COA No. 378454 - III 100285-8

SUPREME COURT
OF THE STATE OF WASHINGTON

SHONTO PETE and MONIE TULLE, as individuals and on behalf of all others similarly situated,
Plaintiffs/Appellants/Petitioners

vs.

CITY OF AIRWAY HEIGHTS WASHINGTON; CITY OF CHENEY WASHINGTON, and TERRI COOPER and JOHN DOE COOPER and the marital community there of
Defendant/Respondents

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

The Petitioners are Shonto Pete and Monie Tulle, as individuals and others similarly situated. Petitioners are the Plaintiffs in the Spokane County Superior Court, and the Appellants in the Division III Court of Appeals. Petitioners' and Respondents filed cross motions for summary judgment on the issue of whether non-lawyer Terri Cooper is qualified to serve as a Municipal Court Commissioner in the Cities of Airway Heights and Cheney who both have populations in excess of 5,000 people.

The trial court denied Petitioners' motion for summary judgment and granted Respondents motion for summary judgment resulting in the dismissal of Petitioners' lawsuit. Petitioners appealed the trial court's rulings on summary judgment, and Division III upheld the trial court's summary judgment orders.

II. CITATION TO COURT OF APPEAL'S DECISION

Petitioner seeks review of *Shonto Pete & Monie Tulle v. City of Airway Heights & City of Cheney,* 37845-4-III, 2021, WL 4060305, September 7, 2021, hereafter "Decision."

III. ISSUES PRESENTED FOR REVIEW

1. Whether RCW 3.50.075's reference to RCW 3.34.060 excludes the population requirement and allows a non-lawyer to serve as a Municipal and District Court Commissioner regardless of population.

IV. STATEMENT OF THE CASE

A. Background.

Terri Cooper is, a non-lawyer, serving as the Municipal Court Commissioner in both the City of Cheney ("Cheney") and the City of Airway Heights ("Airway Heights"). **CP 209-212; 215-223.** Ms. Cooper has never attended law school, does not possess a law degree, and is not admitted to practice law in the State of Washington. **CP 209-212; 215-222.** Both Cheney and Airway Heights have populations that exceed 5,000 people, and

were aware Ms. Cooper was a non-lawyer when she was hired to serve as the Municipal Court Commissioner. **Id.** Ms. Cooper has taken and passed the qualifying examination for a lay candidate to serve as a judicial officer prior to January 1, 2003. **CP 211; 218; 227.**

In her capacity as the Municipal Court Commissioner, Ms. Cooper sentenced Petitioner Shonto Pete to serve 90-days in jail. **CP 21.** Ms. Cooper also found that Petitioner Monie Tulle had committed an offense and imposed a sanction. **CP 21.** Ms. Cooper took these actions despite not meeting the qualifications to serve as the Municipal Court Commissioner in Airway Heights and Cheney because she is a non-lawyer serving in municipalities with populations greater than 5,000 people. Airway Heights was aware that a non-lawyer, such as Ms. Cooper, could not serve as a Municipal Court Commissioner as the former Mayor of Airway Heights, Don Harmon, removed a sitting lay judge in 1997 because Airway Heights population was forecasted to exceed 5,000 people. **CP 338-340.** Despite

knowing its Municipal Court Commissioner must be lawyer due to its population greatly exceeding 5,000 people, Airway Heights hired Ms. Cooper to serve as a judicial officer. **CP 216-222.**

Petitioners, and other similarly situated, brought this action seeking damages as a result of Ms. Cooper violating their constitutional rights by taking their liberty and imposing financial penalties without the legal authority to do so under the law. Washington law requires anyone serving as a judge, commissioner, or pro tem judge to be a lawyer where the population is greater than 5,000 people[1].

B. Superior Court Procedural History

On June 26, 2020, the trial court considered cross motions for summary judgment. **RP 5-6; CP 55-74; 75-83; 189-201; 202-228; 234-239; 318-334; 351-363; 392-396.** The trial court noted there were no genuine issues of material fact regarding

[1] Municipal Court Commissioner (RCW 3.50.075); District Court Judge (RCW 3.34.060), Municipal Court Judge (RCW 3.50.404), District Court Commissioner (RCW 3.42.010) and Municipal Pro Tem Judge (RCW 3.50.090).

Terri Cooper being appointed as a Municipal Court Commissioner in both the City of Cheney and the City of Airway Height. **RP 17.** The trial court recognized that Ms. Copper was not a lawyer, she had taken and passed the qualifying exam for non-lawyer judges, and both cities had populations greater than 5,000 people. **RP 17.**

At issue on summary judgment was whether RCW 3.50.075(3) referenced the population requirement set forth in RCW 3.34.060(2)(b) for non-lawyer judges. **RP 18**. The Petitioners argued that RCW 3.50.075(3)'s reference to RCW 3.34.060 required the trial court to include the entire statute, or at least the entire sentence of RCW 3.34.060(2)(b) setting forth the requirements for a lay candidate for judicial officer. **RP 18**. RCW 3.34.060(2)(b) allows non-lawyers to serve as a judicial officer where the individual has passed the qualifying examination for non-lawyers prior to January 1, 2003 in districts with a population less than 5,000 people. Respondents, on the other hand, argued RCW 3.30.075(3) does not reference the

population requirement stated in RCW 3.34.060(b)(2). Respondents argued RCW 3.30.075(a) only intended to reference the portion of RCW 3.34.060(2)(b) appearing after the first comma in the sentence, which only refers to the requirement to pass a qualifying exam for a lay candidate for judicial officer. **RP 17-18.**

The trial court decided that RCW 3.50.075(3) only intended to reference the portion of the sentence appearing after the first comma in RCW 3.34.060(2)(b) referring to the qualifying exam for a lay candidate for judicial officer. **RP 19-20.** The trial court found the population requirement stated in RCW 3.34.060(2)(b) did not apply to a non-lawyer Municipal Commissioner. **RP 19-20.** Based on this interpretation of RCW 3.50.075, the trial court denied Petitioners' motion for summary judgment and granted Respondents' motion for summary judgment resulting in the dismissal of the Petitioners' lawsuit. **RP 20.**

C. Division III Decision.

The Petitioners appealed the trial court's decision to Division III because a reading of the plain language of RCW 3.50.075(3) and RCW 3.34.060(2)(b), related statutes, and applicable caselaw requires there be less than 5,000 people before a non-lawyer can qualify as a judicial officer in Washington. On September 7, 2021, Division III issued its Decision (the "Decision") upholding the trial court's rulings on summary judgment.

Division III analyzed the language of RCW 3.30.075(3) and its reference to RCW 3.34.060 and determined the population requirement for non-lawyer judges stated in RCW 3.34.060(2)(b) did not apply to Municipal Court Commissioners. Division III ignored the plain language of the statute, legislative intent, related statutes and prior rulings of the Washington Supreme Court requiring judicial officers to be lawyers where the population is greater than 5,000 people. The Decision allows non-lawyers to serve as a Municipal and District Court Commissioners regardless of population; meaning non-lawyers

may serve as Commissioners in Washington's most populated cities, such as Seattle, Spokane, and Tacoma.

V. ARGUMENT

A. Standard of Review.

The standard of review for trial court's order granting or denying a motion for summary judgment is *de novo*. McDevitt v. Harbor View Medical Center, 179 Wash.2d 59, 64, 316 P.3d 469 (2013). By filing cross motions for summary judgment, the parties concede there is no genuine issues of material fact. Pleasant v. Regence BlueSheild, 181 Wash. App. 252, 261, 325 P.3d 237 (2014).

Division III and the trial court committed err by determining the statutory population requirement for non-lawyer judicial officers does not to apply to Municipal and District Court Commissioners. The Supreme Court should accept review because the Decision is contrary to prior Supreme Court decisions, violates citizens constitutional rights, and involves issues of substantial public interest.

B. The Decision is in Conflict with Prior Washington Supreme Court Decisions and Rules of Statutory Interpretation By Permitting a Non-Lawyer to Serve as a Judicial Officer Regardless of Population.

1. The Decision is Contrary to Prior Decisions of the Washington Supreme Court Allowing Non-Lawyers to Serve as Judicial Officers Only in Sparsely Populated Areas.

To be a judicial officer in the State of Washington a person must be an attorney licensed to practice in this state, however, there is one limited exception. The exception is that a person who has taken and passed the qualifying examination for non-lawyer judges prior to January 1, 2003, may serve as a judicial officer in districts and municipalities with less than 5,000 people. See, RCW 3.34.060, RCW 3.50.040; RCW 3.42.010; RCW 3.50.090 & RCW 3.50.075. Contrary to the plain statutory language, legislative history and prior caselaw, the Decision allows non-lawyers to serve as Municipal and District Court Commissioners regardless of population. The exception allowing non-lawyers to serve as judicial officers has always been population based. See, Young v. Konz, 91 Wash.2d 532,

588 P.2d 1360 (1979); Shaw v. Vannice, 96 Wash.2d 532, 637 P.2d 241 (1981).

As the Washington Supreme Court stated, "[*o*]*ur state system, which provides for nonattorney judges in small sparsely populated areas, only in misdemeanor and gross misdemeanor cases, with de novo review from All cases, unless review is voluntarily waived, clearly meets this standard.*" Young, 91 Wash.2d at 539. The Supreme Court ultimately upheld the validity of the statutes providing for non-lawyer judges based on the holding in North v. Russell, 427 U.S., 92 S. Ct. 2709, 49 L. Ed.2d 534 (1976), which "*upheld the right of states to classify areas, establishing one system of courts for populated areas and another for rural areas.*" Young, 91 Wash.2d at 543. This is further emphasized by the decision in Shaw, where the Supreme Court discussed the requirements for Municipal Courts formed in accordance with RCW 3.50.010, and stated, "*[a]ll judges of these municipal courts in municipalities having a population of*

5,000 or more, however, must be attorneys." Shaw, 96 Wash.2d at 534.

Division III committed err by reading RCW 3.50.075's reference to RCW 3.34.060 to omit the population requirement for a Municipal Court Commissioner and allow non-layers to serve as a judicial officer regardless of population. The Supreme Court should accept this Petition for Review because the Decision is contrary to the prior decisions of the Supreme Court of Washington, discussed above, allowing non-lawyers to serve as judicial officers only in sparely populated areas of Washington. RAP 13.4(b)(1).

2. The Decision is Contrary To Prior Decisions of the Supreme Court and Appellate Courts Applying the Rules of Statutory Interpretation.

a. Interpretation of Reference Statutes.

The Decision performs judicial construction and limits the intent of the Legislature by excluding the population requirement for a non-lawyer commissioner. "*A court is required to assume the Legislature meant exactly what it said and apply the statute*

as written." HomeStreet, Inc. v. State Dept. of Revenue, 166 Wash.2d 444, 452, 210 P.3d 297 (2009), quoting, Duke v. Boyd, 133 Wash.2d 80, 87, 942 P.2d 351 (1997). Further, "*[t]he referred statute must be read in context of the referring statute.*" Rivas v. Overlake Hosp. Medical Center, 164 Wash.2d 261, 267, 189 P.3d 753 (2008). A principle of statutory interpretation is "*a reading that results in absurd results must be avoided because it will not be presumed that the legislature intended absurd results.*" State v. J.P., 149 Wash.2d 444, 450, 69 P.3d 318 (2003).

RCW 3.50.075 governs the appointment of Court Commissioners in Municipal Courts. RCW 3.50.075(3) states:

> **Except as provided in subsection (4) of this section, a commissioner has such power, authority, and jurisdiction in criminal and civil matters as the appointing judges possess, and must be a lawyer who is admitted to practice law in the state of Washington *or a non-lawyer who has passed, by January 1, 2003, the qualifying examination for lay judges for courts of limited jurisdiction under RCW 3.34.060.***

RCW 3.50.075(3) references RCW 3.34.060, this is what is known as a "reference statute." Knowles v. Holly, 82 Wash.2d 694, 700, 513 P.2d 18 (1973). Such cross references, "*avoid encumbering the statute books by unnecessary repetition, and...are recognized in this state as approved method of legislation.*" State v. Weatherwax, 188 Wash.2d 139, 149, 392 P.3d 1054 (2017), quoting, Knowles v. Holly, 82 Wash.2d at 700. Courts are unanimous concerning the legal effect of a statutory reference, "*[t]he precepts and terms to which reference is made are to be considered and treated as if they were incorporated into and made part of the referring act, just as completely as if they had been explicitly written therein.*" Knowles v. Holly, 82 Wash.2d at 700-701. "***We consider the referencing statute to incorporate the text of the referenced provision completely, as if the two were one statute***." Weatherwax, 188 Wash.2d at 149.

Under Washington law, since RCW 3.50.075(3) references the entirety of RCW 3.34.060, the two statutes must

be read as if they were one statute. Id. There is no limiting language in RCW 3.50.075(3) stating that only a portion of RCW 3.34.060 is to be referenced. RCW 3.34.060 states:

> **To be eligible to file a declaration of candidacy for and to serve as a district court judge, a person must:**
>
> ***(1) Be a registered voter of the district court district and electoral district, if any, and***
>
> ***(2) Be either:***
>
> > ***(a) A lawyer admitted to practice law in the state of Washington; or***
> >
> > ***(b) In those districts having a population of less than five thousand persons, a person who has taken and passed by January 1, 2003, the qualifying examination for a lay candidate for judicial officer as provided by rule of the supreme court.***

RCW 3.34.060 (emphasis added). The plain language of RCW 3.34.060(2)(b) specifically states that the qualifying examination to serve as a lay judge only applies in districts having populations of 5,000 or less. RCW 3.34.060(2)(b). By law, the population requirement stated in RCW 3.34.060 must be read into RCW 3.50.075 by reference, making it a requirement for the

municipality to have a population of less than 5,000 before a non-layer can be qualified to serve a lay Municipal Court Commissioner. Weatherwax, 188 Wash.2d at 149. To read the two statutes together otherwise would be to render the population requirement set forth in RCW 3.34.060(2)(b) meaningless and render a clause, sentence and words superfluous, void, or insignificant contrary to rules of Washington statutory construction. Kasper, 69 Wash.2d at 804.

The Decision concludes the reference to RCW 3.34.060 by RCW 3.50.075(3) only refers to the language that already appears in RCW 3.50.075, adding no additional language to RCW 3.50.075(3). Omitting the reference to the population requirement renders the reference to RCW 3.34.060 meaningless and superfluous, contrary to the rules of statutory interpretation. State v. Dennis, 191 Wash.2d 169, 173, 421 P.3d 944 (2018).

Reading RCW 3.50.075(3) consistent with the Decision, you simply get the same language repeated:

> ***RCW 3.50.075(3) - a nonlawyer who has passed, by January 1, 2003, the qualifying examination for lay judges for courts of limited jurisdiction under RCW 3.34.060.***
>
> **RCW 3.34.060(2)(b) - *a person who has taken and passed by January 1, 2003, the qualifying examination for a lay candidate for judicial officer as provided by rule of the supreme court.***

RCW 3.50.075(3) & RCW 3.34.060(2)(b). It is only when the first part of the sentence of RCW 3.34.060(2)(b) is added does the reference make logical sense:

> ***In those districts having a population of less than five thousand persons, a person who has taken and passed by January 1, 2003, the qualifying examination for a lay candidate for judicial officer as provided by rule of the supreme court.***

RCW 3.34.060(2)(b)(emphasis added).

The Supreme Court should accept this Petitioner for Review because the Decision does not follow the rules of statutory interpretation and creates new law allowing non-lawyers to serve as a Municipal and District Court Commissioner regardless of population. RAP 13.4(b)(1) & (2).

b. The Decision is Contrary to Other Similar Statutes Requiring a Population Less than 5,000 for a Non-Lawyer to Serve as a Judicial Officer.

"*A provision's plain meaning may be ascertained by an examination of the statute in which the provision at issue is found, as well as related statutes or other provisions in the same act in which the provision is found.*" Drebick, 156 Wash.2d 289, 295, 126 P.3d 802 (2006) quoting, Campbell & Gwinn, 146 Wash.2d 1, 10, 43 P.3d 4 (2002)(internal quotations omitted). "*Reference to a statute's context to determine its plain meaning also includes examining closely related statutes, because legislators enact legislation in light of existing statutes.* State Dept. of Ecology v. Campbell & Gwinn, LLC, 146 Wash.2d 1, 11, 43 P.3d 4 (2002). Looking at the related statutes and provisions within the same act, the population requirement of less than 5,000 people applies to Municipal Court Commissioners.

Under RCW 3.50. *et. seq*, a judicial officer is defined as a judge, judge pro tempore, or court commissioner. RCW 3.50.045(3). RCW 3.50.040 sets forth the requirements to be a Municipal Court Judge and provides in pertinent part:

> ***A person appointed as a full-time or part-time municipal judge shall be a citizen of the United States of America and of the state of Washington; and an attorney admitted to practice law before the courts of record of the state of Washington: PROVIDED, That in a municipality having a population less than five thousand persons, a person who has taken and passed by January 1, 2003, the qualifying examination for a lay candidate for judicial officer as provided by rule of the supreme court may be the judge.***

RCW 3.50.040 (emphasis added). RCW 3.50.090 sets forth the requirements to be a Municipal Judge Pro Tem:

> **The qualifications of a judge pro tempore shall be the same as for judges as provided under RCW 3.50.040 except that a judge pro tempore need not be a resident of the city or county in which the municipal court is located.**

RCW 3.50.090(emphasis added). The requirements to be a Judge Pro Tem references RCW 3.50.040; making it a reference statute. Knowles v. Holly, 82 Wash.2d 694, 700, 513 P.2d 18

(1973). Pursuant to RCW 3.50.090 non-attorneys can only serve as Municipal Judge Pro Tem where populations are less than 5,000 people.

Pursuant to RCW 3.50.075(3) a Municipal Court Commissioner:

> ***must be a lawyer who is admitted to practice law in the state of Washington or a nonlawyer who has passed, by January 1, 2003, the qualifying examination for lay judges for courts of limited jurisdiction under RCW 3.34.060.***

RCW 3.50.075(3). Rather than adding the population language appearing in RCW 3.50.040 within the same act, RCW 3.50.075(3) makes reference to RCW 3.34.060, which contains the exact same population requirement. RCW 3.34.060(b)(2) reads:

> ***In those districts having a population of less than five thousand persons, a person who has taken and passed by January 1, 2003, the qualifying examination for lay candidate for judicial officer as provided by rule of the supreme court.***

RCW 3.34.060(2)(b)(emphasis added).

When evaluating a statute, courts apply the last antecedent rule: "*unless a contrary intention appears in the statute, qualifying words and phrases refer to the last antecedent.*" City of Spokane v. County of Spokane, 158 Wash.2d 661, 673, 146 P.3d 893 (2006), quoting, Berrocal v. Fernandez, 155 Wash.2d 585, 593, 121 P.3d 82 (2005). "[*T*]*he presence of a comma before the qualifying phrase is evidence the qualifier is intended to apply to all antecedents instead of only the immediately preceding one.*" Id. The presence of comma is evidence of the intent for the population requirement to apply to all antecedents that follow. Id. If the legislature intended RCW 3.50.075(3) to reference only a portion of RCW 3.34.060, it would have stated the intention to disregard the population requirement and only refer to the qualifying examination appearing after the qualifying comma. Application of the antecedent rule clearly shows the Decision's limited reading is contrary to statutory interpretation.

Both RCW 3.50.040[2] and RCW 3.34.060(b)(2) use the term "*judicial officer,*" which is defined as a judge, judge pro tempore, or court commissioner. RCW 3.34.110(3). Looking at similar statutes and provisions the population requirement applies to all judicial officers. RCW 3.34.060, RCW 3.50.040; RCW 3.42.010; RCW 3.50.090 & RCW 3.50.750.

The Supreme Court should accept this Petition for Review because the Decision creates new law by allowing non-lawyers to serve as judicial officers, Municipal and District Court Commissioners, regardless of the population. The Decision is contrary to the rules of statutory interpretation and contrary to similar statutes within the same act.

C. The Decision Violates Public Policy and Legislative Intent.

The purpose of statutory interpretation is "*to discern and implement the intent of the legislature.*" City of Olympia v. Drebick, 156 Wash.2d 289, 295, 126 P.3d 802 (2006). A

[2] To be a Municipal Judge Pro Tem pursuant to RCW 3.50.090 is the exact same requirements to be Municipal Court Judge pursuant to RCW 3.50.040.

reviewing court is required to give effect to every word in the statute. Id. A principle of statutory interpretation is "*a reading that results in absurd results must be avoided because it will not be presumed that the legislature intended absurd results.*" State v. J.P., 149 Wash.2d 444, 450, 69 P.3d 318 (2003).

On January 1, 2003 former GR 8 was repealed and replaced by RCW 3.34.060 and RCW 3.50.040. Tegland, 2 Wash. Prac; Rules Practice, GR 8 (8th Ed.). Looking at the legislative history, it is apparent that the purpose of replacing former GR 8 was to add a population requirement for non-attorney judicial officers.

On February 16, 2020, Senate Bill 6292 passed the Washington State Senate during the 2002 Regular Session, and stated:

> ***The Municipal and District Court Judges Association is recommending that all candidates for district and municipal court judge should be attorneys admitted to the practice of law in this state, unless the candidate resides in the district with less than 5,000 population and passes a qualifying examination.***

WA S. B. Rep., 2002 Reg. Sess. S.B. 6292. This proposal was made because most people have contact with the lower courts and the public expects their case to "*be heard by a judge who has the requisite education.*" Id. "*The perception of justice is important for confidence in the court system.*" Id.

On March 8, 2020, Senate Bill 6292 passed the Washington House of Representatives, with the purpose of the bill to require:

> ***all district and municipal court judges to be admitted to the practice of law in Washington or, in districts or municipalities with less than 5,000 population, to have passed the qualifying examination for a lay judicial officer by January 1, 2003.***

WA H.R. B. Rep., 2002 Sess. S.B. 6292. At this time, it was noted that there were eight lay judges, and that the bill had nothing to do with the quality of the lay judges, but rather the credibility and public perception of the professional judiciary. Id.

On March 28, 2002, S.B. 6292 was enacted and the background provided stated:

> **The Municipal and District Court Judges Association is recommending that all candidates for district and municipal court judge should be attorneys admitted to the practice of law in this state, unless the candidate resides in a district with less than 5,000 population and passes a qualifying examination.**

WA F. B. Rep., 2002 Reg. Sess. S.B. 6292. Reading the summary of the bill as enacted, it is apparent that the population requirement of less than 5,000 people for a lay candidate to serve as a judicial officer is the main purpose of the bill, and that the bill applies to both District Courts and Municipal Courts. Id.

Consistent with the legislative history above, both RCW 3.34.060 and RCW 3.50.040 only allow a non-lawyer to serve as a judicial officer in districts and municipalities with a population less than 5,000 people. A Municipal Court Commissioner is by definition a judicial officer. RCW 3.34.110 & RCW 3.50.045. The purpose of enacting the population requirement was to ensure that the majority of the people coming into contact with the court have their case "*be heard by a judge who has the requisite education.*" WA S. B. Rep., 2002 Reg. Sess. S.B. 6292.

Because "*[t]he perception of justice is important for confidence in the court system.*" Id.

The Decision involves a substantial public interest because a non-lawyer is being allowed to serve as a judicial officer taking citizens' liberty and assessing financial penalties without judicial authority authorized by statute. The Supreme Court should accept this Petition for Review to address this issue of substantial public interest. RAP 13.4(b)(4).

D. The Decision Creates a Significant Question under both the Washington and United States Constitution.

The Petitioners, and those similarly situated, constitutional rights were violated because Terri Copper is not qualified under the statute to serve as a judicial officer. RCW 3.50.075. The legislature has the sole authority to determine jurisdiction and powers of limited courts, and Ms. Cooper does not have jurisdiction or the power to deprive citizens of liberty or property. State v. Hastings, 115 Wash.2d 42, 50, 793 P.2d 956 (1990), citing Young, 91 Wash.2d at 540-41.

At issue is due process under the Washington Constitution Art. 1, § 3 and the 14th Amendment of United States Constitution stating no person shall be deprived of life, liberty or property without due process of law. While the Washington Supreme Court has held that non-lawyer judges do not violate these due process rights, the decision was based upon the population limitations set forth in the applicable statutes. Young v. Konz, 91 Wash.2d 532, 588 P.2d 1360 (1979), citing RCW 3.12.071(justice of peace in cities with a population greater than 5,000 people must be lawyers); RCW 3.50.040(municipal court judges need not be lawyers where population is less than 5,000).

The Decision allows a non-lawyer to serve as a Municipal Court Commissioner, a judicial officer, regardless of population. The exception allowing non-lawyers to serve as judicial officers has always been population based. See, Young v. Konz, 91 Wash.2d 532, 588 P.2d 1360 (1979); Shaw v. Vannice, 96 Wash.2d 532, 637 P.2d 241 (1981); RCW 3.34.060, RCW 3.50.040; RCW 3.42.010; RCW 3.50.090 & RCW 3.50.750. The

purpose of enacting the population requirement was to ensure that the majority of the people coming into contact with the court have their case "*be heard by a judge who has the requisite education.*" WA S. B. Rep., 2002 Reg. Sess. S.B. 6292. Because "*[t]he perception of justice is important for confidence in the court system.*" Id.

Additionally, the Washington Supreme Court relied upon the holding in North v. Russell, 427 U.S. 328, 96 S. Ct. 2709, 49 L. Ed.2d (1976) to find that allowing non-lawyers to serve as judicial officers did not violate equal protection rights. Relying upon North, the Washington Supreme Court stated:

> ***Lastly, we find North controlling on the issue of equal protection. The United States Supreme Court in North upheld the right of states to classify areas, establishing one system of courts for populated areas and another for rural areas.***

Shaw v. Vannice, 96 Wash. 2d 532, 537, 637 P.2d 241, 244 (1981). The purpose of allowing an exception non-lawyer judge to serve as a judicial officer and finding it does not violate equal protection rights is directly related to population.

A Municipal Court Commissioner is by definition a judicial officer, and as such the Legislature established the population requirement referenced in RCW 3.34.060 to apply to all judicial officers in districts or municipalities. RCW 3.34.110(3). The Decision carves out an exception for only Municipal and District Court Commissioners without rhyme or reason allowing these specific judicial officers to serve regardless of population. The Decision is more perplexing considering that the majority of people who come in contact with a court appear before Municipal and District Courts with their liberty and property interests at stake. The intent of the population requirement is to ensure that judicial officers in municipalities and districts with a population greater than 5,000 are lawyers, who are trained, education and have the requisite experience. WA S. B. Rep., 2002 Reg. Sess. S.B. 6292. This ensures that citizens have confidence in the judicial system. Id.

The Supreme Court should accept review because the Decision violates the Petitioners', and others similarly situated,

constitutional rights by allowing a non-lawyer to serve as a Municipal Court Commissioner in violation of the legislative intent and entire statutory framework establishing jurisdiction, qualifications and powers.

VI. CONCLUSION

This Petition for Review should be accepted by the Washington Supreme Court because Division III affirm the trial court's finding that a non-lawyer may serve as a Municipal Court Commissioner regardless of population is contrary to prior decisions of this Court, rules of statutory interpretation and in violation of constitutional rights to due process and equal protection. There is no other purpose for a non-lawyer to serve as a judicial officer other than a sparse population with limited access to educated, trained and licensed lawyers. To create an exception and allow non-lawyer to serve as Municipal and District Court Commissioners does not comply with any law or policy of this State.

I certify that this Petitioner for Review contains 4687 words, in compliance with RAP 18.17.

DATED this 7th day of October, 2021.

ROBERTS | FREEBOURN, PLLC

s/ Chad Freebourn
CHAD FREEBOURN, WSBA #35624
Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on 7th day of October, 2021 I caused to be served via the Court of Appeals filing system a true and correct copy of the foregoing document to the following:

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/s/ Chad Freebourn
Chad Freebourn

APPENDIX A

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Division III

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CASE # 378454
Shonto Pete & Monie Tulee v. City of Airway Heights & City of Cheney
SPOKANE COUNTY SUPERIOR COURT No. 192047059

Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review of this decision by the Washington Supreme Court. RAP 13.3(b), 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact that the moving party contends this court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration that merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of a decision. RAP 12.4(b). Please file the motion electronically through this court's e-filing portal. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of the decision (should also be filed electronically). RAP 13.4(a). The motion for reconsideration and petition for review must be received by this court on or before the dates each is due. RAP 18.5(c).

Sincerely,

Tristen L. Worthen
Clerk/Administrator

TLW:btb
Attachment
c: **E-mail** Honorable Maryann C. Moreno

FILED
SEPTEMBER 7, 2021
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

SHONTO PETE and MONIE TULEE as individuals and on behalf of all others similarly situated, Appellants, v. CITY OF AIRWAY HEIGHTS, WASHINGTON; and CITY OF CHENEY, WASHINGTON, Respondents, TERRI COOPER and JOHN DOE COOPER, and the marital community thereof, Defendants.	)	No. 37845-4-III UNPUBLISHED OPINION

PENNELL, C.J. — Shonto Pete and Monie Tulee appeal summary judgment dismissal of their claims against the cities of Airway Heights and Cheney. We affirm.

FACTS

In 2019, Commissioner Terri Cooper of the Airway Heights Municipal Court adjudicated cases against Shonto Pete and Monie Tulee. Commissioner Cooper does not have a law degree and has never been admitted to practice law. In 2002, Commissioner Cooper passed the municipal court nonlawyer judicial officer qualification examination, rendering her eligible to be appointed as a nonlawyer judicial officer under former GR 8 (1998).[1] In January 2003 she completed the Washington State Judicial College and was sworn in as a district court judicial officer.

Commissioner Cooper was initially appointed as a court administrator and commissioner of the Medical Lake Municipal Court. In 2004, Commissioner Cooper left the Medical Lake Municipal Court and was appointed as a court administrator and commissioner for the Cheney Municipal Court. In 2018 Commissioner Cooper was appointed as a commissioner on the Airway Heights Municipal Court through an interlocal agreement. At the time of the 2018 appointment, the city of Airway Heights had an estimated population of 9,085 people, and the city of Cheney had an estimated

[1] Former GR 8 permitted those who were not admitted to practice law in Washington to serve as "judicial officers" after passing a qualifying examination. Former GR 8.2. "Judicial officers" included district and municipal court judges, court commissioners, and court administrators. Former GR 8.1(a)(2).

population of 12,200 people.

In 2019, Mr. Pete filed a class action lawsuit in Spokane County Superior Court against Commissioner Cooper and her marital community, and the cities of Airway Heights and Cheney. Ms. Tulle later joined in the suit as a plaintiff. The complaint alleged various constitutional violations, all based on the allegation that Ms. Cooper was not qualified to serve as a court commissioner. Prior to the proceedings resulting in this appeal, the claims against Commissioner Cooper and her marital community were dismissed. Airway Heights and Cheney then successfully moved for summary judgment and the remaining claims of Mr. Pete and Ms. Tulle were dismissed.

Mr. Pete and Ms. Tulle now appeal the judgment against them.

ANALYSIS

Mr. Pete and Ms. Tulle claim the summary judgment order must be reversed because Commissioner Cooper fails to meet the statutory criteria for a municipal court commissioner. The statutes governing this issue are RCW 3.50.075 and RCW 3.34.060. Resolving the arguments raised by Mr. Pete and Ms. Tulee[2] requires statutory

[2] We question whether the complaint about Commissioner Cooper's qualifications would have been more appropriately brought as a *quo warranto* action under chapter 7.56 RCW. *See Green Mountain Sch. Dist. No. 103 v. Durkee*, 56 Wn.2d 154, 158-59, 351 P.2d 525 (1960); *State v. Franks*, 7 Wn. App. 594, 596, 501 P.2d 622 (1972). Nevertheless, because this issue has not been raised by the parties it is not addressed.

interpretation, a task we conduct de novo. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). The goal of statutory interpretation is to discern the legislature's intent. The best source for discerning intent is statutory language. If the text of a statute makes clear the legislature's intent, our interpretive task goes no further. We must give effect to the statute's plain meaning. *See Estate of Haselwood v. Bremerton Ice Arena, Inc.*, 166 Wn.2d 489, 498, 210 P.3d 308 (2009).

RCW 3.50.075 defines the powers, qualifications required, and appointment procedure of municipal court commissioners. We emphasize the portion of the statute pertinent to the claims on appeal:

> (1) One or more court commissioners may be appointed by a judge of the municipal court.
>
> (2) Each commissioner holds office at the pleasure of the appointing judge.
>
> (3) Except as provided in subsection (4) of this section, a commissioner has such power, authority, and jurisdiction in criminal and civil matters as the appointing judges possess, and must be a lawyer who is admitted to practice law in the state of Washington *or a nonlawyer who has passed, by January 1, 2003, the qualifying examination for lay judges for courts of limited jurisdiction under RCW 3.34.060.*
>
> (4) On or after July 1, 2010, when serving as a commissioner, the commissioner does not have authority to preside over trials in criminal matters, or jury trials in civil matters unless agreed to on the record by all parties.
>
> (5) A commissioner need not be a resident of the city or of the county in which the municipal court is created. When a court commissioner has not been appointed and the municipal court is presided over by a part-

> time appointed judge, the judge need not be a resident of the city or of the county in which the municipal court is created.

RCW 3.50.075 (emphasis added).

RCW 3.34.060, which is referenced in RCW 3.50.075(3), lists the eligibility and qualifications required of district court judges:

> To be eligible to file a declaration of candidacy for and to serve as a district court judge, a person must:
> (1) Be a registered voter of the district court district and electoral district, if any; and
> (2) Be either:
> (a) A lawyer admitted to practice law in the state of Washington; or
> (b) In those districts having a population of less than five thousand persons, a person who has taken and passed by January 1, 2003, the qualifying examination for a lay candidate for judicial officer as provided by rule of the supreme court.

The plain meaning of RCW 3.50.075(3) is clear and unambiguous. Nonlawyers may only serve as a municipal court commissioner if they have passed, by January 1, 2003, the qualifying examination for lay judges of courts of limited jurisdiction. No mention of a population limitation for nonlawyer municipal court commissioners is made in RCW 3.50.075. The reference in RCW 3.50.075(3) to RCW 3.34.060 only serves to indicate that the "qualifying examination for lay judges for courts of limited jurisdiction" required of nonlawyer municipal court commissioners is the same examination as the "qualifying examination for a lay candidate for judicial officer" required of nonlawyer

district court judges. Contrary to the arguments made on appeal, RCW 3.34.060 does not graft a population requirement into RCW 3.50.075.

Mr. Pete and Ms. Tulle argue that the qualifications of municipal court commissioners should be commensurate with those of other similar judicial officers. When it comes to district court judges, municipal court judges, and municipal pro tem judges, the governing statutes limit the eligibility of nonlawyers to districts with 5,000 or less people. RCW 3.34.060 RCW 3.50.040; RCW 3.50.090.[3] Mr. Pete and Ms. Tulle claim municipal court commissioners should be subject to the same population size restriction. The problem with this argument is it runs counter to the statutory text. We will not override a statue's plan meaning based on policy preferences.

The meaning of the statutes at issue in this case are plain. We therefore look no further to resolve the parties' dispute. Under the plain terms of the governing statutes, Terri Cooper's status as a nonlawyer does not disqualify her from serving as a municipal court commissioner, regardless of the size of her district.

CONCLUSION

The summary judgment order of dismissal is affirmed.

---

[3] There is no population limitation imposed on nonlawyer district court commissioners. RCW 3.42.010.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Pennell, C.J.

WE CONCUR:

Siddoway, J.

Staab, J.

APPENDIX B

RCW 3.34.060

District judges—Eligibility and qualifications.

To be eligible to file a declaration of candidacy for and to serve as a district court judge, a person must:

(1) Be a registered voter of the district court district and electoral district, if any; and

(2) Be either:

(a) A lawyer admitted to practice law in the state of Washington; or

(b) In those districts having a population of less than five thousand persons, a person who has taken and passed by January 1, 2003, the qualifying examination for a lay candidate for judicial officer as provided by rule of the supreme court.

[2002 c 136 § 1; 1991 c 361 § 1; 1989 c 227 § 4; 1984 c 258 § 12; 1961 c 299 § 15.]

NOTES:

Intent—1989 c 227: See note following RCW 3.38.070.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

RCW 3.50.075

Court commissioners—Appointment—Qualification—Limitations—Part-time judge.

(1) One or more court commissioners may be appointed by a judge of the municipal court.

(2) Each commissioner holds office at the pleasure of the appointing judge.

(3) Except as provided in subsection (4) of this section, a commissioner has such power, authority, and jurisdiction in criminal and civil matters as the appointing judges possess, and must be a lawyer who is admitted to practice law in the state of Washington or a nonlawyer who has passed, by January 1, 2003, the qualifying examination for lay judges for courts of limited jurisdiction under RCW 3.34.060.

(4) On or after July 1, 2010, when serving as a commissioner, the commissioner does not have authority to preside over trials in criminal matters, or jury trials in civil matters unless agreed to on the record by all parties.

(5) A commissioner need not be a resident of the city or of the county in which the municipal court is created. When a court commissioner has not been appointed and the municipal court is presided over by a part-time appointed judge, the judge need not be a resident of the city or of the county in which the municipal court is created.

[2019 c 52 § 1; 2008 c 227 § 8; 1994 c 10 § 1.]

NOTES:

Effective date—Subheadings not law—2008 c 227: See notes following RCW 3.50.003.

ROBERTS FREEBOURN

October 07, 2021 - 4:53 PM

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