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CASE #: 25-2-10692-6 SEA

The Hon. David Whedbee
Hearing Date: 11/21/25
Hearing Time: 10:00AM

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

MARY ANDERSON,

Plaintiff,

v.

SNOHOMISH COUNTY INDIVISIBLE, a chapter of Indivisible, a 501(c)(4) corporation; NAOMI DIETRICH, and marital community, an individual; PAULA TOWNSELL, and marital community, an individual; and PATRICK MORIARTY, and marital community, an individual,

Defendants.

NO. 25-2-10692-6 SEA

ORDER GRANTING DEFENDANTS' SPECIAL MOTION FOR EXPEDITED RELIEF UNDER UNIFORM PUBLIC EXPRESSION PROTECTION ACT RCW 4.105.020

THIS MATTER came before the undersigned upon Defendants' Special Motions for Expedited Relief Under Uniform Public Expression Protection Act RCW 4.105.020. The Court, having been fully informed, read and considered arguments of counsel, and documents, evidence, and other filings entered into the court record by the parties, including the following:

1. Complaint for Damages (Dkt. 1, April 7, 2025)
2. Defendant Townsell's Special Motion for Expedited Relief Under Uniform Public Expression Protection Act RCW 4.105.020 (Dkt. 31, June 5, 2025)
3. Declaration of Paula Townsell (Dkt. 32, June 5, 2025)
4. Declaration of William Sheets (Dkt. 33, June 5, 2025)

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Seattle, WA 98104

5. Declaration of Counsel in Support of Defendant Townsell's Special Motion for Expedited Relief Under Uniform Public Expression Protection Act RCW 4.105.020 (Dkt. 34, June 5, 2025)
6. Defendant Patrick Moriarty's Motion to Dismiss; Uniform Public Expression Protection Act, Chapter 4.105 RCW (Dkt. 35, June 6, 2025)
7. Declaration of Patrick Moriarty in Support of Defendant Patrick Moriarty's Motion to Dismiss; Uniform Public Expression Protection Act, Chapter 4.105 RCW (Dkt. 36, June 6, 2025)
8. Declaration of Dawna Knox (Dkt. 37, June 6, 2025)
9. Declaration of Sharon K. Zankich in Support of Defendant Patrick Moriarty's Motion to Dismiss; Uniform Public Expression Protection Act, Chapter 4.105 RCW (Dkt. 38, June 6, 2025)
10. Declaration of Tana Daugherty in Support of Defendant Patrick Moriarty's Motion to Dismiss; Uniform Public Expression Protection Act, Chapter 4.105 RCW (Dkt. 39, June 6, 2025)
11. Defendant Snohomish County Indivisible's Special Motion for Expedited Relief Pursuant to the Uniform Public Expression Protection Act (RCW §4.105.020) (Dkt. 41, June 9, 2025)
12. Declaration of Mary Ann Ottinger (Dkt. 43, June 9, 2025)
13. Declaration of Jeffrey Twersky (Dkt. 44, June 9, 2025)
14. Declaration of Peter M. Ritchie (Dkt. 49, June 9, 2025)
15. Defendant Dietrich's Special Motion for Expedited Relief Under Uniform Public Expression Protection Act RCW 4.105.020 [Corrected] (Dkt. 52, June 10, 2025)

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16. Plaintiff's Motion for Limited Discovery and to Continue All Defendants' Motions for Expedited Relief Under the Uniform Public Expression Protection Act Until the Limited Discovery Can Be Obtained (Dkt. 57, June 20, 2025)
17. Declaration of Erin C. Sperger in Support of Plaintiff's Motion for Limited Discovery and to Continue All Defendants' Motions for Expedited Relief Under the Uniform Public Expression Protection Act Until the Limited Discovery Can Be Obtained (Dkt. 58, June 20, 2025)
18. Defendant Naomi Dietrich's Response to Plaintiff's Motion for Limited Discovery and to Continue Defendant's UPEPA Motion (Dkt. 64, June 27, 2025)
19. Declaration of Peter M. Ritchie in Support of Defendant Naomi Dietrich's Response to Plaintiff's Motion for Limited Discovery and to Continue Defendant's UPEPA Motion (Dkt. 65, June 27, 2025)
20. Defendant Townsell's Response in Opposition to Plaintiff's Motion for Limited Discovery (Dkt. 67, June 27, 2025)
21. Defendant Patrick Moriarty's Response to Plaintiff's Motion for Limited Discovery and to Continue All Defendants' Motions for Expedited Relief Under the Uniform Public Expression Protection Act Until the Limited Discovery Can Be Obtained (Dkt. 68, June 27, 2025)
22. Defendant Snohomish County Indivisible's Opposition to Plaintiff's Motion for Limited Discovery and to Continue All Defendants' Motions for Expedited Relief Until the Limited Discovery Can Be Obtained (Dkt. 69, June 27, 2025)
23. Amended Defendant Naomi Dietrich's Joinder in Co-Defendants' Responses in Opposition to Plaintiff's Motion for Limited Discovery (Dkt. 73, June 27, 2025)

24. Plaintiff's Reply in Support of Her Motion for Limited Discovery and Continuance and in Opposition to Defendants Naomi Dietrich's and Paula Townsell's Response (Dkt. 75, July 1, 2025)
25. Plaintiff's Reply in Support of Her Motion for Limited Discovery and Continuance and in Opposition to Defendant Moriarty's Response (Dkt. 76, July 1, 2025)
26. Plaintiff's Reply in Support of Her Motion for Limited Discovery and Continuance and in Opposition to Defendant Indivisible's Response (Dkt. 77, July 1, 2025)
27. Plaintiff's Opposition to Defendants' Motions to Dismiss Under the Uniform Public Expression Protection Act and Award Plaintiff Her Reasonable Attorney's Fees and to Strike Inadmissible Evidence (Dkt. 81, July 7, 2025)
28. Declaration of Mary Conception Anderson (Dkt. 82, July 7, 2025)
29. Declaration of Molly Fraser (Dkt. 83, July 7, 2025)
30. Declaration of Christopher Heimann (Dkt. 84, July 7, 2025)
31. Amended Defendant Naomi Dietrich's Joinder in Co-Defendant Snohomish County Indivisible's Motion for Overlength Brief (Dkt. 95, July 9, 2025)
32. Corrected Declaration of Naomi Anita Dietrich (Dkt. 98, July 10, 2025)
33. Reply in Support of Defendant Townsell's Special Motion for Expedited Relief Under Uniform Public Expression Protection Act RCW 4.105.020 (Dkt. 100, July 14, 2025)
34. Defendant Patrick Moriarty's Reply in Support of Motion to Dismiss; Uniform Public Expression Protection Act, Chapter 4.105 RCW (Dkt. 101, July 14, 2025)
35. Declaration of Jesse L. Taylor in Support of Defendant Patrick Moriarty's Reply in Support of Motion to Dismiss; Uniform Public Expression Protection Act, Chapter 4.105 RCW (Dkt. 102, July 14, 2025)
36. Defendant Naomi Anita Dietrich's Reply in Support of Her Motion for Expedited Relief Pursuant to the Uniform Public Expression Protection Act (RCW §4.105.020), Motion

to Strike, and Opposition to Plaintiff's Motion to Strike, and Joinder in Oppositions Filed By Defendants Snohomish County Indivisible, Townsell, and Moriarty (Dkt. 103, July 14, 2025)

37. Declaration of Naomi Anita Dietrich in Support of Her Reply to Plaintiff's Opposition (Dkt. 104, July 14, 2025)

38. Declaration of Peter M. Ritchie in Support of Defendant Naomi Anita Dietrich's Reply (Dkt. 105, July 14, 2025)

39. Defendant Snohomish County Indivisible's Reply Supporting Its Special Motion for Expedited Relief Pursuant to the Uniform Public Expression Protection Act (RCW §4.105.020), Motion to Strike, and Opposition to Plaintiff's Motion to Strike, and Joinder in Oppositions Filed by Defendants Dietrich, Townsell, and Moriarty (Dkt. 107, July 14, 2025)

40. Order Granting in Part and Denying in Part Plaintiff's Motion for Limited Discovery and Order Granting Motion to Continue Defendants' Motions for Expedited Relief Under the Uniform Public Expression Protection Act (Dkt. 109, July 16, 2025)

41. Agreed Order Continuing Defendants' UPEPA Motions Hearing Date (Dkt. 110, July 22, 2025)

42. Objection to Subpoenas to Daily Herald in Everett and Jonathan Tall (Dkt. 114, July 31, 2025)

43. Plaintiff's Motion to Compel Compliance with the Subpoena Served to Jonathan Tall (Dkt. 122, September 2, 2025)

44. Declaration of Erin C. Sperger in Support of Plaintiff's Motion to Compel Compliance with the Subpoena Served to Jonathan Tall (Dkt. 123, September 2, 2025)

45. Declaration of Mary Anderson in Support of Plaintiff's Motion to Compel Compliance with the Subpoena Served to Jonathan Tall (Dkt. 124, September 2, 2025)

46. Declaration of Molly Fraser (Dkt. 125, September 2, 2025)
47. Response of Jonathan Tall to the Motion to Compel (Dkt. 129, September 8, 2025)
48. Defendant Judge Patrick Moriarty's Opposition to Plaintiff's Motion to Compel Compliance with the Subpoena Served to Jonathan Tall (Dkt. 132, September 9, 2025)
49. The Daily Herald's (1) Response to Plaintiff's Motion to Compel Complaince with Subpoena Issued to Jonathan Tall; (2) Motion to Quash Same; and (3) Motion for CR 11 Sanctions Against Plaintiff's Attorney and Award of Fees and Costs From Plaintiff to the Herald (Dkt. 133, September 9, 2025)
50. Declaration of Michele Earl-Hubbard (Dkt. 134, September 9, 2025)
51. Plaintiff's Reply to Defendant Moriarty's Response to Motion to Comply with the Subpoena Served to Jonathan Tall (Dkt. 136, September 11, 2025)
52. Plaintiff's Reply to Non-Party The Daily Herald's Response to Motion to Compel Compliance with the Subpoena Served to Jonathan Tall (Dkt. 137, September 11, 2025)
53. Supplemental Declaration of Erin C. Sperger in Support of Plaintiff's Reply to the Herald on Motion to Compel Compliance with the Subpoena Served to Jonathan Tall (Dkt. 138, September 11, 2025)
54. Order Denying Plaintiff's Motion to Compel, Granting the Daily Herald's Motion to Quash, Denying Request for Fees and Costs to the Herald to be Paid by Plaintiff, and Denying Request for CR 11 Sanctions (Dkt. 140, September 16, 2025)
55. Defendant Patrick Moriarty's Revised Motion to Dismiss; Uniform Public Expression Protection Act, Chapter 4.105 RCW (Dkt. 142, October 24, 2025)
56. Second Declaration of Tana Daugherty in Support of Defendant Patrick Moriarty's Revised Motion to Dismiss; Uniform Public Expression Protection Act, Chapter 4.105 RCW (Dkt. 143, October 24, 2025)

57. Defendant Paula Townsell's Statement of Intent to Rely on Previously Filed Briefing (Dkt. 144, October 24, 2025)

58. Defendant Snohomish County Indivisible's Joinder in All Oppositions Filed by Defendants Dietrich, Townsell, and Moriarty (Dkt. 147, October 24, 2025)

59. Defendant Naomi Anita Dietrich's Statement of Intent to Rely on Previously Filed Briefing (Dkt. 149, October 24, 2025)

60. Plaintiff's Revised Opposition to Defendants' Motions to Dismiss Under the Uniform Public Expression Protection Act and Award Plaintiff Her Reasonable Attorney's Fees and to Strike Inadmissible Evidence (Dkt. 151, November 10, 2025)

61. Supplemental Declaration of Mary Conception Anderson (Dkt. 152, November 10, 2025)

62. Declaration of Erin C. Sperger (Dkt. 153, November 10, 2025)

63. Reply to Plaintiff's Revised Opposition to Defendant's Motion to Dismiss Under UPEPA (Dkt. 169, November 17, 2025)

64. Defendant Patrick Moriarty's Reply in Support of Motion to Dismiss; Uniform Public Expression Protection Act, Chapter 4.105 RCW (Dkt. 171, November 17, 2025)

65. Declaration of Jesse L. Taylor in Support of Defendant Patrick Moriarty's Reply in Support of Motion to Dismiss; Uniform Public Expression Protection Act, Chapter 4.105 RCW (Dkt. 172, November 17, 2025)

66. Defendant Snohomish County Indivisible's Reply to Plaintiff's Revised Opposition to Motions to Dismiss Under the UPEPA Act (Dkt. 173, November 17, 2025)

67. Defendant Dietrich's Joinder in Defendant Townsell's Reply to Plaintiff's Revised Opposition and Motion to Strike Inadmissible Statements and Materials (Dkt. 175, November 17, 2025)

68. Declaration of Mario A. Batki in Response to the Declaration of Erin C. Sperger Filed Herein on November 10, 2025 (Dkt. 176, November 17, 2025)

69. Declaration of Naomi Anita Dietrich in Response to the Declaration of Erin C. Sperger Filed Herein on November 10, 2025 (Dkt. 177, November 17, 2025)

70. Plaintiff's Response to Defendants' Motions to Strike (Dkt. 180, November 20, 2025)

71. Order on Deadlines for Additional Briefing (Dkt. 183, November 24, 2025)

72. Plaintiff's Chart That Lists Provably False Statements Pursuant to Court's Order Dated November 24, 2025 (Dkt. 186, December 1, 2025)

73. Defendants' Combined Counterstatement Regarding Alleged False Statements (Dkt. 188, December 8, 2025)

74. Defendant Patrick Moriarty's Supplemental Briefing Regarding the Requirement That Alleged Defamatory Statements Be Pled in the Complaint (Dkt. 189, December 8, 2025)

75. Plaintiff's Supplemental Briefing on Due Process (Dkt. 191, December 8, 2025)

76. Defendants' Joint Objection and Motion to Strike (Dkt. 194, December 12, 2025)

77. Declaration of Jesse L. Taylor in Support of Defendants' Joint Objection and Motion to Strike (Dkt. 195, December 12, 2025)

78. Defendants' Combined Supplemental Briefing (Dkt. 196, December 19, 2025)

79. Declaration of Jesse L. Taylor in Support of Defendants' Combined Supplemental Briefing (Dkt. 197, December 19, 2025)

80. Plaintiff's Supplemental Briefing on Whether an Improperly Tendered Affidavit of Prejudice Deprives the Court of Authority to Allow an Objecting Party to Make a Record of His or Her Objection (Dkt. 198, December 19, 2025)

81. Declaration of Mary Conception Anderson (Dkt. 199, December 19, 2025)

82. Plaintiff's Response to Defendants' Objection and Motion to Strike (Dkt. 200, December 19, 2025)

83. Reply in Support of Defendants' Joint Objection and Motion to Strike (Dkt. 202, December 23, 2025)

84. Oder Granting Defendants' Motion for Leave to File Responsive Brief and Denying Motion to Strike (Dkt. 203, December 30, 2025)

85. Defendant Snohomish County Indivisible's Supplemental Reply Supporting Its Special Motion for Expedited Relief Pursuant to the Uniform Public Expression Protection Act (RCW §4.105.020) (Dkt. 204, January 5, 2026)

86. Defendants' Joint Response to Plaintiff's Supplemental Briefing on Due Process (Dkt. 208, January 7, 2026)

87. Plaintiff's Objection and Motion to Strike Snohomish County Indivisible's Supplemental Reply (Dkt. 210, January 9, 2026)

88. Defendant Snohomish County Indivisible's Opposition to Plaintiff's Motion to Strike Supplemental Reply (Dkt. 212, January 20, 2026).

The UPEPA motions filed by Defendants Naomi Dietrich, Judge Patrick Moriarty, Paula Townsell, and Snohomish County Indivisible (SCI), as well as Plaintiff Mary Anderson's combined response, all raise overlapping facts and legal issues. At the initial hearing on these motions, on November 21, 2025, the Court requested the parties to delineate the specific allegedly actionable statements that Plaintiff claims were defamatory in this common background. For these reasons, the Court issues the following omnibus order addressing each motion, and any underlying motions to strike, in a single omnibus order. The Court finds and concludes as follows:

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General Factual Background

1. Plaintiff Mary Anderson earned her J.D. in 2011, thereafter working in various forms of civil litigation as a trial and appellate lawyer. She was also active in different bar associations, with a stated dedication to serving the community.
2. Beginning in March 2022, Ms. Anderson served the Snohomish County District Court as a Pro Tem Judge, until December 16, 2022. Ms. Anderson served in this capacity for a total of 69 calendar days, although Defendants later measured this service to be 44-45 days by aggregating the total hours worked.
3. On November 15, 2022, the Snohomish County Prosecuting Attorney's Office, through a deputy prosecutor (DPA), filed several Affidavits of Prejudice under RCW 3.34.110, in approximately 9 individual cases before then Pro Tem Judge Anderson, which Plaintiff later characterized as a "blanket affidavit." Dkt. 82, ¶¶ 10-13; *see also generally* Dkt.1, Ex. B. In response, the public defender handling the matters raised the issue of race and gender discrimination, noting that then Pro Tem Judge Anderson was the only Black woman serving in Snohomish County. The public defender alleged several times that the Prosecutor's Office had a "policy" of "affidaviting" then Pro Tem Judge Anderson. Dkt.1, Ex. B at 5-8. When asked about the reason for the affidavits, the DPA stated that he did not know the reason, but was following the directive of his superiors at the Prosecutor's Office to file affidavits in cases before then Pro Tem Judge Anderson. Then Pro Tem Judge Anderson allowed the public defender to make a record of her objections, in each individual case. When then Pro Tem Judge Anderson probed the DPA for specific reasons underlying this policy, the DPA did not have any specific information and volunteered that the Prosecutor's Office could later file an explanatory brief. Dkt.1, Ex. B at 8. No such brief or other official explanation was later provided by the Prosecutor's Office.

4. On December 28, 2022, Ms. Anderson received an email thanking her for her work in 2022 and inviting her for pro tem service on the District Court in 2023, which Ms. Anderson accepted. Dkt. 82, ¶¶ 28-29; *see also* Dkt. 1, Ex. D. In January 2023, Ms. Anderson received requests to serve in the Evergreen branch of the Snohomish County District Court, which she declined because of unavailability. *Id.*, at ¶ 30; *see also* Dkt. 1, Ex. E. Although the parties dispute whether Plaintiff remained eligible for pro tem duty in 2023 (discussed below), it is undisputed that Ms. Anderson did not in fact sit on the bench and adjudicate any District Court matters after December 16, 2022.
5. In 2023, Ms. Anderson mounted a campaign to challenge an appointed incumbent, Defendant Judge Patrick Moriarty, for his position on the Snohomish County Superior Court. During that campaign, Judge Moriarty and his campaign manager, Mary Ann Ottinger, made various statements in opposition to Candidate Anderson, which Plaintiff alleges were defamatory, placed her in a false light, or otherwise subjected Defendants here to civil liability, as discussed in detail below.
6. As part of her campaign, Candidate Anderson initially obtained the endorsement of the 38th Legislative District Democrats (LDDs), including a vote in her favor from Defendant Paula Townsell. Dkt. 125, ¶ 4, Dkt. 32 at 3. Ms. Townsell was member of the Democratic Party 38th LDD's Endorsement Committee from 2019 to 2023. Dkt. 32 at 1. Ms. Townsell was also a member of Defendant Snohomish County Indivisible (SCI) from 2017 to 2023, and its co-leader in 2024. *Id.*
7. Defendant Naomi Dietrich was the co-founder and director of SCI during the relevant time. SCI is an informal political organization, which in general supports progressive political causes. According to Ms. Dietrich, one of SCI's roles is to vet and endorse political candidates consistent with its advocacy platform, "to help people make an informed decision." Dkt. 98 at 1-2.

8. In June 2023, Ms. Townsell contacted Ms. Dietrich about Candidate Anderson. At that time, Ms. Townsell advised Ms. Dietrich that Candidate Anderson had mentioned to the endorsement committee the "affidavits of prejudice" filed while she was sitting as a Pro Tem Judge in Snohomish County District Court. According to Ms. Townsell, when asked about the affidavits, Candidate Anderson declined to elaborate except to say the issue was a matter of public record. Dkt. 98 at 2.

9. Later, Ms. Dietrich obtained a transcript of a town hall meeting that occurred in July 2023, at which Candidate Anderson in various ways described being called by God to serve as a judge. Dkt. 98 at 2-3. Ms. Dietrich stated this speech "concerned" her because she is "a firm believer in the separation between church and state." *Id* at 3. Ms. Dietrich explained further:

> On August 22, 2023, I received information that Ms. Anderson had a campaign sign at the Lake Stevens, Assembly of God church. I went to the church and saw that there was a Ms. Anderson campaign sign there. This concerned me because I do not agree with the beliefs of the Assembly of God, and I was concerned that Ms. Anderson agreed with those beliefs. In my opinion if Ms. Anderson adhered to those beliefs, she was unqualified to sit as a Snohomish County Superior Court Judge.
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> . . . .
>
> I attempted to learn about Ms. Anderson's positions on beliefs held by the Lake Stevens Assembly of God Church [sic] issues of concern to me, but throughout the campaign, when she was asked about her personal opinions on certain issues, she would respond that canons of judicial ethics prevented her from discussing her personal opinions. . . . Based on her invocation of God, and on her apparent association with the Lake Stevens, Assembly of God Church, I was concerned that Ms. Anderson's politics and values did not align with those of SCI.

Dkt. 98 at 4-5. Candidate Anderson does not dispute that she declined to answer questions about these social issues, taking the stance that to do so would be contrary to judicial ethics. Dkt. 82, ¶¶ 56, 61-62.

10. In mid-August 2023, Ms. Dietrich reached out to Ms. Ottinger, the Moriarty campaign manager. According to Ms. Townsell, Ms. Ottinger "had found information showing that Ms. Anderson was not truly a judge pro tem [in 2023], despite purporting to be an active

judge pro tem during her campaign, and that she had only worked as a judge pro tem a total of 44 days in 2022." Dkt. 98 at 3. To confirm this account, Ms. Dietrich filed a public records request with the Snohomish County District Court seeking records about Ms. Anderson's service as a Pro Tem Judge between 2013 and 2023. *Id.*; *see also id.*, Ex. A.

11. With respect to 2023, Ms. Dietrich received no responsive records, from which she concluded that Candidate Anderson had not served in 2023. As for 2022, Ms. Dietrich received records indicating that then Pro Tem Judge Anderson had served a total of 69 days, "consisting of 50 half days and 19 full days, or the equivalent of having worked 44 full days." Dkt. 98 at 4. Ms. Dietrich also concluded from these public records that then Pro Tem Judge Anderson served in 2022 starting in March until her last day on December 16, 2022. *Id.*

12. As a member of the 38th LDD's Endorsement Committee, Ms. Townsell initially supported Candidate Anderson. Dkt. 32 at 3. Later, Ms. Townsell received a "research packet" about Candidate Anderson that caused her to reconsider her views. *Id.*, *see also id*., Ex. D.

13. On August 23, 2023, Ms. Townsell observed the presence of a campaign sign for Candidate Anderson next to a Lake Stevens Assembly of God Church sign. Dkt. 32 at 5. As she further vetted Candidate Anderson, Ms. Townsell learned:

> The Lake Stevens branch of the Assembly of God Church is a member of the National Assembly of God organization. I researched the National Assembly of God website for the Church's position on homosexuality, transgender sexuality, and abortion. . . . [I discovered] position papers on homosexuality, transgender, and abortion. I concluded in reading the Assembly of God Church position papers that the Church was anti-homosexual, anti-transgender, and anti-choice. I concluded, as did other members of the Endorsement Committee, that by allowing her sign to be posted next to the Assembly of God Church sign, Anderson publicly aligned herself with the views of the Church.

Dkt. 32 at 5 (internal exhibit references omitted).

14. Ms. Townsell later discussed these concerns with the 38th LDD Endorsement Committee. Dkt. 32 at 7. For Ms. Townsell, Candidate "Anderson's public willingness to align herself with a church that has published an anti-LGBTQIA+ position paper confirm[ed] [her]

personal opinion regarding Anderson's position." *Id.* In her declarations filed with her response here and in the original complaint, Ms. Anderson does not directly deny that she was ever a member of the Assembly of God Church, *see* Dkt. 1, Dkt. 82, and Dkt. 153; although Ms. Anderson does point to an unsigned question and answer submitted respectively on September 19, and 26, 2023 to the 32nd and 38th LDDs, by "friend" and intermediary Maralyn Chase, that "Ms. Anderson is not a member of any religious denomination." Dkt. 152, Ex. E at Bates 467. Ms. Anderson denies that she ever held any campaign events at the church. Dkt. 82, ¶ 58.

15. On August 24, 2023, Ms. Townsell emailed Bill Sheets, the Endorsement Committee Chair of the 38th LDDs, to flag what she described as "major issues" surrounding Candidate Anderson's judicial campaign. *See* Dkt. 1, ¶¶ 2.59-2.60; Dkt. 153, Ex. 9 at Bates 252-254. Among other issues, Ms. Townsell noted that Candidate Anderson was "a member of the Assembly of God", a church that held views about transsexuality, gender identity, and abortion Ms. Townsell found antithetical to her and Democrats (Dkt. 153, Ex. 9 at Bates 252); Candidate Anderson spent time standing next to a Republican booth at the State Fair; and a photograph of a campaign sign in favor of Candidate Anderson was observed next to a sign that read: "You're Invited" alongside a third sign that announced an unspecified event "on Sunday at 10:00AM" at the Lake Stevens Assembly of God. Dkt. 153, Ex. 9 at Bates 252-253. Apparently because of these "major issues," Ms. Townsell stated, "we need to hear from Mary Anderson," raising express questions whether Candidate Anderson supported "LGBTQIA rights, including the right to marry", "Trans-rights" and "abortion access/choice." [1] *Id.*, at Bates 253. Ms. Townsell raised additional questions for inquiry that

[1] Plaintiff claims that "[a]s early as August 31, 2023, Dietrich and Townsell were aware that I did not place the sign above the church sign; it was put there by a supporter on their private property." Dkt. 82, ¶ 60. Yet in this declaration, Plaintiff cites no basis for this claim of notice to Defendants. *Id.*

concerned Candidate Anderson's reference to herself as a "constitutional judge" without explanation, and why the Snohomish County Prosecuting Attorney's Office "sanctioned" Candidate Anderson's "ability to serve on criminal cases from the bench." *Id.*

16. That same day, Mr. Sheets responded to Ms. Townsell, inquiring about the results of her public records request and "any known Republicans or conservatives" who had endorsed Candidate Anderson or contributed to her campaign. Dkt. 153, Ex. 9 at Bates 252.
17. In apparent response to the negative views about Candidate Anderson passing through Ms. Dietrich, Ms. Townsell and others, Maralyn Chase of the 32nd Legislative District Democrats (32nd LDDs) conducted her own research into Candidate Anderson and the related allegations about her. *See* Dkt. 152, ¶¶ 10-12, Ex. C. As a part of that research, Ms. Chase spoke with Candidate Anderson extensively from which Ms. Chase prepared a response to various allegations by Ms. Dietrich and Ms. Townsell among others. Dkt. 152, ¶ 10-18, Ex. E.
18. Later, on September 19, 2023, Ms. Chase submitted this response by way of a letter (with attachments), to Stephanie Harris, Chair of the 32nd LDD's Endorsement Committee, seeking to debunk some of the claims by Ms. Dietrich and Ms. Townsell. *Id.*; *see also* Dkt. 153, Ex. 31 to Ottinger Dep., at Bates 214-218.
19. On September 26, 2023, Mr. Sheets, as Chair of the 38th LDD's Endorsement Committee, received a copy of the Chase letter (with attachments) from Ms. Harris. Dkt. 32, Ex. B. Mr. Sheets circulated the Chase letter (with attachments) to the 38th LDD's Endorsement Committee members (including Ms. Townsell) in preparation for a meeting with Candidate Anderson about 38th LDD's potentially rescinding their support. *Id*. (noting the Chase letter "makes a lot of claims that may be hard to verify one way or the other in the time we have left, but please read it over and let me hear your thoughts"); *see also* Dkt. 125, ¶ 12. In response, Ms. Townsell emailed the committee members that same day, replying to the issues

raised in the Chase letter, including the allegations about Candidate Anderson violating judicial ethical canons, and expressing the reasons why she did not support Candidate Anderson, particularly because (in her view) Candidate Anderson did not share core Democratic values. Dkt. 32, Ex. B.

20. On September 28, 2023, the 38th LDDs held the meeting to address the Endorsement Committee's recommendation to rescind Candidate Anderson's endorsement. Dkt. 32 at 8. Candidate Anderson was invited to the meeting, but she apparently chose to have her campaign manager, Molly Sullivan, attend and speak in her stead. *Id.* In the days just before this meeting, Ms. Sullivan and Mr. Sheets exchanged emails establishing the framework for the meeting and providing Ms. Sullivan with a list of questions and concerns. Dkt. 32, Ex. K.

21. At the September 28, 2023 meeting, Ms. Sullivan spoke on Candidate Anderson's behalf. After reviewing the Chase letter and its attachments, Ms. Townsell made a statement explaining why she was unconvinced that she should support Candidate Anderson, including: (1) her concerns that Candidate Anderson did not share her values regarding "a woman's right to choose" and that Candidate Anderson was not more forthcoming about that issue; and (2) that in light of the Anderson sign posted next to the Lake Stevens Assembly of God sign, Ms. Townsell feared that "by allowing her sign to be posted next to the Assembly of God Church sign, Anderson publicly aligned herself with the views." Dkt. 32 at 4-5.

22. After this airing of views, the 38th LDDs rescinded their endorsement of Candidate Anderson. Dkt. 125 at 7.

23. In November 2023, Judge Moriarty defeated Candidate Anderson in the judicial election for the contested position on the Snohomish County Superior Court.

24. On June 5, 2024, Plaintiff conceded publicly that after the election she learned that she in fact had been "removed" from the Snohomish County District Court "pro tem list" for 2023.[2] Dkt. 32 at 6-7; Dkt. 32, Ex. I at 48:45-49:15.

Procedural Background

25. On April 7, 2025, Plaintiff filed a 226-page Complaint (with attachments), against the Defendants, asserting claims of defamation, false light, outrage, and negligent misrepresentation, among other sub-claims. Dkt. 1.

26. On June 5, 2025, Defendant Townsell filed a Special Motion for Expedited Relief under the Uniform Public Expression Protection Act (UPEPA), RCW 4.105 *et seq.*, seeking dismissal. Dkt. 31.

[2] Plaintiff devotes considerable attention to discussing various conversations with several judges on the District Court about her eligibility to serve as a pro tem judge in 2023 and 2024. *See*, *e.g.*, Dkt. 82, ¶¶ 42-50, Ex. 6. According to an email string from January to April 2024 between Ms. Anderson and then Presiding Judge Jeffrey Goodwin (and cc'd to Judge Jennifer Rancourt who had been in the Presiding Judge in 2023), Ms. Anderson was reaching out about serving as a pro tem in 2024, to which Judge Goodwin responded: "It is my understanding that Judge Rancourt was attempting to schedule a meeting with you. She sent you an email in May of last year requesting a meeting and you never responded. Because you didn't respond, we took you off the pro tem rolls." Dkt. 82, Ex. 6 at 2.

In an earlier email, dated January 30, 2024, sent to both Judges Goodwin and Rancourt, Ms. Anderson wrote: "I was under the impression we were going to meet in January 2023. I responded and gave my available dates but did not hear back from you or Jen. I apologize for missing the May 2023 email. In May of last year, I was dealing with a family emergency; I was involved in my first judicial campaign, managing a law practice and preparing for two trials. I want to remain on the pro tem list." Dkt. 82, Ex. 6 at 3.

Amid these murky circumstances about her status on the pro tem list in 2023, Plaintiff states in this litigation: "To clarify, I was never removed from the pro tem list during the 2022 or 2023 calendar years." Dkt. 82, ¶ 42. This statement confuses the Court because on June 5, 2024, Plaintiff admits that she ***was*** removed from the list for 2023. Dkt. 32, Ex. I at 48:45-49:15.

27. On June 6, 9 and 10, 2025, Defendants Moriarty, Snohomish County Indivisible and Dietrich respectively followed suit and filed their own UPEPA motions to dismiss Plaintiff's claims against them. *See* Dkts. 35, 41, 52, and 142 (Defendant Moriarty' later-filed revised motion).

28. It is undisputed that all Defendants provided Plaintiff with the required 14-day notice before filing any UPEPA motions. *See* RCW 4.105.020(1). The "UPEPA prefiling notice . . . grant[s] [Plaintiff] 14 days to amend [her] complaint to either remove meritless claims or assert meritorious ones before [Defendants are] authorized to file [their] UPEPA motion and trigger the stay." *Jha v. Khan*, 24 Wn. App. 2d 377, 406, 520 P.3d 470, 486 (2022). Plaintiff did not file an amended complaint during this period.

29. Except under circumstances absent here, *see* RCW 4.105.030(4) and (7), an automatic stay is triggered once the 14-day notice period expires. RCW 4.105.030(1).

30. On June 20, 2025, Plaintiff moved under RCW 4.105.030(4) to allow limited discovery as related to the allegedly defamatory statements, *see* Dkt. 57, which the Court granted in part and denied in part on July 16, 2025. Dkt. 109.

31. By agreement, and consistent with RCW 4.105.040(1)(a), the parties set the hearing date on the pending UPEPA motions for November 21, 2025. In Plaintiff's combined response to the motions, Plaintiff discussed several additional allegedly defamatory statements, which were not pleaded in the original complaint, that Plaintiff contends (over Defendants' objection) may be considered in an amended complaint.

Plaintiff's Prospective Request to Amend Complaint

32. Notwithstanding the UPEPA stay, Plaintiff claims that she may rightfully amend her complaint, and that to deny her that right violates the Washington State Constitution.

33. *Jha* forecloses Plaintiff's proposed amendments. There, as here, an unsuccessful political candidate sued his opponent for allegedly making defamatory statements during a campaign. The plaintiff permissibly amended her complaint within the 14-day notice period, but once

defendant's UPEPA motion was pending, plaintiff sought to file a second amended complaint. *Jha* rejected this motion for leave to amend, because it did not fall within the two narrow exceptions to the stay under RCW 4.105.030. 24 Wn. App.2d at 405–06 (A plaintiff's "motion for leave to file a[n] . . . amended complaint is not one of the two types of motions that the trial court is authorized to entertain once the stay is in effect.") (citing RCW 4.105.030(7)).

34. Here, as in *Jha*, Plaintiff "sought no special or preliminary injunctive relief[,]" and "[n]either was [Plaintiff's] motion unrelated to [the] UPEPA dismissal motion." *Jha*, 24 Wn. App. 2d at 405. Plaintiff, also as in *Jha*, "sought leave to file a motion to amend [her] complaint—the very complaint that [defendant] was seeking to dismiss in its entirety in [the] UPEPA motion," and the "UPEPA prefiling notice had already granted [Plaintiff] 14 days to amend [her] complaint to either remove meritless claims or assert meritorious ones before [Defendants were] authorized to file [their] UPEPA motion and trigger the stay." *Id.* at 405-406. Under *Jha*, the Court has no authority to allow any amendments at this stage, and Plaintiff is procedurally barred from seeking her proposed amendments.

35. Plaintiff also argues that it would be unconstitutional for a statute to permit discovery, yet to deny a party the opportunity to amend her complaint based on discovery responses. In pointing to a conflict between UPEPA and court procedural rules, Plaintiff relies mainly on CR 15, which, in pertinent parts, allows for leave to amend a pleading "by leave of court . . . freely given when justice so requires," CR 15(a); and upon objection as "not within the issues made by the pleadings . . .when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits." CR 15(b).

36. Under the Washington State Constitution, courts have "inherent power [that] includes the power to govern court procedures. Where a statute and a court rule conflict, the court will attempt to harmonize them, giving effect to both. Where, however, the two cannot be harmonized, the court rule prevails in procedural matters and the statute in substantive matters." *Spratt v. Toft*, 180 Wn. App. 620, 634–35, 324 P.3d 707, 714 (2014) (validating statute because "mere fact that discovery is limited does not in and of itself render a statute unconstitutional").

37. Keeping in mind the canon of construction under RCW 4.105.901 that UPEPA should be construed broadly to give effect to the First Amendment rights that underpin the statute, and the directive in *Spratt* that the Court must endeavor to harmonize statutory provisions with court rules, this Court does not find that the bar on an amended complaint, as articulated under *Jha*, is unconstitutional as applied here.

38. The Court can harmonize the limitations on both discovery and motions practice under UPEPA, with the balancing tests provided by CR 15(a)-(b). First, UPEPA already provides Plaintiff an opportunity to amend her complaint after receiving the notice that Defendants planned to file a UPEPA motion for expedited relief. RCW 4.105.020(1).

39. More important, UPEPA already provides for limited discovery, which the Court granted here in part. In her motion seeking limited discovery, Plaintiff consistently stressed that she needed the requested information/documents to support her claims that the allegedly defamatory statements were false, made knowingly or with reckless disregard for the truth, and were stated as fact and not opinion. *See* Dkt. 57. In other words, Plaintiff sought discovery to bolster her claims about Defendants' mental states, as regards the actual malice showing (discussed below); discovery was not aimed to unearth additional new defamatory statements beyond those alleged in the original complaint. This is congruent with the purpose of limited discovery. *See* RCW 4.105.030(4) ("During a stay . . ., the court may allow limited

discovery if a party shows that specific information is necessary to establish whether a party has satisfied or failed to satisfy a burden under RCW 4.105.060(1) and the information is not reasonably available unless discovery is allowed."). The Court agreed that Plaintiff may seek discovery to help establish a prima facie case of defamation, which included information about Defendants' mental states with respect to the alleged defamatory statements originally pleaded. Dkt. 109. To this extent there is no constitutional infirmity, because Plaintiff was allowed to gather evidence in support of her claims consistent with RCW 4.105.030(4).

40. In opposing Defendants' UPEPA motions, Plaintiff seizes on materials that contain allegedly defamatory statements which were openly a part of the campaign, including campaign flyers, campaign signs, and the interview Judge Moriarty gave to the *Everett Herald*. As noted, this Court already granted Plaintiff limited discovery as to "information [that] is not reasonably available." RCW 4.105.030(4). This limited discovery provided access to, among other information, internal e-mail communications and memoranda within the Moriarty campaign, and other email communications by Ms. Ottinger about Candidate Anderson to third parties; opposition and other research conducted by Defendants Dietrich, SCI and Townsell, and email communications between them; minutes from the 38th Legislative District Endorsement Committee, in addition to limited depositions. Dkt. 109.

41. The Washington Supreme Court's decision in *Thurman v. Cowles Company*, 4 Wn.3d 291, 562 P.3d 777 (2025), undermines any contention that the supposedly newly discovered defamatory statements here could relate back to Plaintiff's original complaint. There, the court ruled UPEPA applied only prospectively and did not apply in a defamation case that was filed before UPEPA's effective date, but amended after the effective date. *Id.* at 303. In rejecting the defendant's claim that the UPEPA framework could relate back to the original complaint under CR 15(c), *Thurman* observed the "amended defamation claim includes course of conduct information such as additional factual allegations that support the elements

of the *same* alleged defamatory statements asserted in his June 14, 2021 complaint. Thurman does not introduce new defamatory statements in his December 3, 2021 amended complaint." 4 Wn.3d at 305 (emphasis in original).

42. Under the logic of *Thurman*, this Court must consider only the alleged defamatory statements featured in the original complaint. To do otherwise would potentially give Plaintiff license to amend her complaint on an ongoing basis, perpetuating a delay in resolving the pending UPEPA motions with each discovery of new allegedly defamatory statements, contrary to the narrow statutory restriction on motions practice during a UPEPA stay under RCW 4.105.030, as reinforced in *Jha*. 24 Wn. App. 2d at 405–406.

43. For these reasons,[3] *Jha* permits this Court to consider only the allegedly defamatory statements as asserted in the original complaint.

The UPEPA Framework for Seeking Expedited Relief

44. "UPEPA . . . is designed to provide an expedited process for dismissing lawsuits that target activities protected by the First Amendment, such as freedom of speech, press, assembly, petition, and association on matters of public concern." *M.G. v. Bainbridge Island Sch. Dist. #303*, 34 Wn. App. 2d 51, 70, 566 P.3d 132, 144, rev. denied sub nom. *Gerlach v. Bainbridge Island Sch. Dist*., 574 P.3d 537 (2025).

45. Under RCW 4.105.060, UPEPA establishes the following analytical framework for an expedited motion to dismiss:

> (1) In ruling on a motion . . . , the court shall dismiss with prejudice a cause of action, or part of a cause of action, if:
>
> (a) The moving party establishes under RCW 4.105.010(2) that this chapter applies;

[3] The Court is also mindful of the UPEPA canon of construction, namely that the statute "must be broadly construed and applied to protect the exercise of the right of freedom of speech and of the press, the right to assemble and petition, and the right of association, guaranteed by the United States Constitution or the Washington state Constitution." RCW 4.105.090.

> (b) The responding party fails to establish under RCW 4.105.010(3) that this chapter does not apply; and
>
> (c) Either:
>
> (i) The responding party fails to establish a prima facie case as to each essential element of the cause of action; or
>
> (ii) The moving party establishes that:
>
> (A) The responding party failed to state a cause of action upon which relief can be granted; or
>
> (B) There is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the cause of action or part of the cause of action.

RCW 4.105.060(1); *see also M.G.*, 34 Wn. App. 2d at 71 ("[I]t is the moving party's burden to establish that UPEPA applies to the cause of action. . . . [O]nce the moving party has satisfied this requirement, the burden shifts to the responding party to establish that a statutory exception applies.") (internal citations omitted).

46. Defendants here all contend they pass subsection (1)(a) of the test, namely that Plaintiff's causes of action arise from Defendants' "[e]xercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States Constitution or Washington state Constitution, on a matter of public concern." RCW 4.105.010(2)(c).

47. Plaintiff does not allege, much less demonstrate, that any of the exceptions to UPEPA apply under RCW 4.105.010(3). Plaintiff argues instead that Defendants falter in meeting their burden that UPEPA applies, because defamatory speech is not protected speech under the First Amendment. Plaintiff's circular argument is meritless as to the first prong. Plaintiff does not address at all the "matter of public concern" criterion, and instead incorrectly collapses this threshold test into the substance of the analysis under RCW 4.105.060(1)(c)(i), *i.e.*, whether Plaintiff pleaded and supported her claims with evidence that the relevant statements were provably false and not otherwise protected speech.

48. "Whether speech is a matter of public concern is a question of law, which courts must determine by the content, form, and context of a given statement, as revealed by the whole record." *M.G.*, 34 Wn. App. 2d at 72 (internal citations and quotation marks omitted). "[S]peech involves matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community." *Jha*, 24 Wn. App. 2d at 389-390 (finding comments in published article critical of a competing candidate fell under UPEPA because "official activities of an elected representative are without question a matter of public concern") (internal citations and quotation marks omitted); *see also Spratt*, 180 Wn. App. at 630 (noting "at the heart of our democracy is the election of candidates to office," and a candidate has a "protected right to speak in furtherance of his candidacy").

49. Defendants have established that their UPEPA motions encompass matters of public concern. No exceptions under RCW 4.105.060(1)(a)-(b) apply. For their motions to succeed, Plaintiff must fail to establish a prima facie case as to each essential element of the cause of action, *see* RCW 4.105.060(1)(c)(i); or Defendants must show either that Plaintiff failed to state a claim on which relief can be granted, or that there are no genuine issues of material fact that Plaintiff's defamation, false light and outrage claims may be decided as a matter of law. RCW 4.105.060(1)(c)(ii).

50. Because Plaintiff is a public figure and the alleged defamation arises out of matters of public concern, "a defamation plaintiff resisting a defense motion for summary judgment must establish a prima facie case by evidence of convincing clarity." *Mark v. Seattle Times*, 96 Wn.2d 473, 487, 635 P.2d 1081, 1089 (1981); *accord Duc Tan v. Le*, 177 Wn.2d 649, 668, 300 P.3d 356 (2013). That said, on summary judgment under a UPEPA motion, the Court must "generally employ the summary judgment standard and glean the facts in a glow favorable to the plaintiff and the nonmoving party." *Carter v. Jones*, 581 P.3d 1050, 1061

(Wash. Ct. App. Dec. 30, 2025) (but noting "the law instructs us to resolve some of the defamation elements as a matter of law").

Plaintiff's Prima Facie Cases of Defamation and False Light against Defendants Dietrich, Moriarty, SCI, and Townsell

51. Plaintiff brings claims against Defendants Dietrich, Moriarty, SCI, and Townsell for defamation and false light. As noted, Plaintiff is procedurally barred from prospectively alleging defamatory statements beyond those alleged in the original complaint. For thoroughness, however, the Court in the alternative considers the merits of new statements.

52. "To establish a prima facie defamation claim, the claimant must show (1) that the defendant's statement was false, (2) that the statement was unprivileged, (3) that the defendant was at fault, and (4) that the statement proximately caused damages." *M.G.*, 34 Wn. App. 2d at 75. A plaintiff carries the burden of establishing a prima facie case on each element, which "must consist of specific, material facts, rather than conclusory statements, that would allow a jury to find that each element of defamation exists." *LaMon v. Butler*, 112 Wn.2d 193, 197, 770 P.2d 1027 (1989).

53. "An invasion of privacy by false light arises when a defendant publishes statements that place a plaintiff in a false light if (1) the false light would be highly offensive and (2) the defendant knew of or recklessly disregarded the falsity of the publication and the subsequent false light it would place the plaintiff in." *Seaquist v. Caldier*, 8 Wn. App. 2d 556, 564, 438 P.3d 606, 612 (2019).

54. "Defamation and invasion of privacy by false light are similar, yet distinct, causes of action. . . . Although both actions rest on the disclosure of false or misleading information, they require different elements and allow for recovery of different damages." *Seaquist*, 8 Wn App. 2d at 564 (citing *Duc Tan*, 177 Wn.2d at 662); and *Eastwood v. Cascade Broad. Co.*, 106 Wn.2d 466, 470-471, 473-74, 722 P.2d 1295 (1986)).

55. Despite any subtle theoretical differences between the two torts, as a practical matter both torts here hinge on whether the statements were false, and when, as here, "the plaintiff is a public figure, both torts require proof of actual malice." *Seaquist*, 8 Wn. App. 2d at 564–65.

56. Under *Seaquist* and other controlling authority,

> [i]n proving falsity for a defamation claim, a plaintiff must prove either a statement was false or a statement left a false impression by omitted facts. A provably false statement is one that, as a statement of either fact or opinion, falsely expresses or implies provable facts about the plaintiff. When determining whether an article is defamatory, a court considers it as a whole and construes it by its ordinary meaning to a person reading it.

Seaquist, Wn. App. 2d at 565–66 (citing *Mohr v. Grant*, 153 Wn.2d 812, 823, 108 P.3d 768 (2005); and *Schmalenberg v. Tacoma News, Inc.*, 87 Wn. App. 579, 590-91, 943 P.2d 350 (1997)).

57. "A defendant is not required to prove the literal truth of every claimed defamatory statement. The gist of the story or the portion carrying the "sting" must be substantially true." *Seaquist*, 8 Wn. App. 2d at 567 (citing *Mohr*, 153 Wn.2d at 825). When a defendant blends true and false statements, a "false statement (or statements) affects the sting of a report only when significantly greater opprobrium results from the report containing the falsehood than would result from the report without the falsehood." *Mohr*, 153 Wn.2d at 826 (internal quotation marks omitted). "Rhetorical hyperbole and statements that cannot reasonably be interpreted as stating actual facts are protected under the First Amendment." *Duc Tan*, 177 Wn.2d at 662.

58. "The First Amendment protects an individual's right to express an opinion, or 'fairly comment,' on a matter of public interest." *Seaquist*, 8 Wn. App. 2d at 566, (quoting *Dunlap v. Wayne*, 105 Wn.2d 529, 537, 716 P.2d 842 (1986) (citing U.S. CONST. amend. I)); *see also Rickert v. State, Public Disclosure Com'n*, 161 Wn.2d 843, 849–50, 168 P.3d 826 (2007) ("political speech is usually as much opinion as fact"). "However, the privilege of fair

comment d[oes] not extend to a false statement of fact, whether it [i]s expressly stated or implied from an expression of opinion." *Duc Tan*, 177 Wn.2d at 663 (internal question marks omitted).

59. "An alleged defamatory statement must be a stated fact, not a stated opinion. . . . However, a stated opinion may be actionable if it implies defamatory facts. . . . The distinction between a fact and an opinion implying defamatory facts requires a court to consider the totality of the circumstances." *Seaquist*, 8 Wn. App. 2d at 566 (citing *Dunlap*, 105 Wn.2d at 537-539). "To determine whether a statement is nonactionable, a court should consider at least (1) the medium and context in which the statement was published, (2) the audience to whom it was published, and (3) whether the statement implies undisclosed facts." *Dunlap*, 105 Wn.2d at 539.

60. "Resolution of whether a statement is one of fact or opinion presents a question of law, properly and preferably decided by the court on summary judgment. . . . The defamation plaintiff bears the burden to show the challenged statement is fact, not protected opinion." *Carter*, 581 P.3d at 1089 (internal citations omitted).

Actual Malice

61. "A public figure defamation plaintiff must prove with clear and convincing evidence that the defendant made the statements with 'actual malice'." *Duc Tan*, 177 Wn.2d at 668 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 279–80 (1964)). "The question whether the evidence in the record . . . is sufficient to support a of actual malice is a question of law." *Seaquist*, 8 Wn. App. 2d at 564–65. "A defendant acts with malice when [s]he knows the statement is false or recklessly disregards its probable falsity." *Id.* "[A]ctual malice must be proved with 'convincing clarity.'" *Carter*, 581 P.3d at 1081 (quoting *Sullivan*, 376 U.S. at 285-86).

62. Courts "do not measure reckless conduct by asking whether a reasonably prudent person would have published or would have investigated before publishing." *Duc Tan*, 177 Wn.2d at 669; *see also Herron v. KING Broad. Co*., 112 Wn.2d 762, 777, 776 P.2d 98, 106 (1989) ("Failure to investigate is not sufficient to prove recklessness."). The apt analysis is as follows:

> Actual malice can . . . be inferred from circumstantial evidence, including a defendant's hostility or spite, knowledge that a source of information about a plaintiff is hostile, and failure to properly investigate an allegation. . . . These factors in isolation are generally insufficient to establish actual malice; they must cumulatively amount to clear and convincing evidence of malice to sustain a verdict in favor of a plaintiff. . . . However, recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports.

Duc Tan, 177 Wn.2d at 669 (internal citations and quotation marks omitted); *see also Carter*, 581 P.3d at 1094–95 (Objective facts showing actual malice "may include the defendant's own actions or statements, the dubious nature of her sources, and the inherent improbability of the story.").

Allegedly False Statements by Defendants and Surrounding Contexts

63. At the close of the UPEPA hearing on November 21, 2025, the Court requested that the parties identify all the allegedly defamatory statements (with citations), and whether they had been asserted in the original complaint. Plaintiff submitted a list, and Defendants then submitted a responsive list, setting forth Statements 1-32. *See* Dkts. 186 and 188. For clarity, the Court tracks this list of statements below, adding factual context as necessary, to address whether each statement is actionable. Because there may be some redundancy in analysis, the Court will cross reference as needed.

64. **Statements 1 and 2,** by Defendant Moriarty (alleged in the original Complaint): In the list, Plaintiff identified two groups of statements by reference to her Complaint where she both characterized and quoted Defendant Moriarty. *See* Dkt. 186 at 2; Dkt. 188 at 2. On August

31, 2023, Judge Moriarty gave an interview to the *Everett Herald* at which Ms. Anderson was present. Judge Moriarty made the following allegedly defamatory statements:

> ***We happen to know that [Plaintiff] served 44 or 45 days [at the Snohomish County District Court] as a pro tem last year due to a public records request that was done by my campaign manager. We know that she hasn't served since January. We know there was an issue that involved a disqualification that was filed against her by the prosecutor's office, which indicates that she apparently was not able to work with them, which ultimately resulted in her not serving anymore.***

Dkt. 82, Ex. 13. The Court considers these direct quotes and not Plaintiff's characterizations.

"44 days" versus 69 days

65. Regarding the first statement about the purported 44-45 days of service, Plaintiff asserts that she served 69 days as a pro tem judge in 2022, and Defendants assert that when aggregating Plaintiff's full and half days of service, based on the number of hours worked, Plaintiff worked the equivalent of 44-45 days.

66. The reference to work "days" is ambiguous because it could mean full or half days. From the context of the interview, it is evident that Defendant Moriarty was trying to stress Plaintiff's relative lack of experience compared to his own years' long experience as a Superior Court Judge. Defendants contend this was "the sting" of the statement. To the extent the statement about 44-45 days of service was false (because in fact then Pro Tem Judge Anderson showed up to work at the District Court on 69 days, regardless of the number of hours worked each day), that mixture of true statements and falsehoods is still not actionable. First, literal truth is not the standard, *see Carter*, 581 P.3d at 1093 ("A defamation defendant need not establish the literal truth of every claimed defamatory statement."), especially in public political debate "in which an audience may anticipate efforts by the parties to persuade others to their positions by use of epithets, fiery rhetoric or hyperbole." *Jha*, 24 Wn. App. 2d at 397 (internal quotation marks omitted). When a defendant blends true and false statements, a "false statement (or statements) affects the

sting of a report only when significantly greater opprobrium results from the report containing the falsehood than would result from the report without the falsehood." *Mohr*, 153 Wn.2d at 826 (internal quotation marks omitted); *see also Duc Tan*, 177 Wn.2d at 666 ("no liability when defendants' true factual statements create the 'sting' of the damaging publication and their additional false statements do not cause any separate or additional harm").

67. The Court finds that statement is substantially true due to the ambiguity inherent in the reference to "days." The Court also cannot find that a reference to 69 days would have resulted in significantly less opprobrium, or an additional and separate harm. *See*, *e.g.*, *Mark*, 96 Wn.2d at 496 (where news report stated plaintiff claiming defamation "bilked the state out of at least $300,000," whereas in fact in fraud prosecution the State "proved only $2,500 in losses, no actionable defamation because inaccurate statements [did not] cause[] him any further damage than has resulted from the conviction and sentence on a grand larceny charge"); *compare Duc Tan*, 177 Wn.2d at 668 ("Defendants insist that the sting of their allegations is that Tan and the VCTC are communists or communist sympathizers. However, there are no true statements showing Tan and the VCTC are communists or communist sympathizers.").

68. Because 69 days is susceptible to being recharacterized as "44 days" when measured in aggregate hours worked, there is some truth underlying the statement, unlike in *Duc Tan*. The "sting" is not distinct because Defendant Moriarty was insinuating that Plaintiff was less experienced in terms of time served on the bench compared to his own. This was true regardless of whether that metric was cast as 44 days or 69 days, because Plaintiff suffered no separate and additional harm. Finally, in the context here—an interview with a journalist preparing an article for public consumption amid a campaign—the audience is deemed to be "prepared for mischaracterizations, rhetoric, and exaggerations, and are 'likely to view such

representations with an awareness of the subjective biases of the speaker.'" *Seaquist*, 8 Wn. App. 2d at 566 (quoting *Dunlap*, 105 Wn.2d at 539). Equally important, the "listener generally deems statements of opinion to be found in certain contexts, such as editorial pages or political debates." *Carter*, 581 P.3d at 1089. This statement is not actionable.

"We know that she hasn't served since January."

69. In July 2023, Ms. Ottinger confirmed through a public records request that Plaintiff had not served as a pro tem judge since December 16, 2022. Dkt. 43, ¶¶ 12-14. And, as noted, Plaintiff ultimately conceded in June 2024 that she was not on the "pro tem list" during 2023. Defendant Moriarty's statement that Plaintiff had not served as a judge since January 2023 was true and thus not actionable.

"We know there was an issue that involved a disqualification that was filed against her by the prosecutor's office, which indicates that she apparently was not able to work with them, which ultimately resulted in her not serving anymore."

70. It is true that there was an issue that involved disqualification by the Snohomish County Prosecuting Attorney's office. Whether the disqualification issue indicated that Plaintiff "apparently was not able to work with prosecutors," is either opinion or not based on undisclosed provable facts. Based on the evidence presented from the November 15, 2022 hearing, the Snohomish County DPA reasonably could be viewed as following "policy," especially looking at the entirety of the hearing, when he filed serial affidavits of prejudice against then Pro Tem Judge Anderson and evaded repeated characterizations and questions about a "policy" of "blanket affidaviting" by deferring to his superiors. *See* Dkt. 1, Ex. B, *passim*; *see also* Dkt. 43, ¶ 7 (Ms. Ottinger describing inquiry with prosecutor's office and its reasoning for filing Affidavits of Prejudice against then Pro Tem Judge Anderson). Even if Defendant Moriarty had actual or constructive knowledge of that hearing's transcript or Ms. Ottinger's communications, the claimed "policy" or practice of disqualification of Pro

Tem Judge Anderson reasonably indicated that the Prosecutor's office was unwilling to work with Plaintiff. Plaintiff points to the fact that she continued to preside on criminal calendars for approximately a month after the November 15, 2022 hearing, as evidence that the Prosecutor's Office was willing to work with her. Dkt. 1, ¶ 1.28. Yet without a definitive statement from the Prosecutor's Office, Defendant Moriarty does not imply, correctly or incorrectly, any objectively verifiable facts.

71. In any event, the fact that Plaintiff continued to have calendars until December 16, 2022, after which she did not return the bench for whatever reasons to which Defendant Moriarty was not privy, does not amount to clear and convincing evidence to show actual malice.

72. Plaintiff argues it was false that the disqualification issue and purported impossible working situation with the Prosecutor's Office "resulted in" then Pro Tem Judge Anderson "not serving anymore" on the District Court bench. Plaintiff relies on the email exchange from January to April 2024, between Ms. Anderson and then Presiding Judge Jeffrey Goodwin (cc'd to Judge Jennifer Rancourt who had been in the Presiding Judge in 2023), to demonstrate falsity. *See* Dkt. 82, Ex. 6. In that email, dated April 9, 2024, Judge Goodwin's stated reason for not placing Ms. Anderson on the 2023 pro tem list was that Judge Rancourt had not heard from Ms. Anderson after she sent a May 2023 email "to schedule a meeting with" Ms. Anderson" about her email "regarding pro tem assignments." *Id.* at 2. ("Because you didn't respond, we took you off the pro tem rolls."). Looking at this evidence in Plaintiff's favor, Defendant Moriarty's statement about the result of Ms. Anderson "not serving anymore" on the District Court bench is false.

73. As to Defendant Moriarty's knowledge, he states, consistent with the February-April 2024 email exchange, that

> Before the endorsement interview with the *Daily Herald*, I received credible information from my campaign manager that Mary Anderson had been removed from the Snohomish County District Court's Judge Pro Tem list. I was told that the Snohomish County District Court's Presiding Judge, Jennifer Rancourt, had tried to speak with Mary Anderson about issues surrounding her service as Pro Tem Judge, but that Ms. Anderson did not respond.

Dkt. 36, ¶ 4; *see also* Dkt. 43, ¶ 16 (same account by Ms. Ottinger). Yet Ms. Ottinger described receiving information on May 16, 2023, from "Judge Anthony Howard of the Snohomish County District Court, that "Ms. Anderson had served as a pro tem judge in the District Court in the past, but had been removed from their list of attorneys accepted for pro tem service because the Snohomish County Prosecutor's Office was 'blanket affidaviting' her." Dkt. 43, ¶ 7; *see also* Dkt. 153, Ex. 2 at Bates 56. Ms. Ottinger also inquired with the Snohomish County Prosecuting Attorney's office and learned it "was unhappy with some rulings that Ms. Anderson had made as a pro tem judge, and had decided that it could not get a fair trial before her, which is why it had decided to file Affidavits of Prejudice in cases set before her." *Id.* Ms. Ottinger learned through a Snohomish County Superior Court Judge that Presiding Judge Rancourt clarified that Ms. Anderson had been "suspended." *Id*., ¶ 9.

74. The Court does not find this is clear and convincing evidence of actual malice. First, Judge Goodwin's stated reason for taking Plaintiff "off the pro tem rolls" was that Judge Rancourt had not heard from Ms. Anderson after she sent a May 2023 email "to schedule a meeting with" Ms. Anderson" about her email "regarding pro tem assignments." Dkt. 82, Ex.6 at 2. Yet what might have been discussed at the never held meeting, regarding the District Court's substantive views about Plaintiff's pro tem work, remains a mystery. More relevant here, the Moriarty campaign did have the affirmative perspective from Judge Howard that Plaintiff "had been removed from their list of attorneys accepted for pro tem service *because the Snohomish County Prosecutor's Office was 'blanket affidaviting' her*." Dkt. 43, ¶ 7 (emphasis added). Finally, no definitive set of criteria about pro tem eligibility at the District Court has surfaced. Where, as here, Plaintiff must meet the "extremely high" standard of

proof by clear and convincing evidence, *Carter*, 581 P.3d at 1094, the Court finds Plaintiff has not made the showing of actual malice.

75. For these reasons, Statements 1 and 2 are not actionable.

76. **Statement 3**, made by Ms. Ottinger to Defendants Dietrich and Townsell, **"*Ms. Anderson had been removed from the list because, according to Ottinger, Anderson lacked authority to ask the prosecutor 'on the record" why he was filing the affidavit of prejudice*."** Dkt. 186 at 3; Dkt. 188 at 3.

77. This statement is not actionable. First, it is unclear from the record what the actual statement was because Plaintiff quotes only her Complaint (at ¶ 2.31) without any evidence of the direct statement. *See* Dkt. 186 at 3. Second, for whatever reason, Ms. Ottinger was not named as a party in the Complaint, despite her allegedly defaming Ms. Anderson. Plaintiff appears to ask the Court to impute Ms. Ottinger's statements to Defendant Moriarty by virtue of her position as his campaign manager. This theory is unavailing, even in the posture of CR 56, because Plaintiff has established no agency relationship between Judge Moriarty and Ms. Ottinger.

78. Even if the Court reached the merits, the statement is not defamatory. *See* Order, *infra*, ¶¶ 97-108.

79. **Statement 4,** Defendant Moriarty's reference to then Pro Tem Judge Anderson's **"*44-45 days*" *of service.*** Dkt. 186 at 3; Dkt. 188 at 3. As discussed, the statement is not actionable. *See* Order, *supra*, ¶¶ 65-68.

80. **Statement 5,** by Ms. Ottinger**: *"Some facts for you to share with others: Mary Anderson has not ever served in any judicial capacity on the Superior Court – the court she is running to serve. Moriarty has 22 years of judicial experience[.] Anderson has not served as a pro tem judge in ANY court since December of last year. She only served the District***

Court for a total of 45.5 days before she was removed from their list." Dkt. 186 at 3; Dkt. 188 at 3.

81. As noted, Ms. Ottinger is not a party. *See* Order, *supra*, ¶ 77. Because the statement was not alleged in the original Complaint, it is also procedurally barred under *Jha*. Even if the Court reached the merits, with respect to the claim about 45.5 days served, this is not actionable. *See* Order, *supra*, ¶¶ 65-68. Otherwise, all the factual statements are true, including that about being removed from the District Court pro tem list which Plaintiff admitted in June 2024.

82. **Statement 6,** by Ms. Ottinger**:** ***"Assembly of God is [Anderson's] church and she has been having events there."*** (Dkt. 186 at 4; Dkt. 188 at 3).

83. This statement is not actionable. As noted, Ms. Ottinger is not a party. *See* Order, *supra*, ¶ 77. Because the statement was not alleged in the original Complaint, it is procedurally barred under *Jha*. Even if the Court considered the merits, it is not actionable. *See* Order, *infra*, ¶¶ 137-146.

84. **Statement 7,** by Ms. Ottinger about Ms. Anderson: **"Never a judge."** Dkt. 186 at 4; Dkt. 188 at 3. Ms. Ottinger is not a party. Yet the statement also appeared on a flyer for Judge Moriarty's campaign. Dkt. 153, Ex. 7 at Bates 74. To that extent the statement can be attributed to Defendant Moriarty.

85. This statement, whether directly stated by Ms. Ottinger or as attributed to the Moriarty campaign, was not alleged in the original Complaint. It is procedurally barred under *Jha*.

86. Even if the Court considered the merits of the claim, it is not actionable. Plaintiff argues that as a pro tem judge in 2022 she was in fact a "judge," and that the flyer's statement that she was "never a judge" is false. Yet the flyer provided additional context for the statement. It expressly stated that Plaintiff has "no judicial experience in the superior court" but that she does have "judicial experience in a lower court[.]" *Id*. The flyer also expressed that Judge Moriarty has five years of experience "as a full-time Judge or Court Commissioner," *id.*,

whereas it is undisputed that Plaintiff never was a full-time judge. When viewed in the context of the other information presented on the flyer, the statement that Plaintiff was "Never a judge" is substantially true. Or, it would tend to be received as an opinion, in this context of a political campaign, because the audience is "prepared for mischaracterizations, rhetoric, and exaggerations, and are likely to view such representations with an awareness of the subjective biases of the speaker." *Seaquist*, 8 Wn. App. 2d at 566 (internal quotation marks omitted). There are also no undisclosed facts whose omission would leave a false impression because, again, the flyer itself disclosed that Plaintiff had "judicial experience in a lower court."

87. **Statement 8**, by Ms. Ottinger to Judge Moriarty about Candidate Anderson: ***"Lawyer for 12 years but not currently practicing law."*** Dkt. 186 at 4; Dkt. 188 at 3.

88. Ms. Ottinger is not a party. But the statement appeared on a flyer for Judge Moriarty's campaign. Dkt. 153, Ex. 7. To that extent the statement can be attributed to Defendant Moriarty. Nevertheless, this statement, whether stated directly by Ms. Ottinger or as attributed to the Moriarty campaign, was not alleged in the original Complaint. It is procedurally barred under *Jha*.

89. Even if the Court considered the merits of the claim, it is not actionable. Plaintiff argues that she was still practicing law during the relevant time, as evinced by her name remaining listed as attorney of record in active cases on the Odessey system and by her bar license being current in 2023. Dkt. 151 at 17.

90. Plaintiff has demonstrated falsity, but she cannot meet the high burden of showing actual malice. Plaintiff adduced no clear and convincing evidence that Defendant Moriarty (or Ms. Ottinger) possessed obvious facts that she was still practicing law. The thrust of Plaintiff's argument is that Defendant Moriarty (or Ms. Ottinger) did not investigate her status. Yet Defendant Moriarty had no duty to investigate, and any negligence in failing to investigate

is insufficient to show actual malice. *See Duc Tan*, 177 Wn.2d at 668-669; *Herron*, 112 Wn.2d at 777; *Carter*, 581 P.3d at 1079 ("When a defamation plaintiff is a public figure, the plaintiff must demonstrate more than negligence by the defendant.").

91. **Statement 9,** by Defendant Dietrich to third party ("Alicia" [Crank] who appears to be a member of Indivisible Edmonds): ***"I have not finished yet [with respect to her search of public records], but preliminarily I can say with utmost confidence that Mary Anderson is at best unqualified and at worst dangerous."*** Dkt. 186 at 4; Dkt. 188 at 4; *see also* Dkt. 1, Ex. J.

92. Under "the totality of the circumstances," *Seaquist*, 8 Wn. App. 2d at 566, Defendant Dietrich's statement was an opinion because there is no way to prove the falsity of the claim that Plaintiff "is at best unqualified and at worst dangerous." First, the statement is expressed amid a range of concerns. Second, both "unqualified" and "dangerous" are subjective views, not actual facts. *See*, *e.g.*, *Cheng v. Neumann*, 51 F.4th 438, 444 (1st Cir. 2022) ("[I]f it is plain that the speaker is expressing a subjective view, an interpretation, a theory, conjecture, or surmise, rather than claiming to be in possession of objectively verifiable facts, the statement is not actionable.") (internal quotation marks omitted, alteration in original); *Camer v. Seattle Post-Intelligencer*, 45 Wn. App. 29, 39-41, 723 P.2d 1195, 1200-1202 (1986).

93. Ms. Dietrich's statement to "Alicia" appears in a longer text communication about Ms. Dietrich being "disappointed" that Alicia Crank, and perhaps Indivisible Edmonds, decided to host an event for Candidate Anderson. Dkt. 1, Ex. J. The entire text string revolves around whether SCI should strive to support Black and Brown political candidates, with which Ms. Dietrich agrees generally, along with Ms. Dietrich's "preliminary" but still uncompleted research indicating to her why she opposes any support for Candidate Anderson in particular. *See Cheng*, *supra*; *cf. Dunlap*, 105 Wn.2d at 539 (statement tends to be opinion where

"speaker qualified the defamatory statement with cautionary terms of apparency") (internal quotation marks omitted). The audience—between two individuals in an intra-SCI dialogue about a particular candidate—was largely concerned about the adequate "due diligence" both persons might need to do before offering a definitive view to the broader public. And Ms. Dietrich couched her allegedly defamatory statement amid a broader explanation of her views against holding the planned event. *See Carter*, 581 P.3d at 1089–90 ("The more the writer presents to the reader the background of the controversy, particularly the writer's subjective experience, the less likely the court will permit liability."). This statement is not actionable.

94. **Statements 10 and 13,** by Defendant Dietrich, respectively to "Alicia" [Crank] at Edmonds SCI on August 31, 2023; and to Maralyn Chase of the 32nd LDDs on September 2, 2023: ***"On November 15, 2022, 8+ Affidavits of Prejudice were filed by the Snohomish County Prosecuting Attorney's office with Mary Anderson presiding. She pointedly and repeatedly inquired of the Prosecutor as to the reasons 'on the records,'*** **[sic]** ***for the Affidavits of Prejudice, an inquiry a judge is not allowed to engage in. Subsequently, she was removed from the list of Pro Tem Judges who could be called to serve in the District Court, thus disqualifying her from any judicial role in the District Court. She has not served there since December 2022."*** Dkt. 186 at 5, 7; Dkt. 188 at 4, 5; *see also* Dkt. 1, Exs. J and K.

> ***"On November 15, 2022, 8+ Affidavits of Prejudice were filed by the Snohomish County Prosecuting Attorney's office with Mary Anderson presiding."***

95. The first sentence is true.

> ***"She pointedly and repeatedly inquired of the Prosecutor as to the reasons 'on the records,' for the Affidavits of Prejudice, an inquiry a judge is not allowed to engage in."***

96. The second sentence about what happened during then Pro Tem Judge Anderson's inquiry about the Affidavits is also true. Whether then Pro Tem Judge Anderson's inquiry into the

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basis for the Affidavits was "allowed" is substantially true, a matter of opinion, or not made with actual malice.

97. Washington permits a party to forum-shop by filing an Affidavit of Prejudice against the assigned judge. *See* RCW 3.34.110 (setting forth procedure in district court); RCW 4.12.050 (setting forth procedure in superior court). RCW 3.34.110 provides in pertinent part

> A district court judicial officer shall not preside in . . . the following case[]: . . . . When the judicial officer or one of the parties believes that the parties cannot have an impartial trial or hearing before the judicial officer. The judicial officer shall disqualify himself or herself under the provisions of this section if, before any discretionary ruling has been made, a party files an affidavit that the party cannot have a fair and impartial trial or hearing by reason of the interest or prejudice of the judicial officer.

RCW 3.34.110(1)(b); *see also* CrRLJ 8.9 ("The judge shall also enter an order of disqualification under the provisions of this rule if, before the judge makes a discretionary ruling and before the trial is commenced, a party files an affidavit alleging that the party cannot have a fair and impartial trial by reason of the interest or prejudice of the judge or for other ground provided by law.").

98. In relevant respect, the term "Affidavit of Prejudice," as contemplated under RCW 3.34.110 and RCW 4.12.050, is a misnomer. *See Harbor Enters., Inc. v. Gunnar Gudjonsson*, 116 Wn.2d 283, 285, 803 P.2d 798, 800 (1991) ("Under our statutes, . . . a litigant has the right to disqualify a trial judge, without establishing actual prejudice, if the statutory requirements . . . are met. The statute speaks of prejudice, but in reality the litigant who exercises this right seeks a change of judge despite the absence of prejudice."). "The statute's history reflects an accommodation between two important, and at times competing, interests: a party's right to one change of judge without inquiry and the orderly administration of justice." *Marine Power & Equip. Co. v. Indus. Indem. Co*., 102 Wn.2d 457, 463, 687 P.2d 202, 205 (1984); *accord State v. Lile*, 188 Wn.2d 766, 781, 398 P.3d 1052, 1060 (2017); *see also State v. Holden*, 96 Wash. 35, 40, 164 P. 595 (1917) ("The statute permits of no ulterior inquiry; it is enough to

make timely the affidavit and motion, and however much the judge moved against may feel and know that the charge is unwarranted, [s]he may not avoid the effect of the proceedings by holding it to be frivolous or capricious."). "Neither interrogation by the judge, nor a hearing as to the reasons behind the affidavit is to be countenanced." *State v. Hansen*, 42 Wn. App. 755, 760, 714 P.2d 309, 313 (1986) (but noting extraordinary circumstance where party volunteered he filed an affidavit to effectively gain a continuance), aff'd, 107 Wn.2d 331, 728 P.2d 593 (1986).

99. Here, on November 15, 2022, the Snohomish County DPA (Casey Peters) presented and filed approximately 9 Affidavits of Prejudice, signed by a different deputy prosecutor on October 31, 2022. *See* Dkt. 197, Ex. A. Each of these affidavits featured the standard language: "I do not believe that the State of Washington will not have an impartial hearing before Pro Tem Mary Anderson in this case." *Id.* They were "timely" filed in the sense that then Pro Tem Judge Anderson had not made any discretionary rulings, although the exact time of filing is unclear.

100. As noted, it is indisputable from the hearing transcript that the public defender (Rachel Stine) was the person (not then Pro Tem Judge Anderson) who sought to make a record of the affidavits where she noted that then Pro Tem Anderson was "one of the few, if only, persons of color and female pro tem judges," Dkt. 1, Ex. B at 4, thus raising the issue of gender and race discrimination, once the DPA presented the affidavits. As is proper, then Pro Tem Judge Anderson took up each individual affidavit as she moved through the docket.

101. As it continued, this process became bogged down in irregularities. When pressed by then Pro Tem Judge Anderson for the "basis" of the affidavits, Mr. Peters stated: "I believe all these matters and the reasons for the affidavits, are best explained via brief. . . . However, I think if this could be set over to the future we could have a full and comprehensive explanation of the reasons for the affidavits of prejudice." Dkt. 1, Ex. B at 5. Ms. Stine then

objected to any continuance: "If the State is asking to potentially reset this entire calendar and is not prepared to articulate a reason for affidaviting you to hear any of these cases, then I think it's suspect if there is any reason." *Id.* Then Pro Tem Judge Anderson inquired about whether the State had a "policy of affidaviting" her. *Id.* at 6. Throughout the colloquy, both Ms. Stine and then Pro Tem Judge Anderson used the terms "policy of affidaviting" and "blanket affidaviting." *See id. passim*. Mr. Peters did not confirm or deny such a policy, but he clarified he had instructions from the Lead DPA Michelle Rutherford to file the affidavits in cases involving then Pro Tem Judge Anderson. *Id.* at 7.

102. Then Pro Tem Judge Anderson directed: "I'm gonna have you on the record tell this Court each and every basis of why you're affidaviting me, the only [B]lack female judge in Snohomish County, in the entire Snohomish County." Dkt. 1, Ex. B at 7. Mr. Peters then made his way through the cases, stating with each one: "as I have previously stated, I've been instructed by my lead attorney to file an affidavit of prejudice." *See*, *e.g.*, *id.* at 7, 8, 10.

103. These colloquies were irregular because ordinarily a trial judge has no discretion to reject a timely filed affidavit, unless the matter concerns non-"discretionary" rulings.[4] *See* RCW3.34.110 (1)(b) ("judicial officer shall disqualify himself or herself . . . a party files an affidavit that the party cannot have a fair and impartial trial or hearing by reason of the interest or prejudice of the judicial officer"); *State v. Cockrell*, 102 Wn.2d 561, 565, 689 P.2d 32 (1984) ("Once a party timely complies with the terms of these statutes, prejudice is deemed established and the judge to whom it is directed is divested of authority to proceed

[4] In litigation, Plaintiff makes the post facto point (*see* Dkt. 152, Ex. E at Bates 222) that a trial judge may reject an affidavit where the nature of the rulings is not considered "discretionary," including "(i) The arrangement of the calendar; (ii) the setting of an action, motion, or proceeding for hearing or trial; (iii) the arraignment of the accused; or (iv) the fixing of bail and initially setting conditions of release." RCW 3.34.110(1)(b). It is undisputed, however, that then Pro Tem Judge Anderson signed off on all the affidavits, necessarily implying that at the time the cases affected by the affidavits did not involve these statutory non-"discretionary" rulings.

further into the merits of the action.") (internal quotations and citation omitted). Other than presenting the affidavit of prejudice, Mr. Peters was not required to provide further justification. As for Ms. Stine, she had no valid expectation that the State should be "prepared to articulate a reason for affidaviting [the judge] to hear any of these cases." Dkt. 1, Ex. B at 5. And even where, as here, the parties raised a "policy" of affidaviting (or "blanket affidaviting")[5] then Pro Tem Judge Anderson, the affidavits of prejudice are self-explanatory. Making matters worse, Mr. Peters promised a brief about this purported policy of blanket affidaviting, though unnecessary, but the Prosecutor's Office never followed through.

104. As recognized in *Holden*, a trial judge may understandably be frustrated when facing an affidavit of prejudice, not to mention feeling affronted by a policy of "blanket affidaviting." Yet the overriding relevant consideration here is that a party has a "right to one change of judge *without inquiry*." *Marine Power*, 102 Wn.2d at 463 (emphasis added), and RCW 3.34.100 "permits of no ulterior inquiry." *Holden*, 96 Wash. at 40.

105. The gist of Ms. Dietrich's statement, in the context of campaign advocacy, was that then Pro Tem Judge Anderson was not allowed to inquire into the reasons for the State's affidavits.

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[5] Plaintiff argues that the claim that Prosecutor's Office had a policy of "blanket affidaviting" is itself false because in parallel federal litigation, commenced after this state court defamation action, the federal defendants from the Prosecutor's Office denied ever "blanket affidaviting" then Pro Tem Judge Anderson. This point is irrelevant because all the discussion about a policy of affidaviting surfaced in the November 15, 2022 hearing. And it is undisputed that Prosecutor's Office, at least as of the September 28, 2023 38th LDD's meeting to discuss rescinding Candidate Anderson's endorsement, never announced a clarifying formal position, much less that Defendants here ever knew about any formal position by the Prosecutor's Office. *See* Dkt. 32, Ex. K (9/27/2023 email from Endorsement Committee Chair Bill Sheets to Molly Sullivan, with questions and comments for upcoming meeting: "Regarding the prosecutor's order for recusal, there was a reason it was placed last on our list. *To date we have seen no documentation to support either that it was done for cause or that it was done for some other motive such as racism.*") (emphasis added).

In a narrow sense, this statement is true by operation of the applicable statute and the interpreting case law.

106. In a broad sense, Ms. Dietrich's statement about then Pro Tem Judge Anderson's lack of authority to inquire was not true. A criminal defendant is "constitutionally entitled to a record of sufficient completeness to permit effective appellate review of his or her claims." *State v. Tilton*, 149 Wn.2d 775, 781, 72 P.3d 735, 738 (2003) (internal quotation marks omitted). Complementing that right, "[t]rial courts have the inherent authority to control and manage their calendars, proceedings, and parties." *State v. Gassman*, 175 Wn.2d 208, 211, 283 P.3d 1113, 1114 (2012).

107. Because the statement could be true in a narrow sense, or false in a broad sense, the statement is susceptible to two reasonable readings. This renders the statement nonactionable. *See Cheng*, 51 F.4th at 444; *cf. Partington v. Bugliosi*, 56 F.3d 1147, 1154 (9th Cir. 1995) ("Given the ambiguous nature of the subject matter from which Bugliosi draws his conclusions, we believe that the First Amendment requires us to give the author substantial latitude in describing and interpreting the events involved.").

108. Here, the context was a text message between two SCI members discussing whether one (Alicia Crank) should host an event for Candidate Anderson. As noted, Ms. Crank mentioned her concerns that SCI should strive to support Black and Brown political candidates, with which Ms. Dietrich agreed in general, but she also cited her "preliminary" but still uncompleted research indicating to her why she opposed support for Candidate Anderson in particular. There is no disclosure about the context of the November 15, 2022 hearing, but even disclosing the fact that defense counsel was the one to raise the issues of race and gender would not negate the substantial truth—in the narrow sense per RCW 3.34.100, *Marine Power* and *Holden*—that a trial judge shall sign an Affidavit of Prejudice without inquiry into motivation. The statement is either substantially true; or expressed as an opinion

regarding the effect of RCW 3.34.110(1)(b) and CrRLJ 8.9 or about whether to hold an event for Candidate Anderson where Ms. Dietrich voiced the results of her "preliminary" research and her view against holding an event. *Cheng*, 51 F.4th at 444; *see also* Order, *supra*, ¶ 92. Finally, for similar reasons, Plaintiff cannot show any reckless disregard for the truth because Ms. Dietrich's view was consistent with the applicable statute and the interpreting case law, or not contrary to any obvious facts. There is no clear and convincing evidence that Ms. Dietrich, a non-lawyer, knew about a trial judge's broader inherent authority.

> ***"She was removed from the list of Pro Tem Judges who could be called to serve in the District Court, thus disqualifying her from any judicial role in the District Court. She has not served there since December 2022."***

109. The first sentence is substantially true, it is an opinion, or it is not made with actual malice. The second sentence is true.

110. As a practical matter, it is true that being removed from the Pro Tem list would disqualify a person from acting as a Pro Tem judge, because it is undisputed that Pro Tem judges are selected from the list. As noted, Plaintiff later admitted that she had in fact been removed from the list for 2023 and never returned to it after December 2022. As a formal matter, Plaintiff has not produced any policy or procedure by which she remained eligible for pro tem duty after December 2022. As to whether being removed from the list was in fact the disqualifying event, Plaintiff points to other judges' emails to her, which inquired about her willingness to cover as a pro tem judge, that Plaintiff contends is evidence that she remained eligible to serve in 2023. *See*, *e.g.*, Dkt. 1, Ex. E; Dkt. 82, ¶¶ 34-35, Ex. 5. At most, this evidence shows that certain judges held different views about the process and arguably favorable views of Plaintiff. It does not demonstrate there was an objectively verifiable process within Snohomish County District Court with distinct criteria for determining the (in)eligibility of persons seeking a pro tem position.

111. Finally, for similar reasons, there is no clear and convincing evidence of any obvious facts that Plaintiff was disqualified for some other impermissible reason. Despite Plaintiff's understandable concern that race and gender bias may have lurked behind the "blanket affidaviting," that alone cannot meet the high burden to show Defendants' actual malice.

112. **Statement 11,** by email from Defendant Dietrich on September 26, 2023, to "Alicia" and potentially others within SCI, as "follow-up" to her "preliminary" research about her opposition to endorsing Candidate Anderson: ***"This shows that she [Anderson] has not even read, and is in violation of, the Washington State Judicial Code of Conduct."*** Dkt. 186 at 5; Dkt. 188 at 4; *see also* Dkt. 1, Ex. S.

113. Ms. Dietrich sent this follow-up e-mail upon completing her public records review and other research into Candidate Anderson. In this e-mail, Ms. Dietrich elaborated on her reservations about Candidate Anderson while acknowledging SCI's strong historical support for candidates of color. Dkt. 1, Ex. S. More specifically to the statement above, Ms. Dietrich was referring to Candidate Anderson's seeking "endorsements from philosophically opposed people and organizations," and about her spending half a day campaigning at a fair standing near a Democratic booth and the other half of the day near the Republican booth, in what Ms. Dietrich believed left people with "no idea about how she stands on the issues." From these events, Ms. Dietrich concluded that Candidate Anderson was, "in essence, asking voters to 'vote blind,' by soliciting endorsements from people and organizations who hold opposing views and stating it is because she is non-partisan. This shows that she has not even read and is in violation of the Washington State Judicial Code of Conduct," namely Canon 4.1, comment 11. Dkt. 1, Ex. S. That comment states:

> The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns

> that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

Canon 4.1, *comment* 11. In the same email, dated September 26, 2023, apparently to the 38th LDDs, Ms. Dietrich cited Canon 4.1, comment 13. *See* Dkt. 1, Ex. S. That comment states:

> The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

Canon 4.1, *comment* 13.

114. It is not provably false that the conduct Ms. Dietrich complained of showed that Candidate Anderson had not read the Canons of Judicial Conduct. *See Spelson v. CBS, Inc.*, 581 F. Supp. 1195, 1203-1205 (N.D.Ill.1984) (in the context of a series of news broadcasts entitled "'Cashing in on Cancer,'" statements such as "'Spelson had overstepped the bounds of his training,'" Spelson's practices were "'unethical, unprofessional, inhuman and totally worthless,'" Spelson's behavior "'really borders on the criminal,'" and other statements regarding "'cancer con-artists'" and "'cancer quacks'" were statements of opinion), aff'd, 757 F.2d 1291 (7th Cir.1985); *accord Camer*, 45 Wn. App. at 40-41 (citing *Spelson* as example of "disparaging" yet constitutionally permissible statements).

115. Whether Candidate Anderson's conduct was in violation of Canon 4.1, comments 11 and 13, is protected opinion or actionable defamation turns on "the totality of the circumstances in which it was made, considering three factors: (1) the medium and context in which the statement was published, (2) the audience to whom it was published, and (3) whether the statement implies that it is supported by undisclosed facts." *Dunlap*, 105 Wn.2d at 539.

116. The Court finds these statements were opinion. First, this ongoing discussion between Ms. Dietrich and "Alicia" (or more broadly the Edmonds SCI, or the 32nd and 38th LDDs) took

place in an intra-organization e-mail, on the specific topic of whether Edmonds SCI should hold an event for Candidate Anderson and the reasons why Ms. Dietrich opposed that; and about whether the endorsement of Candidate Anderson should be rescinded. As a rejoinder, the communication to Ms. Chase served the same purpose. Second, the audience discussing the topic in this context would reasonably be prepared for opinions; in fact, Ms. Dietrich was expressly justifying her viewpoint to compete with other views within SCI as might be presented to the 32nd and 38th LDDs amid the endorsement seeking process. *See Seaquist*, 8 Wn. App. 2d at 566 (Statements tend to be opinion where audience is "prepared for mischaracterizations, rhetoric, and exaggerations, and are likely to view such representations with an awareness of the subjective biases of the speaker.") (internal quotation marks omitted); *see also Cheng*, *Spelson* and *Camer*, *supra*. Likewise, despite invoking comment 13, there are no provably false facts that underlie her statement that comment 13 "underscores what I said earlier about her asking voters to 'vote blind.'" Dkt. 1, Ex. S. This is the language of rhetorical flourish, argument and persuasion, not facts, no matter how inapt and unpersuasive Ms. Dietrich's point might be. Finally, Ms. Dietrich disclosed the conduct she found in violation of Canon 4.1, comments 11 and 13. Ms. Dietrich also did not imply there were other undisclosed facts that supported her opinion.

117. While this Court might agree that Candidate Anderson campaigned within ethical bounds, and that Ms. Dietrich's textual interpretations of the judicial canons were off the mark (especially when looking at the entirety of Canon 4.1), she was still only interpreting a canon and applying it to a discrete set of disclosed facts. *See Wilkow v. Forbes, Inc.*, 241 F.3d 552, 555 (7th Cir. 2001) ("[I]f it is plain that the speaker is expressing a subjective view, an interpretation, a theory, conjecture, or surmise, rather than claiming to be in possession of objectively verifiable facts, the statement is not actionable."). Whether "soliciting endorsements from people and organizations who hold opposing views" left voters with

sufficient information to distinguish between Candidate Anderson and her opponent, in violation of Canon 4.1, this statement was likewise conjecture and not provably false.[6] Even if wrong, in this context, the statement is not actionable. *See Duc Tan*, 177 Wn.2d at 662 ("Rhetorical hyperbole and statements that cannot reasonably be interpreted as stating actual facts are protected under the First Amendment."); *see also Cheng*, *Wilkow*, *Spelson*, and *Camer*, *supra*.

118. **Statement 12**, by Defendant Dietrich to Maralyn Chase of the 32nd LDDs on September 2, 2023: "***Mary Anderson claims to have extensive experience as a Pro Tem Judge. In fact, she only served the District Court for a total of 44 days between March and December of 2022, when the judges of the District Court removed her from the list of attorneys they would accept for service as Pro Tem Judges. She has not served there since December 2022."*** Dkt. 186 at 6; Dkt. 188 at 5; *see also* Dkt. 1, Ex. K.

119. This group of statements are substantially true, nonactionable opinion, or not made with actual malice, as discussed above. *See* Order, *supra*, at ¶¶ 65-68, 72-74.

120. **Statement 14**, by Defendant Townsell: ***"On or about September 2023, Townsell verbally tells the community that Ms. Anderson is not qualified to serve on the bench and has been removed from the pro tem list and will follow her to superior court if elected."*** Dkt. 186 at 7; Dkt. 188 at 6; *see also* Dkt. 1, ¶ 2.44, Exs. P and S. This allegation from the complaint is not directly supported by Plaintiff's reference to Exhibits P and S attached to the original complaint. The Court nonetheless addresses the merits of the allegation.

121. As discussed, whether Candidate Anderson was unqualified to serve on the Superior Court bench is a nonactionable opinion. *See* Order, *supra*, ¶¶ 91-93. It was a true statement that Ms. Anderson was removed from the District Court Pro Tem list. Finally, whether or not this

[6] If the Commission of Judicial Conduct had investigated Candidate Anderson and concluded that she was not in violation of judicial ethics, that might objectively disprove Defendant Dietrich's allegations here. But this contrafactual scenario did not occur.

experience would follow Candidate Anderson to the Superior Court if elected is a prediction about the future and cannot be provably false. *See Uline, Inc. v. JIT Packaging, Inc.*, 437 F. Supp.2d 793, 803 (N.D. Ill. 2006) ("It is also an opinion as to JIT's future financial status, and is therefore not actionable as defamation since a prediction of future events can neither be true nor false."); *see also Wilkow*, *Spelson* and *Camer*, *supra*. This is nonactionable opinion.

122. **Statement 15**, attributed to Defendant Townsell: ***"The prosecutor sanctioned Anderson, which means she isn't allowed to hear criminal cases in Snohomish County Superior Court and Judge Rancourt removed Anderson from the list of judges able to preside in SnoCo Superior Court."*** Dkt. 186 at 8; Dkt. 188 at 6.

123. For support Plaintiff cites paragraphs 2.42 and 2.43 the original complaint. However, these pleaded allegations do not match the above statement. This group of statements was not otherwise alleged in the original complaint. Under *Jha*, the statements are procedurally barred. Even if the Court considered the merits, the statements are nonactionable opinion, not a provably false, or not made with actual malice. *See Wilkow*, *Cheng*, *Spelson*, and *Camer*, *supra*; *see also* Order *supra*, ¶¶ 92, 117, and *infra*, ¶¶ 130-131, 153-55.

124. **Statement 16**, attributed to Defendant Dietrich: ***"Assembly of God is her church and she's been having campaign events there with link to position on homosexuality and abortion."*** Dkt. 186 at 9; Dkt. 188 at 6.

125. This group of statements was not alleged in the original complaint. Under *Jha*, the statement is procedurally barred. Even if the Court considered the merits, it is not actionable. *See* Order, *infra*, ¶¶ 137-146.

126. **Statement 17**, attributed to Defendant Dietrich: ***"Dietrich of Snohomish County Indivisible never emailed or called Ms. Anderson to inquire … whether she . . . worked only 44 days***

as a pro tem judge between March – December 2022." Dkt. 186 at 10; Dkt. 188 at 7; *see also* Dkt. 1, ¶2.48

127. This is a description of Defendant Dietrich's alleged inaction, not a statement by Defendant Dietrich. It is not actionable.

128. **Statements 18-19 (duplicates),** attributed to Defendants Dietrich and Townsell: **"On or about September 2023, Dietrich and Townsell verbally tells the community that Ms. Anderson is against white people and anti LGBTQIA+ community."** Dkt. 186 at 10; Dkt. 188 at 8; *see also* Dkt. 1, ¶ 2.45.

129. These verbal statements are described in the original complaint, but without any supporting documentation. Defendants Townsell and Dietrich deny they ever referred to Plaintiff as "anti-white" or "anti LGBTQIA+ community." Dkt. 32, ¶ 7; Dkt. 103 at 12-13. Even if these statements were substantiated, they are not provably false and are thus nonactionable opinions. *Cf. Cheng*, 51 F.4th at 446 ("Right-wing," "far-right," and "conspiracy theorist" are "vague, judgement-based terms" that "admit[] of numerous interpretations and are not objectively provable as false.") (internal quotations omitted, alteration in original).

130. **Statements 20 and 27 (duplicative)**, attributed to Defendant Townsell as made on September 13, 2023: ***"Candidate Anderson was evasive when seeking the 38th LDD endorsement regarding the matter of not being allowed to hear criminal cases, which will follow her to Superior Court if she were to win."*** Dkt. 186 at 10, 14; Dkt. 188 at 8, 10; *see also* Dkt. 1, ¶¶ 2.44 and 2.59, Ex. P.

131. Whether Plaintiff was "evasive" is not demonstrated here through any undisclosed provable facts. Whether the allegation of "not being allowed to hear criminal cases . . . [would] follow her to Superior Court if she were to win" is also not reducible to provable fact, or actionable, because it is a speculation about the future. *See Uline*, 437 F.Supp.2d at 803.

132. **Statement 21**, made on September 1, 2023, and attributed to Defendant Townsell: ***"The following facts are based on my research. Anderson was removed from the list of Pro Tem Judges who could be called to serve in the District Court, thus disqualifying Anderson from any judicial role in the district court."*** Dkt. 186 at 11; Dkt. 188 at 8.

133. This statement was not alleged in the original complaint. It is procedurally barred under *Jha*. Even if the Court considered the merits, this statement is not actionable defamation.

134. Plaintiff argues this is a false statement because she continued to receive requests to cover calendars at District Court after November 15, 2022. Looking at the broader context and the wording of the statement itself, Plaintiff's claim of falsity is insufficient. First, Defendant Townsell in the statement equates disqualification with being removed from the list. It is undisputed Plaintiff was removed from the list as of December 16, 2022, and that she did not serve as a pro team between that date and September 1, 2023 (or thereafter), when Defendant Townsell made her statement. To the extent Plaintiff relies on requests for coverage after December 16, 2022, this evidence at most shows that certain judges may have held different views about the process and Candidate Anderson. It does not demonstrate there was an objectively verifiable process within Snohomish County District Court with distinct criteria for determining the (in)eligibility of persons seeking a pro tem position. As to actual malice, Plaintiff fails to show with clear and convincing evidence that Defendant Townsell omitted from her research, or overlooked some obvious document in the course of her research, that Plaintiff was in fact eligible to serve as a pro tem judge in 2023. Finally, even if Candidate Anderson directly challenged Defendant Townsell's account of the (in)eligibility question in August-September 2023, by publicly alluding to her email communications with the Evergreen branch of District Court, it "does [not] suffice for a plaintiff merely to proffer purportedly credible evidence that contradicts a defendant's story." *Carter*, 581 P.3d at 1094.

This statement is not actionable, for similar reasons as discussed in conjunction with Statement 10. *See* Order, *supra*, ¶ 110.

135. **Statement 22**, attributed to Defendant Townsell: **"*The following facts are based on my research. Mary Anderson claims to have extensive experience as a Pro Tem Judge. In fact, she only served the District Court for a total of 44 days between March and December of 2022 when the judges of District Court removed her from the list of attorneys they would accept for service as Pro Tem Judges."*** Dkt. 186 at 11; Dkt. 188 at 9; *see also* Dkt. 32, Ex. D at 3.

136. First, this statement is procedurally barred under *Jha* because it was not alleged in the original complaint. Second, the e-mail wherein these statements were made was a "research packet" Defendant Townsell received as a member of the 38th LDD's Endorsement Committee, *see* Dkt. 32 at 3; and the email in question does not indicate the name of the sender or recipient, which are redacted. *Id*., Ex. D at 3. The basis for the attribution is thus unclear. Finally, even if the Court considered the merits, this statement is not actionable for reasons set forth above. *See* Order, *supra*, ¶¶65-68. Also, Plaintiff admitted in June 2024 that she was removed from the pro tem list.

137. **Statement 23**, attributed to Defendant Townsell, based on an email to Bill Sheets from the 38th LDD's Endorsement Committee, sent on August 24, 2023: ***"Her strong religious ties are apparent, she is a member of the Assembly of God faith. I have heard that she's holding events at the church, but don't have any specifics to add on that information. These are the published positions of the Assembly of God [citing position papers about gender identity and abortion]."*** Dkt. 186 at 12; Dkt. 188 at 9; *see also* Dkt. 1, ¶¶ 2.59-2.60; Dkt. 153, Ex. 9 at Bates 253-254.

138. It is unclear from the record whether Plaintiff is or was a member of the Assembly of God church. *See* Order *supra*, ¶ 14; *see also* Order *infra*, ¶¶ 142, 144. As noted below, the Court assumes Plaintiff was not a church member.

139. Although it is false that Plaintiff held events at the Lake Stevens Assembly of God church during the relevant time, it is not provably false that Defendant Townsell may have heard she was. Defendant Townsell also disclosed that she lacked specific information about the claim, undermining that it was factual. *Cf. Dunlap*, 105 Wn.2d at 539 (statement tends to be opinion where "speaker qualified the defamatory statement with cautionary terms of apparency") (internal quotation marks omitted). Otherwise, it is true that the Assembly of God had position papers on the topics of gender identity and abortion.

140. As to Statement 23 and any false sub-statements, Plaintiff founders on the "actual malice" prong. Ms. Townsell had heard Candidate Anderson speak publicly in July 2023 that she was called by God to seek judicial office. Dkt. 153, Ex. 9 at Bates 252. Ms. Townsell verified the photograph taken of the sign in favor of Candidate Anderson staked next to the announcement for the event at the Lake Stevens Assembly of God, which apparently was on church property. Dkt. 98 at 4. For Ms. Townsell, the presence of the campaign sign juxtaposed with the sign of the Lake Stevens Assembly of God event raised "concerns about Anderson's view of the LGBTQIA+ community" because "of Anderson's failure to remove her sign from the [Church]." Ms. Townsell discussed these concerns with the 38th LDD's Endorsement Committee. Dkt. 32 at 7. For Ms. Townsell Candidate "Anderson's public willingness to align herself with a church that has published an anti-LGBTQIA+ position paper confirm[ed] [her] personal opinion regarding Anderson's position." *Id.*

141. Plaintiff implicitly faults Defendant Townsell for not making further inquiry into her purported membership in the Assembly of God church. *See*, *e.g.*, Dkt. 151 at 19, 32, 54, 59. Yet a speaker like Defendant Townsell need not investigate her claims about a public figure

to verify their truth and cannot be liable for failing to do so. *See Herron*, 112 Wn.2d at 777; *Carter*, 581 P.3d at 1079. Here, Defendant Townsell nevertheless undertook substantial research as part of her ongoing "due diligence" in forming her ultimate position to oppose Candidate Anderson amid the extensive debate within the Endorsement Committee in August-September 2023. Defendant Townsell even urged that the Endorsement Committee to inquire with Candidate Anderson about what her views were as to questions she and the Committee had raised. *See* Dkt. 153, Ex. 9 at Bates 252-253.

142. In specific connection to Defendants Dietrich's and Townsell's claim that Plaintiff was a member of the Assembly of God church, Plaintiff relies on the Chase letter (with attachments) submitted first to the 32nd LDD's Endorsement Committee on September 19, 2023, which then forwarded it to Mr. Sheets of the 38th LDD's Endorsement Committee on September 26. *See* Dkt. 152, ¶ 10-18, Ex. E; *see also* Dkt. 186 at 7. The document Plaintiff stresses is an attachment to the letter—a direct response to the concerns about the "church sign and the separation of church and state" issues, apparently drafted by Ms. Chase on behalf of Candidate Anderson, which conveyed:

> Ms. Anderson is not a member of any religious denomination. There is no evidence, as publicly alleged, that she is a "ProLifer" or holds any other theological position. Under no circumstance has Ms. Anderson expressed a theological or religious preference or bias. She also believes the members of any theological organization have the right to a fair and unbiased application of the law should they come before her court.

Dkt. 152, Ex. E at Bates 467.

143. With respect to Statements 18-23 generally, the salient context here is that Defendant Townsell was participating in an ongoing vetting process for judicial candidates within the 38th LDD's Endorsement Committee. Defendant Townsell was raising questions, in addition to expressing her views based on the results of her research and her reasons for rejecting Candidate Anderson's rejoinder through the September 19, 2023 Chase letter.

144. To show falsity and actual malice, Plaintiff relies on the Chase letter. Dkt. 186 at 7. First, the letter is insufficient to provide notice to Defendants about her status as a non-member of the Assembly of God faith, at the time Defendants Dietrich and Townsell may have falsely claimed that Candidate was a member. Looking at the facts in Plaintiff's favor, the Court assumes Plaintiff was not a member, and that Defendant Townsell reviewed the entire Chase letter and attachments by September 26. Yet Defendant Townsell (and Dietrich) made this allegedly defamatory statement in late August and early September 2023, before Candidate Anderson clarified her views through Ms. Chase. To the extent Plaintiff might argue that Defendant Townsell ratified her earlier statements at the September 28 meeting, by refusing to correct them and confirming her opposition to Candidate Anderson, Plaintiff's reliance on the Chase letter and attachments is self-defeating. To show actual malice, it "does [not] suffice for a plaintiff merely to proffer purportedly credible evidence that contradicts a defendant's story." *Carter*, 581 P.3d at 1094. Equally fatal to Plaintiff's position, "[a]rguments for actionability disappear when the audience members know the facts underlying an assertion and can judge the truthfulness of the allegedly defamatory statement themselves." *Id.* at 1090 (citing *Dunlap*, 105 Wn.2d at 540). Also, to the extent the Anderson campaign or others confronted any of the Defendants with the purported falsity of any statements after the fact, Defendants had no duty to retract, and such evidence cannot show actual malice. *See*, *e.g.*, *Sullivan*, 376 U.S. at 286 ("The Times' failure to retract upon respondent's demand, although it later retracted upon the demand of Governor Patterson, is likewise not adequate evidence of malice."); *Blankenship v. NBCUniversal, LLC*, 60 F.4th 744, 763 (4th Cir. 2023) ("[Defamation plaintiff] makes much of [defendants'] failure to issue corrections after learning their statements were inaccurate, but the lack of a retraction has little to no relevance in the actual malice inquiry.").

145. Here, by the time of the September 28 meeting, the 38th LDDs were the audience. The reason they were gathered was to consider the rescission question and the materials in support of and in opposition to Candidate Anderson. This audience is deemed to be skeptical, tending to view all the points made (including by Defendant Townsell) as opinions not facts. *See Camer*, 45 Wn. App. at 41 ("'Even apparent statements of fact may assume the character of opinions, and thus be privileged, when made in public debate, heated labor dispute, or other circumstances in which an 'audience may anticipate efforts by the parties to persuade others to their positions by use of epithets, fiery rhetoric or hyperbole[.]'") (quoting *Information Control Corp. v. Genesis One Computer Corp.*, 611 F.2d 781, 784 (9th Cir.1980)) (otherwise internal quotation marks omitted) (alteration in original). Crucially, this audience also possessed the countervailing facts and contentions about Candidate Anderson supplied by Ms. Chase. Consistent with *Carter*, the facts had been disclosed before the meeting, and the audience was free to make up their own minds about the truth of the competing positions. *Cf. Dunlap*, 105 Wn.2d at 540-541 (no defamation where bank customer accused branch manager of "soliciting kickbacks" amid a property development project and reported him to bank president where afterward the parties' lawyers exchanged views about the controversy and bank president held meeting in possession of the underlying facts before terminating branch manager).

146. Plaintiff has pointed to no evidence, much less clear and convincing evidence, that Defendant Townsell possessed obvious facts to suggest that Candidate Anderson was not a member of the Assembly of God before September 26, 2023. It may have been speculative or even irresponsible for Defendant Townsell to conflate the Anderson campaign sign with the Lake Stevens Assembly of God sign and conclude Candidate Anderson was a church member; yet that is not reckless disregard for the truth here.

147. **Statement 24**, made on August 24, 2023, and attributed to Defendant Townsell: ***"Below is a photo of the candidate's sign, taken yesterday (8/23/23), in Lake Stevens where the signposts serve double-duty in inviting voters to her church, Lake Stevens Assembly of God."*** Dkt. 153, Ex.9; Dkt. 186 at 12; Dkt. 188 at 9.

148. This statement is procedurally barred under *Jha* because it was not alleged in the original Complaint. Even if the Court considered the merits of the statement, it is not actionable for reasons stated above. *See* Order *supra*, ¶¶ 138-146; *see also* Order *infra*, ¶ 150.

149. **Statement 25**, attributed to Defendant Townsell and made on September 13, 2023: ***"Mary Anderson's sign in Lake Stevens (see insert photo) invites folks to Lake Stevens Assembly of God Sunday services at 10 (a noninclusive church, with anti-choice, anti-trans, and anti LGBTQIA beliefs and published statements on these issues."*** Dkt. 186 at 13; Dkt. 188 at 9; *see also* Dkt 1, Ex. P.

150. Exhibit P to the complaint, an email to Mr. Sheets on the subject of "Mary Anderson endorsement," does not support Plaintiff's related allegation in the complaint that Defendant Townsell falsely states that Ms. Anderson "is anti-choice and anti-LGBTQIA+ community." Dkt. 1, ¶ 2.43, *compare* with *id.*, Ex. P. The text of the September 13, 2023 email plainly attributes the "anti-choice and anti-LGBTQIA+ community" views to the Lake Stevens Assembly of God church, not to Candidate Anderson personally. Whether Candidate "Anderson's sign in Lake Stevens . . . ***invites*** folks to Lake Stevens Assembly of God Sunday services at 10," that statement is mere conjecture, and cannot be negated by verifiably objective facts. Finally, as discussed above, Defendant's statement was part of the debate within the 38th LDDs about endorsement, which likely would be received as the opinion of an advocate. This statement is not actionable.

151. **Statement 26**, attributable to Defendant Townsell on September 23, 2023: ***"Ms. Anderson is anti-choice and anti-LGBTQIA+ community."*** Dkt. 186 at 14; Dkt. 188 at 10; *see also* Dkt. 1, ¶ 2.43.

152. As noted above, Exhibit P to the complaint belies that Defendant Townsell made this statement. Defendant Townsell also denies she made the statement. Dkt. 32 at 7-8. To the extent Plaintiff relies on her declaration (*see* Dkt. 186 at 13) to counter this denial, Paragraphs 63 and 64 do not substantiate that Defendant Townsell made the statement Plaintiff attributes to her. *See* Dkt. 82, ¶¶ 63-64. Finally, the letter to the editor at "Edmonds News" by Plaintiff's "friend" Jenna Rand, dated October 11, 2023, cited by Plaintiff (Dkt. 82, Ex. 11), is irrelevant to the actual malice criterion because it does not mention Ms. Townsell and was published well after the date of the alleged statement. This statement is not actionable.

153. **Statement 28,** made by Defendant Townsell on September 26, 2023, in email with Mr. Sheets: ***"The attorney from the Prosecutor's Office stated on record that they have a blanket policy of Affidaviting Mary Anderson on all cases, which will likely carry over to the Superior Court should she be elected."*** Dkt. 186 at 15; Dkt. 188 at 10; *see also* Dkt. 1, ¶¶ 2.43,2.68, Ex. S.

154. As a literal matter, it is incorrect that the "attorney from the Prosecutor's Office stated on record that they have a blanket policy of Affidaviting Mary Anderson on all cases." However, the statement is true that the DPA, Casey Peters, consistently stated during the November 15, 2022 hearing, in responses to questions from then Pro Tem Judge Anderson and allegations by defense counsel about "blanket affidaviting" and a "policy of affidaviting," that his superiors at the Snohomish County Prosecuting Attorney's Office had instructed him to file Affidavits of Prejudice in cases before Pro Tem Judge Anderson. Because substantial, not literal, truth is a defense to defamation, *see Seaquist*, 8 Wn. App. 2d at 566–67, Plaintiff's claim as to the first clause of Statement 28 is not actionable. *Cf. Partington*, 56 F.3d at 1154

("Given the ambiguous nature of the subject matter from which Bugliosi draws his conclusions, we believe that the First Amendment requires us to give the author substantial latitude in describing and interpreting the events involved."). Perforce, it also fails to meet the much higher standard of actual malice because no definitive policy statement issued from the Prosecutor's Office before September 28, 2023. *See* Order, *supra*, ¶¶ 70-74, 143-144.

155. As for the second clause—that any policy of affidaviting would "likely carry over to the Superior Court should she be elected"—Defendant Townsell expressly couched her comment as one of prediction and probability. This cannot be an actionable statement of fact. *See Uline*, 437 F. Supp.2d at 803; *see also* Order, *supra*, ¶¶ 121, 131.

156. **Statement 29**, attributed to Defendant Moriarty, ***"It is my understanding that Ms. Anderson has not protemmed in our courts since the end of last year. And that, as I understand it, is not because of – well, it was mai[n]ly because she was asked not to."*** Dkt. 186 at 15; Dkt. 188 at 11 *see also Dkt. 1, Exs. D, E*.

157. This statement was not alleged in the original Complaint. It is procedurally barred under *Jha*.

158. Even if the Court considered the merits of the statement, it is not actionable. Defendant Moriarity clearly qualied the statement as his "understanding" about what happened. *Cf. Dunlap*, 105 Wn.2d at 539; *see also Wilkow* at 555 ("[I]f it is plain that the speaker is expressing a subjective view, an interpretation, a theory, conjecture, or surmise, rather than claiming to be in possession of objectively verifiable facts, the statement is not actionable."). A reasonable audience, especially in the campaign context, would not consider this a statement of fact. In any event, the first sentence of the statement is true. As to the second sentence about the reason for Plaintiff allegedly not serving as a Pro Tem Judge since December 2022, it is not provably false what the "main" reason was why she was not asked to return. Although Plaintiff heard from one District Court judge at the Evergreen branch that

she was invited to pro tem there in January 2023, *see* Dkt. 1, Exs. D and E, that does not negate that there may have been other judges who didn't request her service. The statement is either substantially true, was expressed as a nonactionable opinion, or not made with actual malice.

159. **Statement 30**, attributed to Defendant Dietrich: "***Anderson pointedly and repeatedly inquired of the Prosecutor as to the reasons 'on the record,' for the Affidavits of Prejudice, an inquiry a judge is not allowed to engage in. The Prosecutor responded that he did not know the reasons but was just following instructions from his superior to file affidavits in all cases before Anderson. She immediately inquired, on the record if the reason was '… because I'm a female and Black?'"*** Dkt. 186 at 16; Dkt. 188 at 11; *see also* Dkt. 1, Ex. B.

160. This statement was not alleged in the original Complaint. It is procedurally barred under *Jha*.

161. On the merits, the statement is not actionable because there is no clear and convincing evidence that Defendant Dietrich reviewed the November 15, 2022 hearing transcript, and for reasons stated above. *See* Order, *supra*, ¶¶ 95-107.

162. **Statement 31**, by Defendant Dietrich in response to community question about Defendant Dietrich's assumption that Candidate Anderson would not be allowed to preside over any criminal cases: ***"Because the Prosecuting Attorney's office has a policy to file an Affidavit of Prejudice on all cases before her and that will carry over into Superior Court."*** Dkt. 186 at 16; Dkt. 188 at 12, *see also* Dkt. 1, ¶¶ 2.42-2.43, 2.68, Ex. S.

163. This statement was not alleged in the original Complaint. It is procedurally barred under *Jha*.

164. Even considering that statement, the evidence cited does not support the construction by Plaintiff. In any event, it is not actionable on the merits. *See* Order, *supra*, ¶¶ 70-74, 143-144, 158.

165. **Statement 32**, attributed to Ms. Ottinger who conveyed it to Defendant Moriarty: ***Candidate Anderson's "Judicial experience in lower court measured in DAYS – No longer serving."*** Dkt. 186 at 17; Dkt. 188 at 12; *see also* Dkt. 153, Ex. 7.

166. This statement was not alleged in the original Complaint. It is procedurally barred under *Jha*.

167. Even if the Court considered the merits of the statement, it is not actionable for reasons discussed above. *See* Order, *supra*, ¶¶ 24, 65-68, 86.

Outrage

168. As to Plaintiff's allegation of outrage, that claim is a nonstarter. Plaintiff has failed to state a claim of defamation and false light because Defendants' statements discussed above were protected under the First Amendment or otherwise not actionable. As a matter of law, Defendants' conduct cannot be outrageous. *Compare Yeakey v. Hearst Commc'ns, Inc.*, 156 Wn. App. 787, 793 n.2, 234 P.3d 332, 335 (2010) (Plaintiff alleged "false light, negligent infliction of emotional distress, and outrage, but conceded that those claims would rise and fall with his defamation claim. Because he has not prevailed on his defamation claim, we do not consider his other claims."), *with Corey v. Pierce Cnty.*, 154 Wn. App. 752, 764, 225 P.3d 367, 374 (2010) ("Corey presented evidence to support both falsity and actual malice. Therefore, Corey also meets the high bar established for a public figure's outrage claim.").

Conclusion

169. The Court finds that Statements 1 through 32 discussed above are not actionable bases for any of the defamation or false light claims alleged by Plaintiff. Those claims must be **DISMISSED.**

170. Plaintiff's claim of outrage here must also be **DISMISSED.**

171. Defendants' motions to dismiss under UPEPA are **GRANTED**. Defendants are the prevailing parties.

172. With respect to any Motions to Strike, the Court identified the evidence in the record on which it relied. This evidence was either not hearsay, used for a non-hearsay purpose (such as notice or state of mind), qualified as an exception to hearsay, or was otherwise admissible. In the body of the Order, the Court also discussed why cited exhibits either did or did not support the parties' respective positions. To this extent any motions to strike are **MOOT.**

173. In pertinent part under RCW 4.105.090, "[o]n a motion under RCW 4.105.020, the court shall award court costs, reasonable attorneys' fees, and reasonable litigation expenses related to the motion . . . [t]o the moving party if the moving party prevails on the motion." RCW 4.105.090(1).

174. Within 7 days of entry of this order, Defendants may submit their respective petitions for attorneys' fees and related expenses. Plaintiff may file a response within 14 days of entry of this order, with any replies due 7 days thereafter. The Court encourages the parties to meet and confer about the respective amounts for each Defendant's reasonable attorneys' fees and expenses, ideally to arrive at an undisputed claim. If that is not possible, the Court will award fees on fees.

DATED: February 15, 2026.

_____
Judge David Whedbee
King County Superior Court

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