NO. 98047-1

SUPREME COURT OF THE STATE OF WASHINGTON

HON. KELLI LINVILLE,

Petitioner,

v.

DEPARTMENT OF RETIREMENT SYSTEMS,
STATE OF WASHINGTON,

Respondent.

ANSWER TO PETITION FOR REVIEW

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TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

I. INTRODUCTION

This is a straightforward statutory interpretation case about admission to the state's Public Employees' Retirement System (PERS). Since 1976, individuals who have retired from one public retirement system, or who qualify for retirement but have not yet retired, are prohibited or estopped from joining a second retirement system.

Kelli Linville, who at the times relevant to this appeal was the Mayor of the City of Bellingham, was denied membership in the PERS system when she was elected mayor because she had previously accumulated enough service credit in the Teachers' Retirement System (TRS) to qualify for retirement. The Court of Appeals agreed with the Department of Retirement Systems (Department or DRS) that Ms. Linville was estopped from joining PERS.

Contrary to the arguments of Ms. Linville, the Court of Appeals decision does not thwart the Legislature's purpose in adopting a dual membership option. Rather, Ms. Linville mischaracterizes the dual member option to thwart the Legislature's clear directive that members in one retirement system who have retired or are eligible to retire are estopped from joining a second system. This Court should deny review of the well-reasoned Court of Appeals decision.

II. COUNTERSTATEMENT OF THE ISSUES

Does RCW 41.04.270 prohibit or estop a person who is a public retirement system member and who is eligible to receive a retirement allowance from a public retirement system, but who has chosen not yet to apply, from becoming a member of, or accruing any contractual rights in, any other public retirement system listed in RCW 41.50.030?

If a person is a member of one retirement system and is prohibited or estopped from joining a second retirement system, does that person then fail to meet the criteria of a "dual member" pursuant to RCW 41.54.010?

III. COUNTERSTATEMENT OF THE CASE

Since 1976, the Legislature has prevented individuals who have retired from one state retirement system from joining a second public retirement system. RCW 41.04.270. The same statute also prevents members who have qualified for full or normal retirement, but have not yet retired, from joining a second public retirement system.

Ms. Linville joined the Teachers' Retirement System (TRS) Plan 1 when she began working as a speech pathologist in the Bellingham School District in 1976. AR 0083. She was elected to the state Legislature as the Representative for the 42nd Legislative District in 1992. AR 0083. She had the option to join PERS when she began her first Legislative term in 1993, but she elected to continue as a member of TRS, making

contributions and accumulating service credit in that retirement system. AR 0083. When Ms. Linville left the Legislature in 2010, she had accumulated 30.83 years of service credit in TRS and qualified for full, normal retirement. AR 0084. She chose not to apply for retirement.

In 2012, Ms. Linville started her term as the Mayor of Bellingham. This is generally a PERS eligible position. However, because Ms. Linville qualified for a full TRS retirement, the Department denied her membership in PERS. The Department relied on RCW 41.04.270, which precludes members from joining a second public retirement system when the member is retired or qualified to retire from their first pubic retirement system.

Ms. Linville appealed the denial through an administrative hearing process at the Department, and she lost. She then appealed to the Whatcom County Superior Court and argued that she met the criteria to be a dual member pursuant to RCW 41.54.010 and therefore should not be estopped from joining PERS. The superior court agreed with Ms. Linville and reversed the administrative decision.

The Court of Appeals reversed the superior court, determining that Ms. Linville was eligible to receive a TRS retirement benefit and thus was not a dual member when she applied for PERS membership. Because she was eligible for a TRS retirement, she was estopped from becoming a

PERS member, and the Department was correct in its determination. *Linville v. Dep't of Retirement Systems*, __ Wn. App. __, 452 P.3d 1269, 1274 (2019).

IV. REASONS WHY THIS COURT SHOULD DENY REVIEW

The Court of Appeals engaged in a careful review of the relevant retirement statutes and applied the plain language of the law. The statutes are not ambiguous, and they work together. The estoppel statute bars admission to a second public retirement system under specific circumstances, and the dual member statute provides a method for calculating benefits when a person is a member of more than one public retirement system. This case does not raise a significant question of constitutional law or an issue of substantial public importance warranting this Court's review. Nor does it conflict with any other decision. Because Ms. Linville cannot satisfy any of the review criteria in RAP 13.4, the Court should deny review.

A. The Legislature Adopted the Estoppel Statute to Prevent Members Who Were Eligible to Retire, Like Ms. Linville, from Joining a Second Retirement System

It is very rare to have someone who has qualified for full or normal retirement apply for admission to a second retirement system. But when that occurs, the retirement statutes have specific instructions on whether a member of one system can join a second retirement system.

The Court of Appeals applied the plain language of the relevant statutes to determine whether Ms. Linville should have been admitted to membership in PERS. This is exactly what this Court has directed lower courts to do: start with a statute's plain language and discern the meaning from the ordinary understanding of the language at issue, the context of the statute where the provision is found, related provisions, and the statutory scheme as a whole. *Taylor v. Burlington N. R.R. Holdings, Inc.*, 193 Wn.2d 611, 444 P.3d 606, 609-10 (2019) (citing *State v. James-Buhl*, 190 Wn.2d 470, 474, 415 P.3d 234 (2018)).

RCW 41.04.270, the estoppel statute, provides in pertinent part:

> [A]ny member or former member who (a) receives a retirement allowance earned by the former member as deferred compensation from any public retirement system authorized by the general laws of this state, or (b) is eligible to receive a retirement allowance from any public retirement system listed in RCW 41.50.030, but chooses not to apply, ... shall be estopped from becoming a member of or accruing any contractual rights whatsoever in any other public retirement system listed in RCW 41.50.030.

(Emphasis added.) From the plain language of the statute, since Ms. Linville was eligible to receive a retirement allowance in TRS but had chosen not to apply, she was estopped from becoming a member of any other public retirement system.

There are two exceptions to this estoppel. First, if the member has accumulated less than fifteen years of service credit in the first retirement system, then that person will not be estopped from joining another retirement system. Second, if the member is a dual member as defined in RCW 41.54.010, then the prohibition will also not apply.

Neither of these exceptions apply to Ms. Linville. She was estopped from joining PERS because she was eligible to retire in TRS but had chosen not to apply. She argues that she meets the other exception to the estoppel statute as a dual member under RCW 41.54.010. If she is correct, then the estoppel statute would not apply to her. However, under the plain language of the dual member definition, Ms. Linville does not qualify.

RCW 41.54.010 defines "dual member" as "a person who (a) is or becomes a member of a system on or after July 1, 1988, (b) has been a member of one or more other systems, and (c) has never been retired for service from a retirement system and is not receiving a disability retirement or disability leave benefit from any retirement system listed in RCW 41.50.030 or subsection (6) of this section." (Emphasis added.) In order to be a dual member, the person must be able to gain membership in a second retirement system. Ms. Linville had membership in TRS, but she

was not able to gain membership in PERS because of the estoppel statute. She is not a dual member.

The plain language of the statutes is clear. A person does not apply to become a dual member. A person becomes a dual member if the person applies to become a member of a second retirement system, meets the eligibility requirements of the second system, and is enrolled in the second system. Then that person meets the definition of "dual member" and will have their retirement benefits calculated as a dual member. Admission to a second retirement system is what creates dual membership. Since Ms. Linville was estopped from joining a second retirement system based on her eligibility to retire from TRS, she could not become a dual member.

B. The Estoppel Statute and the Dual Member Statute Operate in Ms. Linville's Case Exactly as the Legislature Intended

In seeking this Court's review, Ms. Linville argues that the Court of Appeals has interpreted the estoppel and dual member statutes in a way that frustrates their intended purpose. That is not correct and is not a basis for review. Under RAP 13.4, the Court will only grant review if the Court of Appeals decision conflicts with a Supreme Court decision, conflicts with a published Court of Appeals decision, involves a significant question of constitutional law, or raises an issue of substantial public interest that should be determined by the Supreme Court.

Ms. Linville claims that a conflict exists because this Court has directed that "statutes should be interpreted to further, not frustrate their intended purpose," citing to *Carranza v. Dovex Fruit Co.*, 190 Wn.2d 612, 625, 416 P.3d 1205 (2018). Nothing in the *Linville* Court of Appeals decision conflicts with this statement. Moreover, the *Carranza* case does not stand for the proposition that a Court will disregard the plain language of a statute to further a purpose that conflicts with the statute's plain language.

In *Carranza*, the Court applied the well-established principles of statutory construction, giving meaning to the plain language of the statute: "As always in cases of statutory interpretation, we look first to the plain language of the statute to discern the legislature's intent." *Carranza*, 190 Wn.2d at 619 (citing *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002)). The Court buttressed its plain language analysis by noting that its conclusion was consistent with the statute's intended purpose as remedial legislation. *Id.* at 625. In that case, the Court was reviewing whether certain payments for agricultural workers met the requirements of the state's Minimum Wage Act (MWA). In noting that "'[s]tatutes should be interpreted to further, not frustrate, their intended purpose," and that "remedial legislation like the MWA 'is given a liberal construction' in accordance with the legislature's intent of protecting

employees," the Court was not creating a new rule of statutory construction that ignores the statute's plain language. Instead, it was acknowledging that "[l]iberally construing the MWA favors interpreting its minimum wage mandate as providing employees with a right to hourly compensation for hourly work." *Carranza*, 416 P.3d at 1213 (citations omitted). The *Carranza* case is not a case about ignoring the plain language of a statute, and it certainly does not instruct courts to ignore or add parts of statutes to achieve a preferred interpretation.

Fundamentally, as the Court of Appeals in *Linville* explained, if a statute is plain on its face, the Court gives effect to that meaning as an expression of legislative intent. Furthermore, the Court will construe a statute "so that all the language used is given effect, with no portion rendered meaningless or superfluous." *Linville*, 452 P.3d at 1272 (quoting *City of Seattle v. Swanson*, 193 Wn. App. 795, 810, 373 P.3d 342 (2016)). As the plain language of the dual member statute shows, it is not a way to gain admission to a second retirement system. Instead, it is a description of a type of retirement calculation process to be used when a person has membership in more than one public retirement system. The Court of Appeals application of the plain language is consistent with this Court's direction in *Carranza*.

Although the plain language of the statutes is clear, Ms. Linville's mischaracterizes the Legislature's efforts to increase portability of retirement benefits. The Court only addresses the legislative history behind a statute if the plain meaning is subject to more than one reasonable interpretation. *State v. Gray*, 174 Wn.2d 920, 927, 280 P.3d 1110 (2012). Here as set forth above, the language is plain. Ms. Linville is not a dual member and thus cannot qualify for an exception to the estoppel statute.

Even if it were appropriate to consider the legislative history, nothing in that legislative history supports the conclusion that the Legislature intended for employees like Ms. Linville to join a second retirement system after qualifying for normal retirement in one system. The dual member option was developed after pension system changes in 1977 that transformed the largest retirement systems (PERS, TRS, and Law Enforcement Officers and Fire Fighters) from Plan 1 with full retirement benefits based on years of service credit, to Plan 2 with age thresholds for full retirement benefits. After the 1977 changes, members in Plan 2 did not have a cap on the service credit that could be earned, and eligibility for full retirement was postponed to a later age. As a result, in those systems, there was an incentive to continue working, and there were

more issues of portability of benefits and a need for combined retirement benefits.

In 1987, the Legislature took up the issue of retirement system members who had service credit in more than one retirement system. Substitute S.B. 5150, which created RCW 41.54.010, developed the concept of a dual member:

> Legislation has been enacted providing for transfer of service from one state retirement system to another under limited criteria. Other than through such legislation, a public service career may be completed with the retirement benefit received from the earlier system not reflecting the career compensation.
> ...
> To be eligible for the portability benefit the person must be a dual member (hold membership in two or more retirement systems) on or after July 1, 1988, and not [sic] retired based on service from any prior system.
> ...
> The provisions on estoppel of membership when retired are amended to exclude dual members.

Final Legislative Report, 50th Leg., Reg. & Spec. Sess., at 206-07 (Wash. 1987) (emphasis added).

The Legislature specifically reviewed the estoppel statute, and amended it so that dual members who qualified for retirement, but had not yet retired, would not be estopped. At that time, the Legislature certainly could have amended RCW 41.04.270 to remove the provision that estopped members of a single retirement system who were eligible to

receive a retirement allowance, but had chosen not to apply, but it did not do so. Instead, the Legislature very narrowly amended the estoppel statute to note that the "qualified, but not yet retired" provision would not apply to a dual member. RCW 41.04.270(2). We must presume that the Legislature intended to keep the estoppel provision that applies to members who are qualified to retire from a public retirement system, but who have chosen not to do so, such as Ms. Linville. The Legislature is presumed to have "full knowledge of existing statutes affecting the matter on which they are legislating." *State v. Conte*, 159 Wn.2d 797, 808, 154 P.3d 194 (2007). That is even more true when they specifically amend a statute to change one provision and leave the remainder intact.

The estoppel statute and the dual member statute were intended to address separate retirement system issues. The statutes work together, as the Legislature anticipated, to prohibit members from joining a second retirement system when they already qualify for a full retirement benefit, and to allow for full service credit and salary credit when individuals are members of more than one retirement system.

Interpreting the dual member statute as Ms. Linville argues would require rewriting the plain language of the statute. Ms. Linville seems to interpret RCW 41.54.010 to allow any member to become a dual member by applying to a second retirement system (ignoring the estoppel

provisions of RCW 41.04.270 completely). But the dual member statute is clearly a definition of a type of retirement system member—someone that has been a member of one or more systems and then becomes a member of another system after 1988. As the Court of Appeals noted: "But we do not see any evidence in the plain language of the statute that the legislature intended this to be the case. Without a rewriting of the statute, the result favored by the superior court cannot be obtained." *Linville*, 452 P.3d at 1273.

C. The Court of Appeals Determined the Department's Interpretation of the Pertinent Retirement Statutes to be Reasonable

Ms. Linville argues that the Court of Appeals interpretation of the estoppel statute and the dual member statute create unlikely, unreasonable, and strained consequences. They do not, and that is not a basis for Supreme Court review under RAP 13.4.

To the contrary, Ms. Linville's interpretation of the statutes would render RCW 41.04.270(1)(b) useless. If a member of a retirement system wants to join another retirement system, even if estopped under subsection (1)(b), that member simply has to apply for dual membership. And because dual membership, under her statutory construction, is determined by first enrolling a member into a second retirement system, all members wishing to join a second retirement system are dual members. In other

words, under her statutory construction, there is no scenario where a member of a retirement system is estopped from joining another retirement system because that member is eligible to receive a retirement allowance.

The Department's interpretation of the statutes, adopted by the Court of Appeals, harmonizes the provisions of the estoppel statute and the dual member statute. The two statutes work together: the first sets limits on admission to retirement systems when the applicant has already retired, or is eligible to retire, and the second establishes an option for members of more than one retirement system to have their service calculated together. As this Court has explained, "[s]tatutes are to be read together, whenever possible, to achieve a 'harmonious total statutory scheme ... which maintains the integrity of the respective statutes.'" *Am. Legion Post No. 149 v. Dep't of Health*, 164 Wn.2d 570, 192 P.3d 306 (2008), (quoting *State ex rel. Peninsula Neighborhood Ass'n v. Dep't of Transp.*, 142 Wn.2d 328, 342, 12 P.3d 134 (2000)).

Ms. Linville asserts that there are two classes of long-term state employees if the estoppel statute is employed: those who joined a second retirement system before they were eligible to retire, and those who did not. This is correct. The Legislature determined that those members who were eligible to retire in one retirement system should not be admitted to a

second system. In contrast, if the member was not yet eligible for retirement, then that person could join a second retirement system and would be considered a dual member. This was, in fact, Ms. Linville's situation. Had she opted to join PERS when she became a member of the Legislature, she would have been a dual member and her employment as Mayor would have been used to calculate a dual member retirement benefit. She did not do so. Once she became eligible for retirement under TRS, she no longer had that option.

Ms. Linville further complains that those retirement system members who could take an early retirement are not estopped from joining a second retirement system because the estoppel statute applies only to those who have taken or are eligible for a full or normal retirement. Again, the plain language of the estoppel statute provides that if a member receives a retirement allowance, or is eligible to receive a retirement allowance, but chooses not to apply, that person is estopped from joining a second retirement system or accruing any contractual rights whatsoever in any other public retirement system.

The Department is responsible for making administrative rules to interpret the Legislature's retirement statutes. RCW 41.50.050. In PERS, there is "normal" retirement and "early" retirement. RCW 41.40.630. New early retirement options were enacted in 2007 for members of PERS and

TRS Plans 2 and 3 to compensate for an investment earnings gain sharing provision that was taken away. *See e.g.* RCW 41.40.630(3)(b) and Laws of 2007, ch. 247, § 901. When a member takes an early retirement, the member gives up a portion of the retirement benefit. Because early retirement did not exist when the Legislature enacted the estoppel statute in 1976, the Department has interpreted estoppel, under RCW 41.04.270, to apply only to normal retirement.

Essentially, Ms. Linville is arguing that the estoppel statute, in her particular circumstances works a significant hardship. It is true that if she could join PERS and have her compensation as the Mayor of Bellingham added to her retirement calculation, that would increase her retirement benefits beyond what they will be based upon her TRS service alone. But the Department and Court of Appeals properly applied the plain language of the retirement statutes, and the statutes require that she be precluded from PERS membership because she qualified for TRS retirement. This Court should deny review.

V. CONCLUSION

Ms. Linville was estopped from joining PERS under RCW 41.04.270 because she was already eligible for retirement under TRS and had not become a dual member pursuant to RCW 41.54.010. The Court of Appeals issued a logical, detailed decision applying the statutes' plain

language. There is no conflict or issue of substantial public importance, and thus this Court should deny review

RESPECTFULLY SUBMITTED this 3rd day of February, 2020.

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DECLARATION OF SERVICE

I certify that on this day, I electronically filed this document with the Clerk of the Court using the Washington State Appellate Courts' e-file portal, which will send notification of such filing to all counsel of record at the following:

Philip James Buri
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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 3rd day of February, 2020, at Tumwater, Washington.

Ebonne Robinson, Legal Assistant

ATTORNEY GENERAL'S OFFICE - REVENUE & FINANCE DIVISION

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