IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

KARL WOOLERY, an individual, Appellant, v. STATE OF WASHINGTON and SPOKANE COUNTY, a political subdivision of the State of Washington, Respondents.	No. 42643-9-II UNPUBLISHED OPINION

Hunt, J. — Karl Woolery appeals the Thurston County Superior Court's CR 12(b)(6) dismissal of his claim against the State of Washington and Spokane County for allegedly violating his right to trial without "unnecessary delay"[1] under article I, section 10 of the state constitution. Woolery argues that the superior court erred in ruling that he had failed to state a claim on which relief may be granted because (1) inadequate court funding caused the five trial continuances comprising unconstitutional delay in his separate personal injury action in Spokane County Superior Court; (2) he has a "mandatory and judicially enforceable"[2] right to justice without

[1] Br. of Appellant at 8 (citing Wash. Const. art. I, § 10).

[2] Br. of Appellant at 14 (emphasis omitted).

unnecessary delay under article I, section 10; (3) he has standing to obtain an order from Thurston County Superior Court compelling the State and Spokane County to provide constitutionally adequate funding for the Spokane County Superior Court; and (4) he did not have an adequate remedy at law to appeal the continuances of his Spokane County personal injury lawsuit.

The State responds that Woolery's appeal is moot because he has since had a trial on the merits in his underlying personal injury action in Spokane County, and we cannot provide him with effective relief.[3] Adopting the State's arguments, Spokane County also contends that (1) adequate safeguards already exist to ensure public participation in the court funding process; and (2) even in the criminal context, the Washington Supreme Court has held that the right to a speedy trial cannot be "'quantified into a specified number of days or months.'"[4]

We hold that (1) Woolery's personal constitutional claim is moot, (2) he lacks standing to assert the constitutional rights of third party civil litigants, and (3) he fails to demonstrate standing to obtain funding relief on behalf of the Spokane County Superior Court.[5] We affirm the Thurston County Superior Court's dismissal of Woolery's third-party claims for lack of standing.

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[3] In the alternative, the State argues that Thurston County Superior Court properly dismissed Woolery's constitutional claim under CR 12(b)(6) because (1) Woolery could not obtain declaratory and injunctive relief from the court when he had an adequate remedy at law; (2) he cannot recover monetary damages for a constitutional violation in Washington without augmentative legislation; (3) he lacks standing to assert the rights of other civil litigants and to obtain funding relief on behalf of the Spokane County Superior Court; and (4) article I, section 10 does not guarantee a civil litigant a "right to a speedy trial." State Br. of Resp't at 21.

[4] Spokane County's Br. of Resp't at 9 (internal quotation marks omitted) (quoting *State v. Carson*, 128 Wn.2d 805, 821, 912 P.2d 1016 (1996)).

[5] Therefore, we do not address the constitutional question of whether article I, section 10 of the state constitution guarantees civil litigants the right to a speedy trial.

Declining to exercise our discretion to address an issue of public interest, we dismiss the personal constitutional claim component of Woolery's appeal as moot.

FACTS

I. Personal injury Action, Spokane County Superior Court

In July 2008, Karl Woolery sued the City of Spokane in Spokane County Superior Court for significant damages arising from a City garbage truck's rear-ending his vehicle in July 2006. His initial trial date was October 12, 2009. When the City was not ready for trial on that date, the Spokane County Superior Court continued the trial to January 11, 2010.[6] According to Woolery, (1) the parties were not assured that they would proceed to trial on January 11 because other cases were already on the docket; (2) the parties agreed to a trial before a pro tem judge to ensure that they would have a "certain trial date" and continued the trial by a month, to February 16; (3) because of budget cuts, the Spokane County Superior Court was forced to cancel the "Pro Tem Judge [P]rogram"; and (4) the Spokane County Superior Court continued the trial to October 2010. Clerk's Papers (CP) at 43.

When Woolery moved for a trial date earlier than October, the Spokane County Superior Court set trial for June 7. Before that date, however, Spokane County eliminated a portion of the judicial budget for the Spokane County Superior Court's "Ex-Parte [P]rogram," which caused the sitting judges to take time away from their courtrooms to tend to ex-parte matters. This action reduced the amount of courtroom time available to try civil cases like Woolery's. CP at 6.

[6] Woolery acknowledges that, in his complaint and amended complaint, he erroneously asserted this first trial continuance resulted from lack of courtroom availability.

According to Woolery, he then learned in a pretrial conference that Spokane County Superior Court did not have an available courtroom for the June 7 trial because of "lack of funding" for the courts. CP at 6. The superior court judge assigned to Woolery's case explained that she was unable to "'broker'" a trial longer than four days to any other judges; as a result, Woolery's trial was continued to September 13. CP at 6.

During an August 20 pretrial conference, Woolery learned that his trial would likely be continued again because an "older case" had already been set for trial on September 13, and the older case took "precedence." CP at 6. The superior court judge also explained that there were not enough courtrooms to accommodate all of the cases that had been filed and that the court needed to try criminal and parental termination cases first, before trying civil cases like Woolery's. Woolery's trial was again continued. In all, Woolery's personal injury case was continued five times for lack of an available courtroom before it went to a jury trial on June 20, 2011.

II. Collateral Constitutional Action, Thurston County Superior Court

In early 2011, before trial of his personal injury action in Spokane County, Woolery filed a lawsuit in Thurston County Superior Court,[7] alleging that (1) the State and Spokane County had inadequately funded the Spokane County Superior Court, which had resulted in his having suffered five trial continuances of his personal injury trial for lack of an available courtroom and being unable to proceed to trial; and (2) his inability to proceed to trial in his personal injury

[7] Woolery also filed an amended complaint, shortly before the parties' CR 12(b)(6) hearing. Because the Thurston County Superior Court's oral ruling at the CR 12(b)(6) hearing addressed issues that Woolery had raised in both his original and amended complaints, we refer to both complaints collectively as his "complaint."

action violated his right to a "speedy trial"[8] under article I, section 10, and his right to a jury trial under article I, section 21. CP at 7. Woolery alleged that each continuance had increased his trial preparation and litigation expenses, had made it more difficult for him to locate and to obtain witnesses, and had caused evidence in his case to become stale.

Woolery sought (1) damages for his increased trial expenses in Spokane County; (2) an order directing the Spokane County Superior Court to set him with a "date certain for his trial"; (3) an order requiring the State and Spokane County to provide "adequate funding" for the Spokane County Superior Court so he and other civil litigants could proceed to trial without unnecessary delay; (4) a finding that the State's and Spokane County's failure to fund the Spokane County Superior Court adequately "threaten[ed] the . . . integrity and independence of the judiciary" and violated the "separation of powers doctrine"; (5) a finding that Spokane County Superior Court's failure to provide him with a trial for his personal injury case without unnecessary delay violated his right to due process and his rights under article I, section 10 and article I, section 21 of the state constitution; and (6) any further relief that the court found equitable, legal, and appropriate. CP at 10, 51.

The State and Spokane County moved to dismiss Woolery's claims under CR 12(b)(6), arguing that (1) article I, section 10 of the Washington Constitution does not entitle a civil litigant to a "speedy [civil] trial"; (2) Washington law does not authorize monetary damages for violation

[8] In his original complaint, Woolery included denial of his constitutional right to a "speedy trial" without "unnecessary delay" under article I, section 10 of the state constitution. CP at 9, 10. But his amended complaint, filed on February 11, 2011, appears to have dropped his direct assertion that article I, section 10 provided him with a "speedy trial" right. CP at 45.

of article I, section 10; (3) Woolery lacked standing to sue for relief for other persons or for increased funding for the Spokane County Superior Court; and (4) the Thurston County Superior Court lacked authority to order the Spokane County Superior Court to provide Woolery with a firm trial date. CP at 30. The Thurston County Superior Court granted the motion and dismissed Woolery's action with prejudice.

Woolery petitioned the Washington Supreme Court for direct review of the Thurston County Superior Court's dismissal of his action. Two months later, in June 2011, while the petition was still pending before the Supreme Court, Woolery proceeded to trial on his personal injury claim in Spokane County Superior Court and received a final judgment. On September 26, 2011, the Supreme Court transferred Woolery's Thurston County Superior Court appeal to this court.

ANALYSIS

Woolery argues that Thurston County Superior Court erred in dismissing his claim under CR 12(b)(6) because (1) he has a mandatory and judicially enforceable right to justice without unnecessary delay under article I, section 10 of the state constitution[9]; (2) he has standing to obtain an order compelling the State and Spokane County to provide constitutionally adequate funding for the Spokane County Superior Court; and (3) he did not have an adequate remedy at

[9] Although Woolery's complaint refers to the State and Spokane County's having violated his right to a jury trial under article I, section 21 of the state constitution and his due process rights under the state and federal constitutions, he does not develop or expand upon these bare assertions in his brief of appellant. Without adequate argument, citations to authority, or any reference to record, we decline to address these arguments. RAP 10.3(a)(6); *Bohn v. Cody*, 119 Wn.2d 357, 368, 832 P.2d 71 (1992); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

law by appealing his trial continuances within the context of his underlying personal injury action in Spokane County. We agree with the State and Spokane County that Woolery's personal constitutional claim filed in Thurston County Superior Court is moot and that he lacked standing to assert any third-party claims or to obtain funding for the courts. Therefore, we need not address whether civil litigants generally may assert proper constitutional claims for relief under article I, section 10 for violations of its "unnecessary delay" clause.

I. Moot Personal Constitutional Claim

We agree with the State and Spokane County that we should dismiss Woolery's appeal because (1) he has already had his jury trial and obtained a judgment for his underlying personal injury action in Spokane County; (2) his Spokane trial provided him with the non-monetary relief[10] that he requested in his Thurston County Superior Court complaint to redress his injuries, primarily a trial in his Spokane case; (3) he waived his claim for monetary relief in the instant case by failing to assign error to and to brief the Thurston County Superior Court's dismissal of his damages claim; and (4) he has not demonstrated that his case presents an issue of continuing and substantial public interest under the public interest exception to the mootness doctrine that

[10] In addition to his request for damages in his complaint, Woolery had also requested (1) an order directing Spokane County Superior Court to set a "date certain for his [personal injury] trial," (2) an order requiring the State and Spokane County to provide "adequate funding" for the Spokane County Superior Court so that he and other civil litigants could proceed to trial without unnecessary delay, and (3) other declaratory relief. CP at 10, 51. As we explain later in this opinion, we cannot provide Woolery with the injunctive and/or mandamus relief that he requested because he has already had a trial for his personal injury action in Spokane County; and, in the absence of his having an ongoing dispute with the State and Spokane County about his ability to proceed to trial on his personal injury claim or a preserved damages claim, we decline to issue an advisory opinion by granting declaratory relief.

we should address now.[11]

As a general rule, Washington appellate courts will dismiss an appeal "'where only moot questions or abstract propositions are involved, or where the substantial questions involved in the trial court no longer exist.'" *Norman v. Chelan County Pub. Hosp. Dist. No. 1*, 100 Wn.2d 633, 635, 673 P.2d 189 (1983) (quoting *Sorenson v. Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972)). An appeal is moot where it presents "'purely academic'"[12] questions and where "'the court cannot provide the basic relief originally sought, or can no longer provide effective relief.'" *IBF, LLC v. Heuft*, 141 Wn. App. 624, 630-31, 174 P.3d 95 (2007) (internal quotation marks omitted) (quoting *Josephinium Assocs. v. Kahli*, 111 Wn. App. 617, 622, 45 P.3d 627 (2002)).

In his complaint, Woolery asked the Thurston County Superior Court to provide him with three basic forms of relief: (1) damages resulting from his alleged constitutional injuries; (2) injunctive and/or mandamus relief by requiring the Spokane County Superior Court to provide him with a "date certain" for his personal injury trial and requiring the State and Spokane County to provide "adequate funding" for the Spokane County Superior Court so that he and other civil litigants could proceed to trial without unnecessary delay; and (3) declaratory relief—a finding that the State's and Spokane County's failure to provide adequate funding for the state superior

[11] Woolery responds that (1) his appeal is not moot because "[t]he superior courts remain underfunded, understaffed, and unable to fulfill their constitutional mandate[ ] under [a]rticle I, [s]ection 10"; and (2) even if his appeal is moot, his case involves a continuing and substantial public interest. Reply Br. of Appellant at 1. We acknowledge that funding of our state courts is an issue of substantial public importance; but are we not persuaded that Woolery's case is the appropriate vehicle for addressing this issue.

[12] *City of Sequim v. Malkasian*, 157 Wn.2d 251, 258, 138 P.3d 943 (2006) (internal quotation marks omitted) (quoting *State v. Turner*, 98 Wn.2d 731, 733, 658 P.2d 658 (1983).

courts violates the separation of powers doctrine, due process, and Woolery's rights under article I, section 10 and article I, section 21 of the state constitution. CP at 10, 51.

Before Woolery's appeal from dismissal of his Thurston County Superior Court action reached us, he had a jury trial in his personal injury action in Spokane County Superior Court and obtained a final judgment. We hold, therefore, that his personal constitutional claim filed in Thurston County Superior Court is moot because that claim's substantial questions no longer exist, only abstract constitutional issues remain, and we cannot provide him with any of the relief that he originally requested in his complaint or with any other effective relief at this time.

A. Damages

Woolery did not assign error to the Thurston County Superior Court's dismissal of his damages claim; nor did he include any discussion of this dismissal in his brief of appellant. As our Supreme Court has repeatedly admonished, "'Only issues *raised in the assignments of error* . . . and *argued* to the appellate court are considered on appeal.'" *Weyerhaeuser Co. v. Commercial Union Ins. Co.*, 142 Wn.2d 654, 693, 15 P.3d 115 (2000) (first emphasis added) (alteration in original) (quoting *State v. Kalakosky*, 121 Wn.2d 525, 540 n.18, 852 P.2d 1064 (1993)); RAP 10.3(a)(4), (6); RAP 12.1(a). Accordingly, we do not further consider his damages claim in this appeal.

B. Injunctive or Mandamus Relief

Because Woolery has already had a trial on the merits in his previously delayed personal injury action in Spokane County, we can no longer provide him with the primary injunctive and/or mandamus relief that he requested in his Thurston County lawsuit, namely ordering the Spokane

County Superior Court to provide a trial date for his personal injury action.[13]

C. Declaratory Relief

Given the existing posture of his case, Woolery is not entitled to declaratory relief in the form of an order that Spokane County Superior Court's alleged "lack of funding" violates the "separation of powers doctrine" or that such lack of funding violated his constitutional rights under article I, section 10. CP at 6, 51. The "long-standing rule" in Washington is that a court is "not authorized under the declaratory judgments act to render advisory opinions or pronouncements upon abstract or speculative questions." *Walker v. Munro*, 124 Wn.2d 402, 418, 879 P.2d 920 (1994). Instead, a court may grant a request for declaratory relief only if a "justiciable controversy" exists between the parties. *Bloome v. Haverly*, 154 Wn. App. 129, 140, 225 P.3d 330 (2010) (citing *Osborn v. Grant County*, 130 Wn.2d 615, 631, 926 P.2d 911 (1996)).

> A justiciable controversy is:
>
> "(1) . . . *an actual, present and existing dispute, or the mature seeds of one,* as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) *between parties having genuine and opposing interests*, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive."

To-Ro Trade Shows v. Collins, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001) (alteration in original)

[13] Again, Woolery phrased his mandamus and/or injunctive relief requests as seeking an order (1) directing the Spokane County Superior Court to set a "date certain for his [personal injury] trial," and (2) requiring the State and Spokane County to provide "adequate funding" for the Spokane County Superior Court so that he and other civil litigants could proceed to trial without unnecessary delay. CP at 10-11, 50-51.

(emphasis added) (quoting *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137 (1973)), *cert. denied*, 535 U.S. 931 (2002). Inherent in these four elements are the traditional limiting doctrines of standing, mootness, and ripeness, as well as the federal case-or-controversy requirement. *To-Ro Trade Shows*, 144 Wn.2d at 411. If the four justiciability elements are not met, a court "'steps into the prohibited area of advisory opinions.'" *To-Ro Trade* Shows, 144 Wn.2d at 416 (quoting *Diversified Indus. Dev. Corp.*, 82 Wn.2d at 815).

Woolery cannot meet the first or second elements of the justifiable controversy test. First, as we have already noted, Woolery cannot show an "'an actual, present and existing dispute, or the mature seeds of one'"[14] because he has already had a final trial on the merits in his personal injury action in Spokane County, and he does not allege that he is currently in a position where his article I, section 10 rights are being violated due to inadequate court funding or the unavailability of a courtroom for any other civil trial in Spokane County Superior Court. His actual dispute with the State and Spokane County is therefore moot, and any future dispute with them that he might have based on similar facts is merely "'dormant, hypothetical, [or] speculative.'"[15] *To-Ro Trade* Shows, 144 Wn.2d at 415 (quoting *Diversified Indus. Dev. Corp.*, 82 Wn.2d 815). Woolery also fails to show that he still has "genuine and opposing interests" to the State and Spokane County now that he has had his jury trial and received a judgment in his personal injury

[14] *To-Ro Trade Shows*, 144 Wn.2d at 415 (quoting *Diversified Indus. Dev. Corp.*, 82 Wn.2d at 815).

[15] Furthermore, any remaining constitutional question that Woolery may have raised about his five trial continuances' having violated his article I, section 10 rights *in the past* is "'purely academic'" because he did not assign error to or brief the dismissal of his damages claim on appeal. *Malkasian*, 157 Wn.2d at 258 (quoting *Turner*, 98 Wn.2d at 733).

action[16]; and his appellate procedural default precludes our consideration of damages relief on appeal. Woolery has failed to demonstrate that he meets the four justiciability requirements necessary for us to grant him declaratory relief under the Declaratory Judgments Act, chapter 7.24 RCW.

Because Woolery has not shown that he is entitled to any of the three basic forms of relief that he originally requested in his complaint or that we can provide him with effective relief, we hold that his personal constitutional claim is moot.

II. Decline To Address Moot Claim

We also decline Woolery's request to consider his appeal under the public interest exception to the mootness doctrine because, in our view, he has not demonstrated that his claim involves an issue of "continuing and substantial public interest"[17] that we should exercise our discretion[18] to remedy. Although we acknowledge our discretion to address the now-moot constitutional issues in Woolery's appeal, we decline to do so. *See Hart v. Dep't of Soc. and Health Servs.*, 111 Wn.2d 445, 450-51, 759 P.2d 1206 (1988).

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[16] Even Woolery appears to recognize this shortcoming when he states that "[h]is interest in litigating this case is as strong as it was when he filed it, even though his [personal injury] case in Spokane has already been heard" and that "[t]his important issue will have a passionate advocate, even though a portion of his claims for relief are now moot." Reply Br. of Appellant at 5.

[17] Reply Br. of Appellant at 2.

[18] An appellate court "*may*, in *its discretion*, retain and decide an appeal which has otherwise become moot when it can be said that matters of continuing and substantial public interest are involved." *Sorenson*, 80 Wn.2d at 558 (emphasis added) (citing State *ex rel. Yakima Amusement Co. v. Yakima County*, 192 Wash. 179, 73 P.2d 759 (1937)).

III. No Standing To Bring Third Party Claims or To Obtain Court Funding

Again, we agree with the State and Spokane County that the superior court properly dismissed under CR 12(b)(6) any additional third-party claims that Woolery may have attempted to raise in his complaint because (1) he lacks standing to assert the constitutional rights of other civil litigants, (2) he does not have taxpayer standing, and (3) he has not demonstrated that he has standing to obtain funding relief on behalf of the Spokane County Superior Court based on an alleged "'separation of powers'" violation.[19] State's Br. of Resp't at 19.

A. No Third Party Standing

The doctrine of standing prohibits a litigant from raising issues related to another's legal rights. *Walker*, 124 Wn.2d at 419. "[C]onstitutional rights are personal and normally cannot be asserted by a third party." *In re Marriage of Akon*, 160 Wn. App. 48, 59, 248 P.3d 94 (2011) (footnote omitted). A litigant may, however, have third party standing if (1) he has suffered an injury-in-fact, giving him a sufficiently concrete interest in the outcome of the disputed issue; (2) the litigant has a close relationship to the third party; and (3) there exists some hindrance to the third party's ability to protect his own interests. *Ludwig v. Dep't of Ret. Sys.*, 131 Wn. App. 379, 385, 127 P.3d 781 (2006).

[19] Woolery misconstrues the State's and Spokane County's standing arguments when he asserts that he has standing because he has a "'personal stake in the controversy.'" Br. of Appellant at 22 (internal quotation marks omitted) (quoting *Marchioro v. Chaney*, 90 Wn.2d 298, 303, 582 P.2d 487 (1978), *aff'd*, 442.U.S. 191, 99 S. Ct. 2242, 60 L. Ed. 2d 816 (1979)). The State and Spokane County do not contend that he lacked standing to assert his *own* constitutional rights; instead, they argue that his personal constitutional claim is "moot" because we cannot provide him with any relief because he has already had his personal injury trial in Spokane County. The State and Spokane County further argue that Woolery lacked standing to obtain relief on behalf of third parties, including the Spokane County Superior Court; we address this argument later in this opinion.

Woolery cannot meet the second and third requirements. Although Woolery may have suffered an injury-in-fact, he has failed to show that he has a "close relationship" with any third party civil litigants in Spokane County or with the Spokane County Superior Court such that he could assert constitutional claims on their behalf. Nor has he shown that there was a "hinderance" to such parties' and institution's ability to protect their own interests. Therefore, we hold that Woolery lacks third party standing.

B. No Taxpayer Standing

To allege taxpayer standing, a plaintiff's complaint must allege (1) a taxpayer's cause of action and facts supporting the plaintiff's taxpayer status, (2) the plaintiff pays the type of taxes funding the project, and (3) the plaintiff asked the Attorney General's office to take the action before bringing his lawsuit. *Dick Enters., Inc. v. King County*, 83 Wn. App. 566, 572-73, 922 P.2d 184 (1996). Taxpayers need not allege a direct, special, or pecuniary interest in the outcome of the lawsuit, but they must demonstrate that their demand to the Attorney General's office to initiate the action was refused, unless such a request would have been futile. *Robinson v. City of Seattle*, 102 Wn. App. 795, 805, 10 P.3d 452 (2000) (citing *City of Tacoma v. O'Brien*, 85 Wn.2d 266, 269, 534 P.2d 114 (1975)).

Although, in his amended complaint, Woolery alleged some facts supporting his taxpayer status and his payment of taxes that fund the Washington court system,[20] he failed to allege that

[20] For the first time in his amended complaint, Woolery alleged that he is a "*taxpayer* of the State of Washington" and that "[taxpayers] . . . as citizens and *taxpayers who fund court operations*, have a constitutional right under the State Constitution to have their individual rights protected and maintained by the courts." *See* CP at 43, 46 (emphasis added).

he first requested that the Attorney General's office initiate a lawsuit on his behalf or that such request would have been futile. The Washington Supreme Court has held that such a demand is a "condition precedent" to maintenance of a taxpayer's action. *Reiter v. Wallgren*, 28 Wn.2d 872, 876-77, 184 P.2d 571 (1947). Therefore, we hold that Woolery lacks taxpayer standing.

C. No Standing To Assert Judiciary's Rights

Woolery further argues that the *judiciary* has "inherent authority" under the separation of powers doctrine[21] and the state constitution to compel the legislature to provide necessary funding for its performance of constitutionally mandated court functions. But he fails to cite any Washington authority holding that a *private citizen* has standing to sue for court funding relief based on an alleged separation of powers violation.[22] Br. of Appellant at 24. Therefore, we do not further address this argument. RAP 10.3(a)(6); *Cowiche Canyon Conservancy*, 118 Wn.2d at 809.

[21] Washington's constitution, much like the federal constitution, does not contain a formal separation of powers clause; but the separation of powers doctrine has been recognized throughout our state's history as being a component of our state constitution. *See Carrick v. Locke*, 125 Wn.2d 129, 134-35, 882 P.2d 173 (1994).

[22] Our Supreme Court appears to have recognized that the *judiciary* has standing to sue to compel funding for its own operations or to ensure its own "survival" when relations with its coequal branches of government breakdown. *In re Salary of Juvenile Director*, 87 Wn.2d 232, 245, 552 P.2d 163 (1976); *see also Zylstra v. Piva*, 85 Wn.2d 743, 749-50, 539 P.2d 823 (1975). But we are aware of no case law holding that a private citizen such as Woolery has such standing.

We dismiss Woolery's personal constitutional claim as moot, and we affirm Thurston County Superior Court's dismissal of his third-party claims for lack of standing.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Worswick, C.J.

Johanson, J.