APPENDIX

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* Footnotes are combined and renumbered

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FILED
MAR 6 2023
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

No. 21-35661

D.C. No. 3:20-cv-06247-RJB
Western District of Washington,
Tacoma

ORDER

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOE PATRICK FLARITY,
Plaintiff-Appellant,
v.
KENNETH ROBERTS; et al.,
Defendants-Appellees.

Before:
SILVERMAN, GRABER, and BENNETT, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote

on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Flarity's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 37) are denied.

Appellees' opposed bill of costs (Docket Entry No. 38) is granted. The determination of allowed costs is referred to the Clerk's Office. *See* 28 U.S.C. § 1920; Fed. R. App. P. 39; 9th Cir. R. 39-1.

No further filings will be entertained in this closed case.

AP-3

FILED
OCT 18 2022
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

No. 21-35661

D.C. No. 3:20-cv-06247-RJB
MEMORANDUM *

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOE PATRICK FLARITY,
Plaintiff-Appellant,
v.
KENNETH ROBERTS; ARGONAUT INSURANCE COMPANY; COUNTY OF PIERCE, a municipal corporation; ET AL,
Unnamed Individual Defendants,
Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Washington
Robert J. Bryan, District Judge, Presiding
Submitted October 12, 2022 **
Before:

SILVERMAN, GRABER, and BENNETT, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Joe Patrick Flarity appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action arising out of a hearing before the Pierce County Board of Equalization. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Daewoo Elecs. Am. Inc. v. Opta Corp.*, 875 F.3d 1241, 1246 (9th Cir. 2017) (judgment on the pleadings under Fed. R. Civ. P. 12(c)); *Cervantes v. United States*, 330 F.3d 1186, 1187 (9th Cir. 2003) (dismissal under Fed. R. Civ. P. 12(b)(6)). We affirm.

The district court properly dismissed Flarity's action on the basis of quasi- judicial immunity, and because Flarity failed to allege facts sufficient to state a plausible claim. *See Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (although pro se pleadings are to be construed liberally, a plaintiff must present factual allegations sufficient to state a plausible claim for relief); *see also Vill. of*

Willowbrook v. Olech, 528 U.S. 562, 564 (2000) (per curiam) (elements of an equal protection "class of one" claim); *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (discussing requirements of due process); *Pasadena Republican Club v. W. Justice Ctr.*, 985 F.3d 1161, 1167 (9th Cir. 2021) (setting forth tests used to evaluate whether a private actor has engaged in state action for purposes of § 1983); *Furnace v. Sullivan*, 705 F.3d 1021, 1030 (9th Cir. 2013) ("To state a claim under 42 U.S.C. § 1983 for a violation of the Equal Protection Clause of the Fourteenth Amendment a plaintiff must show that the defendants acted with an intent or purpose to discriminate against the plaintiff based upon membership in a protected class." (citation and internal quotation marks omitted)); *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) (en banc) (explaining judicial immunity and that it applies to "those performing judge-like functions," "however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff").

The district court did not abuse its discretion by denying leave to amend because amendment would have been futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that leave to amend may be denied when amendment would be futile); see also *Hirsh v.*

Justices of the Supreme Court of Cal., 67 F.3d 708, 715 (9th Cir. 1995) (judicial defendants are immune in their individual and official capacities).

The district court did not abuse its discretion by denying Flarity's motions for reconsideration because Flarity failed to establish a basis for such relief. *See* W.D. Wash. R. 7(h)(1) (setting forth grounds for reconsideration under local rules); *Bias v. Moynihan,* 508 F.3d 1212, 1223 (9th Cir. 2007) (setting forth standard of review applied to a district court's compliance with local rules); *Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (setting forth standard of review and grounds for reconsideration under the Federal Rules of Civil Procedure).

We reject as lacking factual support in the record Flarity's contention that the district court denied him due process.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Argonaut Insurance Company's request for appellate attorney's fees, set forth in the answering brief, is denied without prejudice. *See* Fed. R. App. P. 38 (requiring a separate motion for fees and costs); *Winterrowd v. Am. Gen. Annuity Ins. Co.*, 556 F.3d

815, 828 (9th Cir. 2009) (a request made in an appellate brief does not satisfy Rule 38).

Flarity's motion to certify a question to the Washington Supreme Court (Docket Entry No. 27) is denied.

AFFIRMED.

AP-8

CASE NO. 3:20-cv-06247-RJB
ORDER GRANTING
DEFENDANT'S MOTION FOR
JUDGMENT ON THE PLEADINGS
AND DENYING PLAINTIFF'S
MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOE PATRICK FLARITY, a marital community,
Plaintiff,
v.
ARGONAUT INSURANCE COMPANY,
Defendant.

THIS MATTER comes before the Court on Defendant Argonaut Insurance Company's ("AIC") Motion for Judgment on the Pleadings (Dkt. 31) and Plaintiff's Motion for Leave to File Amended Complaint (Dkt. 40). The Court has considered the pleadings filed regarding the motions and the remaining file. Oral argument is unnecessary to fairly decide these motions.

I. FACTS AND BACKGROUND

Pro se Plaintiff, Joe Flarity, currently has two cases pending before the Court and at least one related matter in Washington State Court. *See* Dkt. 1; Case No. 3:20-cv-6083-RJB; King Cnty. Superior Ct. No. 20-2-16139-0-SEA. His claims relate to the tax assessment of his property, which Pierce County assessed at a value that cased his taxes to increase. *See id.* This matter more specifically relates to his appeal of his property valuation to the Pierce County Board of Equalization ("BOE"). Dkt. 1. Plaintiff alleges that Pierce County, Pierce County officials, and AIC violated his Constitutional rights to equal protection and due process in the administration of his BOE appeal. *See id.* Pierce County and Pierce County officials previously filed a motion to dismiss (Dkt. 13), which the Court granted on the grounds that all claims were either barred by quasi-judicial immunity or failed to state a claim for which relief could be granted (Dkt. 23). AIC, which is a private company, is the only defendant remaining in this matter. Plaintiff's claims against AIC are (1) Violation of Equal Protection and Due Process brought pursuant to § 1983, and (2) "Civil Rights Tort Claims" because of an alleged agreement with Pierce County to violate the civil rights of Pierce County taxpayers. Dkt. 1.

Plaintiff's proposed amended complaint is 27 pages, but over 300 pages including exhibits. Dkts.

40 and 42. In it, he realleges the equal protection and due process claims that were dismissed from his original complaint but frames them as being made against the officials in their personal capacities. *See id.* He also proposes to add three defendants in their personal capacities and claims of First Amendment violations, civil conspiracy, obstruction of justice, insurance malpractice, and fraud. *Id.* The essential allegations remain the same: that Pierce County and its officials violated the Constitution and laws during Plaintiff's BOE administrative appeal, and that AIC, a private insurance company, conspired in these violations.

As to AIC's Motion for Judgment on the Pleadings (Dkt. 31), AIC argues that Plaintiff's claims should be dismissed because he brings them pursuant to 42 U.S.C. § 1983, but AIC, as a private entity, cannot be liable under § 1983. Plaintiff does not oppose AIC's motion.

II. DISCUSSION

A. MOTION FOR JUDGMENT ON THE PLEADINGS

Pursuant to Federal Rule of Civil Procedure 12(c), "[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." A Rule 12(c) motion is "functionally identical" to a motion to dismiss brought pursuant to Rule 12(b)(6), with the difference being timing.

Dworkin v. Hustler Magazine Inc., 867 F.2d 1188, 1192 (9th Cir. 1989). Judgment under Rule 12(c) "is proper when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be solved and that it is entitled to judgment as a matter of law." *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989).

It is clear from the face of the pleadings that AIC is entitled to judgment as a matter of law. Plaintiff's claims against AIC depend on liability under section 1983. Only a state actor or a person "acting under color of state law," however, may be liable under section 1983. *West v. Atkins*, 487 U.S. 42, 48 (1988). A private company does not necessarily become a "state actor" by entering into a contract with the state. *Life Ins. Co. of N. Amer. V. Reichardt*, 591 F.2d 499, 501–02 (9th Cir. 1979). Instead, "a private entity may be considered a state actor 'only if its particular actions are inextricably intertwined with those of the government.'" P*asadena Republican Club v. W. Justice Ctr.*, 985 F.3d 1161, 1167 (9th Cir. 2021) (quoting *Brunette v. Humane Soc. of Ventura Cnty.*, 294 F.3d 1205, 1211 (9th Cir. 2002) (internal citation omitted).

Plaintiff does not allege sufficient facts to plausibly allege that AIC acted under the color of state law. He merely states that AIC contracted with Pierce County and it "knew or should have known" of

civil rights violations. Dkt. 1 at 4. Taken as true and in the light most favorable to Plaintiff, this is insufficient to establish an inextricable link between the alleged conduct of AIC and Pierce County.

Furthermore, Plaintiff did not respond to AIC's motion for judgment on the pleadings. Pursuant to Local Civil Rule 7(b)(2), failure to respond "may be considered by the court as an admission that the motion has merit."

Accordingly, AIC's Motion for Judgment on the Pleadings (Dkt. 31) should be granted.

B. MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

"Federal Rule of Civil Procedure 15(a) provides that a party may amend its pleading once as a matter of course within certain time limits, or, in all other instances, with the court's leave." *Hall v. City of Los Angeles*, 697 F.3d 1059, 1072 (9th Cir. 2012) (quoting Fed. R. Civ. P. 15(a)). "The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). Courts often consider four factors to determine whether "justice so requires:" (1) undue delay; (2) bad faith; (3) futility of amendment; and (4) prejudice to the opposing party. *United States v. Pend Oreille Pub. Util. Dist. No. 1*, 926 F.2d 1502 1511 (9th Cir. 1991). "The rule favoring liberality in amendments to pleadings is particularly important for the pro se litigant." *Crowley v. Bannister*, 734 F.3d 967, 977 (9th Cir. 2013) (leave should be

granted "if it appears *at all possible* that the plaintiff can correct the defect").

Plaintiff's proposed amended complaint remains fatally flawed. The Court previously dismissed Plaintiff's claims against Defendant Kenneth Roberts with prejudice because they were barred by quasi-judicial immunity. Dkt. 23. Plaintiff attempts to recast his claims against Defendant Roberts and to add three more defendants who participated in his BOE hearing by naming the defendants in their personal, as opposed to official, capacities. Dkts. 40 and 40-1. However, quasi-judicial "individual defendants are also immune in their individual capacities." *See Hirsh v. Justices of Supreme Ct.* of State of Cal., 67 F.3d 708, 715 (9th Cir. 1995). Therefore, Plaintiff's claims against Defendant Kenneth Roberts, Dee Martinez, and Jean Contanti-Oehler would be barred by quasi-judicial immunity and amendment would be futile.

Plaintiff's remaining proposed claims fail to establish that he is plausibly entitled to relief because they are based on conclusory allegations. For example, the proposed complaint states, "Mark Lindquist, Kenneth Roberts, Dee Martinez, Jean Contanti-OEHLER, and unknown AIC representatives have conspired to deny the public their right to attend BOE hearings required to be in the public domain. This is an obvious and undisputed fact that is still ongoing in Pierce County. This ***overt***

act damaged Flarity by denying state/federal rights for equal protection, due process rights, and 1 st amendment rights to an open BOE court." Dkt. 40-1 at 15–16; *see also id.* at 7–8 ("Unknown officials have acted in concert to hide the conspiracy to close the BOE Court to the public in defiance of state law for public disclosure of records."). Conclusory allegations of a "conspiracy," however, are insufficient to state a claim. *Shucker v. Rockwood*, 846 F.2d 1202, 1205 (9th Cir. 1988).

In addition, Plaintiff supports his claim of insurance malpractice against AIC with newspaper articles, submitted as exhibits, that discuss lack of transparency by Pierce County and its officials. Dkt. 40-6. The inference from these articles is that AIC knew Pierce County and its officials lack transparency, "but refused to act in a responsible manner." Dkt. 40-1 at 12. Even if true, this does not plausibly allege that AIC committed malpractice against him.

Plaintiff has had ample opportunity to allege, in "a short and plain statement," that he is plausibly entitled to relief, as required by Federal Rule of Civil Procedure 8(a). Allowing amendment would cause undue delay and prejudice Defendants by requiring them to continue to defend against claims that ultimately lack merit.

Therefore, Plaintiff's motion for leave to amend the complaint (Dkt. 40), should be denied.

III. ORDER

- Defendant AIC's Motion for Judgment on the Pleadings (Dkt. 31) **IS GRANTED**;
- Plaintiff's Motion for Leave to File Amended Complaint (Dkt. 40) **IS DENIED**;
- This matter **IS CLOSED**.

IT IS SO ORDERED.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 11th day of May, 2021.

/s/ Robert J. Bryan
ROBERT J. BRYAN
United States District Judge

AP-16

FILED
MAR 7 2023
FOR THE NINTH CIRCUIT
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

No. 21-35580
D.C. No. 3:20-cv-06083-RJB
Western District of Washington, Tacoma

ORDER

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOE PATRICK FLARITY,
Plaintiff-Appellant,

v.

ARGONAUT INSURANCE COMPANY; et al.,
Defendants-Appellees.

Before: SILVERMAN, GRABER, and BENNETT, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Flarity's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 39) are denied.

Appellees' opposed bill of costs (Docket Entry No. 40) is granted. The determination of allowed costs is referred to the Clerk's Office. *See* 28 U.S.C. § 1920; Fed. R. App. P. 39; 9th Cir. R. 39-1.

No further filings will be entertained in this closed case.

AP-18

FILED
OCT 18 2022
UNITED STATES COURT OF APPEALS
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

No. 21-35580

D.C. No. 3:20-cv-06083-RJB
MEMORANDUM *

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
JOE PATRICK FLARITY,
Plaintiff-Appellant,
v.
ARGONAUT INSURANCE COMPANY; DAVID H. PRATHER; HEATHER ORWIG; KIM SHANNON; DANIEL HAMILTON; MARY ROBNETT; PIERCE COUNTY; UNKNOWN PARTIES,
Unnamed individual defendants,
Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Washington
Robert J. Bryan, District Judge, Presiding
Submitted October 12, 2022**

Before: SILVERMAN, GRABER, and BENNETT, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2). Flarity's request for oral argument, set forth in the opening brief, is denied.

Joe Patrick Flarity appeals pro se from the district court's judgment dismissing his 42 U.S.C § 1983 action arising out of a tax assessment of his property. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Daewoo Elecs. Am. Inc. v. Opta Corp.,* 875 F.3d 1241, 1246 (9th Cir. 2017) (judgment on the pleadings under Fed. R. Civ. P. 12(c)); *Cervantes v. United States*, 330 F.3d 1186, 1187 (9th Cir. 2003) (dismissal under Fed. R. Civ. P. 12(b)(6)). We affirm.

The district court properly dismissed Flarity's action as barred by the statute of limitations and because Flarity failed to allege facts sufficient to state a plausible claim. *See Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (although pro se pleadings are to be construed liberally, a plaintiff must present factual allegations sufficient to state a

plausible claim for relief); *see also Vill. Of Willowbrook v. Olech,* 528 U.S. 562, 564 (2000) (per curiam) (elements of an equal protection "class of one" claim); *Mathews v. Eldridge,* 424 U.S. 319, 335 (1976) (discussing requirements of due process); *Pasadena Republican Club v. W. Justice Ctr.*, 985 F.3d 1161, 1167 (9th Cir. 2021) (setting forth tests used to evaluate whether a private actor has engaged in state action for purposes of § 1983); *Furnace v. Sullivan,* 705 F.3d 1021, 1030 (9th Cir. 2013) ("To state a claim under 42 U.S.C. § 1983 for a violation of the Equal Protection Clause of the Fourteenth Amendment a plaintiff must show that the defendants acted with an intent or purpose to discriminate against the plaintiff based upon membership in a protected class." (citation and internal quotation marks omitted)); *Bagley v. CMC Real Estate Corp.*, 923 F.2d 758, 760 (9th Cir. 1991) (statute of limitations for § 1983 actions in Washington is three years).

The district court did not abuse its discretion by denying leave to amend because further amendment would have been futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that leave to amend may be denied when amendment would be futile); *Metzler Inv. GMBH v. Corinthian Colls., Inc.*, 540 F.3d 1049, 1072 (9th Cir. 2008) (explaining that "the district court's discretion

to deny leave to amend is particularly broad where plaintiff has previously amended the complaint" (citation and internal quotation marks omitted)); *Southwick v. Seattle Police Officer John Doe #s 1-5*, 186 P.3d 1089, 1093 (Wash. Ct. App. 2008) ("[N]o equitable tolling occurs when a party is not required to exhaust the available administrative remedies before filing suit.").

The district court did not abuse its discretion by denying Flarity's motions for reconsideration because Flarity failed to establish a basis for such relief. *See* W.D. Wash. R. 7(h)(1) (setting forth grounds for reconsideration under local rules); B*ias v. Moynihan*, 508 F.3d 1212, 1223 (9th Cir. 2007) (setting forth standard of review applied to a district court's compliance with local rules); *Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (setting forth standard of review and grounds for reconsideration under the Federal Rules of Civil Procedure).

We reject as lacking factual support in the record Flarity's contentions that the district court was biased against him, acted in bad faith, or denied him due process.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Argonaut Insurance Company's request for appellate attorney's fees, set forth in the answering brief, is denied without prejudice. *See* Fed. R. App. P. 38 (requiring a separate motion for fees and costs); *Winterrowd v. Am. Gen. Annuity Ins. Co.*, 556 F.3d 815, 828 (9th Cir. 2009) (a request made in an appellate brief does not satisfy Rule 38).

All pending motions and requests are denied.

AFFIRMED.

AP-23

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CASE NO. 3:20-cv-06083-RJB
ORDER GRANTING
DEFENDANT'S MOTION FOR
JUDGMENT ON THE PLEADINGS
AND DENYING PLAINTIFF'S
MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT

JOE PATRICK FLARITY, a marital community,
Plaintiff,
v.
ARGONAUT INSURANCE COMPANY,
Defendant.

THIS MATTER comes before the Court on Defendant Argonaut Insurance Company's ("AIC") Motion for Judgment on the Pleadings (Dkt. 72) and Plaintiff's Motion for Leave to File Amended Complaint (Dkt. 78). The Court has considered the pleadings filed regarding the motions and the remaining file. Oral argument is unnecessary to fairly decide these motions.

I. FACTS AND BACKGROUND

Pro se Plaintiff, Joe Flarity, currently has two cases pending before the Court and at least one

related matter in Washington State Court. *See* Dkt. 1; Case No. 3:20-cv-6247-RJB; King Cnty. Superior Ct. No. 20-2-16139-0-SEA. His claims relate to the tax assessment of his property, which Pierce County assessed at a value that cased his taxes to increase. *See id.* This matter more specifically relates to the procedures used to assess his property. Dkt. 31. The valuation of his property caused his taxes to increase. *Id.*

Plaintiff alleges that Defendant Heather Orwig trespassed on his land to perform the property assessment and that there is an ongoing conspiracy among all Defendants to deprive him and others in Pierce County of their rights to privacy and equal protection. *See id.* Pierce County and Pierce County officials previously filed a motion to dismiss (Dkt. 12), which the Court granted (Dkt. 42). AIC, which is a private company, is the only defendant remaining in this matter. Plaintiff's claims against AIC are (1) Violation of Equal Protection and Due Process brought pursuant to § 1983, and (2) "Civil Rights Tort Claims" because of an alleged agreement with Pierce County to violate the civil rights Pierce County taxpayers. Dkt. 31.

In Plaintiff's proposed amended complaint, he realleges the equal protection and due process claims that were dismissed from his original complaint but frames them as being made against the officials in their personal capacities. Dkt. 78-2. He also seeks to

add two defendants in their personal capacities, claims under the Racketeering Influenced and Corrupt Organizations statute ("RICO"), 18 U.S.C. § 1961 *et seq.*, and a claim of conspiracy to commit fraud against AIC. Id. The essential allegations remain the same: that Pierce County and its officials violated the Constitution and laws while assessing Plaintiff's property, and that AIC, a private insurance company, conspired in these violations.

The Court will first consider AIC's Motion for Judgment on the Pleadings (Dkt. 72). AIC argues Plaintiff's claims should be dismissed because he brings them pursuant to 42 U.S.C. § 1983, but AIC, as a private entity, cannot be liable under § 1983. Plaintiff does not oppose AIC's motion.

The Court will then consider Plaintiff's Motion for Leave to File Amended Complaint (Dkt. 78).

II. DISCUSSION

A. MOTION FOR JUDGMENT ON THE PLEADINGS

Pursuant to Federal Rule of Civil Procedure 12(c), "[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." A Rule 12(c) motion is "functionally identical" to a motion to dismiss brought pursuant to Rule 12(b)(6), with the difference being timing. *Dworkin v. Hustler Magazine Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). Judgment under Rule 12(c) "is

proper when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be solved and that it is entitled to judgment as a matter of law." *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989).

It is clear from the face of the pleadings that AIC is entitled to judgment as a matter of law. Plaintiff's claims against AIC depend on liability under section 1983. Only a state actor or a person "acting under color of state law," however, may be liable under section 1983. *West v. Atkins*, 487 U.S. 42, 48 (1988). A private company does not necessarily become a "state actor" by entering into a contract with the state. *Life Ins. Co. of N. Amer. V. Reichardt*, 591 F.2d 499, 501–02 (9th Cir. 1979). Instead, "a private entity may be considered a state actor 'only if its particular actions are inextricably intertwined with those of the government.'" *Pasadena Republican Club v. W. Justice Ctr.*, 985 F.3d 1161, 1167 (9th Cir. 2021) (quoting *Brunette v. Humane Soc. of Ventura Cnty.*, 294 F.3d 1205, 1211 (9th Cir. 2002) (internal citation omitted).

Plaintiff does not allege sufficient facts to plausibly allege that AIC acted under the color of state law. He merely states that AIC contracted with Pierce County and it "knew or should have known" of civil rights violations. Dkt. 31 at 7. Taken as true and in the light most favorable to Plaintiff, this is

insufficient to establish an inextricable link between the alleged conduct of AIC and Pierce County.

Furthermore, Plaintiff did not respond to AIC's motion for judgment on the pleadings. Pursuant to Local Civil Rule 7(b)(2), failure to respond "may be considered by the court as an admission that the motion has merit."

Accordingly, AIC's Motion for Judgment on the Pleadings (Dkt. 72) should be granted.

B. MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

"Federal Rule of Civil Procedure 15(a) provides that a party may amend its pleading once as a matter of course within certain time limits, or, in all other instances, with the court's leave." *Hall v. City of Los Angeles*, 697 F.3d 1059, 1072 (9th Cir. 2012) (quoting Fed. R. Civ. P. 15(a)). "The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). Courts often consider four factors to determine whether "justice so requires:" (1) undue delay; (2) bad faith; (3) futility of amendment; and (4) prejudice to the opposing party. *United States v. Pend Oreille Pub. Util. Dist. No. 1*, 926 F.2d 1502 1511 (9th Cir. 1991). "The rule favoring liberality in amendments to pleadings is particularly important for the pro se litigant." *Crowley v. Bannister*, 734 F.3d 967, 977 (9th Cir. 2013) (leave should be granted "if it appears *at all possible* that the plaintiff can correct the defect").

Plaintiff's proposed amended complaint remains fatally flawed. The Court previously dismissed Plaintiff's claims against Pierce County and Pierce County officials pursuant to Federal Rule of Civil Procedure 12(b)(6) because Plaintiff failed to state a claim for which relief could be granted. Dkt. 42. Plaintiff's proposed amended complaint similarly fails to establish that he is plausibly entitled to relief. Instead, he reiterates conclusory statements about his entitlement to relief. For example, he realleges that various defendants deprived him of equal protection of the law, but he does not include any facts to demonstrate how he was treated differently than other similarly situated people. *See* Dkt. 78; *Gerhart v. Lake Cnty., Mont.*, 627 F.3d 1013, 1022 (9th Cir. 2011) (a "class of one" plaintiff must allege that the defendants (1) intentionally (2) treated plaintiff differently than other similarly situated people (3) without rational basis).

Plaintiff also reiterates conclusory claims about a conspiracy. *See e.g.*, Dkt. 78-2 at 6, 12, and 13. Conclusory allegations of a "conspiracy," however, are insufficient to state a claim. *Shucker v. Rockwood*, 846 F.2d 1202, 1205 (9th Cir. 1988).

Plaintiff has had ample opportunity to allege, in "a short and plain statement," that he is plausibly entitled to relief, as required by Federal Rule of Civil Procedure 8(a). Allowing amendment would cause undue delay and prejudice Defendants by requiring

them to continue to defend against claims that ultimately lack merit.

Therefore, Plaintiff's motion for leave to amend the complaint (Dkt. 78), should be denied.

III. ORDER

- Defendant AIC's Motion for Judgment on the Pleadings (Dkt. 72) **IS GRANTED**;
- Plaintiff's Motion for Leave to File Amended Complain (Dkt. 78) **IS DENIED**;
- This matter **IS CLOSED**.

IT IS SO ORDERED.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing pro se at said party's last known address.

Dated this 11th day of May, 2021.

/s/ Robert J. Bryan
ROBERT J. BRYAN
United States District Judge

AP-30

FILED
DEPT16
IN OPEN COURT
JUL 30 2021
PIERCE COUNTY, Clerk
BY /s xxx
DEPUTY

JUDGE ELIZABETH MARTIN

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

NO. 21-2-06124-1

~~PROPOSED~~ ORDER GRANTING DEFENDANT PIERCE COUNTY'S CR 12(b)(6) MOTION TO DISMISS
NOTED ON CALENDAR:
JULY 30, 2021

JOE PATRICK FLARITY, a marital community,
Plaintiff
vs.
ARGONAUT INSURANCE COMPANY, SUE TESTO, MARY ROBNETT, PIERCE COUNTY, a municipal corporation, STATE OF WASHINGTON, et al,

AP-31

Defendants

THIS MATTER having come on regularly before the above-captioned Court upon Pierce County Defendants' CR(b)(6) Motion to Dismiss, the Court having considered the records and files herein it is hereby:

ORDERED, ADJUDGED, AND DECREED that Pierce County Defendants' CR(b)(6) Motion to Dismiss is GRANTED.

IT IS FURTHER ORDERED that all of Plaintiff's claims against Defendants Sue Testo, Mary Robnett and Pierce County are dismissed WITH PREJUDICE.

DATED this 30 day of July, 2021.

/s/ Elizabeth Martin
THE HONORABLE ELIZABETH MARTIN

Presented by:
MARY E. ROBNETT
Prosecuting Attorney

s/ DANIEL R. HAMILTON
DANIEL R. HAMILTON, WSBA#14658
Pierce County Prosecutor/ Civil
955 Tacoma Avenue South, Suite 301
Tacoma, WA 98402-2160

Ph: 253-798-7746 / Fax: 253-798-6713
E-mail:
daniel.hamilton@piercecountywa.gov

AP-33

FILED
SUPERIOR COURT
THURSTON COUNTY, WA
2023 JAN-6 AM11:47
Linda Myhre Enlow
Thurston County Clerk

Hearing is Set
Date: January 6, 2023
Time: 9:00 a.m.
Judge Mary Sue Wilson/Civil

STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT
NO. 22-2-02806-34
JUDGMENT
Plaintiff,
CLERK'S ACTION REQUIRED

JOE PATRICK FLARITY, a marital community,
Plaintiff,
V.
UNKNOWN WASHINGTON STATE OFFICIALS in their official and personal capacities, and STATE OF WASHINGTON, et al.,
Defendants.

AP-34

Judgment Summary

Pursuant to RCW 4.64.030, the following information should be entered in the Clerk's Execution Docket:

Judgment Creditor: State of Washington, Department of Revenue

Creditor's Attorneys: Cameron G. Comfort, Sr. Assistant Attorney General Andrew Krawczyk, Assistant Attorney General

Judgment Debtor: JOE PATRICK FLARITY, a marital community
Debtor's Attorney: Joe Patrick Flarity, Pro Se

Amount of Judgment: $1,775.00

Statutory Attorney's Fees: (per RCW 4.84.010(6)) $200.00

On December 9, 2022, this Court considered (a) Defendants' Motion to Dismiss, (b) Declaration of Cameron G. Comfort in Support of Defendants' Motion to Dismiss, ~~(d)~~(c) Declaration of Ross Petersen, (d) Flarity's pleading titled Motion for Sanctions State of Washington Objection, (e) Defendants' Reply in Support of Motion to Dismiss, and (f) Second Declaration of Cameron G. Comfort in Support of

Defendants' Motion to Dismiss. The Court also considered (a) Plaintiffs Motion to Stay Pending Appeal, (b) Defendants' Opposition to Motion for Stay Pending Appeal and Request for Sanctions, and (c) the Declaration of Cameron G. Comfort in Support of Defendants' Opposition to Motion for Stay Pending Appeal and Request for Sanctions.

On December 9, 2022, this Court entered an Order Denying Plaintiffs Motion for Stay Pending Appeal and Granting CR 11 Sanctions to Defendants in the amount of $1,775 .00. On January 6, 2023, the Court entered an Order Granting Defendants' Motion to Dismiss. The dismissal Order awarded statutory attorney's fees to defendants of $200.00 pursuant to RCW 4.84.010(6).

NOW, THEREFORE, JUDGMENT is entered for defendants, and against plaintiff Joe Patrick Flarity, for reasonable sanctions in the amount of $ 1,775.00 and statutory attorney's fees in the amount of $200.00.

DONE IN OPEN COURT this 6th day of January, 2023.

/s/ Mary Sue Wilson
THE HONORABLE MARY SUE WILSON
Mary Sue Wilson

Presented by:

AP-36

ROBERT W. FERGUSON
Attorney General

/s/ Cameron G. Comfort
CAMERON G. COMFORT, WSBA No. 15188
Sr. Assistant Attorney General
ANDREW J. KRAWCZYK, WSBA NO. 42982
Attorneys for Defendants
OID No. 9 1027

Kernutt by Zoom 1/6/23
Flarity by Zoom 1/6/23

Hearing is Set
Date: January 6, 2023
Time: 9:00 a.m.
Judge Mary Sue Wilson/Civil

STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

AP-37

NO. 22-2-02806-34
ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

JOE PATRICK FLARITY, a marital community,
Plaintiff,
V.
UNKNOWN WASHINGTON STATE OFFICIALS in their official and personal capacities, and ST ATE OF WASHINGTON, et al.,
Defendants.

THIS MATTER came before the Court on December 9, 2022, on Defendants' Motion to Dismiss. Joe Patrick Flarity, pro se, appeared on his own behalf. Senior Assistant Attorney General Cameron G. Comfort and Assistant Attorney General Andrew Krawczyk appeared on behalf of defendants. Assistant Attorney General Matthew Kemutt appeared on behalf of the Board of Tax Appeals. The Court has considered all of the pleadings and records on file, including the following documents and evidence called to its attention:

1. Defendants' Motion to Dismiss;

2. Declaration of Cameron G. Comfort in Support of Defendants' Motion to Dismiss;

3. Declaration of Ross Petersen;

4. Plaintiffs pleading titled Motion for Sanctions State of Washington Objection;

5. Defendants' Reply in Support of Motion to Dismiss; and

6. Second Declaration of Cameron G. Comfort in Support of Defendants' Motion to Dismiss.

Having considered the pleadings in the record, and heard the arguments of pro se plaintiff and counsel for the defendants, the Court FINDS and CONCLUDES:

1. Plaintiff's action seeks judicial review under the Administrative Procedure Act of the final decision of the Board of Tax Appeals in *Becky L. Flarity & Joe P. Flarity v. Mike Lonergan, Pierce County Assessor-Treasurer*, BTA Docket No. 19-105 (2022).

2. Plaintiff did not serve the Board of Tax Appeals (the agency issuing the decision for which review is sought) within the mandatory 30-day time limit for such service in RCW 34.05.542(2).

3. Plaintiff also did not serve the Pierce County Assessor (a party in the Board of Tax Appeals proceeding and a necessary party) within the 30-day time limit for such service in RCW 34.05.542(2).

4. Dismissal is required when a petitioner seeking judicial review under the Administrative Procedure Act fails to comply with the service requirements in RCW 34.05.542(2).

5. Dismissal of plaintiff's damages claim with respect to the Board of Appeals is appropriate based on plaintiff's failure to comply with RCW 4.92.100.

6. Dismissal of plaintiff's constitutional claims with respect to the Board of Tax Appeals is required based on plaintiff's failure to comply with RCW 34.05.542(2).

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Defendants' · Motion to Dismiss is GRANTED.

2. Plaintiff's Amended Complaint is DISMISSED WITH PREJUDICE.

3. Defendants are GRANTED statutory attorneys' fees of $200 pursuant to RCW 4.84.010(6) and RCW 4.84.080(1).

DATED this 6th day of January, 2023.

/s/ Mary Sue Wilson
THE HONORABLE MARY SUE WILSON
Mary Sue Wilson

Presented by:
ROBERT W. FERGUSON
Attorney General

/s/ Cameron G. Comfort
CAMERON G. COMFORT, WSBA No. 15188
Sr. Assistant Attorney General
ANDREW J. KRAWCZYK, WSBA NO. 42982
Attorneys for Defendants
OID No. 91027

AP-40

Kernutt by Zoom 1/6/23
Flarity by Zoom 1/6/23

AP-41

United States Court of Appeals for the Ninth Circuit

Post Office Box 193939
San Francisco, California 94119-3939
415-355-8000

No. 21-35580
DC No. 3:20-cv-6083-RBL
MOTION TO STRIKE AND
CORRECT DPA HAMILTON'S
EXCERPTS OF RECORD
DK#12-1
RELIEF NEEDED BY
January 11, 2022

JOE PATRICK FLARITY, a marital community
Appellant
V.
Argonaut Insurance Company, David H. Prather, Heather Orwig, Kim Shannon, Daniel Hamilton, Mary Robnett, Pierce County, a municipal corporation, Et Al.
Appellee

APPELLANT'S Motion to STRIKE DK#12-1 and Order Corrections

1. DPA Hamilton has deliberately muddled the record stamps. From his DK12-1 and repeated throughout:

[IMAGE OF ILLEGIBLE HEADING]

2. Meanwhile, AIC has no problem separating the stamps. From DK# 14-1 excepts filed on the same date for the same case:

[IMAGE OF LEGIBLE HEADING]

3. Flarity requests the Panel insist on professional conduct for public attorneys. Certainly every appeals attorney is capable of the standard practice, especially since the Adobe software makes this adjustment easy. That a public attorney with DPA Hamilton's vast experience has chosen otherwise shows a deliberate legal tactic. Oversight of the WSBA for public attorneys is weak and headed in the wrong direction to inspire the public's confidence.[1] Public attorneys consistently appear before this panel and demand the right to be corrupt citing *Pierson v. Ray*, 386 U.S. 547, 554 (1967) and ignoring *Kalina v. Fletcher*, 522 U.S. at 127 (1997).

NOTICE OF COORDINATION

4. Flarity requested DPA Hamilton fix this problem per FRAP 27-1 by email and received no response. See attached EXHIBIT 1.

---

1 Washington Supreme Court, Order NO. 25700-B-612 : *Further, such a retreat from inclusion of public members on bar association oversight entities puts this state at odds with other progressive leaders such as our sister states of Oregon and California.*

IRREPARABLE HARM TO FLARITY

5. Flarity's opening brief does NOT use DPA Hamilton's notation—because the excerpt did not exist when Flarity filed the opening brief. The Tacoma District Court docket # Flarity referenced has now been obliterated by DPA Hamilton in an unethical and unnecessary gamesmanship tactic impinging the dignity of Federal Courts.

6. If this panel is hindered in even a minuscule way translating the District Court notation from Flarity's brief into the record DPA Hamilton provided—that presents a significant advantage to Pierce County in addition to other problems scholars have recognized for pro se appearances challenging unconstitutional practices in the 9th Circuit.[2] As a 4th Amendment Cause, this is particularly relevant for Flarity since the 9th Circuit just expanded *Bivens* for represented *Robert Boule in Boule v Egbert* 998 F3d 370 9th Cir 2020 for the Smugglers Inn in Blaine, WA.

7. CONCLUSION: Flarity requests the Panel to require DPA Hamilton to fix the notation, which is a

---

2 "9th Cir. district judges have "avoided the merits" for pro se plaintiffs." Professor Steven Landsman, Lewis and Clark Law Review, Volume 13:2. 2

NO GOOD DEED GOES UNPUBLISHED: PRECEDENT STRIPPING AND THE NEED FOR A NEW PROPHYLACTIC RULE, By Edward Cantu, UMKC School of Law

standard practice among Bar certified attorneys with over-stamping practice specifically prohibited in many courts. Adobe's software has made the slight shrink exercise routine. That an attorney of DPA Hamilton's calibre has avoided the standard practice is an indication of gamesmanship that should not be condoned in the 9th circuit, especially for a public attorney proceeding against a pro se civil rights plaintiff. See *Byrd v. Phoenix Police Dep't, 885 F.3d 639, 642 (9th Cir. 2018)* and the Haines Doctrine.[3]

CERTIFICATION AND SIGNING:

By signing below, I certify that this MOTION complies with the requirements of Federal Rules of Appellant Procedure, to the best of Flarity's knowledge and is sworn to be true under penalty of perjury.

DATE: January 3, 2022

/s/ Joe Flarity
Joe Patrick Flarity
101 FM 946 S
Oakhurst, TX 77359
f_v_piercecountywa@yahoo.com
253 951 9981

3 *Haines v. Kerner*, 404 U.S. 519 (1972)

AP-45

Joe Patrick Flarity, PRO SE
249 Main Ave. S. STE 107 #330
North Bend, WA 98045
email: f_v_piercecountywa@yahoo.com
253 951 9981

United States Court of Appeals for the Ninth Circuit
Post Office Box 193939
San Francisco, California 94119-3939
415-355-8000

No. 21-35580
DC No. 3:20-cv-6083-RBL

MOTION TO STRIKE AND CORRECT DPA HAMILTON'S EXCERPTS OF RECORD

DK#12-1
RELIEF NEEDED BY January 7, 2022

JOE PATRICK FLARITY, a marital community
Appellant
V.

Argonaut Insurance Company,
David H. Prather,
Heather Orwig,
Kim Shannon,
Daniel Hamilton,
Mary Robnett,
Pierce County, a municipal corporation,
Et Al.
Appellee

EXHIBIT ONE

Email Coordination

From: Joe Flarity
f_v_piercecountywa@yahoo.com
Subject: Please do not over-stamp: 21-35580
Date: December 30, 2021 at 4:41 PM
To: Dan Hamilton
dan.hamilton@piercecountywa.gov
Cc: Sekits, Matthew
matthew.sekits@bullivant.com, Ghosh,
Monica monica.ghosh@bullivant.com

Dear D Ray Hamilton:

Please replace your excerpts with a record that does not over-stamp the headings. Besides making it harder for us to cite, it is also disrespectful to the Panel. It makes those in Pierce County look like

rubes. We should all be helping each other to be professional.

Talk to Matthew if you need help.

Let me know if you are going to fix this. Otherwise I will file an objection. Let me know by close of business Friday.

Have a great new years.

Joe Flarity

PS: I appreciate your help with my spelling, Matthew.

AP-48

United States Court of Appeals for the Ninth Circuit
Post Office Box 193939
San Francisco, California 94119-3939
415-355-8000

No. 21-35661

DC No. 3:20-cv-06247-RLB

PETITION FOR PANEL REHEARING IN CONJUCTION WITH PETITION FOR HEARING EN BANC
ORAL ARGUMENT REQUESTED

JOE PATRICK FLARITY
Plaintiff-Appellant
V.
KENNETH ROBERTS, ARGONAUT INSURANCE COMPANY, PIERCE COUNTY; a municipal corporation, et al.
Defendants-Appellees

[TABLE OF CONTENTS OMITTED]

I PETITION TO THE PANEL

Now comes Joe Patrick Flarity, pro se, petitions the 9th Circuit Court Panel for a rehearing on Memorandum DK#33-1 filed on October 18, 2022,

affirming the Honorable Judge Bryan's dismissal for Flarity's cause with no leave to amend, "liberally" or otherwise. The Memorandum encourages further abuse of the people's right to open courts, a fundamental right necessary to preserve democracy.

II PETITION EN BANC

In conjunction, Flarity petitions the panel en banc, per Circuit rule 35-1. The Panel has neglected to follow FRAP 28(c), which authorizes all attorneys a Reply. The truncation of Flarity's right to Reply to Pierce County and AIC Responses present a severe disadvantage. The Panel's bold refusal to follow the FRAP needs to be addressed by the entire Panel.

III NECCESITY OF ORAL HEARING

Why Oral Argument Is Still Important, and How to Make It So, by John J. Bursch:

> In *People v Pena*, 32 Cal. 4th 389 (Cal. 2004), the California Supreme Court issued a formal opinion that firmly reinforces the importance of oral argument (at least in California), by striking down a California Court of Appeals procedure under which parties were being actively discouraged from exercising their right to have appellate counsel speak directly to the panel....

Bright & Arnold, *Oral Argument? It May Be Crucial!*, 70 A.B.A J. 68, 70 (Sept. 1984) note that two Eighth Circuit judges changed their mind in 17% and 31% of the cases in which oral argument was held; Wald, 1*9 Tips From 19 Years on the Appellate Bench*, 1 J. App. Prac. & Process 7, 17 (2001) "Oral argument seldom brings you 180 degrees around, but if your tilt is, say, 50- 49%, it can make a big difference." HOW OFTEN DO PRO SE PLATINTIFFS GET ORAL ARGUMENTS? From angelfire.com:

> Judge Paul Niemeyer, who sits on the 4th Circuit, notes that very rarely are self-litigants allowed to give their own oral arguments in court. In his 14 years on the bench, he has only seen it happen twice.

It would appear the Panel has banished pro se Flarity to the hinterlands of federal jurisprudence. This brings into relevance the warning of Henry David Thoreau:

> There will never be a really free and enlightened State, until the State comes to recognize the individual as a higher and independent power, from which all its own power and authority are derived, and treats him accordingly.

...if they should not hear my petition, what should I do then?

[IDENTIFICATION OF PARTIES AND COUNCIL OMITTED]

[TABLE OF AUTHORITIES OMITTED]

VI STATEMENT OF ISSUES: FRAP 35(b) QUESTIONS

1) FLARITY DENIED THE OPPORTUNITY TO REPLY. The Panel has neglected to follow long established FRAP 28(c). A cohesive Reply needed a ruling from the Washington State Supreme Court. The Panel should not deny Flarity's Motion to Certify a Federal Question and issue a Memorandum confirming dismissal at the same time without allowing the required time provided for a robust reply to defendants Pierce County and AIC. The filings already provided to the 9th Circuit give ample evidence that Flarity does exhaust all the possible remedies with valid legal arguments.

2) MEMORANDUM AUTHORIZES CLOSURE OF COURTS TO THE PUBLIC. Open Courts are a fundamental right protected by common law. The 1st Amendment is based on the abuses of the Star chamber from the days of King George II. 1st Amendment issues demand review by strict scrutiny. The facts of court closure are in dispute and the

perpetrators of the policy remain hidden. The perpetrators of this illegal policy are not protected by absolute immunity.

3) LEAVE TO AMEND IGNORED. *Cervantes v. Countryside Home Loans, Inc.*, 656 F.3d 1034, 1041 (9 th Cir. 2011) is inappropriate for use against Flarity. No 1 st Amendment issues are listed. Per *Haines v. Kerner*, 404 U.S. 519 (1972), and *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990), amendments should be allowed with "***extreme liberality***." The perpetrators of the illegal policy are not protected by absolute immunity, and once identified, could have been added to the Cause by amendment. Flarity has stated a claim not appropriate for dismissal by rule 12 with zero examination.

4) CLASS OF ONE NOT APPLICABLE. The Memorandum's improbable legal argument transfers the requirement for open courts into an easement issue per *Willowbrook v. Olech*, 120 S.Ct. 1073, 528 U.S. 562, 145 L.Ed.2d 1060 (2000). This is likely a clerk error. If it is not an error, the misapplication of precedent severely infringes basic rights of the people.

5) APPLICABILITY OF PUBLISHED ORDERS. Per Circuit Rule 36-3 (a), the public should be warned the Memorandum opens the door to closure of courts across the west with no ability of correction by the people in federal courts.

VII PRESERVING COURT LEGITIMACY

This appeal resonates from the 9th Circuit's own website: Justice Reinhardt:[4] I am confident that we can return to an era in which the courts serve as the guardians of the values embodied in our Constitution.... *Occidental Life Insurance Company of California v. Equal Employment Opportunity Commission*, 432 U.S. 355, 97 S.Ct. 2447, 53 L.Ed.2d 402 (1977):

> ...with national interests in mind, it is the **duty of the federal courts** to assure that the importation of state law will not frustrate or interfere with the implementation of national policies.

Justice Kagan September 14, 2022 as reported by CBS News:

> "...court is legitimate when it's acting like a court....Judges create legitimacy problems for themselves ... when they instead stray into places where it looks like they're an extension of the political process or when they're imposing their own personal preference..."

---

4 *Jacobsen v. Filler*, 790 F.2d 1362 (9th Cir. 1985): "The majority portrays a litigant's pro se status as the product of choice, whereas such status is most often the result of necessity. The majority equates a litigant's so-called "choice" to appear pro se with other litigants' choice of counsel. The comparison ignores the economic reality..."

VIII THE NATURE OF DEMOCRACY WHEN COURTS CAN BE ARBITRARILTY CLOSED

The Et Al defendants who closed the Pierce County BOE to the public have not been identified. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980), beautifully documented the need for open courts. It is the duty of federal courts to defend the Constitution. The first amendment is **first** for a reason. It demands a robust Panel defense by strict scrutiny. In defiance of Justice Reinhardt's hopes, the Panel has neglected an essential duty to protect the common people's *fundamental liberties.* The Panel abuses *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9 th Cir. 1986), *Stump v. Sparkman*, 435 U.S. 349, 360, 98 S.Ct. 1099, 1106, 55 L.Ed.2d 331 (1978),

> *"The immunity afforded judges and prosecutors is not absolute."*
>
> *A judge is liable for injury caused by a ministerial act...Ex parte Virginia, 100 U.S. 339, 25 L.Ed. 676; 2 Harper & James, The Law of Torts 1642—1643 (1956)... When a judge acts intentionally and knowingly to deprive a person of his constitutional rights he exercises no discretion or individual judgment; he acts no longer as a judge, but as a 'minister' of his own prejudices.*

Closure of the BOE Court **as a county policy** is not a "judge-like function." In a similar decision, *Kalina v. Fletcher*, 522 U.S. 118 (1997), determined prosecutors do not get immunity for acts that exceed their authority. Per *Kalina*:

> *Held*: Section 1983 may create a damages remedy against a prosecutor for making false statements of fact in an affidavit supporting an application for an arrest warrant, since such conduct is not protected by the doctrine of absolute prosecutorial immunity. Pp. 123-131.

IX FLARITY DENIED A REPLY

FRAP 28 (c) provides the authority for Flarity to Reply. DK#27 filed on March 14, 2022, presented a Motion to Certify questions to the Washington State Supreme Court. Defendent Responses, DK#28, DK#30, presented conflicting lower court decisions needing Supreme Court clarity. The 9th Circuit has taken over seven months to determine that no further clarification will be allowed. Denial of the Motion was tacked onto the end of the Memorandum with no specificity. Certainly, Flarity's Reply will suffer from lack of clarity from Washington State, but the that denial **should not preclude denial of Flarity's right to Reply altogether**. The Panel's decision not to follow the FRAP is a further indication of pro se subjugation to a disfavored class.

X LEAVE TO AMEND NOT FUTILE

Leave to amend should be granted with **extreme liberality** as Flarity's DK#40 Motion for Leave to Amend referenced:

> Amendments should be allowed with "**extreme liberality**" per *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990).

C*ervantes v. Countryside Home Loans, Inc.*, 656 F.3d 1034, 1041 (9 th Cir. 2011) was used by the Panel to circumvent *Morongo* and the *Haines Doctrine*. This is loan case challenging the constitutionality of the MERVS loan system. Flarity does not dispute that a loan is not supported as a fundamental right. It is also not supported by Arizona law. From *Cervantes*:

> ...although the plaintiffs contend that they can state a claim for wrongful foreclosure, Arizona state law does not currently recognize this cause of action, and their claim is, in any case, without a basis. The plaintiffs' claim depends upon the conclusion that any home loan within the MERS system is unenforceable through a foreclosure sale, but that conclusion is unsupported by the facts and law on which they rely.

It is an obvious legal mistake to convert Flarity's 1st amendment right for an open BOE court into a loan dispute. Flarity respectfully requests the Panel correct this error and preserve a fundamental right as well as the integrity of the 9th Circuit.

XI CLASS OF ONE NOT APPROPRIATE

Willowbrook v. Olech, 120 S.Ct. 1073, 528 U.S. 562, 145 L.Ed.2d 1060 (2000):

> *Olech sued the Village claiming that the Village's demand of an additional 18-foot easement violated the Equal Protection Clause of the Fourteenth Amendment. Olech asserted that the* ***33-foot easement demand*** *was "irrational and wholly arbitrary"; that the Village's demand was actually* ***motivated by ill will*** *resulting from the Olechs' previous filing of an unrelated, successful lawsuit against the Village; and that the Village acted either with the intent to deprive Olech of her rights or in reckless disregard of her rights."*

Worse than *Cervantes v. Countryside Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011), the Panel here confuses *Olech's* easement case with the strict scrutiny requirements of enforcement of the 1st Amendment for open courts. Pierce County has the violated first amendments rights of all citizens for

open BOE courts. This right was superbly documented in *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980). To preserve fundamental liberties and bolster the public's respect of federal courts, Flarity respectfully requests this discrepancy should be addressed and corrected.

XII MOTION TO PUBLISH THE TRUTH TO THE PEOPLE

The Court should publish its memorandum, as it states a categorical prohibition and flatly contradicts *Schwake v. Arizona Bd. of Regents*, 967 F.3d 940, 948 n. 7 (9th Cir. 2020) and *United States v. Qazi*, 975 F. 3d 989, 992–93 (9th Cir. 2020). The Panel has a duty to construe pro se filings liberally. The ruling overturns *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980) to sustain open courts as a bulwark of our democracy.

In addition, the Pierce County is engaged in TEGWAR[5] , which violates Due Process by arbitrary or capricious court conduct.

Due to conflicts with circuit law, Circuit Rule 36-2(a), (d) and FRAP 28(c), where the Panel denied Flarity the long recognized opportunity to Reply-- the 9th Circuit should publish. The people should be informed of the actual status of the 1st Amendment

---

5 TEGWAR definition: "The Exciting Game Without Any Rules." Mark Harris, *Bang the Drum Slowly*. From *Ramirez-Alejandre v. Ashcroft*, 320 F.3d 858, 860, 864–65, 872–75 (9th Cir. 2003) (en banc).

and the right of common people to amend in the 9th Circuit.

XIV CONCLUSION

The Panel's Memorandum jeopardizes the public's expectations of fairness at the 9th Circuit. It makes a mockery of precedents.[6] It would appear that Flarity has been cast into the outland of Landsman's "**troublesome fringe**."[7] This policy was long decried by Judge Reinhardt. The ruling demonstrates classic court *rationalization* as Flarity was given a decision impacting the 1st Amendment. The Panel violated the FRAP by denying Flarity a Reply. The Memorandum is a strike against the basic right of common people to appear in court.[8] This is especially confusing behavior given the recent infusion of judges

6 *Anastasoff v. United States*, 223 F.3d 898 (8th Cir. 2000): All litigants have a constitutional right to have their claims adjudicated according the rule of precedent.

Direct Marketing Assn. v. Brohl, 814 F.3d 1129, 1147–48 (10th Cir. 2016). Judge Gorsuch noted : *"And in taking the judicial oath judges do not necessarily profess a conviction that every precedent is rightly decided, but they must and do profess a conviction that a justice system that failed to attach power to precedent, one that surrendered similarly situated persons to wildly different fates at the hands of unconstrained judges, would hardly be worthy of the name."*

7 ... a federal court is four times more likely to grant a motion to dismiss against a pro se plaintiff than a represented plaintiff. Patricia W. Hatamyar, The Tao of Pleading: Do Twombly and Iqbal Matter Empirically?, 59 Am. U.L. Rev. 553, 621 (2010).

professing to be enamored of the original intent of our founders.[9] The Panel is requested to change the Memorandum to allow remand for amendment and remove *Olech's* ridiculous assertion Flarity failed to prove a class of one for a right to observe the BOE court. No easement is necessary to appear in a public court.

CERTIFICATE OF COMPLIANCE TO WORD COUNT

Word Count is 2506 and is within the word limit.

CERTIFICATION AND SIGNING:

By signing below, Flarity certifies that this en banc petition complies with the requirements of Federal Rules of Appellate Procedure. Ninth Circuit Rules, 1 December 2019, to the best of Flarity's knowledge and is sworn to be true under penalty of perjury.

DATE: November 1, 2022

Via CM/ECF filing:

---

8 *Elmore v. McCammon* (1986) 640 F.Supp. 905, 911): "the right to file a lawsuit pro se is one of the most important rights under the constitution and laws."

9 Historian Eldon Revere James: *"Pro se litigation was the rule rather than the exception in early American history. Lawyers were actually banned outright or faced tight restrictions ...."*

AP-61

/s/ Joe Flarity
Joe Patrick Flarity
101 FM 946 S
Oakhurst, TX 77359
253 951 9981
f_v_piercecountywa@yahoo.com

AP-62

United States Court of Appeals for the Ninth Circuit

Post Office Box 193939
San Francisco, California 94119-3939
415-355-8000

No. 21-35580
DC No. 3:20-cv-6083-RBL

MOTION TO CERTIFY FEDERAL QUESTIONS TO WASHINGTON SUPREME COURT

JOE PATRICK FLARITY, a marital community
Appellant
V.
Argonaut Insurance Company, David H. Prather, Heather Orwig, Kim Shannon, Daniel Hamilton, Mary Robnett, Pierce County, a municipal corporation, Et Al.
Appellee

MOTION TO CERTIFY FEDERAL QUESTIONS

1. Comes Flarity, a pro se marital community, Moves the Panel for submission to the Washington Supreme Court Federal Questions per RAP 16.16 citing RCW 2.60 for questions raised in Pierce County's Answer DK#11.

I. LEGAL AUTHORITY TO CERTIFY

2. Per *Hillsborough Tp Somerset County v. Cromwell*, 326 U.S. 620, 66 S.Ct. 445, 90 L.Ed. 358 (1946), with emphasis:

> We have held that where a federal constitutional question turns on the interpretation of local law and the local law is in doubt, **the proper procedure is for the federal court to hold the case until a definite determination of the local law can be made by the state courts.**

3. WASHINGTON LAW CONFIRMS HILLSBOROUGH. Per RCW 2.60.20:

> **Federal court certification of local law question:**
>
> When in the opinion of any federal court before whom a proceeding is pending, it is necessary to ascertain the local law of this state in order to dispose of such proceeding and the local law has not been clearly determined, such federal court may certify to the supreme court for answer the question of local law involved and the supreme court shall render its opinion in answer thereto.

4. Per RCW 2.60.030: **Practice and procedure**, with emphasis:

> Certificate procedure shall be governed by the following provisions:
>
> (1) Certificate procedure may be invoked by a federal court upon its own motion **or upon the motion of any interested party in the litigation involved** if the federal court grants such motion.

II. QUESTION: ARE TAX APPRAISERS ABOVE THE LAW

5. WHEN A SEARCH IS NOT A SEARCH. Pierce County contends that inspection by a tax appraiser is NOT a search nor an invasion and is authorized by State law. The practice is purported as approved by Division Three's *State v Vonhof* 751 P2d 1221 51 WnApp 33 Wash App 1988. **If true, the bulk of Flarity's 14th Amendment claims disappear.**

6. *RIDGWAY* SUPERCEDES *VONHOF*. Pierce County's Answer surreptitiously neglected to include the subsequent ruling almost identical to *Vonhof*. *State v Ridgway* 790 P2d 1263 57 WnApp 915 Wash App 1990. In *Ridgway*, Division Two conflicted *Vonhof* and confirmed the "*sanctity*" of state privacy protections for curtilage. But that Panel dodged the assessor issue by reversal of Ridgway's criminal conviction resulting from the illegal search:

> We need not discuss Ridgway's contentions about the assessor, for we conclude that his photo and information did not supply probable cause for the warrant. We agree with Ridgway's contention that the investigative entry was unlawful.

III. QUESTION: BOE COURT DUE PROCESS WHEN VIOLATING THE LAW

7. The BOE Court, as Flarity suffered in January 2018, IS NOT A PUBLIC FORUM as required by local law and rules. This policy was not established specifically for Flarity's hearing, but was an illegal *prior agreement* affecting all Petitioners to this Court as a CLASS. This practice violates the Washington State Constitution Article 1, Section 10 ADMINISTRATION OF JUSTICE, **Justice in all cases shall be administered openly**, and without unnecessary delay; Section 4, Right of Petition and assemblage; RCW 84.48, for BOE meetings to be "**open**"; Pierce County's DESK REFERENCE MANUAL, 12.5: **All private residence meetings are public.**

8. The Supreme Court of Washington is the appropriate place to determine the effect of systemic violation on the **jurisdiction of the court, due process,** and the implication of **constructive fraud** on the

public. Per Article one of the Washington State Constitution:

> **SECTION 3 PERSONAL RIGHTS.** No person shall be deprived of life, liberty, or property, without due process of law.
> "

Flarity relies on *Townsend v. Burke*, 334 U.S. 736, 68 S.Ct. 1252, 92 L.Ed. 1690, for activity **inconsistent with due process**. The immunity afforded a quasi-judicial court, whether absolute or qualified, must depend on the officials adhering to a standard of acceptable behavior. If the officials are held to no standard—the available immunity should likewise be liquid. From *Ashelman v. Pope*, 793 F.3d 1072, 1078 (1986) with emphasis:

> The immunity afforded judges and prosecutors **is not absolute**....The factors relevant in determining whether an act is judicial "**relate to the nature of the act itself, ... and to the expectations of the parties....**

IV. ARGUMENT FOR CERTIFICATION

9. CONFLICTED LOWER COURTS. Both Vonhof and Ridgway argued their arrests were directly related to an appraiser search in which the "*enforcement official*" went to considerable effort to invade protected curtilage in a warrantless invasion

of privacy. Certainly the assessors' photographs and report of suspicious smells were compelling enough to provoke police action.[10] But unlike *Bivens v. Six Unknown Named Agents,* 403 U.S. 388 (1971), neither case resulted in liability for privacy violations.

10. WHEN COMITY AND CIVIL RIGHTS CONFLICT. This particular search issue has not reached the Washington Supreme Court. Because the collection of taxes is involved, comity and civil rights conflict as Justice Alito explained in *Knick v.Twp. of ScoP*, 139 S. Ct. 2162, 204 L.Ed.2d 558 (2019). Per *Knick*, the state enjoys a "*home court advantage*" with civil rights sent to the back of the bus in Washington State. Washington State should be requested to justify the right of tax agents to violate fundamental liberties.[11]

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10 Hypocrisy undermines the people's confidence in our government. "I have smoked & been around marijuana in the past years & around the type that is grown indoors & is highly cultivated & that is the type of odor I smelled coming from this area of the bldg." *State v. Vonhof,* 751 P.2d 1221, 51 Wn.App. 33 (Wash. App. 1988) .

11 The Court defies *Knick* in *Trucking Associations, Nonprofit Corp. v. State*, 188 Wash. 2D 198, 393 P.3d 761 (Wash. 2017): "This holding is in line with the underlying purpose of comity—avoiding disruption of state tax administration to ensure the State can collect the revenue it depends on to function."

HOME COURT ADVANTAGE EVIDENT ON TAX ISSUES

11. PROTECTION OF PRIVACY SHOULD BE CONSISTENT. The Panel should consider that the protection of privacy by the Washington State Supreme Court must be consistent throughout the circumstances. By precedent, the Washington Supreme Court is fond of privacy and proud to assert elevation above the 4th Amendment—when taxes are NOT involved. See the cases Pierce County cited protecting privacy: *State v Bowman* 196 Wash2d 1031 479 P3d 1161Table Wash 2021, *State v Hinton* 319 P3d 9 179 Wash2d 862 Wash 2014, and *State v. Boland*, 115 Wash.2d 571, 800 P.2d 1112 (1990). In *Boland*, the Court went to the extraordinary effort to protect the privacy of trash in a container on a public street.

12. PRIVACY MADE SACRED. Flarity cited even better Washington Supreme Court protections of privacy per DK#78-3, p4, NOT PROVIDED IN THE EXCERPTS, SEE APPENDIX. Per *T.S. v. Boy Scouts of America*, 138 P.3d 1053, 157 Wn.2d 416 (Wash. 2006):

> Our Founding Fathers recognized one's privacy deserved heightened protection exceeding the Fourth Amendment, favoring a broader constitutional directive *explicitly* protecting our citizens' private affairs; whereas the

> United States Constitution never even mentions privacy. So doing, the framers created a "broad and inclusive privacy protection." *See, e.g.,* Sanford E. Pitler, Comment, *The Origin and Development of Washington's Independent Exclusionary Rule: Constitutional Right and Constitutionally Compelled Remedy,* 61 WASH. L. REV. 459, 520 (1986). Contemporaneous accounts describe the framers of article I, section 7 as having made private affairs "sacred." THE JOURNAL OF THE WASHINGTON STATE CONSTITUTIONAL CONVENTION, 1889, *supra,* at 497 n. 14

13. In addition, the Supreme Court in *City of Seattle v. McCready*, 123 Wn.2d 260, 868 P.2d 134 (Wash. 1994) and confirmed in *Bosteder v. City of Renton*, 155 Wn.2d 18, 36-37, 117 P.3d 316 (2005), determined that even "*well meaning*" officials and *Superior Court Judges* **could not invade domicile privacy for petty reasons. PC SER 101.**

TIPTOEING AROUND AUTOMATIC STANDING[12]

14. Pierce County argues RCW 84.40.025 has removed the Article 1, Section 7 standing for

12 The "**automatic standing**" phrase was used in *State v Bowman* 196 Wash2d 1031 479 P3d 1161Table Wash 2021.

personal and business property domiciles in the State with no clear indication on how privacy rights might be restored. The current precedent, *State v Ridgway* 790 P2d 1263 57 WnApp 915 Wash App 1990, **avoided this issue.**[13] It is significant the State showed an uncharacteristic lack of enthusiasm to have the Supreme Court clarify the reversal of their Ridgway cannabis defeat on appeal. The criminal conviction of *Vonhof* was NOT appealed to the Supreme Court. SEE DECLARATION herein.

OPENNESS INCONSISTENT AT THE WASHINGTON SUPREME COURT

15. There is no clear precedent on how closure of the BOE to the public affects due process and jurisdiction. Many of the decisions respond to custody battles and conflict with other decisions. *In re Guardianship of Stamm v. Guardianship Services of Seattle*, No. 53334-7-I (WA 11/28/2005) (Wash. 2005)

> The Washington Constitution does not establish a right to court access, other than the right to open proceedings and speedy trials.

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13 The Supreme court often cites *Ridgway* for other situations. "Ignoring a visible 'No Trespassing' sign 'is an important factor that is looked at to determine if an alleged trespasser is aware that the owner of the premises does not welcome uninvited visitors.' *State v. Cairnes*, No. 53684-2-I (WA 3/21/2005) (Wash. 2005)

Dependency of K.R., In re, 904 P.2d 1132, 128 Wn.2d 129 (Wash. 1995):

The majority today denies Washington parents this safeguard of a heightened burden of proof by misinterpreting the relevant statute and case law and turning a blind eye to the constitution....I dissent because I believe adherence to the constitution requires more than clever word play.

Aslo[sic] *State v. W.R.*, 336 P.3d 1134, 181 Wash.2d 757 (Wash. 2014) and *H.J.P., Matter of*, 789 P.2d 96, 114 Wn.2d 522 (Wash. 1990), noKng the *K.R.* dissent.

16. EVERY PART OPEN. The Panel takes on a completely different tone when evaluating the openness issue for convicted murderer Michael Lynn Sublett. Per *Wash v. Sublett*, 176 Wash.2d 58, 292 P.3d 715 (Wash. 2012), their emphasis with footnote references removed:

> *See* John H. Bauman, *Remedies Provisions in State Constitutions and the Proper Role of the State Courts*, 26 Wake Forest L.Rev. 237, 284–88 (1991) (collecting open courts provisions) ....Thus, our constitution contains a stand-alone open administration of justice clause that was entirely unique to our constitution when it was adopted. This suggests our framers were

> especially preoccupied with the open administration of justice.
>
> Under article I, section 10, *every part* of the administration of justice is presumptively open. Section 10 says that justice in all cases must be administered openly, the purpose being to ward off corruption and enhance public trust in our judiciary...
>
> ....In short, the United States Supreme Court is much freer to limit courtroom openness than we are.

17. WHEN OPENNESS DOES NOT APPLY. Precedent established limits to the "every part" idea of *Sublett*. Per *Seattle Times Co. v. Eberharter*, 713 P.2d 710, 105 Wn.2d 144 (Wash. 1986), with emphasis:

Seattle Times next argues that even if we decide that the federal constitution [713 P.2d 716] does not provide for a right of access to the document at issue here, we should allow access under article 1, section 10 of the Washington State Constitution....**The applicability of the provision to a search warrant affidavit has never before been addressed**....We conclude that neither the federal nor state constitution provides for a public right of access to a

search warrant affidavit in an unfiled criminal case, and **we decline to issue a writ of mandamus.**

18. OPENNESS APPLIES TO ADMINISTRATIVE HEARINGS. The Panel has ruled on the State Constitution's applicability to administrative hearings. *Mills v. Western Wash. Univ.*, 170 Wash.2d 903, 246 P.3d 1254, 264 Ed. Law Rep. 426, 31 IER Cases 1494 (Wash. 2011):

> "**To have the force of law, an administrative regulation must be properly promulgated pursuant to a legislative delegation.**"...The basis of the court's decision was that the University violated the Administrative Procedure Act (APA), chapter 34.05 RCW, **by closing Mills's disciplinary hearing to the public**. We reverse the Court of Appeals."

19. STRICT SCRUTINY FOR 1ST AMENDMENT CLAIMS. Flarity has made a **1st Amendment claim** to stop the conspiracy to defy the public's right to aqend BOE hearings. *Grant County v. Bohne*, 89 Wn.2d 953, 577 P.2d 138 (Wash. 1978), with emphasis:

> In this case, **unlike First Amendment cases**, we are not concerned solely with whether the language of the ordinance is vague on its face. Rather, the

> language should be tested in light of the conduct of the person alleged to have violated the ordinance.

20. FAIRNESS OF COURT HEARINGS SUPPORTED. The Washington Supreme Court has protected citizens when failure of due process and court prejudice are evident. Per *Tonga Air Services, Ltd. v. Fowler*, 118 Wn.2d 718, 826 P.2d 204 (Wash. 1992), with emphasis:

> Mr. Fowler makes the broad-based contention that "[t]he socio-legal system in Tonga made it impossible for [him] to obtain a fair trial.... Mr. Fowler alleges the attorney he initially consulted in Tonga regarding issues to be litigated subsequently represented TAS against Mr. Fowler....he was forced by the trial court in Tonga to go to trial in "complex business litigation" without an attorney, ... he was denied the right at trial to proceed with counterclaims and setoff defenses.

TAXES APPEAR TO FLIP THE SCRIPT FOR CIVIL RIGHTS DECISIONS

21. While the Washington Supreme Court questioned the 9th Circuit's willingness to protect

"*personal liberties*" in Gunwall[14] , the tables are turned when it comes to the collection of taxes. Per *Nichel v. Lancaster* 647 P2d 1021 97 Wn2d 620 (Wash 1982), Justice Dimmick:

> "*I dissent. I find the duties imposed on the county assessors by the tax assessment statutes to be mandatory....I cannot join in the majority's circumvention of a clear legislative mandate....*"

The Washington State Supreme Court demonstrates a measurable shift in jurisprudence where taxes are involved. *Morrison v. Rutherford* 516 P2d 1036 83 Wn2d 153 (Wash 1973):

> "...not due to arbitrary, capricious or intentional discrimination by any Kitsap County official, **but rather due to a lack of adequate funds**..."

The paradigm is further supported by the recent *Trucking* decision,[15] which defies the 9th Circuit's

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14 *State v. Gunwall,* 106 Wn.2d 54, 720 P.2d 808, 76 A.L.R.4th 517 (Wash. 1986), with emphasis:...being "increasingly necessary for the States in our federal scheme to assume a role of activism designed to adapt our law and libertarian tradition to changing civilization", and to **hail this trend as a triumph of personal liberty**...."

15 "At oral argument, counsel for the Department explained that ALJs have limited power to review constitutional

direction that officials should provide a **fair court in the first instance** for tax due process defying *Clements* citing *Ward.*[16] Washington State seems infamous for abuse of taxpayers seeking relief in a fair court long recognized in other states. Per *First National Bank v. Christensen* [39] Utah [568], 118 P. 778:

> "Such an arbitrary policy is vicious in principle, violative of the Constitution, and operates as a constructive fraud upon the rights of the property holder discriminated against. In such cases equity will grant relief." *Andrews v. King County, 1 Wash. 46, 23 P. 409, 22 Am. St. Rep. 136; Case v. San Juan County, 59 Wash. 222, 109 P. 809; Doty Lumber & Shingle Co. v. Lewis County,* ...

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claims, but that such issues may be preserved for appeal. Wash. Supreme Court oral argument, supra, at 10 min., 5 sec. through 10 min., 30 sec." *Wash. Trucking Associations, Nonprofit Corp. v. State*, 188 Wash. 2D 198, 393 P.3d 761 (Wash. 2017).

16 *Clements v. Airport Authority of Washoe County*, 69 F.3d (9th Cir. 1995). *Ward v. Village of Monroeville*, 409 U.S. 57 (1972).

V. TIMING

22. Now is the time for the Supreme Court to examine these issues and either endorse or prohibit state practices. The Washington Supreme Court already has Pierce County's NOTICE on record for a similar matter on unconstitutional RCW 84.40.038, Cause 100504-1, in addition to *State of Washington v. Palla Sum*, No. 99730-6 for Art. 1 Sec. 7 issues.

VI . OPPORTUNITY TO ESTABLISH PRECEDENT

23. BORDER PATROL NOT ABOVE THE LAW. Like the DEA agents in *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), the 9th Circuit per *Boule v. Egbert*, 998 F.3d 370 (9th Cir. 2020) determined that border agents were NOT above the law. Even with previous documented smuggling activity—property owners still enjoy the full protection of 4th Amendment rights. This decision is under review by the U.S. Supreme Court, 21-147. Reversal could result in a new category of *enforcement agents* causing a marked degradation of civil rights for property owners along our borders.

24. TAX APPRAISER STATUS UNDETERMINED. In contrast, enforcement agents in Pierce County currently enjoy relief from privacy restrictions to the insult of Pierce County domiciles by undisputed county policy. The Panel is requested to have the Washington Supreme Court clarify Pierce County's NOTICE per RCW 84.40.025 as

constitutional by Art. 1 Sec. 7 of the Washington State Constitution. *Ridgway* 790 P2d 1263 57 WnApp 915 Wash App 1990 should be extended to the Washington Supreme Court for clarification as is currently underway for Palla Sum for expansion of Art. 1 Sec 7 for considerations due to race. The ACLU Amici is attached for State of *Washington v. Palla Sum*, No. 99730-6.

25. JURISDICTION AND DUE PROCESS OF BOE OPERATING IN DEFIANCE OF THE LAW NOT DEFINED. *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808, 76 A.L.R.4th 517 (Wash. 1986) should be reflected. The Supreme Court of Washington State should analyze the impact of closure on due process and fairness with a decision pertaining to Flarity's equal protection by State Rights. The state founders made considerable efforts to bolster gaps in the U.S Bill of Rights as described in detail for *Wash v. Sublett*, 176 Wash.2d 58, 292 P.3d 715 (Wash. 2012).

VII . CERTIFICATION BENEFITS ALL PARTIES

26. BENEFIT TO THE 9TH CIRCUIT. Clarification will directly affect Flarity's Reply to Pierce County and **relieve the 9th Circuit's burden for specificity in the ruling as to 14th Amendment protection.**

CERTIFICATION OF WORD LIMIT FOR MOTION: The word count is 3500 and within the limits of the FRAP for word count.

CERTIFICATION AND SIGNING:

By signing below, I certify that this MOTION complies with the requirements of Federal Rules of Appellant Procedure, to the best of Flarity's knowledge and is sworn to be true under penalty of perjury.

DATE: January 27, 2022

/s/ Joe Flarity
Joe Patrick Flarity
101 FM 946 S
Oakhurst, TX 77359
f_v_piercecountywa@yahoo.com
253 951 9981

AP-80

UNITED STATES DISTRICT COURT
WESTERN DISTRICT Tacoma Division
The Honorable Judge ROBERT J. BRYAN

CAUSE No. 3:20-cv-06247-RJB

MOTION FOR RECONSIDERATION OF FINAL JUDGEMENT
NOTE ON CALENDAR May 24, 2021

JOE PATRICK FLARITY, a marital community
And Others Similarly Situated
Plaintiffs,
V.
KENNETH ROBERTS, ARGONAUT INSURANCE COMPANY, PIERCE COUNTY, a municipal corporation, Et Al.
Defendants

RECONSIDERATION OF JUDGEMENT

1. NOW COMES the PLAINTIFF, PRO SE, representing the marital community, moves the COURT to reconsider dismissal in DK#49 and final Judgement in DK#50 filed May 11, 2021. Per LCR7(h).

2. MANIFEST ERROR (1): CLARIFICATION OF PREJUDICE. Prejudice is not adequately addressed in the Order nor listed on the Docket. As the "matter is closed" it appears Flarity is not provided the FRCP

15 "freely" given opportunity to amend the Complaint. The Court has defied precedent *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990), "Amendments should be allowed with "**extreme liberality**." The ruling is ambiguous and demonstrates prejudice by the Court particularly onerous for a pro se attempt to correct broad civil rights abuses. See *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 701 (9th Cir.1988). In particular, the immunity of proposed new defendant ex-prosecutor Lindquist was not addressed as well as other et al officials who are not BOE officials. The Court must state that no amendment of any kind will be allowed for any possible defendant and give specific justification rather than a smoke screen of blanket "no merit." Any reasonable person in America would be astonished that the administrative branch could destroy 1st Amendment/states rights to an open court with that destruction enforced by Federal Court.

3. MANIFEST ERROR (2): REASONABLE INFERENCE DENIED. From the Order p3, L20, with emphasis:

> *"Plaintiff does not allege sufficient facts to plausibly allege that AIC acted under the color of state law." From p3, L14: "A private company does* ***not necessarily*** *become a "state actor" by entering into a contract with the state."*

...not necessarily? Contrast with Judge Zilly's Order preserving the rights of Open Courts in C19-2043 TSZ, with emphasis:

> *In ruling on a motion to dismiss, the Court must assume the truth of the plaintiff's allegations and draw all reasonable inferences in the plaintiff's favor. Usher v. City of L.A., 828 F.2d 556, 561 (9th Cir. 1987). The question for the Court is not whether the plaintiff has presented a prima facie case or is likely to prevail, but rather only whether the facts in the complaint sufficiently state a "plausible" ground for relief. See Twombly, 550 U.S. at 570. Under this standard, the State of Washington's operative pleading passes muster.*
>
> *....To satisfy Article III's "case or controversy" requirement, a plaintiff must have (1) "suffered an injury in fact," (2) "that is fairly traceable to the challenged conduct of the defendant," and (3) "that is likely to be redressed by a favorable judicial decision." See, e.g., Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1547 (2016).*

It is certainly "*plausible*" that AIC is engaged in fraud per the case DPA Hamilton himself has cited, *Glesenkamp v. Nationwide Mutual Insurance Company*, 344 F.Supp. 517 (N.D. Cal. 1972), with emphasis:

> *"...fraud consisted of a misrepresentation by an insurer as to its* ***willingness to honor the terms of a policy****. Wetherbee v. United Insurance Company of America, 265 Cal.App.2d 921, 71 Cal.Rptr. 764, 769 (1968). The Court stated that: ..."While plaintiff may well have a significant problem of proof as to the factual basis underlying her claim of fraud, as defendant appears to suggest, the* ***issue of proof is one for trial and such difficulties are not sufficient to sustain this motion to dismiss****."*

REICHARDT PUT THE INSURANCE CONSPIRATORS TO TRIAL. The Court's ruling DEFIES the case it cited as an authority, *Life Ins. Co. of North America v. Reichardt, 591 F.2d 499 (9th Cir. 1979)*, with emphasis:

> "...a complaint must allege that...one or more of the conspirators (3) did, or caused to be done, "any act in furtherance of the object of (the)

> conspiracy," whereby another was (4a) "injured in his person or property" or (4b) "deprived of having and exercising any right or privilege of a citizen of the United States."
>
> **The insurance companie**s would have us construe § 1985(3) to be limited to deprivations of federal rights, as opposed to any legal rights or entitlements (including state conferred rights). **We believe such a narrow construction is inconsistent with the drafters' purpose and irreconcilable with the interpretation since accorded § 1985 by the Supreme Court**. Violations of state conferred rights and privileges are sufficient to constitute a deprivation of "**equal protection of the laws.**"

It is PLAUSIBLE that AIC had no intent to honor the contract by agreement with Pierce County and is therefore **inextricably intertwined**.[17] Flarity has met

17 Per *Pasadena Republican Club v. W. Justice Ctr.* (9th Cir. 2021), with emphasis. *"To apply the ruling in Burton, the private party's conduct of which the plaintiff complains must be* ***inextricably intertwined with that of the government****.... the Club* ***did not*** *allege that the City or some other state actor participated in the alleged* ***conspiracy to deprive the Club of its constitutional rights****. In all, Burton teaches us that "substantial coordination" and "significant*

the *Morongo and Reichardt* standards. The Court is requested to reverse the ruling and allow amendment, with *Balistreri* the controlling precedent as the Court identified in DK#23 p4, L20. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 701 (9th Cir.1988):

> *"[T]he 'rule* ***favoring liberality, in amendments to pleadings is particularly important for the pro se litigant****. Presumably unskilled in the law, the pro se litigant is far more prone to make errors in pleading than the person who benefits from the representation of counsel.' " Id. at 1131 (quoDng Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir.1987)).*

4. MANIFEST ERROR (3). RECONSIDERATION OF LCR 7(b)(2): From p6, l3 of DK#49 Order,

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financial integration" between the private party and government are hallmarks of a symbiotic relationship. Brunette, 294 F.3d at 1213.

Flarity provided evidence of an illegal exchange benefiting both parties. *Brunette, 294 F.3d at 1213-14* DOES NOT APPLY: *"holding that there was no symbiotic relationship where a private news company accompanied a "quasi-public" Humane Society in executing a search warrant of a breeder's ranch because plaintiff failed to allege that the news company "rendered any service indispensable to the Humane Society's continued financial viability").*

"Plaintiff did not respond to AIC's Motion for judgement on the pleadings....failure to respond may be considered by the court as an admission that the motion has merit."

The Court is duplicitous and demonstrates clear bias by ignoring its own Order DK#41 P1, L18, with emphasis:

> *On March 29, 2021, Defendant Argonaut Insurance Company filed Motion for Judgment on the Pleadings. Dkt. 31. On April 22, 2021, Plaintiff filed Motion for Leave to File Amended Complaint, which is noted for May 7, 2021. Dkt. 40.*
>
> ***The motions should be considered together.*** *Therefore, the Court will renote Defendant's motion to be considered the same day as Plaintiff's motion. The parties should respond and reply to the motions in accord with the Local Civil Rules.*

DK#41 was in response to Flarity's DK#33:

> *2. EFFECTIVE USE OF THE COURT'S TIME. The Court's ability to evaluate the DK#31 Motion will be greatly improved after reviewing the proposed Amended Complaint, which was interrupted due to AIC's refusal to*

> *confer, provide initial discovery, and then filing a FRCP 12(c) Motion 80 days after the Court's Order.*
>
> From Attorney Khoury, Esq:
>
> *...After an answer is filed, a plaintiff will need to move the court for leave to file an amendment. Given the tight deadlines of most motion briefing schedules,* ***adding in a motion for leave to amend, as well as the complaint's amendment, while trying to defend a 12(c) motion, can really turn up the pressure on a plaintiff.***

Flarity's proposed amended complaint addressed all the elements of AIC's FRCP 12(c) Motion with the Court having ordered the two would be considered together. For the Court now to now assert LCR 7(b)(2) with no consideration for Flarity's proposed amended complaint is obvious bias and abuse of discretion.

"B. MOTION FOR LEAVE TO FILE AMENDED COMPLAINT."

5. MANIFEST ERROR (4): COURT AVOIDED SPECIFICITY IN DEFIANCE OF ITS OWN CITATION. Admonished by the Court in DK#23 to provide specific details as to Pierce County practices,

Flarity is then squeezed in a CATCH-22 dismissal for lack of a "*short and plaint statement.*" p5, L20. Flarity had suffered from Pierce County's CLOSURE OF THE BOE TO THE PUBLIC IN VIOLATION OF STATE LAW AND BOTH CONSTITUTIONS as detailed in Counts 1b and 1c, 2a and 3. The specificity given in the Court's DK#23 Dismissal Order vanished in DK#49. The Court defied its DK#31 citation. From the Order, p2, L6: "***The Court, however, is bound by applicable rules and stare decisis. See Hart v. Massanari, 266 F.3d 1155, 1180 (9th Cir. 2001).***" Per *Hart*, with emphasis:

> *In writing an opinion, the court must be careful to recite all facts that are relevant to its ruling, while omisng facts that it considers irrelevant.* ***Omitting relevant facts will make the ruling unintelligible to those not already familiar with the case;...***

There is no evidence that Flarity was singled out for special treatment. The BOE closure is a general county practice.

6. MANIFEST ERROR (5): **PRO SE** *SCHUCKER v ROCKWOOD* an INAPPROPRIATE CITATION FOR LINDQUIST AND PIERCE COUNTY. Flarity's Monell Policy claims made in Count 2a cited this Court's reasoning in *Nelson v. Lewis Cnty.* (W.D. Wash. 2012) and *"it would be an abuse of discretion*

not to permit any discovery", per *Bracy v. Gramley*, 520 U.S. 899, 117 S.Ct. 1793, 138 L.Ed.2d 97 (1997). The Court has excused an obvious illegal county practice by lumping Flarity's identified CLASS into Mr. Robert Schucker's **pro se** attempt to avoid paying his ex-wife her fair share of his pension by suing a judge:

> *At most, Schucker alleges that Judge Jourdane misinterpreted a statute and erroneously exercised jurisdiction and thereby acted in excess of his jurisdiction. Schucker v. Rockwood, 846 F.2d 1202 (9th Cir. 1988).*

The Court erred in dismissing all Pierce County liability with a "*conclusory*" label not related to the 9th Cir. dismissal of Mr. Robert Schucker's pro se suit for his unique situation. The Court has ignored Flarity's evidence, which was undisputed for an illegal county practice in defiance of *Monell.*

PROSECUTOR IMMUNITY. The appropriate citations for prosecutor immunity are *Kalina v. Fletcher*, 522 U.S. (1997) and *Connick v. Thompson*, 131 S. Ct. 1350, 179 L. Ed.2d 417, 563 U.S. 51 (2011). Closure of the BOE Court to the public is NOT a prosecutorial function.

COUNTY LIABILITY. The controlling citations are *Monell v. Department of Social Services*, 436 U.S. 658 (1978), *Pembaur v. City of Cincinnati*, 475 U.S.

469 (1986), *Gregory v. City of Louisville*, 444 F.3d 725, 754 (6th Cir. 2006), *Watkins v. City of Oakland*, 145 F.3d 1087, 1093 (9th Cir.1998), *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285, 292, 50 L.Ed.2d 251 (1976), *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), and *Starr v. Baca*, 652 F.3d 1202, *11 Cal. Daily Op. Serv. 9290, 11 Cal. Daily Op. Serv. 11148* (9th Cir. 2011), invoking the 9th's own STARR DOCTRINE. Flarity has shown undisputed evidence of an illegal county practice.

7. MANIFEST ERROR (6). COURT SWITCHING REFERENCE TO **PRO SE** SCHUCKER DOES NOT JUSTIFY BOE VIOLATION OF THE LAW. The controlling case remains *Ashelman v. Pope*, 793 F.3d 1072, 1078 (1986), which the Court cited in DK#23, invoking *Bracy v. Gramley*, 520 U.S. 899, 117 S.Ct. 1793, 138 L.Ed.2d 97 (1997), and the ***Liteky* Exception** (*Liteky v. United States*, 510 U.S. 540.) It is this Court's duty to determine if the issue is "*narrowly drawn.*[18] That the Court has avoided this decision is to spurn Hart as well as *Wolff v McDonnel.*[19]

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18 *Per Ashelman, The immunity afforded judges and prosecutors* ***is not absolute****....The factors relevant in determining whether an act is judicial "relate to the nature of the act itself, ...* ***and to the expectations of the parties****,...the exceptions are* ***few and narrowly drawn.***

19 ...it is essential that courts give enough specificity in their rulings that "wrong decisions" can be prevented."JusIce Friendly noted in Some Kind of Hearing, citing *Wolff v*

Even the superficial **pro se** *Schucker* Order still provided an indictment of the Pierce County BOE actions as ***in the clear absence of jurisdiction*** and that intimidation of judicial officials may be **in the public interest**, with emphasis:

> *Even assuming Judge Jourdane's assumption of jurisdiction was "in excess of his jurisdiction," the act was not done "**in the clear absence of jurisdiction.**" See **Stump**, 435 U.S. at 357 n. 7, 98 S.Ct. at 1105 n. 7.*

Lawless conduct is evident at the BOE per *Stump*, with emphasis:

> ***...And there was not even the pretext of principled decision-making.** The total absence of any of these normal attributes of a judicial proceeding convinces me that the **conduct complained of in this case was not a judicial act**... Though the rhetoric may be overblown, I do not quarrel with it. But if aura there be, it is hardly protected by exonerating from liability **such lawless conduct as took place here. And if intimidation would serve to deter its recurrence, that would surely be in the public interest.***

McDonnel, 418 U.S. 539, 565 (1974).

By closure of the BOE Court to the public, the Court did meet the narrowly drawn exception in *Ashelman*, *Liteky*, and *Stump*. Flarity petitioned before a BOE operating *in the clear absence of jurisdiction.*

8. MANIFEST ERROR (7). COURT DISMISSAL BY *HIRSH* IN ERROR. Lawless conduct by a Court is also prohibited in *Hirsh v. Justices of Supreme Court of State of Cal., 67 F.3d 708* (9th Cir. 1995), which the Court cited as supporting the dismissal, with emphasis:

> *The Bar Court judges and prosecutors have quasi-judicial immunity from monetary damages. Administrative law judges and agency prosecuting akorneys are entitled to quasi-judicial immunity so long as they perform functions similar to judges and prosecutors* ***in a setting like that of a court.*** *Butz v. Economou, 438 U.S. 478, 511-17, 98 S.Ct. 2894, 2913-16, 57 L.Ed.2d 895 (1978).*
>
> *From Butz v. Economou, with emphasis: 4*
>
> *The extension of absolute immunity from damages liability to all federal executive officials would seriously erode the protection provided by basic*

> *constitutional guarantees. "No man in this country is so high that he is above the law.* ***No officer of the law may set that law at defiance with impunity.*** *All the officers of the government from the highest to the lowest, are creatures of the law, and are bound to obey it." United States v. Lee, 106 U.S., at 220, 1 S.Ct., at 261. See also Marbury v. Madison, 1 Cranch 137, 2 L.Ed. 60 (1803); Scheuer v. Rhodes, 416 U.S., at 239-240, 94 S.Ct., at 1687-1688.*
>
> *In light of this principle, federal officials* ***who seek absolute exemption from personal liability*** *for unconstitutional conduct must* ***bear the burden*** *of showing that public policy requires an exemption of that scope.*

By closure of the BOE Court to the public, the BOE is NO LONGER " **in a setting like that of a court**" per Hirsh, and must **bear the burden** of showing immunity.[20]

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20 Also *Gregory v. Thompson*, 500 F.2d 59 (9th Cir. 1974): *"Judge Thompson's choice to perform an act similar to that normally performed by a sheriff or bailiff should not result in his receiving absolute immunity for this act simply because he was a judge at the time."*

9. MANIFEST ERROR (8). COURT DISMISSAL OF AIC FRAUD IN DEFIANCE OF *OLYMPIC* AND *LUGAR.*

AIC DOES NOT DISPUTE the possibility of FRAUD. SEE DK#45 P5, L9. This admission should be all the Court needs to proceed. Inquiry will reveal the OVERT ACT in furtherance of the conspiracy. Per *Olympic Club v. Those Interested Underwriters at Lloyd's London*, 991 F.2d 497 (9th Cir. 1993) with emphasis:

> *'[T]here exists a* ***duty on the insurer to defend an action if potential liability to pay exists, even though that potential liability to pay is remote.'*** *California Union Ins. Co. v. Club Aquarius, Inc., 113 Cal.App.3d 243, 247, 169 Cal.Rptr. 685, 686 (1980)....". "The insurer's obligation to defend is not dependent on the facts contained in the complaint alone;* ***the insurer must furnish a defense when it learns of facts from any source that create the potential of liability under its policy.*** *" CNA Casualty of Calif. v. Seaboard Surety Co., 176 Cal.App.3d 598, 606, 222 Cal.Rptr. 276, 279 (1986)... The policy definition of* ***'wrongful act' includes any 'omission.'***

AIC IS LIABLE FOR CIVIL RIGHTS VIOLATIONS Per *Lugar v. Edmondson Oil Company, Inc*, 457 U.S. 922, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982) with emphasis:

> 'Private persons, jointly engaged with state officials in the prohibited action, are acting "under color" of law for purposes of the statute. To act "under color" of law ***does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents,***' " quoting United States v. Price, 383 U.S., at 794, 86 S.Ct., at 1157....To read the "under color of any statute" language of the Act in such a way as to impose a limit on those Fourteenth Amendment violations that may be redressed by the § 1983 cause of action would be wholly inconsistent with the purpose of § of the Civil Rights Act of 1871, 17 Stat. 13, from which § 1983 is derived. The Act was passed "for the express purpose of 'enforc[ing] the Provisions of the Fourteenth Amendment.'..."

AIC is a plausible "*willful participant*" with Pierce County in a scheme to file a sham insurance policy

with the Insurance Commissioner and then slip civil rights charges onto the people in an opaque manner.

10. MANIFEST ERROR (9). DENIAL OF A FORUM IN DEFIANCE OF STATE LAW. Flarity's Petition before the BOE has NOT been heard on the Merits by any judicial court. The Court's ruling puts Flarity in a dire position to defend against Collateral estoppel/Res Judicata and Statute of Limitations affirmative defenses. Per Flarity's Proposed Amended Complaint:

> 43.1 The Court is requested to award Flarity return of unlawful taxes paid under protest as allowed in RCW 84.68.020, with emphasis:
>
> In all cases of the levy of taxes for public revenue ***which are deemed unlawful*** or excessive by the person, firm or corporation whose property is taxed, or from whom such tax is demanded or enforced, such person, firm or corporation may pay such tax or any part thereof deemed unlawful, under written protest setting forth all of the grounds upon which such tax is claimed to be unlawful or excessive; and thereupon the person, firm or corporation so paying, or their legal representatives or assigns, may bring

> an action in the superior court ***or in any federal court of competent jurisdiction*** against the state, county or municipality by whose officers the same was collected, to ***recover such tax, or any portion thereof, so paid under protest***.

This Court provided NO opportunity for Flarity to argue the merits of the BOE decision that resulted in over $30,000 of taxes and penalties paid under protest. The Court of the Honorable Judge Bryan is obligated as the "*federal court of competent jurisdiction*" authorized to hear the merits of Flarity's Cause per RCW 84.68.020.

11. MANIFEST ERROR (10). PREJUDICE AGAINST PRO SE PLAINTIFF. Flarity cannot state that this Court is prejudice against civil rights plaintiffs. The Court did just provide a forum for Mr. Robin Hordon, CASE NO. 20-5464 RJB, represented by renowned law firm MacDonald Hoague and Bayless. Consequently, first amendment rights to display a "Go Vote" sign in a Kitsap County public park have been restored for residents as a CLASS. From this Court's Order, p6, L9:

> *The Port Commission's Rule #10 is invalid, unconstitutional, and unenforceable, particularly as it may apply to free speech activities....The*

foregoing claims appear clear in the Amended Complaint.

Flarity has likewise provided clear claims to restore similar 1st Amendment rights to the people of Pierce County. What is NOT CLEAR in Flarity's complaint has not been identified. The Court has simply stated all claims lack any merit and closed the case with no discussion as to correctable problems. The difference in the treatment is simply that this Court has separated plaintiffs into "*wildly different classes.*"[21] The dismissal is a usurpation of the Article III charter for Federal Courts to preserve the Constitutional rights of all residents within the Court's jurisdiction. The constraint the Court promised in DK#31 per *Hart v. Massanari*, 266 F.3d 1155, 1180 (9th Cir. 2001) is abused by the Order. The rights of the people do not become worthless

21 *Direct Marketing Assn. v. Brohl*, 814 F.3d 1129, 1147–48 (10th Cir. 2016). Judge Gorsuch noted : "*And in taking the judicial oath judges do not necessarily profess a conviction that every precedent is rightly decided, but they must and do profess a conviction that a justice system that failed to attach power to precedent, one that surrendered similarly situated persons to wildly different fates at the hands of unconstrained judges, would hardly be worthy of the name.*"

paper sans legal representation.[22] Per Hart, with emphasis:[23]

> "*Obviously, binding authority is very powerful medicine. A decision of the Supreme Court will control that corner of the law unless and until the Supreme Court itself overrules or modifies it.* ***Judges of the inferior courts may voice their criticisms, but follow it they must.*** *See, e.g., Ortega v. United States, 861 F.2d 600, 603 & n.4 (9th Cir. 1988)...if a controlling precedent is determined to be on point, it must be followed....*

Flarity had asked MacDonald Hoague and Bayless to take this case. They declined. As an unelected private party, that is their privilege. A lesser known ruling from Reichardt:

---

22 Justice Gorsuch, A Republic, If You Can Keep It, p 39 with emphasis: *How does this Constiution Sound?...It promises "inviolability of the person" and "the privacy of correspondence," the right to vote and run for office....It even guarantees the right to an education and free medical care....Well the Constitution I am quoting from is North Korea's...****the promises...aren't worth the paper they are written on****.*

23 Also Chief Justice Roberts from June Medical Services, LLC v. Russo, 591 U.S. ___ (2020): "*The legal doctrine of stare decisis requires us, absent special circumstances, to treat like cases alike.*"

> *A private person cannot make constitutions or laws, nor can he with authority construe them, nor can he administer or execute them. Citing United States v. Harris, 106 U.S. 629, 643, 1 S.Ct. 601, 612, 27 L.Ed. 290 (1883)*

That numerous private law firms have refused to enter into a lengthy and expensive battle with notorious Pierce County prosecutors is no excuse for the Court to abdicate its responsibility for the pursuit of truth to preserve Federal Rights. The Court has a constitutional responsibility to provide a forum for Federal Questions per 28 U.S. Code § 1331. To dismiss such an obvious abuse of the people's most basic civil rights without inquiry is clearly unconstitutional and manifest error.

12. CONCLUSION. *Hart* demands the Court address the charges in the proposed amended Complaint with specificity for relevant facts. Per the proposed amended complaint:

> Count 1a-f: 14th Amendment violations of state laws.
>
> > **a**: BOE violated their oaths to be fair and impartial per the 14th Amendment for arbitrary actions ***inconsistent with Due Process***.

b: BOE Court liable for **closure of the Court** to the public destroying jurisdiction.

c: Mark Evans Lindquist liable for **closure of the BOE Court** to the public as outside the function of a prosecutor.

d: BOE did abdicate charter to correct assumption Per RCW 84.48.

e: Unknown officials have defied RCW 42.46 and WAC 44-14-01003 to hide the conspiracy to close the BOE Court to the public in **defiance of state law for public disclosure of records**.

f: All officials violated RCW 9A.80.010 for **misconduct as** they are required to report observed violations of the law.

Count 2a: Monell violations for County Policy for biased BOE Court closed to the public as an established illegal practice.

Count 3a: 1st Amendment violations for a BOE Court Closed to the public by officials in their personal capacities.

Count 4a: AIC civil conspiracy to receive Flarity tax funds for a low-ball policy they do not intend to honor to meet state liability obligations.

Count 5a: Civil conspiracy and Fraud per 28 U.S. Code § 1983.

Count 5b: Civil conspiracy and Fraud per 28 U.S. Code § 1985 with Class identified.

CERTIFICATION AND SIGNING:

By signing below, Flarity certifies RECONSIDERATION OF JUDGEMENT complies with the requirements of LCR 7 to the best of Flarity's knowledge. Flarity certifies that the address is correct and the Clerk will be notified if there is any change.

Flarity certifies Defendant attorneys were notified electronically:

DPA Daniel Hamilton representing Pierce County
Dan Hamilton
<dan.hamilton@piercecountywa.gov>
Mathew Sekits of Bullivant Houser,
representing Argonaut Insurance

AP-103

"Sekits, Matthew"
<matthew.sekits@bullivant.com>

Date of Signing: May 24, 2021

Signature of Plaintiff: /s/ Joe Flarity

249 Main Ave S, STE 107, #330
North Bend, WA 98045
f_v_piercecountywa@yahoo.com
253 951 9981

AP-104

_____FILED _____LODGED
_____RECEIVED
DEC 23 2020
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT
TACOMA
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT
Tacoma Division
1717 Pacific Avenue, Room 3100, Tacoma WA
98402

CAUSE No. 3:20-cv-06247-DWC

COLOR OF LAW VIOLATIONS, DAMAGES,
PENALTIES AND DECLARATORY RELIEF
CLASS ACTION
JURY TRIAL REQUESTED

JOE PATRICK FLARITY, a marital community
And Others Similarly Situated
Plaintiffs,
V.
KENNETH ROBERTS, ARGONAUT
INSURANCE COMPANY, PIERCE COUNTY, a
municipal corporation, EtAl.
Defendants

[TABLE OF CONTENTS OMITTED]

PLEADING

1. NOW COMES the PLAINTIFF, PRO SE, moves the Court to order the Defendants, hereafter called ***the officials***, to pay damages as a result of violated Constitutional Amendments, laws, rules, and the officials' sworn oaths. When ***the people*** is used, it refers to the allied citizens and residents of Pierce County in general, with Flarity included.

2. The officials' abuses of power, process, and the rule of law damage the people regardless of political affiliation, race, sex, age or citizenship. The officials' abuse is widespread and represents a PATTERN and PRACTICE.

3. Flarity repeats and re-alleges all the allegations contained herein as if fully set forth throughout. For pleading clarity, this vernacular applies to all counts, remedies, and reliefs herein and will not be repeated.

COUNT 1

42 U.S. Code § 1983, Claim for Violation of Equal Protection of the Law and Due Process (Against all Defendants)

4. The authority of the 14th amendment invokes the US Constitution on the defendants for

constitutional amendments, rules, procedures and oaths.

> 14th Amendment: "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; nor deny any person within its jurisdiction the equal protection of the laws."

5. Officials damaged Flarity by violations of the US Constitution as the employees refused to obey amendments, laws, sworn oaths or other established codes of conduct. The violations of individual employees were taken jointly, in concert, and with shared intent. They constituted a civil conspiracy to deny civil rights. The violations are ***deliberate***, ***reckless*** or ***callous*** with ***evil intent*** and **bad faith.** Flarity suffered intentional emotional damage and ambient abuse by officials violating the laws they swore to uphold, as well as significant financial damages.

COUNT 2

42 U.S. Code § 1983, Monell Policy Claim (Against Defendant Pierce County)

6. The actions of employees were taken under the authority of one or more policies, ***patterns, practices or customs***. The officials failed to train, supervise, discipline, or otherwise control individuals responsible to ensure the rights of the people are protected. The policies represent unconstitutional practices. The policies were further established by ratification, approval or indifference by supervisors and policy makers. Employees have a good reason to believe their misconduct will not be challenged and that they are immune from consequences, such as RCW 9A.52.070, RCW 9A.80.010, and RCW 84.40.025. Defendant Pierce County has taken overt steps to hide ***bad faith*** official misconduct and slip the financial burden onto the people.

COUNT 3

Violation of Flarity's Right to Due Process (Against Pierce County and Kenneth Roberts)

7. Flarity suffered from an unfair hearing before an administrative tribunal, the Pierce County Board Equalization (hereafter BOE) with Kenneth Roberts as Chairperson. Kenneth Roberts was selected for the BOE by the Pierce County Council. The BOE has oversight with the Pierce County District Attorney

by state statute and by pattern and practice, the Clerk of Superior Court in Pierce County.

8. Research indicates that near 100% of residential petitioners appearing before the BOE with Kenneth Roberts as chairperson suffered the same humiliating defeat even though no representative appeared to argue for the county. Kenneth Roberts demonstrates the ultimate "captured administrative agency." Petitioners worked diligently on their presentations and took time off work to appear with the expectation they would receive a fair and impartial hearing. Instead, the BOE outcome was predetermined.

COUNT 4: Civil Rights Tort Claims are liable to the Argonaut Insurance Company

9. Flarity alleges that there is a bad faith agreement at work in Pierce County. The Argonaut Insurance Company knew or should have known that tens of millions of taxpayer dollars for civil rights violations of which they were liable was instead being sneaked onto Pierce County taxpayers. Argonaut was paid about $306.963.00 of 2017 premiums and the people expect them to honor their contract. Public insurers have a moral and legal responsibility to restrain the officials they insure. Argonaut has breeched its duty, contributing to Pierce County's pattern and practice of civil rights violations. This failure was an intentional, or negligent tort, by strict or implied liability.

BASIS FOR JURISDICTION

10. The basis for jurisdiction is a federal question pursuant to Civil Rights Act, 42 U.S. Code § 1983, et seq; 28 U.S. Code § 1331; 28 U.S. Code § 1343 (a); the, 5th, 6th and 14th Amendments of the Constitution of the United States.

11 . Supplemental jurisdiction over similar state law violations may be invoked by the Court pursuant to 28 U.S. Code § 1367.

12. This Court has further remedial authority under the Declaratory

JudgmentAct, 28 U.S. Code § 2201 (a) and 28 U.S. Code § 2202.

PLAINTIFFS AND STANDING

13. Flarity is a marital community of lots 2 and 3 located in rural Pierce County; address 28719 Borrell Rd E, Buckley, WA 98321 and approximately 11 acres. This land is productive pasture since the Wickersham and Valley saw mills were removed around 1910, and the fertile land short-platted into the Valley Garden Estates. Flarity proceeds on behalf of the community via FRCP R17 and RCW 4.08.040 "When either spouse or either domestic partner may join or defend."

14. Precedent has been established that Federal Court is the proper forum for 42 U.S. Code § 1983 claims at any stage of the litigation process. Flarity will show suffering from an "*injury-in-fact,*" that its

injury is "*traceable*" to county actions, and that Flarity's injury will likely be "redressed' by this action. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).

15. This Cause meets the requirements of FRCP 23 for class actions: 1) the possible plaintiffs whom appeared before the unfair BOE chaired by Kenneth Roberts number in the hundreds and are easily identified and located by public records. 2) there are questions of law or fact common to the class. 3) the claims of Flarity are typical of the claims of the class.

DEFENDANTS

16. The actions of the county officials whom violated Flarity's civil rights were covered in 2017 by Argonaut Insurance Company, a Bermuda company with Domiciliary Address listed as 225 W. Washington Street, 24th Floor Chicago, IL 60606.

17. Kenneth Robert was the BOE Chairperson in 2018 having served on the BOE for the three previous years in some capacity. It is unknown at this time the influence of the other board members, Dee Martinez, and Jean Contanti-OEHLER, on BOE unfairness. None of these BOE members had legal or real estate experience.

18. Pierce County is a municipal corporation formed under the laws of Washington State. Pierce County is represented by the County Executive, Bruce Dammeier.

19. Et Al: UNNAMED INDIVIDUAL DEFENDANTS: The fracture of laws and constitutional amendments Flarity suffered required substantial assistance from a variety of officials whom will be added to the complaint when identified during discovery.

VENUE

20. Venue is the Western District of Washington under 28 U.S. Code § 1391 (b)(3). "a defendant not resident in the United States may be sued in any judicial district. .. ", 28 U.S. Code § 1332 and 28 U.S. Code § 1441. The family of Argonaut Insurance Companies are based in Bermuda.

21. Flarity's property and the events occurred in Pierce County within the Venue of the Western District at Tacoma.

JURY DEMANDED

22. Flarity respectfully demands a jury per Fed. R.Civ. P. 38 (a).

DUTY TO DISCLOSE

23. Per Federal Rule 26. Initial Disclosure: The officials have a duty to disclose all possible defendants, documents, and insurance agreements within 30 days of service.

DELIVERY OF SERVICE

24. Delivery of service per FRCP Rule 5 and proof of service will be filed with the Court except for Argonaut Insurance Company.

25. The actions of the county officials whom violated Flarity's civil rights were covered in 2017 by Argonaut Insurance Company, a Bermuda company. Per the Insurance commissioner's website, service is to:

> Office of the Insurance Commissioner
> Service of Legal Process
> P.O. Box 40255
> Olympia, WA 98504-0255

> " *... with a cover letter stating the insurer, the summons and complaint, two sets of all documents for each entity and a $10 check or money order per insurer made payable to Washington State Office of the Insurance Commissioner."*

STATEMENT OF FACTS

26. Parcels 9815000014 and 9815000015 were listed as 100% wetlands in 2017 and recognized as an **open space corridor** for wildlife in the tax records. The land has been in continuous farm production since 1910 for hay and grazing and other livestock.

27. Flarity's residence was in East Texas at time of the unfair BOE hearing.

28. Flarity drove up from Texas for a BOE hearing in protest of a barn on parcel 9815000015 that had been designated by a residential appraiser as a half finished residence. Flarity crossed 4 snowy passes and arrived at the BOE hearing early on January 9, 2018 with the intention of witnessing other Pierce County property owners give their presentations. The BOE Clerk at that time, Kim Shannon, did inform Flarity that the BOE Court was CLOSED to the public in violation of state law. The BOE panel consisted of Ken Roberts, Dee Martinez, and Jean Contanti-OEHLER.

29. On January 17, 2018, Ken Roberts issued an Order on Flarity's petition 201702142, abdicating BOE authority to rule on the Assessor's "presumption" about Flarity's barn and leaving the appraiser's assessment in force.

30. Flarity filed a claim for damages per Washington law: **RCW 4.96.020**. This was denied in full with no explanation by Pierce County Risk Management on November 15, 2018.

31. In May of 2019, Flarity packed personal items by Allied shipping and moved to the northwest for the single purpose of contesting the loss of the people's civil rights in Pierce County.

32. On May 28, 2019, Flarity presented to the Pierce County Council details of the violation of our

civil liberties, possible remedies, and purchased a website to document Flarity's presentations: http://inthejawsofjackals.com

33. On June 18, Flarity presented to the Council this quote from Mary Robnett, the current prosecutor:

> https://truthaboutmark.com/the-promising-start-the-fall-from-grace/
>
> *... Lindquist's terms have been marked by multiple scandals, an obsession with image management and politics, poor decision-making, retaliation, besieged subordinates, a damning independent investigation, and piles of wasted taxpayer dollars.*

At this meeting, the Council did approve a claim for $649,999. in the case of ***Ames v. Pierce County***,374 P.3d 228 (2016) with no discussion.

34. Flarity's investigation of **Ames** revealed the ***damning independent investigation*** Mary Robnett referred to above: Mark R. Busto of Sebris Busto James, dated October 22, 2015. The report provided details about ***Ames*** and a related one, ***Nissen v. Pierce County***, 182 Wash.2d 1008, 343 P.3d 759 (2015). Multiple millions were needed to resolve these cases for similar callous behavior to people's rights by Prosecutor Mark Lindquist. Like in Ames,

the Council had forced the Nissen costs onto the taxpayers with no discussion.

35. Flarity submitted numerous petitions to the Washington State Board of Tax Appeals (WSBTA) concerning the unconstitutional activity of Pierce County officials. On September 3, 2019, Flarity appeared before Mark Pree at the WSBTA for a hearing on the presumed characteristic of the barn on lot 3.

36. On November 6, 2019, the WSBTA denied Flarity's claim for review on Cause 93983 and 94396, ending the last nonjudicial remedy available to rectify the unfair hearing suffered by Flarity before the arbitrary Kenneth Roberts.

37. On December 3, 2019, Flarity submitted a claim to Pierce County Risk management for his Denial of a Fair and Impartial Hearing . This claim was rejected with no explanation.

38. After three years of jumping through myriads of "required" non- judicial hoops with no acknowledgement of a scintilla of culpability by Pierce County, Flarity now prays for relief in Federal Court.

DECLARATORY RELIEF REQUESTED

39. DENIAL OF A FAIR AND IMPARTIAL HEARING: Flarity asks the Court to DECLARE that the BOE chaired by Kenneth Roberts did subject Flarity and hundreds of other good faith petitioners to an unfair hearing. The outcome was decided before

the petitioners arrived. The official's actions were deliberate, callous, with evil motive or intent, or reckless and in bad faith; or alternately negligent.

REMEDIES REQUESTED

40. Burden of proof for remedies shall be by preponderance of evidence.

41 . Each class member whom suffered the unfair hearing by Kenneth Roberts shall be paid $10,000.

42. As the originator of the Class Action Claim, award Flarity $50,000 plus legal and moving expenses pursuant to **42 U.S. Code § 1983**; and

43. The Court is requested to levy all the liability portions of claims directly to the Argonaut Insurance Company; and

44. Award any other relief that serves the interests of equitable justice or could encourage future restraint of lawbreaking officials; and

45. Allow amendment of this complaint if the interests of justice require amendment.

CERTIFICATION AND SIGNING:

By signing below, Flarity certifies that this Complaint complies with the requirements of Federal Rule of Civil Procedure 11, to the best of Flarity's knowledge. Flarity certifies that the address is correct and the Clerk will be notified if there is any change.

Date of Signing: December 21, 2020

Signature of Plaintiff: /s/ Joe Flarity

AP-117

Name of Plaintiff: Joe Flarity

249 Main Ave S, STE 107, #330
North Bend, WA 98045
classactionboe@yahoo.com
253 951 9981

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