101662-0

No. 100300-5

THE SUPREME COURT
STATE OF WASHINGTON

JENNIFER RALSTON, CALEB MCNAMARA AND THE ESTATE OF TIMOTHY MCNAMARA; BRAEDEN SIMON, ABIE EKENEZER, JESSE HUGHEY, TIM KAUCHUK, JORDAN PICKETT, DANIEL PIERCE, SEAN SWANSON, JOEY WIESER, QUINN ZOSCHKE, JEFF CUSHMAN,

Plaintiffs/Appellants,

v.

STATE OF WASHINGTON,

Respondent.

Appeal from the Superior Court of King County
Honorable Kristen Richardson
No. 21-2-06462-7 SEA

PETITION FOR REVIEW

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TABLE OF CONTENTS

Table of Contents

I. BACKGROUND INFORMATION 1

A. Identity of the Petitioners 1

B. Citation to Court of Appeals decision 1

II. ISSUES PRESENTED FOR REVIEW 1

III. STATEMENT OF THE CASE 3

A. The factual basis for seeking review by this Court. 3

B. Proceedings Below 6

C. Applicable standard of review 7

IV. ARGUMENT 9

A. Plaintiffs have standing to bring this lawsuit. 9

B. Plaintiffs have a right to seek a declaration and appropriate remedy for inadequate funding of our courts because of its impact on their constitutionally guaranteed rights. 12

C. A declaration of rights in a case like this one is well within the courts' authority. 18

V. CONCLUSION 19

TABLE OF AUTHORITIES

Cases

City of Seattle, Seattle Police Dep't v. Seattle Police Officers' Guild, 17 Wn. App. 2d 21, 484 P.3d 485 (2021)..... 17

Doe v. Puget Sound Blood Ctr., 117 Wn. 2d 772, 819 P.2d 370 (1991) 16

First Covenant Church of Seattle v. City of Seattle, 120 Wn. 2d 203, 220, 840 P.2d 174 (1992) 17

Farris v. Munro, 99 Wn.2d 326, 662 P.2d 821 (1983) 10

Friends of N. Spokane Cty. Parks v. Spokane Cnty., 184 Wn. App. 105, 336 P.3d 632 (2014) 9

Gorman v. City of Woodinville, 175 Wn. 2d 68, 283 P.3d 1082 (2012) 7

Hale v. Wellpinit Sch. Dist. No. 49, 165 Wn. 2d 494, 198 P.3d 1021 (2009) 15

I.N.S. v. Chadha, 462 U.S. 919, 951 (1983)..... 15

John Doe v. Puget Sound Blood Ctr., 117 Wn.2d 772, 819 P.2d 370 (1991) 16

Kinney v. Cook, 159 Wn.2d 837, 842, 154 P.3d 206 (2007)..... 8

Lane v. City of Seattle, 164 Wn.2d 875, 194 P.3d 977 (2008)..... 11

Marchioro v. Chaney, 90 Wn.2d 298, 582 P.2d 487 (1978) 11

Matter of Salary of Juvenile Director, 87 Wn.2d 232, 552 P.2d 163 (1976) 15

McCleary v. State, 173 Wn. 2d 477, 528, 269 P.3d 227 (2012) 11 14. 15

Nelson v. Appleway Chevrolet, Inc., 160 Wn.2d 173, 157 P.3d 847 (2007) 10

NLRB v. Noel Canning, 573 U.S. 513, 525 (2014)..... 16

Orwick v. City of Seattle, 103 Wn. 2d 249, 692 P.2d 793, 797 (1984)..... 8

Putman v. Wenatchee Valley Med. Ctr., P.S., 166 Wn. 2d 974, 216 P.3d 374 (2009)..... 16

Reid v. Pierce County, 136 Wn.2d 195, 961 P.2d 333 (1998) 7

Seattle Sch. Dist. No. 1 of King Cty. v. State, 90 Wn. 2d 476, 585 P.2d 71 (1978)..... 18

Sofie v. Fibreboard Corp., 112 Wn. 2d 636, 771 P.2d 711 (1989) 16

Seattle v. State, 100 Wn.2d 16, 24, 666 P.2d 351 (1983)....……14

State v. Easterling, 157 Wn. 2d 167, 177, 137 P.3d 825 (2006)..……17

State v. Howard, 106 Wn.2d 39, 43, 772 P.2d 783 (1985)……..14

State v. Krantz, 24 Wn. 2d 350, 354, 164 P.2d 453 (1945)..……17

State v. Williams, 29. Wn. App. 86, 627 P.2d 581 (1981) 14

Tacoma v. State, 117 Wn.2d 348, 358, 816 P.2d 7 (1991) 14

Washington Natural Gas Co. v. PUD 1, 77 Wn.2d 94, 459 P.2d 633 (1969) 11

Washington State Hous. Fin. Comm'n v. Nat'l Homebuyers Fund, Inc., 193 Wn.2d 704, 445 P.3d 533 (2019) 10

Yelle v. Bishop, 55 Wn.2d 286, 347 P.2d 1081 (1959) 14

Statutes

RCW 2.28.139 13

RCW 7.24.020 9

RCW 7.24.120 10

RCW 43.135.060 13

Rules

CR 12(b)(6) 6, 7

CR 23(b)(3) 18

RAP 4.2(a)(4) 7

RAP 13.4 1

RAP 13.4(b)..... 1

RAP 13.4(b)(4) 1

Constitutional Provisions

WASH. CONST. art. I § 1……15
WASH. CONST. art. I, § 10……..……...2, 3, 6
WASH. CONST. art. I, § 21……3, 6
WASH. CONST. art. IV, § 13……..….13
WASH. CONST. art. IX, § 1……14

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I. BACKGROUND INFORMATION

A. Identity of the Petitioners

Class representatives Jennifer Ralston, Caleb Mcnamara, the Estate of Timothy Mcnamara, Braeden Simon, Abie Ekenezer, Jesse Hughey, Tim Kauchuk, Jordan Pickett, Daniel Pierce, Sean Swanson, Joey Wieser, Quinn Zoschke, and Jeff Cushman, and the putative class of plaintiffs in civil cases they represent, petition this Court pursuant to RAP 13.4 of review the Court of Appeals' Decision designated below.

B. Citation to Court of Appeals decision

Plaintiffs seek discretionary review of the Court of Appeals' Decision filed on December 27, 2022 which held that civil litigants who have been injured or adversely impacted by the legislature's underfunding of the judiciary lack standing to sue the State in order to compel the legislature to adequately fund our superior courts.

II. ISSUES PRESENTED FOR REVIEW

Plaintiffs base their request for direct review on RAP 13.4 (b) which provides that a party may seek review in this Court "if a significant question of law under the Constitution of the State of Washington or of the United States is involved (RAP 13.4(b)(3); or "if the petition involves an issue of substantial public interest that should be determined by [this] Court." (RAP 13.4(b)(4)).

In its Decision, the Court of Appeals recognized that "the judiciary possesses the inherent power to compel the legislature to better fund the courts."[1] But the court then held that "the courts' inherent power to compel their own funding is appropriately exercised rarely and only by the courts themselves.[2] Plaintiffs agree that the judiciary possesses the inherent power to require the legislature to adequately fund our courts."[3] However, Plaintiffs disagree that only the judiciary may exercise its inherent power.[4] Plaintiffs petition for discretionary review of this case so that this issue may be decided by this Court.

Due to the important constitutional issues raised in this case, as well as the signifcant public interest and policy questions it presesnts, Plaintiffs seek direct review by this Court of the following issues:

(1) Do the class representatives and putative class members in this case have standing to ask the courts to exercise their inherent authority on the plaintiffs' behalf?

(2) Do the plaintiffs have a right to seek a declaration from this Court that the State's failure to provide adequate funding for our courts violates their constitutional right to access the courts without unnecessary delay as guaranteed by WASH. CONST. art. I, sec. 10?

(3) Do the plaintiffs have a right to seek a declaration from this Court that the State's failure to provide inadequate funding

[1] *See* Court of Appeals' Published Opinion at 5.
[2] Court of Appeals' Published Opinion at 12.
[3] *See* Court of Appeals' Published Opinion at 5.
[4] Court of Appeals' Published Opinion at 1.

for our trial courts violates the plaintiffs' "inviolate" constitutional right to trial by jury set forth in WASH. CONST. art. I, sec. 21?

(4) Does the State's failure to provide inadequate funding for our courts violate the legislature's duty to preserve the constitutional separation of powers that inheres in our state Constitution?

III. STATEMENT OF THE CASE

A. The factual basis for seeking review by this Court.

Washington's courts are in crisis. And the people most injured by this crisis are civil litigants, who cannot have their disputes heard without unnecessary delay, because the legislature has failed to adequately fund our courts. This systematic underfunding of the courts is not a new problem; it has been going on for decades. Not only has the lack of adequate funding perpetually left our courts in a state of crisis, this lack of funding also stands as an obstacle to fulfilling the constitutional mandate that "[j]ustice in ***all*** cases shall be administered … without unnecessary delay." WASH. CONST. art I, sec. 10 (emphasis added).

Every chief justice of this Court from Chief Justice Richard Guy, who in 2000 inaugurated the tradition of a written State of the Judiciary Report, through Chief Justice Steven C. González, has identified and commented on the systemic inadequacy in funding our courts and the impact that this lack of funding has on the courts' ability to administer justice in our state.[5] For example in 2015, Chief Justice Barbara A.

[5] CP 066 – CP 080 (Plaintiffs' Amended Complaint at ¶¶ 5.22-5.40). *See*

Madsen wrote that "our courts continue to struggle with high caseloads, reduced staff, old information systems, growing needs for interpreters, and inadequate structures. Meeting the justice needs of the people of Washington requires adequate funding from the legislature."[6] Justice Madsen added, "Justice matters, but the stark reality is that adequate funding is still the most severe obstacle impeding fair, accessible and timely justice for the people of Washington."[7]

Ten years earlier, in 2005, Chief Justice Gerry Alexander specifically highlighted the impact of this funding crisis on civil trials stating:

> [T]oo many of our trial court jurisdictions are experiencing crowded court dockets which frequently results in the postponement of trials, particularly civil trials. In three of our four largest counties, the time to trial in civil cases is over twelve months. That, ladies and gentlemen, is too long for people to wait to have their disputes resolved.[8]

Rather than remedy this crisis, the legislature has ignored the repeated pleas for adequate funding from the chief justices of this state by pretending that no crisis exists or by trying to fund Washington's court

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also 2023 State of the Judiciary Report,

[6] CP 048 (2015 State of the Judiciary, Chief Justice Barbara A. Madsen on behalf of the courts of Washington. January2015.pdf (courts.wa.gov)).

[7] CP 047 (2015 State of the Judiciary at 15).

[8] CP 048 (2005 State of the Judiciary, Chief Justice Gerry Alexander, January 2005 (courts.wa.gov)).

system almost entirely on the backs of our overburdened counties. Yet, responsibility for funding state courts is a constitutional obligation of the State, even if, by legislation, the obligation is shared with counties. Relying on funding obligations imposed on counties, though, is neither constitutionally mandated nor has it proven workable. In the most recent survey on judicial funding, in 2003, Washington ranked **dead last** in the nation for state spending on its trial courts, a point emphasized by Chief Justice Alexander in an address to the legislature in 2006:

> As you may recall, during my last address I highlighted findings of a Trial Court Funding Task Force and our "Justice in Jeopardy" legislative proposal aimed at improving the operations of our trial courts in Washington. A core finding of this task force was that there must be a rebalancing of responsibility for the funding of trial courts so that the state government contributes in a more equitable way, along with local government, to the operations of the superior, district, and municipal courts. As an example of the current funding imbalance, in 2003 Washington State ranked 50th of the 50 states in terms of funding for its trial courts, prosecution and indigent defense, with less than three-tenths of one percent of the state's budget dedicated to the funding of the judicial branch of government.[9]

Plaintiffs' Amended Complaint amply demonstrates that the systemic underfunding of our courts has created a crisis in our judicial system and has damaged our courts' ability to adequately serve the putative

[9] CP 069 (2006 State of the Judiciary, Chief Justice Gerry Alexander, January 2006 (wa.courts.gov)).

plaintiff class, as well as the citizens of this state. The named Plaintiffs and the putative class of plaintiffs that they represent, have been injured or adversely impacted by the legislature's underfunding of the judiciary. The legislature's failure to adequately fund our courts has resulted in a denial of justice administered "without unnecessary delay" as guaranteed in art. I, § 10 of Washington's constitution. The legislature's failure to adequately fund our courts has also placed an unconstitutional burden on the promise of our constitution to the citizens of this state to keep their right to a jury trial "inviolate" (WASH. CONST. art. I, § 21). Additionally, the State's failure to fulfill its constitutional duty to adequately fund our courts violates one of the core principles underlying our entire constitutional form of government -- the separation of powers.

B. Proceedings Below

Because the legislature has refused to address this funding crisis, the Class Representatives brought this class action lawsuit on behalf all civil plaintiffs who have been or will be injured as a consequence of not having their civil cases timely tried as required under WASH. CONST. art. I, § 10.

In response to Plaintiffs' Complaint, the State brought a CR 12(b)(6) motion to dismiss this case. The trial court granted the State's motion and dismissed the case without a written opinion addressing the

issues or explaining the rationale for its action, essentially punting the consideration of this matter *ab initio* to a higher court.[10]

Plaintiffs then sought direct review of the trial court's decision by this Court under RAP 4.2(a)(4). This Court denied direct review and transferred the case to the Court of Appeals. The Court of Appeals held that "only the judiciary may wield its inherent power to compel the legislature to better fund the courts."[11] Plaintiffs now ask this Court to grant discretionary review of this case under RAP 13.4 in order for this Court to address the significant constitutional issues and public interest concerns raised by this case.

C. Applicable standard of review

Appellate review of a CR 12(b)(6) motion is *de novo*. *Gorman v. City of Woodinville*, 175 Wn. 2d 68, 71, 283 P.3d 1082 (2012); *Reid v. Pierce County,* 136 Wn.2d 195, 200–01, 961 P.2d 333 (1998). In determining a 12(b)(6) motion, the Court's inquiry is limited to determining whether there is any possible legal theory or set of facts consistent with plaintiff's complaint that would entitle the plaintiff to relief. Under this standard, "[d]ismissal for failure to state a claim may be granted only if 'it appears beyond doubt that the plaintiff can prove no set

[10] CP 495-496, Trial Judge's Order Dismissing Plaintiffs' Complaint.
[11] Court of Appeals Published Opinion at 6.

of facts, consistent with the complaint, which would entitle the plaintiff to relief.'" *Orwick v. City of Seattle*, 103 Wn. 2d 249, 254, 692 P.2d 793, 797 (1984). In other words, under this standard of review, the court presumes that all facts alleged in the plaintiff's complaint are true and may consider hypothetical facts supporting the plaintiff's claims. *Kinney v. Cook*, 159 Wn.2d 837, 842, 154 P.3d 206 (2007).

Here, the allegations in Plaintiffs' Amended Complaint, taken as true, establish that: (1) current levels of judicial funding are inadequate; (2) our judicial system is in crisis due to inadequate funding; (3) the crisis caused by the lack of adequate court funding has adversely affected the availability of justice without unnecessary delay and the inviolate right to trial by jury, as guaranteed by our Constitution; (4) that legislative unwillingness to fund the courts adequately raises serious separation of powers problems; and, (5) that Plaintiffs and the putative class they represent are injured by the untimely operation of the courts due to state-imposed financial constraints. At this point in the litigation, those are facts that must be accepted as true.

In addition. the named plaintiffs alleged that they are currently plaintiffs in civil cases being unnecessarily delayed by the systematic underfunding of the courts, satisfying requirements of standing and ripeness. These circumstances provide a prima facie basis for plaintiffs to

allege a violation of the constitutional guarantees they have invoked. The facts alleged and the constitutional provisions that provide the basis for their claims should have been more than enough for Plaintiffs to have survived the State's motion to dismiss. But the trial court nonetheless granted the State's motion without an opinion explaining the grounds for its ruling. The Court of Appeals held that although the judiciary has inherent authority to require the legislature to adequate fund our courts, "[l]itigants may not wield the judiciary's power in its stead and the judiciary may not …delegate its power in an attempt to disguise its use."[12] Plaintiffs then filed this petition for review and asks this Court to review this issue.

IV. ARGUMENT

A. Plaintiffs have standing to bring this lawsuit.

"Standing is a 'party's right to make a legal claim or seek judicial enforcement of a duty or right." *Friends of N. Spokane Cty. Parks v. Spokane Cnty.*, 184 Wn. App. 105, 115, 336 P.3d 632 (2014). This case is brought pursuant to the Uniform Declaratory Judgments Act (UDJA). RCW 7.24.020, which codifies the UDJA and affords standing to a party (1) within the zone of interest protected by statute or constitutional

[12] Court of Appeals' Published Opinion at 12.

provision and (2) who has suffered an "injury in fact, economic or otherwise." *Nelson v. Appleway Chevrolet, Inc.*, 160 Wn.2d 173, 186, 157 P.3d 847 (2007) (citation omitted); *Washington State Hous. Fin. Comm'n v. Nat'l Homebuyers Fund, Inc.*, 193 Wn.2d 704, 711, 445 P.3d 533 (2019). In addition, the UDJA is available for justiciable controversies that meet these four elements: "(1) parties must have existing and genuine rights or interests; (2) these rights or interests must be direct and substantial; (3) the determination will be a final judgment that extinguishes the dispute, and (4) the proceeding must be genuinely adversarial in character." *Id*. Notably, the UDJA is "liberally construed and administered," RCW 7.24.120, and "standing is not intended to be a particularly high bar." *Washington State Hous. Fin. Comm'n*, 193 Wn.2d at 712.

In addition, our courts recognize public interest standing, where a case presents "issues of significant public interest that, by analogy to other decisions, allow this court to reach the merits." *Farris v. Munro*, 99 Wn.2d 326, 330, 662 P.2d 821 (1983). Public interest standing is available "[w]here a controversy is of serious public importance and immediately affects substantial segments of the population and its outcome will have a direct bearing on the commerce, finance, labor, industry or agriculture generally," and therefore supports the proposition that "questions of standing to maintain an action should be given less rigid and more liberal

answer." *Id*. (quoting *Washington Natural Gas Co. v. PUD 1*, 77 Wn.2d 94, 96, 459 P.2d 633 (1969). As article I, section 10 establishes, the State has a fundamental responsibility to administer justice without unnecessary delay. Where it fails to do so due to inadequate funding, by analogy to the school funding cases, this Court may declare so. *See McCleary v. State*, 173 Wn. 2d 477, 528, 269 P.3d 227 (2012).

Regardless of the test applied, Plaintiffs have standing to bring this lawsuit. If the civil justice system is plagued by "unnecessary delay," as alleged here, it is hard to contemplate why plaintiffs suffering from that delay lack standing to assert the right, as they have the necessary personal stake in the issue that affords standing to raise the constitutional question. *Marchioro v. Chaney,* 90 Wn.2d 298, 303, 582 P.2d 487 (1978).

This Court has recognized that "'[j]ustice delayed is justice denied' is literally true for money," because it "deprives [a plaintiff] of its productive use during that time." *Lane v. City of Seattle*, 164 Wn.2d 875, 888, 194 P.3d 977 (2008). Delaying jury trials affects the receipt of those funds and has a direct bearing on those most harshly impacted by unacceptable delays in having their cases tried: plaintiffs whose injuries range from physical to financial, many with devastating personal and family consequences. The courts' inability to efficiently or predictably address their claims can be as devastating as the underlying injuries that

brought them to court—sometimes even more so than the injury that is subject to suit.

The budgetary crisis within the judiciary also impairs their right to a jury trial to determine appropriate compensation and render a judgment. Plaintiffs who await a verdict so that insurance claims will be paid on their behalf may lose their homes as the result of inordinate and sequential delays of their trials. Long overdue and unpaid medical bills may force others into bankruptcy. Unnecessary delay also impairs plaintiffs' cases because witnesses' memories start to fade and evidence becomes stale. Finally, the judiciary's inability to operate on a sound financial footing undermines its ability to stand as a bulwark of constitutionally guaranteed rights invaded by actions of the other branches, which serves as the basis for separation of powers.

Under these facts, the Class Representative and putative class members all have a current personal stake in the outcome of this controversy of substantial importance, and they should be deemed to have standing to bring this ripe lawsuit.

B. Plaintiffs have a right to seek a declaration and appropriate remedy for inadequate funding of our courts because of its impact on their constitutionally guaranteed rights.

The Constitution establishes three branches of government: legislative, executive, and judicial. Funding each of the three branches

ultimately falls upon the State. Just as it is true that the State must fund the legislative and executive branches sufficiently to enable their operation as the Constitution contemplates, so, too, must the State adequately fund the judicial branch.

Only one provision of the Constitution affecting the judicial branch provides an exception to that mandatory State responsibility. Section 13 of the judicial article splits the funding responsibilities for superior court judges between the state and the county or counties from which that judge is elected. WASH. CONST. art. IV, § 13. If the framers had intended that counties have constitutional responsibility for other expenses of the superior courts and such other courts as the legislature might establish, the Constitution would have employed the same language as Section 13 to create concurrent responsibility. It pointedly did not.[13]

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[13] The Court of Appeals relies on RCW 2.28.139 to support its argument that the counties have a duty to fund the operation of their courts. The statute states that "[t]he county in which the court is held shall furnish the courthouse, a jail or suitable place for confining prisoners, books for record, stationery, lights, wood, attendance, and other incidental expenses of the courthouse and court which are not paid by the United States." What the Court of Appeals fails to address is that in 1979 the voters of Washington passed Initiative 62, codified as RCW 43.135.060,[13] which attempted to curtail the legislature from imposing "unfunded mandates" on the counties, including "increased levels of service," unless "fully reimbursed" by the State. On several occasions this Court has recognized that RCW 43.135.060 places the burden of funding new judgeships and the administrative costs associated with new judgeships entirely on the State.

This conclusion is further bolstered by the "well-established rule of constitutional construction, '*expressio unius est exclusio alterius*,'" which holds that that the "express mention of one thing implies the exclusion of the other." *Yelle v. Bishop*, 55 Wn.2d 286, 295, 347 P.2d 1081 (1959). The principle allows constitutional duties to be implied from an omission. *Id*. Put another way, the omission excludes from the constitutionally assigned county responsibility all which is left unsaid. *Cf. State v. Williams*, 29. Wn. App. 86, 91, 627 P.2d 581 (1981).

The school-funding case, *McCleary* provides an instructive example. The trial court held basic education had to be funded by state-level sources. The State argued that the Constitution allowed it to make ample provision for education using a combination of federal funds as well as local funds not derived from excess levies. *Id*. at 528. This Court disagreed, stating that "the State's reliance on local dollars to support the basic education program fails to provide the "ample" funding Article IX, Section 1 requires. *McCleary,* 173 Wn.2d at 528.

The same concerns voiced in *McCleary* are also present in funding the trial courts. The ability of the counties to provide adequate funding for

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See Seattle v. State, 100 Wn.2d 16, 24, 666 P.2d 351 (1983); *State v. Howard,* 106 Wn.2d 39, 43, 772 P.2d 783 (1985); *Tacoma v. State,* 117 Wn.2d 348, 358, 816 P.2d 7 (1991).

the operation of our trial courts varies from county to county. As in *McCleary*, counties with a wealthier tax base will be able to appropriate more funds for their courts than poorer counties who are strapped for funds. The result of this disparity is that these poorer counties will often fall short of adequately funding their courts, thereby affecting the equity or quality and quantity of how justice is administered in their courts. Such disparity is constitutionally cognizable, and Plaintiffs state a claim for the harm the disparity causes.

Without adequate funding, a separation of powers violation occurs, which exists when the action or inaction of one branch threatens the integrity of another. *Hale v. Wellpinit Sch. Dist. No. 49*, 165 Wn. 2d 494, 507, 198 P.3d 1021 (2009). This Court admonished that "separation of powers … dictates that the judiciary be able to ensure its own survival when insufficient funds are provided by the other branches." *Matter of Salary of Juvenile Director*, 87 Wn.2d 232, 245, 552 P.2d 163 (1976).

Separation of powers serves an instrumental purpose under our Constitution. Because "governments . . . are established to protect and maintain individual rights," WASH. CONST. art. I, § 1, separation of powers serves to prevent arbitrary government actions, *I.N.S. v. Chadha*, 462 U.S. 919, 951 (1983) (according an individual standing to challenge a one-house veto of executive action), and "can serve to safeguard individual

liberty." *NLRB v. Noel Canning*, 573 U.S. 513, 525 (2014). When adversely affected by the violation of separation of powers, as pleaded here, plaintiffs are plainly within its zone of interest.

In addition, Article I, Section 10 establishes that "people have a right of access to courts; indeed, it is 'the bedrock foundation upon which rest all the people's rights and obligations.'" *Putman v. Wenatchee Valley Med. Ctr., P.S.*, 166 Wn. 2d 974, 979, 216 P.3d 374 (2009) (quoting *John Doe v. Puget Sound Blood Ctr.*, 117 Wn. 2d 772, 780, 819 P.2d 370 (1991)). It is guaranteed "without unnecessary delay" and is an individual right that "must be accorded a high priority." *Doe v. Puget Sound Blood Ctr*., 117 Wn. 2d 772, 783, 819 P.2d 370 (1991). Unnecessary delay, then, violates the guarantee.

Finally, the right to an "inviolate" jury trial contained in Article I, Section 21, also, must be discharged in a meaningful manner at a meaningful time. Unnecessary delay impairs that right. This Court has long recognized that the availability of the form of a jury trial without giving it its full scope violates the constitutional guarantee. *See, e.g., Sofie v. Fibreboard Corp*., 112 Wn. 2d 636, 659, 771 P.2d 711 (1989) (holding damage cap violated full scope of the right).

A violation of a constitutional right need not completely eviscerate the right so that it is null and void in its entirety. In *Sofie*, the limit on the

jury's damage assessment denied a plaintiff the full benefit of the right to a jury trial. Thus, a constitutional right is violated not just when the right is entirely denied, but when the challenged law or action "burdens,"[14] "impinges,"[15] "interfere[s],"[16] with or "implicate[s]"[17] the underlying right.

Under the Court of Appeals analysis in this case, Plaintiffs would have no cause of action pursuant to Section 21 even if the legislature suspended jury trials for ten years for budgetary reasons. Certainly, such a moratorium would burden, impinge, interfere, and implicate the jury-trial right – and its remedy would be to require the State to provide the necessary funds so that jury trials could take place.

The answer to these violations is not for individual plaintiffs to file serial motions in every case seeking expeditious handling of their cases, but a systematic response to a systemic issue. *Cf. City of Seattle, Seattle Police Dep't v. Seattle Police Officers' Guild*, 17 Wn. App. 2d 21, 39, 484 P.3d 485 (2021) (recognizing that Section 1983 established a "broad remedy" for systematic violations"). While this is not a Section 1983

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[14] *First Covenant Church of Seattle v. City of Seattle*, 120 Wn. 2d 203, 220, 840 P.2d 174 (1992).
[15] *State v. Krantz*, 24 Wn. 2d 350, 354, 164 P.2d 453 (1945).
[16] *In re Custody of Smith*, 137 Wn. 2d 1, 17, 969 P.2d 21 (1998), *aff'd sub nom. Troxel v. Granville*, 530 U.S. 57 (2000).
[17] *State v. Easterling*, 157 Wn. 2d 167, 177, 137 P.3d 825 (2006).

action, it, too, deserves a broad remedy for systematic violations of the Washington Constitution. As a putative class action, it is plainly superior to other possible methods for the fair and efficient adjudication of the controversy. Through CR 23(b)(3), this suit seeks to resolve not just a single scheduling issue in a case or a collateral order to various trial courts, but a declaration that is aimed at resolving an underfunding issue affecting the dockets of our courts throughout the state.

C. A declaration of rights in a case like this one is well within the courts' authority.

This Court has demonstrated sensitivity to legislative prerogative in the past where funding has been adjudicated, while recognizing it nonetheless has the authority and duty to declare the law under the Constitution. *Seattle Sch. Dist. No. 1 of King Cty. v. State*, 90 Wn. 2d 476, 518, 585 P.2d 71 (1978). It further held that "the fact that the legislature possesses an ultimate obligation to act is not to say that it may act or not act as it chooses. The duty to act as well as the duty to do so within the parameters of [the applicable constitutional provision] is constitutionally required." *Id.* at 523. So, even if the courts were not to prescribe the remedy, which it may indeed do, it may declare the rights and constitutional obligations of the State with respect to court funding, while allowing the State the "necessary time to rework" whatever budgetary

constraints it may face "to comply with a decision of this court having a similar severe fiscal impact." *Id*. at 538. Thus to the extent the trial court here was concerned about budgetary impact on the State or interference with legislative authority, that concern was misplaced.

Plaintiffs understand the burden they bear to demonstrate that the courts are inadequately funded, that the effect of that underfunding is unreasonable delays[18] in receiving the jury trials they are constitutionally entitled to, and that increased appropriations would remedy their injury. A heavy burden at trial, however, is not the same as a failure to plead a legitimate cause of action. Plaintiffs have borne the burden they bear at this early stage of litigation.

V. CONCLUSION

At the end of its opinion, the Court of Appeals makes the curious argument that "[a] central problem with permitting citizens suits against the legislature to fund the courts becomes one of imbalance: the courts could receive financing at the cost of other agencies that themselves have no inherent power to compel their own funding."[19] In making this

[18] This is a very different standard than the speedy-trial right afforded criminal defendants, and the State is disingenuous in suggesting that Plaintiffs seek the same right in civil cases. State Mem. 27.

[19] Court of Appeals' Published Opinion at 11.

argument, the Court ignores the obvious fact that our courts are not state agencies, but instead are a co-equal branch of government tasked with protecting the constitutional rights of the citizens of this state. Despite the fundamental differences between the courts and the state bureaucracy, the Court suggests that the courts should go through the normal legislative budgeting process to seek adequate funding for our courts. But this argument ignores the well documents attempts of this Court to do precisely this through the Court's annual State of the Judiciary reports. The pleas in these reports for adequate court funding have fallen on deaf ears for 23 years now.

If this Court does not have the power and authority to consider Plaintiffs' causes of action for adequate court funding that has directly undermined their constitutional rights to have their legal matters promptly addressed, no one does. The legislature has repeatedly failed to provide sufficient court funding. The executive has not intervened to ask the legislature to provide sufficient court funding. And Judges throughout this state – though asking and being rebuffed for sufficient court funding – feel the constraints of judicial decorum pulling them back from filing a direct action of their own. Meanwhile, plaintiffs, like those in this case, suffer.

Plaintiffs here seek to overturn the decades-long unconstitutional practice whereby the lack of funding violates the right to justice without

unnecessary delay and the inviolate right to a jury to the constitutional detriment of Plaintiffs. The need for adequate funding is so patent that the judicial branch of government is impaired, harming the constitutionally mandated separation of powers that operates "to ensure [the judiciary's] survival when insufficient funds are provided by the other branches." *Juvenile Dir.*, 87 Wn.2d at 245.

As the great civil rights icon John Lewis said: "If not now, then when. If not us, then who." In this case, Plaintiffs respectfully submit: the time is now and they have proper standing and made sufficient allegations based in the Constitution to do so. To protect these precious guarantees, this Court should grant discretionary review and hear this case.

DATED: January 25, 2023

I certify that this memorandum contains 4841 words, in compliance with RAP 18.17.

/s/ Karen K. Koehler
Karen K. Koehler, WSBA #15325
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Attorneys for Plaintiffs/Appellants

CERTIFICATION

I hereby certify that on January 25, 2022, I delivered a copy of the document to which this certification is attached for delivery to all counsel of record as follows:

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STRITMATTER LAW OFFICES

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JENNIFER RALSTON, CALEB MCNAMARA AND THE ESTATE OF MCNAMARA; BRAEDEN SIMON, ABIE EKENEZER, JESSE HUGHEY, TIM KAUCHUK, JORDAN PICKETT, DANIEL PIERCE, SEAN SWANSON, JOEY WIESER, QUINN ZOSCHKE, JEFF CUSHMAN, Appellants, v. STATE OF WASHINGTON, a governmental entity, Respondent.	No. 84142-4-I DIVISION ONE PUBLISHED OPINION

SMITH, A.C.J. — Several plaintiffs bring this putative class action lawsuit against the State. They claim that it has underfunded the Washington courts in violation of its constitutional duties, that the ensuing court congestion has delayed their civil cases and thereby caused them harm, and that they represent a class of plaintiffs similarly harmed. The trial court dismissed the case for failure to state a claim upon which relief can be granted.

We affirm, concluding that only the judiciary may use its inherent power to compel the legislature to better fund the courts and that no other power allows the plaintiffs their requested remedy.

FACTS

This case is a putative class action brought by a number of plaintiffs. Each is also plaintiff in a separate civil action. They claim that those underlying civil lawsuits have seen their trials delayed because of systemic court underfunding. They bring this action against the State in an attempt to compel greater funding for the judiciary.

The underlying actions are varied and their trial dates have been postponed for a number of reasons. Jennifer Ralston and Caleb McNamara filed their case in 2015. That case still awaited trial as of the filing of the complaint in this putative class action because the court granted a defense motion to continue brought on account of claimed complications in discovery. The order allowed the parties to file a motion for expedited trial, though it is unclear from the record whether they did.

Braeden Simon commenced his case in September, 2020. After a judicial reassignment, trial was rescheduled by the court from September 7, 2021 to February 16, 2022, the next available jury trial date, because of a "scheduling conflict."

Abie Ekenezer, Jessey Hughey, Tim Kauchak, Jordan Pickett, Daniel Pierce, Sean Swanson, Joey Wieser, and Quinn Zoschke, along with around 45 other individuals, are plaintiffs in a lawsuit filed in September, 2020 and amended in April, 2021. Trial was moved forward a year and a half, from September 27, 2021 to February 21, 2023, after the defendants asked for a three-year

continuance because of the complexity of the case, which involves voluminous discovery and more than 500 disclosed witnesses.

Jeff Cushman initiated his underlying lawsuit in October, 2020. The matter was consolidated with other similar cases and a third amended complaint was filed in August, 2021. The court moved the trial date to March, 2022.

Together, these plaintiffs sue the State on behalf of a larger putative class of plaintiffs suffering the impact of delays in their civil trials. They do so because the State plays a role in funding the courts[1] and, they allege, it is failing to fulfil that role. They contend that their trials' continuances harmed them and were ultimately caused by the State's failure to adequately fund the courts. They seek a declaration of their rights and injunctive relief under the Uniform Declaratory Judgments Act (UDJA), ch. 7.24 RCW, requesting that the judiciary compel greater court funding from the legislature.

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[1] It is a limited role. Our state constitution provides:

> The salaries of the judges of the supreme court shall be paid by the state. One-half of the salary of each of the superior court judges shall be paid by the state, and the other one-half by the county or counties for which he is elected. In cases where a judge is provided for more than one county, that portion of his salary which is to be paid by the counties shall be apportioned between or among them according to the assessed value of their taxable property, to be determined by the assessment next preceding the time for which such salary is to be paid.

WASH. CONST. art. IV, § 13. What the State does not pay, the counties do: "The county in which the court is held shall furnish the courthouse, a jail or suitable place for confining prisoners, books for record, stationery, lights, wood, attendance, and other incidental expenses of the courthouse and court which are not paid by the United States." RCW 2.28.139.

The trial court granted the State's motion to dismiss the action with prejudice. The plaintiffs sought direct review from the Washington Supreme Court, which declined review by a June 8, 2022 order.

ANALYSIS

Standard of Review

A trial court's decision to dismiss a case under CR 12(b)(6) is reviewed de novo. Kinney v. Cook, 159 Wn.2d 837, 842, 154 P.3d 206 (2007). "Dismissal is warranted only if the court concludes, beyond a reasonable doubt, the plaintiff cannot prove 'any set of facts which would justify recovery.' " Kinney, 159 Wn.2d 837 at 842 (quoting Tenore v. AT&T Wireless Servs., 136 Wn.2d 322, 329-30, 962 P.2d 104 (1998)). "The court presumes all facts alleged in the plaintiff's complaint are true and may consider hypothetical facts supporting the plaintiff's claims." Kinney, 159 Wn.2d at 842.

Collateral Attack

As a threshold procedural matter, the State contends that this action constitutes a collateral attack by the plaintiffs on their underlying cases and therefore improperly asks one court to interfere in proceedings not before it. We disagree.

The common law priority of action rule "provides that the first court to obtain jurisdiction over a case possesses exclusive jurisdiction to the exclusion of other coordinate courts." Atl. Cas. Ins. Co. v. Oregon Mut. Ins. Co., 137 Wn. App. 296, 302, 153 P.3d 211 (2007). "[I]ts authority continues subject only to the appellate authority until the matter is finally and completely disposed of." State

ex rel. Greenberger v. Superior Court for King County, 134 Wash. 400, 401, 235 P. 957 (1925). But the rule applies only where there is "identity of subject matter, relief, and parties between the actions." Am. Mobile Homes of Wash., Inc. v. Seattle-First Nat'l Bank, 115 Wn.2d 307, 317, 796 P.2d 1276 (1990).

Here, there is no identity of subject matter, requested relief, or parties between the actions. The plaintiffs do not ask the court to decide the issues of fact or law that are the subject of their underlying cases or directly interfere in those proceedings in any way. What relief the plaintiffs do request is systemic in nature, rather than targeted at their preexisting cases. Furthermore, the parties among the cases are also not identical; the State is the only named defendant here. The priority of action rule therefore does not bar this lawsuit.

Power to Compel Legislative Funding

We are asked whether private litigants who assert that their trials have been delayed because of an underfinanced court system's lack of capacity may sue the State in order to compel the judiciary's more ample funding by the legislature. We conclude that they may not. The judiciary possesses the inherent power to compel the legislature to better fund the courts. But exercise of this power is necessarily limited by the careful balance of powers between the branches. These limitations express themselves in part by allowing only one entity to bring this sort of lawsuit: the judiciary. More generally, no other right or power permits the plaintiffs' requested remedy. A lawsuit brought by members of the public to compel specific legislative exercise of its power over funding may

only be sustained under our state constitution's public education mandate, not under the provisions relied on by the plaintiffs in this case.

1. Structural Constitutional Principles

The doctrines of separation of powers, checks and balances, and inherent judicial powers are "three interrelated . . . constituents of our governmental framework" that inform determinations of when one branch may interfere with the actions of another. In re Salary of Juvenile Director, 87 Wn.2d 232, 237-38, 552 P.2d 163 (1976). The judiciary is empowered by these doctrines to compel the legislature to provide greater funding for the courts when they are unconstitutionally under resourced. Id. at 245. The plaintiffs contend that they fall within a "zone of interest" arising from this power that supports their lawsuit because court underfunding "impairs [the judiciary's] existence as a co-equal branch, in violation of the constitutional guarantee of separation of powers." The State, on the other hand, contends that these doctrines entirely prohibit the plaintiffs' lawsuit because any exercise of this power constitutes a disfavored judicial interference in legislative functions. We hold that only the judiciary may wield its inherent power to compel the legislature to better fund the courts.

The three doctrines are as much philosophical and political constructs as they are legal ones. Juvenile Director, the seminal Washington case addressing them, conducts an examination of their history and purpose and is the basis for much of the following analysis. Id. at 236-51. That being so, a brief summary of the case's facts is appropriate. It concerned the appeal from a superior court

order enjoining the board of county commissioners of Lincoln County to pay a court-appointed employee, the director of juvenile services, a higher wage. Id. at 234-35. The case was brought by the superior court of Lincoln County but heard by a superior court judge from another county. Id. at 233. The Washington Supreme Court, in an opinion written by Justice Utter, reversed the superior court's order because the judicial plaintiffs had not met the high burden needed for the judiciary to compel another branch to fund the courts. Id. at 251.

To start, "[a]ny inquiry into the propriety of court action to compel funding of its own functions must begin with an examination of the theoretical underpinnings of the doctrines of separation of powers, checks and balances, and inherent judicial power." Id. at 237. The separation of powers doctrine was first expressed in its modern form by eighteenth century English and French scholars including John Locke and Baron de Montesquieu. Id. at 238. At its core is the notion that exercise of three fundamental governmental powers—writing laws, executing laws, and judging laws' application—should be divided among three separate institutions of government (respectively, the legislative, executive, and judicial branches). See id. at 238-39.[2] This division came to be embodied in the provisions of the state and federal constitutions of the United States. Id. at 239-40. Though it is not a "definitive guide to intergovernmental relations," the separation of powers doctrine is still " 'the dominant principle of the American

[2] Though, with that said, "[i]t is an oversimplification to view the doctrine as establishing analytically distinct categories of government functions," some overlap between and among the functions has always existed. Id. at 242.

political system,' " invoked by the courts as a heuristic to help decide matters throughout the history of American jurisprudence. Id. at 240 (collecting federal and Washington cases) (quoting GORDON S. WOOD, THE CREATION OF THE AMERICAN REPUBLIC 1776-1787, at 449 (1969)).

The related doctrine of checks and balances suggests that a total separation of powers among the three branches is too broad a division of authority. It proposes that good government is better assured by allowing the branches to check each other's exercise of powers in certain circumstances in order to stop a single branch from overreaching. Id. at 240-42. Thus, among other checks and balances, the executive possesses a veto power over legislation, the legislature possesses the power of the purse, and the court may interpret the constitution and laws. Id. at 241-42.

Checks relevant in this case are both judicial and legislative. On the one hand, "[i]t is emphatically the province and duty of the judicial department to say what the law is" and thereby declare legislative or executive actions unconstitutional. Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177, 2 L. Ed. 60 (1803). That this function be fulfilled is crucial, since "[w]ithout this, all the reservations of particular rights or privileges would amount to nothing." THE FEDERALIST No. 78 (Alexander Hamilton). On the other hand, the Washington legislature controls appropriations, including appropriations funding the other branches. WASH. CONST. art. VIII, § 4.[3]

[3] Governing appropriations in Washington:

The judiciary's crucial functions are therefore inextricably interdependent with the functions of the legislature's appropriations power. The exercise of checks is, as a result, delicate and circumstance specific:

> The actual art of governing under our Constitution does not and cannot conform to judicial definitions of the power of any of its branches based on isolated clauses or even single Articles torn from context. While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity.

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 635, 72 S. Ct. 863, 870, 96 L. Ed. 1153 (1952) (Jackson, J. concurring).

Not having either the power of appropriations or veto, the judiciary is "the only branch excluded from participation in the formation and adoption of the government budget. Such exclusion makes the courts vulnerable to improper checks in the form of reward or retaliation." Juvenile Director, 87 Wn.2d at 244 (providing a historical parallel, "the use of the King's purse to obtain the loyalty of Parliament").

But the independence of the courts to perform their structural function depends on funding, and so, "separation of powers also dictates that the judiciary

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> No moneys shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within one calendar month after the end of the next ensuing fiscal biennium, and every such law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied, and it shall not be sufficient for such law to refer to any other law to fix such sum.

be able to ensure its own survival when insufficient funds are provided by the other branches." Id. at 244-45. The courts therefore must—as a function not of any positive constitutional grant of power, but instead because of the underlying structure of the constitution—possess an inherent power to compel funding from the other branches. Id. at 245. This power "may be exercised *by the branch* to protect *itself* in the performance of its constitutional duties." Id. at 245 (emphases added).

The fragility of the courts' inherent power to compel funding is readily apparent. Inter-branch conflict arising out of the power's use may have "an adverse effect on working relations between" the judiciary and the other branches of government. Id. at 247-48. This may take the form of more funding battles, court-packing, jurisdiction stripping, altered methods of judicial selection, and retaliation against the judge(s) who permitted the forced funding. See id. at 248. Backlash could affect the judiciary's ability to fulfil its constitutional duties more dramatically than underfunding ever did. Additionally, an exercise of the power to compel funding may cause the judiciary to lose its credibility in the eyes of the public, id. at 248, a particular concern at this point in our history. This dictates caution in any conflict between the judiciary and other branches.

Further recommending a restrained application of this power is recognition of the inherently political, and inherently difficult, nature of "allocation of available[, finite] monetary resources by representatives of the people elected in a carefully monitored process." Id. at 248. The judiciary, a non-political branch

comprising officials not always selected in a proportionally representative manner, is less sensitive to the will of the people. Id. at 249. Its single-minded focus on its own funding may as a result risk depriving other crucial services of funds, a distribution already carefully considered by a more representative branch. Id. at 248-49.

This may be the case even in those instances where the judiciary is truly unable to fulfil its constitutional duties. Real harm can be caused by court underfunding, just as it can be caused by the underfunding of many other important governmental services. Litigation, though, is an inferior mechanism to remedy this harm. It focuses only on the parties involved, ignoring any broader context. Cases such as this one, for example, cannot take into account the difficulties faced by the legislature when deciding how to apportion resources. And so they ignore the chance that even if the plaintiffs prevail, restoring court funding, they may do so at the cost of harms caused by the resulting more severe underfunding of other services. A central problem with permitting citizen suits against the legislature to fund the courts becomes one of imbalance: the courts could receive financing at the cost of other agencies that themselves have no inherent power to compel their own funding.[4]

[4] As counsel for the State noted at argument: "[T]he heart of the problem . . . is that private litigants don't represent the interests of the public as a whole, they represent their own interests." Wash. Court of Appeals oral argument, Ralston v. State, No. 84142-4-I (Sept. 27, 2022), at 16 min., 23 sec., audio recording by TVW, Washington State's Public Affairs Network, https://tvw.org/video/division-1-court-of-appeals-2022091074/?eventID=2022091074.

Juvenile Director therefore concluded that a high standard is demanded where the courts' inherent power to compel their own funding from the legislature is invoked. Id. at 249-50. The power "is to be exercised only when established methods fail or when an emergency arises." Id. at 250. Juvenile Director reversed because there was no proof that underfunding "was so inadequate that the court could not fulfill its duties," nor that "an increase [in funding] was reasonably necessary for the efficient administration of justice." Id. at 252.

The fundamental structural concerns of Juvenile Director control resolution of this case. The courts' inherent power to compel their own funding is appropriately exercised rarely and only by the courts themselves. See Zylstra v. Piva, 85 Wn.2d 743, 748, 539 P.2d 823 (1975) ("The court cannot . . . relinquish either its power or its obligation to keep its own house in order."). Pragmatic worries about destabilization of the delicately balanced co-equal branches abound. These worries are not disposed of simply because the lawsuit giving rise to an exercise of this power is brought by private litigants rather than the courts. Any exercise of the power would still be a judicial function, and any protestation otherwise would appear to reasonable observers to be a Trojan horse. Litigants may not wield the judiciary's power in its stead, and the judiciary may not, for its part, delegate its power in an attempt to disguise its use.

We therefore conclude that the courts' inherent power to use litigation to compel more robust court funding from the legislature inheres only in the judiciary and cannot be invoked by private litigants.[5]

2. General Limitations on Parties' Power to Compel Legislative Funding

Nor can the plaintiffs rely on any other authority to sustain their lawsuit. The limits imposed on exercise of the courts' inherent powers are consistent with our more general refusal to compel funding from the legislature regarding *any* right or policy. See Ellensburg v. State, 118 Wn.2d 709, 718, 826 P.2d 1081 (1992) ("The power of appropriation is vested in the Legislature. It is the rare case where the judiciary interferes with that power."); Rocha v. King County, 195 Wn.2d 412, 431, 460 P.3d 624 (2020) (declining to compel greater compensation for jurors); Aji P. by & through Piper v. State, 16 Wn. App. 2d 177, 193-94, 480 P.3d 438 (2021) (declining to compel the State to engage in, and therefore fund, certain environmental policies). This refusal is, like the limitations on the courts' inherent powers, consistent with our general approach to the separation of powers, which disfavors "the activity of one branch invad[ing] the prerogatives of another." Putman v. Wenatchee Valley Med. Ctr., P.S., 166 Wn.2d 974, 985, 216 P.3d 374 (2009).

[5] At argument, the plaintiffs argued that "this is . . . not an action against the legislature. . . . It is actually against the State, because the State has responsibility for making sure that the judiciary is adequately funded." Wash. Court of Appeals oral argument, supra, at 20 min., 22 sec. Because this action asks for exercise of the appropriations power reserved for the legislature, this is a distinction without a difference.

The one narrow, guarded exception to this rule exists under Washington Constitution article IX, section 1, which creates an individual positive right to education funding enforceable through citizens' lawsuits. Seattle Sch. Dist. No. 1 v. State, 90 Wn.2d 476, 510, 585 P.2d 71 (1978) (not ordering any particular action from the legislature, simply concluding that the State was in breach of its duty and the legislature should act); see also McCleary v. State, 173 Wn.2d 477, 518, 269 P.3d 227 (2012) (framing right to education as a "positive right").

That right is not at issue here, but Seattle School District No. 1 is nonetheless instructive. Article IX, section 1 states in relevant part: "It is the paramount duty of the state to make ample provision for the education of all children residing within its borders." WASH. CONST. art. IX, § 1. Seattle School District No. 1, relying on this language, held that the provision, because of that duty, "creates a correlative right on behalf of all resident children." 90 Wn.2d at 510. The court came to this conclusion via a careful textual analysis, giving serious consideration to the words "paramount," "duty," and "ample provision." Seattle Sch. Dist. No. 1, 90 Wn.2d at 516.

Importantly for our purposes in this case, the court in Seattle School District No. 1 emphasized that article IX, section 1 is "unique." 90 Wn.2d at 510. No similar duty and correlative rights arise under other provisions not "constitutionally paramount." Seattle Sch. Dist. No. 1, 90 Wn.2d at 523. And there can be no other "paramount" right because, first, none other is described in our constitution and, second, "[w]hen a thing is said to be paramount, it can only

mean that it is more important *than all other* things concerned." Seattle Sch. Dist. No. 1, 90 Wn.2d at 510-11 (emphasis added) (quoting BERGEN EVANS & CORNELIA EVANS, A DICTIONARY OF CONTEMPORARY AMERICAN USAGE 350 (1957)).

The plaintiffs invoke Washington Constitution article I, section 10[6] and Washington Constitution article I, section 21,[7] arguing that each of these constitutional provisions creates a similar duty that permits this lawsuit and the remedy of compelled funding. But those invocations are unavailing as a result of the exclusive language in Seattle School District No. 1. Neither provision can permit private litigants to compel funding; only article IX, section 1 authorizes that sort of action. The plaintiffs bring their action under the UDJA, arguing that the State's failure to fund the courts violates article I, section 10 and article I, section 21. But to have recourse to the UDJA, the interests litigants seek to protect must be within that zone of interests protected or regulated by a relevant statute or constitutional guarantee. Grant County Fire Prot. Dist. No. 5 v. Moses Lake, 150 Wn.2d 791, 802, 83 P.3d 419 (2004). The constitutional provisions on which plaintiffs rely, however, do not impose on the legislature a duty to act enforceable by private litigants.

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[6] "Justice in all cases shall be administered openly, and without unnecessary delay."

[7] "The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto."

Finally, plaintiffs argue that they have standing under the UDJA not because they stand within a protected zone of interests, but because the issue of court funding is one of great public interest.

> Where the question is one of great public interest . . . and where it appears that an opinion of the court will be beneficial to the public and to other branches of the government, the court may exercise its discretion and render a declaratory judgment to resolve a question of constitutional interpretation.

Seattle Sch. Dist. 1, 90 Wn.2d at 490. But public interest standing is extended to ensure that issues do not escape review. Grant County, 150 Wn.2d at 803. Thus, in Yakima County (West Valley) Fire Protection District No. 12 v. Yakima, the court did not extend standing to a fire protection district where its arguments could be made as well or better by others who had entered into the same utility agreement with the city of Yakima. 122 Wn.2d 371, 380-81, 858 P.2d 245 (1993). Here, where the courts themselves are more knowledgeable and better positioned than members of the public to address the systemic underfunding alleged by the plaintiffs, we do not extend public interest standing to them.

CONCLUSION

Plaintiffs' counsel stated at the beginning of oral argument that individuals are "at the mercy of the legislature" if an underfunded judiciary proves unable to resolve disputes. While this may be true, it is hardly a state of affairs unique to court funding; the legislature is given the power to tax and spend, and with it the responsibility to deliberate carefully and apportion funds appropriately. It, not the courts, is the proper forum for debates about the expenditure of limited public resources. Where it errs, voters are not left without recourse, but instead have

the power to correct it through the democratic political process. Where it errs by underfunding the courts, the judiciary is empowered to defend its institutional purpose. But that the judiciary exists to serve public interests does not mean that the public may compel it to use its inherent power to order the legislature to act.

We affirm.

Smith, A.C.J.

WE CONCUR:

Andrus, C.J.

Mann, J.