

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**Superior Court of Washington for Clark County**

**Save Columbia CU Committee, John Bucholtz, Steve Straub, and Robert Tice,**  
Plaintiffs,

**No. 04-2-01341-4**

vs.

**Motion for Reconsideration**

**Columbia Community Credit Union, Karen Martel, Edwin C. Bell, Dale Magers, William F. Byrd III, Robert M. Byrd, Dennis McLachlan, Mark L. Ail, Connie Jones, and Bruce Davidson,** Defendants.

**I. Relief Requested**

Plaintiffs move under CR 59(a)(1), (7), and (9) that the Court reconsider and vacate the portions of it’s “Ruling on CR 12(b)(6) Motions and Motion For Partial Summary Judgment” (“**Ruling**”) entered on May 10, 2004 in this proceeding, that granted Defendants’ motion for summary judgment of Plaintiffs’ “Term Limits Claim” (Ruling pages 2 - 5) and granted Defendants’ motion for dismissal under CR 12(b)(6) of Plaintiffs’ “Enabling Legislation” and “Supermajority” claims (Ruling pages 9-10). Acronyms and short names used in prior pleadings will be used below (*e.g.*, “**CCCU**” is Columbia Community Credit Union.”)

**II. Statement of Facts**

**A. The Pleadings.** On March 16, 2004, Plaintiffs filed this action. Before answering, on April 5, 2004, Defendants filed “Defendants’ Motion for Dismissal or, in the Alternative, for Partial Summary Judgment” (“**Defendants’ Motion**”). With that motion, Defendants filed a

1 “Memorandum of Points and Authorities in Support of Defendants’ Motion for Dismissal or, in  
2 the Alternative, for Partial Summary Judgment” (“**Defendants’ Memorandum**”), and a  
3 “Declaration of David E. Doss in Support of Motion for Dismissal or, in the Alternative, for  
4 Partial Summary Judgment” (“**Doss Declaration**”). On April 15, 2004, Plaintiffs filed  
5 “Plaintiffs’ Response to Defendants’ Motion for Dismissal or, in the Alternative, for Partial  
6 Summary Judgment” (“**Plaintiffs’ Response**”) supported by “Schafer’s Declaration of 4/15”  
7 (“**Schafer 4/15 Declaration**”). On April 20, 2004, Defendants’ filed a “Reply in Support of  
8 Defendants’ Motion for Dismissal or, in the Alternative, for Partial Summary Judgment”  
9 (“**Defendants’ Reply**”).

10 Plaintiffs had filed, on April 2, 2004, a “Motion for Summary Judgment on Term-Limited  
11 Directors Issue” (“**Plaintiffs’ Motion**”), together with “Declaration of Doug Schafer in Support  
12 of Motion for Summary Judgment on Term Limited Directors Issue” (“**Schafer 4/2  
13 Declaration**”). On April 14, 2004, Defendants filed “Defendants’ Response in Opposition to  
14 Plaintiffs’ Motion for Summary Judgment on Term-Limited Directors Issue” (“**Defendants’  
15 Response**”). On April 20, 2004, Plaintiffs filed “Plaintiffs’ Reply to Response Opposing Motion  
16 for Summary Judgment on Term-Limited Directors Issue” (“**Plaintiffs’ Reply**”).

17 On April 15, 2004, the parties jointly filed a “Stipulation re Term of Board Service of  
18 Board Members” (“**Stipulation re Board Service**”).

19 On April 22, 2004, during the hearing upon Defendants’ Motion and Plaintiffs’ Motion,  
20 Judge Bennett expressly requested that counsel for Defendants supplement the record to include  
21 evidence about certain material facts (the lack of evidence about those material facts having been  
22 noted in Plaintiffs’ Reply, pages 3 - 5). On April 23, 2004, Defendants filed “Declaration of  
23 Kathleen Porter in Support of Motion for Dismissal or, in the Alternative, for Partial Summary  
24 Judgment” (“**Porter Declaration**”), providing for the record some of the evidence that Judge  
25 Bennett had requested but denying the existence of other such evidence (namely, audiotapes of a  
26 board meeting).

27 On May 7, 2004, the Court signed the Ruling, and it was entered on May 10, 2004.

**B. The Term Limits Claim.** CCCU’s board of directors amended its bylaws at their  
meeting on November 16, 1999 to limit directors to three consecutive three-year terms in office.  
Plaintiffs’ Motion asserted that the bylaws were a contract between CCCU and its members  
(including Plaintiffs) to be given its *plain meaning*, and that the members were not bound by the  
hidden, subjective intentions of individual directors who adopted the term limits amendment.  
Plaintiffs argued for *prospective* application of the 1999 term limits amendment to CCCU board  
elections occurring after 1999 as a new nominee qualification requirement, as permitted by RCW

1 31.12.235(3), *that considered nominees' pre-amendment terms in office*. (Plaintiffs' Reply,  
2 page 2, line 23) Defendants argued for *prospective* application of the 1999 term limits  
3 amendment to CCCU board elections occurring after 1999 as a new nominee qualification  
4 requirement *that disregarded nominees' pre-amendment terms in office*. (Defendants' Motion,  
5 page 11, line 25). Both Plaintiffs and Defendants agreed that the term limits amendment applied  
6 *prospectively*—that it applied upon each director's next election after the 1999 adoption of the  
7 amendment. Plaintiffs and Defendants disagreed on whether, once the term limits amendment  
8 became applicable to a director seeking re-election, the director's pre-amendment terms should,  
9 or should not, be considered.

10 The Court held (Ruling page 4, lines 5 - 6) as a matter of law that the disposition of the  
11 term limits claim was controlled by “the intent of the directors, not knowledge of the members,”  
12 and *the Court implicitly ruled that there was no question of material fact as to the intentions of*  
13 *the individual directors* who adopted the term limits amendment on November 16, 1999. The  
14 Court implicitly ruled that the 1999 term limits amendment created a qualification requirement  
15 applicable to CCCU board elections after 1999 but that nominees' pre-amendment terms in  
16 office would not be considered in applying that requirement.

17 The record before the Court on Defendants' Motion included no affidavit or declaration  
18 by any of the eight directors who attended CCCU's board meeting on November 16, 1999 and  
19 who adopted the term limits amendment. The record included an inadmissible declaration by  
20 CCCU's chief executive officer, David Doss, asserting that he had attended the November 16,  
21 1999 board meeting (though he was not himself a member of the board (Porter Declaration, Ex.  
22 B)), that “it was *our* intention that the term-limits would apply prospectively,” and that “the  
23 *board unanimously understood* the prospective application and that is the only application that  
24 made sense because if the bylaw was made operative immediately director Connie Jones would  
25 have been ineligible to serve.” (Doss Declaration, page 2, ¶ 3, emphasis added.) Connie Jones  
26 had begun her sixth three-year term as a director in March of 1999, so she would not again stand  
27 for election until March of 2002. (Stipulation re Board Service, pages 2 - 3)

Every assertion in the Doss Declaration is equally as supportive of Plaintiff's position as  
as it is of Defendants' position, namely, that the term limits amendment would apply  
*prospectively* “upon each individual director's next election.” Nothing in the Doss Declaration  
indicates whether Mr. Doss believes that the eight directors who adopted the term-limits  
amendment in 1999 intended that, upon each director's subsequent election, the term-limits  
qualification would be applied by considering pre-amendment terms or by disregarding those  
terms. He only asserts his belief that those directors adopting the amendment in November of  
1999 did not intend it as rendering director Connie Jones ineligible to finish her then current

### 3—Motion for Reconsideration

1 term in office.

2 Three of CCCU's nine directors in office at November 16, 1999—Connie Jones, Robert  
3 Marble, and David Petrie—had been directors since at least January 1984. (Porter Declaration,  
4 Ex. B, and Stipulation re Board Service, pg. 5). Robert Marble did not seek re-election to the  
5 CCCU board when his term expired in March of 2001, and his act of then retiring from the board  
6 is consistent with Plaintiffs' position that the term limits amendment applied to subsequent board  
7 elections but considered pre-amendment terms of service. (Plaintiffs' Reply, pages 5 - 6)

8 The almost completely redacted minutes of the November 16, 1999 CCCU board meeting  
9 included a sentence under the heading, "Report of Executive Committee" that read, "Ail reported  
10 that the Committee had reviewed proposed term limits for Board members, and was  
11 recommending that the Board approve those tonight." (Porter Declaration, Ex. B) *The record  
12 before the Court did not include minutes of the meeting at which the Executive Committee  
13 considered the term limits proposal, nor any written report by that Committee on the term  
14 limits proposal, nor any evidence about who proposed the term limits amendment and the  
15 reasons why they did so, nor any evidence of the reasons why the Executive Committee or the  
16 CCCU board supported the adoption of the term limits amendment.*

17 *In short, the record contains no evidence whatsoever indicating just what the  
18 intentions were of the eight directors of CCCU when they adopted the term limits bylaw  
19 amendment on November 16, 1999 on the question of whether pre-amendment terms of  
20 service would be considered, or would be disregarded, if and when a director later sought re-  
21 election to the board.* The Doss Declaration, even if it were admissible concerning the eight  
22 individual directors' intentions, sheds no light on that key question. The later retirement of  
23 director Robert Marble in March of 2001 is consistent with Plaintiffs' position. The much later  
24 re-election of Connie Jones and David Petrie in March of 2002 is consistent with Defendants'  
25 position.

26 **C. The Enabling Legislation and Supermajority Claims.** The Court granted  
27 Defendants' motion under CR 12(b)(6) to dismiss, for failure to state a claim, Plaintiffs' claims  
that the conversion of CCCU into a savings bank is *not permitted* by applicable law and that any  
conversion or merger of CCCU requires approval by *two-thirds* of its voting members. The  
Defendants had moved to dismiss under CR 12(b)(6) by arguing very simply that, "Plaintiffs do  
not allege that Columbia [a/k/a CCCU] is undergoing a conversion or that one is imminent or  
planned." (Defendants' Memorandum, page 10, line 15) Defendants submitted no affidavits,  
declarations, or other factual evidence supporting their motion to dismiss these claims.

In response, Plaintiffs asserted that the rule firmly established in Washington case law

1 requires *dismissal* of a CR 12(b)(6) motion whenever facts supporting a claim are *conceivable*,  
2 and Plaintiffs additionally called to the Court’s attention several documents properly in the  
3 record before the Court indicating that CCCU’s board of directors had recently attempted to  
4 consummate, and had never abandoned, its Plan of Conversion of CCCU to a state savings bank.  
5 (Plaintiffs’ Response, page 11) Plaintiff had briefed the recent Washington state case law and  
6 presented to the Court the legal standard applicable to CR 12(b)(6) motions at pages 2 - 3 of  
7 Plaintiffs’ Response, there concluding “if any possible set of facts—even facts that can be  
8 conceived—might be found through pre-litigation discovery that would justify relief on a claim  
9 asserted, then the CR 12(b)(6) motion as to that claim must be denied.”

10 On page 10 of the Ruling, the Court dismissed the Enabling Legislation and  
11 Supermajority Claims with the following conclusory (but unsupported) statements:

12 “Plaintiff’s claims relating to the law applicable to conversion of a credit  
13 union to a state bank are based upon a concern that the Board of the credit union  
14 may renew its plan of conversion. Certainly, that concern is not unsupported by  
15 history; the plan had been presented and approved, though later rejected by the  
16 NCUA. At this time, however, *no evidence is presented of an actual, presently*  
17 *existing intent or plan to convert*. At best, agents of the credit union have  
18 speculated about the possibility of resubmitting the issue.” [Emphasis added.]

19 Contrary to those statement, National Credit Union Administration (“NCUA”) did not  
20 *reject* CCCU’s Plan of Conversion. NCUA’s letter of January 29, 2004, stated that CCCU’s  
21 membership vote on the conversion held in November 2003 was not conducted in a legal  
22 manner, that its disclosures to members on the conversion were misleading, and that “if the  
23 [CCCU] Board intends to continue its pursuit of a conversion to a mutual savings bank, another  
24 membership vote that fully complies with the requirements of § 708a of the NCUA Rules and  
25 Regulations will be required.” (Declaration in Support of Application for Writ of Mandamus,  
26 Ex. C, in Cause No. 04-2-00475-2) CCCU’s public news release the next day in response to that  
27 NCUA letter reported that its board already had agreed to hold a member revote on the plan of  
conversion and that it was “considering all options.” (Schafer 4/15 Declaration, Ex. C)

Plaintiffs presented and called to the attention of the Court evidence that CCCU’s board  
of directors resolutions of April 15, 2003, adopting a Plan of Conversion and directing its  
officers to implement that conversion had not been rescinded as of November 6, 2003. (Schafer  
4/15 Declaration, Ex. B) ***No evidence exists in the record before the Court that those  
resolutions ever have been rescinded by CCCU’s board of directors, so the Court must assume  
that those resolutions remain in full force.***

Plaintiffs presented and called to the attention of the Court evidence that the Federal  
Deposit Insurance Corporation (“FDIC”) on October 10, 2003, approved CCCU’s application for  
insurance on deposits of Columbia First Bank, the state mutual savings bank into which CCCU

1 proposed to convert, and that the FDIC approval would apply to CCCU's conversion at any time  
2 within twelve months or even later if an extension is approved. (Schafer 4/15 Declaration, Ex. D)  
3 *No evidence exists in the record before the Court that CCCU's board has withdrawn its*  
4 *application for FDIC insurance of its deposits as a converted state mutual savings bank, so the*  
5 *Court must assume that the FDIC deposit insurance approval remains open for completion of*  
6 *the conversion by CCCU.*

### 7 8 **III. Applicable Law**

#### 9 **A. Motion for Reconsideration.**

10 Civil Rule 59(a) states ground for reconsideration of a trial court's decision upon motion  
11 by an aggrieved party as including (1) "any order of the court, or abuse of discretion, by which  
12 such party was prevented from having a fair trial," (7) "That there is no evidence ... to justify ...  
13 the decision, or that it is contrary to law," and (9) "That substantial justice has not been done."

14 Clark County Superior Court Local Rule 59 provides:

15 **(b) Time for motions; contents of motions.** A motion for new trial or  
16 reconsideration shall be served and filed not later than 10 days after the entry of  
17 the judgment or order in question. The opposing party shall have 10 days after  
18 service of such motion to file and serve a response, if necessary. No reply will be  
19 permitted. The moving party shall provide copies of the motion (and response, if  
20 any) to the Judge. No oral argument shall be permitted without express approval  
21 of the court. The court shall issue a written ruling on the motion. [Adopted  
22 effective September 1, 2001]

23 **B. CR 12(b)(6) Motion Standard of Review.** Plaintiff briefed the standards for  
24 denying motions under CR(b)(6) (failure to state a claim), at pages 2 - 3 of Plaintiff's Response,  
25 and those pages will not be repeated here. That analysis of controlling cases concluded that "if  
26 any possible set of facts—even facts that can be conceived—might be found through pre-  
27 litigation discovery that would justify relief on a claim asserted, then the CR 12(b)(6) motion as  
to that claim must be denied."

#### 28 **C. Required Form of Summary Judgment Order.**

29 CR 56(h) provides:

30 **(h) Form of Order.** The order granting or denying the motion for summary  
31 judgment shall designate the documents and other evidence called to the attention  
32 of the trial court before the order on summary judgment was entered.

33 And Rule of Appellate Procedure (RAP) 9.12, titled "Special Rule for Order on Summary

1 Judgment” nearly identically provides:

2 On review of an order granting or denying a motion for summary judgment the  
3 appellate court will consider only evidence and issues called to the attention of  
4 the trial court. The order granting or denying the motion for summary judgment  
5 shall designate the documents and other evidence called to the attention of the  
6 trial court before the order on summary judgment was entered.

7 **D. Summary Judgment Standard of Review.** In *City of Lakewood v. Pierce County*,  
8 106 Wn. App. 63, 68, 23 P.3d 1 (2001), the Court of Appeals, Div. II, restated the familiar  
9 standard of review for summary judgment orders:

10 When reviewing an order of summary judgment, we engage in the same inquiry  
11 as the trial court. *Bishop v. Miche*, 137 Wn.2d 518, 523, 973 P.2d 465 (1999).  
12 Summary judgment is appropriate only if the pleadings, affidavits, depositions,  
13 and admissions on file demonstrate the absence of any genuine issues of material  
14 fact, and that the moving party is entitled to judgment as a matter of law. CR  
15 56(c). A material fact is one that affects the outcome of the litigation. *Ruff v.*  
16 *County of King*, 125 Wn.2d 697, 703, 887 P.2d 886 (1995). All facts and  
17 reasonable inferences are reviewed in the light most favorable to the nonmoving  
18 party, and all questions of law are reviewed de novo. *Bishop*, 137 Wn.2d at 523.

19 **E. Burden of Party Moving for Summary Judgment.** In *White v. Kent Medical*  
20 *Center*, 61 Wn. App. 163, 170, 810 P.2d 4 (1991), the Court of Appeals stated the burden of  
21 proof of a party moving for summary judgment as follows:

22 In a summary judgment motion, ***the moving party has the initial burden of***  
23 ***showing the absence of an issue of material fact.*** This burden can be met by  
24 showing that there is an absence of evidence supporting the nonmoving party’s  
25 case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 91 L.Ed.2d 265, 106 S.Ct. 2548  
26 (1986); *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225-26, 770 P.2d  
27 182 (1989). In this situation, the moving party is not required to support the  
motion by affidavits or other materials negating the opponent’s claim. *Celotex*,  
477 U.S. at 322-23; *Young*, 112 Wn.2d at 225-26. The moving party must still,  
however, identify “those portions of ‘the pleadings, depositions, answers to  
interrogatories, and admissions on file, together with the affidavits, if any,’ which  
it believes demonstrate the absence of a genuine issue of material fact.” *Celotex*,  
477 U.S. 323 (quoting Fed. R. Civ. P. 56); *Baldwin v. Sisters of Providence in*  
*Wash., Inc.*, 112 Wn.2d 127, 132, 769 P.2d 298 (1989). ***If the moving party does***  
***not meet this initial burden, summary judgment may not be entered***, regardless  
of whether the opposing party submitted responding materials. *Jacobsen v. State*,  
89 Wn.2d 104, 108, 569 P.2d 1152 (1977); *see also Baldwin*, 112 Wn.2d at 132.  
[Emphasis added.]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

## V. Legal Argument

**A. Term Limits Claim.** On the Term Limits Claim, Plaintiffs believed that the Court would agree with their view that CCCU members were entitled to a *plain meaning* interpretation of the term limits bylaws amendment, without probing into the hidden, subjective intentions of those individual CCCU directors who adopted it. Accordingly, Plaintiffs did not move for continuance under CR 56(f) so as to permit depositions, interrogatories, demands for production of documents, and other discovery of what those individuals' subjective intentions might have been on November 16, 1999.

But since the Court now has rejected the plain meaning rule, and has ruled that the subjective intentions at that time of those eight individuals are the very material facts that control disposition of the term limits issue, it is an injustice to dismiss the term limits claim without affording the Plaintiffs' an opportunity for such discovery. That is most particularly the case here because the Defendants have not met their *initial* burden of showing the absence of any question as to the subjective intentions of those eight persons at that time. The record included no evidence whatsoever about whether those directors, at November 16, 1999, intended that in the prospective application of the term limits bylaw to nominees in future board elections would consider, or would not consider, nominees' terms of service on the board that predated November 16, 1999.

The Defendants' obvious failure to meet their *initial* burden is illustrated by the fact that during the hearing on their summary judgment motion Judge Bennett requested that the Defendants' counsel supplement the scant record with some admissible evidence on the question of what had been the directors' intentions when they adopted the term limits amendment at their meeting on November 16, 1999. The Plaintiffs had called Judge Bennett's attention to the glaring absence in the record of minutes or recordings of that board meeting, or copies of the packets of information provided to the board members in advance of that meeting.

But the heavily redacted board meeting minutes that the Defendants submitted *after* the hearing simply *begged the question* about the directors' intentions by referring to, but not providing a copy of, a report by their Executive Committee that recommended adoption of the term limits amendment or the minutes of any Executive Committee meeting at which the term limits amendment was discussed. And under *White, supra*, the failure of a party moving for summary judgment to show the absence of a material fact *in their opening motion materials* is fatal to their motion. Since under *White* a moving party's requisite initial showing cannot be made in its reply to the nonmoving party's response, that showing plainly cannot be made in post-hearing submissions made after the trial judge has observed that material facts remain in

1 question!

2 Civil Rule 56(f) and RAP 9.12 require that the Court’s order granting the Defendants’  
3 motion for summary judgment on the term limits issue designate the evidence called to the  
4 Court’s attention and upon which it concluded there to be no question of material fact. No such  
5 order has yet been prepared, and the Plaintiffs’ do not believe that a facially adequate listing of  
6 admissible supporting evidence could be prepared.

7 The primary objective of a trial court in ruling on CR 56 motions is to do justice. *Coggle*  
8 *v. Snow*, 56 Wn. App. 499, 508, 784 P.2d 554 (1990). The summary dismissal of the Plaintiffs’  
9 term limits claim did not do justice.

10 **B. The Enabling Legislation and Supermajority Claims.** The Court granted the  
11 Defendants’ motion to dismiss the Plaintiffs’ Enabling Legislation and Supermajority Claims for  
12 failure to state a claim under CR 12(b)(6) with a statement that, “At this time, however, no  
13 evidence is presented of an actual, presently existing intent or plan to convert.” Ruling, page 10,  
14 lines 7 - 9

15 Contrary to that statement, the *only* admissible evidence that was presented to the Court  
16 indicated that CCCU’s board had formally resolved to convert CCCU into a bank, and no  
17 admissible evidence was presented that the board had rescinded that resolution.

18 But the Court’s focus on the evidence *presented* of the CCCU’ board’s intention  
19 indicates that the Court failed to apply the proper legal standard by which to measure CR  
20 12(b)(6) motions—that being whether “any possible set of facts” might be found through  
21 discovery that would justify relief on the claim asserted. Only if a claim shows on its face there  
22 is some insuperable bar to relief should a CR 12(b)(6) motion be granted, according to the  
23 established case law that the Plaintiffs called to the attention of the Court on pages 2 - 3 of  
24 Plaintiffs’ Response.

25 The Court dismissed Plaintiffs claim for declaratory judgment on these plainly important  
26 legal issues by suggesting that if CCCU’s board again attempts to convert the institution into a  
27 bank “everyone concerned will know, in time to seek judicial intervention.” Ruling, page 10,  
lines 15 - 17. While judicial intervention to prevent *final consummation* of an unlawful bank  
conversion might be possible through an action brought after another public announcement, that  
reasoning fails to recognize that the Plaintiffs have a right under RCW 7.24.020 to seek  
clarification on the important question of law *before CCCU incurs substantial expenditures and*  
*obligation to continue or renew their pursuit of that course.*

It is not inconceivable that CCCU may have incurred expenses and liabilities  
approximating one-half million dollars to study and commence the implementation of its 2003

1 plan of conversion, including submitting applications to bank regulatory officials, *before* it was  
2 reasonably disclosed to CCCU's members in August of that year. It plainly was in the financial  
3 interests of the high-priced East-coast conversion promoters and advisors to reassure CCCU that  
4 their turnkey conversion package was "legal." And it may be legal in some other states.

5 In addition to the direct costs incurred, CCCU would have incurred considerable staff and  
6 management time and attention in the study and initial implementation of the conversion before  
7 adequately disclosing it to the CCCU membership. The record before the Court shows that  
8 CCCU's officials were studying the conversion for nine months before the board formally  
9 adopted the Plan of Conversion in April 15, 2003, and they did not reasonably apprise their  
10 membership of that conversion until August 5, 2003. (Schafer 4/2 Declaration, Ex. A ¶4; Schafer  
11 4/15 Declaration, Ex. A & B)

12 The Plaintiffs have a right under RCW 7.24.020 and the circumstances before the  
13 Court—and the pleadings and records before the Court—to seek and obtain a declaratory ruling  
14 on the questions of Washington law raised in their Enabling Legislation and Supermajority  
15 Claims before CCCU once again incurs extraordinary expenditure of financial and human  
16 resources to continue or renew their pursuit of a bank charter.

## 17 **VII. Conclusion.**

18 For the reasons discussed above, the Court should reconsider and vacate the portions of  
19 the Ruling that granted Defendants' motion for summary judgment of Plaintiffs' "Term Limits  
20 Claim" (Ruling pages 2 - 5) and granted Defendants' motion for dismissal under CR 12(b)(6) of  
21 Plaintiffs' "Enabling Legislation" and "Supermajority" claims (Ruling pages 9-10).

22 Date: May 20, 2004

23 \_\_\_\_\_  
24 Douglas A. Schafer, WSBA No. 8652, Plaintiffs' Counsel