No. _____

In The
Supreme Court of the United States

IN RE WILLIAM SCHEIDLER,
Petitioner,

v.

JAMES AVERY, et. al,
Respondents.

On Petition for a Rule Nisi, or Writ of Mandamus to the
United States Court of Appeals for the Ninth Circuit

PETITION FOR RULE NISI, OR WRIT OF MANDAMUS

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I. RELIEF REQUESTED

This case involves a private citizen (plaintiff) v public servants (defendants) who are legally contracted to each other solely under Washington State's constitution and laws *mandating* defendants exercise their "*just powers to protect and maintain individual (plaintiff's) rights."* [Article 1 ,section 1].

Therefore this Court should,

Compel the 9th Circuit to, or show cause why it does not, apply Washington State's laws that implement Article 1, section 1 as the US 10th amendment provides, 28 USC 1652 demands, and 28 USC 2072(b) prohibits "abridging, modifying or enlarging".

Compel the 9th Circuit to exercise its fiduciary obligations to hold its 'officers of the court' to their legal and ethical duty required by Washington's laws as rules FRAP 46, circuit rule 46-2 and LCR 83.3 require.

Or, provide plaintiff a forum, which is impartial as 28 USC 455(a) and (b)(4) mandates, to address judges-judging-judges who abridge, modify, or enlarge statutory rights in violation of §2072(b).

II. PARTIES TO THE PROCEEDING

William Scheidler,
Plaintiff, Petitioner
V

James Avery, individually and in his official capacity as Kitsap County's Assessor; Alan Miles, individually and in his official capacity as Kitsap County's deputy prosecutor; M. Karlynn Haberly, Individually and in her official capacity; Kay S. Slonim, Individually and in her official capacity; Felice Congalton, Susan Carlson, David Ponzoha, Zachary Mosner, Ione George individually and in her official capacity, the Washington State Board of Tax Appeals (BoTA),the Washington State Bar Association, and Jane and John Does, 1-100.

Defendants/Respondents.

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III. PETITION FOR A SHOW CAUSE ORDER, OR WRIT OF MANDAMUS

William Scheidler, *pro se*, respectfully petitions for rule nisi, or for writ of mandamus to address the judicial misconduct in violating the laws that apply to judges and the split between the 2 panels of the Ninth Circuit Court of Appeals.

IV. RULINGS AT ISSUE.

August 14, 2017 unpublished Memorandum of the United States Court of Appeals for the Ninth Circuit, Case no. 15-35945 affirming the district judge's FRCP 12(b)(6) dismissal of the case.

November 17, 2015 District Court's order, #12-cv-5996, dismissing the action under FRCP 12.

March 30, 2015 unpublished Memorandum of the United States Court of Appeals for the Ninth Circuit, Case no. 13-35119, which AFFIRMED in part, REVERSED in part, and REMANDED the district judge's FRCP 12 dismissal.

January 29, 2018 Order of the United States Court of Appeals for the Ninth Circuit, Case no. 15-35945, denying en banc review to address the split between panels of the 9th Circuit on the law of the case.

V. JURISDICTION

This matter invokes this Court's original jurisdiction under 28 USC § 1251(b)(2), or its supervisory powers, 18 USC Ch. 1 §4; 28 USC § 1651(b); 28 USC § 2106; or alternatively, an extraordinary writ per 28 U.S.C. § 1651(a).

VI. RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS.

APP. 54-87

Federal Authorities:

U.S Tenth Amendment, Title 28 U.S.C. § 455, 28 U.S. Code § 1652, 28 U.S. Code §§ 2072, 2106, 2201 and 2202

Washington State:

Article 1, sections 1, 4, 8, 12, 21, and 28; Article 2, sections 16, 26, 28(12) and (17); Article 4, section 16; Article 7, section 10; RCW 2.28.030 to RCW 2.28.060; RCW 2.48.180 through RCW 2.48.230; RCW 4.04.010; RCW 4.32.250; RCW 4.36.070; RCW 4.36.170; RCW 4.36.240; RCW 4.40.060; RCW 4.44.090; RCW 4.92.010; RCW 4.92.060; RCW 4.92.090; RCW 4.96.; RCW 9A.08.020 through 9A.08.030; RCW 9A.60.030; RCW 9A.80.010; RCW 42.20.080; RCW 84.36.383; RCW 84.36.383; RCW 84.36.385.

VII. STATEMENT OF THE CASE

1. Introduction

Washington State has, in its Constitution and statutes, established clear policies for resolving disputes between Washington local and state government officials (defendants), in breach of their legal responsibility under Washington's Constitution and statutes affecting Washington residents (plaintiff),

This case could have been resolved in 2009 through Washington's declaratory right of action – but it was obstructed by county defendants. A 2012 jury trial/verdict would have ended this case – but it too was obstructed by defendants. Even an administrative action brought by Scheidler in 1998 may have PREVENTED additional litigation if not for the Kitsap Prosecutor's trumped up threat that forced Scheidler's lawyer, Scott Ellerby, from the case, on the very eve of the hearing, using his WSBA license as leverage. (Documents proving this threat are in **App. 108-113**)

To date, neither defendants, their lawyers, nor judges have addressed the core allegation. Defendant, James Avery, Kitsap County's Assessor, alters a

controlling law, RCW 84.36.383(5), on the county's application for the state's Article 7, section 10 property tax exemption (App 88-90). Every retired and/or disabled homeowner must complete Avery's application, (RCW 84.36.385(1)), to obtain this constitutional right.

Because Avery adds words, substitutes words, omits words, and rearranges words, of this *controlling law, which is evident on the face of the application itself,* the calculation this law describes is, necessarily, changed in the same way – adding other numbers, rearranging mathematical sequences, leaving out numbers. Avery's "unlawful" calculation and its bogus result is intended to unlawfully "disqualify" otherwise "qualified" retired/disabled homeowners of their Article 7, section 10 exemption.

2. Facts/Exhibits

Scheidler provided documents, over 200 exhibits, which on their face, support the allegation Avery and the other defendants engage in quid-pro-quo schemes to avoid accountability in cheating the retired/disabled of their rights. For example:

> **Appendix 3 [App. 88-90]**: Kitsap County's 2008 application, page 3, first paragraph, validates James Avery alters the controlling law the

application purports to cite. It is a criminal violation to violate any provision of law that regulates official duties. See RCW 9A.80.010 and RCW 42.20.080

Appendix 4: **[App. 91-93]** Dept. of Revenue memo to WA State Assessors that PROVES the fraud originates with the DOR, under advice by the Washington State Attorney General.

Appendix 5: **[App. 94-107]** Scheidler was forced to sign defendants' 'fraudulent applications', under duress – a Class-C Felony under RCW 9A.60.030 - Obtaining a signature by deception or duress.

Appendix 6: **[App. 108-113]** The letters and emails that prove Scheidler's lawyer was extorted from his case by the Kitsap County Prosecutor.

3. Summary of proceedings below.

Defendants, without rebutting the allegations or addressing the evidence, engaged in forum shopping and removed Scheidler's state case to federal court and immediately asked the assigned judge, Ronald B. Leighton, to dismiss the case. Scheidler answered with a motioned to remand and for the disqualification of the Judge Leighton. Scheidler learned Leighton's wife, a lawyer, had a

financial/business relationship with Kitsap County re their risk insurance coverage. Judge Leighton refused to disqualify, refused to remand and dismissed the case with prejudice based in federal court holdings of 11th amendment immunity, lack of jurisdiction to review a state agency's decision, pleading deficiencies under Iqbal/Twombly, absolute immunity, and failure to state a claim.

Scheidler appealed, arguing Judge Leighton's only legal avenue was to 'remand' those claims for which he lacked jurisdiction. Scheidler further argued state law prohibits dismissal and prohibits immunities, therefore, a valid claim exists. The appellate court (1st panel) 'affirmed in part, reversed in part, and remanded' the case back to district court. **[App. 49-52]**

The remanded case was again before Judge Leighton and the same lawyers who presented these false and irrelevant defenses that required the appeal and 2-year delay caused by the "abuses of discretion". Scheidler again motioned to disqualify Judge Leighton for his financial interests and added the "abuses of discretion," noted by the 1st panel, the fiduciary obligations he shares with his fellow Washington State Bar [WSBA] defendants. Again, Judge Leighton refused to disqualify. And, again

Judge Leighton dismissed the case on defendants' motion based, again, in federal court established defenses. **[App. 4-48]** Scheidler was forced to appeal and argued the 1st panel already disposed of defendants' defenses as they collide with state law. However the 2nd panel, without any rationale, affirmed dismissal based in federal court standards that appear to invoke immunity, pleading deficiencies under Iqbal/Twombly, or failure to state a claim. **[App. 1-3]**

Scheidler petitioned for En banc review to resolve the split between the 1st panel and 2nd panel concerning the state laws governing "immunity" "pleading standards", "rights of action" and the Washington State Supreme Court's expressed rejection of "Iqbal/Twombly" standards.

En banc review was denied 1/29/2018. **[App. 53]** Scheidler petitions this Court exercise its fiduciary duty it owes to society to insure the integrity of our courts and its 'officers of the court' abide by the laws that apply to them.

VIII. ISSUES PRESENTED

1. The Federal Courts, on the face of their memorandums, are in violation of the US

10th amendment, 28 USC 1652 and 28 USC 2072(b).

Facts and argument common to each allegation:

1. In 2012, this case was filed in state superior court per RCW Title 4, which implements and enforces Washington's constitutional provisions.

2. The ground rules by which a Title 4 civil action is prosecuted in Washington State are laid out in RCW 4.04.010, which mandates, *"The common law, so far as it is not inconsistent with the Constitution and laws of the United States, or of the state of Washington nor incompatible with the institutions and condition of society in this state, shall be the rule of decision in all the courts of this state."*

3. All defendants are "public servants" solely regulated by law – including RCW 4.04.010.

4. Furthermore, all defendants are members of the WSBA with the exception of James Avery (county assessor) and David Ponzoha (court clerk).

5. All lawyers, judges, (including federal judges of Washington) are WSBA associates and regulated by law.

6. The judicial blind-eye to Washington's Constitution and laws that regulate public servants is in itself "abridging, modifying or enlarging" the State's laws in violation of 2072(b)

7. In 1933, the legislature created the WSBA as an agency of the state under the Washington

Supreme Court, whose judges are all WSBA associates.

8. The WSBA is self-regulating by virtue in having its members occupy every judicial office.[1] It is the ultimate and special privilege to grant associates of an agency, who may be in public and private practice, complete control of an entire branch of government. No other association, corporation, or individual can ever hope to attain such unaccountable power. The WSBA is the ultimate monopoly.

9. The Bar Act, as alleged by Scheidler, is likely unconstitutional under Article 2, section 28(6) – *legislation granting corporate powers or privileges* is prohibited. It is likely unconstitutional under Article 1, section 12, as "self-regulation", to the extent enjoyed by the WSBA, is a 'prohibited' privilege no other association, corporation, or person enjoys. It is likely unconstitutional under Article 12, section 22 -- *Monopolies and trusts shall never be allowed in this state*. And clearly, having its members in state judicial, legislative, executive, administrative, and even federal judicial offices destroys any notion of a "fair forum" to challenge the WSBA Act as unconstitutional because the WSBA has ensured they

[1] Judicial notice: RPC - Preamble at ¶10: http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=RPC&ruleid=garpcpreamble

are the ultimate decision-makers – judges of the Washington Supreme Court.

10. It also raises an issue of 'separation of powers' as associates of this 'agency of the state' are federal court judges – a contradiction under the 10th amendment. Here again, a fair forum is unavailable to challenge the violation of the separation of powers because a WSBA associate is a federal judge.

11. Criminals looking for an established enterprise through which they can take control, commit crimes, control prosecution, control litigation, and determine outcomes and judgements by any means they want, the WSBA is the perfect answer to that dream. [2]

12. The WSBA doesn't hold lawyers to the law, it holds lawyers to the WSBA's political goals at the expense of Scheidler's rights. Scheidler has standing to sue for his injuries caused by defendants "violation of a statute intended and designed to prevent injury to persons or property constitutes negligence per se and, if it contribute proximately to injury, *is actionable negligence*. (and that, of course, would be a question for the jury)." *Baldwin v. Wash. Motor Coach Co.*, 196 Wash. 117, 82 P.2d 131, 1938 Wash. LEXIS 601.

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[2] Judicial notice – WSBA president charged with 3 counts 2nd degree theft.
http://www.spokesman.com/stories/2017/jun/19/youngest-ever-washington-bar-association-president/

13. Scheidler's right of action against defendants, including the WSBA, is expressly provided by RCW Title 4, ch 92 and 96, the "Bar Act" and the common law of *Baldwin*.

14. Defendant Avery's *act* to change the law, in which the other defendants *act in omission*, is both a question of fact and law. In this case the law is clear. RCW 84.36.383 specifically states, "As used in RCW 84.36.381 through 84.36.389, … (5) Disposable income ***means*** …" By using the word "*means*", means, Avery's rewording '*disposable income*', clearly obvious on the application itself, **[App. 88-90]** is unauthorized. Scheidler has been affected by Avery's unauthorized act and has standing to make a claim that is to be decided by a jury – not a judge – as *Baldwin* makes clear. See also, Article 4, section 16, RCW 4.40.060 to RCW 4.44.090 – facts are for a jury**. [App. 67, 68 and 77 respectively],**

15. Plaintiff demanded a jury trial, which is an "inviolate right" per Article 1, section 21, (also *Baldwin*, supra), to address defendants' 'acts and omissions', which in and of themselves constitute matters of fact, and matters of public importance. It is self-evident government conduct is always an Article 1, section 1 issue (*governments are created with just powers for the sole purpose, to protect individual rights*). The same for the Article 7, section 10 relief Avery denies. Such petitions on matters concerning the public good" "shall not be abridged", Article 1,

section 4, and for a jury to decided, not a judge, Id., Article 1, section 21 and Article 4, section 16. **[App. 66-68].** Id., *Baldwin*, RCW 4.40.060 and RCW 4.44.090. **[App. 77].**

16. Defendants, without answering, removed this state case to federal court and immediately motioned their WSBA colleague, Judge Leighton, to dismiss the case citing federal court-created defenses of 11th amendment immunity, quasi-judicial immunity, res judicata, Iqbal/Twombly, failure to state a claim Rooker-Feldman/estoppel. Judge Leighton, in 2013, ordered the case dismissed,

17. Scheidler, in his papers filed in District and Appellate courts, consistently argued state law is the controlling authority in this case. Scheidler argued defendants lacked the federal court-created defenses they claim because state laws define plaintiff-defendants relationship and control civil actions. This Court has held since *Erie Railroad v. Tompkins*, 304 US 64, state law governs substantive matters; and the state's pleading statutes "qualifies the right it becomes a part of the substantive law rather than procedural... ", *Johansen v. EI Du Pont De Nemours & Co.*, 810 F. 2d1377 - Court of Appeals, 5th Circuit 1987

18. The 1st panel seemed to agree with Scheidler. But upon remand Judge Leighton continued to see it differently. In 2015, Leighton dismissed the case again and the 2nd panel affirmed

blatantly retorting, or implying, that the state law mandate of §1652 is "meritless", "not persuasive", "unsupportable" and "frivolous" [App 3, 23 and 24], notwithstanding state laws to the contrary.

19. Congress used the word "shall" in §1652 – State law *shall* be the rule of decisions; in §2072(b) – court rules *shall* not abridge, modify or enlarge any substantive right; in §455(a) and (b)(4) – Any justice, judge or magistrate judge *shall* disqualify. 'Shall' denotes the law is mandatory. Obeying the law is not 'discretional'. It is 'negligence per se' to violate a statute that deprives Plaintiff of his rights. Under state statutes, also *Baldwin*, Plaintiff has standing to sue, and a jury must decide the facts.

20. 28 USC 1652 'mandates', and this Court said, "the federal court enforcing a state-created right in a diversity case is, as we said in *Guaranty Trust Co. v. York*, 326 U. S. 99, 108, in substance "only another court of the State." The federal court therefore may not "substantially affect the enforcement of the right as given by the State." *Bernhardt v. Polygraphic Co. of America*, 350 US 198, 203 (1956). Since the federal courts are just another state court the judges are bound by RCW 4.04.010, including, RCW Title 2.28 **[App. 66-87].**

21. **Federal Judge with personal ties to Defendant County protects County's illegal acts against Washington citizens.**

In this case, the assigned U.S. District Court Judge Leighton, whose wife has a direct pecuniary relationship with Defendant County, has substantially affected the enforcement of Washington state law. Judge Leighton refused to disqualify himself in the face of an obvious personal conflict of interest, and benefits himself as he diminishes the rights that Washington State law grants to its citizens by not following 28 USC 455(a) and (b)(4).

Scheidler, in his motion to disqualify and on appeal before the 2nd appellate panel cited the following facts, ignored by both courts, showing Judge Leighton was disqualified under 28 USC 455(a) and (b): [Case: 15-35945, 03/12/2016, ID: 9899775, DktEntry: 2-1, Page 53-57]

- Leighton's proven bias - the 9th Circuit's reversal and remand of Leighton's first dismissal for abuses of discretion.
- Cases from other circuits holding sua sponte disqualification is appropriate for a judge who is reversed for an 'abuse of discretion';
- Cases that held 'judge shopping' (defendants removal action) is an element of bias *Idaho v Freeman* (1979, DC Idaho) 478 F Supp 33.;
- Judge Leighton's unwarranted comments in response to the 9th Circuit Clerk saying Scheidler is 'vitriolic and not logical' his issues are "without merit" and are "frivolous on its face". These

disparaging comments were completely rebuked by the first panel's reversal and remand;

• Prior district cases where non-WSBA Associates were brought in as judge when the WSBA was defendant; Marshall v.WSBA et al, WD Case #11- cv-05319-SC, Pope v. WSBA et al, WD Case #11-cv-05970-DWM , and Scannell v. WSBA et al, 12-cv-00683-SJO ;

• Judge Leighton's wife, Sally B. Leighton, was involved with Kitsap County's insurance coverage which created a conflict in an averse verdict against Kitsap County;

• Cases that held members of an association are liable for the association's debts. Judge Leighton is potentially liable as a WSBA associate. See RISS v. ANGEL 131 Wn.2d 612, 632, 934 P.2d 669 (1997);

• Judge Leighton's conflict in fiduciary duties – RCW 2.48.180-230 are laws that apply to all WSBA associates, including defendants and Leighton, which are at issue in this case; and

• WSBA associates who are judges are granting themselves and their colleagues immunities and privileges, which are prohibited under ARTICLE 1, SECTIONs 8 and 12, supra, and ARTICLE 2 SECTION 28(12 and 17) supra, an unconstitutional and self-serving use of power in violation of 28 USC 455.

"The right to an impartial decision maker is a fundamental right which requires due process of law before it is denied. See *Goldberg v. Kelly*, 397 U.S. 254, 271, 25 L. Ed. 2d 287, 90 S. Ct. 1011 (1970).

For both Judge Leighton and the Appellate Courts to declare "no facts were cited" is on its face a lie and shows judges-judging-judges is the means by which judges perpetrate frauds upon society.

22. **State law expressly prohibits granting immunity to state government officials, which law Judge Leighton violates when he follows contrary federal court established standards**

Judge Leighton states, [App. 22 and 29 respectively] "the clerks … the WSBA defendants are entitled to absolute quasi-judicial immunity" … "also entitled to 11th amendment immunity".

Washington State's constitution expressly prohibits legalizing unauthorized or invalid acts by any official nor limiting civil actions (Article 2 sections 28(12) and (17) – unauthorized or invalid acts shall not be legalized, nor shall civil actions be limited). The State expressly waives 11th amendment immunity (Article 2, sections 26 – suits against the state are authorized). And the State abolished hereditary privileges and immunities, and prohibits granting privileges and immunities that are not available to all citizens (Article 1, sections 8, 12, and 28).

Judge Leighton calls these constitutional arguments "not persuasive", [App. 23]. Even state statutory law, RCW 2.48.010, expressly states, "the Washington State Bar Association … *may sue and be sued*". The defendants, including the WSBA, have no immunity whatsoever.

Judge Leighton, in declaring defendants are immune from suit, has blatantly "abridged, modified, or enlarged" these constitutional and statutory provisions, which is prohibited by §2072(b).

23. Federal Judge Leighton exalts himself above Washington lawmakers and enriches himself

The 9th Circuit judges also err in exalting their opinions, based on federal case law, above conflicting Washington state law. But the most serious violation can be traced to Federal District Judge Leighton who refused to acknowledge his personal conflict. Judge Leighton's bias is revealed in numerous personal attacks laced throughout his orders.[3] Leighton was found by the first 9th Circuit panel to have "abused his discretion" and to have failed to decide the essential property tax issue on its merits. [App. 49-52]. Both actions weigh against the notion that Judge Leighton was able to be non-partial despite his personal

[3] "wild-ranging, wild conspiracy allegations" [App. 36]; "Scheidler does not appear to believe in reasonable disagreement" [App. 37]; Case 3:12-cv-05996-RBL Document 50 Filed 11/26/14 Page 1-2, "Vitriol is not a substitute for logic."

connection to County defendants. Further, in his opinion, Judge Leighton mocks and ridicules Plaintiff for dragging out this case by "chasing this white whale" [App. 5, FN 1] when Judge Leighton's own errors, the courts own rules, the abuses of discretion, and defendants removal and improper motions to dismiss, contributed to additional costs and 4 years of delay in resolution.

For judges to decide the scope of their own authority and declare state laws "frivolous, meritless, not persuasive, unsupportable" is self-evident judges have ignore §1652 and thereby 'abridged or modify' the substantive rights embodied in state law in violation of 28 USC 2072(b). "To permit branches to measure their own authority would quickly subvert the principle that state governments, while governments of general powers, must govern by the consent of the people as expressed by the constitution." *Wash. State Labor Council v. Reed*, 149 Wn.2d 48 (Wash. Apr. 3, 2003), Chambers concurring.

24. **Count 1: Tortious conduct by Officers of the Court.**

The 2nd panel, without any rationale or reference to any portion of Judge Leighton's order, affirmed the district court's dismissal of Scheidler's claim, for "Failure to state a claim", citing, *Hicks v. Small*, 69 F.3d 967, 969 (9th Cir. 1995) (dismissal for failure to state a claim under Fed. R. Civ. P. 12(b)(6). **[App. 1-2]**

Probable Cause: Paragraphs VIII 1-23 included by reference.

Additionally, *Hicks v Small* is irrelevant case law per RCW 4.04.010. The litigants in *Hick*s, in which a Nevada veteran is suing a federal agency, are not 'bound together' by Washington State law as in this case. *Hicks* is not a "constitutional provision" nor an "Act of Congress" the 10th amendment requires in order to preempt state law.

State laws establish the plaintiff-defendant relationship, the elements of a claim, standing, pleading standards, remedies for pleading defects, and duties of the courts and its judges and lawyers. The Hicks' standards are not the State's statutory standards.

"Congress, not federal courts, is to articulate the standards to be applied as a matter of federal law. Id. at 316," *State v. Kurtz*, 178 Wn.2d 466, 309 P.3d 472, 2013 Wash. LEXIS 763, 178 Wn.2d 466, 309 P.3d 472, 2013 Wash. LEXIS 763, citing *City of Milwaukee v. Illinois*, 451 U.S. 304; This Court, in *Cipollone v. Liggett Group, Inc.*, 505 US 504, 516 (1992), states, "the historic police powers of the States [are] not to be superseded … unless that [is] the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.*, 331 U. S. 218, 230 (1947)".

RCW title 4, sections 32, 36, 92 and 96 enforce and reemphasize the constitutional prohibitions in

granting defendants any immunity or limiting civil actions. Defendants, their lawyers, and judges, (a.k.a., public servants – including the WSBA) belong to the very groups of "liable parties" noted in RCW title 4, ch 92 and 96. **[**Full citations incorporated by reference. **App. 75-79].** And the State makes clear, "[A] public officer, their servant, *has no rights whatever, so far as his possession of the office is concerned, which may not be ignored by the people speaking in a lawful manner*." *Cudihee v. Phelps*, 76 Wash. 314 (Wash. 1913). This means that the *"acts or omissions*" by defendants, even those *acts or omissions* by lawyers and judges who themselves are public servants, are within reach of a person's right to file a claim against them for the harms they inflict. In this case Avery's misstating RCW 84.36.383(5), or the other defendants' failure to protect" deprives Scheidler of his Article 7, section 10 rights and constitutes a claim under RCW Title 4.

RCW title 4, embodies the essence of Article 1, sections 1, and 21 – *"governemnts derive their just powers by the consent of the governed to protect individual rights" and a "jury trial is an inviolate rights".* Simply reading RCW Title 4 ch 92-96, in light of Article 1, sections 1 and 21, by the expressed words and common sense understanding, the meaning is

clear – it must be the *jury*[4], which is the *institution*[5] through which the *people speak* in a *lawful manner*[6] in the *exercise of their inherent powers*[7] within the judicial branch to give the People's *consent*[8] to *governments' acts or omissions in exercising their just powers*.[9] "Because of the constitutional nature of the right to jury trial, litigants have a continued interest in it … Otherwise, article 1, section 21 means nothing." *Sofie v. Fibreboard Corp.*, 112 Wn.2d 636, 771 P.2d 711, 1989 Wash. LEXIS 42, CCH Prod. Liab. Rep. P12.

Scheidler met the pleading requirement of RCW Title 4 – which is, to make a "claim/allegation". Judge Leighton states over and over (about 13 times, see App. 4-48), "he (Scheidler) claims…"! Then Judge Leighton describes what Scheidler claims arising from the "acts or omissions" by defendants. Judge Leighton, by his own words, shows Scheidler met every element required by RCW Title 4!

Scheidler added a great deal more facts in support of his allegations. Judge Leighton, says, "more than 200 pages of exhibits" **[App.11-12].**

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[4] Article 1, section 21

[5] See RCW 4.04.010 … rule of decision must be consistent with Washington's "institutions".

[6] Id., *Cudihee*, supra.

[7] Article 1, section 1

[8] Ibid.

[9] Ibid.

Neither Judge Leighton nor defendants' addressed these 200 exhibits. In fact, Judge Leighton expressly absolved defendants from answering. Leighton, at App. 36, says, "none of defendants should…be required to address…[the allegations or facts]", Clearly Judge Leighton wants to "plead" defendants' case for them. For a judge to assume the role of defendants' lawyers abridges Article 4, section 19 in violation of 28 USC 2072(b). "**JUDGES MAY NOT PRACTICE LAW.** No judge of a court of record shall practice law in any court of this state during his continuance in office."

Judge Leighton's criticism of Scheidler's RICO complaint involves the same inside-out logic. Judge Leighton notes all the "felony laws" violated by defendants, just as 18 USC 1961 requires for determining a "racketeering activity". **[App. 6 (FN 2), 10, 10(FN 6), 13-14, 18, 20, 31-32, 37-41]** The violation of a statue is also a required element to establish 'negligence per se' per *Baldwin*. Judge Leighton's intent is to try to pawn-off "racketeering activities and foreclose a "*Baldwin* action" as if Scheidler is off his rocker for listing defendant's criminal violations. This begs the question, is Judge Leighton using his office to hide the criminal conduct by his colleagues?

Even when defendants are acting within the scope of their duties, **RCW 4.92.075 still holds them**

liable if their acts are "unjust". However, the judgement accrues to the state, if

> **"**the body presiding over the action or proceeding has found that the officer, employee, or volunteer was acting within the scope of his or her official duties, and a judgment has been entered against the officer, employee, or volunteer pursuant to chapter 4.92 RCW or 42 U.S.C. Sec. 1981 et seq., thereafter the judgment creditor shall seek satisfaction only from the state, and the judgment shall not become a lien upon any property of such officer, employee, or volunteer."

This case should be governed in the same way as in *Paperworkers v. Misco, Inc.,* 484 US 29, 40 (1987), in which this Court emphatically held that "it was consistent with our observation in *John Wiley & Sons, Inc.* v. *Livingston*, 376 U. S. 543, 557 (1964), that when the subject matter of a dispute is arbitrable, "procedural" questions which grow out of the dispute and bear on its final disposition are to be left to the arbitrator."

Here, the contract's terms at issue are Washington's constitution and laws. And the "arbitrator" in this case is the "jury". And the "procedures" in this case are described in RCW Title 4.

For defendants' lawyers and judges to deny leave to amend, to obstruct a jury, to decide their own

conduct, and then claim 'res judicata, estoppel…' is simply governments deciding the scope of their own authority, in violation of Article 1, section 1 and the laws of RCW title 4 that implement this provision. A "jury verdict", which is an *act* by the people, is the only "act" that is beyond the reach of RCW title 4. Clearly Judge Leighton applies *Hicks* as a fraudulent scheme to "abridge, modify or enlarge" the laws that control. Judge Leighton wants to ensure "judges", NOT THE PEOPLE, control government. It is a clear act of bias – satisfying a personal interest in the outcome of the case prohibited by §455(a) and (b)(4). Such conduct by a judge is unacceptable under *Livingston,* and prohibited under 28 USC §§ 1652 and 2072(b).

Therefore, *Hicks* is inappropriate as it fails to meet the standards imposed by RCW 4.04.010, supra, Applying *Hicks* is a fraud upon Scheidler, the Courts and Society. "[F]raud vitiates everything tainted by it, even to the most solemn determinations of courts of justice". *Batey v. Batey*, 35 Wn.2d 791, 215 P.2d 694, 1950 Wash. LEXIS 512 "Fraudulent misrepresentation may be effected by half-truths calculated to deceive. A representation literally true is actionable if used to create an impression substantially false. 37 C. J. S. 251, Fraud, § 17 b. *Ikeda v. Curtis*, 43 Wn.2d 449, 261 P.2d 684, 1953 Wash. LEXIS 329.

The District and 2nd panel's holdings are voidable for fraud by applying irrelevant case law in

violation of the U.S. 10th amendment, §§1652 and 2072(b). As *Baldwin* makes clear, the violation of these federal laws provides Scheidler, *and a jury*, a right of action for the injuries caused.

25. Count 2: Tortious conduct by Officers of the Court.

The 2nd panel, without any rationale, dismissed Scheidler's claim, alleging he "failed to allege facts sufficient to state any plausible claim. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face."

Probable Cause: Paragraphs 1-24 are incorporated by reference. *Iqbal*, in which a terrorist sues a federal agency, is irrelevant case law for the same reasons as stated in Count 1, incorporated by reference.

Additionally, by the federal courts' own words, it is self-evident *Iqbal* is a "factual analysis", Facts are for a jury to decide – not a judge. Washington's Article 4, section 16 mandates', "Judges *shall not* charge juries with respect to matters of fact, *nor comment thereon*". See also RCW 4.40,060 RCW 4.44.090 – facts are for a jury **[App. 77]**. For this reason alone Iqbal is inappropriate under RCW 4.04.010.

Then at App. 28, Judge Leighton states, "Scheidler is factually wrong". Clearly Judge Leighton

is both denying (abridging) the jury of its powers to decide the facts, and then Judge Leighton claims for himself (enlarging) his power to "comment on the facts". (App 6 to App 8; App 42 to App 47).

Notwithstanding an *Iqbal* analysis abridges Article 4, section 16, the facts alleged are Defendants "acts or omissions" as RCW title 4, requires. As stated in the probable cause for count 1, Judge Leighton spent 30-pages describing the "acts" by defendants which constitute the facts to be tried.

Additionally, Washington's Supreme Court rejected adopting *Twombly* and *Iqbal* standards of pleading in *McCurry v. Chevy Chase Bank, FSB*, 169 Wn.2d 96. Judge Leighton simply claims "this is a federal trial court …Scheidler's reading of *McCurry* is simply wrong." [App. 15 at FN 9]. Judge Leighton only referenced Scheidler's *Iqbal* arguments in a footnote – in what appears to an attempt by Leighton to delegitimize a legitimate legal argument by burying it in a dismissive footnote. Additionally, the United State's District Court SD Texas, in *Saenz v. IDS Property Casualty Insurance Company*, No. 2:14-CV-338, (2014) "held that state standards are applied to the evaluation of improper joinder claims when they are more lenient than federal standards. *E.g., Stevenson v. Allstate Texas Lloyd's,* No. 11-cv-3308, 2012 WL 360089, *3 (S.D. Tex. Feb. 1, 2012); *Edwea, Inc. v. Allstate Ins. Co.,* No. H-10-2970, 2010 WL

5099607, 2010 U.S. Dist. LEXIS 129582 (S.D. Tex. Dec. 8, 2010).

State pleading standards are an issue of first impression in the US 9th Circuit and needs to be addressed. This Court in *Schlagenhauf v. Holder*, 379 US 104, 111 (1964), states, "the Court of Appeals should have also, under these special circumstances, determined…new and important problems."

Therefore, *Iqbal* is inappropriate under the standards of RCW 4.04.010, and the application of *Iqbal* is actionable under RCW 4.92, RCW 4.96, *Baldwin* and *Ikeda v. Curtis*, supra.

26. **Count 3: Tortious conduct by Officers of the Court.**

The 2nd panel, without any rationale, claims, "the district court did not abuse its discretion in denying Scheidler leave to amend because amendment would have been futile. *See U.S. ex rel. Lee v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011)";

Probable cause: Paragraphs 1-25 incorporated by reference.

Corinthian is irrelevant case law for the same reasons as stated in Count 1, and 2.

Additionally, Judge Leighton, in denying leave to amend, App. 33, claims his reasons are the "prejudice to opposing party … (which) carries the greatest weight". Defendants' have no rights to

"prejudice", as *Cudihee* makes clear. Judge Leighton, contrary to §2072(b), reverses the plaintiff-defendants relationship established by Article 1, section 1. Rather than holding defendants to their legal duty to protect Scheidler, it appears Judge Leighton requires Scheidler protect the rights he bestows upon defendants' or suffer his consequences.

Therefore, *Corinthian* is inappropriate under the standards of RCW 4.04.010, and is actionable under RCW 4.92 and RCW 4.96, *Baldwin*, and *Ikeda v. Curtis*, supra.

27. **Count 4: Tortious conduct by Officers of the Court.**

The 2nd panel states, "The district court properly denied Scheidler's state tax appeal because Scheidler failed to identify any error in the state tax agencies' decisions. *See* Wash. Rev. Code §§ 34.05.570(3) (circumstances under which court may grant relief from agency decision), 84.36.383(5) (definition of "disposable income").

Probable cause: *Paragraphs 1-26 included by reference.*

It is self-evident from the ruling itself, Judge Leighton **[App. 38-48]** is again in violation of the state's Article 4, section 16 and RCW 4.40,060 RCW 4.44.090 – judges shall not comment on the facts; and facts are for a jury **[App. 77]**. At App. 28, Judge Leighton states, "Scheidler is factually wrong".

Clearly Judge Leighton is both denying (abridging) the jury of its powers to decide the facts, and then Judge Leighton claims for himself (enlarging) his power to "comment on the facts". (App 6 to App 8; App 42 to App 47).

Judge Leighton's conduct constitutes the unlawful "practice of law"[10]. Defendants never answered the complaint, but motioned only for dismissal, which Judge Leighton granted. (App. 4, 31-33) This begs the question, who argued the case? Who presented evidence? Who cross-examined witnesses? When was Scheidler given his opportunity to present oral testimony? There must be "some meaningful opportunity subsequent to the initial taking for a determination of rights and liabilities ." *Parratt v. Taylor*, 451, US 527, 541 - Supreme Court 1981. "[T]he right to be heard in a meaningful manner at a meaningful time ." *Elks Nat. Foundation v. Weber, 942 F.2d 1480 - Court of Appeals, 9th Circuit 1991;* includes the right "to confront and cross-examine adverse witnesses", *Goldberg v. Kelly*, 397 US 254 (1970).

Notwithstanding the issues related to Judge Leighton's unlawfully claimed powers, and the denial of Scheidler's due process right to be heard, Judge Leighton's analysis of RCW 84.36.383 **[App. 38-47]** runs afoul of this Court's holding in *United Sav. Assn.*

[10] Id., Article 4, section 19.

of Tex. v. Timbers of Inwood Forest Associates, Ltd., 484 US 365, 371 (1988). Scheidler's interpretation is the "only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law, see, *e. g.,* Pilot Life Ins. Co. v. *Dedeaux,* 481 U. S. 41, 54 (1987); *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U. S. 609, 631-632 (1973); *Jarecki* v. *G. D. Searle & Co.*, 367 U. S. 303, 307-308 (1961); and the courts must "presume that all facts alleged in the plaintiff's complaint are true." *Tenore v. AT&T Wireless Servs.,* 136 Wn.2d 322, 330, 962 P.2d 104 (1998). If any ambiguity exists it must be resolved in favor of the Article 7, section 10 right; not defeat it.

On a more fundamental level, one of Scheidler's claims was for a declaratory ruling. (see second amended complaint, dkt 58 at ¶282)

> *Declare the Defendant, James Avery, violated his statutory obligations to publicize the "qualifications and manner of making claims under RCW 84.36.381 through 84.36.389" because the "qualifications" Avery publicizes do not reflect the statute these publications are to portray.*

Before any 'statutory interpretation' can be performed, we need to know which of the various versions of the statutes (see App. 88-93) are being interpreted. This begs the question, upon what words are these judicial interpretations based? An absurdity exists under *Stalkup, infra,* as no one other than

Scheidler addressed Avery's altering RCW 84.36.383(5), or the DOR's false narrative based upon their version of ¶383(5).

For the same reasons as in Count 1 through 3, incorporated by reference, probable cause exists for the 'acts or omissions' by the district and federal courts that are actionable under RCW 4.92 and RCW 4.96, *Baldwin*, and *Ikeda v. Curtis*, supra.

28. **Count 5: Tortious conduct by Officers of the Court**.

The 2nd panel states, "The district court did not abuse its discretion in denying Scheidler's motion for recusal of the district judge because Scheidler failed to identify a ground for recusal. *See* 28 U.S.C. §§ 144, 455; *Pesnell v. Arsenault*, 543 F.3d 1038, 1043 (9th Cir. 2008)";

Probable cause: As stated VIII (21) above, Scheidler noted at least 10 factual reasons Leighton should have disqualified. On the face of the appellate court's statement it is self-evident, judges are deciding the facts, the laws, the rules, the ethical obligations that apply to judges. It is a blatant violation of 28 USC 455(a) and (b)(4). Judges have a clear "bias", "a fiduciary conflict" and "direct interests" concerning the scope of their conduct, the laws, the rules, the ethical obligations imposed upon judges.

The continuing claim by judges that "Scheidler failed to identify a ground for recusal" is false

statements of fact by officers of the court and a fraud upon the court by officers of the court.

For the same reasons as in Count 1-4, probable cause exists for fraud and is actionable under RCW 4.92 and RCW 4.96, *Baldwin*, and *Ikeda v. Curtis*, supra.

29. **Count 6: Tortious conduct by Officers of the Court.**

The 2nd appellate panel claims, "We reject as meritless Scheidler's contentions that the district court lacked authority to decide the motions to dismiss, that federal pleading standards are inapplicable, and that the district court failed to comply with this court's prior mandate";

Probable cause: Paragraphs 1-28 are included by reference.

Additionally, the 1st panel's memorandum is a view directly opposite the view by the 2nd panel. In fact the 1st panel's memorandum leaves the state laws that apply 'mostly' intact. The second panel neither addresses its opposite view, or explains why state laws are ignored.

For the same reasons as in Count 1-5, incorporated by reference, probable cause exists for fraud and is actionable under RCW 4.92 and RCW 4.96, *Baldwin*, and *Ikeda v. Curtis*, supra.

30. **Count 7: Tortious conduct by Officers of the Court.**

The Federal Court claims "We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009)". Judge Leighton claims "Scheidler, fundamentally, misapprehends the duties of attorneys generally, and those opposing him in this case and prior cases". **[App 17-18]**

Probable cause: First*, Wright* is not on point in this case. *Wright* concerned California law, and a moot issue in seeking summary judgment because the trial had already concluded. In this case Washington law applies, no trial or jury verdict occurred, none of the issues are moot. *Wright* is inappropriate under the standards of RCW 4.04.010

Second, "de novo" review is the standard of review for appeals of cases dismissed on the pleadings. A de novo review is of the "whole record" not just what is argued in a brief. Clearly the 9th circuit did not conduct a 'de novo' review as they expressly stated they won't consider anything not found in the brief.

Third, under Washington laws, RCW 2.48.180 through RCW 2.48.230, AND RCW title 4, it is the lawyer's duty or court's obligation to present 'all facts and law' that apply which have been overlooked. In this case, Scheidler is not a lawyer. It is defendants' lawyers who have a statutory duty to "remedy" any

substantive issue inadvertently omitted by the opposing party. See also RCW 4.32.250 which implements Article 1, section 1's mandate to "*protect individual rights*". The courts have a legal as well as fiduciary duty under FRAP 46, circuit rule 46-2 and LCR 83.3, to hold lawyers to their legal obligations. By the 2nd panels own words, they are in breach of their legal as well as ethical duty.

Fourth, bias and fiduciary conflict exist. Judges under FRAP 46, circuit rule 46-2 and LCR 83.3 are suppose to hold lawyers to their legal and ethical duty. This fiduciary obligation, when a lawyer's duties are at issue, triggers disqualification under 28 USC 455(a) and (b)(4). Bias is further evident by Judge Leighton's testimony on behalf of 'attorneys' noted above. In Washington a lawyers *duties* are defined by law – RCW 2.48.180 through RCW 2.48.230, and cannot be 'abridged, modified or enlarged' by Judge Leighton's notion of the 'role of lawyers'.

Therefore, for the same reasons as in Count 1-6, probable cause exists for fraud and is actionable under RCW 4.92 and RCW 4.96, *Baldwin*, and *Ikeda v. Curtis*, supra.

31. **Count 8: Official Misconduct – a gross misdemeanor.**

Probable cause: Under Washington laws, **RCW 9A.80.010 and RCW 42.20.080,** a public servant or officer who violates any provision of law regulating

their conduct is Official misconduct and a gross misdemeanor.

Defendants, as well as lawyers and judges, are all 'public servants' and are regulated by the state's laws noted in App. 54-87. Defendant James Avery has no authority to deceive retired/disabled homeowners from their Article 7 section 10 rights while the other public servants turn a blind-eye. Most egregiously, Judge Leighton devoted nearly 40 pages without addressing which "version of RCW 84.36.383(5)" his analysis is based upon. All public servants associated with this case, beyond defendants themselves, have an affirmative duty to both protect Scheidler and to take action against any other public servant who aids and abets "unauthorized or invalid" acts when Washington's constitution and laws demand the opposite.

Each violation of a provision of law is a gross misdemeanor and actionable under *Baldwin*. These defendants and their lawyers have repeatedly violated the laws and constitutions of Washington and the United States and should suffer the penalties prescribed for these violation. In other words: defendants should be locked up for the rest of their lives for their betrayal of the US and Washington State constitutions.

32. **Count 9: Aiding and Abetting**

At the core of our rotten government are lawyers. And it is from the ranks of lawyers we get our judges – all of whom are WSBA associates.

Probable cause: Judge Leighton was reversed, by the 1st panel, for 'abuses of discretion'. A judge would not 'abuse discretion' if not for the lawyers seeking to mislead the judge. Under Washington law, RCW 2.48.210, a lawyer "*shall not seek to mislead a judge or jury by any false statements of fact or law".* (emphasis). The 1st panel's reversal and remand is authoritative evidence the lawyers in this case have violated the law that govern their conduct – all to Scheidler's harm.

A jury, as demanded, would have ended this case in 2012 But WSBA associates, regardless of their government titles, obstruct a person's constitutional right to a jury trial.

There is a reason a jury has been denied. There is a reason Scheidler's lawyer was forced off the case. There is a reason no hearings were conducted, no witnesses testified, no cross-examination allowed, no experts called. There is a reason Judge Leighton divined, from the pleadings alone, all inferences in defendants' favor, when case law mandates the courts "presume that all facts alleged in the plaintiff's complaint are true." *Tenore v. AT&T Wireless Servs.,* 136 Wn.2d 322, 330, 962 P.2d 104 (1998). It is because these government public servants are guilty and they

can only escape their unlawful conduct by using their office to aid and abet so to obstruct justice at every opportunity in a quid pro quo cover-up.

Defendants, their lawyers, and judges, as public servants, have a common fiduciary duty imposed by Article 1, section 1. As 'officers, elected officials or employees' of the state's governments their sole duty is to protect "individual rights" - Scheidler's rights. To the contrary, Defendants, their lawyers, and judges, have engaged in conduct that is unauthorized under both state and federal laws; have used their government offices to *abridge or modify* Washington State's constitution and laws as described herein, and e*nlarged* their powers under the unlawful scheme that relies upon government deciding the scope of its own authority in violation of 28 USC 455(a) and (b)(4), 28 USC 1652 and 28 USC 2072(b). Said another way, these public servants have, in every instance, decided their own conduct by limiting Scheidler's civil action under inapplicable case law doctrine and denied both Scheidler and the People their jury right to address the facts and governments conduct. The principles of liability, RCW 9A.08.020, implicates all these public servants in aiding and abetting each other's unlawful schemes to circumvent Washington's laws and Scheidler's rights.

Scheidler has standing to sue all those who have violated Scheidler's rights, and a jury has full

jurisdiction to decide the merits of defendants' conduct and award damages. See *Baldwin*, supra.

2. The Federal Courts are in violation of federal court standards.

If state law is ignored, as in this case, contrary to 28 USC 1652 mandating state law rule decision in federal court, "a trial court abuses its discretion when it applies the wrong law. See, e.g., *State v. Lord*, 161 Wn.2d 276, 284, 165 P.3d 1251 (2007). "If a trial court has tenable grounds for a decision but applies the wrong law, it errs as a matter of law. Moreover, whatever its stated reasons under the inapplicable standard, these reasons are no longer reasonable under the controlling legal standard." *Estate of Stalkup v. Vancouver Clinic, Inc., PS*, 145 Wn. App. 572 (Wash. Ct. App. 2008); "[w]hen a court misapprehends or fails to apply the law with respect to underlying issues, it abuses its discretion." *Gunnells v. Healthplan Servs. Inc.,* 348 F.3d 417, 446 (4th .2003)."

Also it is facially evident, there is a split between appellate panels re the 'law of the case' that center on these state law issues of first impression. See *Schlagenhauf v. Holder*, 379 US 104, 111 (1964), supra.

IX. REASONS FOR ISSUING A SHOW CAUSE OR IN THE ALTERNATIVE MANDAMUS

This is a ***Federal v State controversy*** created by judicial usurpation of power – there is no forum that is free of conflict to resolve judges-judging-judges claiming powers they do not have.

This Court holds, "the federal courts must follow the law of the State as to burden of proof, *Cities Service Co.* v. *Dunlap,* 308 U.S. 208, as to conflict of laws, *Klaxon Co.* v. *Stentor Co.,* 110*110 313 U.S. 487, as to contributory negligence, *Palmer* v. *Hoffman,* 318 U.S. 109, 117. And see *Sampson* v. *Channell,* 110 F.2d 754. *Erie R. Co.* v. *Tompkins* has been applied with an eye alert to essentials in avoiding disregard of State law in diversity cases in the federal courts. A policy so important to our federalism must be kept free from entanglements with analytical or terminological niceties." Id., *Guaranty* at 110; Id., *Bernhardt*.

The judges within the US 9th Circuit, without explanation, exceeded their statutory limitations defined by the US 10th amendment, 28 USC 1652, 28 USC 2072(b), 28 USC 455 (a) and (b)(4), to conspire with Washington State public servant defendants to 'abridge or modify' Washington State's constitution and laws to escape their legal duty by applying federal court-created standards that have no preemptive authority over state law. See *State v. Kurtz,* supra, *Cipollone v. Liggett,* supra. This unlawful scheme is intended to ensure only 'judges-judge-judges'

concerning the powers they claim under their self-created rules and court-created holdings – which is prohibited under 28 USC 455.

This federal usurpation of the federal and state constitutions and laws, cited herein, has raised this case to a ***federal power v state's rights*** controversy of broad and substantial public importance. In fact President Trump was elected, in part, for his promise to address judicial overreaching and government corruption and return government back to the people..

This Court has, original jurisdiction of "(2) All controversies between the United States and a State …", per 28 USC 1251(a) and (b)(2); and supervisory powers to ensure "the history of liberty has largely been the history of observance of procedural safeguards." *McNabb v. United States*, 318 US 332, 347 (1943).

There are no adequate avenues for Scheidler to vindicate his rights under RCW Title 4, or seek damages under *Baldwin,* resulting from judicial corruption as there are no court rules providing a fair forum established by the Supreme Court in which judges don't judge judges. Violations of law by federal judges and the lawyers who are regulated by federal judges create the exceptional circumstances warranting this action.

Furthermore an appellate decision that is devoid of any rationale in explaining their violations of federal law cannot be reviewed by this court as

there is nothing to review. The important issues raised and supported by the argument, are ripe for review and disposition under this Court's Original jurisdiction or All Writs Act and supervisory jurisdiction. See *Hollingsworth v. Perry,* 130 S.Ct. 705, 709-10 (2010), "By insisting that courts comply with the law, parties vindicate not only the rights they assert but also the law's own insistence on neutrality and fidelity to principle … are part of the reasons leading to the decision to grant extraordinary relief". In *Cheney v. United States Dist. Court for DC*, 542 US 367, 380 (2004), "[O]nly exceptional circumstances amounting to a judicial 'usurpation of power' *Will v. United States*, 389 U.S. 90, 95, 88 S.Ct. 269, 19 L.Ed.2d 305 (1967)… or a "clear abuse of discretion," *Bankers Life & Casualty Co. v. Holland*, 346 U.S. 14379, 383, 74 S.Ct. 145, 98 L.Ed. 106 (1953), "will justify the invocation of this extraordinary remedy," *Will*, 389 U.S., at 95, 88 S .Ct. 269.

X. CONCLUSION

For the reasons stated above, this Court must exercise its fiduciary duty and issue the mandate. Or provide, by rule, an "impartial forum" for Scheidler, as 28 USC 455(a) and (b)(4) dictates, that doesn't reek of "bias", "fiduciary conflict" and "other conflicts of interests" in having judges-judging-judges concerning the laws, rules, and fiduciary duty imposed upon judges and officers of the court (i.e., lawyers).

Respectfully submitted

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