SUPREME COURT OF THE STATE OF WASHINGTON

CAUSE 99546-0

Daniel Elwell Appellant V. State of Washington Appellee	§ § § § § § § § §	MOTION FOR *AMICI CURIAE*

Joe Patrick Flarity, as an individual

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Attorney for *Amici Curiae, pro se*

I INTRODUCTION

Flarity, appears pro se, with a good faith attempt to provide the Panel with additional references helpful in the Elwell issues. Since all the filings presented are from public attorneys, the Panel has been given a limited viewpoint.[1] Flarity presents additional authorities to identify a *systemic*[2] constitutional problem in Div. One.

Flarity does not advocate for Elwell, but appears from a pro se background illustrating the challenge for the public to restrain lawbreaking officials. It seems unreasonably difficult to coax courts to enforce the Constitution for disfavored classes of plaintiffs.

Like Webster Bivens,[3] the illegal search of Daniel Elwell immediately revealed that he was not your typical "law-abiding citizen." As a drug dealer, Bivens could at least claim that he was providing a "community service." (Like cannabis, legalization of psylocibin mushroom seems right around the corner. What is next?) But theft of personal property is universally vilified. Elwell seems to live on the bottom rung of our supposed classless structure. Fortunately for our experiment in democracy, our founders had experienced intense discrimination in England and adroitly crafted our institutions to protect disfavored classes (after nine more amendments). Their principles are carried forth to us on paper. It

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[1] From the Washington Appellate Project website: "All of our cases are appointed to us directly from the Office of Public Defense. We are not private counsel and can only represent individuals whose appeals are assigned to us."

[2] Similar to that identified in Supreme Court letter dated June 4, 2020.

[3] *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971).

takes court enforcement to press them into the fabric of society.[4] Flarity demands the police respect Elwell's civil rights. Ten years is not long enough for Flarity to forget that John T. Williams was shot in the back 4 times while peaceably walking down a Seattle street. The U.S. Supreme Court has never ruled that basic constitutional violations can EVER be considered harmless[5] with illegal arrest always outrageous with civil damages available. Punishment is the best technique to facilitate official change because it generates greater public awareness of problems.

NOTICE OF COORDINATION

All parties were requested to agree to the proposed brief. The email coordination is attached to this Motion.

APPLICABILITY TO FILE

1) PRO SE APPLICABILITY. Elwell presents significant pro se issues with no support base.[6] The Washington Appellate Project has done a fine job focusing on the criminal charge. Flarity identifies the illegal arrest for

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[4] "the promises found in these documents aren't worth the paper they are written on." *A Republic, If You Can Keep It*, by Justice Neil Gorsuch. Published by Crown Forum 2019, a division of Random House. P 40, pointing to the promises listed in the Constitution of North Korea.

[5] *Chapman v. State of California*, 87 S.Ct. 824, 17 L.Ed.2d 705, 386 U.S. 18, 24 A.L.R.3d 1065 (1967).

[6] Nathan Weber, The New York Times: *"Judge Posner said he realized that people without lawyers are mistreated by the legal system, and he wanted to do something about it... went on to found the Posner Center of Justice for Pro Se's, a non-profit foundation."* The Center was **closed** after Judge Posner died.

Elwell, like *Bivens* and *Zink*,[7] carries civil damages with further danger of an unpublished opinion eroding privacy.

2) REQUEST FOR EXCEPTION DUE TO TIMING. Flarity respectfully requests an exception to timing requirements per U.S. v Qazi, 975 F.3d 989, 992 93 (9th Cir. 2020).[8] Flarity just discovered this case with no docket information listed. *Elwell* has applicability to *Zink* with that petition now pending.

3) AMICUS SUPPORT BASE EVIDENT FOR ATTORNEYS. Connected attorneys enjoy an enormous support base. i.e., AAG Melody's Cause against ICE, 2:19- cv-02043-TSZ has a number of Amici in support from AGs all across the country. Likewise, as was pointed out by Senator Whitehouse in the nomination for Justice Barrett, [9] right wing foundations with similar funding appear from a variety of angles posing as unique organizations. i.e., Freedom Foundation, Pacific Legal Foundation, Bradley Foundation, Cato Institute, Americans for Prosperity….

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[7] Zink v. City of Mesa, Cause 100109-6

[8] " It is an entrenched principle that pro se filings "`however inartfully pleaded' are held `to less stringent standards than formal pleadings drafted by lawyers.'" *Hughes v. Rowe*, 449 U.S. 5, 9, 101 S.Ct. 173, 66 L.Ed.2d 163 (1980) (per curiam) (quoting *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972)); Hamilton v. United States, 67 F.3d 761, 764 (9th Cir. 1995). We are specifically directed to "construe pro se pleadings liberally."[2] *Hamilton*, 67 F.3d at 764. This duty applies equally to pro se motions and with special force to filings from pro se inmates. *See, e.g., Thomas v. Ponder*, 611 F.3d 1144, 1150 (9th Cir. 2010); *Zichko v. Idaho*, 247 F.3d 1015, 1020 (9th Cir. 2001)."

[9] "…with the same funders selecting judges, funding campaigns for the judges, and then showing up in court in these orchestrated amicus flotillas to tell the judges what to do… 16 foundations financed the anti-CFPB [Consumer Finance Protection Bureau] amicus brief filers."

4) GOVERNMENT LAWLESSNESS NOT UNCOMMON. Officials in Washington State violate civil rights with impunity. This blatant abuse is only possible because a) the people refuse to come forward to complain, or b) the courts refuse to enforce the law. The public has serious issues restraining the government in Washington State. Flarity demonstrates the "chilling effect" of attorney apathy for civil causes. [10]

5) FLARITY DOES NOT ADVOCATE FOR ELWELL. Flarity has not a scintilla of sympathy for Elwell. Flarity presents this Amicus to preserve Flarity's right to privacy in public and private places in King County by identifying errors at Div. One that are likely to spread.

6) ATTORNEY BARRIER AN ILLEGAL FRANCHISE. The de facto requirement for attorney representation harkens back to the abuses seen in the Star Chamber (1640) notorious for rulings favorable to the King of England.[11] Flarity requests the rights to address this Panel on a matter vital to public places across the entire state as protected by Art. 1, Sec. 8, 12.

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[10] "I can't take this case. There are only a handful of people in the world who understand how this really works in Washington State. You are going to get hammered and there is nothing you can do about it. You are a regular citizen with no inside connections, wealth/employment leverage potential, or a fellow government employee. It would be unseemly to take your money." I, Joe Patrick Flarity, certify (or declare) by *RCW 9A.72.085* as to the truthfulness of this attorney's statement under penalty of perjury.

[11] *Faretta v. California* 422 U.S. 806 (1975) , noted the relationship of the Judiciary Act of 1789, which guarantees self-representation in civil cases, to the sixth amendment. The Court discussed procedure in the seventeenth-century Star Chamber, **where counsel was *required*…**

7) USEFULNESS TO THE PANEL. Flarity's brief is based on a broader perspective on Federal holdings. Flarity believes this Amicus compares in legal substance with a good number of amici presented to this Panel and will be helpful in the decision on Elwell's issues.

LEGAL AUTHORITY TO SUBMIT BRIEF

Judicial Canon 2.2 [4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure **pro se** litigants the opportunity to have their matters fairly heard.

Judicial Canon 2.6[1] The **right to be heard is an essential component of a fair and impartial system of justice**. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

THE ENDS OF JUSTICE: Under the Rules of Appellate Procedure (RAP) 1.2(c), this court may act and waive any of the RAP **"to serve the ends of justice."**

Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 572 (1980) (plurality opinion) (quoting State v. Schmitt, 139 N.W.2d 800, 807 (1966)).

> And access allows the public to "participate in and serve as a check upon the judicial process — an essential component in our structure of self-government." *Globe Newspaper Co. v. Superior Ct. for Norfolk Cty*., 457 U.S. 596, 606 (1982).

RIGHT TO FILE AMICUS SHOULD NOT RESRICTED TO A CLASS

> **SECTION 12 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.

Martinez-Cuevas v. Deruyter Brothers Dairy, 475 P.3d 164, 169, 171 (Wash. 2020):

> WASH. CONST. art. I, § 12. Passed during a period of distrust toward laws that served special interests, **the purpose of article I, section 12 is to limit the sort of favoritism that ran rampant during the territorial period**. *Ockletree v. Franciscan Health Sys.,* 179 Wash.2d 769, 775, 317 P.3d 1009 (2014) (plurality opinion)

RIGHT TO FILE AMICUS SHOULD NOT BE A FRANCHISE OR PRIVILEGE

> SECTION 8 IRREVOCABLE PRIVILEGE, FRANCHISE OR IMMUNITY PROHIBITED. No law granting irrevocably any privilege, franchise or immunity, shall be passed by the legislature.

The denial of pro se amici does not promote the **health and safety of the public**, but the opposite as shown in the Amicus. *Ventenbergs v City of Seattle* 178 P3d 960 163 Wash2d 92 Wash 2008:

> Thus, the plain meaning of the provision at the time of its adoption prohibits the legislature from derogating the common right of all for the benefit of one "citizen, class of citizens, or corporation." Const. art. I, § 12; *see also* Const. art. I, § 8 ("No law granting irrevocably any privilege, franchise or immunity, shall be passed by the legislature."); Const. art. XII, § 22 ("Monopolies and trusts shall never be allowed in this state . . . .").
>
> Both *Smith* and *Carlson,* however, support the proposition that an exclusive franchise is **valid only if it is necessary to achieve a critical public health or safety goal**. See *Smith,* 55 Wash. at 221, 104 P. 249 ("[A]n ordinance which [directly promotes

> public health] is a proper exercise of the police power.");
> *Carlson,* 73 Wash.2d at 82, 436 P.2d 454 .

State v Inland Forwarding Corp 164 Wash 412 2 P2d 888 Wash 1931:

> 'The argument against the power to grant an exclusive privilege is sound, and is fully sustained in [164 Wash. 419] the rule announced by this court is *North Springs Water Co. v. Tacoma,* 21 Wash. 517, 58 P. 773, 47 L. R. A. 214.

Public Utility Dist No 1 of Snohomish County v Taxpayers and Ratepayers of Snohomish County 479 P2d 61 78 Wn2d 724 Wash 1971:

> The entire scheme, RCW 54.44, and the contracts made under it, in my opinion, are not only repugnant to the constitution as a whole but violate it in several other specific particulars. I think they violate Const. art. 1, § 8, which says that 'No law granting irrevocably any privilege, franchise or immunity, shall be passed by the legislature.'

FLARITY CAUSES AND EXPERTISE IDENTIFIED

A major concern of the Panel could be that removing amici barriers would result in a deluge of incoherent filings. The Panel is still able to establish gates. Flarity suggests that pro se amici be limited to civil rights issues against powerful corporations or the sovereign.[12] This will help correct an obvious imbalance our state constitution was deliberately constructed to enhance. [13] Another barrier should be that the authors show previous expertise with legal briefs. Flarity offers the following to meet that

[12] *Snyder v. Ingram*, 48 Wn.2d 637, 639, 296 P.2d 305 (1956)

[13] *"Ever fearful of kings, emperors, and dictators, the founders of our state drafted our constitution as a document of limitations....desiring to prevent public bodies and officers from the abuse of power."* John R. Kinnear, Senator and Delegate at the Washington State Constitutional Convention, Olympia, July 4, 1889.

requirement which exceeds the experience of many attorneys reluctant to challenge the sovereign:

1) Flarity filed 3:20 -cv-6083-RJB in Federal Court to stop Pierce County from destroying the 4th Amendment by an undisputed (and undated) memo approved by DA Mark Lindquist. This is the NOTICE shown in the Brief. The Honorable Judge Bryan ruled that Pierce residents have no 4th amendment rights. This loss is now appealed to the 9th Circuit, 21-35580. Flarity's request to assign an attorney was denied by the 9th Circuit.
2) Ironically, the parallel case of Robin Hordon resulted in this ruling from the Honorable Judge Bryan in *Hordon v. Kitsap County*, CASE NO. 20-5464 RJB: *"The Port Commission's Rule #10 is invalid, unconstitutional, and unenforceable,..."* And it was that easy to restore 1st Amendment rights to display protest signs in Kitsap county parks. The law firm of MacDonald, Hoague and Bayless seems one of those *"handful of people in the world who understands how this really works in Washington State."* See FN9.
3) Flarity filed 3:20-cv-06247-RJB in Federal Court to stop Pierce County from closing the BOE court to the public in violation of Federal and State Laws. The Honorable Judge Bryan ruled that Pierce County residents have no 1st Amendment rights to open courts. This action is appealed to the 9th Circuit, 21-35661. Flarity's request to assign an attorney was denied by the 9th Circuit.
4) Flarity filed 20-2-16139-0 in King County to overturn unconstitutional RCW 84.40.038 which is being used by BOE's across the state to deny

all petitions for delay in violation of Art. 1, Sec. 3 due process requirements. This case is now on appeal in Div. I, 82381-7. Ironically, the AG argues FOR 1st Amendment rights to court access before Judge Zilly and AGAINST 1st Amendment rights to court access in Div. I.[14]

5) Flarity filed 3:20-cv-05219-RBL to compel Pierce County to follow the instructions of the WASHINGTON SUPREME COURT for infraction ticket wording, subsequently documented per RCW 7.80.070. **Notice—Determination final until contested –Form.** The Honorable Judge Leighton determined that the 14th amendment does not apply to the residents of Pierce County for equal protect of the law. Flarity's request to assign an attorney was denied by the 9th Circuit. The 9th Cir. confirmed the FRCP 12(b) dismissal and refused to publish the decision.[15] Subsequently, the ACLU won a case prohibiting suspension of driver's licenses in Thurston County for similar issues. *Pierce et al v. DOL*, 20-2-02149-34.

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[14] From AAG Melody's Complaint: 2:19- cv-02043-TSZ: FIFTH CLAIM (Right of Access to the Courts)...constitutional right of access to the courts prohibits systemic official action that bans or obstructs access to the courts, including the filing or presenting of suits....Defendants' actions deprive Washington and its residents of meaningful access to the courts in violation of rights under the First, Fifth, Sixth, and Fourteenth Amendments."

[15] Confirming the de facto practice documented by Edward Cantu, UMKC School of Law in *NO GOOD DEED GOES UNPUBLISHED: PRECEDENT STRIPPING AND THE NEED FOR A NEW PROPHYLACTIC RULE*.

CONCLUSION

Flarity's amicus proposes consideration of numerous unexamined Federal and State decisions for privacy. The major new addition concerns the importance and power of JUDICIAL DISSENT, which have shaped our culture for the better. The brief also examines how precedent stripping, cursory rulings and unpublished opinions violate federal amendments and State Art. 1 rights. The advantage pro se law-breakers enjoy over law-abiding pro se citizens attempting to correct official behavior is also shown.

CERTIFICATE OF COMPLIANCE TO WORD LIMIT

Total word count is 2516 and is within the limits or RAP 18.17.

CERTIFICATION AND SIGNING:

By signing below, Flarity certifies that this Motion complies with the requirements of RAP 17 for Motions to the best of Flarity's knowledge and is sworn to be true under penalty of perjury.

DATE: November 29, 2021

/s/ Joe Flarity
Joe Patrick Flarity
249 Main Ave S STE 107 #330
North Bend, WA 98045
piercefarmer@yahoo.com
253 951 9981

From: **Wise, Donna** Donna.Wise@kingcounty.gov
Subject: RE: Request approval for Amicus for Daniel Elwell
Date: November 29, 2021 at 12:55 PM
To: Joe Flarity piercefarmer@yahoo.com, katehuber@washapp.org
Cc: Brame, Wynne Wynne.Brame@kingcounty.gov, wapofficemail@washapp.org

Mr. Flarity –

The deadline for filing amicus briefs has passed. Oral argument already has occurred. The State would oppose the filing of any amicus brief at this point.

Donna Wise
Senior Deputy Prosecuting Attorney
King County Prosecutor's Office
W554 King County Courthouse
Seattle, WA 98104

From: Joe Flarity <piercefarmer@yahoo.com>
Sent: Tuesday, November 23, 2021 2:21 PM
To: Wise, Donna <Donna.Wise@kingcounty.gov>; katehuber@washapp.org
Cc: Brame, Wynne <Wynne.Brame@kingcounty.gov>; wapofficemail@washapp.org
Subject: Request approval for Amicus for Daniel Elwell

Hello Donna and Kate:

I request your support in submitting an amicus brief in your pending case for Daniel Elwell. I have no personal interest in the outcome, but believe my perspective can sharpen the issues before the Supreme Court.

I have some experience challenging the “sovereign” in Federal Court pro se. I am also knowledgeable about Sec. 7. As a resident of North Bend, my foray into Federal Court in Tacoma makes me very appreciative of King County's respect for civil rights (which have been filed before Judge Bryan).

Please disregard the rule that only attorney’s can submit amici. This is unconstitutional per Art. 1, Sec. 8, 12 and the Supreme Court has already accepted my brief for Consideration of the Pending Zink v. Mesa petition.

I believe that all parties will benefit from my brief. This will translate to a more compelling decision that will then benefit people all across the State.

Please reply by close of day Nov. 24, so I can get started on brief over the holiday weekend. No reply will be taken as approval.

Thank you and have a good holiday,

Joe Flarity
253 951 9981

ps: holiday hint—eat lots of salad first.

SUPREME COURT OF THE STATE OF WASHINGTON

CAUSE 99546-0

Daniel Elwell Petitioner V. State of Washington Respondent	§ § § § § § § § §	MEMORANDUM OF *AMICI CURIAE*

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Attorney for *Amici Curiae, pro se*

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I TABLE OF AUTHORITIES

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II INTRODUCTION

Daniel Elwell is exactly the kind of person a typical homeowner wants off the streets. But as Flarity learned in Pierce County, the less fortunate "Elwells" are like coal-mine canaries. Once a segment of rights can be violated as a practice, the officials generally continue to expand unconstitutional conduct. This is examined by dissent opinions. Flarity seeks to preserve Elwell's fundamental rights out of selfish necessity for

preservation of the rule of law and the pursuit of happiness for all.[1]

That the police violated Elwell's 4th Amendment/ Sec. 7 rights is clear with the search and arrest causing immediate damage. Div. One has misinterpreted the essence of privacy rights per *Bivens*.

Even without being stabbed in the back by his own lawyer, Elwell's pro se motion to suppress evidence—no matter how expertly it was presented—would have likely been ignored. A de facto policy that all pro se claims against officials are without merit is evident. The practice reeks of the same paradigm decried in the Supreme Court Letter, June 4, 2020, pleading for attorney resistance to stop implicit racism.[2] However, the intransigent roots of those debasing pro se rights are not centered in society at large, but in the courts. The appearance of a pro se litigant against officials seems to arrive with absolution from fundamental duty.[3] In addition, the suppression of publication limits the public's understanding that basic civil rights, sans a good lawyer, may exist only on paper.[4]

Pro se plaintiffs claiming broad civil rights abuses seem the opposite of heroes to Washington judges, despite numerous precedents directing

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[1] "In Germany they came first for the Communists, and I didn't speak up because I wasn't a Communist….", Martin Niemöller.

[2] "*As lawyers and members of the bar, we must recognize the harms that are caused when meritorious claims go unaddressed due to systemic inequities or the lack of financial, personal, or systemic support."*

[3] *Boyd v. United, 116 U.S. 616 at 635 (1885), Justice Bradley: "It is the duty of the Courts to be watchful for the Constitutional Rights of the Citizens, and against any stealthy encroachments thereon. Their motto should be Obsta Principiis."*

[4] "*the promises found in these documents aren't worth the paper they are written on." A Republic, If You Can Keep It*, by Justice Neil Gorsuch. Published by Crown Forum 2019, a division of Random House. P 40, illustrating the empty promises in foreign countries.

otherwise.[5] Compounding the federal "*all claims are meritless*" pro se policy,[6] state officials and the WSBA gleefully leverage sovereign power to crush pro se actions, [7] cooperation among the pro se community, or informal help from otherwise willing attorneys. Elwell here highlights a *systemic* problem likely to continue to erode faith in our Courts. This "loss of faith" problem was well briefed before this Panel concerning Judge Keenan, cause 201,996-0 and will be approached from a U.S "health" and *equity* perspective.[8]

III IDENTITIES AND INTERESTS OF AMICI

The identities and interests of *amici curiae* are set out in Flarity's motion for leave to file this memorandum. Flarity has has not expended this effort as advocate for Elwell, but to preserve Sec. 7 privacy rights for Flarity in King County and to illustrate the difficulty that all pro se plaintiffs must overcome to restrain lawbreaking officials. The loss of Elwell's privacy rights

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[5] *Perry v. United States,* 204 U.S. 330, 358, with emphasis: "It is not the function of our government to keep the citizen from falling into error; it is the function of the citizen to keep the government from falling into error."

[6] …being "increasingly necessary for the States in our federal scheme to assume a role of activism designed to adapt our law and libertarian tradition to changing civilization", and to hail this trend as a triumph of personal liberty." *State v Gunwall* 106 Wn2d 54 720 P2d 808 76 ALR4th 517 Wash 1986.

[7] Kelly Sullivan was charged with "Barratry" defending himself against an infraction. *State v. Sullivan,* 19 P.3d 1012, 143 Wash.2d 162 (Wash. 2001).

[8] *The World Justice Project Rule of Law Index, 2020.*

is a loss for all the people. The people have a *right and a duty* [9] to resist these depredations to the maximum extent possible.

Flarity is impacted by similar violations of citizen's federal rights and denial of Art. 1, 2, 4, 5, 29, 32 of the State Constitution. The people's ability to hold officials accountable to the law is vital to the "*keeping of our republic*." The right to address the Court should NOT be reserved for *privileged* unelected private attorneys by our Constitutions, Article 1, Section 8, Article 1, Section 12. The decision to accept should reside in the usefulness of the brief to the Panel.

The de facto requirement for attorney representation harkens back to the abuses seen in the Star Chamber (1640) notorious for rulings favorable to the King of England.[10] Flarity requests the right to address this Panel on a matter vital to public places across the entire state.

IV ISSUES IDENTIFIED

1) THE FOURTH AMENDMENT AND SECTION 7 STRONGLY DEFENDED. The illegal search is obvious. Confirmation of Elwell will signify a roll-back of privacy rights. If Elwell can't push a covered cart down the sidewalk, why are homeowners' trash bins protected from search sitting all night on a

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[9] National Humanities Center: … *it is clear that the Enlightenment concepts of "natural law" and the "natural rights of mankind" found an early forceful expression in the 1776 declaration of the "thirteen united States of America."*

[10] *Faretta v. California* 422 U.S. 806 (1975), noted the relationship of the Judiciary Act of 1789, which guarantees self-representation in civil cases, to the sixth amendment. The Court discussed procedure in the seventeenth-century Star Chamber, **where counsel was *required***…

public street?

2) DIVISION ONE FAILED IN ITS PRIMARY ROLE FOR ERROR CORRECTING. Elwell is here because the system has failed at both the Superior and Division levels. Elwell also identifies failures for both the DA and the assigned attorney. This Panel should be concerned that the obvious problem of an assigned attorney advocating against his client was not corrected. This is especially apparent because the search violation was obvious. If the Court had found for Elwell, the case would be closed for all practical purposes. That Elwell was given the "opportunity" to argue about admissibility of the evidence before the jury completely defeats the purpose besides violating CR40(a)(2). Elwell illustrates a grave failure for Div. One and points this state away from the rule of law. Forcing the Supreme Court into the **error correcting business** is very bad news for the people as the Panel only accepts a small percentage of petitions. The Supreme Court identified this issue more than a hundred years ago, when it was a lot less busy.[11]

3) THE DE FACTO PREJUDICE AGAINST PRO SE. Although the Canon made special allowances for pro se appearances, the observed prejudice makes pro se attempts to obtain justice largely futile in Div. One. The people's opportunity to appear is hollow if the rules and precedents don't apply.

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[11] *Wyman, Partridge & Co. v. Superior Court* (1905), with emphasis: *...the **respondent raises the objection that the relator has an adequate remedy by appeal**, and that mandamus will not lie....The mere fact that the superior court of Kikitas county, to which the proceedings have been transferred, may erroneously assume jurisdiction and that the proceedings may in that way eventually reach this court by appeal, **is not, in our opinion, an adequate remedy**.*

4) LACK OF SPECIFICITY AND DISSENT TIED TO UNPUBLISHED RULINGS AND IGNORED PRECEDENTS. The large body of unpublished, cursory opinions presents a "gold mine"[12] of arbitrary decisions useful for unethical officials to reference. The Supreme Court should remedy or at least make visible this problem with a published decision so the truth will be common public knowledge and available for proper citations.

V STATEMENT OF THE CASE

Flarity accepts the facts as presented by both Elwell and State. It is undisputed that the police searched Elwell without permission or a warrant. Div. One's refusal to enforce Article 1, Section 7 in support of privacy for a reluctant pro se defendant facing what is essentially two prosecutors is based on the Panel's identification of Elwell in a grainy photo and not relevant to the illegal search. When a covered object is judged "open" is specious logic and degrades the integrity of the court.

VI ARGUMENT

A. U.S SUPREME COURT GIVES BROAD SUPPORT TO 4TH AMENDMENT RIGHTS.

Although our Court seems more divided than any time since *Dred Scott*,[13] they are united in protection of privacy issues, even without the 4th Amendment mentioning privacy. (See section on Dissents.) The U.S. Panel was put on notice that a ruling against convicted drug dealer Jones might

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[12] Chief Justice Alex Kozinski & Justice Stephen Reinhardt, *Please Don't Cite This!*

[13] *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857).

very well result in a tracking device being installed on their personal vehicles. *United States v. Jones*, 132 S. Ct. 945, 181 L. Ed. 2d 911 (2012):

> "The Court held that the Government's installation of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constituted a search under the Fourth Amendment."

The Court backed up that decision by ordering that a police officer viewing from a public place--is NOT allowed a warrantless search even when the target IS ***partially visible***. This is significant, because unlike convicted motorcycle thief Collins, Elwell had nothing visible. Per *Collins v. Virginia*, 138 S. Ct. 1663, 201 L.Ed.2d 9 (2018):

> From his parked position on the street, Officer Rhodes saw what appeared to be a motorcycle with an extended frame covered with a white tarp, parked at the same angle and in the same location on the driveway as in the Facebook photograph. Officer Rhodes, who did not have a warrant, exited his car and walked toward the house. He stopped to take a photograph of the covered motorcycle from the sidewalk, and then walked onto the residential property and up to the top of the driveway to where the motorcycle was parked. In order "to investigate further," App. 80, Officer Rhodes pulled off the tarp, revealing a motorcycle that looked like the one from the speeding incident.

That delicate line determining the protected *Curtilage* is a contentious arguing point left somewhat vague by the U.S. Supreme Court. But *Intimacy* is the recognized defining characteristic. With his hands on the cart carrying the box, Elwell met this condition with ease.

B. STATE FOUNDERS CONSIDERED PRIVACY SACRED.

King County offers the best protections of civil rights in the state. This is not the result of altruistic purity emitted from our sacred soil--but from successful lawsuits forcing compliance.[14] The courts have denied searches even when officials intentions are *"well meaning"* and protected by law; the rulings overturned laws or warrant practices.[15]

The respect of the public is encouraged by the clarion decisions of this Panel protecting rights. Flarity can find none better on this issue than the poetry of *TS v Boy Scouts of America* 138 P3d 1053 157 Wn2d 416 Wash 2006:

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

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[14] *The Value of Government Tort Liabilty: Washington State's Journey from Immunity to Accountability*, Debra L. Stephens & Bryan P. Harnetiaux. Washington State Trial Lawyers Foundation.

[15] *See v. City of Seattle* 387 U.S. 541 1967; *City of Seattle v. McCready,* 124 Wash.2d 300, 309, 877 P.2d 686 (1994) ; *Bosteder v City of Renton* 117 P3d 316 155 Wn2d 18 Wash 2005.

C. DIVISION ONE PANEL AS FINDERS OF FACT—HOLDING HARMLESS.

Elwell turns on Div. One's belief in a jury conviction based on a grainy photograph despite the obvious fact that thousands of people with similar builds and UW sweatshirts walk the Seattle streets. If the photo can convict Elwell of burglary, it could also convict for murder, because the "beyond a reasonable doubt" criterion applies to both charges. That issue is not for the Panel, but for a jury. An effective criminal lawyer would be sure to provide numerous similar alternative pictures, deny the priors as prejudicial, and then offer a poignant description of "doubt" and the jury's constitutional requirement to err on the safe side of the law. Without the illegal search and facing effective counsel--it is unlikely the DA would risk a jury trial. Elwell presents the classic example of "lower class" rights for small charges "*swept under the carpet*" as described by Judge Arnold.

D. ELWELL RULING WOULD SET NEW PRECEDENT

The Panel should note the *TS* Panel added "***with no express limitations***" to the Sec. 7 ruling:

> …Further, we declared over 25 years ago that article I, section 7 "clearly recognizes an individual's right to privacy with no express limitations." *State v. Simpson,* 95 Wash.2d 170, 178, 622 P.2d 1199 (1980).

The unpublished ruling for Elwell does indeed add a "limitation" to privacy overturning *TS*. If the Panel wishes to confirm a limitation to privacy based on clothing or body type, this should be well defined (with some note to time allowed) and published so the people will understand the reasons for their loss.

E. GUNWALL ANALYSIS SUPPORTS REVERSAL

Privacy is well documented as standing well above U.S. rights per the *Gunwall Analysis,*[16] with this Panel consistently resisting the *power of the sovereign* to yield. Flarity applauds the Court's persistence to preserve rights. Of the 38 decisions from this Panel collecting "Gunwall analysis" and "Section 7". Here is the most cited case with similar "ineffective assistance" of council. *State v. Reichenbach*, 101 P.3d 80, 153 Wash.2d 126 (Wash. 2004):

> We conclude that police officers illegally seized the baggie of methamphetamine at issue and that counsel rendered ineffective assistance when he failed to move for suppression of the methamphetamine. We reverse the Court of Appeals.

State v. Vanhollebeke, 412 P.3d 1274, 190 Wash.2d 315 (Wash. 2018), gave an excellent description of the analysis process used by the Panel and *State v. Parker*, 987 P.2d 73, 139 Wash.2d 486 (Wash. 1999) for "axiomatic" greater protection of Art. Sec. 7. Unlike other states, Mr. Boland can be thankful for preclusion of police from sifting through curbside trash. *State v. Boland*, 800 P.2d 1112, 115 Wn.2d 571 (Wash. 1990):[17]

> …it is clear that a law enforcement officer's examination of the contents of a garbage container placed curbside for collection is an unconstitutional intrusion into a person's private affairs, particularly when the city ordinance requires the container to be removed from the person's property and placed at the side of the street for ease of collection.

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[16] *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808, 76 A.L.R.4th 517 (Wash. 1986).

[17] Because of bear activity, our North Bend ordinance prohibits trash on the street all night. If a homeowner defies the law (which many do), did they also waive their right to privacy per *Boland*?

Like "obviously guilty" *Bivens*, if the evidence supports a search of Elwell, the officer had a duty to obtain a warrant. The shirking of that duty should not be condoned by the Prosecutor, the Superior Court Judge, or especially the Div. One Panel due to class. The Panel should resist the temptation to cut corners.

F. THE "TRULY DEPLORABLE" IS EVIDENT IN WASHINGTON

A major goal of supreme courts is to level the application of laws across their jurisdiction.[18] The Panel has either failed or was not presented the opportunity for leveling of Sec. 7. Pierce County has enforced a "NOTICE" destroying their citizens privacy rights with that NOTICE ignoring the part of the RCW that contradicts their trespass policy. This actively enforced NOTICE destroying civil rights is shown in EXHIBIT ONE.

In contrast, King County, by the injected virtue of successful lawsuits, has a policy to support "equity" identified by the World Justice Project as essential for the confidence of investors.[19] A portion of the King County plan is shown in EXHIBIT TWO. This disparity between neighboring counties

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[18] Justice Story: "the laws, the treaties, and the constitution of the United States would be different in different states, and might, perhaps, never have precisely the same construction, obligation, or efficacy, in any two states. **The public mischiefs that would attend such a state of things would be truly deplorable**." *Martin v. Hunter's Lessee, 1 Wheat. 304, 348 (1816).*

[19] The World Justice Project Rule of Law Index 2020 presents a portrait of the rule of law in 128 countries and jurisdictions by providing scores and rankings based on eight factors: Constraints on Government Powers, Absence of Corruption, Open Government, Open Government, Fundamental Rights, Order and Security, Regulatory Enforcement, Civil Justice, and Criminal Justice.

gives significant indication this country is indeed headed towards the warning in *Snowcrash* as to the balkanization of rights. [20] While an Elwell reversal will not fix a Pierce County problem, it would benefit the people if Pierce County looked to King County for inspiration, rather than the reverse.

G. PRO SE SEPARATION INTO AN UNFAVORED CLASS

Separation into classes and meritorious claims ignored is exactly the situation decried by the Supreme Court's June 4, 2020 letter. The problem in Div. One is also identified in Federal court: "***Pro se cases don't count.***" [21] Court discrimination damaging pro se plaintiffs is documented by Edward Cantu, UMKC School of Law in *NO GOOD DEED GOES UNPUBLISHED: PRECEDENT STRIPPING AND THE NEED FOR A NEW PROPHYLACTIC RULE*:

> Judge Richard Arnold, former Chief Judge of the Eighth Circuit has asserted that use of precedent-stripping has created "a vast underground body of law disavowed by the very judges who are producing it.
>
> …the insidious misuse of precedent-stripping by courts presents such systemic threat to appellants' procedural due process rights that the need for a new prophylactic rule…

Professor Steven Landsman, Lewis and Clark Law Review, Volume 13:2, identified this as a consistent problem in the 9th Circuit:

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[20] Science fiction novel published in 1992 by Neal Stephenson and inspired by Julian Jaynes' *The Origin of Consciousness in the Breakdown of the Bicameral Mind*.

[21] Judge Acosta from the bench at the Mark O Hatfield courthouse in, *Thornsen v. NaphCare,* 3:19-cv-969-AC*,* March 2020--demonstrating the utility of public observation.

> *When courts appear to **curtail access, to avoid the merits, or to act against an identifiable group of litigants**, they are likely to kindle onlooker skepticism about **judicial legitimacy**...*

The bias against pro se in Div. One is not as apparent in Div. Three, with pro se Ridgley afforded the legislature's intent to protect private communications. *State v Ridgley* Wash App 2021:

> Washington's privacy act, chapter 9.73 RCW, provides a method for narcotics investigators to record private communications without obtaining either a warrant or full-party consent….The reports that accompanied the self-authorizations failed …. evidence related to the undercover recordings should have been suppressed from Mr. Ridgley's trial.

The Panel should remember that official misuse of RCW 9.73 led to Donna Zink's arrest at a Mesa public meeting. See Amicus for Petition for Review *Zink v. City* of Mesa, 100109-6, asking for reversal for an unpublished Div. III decision.

Justice Gorsuch in *Direct Mktg. Ass'n v. Brohl*, 135 S. Ct. 1124, 191 L.Ed.2d 97 (2015), indicated that a court's refusal to observe precedents for an identified CLASS of plaintiffs—should not be considered ***a system of justice***.

H. UNPUBLISHED: A SUPPRESSION OF DISSENTS--ART. 1 VIOLATIONS

When precedents are stripped, specificity in the ruling avoided, and then a Panel refuses to publish what should be a new precedent—those are Article 1, Section 3 and Article 1, Section 10 violations. Throughout our history, dissents are a critical part of rulings with a single voice often exposing the

truth of the issue that reverberates with a reversal in subsequent courts.[22] A de facto policy that suppresses dissents harms the public and is a "*formula for irresponsibility*" according to Chief Justice Posner, 7th Circuit. The decision to publish has a measurable effect on the number of dissents. The actual ruling and the decision to publish are often inextricably intertwined:[23]

> …judges may be prepared to acquiesce in decisions that run contrary to their own preferences, and to vote with the majority, **as long as the decision remains unpublished**, but can be driven to dissent if the majority insists upon publication.

Justice Richard S. Arnold, *Unpublished Opinions: A Comment*, 1 J. APP. PRAC. & PROCESS, 219, 224, 226 (1999).

> …if a judge believes a certain decision should be reached, but also believes that the decision is hard to justify under the law, he or she can achieve the result, assuming agreement by the other members of the panel, by deciding the case in an unpublished opinion and sweeping the difficulties under the rug.

As highly visible members of the government, hypocritical court behavior contributes to the prescient prediction noted in the PRE-COVID August

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22 *Olmstead v. United States*, 277 U.S. 438 (1928) allowed wire tapping over Justice Brandeis' sublime dissent. The government was later restrained from tapping public phone booths. The Panel finally had enough when the government put a microphone against the glass of a public booth. *Katz v. United States*, 389 U.S. 347 (1967). Note Justice Black's dissent : "*the Court is slowly "rewriting" the Fourth Amendment to apply to **individual privacy** and not just unreasonable searches and seizures."*

23 David S. Law, Strategic Judicial Lawmaking: Ideology, *Publication, and Asylum Law in the Ninth Circuit*, 73 U. CIN. L. REV. 817, 820 (2005).

2019 Atlantic article, MEASLES AS A METAPHOR:[24]

> What the diseases' return tells us about America's ailing culture. …*central to measles return and at least as worrying for society overall: diminished trust in government. ... approval rates of our government were 77% in 1964 and now regularly dip below 20 percent....conspiracy theorists thrive when government is corrupt and opaque."*

I. SPECIFICITY, PRECEDENCE STRIPPING, AND UNPUBLISHED INEXTRICABLY INTERTWINED

This evil trifecta also defies the Judicial Canons by creating a "underground body" decried in *Anastasoff v. U.S.,* 223 F.3d 898, 2000 WL 1182813 (8th Cir. 2000), with emphasis:

> We do not have time to do a decent enough job, the argument runs, when put in plain language, to justify treating every opinion as a precedent. If this is true, the judicial system is indeed in serious trouble, but the remedy is not to create an **underground body of law** good for one place and time only.

Both Federal and State precedents demand the issues be identified and then consistently reinforced. Jon A. Strongman. *Unpublished Opinions, Precedent, and the Fifth Amendment: Why Denying Unpublished Opinions Precedential Value Is Unconstitutional*, 50 U. KAN. L. REV. 195, 214 (2001):

> "the opportunity to rely on the history, the reason, or the course" of a prior decision denies litigants procedural due process because it allows courts to "arbitrarily ignore or even directly contradict its previous decision for any reason or no reason at all."

[24] The CDC estimates that lack of believe in our Covid vaccines has caused the unnecessary deaths of hundreds of thousands of Americans.

Per *Hart v Massanari,* 266 F.3d 1155, 1180 (9th Cir. 2001) :

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

Justice Friendly, *Some Kind of Hearing* , 123 U. Pa. L. Rev. 1267 (1975), citing *Wolff v McDonnel,* 418 U.S. 539, 565 (1974):

> ...it is essential that courts give enough specificity in their rulings that "wrong decisions" can be prevented.

J. THE "GOLD MINE" OF UNPUBLISHED DECISIONS

This vast number of unpublished, cursory, and often arbitrary rulings delivers a ragged wasteland for unethical citations. Since unpublished decisions usually take the official's position, the major offenders are public attorneys who understand they will suffer no restraint from the WSBA. *Elwell* can now be cited to "uncover" any object no matter how well it was covered in defiance of *Collins v. Virginia*. Likewise, officials seeking to escape personal responsibility for retaliation can now cite the unpublished portion of *Zink v City of Mesa*, Cause 100109-6. In *Youker v. Douglas Cnty.* (Wash. App. 2011), this Panel refused to review the decision giving credence to the danger identified in *Wyman*. Unpublished *Youker* is fervently cited by officials as if it set precedence for both invasion of privacy and the requirement to proceed in a prejudice venue.

But the pinnacle of unethical citations is the use of a pro se case to defeat another pro se cause. i.e. *Schucker v. Rockwood*, 846 F.2d 1202 (9th

Cir. 1988), cited 674 times, making infamous pro se Robert Schucker's still-born attempt to stiff his ex-wife out of her pension by suing the judge.

The Panel is requested to look carefully at *Elwell* and other decisions that could be misused. Publishing prompts judges the freedom to wax eloquently. The dissents often carry a greater portion of truth and outlive the original decisions.

K. TWO CLASSES OF PRO SE LITIGANTS

Elwell has reached the Supreme Court. This is a significant and uncommon achievement (in contrast to *Youker*) made possible in large part by the Washington Appellate Project and state funding. Attorney Huber's goal is to keep Elwell out of jail. Flarity highlights the illegal arrest for Elwell, like Bivens and Zink,[25] also carries possible civil damages. Elwell perfectly illustrates how civil pro se issues are often buried beneath criminal causes.[26] Professor Edward Cantu:

> *"…this advent of a "two track system" of justice is due partly to court culture...In civil non-pro se cases, the lawyers tend to be the more celebrated members of the bar … because they get paid incredible hourly rates to do so, they tend to raise the most novel, creative, and refined legal arguments."*

This identified "culture" denying civil pro se plaintiff access to juries directly conflicts with the intent of our founders and serves to flood the "lungs" of

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[25] Zink v. City of Mesa, Cause 100109-6

[26] Paraphrasing p102, *A Republic, If You Can Keep It*, by Justice Neil Gorsuch. Published by Crown Forum 2019: ***The civil standard should not be buried below it.*** **[the criminal standard].**

our democracy.[27] The Panel is asked to preserve pro se rights for the "law-abiding" **center** [28] by first protecting Elwell against the criminal charge. Proceeding in a pro se civil case while incarcerated is impossible. Judge Reinhard in *Jacobsen v. Filler,* 790 F.2d 1362 (9th Cir. 1985), with emphasis:

> Because I believe that our previous cases recognize the rights of all pro se litigants to the procedural protection of the court, and because I believe that affording such protection serves the interest not only **of the litigants but also of the court itself,** I respectfully dissent... The majority opinion creates two classes of indigent litigants, those who are poor and law abiding, and those who are poor and not**. It then affords lesser rights and protections to the former**. In this respect, the majority's actions are contrary to the view our circuit has previously expressed...

Bivens was paid directly from the pockets of five DEA agents for the *outrage* of his arrest because fourth amendment violations are "*separate and immediate*" from criminal proceedings. Convicted drug dealer Bivens received payment for *"great humiliation, embarrassment, and mental suffering"* in his landmark pro se illegal arrest complaint, while ironically, law-abiding *Zink* was denied similar in Div. III. *Bivens v. Six Unknown*

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[27] "The right to vote and the right to a jury trial represent the heart and lungs of representative democracy. John Adams.

[28] Flarity asks the Panel to consider our current similarity to the Irish revolution during the 1918 flu pandemic. *The Second Coming*, W.B. Yeats:

Things fall apart; the centre cannot hold;
Mere anarchy is loosed upon the world; The blood-dimmed tide is loosed, and everywhere the ceremony of innocence is lost; The best lack all conviction, while the worst are filled with passionate intensity.

Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971), with emphasis:

> The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, **whenever he receives an injury.**' *Marbury v. Madison*, 1 Cranch 137, 163, 2 L.Ed. 60 (1803).
>
> …it is apparent that some form of damages is the only possible remedy for someone in Bivens' alleged position.… the 'exclusionary rule' is simply irrelevant. **For people in Bivens' shoes, it is damages or nothing.**

VII REVERSAL BASED ON BLACK'S DISSENT

Justice Black's dissent in *Katz v. United States*, 389 U.S. 347 (1967), was right on target. The U.S Court now agrees we carry an implicit 4th amendment right to privacy wherever we go. This is obviously true for Elwell carrying a covered package. Per *Boland*, that right is extended to garbage cans sitting alone on the street. If the search was illegal and resulted in arrest-- like *Bivens*, damage has occurred. That Elwell might have been convicted based on the grainy photo later is irrelevant to the immediate civil damages of illegal search and arrest. Div. One delivered a grave error their "*sweeping under the carpet."*

VIII REVERSAL AND PUBLISHING

This case is before the Panel in part because Elwell was placed into a pro se category because of ineffective council and unjust DA support of illegal police action. Flarity respectfully requests the Panel to examine and publish, which should include Div. One's failure to identify the search/arrest

as illegal and a separate civil charge per *Bivens*. Publication will preclude unethical state citation of Elwell further damaging privacy rights as noted for *Youker*.

CERTIFICATE OF COMPLIANCE TO WORD LIMIT

Word count is 4911 without headers and is within the RAP 18.17 limit.

CERTIFICATION AND SIGNING:

By signing below, Flarity certifies that this brief complies with the requirements of RAP 10.2(f)(1) to the best of Flarity's knowledge and is sworn to be true under penalty of perjury.

DATE: November 29, 2021

/s/ Joe Flarity
Joe Patrick Flarity
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North Bend, WA 98045
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SUPREME COURT OF THE STATE OF WASHINGTON

CAUSE 99546-0

Daniel Elwell Petitioner V. State of Washington Respondent	§ § § § § § § § § § § § § § § §	FLARITY AMICUS BRIEF EXHIBIT 1

EXHIBIT 1

NOTICE TO PIERCE COUNTY RESIDENTS

HIGHLIGHTED

Pierce County

Office of Prosecuting Attorney

REPLY TO:
CIVIL DIVISION
955 Tacoma Avenue South, Suite 301
Tacoma, Washington 98402-2160
FAX: (253) 798-6713

MARK LINDQUIST
Prosecuting Attorney

Main Office: (253) 798-6732
(WA Only) 1-800-992-2456

NOTICE TO REAL AND PERSONAL PROPERTY OWNERS

As you may be aware, the Pierce County Assessor-Treasurer is required by Washington law to periodically examine all taxable real and personal property in the county for purposes of valuation and assessment of property taxes.

To facilitate such examinations, the Washington legislature has enacted **RCW 84.40.025,** which in relevant part provides as follows:

> For the purpose of assessment and valuation of all taxable property in each county, any real or personal property in each county **shall be subject to visitation, investigation, examination, discovery, and listing at any reasonable time by the county assessor for the county or by any employee thereof designated for this purpose by the assessor.**

Under this statute, owners of taxable real and personal property in Pierce County are required to allow the Assessor-Treasurer and his authorized employees access at any reasonable time to their real and personal property for purposes of valuation and assessment of the property tax. Thus, although you may generally be entitled to deny others access to your real and personal property, you may not deny such access to the Assessor-Treasurer and his authorized employees for the purposes outlined above.

Accordingly, please provide prompt access to your real and personal property as requested by authorized employees of the Assessor-Treasurer so they can perform their lawful duties. In case of doubt, you may confirm the credentials of any employee seeking access to your property by calling the Assessor-Treasurer's Office at (253) 798-2719. Should you have any questions, comments or concerns, please do not hesitate to contact the Deputy Prosecutor identified below.

Very truly yours,

DAVID H. PRATHER
Deputy Prosecuting Attorney/Civil Division
Direct Line: 253-798-4168
Email: dprathe@co.pierce.wa.us

DHP:nb
cc: Mike Lonergan, Pierce County Assessor/Treasurer

SUPREME COURT OF THE STATE OF WASHINGTON

CAUSE 99546-0

Daniel Elwell Petitioner V. State of Washington Respondent	§ § § § § § § § § § § § § § § §	FLARITY AMICUS BRIEF EXHIBIT 2

EXHIBIT 2

2019 KING COUNTY RISK MANAGEMENT REPORT
PAGE 4

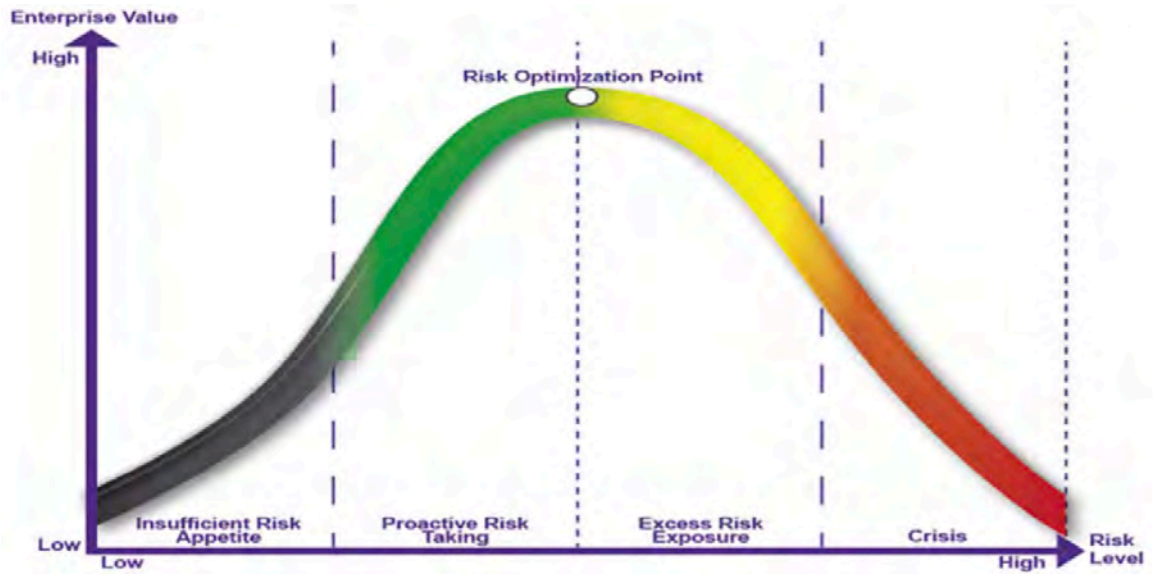
Figure 1. Risk Value Curve

The Risk-Value Curve facilitates risk discussions and helps decision makers understand how much risk they are willing to take. County decision makers are using the Risk-Value Curve to shift their mindset about risk and support informed risk taking within the organization's risk appetite. As illustrated with the baby equipment example above, this concept is particularly valuable when considering new projects and initiatives, and weighing potential worst-case scenarios against community benefits, to arrive at an optimal risk position.

IV. Enterprise Risk Management

Fulfilling King County's True North, *making King County a welcoming community where every person can thrive*, requires balanced risk taking. Effective and balanced risk management increases the probability of successful outcomes while protecting the reputation, safety, and overall financial health of the county. For example, when contracting with community organizations to help advance our equity and social justice initiatives, ORMS adjusts insurance and liability requirements so they are not a barrier to engagement.

As described in Figure 2 below, decision making in eight critical types of activities is guided by a clearly defined risk appetite statement which was developed in March 2019. Whether King County is risk averse, as in safety decisions, or willing to aggressively take risk to pursue equity and social justice goals, the Risk Appetite Statement is critical to the overall enterprise risk management effort.



FLARITY FARM

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