No. 374190 99823-0

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

KYLIE HANSON, individually

Appellant.

vs.

MIRIAM GONZALEZ CARMONA and JOHN DOE CARMONA, husband and wife, individually, and the marital community comprised thereof

Respondents,

PETITION FOR REVIEW BY THE SUPREME COURT

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I. IDENTITY OF PETITIONER:

Plaintiff, Ms. Kylie Hanson is the petitioner. She was injured in an automobile accident when Defendant Ms. Carmona ran a red light and hit Plaintiff Hanson's vehicle.[1] She was the Respondent in the underlying matter.

II. CITATION TO COURT OF APPELLATE DECISION:

Appellate court decision for 374190-III, rendered March 9, 2021. Motion for publication was granted April 27, 2021.

III. ISSUES FOR REVIEW

(A) Issue For Review: Does RCW 4.96.020(4) violate Washington's separation of powers doctrine? The Court of Appeals welcomed the Supreme Court's review of this question. *Hanson v. Carmona*, 2021 WL 871218, p.9. This issue focuses on which of this Court's precedents applies to a suit against an employee for his/her personal liability. In *Waples*

[1] The titles plaintiff and defendant are used to make the distinction here easier.

v. Yi, 169 Wn.2d 152, 161-162 (2010) this Court held that the legislature's pre-suit filing conditions infringed upon the judicial branch's prerogative to set the court rules, including how a suit commenced under CR 3(a). Such an infringement by the legislature, violated Washington's separation of powers doctrine and was unconstitutional. *Id.*

In contrast to *Waples*, the fractioned opinion of *McDevitt v. Harborview Medical Center*, 179 Wn.2d 59 (2013) held that Const. art. II, sec. 26 allows the legislature to determine how suit is initiated against the state since this is a matter of sovereign immunity.

Regardless of her employment by the state, Defendant Carmona is personally liable for a tort if the duty for the tort arose outside of the employment duties. *Eastwood v. Horse Harbor Foundation, Inc.* 170 Wn.2d 380, 400 (2010). According to the Court

of Appeals decision, RCW 4.96.020(4) sets a pre-filing condition on suing Defendant Carmona as a private party even if the state is not part of the action. Does this violate the separation of powers doctrine and this Court's precedent set forth in *Waples*?

(B) Issue For Review: Can the legislature extend sovereign immunity to a private party? The *McDevitt* decision was based upon sovereign immunity and Const. art. II, sec. 26. Does RCW 4.96.020(4) extend the doctrine of sovereign immunity to and individual's private liability, and if so, is that allowed by Washington's Constitution?

(C) Issue ***Not*** for Review: As recognized by the Court of Appeals, what is not raised in this appeal is a facial challenge to RCW 4.96.020(4). There may be a set of circumstances in which this statute may be applied. In particular, this Court recognized in

Annechino v. Worth, 175 Wn.2d 630 (2012) that certain duties which arise solely because of employment do not create independent liability. Certainly, such jobs as a flagger on a road performing the flagger job has no duties to do it correctly outside of employment. Such an activity would not give rise to personal liability. This type of no private party liability circumstance is not at issue for this appeal.

IV. STATEMENT OF THE CASE

A. Substantive Facts of the Case

At approximately 5:30pm, on September 6, 2016 Defendant Carmona ran a red light and hit the Plaintiff Hanson's automobile. *CP 67, 70.* Defendant Carmona was cited by the police for "Fail to obey traffic control." *CP 67*

Plaintiff Hanson had to go to the hospital because she was injured. *CP 72.* These injuries included leg contusions and

sprains that were caused by Defendant Carmona hitting Plaintiff Hanson's car. *CP 73.*

On May 25, 2018 insurance company Enduris sent Defendant Hanson a letter about the claim that they had paid the property damage to Plaintiff Hanson's insurance company. The letter stated that prior to September 6, 2019 Plaintiff Hanson needed to either settle her claim or "file suit" to protect her rights to pursue any reimbursement. *CP 107.* The letter did not discuss a tort claim form, or that Defendant Carmona was working for a quasi-governmental agency. *Id.*

B. Facts on Case Commencing Against Carmona

On August 26, 2019 Plaintiff Hanson filed suit against Defendant Carmona and Southeast Washington Office Of Aging and Long-Term Care Advisory Counsel. *CP 3-8.* Both were named separately with a prayer for judgements against them individually, jointly and severally. *Id.* All the acts complained of were the personal actions of Defendant Carmona. *Id.*

Defendant Carmona was personally served with this suit on September 16, 2019. *CP 78.*

C. Procedural Facts on The Case

On October 7, 2019 the Defendants brought a motion that argued Southeast Washington Office Of Aging and Long-Term Care Advisory Counsel should be dismissed because it is a quasi-governmental agency. *CP 12-15.* The motion does not mention Defendant Carmona's personal liability or the claim against her, but it was brought on her behalf as well. *Id.*

Plaintiff Hanson amended the complaint on October 28, 2019 removing Southeast Washington Office Of Aging and Long-Term Care Advisory Counsel. *CP 53-55.* The non-state parties, Defendant Carmona and her husband remained in the suit. *Id.*

On October 28, 2019 Ms. Hanson responded to the summary judgment motion by arguing Defendant Carmona was personally liable for this claim and it could be pursued against

Defendant Carmona directly regardless of her employer. *CP 57.*

On February 7, 2020 the trial court denied Defendant Carmona's summary judgment motion. The findings of the court were "Miriam Gonzalez Carmona was driving a vehicle and hit Ms. Kylie Hanons and her personal liability for this matter is in controversy for trial." *CP 146.* Based on this finding the trial court ruled, "[t]he case may proceed against Miriam Gonzalez Carmona in her individual capacity." *CP 147.*

On February 7, 2020 the trial court certified this matter for discretionary review. *CP 150.* The Court of Appeals then granted discretionary review. On March 9, 2021 the Court of Appeals reversed the trial court. On April 27, 2021 the Court of Appeals published that opinion.

V. ARGUMENT

Under RAP 13.4(b)(3),(4) this matter presents both (A) a significant question of law under the Washington Constitution,

and (B) an issue of substantial public interest that should be determined by the Supreme Court. Because of both these items, Ms. Hanson requests this Court to accept review of this matter.

A. The Separation of Powers Issue, and RCW 4.96.020(4)'s Extension of Sovereign Immunity to Private Parties Are Significant Questions Of Law Under Washington's Constitution

1. As Applied RCW 4.96.020(4) Violates Washington's Separation of Powers Doctrine

As the Court of Appeals welcomed this Court to visit, there is a question of whether or not RCW 4.96.020(4) violates the separation of powers doctrine. *Hanson v. Carmona*, 2021 WL 871218, p.9.

RCW 4.96.020(4) creates a pre-filing notice requirement before a suit can be commenced under CR 3(a). As applied in this case, this is an extra step that is required before Defendant Carmona can be sued in her private capacity for her personal liability. This changes procedure on how a case commences so that it is different than the court rules. The court rules are solely

within the prerogative of the judicial branch. *Waples*, 169 Wn.2d at 160-161.

The division of our government into different branches has been presumed throughout our state's history to give rise to a vital separation of powers doctrine. *Putman v. Wenatchee Valley Medical Center, P.S.*, 166 Wn.2d 974, 980 (2009). The doctrine of separation of powers serves mainly to ensure that the fundamental functions of each branch remain inviolate. *Brown v. Owen*, 165 Wn.2d 706, 718 (2009). Separation of powers is how our system obliges the government to control itself, and thus perform on its fundamental purpose "to protect and maintain individual rights." Madison, James, *The Federalist Papers No. 43, p. 333 (1788); Const. art. I sec. 1.*

This Court has recognized that an inherent power of the judicial branch is to promulgate rules for its practice. *Putman*, 166 Wn.2d at 980. The legislature may not infringe upon this power, and if that is done then the legislature has violated the separation of powers doctrine. *Id.*

The reason the judicial branch has the power to determine its procedures is to ensure equal access to the court system. This is seen in the Court's decision in *Putman* that held the power to promulgate rules for practice is inherent in the judicial branch. *Putman*, 166 Wn.2d at 980. *Putman's* foundational premise was that the very essence of civil liberty is the right of every individual to claim the protection of laws whenever she/he receives an injury. *Id.* at 979, citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803).[2]

It is the government's first duty to afford this protection of laws through the courts. *Id.* The judicial branch does this by setting procedural rules on how a case is commenced in the courts. *Waples*, 169 Wn.2d at 160-161. Because of this the

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[2] While there may be a temptation to see this language in *Putman* only to apply to the equal protection aspects of the case, J. Chambers applied it to the division of powers doctrine in his concurrence of *McDevitt*. *McDevitt,* 179 Wn.2d at 80, J Chambers concurrence.

legislature is not generally allowed to set pre-conditions on a suit that restrict it from commencing under CR 3(a). *Id.*

In contrast to *Waples*, *McDevitt* created a narrow exception of when the legislature can burden the right to access courts with a pre-suit condition. *McDevitt* held Const. art. II, sec. 26 and sovereign immunity provides the legislature can set conditions precedent to filing suit when a party is suing the State. *McDevitt*, 179 Wn.2d at 75. The *McDevitt* court noted that where *Waples* was a suit between private parties, the suit in *McDevitt* was against the State. *Id.* at 74. Const. art. II, sec. 26 specifically provided the legislature can determine how the State is sued and therefore can set pre-conditions on a suit against the state without violation the separation of powers. *Id.*

One of the important constitutional questions here is whether or not Defendant Carmona was sued as a private party. The genesis of this suit was Defendant Carmona driving on the road, ran a stoplight, and injured Plaintiff Hanson.

Defendant Carmona's duty to drive safely on the road and stop at red lights was one common to all Washington drivers. *Sanchez v. Haddix*, 95 Wn.2d 593, 597 (1981); RCW 46.61.050(1); 6 Wash. Prac., Wash. Pattern Jury Instr. Civ. WPI 70.06 (7th ed.). These duties existed independent of Defendant Carmona being employed by anyone, even a quasi-governmental agency.

Because these duties are independent of her employment, Defendant Carmona is personally liable for violations of these tort duties. *Eastwood,* 170 Wn.2d at 400. Like the employee in *Eastwood*, the status of employment at the time does not shield Defendant Carmona of her personal liability and she may be sued personally. *Id.*

Defendant Carmona's employer is not a necessary party for the suit to commence. *Orwick v. Fox*, 65 Wn. App. 71, 80-81 (1992). In fact, Defendant Carmona's employer may be released from the suit and Defendant Carmona is still able to be sued. *Vanderpool v. Grange Ins. Ass'n*, 110 Wn.2d 483, 487

(1988) (Holding that a release of an employer from liability does not release the tortfeasor employee from liability).

Defendant Carmona was named as a private an individual party. Suit was commenced against her correctly under CR 3(a), and she was properly served within the 90-day period afforded by the court rules. At the time of summary judgment, and appeal Defendant Carmona in her personal capacity was the only defendant in this suit. All of this is appropriate to proceed against Defendant Carmona for her personal liability, that is outside suit against the State.

Waples held that the legislature cannot set pre-conditions to suit against private parties. The record is clear that Defendant Carmona was sued in her individual and personal capacity. It is an important constitutional issue of whether or not this matter falls under *McDevitt*, which applies to suits against the State, or under *Waples* which applies to suits against private parties.

2. *Whether or not the legislature can extend sovereign immunity to individuals is an important constitutional issue*

The *McDevitt* decision to allow the legislature to set pre-filing conditions was on of both Const. art. II, sec. 26 and the State's waiver of sovereign immunity. *McDevitt*, 179 Wn.2d at 74-75. What *McDevitt* did not address is whether or not the sovereign immunity considerations could be extended to an individual.

In this mater the Court of Appeals acknowledges that Defendant Carmona can be sued as for personal liability and as an individual. The Court of Appeals though holds that a pre-suit condition does not interfere with Ms. Hanson's right to compensation for tort injuries. *Hanson*, 2021 WL 871218, p. 6. To do this, the Court of Appeals cites back to *McDevitt* which only evaluated the pre-suit notice for suits against the state. *McDevitt*, 179 Wn.2d at 68-74.

The Court of Appeals also cites to *Wright v. Terrell*, 162 Wn.2d 192, 195 fn. 1 (2007) and appellate court cases to find courts "have rejected challenges to nonclaim statutes based on an employee being a private individual." *Hanson*, 2021 WL

871218, p. 6. The scope of *Wright* was this Court reaffirming its decision in *Bosteder v. City of Renton*, 155 Wn.2d 18 (2005) that the former version of RCW 4.96.020 did not include the statutory language employee. J. Ireland's part concurrence and dissent clearly states that the *Bosteder* does not address the constitutionality of statute, but instead was based purely on statutory construction based on the statute not including the term "employee." *Id.* at 59.

This Court has not addressed whether or not sovereign immunity can be extended from the state liability to personal liability. This is an important constitutional issue that Ms. Hanson asks this Court to take up.

B. The Issues Involved in This Appeal Are a Substantial Public Interest

Unlike the plaintiffs in *Waples* and *McDevitt*, a driver on the road typically cannot control their interaction with a governmental agency. Instead, collisions are caused by whoever else just happens be on the road; privately employed, government employed, leisure or unemployed.

In 2015 a crash occurred in Washington once every 4.5 minutes and a person died in a crash every 16 hours.[3] Washington has long favored full compensation for those injured in automobile accidents. *Sherry v. Financial Indem. Co.*, 160 Wn.2d 611, 620-621 (2007). "The right to be indemnified for personal injuries is a substantial property right, not only of monetary value but in many cases fundamental to the injured person's physical well-being and ability to continue to live a decent life." *Hunter v. North Mason High School*, 85 Wn.2d 810, 814 (1975).

A person injured by a wrongdoing driver is to seek protection of the courts by naming the wrongdoing driver and filing the complaint per CR 3(a). Then the injured person can complete service within 90 days of the filing and have the case perfected in the court. CR 3(b)(RCW 4.16.170).

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[3] *https://www.wsdot.wa.gov/mapsdata/crash/pdf/2015_Annual_Collision_Summary.pdf*. The WDOT stopped producing this report in 2015.

The address of the wrongdoing driver is often on the police report from the collision, as was true in this case. *CP 67.* The injured party can use this to make reasonable attempts to serve the wrongdoing driver. If that cannot be done, then the injured party can serve the secretary of state to complete service. RCW 46.64.040.

This is the established process that an injured party can take to access our courts and seek redress. It is well defined, set out by our court rules and provides for the randomness of the people whom an injured party may encounter on the road.

This appeals decision changes this process. Now an injured party cannot just sue the wrongdoing driver if the employer of the wrongdoing driver is a governmental, or in this case, a quasi-governmental, agency. Instead, the injured party must try to first identify the employer's governmental status before bringing a private suit against the wrongdoing driver. As this case shows, this can be a problematic barrier to justice.

The police report in this matter identified the wrongdoing

driver's registered owner of the vehicle as "AGING AND LONGTERM CARE, SE." *CP 67.* Pulling from the Secretary of State's website showed SOUTHEAST WASHINGTON OFFICE OF AGING AND LONG-TERM CARE ADIVSORY COUNCIL, as a non-profit. The description of this was that they "advise" another "Council of Governments." *CP 75-76.* These immediate sources do not clearly identify a governmental employer.

The insurance company is also not likely helpful, since as shown in this case their letter to the insured can fail to identify the employer as a governmental agency. *CP 107.* In this matter, the insurance company specifically ignored the tort claim form now being mandated, and instead said suit should be "filed" by September 9, 2019 to protect Plaintiff Hanson's rights. *CP 107.*

Instead, the way to identify this quasi-governmental agency employer is by checking with the Yakima County auditor. *CP 17-18.* In this case, even the name of quasi-governmental agency is different than the police report so that

also has its problems. Worse though, this accident though occurred in Spokane, Washington and Ms. Hanson is a resident of Spokane, Washington. *CP 3-4*. What causes a Spokane resident, injured in Spokane to check with the Yakima auditor?

The public has a substantial interest in whether or not wrongdoing drivers can be shielded by a procedure designed only to protect the state and not the wrongdoing driver. Washington's Constitution provides uniform access to courts, and the Supreme Court rules provide this uniform in every county. Private parties, such as drivers who injure others, should be able to be sued in the place where the injury occurred without checking any number of the other 39 counties in Washington. The public has a significant interest in how it can access courts to remedy injuries done to drivers on the road.

VI. CONCLUSION

Because of the important constitutional and societal issues involved Plaintiff Hanson asks this Court to accept review of this

matter. This is about access to our courts and is fundamental to justice.

Respectfully submitted this 26 day of May, 2021.

Marshall W. Casey, WSBA #42552
Attorney for the Ms. Hanson

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the ___ day of May, 2021, I cause a true and correct copy of the foregoing document to be delivered via the Washington State Appellate Court's Secure Portal Electronic Filing System and via the following Method

Christopher J. Kerley Counsel for Respondents		SENT VIA EMAIL: ckerley@ecl-law.com

Dated this on 26 of May, 2021.

Marshall W. Casey

APPENDIX

1. ORDER FOR PUBLISHING
2. OPINION
3. RCW 4.96.020
4. WASHINGTON CONSTITUTION ARTICLE 2 SECTION 26

FILED
APRIL 27, 2021
In the Office of the Clerk of Court
WA State Court of Appeals Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

KYLIE HANSON, individually, Respondent, v. MIRIAM GONZALEZ CARMONA and JOHN DOE CARMONA, husband and wife, individually, and the marital community comprised thereof, Petitioners. SOUTHEAST WASHINGTON OFFICE OF AGING AND LONG TERM CARE ADVISORY COUNCIL, a Washington non-profit corporation, Defendant.	No. 37419-0-III ORDER GRANTING MOTION FOR PUBLICATION

THE COURT has considered the petitioner's motion to publish the court's opinion of March 9, 2021, and the record and file herein, and is of the opinion the motion to publish should be granted. Therefore,

IT IS ORDERED, the opinion filed by the court on March 9, 2021, shall be modified on page 1 to designate it is a published opinion and on page 21 by deletion of the following language:

> A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

PANEL: Judges Fearing, Pennell, Lawrence-Berrey

FOR THE COURT:

REBECCA L. PENNELL
Chief Judge

FILED
MARCH 9, 2021
In the Office of the Clerk of Court
WA State Court of Appeals Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

KYLIE HANSON, individually, Respondent, v. MIRIAM GONZALEZ CARMONA and JOHN DOE CARMONA, husband and wife, individually, and the marital community comprised thereof, Petitioners. SOUTHEAST WASHINGTON OFFICE OF AGING AND LONG TERM CARE ADVISORY COUNCIL, a Washington non-profit corporation, Defendant.	)	No. 37419-0-III UNPUBLISHED OPINION

FEARING, J. — On discretionary review, we address a unique question: whether RCW 4.96.010 and RCW 4.96.020(4), Washington's municipal corporation claims-filing statutes, violate the separation of powers doctrine because of a conflict with CR 3(a). Defendant Miriam Gonzalez Carmona, a government entity employee, allegedly caused a car accident that resulted in injuries to plaintiff Kylie Hanson. Hanson failed to file a

pre-suit notice under RCW 4.96.020(4) within the statute of limitations. Carmona moved for summary judgment dismissal based on Hanson's omission of the statutory pre-suit notice, which motion the trial court denied. We hold RCW 4.96.020(4) to be constitutional in face of a separation of powers challenge. We also reject Hanson's argument that a claimant need not file a pre-suit notice on the municipality when the claimant sues the government employee in her individual capacity but when the employee committed the tort during the course of employment. We reverse the trial court's denial of summary judgment to Carmona.

FACTS

Kylie Hanson sues Miriam Gonzalez Carmona for an automobile accident. On September 6, 2016, Carmona drove a vehicle that struck a car driven by Hanson in an intersection in Spokane Valley. Carmona failed to obey a red traffic light and proceeded into the intersection.

At the time of the collision, Miriam Gonzalez Carmona drove a car in the course of her work with Southeast Washington Office of Aging and Long Term Care (SEW ALTC), an agency on aging established pursuant to chapter 74.38 RCW. Eight southeastern Washington counties created SEW ALTC through an interlocal agreement. CP 17-18, CP 21. SEW ALTC is a local governmental entity. SEW ALTC owned the Chevy Malibu driven by Carmona.

PROCEDURE

On August 26, 2019, Kylie Hanson filed suit against Miriam Gonzalez Carmona and an advisory council that oversees SEW ALTC. Kylie Hanson never filed a statutory notice of claim with Carmona's employer, SEW ALTC.

On October 7, 2019, Miriam Gonzalez Carmona and the advisory council brought a motion for summary judgment seeking dismissal of the suit with prejudice. The two defendants argued that Carmona's employer, SEW ALTC, is a local governmental entity. According to the defendants, Kylie Hanson needed to file a pre-suit tort claim with SEW ALTC under RCW 4.96.020 before commencement of a lawsuit against Carmona. The defendants also argued that the three-year statute of limitations had expired.

On October 28, 2019, Kylie Hanson filed an amended complaint that removed the advisory council as a defendant. She did not substitute SEW ALTC as a defendant. Miriam Gonzalez Carmona became the sole defendant. Hanson also removed in the amended complaint any allegation that Gonzalez Carmona operated the vehicle within the scope of her employment.

When responding to the summary judgment motion, Kylie Hanson did not contend that Miriam Gonzalez Carmona worked outside the scope of her employment with SEW ALTC at the time of the collision. Hanson argued, however, that Miriam Gonzalez Carmona remained personally liable for the accident regardless of her employer.

The trial court denied Miriam Gonzalez Carmona's summary judgment motion. The trial court ruled that the suit against Carmona individually could survive the lack of a pre-suit government claim. We granted discretionary review of the ruling.

LAW AND ANALYSIS

Miriam Gonzalez Carmona contends that she is a government entity employee and that Kylie Hanson needed to have filed a notice of claim under RCW 4.96.020(4) before commencing a lawsuit against her since she performed her acts within the scope of her employment. In response, Kylie Hanson argues six sometimes overlapping points. First, Carmona remains personally and privately liable for her tortious conduct regardless of the identity of her employer and regardless of whether she acted in the scope of her employment. Second, because SEW ALTC need not be joined in this lawsuit, Hanson need not supply Carmona or her employer a pre-suit tort claim. Third, any agreement by the government entity or its insurer to indemnify and provide a defense to Carmona does not convert this lawsuit into one against the government. Fourth, Carmona cannot rely on the government claims-filing statute because Hanson dismissed any quasi-governmental entity before the trial court issued its summary judgment denial. Fifth, CR 3(a) governs the commencement of a lawsuit, and RCW 4.96.020(4) impermissibly conflicts with the court rule. This argument asserts the separation of powers doctrine. Sixth, dismissal of her claim against Carmona for the failure to serve a pre-suit notice violates Hanson's fundamental property rights. The first four contentions rely primarily on common law,

and we conflate those four arguments for purposes of analysis. Hanson grounds the last two arguments on constitutional principles, and we review those arguments together.

Statutory and Common Law

Two Washington statutes control our decision. First, RCW 4.96.010 declares:

> (1) All local governmental entities, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their past or present officers, employees, or volunteers while performing or in good faith purporting to perform their official duties, to the same extent as if they were a private person or corporation. *Filing a claim for damages within the time allowed by law shall be a condition precedent to the commencement of any action* claiming damages.

(Emphasis added.) In turn, RCW 4.96.020 reads, in part:

> (1) The provisions of this section apply to claims for damages against all local governmental entities and their officers, *employees*, or volunteers, acting in such capacity.
>
> (2) . . . All claims for damages against a local governmental entity, or against any local governmental entity's officers, employees, or volunteers, acting in such capacity, shall be presented to the agent within the applicable period of limitations within which an action must be commenced.
>
> . . . .
>
> (4) No action subject to the claim filing requirements of this section shall be commenced against any local governmental entity, or against any local governmental entity's officers, *employees*, or volunteers, acting in such capacity, for damages arising out of tortious conduct until sixty calendar days have elapsed after the claim has first been presented to the agent of the governing body thereof. The applicable period of limitations within which an action must be commenced shall be tolled during the sixty calendar day period.

(Emphasis added.) Similar statutes apply to claims brought against the State of

Washington and the State's employees. The statutes are alternatively called nonclaim statutes, pre-suit notice statutes, and claims-filing statutes.

Washington courts have held that the claimant must file the statutory pre-suit claim with the local government or the State for torts committed by an employee during the scope of work for the government. *Wright v. Terrell*, 162 Wn.2d 192, 195, n.1, 170 P.3d 570 (2007); *Hyde v. University of Washington Medical Center*, 186 Wn. App. 926, 930, 347 P.3d 918 (2015); *Woods v. Bailet*, 116 Wn. App. 658, 665-66, 67 P.3d 511 (2003); *Hardesty v. Stenchever*, 82 Wn. App. 253, 261, 917 P.2d 577 (1996). The claim statute extends to suits arising from the conduct of a government employee even if the claimant only sues the employee. *Hyde v. University of Washington Medical Center*, 186 Wn. App. at 930-31 (2015).

The Washington Supreme Court, in *Bosteder v. City of Renton*, 155 Wn.2d 18, 117 P.3d 316 (2005), identified the purposes behind a government pre-suit notice statute. The government should be afforded an opportunity to investigate and remedy any potential claims prior to or in place of entrance of those claims into the judicial system. RCW 4.96.041 requires a local government to pay for the defense of its employee when the plaintiff sues the employee for acts committed within the scope of her employment. Thus, whether the plaintiff names the employee in the suit, the local government entity, or both, the action will implicate the local government's finances. In addition to RCW 4.96.041(2) demanding that the governmental entity provide a defense for an employee

sued for an act committed in good faith and in the scope of her employment, RCW 4.96.041(4) directs the government entity to pay any judgment against such employee.

To avoid application of RCW 4.96.020(4), Kylie Hanson forwards the Washington Supreme Court's decision in *Eastwood v. Horse Harbor Foundation, Inc.*, 170 Wn.2d 380, 241 P.3d 1256 (2010) for the proposition that an employee may be held personally liable for her tortious conduct regardless if she committed the tort in the course of employment. In that case, the Supreme Court reviewed a Court of Appeals decision that held the lessor of real property could not recover for economic loss caused by the lessee's waste because the lessor's remedies were those limited to remedies listed in the lease. The Court of Appeals also ruled that the lessee's employee could not be individually liable for breach of contract. The Supreme Court reversed. The high court held that the lessee held a tort duty to prevent waste independent of the parties' contract. In turn, the lessor could also recover tort damages from the employee responsible for the waste. The Supreme Court only wrote a modest paragraph when addressing the second issue. The court followed the settled rule that an employee who tortiously causes injury to a third person may be held personally liable to that person regardless of whether he or she committed the tort while acting within the scope of employment.

We do not disagree with or breach the holding in *Eastwood v. Horse Harbor Foundation*. The question of whether an employee may be personally liable for her tortious conduct occurring during the course of employment is a distinct legal issue from

whether the claimant must file a pre-suit tort claim against a government employee before maintaining a court action.

Kylie Hanson posits the related argument that a plaintiff may sue either the employee or the employer for the employee's tortious conduct. She cites *Vanderpool v. Grange Insurance Association*, 110 Wn.2d 483, 487, 756 P.2d 111 (1988) and *Orwick v. Fox*, 65 Wn. App. 71, 80-81, 828 P.2d 12 (1992). In *Vanderpool v. Grange Insurance Association*, the Supreme Court held that release of the employer from liability for a tort does not release the employee. In *Orwick v. Fox*, this court held that the employer is not an indispensable party, under CR 19(b), for a suit against an employee for a tort committed during the course of employment.

We do not quarrel with the principles announced in *Vanderpool v. Grange Insurance Association* and *Orwick v. Fox*. Nevertheless, the rulings in the two cases do not address the question before this court: whether the claimant must file a pre-suit tort claim under RCW 4.96.020(4) when suing a government employee without adding the government employer as a defendant. *Hyde v. University of Washington Medical Center*, 186 Wn. App. 926, 930 (2015) answered that very question in the affirmative.

Constitutional Law

Kylie Hanson's statutory and common law arguments may be more overture to her constitutional argument than aria. She contends that RCW 4.96.010 and RCW 4.96.020(4) are unconstitutional under the separation of powers doctrine. To set the

operatic stage for this constitutional attack, we first discuss sovereign immunity, the legislature's waiver of the immunity, other constitutional challenges to nonclaim statutes, and constitutional challenges under the separation of powers doctrine to other statutory preconditions to filing suit.

WASH. CONST. art. II, § 26 declares:

> The legislature shall direct by law, in what manner, and in what courts, suits may be brought against the state.

Article II, section 26 of the constitution acknowledges the doctrine of sovereign immunity recognized at common law. *Coulter v. State*, 93 Wn.2d 205, 207, 608 P.2d 261 (1980). Early case law, however, acknowledged that the legislature could waive the State's sovereign immunity and render the State liable for designated causes of action. *Riddoch v. State*, 68 Wash. 329, 332, 123 P. 450 (1912); *Billings v. State*, 27 Wash. 288, 291, 67 P. 583 (1902). Otherwise, the State avoids liability for the tortious conduct of its officers, agents, or servants. *Riddoch v. State*, 68 Wash. at 332; *Billings v. State*, 27 Wash. at 293.

In RCW 4.96.010(1), the Washington State Legislature waived immunity for local government entities. To repeat, the lengthy first sentence of subsection 1 of the statute declares:

> All local governmental entities, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their past or present officers, employees, or volunteers while performing or in good faith purporting to perform their

> official duties, to the same extent as if they were a private person or corporation.

Chapter 4.96 RCW originated as a result of the legislature's authority to conditionally waive sovereign immunity. *Myles v. Clark County*, 170 Wn. App. 521, 528, 289 P.3d 650 (2012).

Critically important to this appeal is the principle that, since the right to sue the state, a county, or other state-created governmental agency must be derived from statutory enactment, the legislature may establish the conditions which must be met before that right can be exercised. *Nelson v. Dunkin*, 69 Wn.2d 726, 729, 419 P.2d 984 (1966). RCW 4.96.010(1) imposed, as a condition to suing a local government, the filing of the pre-suit claim. The second sentence of the subsection reads in part:

> Filing a claim for damages within the time allowed by law shall be a condition precedent to the commencement of any action.

Claimants based previous constitutional challenges to Washington pre-suit notice statutes on the equal protection clause. The Washington Supreme Court held older versions of nonclaim statutes violative of the clause because they created two classes of tort victims with two classes of tortfeasors, governmental and nongovernmental, but then did not extend the statute of limitations during the waiting time resulting for pre-suit notices for claims against the government. *Petersen v. State*, 100 Wn.2d 421, 446, 671 P.2d 230 (1983); *Hall v. Niemer*, 97 Wn.2d 574, 579-80, 649 P.2d 98 (1982); *Jenkins v. State*, 85 Wn.2d 883, 890-91, 540 P.2d 1363 (1975); *Hunter v. North Mason High*

School, 85 Wn.2d 810, 813, 539 P.2d 845 (1975). Equal protection guarantees a party the same amount of time to bring a tort action against the government as he or she would have to bring an action against a private tortfeasor. *Daggs v. City of Seattle*, 110 Wn.2d 49, 53, 750 P.2d 626 (1988).

The Washington Supreme Court in *Hunter v. North Mason High School*, 85 Wn.2d 810 (1975), expressed criticisms that apply to all pre-suit notice statutes for claims against government units. A broad reading of the opinion would lead to declaring all nonclaim statutes unconstitutional. The high court observed that the defenders of the statutes argue that government entities are so large and are principal targets of tort claims such that their managing agents lack awareness of many potentially liability-producing incidents and therefore need special notice to adequately investigate and defend against them. The court answered this argument by noting that the discrimination behind the claims-filing statutes do not reflect the concern. Governmental bodies range in size from small municipal corporations to the state itself. As a class they are neither larger nor more liability-prone than the class of private tortfeasors, which includes everything from single individuals to giant corporations financially larger than the state. Most governmental subdivisions are small enough for their officials to learn of incidents which may subject them to liability. Government entities possess special investigative resources that better equip them to investigate and defend negligence suits than most private tortfeasors, for whom the law affords no special notice privileges. The privilege of

special notice given governmental bodies and the burden concomitantly placed on claimants does not correspond to any special need or inability to investigate particular to the bodies.

The *Hunter* court added that other purposes forwarded to justify nonclaim statutes also fail to connect to the distinction drawn between governmental tortfeasors and private tortfeasors. Special notice of possible future claims does little to facilitate budget planning, since most governmental entities are so small as to be unable to use actuarial methods to forecast liabilities and self-insure and will usually purchase insurance like any private individual or corporation. To the analysis of the *Hunter* court could be added the observation that many, if not most, municipalities summarily reject or ignore without consideration pre-suit notices.

In *Hunter v. North Mason High School*, the Washington Supreme Court concluded that, any policy of placing roadblocks in the way of potential claimants against government units having been abandoned, the court could not uphold nonclaim statutes simply because they serve to protect the public treasury. Claims-filing statutes serve no substantial or even rational basis. The arbitrary burden placed on state claimants by the pre-suit notice statutes could not withstand constitutional scrutiny.

The Washington Supreme Court soon rejected the equal protection analysis promoted in *Hunter v. North Mason High School* and distanced itself from the precedent created in the decision. Later Washington Supreme Court decisions courts sought to limit

Hunter's holding to the particular claims-filing statute at issue in *Hunter* despite the rationale of the decision applying to all pre-suit notice statutes. In *Hunter*, the relevant version of RCW 4.96.020 demanded that the claimant give notice of any claim within one-hundred and twenty days of the injury, not outside of a minimum number of days before filing suit.

In *Daggs v. City of Seattle*, 110 Wn.2d 49 (1988), the Washington Supreme Court accepted at least one rationale behind claims-filing statutes that the *Hunter* court indirectly rejected. In *Daggs v. City of Seattle*, the court mentioned that claims filing laws serve the important function of fostering inexpensive settlement of tort claims. Within five years of *Hunter v. North Mason High School*, the Washington Supreme Court began upholding, against equal protection challenges, the requirement of pre-suit notices before filing an action against a government entity when the statute did not stunt the claimant's time for suing. *Medina v. Public Utility District No. 1 of Benton County*, 147 Wn.2d 303, 313-14, 53 P.3d 993 (2002); *Daggs v. City of Seattle*, 110 Wn.2d 49 (1988); *Hall v. Niemer*, 97 Wn.2d 574, 581 (1982); *Coulter v. State*, 93 Wn.2d 205, 207, 608 P.2d 261 (1980).

Kylie Hanson, in addition to contending that RCW 4.96.020(4) violates the separation of powers doctrine, maintains that the statute interferes with her fundamental right to compensation for tort injuries. Nevertheless, the Supreme Court has reasoned that a nonclaim statute does not impact a fundamental right or create a suspect

classification. *McDevitt v. Harborview Medical Center*, 179 Wn.2d 59, 316 P.3d 469 (2013); *Daggs v. City of Seattle*, 110 Wn.2d 49, 55-56 (1988). Therefore, the court applies minimal scrutiny to pre-suit notice statutes and upholds the statute if its purpose possesses a rational relationship with the language of the statute. Waiting a few months to file suit does not substantially burden tort victims. *Daggs v. City of Seattle*, 110 Wn.2d 49, 56 (1988). The waiting period does not harm the victim when the statute provides for a tolling of the statute of limitations during the period.

Kylie Hanson also argues that the legislature exceeded its authority when creating procedures attendant to suing government entity employees, because, despite working for the government, the employees remain private persons. Washington courts have rejected challenges to nonclaim statutes based on an employee also being a private individual. *Wright v. Terrell*, 162 Wn.2d 192, 195 n.1 (2007); *Hyde v. University of Washington Medical Center*, 186 Wn. App. at 930-31 (2015); *Hardesty v. Stenchever*, 82 Wn. App. at 260-62 (1996). Hanson cites no law to support her contention that the legislature cannot constitutionally benefit government employees, who remain private persons, with the protection of a claims-filing statute.

In this appeal, Kylie Hanson astutely does not rely on the equal protection clause, but asserts unconstitutionality on a ground not addressed before in a Washington appellate decision in the context of government pre-suit notice statutes. Hanson creatively contends that RCW 4.96.020(4) violates the separation of powers doctrine.

Also, the legislature exceeded its authority by enacting a procedural rule, which authority, under the separation of powers doctrine, only belongs to the Supreme Court. According to Hanson, the statute conflicts with CR 3(a) adopted by the Supreme Court. A plaintiff, in a reported decision, has not before argued that RCW 4.96.010 and RCW 4.96.020(4) conflict with CR 3(a) and thereby violate the separation of powers doctrine.

The Washington State Constitution does not contain a formal separation of powers clause, but the courts presume that the division of our government into different branches throughout our state's history calls for a vital separation of powers doctrine. *Brown v. Owen*, 165 Wn.2d 706, 718, 206 P.3d 310 (2009); *Carrick v. Locke*, 125 Wn.2d 129, 135, 882 P.2d 173 (1994). The doctrine of separation of powers divides power into three coequal branches of government: executive, legislative, and judicial. *City of Fircrest v. Jensen*, 158 Wn.2d 384, 393-94, 143 P.3d 776 (2006) (plurality opinion). The doctrine does not demand that the branches of government be hermetically sealed off from one another, but ensures that the fundamental functions of each branch remain inviolate. *Hale v. Wellpinit School District No. 49*, 165 Wn.2d 494, 504, 198 P.3d 1021 (2009). If the activity of one branch threatens the independence or integrity or invades the prerogatives of another, that activity violates the separation of powers. *State v. Moreno*, 147 Wn.2d 500, 505-06, 58 P.3d 265 (2002).

Some fundamental functions lie within the inherent power of the judicial branch, including the power to promulgate rules for court practice. *Waples v. Yi*, 169 Wn.2d 152,

158, 234 P.3d 187 (2010). If a statute appears to conflict with a court rule, this court will first attempt to harmonize the two and give effect to both, but if they cannot be harmonized, the court rule will prevail in procedural matters, and the statute will prevail in substantive matters. *Waples v. Yi*, 169 Wn.2d 152, 158.

Kylie Hanson primarily relies on *Waples v. Yi*, 169 Wn.2d 152. In *Waples*, the Washington Supreme Court addressed a challenge to the constitutionality of former RCW 7.70.100(1) (2006), which required a plaintiff to provide health care providers with ninety days' notice of the plaintiff's intention to file a medical malpractice suit. In a lawsuit against her dentist, Nancy Waples conceded that she did not provide the required notice, but argued that the requirement is unconstitutional. The court agreed and declared the statute unconstitutional under the separation of powers doctrine.

The Washington Supreme Court, in *Waples v. Yi*, faced the question of whether former RCW 7.70.100(1) (2006) conflicts with the commencement provisions of CR 3(a) and whether that conflict involves procedural law or substantive law. Nancy Waples argued that former RCW 7.70.100(1) conflicted with the court rule because the notice requirement of the statute fundamentally changed the procedures for the commencement of a civil action under CR 3(a). CR 3(a) provides in pertinent part:

> Except as provided in rule 4.1, a civil action is *commenced* by service of a copy of a summons together with a copy of a complaint, as provided in rule 4 or by filing a complaint.

(Emphasis added.) In contrast, the pertinent language of former RCW 7.70.100(1) then provided:

> No action based upon a health care provider's professional negligence may be *commenced* unless the defendant has been given at least ninety days' notice of the intention to commence the action.

(Emphasis added.) The Washington Supreme Court observed that requiring notice under former RCW 7.70.100(1) added an additional step for commencing a suit to those required by CR 3(a). Failure to provide the notice required by former RCW 7.70.100(1) resulted in a lawsuit's dismissal even when the complaint was properly filed and served pursuant to CR 3(a). The court could not harmonize the conflict between former RCW 7.70.100(1) and CR 3(a). The court concluded that former RCW 7.70.100(1) involved procedures, since procedural rules involve the operations of the courts. Substantive law creates, defines, and regulates primary rights. RCW 7.70.100(1) did not address the primary rights of either party and dealt only with the procedures to effectuate those rights. Therefore, CR 3(a) trumped former RCW 7.70.100(1).

When issuing *Waples v. Yi*, the Washington Supreme Court relied on its earlier decision in *Putman v. Wenatchee Valley Medical Center, P.S.*, 166 Wn.2d 974, 216 P.3d 374 (2009). In the latter case, the court applied the separation of powers doctrine to declare RCW 7.70.150 unconstitutional because of its conflict with the pleading requirements of CR 8 and 11. RCW 7.70.150 demanded that, at the time a claimant filed a suit against a health care provider, the plaintiff file a certificate of merit signed by a

health care provider that declared a reasonable probability existed that the defendant failed to exercise the standard of care. CR 11 states that attorneys need not verify pleadings in medical malpractice actions, let alone any lawsuits. CR 8 allows notice pleading. The conflict involved procedural law and not substantive law in that the certificate of merit requirement encroached upon the judiciary's power to set court rules.

In *Putman v. Wenatchee Valley Medical Center*, the court wrote that civil liberty consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. Therefore, the people have a right of access to courts. The right of access to courts includes the right of discovery authorized by the civil rules. Requiring medical malpractice plaintiffs to submit a certificate prior to discovery hindered their right of access to courts. Through the discovery process, plaintiffs uncover the evidence necessary to pursue their claims.

As with former RCW 7.70.100(1) (2006), RCW 4.96.020(4) also reads that the claimant must file a pre-suit notice before the action "shall be commenced." The nonclaim statute imposes an additional procedural obstacle on the claimant for the purpose of commencing action beyond the steps demanded by CR 3(a).

We observe a distinction between the circumstances in *Putnam v. Wenatchee Valley Medical Center* and *Waples v. Yi*. The tortfeasors in the two earlier decisions were private entities. The state constitution did not expressly grant the legislature authority over procedures in medical malpractice claims. The statute challenged by Kylie Hanson,

RCW 4.96.020(4), applies only in favor of government tortfeasors. The Washington Constitution expressly grants the state legislature the power to waive sovereign immunity, and, if it does, to impose conditions on suits against the state and municipal corporations. By adopting RCW 4.96.010 and .020(4), the legislature imposed one of several conditions on suing the government.

We deem *McDevitt v. Harborview Medical Center*, 179 Wn.2d 59, 316 P.3d 469 (2013) more on point than *Waples v. Yi* and *Putnam v. Wenatchee Valley Medical Clinic*. In *McDevitt*, the claimant challenged a former version of RCW 7.70.100(1), which statute required a ninety-day pre-suit notice before filing a medical malpractice suit. The Supreme Court had held the statute unconstitutional in *Waples v. Yi* as applied to private defendants. Glen McDevitt sued Harbor View Medical Center, a government entity operated by the University of Washington.

In *McDevitt v. Harborview Medical Center*, the Washington Supreme Court concluded that the ninety day pre-suit notice requirement is constitutional as applied against the State on the grounds that the legislature may establish conditions precedent, including pre-suit notice requirements. Thus the reasoning behind invalidating the statute in *Waples v. Yi* did not apply. The requirement did not constitute a substantial burden on the ability of governmental tort victims to obtain relief. The classification of plaintiffs suing state defendants did not infringe on a fundamental right or create a suspect classification. The requirement also rationally related to a legitimate government interest

because of the multitude of departments, agencies, officers and employees and their diverse and widespread activities, touching virtually every aspect of life within the state. The pre-suit notice also assisted government entities in budgeting. The statute promoted pre-suit settlement of valid claims.

We recognize that many, if not most, of the justices in *McDevitt v. Harborview Medical Center* concurred in the lead opinion because the lead opinion determined to apply its ruling prospectively only. Only three justices signed the lead opinion. Nevertheless, no later Washington Supreme Court has rejected the reasoning of *McDevitt*. We deem *McDevitt v. Harborview Medical Center* controlling in this appeal.

Failure to comply with the nonclaim statute's filing requirement leads to dismissal of the suit. *Daggs v. City of Seattle*, 110 Wn.2d 49, 57 (1988); *Hyde v. University of Washington Medical Center*, 186 Wn. App. 926, 929 (2015). The government need not show prejudice in order to gain dismissal. *Pirtle v. Spokane Public School District No. 81*, 83 Wn. App. 304, 309-10, 921 P.2d 1084 (1996).

Because *McDevitt v. Wenatchee Valley Medical Clinic* is a fractioned opinion, we welcome the Washington Supreme Court visiting the question of whether RCW 4.96.020(4) violates the separation of powers doctrine. In the meantime, we are bound to enforce the legislative will when exercised within its constitutional limits. *Robb v. City of Tacoma*, 175 Wash. 580, 586, 28 P.2d 327 (1933). We presume the constitutionality of a legislative act and will not declare an enactment void unless its invalidity appears

beyond a reasonable doubt. *Robb v. City of Tacoma*, 175 Wash. 580. We must give full effect to the plain language of a statute even when the results of doing so may seem unduly harsh. *Bosteder v. City of Renton*, 155 Wn.2d 18, 41 (2005).

CONCLUSION

We reverse the superior court's denial of Miriam Gonzalez Carmona's motion for summary judgment. We remand to the superior court to enter judgment dismissing Kylie Hanson's suit against Carmona.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Fearing, J.

WE CONCUR:

Lawrence-Berrey, J.

Pennell, C.J.

RCW 4.96.020

Tortious conduct of local governmental entities and their agents—Claims—Presentment and filing—Contents.

(1) The provisions of this section apply to claims for damages against all local governmental entities and their officers, employees, or volunteers, acting in such capacity.

(2) The governing body of each local governmental entity shall appoint an agent to receive any claim for damages made under this chapter. The identity of the agent and the address where he or she may be reached during the normal business hours of the local governmental entity are public records and shall be recorded with the auditor of the county in which the entity is located. All claims for damages against a local governmental entity, or against any local governmental entity's officers, employees, or volunteers, acting in such capacity, shall be presented to the agent within the applicable period of limitations within which an action must be commenced. A claim is deemed presented when the claim form is delivered in person or is received by the agent by regular mail, registered mail, or certified mail, with return receipt requested, to the agent or other person designated to accept delivery at the agent's office. The failure of a local governmental entity to comply with the requirements of this section precludes that local governmental entity from raising a defense under this chapter.

(3) For claims for damages presented after July 26, 2009, all claims for damages must be presented on the standard tort claim form that is maintained by the office of risk management in the department of enterprise services, except as allowed under (c) of this subsection. The standard tort claim form must be posted on the department of enterprise services' web site.

(a) The standard tort claim form must, at a minimum, require the following information:

(i) The claimant's name, date of birth, and contact information;

(ii) A description of the conduct and the circumstances that brought about the injury or damage;

(iii) A description of the injury or damage;

(iv) A statement of the time and place that the injury or damage occurred;

(v) A listing of the names of all persons involved and contact information, if known;

(vi) A statement of the amount of damages claimed; and

(vii) A statement of the actual residence of the claimant at the time of presenting the claim and at the time the claim arose.

(b) The standard tort claim form must be signed either:

(i) By the claimant, verifying the claim;

(ii) Pursuant to a written power of attorney, by the attorney-in-fact for the claimant;

(iii) By an attorney admitted to practice in Washington state on the claimant's behalf; or

(iv) By a court-approved guardian or guardian ad litem on behalf of the claimant.

(c) Local governmental entities shall make available the standard tort claim form described in this section with instructions on how the form is to be presented and the name, address, and business hours of the agent of the local governmental entity. If a local governmental entity chooses to also make available its own tort claim form in lieu of the standard tort claim form, the form:

(i) May require additional information beyond what is specified under this section, but the local governmental entity may not deny a claim because of the claimant's failure to provide that additional information;

(ii) Must not require the claimant's social security number; and

(iii) Must include instructions on how the form is to be presented and the name, address, and business hours of the agent of the local governmental entity appointed to receive the claim.

(d) If any claim form provided by the local governmental entity fails to require the information specified in this section, or incorrectly lists the agent with whom the claim is to be filed, the local governmental entity is deemed to have waived any defense related to the failure to provide that specific information or to present the claim to the proper designated agent.

(e) Presenting either the standard tort claim form or the local government tort claim form satisfies the requirements of this chapter.

(f) The amount of damages stated on the claim form is not admissible at trial.

(4) No action subject to the claim filing requirements of this section shall be commenced against any local governmental entity, or against any local governmental entity's officers, employees, or volunteers, acting in such capacity, for damages arising out of tortious conduct until sixty calendar days have elapsed after the claim has first been presented to the agent of the governing body thereof. The applicable period of limitations within which an action must be commenced shall be tolled during the sixty calendar day period. For the purposes of the applicable period of limitations, an action commenced within five court days after the sixty calendar day period has elapsed is deemed to have been presented on the first day after the sixty calendar day period elapsed.

(5) With respect to the content of claims under this section and all procedural requirements in this section, this section must be liberally construed so that substantial compliance will be deemed satisfactory.

[2015 c 225 § 6; 2012 c 250 § 2; 2009 c 433 § 1; 2006 c 82 § 3; 2001 c 119 § 2; 1993 c 449 § 3; 1967 c 164 § 4.]

NOTES:

Purpose—Severability—1993 c 449: See notes following RCW 4.96.010.

counties composing the joint senatorial or joint representative district, the person appointed to fill the vacancy must be from the same legislative district and of the same political party as the legislator whose office has been vacated, and in case a majority of said county commissioners do not agree upon the appointment within sixty days after the vacancy occurs, the governor shall within thirty days thereafter, and from the list of nominees provided for herein, appoint a person who shall be from the same legislative district and of the same political party as the legislator whose office has been vacated. [AMENDMENT 32, 1955 Senate Joint Resolution No. 14, p 1862. Approved November 6, 1956.]

Amendment 13 (1930) — Art. 2 Section 15 VACANCIES IN LEGISLATURE — *Such vacancies as may occur in either house of the legislature shall be filled by appointment by the board of county commissioners of the county in which the vacancy occurs, and the person so appointed shall hold office until his successor is elected at the next general election, and shall have qualified:* Provided, *That in case of a vacancy occurring in the office of joint senator, the vacancy shall be filled by appointment by the joint action of the boards of county commissioners of the counties composing the joint senatorial district.* [AMENDMENT 13, 1929 p 690. Approved November, 1930.]

Original text — Art. 2 Section 15 WRITS OF ELECTION TO FILL VACANCIES — *The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislature.*

SECTION 16 PRIVILEGES FROM ARREST. Members of the legislature shall be privileged from arrest in all cases except treason, felony and breach of the peace; they shall not be subject to any civil process during the session of the legislature, nor for fifteen days next before the commencement of each session.

SECTION 17 FREEDOM OF DEBATE. No member of the legislature shall be liable in any civil action or criminal prosecution whatever, for words spoken in debate.

SECTION 18 STYLE OF LAWS. The style of the laws of the state shall be: "Be it enacted by the Legislature of the State of Washington." And no laws shall be enacted except by bill.

SECTION 19 BILL TO CONTAIN ONE SUBJECT. No bill shall embrace more than one subject, and that shall be expressed in the title.

SECTION 20 ORIGIN AND AMENDMENT OF BILLS. Any bill may originate in either house of the legislature, and a bill passed by one house may be amended in the other.

SECTION 21 YEAS AND NAYS. The yeas and nays of the members of either house shall be entered on the journal, on the demand of one-sixth of the members present.

SECTION 22 PASSAGE OF BILLS. No bill shall become a law unless on its final passage the vote be taken by yeas and nays, the names of the members voting for and against the same be entered on the journal of each house, and a majority of the members elected to each house be recorded thereon as voting in its favor.

Governmental continuity during emergency periods: Art. 2 Section 42.

SECTION 23 COMPENSATION OF MEMBERS. Each member of the legislature shall receive for his services five dollars for each day's attendance during the session, and ten cents for every mile he shall travel in going to and returning from the place of meeting of the legislature, on the most usual route.

Compensation of legislators, elected state officials, and judges: Art. 28 Section 1, Art. 30.

SECTION 24 LOTTERIES AND DIVORCE. The legislature shall never grant any divorce. Lotteries shall be prohibited except as specifically authorized upon the affirmative vote of sixty percent of the members of each house of the legislature or, notwithstanding any other provision of this Constitution, by referendum or initiative approved by a sixty percent affirmative vote of the electors voting thereon. [**AMENDMENT 56,** 1971 Senate Joint Resolution No. 5, p 1828. Approved November 7, 1972.]

Original text — Art. 2 Section 24 LOTTERIES AND DIVORCE — *The legislature shall never authorize any lottery or grant any divorce.*

SECTION 25 EXTRA COMPENSATION PROHIBITED. The legislature shall never grant any extra compensation to any public officer, agent, employee, servant, or contractor, after the services shall have been rendered, or the contract entered into, nor shall the compensation of any public officer be increased or diminished during his term of office. Nothing in this section shall be deemed to prevent increases in pensions after such pensions shall have been granted. [**AMENDMENT 35,** 1957 Senate Joint Resolution No. 18, p 1301. Approved November 4, 1958.]

Compensation of legislators, elected state officials, and judges: Art. 28 Section 1.

Increase during term of certain officers, authorized: Art. 30 Section 1.

Increase or diminution of compensation during term of office prohibited.
county, city, town or municipal officers: Art. 11 Section 8.
judicial officers: Art. 4 Section 13.
state officers: Art. 3 Section 25.

Original text — Art. 2 Section 25 EXTRA COMPENSATION, PROHIBITED — *The legislature shall never grant any extra compensation to any public officer, agent, servant, or contractor, after the services shall have been rendered, or the contract entered into, nor shall the compensation of any public officer be increased or diminished during his term of office.*

SECTION 26 SUITS AGAINST THE STATE. The legislature shall direct by law, in what manner, and in what courts, suits may be brought against the state.

SECTION 27 ELECTIONS — VIVA VOCE VOTE. In all elections by the legislature the members shall vote viva voce, and their votes shall be entered on the journal.

SECTION 28 SPECIAL LEGISLATION. The legislature is prohibited from enacting any private or special laws in the following cases:

1. For changing the names of persons, or constituting one person the heir at law of another.

2. For laying out, opening or altering highways, except in cases of state roads extending into more than one county, and

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