PHS Executive/Managerial/Supervisory Staff

- 1) Jon Flowers - SR HRM J. Flowers, Senior HRM. He is/was the Senior HR Manager for PHS in 2018.

7. SEIU 1199 NW Staff

- 1) Additional SEIU staff may have been identified in exhibits filed in this case that are not disclosed in this petition.
- 2) Carmencita Smith - SEIU C. Smith, Union Agent [Union Delegate]. She was the union delegate for the Petitioner in the union grievance meetings.
- 3) Darius Smith - SEIU D. Smith, Union Agent. He was the union agent in 2018.

- 4) Will Vargus - SEIU W. Vargus, Union Agent. He was the union agent in 2018.
8. **Washington State Employment Security Department Staff**
 - 1) Mr. Jacob Rainey - Mr. J. Rainey. He is the UICB or UIC claim investigator.
 - 2) Mr. Robert Page - Mr. R. Page. He is the Supervisor of the Records Management Unit-Records Officer.
 - 3) Ms. Gena Uuereb - Ms. G. Uuereb. She is the Assistant Records Officer.

9. **Washington State Office of the Attorney General Staff**

- 1) Mr. Jacob William Dishion, WSBA no. 46578 - Mr. J. W. Dishion, Mr. Dishion, J. Dishion, Dishion. He is the defense attorney. He is employed thru the Washington State Attorney General Office.
- 2) Ms. Lisa M. Petersen, WSBA no. 30372 - Ms. L. M. Petersen, Ms. Petersen, She is the defense attorney. She is employed thru the Washington State Attorney General Office.

B. **Miscellaneous Abbreviations/Terms**

- 1) Administrative Agency Record - AAR
- 2) Administrative Agency Record Exhibit - exhibit AAR or ex. AAR
- 3) Administrative Law Judge - ALJ
- 4) Amendment - Amdt
- 5) Amendments - Amdts
- 6) American Bar Association - ABA
- 7) Appendix - App.
- 8) Article - Art.

- 9) Brief - **Br.**
- 10) Cherry Hill - **CH**
- 11) Clerk's Papers - **CP**
- 12) Collective Bargaining Agreement - **C.B.A**
- 13) Constitution - **Const.**
- 14) Court - **Ct.**
- 15) Department - **Dept.**
- 16) Designation of Clerk's Papers - **DCP**
- 17) Designation of Clerk's Papers Index - **DCP IDX**
- 18) Designation of Clerks Papers - **DCP or CP**
- 19) Disciplinary - **Discipl.**
- 20) Docket - **Dkt.**
- 21) Documentary evidence - **Doc. Evidence**
- 22) Employment Security Act - **ESA**
- 23) Enforcement of Lawyer Conduct - **ELC**
- 24) Evidence - **Evid.**
- 25) Environmental Services - **EVS**
- 26) Exhibit - **Ex.**
- 27) Exhibits - **Exs.**
- 28) Fair Labor Standards Act - **FLSA**
- 29) First Hill - **FH**
- 30) Forward - **Fwd or Fwrd.**
- 31) Identity - **Id.**
- 32) KCSC Hon. Chief Judge Julie Spector - **Chief Judge J. Spector**

- 33) KCSC Hon. Judge Marshall Ferguson - **Judge M. Ferguson**
- 34) KCSC Hon. Judge Susan Amini - **Judge S. Amini**
- 35) King County Superior Court – **KCSC**
- 36) Linen Director - **LD**
- 37) Linen Manager - **LM**
- 38) Linen Supervisor - **LS**
- 39) Local Civil Rules - **LCR**
- 40) Management - **Mngement**
- 41) Miscellaneous - **Misc.**
- 42) Motion - **Mtn or Mot.**
- 43) New York - **NY**
- 44) Originally - **Orig.**
- 45) PeopleSystem Inc. NEC Appeal Representative Eka Otu - **PS NEC E. Otu**
- 46) Petition for Judicial Review Appeal Complaint - **Petition for Review**
Complaint or PRC
- 47) Petition for Review - **PFR**
- 48) Providence Health Services - **PHS**
- 49) PS NEC – **PS NEC**
- 50) PS NEC Inc. - **PS NEC Inc.**
- 51) Report of Proceedings - **ROP**
- 52) Respondent - **Resp't**
- 53) Response - **Resp.**
- 54) Revised Code of WA - **RCW**
- 55) SEIU 1199 NW - **SEIU**

- 53) State CRO Hon. AL Judge John M. Sells - ALJ J. Sells
- 57) State CRO Hon. AL Judge Shana L. Oliver - ALJ S. Oliver
- 58) State OAH Hon. AL Judge Christopher Thomas - ALJ C. Thomas
- 59) State OAH Hon. AL Judge Micah Larripa - ALJ M. Larripa
- 60) Statement - Stmt
- 61) Swedish Health Services - SHS
- 62) Transcript - Tr.
- 63) Trial Readiness Form - TRF
- 64) Unemployment insurance - UI
- 65) Unemployment insurance claim - UIC
- 66) Unemployment insurance compensation benefits – UICB, UI Benefits
- 67) United States - U.S.
- 68) United States Code - U.S.C.
- 69) United States Postal Services - USPS or U.S. Postal Services
- 70) Washington State Administrative Code - WAC
- 71) Washington State Administrative Procedure Act - APA
- 72) Washington State Bar Act - WA State Bar Act, WS state Bar Act
- 73) Washington State Court of Appeals - WA COA, state COA
- 74) Washington State Rules of Evidence - state ROE, ER, WA state ROE
- 75) Washington State Rules of Professional Conduct - WA state RPC, RPC
- 76) Washington State Rules of Unprofessional Conduct – WA state UPC, UPC
- 77) Washington State Supreme Court - WA State Supreme Court/Ct., state Supreme Court/Ct.

PETITION FOR A WRIT OF CERTIORARI

Pet'r Riccardo Green respectfully petitions this court for a Writ of Certiorari to review the Order denying the Petition for Review and Order denying the Motion for Reconsideration of the Washington State Supreme Court in Riccardo Green v. Washington State Employment Security Department, No. 99285-1.

OPINIONS BELOW

The opinion of the Washington State Court of Appeals Division One (Pet. App. A 2a, & Pet. App. B 4a-9a) is unpublished. The relevant orders of the Washington State Supreme Court (Pet. App. E 19a & Pet. App. F 21a) are unpublished. The relevant orders of the Washington State Court of Appeals Division One are unpublished (Pet. App. C 11a, Pet. App. D 13a-17a, Pet. App. G 23a, Pet. App. H 25a, Pet. App. I 27a, Pet. App. J 29a, and Pet. App. K 31a-32a). The relevant orders of the King County Superior Court (Pet. App. L 34a-35a, Pet. App. M 37a-38a, and Pet. App. P 101a-113a) are unpublished.

JURISDICTION

The Washington State Court of Appeals affirmed the decision of the King County Superior Court on Nov. 23, 2020, see Pet. App. A 2a & Pet. App. B 4a-9a. A timely petition for review was filed in the Washington State Supreme Court on Dec. 04, 2020 RAP 13.4(b)(1-4), see Pet. App. T 164a-197a. The petition for review was denied on April 07, 2021 by Chief Justice Gonzalez, see Pet. App. E 19a. A timely motion for reconsideration was filed in the Washington State Supreme Court on April 20, 2021 DRJ Rule 9(d)(e), see Pet. App. U 206a-248a. The motion for reconsideration was denied on April 22, 2021 RAP 12.4(a), see Pet. App. F 21a. This court obtains jurisdiction invoked under 28 U.S.C. § 1257(a), Rule 10(a)(b)(c), Rule 13(1), & U.S. Constitution Articles III § 2 & VI § 2.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Washington State Supreme Court & the United States Supreme Court have a constitutional agreement that is expressed in the WA State Const. Article I § 2 Supreme Law of the Land states “**The Constitution of the United States is the supreme law of the land.**” The WA State Const. Article I § 1, 2, 3, 10, 12, 28, 29, 30; Article XXV § 1; Article XXVII § 1, 2; & Article XXXI § 1. The U.S. Const. Article VI § 2 Supremacy Clause states

“This Constitution, and the Laws of the United States...under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby...”

The U.S. Const. Article III § 2 Extent of Judicial Power states in part

“The judicial Power shall extend to all Cases...arising under this Constitution, the Laws of the United States...under their Authority...”

The U.S. Const. 1st Amdt Free Speech & Free Exercise Clause; 5th Amdt § 1 Due Process Rights that state in part “...nor be deprived of life, liberty, or property, without

due process of law..." The U.S. Const. 14th Amdt § I Due Process Rights and Equal Protection that states in part

"All persons born or naturalized in the United States...are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law..."

See *Jackson v. Metropolitan Edison Co*, 419 U.S. 345, 351 (1974); *Flagg Bros., Inc. v. Brooks* 436 U.S. 149, 166 (1978). **RCW 34.05.526** states in part "An aggrieved party may secure appellate review of any final judgment of the superior court...by the supreme court or the court of appeals..."

STATEMENT OF THE CASE

A. Introduction

Petitioner Riccardo Green, aka the "advocate" is the party that filed this petition in this Ct. The Pet'r respectfully, diligently, & urgently requests this Ct. to grant this writ under Rule 10(a)(b)(c). By & thru, the Pet'r filed this Writ of Certiorari on time. The Pet'r filed the mtn for reconsideration pgs 1-25 on time, on or about Tues., April 20, 2021 to the WA State Supreme Court under DRJ Rule 9(d)(e). Pet'r filed the PFR under RAP 13.4(a)(b)(1)(2)(3)(4), RAP 13.4(a) within 30 days pursuant to ESA RCW 50.32.120, & APA RCW 34.05; 34.05.570; 34.05.570(3); 34.05.526; & 34.05.518 & on/about Dec. 04, 2020, & paid the filing fee of \$200. This Ct. obtains jurisdiction in this matter under U.S.C. § 1257(a) & Rule 10(a)(b)(c). This Ct. obtains judicial power & authority over the State OAH, State CRO, State ESD, KCSC, State COA, & State Supreme Ct. The Resp't's attorney for both appeal cases 80975-0-1 & 81225-4-1 is Mr. Jacob William Dishion, RCW 2.48.170; See *State ex rel. Foster v. Wash. State Bar Ass'n*, 23 Wn.2d 800, 805, 162 P.2d 261 (1945). Further, the Pet'r was employed by SHS since about

May/June 2008 to Aug. 31, 2018. SHS, PHS, & SEIU are non-profit corporations/enterprises Non-Profit Corporation Act under RCW 24.03 metaphorically as “corrupt business partners” subject to dissolution under RCW 24.03.266, 24.03.271, 24.03.276. Pet'r worked FT as a linen attendant w/ full benefits at SHS at FH for 10 plus yrs. under laborious conditions. He was wrongfully terminated from employment on Aug. 31, 2018; 1] same day LM W. Schafer removed his new “10 min rule” from the linen dept. staff excluding Pet'r; 2] same day W. Schafer forced linen staff to change personal lockers to the new smaller/half-size co-ed locker room on B floor due on Fri., Aug. 31, 2018; 3] same day Pet'r opposed/advocated against sustained employment discrimination, retaliation, managerial harassment/abuse, & perceived health/safety violations in the workplace; & 4] same day W. Schafer engaged in intentional employment discrimination in the workplace; thus Pet'r was ultimately retaliated, punished, & terminated. See *WA State Board Against Discrimination v. Olympia School District*, 68 Wn.2d 262, 412 P.2d 769 (1966). Before termination, Pet'r filed multiple external complaints to state/federal 3rd party gov. agencies & internal complaints to SHS/SEIU/PHS staff including but not limited to LM W. Schafer & HRM E. Howard as protected activities before the Pet'r was recklessly & swiftly removed from the employment premises before the end of his work shift. Lastly, the state ESD originally granted UICB to the Pet'r on or about Jan. 2019.

B. Procedural Background

The Pet'r filed an UIC with the state ESD on or about Jan. 2019. The state ESD determined Pet'r was qualified for maximum UICB at \$18,434. Pet'r only utilized about half of the UICB at about \$9,892. Pet'r participated in the investigation & submitted additional evidence & responses via email to the state ESD investigator/adjudicator Mr.

Rainey upon request, & thus the state ESD originally granted/authorized UICB under RCW 50.01.010 to the Pet'r. The state ESD UICB that was originally granted was reversed by the state OAH ALJ C. Thomas & affirmed by the state CRO ALJ J. M. Sells in the misconduct case [063297 & 2019-1345]. The overpayment case was affirmed by the state OAH ALJ M. Larripa & state OCR ALJ S. Oliver, thus the Pet'r was forced to pay back \$9,892 to the state ESD CU to this date as an abusive tactic that violates the State/Federal Fair Debt Collection Practices Act RCW 19.16 & 15 U.S.C § 1692(a-p). In verse, the state ESD still owes the Pet'r \$9,892 plus \$2,400 totals at about \$12,292 plus interest, an award of sanctions & related fees incurred in litigation. SHS/PS NEC failed/refused to submit additional information evidence upon request from the adjudicator/investigator Mr. Rainey, thus the overpayment should have been waived under RCW 50.20.190, RCW 50.29.021(6), & not collected by the state ESD CU under RCW 19.16.110, RCW 19.16.210, RCW 19.16.250. The order *affirming* the Resp't's "findings of facts..." dismissing case was *affirmed* by KCSC Judge S. Amini, & 1] mtns for sanctions, 2] mtn for reconsideration, 3] "omnibus" mtn in limine, 4] mtn to admit additional evidence, & 5] mtn for jury demand were all denied by the trial court, see dkts 21, 34, 35, 36. Pet'r filed the notice of appeal on time under RAP 2.1(a)(1), 2.2, 3.1, 4.1(a)(b)(1), 5.1(a), 5.2, 6.1 in KCSC on Feb. 10, 2020, & received by the state COA on March 13, 2020. Pet'r filed Appellant Br. at pgs 1-50 under RAP 10.2(a); & filed Appellant Reply Br. at pgs 1-25 under RAP 10.2(d). Pet'r filed mtn to consolidate both appeals under RAP 3.3(b) on/about April 2020 & was denied. Resp't filed mtn to extend time to file Resp. Br. on April 09, 2020 by Ms. Petersen on behalf of Mr. Dishion, & was granted. In this mtn, Resp't used the "COVID -19 outbreak" as reason[s] towards its failure/refusal to file a timely Resp. Br., RAP 10.2(c). In case 81225-4-1, Resp't filed a similar mtn to extend

on the same day Resp. Br. was due under RAP 10.2(c) & used the exact same/similar reasons “COVID -19 outbreak.” Both frivolous mtns filed were used to “camouflage” his willful RPC violations RPC 1.3, 8.4. The state COA granted mtn on/about July 01, 2020. Resp. Br. was filed Aug. 20, 2020. Pet'r filed Reply Br. on Sept. 18, 2020. COA filed its opinion on Nov. 23, 2020 to the decision of KCSC affirming the judgement. Pet'r filed PFR under RAP 13.4(a) on/about Dec. 04, 2020. The Resp't filed frivolous mtn to extend time on Jan. 04, 2021 in State Supreme Ct. The court granted the mtn on Jan. 04, 2021. Resp't filed answer to the PFR on or about Feb. 02, 2021. State Supreme Ct. denied the PFR on April 07, 2021. Pet'r filed a mtn for reconsideration pgs 1-25 under DRJ Rule 9(d)(e) in state Supreme Ct. on time within 14 days on or about Tues., April 20, 2021. On or about April 22, 2021 state Supreme Ct. denied the mtn. The Pet'r filed this Writ of Certiorari in timely manner in this Ct. under U.S.C. § 1257(a), Rules 10 & 13, & paid the filing fee of \$300.

Furthermore, Rule 10(a) states in part “...writ of certiorari is not a matter of right, but of judicial discretion...granted...compelling reasons.” Rule 10(b) states “a state court...conflicts with the decision of another state court...” Rule 10(c) states “a state court...conflicts with relevant decisions of this Court.” Rule 13 states in part “...writ of certiorari...timely...filed...90 days after entry of the judgment...” However, orders 589 & 594 extended the number of days to 150, thus the petition was filed on time. 28 U.S.C. § 1257(a) allows this Ct. to obtain jurisdiction. It states in part

“(a) Final judgments...highest court of a State... may be reviewed...by writ of certiorari...statute of the United States is drawn in question...statute of any State is drawn in question...repugnant to the Constitution...laws of the United States...”

The petition is not frivolous. The petition involves very *important* state/federal constitutional questions related to substantive/procedural due process, equal protection, &

constitutional violations that the state Supreme Ct. & state COA failed/refused to give to Pet'r. See *Peña-Rodriguez v. Colorado*, 137 S. Ct. 855 (2017); *Gonzalez v. Crosby*, 545 U.S. 524 (2005); *Evers v. Dwyer*, 358 U.S. 202, 203 (1958); *Wyatt v. Aderholdt*, 503 F.2d 1305 (5th Cir. 1974).

C. Factual Background

Pet'r filed this petition because the state Supreme Ct. & the state COA misapprehended, overlooked, rejected, & ignored Pet'r's entire court record including Pet'r's evidence submitted under RAP 12.4(c). Pet'r reasserts all undisputed material facts & evidence referenced in the PFR filed in state Supreme Ct. under RAP 13.4(a)(b)(1-4), Appellant's Br. pgs 1-50 under RAP 10.2(a) & Reply Br. pgs 1-25 under RAP 10.2(d), & Pet'r's testimony pgs 1-39 under WAC 182-526-0390(1)(2) filed in state COA & used in support of the PFR & this petition.

1. **Petitioner's reasserts all including but not limited to undisputed material facts, additional undisputed material facts, laws, pleadings, legal authorities, legal arguments, dockets, evidence, & exhibits referenced in the Petitioner's Opening Trial Brief pgs 1-40 & Reply Brief pgs 1-9 filed in KCSC, Appellant Brief pgs 1-50 under RAP 10.2(a), Reply Brief pgs 1-25 under RAP 10.2(d), Trial Exhibit List pgs. 1-18, Exhibits 01-280, & Verbatim Report of Proceedings Transcript from KCSC pgs. 1-39 filed in State COA**

Pet'r reasserts all undisputed material facts, dkts, exhibits, pleadings, mtns, & evidence referenced in the PFR filed in state Supreme Ct. under RAP 13.4(a)(b)(1-4), Appellant's Br. pgs 1-50 under RAP 10.2(a) & Reply Br. pgs 1-25, under RAP 10.2(d), & Pet'r's testimony pgs 1-39 under WAC 182-526-0390(1)(2) filed in state COA & used in support of the PFR. SHS/PS NEC's appeal to the state ESD was absolutely frivolous, & failed/refused to submit evidence to the state ESD & participate during the adjudication/investigation, thus fwded zero evidence on appeal to state OAH case 063297 under RCW 50.29.021(6). Furthermore, the Pet'r was terminated expeditiously at 1:51

pm. Pet'r was not allowed to clock out at the completion of his wk shift at 2:30 pm. Pet'r received termination letter in W. Schafer's office on B floor in the presence of E. Howard & W. Schafer on same day he was terminated see AAR exs 205-213, AAR ex 111, AAR ex 112, Pet'r's PRC pgs 1-14, & AAR exs 200-204, 251-255. Pet'r was removed expeditiously from linen dept. & escorted to the new smaller/half size co-ed semi locker-room on B floor by E. Howard/W. Schafer to remove his personal items that he recently transferred to that afternoon by the due date of Fri., Aug. 31, 2018, see AAR exs 113, 205-216. Pet'r was escorted off the employment premises by E. Howard/W. Schafer metaphorically as a "criminal" half way thru hallways on B floor by W. Schafer & then to the exit/entrance doors on 1st floor by E. Howard. Before termination, the Pet'r filed & sent via USPS two written complaints to 3rd party state/federal gov. agencies such as WSHRC, US DOJ, US EEOC, etc. on or about Aug. 23, 2018 & Aug. 28, 2018, see AAR exs 65-84, 85-90. Complaints involved SHS staff 1] *LM* W. Schafer, 2] *LM* R. Bernard, 3] *HRM* E. Howard, & 4] other SHS staff see AAR exs 65-84, 85-90. Pet'r sent copies of the internal/external complaints pgs 1-9 dated Aug. 28, 2018 via email to 1] W. Schafer, 2] R. Bernard, 3] E. Howard, 4] SHS staff, & 5] SEIU staff see AAR exs 125-127. AAR ex 125 states in part "...letter of request for immediate actions and internal complaint against...Wade Schafer and Robert Bernard pages 1-9..." Before termination Pet'r sent another internal complaint via email to 1] E. Howard, 2] W. Schafer, 3] SEIU staff, & 4] SHS staff on Aug. 31, 2018 at 12:10 pm, see AAR ex 215. See *Spain v. ESD*, 164 Wash.2d 252, 185 P.3d 1188 (2008); *Smith v. ESD*, 155 Wn. App 24, 32, 266 P.3d 263 (2010); *Tapper v. ESD*, 122 Wash.2d 397, 402, 858 P.2d 494 (1993); *Gibson v. ESD*, 52 Wn. App. 21 1, 758 P.2d 547 (1988); & *Arnett v. Seattle General Hospital, WA State Board Against Discrimination*, 65 Wn.2d 22, 395 P.2d 503 (1964).

Minutes before termination on Fri., Aug. 31, 2018 Pet'r sent another internal complaint via email at 1:44 pm, see AAR ex 214 sent to 1] E. Howard, 2] SHS staff, & 3] SEIU staff as protected activities under RCW 50.04.294(e), 49.60.210, 49.60.180, 49.17.160, see AAR exs 65-217, 221-234, 249-268, 49-268. Further, the state ESD's letter dated Jan. 18, 2019 cited state laws under RCW 50.20.066, 50.04.294, WAC 192-150-200 & 192-150-205, see AAR exs 49-50, 52-53 that states in part "We don't know why your employer decided to fire you. Your employer fired you for a reason that we don't consider misconduct."

SHS/PS NEC Eka Otu's evidence submitted to the state OAH minutes before the state OAH on about April 2019 obtains zero allegations of misconduct in the months of July 2018, Aug. 2018, Aug. 30, 2018 see AAR ex 115, or on Aug. 31, 2018 before termination, see AAR exs 123-124, 218-237. Pet'r responded via email sent on June 30, 2018 at 4:33:39 pm to 1] W. Schafer, 2] E. Howard, 3] SHS staff, & 4] SEIU staff, see AAR exs 85-90, 101-109, 123-124, 110-268. Pet'r's response via email sent to the state ESD adjudicator/investigator Mr. Rainey see AAR exs 65-91, 205-213 states in part

"I do not know why I was terminated. I was NOT provided with any reasons by the employer in writing prior to termination that allowed me to respond in writing to any alleged incident[s] against me...All I did was work on that day [i.e. Friday, Aug. 31, 2018]...and transferred my personal contents from my former locker on C floor to my new locker on B floor that was due by Friday, Aug. 31, 2018..."

Pet'r engaged in protected activities under RCW 50.04.294(e) see AAR exs 49-268 & was a SEIU member at time of termination, see AAR exs 49-268. SEIU willfully breached their fiduciary duty & CBA & retaliated against the Pet'r, thus violated state unfair labor laws RCW 41.59.140, 41.59.060, 49.44.090. Pet'r filed employment discrimination & health/safety complaints to SHS/PHS/SEIU staff via email & via U.S

postal mail to 3rd party gov. agencies 1] May 20, 2018 see AAR exs 91-100, 2] July 17, 2018 [against W. Schafer /R. Bernard] see AAR exs 85-90, 3] Aug. 23, 2018 [against E. Howard, R. Bernard, W. Schafer, & *Seven* Managerial Staff] see AAR exs 75-84, & 4] Aug. 28, 2018 [against E. Howard, L/ED G. May, W. Schafer, & R. Bernard] see AAR exs 65-74. RCW 50.04.294(e) states in part "...However, an employee who engages in lawful union activity may not be disqualified due to misconduct." Moreover, the Pet'r submitted PFR to the state CRO/OCR on or about April 11, 2019 to this case 063297 WAC-192-04-170 to the Initial Order from the state OAH ALJ C. Thomas dated April 02, 2019 against Pet'r see AAR exs 200-217, 239-247. Pet'r respectfully requests this Ct. to review all evidence AAR exhibits 1-268 including the entire court record related to this case. The state OAH instructions received see AAR exhibits 266-268 states in part "If you did not file the appeal, and you fail to call in, the Administrative Law Judge will a make decision on the evidence presented at the hearing." SHS/PS NEC failed/refused to submit any responses to both PFR complaints filed by the Pet'r to the state OCR/CRO in about April 2019. See AAR exhibits 49-268.

- a. Sustained contradiction in written statements between PS NEC Eka Otu, SHS HRM E. Howard, & SHS LM W. Schafer recklessly, willfully, & wantonly violated state/federal laws, violated SHS termination/retaliation policies, & violated SEIU C.B.A failed to establish misconduct

SHS/PS NEC Eka Otu filed a frivolous appeal to the state ESD on Feb. 19, 2019 see AAR ex 51 that was deceptive & defamatory. Written stmt by SHS/PS NEC absolutely contradicted the written stmt by W. Schafer on Aug. 31, 2018 & his testimony at the state OAH hearing in about April 2019.

See AAR ex 112 that states in part “Effective immediately, Aug. 31, 2018 you are being terminated from your position of Linen Attendant. The termination of employment is based on your misconduct in the workplace.”

See AAR ex 21 pg. 19 that states in part

Judge C. Thomas: “And could you tell me, uh, why was he terminated?”

Mr. W. Schafer: “Um, repeated exhibition of insubordination and aggressive behavior.”

This written stmt absolutely contradicted written stmt by E. Howard dated Aug. 30, 2018 see AAR ex 115 that states in part

“...If you experience or witness behavior that you perceived is retaliatory, in violation of Swedish’s policy you must immediately report the behavior, either to me, any Human Resources team member, any member of the management team...”

Written stmt absolutely contradicted written stmt by Mr. Dishion in Resp. Br. filed in KCSC see dkt 12 CP pgs 76-87. Pet’r sent response via email to E. Howard & PHS/SHS staff on Aug. 30, 2018 at 1:59 pm, see AAR ex 185 that states in part

“I absolutely disagree with HR management’s internal investigation regarding discrimination and retaliation, and will continue to oppose now and in the future both linen dept. managers...[i.e. Wade S. and R. Bernard]...sustained favoritism and protection of whites and/or persons with white skin color in the linen dept.; and protection for both linen managers.”

Pet’r sent via email internal complaints see AAR exs 140-171 & was expeditiously terminated on Aug. 31, 2018 at 1:51 pm. Written stmt dated Aug. 31, 2018 by W. Schafer was given to the Pet’r before & on the same day as termination absolutely contradicts/violates SHS’s own termination/retaliation policies & SEIU’s own CBA see AAR ex 111 it states “You are presence is required at 1:30pm for a meeting at the HR center located at 1101 Madison 11th floor. This is not an investigatory meeting and your union delegate is not needed for this meeting.

Thank you.” Pet’r sent an email to E. Howard, W. Schafer, two SEIU staff, & SHS staff on Aug. 31, 2018 at 12:11 pm; see AAR ex 215. *Minutes before* termination the Pet’r sent a 2nd internal complaint at 1:44 pm via email see AAR ex 214 against W. Schafer & E. Howard sent to E. Howard, SHS staff, & SEIU staff that states in part

“At this time, I am being intentionally harassed and retaliated against by either you...and/or Wade S. for opposing sustained employment discriminatory practices that violate anti-discrimination laws...needs to cease.”

E. Howard letter dated Aug. 30, 2018 sent to the Pet’r via email failed to allege any misconduct against Pet’r before expeditious termination, see AAR exs 115, 122, 140, 141. SHS failed/refused to submit any *reply* to state CRO & submit substantial evidence to the state ESD, state OAH, or state CRO see AAR exs 111, 219 dated 2017, AAR ex 220 dated 2017, & AAR exs 49-268. Pet’r sent internal complaints to W. Schafer on about June 30, 2018 see AAR exs 221-234. On about Feb. 28, 2018 fwded to E. Howard on about March 05, 2018 see AAR exs 230-232. Pet’r emailed internal complaint to W. Schafer on about Sun., Aug. 26, 2018 at 7:08 am about linen carts stored on floor A by Haide C. See AAR ex 184 states in part

“On Sat, Aug. 25, 2018 I noticed linen carts stored on A floor for the next day Sun, Aug. 26, 2018 by the person assigned the new work assignment A-Haide C. I believe she was finished with work assignment around 10 am to 11 am. Total no. of linen carts not delivered 8. Total no. of linen supply locations not delivered 12.”

On about Mon., Aug. 27, 2018 Pet’r emailed an internal complaint about the “10 min rule” to W. Schafer see AAR exs 120-121 that states in part

“You notified me this morning that I am late around 6:15 am. I informed you I clocked in on time...I absolutely oppose and will continue to oppose your new “10 minute” rule as a sustained employment retaliatory, discriminatory, and racist practice...”

Pet'r emailed the first internal complaint to LM W. Schafer about the "10 min" rule on about Feb. 2018 approx. six months before termination & in about June 30, 2018, see AAR exhibits 221-234. These internal complaints were fwded to HRM E. Howard on about March 05, 2018; see AAR exhibits 230-232 that states in part

"...I believe this request to meet with you is discriminatory and retaliatory, as a sustained form of unfair targeted discriminatory treatment, managerial harassment, managerial abuse, managerial neglect, and abuse of employment position...you have been engaging in unfair discriminatory treatment between co-workers within your newly implemented "10 minute" rule."

Further, SHS/PS NEC Eka Otu, & Mr. Dishion reason[s] for the termination diverted multiple times that absolutely contradict from one reason to the next see AAR ex 112, AAR ex 51 & AAR exs 44-47, 49-268, thus explanations are 1] NOT worthy of credence; 2] absolutely bogus, & defamatory; 3] violated state laws not limited to RCW 50, 49.60.210, 49.60.180, 49.17.160, 49.44.090, 47.64.130, 41.59.140, 41.59.060; See *Marquis v. Spokane*, 130 Wn.2d 97, 100-01, 922 P.2d 43 (1996); 4] violated SHS's/PHS's own retaliation/termination policies see AAR ex 115; & 5] violated SEIU's own CBA; & thus SHS/PS NEC's explanations breed metaphorically as a "**cancerous disease of racism.**" SHS/PS NEC Eka Otu defamatory reason[s] for termination absolutely contradicts 1] E. Howard written stmt sent to Pet'r on Aug. 30, 2018 see AAR ex 115 that states zero allegations of any misconduct, & 2] W. Schafer's letter of termination see AAR ex 112 *fails* to state zero allegations of any misconduct. PS NEC stated on appeal to the state ESD in Feb. 2019 see AAR ex 51 states in part

"...on behalf of Swedish Medical Center, ER # 950050100, for whom we have power of attorney...& we disagree. We wish to appeal further & respectfully request a hearing. The claimant was insubordinate when he refused to follow dependability rules as required by all employees. The claimant was not being asked to follow rules not ask of others to follow..."

Dana Blay's faxed statement to state ESD was absolutely contradicted by Mr. Dishion's defamatory/misrepresented stmts in the Resp. Br., see dkt 12 CP pgs 76-87. CP pg 76 stated in part

“...fired from his job at Swedish Health Services for insubordination and violation of his employer’s policy prohibiting the use of profanity and threats of violence in the workplace...”

Resp't/Mr. Dishion willful defamatory statements violated RPC 4.1, 8.4. The reason[s] of the termination was confirmed by the Judge C. Thomas and SHS's appeal rep. Mr. Otu at the state OAH, thus any other reason[s] is/are outright defamatory, retaliatory, irrelevant, inadmissible hearsay, & absolutely bogus.

See AAR ex. 16 pg. 14

Judge C. Thomas:

“...to an appeal filed on behalf of Swedish Health Services. It looks like somebody named Dana Blay filled this out, uh, or signed this letter and sent it back to the Department on the 19th of February this year. Does that look accurate to you?”

Mr. Otu:

“Yes.”

See verbatim ROP pg. 23 at lines 13-17 that states in part “...I think it was on the 31st – and indicated it’s not an investigation meeting. So how can there be misconduct if there’s no investigation meeting?”

W. Schafer & E. Howard willfully failed/refused to inform the ALJ C. Thomas in the hearing that himself, E. Howard, & SHS/SEIU staff were notified about the illegal gambling [*i.e. sport bets*] conducted on the employment premise by linen & environmental “evs” staff that was *condoned/tolerated* by SHS at FH/CH for many years, & probable cause that W. Schafer [who worked at CH] was directly/indirectly involved in the sport bets by *probable* use of *his* “10 min” rule by deception & use of *his* office metaphorically as a “casino & bank,” thus violates RCW 9.46, 9.46.010, 9.46.0249, & 18 U.S.C. §

1955(a)(b)(c). SHS/PHS breached the implied covenant of good faith & fair dealing between the employee & employer; & breached the implied contract between the employee & employer relationship. See *Schneider v. Equibank*, 744 F. Supp. 106, 108 (W.D. Pa. 1990); *Toussaint v. Blue Cross & Blue Shield*, 292 N.W.2d 880, 885 (Mich. 1980); *Thompson v. St. Regis Paper Co.*, 685 P.2d 1081, 1087 (Wash. 1984); *Roberts v. Atlantic Richfield Co.*, 568 P.2d 764, 768-69 (Wash. 1977); *Dicomes v. State*, 113 Wn.2d 612, 618, 782 P.2d 1002 (1989); *Amoco Oil Co. v. Ervin*, 908 P.2d 493, 498 (Colo. 1995). Pet'r reasserts the absolute truth is that there was NO misconduct committed by Pet'r, but an "outright retaliatory lash out filled with absolute hatred & definite jealousy" that caused the expeditious termination on **Fri., Aug. 31, 2018.**

b. Wade Allen Schafer's, Ethan C. Howard's, & Eka Otu's Testimonies in State OAH on April 02, 2019 failed to establish misconduct

W. Schafer's, E. Howard's, & Eka Otu's testimonies were conspired, inflamed, irrelevant, inadmissible hearsay, not credible, not trustworthy, biased, intentionally misleads, mischaracterization, deceptive, defamatory, & horrendous; not supported with evidence to substantiate allegations, but unproven/unfounded. Character evidence in testimony by all three witnesses is/are inadmissible hearsay & irrelevant evidence ER 402, 403, 404, 801(d), 802 [irrelevant], & 806, & 904, thus should have been rejected by state COA & must be rejected by this Ct. In verse, all three testimonies of E. Howard, W. Schafer, and E. Otu openly acknowledge the sustained discriminatory, harassing, & retaliatory treatment & actions by SHS staff.

1) Wade A. Schafer - SHS Linen Manager Testimony

See AAR ex 21 pg. 19 that states in part

Judge Thomas: "All right. Thank you, sir. You are under oath. Mr. Schafer, will you swear or affirm to tell the truth at this hearing?"

Mr. W. Schafer: "I do."

See AAR ex 21 pg. 19 that states in part

Judge C. Thomas: "All right. Mr. Schafer, um, did you discharge Mr. Green, was he laid off due to a lack of work, or did he quit his job?"

Mr. W. Schafer: "He was terminated."

See AAR ex 22 pg. 20 that states in part

Mr. W. Schafer: "...He then stated that he will continue to oppose that work rule in that same email."

See AAR ex 24-25 pg. 22-23 that states in part

Judge C. Thomas: "For identification purposes, page 101 of 151 is an email to you, Mr. Schafer, from Mr. Green. It says, Wade, you notified me this morning that I am late around 6:15 a.m. I informed you that I clocked in on time. Is that the email you're referring to?"

Mr. W. Schafer: "Uh, yes, sir."

Judge C. Thomas: "...absolutely oppose and will continue to oppose your ten minute rule as sustained employment retaliatory, discriminatory, and racist practice, embedded in a sustained including but not limited to managerial abuse, managerial harassment, and it goes on..."

Mr. W. Schafer: "Yes, sir."

See AAR ex 30 pg. 28 that states in part

Mr. W. Schafer: "...I have assignments written up on the board in our department..."

Mr. W. Schafer: "...he came in and wrote the word discriminates with an arrow up to my name."

See AAR ex 37 pg. 35 that states in part

Mr. W. Schafer: "...he referred to another – one of my colored, um, employees, he referred to him as a slave from Africa."

W. Schafer stated absolute defamatory statements without evidential proof under oath in the state OAH hearing on about April 02, 2019. W. Schafer committed perjury under oath & violated RCW 9A.72.020(1). Pet'r responded to each & every discriminatory, retaliatory, & harassing disciplinary form written *against* the Pet'r by R. Bernard or W. Schafer; & thus must be *rejected* by this Ct. His statements are considered hearsay & character evidence inadmissible under state ROE 402, 404, 802.

See AAR ex 36 pg. 34 that states in part

Judge C. Thomas: "Um, do you have any idea as to why Mr. – Mr. Green opposed this rule, or why he wouldn't want to report to you prior to starting the shift?"

Mr. W. Schafer: "I – I – I really don't. Um, he just – he just thought that it was harassing and discriminatory, and just absolutely opposed it."

See AAR ex 37 pg. 35 that states in part

Judge C. Thomas: "...or have you yourself ever seen or – or observed Mr. Green doing so; whether verbally or in an email or –"

Mr. W. Schafer: "Mr. – yes, absolutely. Mr. Green would always refer to me as discriminating, harassing..."

See AAR ex 40 pg. 38 that states in part

Mr. E. Otu: "...Are you the only individual, uh, which Mr. Green categorized as being discriminative or harassing?"

Mr. W. Schafer: "He's referred to Mr., uh, Howard, myself, and, um, my – another manager, uh, Bob – Robert Bernard."

Mr. E. Otu: "Has he ever referred to any of his coworkers as being discriminative or harassing?"

Mr. W. Schafer: "Yes, he has..."

See AAR ex. 42 pg. 40 that states in part

Mr. W. Schafer: "And, uh, my lead, uh, she is female, she's just absolutely progressing so much better &, um things have really improved."

2) Ethan C. Howard - SHS HR Manager Testimony

See AAR ex. 20 pg. 19 that states in part

Mr. E. Howard: "It was a represented union position."

See AAR ex 42 pg. 40 that states in part

Mr. E. Otu: "Mr. Howard, can you hear me okay?"

Mr. E. Howard: "Yes, I can hear you."

See AAR ex 43-44 pg. 41-42 that states in part

Mr. E. Howard: "Um, if you look at some of the corrective actions that were issued and look at his response (inaudible) myself, Wade, and another manager, Robert Bernard, (inaudible) responses to the corrective action."

Mr. E. Otu: "And you're referring to, um, his handwritten responses on the corrective action?"

Mr. E. Howard: "That is correct."

Mr. E. Howard: "I am referring to, um, page (inaudible). That is the written (inaudible). It would be his response where he mentions, um that it's discriminatory."

Mr. E. Howard: "If you move on to the, um – the final warning, and you'll see where he once again goes on (inaudible) racist."

Mr. E. Otu: "...were there a time that Mr. Green was issued a warning and did not have the responses that he was being discriminated against or that people were racist or what – was there ever a time that he accepted, whether graciously or – or not, that – that he was getting a warning and didn't make these type of comments that you are aware of?"

Mr. E. Howard: "Not that I'm aware of."

3) Eka Otu – PS NEC Appeals Representative Testimony

See AAR ex. 16 pg. 14

Judge C. Thomas: “...to an appeal filed on behalf of Swedish Health Services. It looks like somebody named Dana Blay filled this out, uh, or signed this letter and sent it back to the Department on the 19th of February this year. Does that look accurate to you?”

Mr. Otu: “Yes.”

4) ALJ C. Thomas Statements During the Admin. Hearing

See AAR ex. 12 pg. 10

Judge C. Thomas: “The Department concluded that Mr. Green had been discharged, but for reasons other than misconduct.”

See AAR ex. 19 pg. 17

Judge C. Thomas: “...I – and I have read them. Um, most of these are statements from Mr. Green.”

c. Petitioner’s Internal Complaints to union staff SEIU 1199 NW established *no* misconduct under RCW 50.04.294(e)

Mr. Otu *confirmed* grievances to ALJ C. Thomas.

See AAR ex. 46 pg. 44 that states in part

Mr. Otu: “...send emails making those type of grievances...”

2. Petitioner’s findings of facts, conclusions of law, & order filed in KCSC should have been granted

Pet’r filed “Findings of Facts, Conclusions of Law, & Order” on/about Dec. 31, 2019

pgs 1-20 with Judge S. Amini Ct. at KCSC, see Pet. App. 40a

3. Petitioner’s motion for sanctions, motion for jury, motion in limine “omnibus,” motion to admit additional evidence, & motion for reconsideration should have been granted by KCSC

Pet’r reasserts all undisputed material facts & evidence referenced in the PFR

under RAP 13.4(a)(b)(1-4), Appellant Br. pgs 1-50 under RAP 10.2(a) & Reply Br. pgs 1-25 under RAP 10.2(d). KCSC erred in judgement/abused discretion & recklessly denied

all mtns submitted by the Pet'r in KCSC except for the mtn protection order that was granted. Pet'r's mtns should have been granted.

4. SHS/PS NEC *failed/refused* to participate in the investigation & provide additional information to the State ESD investigator Mr. Jacob Rainey in January 2019 violated RCW 50.20.190, RCW 50.29.021(6)

Pet'r reasserts all undisputed material facts & evidence referenced in the PFR under RAP 13.4(a)(b)(1-4), Appellant Br. pgs 1-50 under RAP 10.2(a), & Reply Br. pgs 1-25 under RAP 10.2(d). SHS/PS NEC failed/ refused to participate in the initial investigation with the state ESD violated RCW 50.20.190, RCW 50.29.021(6), & RCW 50.32.120.

5. Additional undisputed material facts of Mr. J. W. Dishion's pattern/trend in conduct/litigation similar, equal to, and/or same in overpayment case no. 80975-0-1 supports motion for sanctions in this misconduct case no. 81225-4-1

Pet'r reasserts all undisputed material facts & evidence referenced in the PFR under RAP 13.4(a)(b)(1-4), Appellant Br. pgs 1-50 under RAP 10.2(a) & Reply Br. pgs 1-25 under RAP 10.2(d). He failed/refused to file answers to both complaints filed in KCSC in about 2019 under RCW 34.05.570(4)(b), 18.130.180(1) see dkts 2-36 CP pgs 1-571, thus zero answer exists in KCSC dkts or CP dkts. He stated defamatory statements that absolutely contradicted SHS/PS NEC statements, testimonies, & vice versa, thus he violated RPC 1.3, 3.1, 3.2, 3.3, 3.4, 4.1, 4.4, 8.4; ABA 1.3, 8.4, ABA 10(A)(1); & ELC 1.1, 1.2, 1.4, 1.5, 2.1, 2.3, 3.5, 5.3, 6.2, 10.3, 10.4, 10.7, 10.13, 10.16, 12.5, 12.9, 13.1(a)(1), 13.2, 14.2; thus he must be disbarred under RCW 2.48.220. See *In re Discipl. Proceeding Against Miller*, 263 149 Wn.2d 262 (2003); *In re Discipl. Proceeding Against Cottingham*, 191 Wn.2d 450, 423 P.3d 818 (2018); *In re Discipl. Proceeding Against McGrath*, 174 Wn.2d 813, 818, 280 P.3d 1091 (2012); *In re Discipl. Proceeding Against Gillingham*, 126 Wn.2d

454, 896 P.2d 656 (1995); *In re Disciplinary Proceeding Against Whitt*, 149 Wash. 2d 707, 716, 72 P.3d 173 (2003).

REASONS FOR GRANTING THE WRIT

I. **Issues presented in the PFR under RAP 13.4(c)(5) & issues related to the assignments of error in the Appellant Brief filed in State COA under RAP 10.2(a) have *not* been resolved by the WA State COA or by the WA State Supreme Court**

The “issues presented” in the PFR (see Pet. App. 164a) **RAP 13.4(c)(5)** filed on or about **Dec. 04, 2020**, see pgs 2-3 questions 1-3 have **not** been resolved by this Ct. The “issues related to assignments of error” questions 1-16 in the Appellant Br. under **RAP 10.2(a)** see pgs 19-21 filed on or about **May 2020** have **not** been resolved.

II. **PFR filed in WA State Supreme Court under RAP 13.4(a) should have been granted under RAP 13(a)(b)(1-4); & WA State Supreme Court has a legal duty & obligation to enforce WA State Laws & prevent a gross miscarriage of injustice and/or unfair prejudice in the administration of justice protected by the WA State & U.S. Constitution, & U.S. Bill of Rights**

The **PFR** filed in state Supreme Ct. is **valid** & should have been granted under **RAP 13.4(a)(b)(1-4)** to prevent a *gross miscarriage of injustice or unfair prejudice in the administration of justice* against the Pet'r that is **secured** by the WA State Const. Articles I, XXV, XXVII, XXXI, the 1st, 5th, & 14th Amdts to the U.S. Const., Articles III § 2 & VI § 2, & **preserved** in the U.S. Bill of Rights **regardless** of pro se status or advocacy. **RAP 13.4(b)(1)** applies to this case. The state COA opinion dated **Nov. 23, 2020** is in *conflict* with this Ct. because it does **not** acknowledge the Pet'r's protective activities under **RCW 49.60, 49.17, 50.04.294(e)**, & Pet'r's evidence filed with the state ESD, state OAH, KCSC, state COA, or Pet'r's testimony **WAC 182-526-0390(1)(2)**, & evidence under state ROE **ER 401, 402, 801, 806, & 904**. **RAP 13.4(b)(2)(3)** applies to this case. Moreover, the WA State Const. & U.S. Const. laws, & individual rights are involved. There is a significant question of law that applies to the Pet'r that is related to the WA State Const. & U.S.

Const. The 14th Amdt Equal Protection § 1 U.S. Const. states in part “...nor deny to any person within its jurisdiction the equal protection of the laws.” Procedural due process in summary is when a person obtains a right to receive a fair procedure & impartial trier of fact that affects that person’s life, liberty, property, & justice. This case involves UICB & money *owed* by the Resp’t. See *Truax v. Raich*, 239 U.S. 33, 36 S.Ct. 7 (1915); *Yik Wo v. Hopkins*, 118 U.S. 356 (1885). The 14th Amdt § 5 U.S. Const. states in part “**power to enforce, by appropriate legislation...**” See *EEOC v. Wyoming*, 460 U.S. 226, 243 n.18 (1983); *Armstrong v. Wilson*, 942 F. Supp. 1252, 1261, 1262-63 (N.D. Cal. 1996); *New York v. United States*, 505 U.S. 144 (1992).; *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 351 (1974); *Flagg Bros., Inc. v. Brooks* 436 U.S. 149, 166 (1978). The 5th Amdt § 1 U.S. Const. states in part “...nor be deprived of life, liberty, or property, without due process of law...” See *Shelley v. Kraemer*, 334 U.S. 1 (1948); *Eggleston v. Pierce County*, 64 P.3d 618, 622 (Wash. 2003); *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *Browning v. Slenderella Systems of Seattle*, 54 Wn.2d, 440, 442, 341 P.2d 859 (1959); *O’Meara v. WA State Board Against Discrimination*, 58 Wn.2d 793, 798, 365 P.2d 1 (1961); *Curtis v. Interlake Realty*, 62 Wn.2d 928, 385 P.2d 37 (1963). The 1st Amdt Religion/Free Expression U.S. Const. states “**Congress shall make no law...prohibiting the free exercise...freedom of speech...to petition the Government for a redress of grievances.**” RAP 13.4(b)(4) applies to this case. This case is of substantial public interest because it involves a protected activity laws enforced by state employment & health/safety anti-discrimination & anti-retaliation laws RCW 49.60.210, 49.60.180; & RCW 49.17.160, RCW 34.05.526 [effective June 11, 1946] 5 U.S.C. § 552; RCW 50.32.120, 50.32.150 & RCW 50.04.294(e); & the WA State Const. Article 1 § 5 Freedom of Speech states “**Every person may freely speak, write and publish on all subjects, being**

responsible for the abuse of that right.” This is protected by the 1st Amdt Free Speech & Free Exercise Clause of the U.S. See *Garcetti v. Ceballos*, 547 U.S. 410 (2006); *Connick v. Myers*, 461 U.S. 138 (1983); *Adair v. U.S.*, 208 U.S. 161, 174-175; *Barsky v. Univ. of the State of NY*, 347 U.S. 442, 472 74 S.Ct. 650 (1954).

III. WA State Supreme Court denial of the PFR under RAP 13.4(b)(1-4), RCW 34.05.526, & RCW 34.05.570(4)(b) & denial of the motion for reconsideration under DRJ rule 9(d)(e) *violated* Petitioner’s substantive & procedural due process rights & equal protection rights; & violates the WA State Constitution Articles I, XXV, XXVII, XXXI, & U.S. Constitution 5th & 14th Amendments, & Articles III § 2 & VI § 2

The WA State Supreme Ct.’s *denial* of the PFR filed under RAP 13.4(b)(1-4), RCW 34.05.526, RCW 34.05.570(4)(b), & the *denial* of the mtn for reconsideration under DRJ Rule 9(d)(e) violated the Pet’s substantive & procedural due process rights, & equal protection rights under the U.S. Const. 5th & 14th Amdts., & Articles III § 2 & VI § 2. DRJ 9(d) states in part “The decision of the Supreme Court becomes final 14 days after the decision is filed...” DRJ 9(e) states in part “...A party...must file a motion for reconsideration within 14 days after the decision of the Supreme Court has been filed.” RCW 34.05.526 states in part “An aggrieved party may secure appellate review of any final judgment of the superior court...by the supreme court or the court of appeals...” The state COA/state Supreme Ct. refused/failed to *enforce* state laws against the Resp’t/Mr. Dishion. Additionally, the state Supreme Ct. violated its own state Const. Articles I, XXV, XXVII, & XXXI. Article I § 1 Political Power states “All political power...established to protect and maintain individual rights.” Article I § 2 Supreme Law of the Land states “The Constitution of the United States is the supreme law of the land.” Article I § 3 Personal Rights states “No person shall be deprived of life, liberty, or property, without due process of law.” Article I § 10 Administration of Justice it states “Justice in all cases shall be administered openly,

and without unnecessary delay.” Article I § 12 Special Privileges and Immunities Prohibited states “No law shall be passed granting to any citizen, class of citizens...privileges or immunities...” Article I § 28 Hereditary Privileges Abolished states “No hereditary emoluments, privileges, or powers...granted or conferred in this state.” Article I § 29 Constitution Mandatory states “The provisions of this Constitution are mandatory...” Article I § 30 Rights Reserved states “The enumeration in this Constitution of certain rights shall not be construed to deny others retained by the people.” Article XXV § 1 Authority of the United States state in part “The consent of the State of Washington...by the congress of the United States...” Article XXVII § 1 Existing Rights, Actions, and Contracts Saved states in part “No existing rights...but all shall continue as if no such change had taken place...” Article XXVII § 2 Laws In Force Continued states in part “All laws now in force in...Washington, which are not repugnant to this Constitution, shall remain in force...” Article XXXI § 1 Sex Equality-Equality Not Denied Because of Sex states “Equality of rights...shall not be denied or abridged on account of sex.” Article XXXI § 2 Enforcement of Power of Legislature states “The legislature shall have the power to enforce...”

Furthermore, the Resp’t owes the Pet’r money & UICB. This is **substantive** property rights of the Pet’r protected by substantive due process rights of the 5th & 14th Amdts of the U.S. Const. The state COA/state Supreme Ct. failed/refused to acknowledge the Pet’r’s internal/external complaints as protected activities under RCW 49.60, 49.17, 50.04.294(e). The state Supreme Ct. **denial** of the PFR under RAP 13.4(b)(1-4) *established* judicial biases, protection, & favoritism to the Resp’t/Dishion that violated the Pet’r’s procedural/substantive due process rights & equal protection rights under the 5th &

14th Amdts & Articles III § 2 & VI § 2 of the U.S. Const., & the WA State Const. Articles I, XXV, XXVII, & XXXI. The state COA/state Supreme Ct. failed/refused to enforce state laws against the Resp't/Dishion *was* an abuse of discretion. The state Supreme Ct. erred in judgement, abused of discretion, *violated* state Const. & the U.S. Const. 1st, 5th, & 14th Amdts when it failed/refused to *grant* the PFR under RAP 13.4(a)(b)(1-4) & RCW 34.05.526; & *denied* the Pet'r's mtn for reconsideration under Rule 9(d)(e). The U.S. Const. Amdt XIV § 5 Power of Congress to Enforce, assists in enforcement of the U.S. Const. 14th Amdt substantial/procedural due process.

IV. **KCSC, WA State Appellate Court, & the WA State Supreme Court intentionally denied motions, abused discretion, & erred in judgement, & failed/refused to enforce WA State laws, disciplinary actions, & sanctions against the Respondent**

The KCSC, state COA, & the state Supreme Ct. *intentionally* denied Pet'r's mtns, abused discretion & erred in judgement, thus the Cts due process was a *gross miscarriage of injustice* to the Pet'r. State COA/state Supreme Ct. failed/refused to enforce state laws against the Resp't/Dishion under RCW 50.32.150, thus violated the WA State Const. Articles I, XXV, XXVII, & XXXI; the U.S. Const. 1st, 5th, & 14th Amdts., & Articles III § 2 & VI § 2. See *Strauder v. West Virginia*, 100 U.S. 303 (1880); *Allgeyer v. Louisiana*, 165 U.S. 578 (1897); *City of Boerne v. Flores*, 521 U.S. 507 (1997); *Kimel v. Florida Board of Regents*, 528 U.S. 62 (2000); *Duncan v. Louisiana*, 391 U.S. 145, 147-48 (1968). RCW 50.32.150 that states in part "**...commissioner...correctly construed the law, the decision...shall be confirmed; otherwise, it shall be reversed or modified...**"

See verbatim ROP pg. 31 lines 18-19 that states in part "**Also, there is no answer to the petition for re-complaint.**" See verbatim ROP pg. 32 lines 1-20 that states in part

“...There is no answer filed...any arguments...the respondent has raised be denied...I have engaged in protected activity under the law...”

V. **Unemployment cases the U.S. Supreme Court, numerous State Court of Appeals & State Supreme Courts reversed & remanded *conflicts* with the WA State COA & WA State Supreme Court’s decisions in this case**

There is unemployment cases the U.S. Supreme Ct. have reversed & remanded that **unequivocally conflicts** with the state COA/state Supreme Ct.’s decisions in this case.

For instance, in *Salinas v. U.S. Railroad Retirement Board*, (19-199) 140 S. Ct. 813, 813 (2020), the board **denied** Mr. Salinas unemployment railroad insurance application under the Railroad Retirement Act, 45 U.S.C. § 231 *et seq.* The U.S. Supreme Ct. **reversed** the judgment of the 5th Cir. COA case 18-60702, 5th Circuit COA, 765 Fed.Appx. 79 (5th Cir. 2019), & **remanded** the case. In the Ct.’s opinion it states in part “**...a petitioner may obtain review of certain final Board decisions in federal circuit courts.**” Another example, in *Sherbert v. Verner*, 374 U.S. 398 (1963), Sherbert was **denied** UICB by the state ESD because she refused to work on Saturdays due to her religious faith. The U.S. Supreme Ct. ruled that Sherbert’s 1st Amdt Rights to Free Speech, Free Exercise clause, & 14th Amdt Rights were violated, thus **reversed & remanded** case. The Ct.’s opinion states in part “**...under the First and Fourteenth Amendments' guarantee of free exercise of religion...the denial of benefits also deprived her of the equal protection of the laws in violation of the Fourteenth Amendment...is reversed and the case is remanded...**” Additionally, in *Thomas v. Review Board of the Indiana Employment Security Div.*, 450 U.S. 707 (1981), the claimant was transferred to another dept. involuntarily. He quit & applied for & was **denied** UICB. The Ct. in its opinion stated in part “**...disqualification from benefits violated the Free Exercise Clause of the First Amendment, as applied to the States through the Fourteenth Amendment.**” Moreover, in *Hobbie v. Unemployment Appeals Commission of Florida, et. al*, 480 U.S. 136

(1987), the U.S. Supreme Ct. **reversed & remanded** the case. The Ct. found that the denial of UICB **violated** 1st Amdt Rights to Free Speech & Free Exercise Clause. In *California Dep't of Human Res. Dev. v. Java*, 402 U.S. 121, 130 (1971), the Ct.'s opinion stated in part "**the issue concerned whether a suspension or denial of benefits already granted, resulting from an employer appeal, was violative of the due process clause...unemployment compensation programs...are intended to operate without regard to need and be available to a recipient as a matter of right.**" See *Fusari v. Steinberg*, 419 U.S. 379, 387-88, 95 S. Ct. 533, 42 L. Ed. 2d 521 (1975); *Philbrook v. Glodgett*, 421 U.S. 707, 714, 95 S. Ct. 1893, 1899, 44 L. Ed. 2d 525 (1975).

Moreover, there are unemployment cases in *numerous* state **COA** & state Supreme Cts. that have been reversed & remanded that **conflicts** with the state COA's/state Supreme Ct.'s opinions in this case. For instance, in *Ballard v. Director, Dept. of Workforce Services* (E-20-319) 2021 Ark. App. 201 (Ark. Ct. App. 2021), Mr. Ballard [pro se litigant] was **denied** UICB by the Arkansas Board of Review. The Arkansas COA Div. 2 **reversed & remanded** an award of benefits to Mr. Ballard. In *Skelly v. State Personnel Bd.*, 15 Cal.3d 194, 124 Cal. Rptr. 14, 539 P.2d 774 (Cal. 1975), the Ct.'s opinion stated in part "**...this right constitutes a property interest protected by due process.**" Another example, in *American Federal of Labor and Congress of Industrial Organizations v. California Employment Development Department* (1979) 88 Cal. App.3d 811, 152 Cal.Rptr. 193, the Ct.'s opinion states in part "**Procedural due process involves the deprivation of a "liberty" or "property" interest...It is clear . . . that unemployment insurance benefits are a type of property interest protected by the due process clause.**" In *Stevens v. White Water Construction, Inc.*, No. 37414-9-III (Wash. Ct. App. Jan. 19, 2021), Stevens was **denied** UICB by the superior court; originally, the state CRO **granted** the

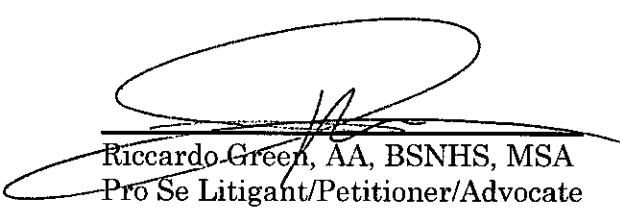
UICB to Mr. Stevens. The 5th COA div. **reversed** the decision by the superior court. The Ct.'s opinion states in part “**Since the employer carries the burden of proving misconduct, we could hold that White Water Construction failed to establish that Fred Stevens dishonestly inflated work hours...**” For instance, in *Cuesta v. Department of Employment Security*, 402 P.3d 898, 200 Wn.App.560 (2017) the Ct.'s opinion states in part “**This court reviews the commissioner's fact findings for substantial evidence in light of the whole record.**” In *Michaelson v. Employment Security Department*, 187 Wn. App. 293, 298, 349 P.3d 896 (2015), the Ct.'s opinion states in part “**We review the ESD commissioner's decision, not the ALJ's decision or the superior court's ruling.**” See *Shaw v. Department of Retirement Systems*, 193 Wn. App. 122, 133, 371 P.3d 106 (2016); *Goldberg v. Sanglier*, 96 Wn.2d 874, 880, 639 P.2d 1347, 647 P.2d 489 (1982); *State v. Budd*, 186 Wn. App. 184, 199, 347 P.3d 49 (2015), aff'd, 185 Wn.2d 566, 374 P.3d 137 (2016). Another example, in *Carter v. Division of Employment Security*, case no. 73538, 350 S.W.3d 482 (Mo. Ct. App. 2011), the Missouri COA, Western District **reversed & remanded** for the award of benefits. Carter was **denied** UICB by the Missouri Div. of Employment Security. The Ct.'s opinion states in part “**...denying Claimant unemployment benefits on the basis that she left work voluntarily is reversed, and the case is remanded for entry of an award of benefits to Claimant...**” See *Davis v. Transp. Sec. & Div. of Emp't Sec.*, 295 S.W.3d 594 (Mo.App. E.D.2009) by the Missouri COA; *Korkutovic v. Gamel Co.*, 284 S.W.3d 653 (Mo.App. E.D.2009). For instance, in *Olson v. Job Service North Dakota and E.W. Wylie Corporation*, 379 N.W.2d 285, the District Court of Cass County affirmed **denial** of UICB to Olson. The North Dakota Supreme Ct. **reversed & remanded** case. The Ct.'s opinion states in part “**We reverse the decision of the district court which affirmed Job Service's denial of benefits**

and remand..." Another example, in *Operton v. Labor and Industry Review Commission and Walgreen Co. Illinois*, 894 N.W.2d 426, 375 Wis.2d 1, 2017 WI 46, the Supreme Court **affirmed** the appeals court decision & **remanded** case. The Ct.'s opinion states in part "**...LIRC incorrectly denied Operton unemployment benefits... we...remand to LIRC...unemployment compensation Operton is owed.**"

CONCLUSION

For all of the above reasons, the petition for a Writ of Certiorari should be granted.

Respectfully submitted,



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