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No. 101300-1

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

CERTIFICATION FROM THE UNITED STATES
DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

BETTE BENNETT,

Plaintiff/Appellant,

vs.

UNITED STATES OF AMERICA,

Defendant/Appellee.

BRIEF OF AMICUS CURIAE
WASHINGTON STATE ASSOCIATION FOR JUSTICE
FOUNDATION

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

Washington State Association for Justice Foundation (WSAJ Foundation) is a not-for-profit corporation under Washington law, and a supporting organization to Washington State Association for Justice. WSAJ Foundation has an interest in the rights of persons seeking redress under the civil justice system.

II. INTRODUCTION AND STATEMENT OF THE CASE

This case asks the Court to address whether the repose provision for medical malpractice actions in RCW 4.16.350(3) comports with the Washington Constitution, including art. 1, § 12. The facts are drawn from the parties' briefs. *See* Bennett Op. Br. at 8-12; U.S. Resp. Br. at 9-14.

For purposes of this brief, the following timeline is relevant:

- May 18, 2009: Bette Bennett undergoes nasal surgery at Naval Hospital Bremerton (NHB).
- May 25, 2009: Bennett goes to the NHB emergency room due to nasal bleeding. She is treated by an ear, nose and

throat specialist, who inserts nasal packing into Bennett's nose. Bennett hears a cracking sound and passes out.

- May 29, 2009 – August, 2017: Bennett experiences migraines, memory loss, and other neurocognitive impairment. Specialists are unable to diagnose her condition or explain her symptoms.
- August, 2017: A neuropsychologist concludes Bennett's symptoms were consistent with a traumatic brain injury (TBI).
- December, 2017: Bennett sees a TBI specialist, who opines Bennett suffered a TBI in May, 2009 when the nasal packing was inserted.
- April 22, 2020: Bennett sues Defendant under the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346.

Defendant moved to dismiss, arguing the repose provision in RCW 4.16.350(3) barred Bennett's claim. Bennett responded that the repose provision violates Wash. Const. art. I, §§ 10 & 12. The federal district court certified questions to this Court.

III. ISSUE PRESENTED

Does RCW 4.16.350(3) violate the privileges and immunities clause of art. I, § 12?¹

IV. SUMMARY OF ARGUMENT

RCW 4.16.350(3), which sets an outer limit of eight years for medical malpractice claims, violates art. I, § 12 in two ways. First, it violates its anti-favoritism principles because it grants limited liability to medical malpractice defendants and implicates plaintiffs' fundamental right to bring an action in court, without reasonable grounds for doing so. Second, it lacks a rational relationship to its purported aim of eliminating stale claims. The repose provision should be stricken from RCW 4.16.350(3), pursuant to the severability clause.

V. ARGUMENT

This is not the Court's first opportunity to examine the constitutionality of the RCW 4.16.350(3) repose provision. In

¹ This brief does not address the second certified question, involving art. I, § 10.

DeYoung v. Providence Med. Ctr., 136 Wn.2d 136, 147-50, 960 P.2d 919 (1998), it applied equal protection principles to hold the repose provision violated art. I, § 12, because it barred too few claims to bear a rational relationship to its goals.

Two developments have occurred since. First, the Legislature reenacted RCW 4.16.350(3), leaving the statutory text unchanged but adding legislative findings. See Laws of 2006, ch. 8, §§ 301 & 302.² Second, this Court adopted an independent state framework for examining challenges alleging favoritism under art. I, § 12. See *Grant County Fire Prot. Dist. v. City of Moses Lake*, 145 Wn.2d 702, 725-31, 42 P.3d 394 (2002) (*Grant County I*), *vacated in part*, *Grant County Fire Prot. Dist. v. City of Moses Lake*, 150 Wn.2d 791, 805-11, 83 P.3d 419 (2004) (*Grant County II*) (together, *Grant County* or *Grant County* test).

The certified question addressed here asks whether RCW 4.16.350(3) violates art. I, § 12 in light of these developments.

² The full text of the current version of RCW 4.16.350 is reproduced in the Appendix.

For two reasons, the Court should answer yes. First, under the *Grant County* framework, RCW 4.16.350(3) constitutes class legislation implicating Bennett’s fundamental right to bring an action, for which no reasonable grounds exist. Second, the equal protection concerns recognized in *DeYoung* were not cured by the 2006 legislative findings, and the statute thus lacks a rational relationship to its purposes.

A. Overview Of Art. I, § 12 And Its Two Separate Lenses Through Which Class Legislation Is Scrutinized.

In Washington, the political power rests with the people, and government’s role is to “protect and maintain individual rights.” Wash. Const. art. I, § 1. To protect these rights, courts must frequently return to “fundamental principles.” Art. I, § 32. The people possess both enumerated and unenumerated rights. *See* art. I, § 30. Enumerated rights include access to courts and due process. *See* art. I, §§ 3, 10. Provisions of the Washington Constitution are mandatory, unless otherwise provided. *See* art. I, § 29.

The Washington Constitution, art. I, § 12, also guarantees equal treatment under the law:

SPECIAL PRIVILEGES AND IMMUNITIES PROHIBITED. No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

Art. I, § 12 has sometimes been interpreted as providing similar protection to the federal equal protection clause. *See* U.S. Const. amend. XIV; *Grant County I*, 145 Wn.2d at 725. Equal protection is concerned with preventing discrimination. *See Grant County I* at 728-29. When legislation is challenged under art. I, § 12 on discrimination grounds, Washington applies equal protection principles. *See Schroeder v. Weighall*, 179 Wn.2d 566, 577-79, 316 P.3d 482 (2014).

But art. I, § 12 has a separate concern – preventing special benefits for “any citizen, class of citizens or corporation.” When legislation is challenged on the ground that it favors select parties and implicates “fundamental rights,” art. I, § 12 offers independent protection. *See Grant County I* at 731-33.

B. RCW 4.16.350(3) Violates Art. I, § 12 Because It Grants A Special Benefit To Medical Malpractice Defendants That Implicates Plaintiffs’ Fundamental Right To Bring An Action Without Reasonable Grounds For Doing So.

The Court utilizes a two-part test to examine whether class legislation violates art. I, § 12’s anti-favoritism mandate: 1) Does it grant a privilege or immunity that implicates a fundamental right? 2) If so, are there “reasonable grounds” for the legislative distinction? *Schroeder*, 179 Wn.2d at 572-73.

1. RCW 4.16.350(3) grants medical malpractice defendants the immunity of limited liability, implicating plaintiffs’ fundamental right to bring an action and triggering independent protection under art. I, § 12.

Bennett defines the right here as “the fundamental right to pursue a common law cause of action.” Op. Br. at 13. Defendant responds that fundamental rights must be defined as they operated at statehood, with the relevant right here being “the right to pursue a claim as that right existed when the privileges and immunities clause was adopted,” including statutes of limitations that accrued upon injury. Resp. Br. at 45.

Defendant's proposed framing should be rejected because it would frustrate the purposes of art. I, § 12, ignore the foundational importance of the right to bring an action, and misapprehend the nature of fundamental rights. Properly understood, the first *Grant County* prong is satisfied because RCW 4.16.350(3) implicates plaintiffs' fundamental right to seek redress in court.

a. The primary aim of art. I, § 12 is ensuring equal access to legal processes in the exercise of common rights.

Early cases evaluating class legislation under art. I, § 12 focused primarily on concerns of favoritism. *See Ex parte Camp*, 38 Wash. 393, 397-98, 80 P. 547 (1905); *Sherman Clay & Co. v. Brown*, 131 Wash. 679, 683, 231 P. 166 (1924); *State ex rel. Bacich v. Huse*, 187 Wash. 75, 80, 59 P.2d 1101 (1936), *overruled on other grounds by Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979). Some referenced rights, but still emphasized equal treatment. *See Cotten v. Wilson*, 27 Wn.2d 314, 319-20, 178 P.2d 287 (1947) (heightened proof

standard for plaintiffs suing certain defendants constituted discriminatory limitation on right of action); *City of Seattle v. Dencker*, 58 Wash. 501, 504, 507, 108 P. 1086 (1910) (a law implicating “natural or constitutional rights” must “treat alike all of a class to which it applies”).

Grant County I did not overrule early art. I, § 12 cases, but rather synthesized this jurisprudence into a cohesive state constitutional framework. *See* 145 Wn.2d at 729-730. It recognized the anti-discrimination concern of federal equal protection and the related but distinct anti-favoritism concern of art. I, § 12:

The aim and purpose of the special privileges and immunities provision of Art. I, § 12, of the state constitution and of the equal protection clause of the fourteenth amendment of the Federal constitution is to secure equality of treatment of all persons, without undue favor on the one hand or hostile discrimination on the other.

Id. at 730 (quoting *Huse*, 187 Wash. at 80). Under art. I, § 12, a law is unconstitutional “if it confers particular privileges, or im-

poses peculiar disabilities or burdensome conditions in the exercise of a common right.” *Alton V. Phillips Co. v. State*, 65 Wn.2d 199, 202-03, 396 P.2d 537 (1964) (citation omitted).

b. Independent state protection is triggered when class legislation implicates “fundamental rights,” or common rights possessed by virtue of state citizenship.

Grant County first asks whether legislation implicates fundamental rights of state citizenship. *Grant County II*, 150 Wn.2d at 812-13. Such rights, by their “very nature,” can “be said to come within the prohibition of the constitution, or to have been had in mind by the framers of that organic law.” *Id.* at 814 (citations omitted). At statehood, a “special or exclusive privilege” meant any “particular or individual authority or exemption existing in a person or class of persons, and in derogation of common right.” William C. Anderson, *A Dictionary of Law* 812 (1889). “Common rights” were “rights, privileges, and immunities appertaining to and enjoyed by all citizens equally and in common, and which have their foundation in the common law.” Black’s

Law Dictionary 226 (2d ed. 1910). Fundamental rights are often drawn from *State v. Vance*, 29 Wash. 435, 70 P. 34 (1902), which frames them broadly:

[T]he terms privileges and immunities pertain alone to those fundamental rights which belong to the citizens of the state by reason of such citizenship. These terms, as they are used in the constitution of the United States, secure in each state to the citizens of all states the right to remove to and carry on business therein; the right, by usual modes, to acquire and hold property, and to protect and defend the same in the law; the rights to the usual remedies to collect debts, and to enforce other personal rights; and the right to be exempt, in property or persons, from taxes or burdens which the property or persons of citizens of some other state are exempt from.

Grant County II, 150 Wn.2d at 812-13 (quoting *Vance*, 29 Wash. at 458). In Washington, fundamental rights include the right to carry on business, see *Ralph v. City of Wenatchee*, 34 Wn.2d 638, 644, 209 P.2d 270 (1949); protection from hazardous employment, see *Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc.*, 196 Wn.2d 506, 519-20, 475 P.3d 163 (2020); voting, see *Madison v. State*, 161 Wn.2d 85, 96, 163 P.3d 757 (2007); and the right to bring an action. See *Schroeder*, 179 Wn.2d at 573.

- c. The proper framing of the right here is the right to bring a cause of action, which is a fundamental right of state citizenship entitled to independent art. I, § 12 protection.**

Medical malpractice actions, like Bennett's, are grounded in the common law. *See Schroeder*, 179 Wn.2d 573. The right to pursue common law claims has long been recognized as a fundamental right of state citizenship. *See id.*; *Cotten*, 27 Wn.2d at 320; *Vance*, 29 Wash. at 458. A personal injury action is a “substantial property right,” and is “fundamental to the injured person’s physical well-being and ability to continue to live a decent life.” *Hunter v. N. Mason High Sch.*, 85 Wn.2d 810, 814, 539 P.2d 845 (1975).

Special solicitude is afforded the right to bring an action, as it ensures access to other rights and facilitates a democratic system of government:

The right to sue and defend in the courts is the alternative of force. In an organized society, it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship....

Reynolds v. Day, 79 Wash. 499, 507-08, 140 P. 681 (1914) (citation omitted).

Because of the revered place it occupies in our constitutional framework, the right to bring an action is framed broadly and enjoys robust protection. *See Schroeder*, 179 Wn.2d at 573; *Alton V. Phillips*, 65 Wn.2d at 202-04; *Cotten*, 27 Wn.2d at 320. In *Schroeder*, the Court held the elimination of minority tolling in medical malpractice actions violated art. I, § 12. In framing the right, the Court did not examine whether at statehood the right was subject to limitations statutes or tolling, instead stating broadly that a right of action originating from common law *is itself* a fundamental right:

This court has long recognized that the privileges and immunities contemplated in article I, section 12 include the right to pursue common law causes of action in court. Thus, *at least where a cause of action derives from the common law, the ability to pursue it is a privilege of state citizenship* triggering article I, section 12's reasonable ground analysis. A law limiting the pursuit of common law claims against certain defendants therefore grants those defendants an article I, section 12 "immunity."

179 Wn.2d at 573 (emphasis added).

Defendant cites several cases to argue rights must be framed more narrowly, *see* Resp. Br. at 26-32 (collecting cases), but these cases do not support a narrow framing here. It is well-recognized “the level of scrutiny applied when determining whether a ‘reasonable ground’ exists in distinguishing between classifications has differed depending on the issues involved.” *Grant County I*, 145 Wn.2d at 731-32; *see also* *Martinez-Cuevas*, 196 Wn.2d at 523. Aside from *Ockletree v. Franciscan Health Sys.*, 179 Wn.2d 769, 317 P.3d 1009 (2014), which Defendant misreads, none of its cited cases provides a basis for narrowly framing the right to bring an action.³

³ Two of Defendant’s cited cases, *Ass’n of Wash. Spirits & Wine Distribs. v. Wash. St. Liquor Control Bd.*, 182 Wn.2d 342, 340 P.3d 849 (2015) and *Am. Legion Post. No. 49 v. Dep’t of Health*, 164 Wn.2d 570, 192 P.3d 306 (2008), involved alleged infringements on the right to carry on business, a right the Court has consciously framed narrowly. *See Wash. Spirits*, 182 Wn.2d at 361-62; *see also* *Wash. Food Indus. Ass’n & Maplebear, Inc. v. City of Seattle*, 524 P.3d 181, 195 (2023). Similar issues were at play in *Ventenbergs v. City of Seattle*, 163 Wn.2d 92, 124-27, 178 P.3d 960 (2008) (Sanders, J., dissenting; urging a fundamental right to work and earn a living). One case has been abrogated by a United States Supreme Court decision and implicitly called into

In *Ockletree*, the plaintiff sued his former employer, a religious hospital, for discrimination under the WLAD, ch. 49.60 RCW. The hospital asserted the WLAD exemption for religious nonprofits, and the employee challenged the exemption under art. I, § 12. This Court issued three separate opinions, none of which commanded a majority. The lead opinion, which Defendant cites for the proposition that “this Court rejected the argument that ‘the right to work free from discrimination is a privilege of citizenship,’” Resp. Br. at 28, garnered only four votes. The remaining five votes, composed of the four-justice dissent and single-justice concurrence, concluded a fundamental right *was im-*

question by this Court. See *Andersen v. King County*, 158 Wn.2d 1, 138 P.3d 963 (2006), *abrogated by Obergefell v. Hodges*, 576 U.S. 644 (2015); see also *Woods v. Seattle’s Union Gospel Mission*, 197 Wn.2d 231, 244 n.3, 481 P.3d 1060 (2021) (suggesting a right to sexual orientation grounded in the state constitution). The narrow framing of the right to vote in *Madison* rested on an explicit provision of the Constitution. See 161 Wn.2d at 96 (citing Wash. Const. art. VI, § 3). None of these suggest the right to bring an action should be framed narrowly.

plicated. *See* 179 Wn.2d at 794-96 (Stephens, J., 4-justice dissent); *id.* at 806 (Wiggins, J., concurring). The dissent stated: “The Right To Sue for Discriminatory Dismissal Is a Privilege of Washington Citizenship Protected by Article I, Section 12.” *Id.* at 794. The concurrence agreed “the exemption of religious and sectarian organizations in RCW 49.60.040(11) is subject to scrutiny under the privileges and immunities clause of article I, section 12.” *Id.* at 806. To the extent *Ockletree* answers whether “the right to work free from discrimination” is fundamental under art. I, § 12, a majority of justices agreed that it is.

Of the fundamental rights recognized under art. I, § 12, the right to bring an action is among the most fundamental and entitled to robust protection. *See Schroeder*, 179 Wn.2d at 573; *Alton V. Phillips*, 65 Wn.2d at 204; *Cotten*, 27 Wn.2d at 320.

- d. Defendant’s proposed framing of the right of action as encompassing statutory law misapprehends the nature of fundamental rights and would frustrate the anti-favoritism purposes of art. 1, § 12.**

Defendant proposes a formulation of the right here as encompassing statutory law applicable at statehood. *See* Resp. Br. at 15. Defendant’s approach must be rejected because it misapprehends the nature of fundamental rights and would undermine the anti-favoritism purposes of art. I, § 12.⁴

Preliminarily, Defendant’s argument relies on an oversimplification of Washington statutory history. It broadly claims “[t]he right to sue for personal injury in Washington was limited by principles of repose at the right’s inception,” suggesting outer limits were categorical and relief from limitations periods unavailable. Resp. Br. at 36. Statutes of limitations generally accrued upon injury, but there were many tolling exceptions, and such tolling was not subject to repose periods. *See, e.g.*, Code of 1881,

⁴ In *DeYoung*, the Court did not find a basis for independent protection under art. I, § 12, in part because repose periods operated at statehood. *See* 136 Wn.2d at 143-44. However, *DeYoung* did not have the benefit of the *Grant County* framework, so it had no occasion to address whether a fundamental right was implicated or how it should be framed. *DeYoung*’s statement thus offers limited guidance here.

Civil Procedure (“1881 Code”), Ch. 2, § 36 (persons outside the territory); § 37 (minority or disability). The “principles of repose” Defendant references were not universal, and it was not foreign to the founders to relieve plaintiffs from strict limitations periods, even indefinitely.

Defendant may respond that the question must be framed more narrowly, to ask whether *in this context*, relief from a limitations period was available at statehood. But this misapprehends the nature of fundamental rights, which are possessed by virtue of state citizenship. Statutes are granted by the Legislature, may be amended or repealed at its discretion, and create no entitlement. *See Grant County II*, 150 Wn.2d at 813. The fortuity and fluidity of statutes stands in contrast to the enduring nature of common rights.

Defendant’s framework would incorporate territorial statutes into the definition of the fundamental right of action. It cites 1881 Code, Ch. 2, §§ 28 & 37, regarding limitations statutes. *See Resp. Br.* at 36, 44. But should the right also encompass Ch. 1, §

6, restricting a married woman’s right to sue unless she joins her husband in the action? Or should a mother’s right to recover for her child’s injury be triggered only if the father is unavailable? See 1881 Code, Ch. 1, § 9. Put another way, should contemporary laws restricting rights be beyond the reach of art. I, § 12 simply because the 1881 Code recognized such restrictions?⁵

This approach would frustrate the primary aim of art. I, § 12, which is to ensure equal access to legal processes in the exercise of common rights. Framing rights to encompass statutory law risks insulating class legislation from meaningful art. I, § 12 review. See *Madison*, 161 Wn.2d at 95 n.7 (Fairhurst, J., lead opinion; recognizing that incorporating legal restrictions into fundamental rights “would seem to insulate . . . [legislation] from any review under the privileges and immunities clause”). In *Alton V. Phillips*, this Court invalidated a law that extended the

⁵ Cited provisions of the 1881 Code are reproduced in the Appendix.

statute of limitations for a single contractor, emphasizing art. I, §

12's anti-favoritism concerns:

It is an essential element of equal protection of the laws that *each person shall possess the unhampered right to assert in the courts his rights, (sic) without discrimination, by the same processes* against those who wrong him *as are open to every other person. The courts must be open to all upon the same terms.* No obstacles can be thrown in the way of some which are not interposed in the path of others. Recourse to the law by all alike without partiality or favor, for the vindication of rights and redress of wrongs is essential to equality before the law.

65 Wn.2d at 202 (emphasis added; citation omitted). To effectuate art. I, § 12's purposes and preserve equal access to the same legal processes in the exercise of the right of action, the right must be framed broadly and disaggregated from statutory law.

- e. **To trigger art. I, § 12 protection, it should be sufficient that RCW 4.16.350(3) “implicates” or “limits” Bennett’s right of action.**

Bennett has a fundamental right to bring an action. *See supra* at §§ V.B.1.c. RCW 4.16.350(3) limits this right. When a law implicates or limits a fundamental right, independent art. I, § 12

protection applies. *See Martinez-Cuevas*, 196 Wn.2d at 518-19; *Schroeder*, 179 Wn.2d at 573.

Defendant insists art. I, § 12 protection is not triggered because the statute did not “eliminate” the right, only “limited” it. Resp. Br. at 30. Again, Defendant misconstrues art. I, § 12.⁶

The text of art. I, § 12 itself reveals its primary concern, which is to prevent laws that grant citizens privileges and immunities which “upon the same terms shall not equally belong to all citizens.” Caselaw construing the provision frames the inquiry as whether a fundamental right is “implicated,” *see Martinez-Cuevas*, 196 Wn.2d at 519, or “limited.” *Schroeder*, 179 Wn.2d at 573. Even the *expansion* of fundamental rights raises art. I, § 12 concerns when not made equally available to similarly-situated parties. *See Alton V. Phillips.*, 65 Wn.2d at 202 (a law “is not constitutional if it *confers particular privileges*, or *imposes*

⁶ For parties like Bennett, who are unable to discover the basis for their claim during the repose period, the right *is* effectively eliminated.

peculiar disabilities or burdensome conditions in the exercise of a common right” (emphasis added; citation omitted)); *see also Grant County I*, 145 Wn.2d at 732 n.9 (citing *Alton V. Phillips* in support of art. I, § 12 framework).⁷ Independent art. I, § 12 protection is required because RCW 4.16.350(3) limits Bennett’s fundamental right of action.

2. No reasonable grounds exist for granting the special benefit of a statute of repose to medical malpractice defendants.

⁷ *Wash. Food Indus. Ass’n & Maplebear, Inc. v. City of Seattle*, 524 P.3d 181 (2023) does not warrant a contrary conclusion. There, the lead opinion concluded no fundamental right was implicated by a premium pay ordinance for certain delivery workers. The primary bases for the opinion were the historically narrow framing of the right to carry on business and the fact that the legislation did not treat similarly-situated persons differently. 524 P.3d at 195-96. The Court then stated: “Additionally, Instacart does not allege that it is effectively prohibited from engaging in business as a result of the ordinance, only that it receives disfavored treatment.” *Id.* at 196. Because the Court had articulated independent bases for its conclusion, this statement was arguably dicta. Additionally, “the level of scrutiny applied when determining whether a ‘reasonable ground’ exists in distinguishing between classifications has differed depending on the issues involved.” *Grant County I*, 145 Wn.2d at 731-32. Where the right to bring an action is at issue, a “limitation” on its exercise is sufficient. *Schroeder*, 179 Wn.2d at 573.

When a fundamental right is implicated, the Court determines whether there is “a reasonable ground for distinguishing between those who fall within the class and those who do not.” *Grant County I*, 145 Wn.2d at 731. Courts may not “hypothesize facts to justify a legislative distinction.” *Schroeder*, 179 Wn.2d at 574. Rather, they “scrutinize the legislative distinction to determine whether it *in fact* serves the legislature’s stated goal.” *Id.*

The Court already held that as originally enacted, RCW 4.16.350(3) failed the less demanding rational basis test because the relationship between the statute and its purported purposes was too attenuated. *See DeYoung*, 136 Wn.2d at 149-50. Unlike rational basis, which may rest on hypothetical justifications, reasonable grounds requires careful scrutiny to determine whether the legislation is justified *in fact*. Unless the 2006 legislative findings supply the requisite factual showing, *DeYoung* should foreclose a finding of reasonable grounds here.

Defendant cites three findings that it claims establish reasonable grounds:

- (1) eight years “is a reasonable time period . . . to balance the interests of injured plaintiffs and the health care industry”;
- (2) “compelling even one defendant to answer a stale claim is a substantial wrong”;
- (3) “setting an outer limit to the operation of the discovery rule is an appropriate aim.”

Resp. Br. at 53-55 (citing RCW 4.16.350(3) (note)).⁸

Two of these are taken directly from *DeYoung*, where the Court conceded their legitimacy but found them insufficient to satisfy rational basis review. *See* 136 Wn.2d at 150 (acknowledging “compelling a defendant to answer a stale claim is a substantial wrong . . . and setting an outer limit to operation of the discovery rule is an appropriate aim”). The Court did not consider

⁸ The findings concede the repose period will likely not meaningfully impact the insurance industry. *See* Laws of 2006, ch. 8, §§ 301 & 302. Defendant does not justify the repose statute on this ground. *See* Resp. Br. at 53-60.

these aims in a vacuum; balanced against them was the impact on plaintiffs' right of action. The legislation had legitimate aims, but the cost of pursuing them was not justified by the "miniscule" benefit. *Id.* The 2006 findings do not fix that problem.

But the cited statements fail to provide reasonable grounds for three additional reasons. First, all are conclusory declarations unsupported by facts, analysis or evidence. Under this test, courts must "scrutinize the legislative distinction to determine whether it *in fact* serves the legislature's stated goal." *Schroeder*, 179 Wn.2d at 574.

Second, they encroach on the Court's authority to evaluate the law's constitutionality. The Legislature is entitled to some deference regarding factual findings and declarations of public policy, and there are elements of these in the Legislature's statements. But these elements are intertwined with claims regarding the "appropriateness" of the legislative aims, the "substantiality" of the harms and the "reasonableness" of the balance struck. These are issues the Court must examine in determining whether

the legislation complies with art. I, § 12. *See id.* at 574-77. Deference to legislative facts and public policy cannot divest the Court of its obligation to safeguard constitutional rules. *See Sofie v. Fibreboard Corp.*, 112 Wn.2d 636, 651, 771 P.2d 711 (1989). The Legislature’s findings do not settle these questions nor insulate the legislation from review by this Court.

Finally, these statements do not address the reasonable grounds inquiry – whether there exists justification for the *class distinction*. *See Grant County I*, 145 Wn.2d at 731. If the “substantial wrong” is compelling defendants to answer stale claims, why only medical malpractice defendants? *See Schroeder*, 179 Wn.2d at 576 (recognizing a statute “not addressed to stale claims generally,” cannot stand for the proposition that “compelling even one defendant to answer a stale claim is a substantial wrong”). Defendant has not offered reasonable grounds for *selectively* granting this benefit to medical malpractice defendants.⁹

⁹ Defendant claims the existence of other Washington statutes of repose proves “the legislature has not singled out healthcare

RCW 4.16.350(3) lacks reasonable grounds and cannot satisfy the independent art. I, § 12 framework adopted in *Grant County*.

C. RCW 4.16.350(3) Violates Art. I, § 12 Because It Lacks A Rational Basis.

If no fundamental right is implicated, this brief assumes rational basis review applies. *See DeYoung*, 136 Wn.2d at 144. And again, we do not start with a clean slate. This Court already invalidated RCW 4.16.350(3) under this standard, finding it precluded too few claims to bear a rational relationship to its purposes. *See id.* at 149-50.

practitioners for special treatment.” Resp. Br. at 51 & n.5. But proof that only one class enjoys the benefit is not required. The question is whether reasonable grounds exist for distinguishing between the class of defendants that receives the benefit and the class that does not. Whatever justification may exist for other repose statutes is not before the Court and has no bearing on whether reasonable grounds exist to grant medical malpractice defendants a benefit the vast majority of Washington defendants do not share.

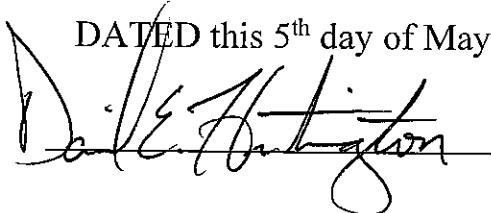
Defendant insists the 2006 findings cured this infirmity, relying on one statement: “compelling even one defendant to answer a stale claim is a substantial wrong.” Resp. Br. at 47-52. Yet this Court conceded that point but found it insufficient to satisfy rational basis. *See DeYoung* at 150 (recognizing “compelling a defendant to answer a stale claim is a substantial wrong . . . [but] the miniscule number of claims subject to the repose provision renders the relationship too attenuated to that goal”). Nothing relevant has changed since *DeYoung* held RCW 4.16.350(3) lacked a rational relationship to its stated aims.

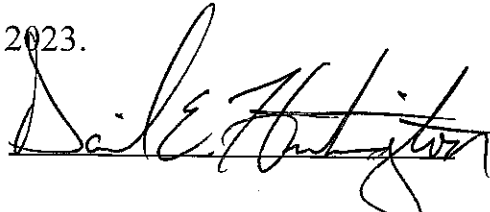
VI. CONCLUSION

The Court should answer “yes” to the first certified question. The repose provision should be severed from the statute pursuant to the 2006 amendments' (uncodified) severability clause. *See* Laws of 2006, ch. 8, § 407.

This document contains 4,984 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 5th day of May, 2023.


for VALERIE D. McOMIE


DANIEL E. HUNTINGTON

On behalf of WSAJ Foundation

APPENDIX

- A-1: Wash. Const. Art. 1, § 12
- A-2: RCW 4.16.350 &
Legislative Findings
- A-3: Laws of 2006, ch. 8, § 407
- A-4: Wash. Const. Art. 1, § 1
- A-5: Wash. Const. Art. 1, § 3
- A-6: Wash. Const. Art. 1, § 10
- A-7: Wash. Const. Art. 1, § 29
- A-8: Wash. Const. Art. 1, § 30
- A-9: Wash. Const. Art. 1, § 32
- A-10: Excerpts of Code of 1881
Civil Procedure, Chapters 1 & 2

West's Revised Code of Washington Annotated
Constitution of the State of Washington (Refs & Annos)
Article 1. Declaration of Rights (Refs & Annos)

West's RCWA Const. Art. 1, § 12

§ 12. Special Privileges and Immunities Prohibited

[Currentness](#)

No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

Credits

Adopted 1889.

[Notes of Decisions \(1216\)](#)

West's RCWA Const. Art. 1, § 12, WA CONST Art. 1, § 12
Current through 11-8-2022.

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Action for injuries resulting from health care or related services—Physicians, dentists, nurses, etc.—Hospitals, clinics, nursing homes, etc.

Any civil action for damages for injury occurring as a result of health care which is provided after June 25, 1976, against:

(1) A person licensed by this state to provide health care or related services, including, but not limited to, a physician, osteopathic physician, dentist, nurse, optometrist, podiatric physician and surgeon, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, osteopathic physician's assistant, nurse practitioner, or physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his or her estate or personal representative;

(2) An employee or agent of a person described in subsection (1) of this section, acting in the course and scope of his or her employment, including, in the event such employee or agent is deceased, his or her estate or personal representative; or

(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subsection (1) of this section, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his or her employment, including, in the event such officer, director, employee, or agent is deceased, his or her estate or personal representative; based upon alleged professional negligence shall be commenced within three years of the act or omission alleged to have caused the injury or condition, or one year of the time the patient or his or her representative discovered or reasonably should have discovered that the injury or condition was caused by said act or omission, whichever period expires later, except that in no event shall an action be commenced more than eight years after said act or omission: PROVIDED, That the time for commencement of an action is tolled upon proof of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic or diagnostic purpose or effect, until the date the patient or the patient's representative has actual knowledge of the act of fraud or concealment, or of the presence of the foreign body; the patient or the patient's representative has one year from the date of the actual knowledge in which to commence a civil action for damages.

For purposes of this section, notwithstanding RCW 4.16.190, the knowledge of a custodial parent or guardian shall be imputed to a person under the age of eighteen years, and such imputed knowledge shall operate to bar the claim of such minor to the same extent that the claim of an adult would be barred under this section. Any action not commenced in accordance with this section shall be barred.

For purposes of this section, with respect to care provided after June 25, 1976, and before August 1, 1986, the knowledge of a custodial parent or guardian shall be imputed as of April 29, 1987, to persons under the age of eighteen years.

This section does not apply to a civil action based on intentional conduct brought against those individuals or entities specified in this section by a person for recovery of damages for injury occurring as a result of childhood sexual abuse as defined in RCW 4.16.340(5).

[2011 c 336 § 88; 2006 c 8 § 302. Prior: 1998 c 147 § 1; 1988 c 144 § 2; 1987 c 212 § 1401; 1986 c 305 § 502; 1975-'76 2nd ex.s. c 56 § 1; 1971 c 80 § 1.]

NOTES:

Purpose—Findings—Intent—2006 c 8 §§ 301 and 302: "The purpose of this section and section 302, chapter 8, Laws of 2006 is to respond to the court's decision in *DeYoung v. Providence Medical Center*, 136 Wn.2d 136 (1998), by expressly stating the legislature's rationale for the eight-year statute of repose in RCW **4.16.350**.

The legislature recognizes that the eight-year statute of repose alone may not solve the crisis in the medical insurance industry. However, to the extent that the eight-year statute of repose has an effect on medical malpractice insurance, that effect will tend to reduce rather than increase the cost of malpractice insurance.

Whether or not the statute of repose has the actual effect of reducing insurance costs, the legislature finds it will provide protection against claims, however few, that are stale, based on untrustworthy evidence, or that place undue burdens on defendants.

In accordance with the court's opinion in *DeYoung*, the legislature further finds that compelling even one defendant to answer a stale claim is a substantial wrong, and setting an outer limit to the operation of the discovery rule is an appropriate aim.

The legislature further finds that an eight-year statute of repose is a reasonable time period in light of the need to balance the interests of injured plaintiffs and the health care industry.

The legislature intends to reenact RCW **4.16.350** with respect to the eight-year statute of repose and specifically set forth for the court the legislature's legitimate rationale for adopting the eight-year statute of repose. The legislature further intends that the eight-year statute of repose reenacted by section 302, chapter 8, Laws of 2006 be applied to actions commenced on or after June 7, 2006." [**2006 c 8 § 301**.]

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW **5.64.010**.

Application—1998 c 147: "This act applies to any cause of action filed on or after June 11, 1998." [**1998 c 147 § 2**.]

Application—1988 c 144: See note following RCW **4.16.340**.

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW **4.16.160**.

Severability—1975-'76 2nd ex.s. c 56: "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 56 § 15.]

*Actions for injuries resulting from health care: Chapter **7.70** RCW.*

*Complaint in personal injury actions not to include statement of damages: RCW **4.28.360**.*

*Evidence of furnishing or offering to pay medical expenses inadmissible to prove liability in personal injury actions for medical negligence: Chapter **5.64** RCW.*

CERTIFICATION OF ENROLLMENT

SECOND SUBSTITUTE HOUSE BILL 2292

Chapter 8, Laws of 2006

59th Legislature
2006 Regular Session

MEDICAL MALPRACTICE

EFFECTIVE DATE: 6/07/06 - Except sections 112 and 210, which become effective 7/01/06.

Passed by the House February 28, 2006
Yeas 82 Nays 15

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate February 22, 2006
Yeas 48 Nays 0

BRAD OWEN

President of the Senate

Approved March 6, 2006.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 2292** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

March 6, 2006 - 2:10 p.m.

**Secretary of State
State of Washington**

1 the reasonable expenses incurred because of the filing of the action,
2 counterclaim, cross-claim, third-party claim, or a defense to a claim,
3 including a reasonable attorney fee. The procedures governing the
4 enforcement of RCW 4.84.185 shall apply to this section.

5 **PART IV - MISCELLANEOUS PROVISIONS**

6 NEW SECTION. **Sec. 401.** Part headings and subheadings used in this
7 act are not any part of the law.

8 NEW SECTION. **Sec. 402.** (1) Sections 105 through 108 and 110 of
9 this act constitute a new chapter in Title 70 RCW.

10 (2) Sections 201 through 208 of this act constitute a new chapter
11 in Title 48 RCW.

12 (3) Sections 305 through 313 of this act constitute a new chapter
13 in Title 7 RCW.

14 NEW SECTION. **Sec. 403.** Sections 211, 212, and 213 of this act
15 apply to insurance policies issued or renewed on or after January 1,
16 2007.

17 NEW SECTION. **Sec. 404.** Section 111 of this act expires July 1,
18 2006.

19 NEW SECTION. **Sec. 405.** Sections 112 and 210 of this act take
20 effect July 1, 2006.

21 NEW SECTION. **Sec. 406.** If specific funding for the purposes of
22 sections 105 through 112 of this act, referencing sections 105 through
23 112 of this act by bill or chapter number and section numbers, is not
24 provided by June 30, 2006, in the omnibus appropriations act, sections
25 105 through 112 of this act are null and void.

26 NEW SECTION. **Sec. 407.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other

1 persons or circumstances is not affected.

Passed by the House February 28, 2006.

Passed by the Senate February 22, 2006.

Approved by the Governor March 6, 2006.

Filed in Office of Secretary of State March 6, 2006.

West's Revised Code of Washington Annotated
Constitution of the State of Washington (Refs & Annos)
Article 1. Declaration of Rights (Refs & Annos)

West's RCWA Const. Art. 1, § 1

§ 1. Political Power

Currentness

All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

Credits

Adopted 1889.

Notes of Decisions (22)

West's RCWA Const. Art. 1, § 1, WA CONST Art. 1, § 1

Current through 11-8-2022.

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West's Revised Code of Washington Annotated
Constitution of the State of Washington (Refs & Annos)
Article 1. Declaration of Rights (Refs & Annos)

West's RCWA Const. Art. 1, § 3

§ 3. Personal Rights

[Currentness](#)

No person shall be deprived of life, liberty, or property, without due process of law.

Credits

Adopted 1889.

[Notes of Decisions \(2248\)](#)

West's RCWA Const. Art. 1, § 3, WA CONST Art. 1, § 3

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West's Revised Code of Washington Annotated
Constitution of the State of Washington (Refs & Annos)
Article 1. Declaration of Rights (Refs & Annos)

West's RCWA Const. Art. 1, § 10

§ 10. Administration of Justice

[Currentness](#)

Justice in all cases shall be administered openly, and without unnecessary delay.

Credits

Adopted 1889.

[Notes of Decisions \(561\)](#)

West's RCWA Const. Art. 1, § 10, WA CONST Art. 1, § 10

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West's Revised Code of Washington Annotated
Constitution of the State of Washington (Refs & Annos)
Article 1. Declaration of Rights (Refs & Annos)

West's RCWA Const. Art. 1, § 29

§ 29. Constitution Mandatory

Currentness

The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.

Credits

Adopted 1889.

Notes of Decisions (5)

West's RCWA Const. Art. 1, § 29, WA CONST Art. 1, § 29

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West's Revised Code of Washington Annotated
Constitution of the State of Washington (Refs & Annos)
Article 1. Declaration of Rights (Refs & Annos)

West's RCWA Const. Art. 1, § 30

§ 30. Rights Reserved

[Currentness](#)

The enumeration in this Constitution of certain rights shall not be construed to deny others retained by the people.

Credits

Adopted 1889.

[Notes of Decisions \(5\)](#)

West's RCWA Const. Art. 1, § 30, WA CONST Art. 1, § 30

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West's Revised Code of Washington Annotated
Constitution of the State of Washington (Refs & Annos)
Article 1. Declaration of Rights (Refs & Annos)

West's RCWA Const. Art. 1, § 32

§ 32. Fundamental Principles

Currentness

A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government.

Credits

Adopted 1889.

Notes of Decisions (5)

West's RCWA Const. Art. 1, § 32, WA CONST Art. 1, § 32

Current through 11-8-2022.

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CODE OF WASHINGTON
1881.

C. B. BAGLEY, PUBLIC PRINTER, OLYMPIA, W. T.

CIVIL PROCEDURE.

AN ACT

TO REGULATE THE PRACTICE AND PROCEEDINGS IN CIVIL ACTIONS.

CHAPTER I.

OF THE FORM OF CIVIL ACTIONS AND OF THE PARTIES THERETO.

SECTION

1. Common law declared in force.
2. Action, but one form of.
3. " parties how designated.
4. " to be in name of party in interest.
5. How executor, trustees, etc., may sue.
6. Husband, when to be joined; where.
6. Wife may sue alone.
7. Husband and wife, may join; when.
8. Widow, or widow and children may sue; when.
9. The mother may maintain for injury or death of child; when.
9. And guardian for injury or death of ward; when.
10. Who may maintain action for seduction.
11. Unmarried female, over twenty-one years of age, for seduction.
12. Infant to appear by guardian.

SECTION

12. Court shall appoint; when.
13. All persons interested must be joined as plaintiffs or defendants.
14. When one or more may sue or defend.
15. By assignee, how defended—set off, etc.
16. Persons severally liable, may be included in same action.
17. When action shall not abate.
18. Action for personal injury shall survive; may be prosecuted by whom.
19. Contract for purchase of lands; for recovery of purchase money; parties to.
20. Court may determine rights in certain cases.
21. New party to action; to what entitled.
22. In action for specific property who may be substituted as party.
23. Person may intervene before trial, how.
24. Intervenor shall serve copy upon parties.

SECTION 1. The common law of England, so far as it is not repugnant to, or inconsistent with the constitution and laws of the United States and the organic act and laws of Washington territory, shall be the rule of decision in all the courts of this territory.

SEC. 2. There shall be in this territory hereafter but one form of action for the enforcement or protection of private rights and the redress of private wrongs, which shall be called a civil action.

SEC. 3. The party commencing the action shall be known as the plaintiff, and the opposite party the defendant.

SEC. 4. Every action shall be prosecuted in the name of the real party in interest, except as is otherwise provided by law.

SEC. 5. An executor or administrator, or guardian of a minor or person of unsound mind, a trustee of an express trust, or a person authorized by statute, may sue without joining the person for whose benefit the suit is prosecuted. A trustee of an express trust, within the meaning of this section, shall be construed to include a person with whom or in whose name a contract is made for the benefit of another.

SEC. 6. When a married woman is a party her husband must be joined with her, except:

1. When the action concerns her separate property, or her right or claim to the homestead property, she may sue alone.

2. When the action is between herself and her husband, she may sue or be sued alone.

3. When she is living separate and apart from her husband, she may sue or be sued alone.

SEC. 7. Husband and wife may join in all causes of action arising from injuries to the person or character of either or both of them, or from injuries to the property of either or both of them, or arising out of any contract in favor of either or both of them. If a husband and wife be sued together, the wife may defend for her own right, and if the husband neglect to defend, she may defend for his right also. And she may defend in all cases in which she is interested, whether she is sued with her husband or not.

SEC. 8. The widow, or widow and her children, or child or children, if no widow, of a man killed in a duel, shall have a right of action against the person killing him, and against the seconds and all aiders and abettors. When the death of a person is caused by the wrongful act or neglect of another, his heirs, or personal representatives may maintain an action for damages against the person causing the death; or when the death of a person is caused by an injury received in falling through any opening or defective place in any sidewalk, street, alley, square or wharf, his heirs, or personal representatives may maintain an action for damages against the person whose duty it was, at the time of the injury, to have kept in repair such sidewalk or other place. In every such action the jury may give such damages, pecuniary or exemplary, as, under all circumstances of the case may to them seem just.

SEC. 9. A father, or in case of the death or desertion of his family, the mother may maintain an action as plaintiff for the injury or death of a child, and a guardian for the injury or death of his ward.

SEC. 10. A father, or in case of his death or desertion of his family, the mother may maintain an action as plaintiff for the seduction of a daughter, and the guardian for the seduction of a ward, though the daughter or ward be not living with or in the service of the plaintiff at the time of the seduction or afterwards, and there be no loss of service.

SEC. 11. An unmarried female over twenty-one years of age may maintain an action as plaintiff for her own seduction, and recover therein such damages as may be assessed in her favor; but the prosecution of an action to judgment by the father, mother, or guardian, as prescribed in the preceding section shall be a bar to an action by such unmarried female.

SEC. 12. When an infant is a party, he shall appear by guardian, or if he has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act. Said guardian shall be appointed as follows:

1. When the infant is plaintiff, upon the application of the infant if he be of the age of fourteen years, or if under that age upon the application of a relative or friend of the infant.

2. When the infant is defendant, upon the application of the infant if he be of the age of fourteen years, and apply on the first day of the return term; if he be under the age of fourteen, or neglect to apply, then

upon the application of any other party to the action, or of a relative or friend of the infant.

SEC. 13. All persons interested in the cause of action, or necessary to the complete determination of the question involved, shall, unless otherwise provided by law, be joined as plaintiffs when their interest is in common with the party making the complaint, and as defendants when their interest is adverse to the plaintiff: *Provided*, That where good cause exists, which shall be made to appear in the complaint, why a party who should be a plaintiff cannot, from a want of consent on his part or otherwise, be made such plaintiff, he shall be made a defendant.

SEC. 14. When the question is one of common or general interest to many persons, or where the parties are numerous and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole.

SEC. 15. Any assignee or assignees of any judgment, bond, specialty, book account or other chose in action, for the payment of money by assignment in writing, signed by the person authorized to make the same may, by virtue of such assignment, sue and maintain an action or actions in any court of law or equity as the case may require, in his or her name, against the obligor or obligors, debtor or debtors therein named, notwithstanding the assignor may have an interest in the thing assigned: *Provided*, That any debtor may plead in defense a counter-claim or an offset, if held by him against the original owner, against the debt assigned, save that no counter-claim or offset shall be pleaded against negotiable paper assigned before due, and where the holder thereof has purchased the same in good faith and for value, and is the owner of all the interest therein.

SEC. 16. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may all or any of them be included in the same action, at the option of the plaintiff.

SEC. 17. No action shall abate by the death, marriage or other disability of the party, or by the transfer of any interest therein, if the cause of action survive or continue; but the court may at any time within one year thereafter, on motion, allow the action to be continued by or against his representatives or successors in interest.

SEC. 18. No action for a personal injury to any person occasioning his death shall abate, nor shall such right of action determine by reason of such death if he have a wife or child living, but such action may be prosecuted, or commenced and prosecuted, in favor of such wife, or in favor of the wife and children, or if no wife, in favor of such child or children.

SEC. 19. In any action brought for the recovery of the purchase money against any person holding a contract for the purchase of lands, the party bound to perform the contract, if not the plaintiff, may be made a party, and the court in a final judgment may order the interest of purchaser to be sold or transferred to the plaintiff upon such terms as may be just, and may also order a specific performance of the contract in favor of the complainant, or the purchaser, in case a sale be ordered.

SEC. 20. The court may determine any controversy between parties before it when it can be done without prejudice to the rights of others,

or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court shall cause them to be brought in.

SEC. 21. When a new party is introduced into an action as a representative or successor of a former party, such new party is entitled to the same summons to be served in the same manner as required for defendants in the commencement of an action.

SEC. 22. A defendant against whom an action is pending upon a contract, or for specific real or personal property, at any time before answer, upon affidavit that a person not a party to the action, and without collusion with him, makes against him a demand for the same debt or property, upon due notice to such person and the adverse party, may apply to the court for an order to substitute such person in his place, and discharge him from liability to either party on his depositing in court the amount of the debt, or delivering the property or its value to such person as the court may direct; and the court may in its discretion make the order.

SEC. 23. Any person may, before the trial, intervene in an action or proceeding, who has an interest in the matter in litigation in the success of either party, or an interest against both. An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff, in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff or by demanding anything adversely to both the plaintiff and the defendant, and is made by a complaint setting forth the grounds upon which the intervention rests, filed by leave of the court or judge on the *ex parte* motion of the party desiring to intervene.

SEC. 24. When leave is given to intervene, a copy of the intervenor's complaint shall be served upon the parties to the action or proceedings who have not appeared, or publication of a notice of the intervention containing a brief statement of the nature of the intervenor's demand shall be made in all cases where there are absent or non-resident defendants. The notice shall be published in the same manner and for the same length of time as prescribed in this act for publication of summons. And the complaint shall also be served upon the attorneys of the parties who have appeared, who may answer or demur to it as if it were an original complaint. The court shall determine upon the rights of the intervenor at the same time the action is decided, and if the claim of the party intervening is not sustained, he shall pay all costs incurred by the intervention: *Provided*, That no intervention shall be cause for delay in the trial of an action between the original parties thereto beyond the term to which the action is brought.

CHAPTER II.

LIMITATION OF ACTIONS.

<p>SECTION 25. Can only be commenced, when; objection, when and how taken. 26. To be commenced within ten years.</p>	<p>SECTION 27. To be commenced within six years. 28. " " " three years. 29. " " " two years.</p>
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SECTION

30. To be commenced within one year.
 31. For statutory penalty, within three years.
 32. Within three months.
 33. Other actions within two years.
 34. On mutual, open and current account.
 35. Limitations shall apply to territory and public corporations; when action deemed commenced.
 36. As to person out of, or concealed in territory.
 37. Persons under certain disabilities.
 38. By or against representatives, when cause of action survives.
 39. In case of alien, etc.
 40. When stayed by operation of law.

SECTION

41. In judgments reversed, if cause of action survives, heirs, etc., may commence within one year.
 42. Disability must exist when right of action accrues.
 43. When disabilities co-exist, all must be removed.
 44. New promises in writing revive right of action.
 45. Payment of principal or interest, fixes time that statute commences to run.
 46. Of action between non-residents, or cause arising out of territory.

SEC. 25. Actions can only be commenced within the the periods herein prescribed after the cause of action shall have accrued, except when in special cases a different limitation is prescribed by statute; but in the district court the objection that the action was not commenced within the time limited, can only be taken by answer.

SEC. 26. The period prescribed in the preceding section for the commencement of actions shall be as follows:

Within ten years:

1. Actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it appear that the plaintiff, his ancestor, predecessor or grantor was seized or possessed of the premises in question within ten years before the commencement of the action.

SEC. 27. Within six years:

1. An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States.
2. An action upon a contract in writing, or liability express or implied arising out of a written agreement.
3. An action for the rents and profits or for the use and occupation of real estate.

SEC. 28. Within three years:

1. An action for waste or trespass upon real property.
2. An action for taking, detaining or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated.
3. An action upon a contract or liability, express or implied, which is not in writing and does not arise out of any written instrument.
4. An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.
5. An action against a sheriff, coroner or constable upon a liability incurred by the doing of an act in his official capacity and by virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution; but this subdivision shall not apply to action for an escape.
6. An action upon a statute for penalty or forfeiture, where an action is given to the party aggrieved, or to such party and the territory except when the statute imposing it prescribed a different penalty.
7. An action for seduction and breach of promise of marriage.

SEC. 29. Within two years:

1. An action for libel, slander, assault, assault and battery, and false imprisonment.

2. An action upon a statute for a forfeiture or penalty to the territory.

SEC. 30. Within one year:

1. An action against a sheriff, or other officer for the escape of a prisoner arrested or imprisoned on civil process.

2. An action by an heir, legatee, creditor or other party interested, against an executor or administrator, for alleged misfeasance, malfeasance or mismanagement of the estate within one year from the time of final settlement, or, the time such alleged misconduct was discovered.

SEC. 31. An action upon a statute for a penalty given in whole or in part to the person who may prosecute for the same, shall be commenced within three years after the commission of the offense; and if the action be not commenced within one year by a private party, it may be commenced within two years after the commission of the offense in behalf of the territory by the prosecuting attorney of the district in which the county is situated, where said offense was committed.

SEC. 32. Within three months:

1. An appeal from any order of a board of county commissioners; or upon a claim rejected by said board.

2. Upon claims against an estate, rejected by an executor or administrator within three months after the rejection.

SEC. 33. An action for relief not hereinbefore provided for, shall be commenced within two years after the cause of action shall have accrued.

SEC. 34. In an action brought to recover a balance due upon a mutual open and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side, but whenever a period of more than one year shall have elapsed between any of a series of items or demands, they are not to be deemed such an account.

SEC. 35. The limitations prescribed in this act shall apply to actions brought in the name of the territory, or any county or other public corporation therein, or for its benefit, in the same manner as to actions by private parties. An action shall be deemed commenced when the complaint is filed.

SEC. 36. If the cause of action shall accrue against any person who shall be out of the territory or concealed therein, such action may be commenced within the terms herein respectively limited after the return of such person into the territory, or after the time of such concealment; and if after such cause of action shall have accrued, such person shall depart from and reside out of this territory or conceal himself, the time of his absence or concealment shall not be deemed or taken as any part of the time limited for the commencement of such action.

SEC. 37. If a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer, for an escape, be at the time the cause of action accrued either under the age of twenty-one years, or insane, or imprisoned on a criminal charge, or in execution under the sentence of a court for a term less than his natural life, the time of such disability shall not be a part of the time limited for the commencement of action.

SEC. 38. If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of

action survive, an action may be commenced by his representatives after the expiration of the time and within one year from his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof and the cause of action survives, an action may be commenced against his representatives after the expiration of that time and within one year after the issuing of letters testamentary or of administration.

SEC. 39. When a person shall be an alien subject or a citizen of a country at war with the United States, the time of the continuance of the war shall not be a part of the period limited for the commencement of the action.

SEC. 40. When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action.

SEC. 41. If an action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on error or appeal, the plaintiff, or if he die and the cause of action survives, his heirs or representatives may commence a new action within one year after the reversal.

SEC. 42. No person shall avail himself of a disability unless it existed when his right of action accrued.

SEC. 43. When two or more disabilities shall co-exist at the time the right of action accrues, the limitation shall not attach until they all be removed.

SEC. 44. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract whereby to take the case out of the operation of this chapter, unless the same is contained in some writing signed by the party to be charged thereby; but this section shall not alter the effect of any payment of principal or interest.

SEC. 45. When any payment of principal or interest has been or shall be made upon any existing contract, whether it be a bill of exchange, promissory note, bond or other evidence of indebtedness, if such payment be made after the same shall have become due, the limitation shall commence from the time the last payment was made.

SEC. 46. When the cause of action has arisen in another state, territory or country between non-residents of this territory, and by the laws of the state, territory or country where the action arose, an action cannot be maintained thereon by reason of the lapse of time, no action shall be maintained thereon in this territory.

CHAPTER III.

OF VENUE OF CIVIL ACTIONS.

<p>SECTION 47. Where shall be commenced. 48. Where shall be tried. 49. Against corporation, where office is, or agent. 50. In all other cases where to be tried. 51. Venue may be changed by court, when. 52. Of change of place of trial.</p>	<p>SECTION 53. District courts; transfer of cases to newly formed. 54. Duty of clerk when change is made. 55. By stipulation, venue need not be changed. 56. Change of venue may be vacated. 57. Venue, change of, when complete. 58. Clerk must transmit papers, etc.</p>
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SEC. 47. Actions for the following causes shall be commenced in the

CERTIFICATE OF SERVICE

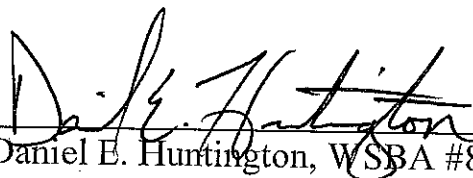
I hereby certify that on the 5th day of May, 2023, I electronically filed with the Clerk of the Court using the Washington State Appellate Courts Portal and also electronically served on the following parties, according to the Court's protocols for electronic filing and service:

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